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~~GARY PLESSMAN, AUSA, CIVIL DIVISION -~~
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
CREDIT FOUNDATION OF AMERICA, a
California corporation; et al,
Defendants.

Case No CV06-3654 ABC(VBKx)

**STIPULATED JUDGMENT
AND ORDER FOR
PERMANENT INJUNCTION
AS TO CREDIT DEFENDERS
OF AMERICA, INC., AND
ROBERT BROWN,
INCLUDING MONETARY
JUDGMENT AS TO CREDIT
DEFENDERS OF AMERICA,
INC.**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), has commenced this action by filing the complaint herein, and Defendants Credit Defenders of America, Inc., and Robert Brown (collectively "Defendants") have waived service of the summons and the complaint and have agreed to settlement of this action without adjudication of any issue of fact or law.

THEREFORE, on the joint motion of the parties, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

FINDINGS

1
2 1. This Court has jurisdiction over the subject matter and the parties
3 pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C.
4 §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

5 2. Venue is proper as to all parties in this District.

6 3. The activities of Defendants are in or affecting commerce, as defined
7 in Section 4 of the FTC Act, 15 U.S.C. § 44.

8 4. The complaint states a claim upon which relief may be granted
9 against Defendants under Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the Federal
10 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and
11 57b.

12 5. Defendants have entered into this Stipulated Judgment and Order for
13 Permanent Injunction (“Order”) freely and without coercion. Defendants further
14 acknowledge that they have read the provisions of this Order and are prepared to
15 abide by them.

16 6. By entering into this Stipulation, the Defendants do not admit to the
17 allegations of the complaint, other than the jurisdictional facts.

18 7. This Order does not constitute, nor shall it be interpreted to
19 constitute, either an admission by the Defendants of any wrongdoing or a finding
20 by the Court that the Defendants have engaged in any violations of law.

21 8. Plaintiff and Defendants hereby waive all rights to appeal or
22 otherwise challenge or contest the validity of this Order.

23 9. Defendants have agreed that this Order does not entitle Defendants to
24 seek or to obtain attorneys’ fees as a prevailing party under the Equal Access to
25 Justice Act, 28 U.S.C. § 2412, and Defendants further waive any rights to
26 attorneys’ fees that may arise under said provision of law.

27 10. Entry of this Order is in the public interest.
28

1 **DEFINITIONS**

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

3 1. "Asset" means any legal or equitable interest in, or right or claim to,
4 any real and personal property, including without limitation, chattels, goods,
5 instruments, equipment, fixtures, general intangibles, leaseholds, mail or other
6 deliveries, inventory, checks, notes, accounts, credits, contracts, receivables,
7 shares of stock, and all cash, wherever located.

8 2. "Assisting" means providing assistance or support to any person or
9 entity including, but not limited to: (a) providing names of, or assisting in the
10 generation of, potential customers including, but not limited to, arranging for the
11 automated delivery of messages to potential customers; (b) performing marketing
12 services of any kind; (c) formulating, drafting, providing, or arranging for the
13 formulation, drafting, or provision of any marketing materials, including any script
14 or other document used when talking to customers or potential customers;
15 (d) providing any training or training materials; or (e) providing information,
16 advice, consultation, or materials regarding business operations, processes, or
17 practices; while knowing or consciously avoiding knowing that the person or
18 entity is engaged in any act or practice that violates this Order or the
19 Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended, 68 Fed. Reg. 4580,
20 4669.

21 3. "Billing information" means any data that enables any person to
22 access a customer's account, such as a credit card, checking, savings, share or
23 similar account, utility bill, mortgage loan account, or debit card.

24 4. "Credit counseling" means providing individualized financial advice
25 to a consumer about his or her finances or credit that helps the consumer
26 understand the financial alternatives available to him or her, with the goal of
27 improving the consumer's knowledge of personal financial management.
28

1 5. “Customer” means any person who is or may be required to pay for
2 goods or services offered through telemarketing.

3 6. “Debt management plan,” “debt management program,” or “DMP”
4 means a plan or program that involves or purports to involve (a) a consumer
5 paying one consolidated periodic payment to the program to cover the debts that
6 are included in the program; and (b) the program disbursing payments to the
7 creditors of the consumer.

8 7. “Debt management services” means:

9 (a) receiving money from a consumer for the purpose of distributing
10 one or more payments to or among one or more creditors of the consumer in full or
11 partial payment of the consumer's obligation;

12 (b) arranging or assisting a consumer to arrange for the distribution
13 of one or more payments to or among one or more creditors of the consumer in full
14 or partial payment of the consumer's obligation;

15 (c) exercising direct or indirect control, or arranging for the exercise
16 of such control, over funds of a consumer for the purpose of distributing payments
17 to or among one or more creditors of the consumer in full or partial payment of the
18 consumer's obligation; or

19 (d) acting or offering to act, for a fee, as an intermediary between a
20 consumer and one or more creditors of the consumer for the purpose of adjusting,
21 settling, discharging, reaching a compromise on or otherwise altering the terms of
22 payment of the consumer's obligation.

23 8. “Defendants” means Credit Defenders of America, Inc., and Robert
24 Brown.

25 9. “Established business relationship” means a relationship between the
26 seller and a person based on: (a) the person’s purchase, rental, or lease of the
27 seller’s goods or services or a financial transaction between the person and the
28 seller, within the eighteen (18) months immediately preceding the date of the

1 telemarketing call; or (b) the person's inquiry or application regarding a product or
2 service offered by the seller, within the three (3) months immediately preceding
3 the date of a telemarketing call.

4 10. "National Do Not Call Registry" means the National Do Not Call
5 Registry, which is the "do-not-call" registry maintained by the Commission
6 pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

7 11. "Seller" means any person who, in connection with a telemarketing
8 transaction, provides, offers to provide, or arranges for others to provide goods or
9 services to the customer in exchange for consideration, whether or not such person
10 is under the jurisdiction of the Commission.

11 12. "Telemarketer" means any person who, in connection with
12 telemarketing, initiates or receives telephone calls to or from a customer or donor.

13 13. The "Telemarketing Sales Rule" or "Rule" means the FTC Rule
14 entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310, attached hereto as
15 Appendix A.

16 14. "Telemarketing" means a plan, program, or campaign which is
17 conducted to induce the purchase of goods or services or a charitable contribution,
18 by use of one or more telephones and which involves more than one interstate
19 telephone call. The term does not include the solicitation of sales through the
20 mailing of a catalog which: contains a written description or illustration of the
21 goods or services offered for sale; includes the business address of the seller;
22 includes multiple pages of written material or illustrations; and has been issued not
23 less frequently than once a year, when the person making the solicitation does not
24 solicit customers by telephone but only receives calls initiated by customers in
25 response to the catalog and during those calls takes orders only without further
26 solicitation. For purposes of the previous sentence, the term "further solicitation"
27 does not include providing the customer with information about, or attempting to
28 sell, any other item included in the same catalog which prompted the customer's

1 call or in a substantially similar catalog. The following acts or practices are exempt
2 from this Rule: telephone calls in which the sale of goods or services or charitable
3 solicitation is not completed, and payment or authorization of payment is not
4 required, until after a face-to-face sales or donations presentation by the seller or
5 charitable organizations, *provided, however*, that this exemption does not apply to
6 the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c).

7 15. “Outbound telephone call” means a telephone call initiated by a
8 telemarketer to induce the purchase of goods or services or to solicit a charitable
9 contribution.

10 16. “Person” means any individual, group, unincorporated association,
11 limited or general partnership, corporation, or other business entity.

12 **ORDER**

13 **I. PROHIBITION AGAINST DECEPTIVE MARKETING PRACTICES**

14
15 **IT IS FURTHER ORDERED** that, in connection with the marketing,
16 providing, or assisting in the marketing or providing of debt management
17 programs, debt management services, or credit counseling, whether directly,
18 indirectly, in concert with others, or through any intermediary, business entity or
19 device, Defendants, and each of them, and their successors, assigns, officers,
20 agents, servants, employees, attorneys, joint venturers, and any other persons in
21 active concert or participation with them who receive actual notice of this Order by
22 personal service or otherwise, whether acting directly or through any corporation,
23 subsidiary, division or other device, are hereby permanently restrained and
24 enjoined from:
25

26 A. Making any false representations that a particular consumer has been
27 pre-approved for participation in a debt management plan with a particular creditor
28

1 or is guaranteed acceptance in a debt management plan at a particular interest rate
2 or payment level by a particular creditor;

3 B. Making any false representations about the benefits that consumers
4 will receive through enrolling in a debt management plan or the timing in which
5 such benefits will be received. This includes misrepresentations that:

6 1. Consumers who purchase debt management services will
7 receive interest rate reductions from particular creditors or that interest charges on
8 credit card debt will be reduced to as low as zero percent;

9 2. Consumers will save money if they purchase debt management
10 services because they will repay their debts for reduced amounts or in a shorter
11 period of time;

12 3. Consumers will receive debt management services before their
13 next credit card billing cycle;

14 4. Consumers will receive help from credit counselors who will
15 provide them with individual credit counseling;

16 5. Enrolling in a DMP will quickly stop or lessen debt collection
17 efforts by consumers' creditors;

18 6. The interest rate on consumers' debts will be reconfigured to be
19 calculated as simple interest rather than compound interest; and

20 7. Consumers will be able to take a charitable tax deduction for
21 payments made for debt management services;

22 C. Making any false representations about the terms and conditions
23 associated with receiving a refund; and

24 D. Making any other false or deceptive representation concerning the
25 provision of debt management programs, debt management services, or credit
26 counseling.

1 **II. PROHIBITION AGAINST DECEPTIVE TELEMARKETING**
2 **PRACTICES**

3 **IT IS FURTHER ORDERED** that, in connection with telemarketing,
4 Defendants, and each of them, and their successors, assigns, officers, agents,
5 servants, employees, attorneys, joint venturers, and any other persons in active
6 concert or participation with them who receive actual notice of this Order by
7 personal service or otherwise, whether acting directly or through any corporation,
8 subsidiary, division or other device, are hereby permanently restrained and
9 enjoined from engaging in, or assisting other persons to engage in:

10 A. Making false or misleading statements concerning the provision of
11 debt management programs, debt management services, or credit counseling;

12 B. Failing to disclose all material restrictions, limitations, or conditions
13 associated with enrolling in a debt management plan prior to collecting any fee,
14 security deposit or other payment from any consumer. This includes disclosing that
15 reductions in interest rate and/or minimum payments are not approved or
16 guaranteed before they have been approved by particular creditors who may
17 approve, modify or reject any particular concession proposed by Defendants for
18 that particular consumer; and

19 C. Making any other false or misleading statements to induce consumers
20 to pay for services or to induce a charitable contribution in violation of the
21 deceptive practices prohibitions of the Telemarketing Sales Rule, 16 C.F.R.
22 § 310.3.

23 ***Provided, however,*** that if the Commission promulgates rules that modify or
24 supersede the Telemarketing Sales Rule, in whole or in part, the Defendants must
25 comply fully and completely with all applicable requirements thereof, on and after
26 the effective date of any such rules.

1 **III. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

2 **IT IS FURTHER ORDERED** that, in connection with telemarketing,
3 Defendants, and each of them, and their successors, assigns, officers, agents,
4 servants, employees, attorneys, joint venturers, and any other persons in active
5 concert or participation with them who receive actual notice of this Order by
6 personal service or otherwise, whether acting directly or through any corporation,
7 subsidiary, division or other device, are hereby permanently restrained and
8 enjoined from engaging in, or assisting other persons to engage in:

9 A. Initiating any outbound telephone call to a person's telephone number
10 on the National Do Not Call Registry of persons who do not wish to receive
11 outbound telephone calls to induce the purchase of goods or services unless:

12 1. The seller has obtained the express agreement, in writing, of
13 such person to place calls to that person. Such written agreement must clearly
14 evidence such person's authorization that calls made by or on behalf of a specific
15 party may be placed to that person, and must include the telephone number to
16 which the calls may be placed and the signature of that person; or

17 2. The seller has an established business relationship with such
18 person and that person has not stated that he or she does not wish to receive
19 outbound telephone calls from the seller;

20 B. Initiating any outbound telephone call to telephone numbers within
21 given area codes without first paying the required annual fees for access to the
22 telephone numbers within those area codes that are included in the National Do Not
23 Call Registry when Defendants do not have the established business relationship or
24 express authorization described in Section III.A of this Order;

25 C. Initiating any outbound telephone call to a person when that person
26 has previously stated that he or she does not wish to receive an outbound telephone
27 call made by or on behalf of the seller whose goods or services are being offered or
28

1 made by or on behalf of the charitable organization for which a charitable
2 contribution is being solicited;

3 D. Engaging in any act or practice that has the effect of denying or
4 interfering, directly or indirectly, with a person's right to be placed on any entity-
5 specific do-not-call list; and

6 E. Engaging in any other act or practice that violates the prohibitions on
7 abusive telemarketing acts or practices in the Telemarketing Sales Rule, 16 C.F.R.
8 § 310.4, the recordkeeping requirements, 16 C.F.R. § 310.5, or the provisions
9 governing fees for access to the National Do Not Call Registry, 16 C.F.R. § 310.8.
10 *Provided, however,* that this Section III shall not apply to any situation where
11 Defendants are engaged in assisting any person that is exempt from complying with
12 the Do Not Call requirements under the Telemarketing Sales Rule, 16 C.F.R.
13 § 310.4(b)(1)(A) and (B).

14 15 **IV. MONITORING CUSTOMER CONTACTS AND SERVICE**

16 IT IS FURTHER ORDERED that Defendants, and each of them, and their
17 successors, assigns, officers, agents, servants, employees, attorneys, joint venturers,
18 and any other persons in active concert or participation with them who receive
19 actual notice of this Order by personal service or otherwise, whether acting directly
20 or through any corporation, subsidiary, division or other device, in connection with
21 the marketing, providing, or assisting in any manner or in any capacity whatsoever
22 in the marketing or providing of debt management programs, debt management
23 services, or credit counseling, whether directly, indirectly, in concert with others,
24 or through any intermediary, business entity or device, are hereby permanently
25 restrained and enjoined from:

26 A. Failing to ensure that, prior to enrolling customers in a debt
27 management program, each telemarketer, whether employed directly by Defendants
28 or by Defendants' agents, is provided with initial and rebuttal scripts and sales

1 materials that are authorized by the debt management services provider and that
2 comply with this Order. Defendants shall require and ensure that each telemarketer
3 uses such scripts and sales materials;

4 B. Failing to take reasonable steps sufficient to monitor and ensure that
5 telemarketers and other personnel, whether employed directly by Defendants or by
6 Defendants' agents, who are engaged in sales or customer service functions,
7 comply with this Order. Such monitoring shall include ensuring that lists of phone
8 numbers that are used to contact consumers include only numbers that are
9 authorized to be called under the Telemarketing Sales Rule. Such monitoring shall
10 also include using non-commissioned employees to listen to a representative
11 sample of the oral presentations made by persons engaged in sales or other
12 customer service functions and keep records regarding any misrepresentations;
13 *provided, however*, that this Section does not authorize or require Defendants to
14 take any steps that violate any federal, state or local laws;

15 C. Failing to maintain and provide personnel, whether employees or
16 independent contractors, who are adequately trained and certified to meet standards
17 that are generally acceptable in the credit counseling profession;

18 D. Failing to maintain and provide adequate procedures for receiving and
19 promptly investigating and responding to consumer complaints;

20 E. Failing to ascertain the number and nature of consumer complaints
21 regarding potentially violative telephone calls or sales practices in which each
22 employee or independent contractor is involved; and

23 F. Failing to take corrective action with respect to any employee or
24 independent contractor who Defendants determine, whether as a result of
25 monitoring or through consumer complaints, is not complying with this Order; such
26 corrective action may include training, disciplining or terminating such employee
27 or independent contractor.

1 **V. USE OF CUSTOMER DATA**

2 **IT IS FURTHER ORDERED** that Defendants, and each of them, and their
3 successors, assigns, officers, agents, servants, employees, attorneys, joint venturers,
4 and any other persons in active concert or participation with them who receive
5 actual notice of this Order by personal service or otherwise, whether acting directly
6 or through any corporation, subsidiary, division or other device, and persons or
7 entities in active concert or participation with them who receive actual notice of
8 this Order, are hereby permanently restrained and enjoined from:

9 A. Selling, renting, leasing, transferring, or otherwise disclosing the
10 name, address, telephone number, billing information, e-mail address or other
11 identifying information of any person who submitted such information to any
12 Defendant in connection with debt management plans, programs, or services, at any
13 time prior to entry of this Order; and

14 B. Using or benefitting from, for commercial purposes, the name,
15 address, telephone number, billing information, e-mail address or other identifying
16 information of any person who submitted such information to any Defendant in
17 connection with debt management plans, programs, or services, at any time prior to
18 entry of this Order;

19 *Provided, however,* that Defendants may disclose such identifying information
20 (i) for the purpose of making payments on debts on behalf of consumers; (ii) with
21 the express written consent of the person whose information is disclosed; (iii) to a
22 law enforcement agency; or (iv) as required or authorized by any law, regulation or
23 court order.

24
25 **VI. MONETARY JUDGMENT**

26 **IT IS FURTHER ORDERED** that:

27 A. A judgment for equitable monetary relief in the amount of \$70,000.00
28 is hereby entered against Defendant Credit Defenders as restitution for consumer

1 injury. Prior to or concurrently with its execution of this Order, Credit Defenders
2 shall turn over the full amount of the restitution to its attorney, who shall hold the
3 entire sum for no purpose other than payment to the Commission after entry of this
4 Order by the Court. Within five (5) days of receipt of notice of entry of this Order,
5 Credit Defenders' attorney shall transfer the restitution payment in the form of a
6 certified check made payable to and delivered to the Commission, or by wire
7 transfer in accordance with directions provided by the Commission. All funds paid
8 pursuant to this Paragraph shall be deposited into a fund administered by the
9 Commission or its agent to be used for equitable relief, including but not limited to
10 consumer redress, and any attendant expenses for the administration of such
11 equitable relief. Credit Defenders shall cooperate in identifying and locating
12 consumers entitled to restitution under this Order. The Commission will use
13 reasonable efforts to distribute restitution funds to consumers. In the event that
14 direct redress to consumers is wholly or partially impracticable or funds remain
15 after redress is completed, the Commission may apply any remaining funds for
16 such other equitable relief (including consumer information remedies) as it
17 determines to be reasonably related to Credit Defenders' practices alleged in the
18 Complaint. Any funds not used for such equitable relief shall be deposited to the
19 U.S. Treasury as disgorgement. Credit Defenders shall have no right to challenge
20 the Commission's choice of remedies under this Section. Credit Defenders shall
21 have no right to contest the manner of distribution chosen by the Commission.

22 B. In the event of default on any payment required to be made by this
23 Section, the entire unpaid amount, together with interest computed under 28 U.S.C.
24 § 1961 -- accrued from the date of default until the date of payment -- shall be
25 immediately due and payable. Credit Defenders agrees that, in such event, the facts
26 as alleged in the complaint filed in this action shall be taken as true in any
27 subsequent litigation filed by Plaintiff or the Commission to enforce their rights
28 pursuant to this Order, including but not limited to a nondischargeability complaint

1 in any subsequent bankruptcy proceeding. Proceedings instituted under this
2 Section are in addition to, and not in lieu of, any other civil or criminal remedies
3 that may be provided by law, including any other proceedings the Plaintiff may
4 initiate to enforce this Order.

5 C. Credit Defenders shall cooperate fully with Plaintiff and the
6 Commission and their agents in all attempts to collect the amount due pursuant to
7 this Section if Credit Defenders fails to pay fully the amount due at the time
8 specified herein. In such an event, Credit Defenders agrees to provide Plaintiff and
9 the Commission with its federal and state tax returns for the preceding two years,
10 and to complete a new standard-form financial disclosure form fully and accurately
11 within ten (10) business days of receiving a request from Plaintiff or the
12 Commission to do so. Credit Defenders further authorizes Plaintiff and the
13 Commission to verify all information provided on its financial disclosure form with
14 all appropriate third parties, including but not limited to financial institutions.

15 D. In accordance with 31 U.S.C. § 7701, Credit Defenders is hereby
16 required, unless it has done so already, to furnish to Plaintiff and the Commission
17 its taxpayer identifying number(s) (employer identification numbers) which shall
18 be used for purposes of collecting and reporting on any delinquent amount arising
19 out of Credit Defenders' relationship with the government.
20

21 VII. ACCURACY OF FINANCIAL INFORMATION

22 **IT IS FURTHER ORDERED** that Plaintiff's and the Commission's
23 agreement to and the Court's approval of this Order are expressly premised upon
24 the truthfulness, accuracy, and completeness of the financial information relating to
25 payments made by and refunds made to Defendants' current and former customers,
26 previously submitted by Defendants to the Commission. If, upon motion by the
27 Plaintiff, this Court finds that any of Defendants' financial information materially
28 misstated the amount of any customer payments or refunds, the Plaintiff may

1 request that this Order be reopened for the purpose of requiring additional
2 restitution from each Defendant who made such misrepresentation or omission;
3 ***provided, however,*** that in all other respects this Order shall remain in full force
4 and effect unless otherwise ordered by this Court; and ***provided further,*** that
5 proceedings instituted under this Paragraph are in addition to, and not in lieu of,
6 any other civil or criminal remedies available by law. Solely for the purposes of
7 reopening or enforcing this Paragraph, Defendants waive any right to contest any
8 of the allegations set forth in the complaint filed in this matter.

9 10 **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

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

14 15 **IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

16 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the
17 date of entry of this Order, Defendants shall deliver copies of the Order as directed
18 below:

19 A. Credit Defenders must deliver a copy of this Order to all of its
20 principals, officers, directors, and managers. Credit Defenders also must deliver a
21 copy of this Order to all of its employees, agents, and representatives who engage
22 in conduct related to the subject matter of this Order. For current personnel,
23 delivery shall be within five (5) days of service of the Order upon Credit
24 Defenders. For new personnel, delivery shall occur prior to them assuming their
25 responsibilities;

26 B. For any business engaged in conduct related to the subject matter of
27 this Order that Robert Brown controls, directly or indirectly, or in which that
28 individual Defendant has a majority ownership interest, Robert Brown must deliver

1 a copy of this Order to all principals, officers, directors, and managers of that
2 business. Robert Brown must also deliver a copy of this Order to all employees,
3 agents, and representatives of that business who engage in conduct related to the
4 subject matter of this Order. For current personnel, delivery shall be within five (5)
5 days of service of this Order upon Robert Brown. For new personnel, delivery
6 shall occur prior to them assuming their responsibilities;

7 C. For any business where Robert Brown is not a controlling person of a
8 business but otherwise engages in conduct related to the subject matter of this
9 Order, Robert Brown must deliver a copy of this Order to all principals and
10 managers of such business before engaging in such conduct; and

11 D. Defendants must secure a signed and dated statement acknowledging
12 receipt of the Order, within thirty (30) days of delivery, from all persons receiving
13 a copy of this Order pursuant to this Section.

14 15 **X. COMPLIANCE REPORTING BY DEFENDANTS**

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

18 A. For a period of three (3) years from the date of entry of this Order,
19 Robert Brown shall notify the Commission of the following:

20 1. Any changes in residence, mailing addresses, and telephone
21 numbers of Robert Brown, within ten (10) days of the date of such change;

22 2. Any changes in employment status (including self-employment)
23 of Robert Brown, and any change in the ownership of Robert Brown in any
24 business entity, within ten (10) days of the date of such change. Such notice shall
25 include the name and address of each business that Robert Brown is affiliated with,
26 employed by, creates or forms, or performs services for; a statement of the nature
27 of the business; and a statement of Robert Brown's duties and responsibilities in
28 connection with the business or employment; and

1 3. Any changes in Robert Brown's name or use of any aliases or
2 fictitious names; and

3 4. Any changes in the corporate structure of Credit Defenders or
4 any business entity that Robert Brown directly or indirectly controls, or has an
5 ownership interest in, that may affect compliance obligations arising under this
6 Order including, but not limited to, a dissolution, assignment, sale, merger, or other
7 action that would result in the emergence of a successor entity; the creation or
8 dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices
9 subject to this Order; the filing of a bankruptcy petition; or a change in the
10 corporate name or address, at least thirty (30) days prior to such change, *provided*
11 that, with respect to any proposed change in the corporation about which Robert
12 Brown learns less than thirty (30) days prior to the date such action is to take place,
13 Robert Brown shall notify the Commission as soon as is practicable after obtaining
14 such knowledge;

15 B. One hundred eighty (180) days after the date of entry of this Order,
16 Defendants shall provide a written report to the Commission, sworn to under
17 penalty of perjury, setting forth in detail the manner and form in which they have
18 complied and are complying with this Order. This report shall include, but not be
19 limited to:

20 1. For Robert Brown:

21 a. The then-current residence address, mailing addresses,
22 and telephone numbers of Robert Brown;

23 b. The then-current employment and business addresses and
24 telephone numbers of Robert Brown, a description of the business activities of each
25 such employer or business, and the title and responsibilities of Robert Brown for
26 each such employer or business; and

27 c. Any other changes required to be reported under
28 Subparagraph A of this Section;

1 2. For all Defendants:

2 a. A copy of each acknowledgment of receipt of this Order,
3 obtained pursuant to Section IX; and

4 b. Any other changes required to be reported under
5 Subparagraph A of this Section;

6 C. For the purposes of this Order, Defendants shall, unless otherwise
7 directed by the Commission's authorized representatives, mail all written
8 notifications to the Commission to:

9 Associate Director of Enforcement
10 Federal Trade Commission
11 600 Pennsylvania Ave., N.W.
12 Washington, D.C. 20580

13 Re: United States of America v. Credit Foundation of America, et al.

14 D. For purposes of compliance reporting and monitoring required by this
15 Order, the Commission is authorized to communicate directly with Defendants.

16 **XI. COMPLIANCE MONITORING**

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

19 A. Within ten (10) days of receipt of written notice from a representative
20 of the Commission, each Defendant shall submit additional written reports, sworn
21 to under penalty of perjury; produce documents for inspection and copying; appear
22 for deposition; and/or provide entry during normal business hours to any business
23 location in such Defendant's possession or direct or indirect control to inspect the
24 business operation;

25 B. In addition, the Commission is authorized to monitor compliance with
26 this Order by all other lawful means including, but not limited to, the following:

27 1. Obtaining discovery from any person, without further leave of
28 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
and

1 2. Posing as consumers or suppliers to any Defendant or any
2 Defendant's employees, or any other entity managed or controlled in whole or in
3 part by any Defendant, without the necessity of identification or prior notice; and

4 C. Each Defendant shall permit representatives of the Commission to
5 interview any employer, consultant, independent contractor, representative, agent,
6 or employee who has agreed to such an interview, relating in any way to any
7 conduct subject to this Order. The person interviewed may have counsel present.
8 **Provided, however,** that nothing in this Order shall limit the Commission's lawful
9 use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
10 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,
11 testimony, or information relevant to unfair or deceptive acts or practices in or
12 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

13 14 **XII. RECORD KEEPING PROVISIONS**

15 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the
16 date of entry of this Order, Defendants, in connection with the provision of debt
17 management programs, debt management services, or credit counseling, are hereby
18 restrained and enjoined from failing to create and retain the following records:

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

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

26 C. Customer files containing the names, addresses, telephone numbers,
27 dollar amounts paid, quantity of items or services purchased, and description of
28

1 items or services purchased, to the extent such information is obtained in the
2 ordinary course of business;

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

5 E. Copies of all sales scripts, training materials, advertisements, or other
6 marketing materials; and

7 F. All records and documents necessary to demonstrate full compliance
8 with each provision of this Order including, but not limited to, copies of
9 acknowledgments of receipt of this Order, required by Section IX, and all reports
10 submitted to the Commission pursuant to Section X.

11

12 **XIII. COMPLETE SETTLEMENT**

13 The undersigned parties, by their respective counsel, hereby consent to entry
14 of the foregoing Order which shall constitute a final judgment and order in this
15 matter. These parties further stipulate and agree that the entry of the foregoing
16 Order shall constitute a full, complete and final settlement of this action.

17

18 **XIV. RETENTION OF JURISDICTION**

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

21

22 **JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and
23 against Defendants, pursuant to all the terms and conditions recited above.

24 SO ORDERED this _____ day of _____, 2006.

25

26

United States District Judge

27

28

1 FOR THE PLAINTIFF:
2 FOR THE UNITED STATES OF AMERICA


3 PETER D. KEISLER
4 Assistant Attorney General, Civil Division
5 U.S. DEPARTMENT OF JUSTICE

6 DEBRA W. YANG
7 United States Attorney
8 LEON W. WEIDMAN
9 Assistant United States Attorney
10 Chief, Civil Division

11

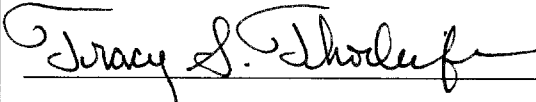
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1 **FOR THE FEDERAL TRADE COMMISSION**

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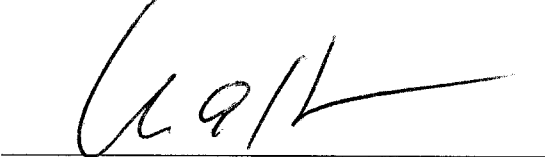
4 Tracy S. Thorleifson
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8 206-220-6350
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18 Robert J. Schroeder
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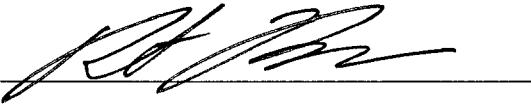
24 

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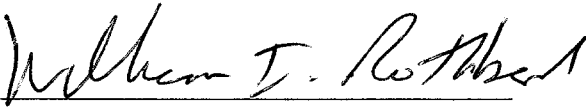
1 **FOR DEFENDANTS:**

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3 

4 Robert Brown

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6 

7 Credit Defenders of America, Inc.

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9 

10 William I. Rothbard
11 Law Office of William I. Rothbard
12 2002 4th Street, Suite 109
13 Santa Monica, CA 90405
14 310-314-4025
15 Attorney for Defendants

1 REASONS FOR SETTLEMENT

2 This statement accompanies the three Stipulated Judgments and Orders for
3 Permanent Injunction ("stipulated orders") in full settlement of an action brought to
4 recover penalties and other equitable relief from defendants for engaging in acts
5 and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the
6 Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. The
7 stipulated orders are with three separate groups of defendants: (1) Credit
Foundation of America, Inc., TTT Marketing Services, Inc., Sure Guard Credit
Corporation, Inc., Anthony Cara, Walter Villaume, and Todd Rodriguez (the "CFA
defendants"); (2) Credit Defenders of America, Inc., and Robert Brown (the
"Credit Defenders defendants"); and (3) Credit Shelter of America, Inc., and Bryan
Taylor (the "Credit Shelter defendants").

8 Pursuant to Section 5(m)(3) of the Federal Trade Commission Act, 15 U.S.C.
9 § 45(m)(3), the Commission hereby sets forth its reasons for settlement by entry of
the stipulated orders:

10 The order with the CFA defendants holds them liable for
11 \$606,745.00 as restitution for consumer injury. The
12 order with the Credit Defenders defendants holds Credit
13 Defenders of America, Inc. liable for \$70,000 as
14 restitution for consumer injury. The order with the
15 Credit Shelter defendants holds them liable for
\$102,540.00, which is suspended based on financial
information provided by these defendants.¹ Together,
these judgments will provide substantial restitution for
consumers who have been injured by the defendants'
alleged practices.

16 In addition, the order with the CFA defendants holds
17 them liable for payment of \$250,000 in civil penalties for
18 their alleged violations of the Commission's TSR. Using
19 this amount as the basis for the civil penalty is
20 appropriate in light of the factors set forth in 15 U.S.C. §
45(m)(1). In addition, the Commission believes that this
penalty will serve as an effective deterrent in this context
for future violations of the TSR.

21 Moreover, the strong injunctive provisions in the
22 stipulated orders will help protect consumers from future
23 harm. For example, the stipulated orders include
24 comprehensive injunctive relief relating to: (1) deceptive
25 practices in the debt management and credit counseling
26 context; and (2) compliance with the TSR provisions
relating to abusive telemarketing practices, including the
Do Not Call provisions.

27 ¹If, however, either of the Credit Shelter defendants are found to have made a
28 material misrepresentation or omission in their financial disclosures, then the
entire judgment amount will become immediately due and payable. *See* Section
VII of the Credit Shelter order.

1 For the foregoing reasons, the Commission believes that settlement by entry
2 of the attached stipulated orders is justified and within the public interest.

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