

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 8:08-cv-2062-T-27MAP

**RCA CREDIT SERVICES, LLC a Florida
Corporation,**

RICK LEE CROSBY, JR., individually,

and BRADY WELLINGTON, individually,

Defendants.

**AMENDED FINAL JUDGMENT AND
PERMANENT INJUNCTION¹**

Summary Judgment in favor of Plaintiff having been entered against Defendants RCA CREDIT SERVICES, LLC. and RICK LEE CROSBY, JR., individually, as to Counts I and III through VII of the Complaint, and the Court having found in favor of Plaintiff and against Defendants RCA CREDIT SERVICES, LLC. and RICK LEE CROSBY, JR., individually, as to Count II of the Complaint after trial, the Court FINDS and CONCLUDES:

1. Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and sections 404(a)(3), 404(b), 405(a), 406(b)(4) and 407(b) of the Credit Organization Act (“CROA”), 15 U.S.C. §§ 1679b(a)(3), 1679b(b), 1679c(a), 1679d(b)(4) and 1679e(b) in connection with the operation of a credit repair organization, as that term is defined in Section 403(3) of CROA, 15 U.S.C. §

¹ This order amends and supersedes a July 28, 2010 Final Judgment and Permanent Injunction (Dkt. 131), which is hereby VACATED.

1679a(3), by advertising, marketing, promotion, offering for sale, and sale of credit repair services, by making untrue or misleading statements to induce consumers to purchase credit repair services, including, but not limited to, the representations that Defendants could improve consumers' credit scores into the 700s in as little as 30 days, and that Defendants could remove any or all negative credit information from credit reports.

2. Defendants violated Section 404(b) of CROA, 15 U.S.C. § 1679b(b), by charging or receiving money or other valuable consideration for the performance of credit repair services that Defendants agreed to perform before such services were fully performed, and violated Section 405(a) of CROA, 15 U.S.C. § 1679c(a), by failing to provide a written statement of "Consumer Credit File Rights Under State and Federal Law," in the form and manner required by CROA, to consumers before any contract or agreement was executed.

3. Defendants violated Section 406(b)(4) of CROA, 15 U.S.C. § 1679d(b)(4) by failing to include on their consumer contracts conspicuous statements regarding the consumers' right to cancel the contracts without penalty or obligation at any time before the third business day after the date on which the consumers signed the contracts.

4. Defendants violated Section 407(b) of CROA, 15 U.S.C. § 1679e(b) by failing to provide a written "Notice of Cancellation," in the form and manner required by CROA, to consumers before any contract or agreement was executed.

5. Defendants are likely to continue to engage in acts and practices in violation of the FTC Act and Credit Organization Act unless they are permanently enjoined.

6. The Federal Trade Commission is entitled to equitable monetary relief against

Defendants in the amount of \$351,529.16 for which Defendants RCA CREDIT SERVICES, LLC. and RICK LEE CROSBY, JR., individually, are jointly and severally liable. Defendant Wellington is jointly and severally liable with Defendants RCA CREDIT SERVICES, LLC. and RICK LEE CROSBY, JR., individually, for \$204,517.43.

PERMANENT INJUNCTION

IT IS ORDERED: Defendants, individually and collectively, whether acting directly or through and in concert with any other person or entity, including through Defendants' successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are **permanently restrained and enjoined from:**

BAN ON CREDIT REPAIR SERVICES

- A. Advertising, marketing, promoting, offering for sale, or selling any credit repair product or service, including publications, e-books and any form of written and oral communication; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any credit repair service.

PROHIBITED CREDIT REPAIR CLAIMS

- C. Claiming, stating, implying or representing, in connection with the advertising, marketing, promotion, offering for sale or sale of any credit repair product or service, in any manner, expressly or by implication that:

1. A consumer can increase their credit score “into the 700s” within 30 days or other short period of time;
2. A consumer can remove any or all negative information from their credit report;
3. A consumer can or should 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, including but not limited to, obtaining an Employer Identification Number or Taxpayer Identification Number.

PROHIBITED REPRESENTATIONS

D. Misrepresenting, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale or sale of any product or service, any material fact, including but not limited to:

1. Any aspect of any credit repair product or service not already prohibited herein;
2. The terms or rates available for any loan or other extension of credit;
3. The nature of any extension of credit, including but not limited to, the provision of any buyer’s club or discount club product or service as credit cards;
4. Any aspect of any debt relief product or service, including but not limited to, the savings a consumer will receive from purchasing, using, or enrolling in such debt relief product or service; the amount of time before which a consumer will receive settlement of the consumer’s

debts; or the reduction or cessation of collection calls;

5. That a consumer will receive legal representation;
6. The nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
7. The total costs to purchase, receive, or use, and the quantity of, the product or service;
8. Any restriction, limitation, or condition to purchase, receive, or use the product or service; and
9. Any aspect of the performance, efficacy, nature, or characteristics of the product or service.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

E. Disclosing, using, or benefitting from sensitive customer information, including the name address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with the sale of credit repair products or services; and

F. 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 products or services or other credit-related products or services. "Sensitive consumer information" shall include (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), and (ii) an 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.

MONETARY JUDGMENT

IT IS FURTHER ORDERED:

G. Judgment in favor of Plaintiff is entered against Defendants RCA CREDIT SERVICES, LLC. and RICK LEE CROSBY, JR., individually, jointly and severally, in the amount of \$351,529.16, of which \$204,517.43 is joint and several with Defendant Wellington. Interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall accrue on the unpaid balance;

H. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. Defendants RCA and Crosby shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in

the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section, and shall have no right to contest the manner of distribution chosen by the Commission; and

I. All sums on deposit with JP Morgan Chase in the name of RCA CREDIT SERVICES, LLC. shall immediately apply toward this judgment. The Commission shall file an appropriate motion identifying the account number and for an order directing said institution to immediately remit said funds to the Commission in accordance with this order.

J. All sums on deposit with Washington Mutual Bank in the name of RICK LEE CROSBY, JR. shall immediately apply toward this judgment. The Commission shall file an appropriate motion identifying the account number and for an order directing said institution to immediately remit said funds to the Commission in accordance with this order.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each 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 each 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. having its representatives pose as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Defendants each 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)).

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 five (5) years from the date of entry of this Order,
 1. Each Individual Defendant shall notify the Commission of the following:
 - a. any changes in such Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. any changes in such 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 such 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 such Defendant's duties and responsibilities in connection with the business or employment; and

c. any changes in such Defendant's name or use of any aliases or fictitious names, within ten (10) days of the date of such change;

2. Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any 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 a Defendant learns less than thirty (30) days prior to the date such action is to take place, such 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, Defendants each 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 they have complied and are complying with this Order. This report

shall include, but not be limited to:

1. For the Individual Defendant:

a. such Defendant's then-current residence address, mailing addresses, and telephone numbers;

b. such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such 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. For all Defendants:

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

D. For the purposes of this Order, Defendants 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. RCA Credit Services, LLC, Rick Lee Crosby, Jr. and Brady Wellington*, Civil Action No. 8:08-cv-2062-T-27JDW-AEP

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send 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 each Defendant.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Corporate Defendant and Individual Defendant for any business in which they, individually or collectively, are the majority owner or directly or indirectly control, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of products 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."

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants must deliver copies of this Order as directed below:

A. Corporate Defendant: Each Corporate Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives 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 such 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. Individual Defendant as control person: For any business that an Individual Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such 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 such 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.

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

D. Defendants 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.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

X. **IT IS FURTHER ORDERED** that each 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.

DISSOLUTION OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the Assets of Defendants RCA CREDIT SERVICES, LLC. and RICK LEE CROSBY, JR., and BRADY WELLINGTON shall remain in effect until this judgment is satisfied, *provided, however*, that Defendants, with the express written consent of counsel for the Commission, may transfer funds to the extent necessary to satisfy the purposes of this order.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction for purposes of construction, modification, and enforcement of this Order. The Clerk shall close this case.

ORDERED ADJUDGED this 14th day of October, 2010.


JAMES D. WHITTEMORE
United States District Judge

Copies:
Counsel of record
Defendants