

IN THE AMERICAN ARBITRATION ASSOCIATION

<p>LAVERNE JONES, MARY RAWLINGS, STACEY NESS and KERRY NESS, <i>individually and on behalf of all others similarly situated,</i></p> <p style="text-align: center;">Claimants,</p> <p style="text-align: center;">vs.</p> <p>GENUS CREDIT MANAGEMENT CORPORATION, f/k/a NATIONAL CREDIT COUNSELING SERVICES, AMERICAN FINANCIAL SOLUTIONS, NORTH SEATTLE COMMUNITY COLLEGE FOUNDATION, INCHARGE INSTITUTE OF AMERICA, INC., AMERIX CORPORATION, 3C INCORPORATED d/b/a CAREONE CREDIT COUNSELING, FREEDOMPOINT CORPORATION, FREEDOMPOINT FINANCIAL CORPORATION, ASCEND ONE CORPORATION and BERNARD DANCEL</p> <p style="text-align: center;">Respondents.</p>	<p>Case No.</p>
--	------------------------

CLASS ACTION ARBITRATION COMPLAINT

Claimants Laverne Jones, Mary Rawlings, Stacey Ness and Kerry Ness (“Claimants”), individually and on behalf of all others similarly situated, for their complaint against Respondents Genus Credit Management Corporation f/k/a National Credit Counseling Services (“Genus”), American Financial Solutions (“AFS”), North Seattle Community College Foundation (“North Seattle”), InCharge Institute of America, Inc. (“InCharge”), Amerix Corporation (“Amerix”), 3C Incorporated d/b/a CareOne Credit Counseling (“CareOne”), FreedomPoint Corporation (FreedomPoint”), FreedomPoint Financial Corporation (“FreedomPoint Financial”), Ascend One

Corporation (“Ascend One”) and Bernard Dancel (“Dancel”) (collectively “Respondents”), upon knowledge as to themselves and their own acts, and upon information and belief as to all other matters, allege as follows:

NATURE OF THE ACTION

1. Claimants bring this arbitration on behalf of themselves and all other consumers in the United States who have been and continue to be financially injured and deceived by Respondents’ false, unfair, deceptive and misleading debt management, credit counseling, budget planning and debt collection activities.

2. Respondents are a collection of companies that collectively comprise one of the largest providers and administrators of Debt Management Plans (“DMPs”) sold to financially-troubled consumers, or companies that profit from the DMPs marketed by other Respondents.

3. Respondents solicit consumers to contract for DMPs created and administered by Respondents. Such DMPs require consumers to stop making payments directly to their creditors, and instead have their debts collected by so-called debt management, credit counseling or debt consolidation firms, who in turn make payments to consumers’ creditors.

4. DMPs have historically been provided by *bona fide* not-for-profit organizations which combine DMPs with consumer education and budget planning, all for reasonable fees. But more recent entrants have been aggressive, unscrupulous and devious. As described in an October 25, 2001 *Business Week* article: “The aggressive new entrants work differently. They target a national audience, spend big on advertising – million-dollar campaigns are not unusual – and rely heavily on brief phone and Internet interactions. Many buy names of debt-strapped customers

from mortgage and other financial companies or use high-pressure sales tactics to sign them up.”

5. Respondents are such companies. Their advertising, promotions and solicitations are rife with false, misleading and deceptive statements about the services they offer and the benefits consumers can expect by participating in Respondents’ DMPs.

6. In fact, Genus was the pioneer of this new breed of unscrupulous companies. Dancel started Genus in 1992 and owned it until approximately 1998, shortly after forming Amerix to process payments for Genus and run its consumer call centers. To this day, Amerix and Dancel siphon tens of millions of dollars annually from Genus and its affiliate companies.

7. In March 2004, the United States Senate issued a scathing report entitled *Profiting In a Non-Profit Industry: Abusive Practices in Credit Counseling* (the “Senate Report”). That Senate Report cited “alarming abuses” by Amerix and its credit counseling affiliates and management. Among those abuses were i) Amerix’s contractual imposition of “assist rates” mandating that at least 30% of all persons contacting Amerix’s DMP affiliates (like Genus and AFS) be enrolled in DMPs; ii) Amerix’s requirement that each DMP originated by its DMP affiliates (like Genus and AFS) generate a monthly “revenue standard” of \$30 per month per consumer DMP; and iii) Amerix’s for-profit control and profiteering from the business of its bogus non-profit and tax exempt credit counseling affiliates, like Genus and AFS.

8. Claimants bring this action under the Fair Debt Collection Practices Act, Credit Repair Organizations Act, Racketeer Influenced and Corrupt Organizations Act, Telemarketing and Consumer Fraud and Abuse Prevention Act, Maryland Consumer Protection Act (and similar statutes of other states) and Maryland Debt Management Services Act (and similar statutes of

other states), common law breach of fiduciary duty, common law fraud and common law unjust enrichment.

9. Claimants seek damages, exemplary and punitive damages where appropriate and allowed, a judgment declaring the practices alleged herein to be unlawful, an injunction enjoining the continuation of Respondents' unlawful conduct, restitution and disgorgement.

10. In connection with the activities giving rise to this action, the Respondents acted with malice, intent, recklessness, knowledge and wanton disregard for the rights of Claimants and the Class.

JURISDICTION AND VENUE

11. The American Arbitration Association ("AAA") has jurisdiction over this class action arbitration and Respondents pursuant to the provision in a document drafted by Respondents choosing the AAA as an acceptable forum for arbitration of claims against Respondents. That document is styled "Terms of Debt Management – Easy Pay" and is annexed hereto as Exhibit 1.

12. Pursuant to that Terms of Debt Management – Easy Pay, Claimant is entitled to file claims in the AAA.

13. The AAA also has jurisdiction over this class action arbitration and Respondents pursuant to the AAA's Commercial Arbitration Rules and the Supplemental Rules For Class Arbitration.

14. The AAA also has jurisdiction over this class action arbitration and Respondents pursuant to *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444 (2003), insofar as no agreement among the parties precludes class action arbitration.

15. Claimants have maintained in litigation filed in the courts of the United States District Court for the District of Maryland (the “District Court”) that the mandatory arbitration provision in agreements drafted by Respondents are unlawful and unenforceable. Claimants maintain that position and do not waive any contrary position. However, Claimants recognize that the District Court has held that Claimants are compelled to arbitrate their claims against Respondents, which decision and order are annexed hereto as Exhibits 2 and 3. Claimants maintain that the District Court’s decision and order were wrongly decided, and do not waive any right to appeal or otherwise contest that decision and order, unless and until Claimants are permitted to pursue their arbitration claims as a class action.

TRADE AND COMMERCE

16. In connection with Respondents’ promotion, sale, administration and operation of their DMPs and debt collection practices, monies as well as contracts, bills and other forms of business communications and transactions were and are transmitted in a continuous and uninterrupted flow across State lines.

17. Various means and devices were used to effectuate the violations of law and conspiracy alleged herein, including the United States mail, wires, interstate travel, interstate telephone commerce and other forms of interstate electronic communications. The activities of Respondents alleged herein were within the flow of, and have substantially affected, interstate commerce.

THE PARTIES

Claimants

18. Claimant Laverne Jones is a citizen of the State of New York who resides in Bronx County. In 1998, she was induced by Respondents' false, misleading, unfair and deceptive advertising, promotions, statements, telemarketing and/or practices to contract with Genus for a DMP, which caused her to suffer injury in a manner common to and typical of all Class Members. Pursuant to that DMP, she paid monthly fees to Respondents until 2003. Respondents did not provide her with any *bona fide* budget planning, debt counseling or education.

19. Due in substantial part to Respondents' unlawful, inequitable and deceptive acts and practices, Claimant Jones filed for bankruptcy. Her claims in this lawsuit have been listed as an asset and/or property of the bankruptcy estate. The United States Trustee administering Ms. Jones' bankruptcy has received notice of her claims in this lawsuit and has abandoned those claims on behalf of the bankruptcy estate.

20. Claimant Mary Rawlings is a citizen of the State of New York who resides in Bronx County. In or about 1999, she was induced by Respondents' false, misleading, unfair and deceptive advertising, promotions, statements, telemarketing and/or practices to contract with Genus for a DMP, which caused her to suffer injury in a manner common to and typical of all Class Members. Pursuant to that DMP, she paid monthly fees to Respondents until approximately 2003. Respondents did not provide her with any *bona fide* budget planning, debt counseling or education.

21. Due in substantial part to Respondents' unlawful, inequitable and deceptive acts and practices, Claimant Rawlings filed for bankruptcy. Her claims in this lawsuit have been listed as an asset and/or property of the bankruptcy estate. The United States Trustee administering Ms. Rawlings' bankruptcy has received notice of her claims in this lawsuit and has abandoned those claims on behalf of the bankruptcy estate.

22. Claimants Stacey Ness and Kerry Ness are citizens of the State of North Dakota. In 1998, they were induced by Respondents' false, misleading, unfair and deceptive advertising, promotions, statements, telemarketing and/or practices to contract with Genus for a DMP, which caused them to suffer injury in a manner common to and typical of all Class Members. Pursuant to that DMP, they paid monthly fees to Respondents until 2002. Respondents did not provide them with any *bona fide* budget planning, debt counseling or education to Claimants.

Respondents

23. Genus is registered as a Maryland not-for-profit corporation headquartered in Columbia, Maryland. Genus advertises, promotes and sells DMPs, and transacts business, promotes its business and solicits consumers in Maryland and the entire United States via television, radio and print advertising, the Internet and by use of the mail and telephone wires, even though Genus is not licensed to provide debt management services in Maryland and other States. Genus was founded by Dancel in 1992 and has continuously resided in this District, even after becoming a subsidiary of InCharge, and later, AFS and North Seattle. In each year since Amerix's formation, Genus has paid a substantial portion of its revenues to Amerix. Although Genus claims to be a not-for-profit company, it operates for the benefit of for-profit companies

and/or private persons. Genus promotes itself as, and is in fact, one of the largest credit counseling and debt management services in the country.

24. North Seattle is registered as a Washington not-for-profit organization headquartered in Seattle, Washington. North Seattle acquired Genus in 2001, as a result of the acquisition of Genus by AFS, a division of North Seattle. North Seattle transacts business, promotes its business and solicits consumers in Maryland and the entire United States, through Genus and AFS, via television, radio and print advertising, the Internet and by use of the mail and telephone wires, even though Genus and AFS was or are not licensed to provide debt management services in Maryland and other States. Although North Seattle has obtained Section 501(c)(3) status from the IRS, it operates for the benefit of for-profit companies and/or private persons.

25. AFS is a division of North Seattle headquartered in Washington State. AFS transacts business and derives revenues and profits from Genus' offices located within this District. AFS was founded in 1998 and acquired Genus in 2001, using loans provided by Genus and InCharge. AFS transacts business, promotes its business and solicits consumers in Maryland and the entire United States via television, radio and print advertising, the Internet and by use of the mail and telephone wires, even though Genus and AFS was or are not licensed to provide debt management services in Maryland and other States. Although AFS claims to be a not-for-profit company, it operates for the benefit of for-profit companies and/or private persons.

26. InCharge is a Delaware corporation headquartered in Orlando, Florida and claims to be a national non-profit organization. InCharge transacts business, derives revenues and profits and promotes its business and solicits consumers in Maryland and the entire United States via

television, radio and print advertising, the Internet and by use of the mail and telephone wires. In July 2000, InCharge became the sole shareholder, parent and holding company of Genus. In 2001, InCharge sold Genus to North Seattle and AFS. InCharge presently markets and offers DMPs, both in its own name and through its subsidiaries Profina Debt Solutions, Concord Credit: La Fundacion Hispana de Credito (“Concord Credit”), National Credit Counseling Services (“NCCS”) and InCharge Debt Solutions. Although InCharge has obtained Section 501(c)(3) status from the Internal Revenue Service, it operates or operated for the benefit of for-profit companies and/or private persons.

27. All claims in this Complaint against InCharge are limited to the time during which InCharge owned, controlled and/or financially benefited from its ownership or control of Genus or its present or former DMP clients. In a Form 1023 submitted by InCharge to the IRS in October 1999, InCharge stated: “In its role as ‘parent’ organization of the Supported Organizations [including Genus], the Institute will direct, manage, supervise, monitor, review, coordinate and plan their respective activities.”

28. Amerix is a Maryland for-profit corporation headquartered at 8930 Stanford Boulevard, Columbia, Maryland. Amerix is a subsidiary of Ascend One, and provides processing and operation of telephone call centers for other Respondents and certain other DMP-selling companies. Amerix transacts business, promotes its business and solicits consumers in Maryland and the entire United States via television, radio and print advertising, the Internet and by use of the mail and telephone wires, even though Amerix is not licensed to provide debt management services in Maryland and other States. Amerix was founded by Dancel in 1996.

29. CareOne is a for-profit subsidiary of Ascend One that also maintains its headquarters at 8930 Stanford Boulevard, Columbia, Maryland. CareOne advertises, promotes and sells DMPs, and transacts business, promotes its business and solicits consumers in Maryland and the entire United States via television, radio and print advertising, the Internet and by use of the mail and telephone wires, even though CareOne is not licensed to provide debt management services in Maryland and other States. CareOne was founded by and is owned in whole or part, directly or indirectly, by Dancel.

30. FreedomPoint is a for-profit corporation and a subsidiary of Ascend One that also maintains its headquarters at 8930 Stanford Boulevard, Columbia, Maryland. FreedomPoint advertises, promotes and sells DMPs, and transacts business, promotes its business and solicits consumers in Maryland and the entire United States via television, radio and print advertising, the Internet and by use of the mail and telephone wires, even though FreedomPoint is not licensed to provide debt management services in Maryland and other States. FreedomPoint was founded by and is owned in whole or part, directly or indirectly, by Dancel.

31. FreedomPoint Financial is a for-profit corporation and a subsidiary of Ascend One that also maintains its headquarters at 8930 Stanford Boulevard, Columbia, Maryland. FreedomPoint Financial advertises, promotes and sells DMPs, and transacts business, promotes its business and solicits consumers in Maryland and the entire United States via television, radio and print advertising, the Internet and by use of the mail and telephone wires, even though FreedomPoint Financial is not licensed to provide debt management services in Maryland and

other States. FreedomPoint Financial was founded by and is owned in whole or part, directly or indirectly, by Dancel.

32. Ascend One is a for-profit corporation that also maintains its headquarters at 8930 Stanford Boulevard, Columbia, Maryland. Ascend One is the parent corporation of Amerix, CareOne, FreedomPoint and FreedomPoint Financial. Ascend One was founded by and is owned in whole or part, directly or indirectly, by Dancel.

33. Bernard Dancel is a citizen of Maryland residing within this District. Dancel is the founder of Genus, Amerix, Ascend One, CareOne, FreedomPoint and FreedomPoint Financial. He is also presently the Chief Executive Officer, Chairman of the Board, director, principal, shareholder, owner and/or primary beneficiary of Amerix, Ascend One, CareOne, FreedomPoint and FreedomPoint Financial. Prior to 1998, Dancel was also a director, principal, shareholder and/or owner of Genus. Dancel continues to derive substantial revenues from Genus/AFS and its DMP clients, through his ownership, control and employment at Amerix, Ascend One, CareOne and FreedomPoint and FreedomPoint Financial.

34. All Respondents acted jointly and severally and through Dancel and his affiliated companies, are affiliated with one another, provided substantial assistance to one another, participated with each other in the common scheme and conspiracy described herein and benefited from the scheme and conspiracy to defraud Claimants and the Class.

35. During all relevant times, in connection with the activities giving rise to this action, Respondents conspired with each other to engage in the various activities set forth herein, agreed

to participate in a conspiracy to defraud Claimants and the Class and aided and abetted one another in furtherance of that conspiracy.

FACTUAL ALLEGATIONS

36. Genus, currently owned by AFS and North Seattle, is the largest debt management company in the nation and has generated in excess of \$100 million annually from its DMP portfolio, with much of that income paid by consumers and Class members.

37. Amerix claims to process over 300,000 DMP accounts with credit balances exceeding \$3 billion, collects debts and processes 1.2 million consumer DMP payments per month valued in excess of \$90 million and fields 150,000 telephone calls per month from DMP and prospective DMP consumers, most of them clients of Genus and AFS.

38. In reality, these Respondents are perpetrating an unfair, deceptive, fraudulent and unconscionable scheme to entice consumers suffering from severe financial hardships to enroll in DMPs sold, marketed and/or managed by Respondents.

39. Respondents' advertising, solicitations and promotions for the DMPs sold by Respondents are riddled with false, misleading, deceptive and unfair promises, statements and omissions. Worse still, Respondents impose multiple undisclosed fees while they promote their DMPs as "free" to consumers and debtors.

40. The hallmark of Respondents' scheme is to lure debt-encumbered consumers with promises to lower monthly debt payments, quickly eliminate debts, eliminate late fees and improve their credit. The promises are accompanied with assurances that, as not-for-profit entities, Genus and its affiliated companies will provide *bona fide* debt management, budget

planning and debt counseling, all “free” to consumers. Unfortunately, while many are eager to accept Respondents’ promises and assurances, most become dissatisfied due to Respondents’ unlawful and unscrupulous conduct.

41. The true purpose of Respondents’ scheme is to persuade consumers to contract for a DMP sold, advertised, referred and/or administered by Respondents. DMPs serve as debt collection plans, whereby Respondents collect, directly or indirectly, monies from consumers to pay their monthly debt obligations. For creating and administering these DMPs, Respondents extract monthly fees from Claimants and the Class, for as long as they participate in Respondents’ DMPs.

42. Respondents have another financial incentive to enroll consumers in DMPs in the form of payments by creditors to Respondents. Since Respondents often dissuade consumers, often against their interest, from filing for bankruptcy where unsecured debts would often be discharged, creditors pay Respondents a percentage of all payments collected on their behalf. These payments from unsecured creditors to Respondents are known as “Fair Share” payments. Fair Share payments presently range from 6% to 8% of debts collected, and have historically been as high as 15%.

43. Amerix has reduced its DMP enrollment practices and affiliate relationships into contractual requirements. For each DMP provider affiliated with Amerix, such as Genus and AFS, Amerix requires each to sign a contract (or “Service Agreement”) promising to enroll at least 30% of all consumers who contact them into DMPs. This requirement is called the “assist rate” in the Amerix Service Agreements. The Service Agreements require each DMP provider to pay Amerix

68% of gross revenues, including Fair Share creditor payments, related to clients for whom Amerix has provided certain services, including DMP administration. The Service Agreements also require each DMP provider to pay Amerix 50% of their gross revenues relating to clients not serviced by Amerix.

44. Amerix also contractually requires that each DMP generate a minimum of \$30 each month, a practice termed the “revenue standard.” Amerix requires that its contract partners collect these fees and charges from consumers, even though they falsely advertise consumers fee payments to be “voluntary.”

45. Amerix also requires its affiliate DMP providers to sign Credit Agreements, whereby Amerix agrees to provide start-up funding and other financial assistance, and a Service Mark Licensing Agreement, whereby Amerix requires its affiliate DMP providers to pay Amerix, CareOne or Ascend One an additional 17% of the DMP provider’s revenues.

46. As a result of the Service Agreement and the Service Mark Agreement, each DMP provider affiliated with Amerix, such as Genus and AFS, is obligated to pay Amerix (and thus Ascend One and Bernard Dancel) between 67% and 85% of their gross revenues.

47. According to a survey conducted by the National Association of Consumer Agency Administrators, a body consisting of government consumer regulators, and the Consumer Federation of America, so-called “non-profit credit counseling” ranked among the “worst scams” of 2002. In fact, the Montgomery County Division of Consumer Affairs ranked as the “worst scam” in 2002 “non-profit” firms operating as a marketing front for related back-office processing firms.” The report explained that, “These firms operate for profit; much of the non-profit’s

revenue is funneled to that [back office company] source. These firms provide little or no credit counseling and operate more as a collection agency though disguised as a charity.” “These ‘non-profit credit counselors’ frequently fail to disclose material facts to consumers.” Genus and Ameridebt were identified by name as such companies. Amerix is the “back-office company” that is paid the majority of Genus’ revenues.

The Background and Business of Respondents

48. Dancel founded Genus in 1992. Employing a strategy of heavy advertising and slick sales techniques involving no personal client contact, Dancel boasts on Amerix’ website to having grown Genus into the “the largest [credit counseling agency] in the industry with more than \$50 million in revenue in less than five years.”

49. Although classified as a not-for-profit and tax exempt entity, Genus nevertheless paid Dancel handsomely. Genus’ 1996 federal tax returns, for example, reveal that Genus paid Dancel a salary in excess of \$330,000 for that year alone.

50. Using a loan of \$1,675,784 from Genus, Dancel formed Amerix in 1996. Genus has since paid Amerix at least \$35 million each year since 1998, and some years double that amount.

51. While Dancel was still running Genus, Genus also supported and later acquired another for-profit company founded by Dancel, Freedom Network International.

52. Dancel stepped aside as President and Chief Executive Officer of Genus in February, 1998 to run Amerix full time. Even though Dancel worked at Genus only two months that year, Genus (a not-for-profit company) paid him compensation in 1998 of \$118, 864. Also in

1998, Genus also paid Dancel's Amerix "consulting fees" of \$36,396,232 and Dancel's Freedom Network International \$520,374.

53. In that same year, Genus sold assets and a portion of its workforce to Amerix in exchange for over \$2.1 million.

54. Between January 1, 1997 and January 1, 1998, Genus also loaned Amerix and Dancel over \$3.5 million. The stated purpose for these loans was to fund Amerix's purchase from Genus the assets described in the prior paragraph, and to fund Amerix's purchase from Genus of the stock of Freedom Network International.

55. In or about 1999, Genus created InCharge to be the sole shareholder and holding company of Genus.

56. In that same year, InCharge reported \$0 revenues and assets, while Genus reported revenue in excess of \$105 million and net balances, after expenses, of almost \$19 million. Among the expenses reported by Genus in 1999 was \$75,437,422 paid to Amerix.

57. Also in 1999, after being acquired by Incharge, Genus gave over \$2.5 million to another InCharge subsidiary, Concord Credit. Genus gave Concord Credit an additional \$16,345,000 in 2000.

58. In 2000, after acquiring Genus and its DMP portfolio, InCharge still reported \$0 revenues and assets. However, in 2000 it paid four employees in excess of \$120,000 each and paid five contractors amounts ranging from \$150,051 to \$468,440. Two of those contractors were paid to provide "public relations" and "public service" announcement services. In part to finance these expenditures, InCharge borrowed \$19,172,514 from its Genus subsidiary.

59. For its part in 2000, Genus reported income in excess of \$113 million and net assets or balances, after expenses, in excess of \$23 million. Included in those expenses were payments of approximately \$80 million to Amerix.

60. InCharge, Genus and Concord Credit (all affiliated entities in 2000) paid salaries to their seven highest paid employees ranging from \$99,678 to \$410,000, including three salaries in excess of \$247,000 and six above \$170,000.

61. In 2001, using a \$6 million loan provided by Genus and an \$11 million loan provided by Amerix, the AFS division of North Seattle acquired Genus from InCharge for \$17 million.

62. Compared to Genus' 2000 revenues in excess of \$113 million, North Seattle reported 2000 revenues, including those earned by AFS, slightly in excess of \$4 million. Nevertheless, AFS acquired Genus.

63. That transaction was facilitated by Dancel's desire to place Genus, Amerix' and Dancel's cash cow, into friendly hands.

64. Dancel found such an entity in North Seattle, which was affiliated with the North Seattle Community College Division. The Chancellor of the college at that time, Peter Ku, founded Clarion Credit Management and CESI, Consumer Education Services, Inc. Both of those DMP companies contract with Amerix for their DMP processing and management.

65. Of the \$4 million earned by North Seattle in 2000, it used more than \$673,306 (approximately 17% of its revenues) to fund grants and scholarships at North Seattle Community College.

66. In 2001, after AFS acquired Genus, North Seattle reported revenues in excess of \$83.5 million. Yet, in 2001 it paid only \$325,661 (approximately .004% of its revenues) to fund grants and scholarships at North Seattle Community College, less than half the year before

67. In 2002, North Seattle reported revenues in excess of \$75.6 million, and paid only \$581,766 (approximately .007% of its revenues) to fund grants and scholarships at North Seattle Community College.

68. The year before it acquired Genus, North Seattle paid one employee a salary in excess of \$100,000. The year after the Genus acquisition, three employees were paid in excess of \$100,000.

69. In 2001, the last partial year that InCharge owned Genus, Genus paid Amerix in excess of \$35 million, out of revenues totaling approximately \$49 million.

70. Since selling Genus, InCharge and its affiliated companies no longer use Amerix to process or manage their DMPs. InCharge has since changed the name of its former Genus subsidiary to NCCS, and makes clear on its website that: “NCCS is no longer associated with Genus Credit Management.”

71. Dancel is the CEO, Chairman of the Board and largest shareholder of Amerix and/or its parent Ascend One. Upon information and belief, he holds those same positions, exerts the same control over, and profits in a like manner from the businesses of FreedomPoint, FreedomPoint Financial and CareOne.

72. Amerix claims to provide advertising, solicitation, enrollment, processing, customer service and back office operations for 300,000 current DMP customers, the majority of

these being customers of Genus and AFS. Amerix operates a 465 person telephone call center in Columbia Maryland, where it responds to consumer and potential customer calls and other consumer communications. Amerix takes credit for collecting debts and monthly fees owed by Genus' and AFS' DMP customers and disbursing that money to creditors. Amerix also collects the Fair Share payments from creditors, on behalf of Genus, AFS and other DMP providers. Amerix even prepares and sends out statements and form letters to Genus and AFS DMP customers.

73. All of Amerix's affiliates sell, market and advertise a DMP product known as "CareOne Credit Counseling" services, marketed under the CareOne trade name and advertised by CareOne as "an industry-leading Debt Management Program brand."

74. CareOne advertises, markets and solicits consumers nationwide using television, radio, print, Internet, mail and the telephone wires to enroll consumers in its DMP program. Once it snares a DMP customer, using the deceptive and misleading advertising described herein, CareOne either enrolls that consumer in a DMP or refers them to enroll in a DMP sold by an Amerix affiliate, such as Genus and AFS. CareOne also refers consumers to companies that sell CareOne and Amerix DMP products, such as Genus and AFS.

75. CareOne claims that its CareOne Credit Counseling service (*i.e.* DMP), is sold by Genus, AFS, Clarion Credit Management, Debt Management Group and CESI, Consumer Education Services, Inc. Each of these companies contracts with Amerix to administer, manage and operate their DMPs. In fact, consumers seeking to enroll with Genus on its on-line DMP enrollment form are directed to the CareOne website to complete the application.

76. FreedomPoint advertises, markets and solicits consumers to enroll in the CareOne Credit Counseling DMP product. It also enrolls consumers in DMPs, or refers them to affiliates that sell CareOne's DMP product and contract with Amerix for DMP administration, management and processing, such as Genus and AFS.

77. FreedomPoint also advertises, markets and solicits consumers to enroll in a DMP program called the "Debt Resolution Program" offered and operated by its sister company, FreedomPoint Financial Corporation, another subsidiary of Ascend One.

78. By soliciting, marketing, operating, creating and referring the DMPs sold by Genus and AFS, and formerly by InCharge, the Dancel-controlled Amerix, Ascend One, CareOne, FreedomPoint and FreedomPoint Financial end up collecting the majority of fees collected from the Class.

79. In fact, the Senate Report discloses that Amerix is contractually entitled to receive between 50 – 85% of all revenues collected from each DMP it administers for each of its credit counseling affiliates, like Genus and AFS. Based on those profit sharing agreements, Amerix has reported gross revenues in excess of \$43 million in 1998, \$79 million in 1999, \$90 million in 2000, \$76 million in 2001 and \$95 million in 2002. "In all, between 1998 and 2002, Amerix received \$386,453,223 in gross revenues – all of which was generated by the 'non-profit' credit counseling industry." Senate Report at p. 15. Since Dancel owns 87% of AscendOne, he has personally reaped the large majority of that windfall.

***False, Misleading and Deceptive Claims of Providing
“FREE” Debt Counseling and “FREE” DMP Referrals***

80. Respondents each advertise and solicit consumers with claims of “free” DMPs and “free” referral services. Neither is true for the vast majority of Class members.

81. While styled as a “voluntary contribution,” Respondents impose mandatory monthly fees for each account included in the DMP offered, sold or managed by Respondents. Respondents also impose other charges associated with initiating new DMPs.

82. Even though Respondents charge these mandatory fees, the obligatory nature of these fees and their amount are absent from Respondents’ advertising, promotions and solicitations, or are otherwise obscured in fine print or overshadowed by repeated claims of “free” debt management, credit counseling and budget planning.

83. The fees imposed by Respondents on consumers are in addition to the Fair Share payments made by creditors to Respondents. Respondents also mischaracterize these payments as “voluntary contributions” to hide or obscure Respondents’ financial relationship with creditors and Respondents’ status as debt collectors for creditors.

84. Genus currently states that it provides “free debt management and education programs that help financially distressed families and individuals effectively manage their finances.” Genus’ advertising contains many similar promises of “free” DMPs.

85. Genus made similar statements and promises prior to marketing the CareOne DMP. For example, in promotional materials mailed by Genus to consumers, under its slogan, “Genus,

We're a better way to become debt free" it stated not only that Genus' service is "free," but also that: "We work with your creditors to lower your monthly payment."

86. AFS encourages consumers to join its DMP, because it "charges **NO** upfront fee or maintenance fee." (Emphasis in original). It also emphatically states that: "Our Services to you are Free, Simple and Secure." AFS' advertising contains many similar promises of "free" DMPs.

87. In a December 18, 2001 press release, Amerix assures consumers that: "Amerix's credit counseling agency partners do not require consumers to pay fees to participate in debt management plans"

88. Both Genus and AFS sell CareOne's DMP program and services. CareOne's website demonstrates the falsity of the claims by Genus and AFS, admitting that: "Clients typically pay a nominal set-up cost to cover the expense of account activation, and a monthly servicing cost to cover recurring expenses."

89. FreedomPoint admits that consumers enrolling in CareOne's DMPs sold by Genus, AFS and others pay "the cost of a monthly contribution."

90. FreedomPoint nevertheless advertises on its website as providing "free" referral services: "FreedomPoint offers a free referral service to a network of carefully-selected service providers – each with many years of success in their areas of expertise." This statement omits to disclose that Genus, AFS and other companies offering CareOne's DMPs, remit much of the money they charge consumers back to FreedomPoint and its affiliated companies. Thus, the services provided by FreedomPoint are not "free," but rather paid indirectly by consumers that

enroll in DMPs offered by Genus, AFS and others. Similar claims of “free” referrals by CareOne and Amerix are similarly false, deceptive and misleading.

91. A consumer complaint made to the Federal Trade Commission (the “FTC”) concerning Genus typifies Respondents’ deception: “I contacted Genus in Sept[ember] of 2000 because of there [sic] promises to help us out of debt. They told me that I had to pay a \$20.00 contribution fee in order for them to help me. I have called several times regarding this \$20.00 fee because this company claims to be a non-profit. I have been told that I have to pay this fee and just because a company claims to be non-profit doesn’t mean they actually are. I have also tried to get them to remove the fee because they claim that it is a contribution fee. To me a contribution is when I willingly contribute this money to this company[,] not them telling me I have to pay it. ... These people just continually lied to me.”

92. Another consumer complained to the FTC as follows: “Genus Credit Management states quite clearly on their site that their services are free to persons in the United States. When I called to employ their services, I was referred to another company, Profina, that asked that I pay \$50.00 up front and an additional \$5.00 per credit account I wanted on the debt management program (up to \$35.00). I refused, double-checked Genus’ web site, and no mention of this other company or the fees they asked for are mentioned anywhere.”

False, Misleading and Deceptive Promises to Lower Monthly Payments, Lower Interest Rates, Eliminate Late Fees and Get Clients Out of Debt Fast

93. Respondents all solicit consumers with promises that by enrolling in their DMPs, consumers will gain the benefit of lower payments and interest rates on their credit card and other unsecured debts, will eliminate late fees and will become debt free in as little as three years. Many of these promises are exaggerated and unbalanced, while others are no less than fabrications for the large majority of consumers induced to join Respondents' DMPs.

94. In its solicitation materials, CareOne states that its DMP (sold by Genus and AFS), will allow financially troubled consumers to: "Lower monthly payments by 57%" and "Reduce Interest Charges." It also assures consumers that "most creditors will significantly reduce your interest charges and waive any late fees."

95. CareOne also promises consumers the following benefits: "Enroll with a credit agency offering the CareOne service and you'll get help in at least 5 important areas. 1) **Help you pay less.** The credit counseling agencies that provide CareOne services negotiate with your creditors for better repayment terms, including lower interest rates and waived late fees. 2) **Help to pay off your debt faster.** By creating a realistic and manageable payment plan, you'll be able to pay off your debt in as few as 3 to 5 years (as compared to potentially 20 to 30 years on your own." (Emphasis in original). It further promises that: "In most cases, your benefits, such as reduced interest rates or waived late fees, will start after your third month and are reflected on your fourth monthly statement from your creditor."

96. CareOne assures consumers that CareOne and its affiliates can deliver on their promises to lower payments due to their special relationships with creditors: “CCAs [Credit Counseling Agencies] that offer the CareOne Service have long-standing relationships with most creditors, so the terms of your agreement will include realistic estimates of how much your creditors will be willing to accept – amounts likely to be much lower than you could negotiate on your own.”

97. FreedomPoint makes the same promises as CareOne in its Internet website and in other promotional, marketing and solicitation materials, including promises that enrollment in a CareOne DMP sold by Genus or AFS will lower payments up to 57%, reduce interest rates and eliminate late fees.

98. FreedomPoint and FreedomPoint Financial claim that their “Debt Resolution Program” can result in a consumer being “completely debt free from unsecured debt in just five years – and potentially reduce your debt burden by thousands of dollars” if creditors accept their terms and consumers adhere to the program.

99. Prior to and since selling the CareOne DMP, Genus has made similar promises. It currently states: “By negotiating terms such as lower interest rates and waived late fees with most creditors, Genus establishes more affordable payments for the consumer. As a result, greater portions of each payment may be applied to the principal.”

100. Respondents are certainly aware, but never disclose, that some credit card creditors refuse to lower interest rates, or are only willing to do so slightly. For example, Sears and American Express Optima will not lower interest rates for consumers involved in DMPs.

101. Also entirely absent from Respondents' promotions, advertising and solicitations is the fact that during the past few years many creditors have increased the interest rates they impose on consumers in DMPs. For example, in 1999 Discover was willing to lower interest rates for consumers in DMPs to 9.9%. Presently, however, Discovery charges those same consumers 17.9%. First USA and MBNA have likewise increased interest rates for consumers in DMPs.

102. Respondents also do not disclose that some creditors, most notably Capital One and First National Bank of Omaha, will not waive fees for past due payments.

103. As a result of these realities, Respondents often cannot and do not lower interest rates, eliminate late fees and contribute to the quicker repayments of debts. Nevertheless, Respondents advertise that they can do all of these things for consumers who enroll in their DMPs. Many consumers fail to complete participation in DMPs, with statistics showing that approximately 75% of DMPs do not get completed. This is another fact absent from Respondents' slick promotion of their DMPs.

104. In addition to Claimants, many consumers have complained to the FTC that Respondents, and especially Genus and AFS, have made false, misleading and deceptive promises to lower credit card payments, lower interest rates and eliminate late fees. Many of these promises were made either in telephone or telemarketing conversations with Respondents' employees, or in Respondents' advertising and solicitations.

105. Respondents' promises and assurances, typified by the statements in Paragraphs 94 to 99 and 219, are false, misleading, deceptive, unfair, incomplete and omit contrary or negative information known by Respondents.

106. Respondents' use of these knowingly false, misleading, deceptive, unfair and exaggerated statements breach Respondents' fiduciary duties owed to Claimants and the Class, and take advantage of Respondents' superior power and knowledge over Claimants and the Class.

False, Misleading and Deceptive Representations of Non-Profit Debt Management

107. Exploiting the not-for-profit or tax exempt status of Genus, AFS and InCharge, Respondents have misled and continue to mislead consumers with the pretense of providing unbiased debt management, budget planning and credit counseling. Respondents have enriched themselves by flouting the public service rationale of non-profit and tax-exempt credit counselors and exploiting misled clients.

108. Describing these abusive practices, the IRS, FTC and state regulators warned in an October 14, 2003 press release: "Federal and state regulators are concerned that some credit counseling organizations using questionable practices may seek tax-exempt status in order to circumvent state and federal consumer protection laws. State and federal statutes regulating credit counseling agencies often do not apply to Section 501(c) tax-exempt organizations." Another IRS press release dated October 17, 2003 expressed similar warnings.

109. Not-for-profits such as Genus, AFS, North Seattle and InCharge earn handsome profits, much of which is shuffled to their officers, directors, employees, shareholders and to their for-profit partners like the Dancel-owned and operated companies: Amerix, Ascend One, CareOne, FreedomPoint and FreedomPoint Financial.

110. Respondents' advertising and solicitation as not-for-profit and tax exempt DMP providers are a charade, intentionally misleading and deceptive, as well as being an abuse of

federal and state tax laws. The Senate Report corroborates this deceptive and unlawful practice, concluding that “the evidence suggests that the Amerix CCAs [credit counseling agencies] are not operating exclusively for exempt purposes and therefore may be in violation of tax regulations.”

111. FreedomPoint, for example, states that: “The Credit Counseling Agencies associated with FreedomPoint are non-profit organizations and do not charge an enrollment fee or require a deposit to enroll in a Debt Management Plan.”

112. Genus and AFS advertise that: “Genus Credit Management / American Financial Solutions (AFS) is a non-profit credit counseling agency that offers free confidential and professional credit counseling, debt management and financial educational programs to consumers nationwide.”

113. Letters from Genus to prospective DMP clients reiterate: “there is no charge for our service. That’s because, unlike banks or loan companies, Genus is a non-profit organization that acts as your advocate. We negotiate with your creditors to reduce your monthly payments – and start getting you out of debt.” (Emphasis in original).

114. As a consequence of their for-profit reality, Respondents routinely and exclusively counsel consumers to enroll in DMPs. The reason is simple. When consumers enroll in DMP’s sold, administered, operated, managed or referred by Respondents, Respondents collect valuable fees from consumers and creditors. If another option is chosen, such as bankruptcy or self help, Respondents get nothing.

115. To dissuade consumers from considering bankruptcy, Amerix provides the dire warning that: “A bankruptcy in a credit history will usually either eliminate the ability to get credit

or make the credit very expensive in terms of fees and interest rates for the consumer.” Amerix fails to mention that consumers of DMPs have their credit cards cancelled and often incur negative statements on their credit reports.

116. Similar warnings and unbalanced statements appear on the CareOne and FreedomPoint internet websites. FreedomPoint declares: “Bankruptcy can follow you for the rest of your life, hurting your ability to qualify for credit, a car, a job, insurance or even a place to live.”

117. In furtherance of their promotion of the not-for-profit charade, Respondents do not adequately disclose that their sales and customer service agents receive commissions for enrolling consumers in DMPs, nor do they provide meaningful disclosure of the relationship and payments between the for-profit and not-for-profit Respondents.

118. Respondents also fail to provide meaningful disclosure about creditor Fair Share contributions—the bounties they receive for collecting debts for creditors—and how those bounties create a conflict of interest for Respondents by generating revenue through DMP enrollments.

False, Misleading and Deceptive Promises of Dependable Service and Timely Debt Payment

119. To solicit consumers to enroll in their DMPs, Respondents promise dependable service and timely debt payments. In many cases, these claims are unfounded as Respondents routinely make late payments to consumers’ creditors resulting in late fees.

120. Genus, for instance, claims that its “state-of-the-art infrastructure assures consumers of fast, dependable, accurate, and confidential service.”

121. Amerix even boasts that: “Every month Amerix enables the movement of more than 1.2 million client payments, worth more than \$95 million, to creditors on behalf of its nonprofit credit counseling agency clients.”

122. Even though many of these “client payments” are debited directly from consumers’ bank accounts, Respondents delay approximately 8 days before sending those payments to creditors, so that Respondents can earn interest for Respondents’ own accounts.

123. In fact, the Genus EasyPay Client Agreement, a contract of adhesion drafted exclusively by Genus with no opportunity for negotiation by consumers, used by Genus to deduct funds directly from DMP clients’ bank accounts, requires consumers to agree that: “You agree that you will not receive any interest that may be earned on any sums paid by you and held by GCM [Genus Credit Management] and/or the depository bank until GCM disburses such sums to your creditors. Please note that we generally hold your payments up to 8 days to ensure that the funds are available before disbursement to your creditors.” The interest earned and retained is yet another fee imposed by Respondents that is not disclosed in their advertising, solicitations and promotions.

124. As a result of Respondents’ delay, consumers with DMPs sold or administered by Genus, AFS, InCharge and/or Amerix often incur late fees imposed by creditors that both increase the amount of debt owed and damage credit ratings. The effect of these late charges and fees caused by Respondents’ delinquent creditor disbursements, is contrary to Respondents’ advertising, solicitations and promotions promising quality service, timely payments and the elimination of late fees.

125. The problem has even caught the attention of the Maryland Attorney General, who reported in a September 22, 2002 press release that “consumers have been hurt by hidden fees and by sloppy practices that resulted in late or missed payments to the consumers’ creditors.” Genus, Amerix, Ascend One, CareOne, FreedomPoint and FreedomPoint Financial are all Maryland-based companies that engage in the practices described by the Attorney General’s press release.

126. Many consumers have complained to the FTC that Respondents, and especially Genus and AFS, have caused them to incur substantial late fees and penalties due to late payments made by Respondents to their clients’ credit card creditors. In addition, many consumers have complained to the FTC concerning Respondents’ inattentive, unresponsive and abusive customer service.

False, Misleading and Deceptive Advertising and Promotion of Educational Services Not Provided

127. While Respondents’ advertising claims to provide “free” credit counseling, budget planning and debt management and education, their intended purpose is not to provide any *bona fide* counseling or education. Rather their goal is to sell DMPs and collect the substantial consumer and credit fees associated with those DMPs.

128. While Respondents each promote the counseling, planning and educational services they claim to provide, they actually attempt to sell all or substantially all consumers who respond to their advertising a DMP designed and administered by Respondents or one of their affiliate companies.

129. Respondents also fail to disclose that no educational or counseling services are provided to consumers that refuse to enroll in DMPs offered, sold or administered by Respondents or their affiliates. The Senate Report concludes that Amerix and each of its credit counseling affiliates, including Genus and AFS, “fail the consumer by neglecting to provide adequate counseling and education.”

130. Corroborating the Senate’s conclusion, North Seattle (including AFS and Genus) reported 2001 revenues of \$84,931,210, but according to its tax returns, spent only \$146,458 (approximately .001%) on “education and training.” In 2002, they reported revenues of \$75,678,214, but spent \$160,058 (approximately .002%) on “education and program expenses.”

131. When a consumer contacts Genus, but does not immediately enroll in a DMP, they receive a letter from Genus pressuring them to enroll in a DMP, without first receiving any education or counseling. One such form letter encourages consumers to enroll in DMPs over the telephone: “In just 30 minutes, you can put an end to the sleepless nights, the constant calls from bill collectors, and the nagging worry that seems to follow you everywhere you go.” (Emphasis in original).

132. Even the services provided by Respondents post-DMP enrollment are a sham designed to further their masquerade as being not-for-profit or tax exempt entities. These efforts are the epitome of form over substance. For instance, when describing the credit counseling offered by its affiliates, FreedomPoint assures consumers that “you never have to speak to anyone unless you want to.” The Senate Report further points to the CareOne website where a “consumer

is permitted to enroll in a DMP without a single contact with a counselor at any of the five CCAs in the Amerix conglomerate.”

133. Typical of their high-pressure sales methods to railroad consumers into DMPs without any prior education or counseling, Genus tells consumers that: “If you are ready to sign up, please click the Enroll Now button below for fast, secure online registration with our CareOne Service.” Genus’ sales representatives and telemarketers pressure consumers by mail and telephone to return contracts for DMP enrollment as soon as possible by fax, overnight mail or digital signature on the Internet.

False, Misleading and Deceptive Advertising and Promotion of Debt Counseling, Budget Counseling and Services Respondents are Not Licensed to Provide

134. Due to substantial abuses in the past, some states now regulate and/or license entities permitted to engage in credit, budget or debt relief counseling. Respondents have abused and largely ignored these laws, continuing to advertise for services they are not lawfully permitted to sell.

135. Since October 1, 2003, companies that provide “debt management services” to consumers in Maryland must be registered and licensed with the State’s Division of Financial Regulation, unless they qualify for an exemption reserved for defined entities such as attorneys and certified public accountants. Respondents are not exempt from the licensing and other requirements imposed by the Maryland Debt Services Act.

136. In New York, Article 24B of New York’s General Business Law, GBL §456, permits only lawyers and entities licensed by the New York State Banking Department to engage

in budget planning services. “Budget Planning” is defined to expressly include the type of DMPs promoted and sold by Respondents. New York Banking law further allows only not-for-profit entities to obtain a license or conduct business as a budget planner.

137. Despite those statutes, and others like them in other states, Respondents advertise and promote their DMPs and other budget planning and debt counseling services without limitation, on television, radio, in print, on the Internet and elsewhere.

138. Genus and AFS claim to offer “credit counseling, debt management and financial educational programs to consumers nationwide,” yet they are or were unlicensed to perform or offer these services in either Maryland or New York.

139. Amerix says it operates a 465-employee call center in Maryland that services over 300,000 DMP accounts every month, yet it is unlicensed to perform or offer these services in either Maryland or New York.

140. CareOne states: “Our Debt Management Plan service provider, CareOne Credit Counseling, is the largest provider in the industry,” yet it is unlicensed to perform or offer these services in either Maryland or New York.

141. FreedomPoint Financial and FreedomPoint offers the Debt Resolution Program and other DMPs from their Maryland headquarters, yet they are unlicensed to perform or offer these services in either Maryland or New York.

142. Respondents individually and collectively continue to advertise, promote and sell budget planning, debt counseling and Debt Management Plans in a manner that is false, misleading, deceptive, unfair and unlawful.

Self- Dealing and Failure to Adequately Disclose Relationship of Entities

143. Bernard Dancel historically and/or presently owns or controls Genus, Amerix, CareOne, FreedomPoint, FreedomPoint Financial and Ascend One. He and the for-profit companies he controls are also paid the majority of revenues earned by Genus, AFS, North Seattle and InCharge.

144. Each of the Respondents does business with one another, loans money to one another, finances one another's operations, has common owners, officers, directors and employees and/or shares consumer and creditor fee income derived from DMP enrollment and participation. These intertwining relationships and conflicts of interest are not adequately disclosed in Respondents' promotional materials or consumer contracts, such that Respondents' statements are unfair, deceptive and misleading.

145. Respondents' self dealing seeks to bait customers by promises of DMPs offered by not-for-profit companies, and then remits the majority of the very extensive profits earned by those not-for-profit companies to their for-profit affiliates and partners. In this manner, the purported not-for-profit Respondents mislead consumers and evade the tax and consumer protection laws, while their substantial profits are funneled to Dancel and the for-profit companies he owns and/or controls.

146. Nowhere do Genus, AFS, CareOne or FreedomPoint disclose to consumers in their advertising and promotional materials that the majority of revenues collected by or on behalf of Genus, AFS and formerly InCharge are paid to Amerix, and indirectly to Dancel.

147. In 1998 Genus reported income of approximately \$57 million and paid Amerix approximately \$36.4 million, another Dancel-owned company in excess of \$500,000, while also paying Dancel a salary for his positions as an officer and director of Genus. In 1999, Genus reported income of approximately \$105 million and paid Amerix in excess of \$75.4 million. In 2000 Genus (a subsidiary of InCharge) reported income of approximately \$114 million and paid Amerix in excess of \$79.7 million. Genus, AFS and/or North Seattle paid like percentages of their income derived from their DMP activities to Amerix since 2001.

148. Other financial entanglements among Respondents include loans from Genus to Amerix, from Genus and/or InCharge to North Seattle and from Amerix to North Seattle.

149. By failing to adequately disclose their conflicts of interest, Respondents have engaged in unfair, deceptive and misleading solicitation of consumers and violated Respondents' fiduciary duties to the Class of consumers, to whom Respondents have superior knowledge and bargaining power.

False, Misleading and Deceptive Promises to Repair Credit Ratings, Records and Scores

150. As yet another inducement, Respondents promise that participation in their DMPs will improve credit, credit ratings, credit histories, credit records and/or credit scores.

151. Genus states on its Internet website that consumers in need of credit repair should “try contacting a reputable, non-profit credit counseling organization that can help you arrange a repayment plan. A repayment plan enables you to rebuild your credit by making consistent monthly payments, which will reflect positively on your credit report.”

152. CareOne tells consumers on its Internet website that its DMPs can improve their credit and credit ratings: “If your credit report already reflects late or missed payments, a Debt Management Plan will likely improve your credit by facilitating consistent, on-time monthly payments. Also, through the Debt Management Plan, many creditors ‘re-age’ your account, meaning that even if you were late in the past they will report you as ‘current’ as long as you make monthly payments on time.”

153. FreedomPoint promises consumers on their Internet website that enrollment in their DMP will result in the “‘re-aging’ of your account, so your payments aren’t considered delinquent.” By promising to achieve the re-aging of credit card debts, FreedomPoint is promising to improve credit ratings, credit ratings and credit scores.

154. InCharge subsidiary, NCCS, states the following on its Internet website, under “Frequently Asked Questions:” “**Can you repair my credit?** By using our services to restructure your debt, your credit rating will improve by showing a positive payment history. No one anywhere can erase your prior true credit history, but the longer you stay in the program, the closer you are to solid financial footing.” (Emphasis in original).

155. A consumer complaint to the FTC about AFS states: “This [AFS] Representative claimed that if I paid him \$299 up front, he would provide a service that would get negative items off of my credit reports.”

156. These promises to improve credit or credit ratings are false, deceptive, unfair, unbalanced and incomplete because of the following reasons, among others: i) many creditors do not report consumer DMP involvement to credit agencies; ii) those creditors that do report

consumer DMP involvement can have a negative impact on a consumer's ability to obtain credit; iii) some creditors refuse to re-age the accounts of DMP participants; iv) Respondents' DMPs do not lower debt balances nearly as fast or extensively as advertised; and v) Respondents' late or missed payments to consumers' creditors cause the imposition of additional late fees and negative credit reporting.

157. Respondents make promises to improve consumers' credit ratings while knowing that many creditors, including MBNA, Sears and Fleet, will not provide credit rating agencies with information which would improve consumers' credit ratings. As a result, credit rating agencies may not provide the credit rating improvements that Respondents promise DMP consumers.

CLASS ACTION ALLEGATIONS

158. Claimant brings this action as a class action arbitration pursuant to the AAA's Supplemental Rules For Class Arbitration on behalf of the following class:

All persons in the United States and its territories, or alternatively certain states within the United States, who enrolled in a Debt Management Plan or similar program advertised, created or administered by any Respondent or entity sharing common ownership of any Respondent, excluding all Respondents and their respective officers, directors, employees, subsidiaries and affiliates (the "Class").

159. The members of the Class are so numerous that joinder of all members is impracticable.

160. Respondents' unlawful, false, misleading, deceptive and unfair trade acts and practices have targeted and affected all members of the respective Class in a similar manner.

161. Among the questions of law and fact common to the Class are:

- (a) Whether Respondents have and/or continue to violate the Fair Debt Collection Practices Act as a result of their unfair, false, misleading and unconscionable statements, omissions and business practices;
- (b) Whether Respondents have and/or continue to violate the Credit Repair Organizations Act as a result of their false, misleading, deceptive and unconscionable statements, omissions and business practices;
- (c) Whether Respondents have and/or continue to violate the Racketeer Influenced and Corrupt Organizations Act;
- (d) Whether Respondents have and/or continue to violate the Telemarketing and Consumer Fraud and Abuse Prevention Act and the FTC's Telemarketing Sales Rule;
- (e) Whether Respondents have and/or continue to violate the Maryland Consumer Protection Act, and similar state consumer protection statutes, as a result of their false, misleading, deceptive and unfair advertising, promotions and solicitations;
- (f) Whether Respondents have and/or continue to violate the Maryland Debt Management Services Act, and similar state statutes;
- (g) Whether Respondents have and/or continue to breach their common law fiduciary duties owed to their consumer clients as a result of self-dealing, breaches of loyalty and failure to disclose conflicting relationships;
- (h) Whether Respondents have and/or continue to violate the common law and equitable principles of unjust enrichment, entitling Claimants and the Class to disgorgement and restitution; and
- (i) Whether Claimants and the Class are entitled to an injunction to enjoin Respondents' unlawful and inequitable conduct.

162. Claimants' claims are typical of those of the Class they seek to represent because they and all of the Class members were injured and continue to be injured in the same manner by Respondents' unlawful and inequitable acts and practices and wrongful conduct.

163. Claimants will fully and adequately protect the interests of all members of the Class. Claimants have retained counsel who are experienced in litigating consumer class actions.

164. Claimants have no interest which are adverse to, or in conflict with, other members of the Class.

165. The questions of law and fact common to the members of the respective Class predominate over any questions which may affect only individual members.

166. A class action arbitration is superior to all other available methods for the fair and efficient adjudication of this controversy. Claimants and their counsel know of no difficulty likely to be encountered in the management of this action that would preclude its maintenance as a class action.

167. Respondents have acted and refused to act, as alleged herein, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

CONTINUING HARM AND INURY

168. Claimants and the Class are harmed and suffer a separate injury each and every time Claimants and each Class member pay monthly fees or other monies to Respondents, each and every time Respondents engage in false, misleading, unfair and/or deceptive conduct or advertising and each and every time Respondents collect debts from Claimants and the Class members.

FRAUDULENT CONCEALMENT AND EQUITABLE TOLLING

169. Respondents have engaged in fraudulent, misleading and deceptive efforts to conceal the true nature of their unlawful conduct from Claimants and the Class. Respondents have intended to and have in fact accomplished their concealment both by their active misrepresentations and omissions, as described herein.

170. Due to Respondents' fraudulent concealment, Claimants have only recently learned of the existence of their claims against Respondents.

171. Claimants' lack of knowledge as to their claims against Respondents were not due to any fault or lack of diligence on their part, but rather due entirely or substantially to the acts of Respondents designed to conceal and hide the true and complete nature of their unlawful conduct.

172. Respondents owed fiduciary duties to Claimants and the Class, which duties were routinely violated and concealed in the manner described herein.

COUNT I

FOR VIOLATIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT

(Against All Respondents Except Genus, AFS, North Seattle and InCharge)

173. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

174. Claimants and each Class member is a "consumer" as that term is defined in 15 U.S.C. §1692a(3).

175. All Respondents included in this Count I are "debt collectors" as that term is defined in 15 U.S.C. §1692a(6), insofar as these persons and entities collect the debts of

consumers as part of DMPs created or administered by Respondents, or who refer consumers to affiliated Respondent persons or entities who collect the debts of consumers.

176. 15 U.S.C. §1692e states as follows: “A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

177. 15 U.S.C. §1692f states as follows: “A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.”

178. As alleged herein, Respondents have employed false, deceptive and misleading representations in order to induce consumers to participate in DMPs advertised, sold and administered by Respondents and their affiliates. Such conduct violates 15 U.S.C. §1692e.

179. As alleged herein, Respondents have employed unfair and unconscionable means in order to induce consumers to participate in DMPs created and operated by Respondents and their affiliates. Such conduct violates 15 U.S.C. §1692f.

180. Claimants and the Class have been injured as a result of Respondents’ violations of 15 U.S.C. §§ 1692e and 1692f.

181. Claimants and the Class are entitled to pursue a claim against Respondents pursuant to 15 U.S.C. § 1692k to redress Respondents’ violations of 15 U.S.C. §§ 1692e and 1692f.

COUNT II

FOR VIOLATIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT

(Against Genus, AFS, North Seattle and InCharge)

182. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

183. Claimants and each Class member is a “consumer” as that term is defined in 15 U.S.C. §1692a(3).

184. Genus, AFS, North Seattle and InCharge are “debt collectors” as that term is defined in 15 U.S.C. §1692a(6), insofar as those entities collect the debts of consumers as part of DMPs created or administered by Respondents, or who refer consumers to affiliate Respondent persons or entities who collect the debts of consumers.

185. Many consumers have complained to the FTC about Respondents’ conduct, especially Genus and AFS, classified by the FTC as “third party debt collection” or “creditor debt collection” and as violations of the FDCPA and other consumer protection statutes.

186. Although Genus, AFS, North Seattle and InCharge are nonprofit organizations, they are not exempted from the definition of “debt collectors” because they do not provide “*bona fide* consumer credit counseling” as the term is used in 15 U.S.C. §1692a(6)(E).

187. Genus, AFS, North Seattle and InCharge are alternatively not exempted from the definition of “debt collectors” because they are not legitimate nonprofit organizations and/or do not “assist[] consumers in the liquidation of their debts[.]”

188. 15 U.S.C. §1692e states as follows: “A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

189. 15 U.S.C. §1692f states as follows: “A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.”

190. As alleged herein, Genus, AFS, North Seattle and InCharge have employed false, deceptive and misleading representations in order to induce consumers to participate in DMPs created and operated by Respondents and their affiliates. Such conduct violates 15 U.S.C. §1692e.

191. As alleged herein, Genus, AFS, North Seattle and InCharge have employed unfair and unconscionable means in order to induce consumers to participate in DMPs created and operated by Respondents and their affiliates. Such conduct violates 15 U.S.C. §1692f.

192. Claimants and the Class have been injured as a result of Genus, AFS, North Seattle and InCharge’s violations of 15 U.S.C. §§ 1692e and 1692f.

193. Claimants and the Class are entitled to pursue a claim against Genus, AFS, North Seattle and InCharge pursuant to 15 U.S.C. 1692k to redress their violations of 15 U.S.C. §§ 1692e and 1692f.

COUNT III

FOR VIOLATIONS OF THE CREDIT REPAIR ORGANIZATIONS ACT

(Against All Respondents)

194. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

195. Claimants and each Class member is a “consumer” as that term is defined in 15 U.S.C. §1679a.

196. Each is a “credit repair organization” as that term is defined in 15 U.S.C. §1679a(3)(A).

197. No Respondent is exempted from being a “credit repair organization” as such exemptions are defined in 15 U.S.C. §1679a(3)(B).

198. Based on its ongoing audit of credit counseling organizations, the IRS Chief Counsel’s Office recently concluded that the IRS should revoke the 501(c)(3) status of the abusive organizations being audited, for among other reasons, using the 501(c)(3) exemption to evade regulation and liability under CROA.

199. No Respondent is a *bona fide* organization pursuant to Section 501(c)(3) of the Internal Revenue Code and also a legitimate non-profit organization, such that it is exempt from liability under CROA.

200. Even if any Respondent is a legitimate organization pursuant to Section 501(c)(3) of the Internal Revenue Code, it is not a *bona fide* non-profit organization, such that it is exempt from liability under CROA.

201. Even if any Respondent is exempt from CROA pursuant to its status under Section 501(c)(3) of the Internal Revenue Code, it is liable under CROA prior to the date it received such status from the IRS.

202. Claimants and each Class member and each Respondent is a “person” as that term is used in 15 U.S.C. §§ 1679b and 1679g.

203. As alleged herein, Respondents have made untrue and misleading statements in violation of 15 U.S.C. §§ 1679b(a)(3) and 1679b(a)(4), and charged and collected fees in violation of 15 U.S.C. §§ 1679b(b).

204. Many consumers have complained to the FTC about Respondents’ conduct, especially Genus and AFS, classified by the FTC as “credit repair” and as violations of CROA and other consumer protection statutes.

205. Claimants and the Class have been injured as a result of Respondents’ violations of 15 U.S.C. §§ 1679b(a)(3), 1679b(a)(4) and 1679b(b).

206. Claimants and the Class are entitled to pursue a claim against Respondents pursuant to 15 U.S.C. 1679g to redress Respondents’ violations of 15 U.S.C. §§ 1679b(a)(3), 1679b(a)(4) and 1679b(b).

COUNT IV

**FOR VIOLATIONS OF THE RACKETEER INFLUENCED
AND CORRUPT ORGANIZATIONS ACT**

(Against All Respondents)

207. Claimants repeat and reallege Paragraphs 1 through 172 as if fully set forth herein.
208. Each Respondent individually is a “person” under 18 U.S.C. § 1961(3).
209. Respondents collectively as an association-in-fact comprise an “enterprise” under 18 U.S.C. §1961(4).
210. Respondents’ “enterprise” was and is engaged in interstate commerce.
211. Respondents have each: (a) directly or through agents or a RICO “enterprise” repeatedly used the mail and/or wires in interstate commerce to commit fraud; (b) consciously and purposely utilized such frauds to maintain interests in one or more RICO “enterprise” or, while employed by or associated with such an “enterprise,” conducted or participated in its affairs; or (c) conspired with others in conduct as outlined in (a) or (b).
212. Respondents’ racketeering activities and frauds have been made, assisted and furthered by use of the United States mail and wires in violation of 18 U.S.C. §1962, which frauds have consisted *inter alia* of the following: (a) representing that one or more Respondents provide tax-exempt, nonprofit, *bona fide* credit counseling; (b) representing or implying that DMP enrollment will substantially reduce debts and interest rates; (c) failing to evaluate DMP enrollments with fiduciary disinterestedness; (d) failing to adequately disclose or assess DMP costs, risks, complications, and alternatives; (e) failing to disclose financial relationships among

Respondents; (f) advertising DMP services as “free” when Respondents impose mandatory costs and fees for the large majority of the Class; (g) failing to disclose that creditor Fair Share contributions vary directly with DMP enrollment levels; (i) failing to disclose that creditors refusing to offer rate reductions are “packaged” into DMPs, thereby boosting fees based on account size; and (j) filing tax returns with falsified information.

213. During the relevant times, and in furtherance and for the purpose of executing a scheme and artifice to defraud, the Respondents on more than two occasions, indeed, on numerous occasions, used and caused to be used mail depositories of the United States Postal Service by both placing and causing to be placed mailable matters in said depositories and by removing and causing to be removed mailable matter from said depositories. Each such use of the United States mail in connection with the scheme and artifice to defraud constituted the offense of mail fraud as proscribed and prohibited by 18 U.S.C. §§ 2, 1341.

214. During the relevant times and in furtherance and for the purpose of executing a scheme and artifice to defraud, Respondents on more than two occasions used and caused and caused to be used wire communications in interstate commerce by both making and causing to be made wire communications. Each such use of a wire communication in connection with the scheme and artifice to defraud constituted the offense of wire fraud as proscribed and prohibited by 18 U.S.C. §1343.

215. These instances of mail and wire fraud were a substantial factor in a sequence of responsible causation. Claimants and the Class reasonably relied to their detriment on the representations made to them by Respondents. The injuries to Claimants and the Class were

reasonably foreseeable or anticipated as a natural consequence of Respondents' mail and wire fraud. Claimants and the Class suffered damages by reason of Respondents' mail fraud and wire fraud.

216. Respondents Amerix, Genus, AFS, CareOne and FreedomPoint each operate telephone call centers wherein their employees provide fraudulent, false, misleading and deceptive information to consumers over the telephone wires. The remaining Respondents aid, abet, assist, profit and/or benefit from the fraudulent, false, misleading, unfair and deceptive information made to consumers over the telephone wires.

217. All Respondents operate and/or control Internet websites wherein they provide fraudulent, false, misleading, unfair and deceptive information to consumers over the internet.

218. Respondents Genus, AFS, Amerix and CareOne each have made or assisted in making television, radio and/or print advertisements and solicitations communicating fraudulent, false, misleading, unfair and deceptive information to consumers. The remaining Respondents aid, abet, assist, profit and/or benefit from the fraudulent, false, misleading, unfair and deceptive information made to consumers in television, radio and/or print advertising.

219. Among the racketeering acts of mail and wire fraud committed by Respondents are the following illustrative examples:

(a) On an Internet website maintained by Genus and AFS at www.genus.org/default.asp, Genus and AFS stated that Genus provides "free debt management and educational programs that help financially distressed families and individuals effectively manage their finances." This statement is fraudulent, false, misleading and deceptive because

Genus does not provide its services for “free,” does not provide *bona fide* “educational programs,” and in most cases does not help consumers “effectively manage their finances.”

(b) On an Internet website maintained by Genus and AFS at www.genus.org/07aboutus.htm, Genus stated that Genus and AFS “offers free confidential and professional credit counseling, debt management and financial educational programs to consumers nationwide. Genus is dedicated to providing free services that help financially distressed families and individuals effectively manage their personal finances.” This statement is fraudulent, false, misleading and deceptive because Genus and AFS do not provide their services or DMPs for “free,” do not provide *bona fide* “educational programs,” especially to those that refuse to enroll in Respondents’ DMPs, and in most cases Genus and AFS do not help consumers “effectively manage their finances.”

(c) On an Internet website maintained by Genus and AFS at [www.genus.org/AFS-Genus Current.htm](http://www.genus.org/AFS-Genus%20Current.htm), Genus and AFS stated: “As an AFS-Genus client, you will be assured of the following: • Our services to you are Free, Simple and Secure • Our Certified Counselors are committed to offering respect and excellent service.” This statement is fraudulent, false, misleading and deceptive because Genus and AFS do not provide their services or DMPs for “free,” and its employees do not provide AFS and Genus clients with either respect or excellent service.

(d) On an Internet website maintained by Genus and AFS at www.genus.org/02debtmanagement.htm, Genus and AFS stated: “The Genus Debt Management Program is a free service to consumers nationwide who are experiencing financial hardship.” This

statement is fraudulent, false, misleading and deceptive because Genus does not provide its debt management services or DMPs for “free.”

(e) On an Internet website maintained by Genus and AFS at www.genus.org/02debtmanagement.htm, Genus and AFS stated: “By negotiating terms such as lower interest rates and waived late fees with most creditors, Genus establishes more affordable payments for the consumer.” This statement is fraudulent, false, misleading and deceptive because Genus cannot and does not lower interest rates and obtain the waiver of late fees “with most creditors.”

(f) On an Internet website maintained by Genus and AFS at www.genus.org/02debtmanagement.htm, Genus and AFS stated: “Genus is supported chiefly by voluntary creditor contributions but works with all lenders – whether or not donations are made.” This statement is fraudulent, false, misleading and deceptive because Genus is not “chiefly supported by voluntary creditor contributions” and does not “work with all lenders.”

(g) On an Internet website maintained by AFS at [www.debtfixers.org/AFS CO Enroll.htm](http://www.debtfixers.org/AFS_CO_Enroll.htm), AFS stated that: “As an AFS client, you will be assured of the following: • Our services to you are Free, Simple and Secure • Our Certified Counselors are committed to offering respect and excellent service.” This statement is fraudulent, false, misleading and deceptive because AFS does not provide their services or DMPs for “free,” and its employees do not provide many AFS clients with either respect or excellent service.

(h) On an Internet website maintained by AFS at www.debtfixers.org, AFS stated that AFS and Genus provide CareOne DMPs having the following characteristics: “It’s not a loan. It’s

not bankruptcy. It's debt relief. And it's Free." This statement is fraudulent, false, misleading and deceptive because neither AFS nor Genus provide DMPs for "Free."

(i) In at least fourteen television advertisements airing, including those airing on October 13, 1997, October 14, 1997, October 15, 1997, December 11, 1997, December 14, 1997, January 5, 1998, January 16, 1998, May 11, 1998, March 9, 1999, March 18, 1999, March 30, 1999, April 12, 1999, July 27, 1999 and August 8, 1999, Genus makes substantially similar claims as recited above, which are fraudulent, false misleading and deceptive for the reasons described in this Paragraph and in this Complaint:

(j) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com, CareOne stated: "Get Online Debt Relief Now! • Lower monthly payments up to 57% [and] • Reduce interest charges." This statement is fraudulent, false, misleading and deceptive because for most consumers, CareOne's DMPs do not reduce payments anywhere near 57% and do not "Reduce interest charges" for debts owed to many creditors.

(k) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/HowThePlanHelps.aspx, CareOne stated that consumers who enroll with affiliates selling CareOne DMPs, such as AFS and Genus, would receive the following: "**Help you pay less.** The credit counseling agencies that provide CareOne services negotiate with your creditors for better repayment terms, including lower interest rates and waived late fees." (Emphasis in original). This statement is fraudulent, false, misleading and deceptive because for many of Respondents' DMP clients, CareOne's DMPs do not "lower interest rates," do not result

in “waived late fees” and because CareOne DMP providers do not “negotiate” with many creditors to obtain the favorable promised results.

(l) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/HowThePlanHelps.aspx, CareOne stated that consumers who enrolled with affiliates selling CareOne DMPs, such as AFS and Genus, would receive the following: “**Help to pay off your debt faster.** By creating a realistic and manageable payment plan, you’ll be able to pay off your debt in as little as 3 to 5 years (as compared to potentially 20 to 30 years on your own).” (Emphasis in original). This statement is fraudulent, false, misleading and deceptive because CareOne’s DMPs do not enable many consumers to repay their debts in 3 to 5 years, do not enable many consumers to repay their debts “faster” than possible without a CareOne DMP and do not enable consumers to repay debts 15 to 20 years earlier than if the consumer did not enroll in a CareOne DMP.

(m) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/QuickAnswerGuide.aspx, CareOne stated that by using a DMP, “most creditors will agree to significantly reduce your interest charges and waive late fees.” This statement is fraudulent, false, misleading and deceptive because for many consumers, CareOne’s DMPs do not “significantly reduce [] interest charges” and do not result in “waive[d] late fees” on consumers’ credit card and unsecured debts owed to “most creditors.”

(n) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/QuickAnswerGuide.aspx, CareOne stated: “A DMP can help get you out of debt more quickly than you could on your own.” This statement is fraudulent, false,

misleading and deceptive because for many consumers, CareOne's DMPs do not result in consumers paying off their unsecured debts faster than without a CareOne DMP.

(o) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/QuickAnswerGuide.aspx, CareOne stated: "A DMP can drastically reduce the high rates of interest typically charged by most creditors. They also eliminate late fees, so more of your money goes toward reducing your debt." This statement is fraudulent, false, misleading and deceptive because for many consumers, CareOne's DMPs cannot and do not "dramatically reduce the high rates of interest" and cannot and do not "eliminate late fees" charged by "most creditors."

(p) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/QuickAnswerGuide.aspx, CareOne stated: "CCAs [credit counseling agencies] that offer the CareOne Service have long-standing relationships with most creditors, so the terms of your agreement will include realistic estimates of how much your creditors will be willing to accept – amounts likely to be much lower than you could negotiate on your own." This statement is fraudulent, false, misleading and deceptive because CareOne and its affiliate agencies, such as AFS and Genus, often do not provide "realistic estimates of how much creditors will be willing to accept" and because CareOne and its affiliate agencies often cannot and do not negotiate better repayment terms than could be negotiated by consumers.

(q) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/QuickAnswerGuide.aspx, CareOne stated: "Your CCA contacts each of your creditors on your behalf, requesting a lower monthly payment, reduced interest

charges, and waived fees (if applicable) in exchange for the promise of timely payments each month. In most cases, creditors will immediately accept the proposal.” This statement is fraudulent, false, misleading and deceptive because many creditors do not ever accept the DMP proposals made by CareOne and its affiliates, including Genus and AFS, and most do not do so “immediately.”

(r) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/QuickAnswerGuide.aspx, CareOne stated: “Within 30 days, you’ll start saving and making one monthly payment to your CCA, who in turn makes payments to your creditors. In most cases, your benefits, such as reduced interest rates or waived late fees, will start after your third month and are reflected on your fourth monthly statement from your creditor. **See your debt shrink every month, with each statement you receive.**” (Emphasis in original). This statement is fraudulent, false, misleading and deceptive because many consumers who enroll in DMPs sold or administered by CareOne or its affiliates do not benefit within three months from “reduced interest rates,” “waived late fees” or reduced balances for many of consumers’ credit card and unsecured debts included in their DMPs.

(s) On an Internet website maintained by CareOne, Amerix and Ascend One at www.careonecredit.com/ODS/QuickAnswerGuide.aspx, CareOne stated that use of a DMP will provide the following benefits: “• Can drastically reduce interest rates and eliminate late fees. • Potential to save up to 57% on your monthly payments. • Doesn’t adversely affect your credit history.” This statement is fraudulent, false, misleading and deceptive because many consumers who enroll in DMPs sold or administered by CareOne or its affiliates do not benefit from

“drastically” reduced interest rates and the elimination of late fees, do not have their total monthly payments reduced anywhere near 57% and because DMP enrollment can and often does adversely affect consumers’ credit histories, credit record and credit scores.

(t) In at least eight television advertisements, including those airing on September 10, 2002, September 12, 2002, September 13, 2002, October 13, 2002, June 10, 2003, November 19, 2003, December 23, 2003 and May 18, 2004, CareOne makes substantially similar claims as recited above that are fraudulent, false misleading and deceptive for the reasons described in this Paragraph and in this Complaint.

(u) In radio advertisements, including those airing on October 1, 2004, December 13, 2004 and February 1, 2005, CareOne makes substantially similar claims as recited above that are fraudulent, false misleading and deceptive for the reasons described in this Paragraph and in this Complaint. In one radio advertisement airing on March 22, 2004, CareOne falsely, fraudulently and deceptively claims that consumers using its services will have their monthly debt payments reduced by an average of 30% and up to 57%, that consumers need pay only “voluntary contributions” to participate in CareOne’s DMPs, and that the agencies that sell and administer CareOne’s DMP’s are legitimate non-profit companies.

(v) In a press release published by Amerix on December 18, 2001, and made available on an Internet website maintained by Amerix at www.amerix.com, Amerix stated: “Amerix’s credit counseling agency partners do not require consumers to pay fees to participate in debt management plans....” This statement is fraudulent, false, misleading and deceptive because Amerix’s credit counseling partners do require consumers to pay fees to participate in DMPs.

(w) In radio advertisements, including those airing on December 24, 2002, Amerix makes substantially similar claims as recited above that are fraudulent, false misleading and deceptive for the reasons described in this Paragraph and in this Complaint.

(x) In magazine advertisements circulated via the United States mails, including those appearing in the June 2002 edition of *Parenting* magazine, Amerix makes substantially similar claims as recited above that are fraudulent, false misleading and deceptive for the reasons described in this Paragraph and in this Complaint.

(y) On an Internet website maintained by FreedomPoint, Amerix and Ascend One at www.freedompoint.com/Products/DebtManagementPlan/SignUp.aspx, FreedomPoint stated that use of a DMP will provide the following benefits: “• Lower your payments up to 57% [and] • Eliminate late fees [and] • Reduce your interest rates.” This statement is fraudulent, false, misleading and deceptive because for many consumers who enroll in DMPs sold or administered by FreedomPoint or its affiliates, including CareOne, Genus and AFS, total credit card monthly payments are not reduced anywhere near 57%, late fees are not eliminated and interest rates are not reduced.

(z) On an Internet website maintained by FreedomPoint, Amerix and Ascend One at www.freedompoint.com/Tools/FACs?PopUp.aspx, FreedomPoint stated that use of a DMP will provide the following benefits: “• Negotiating reduced interest rates, so more of your monthly payment goes toward reducing your debt [and] ... • Eliminating late fees [and] • ‘Re-aging’ your account, so your payments aren’t considered delinquent....” This statement is fraudulent, false, misleading and deceptive because for many consumers who enroll in DMPs sold or administered

by FreedomPoint or its affiliates, including CareOne, Genus and AFS, interest rates are not reduced on many credit card and unsecured debts, late fees are not eliminated and debts are not re-aged.

(aa) On an Internet website maintained by FreedomPoint, Amerix and Ascend One at www.freedompoint.com, FreedomPoint stated: “The Credit Counseling Agencies associated with FreedomPoint are non-profit organizations and do not charge an enrollment fee or require a deposit to enroll in a Debt Management Plan.” This statement is fraudulent, false, misleading and deceptive because the Credit Counseling Agencies affiliated with FreedomPoint, including CareOne, Genus and AFS, do charge a fee to enroll in their DMPs and because none of the Respondents are legitimate or lawful non-profit organizations.

(bb) In its standard Easy Pay Client Agreement, a contract of adhesion, mailed by Genus to its DMP clients, Genus states: “Our Debt Management Program is free to you, although you will be charged a returned item fee if a payment is returned by your bank.” This statement is fraudulent, false, misleading and deceptive because Genus’ DMP was not and is not “free.”

(cc) In its standard Easy Pay Client Agreement, a contract of adhesion, mailed by Genus to its DMP clients, Genus states: “Your monthly repayment amount includes a voluntary contribution to us of \$3 per account per debt management payment (but in no case more than \$30).” This statement is fraudulent, false, misleading and deceptive because the fees imposed by Genus were and are not “voluntary,” but rather are imposed as mandatory on all or substantially all Genus DMP clients.

(dd) In a form document mailed by Genus to its DMP clients, Genus states: “Some of my bills don’t show the reduced payments or lower interest rates Genus told me I’d get. Why not? It depends on the creditor. Some need at least 30 days – or one billing cycle – to adjust their billing systems. Others want to make sure you’re serious about paying your debt – so they require you to make at least 3 payments before the new amount shows up on your statement. Once you’ve made those payments, you’ll see the change on your bill.” This statement is fraudulent, false, misleading and deceptive because Genus knows that many creditors refuse to lower interest rates for Genus DMP clients, because many creditors refuse Genus proposals to lower payments and because many Genus DMP consumers do not get the benefit of lower credit card payments.

(ee) In an advertisement and solicitation mailed by Genus to potential DMP clients, Genus states that: “• Our service is free [and] •We work with your creditors to lower your monthly payments.” This statement is fraudulent, false, misleading and deceptive because Genus’ DMPs are not “free” and because Genus fails to lower the total monthly payments for many DMP clients.

(ff) In form letters signed by Genus’ President and mailed by Genus to consumers who contacted Genus, but had not yet enrolled in a DMP, Genus states: “In fact, there is no charge for our service.” This statement is fraudulent, false, misleading and deceptive because Genus does charge for its services.

(gg) In form letters signed by Genus’ President and mailed by Genus to consumers who contacted Genus, but had not yet enrolled in a DMP, Genus states: “Once we’ve arranged a lower monthly payment to your creditors, you can send it to us by certified check or money order.” This

statement is fraudulent, false, misleading and deceptive because for many consumers, Genus cannot and does not “lower monthly payment[s].”

(hh) Respondents Genus, AFS, CareOne and FreedomPoint each solicit consumers on their respective Internet websites to enroll in DMPs, as detailed above. Each of these solicitations is fraudulent, false, misleading and deceptive because all omit to disclose that they are not licensed to sell or offer DMPs in many states, including Maryland and New York.

220. Claimants and the Class have been injured as a result of Respondents’ racketeering activity, mail and wire fraud, and violations of RICO.

221. Claimants and the Class are entitled to pursue a claim against Respondents pursuant to 18 U.S.C. 1964(c) to redress their violations for 18 U.S.C. §1962.

COUNT V

FOR VIOLATIONS OF THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT

(Against All Respondents)

222. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

223. Claimants and the Class as a group are collectively a “person” within the meaning of 15 U.S.C. §6104(a) and the Telemarketing Sales Rule, 15 C.F.R. §310.2(v).

224. Respondents have engaged in “telemarketing” as defined in 15 U.S.C. §6106(4), or have otherwise assisted, profited and benefited from the telemarketing activities of other Respondents.

225. Pursuant to 15 U.S.C. §§ 6102(a) and 6104(a) and the Telemarketing Sales Rule, 15 C.F.R. §310.1, *et seq.*, it is unlawful to engage in deceptive and/or abusive telemarketing acts and practices.

226. As alleged herein, Respondents have engaged in pattern of deceptive and/or abusive telemarketing acts and practices, in violation of 15 U.S.C. §§ 6102(a) and 6104(a) and the Telemarketing Sales Rule. For example, after viewing a television commercial promoting Genus' DMP, Plaintiff Jones was promised by a Genus telemarketer that the Genus DMP would lower her interest rates and that all her unsecured debts would be repaid in 2 to 3 years.

227. Claimants and the Class have suffered damages exceeding \$50,000 and other injuries as a result of Respondents' violations of 15 U.S.C. §§ 6102(a) and 6104(a) and the Telemarketing Sales Rule.

228. In consumer complaints made to the FTC concerning Respondents, or certain Respondents individually, the FTC classified Respondent(s)' conduct as violations of the Telemarketing Sales Rule.

229. Claimants and the Class as a group are entitled to commence an action for damages and equitable relief pursuant to 15 U.S.C. §6102(a) to remedy Respondents' violations of the Telemarketing and Consumer Fraud and Abuse Prevention Act and the Telemarketing Sales Rule.

230. No Respondent is exempt from liability or any other remedy available under the Telemarketing and Consumer Fraud and Abuse Prevention Act or the Telemarketing Sales Rule.

COUNT VI

**FOR VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT
AND THE SIMILAR STATUTES OF OTHER STATES**

(Against All Respondents)

231. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

232. Claimants and the Class are “persons” within the meaning of Maryland Code §13-101(h).

233. Maryland Code §13-303 states: “A person may not engage in any unfair or deceptive trade practice, as defined in this subtitle or as further defined by the Division, in:

1. The sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services;
2. The offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services;
3. The extension of consumer credit; or
4. The collection of consumer debts.”

234. As alleged herein, and as defined by Maryland Code §13-301, Respondents engaged in unfair and deceptive acts and practices in the form of misrepresentations, omissions and deceptive and misleading advertising in violation of Maryland Code §13-303.

235. Respondents knew or should have known that their solicitations, promotions and representations were false and likely to deceive and mislead Claimants and the Class members.

236. Claimants and the Class reasonably relied on the unfair and deceptive solicitations, promotions and representations made by Respondents.

237. Claimants and the Class have been injured as a result of Respondents' violations of Maryland Code §13-303.

238. Respondents' unfair, deceptive and misleading acts, practices and advertising have directly, foreseeably, and proximately caused damages and injury to Claimants and the other Class members.

239. Claimants and the Class are entitled to pursue a claim against Respondents pursuant to Maryland Code §13-408(a).

240. Respondents' deceptive and unfair trade practices and deceptive and misleading advertising also violate the consumer protection statutes in states other than Maryland, including but not limited to New York General Business Law §§ 349, 350 and 458-a.

COUNT VII

FOR VIOLATIONS OF THE MARYLAND DEBT MANAGEMENT SERVICES ACT AND THE SIMILAR STATUTES OF OTHER STATES

(Against All Respondents)

241. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

242. Claimants and the Class are "consumers" as that term is defined in Maryland Code §12-901(c).

243. Each Respondent provides "debt management services" and is a "debt management services provider" as those terms are defined by Maryland Code §12-901(f) and (h).

244. Respondents have each offered debt management services to consumers without the licensed mandated by Maryland Code §12-906.

245. No Respondent is exempt from the licensing requirements of Maryland Code §12-906.

246. Respondents offer, sell and promote debt management services to consumers without complying with the requirements of Maryland Code §12-916.

247. Respondents charge fees in excess of the amounts permitted by Maryland Code §12-918, including but not limited to the requirement imposed by Respondents that consumers pay a so-called monthly “voluntary contribution” in exchange for the debt management services provided by Respondents.

248. Claimants and the Class have been injured as a result of Respondents’ violations of Maryland Code §§12-906, 12-916 and 12-918 and other provisions of the Maryland Debt Management Services Act.

249. Claimants and the Class are entitled to pursue a claim against Respondents pursuant to Maryland Code §12-930 to redress their violations of Maryland Debt Management Services Act.

250. Respondents’ conduct also violates similar statutes in States other than Maryland.

COUNT IX

FOR COMMON LAW BREACHES OF FIDUCIARY DUTY

(Against All Respondents)

251. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

252. Each Respondent contracting with Claimants and Class members to create or administer a DMP is a fiduciary of those consumers owing those consumers fiduciary duties of care, candor and loyalty.

253. As alleged herein, Respondents routinely and secretly breached those fiduciary duties by engaging in self-dealing for their own benefit and by failing to disclose conflicts of interest.

254. Claimants and the Class have been injured as a result of Respondents' breaches of their fiduciary duties.

COUNT X

FOR COMMON LAW FRAUD

255. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

256. Respondents intentionally, knowingly and/or recklessly made false statements for the purpose of inducing Claimants and Class members to enroll in DMPs. These false statements took the form of statements that contained misrepresentations and statements that omitted

information known by Respondents to be true and which made the statements untrue or exaggerated.

257. Respondents made their false statements with the intention that Claimants and the Class would both rely on those statements and be defrauded by them.

258. Claimants and the Class reasonably relied on Respondents false statements and would not have enrolled in DMPs offered, sold and/or administered by Respondents had Respondents not made their false statements.

259. Claimants and the Class suffered injury as a result of relying on Respondents' false statements.

COUNT XI

FOR COMMON LAW UNJUST ENRICHMENT

(Against All Respondents)

260. Claimants repeat and reallege Paragraphs 1 through 172 and 219 as though set forth herein.

261. As alleged herein, Respondents have unjustly benefited from their unlawful and inequitable acts resulting in the payment of money by Claimants and the Class members.

262. Respondents have and are continuing to derive profits and revenues resulting from their false, misleading, deceptive, unfair and inequitable conduct.

263. It would be inequitable for Respondents to be permitted to retain any of the proceeds derived as a result of their deceptive and unlawful conduct.

264. Respondents should be compelled to provide restitution to Claimants and the Class members and to disgorge into a common fund or constructive trust for the benefit of Claimants and the Class members, all proceeds received by Respondents as a result of any unlawful act described in this Complaint which has inured and continues to inure to the unjust enrichment of Respondents.

265. Claimants and the Class have no adequate remedy at law for their irreparable injuries caused by Respondents' inequitable conduct.

PRAYER FOR RELIEF

WHEREFORE, Claimants and the Class pray for an award against all Respondents, jointly and severally, as follows:

- (a) Certifying this action to proceed as a class action arbitration, denominating Claimants as the representatives for the Class and their counsel as counsel for the Class;
- (b) Awarding Claimants and the Class compensatory damages;
- (c) Awarding Claimants and the Class statutory and exemplary damages where permitted;
- (d) Permanently enjoining Respondents from continuing to engage in the unlawful and inequitable conduct alleged herein;
- (e) Declaring that Respondents have engaged in the unlawful and inequitable conduct alleged herein;
- (f) Ordering Respondents to provide restitution and to disgorge into a common fund or a constructive trust all monies paid by Claimants and the Class to the full extent to which Respondents were unjustly enriched by their unlawful and inequitable conduct alleged herein;
- (g) Awarding Claimants and the Class punitive damages;
- (h) Granting Claimants and the Class the costs of prosecuting this action, together with interest and reasonable attorneys' and experts' fees; and

- (i) Granting such other and further relief as the Arbitrator may deem just and proper under the circumstances and applicable laws.

Dated: February 7, 2005
New York, New York

Respectfully submitted,

WHALEN & TUSA, P.C.

Joseph S. Tusa
Paul C. Whalen
90 Park Avenue
New York, NY 10016
Tel. (212) 786-7377
Fax. (212) 658-9685

**LAW OFFICES OF G. OLIVER
KOPPELL & ASSOCIATES**

G. Oliver Koppell
John F. Duane
99 Park Avenue, Suite 800
New York, NY 10016
Tel. (917) 368-0400
Fax. (212) 973-9494

JACK SANDO, ESQ.

4922A St. Elmo Avenue
Bethesda, MD 20814
Tel. (301) 986-0818
Fax. (301) 907-0965

Attorneys for Claimants