

1
2 **STATE OF CALIFORNIA**
3 **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**
4 **DEPARTMENT OF CORPORATIONS**

5 TO: Debticated Consumer Counseling, Inc.
6 Erik Pukke, President
7 775 Park Avenue, Suite 215
8 Huntington, New York, 11743

9 **DESIST AND REFRAIN ORDER**
10 **(For violations of section 12200 of the Financial Code)**

11 The California Corporations Commissioner finds that:

- 12 1. On January 13, 2003, Debticated Consumer Counseling, Inc. (Debticated) filed
13 a Nonprofit Community Service Organization Notice and Written Consent (NCSO) form with
14 the Department of Corporations (Department) to claim an exemption from the licensing
15 requirements of the Check Sellers, Bill Payers and Proraters Law pursuant to Financial Code
16 section 12104. The filing shows Erik Pukke (“Pukke”) designated as President and that
17 Debticated is located at 775 Park Avenue, Suite 215, Huntington, New York 11743.
- 18 2. On April 9, 2004, the Department informed Debticated that it had failed to
19 meet the exemption filing requirements by not submitting: (1) proof of incorporation in California
20 or any other state as a nonprofit corporation and operation pursuant to either the California
21 Nonprofit Public Benefit Corporation Law or the California Nonprofit Mutual Benefit
22 Corporation Law and (2) an audit report containing audited financial statements for fiscal year
23 ended December 31, 2002 accompanied by a declaration and separate written statement
24 identifying the organization contact person. The Department gave Debticated 20 days to submit
25 the required documents. On July 29, 2004, the Department issued a letter informing Debticated
26 that to date the requested items necessary for the exemption filing had not been received.
27 Debticated made no further communication with the Department.

28 //

1 3. Debticated and Pukke have engaged in the following activities in violation of the
2 Check Sellers, Bill Payers and Proraters Law pursuant to the California Financial Code section
3 12000 et seq. They offered their services of receiving money as an agent of an obligor for the
4 purposes of paying bills (“bill payer”) and prorating services to California consumers in
5 advertisements, via their telephone and facsimile numbers, and through the Internet at a Web site
6 located at www.debticated.org. Their prorating services consist of debt-counseling services or
7 programs, which include negotiations of repayment plans with creditors of consumers whereby
8 Debticated and Pukke and others, acting in concert or participation with them, will receive
9 money from the consumer for the purpose of distributing the money among a consumer’s
10 creditors in payment of that consumer's obligations. Their bill paying services involve the
11 receipt of money as an agent of a consumer for the purpose of paying the bills of a consumer.

12 4. In exchange for the above-described services California consumers were
13 requested to make a contribution to Debticated to cover the costs involved in handling the
14 consumer accounts on a monthly basis. A description of the services of the debt-counseling
15 program includes working with the consumer and creditors of the consumer to arrange a payment
16 schedule, wherein the above-named individuals and entity on behalf of the consumer distribute
17 payments monthly to the creditors of the consumer. Alleged benefits associated with their
18 program include paying debts in much less time, negotiating with creditors to lower monthly
19 payments, reduce interest rates and stop late charges, and the convenience of paying all their
20 debts in one monthly payment. Debticated and Pukke represent to consumers that:

21 “you will be able to pay your debt in much less time than you could on
22 your own and if you make your payments in full and on time to
23 Debticated, then many of your creditors will “re-age” your account.”

23 //
24 //
25 //
26 //

27
28

1 5. The Department of Corporations has jurisdiction over and regulates bill payers and
2 proraters under the Check Sellers, Bill Payers and Proraters Law set forth in the California
3 Financial Code section 12000 et seq. California Financial Code section 12200, states:

4 No person shall engage in the business, for compensation, of
5 selling checks, drafts, money orders, or other commercial paper
6 serving the same purpose, or of receiving money as agent of an
7 obligor for the purpose of paying bills, invoices, or accounts of
8 such obligor, or acting as a prorater, nor shall any person,
9 without direct compensation and not as an authorized agent for
a utility company, accept money for the purpose of forwarding
it to others in payment of utility bills, without first obtaining a
license from the commissioner.

10 6. The definition of proraters is found in Financial Code section 12002.1,
11 which states:

12 A prorater is a person who, for compensation, engages in whole or in
13 part in the business of receiving money or evidences thereof for the
14 purpose of distributing the money or evidences thereof among
15 creditors in payment or partial payment of the obligations of the
debtor.

16 7. The California Corporations Commissioner has not licensed Debticated Consumer
17 Counseling, Inc., and Erik Pukke in this State to act as a bill payer or
18 prorater.

19 8. In order to be exempt from licensure, Financial Code section 12104 states:

20 A nonprofit community service organization that meets all of the following
21 criteria shall be exempt from any requirements imposed on proraters pursuant to
22 this division:

23 (a) The nonprofit community service organization incorporates in this state or
24 any other state as a nonprofit corporation and operates pursuant to either the
25 Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section
26 5110) of Division 2 of Title 1 of the Corporations Code or the Nonprofit Mutual
27 Benefit Corporation Law, Part 3 (commencing with Section 7110) of Division 2
28 of Title 1 of the Corporations Code.

//

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(i) The nonprofit community service organization submits to the Commissioner, at the organization’s expense, an audit report containing audited financial statements covering the calendar year or, if the organization has an established fiscal year, then for that fiscal year, within 120 days after the close of the calendar or fiscal year.

(j) The nonprofit community service organization submits with the annual financial statements required under subdivision (i) a declaration that conforms to Section 2015.5 of the Code of Civil Procedure, is executed by an official authorized by the board of the organization, and that states that the organization complies with this section. The annual financial statements shall also include a separate written statement that identifies the name, address, contact person, and telephone number of the organization.

9. The Department never received the necessary documents from Debticated and Pukke indicating that they met the exemption filing requirements by submitting proof of incorporation in California or any other state as a nonprofit corporation and an audit report containing audited financial statements accompanied by a declaration and separate written statement identifying the organization contact person.

Based upon the foregoing findings, the California Corporations Commissioner is of the opinion that Debticated Consumer Counseling, Inc. and Erik Pukke, acting in concert and/or in participation with others, have been engaging in the business of bill paying and prorating as defined in the Check Sellers, Bill Payers and Proraters Law without a license from the California Corporations Commissioner and without meeting the exemption requirements imposed on proraters.

//
//
//
//
//
//
//
//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Pursuant to Financial Code section 12103, the California Corporations
Commissioner hereby orders Debticated Consumer Counseling, Inc. and Erik Pukke,
individually, in concert and participation with others, to desist and refrain from engaging in
business as a bill payer or prorater unless and until they are licensed or exempt. This Order is
necessary, in the public interest, and for the protection of consumers.

Dated: February 1, 2005
Los Angeles, California

WILLIAM P. WOOD
California Corporations Commissioner

By _____

ALAN S. WEINGER,
Supervising Counsel
Enforcement and Legal Services Division