

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. PJM 03-3317
	)	
AMERIDEBT, INC., et al.,	)	
	)	
Defendants.	)	
_____	)	

**STIPULATED FINAL JUDGMENT AND ORDER AS TO AMERIDEBT, INC.**

Plaintiff, the Federal Trade Commission (“Plaintiff,” “FTC” or “Commission”), has filed a Complaint for permanent injunctive and other equitable relief pursuant to Section 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b), and Sections 503 and 505(a)(7) of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. §§ 6803 and 6805(a)(7). The Complaint charges the Defendants with unfair or deceptive acts or practices in promoting and offering credit counseling and debt management plans in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and failure to provide consumers with the disclosures required by Subtitle A of Title V of the GLB Act, 15 U.S.C. §§ 6801 through 6809, and the FTC’s Privacy of Consumer Financial Information Rule (“Privacy Rule”), 16 C.F.R. Part 313. The Complaint and related legal action are pending under the above caption (the “FTC Action”).

Defendant AmeriDebt, Inc. (“AmeriDebt”) filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on or about June 5,

2004, in the United States Bankruptcy Court, District of Maryland, Case No. 04-23649-PM ("Bankruptcy Case"). On September 20, 2004, the bankruptcy court approved the appointment of Mark D. Taylor ("Chapter 11 Trustee") to serve as the Chapter 11 Trustee on behalf of AmeriDebt.

The Plaintiff and AmeriDebt, having been represented by counsel and acting by and through such counsel and the Chapter 11 Trustee, have consented to (a) settlement of the FTC Action without trial or adjudication of any issue of fact or law and without AmeriDebt admitting liability for any of the matters alleged in the Complaint and (b) entry of this Order by this Court. This Order settles only the FTC's claims against AmeriDebt, and shall not act as a bar to any claim by the FTC nor preclude the FTC from seeking any remedy against any other persons, corporations, or entities, including persons who may be subject to portions of this Order as persons acting in active concert or participation with AmeriDebt or persons who are party to any indemnification agreement with AmeriDebt.

**NOW, THEREFORE,** the Plaintiff and AmeriDebt (collectively referred to as the "Consenting Parties") having requested the Court to enter this Order,

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

#### **FINDINGS**

1. This Court has jurisdiction over the subject matter of the FTC Action and of the Consenting Parties. Venue in the District of Maryland is proper.
2. The Complaint states a claim upon which relief may be granted against AmeriDebt under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), and Sections 503 and 505(a)(7) of the GLB Act, 15 U.S.C. §§ 6803 and 6805(a)(7).

3. The activities of AmeriDebt charged in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Commission's action against AmeriDebt, including the entry and enforcement of this Order, is not stayed by 11 U.S.C. § 362 (a)(1), (2), (3) or (6) 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; **provided, however,** that the FTC acknowledges that, in accordance with the terms set forth in this Order, it will collect the monetary judgment contained herein only through the Bankruptcy Case as set forth in Section III below.
5. AmeriDebt waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. AmeriDebt also waives all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.
6. Entry of this Order is in the public interest.

### **DEFINITIONS**

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

1. "Allowed" means a claim allowed pursuant to section 502 of the Bankruptcy Code.
2. "AmeriDebt" means AmeriDebt, Inc., by and through the Chapter 11 Trustee, whether acting directly or through any corporation, subsidiary, division, or other device.
3. "Assigns" shall not include any entity to whom the current portfolio is transferred pursuant to a final order of the Bankruptcy Court.
4. "Assisting" means providing assistance or support to any person or entity, including, but not limited to, providing any of the following goods or services: (a) formulating, drafting,

providing, or arranging for the formulation, drafting, or provision of any marketing material; (b) providing names of, or assisting in the generation of, potential customers; (c) performing marketing services of any kind; (d) formulating, drafting, providing, or arranging for the formulation, drafting, or provision of any employee script; (e) providing any training or training materials; or (f) providing information, advice, consultation, or materials regarding business operations, processes, or practices; **provided, however**, that the transfer of the Current Portfolio, defined below, and any assistance related to such transfer, pursuant to a final order of the Bankruptcy Court, shall not constitute “assisting” as defined herein.

5. “Claim” shall have the meaning ascribed to it in section 101(5) of the Bankruptcy Code.
6. “Credit counseling” means providing financial advice to a consumer about the consumer’s finances or credit.
7. “Credit education” means providing general information or advice to a consumer about financial or credit matters.
8. “Current portfolio” means the debt management plans between AmeriDebt and consumers that were still active as of the Petition Date.
9. “Debt management” means providing any service to a consumer relating to managing debts, including providing debt management plans.
10. “Debt management plan,” “debt management program,” or “DMP” means a plan or program that involves or purports to involve (a) a consumer paying one consolidated periodic payment to the program to cover the debts that are included in the program; and (b) the program disbursing payments to the creditors of the consumer.

11. "Document" is synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or other non-identical copy is a separate document within the meaning of the term.
12. "Liquidating Plan" or "Plan of Liquidation" means a plan of liquidation to be filed by the Chapter 11 Trustee and confirmed by a final order in the Bankruptcy Case, the provisions of which shall not be inconsistent with the terms of this Order. The Liquidating Plan shall provide for (a) the liquidation and cessation of AmeriDebt's business following, or in conjunction with, the transfer of AmeriDebt's debt management plans, and (b) the payment of claims in a manner consistent with the Bankruptcy Code and applicable law, including distribution, if any, on the FTC's Allowed Claim.
13. "Person" means any natural person or organization including, but not limited to, any proprietorship, partnership, company, firm, corporation, joint venture, society, association, trust, or government agency or unit, and any other group or combination acting as an entity.
14. "Petition Date" means June 5, 2004, the date on which AmeriDebt filed its Chapter 11 petition, thereby commencing the Bankruptcy Case.
15. "Redress Fund" means a fund to be established and administered by the FTC for the purpose of providing consumer redress as set forth in Section III of this Order.
16. For purposes of Section III.F. of this Order, "up-front fee" or "initial contribution" means

the first payment made by a consumer on a DMP if the first payment was not sent to creditors.

## I. PROHIBITION ON FUTURE ACTIVITIES

**IT IS FURTHER ORDERED** that AmeriDebt is hereby permanently restrained and enjoined from engaging in, participating in, or assisting others to engage or participate in credit counseling, credit education, or debt management, **provided, however,** that AmeriDebt may continue to engage in these activities with respect to the DMPs in its Current Portfolio until the earlier of such time as (a) AmeriDebt's transfer, sale, assignment, or rejection of the DMPs or (b) the elective termination of such DMPs by individuals enrolled in such DMPs, but in no event shall AmeriDebt continue to engage in these activities for more than one year from the date of entry of this Order without the consent of the FTC.

## II. PROHIBITED BUSINESS ACTIVITIES

**IT IS FURTHER ORDERED** that, in connection with the marketing, providing, or assisting in the marketing or providing of credit counseling, credit education, or debt management, AmeriDebt, as well as its successors, assigns, officers, agents, servants, employees, or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

- A. making, or causing or assisting others to make, expressly or by implication, any false or misleading representation, including, but not limited to, misrepresenting:
  1. the existence, absence, terms, or amount of any fees, contributions, monies, or other costs, whether monetary or in kind, associated

- with the goods or services;
2. that counseling regarding the consumer's particular financial or credit situation will be provided;
  3. that no profits are being made from the goods or services provided;  
and
  4. the terms, costs, other conditions, benefits of, or any other matter regarding the goods or services; and
- B. failing to comply in any respect with the GLB Act, 15 U.S.C. § 6803, and the Privacy Rule, 16 C.F.R. Part 313.

### III. MONETARY RELIEF AND OTHER CONSUMER PROTECTIONS

#### IT IS FURTHER ORDERED that:

- A. Judgment is entered in favor of the Commission and against AmeriDebt and its successors and assigns in the amount of \$170,000,000.00; **provided that** this amount shall not be binding in proceedings by Plaintiff against any non-settling Defendants.
- B. AmeriDebt shall file the Liquidating Plan and the Chapter 11 Trustee shall use his best efforts to obtain confirmation of the Liquidating Plan. The Liquidating Plan shall not modify or otherwise supersede this Order, including the District Court's exclusive jurisdiction to interpret and enforce this Order.
- C. For purposes of this Order and distribution under the Liquidating Plan, the FTC shall hold an Allowed general, non-priority unsecured Claim against AmeriDebt in the amount of \$170,000,000.00 ("FTC Allowed Claim"); **provided that**, if the

Bankruptcy Case is converted to a case under Chapter 7 of the Bankruptcy Code, this Order shall constitute the amount of the FTC Allowed Claim in such converted case. The Liquidating Plan shall provide for initial distribution, if any, on account of the FTC Allowed Claim on the effective date of the Liquidating Plan or such other date as may be agreed to by the FTC. Other distributions, if any, on account of the FTC Allowed Claim shall be made in accordance with the Liquidating Plan. Except as otherwise agreed to by the FTC, the Liquidating Plan shall treat the FTC, and any consenting claimants with Allowed general, non-priority unsecured Claims in a single class of which they shall be the sole members (the "Consumer Class") and shall provide that the Consumer Class shall receive a pro rata share of any distribution to holders of allowed general, non-priority unsecured claims; and such other amounts as may be agreed to by holders of Allowed Claims having priority over the FTC Claim.

- D. Except to the extent inconsistent with the District Court's exclusive jurisdiction to interpret and enforce this Order, the Bankruptcy Court shall retain jurisdiction over all issues relating to the Liquidating Plan, including (a) confirmation and implementation of such plan, and (b) the distribution to and treatment of Allowed Claims under such plan, including the FTC Allowed Claim and the Consumer Class.
- E. All funds paid to the Consumer Class pursuant to this Order shall be paid in cash by electronic funds transfer pursuant to instructions provided by the Commission and deposited into the Redress Fund administered by the Commission or its agent



to be used for equitable relief, after consultation with those states that have consented to join the Consumer Class, including but not limited to consumer redress and any attendant expenses for the administration of the Redress Program. 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 practices alleged in the Complaint. Any funds distributed to the Consumer Class that are not used for such equitable relief shall be deposited as equitable disgorgement into the United States Treasury. AmeriDebt shall have no right to challenge the FTC's choice of remedies under this Section.

- F. After this Order has been entered by the District Court, AmeriDebt shall, within thirty (30) days after the FTC's written request, provide the FTC or its designated agent the following data in computer-readable format concerning all consumers who enrolled in any AmeriDebt DMP: (i) the consumer's name, last known address and telephone number, and date of enrollment in the DMP; (ii) the amount of any up-front fee paid or initial contribution made by the consumer, and the amount of any refund received for such fee or contribution; and (iii) the amount of any monthly payments or contributions made by the consumer, and the amount of any refund received for such payments or contributions. AmeriDebt shall take all reasonable steps to provide this data in a form that is the most recent and accurate available to AmeriDebt, and in a format useable and compatible with

the FTC's or its designated agent's information system.

#### **IV. COOPERATION WITH GOVERNMENT COUNSEL**

**IT IS FURTHER ORDERED** that AmeriDebt shall, in connection with the FTC Action, cooperate in good faith with the FTC and appear, or cause its officers, employees, or representatives to appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, AmeriDebt shall appear, or cause its officers, employees, or representatives to appear, and provide testimony under oath in any trial, deposition, or other proceeding in connection with the FTC Action, without the service of a subpoena.

#### **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that AmeriDebt, within five business days after receipt of this Order as entered by the Court, must submit to the FTC a truthful sworn statement acknowledging receipt of this Order, in the form set forth in Attachment A.

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

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, AmeriDebt shall deliver a copy of this Order to all principals, officers, directors, managers and employees and shall secure from each such person a signed and dated statement acknowledging receipt of this Order. AmeriDebt shall deliver this Order to current personnel within thirty (30) days of the date of entry of this Order, and to new personnel within thirty (30) days after the person assumes such position. In connection with the transfer, assignment or sale of the Current Portfolio, AmeriDebt shall deliver a copy of this Order to any transferee, assignee

or purchaser, and shall secure from the transferee, assignee, or purchaser a signed and dated statement acknowledging receipt of this Order.

## VII. RECORD KEEPING REQUIREMENT

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, in connection with any business related to credit counseling, credit education, or debt management, AmeriDebt and its agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Copies of all manuals, sales scripts, training materials, advertisements, or other marketing materials;
- B. Records accurately reflecting: the name, address, and phone 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 on which the person commenced work; and the date and reasons for his or her termination, if applicable;
- C. Records accurately reflecting: the number of consumers to whom AmeriDebt provided any good or service; and the number of consumers who paid fees, contributions, monies, or other costs, whether monetary or in kind, to anyone in order to obtain the good or service, and the amount of each such payment;
- D. Customer files containing the names, addresses, phone numbers, dollar amounts paid to creditors, and dollar amounts paid to any other person, to the extent such

information is obtained in the ordinary course of business; and

- E. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;

provided, however, that the Chapter 11 Trustee may, in the exercise of his business judgment, abandon or otherwise dispose of such records of AmeriDebt in his possession, pursuant to 11 U.S.C. § 554, and shall provide notice to the FTC of any proposed abandonment or disposition. Upon the FTC's request, the Chapter 11 Trustee shall transfer such records to the FTC. Any such records that are not transferred to the FTC and that contain personal identifiers, including the name, address, telephone number, account number(s) (including credit card, debit card and bank account numbers), e-mail address, social security or other tax identification number, or other identifying information of any consumer who was or is a party to a DMP or who paid any money to AmeriDebt at any time prior to entry of this Order, shall be destroyed by shredding or similar means of destruction. The FTC shall not seek to hold the Trustee accountable or otherwise liable for records that might have been inadvertently destroyed prior to the entry of this Order.

### **VIII. COMPLIANCE REPORTING**

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

- A. For a period of eight (8) years from the date of entry of this Order, AmeriDebt shall notify the FTC of any changes in corporate structure that may affect compliance obligations arising under this Order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the

emergence of a successor corporation; the creation, or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the dismissal or conversion of the bankruptcy case; or a change in corporate name or address, at least thirty (30) days prior to such change, **provided that**, with respect to any proposed change in the corporation about which AmeriDebt learns less than thirty (30) days prior to the date such action is to take place, AmeriDebt shall notify the FTC as soon as is practicable after obtaining such knowledge;

- B. One hundred eighty (180) days after the date of entry of this Order, AmeriDebt shall provide a written report to the FTC, setting forth in detail the manner and form in which it has complied and is complying with this Order; provided, however, that the filing of a Liquidating Plan and disclosure statement containing this information and served on the FTC shall satisfy this requirement.
- C. For purpose of the compliance reporting required by this Section, the FTC is authorized to communicate directly with the Chapter 11 Trustee.

#### **IX. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for purposes of monitoring and investigating compliance with any provision of this Order:

- A. Within twenty (20) days of receipt of written notice from a representative of the FTC, AmeriDebt 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 AmeriDebt's possession or direct or indirect control to inspect the business

operation;

- B. In addition, the FTC is authorized to monitor compliance with this Order by all lawful means, and provided further that nothing in this Order shall limit the FTC'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 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. AmeriDebt shall permit representatives of the FTC 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 Order. The person interviewed may have counsel present.

#### **X. NOTIFICATIONS**

**IT IS FURTHER ORDERED** that, for purposes of this Order, AmeriDebt shall, unless otherwise directed by the FTC or its authorized representatives, mail all written notifications to the FTC relating to this Order to:

Associate Director, Division of Financial Practices  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580  
Re: FTC v. AmeriDebt, et al.

#### **XI. COSTS AND ATTORNEYS FEES**

**IT IS FURTHER ORDERED** that each Consenting Party to this Order shall bear its own costs and attorneys fees incurred in connection with the FTC Action.

#### **XII. CHAPTER 11 TRUSTEE LIABILITY**

**IT IS FURTHER ORDERED** that nothing in this Order shall be construed to impose liability upon the Chapter 11 Trustee for actions consistent with the Bankruptcy Code and pursuant to Bankruptcy Court order; provided, however, that the Chapter 11 Trustee shall not take actions inconsistent with this Order or seek to collaterally attack the provisions of this Order in Bankruptcy Court. Nothing in this Order shall be construed to require the Chapter 11 Trustee to violate an order issued by the Bankruptcy Court.

### **XIII. 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 Order; **provided, however,** and except to the extent inconsistent with this Court's exclusive jurisdiction, the Bankruptcy Court shall retain jurisdiction over all bankruptcy matters, including without limitation (a) the confirmation and implementation of the Liquidating Plan, and (b) the treatment of and distribution to Allowed Claims, including the FTC Allowed Claim.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

The parties hereby stipulate and agree to the terms and conditions set forth above and consent to the entry of this Stipulated Final Judgment and Order as to AmeriDebt, Inc.

FOR THE FEDERAL TRADE COMMISSION:

JOHN D. GRAUBERT  
Acting General Counsel



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FOR DEFENDANT AMERIDEBT, INC.:

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for AmeriDebt, Inc.  
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Chapter 11 Trustee for AmeriDebt, Inc.  
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ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. PJM 03-3317
	)	
AMERIDEBT, INC., et al.,	)	
	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF [NAME] ON BEHALF OF  
DEFENDANT AMERIDEBT, INC.

I, [Name], being duly sworn, hereby states and affirms as follows:

1. My name is [Name]. My current residence address is [Address]. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am the [title] of AmeriDebt, a defendant in *Federal Trade Commission v. AmeriDebt, Inc. et al.* (United States District Court for the District of Maryland).

3. On [date], I received a copy of the Stipulated Final Judgment and Order as to AmeriDebt, Inc., which was signed by the Honorable [judge] and entered by the Court on [date]. A true and correct copy of the order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

\_\_\_\_\_  
[Name]

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_