

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Federal Trade Commission,

Case No. 3:08-cv-1001

19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, Section 410(b) of the Credit Repair Organizations Act, 15 U.S.C. § 1679h(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108.

FINDINGS

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendants.
2. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
3. The FTC has authority to seek the relief it has requested and the Complaint states a claim upon which relief may be granted against Defendants under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b, Section 410(b) of the Credit Repair

consumer with regard to any activity or service the purpose of which is to improve a consumer's credit record, credit history, or credit rating.

5. **“Credit-related products, programs, or services”** means any product, program, or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, loans, or financing, or as a method to consolidate or liquidate debts.

6. **“Customer”** means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by the Defendants.

7. **“Individual Defendants”** means Latrese Hargrave and Kevin Edward Wade or any alias used by these individuals.

8. **“Corporate Defendant”** means Latrese & Kevin Enterprises Inc., also doing business as Hargrave & Associates Financial Solutions, and its successors, including but not limited to Kevetrese Enterprises, Inc., and assigns or any other name under which it does business.

9. **“Defendants”** mean the Individual Defendants and the Corporate Defendant, individually, collectively, or in any combination.

10. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), 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 non-identical copy is a

affiliate or other device, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

A. That Defendants can improve substantially consumers' credit profiles and credit scores by permanently removing negative information from consumers' credit reports, even where such information is accurate and not obsolete;

B. That after paying a fee, Defendants will provide consumers with or arrange for consumers to receive a major credit card, such as a MasterCard or Visa;

C. Their ability to otherwise improve or otherwise affect a consumer's credit report or profile or ability to obtain credit;

D. The total cost to purchase, receive, or use the goods or services;

E. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services;

F. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services; and

G. Any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services.

II. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE CREDIT REPAIR ORGANIZATIONS ACT

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any credit repair service to consumers, Defendants,

and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from violating, or assisting others in violating, the Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j, including, but not limited to:

A. By making or using untrue or misleading representations to induce consumers to purchase their services, including, but not limited to, misrepresenting that a credit repair organization can improve substantially consumers' credit reports or profiles by permanently removing negative information from consumers' credit reports, even where such information is accurate and not obsolete, in violation of Section 404(a)(3), 15 U.S.C. § 1679b(a)(3); or

B. By charging or receiving money or other valuable consideration for the performance of credit repair services, before such services are fully performed, in violation of Section 404(b), 15 U.S.C. § 1679b(b).

III. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any credit-related product or service, Defendants, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division,

affiliate or other device, are hereby permanently restrained and enjoined from violating, or assisting others in violating, the Telemarketing Sales Rule, 16 C.F.R. § 310, as presently enacted or as it may hereafter be amended, by, including, but not limited to:

A. Requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when they have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit, in violation of 16 C.F.R. § 310.4(a)(4), or

B. Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sales offer, in violation of 16 C.F.R. § 310.3(a)(2)(iii).

IV. PROHIBITION ON COLLECTING ACCOUNTS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from attempting to collect, collecting, selling, or assigning, or otherwise transferring any right to collect payment for any credit repair services from any consumer who purchased or agreed to purchase credit repair services from any Defendant prior to the entry of the Temporary Restraining Order with Asset Freeze and Other Equitable Relief and Order Setting Preliminary Injunction Hearing (Dkt. No. 18) on October 23, 2008.

V. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, email address, Social Security number, credit card number, bank account number, date of birth, or other identifying or financial information of any person about whom any Defendant obtained such information in connection with the activities alleged in the Complaint; and

B. Benefitting from or using the name, address, telephone number, email address, Social Security number, credit card number, bank account number, date of birth, or other identifying or financial information of any person about whom any Defendant obtained such information in connection with the activities alleged in the Complaint.

, , , , , that Defendants may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

VI. DISPOSAL OF SENSITIVE CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting

directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from 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 services or other credit-related services.

6. Bank of America shall, within five (5) business days of the date of entry of this Order, transfer to the FTC all assets held on account for Defendant Latrese Hargrave.

C. Defendants shall remain jointly and severally liable to pay to the FTC for equitable monetary relief in an amount equal to the \$7,443,742.00 judgment, less any part of that judgment that was collected pursuant to subsection B and Section VIII.

D. Funds paid over to the FTC or its agents pursuant to this Final Order, shall be deposited into a fund administered by the FTC or its designated representative to be used for equitable relief, including but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. Defendants shall cooperate fully to assist the FTC in identifying consumers who may be entitled to redress pursuant to this Order. In the event that direct redress to consumers is wholly or partially impracticable, or funds remain after redress is completed, the FTC may apply funds for any other equitable relief (including consumer information remedies) that it determines to be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the U.S. Treasury as disgorgement. Defendants shall have no right to challenge the FTC's choice of remedies under this Section.

E. The facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the FTC to enforce its rights to any payment or money judgment pursuant to this Final Order, including but not limited to a nondischargeability complaint in any bankruptcy case.

Furthermore, the facts alleged in the complaint establish all elements necessary to sustain an action pursuant to, and that this Final Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S. C. § 523(a)(2)(A).

FTC, 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 FTC 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. posing 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 FTC 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.

, , , , , , that 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, 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. 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 FTC of the following:

organization; a dissolution, assignment, sale, merger, or other action; the creation or

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 FTC 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 FTC's authorized representatives, send by overnight courier all reports and notifications required by this Order to the FTC to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580

RE: *F C* & *E I*
Civil Action No. 3:08-cv-01001-MMH-JRK

, 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 FTC at: DEBrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order, the FTC is authorized to communicate directly with each Defendant.

XI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendants, and any business in which an Individual Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, 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, 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.”

XII. 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

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.

XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

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 FTC a truthful sworn statement acknowledging receipt of this Order. The Acknowledgment submitted shall conform to Attachment A.

XIV. DISSOLUTION OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the Assets of Defendants shall remain in effect until the Defendants have taken all the actions required by the Section VII titled “Monetary Judgment and Consumer Redress,” , , , , , , , , , that Defendants, with the express written consent of counsel for the FTC, may transfer funds to the extent necessary to make all payments required by Section VII. Once Defendants have fully complied with the requirements of Section VII, the freeze against the Assets of Defendants shall be lifted permanently. A financial institution shall be entitled to rely upon a letter from Plaintiff stating that the freeze on the assets of Defendants has been lifted.

XV. 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: January 27, 2010

s/Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge