

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CREDIT RESTORATION BROKERS, LLC, *et al.*,

Defendants.

Civil No. 2:10-cv-0030-CEH-SPC

Judge Charlene E. Honeywell

**PLAINTIFF’S CONSOLIDATED MOTION FOR AND MEMORANDUM IN
SUPPORT OF AN ORDER TO SHOW CAUSE WHY
CONTEMPT DEFENDANTS SAM TARAD SKY, ALLREPCO LLC, CREDIT
RESTORATION BROKERS, LLC, AND DEBT NEGOTIATION ASSOCIATES, LLC
SHOULD NOT BE HELD IN CONTEMPT**

COMES NOW, Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), and moves this Court to issue an ORDER TO SHOW CAUSE why Contempt Defendants Sam Sky and his companies, Credit Restoration Brokers (“CRB”), Debt Negotiation Associates (“DNA”), and Allrepcoco LLC (collectively “Contempt Defendants” or “Sky and his companies”) should not be held in CIVIL CONTEMPT for violating the Stipulated Settlement Order With Defendants Credit Restoration Brokers, LLC, Debt Negotiation Associates, LLC, and Sam Tarad Sky (“Stipulated Settlement Order”) entered by this Court on March 11, 2010 (DE 10), as set forth below in the statement of Basis for Relief, Memorandum of Law, and statement of Relief Requested.

I. Introduction

In violation of the Stipulated Settlement Order, Contempt Defendants Sam Sky and his companies have launched a scheme to defraud economically distressed consumers who may be interested in receiving food stamps. Specifically, taking cynical advantage of the recent economic downturn, Sky and his companies deceptively market a “Food Stamp Eligibility Tool Kit” (“food stamp guide”) to consumers seeking financial help. Sky and his companies market the product as an “automatic,” “hassle free” method by which “virtually everyone” can receive food stamps “without any risk.” In fact, eligibility for food stamps remains strictly limited and the vast majority of Americans do not qualify. To side-step these longstanding limitations, Sky’s “guide” encourages consumers to provide so-called “ideal” information on their food stamp applications thereby misrepresenting their income and expenses. Following such advice is hardly “without any risk.” Rather, it puts consumers at considerable risk of criminal prosecution for public benefits fraud. Finally, Contempt Defendants also violate the Stipulated Settlement Order by unlawfully requiring payment before performance for credit repair services and refusing to make required disclosures about the timing and risk of debt negotiation.

Contempt Defendants’ conduct violates four provisions of the Stipulated Settlement Order. First, Sky’s misrepresentations about his food stamp guide violate Section II, which prohibits Contempt Defendants from making false representations in connection with marketing or selling any goods or services. Second, Contempt Defendants collect advance fees for credit repair services in violation of Section I.C. Third, they fail to make certain

disclosures about their debt negotiation services in violation of Section II.C. Finally, they have failed to submit the compliance reports required by the Final Order in Section X.B. In light of these blatant order violations, the Commission seeks civil contempt sanctions against Contempt Defendants, including compensatory relief for Sky's latest victims.

II. Statement of Facts and Basis of Request for Order to Show Cause

A. The Original Action

In January 2010, the Commission filed a complaint and lodged a proposed stipulated settlement order against Sky, CRB, and DNA charging deceptive conduct between 2004 and 2009. (DE 1; DE 4). *FTC v. Credit Restoration Brokers, LLC, et al.*, No. 2:10-cv-0030 (M.D. Fla.). Specifically, the Commission alleged, among other things, that Sky and CRB made false statements to induce consumers to purchase their credit repair services and charged an advance fee before fully completing such services, in violation of the Credit Repair Organization Act ("CROA"), 15 U.S.C. §§ 1679-1679j. The Commission also alleged that Sky, CRB, and DNA made false statements about their ability to substantially improve consumers' credit reports and to substantially reduce consumers' debt, in violation of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a).

On March 11, 2010, this Court approved the Stipulated Settlement Order with Sky, CRB, and DNA. (DE 10). Significantly, the Stipulated Settlement Order bars Sky, CRB, and DNA from deceptively marketing any good or service and from violating CROA. (Stipulated Settlement Order Sections II and I, generally). It also requires Sky, CRB, and DNA to make prominent disclosures when advertising debt relief services with promises of specific

principal balance reductions. (Stipulated Settlement Order Section II.C.). Moreover, the Stipulated Settlement Order requires Sky, CRB, and DNA to file periodic compliance reports with the Commission setting forth in detail their business activities. (Stipulated Settlement Order Section X.B.).

B. Sky's Deficient Compliance Reports

Pursuant to the Stipulated Settlement Order, Sky submitted two compliance reports to the FTC; however, these reports omit crucial facts about his new business practices, most notably his sale of food stamp services. In his 180-day compliance report submitted in August 2010, Sky did not disclose his new food stamps venture, did not reveal the existence of Allrepc, LLC, and did not list any of his websites. Rather, he merely acknowledged his continued involvement with CRB and DNA and mentioned a new fictitious business named Florida Consumer Assistance.¹ (Burton Decl. Att. BB). Moreover, in his annual compliance report, submitted in January 2011, Sky continued to conceal his food stamps venture and related websites. (Burton Decl. Att. CC). Sky did mention Allrepc, LLC for the first time, but he again did not describe its business. *Id.*

C. Contempt Defendants' Violative Business Practices

Since at least October 2010, Sky and his three companies have marketed a food stamp guide by falsely asserting that "almost everybody" can "legally" receive food stamps. Moreover, Contempt Defendants unlawfully collect advance fees from consumers in

¹ All five letters from Sky and his companies to the FTC since the entry of the Stipulated Settlement Order are filed herewith. (Burton Decl. Atts. Y, Z, AA, BB, CC).

connection with promised credit repair services and fail to make required disclosures in connection with their promise to substantially reduce consumers' debts.

1. Contempt Defendants Falsely Promise That “Almost Everybody” Can “Legally” Receive Food Stamps.

Sky and his companies deceptively market his food stamp application guide on the Internet. At www.myfoodstampcard.com, Sky offers his food stamp guide for a one-time \$99 charge. (Burton Decl. ¶¶ 9-16). On www.allrepc.com, Sky bundles the same guide with a package of other purported financial services for which consumers pay a monthly recurring charge of up to \$139.² (Burton Decl. ¶¶ 17-28). On both of these websites, Sky explicitly promises that his guide will show how “almost everybody” or “virtually everyone” can “legally apply for food stamps” or “legally get [food stamps] for free.” (Burton Decl. Atts. D-2, E-2, F-2, G-2 (myfoodstampcard.com); I-3, J-3, K-3, L-3 (allrepc.com)).

On myfoodstampcard.com,³ Sky conveys a sense of urgent opportunity – *i.e.*, consumers should take advantage of a new law, start receiving food stamps, and become “grandfathered in” before curtailment of new enrollees. Specifically, the top of the homepage heralds a supposed recent eligibility expansion:

² Recently, Sky updated allrepc.com, along with two other websites, making them identical. (Burton Decl. ¶ 22; Att. L-2 (allrepc.com); ¶ 34 Att. O-2 (crbcredit.com); ¶ 36, Att. P (dnadebt.com) (all Mar. 2011)).

³ Two of Sky's other websites, www.lifeinsurancereverse.com and www.seniorlifeselementnow.com, also market the food stamp guide and appear to be identical to myfoodstampcard.com. (Burton Decl. ¶ 6, Att. C; ¶ 37, Att. Q; ¶ 38, Att. R). Additionally, Sky controls five other websites containing “foodstampcard” in the URL, but they are not currently operative. (Burton Decl. ¶ 6, Att. C at pp. 4-5).

**IT'S NOW POSSIBLE FOR SMALL BUSINESS
OWNERS/FULL TIME EMPLOYEES/PART TIME
EMPLOYEES/INDEPENDENT CONTRACTORS/COLLEGE
STUDENTS & MORE TO BE ELIGIBLE FOR FOOD STAMPS**

THE NEW LAW EFFECTIVE JULY 2010

...

(Burton Decl. Atts. D-2, E-2, F-2, G-2). Continuing, Sky urgently appeals to consumers' self interest in tough economic times:

Good people have lost their homes and lost their savings trying to do the "right thing" . . . Back in the day, doing the "right thing" would've **NEVER** put good people in the positions that they're in today.

The Myth – getting hundreds in free food stamps every month – month after month – will de-motivate me and be a negative on society.

The Facts

...

1. Over the next few years – this could give you over \$20,000.00 in food – which would free up your other money – to do whatever you want to do. .
2. . . . If enough caring families get the help that they deserve – eventually the government will end this program. . . .
3. . . . Wouldn't it be nice to be grandfathered in (where you still continue to get benefits) even after they shut off this opportunity to future applicants?

...

THE NEW LAW!

VIRTUALLY EVERYONE IS ELIGIBLE!

...

Id. Sky never reveals details about the purported eligibility explosion, but he promises his guide is “structured to get [consumers] automatically approved, hassle free, and *without any risk.*” (*See, e.g.*, Burton Decl. Att. D-2 at p. 4 (emphasis added)).⁴

Sky makes these promises to consumers everywhere, without regard to the purchaser’s state of residency.⁵ Indeed, Sky implies that his food stamp guide will delve into states’ differing eligibility requirements. On allrepc.com, he states that “Although the USDA (United States Department of Agriculture) is a Federal Program. All 50 States have different rules for eligibility for their residence. Get your answers here!” (*See, e.g.*, Burton Decl., Att. I-4 at 3). It is not until after consumers receive Sky’s 96-page guide, which reproduces computer screen shots of Florida’s Internet-based food stamp application module, that they learn it contains information about *only* Florida’s application process and eligibility criteria.⁶ (Burton Decl. ¶¶ 15.e, 28; Atts. H, M).

⁴ To further buttress his legitimacy, for several months Sky prominently displayed a modified Seal of the President of the United States on the homepages of allrepc.com and crbcredit.com. (*See, e.g.*, Burton Decl. ¶ 19, Att. I-1 (allrepc.com, Oct. 2010), ¶ 33, Att. O-1 (crbcredit.com, Feb. 2011) (both showing the coat of arms, minus the encircling words “Seal of the President of the United States”)).

⁵ FTC staff purchased his guide from both websites using consumer addresses in two states other than Florida. (Burton Decl. at ¶¶ 15.c, 23.e).

⁶ On allrepc.com Sky never mentions Florida at all, except for a “shopping cart” page title stating “Florida Consumer Assistance.” As discussed further below, neither Sky’s references to “Florida Consumer Assistance” nor other brief references to Florida buried in the lengthy product description on myfoodstampcard.com make this important fact clear to consumers purchasing the guide.

Most importantly, Sky's claims that "almost everybody" is eligible for food stamps simply ignore the government's long-standing restriction that only low-income households can qualify for food stamps.⁷ Indeed, even in Florida, less than half of residents qualify for food stamps. (Mathers Decl. ¶ 16).

Not surprisingly, Sky's mysterious "July 2010 new law" is a Florida-only development with limited significance. Sky grossly overstates a modest eligibility expansion in Florida that raised the income limit for many applicants to 200 percent of the federal Poverty Guidelines and removed the limit on the total amount of assets an applicant may possess. (Mathers Decl. at ¶¶ 13-15). Significantly, these changes did not relate to other eligibility factors, such as household size or household expenses like rent. Most importantly, the changes did not result in most – let alone "virtually" all – Florida residents becoming eligible for food stamps. (Mathers Decl. at ¶ 16).

More bad news awaits purchasers who plan to follow Sky's supposedly "legal" advice. In the guide, Sky repeatedly instructs consumers to provide the government with "ideal" answers to eligibility questions on the food stamp application. (*See, e.g.*, Burton Decl. Atts. H, M at pp. 3, 4, 5, 6, 7, 8, 93 (identical pagination)). For example, Sky's "ideal" advice includes having high-income residents briefly move out of the household, answering

⁷ In re-authorizing the nation's food stamps program, Congress found "that the limited food purchasing power of *low-income* households contributes to hunger and malnutrition. . . . To alleviate such hunger and malnutrition, a supplemental nutrition assistance program is herein authorized which will permit *low-income* households to obtain a more nutritious diet . . ." 7 U.S.C. § 2011, as amended through Pub. L. 110-246 (Oct. 1, 2008) (emphasis added).

that friends pay the applicants' expenses with "loans" that have to be repaid because "loans are not income," and "go[ing] as high as you can go [on rent] without sounding ridiculous!" (*Id.* Att. H, M at 7, 92, 93 (identical pagination)).⁸ This advice, if followed, could falsely inflate consumers' chances of being deemed eligible and expose them to civil liability and criminal prosecution. (Mathers Decl. at ¶¶ 22-24).⁹

2. Contempt Defendants Collect Advance Fees for Credit Repair Services and Do Not Make Required Debt Relief Disclosures.

On allrepc.com,¹⁰ Sky and his companies bundle his food stamp guide with other purported products and services in a "Financial Solution Package" for a monthly recurring charge of between \$99 and \$139. (Burton Decl. ¶¶ 19-22, 23.b.,c; Atts. I-3, J-3, K-3, L-3). Specifically, Sky offers nine products and services in this package: credit repair services; debt relief services; credit and debt games; the food stamp guide; found money searches;

⁸ Sky attempts to evade liability for his illicit advice with two buried disclosures. First, in a rambling "Terms & Conditions" webpage at myfoodstampcard.com (not found at allrepc.com) that consumers are not required to view prior to purchase, Sky states that applicants should not "give an answer that is inaccurate." (Burton Decl. ¶ 11, Att. D-3; ¶ 12, Att. E-3; ¶ 13, Att. F-3; ¶ 14, Att. G-3). Second, the final page of his 96-page guide contains a similar disclaimer. (*Id.* Att. H, M at p. 96 (identical pagination)). As discussed below, these buried disclaimers fail as a matter of law.

⁹ Florida residents swear under penalty of perjury to their answers on the application. (Mathers Decl. at ¶ 22). Thus, contrary to Sky's instructions to lie, "The ideal answer to questions on the [food stamp] application is the truth," according to Florida DCF staff. (*Id.*)

¹⁰ Sky recently revised the format of allrepc.com, crbcredit.com, and dnadebt.com to make them identical in appearance and written content. *See* footnote 2 above. Still another of Sky's websites, www.samimr.com, redirects consumers to allrepc.com's Financial Solutions Package page where they can buy Sky's product. (Burton Decl. ¶ 6, Att. C; ¶ 30).

secretarial services; advice on foreclosures; Section 8 Housing advice; and college financial aid advice. *Id.* Consumers may purchase the package online merely by providing contact and payment information. (Burton Decl. ¶¶ 23.d-.g). As discussed below, Sky takes immediate payment before performing any credit repair services or fully making required debt relief disclosures. (Burton Decl. ¶¶ 23.e, .f, .g, 24).

Of the nine products and services, Sky features his credit repair and debt relief services most prominently. Indeed, his top two marketing pitches on the website homepage highlight these services with large button-style hyperlinks labeled “Need Your Credit Report Improved?” and “Need Your Debt Reduced To A Low Amount?” (Burton Decl. ¶¶ 19-22, Atts. I-1, J-1, K-1, L-1). Sky elaborates upon his credit and debt services with express promises such as:

- We negotiate your debt at a 60% savings or greater – off the alleged amount owed.
- We will negotiate your unsecured debt for 40 cents on the dollar or less, guaranteed.
- We prepare dispute letters to all 3 Major Credit Bureaus (and Subsidiary Bureaus) every 30-45 days to legally dispute negative trade lines . . .
- We provide credit education and legal tricks to boost your credit score.
- We provide constant, in house credit monitoring, to keep your credit in perfect shape for future credit purchases.

(Burton Decl. Atts. ¶¶ 19-22, Atts. I-3, J-3, K-3, L-3).

Incredibly, despite the monthly membership charges of up to \$139, Sky’s website claims that his much-lauded credit and debt services, but not the other seven products in the package, are actually “free.” *Id.* Belying his “free” assertion, however, Sky pitches several detailed “reasons” to enroll in his Financial Solution Package. *Id.* His top three reasons

address *only* his credit and debt services, not any of the other services bundled in the program. *Id.*

D. Parties to the Current Action: Contempt Defendants

1. Sam Tarad Sky

Sky is an original defendant who serves as the managing member of Allrepcos, CRB, and DNA. (Burton Decl. ¶¶ 42-44, Atts. U-W). Sky operates those entities from Fort Myers, Florida, the same city from which defendants operated in the underlying matter. (DE 1 at p. 3; Burton Decl. ¶ 27; Att. BB). Sky also controls www.myfoodstampcard.com, which he registered on July 4, 2010. (Burton Decl. ¶ 4, Att. A). Since at least October 2010, that website has advertised Sky's food stamp application guide.

2. Allrepcos, LLC

Allrepcos is a Florida limited liability company that Sky founded on March 9, 2009. (Burton Decl. ¶ 42, Att. U). Allrepcos's website is www.allrepcos.com. (*See, e.g.*, Burton Decl. ¶ 22, Att. L-1). As discussed above, that website sells memberships in a "Financial Solution Package," which includes the food stamp guide, as well as credit, debt, and other services, for a monthly recurring charge.

3. Credit Restoration Brokers, LLC

Credit Restoration Brokers ("CRB") is a Florida limited liability company and an original defendant. (Burton Decl. ¶ 43, Att. V). CRB (not Allrepcos, LLC) registered the allrepcos.com website on March 10, 2009. (Burton Decl. ¶ 5, Att. B). Later on July 23, 2010, CRB registered the fictitious business name Florida Consumer Assistance. (Burton Decl. ¶

45, Att. X). Sky recently made CRB's website www.crbcredit.com identical to allrepc.com; thus, CRB now directly advertises the Financial Solution Package. (Burton Decl. ¶ 22, Att. L-2 (allrepc.com); ¶ 34, Att. O-2 (crbcredit.com)).

4. Debt Negotiation Associates, LLC

Debt Negotiation Associates ("DNA"), like CRB, is a Florida limited liability company and an original defendant. (Burton Decl. ¶ 44, Att. W). Sky recently made DNA's website www.dnadebt.com identical to allrepc.com; thus, DNA now directly advertises the Financial Solution Package. (Burton Decl. ¶ 22, Att. L-2 (allrepc.com); ¶ 36, Att. P (dnadebt.com)).

III. Memorandum of Law

A. This Court Has the Authority to Grant the Requested Relief.

The Court has the inherent power to enforce its orders through civil contempt. *Shillitani v. United States*, 384 U.S. 364, 370 (1966). The FTC, as a party to the original action, may invoke the court's powers by initiating a civil contempt proceeding as part of that action. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418 (1911).

A finding of civil contempt is warranted where there is clear and convincing evidence that the contemnor violated an outstanding court order. *See CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992). Here, there is overwhelming evidence that Sky and his companies Allrepc, CRB, and DNA: (1) are bound by and, therefore, have

a duty to comply with the Court's valid and lawful Stipulated Settlement Order; and (2) violated clear and unambiguous provisions of the Stipulated Settlement Order.¹¹

1. Contempt Defendants Are Bound by the Stipulated Settlement Order.

Sky, CRB, and DNA are indisputably bound by the Stipulated Settlement Order because they are parties to the original action and signed the Stipulated Settlement Order after negotiations and representation by counsel. Fed. R. Civ. P. 65(d)(2)(C). Sky personally signed the Stipulated Settlement Order "individually, and as owner, operator, or director" of CRB and DNA on December 7, 2009. (DE 10 at p. 23).

Allreco is also bound by the Stipulated Settlement Order, because it had actual notice of the Final Order and was in active concert or participation with Sky, CRB, and DNA. Fed. R. Civ. P. 65(d)(2)(C). First, it had notice of the Stipulated Settlement Order through Sky, who founded Allreco and controls the company as its CEO. (Burton Decl. ¶ 42, Att. U; ¶ 52, Att. DD). "The knowledge of individuals who exercise substantial control over a corporation's affairs is properly imputable to the corporation." *Schultz v. Applicia, Inc.*, 488 F. Supp. 2d 1219, 1227 (S.D. Fla. 2007); *see also United States v. Route 2, Box 472*, 60 F.3d 1523, 1527 (11th Cir. 1995) (agent's knowledge is imputed to a corporation if the agent is "acting within the scope of his employment and benefitting the corporation").

¹¹ Once a movant meets this initial burden, the burden shifts to the contemnor who must show that he either complied with the order or was excused from complying. *Id.* at 1529; *see also Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990) (contemnor must show a present inability to comply beyond a mere assertion of inability) (citations omitted).

Second, there is no question that Allrepcos acts in concert and participation with Sky, CRB, and DNA. Sky is CEO of Allrepcos, and www.allrepcos.com is one of two primary websites through which Sky, CRB, and DNA market and sell their food stamp guide and credit repair and debt negotiation services. Moreover, the allrepcos.com website was registered by CRB.

2. Sky and His Companies Have Violated Clear and Unambiguous Provisions of the Stipulated Settlement Order.

Sky and his companies violate the clear and unambiguous provisions of the Stipulated Settlement Order through deceptive marketing, collection of advance fees, failure to make required disclosures, and incomplete compliance reports. Specifically, Contempt Defendants: (a) make false and misleading representations to sell their food stamp guide, in violation of Section II; (b) collect advance fees for credit repair services, in violation of Section I.C.; (c) fail to make disclosures about the duration of debt relief negotiations and the likely balance increases that will occur while debts are negotiated, in violation of Sections II.C.2. and II.C.3., respectively; and (d) failed to submit compliance reports required by the Stipulated Settlement Order, in violation of Section X.B.

a. Sky's Misrepresents that Virtually Everyone Can Legally Receive Food Stamps by Following His Advice in Violation of Section II.

Section II of the Final Order prohibits the Contempt Defendants from

in connection with the advertising, *marketing*, promotion, offering for sale, sale, or provision of *any good or service . . . misrepresenting*, or assisting others in misrepresenting, expressly or by implication, any *material fact*, including, but not limited to, misrepresenting . . . [a]ny material aspect of the performance, efficacy, nature, or central characteristic of any good or service.

(DE 10 at pp. 7-8 (emphasis added)). Sky and his companies violate this provision by making the following explicit and implicit material misrepresentations on their websites: (i) due to a recent change in the law, “almost everyone” or “virtually everyone” can receive food stamps by using their guide and (ii) the food stamp guide will show consumers how to receive food stamps “legally,” “automatically,” “hassle free,” and “without any risk.” As discussed below, these claims misrepresent material aspects of the performance, efficacy, nature, or central characteristic of the food stamp guide, because, in fact, the guide does not show how everybody can receive food stamps automatically, hassle-free, or otherwise. Furthermore, far from being “without any risk,” following Sky’s advice would expose consumers to the risk of criminal prosecution for public benefits fraud.¹²

i. Sky’s Food Stamp Guide Does Not Enable Virtually Everyone to Qualify for Food Stamps.

Sky claims that “almost everybody” or “virtually everyone” can receive food stamps by using his guide. This claim is false. As explained above, food stamps are a public benefit only available to the fraction of American households that have incomes below certain thresholds. Most Americans do not qualify for food stamps because they have incomes too high to qualify. In order to bolster the credibility of these misrepresentations, Sky falsely trumpets a “NEW LAW EFFECTIVE JULY 2010” that makes it “NOW POSSIBLE” for

¹² Sky’s claims are material, because they are express and deliberately implied. *FTC v. Wilcox*, 926 F. Supp. 1091, 1098 (S.D. Fla. 1995) (“Express claims or deliberately-made implied claims used to induce the purchase of a particular product or service are presumed to be material.”).

almost everyone to receive food stamps. In fact, no law, effective July 2010, before or after, extends food stamp eligibility to almost everyone. ACCESS Florida, the agency that administers the Florida food stamps program, made a policy change in July 2010 that modestly expanded eligibility in that state, but there was no similar change at the national level. Even after this change, most Floridians remained ineligible to receive food stamps. Furthermore, Florida denied an average of 26,610 food stamp applications per month between August 2010 and January 2011, because the applicants were over-income. (Mather Decl. at ¶ 21). Clearly, “almost everybody” does not qualify for food stamps.

Moreover, Sky falsely implies in his marketing that his food stamp guide will provide helpful information to consumers regardless of where they live, and Sky and his companies market and sell the guide to consumers across the United States. Sky pushes his guide as a national food stamp guide on allrepc.com, suggesting that the guide addresses the various differences among the states’ food stamp programs, explaining that “eligibility requirements differ from state to state,” and touting that

Although the USDA (United States Department of Agriculture) is a Federal Program. All 50 States have different rules for eligibility for their residence. Get your answers here!

In fact, the guide contains information only about the Florida food stamp application.¹³

¹³ On myfoodstampcard.com, Contempt Defendants note that they do business as “Florida Consumer Assistance.” They also refer to the guide as the “Florida Food Stamp Guide,” but only in text following an “Order Here” link to purchase the product. These references do not alter the overall message that the food stamp guide would be useful to consumers nationwide. Indeed, Sky sells the product to consumers regardless of where they
(continued...)

ii. Sky's Food Stamp Guide Puts Consumers at Risk of Civil and Criminal Liability.

Sky and his companies deceptively peddle his food stamp guide as a method “structured to get [consumers] automatically approved [for food stamps], hassle free, and without any risk.” By using his guide, Sky falsely claims, consumers can “legally apply for” and “get [food stamps] for free.” The truth, however, is that following Sky's method would likely do no more than place a consumer at risk of civil or criminal liability.

Sky's food stamp guide is nothing more than a print-out of a highly redacted Florida food stamps application combined with Sky's instructions for giving the “ideal” answers to questions on the application.¹⁴ Sky, with cynical disregard for the truth and his customers' welfare, coaches consumers to lie on their applications, pushing these “ideal” answers as “legal” advice and tactics that over-income consumers should use to “legally and creatively

¹³(...continued)

live. See, e.g., *CFTC v. R.J. Fitzgerald Co., et al.*, 310 F. 3d 1321, 1330, 1341 (11th Cir. 2002) (citations omitted), *cert. denied*, 543 U.S. 1034 (2004) (A “general risk disclosure statement” presented on screen for 45 seconds during a 60-second television commercial was inadequate to overcome an “overall message” that was “objectively misleading.”); *FTC v. Direct Mktg. Concepts, Inc.*, 624 F. 3d 1, 12 (1st Cir. 2010) (To avoid liability, “disclaimers or qualifications in any particular ad” must be “sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression.”) (citing *Removatron Int'l Corp. v. FTC*, 884 F. 2d 1489, 1497 (1st Cir. 1989)).

¹⁴ Nearly 80 of the 96 pages in Sky's food stamp guide merely comprise redacted screen shots of Florida's online food stamps application form. (Burton Decl. Atts. H, M at pp. 9-88 (identical pagination)).

become eligible” for food stamps. According to Sky, applicants should use these “ideal” answers to misrepresent, among other facts, household size, income, and expenses.¹⁵

In fact, Sky’s “ideal” answers are anything but ideal. According to staff at ACCESS Florida, consumers that provide these “ideal” answers and not truthful ones may be committing an illegal act subjecting them to the risk of criminal prosecution. The threat of state action against a food stamp applicant is very real. In 2010, ACCESS Florida disqualified 2,183 cases for suspected fraud and referred 3,982 cases of suspected fraud to law enforcement. (Mathers Decl. at ¶ 24).

Moreover, there is nothing “automatic” about a food stamps application. Whether or not a consumer purchases Sky’s food stamp guide, the consumer must still apply to the particular state agency that administers food stamps where the applicant resides. For example, in Florida, applicants are interviewed by ACCESS Florida and must complete an application requiring extensive information about the applicant, the applicant’s family and

¹⁵ In a rambling Terms and Conditions page accessible via an inconspicuous link at the bottom of myfoodstampcard.com, Sky buries a general disclaimer that warns consumers not to break the law or give inaccurate answers. Such hidden terms are inadequate to correct an advertisement’s overall net impression. *See, e.g., R.J. Fitzgerald*, 310 F. 3d at 1341; *United States v. Prater*, 2003 U.S. Dist. LEXIS 16099, No. 8:02-cv-2052-T-23MSS (M.D. Fla. Aug. 19, 2003); *Direct Mktg. Concepts*, 624 F. 3d at 12. Likewise, the food stamp guide also contains statements tacked on to the end of the document in which Sky admonishes consumers not to break the law. Such belated advice cannot cure Sky’s misrepresentations. These disclaimers come after the consumer purchases the product and do nothing to rectify, much less clarify, Sky’s marketing claims. *Removatron*, 884 F. 2d at 1496 (When determining whether an advertisement is deceptive, “[e]ach advertisement must stand on its own merits . . .”).

household members, as well as the applicant's household income and expenses. (Mathers Decl. at ¶ 11).

Unfortunately, the food stamp guide is far from an automatic, hassle-free, and risk-free method "for caring families [to] get themselves the help that they deserve." Rather, the guide is a roadmap for public benefits fraud.

b. Sky and His Companies Collect Advance Fees for Credit Repair Services in Violation of Section I.

Section I .C. of the Stipulated Settlement Order specifically prohibits Sky and his companies from "charging or receiving any money or other valuable consideration for the performance of any credit repair service before all such services are fully performed." The Stipulated Settlement Order defines "credit repair service" as

any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of: (a) improving any consumer's credit record, credit history, or credit rating; or (b) 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.

(DE 10 at p. 4). As explained above, Sky and his companies perform credit repair services as part of Sky's "Financial Solution Package." Sky's pitch begins with the question, or perhaps, assertion, "Need your credit report improved?" Sky assures consumers that he will employ several methods to do just that. Specifically, he states that he will improve consumers' credit by drafting dispute letters to the major credit bureaus "every 30-45 days to legally dispute negative tradelines." He also promises to "provide constant, in house credit monitoring, to keep your credit in perfect shape for future credit purchases." Finally, he assists consumers

with his “legal tricks to boost your credit score.” Such services, purported to improve or assist a consumer with improving the consumer’s credit report, are quintessential “credit repair services.” *See, e.g., Helms v. Consumerinfo.com, Inc.*, 436 F. Supp. 2d 1220, 1232 (N.D. Ala. 2005) (“Defendant’s representation that it will provide ‘tips’ to help customers improve their credit ratings also falls squarely within the language of the CROA.”); *FTC v. Gill, et al.*, 71 F. Supp. 2d 1030, 1040 & fn 11 (C.D. Cal. 1999), *aff’d*, 265 F. 3d 944 (9th Cir. 2001).

To receive Sky’s credit repair and debt negotiation services, consumers must pay between \$99 and \$139 up front and then continue to pay the same fee on a monthly basis. Likely in an effort to obviate the Stipulated Settlement Order’s prohibition on receiving such payments before performance, Sky describes these services as “free.” In fact, they are not free. Notwithstanding Sky’s offer of a “*a* free consultation” [emphasis added] on allrepc.com, the “free” credit repair services (dispute letters, “constant, in house credit monitoring,” and “legal tricks”) and debt negotiation services come only with the subscription service that must be paid for up-front each month thereafter. Indeed, Sky markets the “Financial Solution Package” as primarily a credit repair and debt negotiations service. For example, in a list on allrepc.com in which Sky details several “reasons” why consumers should subscribe to the financial solution package, his top three address only the supposedly “free” credit and debt services, not any of the other services bundled in the program. Where consumers pay for credit repair services bundled with other services, the credit repair services are not free. *See, e.g., FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d

1320, 1333 (M.D. Fla. 2010) (Defendant’s credit repair services were not “free” when bundled with others for which a fee was charged.).

c. Sky and His Companies Fail to Make Prominent Debt Relief Disclosures, in Violation of Section II.

Section II.C of the Stipulated Settlement Order prohibits Sky and his companies from failing to make certain disclosures “clearly and prominently” whenever they claim that a consumer who purchases their debt relief services

will obtain (a) a specific reduction or specific range of reductions of consumers’ interest rates; or (b) *any specific percentage of reduction*, range of percentages, or words to the equivalent effect of a specific percentage, *including, but not limited to, terms such as “\$0.30 on the dollar” and “\$0.50 on the dollar,”* of the consumer’s total amount of unsecured debt owed at the time the consumer enrolls in the service . . .

((DE 10 at p. 8) (emphasis added)). Specifically, if Contempt Defendants make one of the these triggering representations, they must disclose the “approximate time period before settlements will be achieved on behalf of consumers, based on the prior historical experience of the average consumer who enrolls in a debt relief service” and “[t]hat the consumers’ balances will typically increase during” the time period in which the accounts are negotiated. *Id.* Sections II.C.2, .3 at pp. 8-9.

In direct contravention of the Stipulated Settlement Order, Sky violates this section of the Stipulated Settlement Order by marketing his debt negotiation services with express promises that Sky and his companies will “negotiate your debt at a 60% savings or greater – off the alleged amount owed” and “negotiate your unsecured debt for 40 cents on the dollar or less, guaranteed” without making the required disclosures. Indeed, he discloses nothing to

consumers about the “approximate time period before settlements will be achieved” or that “consumers’ balances will typically increase during this time period.”¹⁶

d. Sky, CRB, and DNA Failed to Send Complete Compliance Reports in Violation of Section X.

Section X.B.1.b of the Stipulated Settlement Order requires Sky to file periodic compliance reports that include, among other things Sky’s

then-current employment status (including self-employment), including the name, address, and telephone numbers of each business that [he] is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of [his] duties and responsibilities in connection with the business or employment.

(DE 10 at p. 18).¹⁷ Nonetheless, in his 180-day report, Sky failed to make any mention of his “affiliation with” his food stamp business or www.myfoodstampcard.com. Rather, he concealed the true “nature” of these businesses, hid the existence of AllrepcO, and declined to include a “detailed description” of his involvement. Sky’s report merely stated that his activities “are geared towards assisting consumers to put themselves in a better financial position. This includes products and possible services.” (Burton Decl. Att. BB). In his annual report, Sky added only the following:

There is no change in any structure or any business that is owned or controlled, with the exception of ALLREPCO. ALLREPCO had previous

¹⁶ As with the credit repair services, Sky proclaims that his “credit and debt advice is always free.” He proclaims that “[y]ou do not pay us!” How a consumer might exercise this option to “not to pay us” is unclear, because as detailed in Section II.A.2.b. above, consumers must purchase the financial solutions package to receive these services.

¹⁷ Sections X.A.2, X.B.2.a, and X.B.2.b require similar reporting of CRB and DNA.

designs of being a referral service, I think at one point a lead marketing service, and is now designed towards a consumers assistance business.

(Burton Decl. Att. CC). In sum, Sky, CRB, and DNA violated Section X.B by continuing to hide their association with the food stamp advice business and by declining to give detailed descriptions of their activities.¹⁸

IV. Relief Requested: Sky and His Companies Should Be Subject to Contempt Sanctions.

“[A] court’s civil contempt power is measured solely by the requirements of full remedial relief.” *United States v. City of Miami*, 195 F.3d 1292, 1298 (11th Cir. 1999). Contempt remedies may include coercing compliance with the order, requiring compensation for losses sustained as a result of the violations, or both. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947); *McGregor v. Chierico* 206 F.3d 1378, 1385 n.5 (11th Cir. 2000).¹⁹

First, if Sky does not cease his violations of the Stipulated Settlement Order, the FTC seeks coercive sanctions, specifically, imprisonment or fines imposed per diem. *See Lawrence v. Goldberg*, 279 F.3d 1294, 1300 (11th Cir. 2002) (affirming contemnor’s continuing incarceration and per diem fine imposed to coerce compliance with the court’s order and until contemnor purges his contempt).

¹⁸ As noted above, Sky recently revised allrepc.com, crbcredit.com, and dnadebt.com. *See* footnote 2 above.

¹⁹ The FTC intends to file, pursuant to Federal Rule of Civil Procedure 60(b), a motion to modify the Stipulated Settlement Order to ban Sky, CRB, and DNA from marketing credit repair, debt negotiation, or public benefits services.

Second, the FTC seeks compensatory sanctions to provide consumers full refunds of any amount they paid Sky for the food stamp guide or the Financial Solution Package.²⁰ Consumers are entitled to full refunds of the entire amount they paid. *See McGregor*, 206 F.3d at 1388-89 (in an FTC contempt action, affirming sanctions in the amount of telemarketer's gross sales) (citing *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 606 (9th Cir. 1993) (“[T]he fraud in the selling, not the value of the thing sold, is what entitles consumers in this case to full refunds.”)).

V. Conclusion

Defendants Sky, CRB, and DNA have once again engaged in deceptive marketing to consumers, with Allrepc in active participation. By deceiving consumers about the food stamp guide, unlawfully requiring payment before performance for credit repair services, and failing to make disclosures about debt relief negotiations, Contempt Defendants have violated central provisions of this Court's Stipulated Settlement Order. In addition, Sky, CRB, and DNA have frustrated efforts to monitor their compliance by refusing to make full reports to the FTC, also in violation of the Court's Stipulated Settlement Order. Accordingly, for the foregoing reasons, the FTC moves that the Court

²⁰ Sky's widespread misrepresentations create a presumption that all of the defendant's customers were harmed and should be fully compensated. *See McGregor*, 206 F.3d at 1388 (In FTC contempt action, “[p]roof of individual reliance by each purchasing customer is not a prerequisite to” full relief.); *See also FTC v. Trudeau*, 579 F.3d 754, 774 (7th Cir. 2009); *FTC v. Kuykendall*, 371 F.3d 745, 765 (10th Cir. 2004).

enter an Order to Show Cause, find Sky and his companies in contempt, and impose the requested sanctions.

Dated: April 12, 2011

s/ Michael J. Davis

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