

to the date of entry of this Consent Decree and wit

9. The parties shall each bear their own costs and attorneys' fees incurred in this action. The Settling Defendants have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412.

I. CIVIL PENALTY

A. Defendan

II. RIGHT TO REOPEN

IT IS FURTHER ORDERED that by agreeing to this Decree, the Settling Defendants reaffirm and attest to the truthfulness, accuracy, and completeness of all financial information heretofore provided by each of them to Plaintiff and/or the Commission. The Settling Defendants acknowledge that the Plaintiff's agreement to this Decree, which requires payment of less than the full amount of the civil penalty, is expressly premised upon the truthfulness, accuracy, and completeness of the Settling Defendants' representations regarding their financial condition as set forth in the sworn financial statements executed by Defendant Albert S. Bastian on September 22, 2008, October 17, 2008, June 8, 2009, and June 18, 2009, with attachments (including tax returns), and the sworn financial statements executed by Defendant Edward L. Hurt, III on September 12, 2008, September 27, 2008, June 8, 2009, and June 12, 2009, with attachments (including tax returns); (collectively, the "Financial Statements"), which contain material information upon which the Plaintiff and the Commission relied on in negotiating and agreeing to the terms of this Decree. If, upon motion by the Plaintiff, this Court finds that one or more Settling Defendants failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the Financial Statements, the Court shall enter judgment against the offending Settling Defendant(T d (h)Tj 5.16 u

owed to the Settling Defendants, to transfer the assets or funds to the Plaintiff in full or partial satisfaction of that judgment.

Provided, however, that in all other respects this Decree shall remain in full force and effect unless otherwise ordered by the Court; and provided further, that proceedings initiated under this Paragraph are in addition to, and not in lieu of, any other civil or criminal penalties as may be provided by law, including any other proceedings the Plaintiff may initiate to enforce this Decree. For purposes of this Section, Settling Defendants waive any right to contest any of the allegations pertaining to them in the Complaint.

III. INJUNCTION

Defendants Bastian and Hurt, their agents, employees, and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with acting as a "debt collector" in the collection of a "debt" from a "consumer," as those terms are defined in Section 803(6), (5) and (3), respectively, of the FDCPA, 15 U.S.C. § 1692(6), (5) and (3), are hereby permanently restrained and enjoined from taking the following actions:

Violating FTC Act

- A. Misrepresenting to consumers, expressly or by implication, that:
1. Nonpayment of a debt will result in garnishment of a consumer's wages;
 2. Nonpayment of a debt will result in a consumer's property being seized or attached or result in a consumer's arrest;
 3. The individuals who act as agents or otherwise on behalf of the Settling Defendants, are attorneys or that any communication is from an attorney

when such individuals are not attorneys and such communications are not from attorneys; and

4. Legal action will be taken against a consumer;

B. Making a misrepresentation to consumers, expressly or by implication, about the consequences of paying or not paying a debt, in whole or in part;

C. Making any material misrepresentation, expressly or by implication, to collect or to attempt to collect a debt or obtain information concerning a consumer;

D. Making any withdrawals from consumers' bank accounts without obtaining the consumers' express informed consent;

Violating FDCPA

E. Using unfair or unconscionable means to collect or attempt to collect any debt, in violation of Section 808 of the FDCPA, 15 U.S.C. § 1692f including, but not limited to:

1. Making withdrawals from consumers' bank accounts without obtaining the consumers' express informed consent, in violation of Section 808 of the FDCPA, 15 U.S.C. § 1692f and

2. Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument, in violation of Section 808(4) of the FDCPA, 15 U.S.C. § 1692f(4);

F. Except as provided in Section 804 of the FDCPA, communicating with any person other than the consumer, the attorney of the consumer, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector, in connection with the collection of a debt, unless the Settling Defendants have the prior consent of the consumer given directl

competent jurisdiction, or the Settling Defendants can show that such communication is reasonably necessary to effectuate a post judgment judicial remedy, in violation of Section 805(b) of the FDCPA, 15 U.S.C. § 1692(b);

G. When communicating with persons other than the consumer for the alleged purpose of acquiring location information about the consumer:

1. Stating that the consumer owes a debt, in violation of Section 804(2) of the FDCPA, 15 U.S.C. § 1692(b~~2~~); or
2. Communicating with third parties more than once, unless requested to do so by such person or unless the Settling Defendants have a reasonable belief that the earlier response of such person is erroneous or incomplete and that the person now has correct or complete location information to provide, in violation of Section 804(3) of the FDCPA, 15 U.S.C. § 1692(b~~3~~);

H. Using any false, deceptive, or misleading representations or means in connection with the collection of any debt, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e including, but not limited to:

1. Falsely representing or implying that any individuals, acting as agents of the Settling Defendants, or otherwise on behalf of the Settling Defendants, that contact consumers are attorneys or that any communication is from an attorney when such individuals are not attorneys and such communications are not from attorneys, in violation of Section 807(3) of the FDCPA, 15 U.S.C. § 1692(e~~3~~);
2. Representing or implying that nonpayment of a debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or

sale of any property or wages of any person, unless at the time of the representation, such action is lawful and the Settling Defendants or the

creditor intend to take such action, in violation of Section 807(4) of the

FDCPA, 15 U.S.C. § 1692e (PA)Tj 14.94 0 Td (, 15 Tj 8.22 0 Td (PA)To39j 14.94 0 .S

consumer given directly to the Settling Defendants, or the express permission of a court of competent jurisdiction, in violation of Section 805(a)(3) of the FDCPA, 15 U.S.C. § 1692(a)(3);

J. Communicating with a consumer at any unusual time or place or a time or place known or which should be known by the Settling Defendants as inconvenient to the consumer, including, but not limited to: (1) communicating with the consumer before 8:00 a.m. or after 9:00 p.m. at the consumer's location, and (2) communicating with the consumer at the consumer's place of employment, when the Settling Defendants know or should know that such communications are inconvenient, in violation of Section 805(a)(1) of the FDCPA, 15 U.S.C. § 1692(a)(1);

K. Engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person, in violation of Section 806 of the FDCPA, 15 U.S.C. § 1692d, including, but not limited to:

1. Using or threatening to use violence or other criminal means to harm the physical person, reputation, or property of any person, in violation of Section 806(1) of the FDCPA, 15 U.S.C. § 1692d(1);
 2. Using obscene or profane language, or language the natural consequence of which is to abuse the hearer, in violation of Section 806(2) of the FDCPA, 15 U.S.C. § 1692d(2); or
 3. Causing a telephone to ring, or engaging a person in telephone conversations, repeatedly or continuously, with intent to annoy, abuse, or harass, in violation of Section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5);
- and/or

L. Engaging in any other act or practice that would violate the FDCPA, 15 U.S.C. § 1692, as attached and as it may be hereafter amended.

IV. NOTICE REQUIREMENTS

For a period of five (5) years from the date of entry of this Decree, Defendants Bastian and Hurt, their agents, and/or employees, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with acting as a "debt collector" in the collection of a "debt" from a "consumer," as those terms are defined in Section 803(6), (5) and (3), respectively, of the FDCPA, 15 U.S.C. § 1692(6), (5) and (3), shall deliver notice as directed below:

A. Defendants Bastian and Hurt as control persons: For any business which is engaged in the collection of "debts" from "consumers," as those terms are defined in Section 803(5) and (3), respectively, of the FDCPA, 15 U.S.C. § 1692(5) and (3), that Defendants Bastian or Hurt control, or in which such Defendants have a majority ownership interest, such Defendants must:

1. Make the following disclosure clearly and conspicuously on each written collection communication that is sent to a consumer for the purpose of collecting a debt:

Federal law prohibits certain methods of debt collection, and requires that we treat you fairly. You can stop us from contacting you by writing a letter to us that tells us to stop the contact. Sending such a letter does not make the debt go away if you owe it. Once we receive your letter, we may not contact you again, except to let you know that there won't be any more contact or that we intend to take a specific action.

If you have a complaint about the way we are collecting this debt, please write to our CONTACT CENTER, [current physical address], email us at [current email address], or call us toll-free at [current phone number] between 9:00 A.M. Eastern Time and 5:00 P.M. Eastern Time Monday - Friday.

The Federal Trade Commission, 500 U.S. 120 (2001), 521 F.2d 1000 (10th Cir. 1975), 822 F.2d 1000 (10th Cir. 1987), 220 F.3d 1000 (10th Cir. 2000)

for any purpose other than to obtain location information about the consumer.

Section 804 of the Act says that, when communicating with other persons to acquire location information, you shall not state that such consumer owes any debt. You also shall not communicate with any such person more than once unless requested to do so by the person or unless you reasonably believe that an earlier response of that person was erroneous or incomplete and that such person now has correct or complete location information to provide to you.

Section 806 of the Act states that you may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

Section 807 of the Act prohibits you from representing or implying that any action, including legal action, will be taken unless at the time of the representation, such action is lawful and there is a clear intent to take such action. Further, Section 807 of the Act prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

Section 808 prohibits any unfair or unconscionable means to collect a debt, including withdrawing funds from a consumer's bank account without obtaining the consumer's express informed consent. It also prohibits depositing postdated checks prior to the date on such checks.

Individual debt collectors may be financially liable for their vi

defined in Section 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C. § 1692(6), (5), and (3), this section shall not apply.

V. DISTRIBUTION OF DECREE AND FDCPA BY SETTLING DEFENDANTS

For a period of three (3) years from the date of entry of this Decree, Defendants Bastian and Hurt, their agents, employees, and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, shall deliver copies of this Decree and the FDCPA as directed below:

A. Defendants Bastian and Hurt as control persons: For any business which is engaged in the collection of "debts" from "consumers," as those terms are defined in Section 803(5) and (3), respectively, of the FDCPA, 15 U.S.C. § 1692(5) and (3), that Defendants Bastian or Hurt control, or in which such Defendants have a majority ownership interest, such Defendants must deliver copies of this Decree and the FDCPA to all principals, officers, directors, and managers of that business. Such Defendants must also deliver copies of this Decree and the FDCPA to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Decree. For current personnel, delivery shall be within five (5) days of service of this Decree upon Defendants Bastian and Hurt. For new personnel, delivery shall occur prior to their assuming their responsibilities.

B. Defendants Bastian and Hurt as employees or non-control persons: For any business where Bastian or Hurt is not a controlling person of that business but otherwise engages in conduct as a "debt collector" in the collection of a "debt" from a "consumer," as those terms are defined in Section 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C. § 1692(6), (5), and

(3), such Defendant must deliver copies of this Decree and the FDCPA to all principals and managers of such business before engaging in such conduct.

C. Defendants Bastian and Hurt must secure a signed and dated statement acknowledging receipt of this Decree and the FDCPA, within thirty (30) days of delivery, from all persons receiving copies of the Decree and the FDCPA pursuant to this Section.

VI. RECORD KEEPING PROVISIONS

For a period of six (6) years from the date of entry of this Decree, Defendants Bastian and Hurt, their agents, employees, and those persons in active concert or participation with them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with any business involving the collection of debts from consumers, where any Settling Defendant is the majority owner of the business, or controls the business, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records (including but not limited to) for the period of 2012 to 2015.

- b. Any changes in Defendant's employment status (including self-employment), and any change in 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 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 Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in Defendant's name or use of any aliases or fictitious names;
2. Each Settling Defendant shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that such 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 Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

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

1. Defendant's then-current residence address, mailing addresses, and telephone numbers;
2. Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant's duties and responsibilities in connection with the business or employment; and
3. Any other changes required to be reported under Subsection A of this Section.

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

D. For the purposes of this Order, Settling 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: United States v. Academy Collection Service, Inc, et al., 208-CV-1576

has agreed to such an interview, relating in any way to any conduct subject to this Decree. The person interviewed may have counsel present.

Provided, however, that nothing in this Decree 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 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)).

IX. ACKNOWLEDGMENT OF RECEIPT OF DECREE BY SETTLING DEFENDANTS

Defendants Bastian and Hurt within five (5) business days of receipt of this Decree as entered by the Court, must each submit to the Commission a truthful sworn statement acknowledging receipt of this Decree.

X. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Decree.

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

DATE: September 8, 2009



UNITED STATES DISTRICT JUDGE

The Plaintiff and Defendants Bastian and Hurt, by their respective counsel, hereby consent

to the terms and conditions of the Consent Decree set forth above, which shall constitute a final



