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CLERK, U.S. DISTRICT COURT
JUL 13 2001
CENTRAL DISTRICT OF CALIFORNIA
BY *luy.* DEPUTY

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CLERK, U.S. DISTRICT COURT
JUL 16 2001
CENTRAL DISTRICT OF CALIFORNIA
BY *M* DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION
Plaintiff,
v.
KEITH GILL, ET AL.
Defendants.

CV-98-1436 LGB (Mcx)

ORDER HOLDING DEFENDANTS
IN CONTEMPT OF NOVEMBER 4,
1999 FINAL ORDER AND
ORDERING SANCTIONS

Docketed
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I. INTRODUCTION

On November 4, 1999, the Court granted summary judgment for Plaintiff, Federal Trade Commission ("FTC") and held that the Defendants, Keith Gill ("Gill") and Richard Murkey ("Murkey"), unlawfully sold credit repair service. The Court's Order prohibited Defendants from engaging in the credit repair business and related activities. Defendants bring the instant ex parte application for an order to show cause why Defendants should not be held in contempt of the Court's Order.

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JUL 16 2001

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1 **II. FACTS AND PROCEDURAL HISTORY**

2 **A. THE PARTIES**

3 Defendant Gill is a licensed attorney who did business as a
4 sole practitioner at the Law Offices of Keith Gill. See Summ. J.
5 Order at 2. In addition to a general law practice, Gill had
6 offered credit repair services to consumers since 1995. See id.
7 Defendant Murkey is a retired attorney. See id. Since 1995, in
8 conjunction with Gill's office, Murkey had offered credit repair
9 services to consumers. See id.

10 While this litigation was pending, Murkey began operating
11 the Credit Restoration Corporation of America, Inc. ("CRCA"). See
12 Stahl Decl., Ex. 18 at 248, 252. The CRCA is a nonprofit
13 organization whose articles of incorporation attest to the fact
14 that its "specific purposes, without limitation, is to counsel
15 and educate consumers on legitimate ways to obtain and maintain
16 good credit." See Stahl Decl., Ex. 20. Beginning in March or
17 April 1999, new clients signed credit repair contracts with CRCA
18 rather than with Gill. See Stahl Decl., Ex. 18 at 254, 254B, 252,
19 255; Summ. J. Order at 36. The CRCA also began servicing Gill's
20 customers. See id. Murkey founded CRCA and exercises primary
21 authority over the company. See Stahl Decl., Ex. 18 at 248-51,
22 257, 263, 268.

23 **B. Procedural History**

24 On March 2, 1998, Plaintiff filed its Complaint against
25 Defendants. The Complaint alleged violations of the Credit
26 Repair Organization Act ("CRO Act") and Section 5 of the Federal
27 Trade Commission Act ("FTC Act"). In particular, the Complaint
28

1 alleged that Defendants were charging and receiving payment for
2 credit repair service before such service was performed. Also,
3 the Defendants were accused of violating the CRO Act and the FTC
4 Act by making misrepresentations to induce customers to purchase
5 their services, including promises to improve credit reports by
6 permanently and lawfully removing negative information even where
7 such information was accurate and not obsolete.

8 Plaintiff sought a temporary restraining order and
9 preliminary injunction. The parties stipulated to a preliminary
10 injunction against Defendants on April 21, 1998. Murkey
11 thereafter violated the preliminary injunction by misrepresenting
12 information to credit bureaus regarding his clients' credit
13 reports and attempting to collect payment from previous customers
14 through the CRCA. See Summ. J. Order at 20, n.13, 21.

15 On November 3, 1999, the Court granted summary judgment in
16 favor of Plaintiff.¹ In its Order, the Court found that
17 Defendants had violated the CRO Act by making misrepresentations
18 and by accepting payment before service had been rendered. See
19 Summ. J. Order at 15-28, 31. Additionally, the Court ruled that
20 Defendants had violated the FTC Act by making misrepresentations
21 that were likely to mislead consumers. See id. at 33.

22 Both Defendants were served with the Summary Judgment Order.
23 Proofs of service show that Murkey was served with the Summary
24 Judgment Order on November 10, 1999 and that Gill signed a return
25 receipt for the Order that was sent to him by certified mail. The

26
27 ¹ The Court entered two amended judgments on November 5, 1999
28 and November 30, 1999. The amended judgments did not substantively
alter the judgment entered on November 3, 1999.

1 Court also sent the Order to all parties on November 4, 1999.

2 Both Defendants have appealed the Court's Order to the Ninth
3 Circuit. Neither Defendant has obtained a stay of the Court's
4 Order during the pendency of the appeal.

5 **C. Injunctive Provisions of the Summary Judgment Order**

6 The Court's Summary Judgment Order included a monetary
7 judgment and extensive injunctive provisions. The injunctive
8 provisions are central to the instant application.

9 **1. Ban on Credit Repair**

10 The Court banned Defendants from the credit repair business
11 as follows:

12 Defendants Gill and Murkey, individually and doing
13 business as any other entity, and their agents,
14 servants, employees, attorneys, and all persons or
15 entities directly or indirectly under their control,
16 and those in active concert or participation with them
17 who receive actual notice of the Order by personal
18 service or otherwise, whether acting directly or
19 through any business entity or other device, are hereby
20 permanently restrained and enjoined from participating
21 in the advertising, promoting, offering for sale, sale,
22 performance, or distribution of any credit repair
23 service, including but not limited to sitting on the
24 board of directors of any credit repair organization,
25 including any non-profit organization or any other
26 organization that performs credit repair service.

27 Summ. J. Order at 39-40.

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2. Prohibition on Specified Representations

The Court barred Defendants from making specific representations to consumers. The Court specified:

Defendants Gill and Murkey, individually and doing business as any other entity, and their agents, servants, employees, attorneys . . . are hereby permanently restrained and enjoined from:

1. Misrepresenting any fact material to a consumer's decision to purchase any credit repair product or service from either Defendant;
2. Representing that either Defendant can substantially improve most consumers' credit reports or profiles by effectuating the permanent lawful removal of bankruptcies, liens, judgments, charge-offs, late payments, foreclosures, repossessions, and other negative information from consumers' credit reports where such information is accurate and not obsolete;
3. Representing that either Defendant will substantially improve any consumer's credit report or profile by effectuating the permanent lawful removal of bankruptcies, liens, judgments, charge-offs, late payments, foreclosures, repossessions, or other negative information from the consumer's credit report where such information is accurate and not obsolete;
4. Inducing, encouraging, or requesting, or assisting

1 or advising any consumer to induce, encourage, or
2 request, any creditor to report false or
3 misleading information, with respect to any
4 consumer's credit worthiness, credit standing, or
5 credit capacity, to a credit reporting agency;

6 5. Violating the Credit Repair Organization Act, 15
7 U.S.C., §§ 1679 to 1679j, as presently enacted or
8 as it may hereinafter be amended, including:

9 a. Violating 15 U.S.C. § 1679(a)(1) by making
10 any untrue or misleading statement, or
11 counseling or advising any consumer to make
12 any untrue or misleading statement, with
13 respect to any consumer's credit worthiness,
14 credit standing, or credit capacity to any
15 consumer reporting agency as defined in 15
16 U.S.C. § 1681(f) or to any person who has
17 extended credit to the consumer or to whom
18 the consumer has applied or is applying for
19 an extension of credit; or

20 b. Violating 15 U.S.C. § 1679(a)(2) by making or
21 using any untrue or misleading statement, or
22 counseling or advising any consumer to make
23 any untrue or misleading statement, the
24 intended effect of which is to alter the
25 consumer's identification to prevent the
26 display of the consumer's credit record,
27 history, or rating for the purpose of
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1 concealing adverse information that is
2 accurate and not obsolete.

3 Id. at 40-42.

4 **3. Prohibition on Demanding Payment and the Customer**
5 **Notification Requirement**

6 The Court included a requirement that Defendants rescind
7 their preexisting contracts, return their consumers' payments,
8 and provide consumers with notification of rescission. The Court
9 held:

10 Defendants Gill and Murkey are hereby permanently
11 restrained and enjoined from:

- 12 1. Failing to return within ten days of receipt any
13 payment either Defendant receives for any credit
14 repair service pursuant to any contract or
15 agreement that was entered into prior to March 4,
16 1998, and to include with each such returned
17 payment a notice to the client stating that as a
18 result of a court order the contracts are
19 rescinded and no further payments are due;
- 20 2. Demanding payment or enforcing or threatening to
21 enforce any contract or agreement for the
22 performance of credit repair service entered into
23 prior to March 4, 1998; or
- 24 3. Failing to mail notices within ten days after the
25 date this Order is entered, to all credit repair
26 clients, if any, who have payments that are due or
27 may become due on contracts for the performance of
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1 credit repair service signed prior to March 4,
2 1998, stating that as a result of a court order
3 the contracts are rescinded and no further
4 payments are due.

5 Id. at 42-43.

6 **4. Compliance Report Requirement**

7 Lastly, the Court included numerous monitoring provisions
8 which included the requirement that each Defendant provide a
9 compliance report to the FTC. The compliance report was to
10 include a statement of the manner in which each Defendant had
11 complied with the Court's Order as of the date of the report.

12 See id. at 46-49.

13 **D. The Ex Parte Application**

14 On May 14, 2001, the Plaintiff filed an ex parte Application
15 for an order to show cause ("OSC") why Defendants should not be
16 held in contempt of Nov. 4, 1999 Final Order and temporary relief
17 including asset freeze, appointment of temporary receiver, and
18 order authorizing immediate access and expedited discovery. On
19 May 14, 2001, the Court granted the Plaintiff's ex parte
20 application to seal the file until the close of the third court
21 day following issuance of the OSC. On the same day, the Court
22 also granted the Plaintiff's ex parte application to waive the
23 requirement of advance notice to Defendants of Plaintiff's ex
24 parte application for an OSC and temporary relief.

25 On June 5, 2001, the Court granted Plaintiff's ex parte
26 application for OSC why Defendants should not be held in contempt
27 of Nov. 4, 1999 Final Order and temporary relief including asset
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1 freeze, appointment of temporary receiver, and order authorizing
2 immediate access and expedited discovery. The Court also issued
3 an order temporarily freezing assets of Murkey and CRCA,
4 appointing a temporary receiver over CRCA, authorizing immediate
5 access to CRCA and expedited discovery. The Court held a hearing
6 on June 7, 2001 regarding the preliminary relief granted and
7 ordered further briefing on the OSC regarding contempt.

8 **E. Hearing on OSC Re: Contempt**

9 On June 25, 2001, the Court held a hearing on the OSC
10 regarding contempt. Counsel for Plaintiff was present. Also,
11 counsel for CRCA was present. Richard Murkey and Keith Gill were
12 present in pro per.

13 At the hearing, the Plaintiff withdrew the declaration of
14 John Jacobs, which was filed in support of the ex parte
15 application for temporary relief. Therefore, the Court has not
16 considered the Declaration of John Jacobs and accompanying
17 exhibits in deciding the OSC regarding contempt.

18 The Court admitted previously filed declarations and heard
19 testimony from the following witnesses: Bret Smart, Adrian Stern,
20 Amy Goldman, Steve Wang, Richard Murkey Jr., Sarah Hardy, Richard
21 Murkey, Keith Nagayama, Keith Gill, Susan Montgomery. All other
22 declarants' previously filed declarations were admitted and the
23 opposing parties waived their right to cross examination.

24 The Court heard testimony from the aforementioned witnesses,
25 observed their demeanor, and made judgments as to their
26 credibility. The Court has considered all the foregoing,
27 together with all the papers filed in the matter in reaching its
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1 findings set out below.

2 **F. Defendants' Post-Order Conduct**

3 Defendant Murkey has continued to conduct the credit repair
4 business in violation of the Court's Order. Defendants Murkey
5 and Gill have failed to comply with the monitoring provisions of
6 the Court's Order.

7 **1. Advertising, promoting and offering to sell credit**
8 **repair service**

9 **a. Infomercials**

10 Murkey has continued to air paid, program-length
11 advertisements ("infomercials") for CRCA on the Cable Radio
12 Network ("CRN"). Murkey advertised his credit repair service on
13 CRN prior to the Court's Order and resumed advertising on CRN in
14 April 2000. See Stahl Decl., Ex. 18 at 266. Murkey ran ten two-
15 hour infomercials for CRCA on a weekly basis through June 2000.
16 See Smart Decl., Ex. 2 at 12-14, 39; Stahl Decl., Ex. 16. The
17 infomercials resumed recently in March 2001. See Stahl Decl. ¶ 2.
18 The recent infomercials featured Murkey and commercials
19 specifically advertising the CRCA. See Stahl Decl., Ex. 13 at
20 142, Ex. 14 at 196; Smart Decl., Ex. 2 at 10-12 ("The Program
21 you're about to hear is 'Turn Your Life Around,' hosted by credit
22 report expert and former lawyer, Rick Murkey" and "'Rick Murkey
23 is still part of the company. He's the boss."); Smart Decl., Ex.
24 2 at 27-28 (commercial for CRCA); Stahl Decl., Ex. 13 at 152-53
25 (same). The commercials advertise CRCA's telephone number and
26 encourage consumers to call to improve their credit reports. See
27 Smart Decl., Ex. 2 at 27-28 (commercial for CRCA); Stahl Decl.,
28

1 Ex. 13 at 152-53, 164, 182 (same). In general, the infomercials
2 solicit customers for CRCA's services. See Stahl Decl. ¶ 7.

3 During expedited discovery, Plaintiff was able to confirm
4 that CRCA has regularly advertised on CRN. See Suppl. Decl. of
5 Ann Stahl in Supp. of Pl.'s Applic. for Contempt Against Keith
6 Gill, Richard Murkey, and CRCA ("Suppl. Stahl Decl.") ¶¶ 16, 26-
7 31. For instance, CRCA's check register for 2001 reflects that
8 CRCA paid nine checks to CRN, some of them expressly for "Radio
9 Shows." See *id.* at ¶ 16, Ex. 30. Canceled checks confirm these
10 payments. See *id.* at ¶ 14, Exs. 28-29. Additionally, An FTC
11 investigator spoke with a CRN representative who confirmed that
12 Murkey and CRCA sponsored a weekly broadcast on CRN which
13 featured Murkey and other CRCA employees. See *id.* at ¶ 31.

14 **b. Newspaper Ads**

15 The CRCA advertises its services in three weekly newspapers
16 in the San Fernando Valley. See Smart Decl., Ex. 6. The ads list
17 typical credit problems and promise "Positive Results in Only 2-3
18 Months." *Id.* The ads also provide CRCA's phone number, which
19 coincides with the number Murkey provided on the title page of
20 court documents filed by him in this lawsuit and the number
21 provided in the infomercials. See *id.*; Smart Decl., ex. 2 at 25;
22 Murkey's Answer to Compl. filed on Mar. 10, 1998.

23 **c. Actual Sales of Credit Repair Service**

24 Evidence obtained by Plaintiff from CRCA's premises confirms
25 that Murkey and CRCA have continued to sell credit repair
26 service. Plaintiff found numerous three-ring binders labeled "New
27 Clients" and organized by months. See Suppl. Decl. of Ann Stahl
28

1 Re:New Clients in Supp. of Pl.'s Applic. for Contempt Sanctions
2 ("Stahl Decl. Re: New Clients") at ¶ 5, Ex. 22. The evidence
3 shows that there were binders for each month since November 1999
4 when the Court Summary Judgment Order was entered. See id.
5 Within each binder is a list of consumer names and corresponding
6 copies of invoices that show those consumers had become new
7 clients during the month designated on the binder. See id. The
8 content within these binders was also recorded in hard files
9 stored in file cabinets, which included contracts with clients
10 and copies of invoices. See id. at ¶ 6, Ex. 23. The hard files
11 confirm that the lists of clients contained in the "New Client"
12 binders represented the clients with whom CRCA had entered into
13 credit repair contracts. See id., compare Exs. 22, 23. The total
14 number of clients listed in the binders between December 1999 and
15 April 2001 is 626. See id. at ¶ 5, Ex. 22, pgs. 8-9, 11-12, 194-
16 95, 345-46, 484-85, 685-87, 765, 849, 889, 972, 1058, 1110, 1113,
17 1250, 1283, 1329, 1354, 1413.

18 Furthermore, the Receiver's accountant has examined
19 contracts and other documents found in client files and
20 determined that CRCA was in the business of offering credit
21 repair services to consumers and that its revenues were earned
22 solely from consumers who purchased credit repair services from
23 CRCA. See Stern Decl. at ¶¶ 25-27, 32. Deposits to CRCA's bank
24 accounts reflect that the amount of CRCA's gross receipts between
25 January 1, 2000 and November 30, 2000 totals \$489,394.84,
26 exclusive of April 2000 deposits. See Suppl. Stahl Decl. at ¶¶
27 13-15, Exs. 27-29.

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1 **2. Representations**

2 Murkey continues to represent, through the CRCA, that he can
3 lawfully and permanently remove accurate, nonobsolete information
4 from credit reports.

5 The message conveyed by the infomercials is that the CRCA
6 can and will improve anyone's credit report by removing all the
7 negative information lawfully and permanently. For instance, in
8 the April 1, 2000 infomercial, the CRCA representative claims,
9 "CRCA is one of the only firms that has actually proven that they
10 can handle things legally and get these things taken care of."
11 See Smart Decl., Ex. 2 at 17. The infomercials also promise that
12 the CRCA will remove accurate information and that it will
13 guarantee that the information remains deleted from credit
14 report. See Stahl Decl., Ex. 19. Plaintiff's investigative calls
15 show that consumers who call the CRCA in response to the
16 infomercials and ads receive the same solicitation and
17 representations. See Smart Decl. ¶¶ 7-8, Exs. 3, 7.

18 During expedited discovery, Plaintiff obtained evidence
19 confirming that Murkey and CRCA are continuing to represent that
20 they can legally and permanently remove all negative items from
21 credit reports. See Suppl. Stahl Decl. ¶ 32, Exs. 39, 45, 47.
22 Booklets found in Murkey's office contain statements prohibited
23 by the Court's Summary Judgment Order, including that CRCA "can
24 legally improve anyone's credit report" and "[t]here are many
25 legal ways to try to permanently improve and/or permanently
26 remove any type of negative item . . . even when the negative
27 accounts are still unpaid" Id.; see also Ex. 39, pgs.

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1 404-07 (emphasis in original).

2 **3. Payment from Customers and Failure to Issue**
3 **Notices and to File Compliance Reports**

4 Murkey has continued to demand payment from consumers of the
5 CRCA who signed up for credit repair service prior to March 1998.
6 See Consumer Decls. in Supp. of OCS: Frye Decl. ¶ 5, Ex. 4;
7 Wachuku Decl. ¶¶ 7-12, Exs. 4-9. Evidence from CRCA offices and
8 clients' files shows that invoices demanding additional payment
9 were sent to clients who entered into contracts prior to March 4,
10 1998. See Suppl. Stahl Decl. at ¶¶ 7-8; Ex. 25, pgs. 26, 51, 89-
11 90, 125, 163.

12 Murkey and Gill have also failed to mail notices to clients
13 who entered into contracts prior to March 4, 1998. See Consumer
14 Decls. in Supp. of OCS: Carlson Decl. ¶ 3; Frye Decl. ¶ 8;
15 Wachuku Decl. ¶¶ 13-14. During the expedited discovery, Plaintiff
16 claims to have found no evidence to suggest that Defendants sent
17 any notifications of rescission. To the contrary, Defendants
18 have continued to bill clients whose contracts were rescinded and
19 debts extinguished by the Court Order. See Suppl. Stahl Decl. ¶¶
20 7-8, 39, Exs. 25, 48.

21 According to Plaintiff, Gill provided a compliance report
22 but failed to detail any efforts to mail rescission notices to
23 consumers, despite Plaintiff's specific request that Gill include
24 a description of his efforts to distribute such notices. See Gill
25 Decl., Ex. at 6. Plaintiff also claims that Murkey failed to
26 provide a compliance report but there has been no evidence filed
27 in support of this contention. Defendants' exhibit 2, as admitted
28 at the hearing, shows that Murkey sent a compliance report to the

1 FTC on November 18, 1999.² See Defs.' Ex. 2.

2 **III. LEGAL STANDARD**

3 District courts have the inherent power to enforce their
4 orders through civil contempt. See Shillitani v. United States,
5 384 U.S. 364, 370 (1966). "Absent a stay, 'all orders and
6 judgments of courts must be complied with promptly.'" Donovan v.
7 Mazzola, 716 F.2d 1226, 1240 (9th Cir. 1983) quoting Maness v.
8 Myers, 419 U.S. 449, 458 (1975).

9 In order to establish Defendants' liability for civil
10 contempt, Plaintiff must show by clear and convincing evidence
11 that the Defendants have violated a specific and definite order
12 of the Court. See Whittaker Corp. v. Execuair Corp., 953 F.2d
13 510, 517 (9th Cir. 1992); FTC v. Affordable Media, LLC, 179 F.3d
14 1228, 1239 (9th Cir. 1999). "The burden then shifts to the
15 contemnors to demonstrate why they were unable to comply." FTC,
16 179 F.3d at 1239. In a civil contempt proceeding, a defendant's
17 good faith or intent in attempting to comply with the order is
18 immaterial. See Stone v. City and County of San Francisco, 968

19
20 ² The letter from Murkey to the FTC is dated November 18, 1999
21 and states in its entirety:

22 Pursuant to the Court's request please be advised that
23 all the information previously provided to you, regarding
24 my residence, address, and phone numbers remains
25 unchanged.

26 In addition, as you are aware I have already notified Mr.
27 Gill's clients, who retained credit repair services prior
28 to 3/4/98, as required under the preliminary injunction,
that no more funds are owed unless they choose to sign a
new agreement and re-hire us.

At this time I am pursuing interests in real estate as a
new business venture.

Defs.' Ex. 2.

1 F.2d 850, 856-57 (9th Cir. 1992).

2 Sanctions for civil contempt may be imposed to coerce
3 obedience to a court order, or to compensate the party pursuing
4 the contempt action for injuries resulting from the contemptuous
5 behavior, or both. See United States v. United Mine Workers, 330
6 U.S. 258, 303-04. "[R]emedial or compensatory actions [for
7 contempt] are essentially backward looking, seeking to compensate
8 the complainant through the payment of money for damages caused
9 by past acts of obedience." Latrobe Steel Co. v. United
10 Steelworkers of America, 545 F.2d 1336, 1344 (3d Cir. 1976).
11 Compensatory awards must "be based upon evidence of complainant's
12 actual loss." Id. at 304. In determining the proper amount of a
13 coercive sanction, the court should consider the "character and
14 magnitude of the harm threatened by continued contumacy, and the
15 probable effectiveness of any suggested sanction." United Mine
16 Workers, 330 U.S. at 304.

17 **IV. Analysis**

18 **A. Violation of Court's Order**

19 In order to establish Defendants' liability for civil
20 contempt, Plaintiff must show by clear and convincing evidence
21 that the Defendants have violated a specific and definite order
22 of the Court. See Whittaker Corp., 953 F.2d at 517. Plaintiff
23 has shown with clear and convincing evidence that Murkey, Gill,
24 and CRCA have violated the Court's Summary Judgement Order.

25 First, the Court's Summary Judgement Order prohibited
26 Defendants from advertising, promoting, and offering for sale any
27 credit repair service, whether directly or through any business
28 entity. Plaintiff has presented evidence that Murkey has

1 advertised, promoted, and offered for sale credit repair service.
2 Plaintiff's evidence of transcribed infomercials and print
3 advertisements shows that Murkey has engaged in such activity on
4 the radio, on the internet, and in newspapers ads. The evidence
5 supports Murkey's liability for violation of the Court's Order.

6 Murkey claims that he appeared in radio programs as only a
7 guest and he made no misrepresentations during those appearances.
8 See Murkey's Opp'n at 3; Murkey Decl. ¶ 4. Having reviewed
9 transcripts of such radio programs, the Court finds that Murkey
10 appeared as more than a "guest" on such programs. Rather, the
11 programs advertise and promote credit repair services and Murkey
12 solicits business during his appearances. See Stahl Decl., Ex. 13
13 at 142, Ex. 14 at 196; Smart Decl., Ex. 2 at 10-12 ("The Program
14 you're about to hear is 'Turn Your Life Around,' hosted by credit
15 report expert and former lawyer, Rick Murkey" and "'Rick Murkey
16 is still part of the company. He's the boss."); Smart Decl., Ex.
17 2 at 27-28 (commercial for CRCA); Stahl Decl., Ex. 13 at 152-53
18 (same). Murkey was enjoined from making such solicitations
19 directly or through any business entity, which would include the
20 CRCA.³ Thus, the Court finds sufficient evidence to hold Murkey
21 in contempt for violating the ban on credit repair.

22
23
24 ³ Murkey claims that he does not perform credit repair
25 services and does not sell such services. See Murkey Decl. ¶ 4.
26 Murkey also argues that his statements are meant to educate
27 consumers regarding credit and are not misrepresentations. See id.
28 at ¶ 7, 10-11. The evidence submitted by Plaintiff shows that
Murkey both sells and performs credit repair services.
Furthermore, the Court has already found that the sort of
representations being made by Murkey are prohibited by the Credit
Repair Restoration Act. Thus, the Court does not address Murkey's
argument regarding the legality of his statements.

1 Second, the Court's Order also enjoined Defendants from
2 making representations to consumers regarding Defendants' ability
3 to improve credit reports by removing negative, but accurate and
4 nonobsolete, information. Murkey argues that the Order is
5 ambiguous and overbroad and the use of the term "credit repair
6 services" theoretically bars Murkey from discussing credit issued
7 with any consumers. See Murkey's Opp'n at 3.

8 A review of the relevant portion of the Order shows that it
9 is very detailed regarding what sort of representations are
10 prohibited rather than using the term "credit repair services."
11 The Court barred Defendants from making specific representations
12 to consumers. The Court specified:

13 Defendants Gill and Murkey, individually and doing
14 business as any other entity, and their agents,
15 servants, employees, attorneys . . . are hereby
16 permanently restrained and enjoined from:

- 17 1. Misrepresenting any fact material to a consumer's
18 decision to purchase any credit repair product or
19 service from either Defendant;
- 20 2. Representing that either Defendant can
21 substantially improve most consumers' credit
22 reports or profiles by effectuating the permanent
23 lawful removal of bankruptcies, liens, judgments,
24 charge-offs, late payments, foreclosures,
25 repossessions, and other negative information from
26 consumers' credit reports where such information
27 is accurate and not obsolete;
- 28 3. Representing that either Defendant will

1 substantially improve any consumer's credit report
2 or profile by effectuating the permanent lawful
3 removal of bankruptcies, liens, judgments, charge-
4 offs, late payments, foreclosures, repossessions,
5 or other negative information from the consumer's
6 credit report where such information is accurate
7 and not obsolete;

8 4. Inducing, encouraging, or requesting, or assisting
9 or advising any consumer to induce, encourage, or
10 request, any creditor to report false or
11 misleading information, with respect to any
12 consumer's credit worthiness, credit standing, or
13 credit capacity, to a credit reporting agency;

14 5. Violating the Credit Repair Organization Act, 15
15 U.S.C., §§ 1679 to 1679j, as presently enacted or
16 as it may hereinafter be amended, including:

17 a. Violating 15 U.S.C. § 1679(a)(1) by making
18 any untrue or misleading statement, or
19 counseling or advising any consumer to make
20 any untrue or misleading statement, with
21 respect to any consumer's credit worthiness,
22 credit standing, or credit capacity to any
23 consumer reporting agency as defined in 15
24 U.S.C. § 1681(f) or to any person who has
25 extended credit to the consumer or to whom
26 the consumer has applied or is applying for
27 an extension of credit; or

28 b. Violating 15 U.S.C. § 1679(a)(2) by making or

1 using any untrue or misleading statement, or
2 counseling or advising any consumer to make
3 any untrue or misleading statement, the
4 intended effect of which is to alter the
5 consumer's identification to prevent the
6 display of the consumer's credit record,
7 history, or rating for the purpose of
8 concealing adverse information that is
9 accurate and not obsolete.

10 Summ. J. Order at 40-42. Plaintiff's evidence illustrates that
11 Murkey has continued to make such representations in
12 infomercials, in newspaper ads, in booklets, and by telemarketing
13 solicitations. Thus, Plaintiff has shown Murkey's liability for
14 contempt by clear and convincing evidence.

15 Third, the Court barred Defendants from demanding payment
16 from consumers who signed contracts for credit repair service
17 prior to March 4, 1998 and ordered Defendants to mail letters
18 notifying consumers that such contracts were rescinded. The
19 Court's Order also required both Defendants to provide Plaintiff
20 with a compliance report within 180 days.

21 Plaintiff's consumer declarations, and accompanying exhibits
22 of invoices, show that Murkey has continued to demand payment
23 from consumers who contracted with Murkey prior to March 4, 1998.
24 Although Murkey claims that he complied with the Court's Order
25 pursuant to the terms of the stipulated preliminary injunction,
26 in April and May 1998, Murkey has not submitted any evidence of
27 such fact. Plaintiff's evidence and efforts during expedited
28 discovery show that both Murkey and Gill failed to mail

1 notifications of rescission and have failed to report to
2 Plaintiff on their efforts to comply with this requirement.

3 Plaintiff claims that Murkey has not provided a compliance
4 report. Murkey has shown that he provided a compliance report by
5 letter immediately after the Court issued its Order. See
6 Murkey's Opp'n at 4; Murkey Decl. ¶ 3; Defs.' Ex. 2. However, the
7 letter, dated November 18, 1999, does not satisfy the
8 requirements of the Court's Order which specifically and clearly
9 set forth the required content for such a report:

10 [E]ach Defendant shall provide a written report to the
11 Commission, sworn to under penalty of perjury, setting
12 forth in detail the manner and form in which the
13 Defendant has complied and is complying with this
14 Order. This report shall include but not be limited
15 to... A statement describing the manner in which the
16 Defendant has complied and is complying with this
17 Order;

18 Summ. J. Order at 42-43, 46. Murkey's letter of November 18, 1999
19 does not provide the required information. See Defs.' Ex. 2.
20 Therefore, the Court finds that Murkey did not provide Plaintiff
21 with a compliance report that complied with the Court's Order and
22 he, thereby, violated the Court's Order.

23 Gill argues that he substantially complied with the Court's
24 Order by sending a compliance report to the FTC on June 5, 2000
25 and by relying on Murkey to send rescission notices to clients on
26 Gill's letterhead. See Gill Decl., Exs. "Substantial compliance"
27 is a defense to civil contempt, such that a "few technical
28 violations" do not qualify as contemptuous conduct if every

1 reasonable effort has been made to comply. Go-Video, Inc. v.
2 Motion Picture Ass'n of America, 10 F.3d 693, 695 (9th Cir.
3 1993). The Court finds that Murkey did not substantially comply
4 with the Court's Order. The Order was detailed in its
5 requirements:

6 Defendants Gill and Murkey are hereby permanently
7 restrained and enjoined from . . . Failing to mail
8 notices within ten days after the date this Order is
9 entered, to all credit repair clients, if any, who have
10 payments that are due or may become due on contracts
11 for the performance of credit repair service signed
12 prior to March 4, 1998, stating that as a result of a
13 court order the contracts are rescinded and no further
14 payments are due.

15

16 One hundred eighty days after the date of entry of this
17 Order, each Defendant shall provide a written report to
18 the Commission, sworn to under penalty of perjury,
19 setting forth in detail the manner and form in which
20 the Defendant has complied and is complying with this
21 Order. This report shall include but not be limited
22 to... A statement describing the manner in which the
23 Defendant has complied and is complying with this
24 Order;

25 Summ. J. Order at 42-43, 46. The compliance report sent by Gill
26 fails to detail any efforts made by Gill to mail rescission
27 notices to consumers, despite the Order's specificity and
28 Plaintiff's specific request thereafter that Gill include a

1 description of his efforts to distribute such notices. See Gill
2 Decl. Ex. at 6. The letters allegedly sent by Murkey to
3 Defendants' clients do not substantially comply with the Court's
4 Order. The letter does not state "that as a result of a court
5 order the contracts are rescinded and no further payments are
6 due." Summ. J. Order at 42-43. Instead, the letter states:

7 Recently, the Federal Trade Commission (FTC) required
8 our offices to revise our contracts with each one of
9 our current clients . . . Therefore, I have enclosed a
10 **new retainer agreement** which you should sign . . . and
11 **return** to us with **payment** . . . if you want us to
12 continue to work on your behalf Should you
13 decide **not** to sign this new agreement, **nor** send us a
14 payment then, unfortunately, we will not be able to
15 continue to try to help you improve your credit.

16 Gill Decl., Ex. (emphasis in original). The letter clearly does
17 not comply with the spirit of the Court's Order. Nor has Gill
18 shown that he made every reasonable effort to comply, considering
19 that he delegated his responsibility to Murkey and must now be
20 held accountable for the deficiencies in the letter sent by
21 Murkey. Therefore, the Defendants' reliance on this letter as
22 their illustration of compliance is misplaced. See Murkey's Opp'n
23 at 4.

24 Gill also claims that Plaintiff has not shown clear and
25 convincing evidence of Gill's contemptuous conduct. Contrary to
26 Gill's argument, the Court finds that Plaintiff has shown by
27 clear and convincing evidence that Gill violated the Court's
28 Order by failing to send rescission notices and by failing to

1 supply Plaintiff with a complete compliance report. Gill's
2 noncompliance consists of more than a "few technical violations."
3 Thus, Plaintiff has shown that both Murkey and Gill are liable
4 for contempt.

5 Plaintiff's evidence shows by clear and convincing evidence
6 that Defendants have violated the Court's Order and should be
7 held liable for contempt.

8 Federal Rule of Civil Procedure 65(d) explains that
9 injunctions are binding on the parties to the action, as well as
10 "those persons in active concert or participation with them who
11 receive actual notice of the order by personal service or
12 otherwise." Fed. R. Civ. P. 65(d). The Ninth Circuit has also
13 held that an injunction is binding on a nonparty which has actual
14 notice and either (1) is the alter ego of, or has an identity of
15 interest with, a party, or (2) aids and abets a party's violation
16 of the order. See Peterson v. Highland Music, Inc., 140 F.3d
17 1313, 1323-24 (9th Cir. 1998). Similarly, while certain nonprofit
18 corporations are exempt from liability for violations of section
19 5(a)(1) of the FTC Act, the exemption does not apply to sham
20 corporations that are the mere alter ego of the contemnor. See
21 Community Blood Bank v. FTC, 405 F.2d 1011, 1019 (8th Cir. 1969);
22 Ohio Christian College, 80 F.T.C. 815, 847-48 (1972). Moreover,
23 Plaintiff is not seeking to enforce Section 5 of the FTC, but
24 rather an Order of the Court that directly references nonprofit
25 organizations in its prohibition. The Court's Order specifically
26 enjoined "those in active concert or participation with"
27 Defendants, including "any non-profit organization or any other
28 organization that performs credit repair service." Summ. J. Order

1 at 39-42. Accordingly, although CRCA claims to be a nonprofit
2 organization and is not a Defendant in this case, its
3 participation in and facilitation of Murkey's conduct makes it
4 eligible for liability.

5 CRCA argues that it never had any direct notice of the
6 Court's Order and its nonprofit status exempts it from this
7 contempt proceeding. The Court finds that CRCA had notice of the
8 Order and its nonprofit status does not exempt it from a finding
9 of contempt because CRCA is the alter ego of Murkey. Murkey is
10 the owner and founder of CRCA. See Stahl Decl., Ex. 18 at 248-51,
11 257, 263, 268; Hardy Decl., Ex. 2.⁴ The evidence shows that CRCA
12 is indistinct from Murkey. See Suppl. Stahl Decl. ¶ 17. There is
13 no evidence that an active board of directors exists or that CRCA
14 adheres to corporate formalities. See Stern Decl. ¶¶ 16, 17.
15 Murkey controls the finances, handles the banking, and signs all
16 the checks for CRCA, with the exception of payroll checks
17 prepared by an outside firm. See *id.* at ¶ 17. There is evidence
18 that Murkey signed checks to himself as well. See Suppl. Stahl.
19 Decl. ¶ 23, Ex. 35, pgs, 322-331; Pl.'s Ex. 111. There is also
20 evidence indicating that Murkey uses income from CRCA for his
21 personal expenses and non-business purposes. Receipts for hotel
22 expenses, restaurants, flowers, and other non-business related
23 items were found in Murkey's CRCA office, inside a box labeled
24

25 ⁴ CRCA disputes that Murkey is a director and officer of CRCA
26 and claims that he resigned his positions. See CRCA's Opp'n at 3.
27 At the hearing on the contempt, Defendants admitted Exhibit 3 into
28 evidence, which is a letter of resignation from Murkey to all the
employees of CRCA, dated November 29, 1999. See Defs.' Ex. 3. The
Court notes that there is no evidence that suggests that CRCA has
a Board of Directors or any corporate officers.

1 "Taxes," in an envelope labeled "CRCA 3d Quarter." See Suppl.
2 Stahl Decl. ¶ 24, Ex. 36, pgs 3334-372. In fact, Murkey kept his
3 receipt for the shipment of his brief to the Ninth Circuit Court
4 of Appeals with other CRCA receipts. See *id.* at 332-33. See
5 Lastly, Murkey lives in the CRCA offices. See *id.*; Murkey Decl. ¶
6 21. Based on this evidence, the Court finds that Murkey had
7 complete control of CRCA, co-mingled personal funds with funds
8 belonging to CRCA, and failed to adhere to the corporate form.⁵
9 Thus, the Court finds that Murkey treated CRCA as his alter ego
10 and that CRCA is not a legitimate nonprofit organization.

11 Employees of the CRCA have testified that they knew about
12 the case brought by Plaintiff against Murkey but that they had
13 never seen nor had knowledge of the specific prohibitions within
14 the Court's Order. See Richard Murkey Jr. Decl. ¶ 15; Isagholian
15 Decl. ¶¶ 2, 3; Hardy Decl. ¶¶ 9, 10. Nevertheless, the Court
16 finds that CRCA had notice of the Court's Order through Murkey.
17 The evidence shows that CRCA is indistinct from Murkey and Murkey
18 used the organization to act in concert with him in his credit
19 repair activities. Thus, Plaintiff has shown CRCA's liability for
20 contempt as a nonparty.

21
22 ⁵ CRCA insists that there is no proof of co-mingling of funds
23 or that Murkey makes all the decisions for CRCA. See CRCA's Opp'n
24 at 3. At the hearing, witnesses Hardy and Murkey Jr. testified that
25 they and Allen Isagholian make the decisions for CRCA, without
26 Murkey Sr. The Court finds the testimony of Murkey Jr. and Hardy
27 regarding the decision-making process within CRCA to lack
28 credibility. Furthermore, CRCA claims that Murkey's use of its
premises and his performance of certain services for CRCA does not
establish alter ego. See *id.* Based on the substantial evidence
presented by Plaintiff, the Court makes the contrary finding. CRCA
also argues that its conduct, or credit repair business, is not
illegal or wrongful. This issue is not before the Court as it was
decided in the Summary Judgment Order.

1 Based on the clear and convincing evidence presented by
2 Plaintiff, the Court finds that Murkey, Gill and CRCA violated
3 the Court's Summary Judgment Order and are, thus, held in
4 contempt.

5 **B. Final Relief**

6 As final relief, Plaintiff seeks the appointment of a
7 permanent receiver, as well as compensatory and coercive
8 sanctions pursuant to United States v. United Mine Workers of
9 America, 330 U.S. 258, 305-05 (1947). Plaintiff asks for
10 compensatory sanctions in the form of restitution or consumer
11 redress. Plaintiff requests that compensatory sanctions equal the
12 amount of CRCA's revenues. Plaintiff argues that in the absence
13 of evidence that any particular client was not injured by the
14 contumacious conduct, the amount of CRCA's revenues totals the
15 amount of consumer injury.

16 In determining the amount of refund needed to redress injury
17 in a fraud action such as this one, "the central issue . . . is
18 whether the seller's misrepresentations tainted the customer's
19 purchasing decisions." McGregor v. Chierico, 206 F.3d 1378, 1388
20 (11th Cir. 2000). The Summary Judgment Order was based on
21 Plaintiff's showing that Defendants made misrepresentations and
22 misleading statements. During this OSC, Plaintiff has shown by
23 clear and convincing evidence that Defendants continue to make
24 such misstatements. "Proof of individual reliance by each
25 purchasing customer is not a prerequisite to the provision of
26 equitable relief needed to redress fraud." Id citing FTC v.
27 Figgie Int'l, Inc., 994 F.2d 595, 605 (9th Cir. 1993. "A
28 presumption of actual reliance arises once the [FTC] has proved

1 that the defendant made material misrepresentations, that they
2 were widely disseminated, and that consumers purchased the
3 defendant's product." FTC, 994 F.2d at 605-06.

4 Here, Plaintiff has presented evidence that Defendant Murkey
5 continues to make misrepresentations. Pursuant to McGregor, the
6 evidence creates a presumption that Defendant's and CRCA's
7 clients relied on those misrepresentations when contracting with
8 and paying for credit repair service. "Given this presumption,
9 the FTC need not prove subjective reliance by each customer, as
10 '[i]t would be virtually impossible for the FTC to offer such
11 proof and to require it would thwart and frustrate the public
12 purposes of FTC action." McGregor, 206 F.3d at 1388 quoting FTC
13 v. Security Rare Coin & Bullion Corp., 931 F.2d 1312, 1316 (8th
14 Cir. 1991). Murkey and CRCA have not presented evidence to rebut
15 the presumption. Therefore, the Court grants Plaintiff's request
16 for compensatory sanctions. The Court orders Murkey and CRCA to
17 rescind all contracts with consumers who have entered contracts
18 with or paid money to Murkey or CRCA for credit repair service
19 after Murkey was served with the Court's Summary Judgment Order.
20 The Court also orders Murkey and CRCA to refund all money
21 received after the date of the Order from consumers whom they
22 were ordered to notify regarding rescission.

23 Second, Plaintiff requests coercive sanctions in the form of
24 contingent fines against Gill, CRCA, and Murkey. Plaintiff
25 proposes that Defendants Murkey and Gill pay from \$1,000 to
26 \$5,000.00 for each day that they violate certain injunctive
27 provisions of the Court's Order. The amount differs depending on
28 the violation.

1 In determining the proper amount of a coercive sanction, the
2 Court should consider the "character and magnitude of the harm
3 threatened by continued contumacy, and the probable effectiveness
4 of any suggested sanction." United Mine Workers, 330 U.S. at 304.
5 In designing an order to coerce compliance, the Court must apply
6 the sanction in a manner that gives the contemnors the
7 opportunity to purge themselves of the contempt by complying with
8 the Court's order. See International Union, UMWA v. Bagwell, 512
9 U.S. 821, 828 (1994).

10 The Court finds that consumers will suffer injury if
11 Defendant continues to make deceptive representations and to
12 receive payment for activities that have been found in violation
13 of the Court's Order. The magnitude of harm posed to the general
14 public by Defendant's continued operation of a fraudulent credit
15 repair business is self-evident. The public has a strong interest
16 in the eradication of fraudulent credit repair businesses. The
17 Court finds that the suggested amounts of contingent fines will
18 serve as effective incentives for Murkey, Gill, and the CRCA to
19 comply with the Court's Orders. Furthermore, the contingent
20 nature of the fine allows contemnors the opportunity to purge
21 themselves of the contempt by complying with the Court's order.
22 See International Union, UMWA, 512 U.S. at 828.

23 Third, Plaintiff seeks the appointment of a permanent
24 receiver over CRCA who would have the authority to wind down and
25 terminate the corporation. Since Defendants and CRCA have failed
26 to show that CRCA engages in any nonprohibited legitimate
27 business practices, the Court grants Plaintiff's request for a
28 permanent receiver. The Court authorizes the permanent receiver

1 to take any action necessary for the termination of the
2 corporation and for the provision of rescission notices and
3 restitution to CRCA clients.

4 **VI. CONCLUSION**

5 For the foregoing reasons, the Court HOLDS Murkey, Gill, and
6 CRCA in civil contempt. The Court hereby adopts and incorporates
7 Plaintiff's proposed order with modifications:

8 Based on clear and convincing evidence, the Court makes the
9 following findings:

10 1. Murkey was served with the Court's Summary Judgement
11 Order of November 4, 1999 ("Final Order") by no later than
12 November 10, 1999. Gill was served with the Final Order by no
13 later than December 24, 1999.

14 2. CRCA is indistinct from Murkey. Murkey has exercised
15 complete control over CRCA. Murkey has treated the assets of
16 CRCA as his own. CRCA has failed to adhere to most standard
17 formalities typically followed by legitimate nonprofit
18 organizations. Murkey has used CRCA to further his own finance
19 and comfort.

20 3. CRCA was put on notice of the terms of the Final Order no
21 later than November 10, 1999, when Murkey was served with the
22 Final Order.

23 4. Beginning before entry of the Final Order and continuing
24 thereafter, CRCA has been in the business of selling credit
25 repair service to the public and has derived virtually all of its
26 revenues from the sale of credit repair service.

27 5. Defendant Richard Murkey ("Murkey") has continuously
28 participated in the advertising, promoting, offering for sale,

1 and sale of credit repair service, directly and through CRCA,
2 after he was served with the Final Order..

3 6. Murkey has violated the provision in the Final Order that
4 prohibits the defendants, and those in active concert or
5 participation with, from participating in the advertising,
6 promoting, offering for sale, and sale of credit repair service.
7 Murkey is liable for contempt for violating this provision of the
8 Final Order, which is specific and definite.

9 7. After receiving notice of the Final Order, CRCA
10 participated in, assisted and facilitated Murkey's violation of
11 the prohibition on participating in the advertising, promoting,
12 offering for sale, and sale of credit repair service. CRCA is
13 therefore also liable for contempt for violating this provision
14 of the Final Order.

15 8. Directly and through CRCA, after being served with the
16 Final Order, Murkey has represented in advertisements, in
17 promotional materials and in direct communications with consumers
18 that he and CRCA can substantially improve most consumers' credit
19 reports or profiles, by effectuating the permanent lawful removal
20 of bankruptcies, liens, judgments, charge-offs, late payments,
21 foreclosures, repossessions, or other negative information from
22 consumers' credit reports where such information is accurate and
23 not obsolete. He has also represented to consumers that he and
24 CRCA will substantially improve the particular consumer's credit
25 report or profile, by effectuating the permanent lawful removal
26 of bankruptcies, liens, judgments, charge-offs, late payments,
27 foreclosures, repossessions, or other negative information from
28 the consumer's credit report where such information was accurate

1 and not obsolete.

2 9. Murkey is liable for contempt for violating the
3 provisions of the Final Order that prohibit the defendants, and
4 those in active concert or participation with them, from (i)
5 representing that they can substantially improve most consumers'
6 credit reports or profiles, by effectuating the permanent lawful
7 removal of bankruptcies, liens, judgments, charge-offs, late
8 payments, foreclosures, repossessions, or other negative
9 information from consumers' credit reports where such information
10 is accurate and not obsolete, and (ii) representing to any
11 consumer that they can substantially improve the consumer's
12 credit report or profile, by effectuating the permanent lawful
13 removal of bankruptcies, liens, judgments, charge-offs, late
14 payments, foreclosures, repossessions, or other negative
15 information from the consumer's credit report where such
16 information is accurate and not obsolete, which are specific and
17 definite.

18 10. CRCA participated in, assisted and facilitated Defendant
19 Murkey's violation of the provisions of the Final Order that
20 prohibit the defendants, and those in active concert or
21 participation with them, from (i) representing that they can
22 substantially improve most consumers' credit reports or profiles,
23 by effectuating the permanent lawful removal of bankruptcies,
24 liens, judgments, charge-offs, late payments, foreclosures,
25 repossessions, or other negative information from consumers'
26 credit reports where such information is accurate and not
27 obsolete, and (ii) representing to any consumer that they can
28 substantially improve the consumer's credit report or profile, by

1 effectuating the permanent lawful removal of bankruptcies, liens,
2 judgments, charge-offs, late payments, foreclosures,
3 repossessions, or other negative information from the consumer's
4 credit report where such information is accurate and not
5 obsolete. CRCA is therefore liable for contempt of these
6 provisions of the Final Order.

7 11. Murkey's and CRCA's representations that they can
8 substantially improve consumers' credit reports or profiles, by
9 effectuating the permanent lawful removal of bankruptcies, liens,
10 judgments, charge-offs, late payments, foreclosures,
11 repossessions, or other negative information from consumers'
12 credit reports where such information is accurate and not
13 obsolete, are false and misleading. These representations were
14 widespread and of the type that a reasonably prudent person would
15 rely upon.

16 12. The amount of consumer injury from Murkey's and CRCA's
17 false and misleading representations is the amount of money that
18 consumers paid to Murkey and CRCA following service of the Final
19 Order on Murkey on November 11, 1999.

20 13. Murkey and Gill failed to send notices, within ten days
21 of entry of the Final Order or at anytime thereafter, to all
22 credit repair clients who had payments that were due or have or
23 will become due on contracts for the performance of credit repair
24 service signed prior to to March 4, 1998, stating that as a
25 result of a court order the contracts are rescinded and no
26 further payments are due.

27 14. Murkey and Gill have violated the provision of the Final
28 Order that directed the defendants to send notices, within ten

1 days after entry of the Final Order, to all credit repair clients
2 who had payments that were due or would thereafter become due on
3 contracts for the performance of credit repair service signed
4 prior to to March 4, 1998, stating that as a result of a court
5 order the contracts are rescinded and no further payments are
6 due. Murkey and Gill are liable for contempt for violating this
7 provision of the Order, which is specific and definite.

8 15. After the entry of the Final Order, Murkey has demanded
9 payment on or threatened to enforce contracts or agreements for
10 the performance of credit repair service entered into prior to
11 March 4, 1998.

12 16. Murkey has violated the provision of the Final Order
13 that prohibited the defendants from demanding payment or
14 enforcing or threatening to enforce any contract or agreement for
15 the performance of credit repair service entered into prior to
16 March 4, 1998. Murkey is liable for contempt for violating this
17 provision of the Final Order, which is specific and definite.

18 17. Murkey failed to provide the FTC, one hundred eighty
19 days after the date of entry of the Final Order or at anytime
20 thereafter, with a written report, sworn to under penalty of
21 perjury, setting forth in detail the manner and form in which he
22 had complied with and was complying with the Final Order or a
23 statement of his then current address and telephone number(s),
24 his then current employment, business addresses and telephone
25 numbers, a description of the business activities of each such
26 employer, and his title and responsibilities for each employer.

27 18. Murkey has violated the provision of the Final Order
28 that directed Murkey, one hundred eighty days after the date of

1 entry of the Final Order, to provide a written report to the
2 Commission, sworn to under penalty of perjury, setting forth in
3 detail the manner and form in which he had complied with and was
4 complying with the Final Order or a statement of his then current
5 address and telephone number(s), his then current employment,
6 business addresses and telephone numbers, a description of the
7 business activities of each such employer, and his title and
8 responsibilities for each employer. Murkey is liable for
9 contempt for violating this provision of the Final Order, which
10 is specific and definite.

11 19. The Court finds Murkey, Gill and CRCA in civil contempt
12 of the Final Order and deems it necessary to issue this Order to
13 coerce compliance with the Final Order and to compensate for
14 injuries resulting from defendants' contumacious conduct.

15 20. This action and the relief awarded herein are in
16 addition to, and not in lieu of, other remedies as may be
17 provided by law, including both civil and criminal remedies.

18 21. Entry of this Order is in the public interest.
19

20 **ORDER**

21
22 **I.**

23 **Sanctions for Violating Prohibition on Engaging in Credit Repair**

24 IT IS THEREFORE ORDERED that Defendant Murkey shall be
25 required to pay to the United States Treasury a fine in the
26 amount of \$5,000 per day for each day after entry of this Order
27 in which he participates, directly or through any business
28 entity, in the advertising, promotion, offering for sale, sale,

1 performance or distribution of credit repair service, including
2 participation in the billing or demanding of payment for any
3 credit repair service. The purpose of this fine is to coerce
4 compliance with the Final Order.

5 IT IS FURTHER ORDERED that Susan Montgomery, who was
6 appointed the Temporary Receiver over CRCA, is hereby appointed
7 Permanent Receiver over CRCA. The Receiver is vested with the
8 full powers of a federal equity receiver, including all of the
9 powers, duties, and rights set forth in the Order Temporarily
10 Freezing Assets of Defendant Murkey and CRCA, Appointing
11 Temporary Receiver over CRCA, Authorizing Immediate Access to
12 CRCA and Expedited Discovery, and Granting Other Provisional
13 Relief, which are incorporated herein by reference. Per request,
14 the Receiver is authorized and directed to (1) return to CRCA's
15 clients all checks and funds received by the Receiver since CRCA
16 was shut down on June 6, 2001; (2) allow Polaris Warner Center to
17 take possession of the leased telephone equipment; (3) move all
18 credit repair/CRCA records out of Suite 300 and permit HQ Global
19 Workplaces to take whatever steps are necessary to lawfully evict
20 Richard Murkey from the premises; (4) sell, through private sales
21 conducted at the CRCA premises, all of the computer equipment,
22 furniture and other personal property located at the CRCA
23 offices; (5) turn over to the FTC for safekeeping all of CRCA's
24 records and other records relating to Murkey's credit repair
25 business, along with the CRCA computer server and one
26 workstation; (6) return the premises to Transwestern Commercial
27 Services once personal property has been removed. The Receiver
28 shall close, wind down and dissolve CRCA.

1 II.

2 **Sanctions For Violating Prohibition on Specified Representations**

3 A. IT IS FURTHER ORDERED that Defendant Murkey is liable
4 for equitable monetary relief. Defendant Murkey is liable for
5 all funds CRCA or Murkey received after November 10, 1999 from
6 CRCA's sale of credit repair service. The Receiver shall, within
7 two weeks of the date of entry of this Order, review financial
8 records of CRCA, including bank records and computer records, to
9 determine the amount of income CRCA received or generated from
10 the sale of credit repair service between November 11, 1999 and
11 June 6, 2001, and file and serve a report to the Court detailing
12 the Receiver's determination and the basis thereof. Defendant
13 Murkey and Plaintiff shall have five court days to file any
14 objections or response; failure to file any objections within
15 five court days shall be deemed consent to the amount as
16 determined in the Receiver's report. Responses to objections
17 must be filed within five court days. After review of the
18 Receiver's report and all objections and responses, the Court
19 shall enter an order with a final determination as to the amount
20 of restitution that Defendant Murkey shall be required to pay.

21 B. IT IS FURTHER ORDERED that the Commission may use the
22 funds collected pursuant to Paragraph A of this Section for
23 equitable monetary relief, including, but not limited to,
24 consumer redress and for paying any attendant expenses of
25 administering any redress fund.

26 C. IT IS FURTHER ORDERED that Defendant Murkey
27 relinquishes any right, title or interest to assets frozen
28 pursuant to this Court's June 5, 2001 Order Temporarily Freezing

1 Assets of Defendant Murkey and CRCA, Appointing Temporary
2 Receiver over CRCA, Authorizing Immediate Access to CRCA and
3 Expedited Discovery, and Granting Other Provisional Relief.
4 Money in all bank, brokerage and other financial accounts shall
5 be transferred directly to the Commission. If the value of the
6 assets so transferred proves to exceed Defendant Murkey's total
7 liability for monetary equitable relief under this Order, the
8 Commission shall return excess funds to Defendant Murkey.

9 D. IT IS FURTHER ORDERED that Defendant Murkey shall be
10 required to pay to the U.S. Treasury a fine in the amount of
11 \$5,000 per day for each day after entry of this Order in which he
12 represents, directly or through any business entity, that he or
13 anyone in active participation or concert with him can
14 substantially improve any or most consumers' credit reports or
15 profiles by effectuating the permanent lawful removal of
16 bankruptcies, liens, judgments, charge-offs, late payments,
17 foreclosures, repossessions, or other negative information from
18 consumers' credit reports, even where such information is
19 accurate and not obsolete.

20
21 III.

22 **Sanctions For Violating Requirement That Defendants Send**
23 **Rescission Notices**

24 IT IS FURTHER ORDERED that, if Defendants Murkey or Gill
25 have failed to send notices, within fifteen days after entry of
26 this Order, to all credit repair clients who entered an agreement
27 for credit repair service with either defendant prior to March 4,
28 1998 and who have not paid the total amount the consumer agreed

1 to pay for the defendants' service, stating that as a result of a
2 court order the contracts are rescinded and no further payments
3 are due, then each defendant shall be required to pay to the U.S.
4 Treasury a fine in the amount of \$1,000 per day until such
5 notices have been sent to all such consumers.

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IV.

Sanctions for Violating Prohibition on Billing Prior Customers

IT IS FURTHER ORDERED that Defendant Murkey shall be
required to pay to the U.S. Treasury a fine in the amount of
\$5,000 per day for each day after entry of this Order in which he
demands payment or enforces or threatens to enforce any contract
or agreement for the performance of credit repair service.

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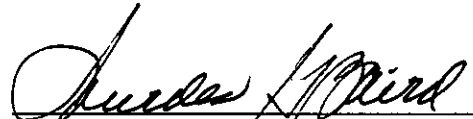
V.

**Sanctions for Violating Requirement of
Submitting Compliance Report**

IT IS FURTHER ORDERED that, if Defendant Murkey has, by the twentieth business day following entry of this Order, failed to serve on Plaintiff's counsel a written report, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied with and is complying with the Final Order and a statement of his current address and telephone number(s), his current employment, his business addresses and telephone numbers, a description of the business activities of each such employer, and his title and responsibilities for each employer, then Defendant Murkey shall be required to pay to the U.S. Treasury a fine in the amount of \$1,000 per day until he has served the required report on Plaintiff's counsel.

IT IS SO ORDERED.

DATED: July 13, 2001



LOURDES G. BAIRD
United States District Judge