

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-civ-61686 (Seitz/O'Sullivan)

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ACE GROUP, INC., a Delaware corporation, d/b/a  
AMERICAN CREDIT EXPERTS, INC., THE ACE  
GROUP, INC., THE ACE GROUP, and ACE,

LEGAL CREDIT REPAIR CENTER, INC., a  
Florida corporation, d/b/a LCRC,

MICHAEL SINGER,

MELVIN KESSLER, and

GERALD ROTH,

Defendants.

**STIPULATED FINAL JUDGMENT AND  
ORDER FOR PERMANENT INJUNCTION AND OTHER  
EQUITABLE RELIEF AGAINST DEFENDANT MELVIN KESSLER**

On October 20, 2008, Plaintiff, Federal Trade Commission ("FTC" or "Commission"), filed a Complaint for Injunctive and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 410(b) of the Credit Repair Organizations Act, 15 U.S.C. § 1679h(b), to obtain preliminary and permanent injunctive relief, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendants Ace Group, Inc., also d/b/a American Credit

Experts, Inc., The Ace Group, Inc., The Ace Group, and ACE; Legal Credit Repair Center, Inc., also d/b/a LCRC; Gerald Roth, Michael Singer, and Melvin Kessler (collectively, "Defendants") for engaging in deceptive acts or practices in connection with the advertising, marketing, promotion, offering for sale, or sale of credit repair services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of sections of the Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j.

On December 10, 2008, Defendant Melvin Kessler ("Settling Defendant") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, in the United States Bankruptcy Court for the Southern District of Florida (Case No. 08-28848) (the "Kessler Bankruptcy Case"). On April 17, 2009, the Commission filed an adversary proceeding against the Settling Defendant seeking an order from the Bankruptcy Court determining that the judgment which may be entered against him in this case is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) (the "Kessler Adversary Proceeding"). *Federal Trade Commission v. Melvin S Kessler*, Adv. Proc. No. 09-01422 (Bankr. S.D. Fla.).

The Commission's action against the Defendants, including the enforcement of a judgment other than a monetary judgment obtained in this action, is not stayed by 11 U.S.C. § 362(1), (2), (3), or (6) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to § 362(b)(4) and thus falls within an exception to the automatic stay.

Plaintiff and Settling Defendant, by and through their attorneys, have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief Against Defendant Melvin Kessler ("Order") by this Court in order to resolve all claims against

Settling Defendant in this action. Plaintiff and Settling Defendant have consented to entry of this Order without trial or adjudication of any issue of law or fact herein and without Settling Defendant admitting liability for any of the violations alleged in the Complaint.

Being fully advised in the premises and acting upon the joint motion of the parties to enter this Order,

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

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Settling Defendant.
2. The Complaint states a claim upon which relief may be granted against Settling Defendant under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b, and Section 410(b) of the Credit Repair Organizations Act, 15 U.S.C. § 1679h(b). Settling Defendant is a “credit repair organization,” as that term is defined in Section 403(3) of the Credit Repair Organizations Act, 15 U.S.C. § 1679a(3).
3. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
4. The activities of Settling Defendant are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. Settling Defendant has read and fully understands the Complaint against him and the provisions of this Order, and he freely enters into this Order.
6. Settling Defendant waives: (a) all rights to seek judicial review or otherwise challenge or contest the validity of this Order; (b) any claim that he may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996);

and (d) any rights to attorneys' fees that may arise under said provision of law. The Commission and Settling Defendant shall each bear their own costs and attorneys' fees incurred in this action.

7. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

#### **DEFINITIONS**

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

A. **"Assets"** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.

B. **"Assisting others"** includes, but is not limited to: (1) performing customer service functions, including receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing or billing services of any kind.

C. **"Credit repair organization"** shall have the meaning ascribed to that term in Section 403(3) of the Credit Repair Organizations Act, 15 U.S.C. § 1679a(3). A complete copy of the Credit Repair Organizations Act, 15 U.S.C. § 1679-1679j, is attached.

D. **"Credit repair service"** means any service, in return for payment of money or

other valuable consideration, for the express or implied purpose of: (1) improving any consumer's credit record, credit history, or credit rating; or (2) providing advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer's credit record, credit history, or credit rating.

E. **"Customer"** means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by Settling Defendants.

F. **"Settling Defendant"** means Melvin Kessler.

G. **"Corporate Defendant(s)"** means Ace Group, Inc., also d/b/a American Credit Experts, Inc., The Ace Group, Inc., The Ace Group, and ACE; and Legal Credit Repair Center, Inc., also d/b/a LCRC, and their successors and assigns.

H. **"Document"** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

I. **"Person"** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

J. **"Plaintiff"** means the Federal Trade Commission.

K. The terms **"and"** and **"or"** in this Order shall be construed conjunctively or disjunctively, as necessary to make the applicable sentence or phrase inclusive rather than

exclusive.

L. The term “**including**” shall mean “including without limitation.”

M. “**Kessler Bankruptcy Case**” means the case Defendant Melvin Kessler commenced December 10, 2008 by filing the voluntary petition for relief under Chapter 7 of the U.S. Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in the U.S. Bankruptcy Court for the Southern District of Florida (Case No. 08-28848).

N. “**Kessler Adversary Proceeding**” means the adversary proceeding filed by the Federal Trade Commission against Melvin Kessler on April 17, 2009 in the Kessler Bankruptcy Case (Bankr. S.D. Fla. Case No. 09-01422).

### **ORDER**

#### **I. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE FEDERAL TRADE COMMISSION ACT**

**IT IS HEREBY ORDERED** that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, including, but not limited to, any credit repair service, Settling Defendant, and his officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

- A. Their ability to improve or otherwise affect a consumer’s credit report or profile or ability to obtain credit;
- B. The total cost to purchase, receive, or use the goods or services;

- C. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services;
- D. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services; or
- E. Any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services.

**II. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE CREDIT REPAIR ORGANIZATIONS ACT**

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any credit repair service to consumers, Settling Defendant, and his officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from violating, or assisting others in violating, the Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j, including, but not limited to:

- A. By making or using untrue or misleading representations to induce consumers to purchase their services, including, but not limited to, misrepresenting that a credit repair organization can improve substantially consumers' credit reports or profiles by permanently removing negative information from consumers' credit reports, even where such information is accurate and not obsolete, in violation of Section 404(a)(3), 15 U.S.C. § 1679b(a)(3); or
- B. By charging or receiving money or other valuable consideration for the

performance of credit repair services, before such services are fully performed, in violation of Section 404(b), 15 U.S.C. § 1679b(b).

**III. PROHIBITION ON COLLECTING ACCOUNTS**

**IT IS FURTHER ORDERED** that Settling Defendant, and his officers, agents, employees, corporations, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from attempting to collect, collecting, selling, or assigning, or otherwise transferring any right to collect payment for any credit repair services from any consumer who purchased or agreed to purchase credit repair services from any Defendant prior to the entry of the Stipulated Order for Preliminary Injunction and Other Equitable Relief, dated December 3, 2008.

**IV. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Settling Defendant, and his officers, agents, employees, and corporations, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from:

- A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, email address, Social Security number, credit card number, bank account number, date of birth, or other identifying or financial information of any person about whom any Settling Defendant obtained such information in



connection with the activities alleged in the Complaint; and

- B. Benefitting from or using the name, address, telephone number, email address, Social Security number, credit card number, bank account number, date of birth, or other identifying or financial information of any person about whom any Settling Defendant obtained such information in connection with the activities alleged in the Complaint.

*Provided, however,* that Settling Defendant may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

**V. DISPOSAL OF SENSITIVE CONSUMER INFORMATION**

**IT IS FURTHER ORDERED** that:

Settling Defendant, and his officers, agents, employees, and corporations, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from failing to take reasonable measures to protect against unauthorized access to or use of sensitive consumer information when disposing of information obtained in connection with the advertising, marketing, promotion, offering for sale, or sale of any credit repair services or other credit-related services. Reasonable measures include but are not limited to: (i) burning, pulverizing, or shredding of papers containing sensitive consumer information so that the information cannot practicably be read or reconstructed; and (ii) destroying or erasing electronic media containing sensitive consumer information so that the information cannot practicably be read or reconstructed.

For the purposes of this section, "sensitive consumer information" shall mean (i) an individual's Social Security number; financial account number; or any other information that enables a person to access another person's account (such as credit card, debit card, checking, savings, money market, stock, commodities, share or similar account, utility bill, or mortgage loan account); or (ii) individual's name or address or phone number **in combination with** the individual's date of birth, driver's license number or other state identification number or a foreign country equivalent, or passport number.

## **VI. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment for equitable monetary relief is hereby entered against Settling Defendant, in the amount of Twenty Million, Six Hundred Forty-five Thousand, Seven Hundred Fifty-four Dollars (\$20,645,754), and the FTC is awarded a monetary judgment in this amount. *Provided, however,* that payment of this judgment shall be suspended subject to the conditions set forth in the Section of this Order titled "Right to Reopen";

B. Settling Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights pursuant to this Order, including its rights to any payment or money judgment pursuant to this Order. For settlement purposes only, Settling Defendant further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A). Settling

Defendant further stipulates and agrees that the judgment ordered by this Section is not dischargeable in bankruptcy and agrees to file, within ten (10) days of the date of entry of this Order, an agreed judgment in the Kessler Adversary Proceeding, in the form attached hereto as Attachment A, determining that the judgment ordered by this Section, including the conditions set forth in the Section of this Order titled "Right to Reopen," will be nondischargeable pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. § 523. Plaintiff and Settling Defendant agree to the foregoing nondischargeability for the purposes of this settlement only. Except as noted above: (i) the Settling Defendant's agreement to the facts as stated in Section VI.B shall not constitute an admission of wrongdoing for any other purpose including, but not limited to, any applications for licenses, employment or otherwise; and (ii) the Settling Defendant denies any liability and specifically denies committing any fraud; and

C. Settling Defendant further stipulates and agrees, pursuant to Section 502 of the Bankruptcy Code, 11 U.S.C. § 502, to the allowance of a general unsecured claim in the Kessler Bankruptcy Case in favor of the FTC in the amount of Twenty Million, Six Hundred Forty-five Thousand, Seven Hundred Fifty-four Dollars (\$20,645,754), less the sum of any payments previously made, and that the FTC is entitled to participate in any payments in the Kessler Bankruptcy Case paid on account of such allowed general unsecured claim.

D. In accordance with 31 U.S.C. § 7701, Settling Defendant is hereby required, unless he already has done so, to furnish to the Commission taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of their relationship with the government. Settling Defendant is further required, unless he already has done so, to provide the

Commission with clear, legible and full-size photocopies of all valid driver's licenses that he possesses, which will be used for reporting and compliance purposes; and

E. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

## **VII. RIGHT TO REOPEN**

**IT IS FURTHER ORDERED** that:

A. Within ten (10) business days after the date of entry of this Order by the Court, Settling Defendant shall submit to the Commission a truthful sworn statement (in the form shown on Attachment B of this Order), that shall reaffirm and attest to the truthfulness, accuracy, and completeness of his own sworn financial statements previously provided to the Commission, consisting of the sworn financial statement executed by Settling Defendant on December 22, 2008, and amended on February 19, 2008, with attachments; the voluntary petition for relief under Chapter 7 of the U.S. Bankruptcy Code in the Kessler Bankruptcy Case; Settling Defendant's sworn testimony taken by the trustee at the meeting of creditors in the Kessler Bankruptcy Case, held on January 16, 2009; the federal income tax returns, along with their attachments and written explanations, produced by Settling Defendant; and the affidavit by Settling Defendant, sworn to on May 12<sup>th</sup>, 2009 (the "Affidavit") (collectively, the "Financial Statements"). Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Settling Defendants' financial condition, as represented in the Financial Statements referenced above, which contain material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Order;

B. If, upon motion by the Commission to the Court, the Court finds that the Settling Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in Settling Defendant's Financial Statements, the suspension of the monetary judgment will be terminated and the entire judgment amount of Twenty Million, Six Hundred Forty-five Thousand, Seven Hundred Fifty-four Dollars (\$20,645,750), shall become immediately due and payable by the Settling Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall begin immediately to accrue on the unpaid balance; and

C. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

#### **VIII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order, and (ii) investigating the accuracy of the Settling Defendant's Financial Statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Settling Defendant shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Settling Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including

but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69;
2. posing as consumers and suppliers to Settling Defendant, his employees, or any other entity managed or controlled in whole or in part by Settling Defendant, without the necessity of identification or prior notice; and

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

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

## **IX. COMPLIANCE REPORTING**

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

- A. For a period of four (4) years from the date of entry of this Order,
  1. Settling Defendant shall notify the Commission of the following:
    - a. any changes in Settling Defendant's residence, mailing addresses,

- and telephone numbers, within ten (10) days of the date of such change;
- b. any changes in Settling Defendant's employment status (including self-employment), and any change in such Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Settling Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of Settling Defendant's duties and responsibilities in connection with the business or employment; and
  - c. any changes in Settling Defendant's name or use of any aliases or fictitious names;
2. Settling Defendant shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that Settling Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed

change in the business entity about which Settling Defendant learns less than thirty (30) days prior to the date such action is to take place, Settling Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Settling Defendant shall provide a written report to the Commission, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and are complying with this Order. This report shall include, but not be limited to:

1. a. Settling Defendant's then-current residence address, mailing addresses, and telephone numbers;
- b. Settling Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that Settling Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Settling Defendant's duties and responsibilities in connection with the business or employment; and
- c. any other changes required to be reported under Subsection A of this Section.
2. a. a copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and



b. any other changes required to be reported under Subsection A of this Section.

C. Settling Defendant shall notify the Commission of the filing of a bankruptcy petition by Settling Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, Settling Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission to the following address:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room NJ-2122  
Washington, D.C. 20580  
RE: *FTC v. The Ace Group, et al.*

Civil Action 08-61686

*Provided*, that, in lieu of overnight courier, Settling Defendant may send such reports or notifications by first-class mail, but only if Settling Defendant contemporaneously sends an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Settling Defendant. *Provided however*, nothing in this provision shall limit the Commission's authority to pose as a consumer or supplier pursuant to Subsection B.2 of the Section titled "Compliance Monitoring."

#### **X. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of seven (7) years from the date of entry of this Order, Settling Defendant, and any business in which Settling Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and their agents,

employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

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

E. Copies of all sales scripts, training materials, advertisements, direct mail solicitations, contracts sent to consumers, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

**XI. DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of entry of this Order, Settling Defendant shall deliver copies of this Order as directed below:

A. Settling Defendant as Control Person: For any business that Settling Defendant controls, directly or indirectly, or in which Settling Defendant has a majority ownership interest, Settling Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Settling Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. Settling Defendant as employee or non-control person: For any business where Settling Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Settling Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

C. Settling Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

**XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

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

**XIII. RETENTION OF JURISDICTION**

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

**XIV. COOPERATION WITH FEDERAL TRADE COMMISSION**

**IT IS FURTHER ORDERED** that Settling Defendant shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC, and appear or cause his officers, members, employees, representatives, or agents to appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Settling Defendant shall appear or cause his officers, members, employees, representatives, or agents to appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

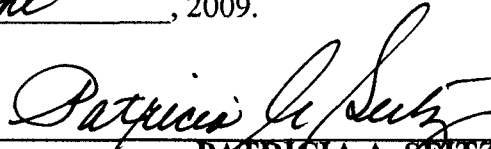
**IT IS FURTHER ORDERED**, pursuant to Fed. R. Civ. P. 54(b), that there is no just reason for delay and the Clerk of the Court shall immediately enter this Order as a final order.

**JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and against

Defendant Melvin Kessler, pursuant to all the terms and conditions recited above.

**IT IS SO ORDERED.**

DATED this 12<sup>th</sup> day of June, 2009.



**PATRICIA A. SEITZ**  
**UNITED STATES DISTRICT JUDGE**

**SO STIPULATED AND AGREED:**

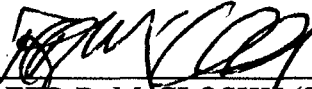
**FOR PLAINTIFF FEDERAL TRADE COMMISSION:**



Date: 6/10/09

MICHELE STOLLS (A5501233)  
ROBIN E. EICHEN (A5501247)  
Attorneys for Plaintiff  
1 Bowling Green, Suite 318  
New York, NY 10004  
(212) 607-2829  
[mstolls@ftc.gov](mailto:mstolls@ftc.gov); [reichen@ftc.gov](mailto:reichen@ftc.gov)

**FOR DEFENDANT MELVIN KESSLER:**



Date: 5/12/09

REED B. McCLOSKY (297534)  
FREEDMAN & McCLOSKY  
Attorneys for Defendants  
1 East Broward Boulevard, Suite 700  
Ft. Lauderdale, FL 33301  
(954) 764-3800  
[rbm@fmfloridalaw.com](mailto:rbm@fmfloridalaw.com)

  
MELVIN KESSLER

Date: 5/12/09

Individually, and as owner and officer of  
The Ace Group, Inc. and  
Legal Credit Repair Center, Inc.  
3900 West Commercial Boulevard, Suite 201  
Fort Lauderdale, FL 33309

**ATTACHMENT A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

In re:  MELVIN S. KESSLER,  Debtor.	08-28848-RBR  Chapter 7
FEDERAL TRADE COMMISSION,  Plaintiff,  v.  MELVIN S. KESSLER,  Debtor.	Adversary Proceeding No. 09-01422-RBR

**STIPULATED JUDGMENT FOR NONDISCHARGEABILITY  
OF DEBT OWED TO FEDERAL TRADE COMMISSION**

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PARTIES,  
through their respective attorneys of record, as follows:

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through its undersigned attorneys, filed a Complaint to Determine Nondischargeability of Debt under Section 523 of the Bankruptcy Code, 11 U.S.C. § 523 (the “Complaint”) on April 17, 2009. Defendant Melvin S Kessler (the “Debtor” or “Kessler”) agrees to the entry of this Stipulated Judgment for Nondischargeability, as further set forth herein.

### **Findings**

1. This Court has subject matter jurisdiction over this Stipulated Judgment for Nondischargeability pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523.
2. Venue in the Southern District of Florida is proper under 28 U.S.C. § 1409(a).
3. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).
4. This Adversary Proceeding relates to *In re Melvin S. Kessler*, Case No. 08-28848-RBR (Bankr. S.D. Fla.) (Chapter 7), now pending before this Court. The FTC is a creditor and party in interest with a claim against the Debtor pursuant to a Stipulated Judgment and Order for Permanent Injunction as to Defendant Melvin Kessler (the “Stipulated Judgment”). The United States District Court for the Southern District of Florida (the “District Court”) entered the Stipulated Judgment in the case *Federal Trade Commission v. Ace Group, Inc., et al.*, Case No. 0:08-cv-61686-PAS (the “Enforcement Action”).
5. The Stipulated Judgment includes equitable monetary relief in favor of the FTC and against the Debtor in the amount of \$20,645,754.00, the amount of consumer injury claimed by the FTC pursuant to its Complaint. Based upon financial statements and supporting documents provided by the Debtor to the FTC, the District Court conditionally suspended the monetary portion of the Stipulated Judgment. The suspension of the monetary portion of the

Stipulated Judgment may be terminated should the District Court determine, upon motion by the Commission, that the Debtor failed to disclose any material asset, or made any other material misrepresentation or omission in certain financial statements and supporting documents provided to the Commission. A copy of the Stipulated Judgment is attached hereto and incorporated as Exhibit 1.

6. The FTC and the Debtor agree to resolve this Adversary Proceeding without litigation and they stipulate and agree that the Stipulated Judgment owing to the FTC by the Debtor is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

**Order**

7. Judgment is hereby entered in favor of the Commission and against the Debtor/Defendant, Melvin Kessler, determining that the Stipulated Judgment entered in the Enforcement Action is nondischargeable in the amount of \$20,645,754.00 pursuant to 11 U.S.C. § 523(a)(2)(A). The Stipulated Judgment is conditionally suspended subject to the Commission's right to file a motion in the District Court for the termination of the suspension of the Stipulated Judgment in accordance with the terms the section of the Stipulated Judgment titled "Right to Reopen" (Section VII).

8. All other provisions of the Stipulated Judgment in the Enforcement Action, including the injunctive provisions, remain in full force and effect.

9. The persons executing this Stipulated Judgment for Nondischargeability acknowledge they have authority to bind the parties to this Adversary Proceeding.

# # #



**STIPULATED AND AGREED TO:**

**MELVIN KESSLER**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Melvin S Kessler  
1260 NW 78th Avenue  
Plantation, Florida 33322

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Jule A. Mack, DC Bar No. 417741  
Kimberly L. Nelson, Va. Bar No. 47224  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Mail Drop NJ-2122  
Washington, D.C. 20580  
Telephone: (202) 326-3304  
Facsimile: (202) 326-2558  
knelson@ftc.gov

By: \_\_\_\_\_

Date: \_\_\_\_\_

Susan D. Lasky, Fla. Bar No. 451096  
2101 N. Andrews Ave., Suite 405  
Wilton Manors, Florida 33311  
Telephone: (954) 565-5854  
Facsimile: (954) 462-8411  
slaskylbrpa@bellsouth.net  
*Counsel for the Debtor*

**ATTACHMENT B**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-civ-61686 (Seitz/O'Sullivan)

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ACE GROUP, INC., a Delaware corporation, d/b/a  
AMERICAN CREDIT EXPERTS, INC., THE ACE  
GROUP, INC., THE ACE GROUP, and ACE,

LEGAL CREDIT REPAIR CENTER, INC., a  
Florida corporation, d/b/a LCRC,

MICHAEL SINGER,

MELVIN KESSLER, and

GERALD ROTH,

Defendants.

---

**AFFIDAVIT OF DEFENDANT MELVIN KESSLER  
ATTESTING TO TRUTHFULNESS OF  
HIS INDIVIDUAL FINANCIAL STATEMENTS**

I, Melvin Kessler, hereby state that the information contained in the sworn financial statements previously provided to the Federal Trade Commission ("FTC"), consisting of the sworn financial statement executed by Melvin Kessler on December 22, 2008, and amended on February 19, 2008, with attachments; my voluntary petition for relief under Chapter 7 of the U.S. Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in the United States Bankruptcy Court for the

Southern District of Florida (Case No. 08-28848) (“Kessler Bankruptcy Case”); my sworn testimony taken by the trustee at the meeting of creditors in the Kessler Bankruptcy Case, held on January 16, 2009; my federal income tax returns, along with their attachments and written explanations, that I produced to the FTC; and the Affidavit of Melvin S. Kessler, sworn to on May \_\_, 2009 (the “Affidavit”), were to the best of my information, knowledge, and belief, true, accurate, and complete at such times they were produced to the FTC.

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

\_\_\_\_\_  
Melvin Kessler

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

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

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

subjected to garnishment for any one indebtedness.

**(b) Penalties**

Whoever willfully violates subsection (a) of this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both. (Pub. L. 90-321, title III, §304, May 29, 1968, 82 Stat. 163.)

**§ 1675. Exemption for State-regulated garnishments**

The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) and (b)(2) of this title.

(Pub. L. 90-321, title III, §305, May 29, 1968, 82 Stat. 164; Pub. L. 95-30, title V, §501(e)(4), May 23, 1977, 91 Stat. 162.)

AMENDMENTS

1977—Pub. L. 95-30 substituted “section 1673(a) and (b)(2) of this title” for “section 1673(a) of this title” in two places.

**§ 1676. Enforcement by Secretary of Labor**

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this subchapter.

(Pub. L. 90-321, title III, §306, May 29, 1968, 82 Stat. 164.)

**§ 1677. Effect on State laws**

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

(Pub. L. 90-321, title III, §307, May 29, 1968, 82 Stat. 164.)

SUBCHAPTER II-A—CREDIT REPAIR ORGANIZATIONS

**§ 1679. Findings and purposes**

**(a) Findings**

The Congress makes the following findings:

(1) Consumers have a vital interest in establishing and maintaining their credit worthiness<sup>1</sup> and credit standing in order to obtain and use credit. As a result, consumers who have experienced credit problems may seek assistance from credit repair organizations which offer to improve the credit standing of such consumers.

(2) Certain advertising and business practices of some companies engaged in the busi-

ness of credit repair services have worked a financial hardship upon consumers, particularly those of limited economic means and who are inexperienced in credit matters.

**(b) Purposes**

The purposes of this subchapter are—

(1) to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services; and

(2) to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.

(Pub. L. 90-321, title IV, §402, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-455.)

PRIOR PROVISIONS

A prior title IV of Pub. L. 90-321, May 29, 1968, 82 Stat. 164, as amended by Pub. L. 91-344, July 20, 1970, 84 Stat. 440; Pub. L. 92-321, June 30, 1972, 86 Stat. 382, which was set out as a note under section 1601 of this title, established a bipartisan National Commission on Consumer Finance to study the functioning and structure of the consumer finance industry as well as consumer credit transactions generally. The Commission was to submit a final report by Dec. 31, 1972, and was to cease to exist thereafter.

EFFECTIVE DATE OF SUBCHAPTER

Section 413 of title IV of Pub. L. 90-321, as added by Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-462, provided that: “This title [enacting this subchapter] shall apply after the end of the 6-month period beginning on the date of the enactment of the Credit Repair Organizations Act [Sept. 30, 1996], except with respect to contracts entered into by a credit repair organization before the end of such period.”

**§ 1679a. Definitions**

For purposes of this subchapter, the following definitions apply:

**(1) Consumer**

The term “consumer” means an individual.

**(2) Consumer credit transaction**

The term “consumer credit transaction” means any transaction in which credit is offered or extended to an individual for personal, family, or household purposes.

**(3) Credit repair organization**

The term “credit repair organization”—

(A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—

(i) improving any consumer’s credit record, credit history, or credit rating; or

(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i); and

(B) does not include—

(i) any nonprofit organization which is exempt from taxation under section 501(c)(3) of title 26;

<sup>1</sup> So in original. Probably should be “creditworthiness”.

(ii) any creditor (as defined in section 1602 of this title), with respect to any consumer, to the extent the creditor is assisting the consumer to restructure any debt owed by the consumer to the creditor; or

(iii) any depository institution (as that term is defined in section 1813 of title 12) or any Federal or State credit union (as those terms are defined in section 1752 of title 12), or any affiliate or subsidiary of such a depository institution or credit union.

#### (4) Credit

The term "credit" has the meaning given to such term in section 1602(e) of this title.

(Pub. L. 90-321, title IV, §403, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-455.)

#### PRIOR PROVISIONS

For a prior section 403 of Pub. L. 90-321, see note set out under section 1679 of this title.

#### § 1679b. Prohibited practices

##### (a) In general

No person may—

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness,<sup>1</sup> credit standing, or credit capacity to—

(A) any consumer reporting agency (as defined in section 1681a(f) of this title); or

(B) any person—

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(2) make any statement, or counsel or advise any consumer to make any statement, the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete to—

(A) any consumer reporting agency;

(B) any person—

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(3) make or use any untrue or misleading representation of the services of the credit repair organization; or

(4) engage, directly or indirectly, in any act, practice, or course of business that constitutes or results in the commission of, or an attempt to commit, a fraud or deception on any person in connection with the offer or sale of the services of the credit repair organization.

##### (b) Payment in advance

No credit repair organization may charge or receive any money or other valuable consider-

ation for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

(Pub. L. 90-321, title IV, §404, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-456.)

#### PRIOR PROVISIONS

For a prior section 404 of Pub. L. 90-321, see note set out under section 1679 of this title.

#### § 1679c. Disclosures

##### (a) Disclosure required

Any credit repair organization shall provide any consumer with the following written statement before any contract or agreement between the consumer and the credit repair organization is executed:

#### "Consumer Credit File Rights Under State and Federal Law

"You have a right to dispute inaccurate information in your credit report by contacting the credit bureau directly. However, neither you nor any 'credit repair' company or credit repair organization has the right to have accurate, current, and verifiable information removed from your credit report. The credit bureau must remove accurate, negative information from your report only if it is over 7 years old. Bankruptcy information can be reported for 10 years.

"You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The credit bureau must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next 60 days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud.

"You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.

"You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it.

"Credit bureaus are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur.

"You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit bureau.

"If the credit bureau's reinvestigation does not resolve the dispute to your satisfaction, you

<sup>1</sup> So in original. Probably should be "creditworthiness."

may send a brief statement to the credit bureau, to be kept in your file, explaining why you think the record is inaccurate. The credit bureau must include a summary of your statement about disputed information with any report it issues about you.

"The Federal Trade Commission regulates credit bureaus and credit repair organizations. For more information contact:

"The Public Reference Branch  
"Federal Trade Commission  
"Washington, D.C. 20580".

**(b) Separate statement requirement**

The written statement required under this section shall be provided as a document which is separate from any written contract or other agreement between the credit repair organization and the consumer or any other written material provided to the consumer.

**(c) Retention of compliance records**

**(1) In general**

The credit repair organization shall maintain a copy of the statement signed by the consumer acknowledging receipt of the statement.

**(2) Maintenance for 2 years**

The copy of any consumer's statement shall be maintained in the organization's files for 2 years after the date on which the statement is signed by the consumer.

(Pub. L. 90-321, title IV, §405, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-457.)

REFERENCES IN TEXT

The Credit Repair Organization Act, referred to in subsec. (a), probably means the Credit Repair Organizations Act, Pub. L. 90-321, title IV, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-454, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

PRIOR PROVISIONS

For a prior section 405 of Pub. L. 90-321, see note set out under section 1679 of this title.

**§ 1679d. Credit repair organizations contracts**

**(a) Written contracts required**

No services may be provided by any credit repair organization for any consumer—

(1) unless a written and dated contract (for the purchase of such services) which meets the requirements of subsection (b) of this section has been signed by the consumer; or

(2) before the end of the 3-business-day period beginning on the date the contract is signed.

**(b) Terms and conditions of contract**

No contract referred to in subsection (a) of this section meets the requirements of this subsection unless such contract includes (in writing)—

(1) the terms and conditions of payment, including the total amount of all payments to be made by the consumer to the credit repair organization or to any other person;

(2) a full and detailed description of the services to be performed by the credit repair organization for the consumer, including—

(A) all guarantees of performance; and

(B) an estimate of—

(i) the date by which the performance of the services (to be performed by the credit repair organization or any other person) will be complete; or

(ii) the length of the period necessary to perform such services;

(3) the credit repair organization's name and principal business address; and

(4) a conspicuous statement in bold face type, in immediate proximity to the space reserved for the consumer's signature on the contract, which reads as follows: "You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right."

(Pub. L. 90-321, title IV, §406, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-458.)

PRIOR PROVISIONS

For a prior section 406 of Pub. L. 90-321, see note set out under section 1679 of this title.

**§ 1679e. Right to cancel contract**

**(a) In general**

Any consumer may cancel any contract with any credit repair organization without penalty or obligation by notifying the credit repair organization of the consumer's intention to do so at any time before midnight of the 3rd business day which begins after the date on which the contract or agreement between the consumer and the credit repair organization is executed or would, but for this subsection, become enforceable against the parties.

**(b) Cancellation form and other information**

Each contract shall be accompanied by a form, in duplicate, which has the heading "Notice of Cancellation" and contains in bold face type the following statement:

"You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day which begins after the date the contract is signed by you.

"To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to [ name of credit repair organization ] at [ address of credit repair organization ] before midnight on [ date ]

"I hereby cancel this transaction,

[ date ]

[ purchaser's signature ]."

**(c) Consumer copy of contract required**

Any consumer who enters into any contract with any credit repair organization shall be given, by the organization—

(1) a copy of the completed contract and the disclosure statement required under section 1679c of this title; and

(2) a copy of any other document the credit repair organization requires the consumer to sign,

at the time the contract or the other document is signed.

(Pub. L. 90-321, title IV, § 407, as added Pub. L. 104-208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009-459.)

**PRIOR PROVISIONS**

For a prior section 407 of Pub. L. 90-321, see note set out under section 1679 of this title.

**§ 1679f. Noncompliance with this subchapter**

**(a) Consumer waivers invalid**

Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter—

- (1) shall be treated as void; and
- (2) may not be enforced by any Federal or State court or any other person.

**(b) Attempt to obtain waiver**

Any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this subchapter shall be treated as a violation of this subchapter.

**(c) Contracts not in compliance**

Any contract for services which does not comply with the applicable provisions of this subchapter—

- (1) shall be treated as void; and
- (2) may not be enforced by any Federal or State court or any other person.

(Pub. L. 90-321, title IV, § 408, as added Pub. L. 104-208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009-459.)

**§ 1679g. Civil liability**

**(a) Liability established**

Any person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

**(1) Actual damages**

The greater of—

- (A) the amount of any actual damage sustained by such person as a result of such failure; or
- (B) any amount paid by the person to the credit repair organization.

**(2) Punitive damages**

**(A) Individual actions**

In the case of any action by an individual, such additional amount as the court may allow.

**(B) Class actions**

In the case of a class action, the sum of—

- (i) the aggregate of the amount which the court may allow for each named plaintiff; and
- (ii) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

**(3) Attorneys' fees**

In the case of any successful action to enforce any liability under paragraph (1) or (2),

the costs of the action, together with reasonable attorneys' fees.

**(b) Factors to be considered in awarding punitive damages**

In determining the amount of any liability of any credit repair organization under subsection (a)(2) of this section, the court shall consider, among other relevant factors—

- (1) the frequency and persistence of noncompliance by the credit repair organization;
- (2) the nature of the noncompliance;
- (3) the extent to which such noncompliance was intentional; and
- (4) in the case of any class action, the number of consumers adversely affected.

(Pub. L. 90-321, title IV, § 409, as added Pub. L. 104-208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009-459.)

**§ 1679h. Administrative enforcement**

**(a) In general**

Compliance with the requirements imposed under this subchapter with respect to credit repair organizations shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission.

**(b) Violations of this subchapter treated as violations of Federal Trade Commission Act**

**(1) In general**

For the purpose of the exercise by the Federal Trade Commission of the Commission's functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], any violation of any requirement or prohibition imposed under this subchapter with respect to credit repair organizations shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. 45(a)].

**(2) Enforcement authority under other law**

All functions and powers of the Federal Trade Commission under the Federal Trade Commission Act shall be available to the Commission to enforce compliance with this subchapter by any person subject to enforcement by the Federal Trade Commission pursuant to this subsection, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of any Federal Trade Commission trade regulation rule, without regard to whether the credit repair organization—

- (A) is engaged in commerce; or
- (B) meets any other jurisdictional tests in the Federal Trade Commission Act.

**(c) State action for violations**

**(1) Authority of States**

In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

- (A) may bring an action to enjoin such violation;
- (B) may bring an action on behalf of its residents to recover damages for which the

person is liable to such residents under section 1679g of this title as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

**(2) Rights of Commission**

**(A) Notice to Commission**

The State shall serve prior written notice of any civil action under paragraph (1) upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

**(B) Intervention**

The Commission shall have the right—

- (i) to intervene in any action referred to in subparagraph (A);
- (ii) upon so intervening, to be heard on all matters arising in the action; and
- (iii) to file petitions for appeal.

**(3) Investigatory powers**

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

**(4) Limitation**

Whenever the Federal Trade Commission has instituted a civil action for violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this subchapter that is alleged in that complaint.

(Pub. L. 90-321, title IV, §410, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-460.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

**§ 1679i. Statute of limitations**

Any action to enforce any liability under this subchapter may be brought before the later of—

- (1) the end of the 5-year period beginning on the date of the occurrence of the violation involved; or
- (2) in any case in which any credit repair organization has materially and willfully misrepresented any information which—
  - (A) the credit repair organization is required, by any provision of this subchapter, to disclose to any consumer; and

(B) is material to the establishment of the credit repair organization's liability to the consumer under this subchapter,

the end of the 5-year period beginning on the date of the discovery by the consumer of the misrepresentation.

(Pub. L. 90-321, title IV, §411, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-461.)

**§ 1679j. Relation to State law**

This subchapter shall not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with any law of any State except to the extent that such law is inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(Pub. L. 90-321, title IV, §412, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-462.)

SUBCHAPTER III—CREDIT REPORTING AGENCIES

**§ 1681. Congressional findings and statement of purpose**

**(a) Accuracy and fairness of credit reporting**

The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness,<sup>1</sup> credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

**(b) Reasonable procedures**

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

(Pub. L. 90-321, title VI, §602, as added Pub. L. 91-508, title VI, §601, Oct. 26, 1970, 84 Stat. 1128.)

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-159, §3, Dec. 4, 2003, 117 Stat. 1953, provided that: "Except as otherwise specifically provided in this Act [see Short Title of 2003 Amendment note set out under section 1601 of this title] and the amendments made by this Act—

<sup>1</sup>So in original. Probably should be "creditworthiness."