

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INTEGRATED CREDIT SOLUTIONS,
INC.; FLAGSHIP CAPITAL SERVICES
CORP.; LIGHTHOUSE CREDIT
FOUNDATION, INC.; MARY H. MELCER;
and J. STEVEN MCWHORTER,

Defendants, and

JEFFREY POORMAN and DANIEL M.
MELGAR, SR.,

Relief Defendants.

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND MONETARY SETTLEMENT
BETWEEN PLAINTIFF FEDERAL TRADE COMMISSION AND
DEFENDANT J. STEVEN MCWHORTER**

Plaintiff Federal Trade Commission (“FTC”) commenced this action concurrently with this Stipulated Judgment and Order (“Order” or “Settlement Agreement”) by filing a Complaint for permanent injunctive and other equitable relief pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b). The Complaint alleges that Defendants Integrated Credit Solutions, Inc. (“ICS”), Flagship Capital Services Corp. (“Flagship”), Lighthouse Credit Foundation, Inc. (“Lighthouse”), Mary H. Melcer, and J. Steven McWhorter (“Mr. McWhorter”) engaged in unfair or deceptive acts and practices in promoting and offering credit counseling and debt management plans in violation of Sections 5(a) and 13(b)

of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b). The Complaint also names Jeffrey E. Poorman and Daniel M. Melgar, Sr. as Relief Defendants.

The FTC and Mr. McWhorter, having been represented by counsel and acting by and through such counsel, have consented to the entry of this Order by this Court to avoid the uncertainty of litigation and resolve all matters of dispute between the FTC and Mr. McWhorter without adjudication of any issue of fact or law and without Mr. McWhorter admitting liability for any of the matters alleged in the Complaint. This Order only settles claims as to Mr. McWhorter, and shall not act as a bar to any claim by the FTC nor preclude the FTC from seeking any remedy against any other persons, including without limitation persons who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants or Relief Defendants or persons in any type of indemnification or contractual relationship with Defendants or Relief Defendants.

NOW, THEREFORE, on the joint motion of the FTC and Mr. McWhorter,

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and of the parties. Venue in the Middle District of Florida is proper.
2. The Complaint states a claim upon which relief may be granted.
3. The FTC has the authority under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), to seek the relief it has requested.
4. Mr. McWhorter has waived service of the Summons and Complaint.
5. The activities of Mr. McWhorter as alleged in the Complaint are in or affecting

commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Mr. McWhorter waives all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Mr. McWhorter further waives and releases any claims he may have against the FTC, its employees, representatives, or agents.

7. Mr. McWhorter agrees that this Order does not entitle Mr. McWhorter to seek or to obtain attorneys’ fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, 110 Stat. 847, 863-64 (1996). Mr. McWhorter further waives any right to attorneys’ fees that may arise under said provision of law.

8. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Mr. McWhorter that he engaged in violations of any law or regulation, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.

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

DEFINITIONS

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

1. “Individual Defendants” means Mary H. Melcer and J. Steven McWhorter, individually, collectively, or in any combination, and whether acting directly or through any heir, successor, assign, agent, entity, corporation, subsidiary, division, or other device, unless specified otherwise herein.

2. “Corporate Defendants” means Integrated Credit Solutions, Inc., Flagship Capital Services Corp., and Lighthouse Credit Foundation, Inc.

3. “Defendants” means all of the Individual Defendants and the Corporate

Defendants, individually, collectively, or in any combination.

4. “Relief Defendants” means Jeffrey E. Poorman and Daniel M. Melgar, Sr.

5. “Assisting others” means knowingly providing any of the following goods or services to another entity: (i) serving as an officer, director or consultant; (ii) performing customer service functions including, but not limited to, receiving or responding to consumer complaints; (iii) formulating or providing, or arranging for the formulation or provision of, any script or any other material for communicating with customers or potential customers; (iv) providing names of, or assisting in the generation of, potential customers, including, but not limited to, arranging for the automated delivery of messages to potential customers; (v) performing marketing services of any kind; or (vi) providing any other substantial help or aid.

6. “Credit counseling” means providing individualized financial advice to a consumer about his or her finances or credit that helps the consumer understand the financial alternatives available to him or her, with the goal of improving the consumer’s knowledge of personal financial management, *provided however* that, for purposes of this Order, credit counseling shall not include discussions or communications with consumers concerning the extension of credit or the sale of real estate products or services.

7. “Debt management” means providing any service to a consumer relating to managing his or her debts, *provided however* that, for purposes of this Order, debt management shall not include discussions or communications with consumers concerning the extension of credit or the sale of real estate products or services.

8. “Debt management plan” or “DMP” means a program in which (1) a consumer pays one consolidated periodic payment to the program to cover the debts that are included in the

program; and (2) the program disburses payments to the creditors of the consumer, *provided however* that, for purposes of this Order, debt management plan shall not include discussions or communications with consumers concerning the extension of credit or the sale of real estate products or services.

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

10. “Enrollment fee” or “up-front fee” shall mean a fee or charge paid by a consumer to any of the Corporate Defendants prior to the consumer enrolling in a DMP.

11. “Employment” means work performed for compensation.

12. “Indirectly” means through one or more intermediaries, including, but not limited to, one or more entities and/or persons.

13. “Monthly payment” shall mean a fee or charge paid to Lighthouse for its services in managing a DMP.

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

15. “Representatives” means Defendants’ successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS HEREBY ORDERED that, in connection with the advertising, promoting, marketing, offering, selling or distributing of any goods or services involving credit counseling or debt management, Mr. McWhorter, any business that he directly or indirectly controls or has a majority ownership interest in, and any persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity, including, but not limited to, the following:

A. Falsely or misleadingly representing or assisting others in falsely representing that a person will provide credit counseling services;

B. Falsely or misleadingly representing or assisting others in falsely representing that a person is: (1) a nonprofit entity; or (2) a tax-exempt nonprofit entity under the Internal Revenue Code;

C. Falsely or misleadingly representing or assisting others in falsely representing that a person will provide debt management services that eliminate interest charges on credit card debt, or reduce those interest charges to as low as one-and-one-half percent;

D. Falsely or misleadingly representing or assisting others in falsely representing that a person will reduce the consumer's interest rate before the consumer's next credit card billing cycle;

E. Falsely or misleadingly representing or assisting others in falsely representing that a consumer's monthly payment for credit counseling or to maintain a DMP is tax-deductible; and

F. Falsely or misleadingly representing or assisting others in falsely representing the terms, benefits, performance, efficacy, or costs of goods or services.

II. REFUNDS and TERMINATION

IT IS FURTHER ORDERED that, in connection with the advertising, promoting, marketing, offering, selling or distributing of any goods or services involving credit counseling or debt management, Mr. McWhorter, any business that he directly or indirectly controls or has a majority ownership interest in, and any persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise shall:

A. Refund a consumer's enrollment fee or initial contribution and cancel the enrollment, if the consumer requests, either verbally or in writing, a cancellation or a refund of his or her enrollment fee or initial contribution within seventy-two (72) hours of the consumer's enrollment date; and

B. Cease collecting any monthly or other payments from the consumer no later than seven (7) days after the consumer verbally or in writing asked to terminate his or her DMP.

III. CUSTOMER SERVICE

IT IS FURTHER ORDERED that in connection with the advertising, promoting, marketing, offering, selling or distributing of any goods or services involving credit counseling, or debt management, Mr. McWhorter, any business that he directly or indirectly controls or has a majority ownership interest in, and any persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from:

A. Failing to maintain and provide adequate staffing for a toll-free number and an address that are specifically dedicated to handling consumers' credit counseling and/or debt management questions, and requests for refunds or terminations. The toll-free number shall be staffed at least every Monday through Friday between the hours of 7:00 a.m. to 8:00 p.m., Eastern Time, national holidays excluded. The obligation of Mr. McWhorter to maintain the toll-free number shall expire three (3) years from the date of entry of this Order;

B. Failing to maintain and provide staff that are adequately trained and certified to meet standards that are generally accepted in the credit counseling profession when providing credit counseling services; and

C. Failing to maintain and provide adequate procedures to ensure that consumers' monthly consolidated payments are timely transferred to creditors.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Mr. McWhorter in the amount of \$500,000, which shall be paid as follows by electronic transfer and pursuant to instructions provided by the FTC: (1) \$250,000 within ten (10) days of the date of entry of this Order; and (2) \$250,000 within ninety (90) days of the date of entry of this Order. If the payment due date falls on a weekend or federal holiday, the payment shall be due on the next business day following the weekend or federal holiday.

B. Any and all funds paid to the FTC pursuant to this Order shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief including, but not limited to, consumer redress and any attendant expenses for the administration of any redress

fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the credit counseling and debt management practices as alleged in the Complaint. Any funds not used for such equitable relief shall be disgorged to the United States Treasury. Mr. McWhorter shall have no right to challenge the FTC's choice of remedies under this Subsection.

C. For purposes of this Section and any subsequent proceedings to enforce payments required to be made under Paragraph A, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Mr. McWhorter agrees that the facts as alleged in the Complaint shall be taken as true without the necessity of further proof.

D. In the event of any default in payment that continues for ten (10) days beyond the due date of payment, the entire unpaid amount together with interest, as computed pursuant to 28 U.S.C. § 1961, as amended, from the date of default to the date of payment, shall immediately become due and payable.

E. Notwithstanding any other provision of this Order, if Mr. McWhorter fails to meet the payment obligation set forth above, he shall pay the costs and attorneys' fees incurred by the FTC and its agents in any attempts to collect amounts due.

F. All funds paid pursuant to this Order are equitable monetary relief, solely remedial in nature, and shall not be deemed a fine, penalty, punitive assessment, or forfeiture.

V. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Mr. McWhorter, within five (5) business days after receipt of this Order as entered by the Court, must submit to the FTC a truthful sworn statement

acknowledging receipt of this Order.

VI. DISTRIBUTION OF ORDER BY MR. MCWHORTER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Mr. McWhorter shall deliver copies of the Order as directed below:

A. For any business involved in credit counseling and/or debt management that Mr. McWhorter controls, directly or indirectly, or in which he has a majority interest, Mr. McWhorter must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Mr. McWhorter must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in credit counseling or debt management. For current personnel, delivery shall be within five (5) days of service of this Order upon Mr. McWhorter. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business where Mr. McWhorter is not a controlling person of the business but he otherwise engages in credit counseling and/or debt management, Mr. McWhorter must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

C. Mr. McWhorter 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.

VII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Mr. McWhorter, any business entity in which he has a majority ownership interest or

directly or indirectly controls, their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and engage in credit counseling and/or debt management, are hereby restrained and enjoined from failing to create and retain the following records:

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

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

C. Customer files containing the names, addresses, telephone 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, or other marketing materials; and

F. Copies of acknowledgments of receipt of this Order required by Section VI.C, and all reports submitted to the FTC pursuant to Section IX.

VIII. 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 three (3) years from the date of entry of this Order:
 - (1) Mr. McWhorter shall notify the FTC of the following:
 - (a) Any changes in his residence, mailing address, and telephone number within ten (10) days of such change;
 - (b) Any changes in his employment status (including self-employment) and any change in his ownership of 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 Mr. McWhorter is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and
 - (c) Any changes in his name or use of any aliases or fictitious names.
 - (2) Mr. McWhorter shall notify the FTC of any changes in any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance with obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or

practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change about which Mr. McWhorter learns less than thirty (30) days prior to the date such action is to take place, he shall notify the FTC as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Mr. McWhorter shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. The report shall include, but not be limited to:

- (1) The then-current residence address, mailing address, and telephone numbers of Mr. McWhorter;
- (2) The then-current employment and/or business address and telephone numbers of Mr. McWhorter as well as, for each employer or business, a description of its business activities and the title and responsibilities of Mr. McWhorter for that business;
- (3) Any other changes required to be reported under Subsection A of this Section; and
- (4) A copy of each acknowledgment of receipt of this Order obtained pursuant to Section VI.C.

C. For purposes of the compliance reporting and monitoring required by this Order, the FTC is authorized to communicate directly with Mr. McWhorter, who may have an attorney

participate, at his option.

IX. COMPLIANCE MONITORING

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

A. Within fifteen (15) days of receipt of written notice from a representative of the FTC, Mr. McWhorter shall: (1) submit additional written reports, sworn to under penalty of perjury; (2) produce documents for inspection and copying; (3) appear for deposition at a reasonable time and place; and/or (4) provide entry during normal business hours to any business location in his possession or direct or indirect control for inspection of any business operation with which Mr. McWhorter is involved.

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

- (1) Obtaining discovery from any person, without further leave of Court, using procedures prescribed by Fed.R.Civ.P. 30, 31, 33, 34, 36, and 45;
- (2) Posing as consumers to Mr. McWhorter, his employees, or any entity owned, managed, or controlled in whole or in part by Mr. McWhorter, without the necessity of identification or prior notice; and
- (3) Conducting interviews relating in any way to any conduct subject to this Order of any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview. Mr. McWhorter shall permit representatives of the FTC to conduct such interviews. The person interviewed may have counsel present.

C. Nothing in this Order shall limit Mr. McWhorter's ability, after attempting to resolve a dispute without court action and for good cause shown, to file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c).

D. Nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 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)).

X. TAXPAYER IDENTIFICATION NUMBERS

IT IS FURTHER ORDERED that Mr. McWhorter is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC his taxpayer identification number(s) (social security number and/or employer identification number), which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of the relationship of Mr. McWhorter with the Federal Trade Commission.

XI. NOTIFICATIONS

IT IS FURTHER ORDERED that, for purposes of this Order, Mr. McWhorter, or his authorized representative, shall, unless otherwise directed by the FTC or its authorized representatives, mail all written notifications to the FTC to:

Associate Director, Division of Enforcement
Federal Trade Commission
601 New Jersey Avenue, N.W.
Mail Stop NJ-2122
Washington, D.C. 20580
Re: FTC v. Integrated Credit Solutions, Inc. et al.

All notices shall be deemed timely if mailed on the date they are due under this Order.

XII. COSTS AND ATTORNEYS FEES

IT IS FURTHER ORDERED that all parties to this Order will bear their own costs and attorneys fees incurred in connection with this action.

XIII. RETENTION OF JURISDICTION


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

IT IS SO ORDERED.

Dated: _____

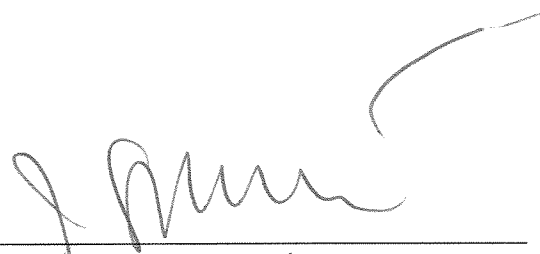
UNITED STATES DISTRICT COURT JUDGE

STIPULATED AND AGREED TO BY:

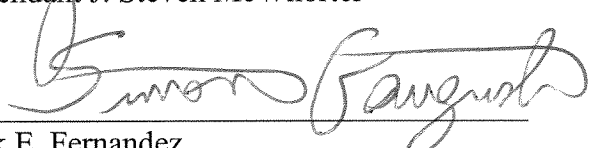


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