

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

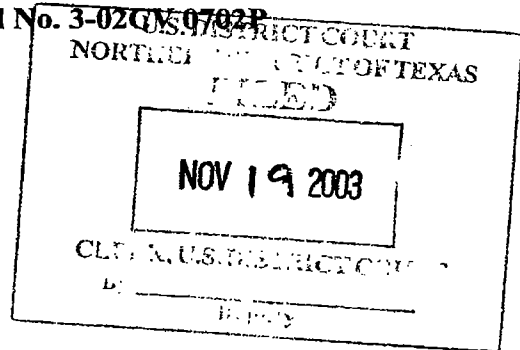
MEDICAL-BILLING.COM, INC.,  
a corporation, d/b/a Professional  
Management Consultants, and

MICHELE GRAHAM,

Defendants.

ORIGINAL

Civil No. 3-02CV-0702P



**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT  
INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action on April 5, 2002, by filing its Complaint for Injunctive and Other Equitable Relief ("Complaint") pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging that defendants Medical-Billing.Com, Inc. and Michele Graham 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.

The Commission and defendant Michele Graham, individually and by her Chapter 7 bankruptcy trustee Linda S. Payne, hereby stipulate to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Order"). The Commission and the defendant have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without the defendant admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

**NOW THEREFORE**, the Commission and defendant Michele Graham, individually and by her Chapter 7 bankruptcy trustee Linda Payne, having requested the Court to enter this Order,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

#### **FINDINGS**

1. This is an action by the Commission instituted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Complaint seeks permanent injunctive relief against defendant in connection with the advertising, offering for sale, and sale of work-at-home medical billing marketing services, and equitable monetary relief in the form of consumer redress and/or disgorgement.
2. This Court has jurisdiction over the subject matter of this action and the parties.
3. Venue is proper as to all parties in the Northern District of Texas.

4. The Commission's Complaint states claims upon which relief may be granted against defendant under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

5. The Commission has the authority under Section 13(b) of the FTC Act to seek the relief it has requested.

6. The activities of defendant, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

7. On May 24, 2002, defendant Michele Graham filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, in the United States Bankruptcy Court for the Eastern District of Texas, Case No. 02-43262 ("Graham Bankruptcy Case"). On or about June 4, 2002, defendant Michele Graham filed a Notice of Voluntary Conversion of her Chapter 13 bankruptcy case to a case under Chapter 7 of the Bankruptcy Code. Linda S. Payne was appointed the Chapter 7 trustee for defendant Michele Graham ("Graham Trustee"). The Commission's action against defendant Michele Graham is not stayed by 11 U.S.C. § 362(a) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exception to the automatic stay.

8. Defendant has entered into this Order freely and without coercion. Defendant further acknowledges that she has read the provisions of this Order and is prepared to abide by

them.

9. The Commission and defendant stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute between them arising from the Complaint up to the date of entry of this Order and without the defendant admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

10. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claim she may have against the Federal Trade Commission, its employees, agents or representatives.

11. Defendant has agreed that this Order does not entitle defendant to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, and defendant further waives any claim that she may have under said provision of law.

12. Entry of this Order is in the public interest.

## **DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. "Defendant" means Michele Graham, individually and by Linda S. Payne, solely in her capacity as the Graham Trustee.

2. "Medical Billing" means any service by which bills or charges for medical services or products or medically related services or products are sent, directly or indirectly, to a patient or third party payor, including, but not limited to, insurance companies, on behalf of the physician, doctor or other provider of a medical service or product or medically related service or product.

3. "Franchise Rule" is defined as the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 C.F.R. Part 436, as currently promulgated or as it may hereafter be amended. A copy of the Franchise Rule is attached hereto and incorporated herein as if fully set forth.

4. "Franchise" is defined in Section 436.2(a) of the Franchise Rule, 16 C.F.R. § 436.2(a), and includes "business opportunity ventures" as discussed in the FTC's Final Interpretive Guide for the Franchise Rule, 44 Fed. Reg. 49966 (August 24, 1979). The term "franchise" in this Order shall also encompass any successor definition in any later trade regulation rule promulgated by the Commission.

5. "Business Venture" means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of

any consideration for: (a) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and (b) more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

6. "UFOC format" is defined as the Uniform Franchise Offering Circular format that has been adopted by the North American Securities Administrators' Association and accepted by the Commission for use in lieu of the Franchise Rule's disclosure format.

7. "Telemarketing" shall mean any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. *Provided* that the term "telemarketing" shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited.

8. "Work-At-Home Opportunity" means any program, plan, product, or service represented to enable or assist a participant or purchaser to earn money while working at home.

9. "Assisting others" means providing any of the following goods or services to any person or entity: (a) formulating or providing, or arranging for the formulation or provision of, any good or service related to any Franchise or Business Venture; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (c) hiring, recruiting, or training personnel; (d) advising or consulting others on the commencement or management of a Franchise or Business Venture; (e) providing names of, or assisting in the generation of, potential customers; (f) performing customer service functions, including but not limited to, receiving or responding to consumer complaints; (g) performing marketing or telemarketing services of any kind; or (h) acting as an officer or director of a business entity.

10. "Customer" or "consumer" means any person who is or may be required to pay for goods or services.

11. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

12. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,

photographs, audio and video recordings, electronic mail ("e-mail"), computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

13. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

## **ORDER**

### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS ORDERED** that defendant Michele Graham whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, is hereby permanently restrained and enjoined from the advertising, promoting, telemarketing, offering for sale, or sale of any Work-At-Home Opportunity. Nothing in this Order shall be read as an exception to this Paragraph I.

### **II. INJUNCTIVE PROVISIONS**

**IT IS FURTHER ORDERED** that:

A. Defendant and her assigns, agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation,



subsidiary, division, affiliate, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of a Franchise or Business Venture, are hereby permanently restrained and enjoined from:

1. Failing to provide a complete and accurate disclosure document containing all of the information required by Section 436.1(a)(1) - (24) of the Franchise Rule, in the manner and within the times specified by the Franchise Rule;
2. Failing to provide an earnings claim document or other disclosures required by Section 436.1(b) - (e) of the Franchise Rule, in the manner and within the times specified by the Franchise Rule;
3. Making any earnings claim or projection without having a reasonable basis for each claim or projection at the time the claim or projection is made, as required by Section 436.1(b) - (e) of the Franchise Rule; and
4. Engaging in any other act or practice prohibited by Section 436.1(f) - (h) of the Franchise Rule, or failing to fulfill any other obligation imposed by the Franchise Rule;

*provided, however,* that the defendant may choose to comply with the disclosure requirements of the Franchise Rule by fully and completely complying with all of the disclosure requirements set forth in the UFOC format. If defendant chooses to comply with the Franchise Rule by using the UFOC format, defendant and her successors, assigns, directors, officers,

agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently enjoined from failing to comply with any provision of the UFOC. In the event the Franchise Rule is hereafter amended or modified, or the UFOC is amended or modified and such UFOC amendment or modification is accepted by the Commission for use in lieu of the Franchise Rule's disclosure format, defendant's compliance with the Franchise Rule as so amended or modified, or the UFOC as amended or modified and accepted by the Commission, shall not be deemed a violation of this Order.

B. Defendant and her assigns, agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any item, product, good, service, Franchise, Business Venture, Work-At-Home Opportunity or employment opportunity, are hereby permanently restrained and enjoined from:

1. Misrepresenting, expressly or by implication, that they will furnish consumers with clients or the names and addresses of clients who are likely to use the consumers' services;
2. Misrepresenting, expressly or by implication, that they have established

relationships with any potential employers;

3. Misrepresenting, expressly or by implication, that consumers are likely to earn a specific level of earnings;
4. Misrepresenting, expressly or by implication, that consumers can readily obtain refunds upon request;
5. Misrepresenting, expressly or by implication, the terms and conditions of any refund or guarantee policy;
6. Failing to disclose in a clear and conspicuous manner, prior to charging a consumer for any good or service, all material terms, conditions, and limitations of any refund or guarantee policy, or any policy of non-refundability; and
7. Misrepresenting, expressly or by implication, any material fact regarding any item, product, good, or service sold or offered for sale.

### **III. PROHIBITIONS REGARDING CONSUMERS**

**IT IS FURTHER ORDERED** that defendant and her assigns, agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or

through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, Social Security number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to defendant, at any time prior to entry of this Order; *provided, however*, that defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

#### IV. MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

A. Judgment is entered in favor of the Commission and against defendant Michele Graham, individually, and Linda S. Payne, solely in her capacity as Graham Trustee, jointly and severally, in the amount of THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00) (the "Judgment") provided, however, that this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Section IV of this Final Judgment and Order.

B. Pursuant to Section 502 of the Bankruptcy Code, 11 U.S.C. § 502, the FTC shall hold an allowed general unsecured claim in the Graham Bankruptcy Case, jointly and severally, in the amount of THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00). The FTC shall be entitled to participate in any distribution in

the Graham Bankruptcy Case paid on account of allowed general unsecured claims in each such case, pursuant to Section 726 or 1129 of the Bankruptcy Code, 11 U.S.C. §§ 726 and 1129, and in accordance with the priorities of the Bankruptcy Code.

C. The Commission and defendant Michele Graham stipulate and agree to, within ten (10) days of the date of entry of this Order, file a Complaint and Agreed Judgment in the Graham Bankruptcy Case, substantially in the form attached hereto as Appendix A, determining the Judgment, including the conditions set forth in Paragraph V of this Order, to be nondischargeable, pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. § 523.

D. Provided that the bankruptcy court in the Graham Bankruptcy Case enters an Order determining the Judgment to be nondischargeable as required by Paragraph IV(C) of this Order and pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, and subject to the conditions set forth in Paragraph V of this Order, the Judgment against defendant Michele Graham shall be suspended until further order of the Court. Nothing in this Paragraph IV(D) or elsewhere in this Order shall be read to modify the FTC's entitlement to participate in any distribution in the Graham Bankruptcy Case under Paragraph IV(B) of this Order.

E. Defendant Michele Graham agrees that, if she fails to meet the obligations set forth in this Order, the facts as alleged in the Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case.

F. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant Michele Graham shall have no right to challenge the Commission's choice of remedies under this Section.

G. Defendant Michele Graham shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

## V. FINANCIAL STATEMENTS

### **IT IS FURTHER ORDERED** that:

A. The Commission's agreement to and the Court's approval of this Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information of defendant Michele Graham provided to the Commission by defendant Michele Graham, dated May 28, 2002, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

B. If the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify the monetary liability of defendant Michele Graham. If the Court finds that the defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against the defendant Michele Graham, in favor of the Commission, in the amount of THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00), which defendant Michele Graham and the Commission stipulate is the amount of consumer injury caused by the defendant, as set forth in Paragraph IV of this Order. Provided, however, that defendant Michele Graham shall be entitled to offset this amount by any refunds paid by defendant to consumers or paid to consumers pursuant to the terms of any judgment rendered in *State of Texas vs. Medical-Billing.Com, Inc. d/b/a Professional Management Consultants and Michele Graham*, Cause No. 01-10672-G, in the 134<sup>th</sup> Judicial District Court for the State of Texas. Provided, further, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Order. For the purposes of reopening or enforcing this Paragraph V(B), defendant Michele Graham waives any right to contest any of the allegations set forth in the Complaint filed in this matter. Nothing in this Paragraph V or

elsewhere in this Order shall be read to modify the obligations of defendant Michele Graham under Paragraph IV(C) to stipulate and agree to the nondischargeability of the Judgment, including the conditions set forth in this Paragraph V, pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. § 523.

## **VI. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Final Judgment and Order,

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in defendant's possession or direct or indirect control to inspect the business operation;
  
- B. In addition, the Commission is authorized to monitor compliance with this Final Judgment and Order by all other lawful means, including but not limited to the following:
  1. Obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
  2. Posing as consumers and suppliers to defendant's, defendant's employees,



or any other entity managed or controlled in whole or in part by defendant,  
without the necessity of identification or prior notice;

**Provided** that nothing in this Final Judgment and Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

- C. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Final Judgment and Order. The person interviewed may have counsel present.

#### **VII. COMPLIANCE REPORTING BY DEFENDANT**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Final Judgment and Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Judgment and Order defendant Michele Graham shall notify the Commission of the following:
1. Any changes in defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

2. Any changes in defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of defendant's duties and responsibilities in connection with the business; and

3. Any changes in defendant's name or use of any aliases or fictitious names.

**B.** One hundred eighty (180) days after the date of entry of this Final Judgment and Order, defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which she has complied and is complying with this Final Judgment and Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subsection A above; and

2. A copy of each acknowledgment of receipt of this Final Judgment and Order obtained by defendant pursuant to Section IX.

**C.** For the purposes of this Final Judgment and Order, defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director  
Southwest Region  
Federal Trade Commission  
Suite 2150, 1999 Bryan Street  
Dallas, Texas 75201  
Re: FTC v. Medical-Billing.Com, Inc., Civil Action No. 3-02CV1727-G.

- D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with defendant Michele Graham.

#### VIII. RECORD KEEPING PROVISIONS

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, defendant Michele Graham, in connection with any business where the defendant Michele Graham is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the promotion, offering for sale, or sale of Franchises or Business Ventures or assisting others engaged in the promotion, offering for sale, or sale of Franchises or Business Ventures, is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the

person commenced work; and the date and reason for the person's termination, if applicable;

- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

#### **IX. DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Judgment and Order, defendant Michele Graham shall deliver a copy of this Final Judgment and Order to the principals, officers, directors, managers and employees under defendant's control for any business that (a) employs or contracts for personal services from defendant and (b) has responsibilities with respect to the subject matter of this Final Judgment and Order. Defendant shall secure from each such person a signed and dated statement acknowledging receipt of the Final Judgment and Order within thirty (30) days after the date of service of the Final Judgment and Order or the commencement of the employment relationship.

**X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that defendant, within five (5) business days of receipt of this Final Judgment and Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Judgment and Order.

**XI. ATTORNEYS' FEES**

**IT IS FURTHER ORDERED** that each party to this Final Judgment and Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

**XII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes, including construction, modification and enforcement of this Final Judgment and Order.

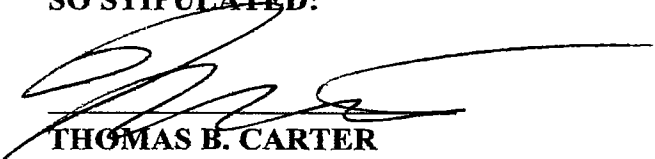
**XIII. EXECUTION IN COUNTERPARTS**

This Order may be executed in counterparts and each such counterpart shall be deemed to be an original executed agreement.

**XIV. ENTRY OF THIS FINAL JUDGMENT**

**IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for delay and the Clerk of Court immediately shall enter this Order as a final judgment as to defendant.

**SO STIPULATED:**



**THOMAS B. CARTER**

Texas Bar No. 03932300

**GARY KENNEDY**

Oklahoma Bar No. 4961

1999 Bryan Street, Suite 2150

Dallas, Texas 75201

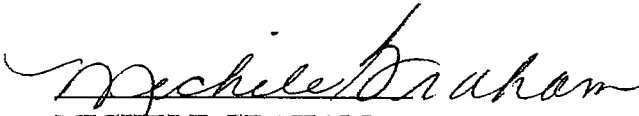
(214) 979-9372 (Voice)

(214) 953-3079 (Facsimile)

Attorneys for Plaintiff

**FEDERAL TRADE COMMISSION**

Dated: 11/17/03



**MICHELE GRAHAM,**

Individually

Dated: 8-4-2003

\_\_\_\_\_  
**LINDA S. PAYNE**, Chapter 7 Trustee

100 North Main Street

Paris, Texas 75702

Dated: \_\_\_\_\_

**SO STIPULATED:**

\_\_\_\_\_  
**THOMAS B. CARTER**

Texas Bar No. 03932300

**GARY KENNEDY**

Oklahoma Bar No. 4961

1999 Bryan Street, Suite 2150

Dallas, Texas 75201

(214) 979-9372 (Voice)

(214) 953-3079 (Facsimile)

Attorneys for Plaintiff

**FEDERAL TRADE COMMISSION**

Dated: \_\_\_\_\_.

\_\_\_\_\_  
**JUAN A. MARQUEZ**

Texas Bar No. 13012200

P.O. Box 600136

Dallas, Texas 75360

(214) 823-8000 (Voice)

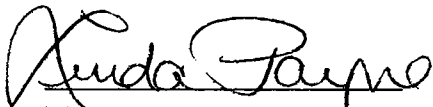
(214) 823-8087 (Facsimile)

**Attorney for Defendant Michele Graham**

Dated: \_\_\_\_\_.

\_\_\_\_\_  
**MICHELE GRAHAM,**

Individually



**LINDA S. PAYNE**, Chapter 7 Trustee

100 North Main Street

Paris, Texas 75702

Dated: \_\_\_\_\_.

Dated: 7/15/03.

**SO STIPULATED:**

\_\_\_\_\_  
**THOMAS B. CARTER**

Texas Bar No. 03932300

**GARY KENNEDY**

Oklahoma Bar No. 4961

1999 Bryan Street, Suite 2150

Dallas, Texas 75201

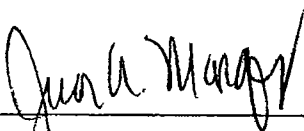
(214) 979-9372 (Voice)

(214) 953-3079 (Facsimile)

Attorneys for Plaintiff

**FEDERAL TRADE COMMISSION**

Dated: \_\_\_\_\_



\_\_\_\_\_  
**JUAN A. MARQUEZ**

Texas Bar No. 13012200

P.O. Box 600136

Dallas, Texas 75360

(214) 823-8000 (Voice)

(214) 823-8087 (Facsimile)

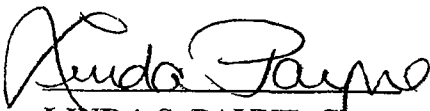
Attorney for Defendant Michele Graham

Dated: \_\_\_\_\_

\_\_\_\_\_  
**MICHELE GRAHAM,**

Individually

Dated: \_\_\_\_\_



**LINDA S. PAYNE**, Chapter 7 Trustee

100 North Main Street

Paris, Texas 75702

Dated: 7/15/03



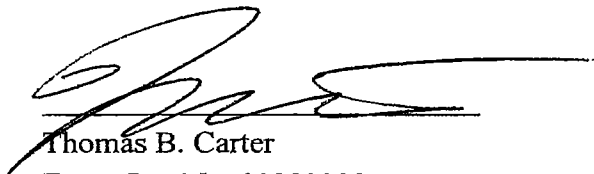
SO ORDERED, this 17<sup>th</sup> day of November, 2003



**JORGE A. SOLIS**

**UNITED STATES DISTRICT JUDGE**

Presented by:



Thomas B. Carter

Texas Bar No. 03932300

Gary D. Kennedy

Oklahoma Bar No. 4961

1999 Bryan Street, Suite 2150

Dallas, Texas 75201

(214) 979-9372 (Voice)

(214) 953-3079 (Facsimile)

Attorney for Plaintiff

**FEDERAL TRADE COMMISSION**

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-Billing<sup>1</sup> 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 and Medical-Billing, jointly and severally, 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

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<sup>1</sup> 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.

Internet.

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](http://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)  
1999 Bryan Street, Suite 2150  
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(214) 953-3079 (Facsimile)



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 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").

**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: \_\_\_\_\_

\_\_\_\_\_  
**JUAN A. MARQUEZ**  
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Attorney for Defendant/Debtor Michele Graham

Dated: \_\_\_\_\_

\_\_\_\_\_  
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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  
Gary Kennedy, Esquire  
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