

APPENDIX A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS**

In re:)	
)	
MICHELE GRAHAM,)	Case No.: 02-43262
)	(Chapter 7)
Debtor.)	
_____)	
)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Adversary Proceeding No. _____
)	
MICHELE GRAHAM,)	
)	
Defendant.)	
_____)	

**COMPLAINT TO DETERMINE NONDISCHARGEABILITY
OF DEBT OWED TO THE FEDERAL TRADE COMMISSION**

Plaintiff, the Federal Trade Commission (“FTC”), through its undersigned attorneys, files this Complaint under Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, objecting to the dischargeability of a pre-petition debt owed by defendant Michele Graham, the debtor herein (the “Debtor”), to the FTC, and in support hereof alleges as follows:

Jurisdiction and Venue

1. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523.

2. Venue in the Eastern District of Texas is proper under 28 U.S.C. § 1391(b) and (c).

3. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

4. This Adversary Proceeding relates to *In re Michele Graham*, Case No. 02-43262 (Bankr. E.D. Tex.) (Chapter 7), now pending in this Court (the “Bankruptcy Case”). The FTC is an unsecured creditor with a claim against the Debtor in the amount of THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00) pursuant to the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (the “Stipulated Judgment”) entered by the United States District Court for the Northern District of Texas in favor of the FTC and against the Debtor and Medical-Billing.Com, Inc., jointly and severally, in the case styled *FTC v. Medical-Billing.Com, Inc.*, Case No. 3-02CV 0702P (N.D. Tex.) (the “District Court Case”).

5. The FTC and the Debtor previously filed a Motion, pursuant to Section 523 of the Bankruptcy Code (the “Code”) and Fed. R. Bankr. P. 4007, 9006, 9013 and 9014, seeking an extension of the time for the FTC to file a complaint objecting to the dischargeability of a pre-petition debt owed by the Debtor to the FTC until thirty days following the entry of a final order and judgment in the District Court Case (the “Extension Motion”). On October 15, 2002, the Court entered an Order granting the Extension Motion.

The Parties

6. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. § 53(b).

7. Defendant Michele Graham, the Debtor, is the owner and president of Medical-Billing.Com, Inc. (“Medical-Billing”), a Texas corporation with its principal place of business at 1000 East Beltline, Suite 104, Carrollton, TX 75006, which conducted business under the name Professional Management Consultants, promoting and selling its marketing services to consumers attempting to start or expand their work-at-home medical billing businesses. At all times material to the complaint filed by the FTC against the Debtor and Medical-Billing in the District Court Case (the “District Court Complaint”), the Debtor, acting alone or in concert with others, has formulated, directed, controlled, or participated in the acts and practices of Medical-Billing, including the acts and practices set forth in the District Court Complaint.

8. On or about May 24, 2002, the Debtor filed a voluntary petition for relief under Chapter 13 of the Code, thereby commencing the Bankruptcy Case. On or about June 4, 2002, the Debtor filed a notice of voluntary conversion of the Bankruptcy Case to a case under Chapter 7 of the Code.

Course of Proceedings

9. On May 5, 2002, the FTC filed the District Court Complaint against the Debtor and Medical-Billing alleging that they were engaged in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the advertising, telemarketing, offering for sale, and sale of work-at-home medical billing marketing services, and seeking a

permanent injunction and ancillary equitable relief against the Debtor and Medical-Billing, including equitable monetary relief in the form of consumer redress and the disgorgement of ill-gotten monies, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

10. The FTC's action against the Debtor and Medical-Billing¹ is not stayed by Section 362(a) of the Code because it is an exercise of the FTC's police or regulatory power as a governmental unit pursuant to Section 362(b)(4) of the Code and thus falls within an exception to the automatic stay.

11. On _____, the District Court entered the Stipulated Judgment permanently enjoining the various practices that the FTC alleged were deceptive to consumers and entering judgment in favor of the FTC against the Debtor in the amount of THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00). A copy of the Stipulated Judgment is attached hereto and incorporated herein as Exhibit 1.

Defendant's Course of Conduct

12. Since at least December 1999, under the assumed name Professional Management Consultants, the Debtor and Medical-Billing have contracted with consumers throughout the United States to recruit healthcare professionals for whom the consumers will provide medical billing services. The Debtor and Medical-Billing have promoted these medical billing marketing services to consumers through a variety of means, including direct mail, facsimile, and the Internet.

¹ On May 23, 2002, Defendant Medical-Billing.Com, Inc. filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Case No. 02-34426-HCA.

13. In their written marketing and promotional materials, the Debtor and Medical-Billing offer to locate healthcare professionals who will contract with consumers to process the professionals' medical billing. The Debtor and Medical-Billing claim that the accounts they locate for consumers will generate a substantial income for the consumers' work-at-home medical billing businesses. The Debtor and Medical-Billing claim that this income is guaranteed and that their offer is risk free. The Debtor's and Medical-Billing's promotional materials urge consumers to call their toll-free telephone number for more information.

14. The Debtor and Medical-Billing also advertise their medical billing marketing services on their Internet web site, www.medical-billing.com. The web site claims that the Debtor and Medical-Billing can "jump start" consumers' medical billing businesses by marketing the consumers' services to healthcare professionals who are interested in outsourcing billing and collection activities. The Debtor's and Medical-Billing's web site urges consumers to contact them via the Internet to learn more.

15. Consumers who call the Debtor's and Medical-Billing's toll-free telephone number or who respond through the Internet are ultimately connected to the Debtor and Medical-Billing, or their employees or agents, who represent that they have pre-qualified healthcare professionals ready to outsource the professionals' billing operations and who have asked the Debtor and Medical-Billing to screen qualified billing services. The Debtor and Medical-Billing promote a variety of sales packages for which they charge consumers between \$3,500 and \$9,000. In the "Basic Package," which sells for \$3,500 to \$4,000, the Debtor and Medical-Billing promise to provide consumers with one healthcare professional, which will generate a minimum of \$1,250 gross income per month for the consumer's medical billing business. Under

the terms of the “Standard Package,” which sells for \$6,000, the Debtor and Medical-Billing promise to provide two health care professionals who will generate a minimum of \$2,500 gross income per month. The “Advanced Package” is priced to consumers at \$9,000, for which the Debtor and Medical-Billing promise to provide three to six healthcare professionals who will generate a minimum of \$4,500 per month in gross income. All three packages come with a “100% refund guarantee.”

16. The Debtor and Medical-Billing generally execute contracts with consumers that (1) obligate the Debtor and Medical-Billing to provide one or more healthcare professionals who will use the consumers to process their medical claims; and (2) specifically guarantee that the healthcare professional(s) provided by the Debtor and Medical-Billing will produce a gross income for consumers of \$1,250 to \$4,500 per month, depending on the sales package selected by the consumer. In addition, the majority of the Debtor’s and Medical-Billing’s contracts also promise a full refund to consumers if the Debtor and Medical-Billing fail to perform within an allotted time, usually 180 days. Consumers typically pay the Debtor’s and Medical-Billing’s fee by wire transfer, credit card, or cashier’s check.

17. After consumers pay the Debtor and Medical-Billing, they hear little or nothing from them. Few, if any, of the consumers who contract with the Debtor and Medical-Billing are provided healthcare professionals to use consumers’ medical billing services. As a result, few, if any, consumers who purchase the Debtor’s and Medical-Billing’s medical billing marketing services earn any income.

18. When consumers contact the Debtor and Medical-Billing to complain, the Debtor and Medical-Billing use a variety of stalling tactics to avoid paying promised refunds.

Consumers who call the Debtor and Medical-Billing are asked to leave their names and numbers, but the Debtor and Medical-Billing rarely, if ever, return their calls. Consumers' numerous letters and e-mails to the Debtor and Medical-Billing also go unanswered for extended periods of time. In addition, the Debtor and Medical-Billing often claim that the consumers' written refund requests or executed release forms were lost or never received, assert that the requests must be reviewed by the Board of Directors before payment can be made, insist that the refund requests are being processed but will take a while longer, and argue that there are insufficient funds to pay refunds at the time. Ultimately, the Debtor and Medical-Billing rarely provide refunds to consumers who qualify for refunds under the contract. The few consumers who receive full or partial refunds do so only after enlisting the assistance of an attorney or a law enforcement agency such as a state attorney general or the FTC.

19. In numerous instances, in the course of offering for sale and selling their medical billing marketing services, the Debtor and Medical-Billing or their employees or agents have represented, expressly or by implication, that they will provide healthcare professionals who will use the consumers to process their medical claims. In truth and in fact, in numerous instances, the Debtor and Medical-Billing do not provide healthcare professionals who use the consumers to process their medical claims. Therefore, these representations are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

20. In numerous instances, in the course of offering for sale and selling their medical billing marketing services, the Debtor and Medical-Billing or their employees or agents have represented, expressly or by implication, that consumers who purchase the Debtor's and

Medical- Billing's medical billing marketing services will earn a specific level of earnings of \$1,250 to \$4,500 per month. In truth and in fact, in numerous instances, consumers who purchase the Debtor's and Medical-Billing's medical billing marketing services do not earn the specific level of earnings represented by the Debtor and Medical-Billing of \$1,250 to \$4,500 per month. Therefore, these representations are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

21. In numerous instances, in the course of offering for sale and sale of medical billing marketing services, the Debtor and Medical-Billing or their employees or agents have represented, expressly or by implication, that consumers can readily obtain full refunds upon request. In truth and in fact, in numerous instances, consumers cannot readily obtain full refunds upon request. Therefore, these representations are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

22. By engaging in the business practices detailed in Paragraphs 12 through 21 above, consumers in many areas of the United States have suffered substantial monetary loss as a result of the Debtor's and Medical-Billing's unlawful acts or practices.

23. The Debtor is jointly and severally liable for the Stipulated Judgment.

Nondischargeability of the Stipulated Judgment

24. Debts for money, property, or services obtained by false pretenses, a false representation, or actual fraud are not dischargeable. 11 U.S.C. § 523(a)(2)(A).

25. The Debtor violated Section 5 of the FTC Act, 15 U.S.C. § 45, by her participation in a scheme to defraud consumers in connection with the advertising, telemarketing, offering for sale, and sale of work-at-home medical billing marketing services.

26. The false representations of material facts set forth in Paragraphs 19 through 21 above constitute deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

27. The Debtor's activities described in Paragraphs 12 through 21 were conducted with knowledge that she was engaged in a fraudulent scheme and with knowledge of the falsity of the representations, or with reckless disregard of the truth or falsity of the representations.

28. The Debtor injured consumers by knowingly engaging in a fraudulent scheme and knowingly making false representations to consumers. These representations were material to customers in deciding to contract with the Debtor for the purchase of medical billing marketing services.

29. Consumers who contracted with the Debtor for the purchase of medical billing marketing services suffered losses totaling at least THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00).

30. The Debtor's activities described in Paragraphs 12 through 21 above constitute false representations or actual fraud. Consequently, the Debtor's debt to the FTC pursuant to the Stipulated Judgment is one for money, property, or services obtained by false representations or actual fraud, and is not dischargeable. 11 U.S.C. § 523(a)(2)(A).

31. As reflected in the agreed judgment submitted herewith, the Debtor has consented to the non-dischargeability of the Stipulated Judgment owed by the Debtor to the FTC.

WHEREFORE, plaintiff FTC requests that the Court:

(a) Enter the agreed judgment submitted herewith determining the Stipulated Judgment in favor of the FTC and against the Debtor, jointly and severally, entered by the

United States District Court for the Northern District of Texas on _____, in the case styled *FTC v. Medical-Billing.Com, Inc.*, Case No. 3-02CV 0702P (N.D. Tex.), is nondischargeable; and

(b) Granting such other and further relief as this case may require and the Court deems just and proper.

Respectfully submitted,

FEDERAL TRADE COMMISSION

WILLIAM KOVACIC
General Counsel

Dated: _____

By: _____
THOMAS B. CARTER (Texas Bar No. 03932300)
GARY KENNEDY (Oklahoma Bar No. 4961)
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS**

In re:)	
)	
MICHELE GRAHAM,)	Case No.: 02-43262
)	(Chapter 7)
Debtor.)	
)	
_____)	
)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Adversary Proceeding No. _____
)	
MICHELE GRAHAM,)	
)	
Defendant.)	
)	
_____)	

**AGREED JUDGMENT FOR
NONDISCHARGEABILITY OF DEBT OWED TO
THE FEDERAL TRADE COMMISSION**

Subject to the approval of the United States Bankruptcy Court for the Eastern District of Texas, IT IS HEREBY STIPULATED by and between the plaintiff Federal Trade Commission (the “FTC”) and the defendant Michele Graham, the debtor herein (the “Debtor”), as follows:

Jurisdiction

1. This Court has subject matter jurisdiction over this Agreed Judgment for Nondischargeability of Debt Owed to the Federal Trade Commission (the “Agreed Nondischargeability Judgment”) pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523.
2. Venue in the Eastern District of Texas is proper under 28 U.S.C. § 1391(b) and (c).

3. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

4. This Agreed Nondischargeability Judgment arises in the bankruptcy case styled *In re Michele Graham* pending in this Court, Case No. 02-43262 (the “Bankruptcy Case”). The FTC is an unsecured creditor with a claim against the Debtor in the amount of THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00) pursuant to the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (the “Stipulated Judgment”) entered by the United States District Court for the Northern District of Texas in favor of the FTC and against the Debtor, in the case styled *FTC v. Medical-Billing.Com, Inc.*, Case No. 3-02CV 0702P (N.D. Tex.) (the “District Court Case”).

Recitals

5. The parties to this Agreed Nondischargeability Judgment are as follows:

- (a) Debtor Michele Graham; and
- (b) The FTC.

6. The FTC is an independent agency of the United States given statutory authority and responsibilities by the Federal Trade Commission Act, 15 U.S.C. Section 41 *et seq.*, as amended.

7. On _____, the United States District Court for the Northern District of Texas entered the Stipulated Judgment in favor of the FTC and against the Debtor and Medical-Billing.Com, Inc., jointly and severally, in the District Court Case.

8. On or about May 24, 2002, the Debtor filed a voluntary petition for relief under

Chapter 13 of the Code, thereby commencing the Bankruptcy Case. On or about June 4, 2002, the Debtor filed a Notice of voluntary conversion of the Bankruptcy Case to a case under Chapter 7 of the Code.

9. Contemporaneously herewith, the FTC filed a Complaint to Determine Nondischargeability of Debt Owed to the Federal Trade Commission commencing this Adversary Proceeding. This Adversary Proceeding seeks a determination that the Stipulated Judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

10. The FTC and the Debtor have agreed to resolve this Adversary Proceeding without litigation and they agree and stipulate that the Stipulated Judgment owed to the FTC by the Debtor, jointly and severally, is nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

Agreement

11. The foregoing recitals are true and correct.

12. The FTC and the Debtor hereby stipulate and agree that judgment shall be entered in favor of the FTC and against the Debtor and defendant, Michele Graham, determining the Stipulated Judgment to be nondischargeable in the amount of THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00).

13. Upon entry of the Agreed Nondischargeability Judgment herein, the FTC may take whatever action is appropriate to perfect a lien for said judgment under federal or state law.

14. The parties executing this Agreed Nondischargeability Judgment acknowledge they have authority to bind the parties to this Adversary Proceeding.

IN WITNESS WHEREOF, the parties hereto have each approved and executed this Agreed Nondischargeability Judgment on the dates set forth opposite their respective signatures.

SO STIPULATED:

MICHELE GRAHAM
Defendant/Debtor

Dated: _____

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Attorney for Defendant/Debtor Michele Graham

Dated: _____

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(214) 953-3079 (Facsimile)
Attorneys for Plaintiff Federal Trade Commission

Dated: _____

ORDER

Based on the foregoing,

IT IS SO ORDERED this _____ day of _____, by the United States
Bankruptcy Court for the Eastern District of Texas.

United States Bankruptcy Judge

cc: Thomas B. Carter, Esquire
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