

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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THE PEOPLE OF THE STATE OF NEW
YORK, by ELIOT SPITZER, Attorney
General of the State of New York,

Petitioner,

-against-

AFFIRMATION

APPLIED CARD SYSTEMS, INC., and
CROSS COUNTRY BANK, INC.,

Respondents.

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MARK D. FLEISCHER, an attorney duly admitted to practice before the courts of this State, makes the following affirmation under penalties of perjury:

1 I am an Assistant Attorney General in the office of Eliot Spitzer, Attorney General of the State of New York, assigned to the Bureau of Consumer Frauds and Protection.

2. I am familiar with the facts and circumstances of this proceeding and submit this affirmation in support of petitioner's application for an Order and Judgment, inter alia, permanently enjoining respondents from engaging in deceptive, fraudulent and illegal business practices, and awarding restitution and damages to injured consumers, and penalties and costs to the State of New York.

3. The facts set forth in this affirmation are based upon information contained in the files of the Bureau of Consumer Frauds and Protection, including business records prepared and maintained by respondents in the regular and ordinary course of business.

INTRODUCTION

4. The Attorney General initiated an investigation into the business practices of Cross Country Bank, Inc. (“Cross Country”) and Applied Card Systems, Inc. (“ACS”) (hereinafter collectively referred to as “respondents”) after receiving over three hundred complaints alleging that respondents engaged in unlawful and deceptive business practices in connection with their consumer credit businesses.

5. The investigation revealed that respondents violate Executive Law § 63(12), and General Business Law (“GBL”) Articles 22-A and 29-H, by repeatedly and persistently engaging in a variety of deceptive and unlawful credit and debt collection practices. Respondents target consumers with poor credit histories and deceptively induce them to enter into onerous and confusing credit card agreements. These credit agreements require that consumers pay high fees and costs for the privilege of receiving only a minimal amount of useable credit, at repayment terms that are difficult--if not impossible--for many consumers to comply with. Respondents also fraudulently induce consumers with whom they enter into credit card agreements to enroll in third party fee based membership programs that provide little or no benefit to New York consumers. When consumers become delinquent on their account payments, as thousands have, respondents employ harassing, abusive and illegal collection tactics in an attempt to collect payments.

6. The Attorney General has commenced this proceeding to enjoin respondents from engaging in these deceptive, fraudulent, and illegal practices, to obtain restitution and damages for consumers injured by these practices, and to obtain civil penalties and costs.

FACTS

7. Cross Country is a financial institution chartered by the State of Delaware and insured by the Federal Deposit Insurance Corporation (“FDIC”), whose primary business is issuing credit cards to consumers. Cross Country issues credit cards to consumers in Albany County and elsewhere in New York State.

8. ACS is a Delaware corporation that is under common ownership and control with Cross Country. ACS’s primary function is the servicing of Cross Country’s credit card accounts. In this capacity, ACS performs billing, payment processing, customer service and collections for Cross Country.

Respondents’ Sub-Prime Credit Cards

9. Since 1997, Cross Country has offered credit cards targeted at consumers who -- due to events in their credit history -- generally would not qualify for credit under traditional underwriting guidelines and principles. (See Cross Country Bank Mission Statement, annexed hereto as Exhibit. A.) This group of consumers is commonly referred to as the “sub-prime credit market.”

10. Cross Country promotes its credit cards as a way for credit-impaired consumers to establish their credit rating.

“At Cross Country Bank, we provide quality services and opportunities to CUSTOMERS who have had difficulties establishing good credit due to past credit problems or lack of credit history. We see each new CUSTOMER as the beginning of a journey, and we work hard to establish that client’s credit and become a financial partner. We aim to serve all of our valued CUSTOMERS as educators, guides, and ultimately, partners, for we truly believe that every CUSTOMER can make the commitment to achieve the good credit and benefits that he or she

deserves....At Cross Country Bank, we treat our CUSTOMERS with the utmost respect and service possible. Our purpose is to help people establish good credit, and we don't feel that previous difficulties or lack of credit history should keep anyone from the privileges a credit card allows. At Cross Country Bank, we care about people—we care about you.” (Exhibit A.)

“At Cross Country bank, we believe that people like you deserve a chance at owning a premium credit card—regardless of their credit history, or lack of history...” (See sample Cross Country Bank direct mail solicitations and telemarketing scripts annexed hereto as Exhibit B.)

11 Many consumers find, however, that their credit rating is worse after obtaining a Cross Country credit card. Because Cross Country's credit cards contain terms that make it difficult for consumers to maintain a satisfactory payment history, many account holders find themselves unable to bring their account payments current and default on their debts. This is reflected in the high percentage of Cross Country's loans--which consist almost exclusively of credit card accounts--reported to the FDIC as charge-offs--21.53% in 2002, and 27.88% in 2001. (Excerpt from Cross County report filed with the FDIC annexed hereto as Exhibit C.

12. Cross Country typically represents in direct mail solicitations and telephone solicitations that the consumer has been approved for a credit limit of up to \$2,500. (See sample Cross Country direct mail solicitations and telemarketing scripts annexed hereto as Exhibit D. See also Complaint of Maurice Henry, dated December 12, 2001, Exhibit I-77.)

13. In fact, Cross Country's credit cards are unique in that they typically provide consumers with a low credit limit--often less than \$400--and require advance payment of high “origination” or processing fees, and annual membership fees. Indeed, these fees often consume half or more of the consumer's already minimal credit limit. For example, Cross Country has

offered consumers a credit card with credit limits as low as \$250 to \$350, for a \$100 application fee and a \$50 annual membership fee. (See sample direct mail solicitations and telemarketing scripts annexed hereto as Exhibit E.) For other cards, Cross Country charges a \$10 monthly maintenance fee in lieu of the up-front application fee. (See sample Cross Country credit card offers annexed hereto as Exhibit F.) Cross Country fails to disclose to consumers that the exorbitant fees charged to the account will leave many account holders with less than \$150 in available credit.

14. After an account is opened, Cross Country continues to impose charges and fees for most customer assistance type services which Cross Country or ACS are asked to provide. For example, account holders are charged fees for requesting and receiving copies of billing statements, automated account information, and for processing payments over the phone through an Automated Clearing House (ACH) system. (See sections of Cross Country credit card agreements annexed hereto as Exhibit G entitled "Our Charges.")

15. In addition, Cross Country charges a late fee of approximately \$30 every month in which an account holder fails to make his or her total minimum monthly payment by the due date set forth in their billing statement, and charges an over-the-limit fee of approximately \$30 every month in which an account holder's balance exceeds his or her credit limit. These fees are added to the account holder's minimum monthly payment, which must be paid on time and in full. Failure to do so results in the imposition of additional late fees and over-the-limit fees (if the balance of the account--including the additional late fee-- continues to exceed the credit limit). (See sections of Exhibit G entitled "Our Charges." See also, sample billing statements annexed hereto as Exhibit K.)

16. In addition to the credit card charges, Cross Country often tacks on enrollment fees for third-party membership benefit programs, including a "Credit Account Protection" program and an "Applied Advantage" program. Many consumers unwittingly enroll in these programs when they complete Cross Country's credit card applications. (See sample Cross Country direct mail solicitations, applications, and billing statements annexed hereto as Exhibit L. See also, Complaints of Harvey S. Bender, Jr., dated March 1, 2000, and Kristina Gardner Hoff, dated December 20, 2001, annexed hereto as Exhibits I-8 and I-80 respectively; and the affidavit of Marnie L. French, dated December 3, 2002, annexed hereto as Exhibit H-9.)

17. Cross Country's fees are applied against the consumers' accounts immediately upon approval of the consumers' applications, and Cross Country sends these consumers billing statements reflecting these charges, irrespective of whether the consumer has used his or her credit card to make any purchases or cash advances. (See sample Cross Country billing statements annexed hereto as Exhibit M.)

18. Cross Country credit agreements do not provide a grace period by which account holders can make a payment without incurring finance charges. Instead, finance charges are applied daily against every transaction (including all fees charged by Cross Country) from the date the transaction is posted to the account until it is paid in full, no matter when the consumer pays off his or her balance. (See sections of Cross Country credit card agreements annexed hereto as Exhibit G entitled "Finance Charges.") As a result, account balances continuously fluctuate, making it difficult, if not impossible, for account holders to keep track of the amount they owe and the amount of credit they have available.

19. Many consumers are unaware of the exorbitant fees charged to them upon the

issuance of their credit card, the limited amount of credit available to them after Cross Country's fees are assessed, and the onerous manner in which finance charges and penalties are applied against their accounts. These consumers quickly find that their account balances have increased exponentially, despite making few -- if any -- purchases with their credit cards.

Howard Jacobs received a credit card from Cross Country in May 2000. On May 28 and May 30, Mr. Jacobs used the credit card to make purchases in the amount of \$48.12. When Mr. Jacobs received his first billing statement at the end of May--after he had used the card--he was surprised to learn that, in addition to the \$50 Annual Fee that was charged to his account--which he expected--there was also a \$100 Application Fee, a \$0.69 Finance Charge and a \$1.39 Cash Advance. The total balance of the account was \$152.02. The next Billing Statement added the \$48.12 in purchases to the balance due. Mr. Jacobs paid the \$48.12 and the \$50 Annual Fee and sent back the cut up credit card so that the account could be closed. Cross Country canceled Mr. Jacobs' account but continued to add Finance Charges, Late Fees, and other fees to his balance. By October 24, 2000, the balance of the account was \$280.46. (Complaint of Howard Jacobs, dated November 5, 2000, annexed hereto as Exhibit I-194)

In November 1999 Harvey Bender received a Cross Country credit card with a \$350 credit limit. After Mr. Bender received his card, he made purchases in the amount of \$199.72. At that time, Mr. Bender believed that he stayed under the credit limit because the addition of the \$100 Application Fee, the \$50 Annual Fee and the \$10 Express Handling Fee would result in a total balance of \$349.72. When Mr. Bender received his first billing statement, a \$27 over-the-limit fee was charged to his account. Mr. Bender had not realized that additional finance charges would bring his account balance over \$350. Mr. Bender made a timely payment of \$70. The next billing statement that Mr. Bender received contained another \$27 late fee. Cross Country had charged the account for a \$34.95 membership fee for a service Mr. Bender did not knowingly purchase, which put the account over the credit limit. (Bender Complaint, Exhibit I-8.)

Diana Cipriano received a Cross Country bank credit card with a \$350 credit limit in December 2001. Ms. Cipriano made purchases

in the amount of \$180.91, and believed that she was under the credit limit, even after the \$100 Application Fee, \$50 Annual fee, and \$10 Express Handling Fee were added to her balance. Ms. Cipriano's first billing statement, however contained a \$30 over-the-limit fee. The billing statement showed that a cash advance fee of \$5.00--for a \$2.79 cash advance--put her balance \$0.91 over her credit limit. Within a few months, Ms. Cipriano's balance was over \$500. (Complaint of Diane Cipriano, dated February 20, 2002, Exhibit I-26.)

In September 2000 Rhonda Root received a Cross Country credit card. She used the card to make purchases of approximately \$200. As of November 2001, Ms. Root's balance was \$899.69. most of which was attributable to late and over-the-limit fees, which were due immediately. (Complaint of Rhonda Root, dated October 24, 2001, Exhibit I-145.)

"I was issued a credit card by Cross Country [sic] bank, I used this card several times for a total of approximately \$300.00. I paid Cross Country \$300.00. I was informed I still owe \$500.00 for various charges. To include the following: 1. start-up fee, 2-annual fee, 3. credit card insurance. Since this problem, I have canceled my credit card and returned to the company. They have now charged me an additional \$220.00 for late fees bringing my balance to \$720.00..." (Complaint of Joseph Bovo, dated September 28, 2000, Exhibit I-110.)

Roberta Stasio used her credit card to purchase \$31.17 worth of merchandise. Her bill ballooned to \$248.00, consisting almost entirely of fees and interest. (Complaint of Roberta Stasio, dated August 25, 2000, Exhibit I-162.)

"On 12/24/01 I was issued a credit card from Cross Country Bank and was told I had a \$250.00 credit limit. On 1/15/02 I received a statement which included a late charge for \$30.00. I was not made aware of the \$150.00 in annual fees and origination fees nor was I informed that these fees were to be applied against my \$250.00 credit limit." (Complaint of Tommy L. Johnson, dated February 1, 2002, Exhibit I-89 .)

See also, Complaint of Rachael August, dated January 18, 2001, Exhibit I-5; Complaint of James Corwin, dated August 5, 2002, Exhibit I-29; Complaint of Yvonne Elliotte, dated

November 9, 2001, Exhibit I-43; Complaint of James Gregory, dated February 2002, Exhibit I-66; Complaint of Roxie Lidner, dated January 2002, Exhibit I-104 ; Complaint of Gareth DeBrava, dated November 9, 2001, Exhibit I-34; Complaint of Thomas W. Coley, dated August 16, 2000, Exhibit I-27; Complaint of Margaret E. VanHorn, dated June 15, 2000, Exhibit I-178; Complaint of Michael P. Boles, dated May 26, 2000, Exhibit I-192; Complaint of Warren Pryor, dated February 3, 2000, Exhibit I-136; Complaint of Catherine A. Belden, Exhibit I-193; Complaint of John T. Collymore, Exhibit I-128; Complaint of Sally Mcnealy, dated August 29, 2001, Exhibit I-116; Complaint of Gloria Norris, dated July 27, 2000, Exhibit I-126; Complaint of Jolene Mitchell, dated March 22, 2001, Exhibit I-118; Complaint of Terry Sanger, dated July 19, 2001, Exhibit I-160; Complaint of Jeanine Hafner, dated July 2002, Exhibit I-202; and complaint reports on file with the Federal Trade Commission (“FTC”), Exhibit J.

20. The cumulative effect of these limited credit lines and compounding fees and finance charges is to trap these unwary consumers in a vicious cycle of pyramiding debt from which they cannot escape.

“In November of 1999 my wife suffered a stroke and things got behind and kept piling up. No one would listen to any reasoning. Payments were missed and charges kept piling on \$27.00 late fee and \$27.00 over the limit fee so that any payment short of a windfall was not enough to override any addition to the balance. ...The last billing I received from the Cross Country Bank stated a balance of \$1087.00. This was in November 2000. I took out a home equity loan and part of the proceeds was the \$1087.00 owed to Cross Country Bank. This statement for December 2000 states a balance of \$168.08.” (Complaint of Rollin R. Hartman, dated January 17, 2001, Exhibit I-191.)

Christine S. Brown made monthly payments to Cross Country through a credit counseling service, pursuant to an agreement between the parties. At the time of the agreement, Ms. Brown owed \$901. The credit counseling service paid Cross Country \$37

a month for almost two years. Cross Country charged late and over-the-limit fees to the account each month, resulting in the account balance increasing to over \$1,700. (Complaint of Christine Brown, dated January 8, 2001, Exhibit I-17.)

“All I spent was \$225.00 in purchases. They now have my bill up to \$570.00. They charge every month a \$27.00 Late Fee and a \$27.00 over limit fee (... they include their \$150.00 fee for the card to make it over the limit.) I have made as high a payment as I could to try to get under their extra charges (in addition their [sic] charging 24% interest). But it’s not possible - the amount just keeps getting higher.” (Warren Pryor Complaint, Exhibit. I-136.)

See also affidavits of Michael Roberts, dated May 3, 2002, Carol Snyder, dated May 6, 2002 and Jessica Christensen, dated January 9, 2003, Exhibits H-16, H-17, and H-4 respectively; and Complaint of Patrick Felder-Smith, dated March 13, 2002, Exhibit I-46; Complaint of Ira Gartrell, dated December 3, 1999, Exhibit I-55; Complaint of Barbara Grey, dated November 1, 2001, Exhibit I-67; Complaint of Ingrid Blizzard, dated July 21, 2000, Exhibit I-9; Complaint of Harvey S. Bender Jr., dated March 1, 2000, Exhibit I-8; Complaint of Barbara Brooks, dated October 18, 2000, Exhibit I-14; Complaint of Ronald Broughton, dated July 23, 2001, Exhibit I-15; and complaint reports on file with the FTC, Exhibit J.

Respondents’ “Secured” Credit Cards

21. Cross Country also offers consumers in the sub-prime market a second type of credit card with interest rates over 23%, in which no real credit is issued to the consumers. These “secured” credit card agreements require that consumers deposit the amount of money they wish to borrow into a secured savings account maintained by Cross Country before that money can become available to the consumer. (A copy of Cross Country’s secured credit card solicitation and application as it appears on the Internet website are annexed hereto as Exhibit N.)

22. Upon issuance of the secured credit card, Cross Country charges a \$50 account

origination fee to the account and a \$10 monthly maintenance fee. Consequently, the amount of credit available to consumers is less than the amount they deposit with the bank. (See Exhibit N.)

23. Consumers who accept Cross Country's secured credit card are subject to much of the same terms and fees applied to Cross Country's unsecured credit card accounts. For example, there is no grace period, and consumers are subject to late and over-the-limit fees. (See Exhibit N.)

24. Cross Country's secured credit card advertisement contains a number of misleading statements. For example, the first page of Cross Country's secured credit card advertisement states in large bold type near the top of the page, "NO collections calls*" and "NO late fees.*" In fact these statements are completely contradicted by the following statement, which is set forth in small type and located near the bottom of the page:

"Late Fees may apply and you may receive collection calls if payments are past due on your credit account and charges or fees incurred cause your credit balance to exceed its credit line (overlimit) or any portion of your credit line becomes unsecured..."
(Exhibit N.)

25. Furthermore, the terms of the secured credit card agreement, including the high interest rate, \$10 monthly maintenance fee, \$50 annual fee, and late and over-the-limit fees of \$30 or more, are inconspicuously buried on the fifth page of the advertisement and application in the "Terms and Conditions" chart and not otherwise referred to in the advertisement and application. (See Exhibit N.)

Fraudulent and Illegal Sale of Fee Based Services

26. In connection with its credit card offers, Cross Country offers consumers an

opportunity to enroll in fee based programs administered by third parties, including the “Credit Account Protection” (“CAP”) program and the “Applied Advantage” (“AA”) program. In many cases, Cross Country mandates that consumers purchase and enroll in the AA program in order to get a credit card.

CAP Program

27. Cross Country advertises the CAP program as “a credit card protection plan that gives you peace of mind in the knowledge that your credit card obligations will be fulfilled should death, disability, unemployment, or family leave occur.” (See printout from Cross Country Bank Internet website www.crosscountrybank.com, and sample direct mail solicitations annexed hereto as Exhibit O.) Cross Country charges account holders a monthly fee based upon the balance of the account for enrollment in the CAP program. (See Exhibit O.)

28. Consumers can enroll in the CAP program merely by signing their name at a designated space on the credit card application. Indeed, it is easy to confuse the CAP program signature line with that reserved for the credit application. (See sample direct mail solicitations annexed hereto as Exhibits P.)

29. The CAP program provides virtually no benefit to New York consumers. Although the program is advertised to help consumers affected by unemployment, disability, dismemberment, unpaid leave of absence, or death, the CAP program excludes virtually all coverage for New York consumers:

“Spousal benefits are not available in...NY”

“[Unemployment] benefits are not available in...NY”

“Family leave benefits are not available in...NY”

“Dismemberment is not covered in...NY”

“Disability benefits are not available in NY”

(See disclosure of CAP policy terms annexed hereto as Exhibit Q. See also, Affidavit of Ike Broome, Jr., dated October 17, 2002, Exhibit H-3; and Complaint of Candace Mastrodonato, Exhibit I-110.)

30. The CAP program’s exclusions pertaining to New York consumers are not conspicuously disclosed, but rather are set forth in fine print on the last page of the application, and are difficult and confusing to read. (See Exhibit O.)

31. Despite the fact that most of the advertised services of the CAP program are unavailable to New York consumers, Cross Country repeatedly enrolls New York consumers into this program and charges them fees for this misleading and useless service. (See Broome Aff., Exhibit H-3; Custer Complaint, Exhibit I-31; McNeely Complaint, Exhibit I-116; Barath Complaint, Exhibit I-6; Bovo Complaint, Exhibit I-10; Complaint of Nora Holiday, Exhibit I-82; Grey Complaint, Exhibit I-67; Henry Complaint, Exhibit I-77; Steckman Complaint, Exhibit I-163; Mastrodonato Complaint, Exhibit I-110; Brooks Complaint, Exhibit I-14; and Hafner Complaint, Exhibit I-202.)

32. Those New York consumers who knowingly enroll in the CAP program are led to believe that they will receive the advertised protections and are surprised and dismayed when they learn that the protections for which they paid are not available to them. (Broome Aff., Exhibit H-3; and Mastrodonato Complaint, Exhibit I-110.)

Applied Advantage Program

33. Cross Country advertises that membership in the Applied Advantage program

entitles account holders to a variety of benefits, such as emergency services, auto rental insurance and credit card registration services. (See printout from Cross Country's Internet website www.crosscountrybank.com, sample direct mail solicitation, telemarketing script and brochure annexed hereto as Exhibit R.)

34. Many consumers who apply for and receive a Cross Country credit card are automatically enrolled in the Applied Advantage program, unless they affirmatively and expressly opt-out of the Applied Advantage program on their application form. The opt-out mechanism of the Applied Advantage program is confusing and misleading. (See sample direct mail solicitation annexed hereto as Exhibit S.)

35. For many other consumers, however, membership in Applied Advantage is mandatory and, indeed, is expressly made a "condition of acceptance of this credit offer." These consumers must enroll in the Applied Advantage program to obtain a credit card. (See sample direct mail solicitation annexed hereto as exhibit T.)

36. The cost of Applied Advantage membership is \$34.95 per year, and is billed automatically to the consumer's Cross Country account upon credit approval and issuance of the credit card. Thereafter, unless the consumer cancels their membership in AA within 60 days of initial enrollment in the program, membership is automatically renewed and all subsequent annual fees are billed automatically to the consumer's credit card account. There is no provision in Cross Country's solicitation or brochure that consumers be given advance written notice of automatic renewal nor, upon information and belief, does Cross Country give consumers such notice. (See, Exhibits S and T.)

37. The 60-day cancellation provision, which enables consumers to avoid the

automatic renewal of their AA membership, is not always clearly and conspicuously disclosed and often appears in minuscule print towards the end of the solicitation. (See Exhibit U.)

Abusive Collection Practices

38. Although Cross Country represents that its associates strive to provide “superior customer service that, is in every instance, professional, courteous and attentive,” (See sample direct mail solicitation annexed hereto as Exhibit V; See also, Exhibit A) respondents’ treatment of delinquent account holders is persistently marked by harassment, abuse and misstatements.

39. ACS employs over 4,000 individuals at four collection sites to collect delinquent payments from Cross Country account holders. ACS’s collectors contact account holders over the telephone through the use of a predictive dialing machine, which dials telephone numbers contained in a stored database. (See Affidavit of Joseph Riley Dagastine, former ACS collector, dated December 18, 2002, annexed hereto as Exhibit W; and Affidavit of Rose Duncan, former ASC collector, dated December 15, 2002, annexed hereto as Exhibit X.)

40. ACS collectors must complete a training program before they begin calling account holders. During the first part of the training program, collectors are given classroom instruction in complying with the spirit of the federal Fair Debt Collections Act and avoiding abusive debt collection practices. (See excerpts from ACS’s Collections Outbound Training Manual, annexed hereto as Exhibit Z. See also, Dagastine Aff., Exhibit W.)

41. After a week or so in the classroom, the new collectors are assigned to work with experienced collectors on actual collection calls, during which they observe and learn various tactics or tricks designed to induce account holders into making a payment. During this “on-the-floor” training, the new collectors are instructed to disregard much of their earlier training and to

pursue payments from account holders aggressively.

“The training we learned on the floor--from managers, supervisors and fellow collectors--was much different than that received in the classroom and consisted of various tricks and tactics we could use to help us collect payments from account holders. Generally speaking, the informal, practical training we received on the floor taught us to be significantly more aggressive in collections than did the formal training we received in the classroom.” (Dagastine Aff., Exhibit W.)

42. ACS continues to foster this aggressive behavior in its collectors through an incentive program, in which a collector’s salary--and the salary of his or her supervisor--is largely based upon the amount of money they collect, and by setting performance quotas that the collectors are required to meet.

“In addition, before each shift our supervisor would try to pump us up by reminding us of the incentive program. They would do this by saying things like ‘do realize if somebody doesn’t follow up on a western union, they are taking money from you personally because that money doesn’t go towards your bonus.’ We received bonuses each month based upon the number of accounts we cured (made current by having the account holder pay all late and over-the-limit fees that are due plus their minimum monthly payment) or the amount of money you collected...In addition to the bonuses, collectors were also motivated by their need to meet a standard production level quota.” (Dagastine Aff., Exhibit W.)

“First of all, there was tremendous pressure put on the collectors to get card holders on the phone and collect a payment. Supervisors received bonuses based upon the amount which was collected on their shift. Rebecca Dilly would often tell us that she was making her house payment with the bonus we get her and that we are going to get card holders on the phone and get their money because she is not going to miss her house payment because we failed to make her bonus for her.” (Duncan Aff., Exh. X)

(See also sample ACS incentive plans and guidelines annexed hereto as Exhibit AA.)

43. Through their aggressive pursuit of payments, ACS collectors routinely engage in

abusive collection practices. For example, once an account holder becomes delinquent in paying their Cross Country account, ACS collectors begin harassing the account holder with repeated, frequent and disruptive telephone calls, intended to intimidate the consumer into making a payment.

“[I] routinely would call account holders numerous times a day if they told me they could not pay. In fact, I would usually make repeated phone calls (4 to 5 times an hour) to about 30% to 40% of the account holders with whom I spoke. These account holders would become very upset over these repeated calls, but I would tell them that I was going to continue calling them until we resolved the debt. I would continue to call these account holders until they no longer answered the telephone.” (Affidavit of Justina Ross, former ACS collector, dated December 5, 2002, annexed hereto as Exhibit Y.)

“Collectors routinely called account holders who already had been contacted by other collectors numerous times that day, even though the records showed that the account holder previously stated that they could not make the payment. Many collectors would tell account holders who were already called that day something like ‘that’s right, I’m going to keep calling you until you pay.’ Our supervisors told us that if we call an account holder who had already been contacted that day, we should again try to talk them into making a payment, and if they refuse, tell them that we will keep calling them until the situation is resolved. I made such statements myself.” (Dagastine Aff., Exhibit W.)

44. In addition, ACS collectors routinely misrepresent their identity in order to get an account holder to speak with them. For example, ACS collectors regularly pretend that they are personally acquainted with the account holder, or that they are calling for some purpose other than collecting a debt.

“To get a card holder on the phone or to get information on the card holder, we were instructed to make it appear that we were the card holder’s long lost friend wanting information on how to contact them, or that the card holder had applied for a loan and we needed their new telephone number.” (Duncan Aff., Exhibit X.)

“In order to get an account holder to speak with us, Collectors would routinely ask for the account holder by first name in a tone that suggested that we were personal friends and that the call was urgent. We would also leave messages on answering machines that implied that the call was urgent, but did not reveal that we were calling about a CCB account....If we called an account holder at work, we would not tell the person who answered the phone that this was a personal call and, if asked, we would say that it was a business call.” (Dagastine Aff., Exhibit W.)

“I would try to reach account holders by calling their family members or neighbors. I would call every house on an account holder’s street in an effort to locate them. When I made these calls, I would pretend to be a friend, classmate or co-worker of the card holder.” (Ross Aff., Exhibit X.)

“When I called an account holder’s number and was told by the person who answered the phone that the account holder was unavailable, I would tell this person that I was trying to contact the person about a loan or job for which they had applied. If I called an account holder at home, I would say I was their employer looking for them because they were supposed to be at work. I would also use ‘ACS’ and ‘Cross Country Bank’ interchangeably in order to confuse the person about who was calling. I called these practices ‘tricking the gate keeper.’ When I used one of these tactics successfully, I would make a note of it on the computer so the next account holder who called could use the same tactic.” (Ross Aff., Exhibit Y.)

“They pretend to be a friend when I, my wife or my son answer the telephone. They say things such as: ‘Hi Toby, this is (name of representative) from Cross Country Bank’ or ‘Hi is Toby there.’” (Affidavit of Toby Fish, dated August 22, 2002, Exhibit H-8.)

“If I let my answering machine pick up the call, they say things like Diane are you there?” (Complaint of Shirley Nobles, dated October 2, 2002, Exhibit I-125.)

45 ACS collectors also try to reach account holders at their places of employment, and repeatedly call them at work, even after being told that the account holder is not permitted to accept such calls at work.

“I would also make repeated phone calls to the card holder’s place of employment if I was unable to reach them at their home or if I spoke with the card holder there in the past.” (Ross Aff., Exhibit Y.)

“The constant calls from Cross Country to my place of employment were extremely disruptive. I work in the Veteran’s Service division at the Albany Veteran’s Administration Hospital where I speak with veterans about their benefits. Cross Country’s calls interrupted and interfered with my discussions with veterans. I asked the bank on a number of occasions to stop calling me at work, but they refused and told me that they will continue calling my work number. They also told me to get used to it and there was nothing I could do about it. I even had two of my supervisors ask Cross Country not to call me at work, but the calls continued.” (Roberts Aff., Exhibit H-16.)

“Cross Country also called numerous times at work even though I told them not to do so because I could get fired. They didn’t care and told me that they would continue to call, which they did.” (Affidavit of Judy Speed, dated May 7, 2002, Exhibit H-19.)

“On June 7, 2002, a representative from Cross Country called me repeatedly at my place of employment, Musica Against Drugs. The representative, a woman, called me as many as twelve times an hour.” (Affidavit of Iliana Mercado, dated October 29, 2002, Exhibit H-12; See also Affidavit of Maria Del pilar Cordova, dated October 29, 2002, Exhibit H-6.)

“The telephone calls I have received from Cross Country Bank are disruptive to my home and my place of employment. I have asked repeatedly that they not call me at work and not harass me at home. The telephone calls continue at my place of employment.” (Affidavit of Mary Bergamo, dated August 26, 2002, Exhibit H-2.)

“Cross Country Bank has also called my place of employment several times. I have asked them not to call and harass me at work but they continue to do so. I have also written letters to Cross Country Bank stating that they can not contact me at work. They have contacted me since the letter has been sent.” (Fish Aff., Exhibit H-8.)

“Cross Country ignored my written and verbal requests to stop calling me at work. These calls interfered with my transactions

with customers and were very disruptive...Cross Country freely discusses the details of my account and payment history with my co-workers.” (Affidavit of John Costello, dated May 8, 2002, Exhibit H-7.)

“Cross Country and Simms Associates continue to call me at work even though I told and have written them to stop. I deal with customers at my job, and it is disruptive and embarrassing for me to deal with the constant calls from the bank.” (Carol Snyder Aff., Exhibit H-17.)

“Back in January I spoke to not only to Cross Country Bank but also to a attorney about Cross Country Bank calling me at work. They informed me to write Cross Country Bank a letter asking them to remove my work number from their records. I was told by a Mr. Titus that is a supervisor at Cross Country Bank that as we spoke on the phone that he was removing it. About a couple of weeks ago Cross Country Bank started calling me at work again which tell me that my work number was never taken off their system.” (Complaint of Franklin Ortiz, dated March 1, 2002, Exhibit I-129.)

“I am a secretary for Moriarty, Dee and Signor, each day our company received a telephone call from Cross Country Bank; looking for a Susan Merritt. They accuse me of being Susan Merritt as well as insist that they will continue to call our law offices until they speak with her. Repeatedly, I tell them they can not reach her here at work, they respond by saying ‘give me her home number and I will stop calling.’” (Complaint of Sandra J. Agel, dated February 12, 2002, Exhibit I-1.)

“In or around the Summer of 2001, Cross Country Bank (“CCB”) began calling my store one to three times every day to speak with one of my employees. This went on for approximately two months. Each time CCB called, I would tell them that the employee...was busy with clients and could not take the call. I would also inform them that their calls were disrupting my business...CCB would always respond by stating that the employee did not leave CCB with a home telephone number and that they had the right to call me whenever they want as often as they want.” (Affidavit of Rebecca E. Snyder, May 3, 2002, Exhibit H-18.)

“They call me at work even after I have told them I can’t receive personal calls at work (up to 3x day).” (Haag Complaint,

Exhibit I-195.)

“You have continued to call and harass me at work, even though my managers have told you I cannot talk to anyone at work on any type of personal matter. My job does not allow it. One of your representatives told my assistant manager that she would stay on hold until he put her through. I consider this harassment and threatening.” (Complaint of Marilyn Nebrich, dated January 18, 2001, Exhibit I-122.)

“CC Company - Explained several times not to call me at work due to the fact it takes me away from my job duties, customers and responsibilities. I am not always here when they call and the store manager has requested several times for them not to call. My district manager has also requested them to stop due to this is a place of employment.” (Complaint of Kelli Hernandez, dated December 1, 2000, Exhibit I-78.)

“Although I have sent two memos (6/9 and 6/18) stating that an employee at our school can not receive personal calls except for family emergencies, we are still receiving numerous phone calls each day from Cross Country Bank.” (Complaint of Nancy E. Tario, dated June 21, 1999, Exhibit I-170.)

See also, Affidavit of Vicky Reid, dated November 8, 2002, Exhibit H-15; Rebecca E. Snyder Aff., Exhibit H-18; Amato Complaint, Exhibit I-196; Complaint of Sylvester Minor, dated June 24, 2001, Exhibit I-117; Complaint of Kelli Hernandez, Exhibit I-78; Complaint of Marilyn R. Bridges, Exhibit I-13; Complaint of Nadine Tremblay, dated July 7, 2000, Exhibit I-174; Cipriano Complaint, Exhibit I-26; Gauvin Complaint, Exhibit I-57; Complaint of Stephen Marks, dated August 2, 2002, Exhibit I-107; Complaint of Kay Wilson, dated January 24, 2002, Exhibit I-183; Complaint of Susan Pullman, dated October 8, 2002, Exhibit I-137; Complaint of Barbara Lee, dated August 5, 2000, Exhibit I-101; Complaint of Nadine Tremblay, dated July 7, 2000, Exhibit I-174; Elliotte Complaint, Exhibit I-43; and complaint reports on file with the FTC, Exhibit J.

46. In addition, once they have an account holder on the phone, ACS collectors often use rude, insulting and/or obscene language in an attempt to collect a payment.

“Collectors routinely called card holders names and made derogatory statements. I have told cardholders that they are thieves who steal the bank’s money, that they should get a job, that they are useless, that they are bums, that they needed to quit sponging off everybody, and that they were liars. I was sometimes mean to card holders. I overheard other collectors telling card holders to donate plasma, go out into parking lots of malls and pick up pennies, or pick up cans. Some collectors told card holders who were in the military that they were a disgrace to the uniform.” (Duncan Aff., Exhibit X.)

“Many collectors were often rude to the account holders they called. I often over-heard collectors tell account holders that they were no better than thieves, or that their refusal to pay their debt was no different than taking a TV out of Walmart. Many times, account holders with whom I would speak would tell me that they were upset because the last collector that called them was out of line. Sometimes, these account holders would play cassette tapes for me while I was on the line on which collectors were being verbally abusive. I even heard tapes in which the collector used profanity. Most often, the tapes would contain statements made by collectors that the account holders were thieves, liars or deadbeats.” (Dagastine Aff., Exhibit W.)

“In fact, making offensive remarks to account holders was a common occurrence at ACS. For example, I regularly called account holders deadbeats. If I heard a television in the background during a call, I would tell the account holders ‘I hear a television in the background and you are on the phone, so why can’t you pay your bill.’ If a card holder was using their cell phone to speak with me, I would tell them to get rid of it and use that money to pay their bill. I have also told card holders to have a yard sale, sell their cars, sell their belongings, get a job, get off their butts, and to get rid of the low lives that were living with them and find someone that could pay their bills for them...I worked in very close proximity to other collectors and I often heard other collectors making abusive statements to account holders. I heard collectors calling account holders names like “son of a bitch” and ‘queer.’ I never heard or saw collectors being reprimanded for such behavior.” (Ross Aff., Exhibit Y.)

“Some of the calls I received were downright abusive and insulting. One representative of Cross Country called me an “f---- - liar” when I told him all I could afford was \$10.00 monthly. Another told me to get a second job.” (Carol Snyder Aff., Exhibit H-17.)

“The representatives throughout the several times they have contacted me have stated ‘we were nice enough to give you this card,’ ‘if you can’t make the payments you should not have gotten the card,’ ‘if you want us to stop bothering you then pay the debt,’ they have also used foul language, telling me ‘to pay the fucking bill.’” (Affidavit of Brenda Monahan, dated October 10, 2002, Exhibit H-14.)

“Cross Country Bank’s representatives have made rude harassing comments to me throughout their calls. They have said things such as: ‘your not going to pay your bills,’ ‘why don’t you get a second job at McDonalds,’ ‘you need to pay because we are going to ruin your credit,’ ‘you are not trying hard enough’.” (Affidavit of Marc Christian Clemons, Exhibit H-5.)

“More often than not, the representatives were rude. They were loud, they frequently talked over me, and they would never listen to me.” (Affidavit of Sandra Weston, August 26, 2002, Exhibit H-21.)

“The caller started yelling at me and asking who I was and why couldn’t he get in touch with my brother. The call was so abusive that I had to hang up the phone.” (Affidavit of Amy Baker, May 18, 2002, Exhibit H-1.)

“Cross Country constantly harass me for payment. One day, they called my home fifteen times. They called on Easter Sunday. They called when I was in the hospital and told my friend that I had to call them immediately. Their representatives use intimidating and threatening language. One caller said “You better talk to me,” called me back five times in fifteen minutes, and then called me an “asshole” when I told him I was filing a complaint with the Attorney General’s Office.” (Costello Aff., Exhibit H-7.)

“...I lost my job due to Sept 11 ... they still proceeded in sending it to collections .. I just need time to pick myself up ... I called and spoke with a woman [from the collection agency] ... she was very nasty and proceeded in telling me that they are in California and

have nothing to do with what happened in NY and that how dare I use that as an excuse ... she said Fuck you to me.” (Complaint of Linda Perez, dated November 12, 2001, Exhibit I-131.)

“I spoke to rep on 6/9 regarding being assessed a late charge and over limit fee. The person was rude and claimed to be a supervisor, she threatened to have me arrested for swearing and told me to hold the line while she connects the sheriff’s dept. I told her go ahead I will wait, she came on the line then saying your still on the line unbelievable. She was swearing at me and said security is coming to the phone to transfer to police to have me arrested. I told her to give me her supervisor she said no one above her. I told her I am still waiting for police, she hung up.” (Complaint of Rodney Hogg, dated June 22, 2001, Exhibit I-81.)

“Some of the representatives were very abusive to me. I remember one caller in particular called me a liar and started yelling at me.” (Speed Aff., Exhibit H-19.)

“They have also called me a “deadbeat,” they have also stated that I have a spotless payment record until now because I am dodging my bills, they have also stated they are going to have me arrested and stated the number of a precinct in my area.” (Christian-Clemons Aff., Exhibit H-5.)

See also, Reid Aff., Exhibit H-15; Affidavit of Irene Mokszycki, dated October 10, 2002, Exhibit H- 13; Complaint of Sharon Foster, Exhibit I-52; Complaint of Nestyne Bujanowski, dated May 30, 2002, Exhibit I-18; Complaint of Nicki Fecura, dated November 13, 2001, Exhibit I-45; Complaint of Zerlinda Jackson, dated December 9, 2001, Exhibit I-86; Complaint of Jerrold Weinstein, dated February 13, 2003, Exhibit I-201; and complaint reports on file with the FTC, Exhibit J.)

47. ACS collectors also make false and improper threats to induce account holders into making payments.

“I would also tell card holders who refused to pay that their accounts could be turned over to a third party collection agency, and that these agencies would a) garnish their wages, b) put liens

against any property that they owned, c) and tack on a 20% fee to their account. I also informed these card holders that their account could be turned over to the IRS at the end of the year and they would have to pay taxes on it, and that if their account was charged off, it would never come off their credit report.” (Duncan Aff., Exhibit X.)

“Collectors, myself included, often threatened account holders by stating that we would ruin their credit rating, garnish their wages, and even turn them into Welfare. We would tell account holders with foreign accents that they would lose their green cards.” (Ross Aff., Exhibit Y.)

“Collectors also frequently used threats to collect payments. For example, they would say things like ‘you do realize that when we charge off this account this is going to go on your credit history,’ or ‘we are going to have to report to the IRS that you have unclaimed income for this past year.’ In fact, I have made these threats to account holders on numerous occasions. Along these lines, we were instructed to ask consumers whether they were currently leasing a vehicle and, if they said they were, we were to tell them that their failure to pay their account could result in their monthly lease payments being increased by the bank. Similarly, we were instructed to--and did--tell account holders that their monthly payments on the private mortgage insurance may be increased as a result of their failure to pay their credit card debt. This statement was frequently made to account holders with seriously delinquent accounts.” (Dagastine Aff., Exhibit W.)

See also, Gauvin Complaint, Exhibit I-57; Complaint of John Coulson, dated July 29, 2001, Exhibit I-30; Complaint of Errol Davis, dated March 30, 2000, Exhibit I-32; Hogg Complaint, Exhibit I-81; Christian-Clemons Aff., Exhibit H-5.

48. ACS collectors routinely disregard account holders’ requests to stop calling them and often state that they will continue to call until they receive payment.

“Many collectors would tell account holders who were already called that day something like ‘that’s right, I’m going to keep calling you until you pay.’ Our supervisors told us that if we call an account holder who had already been contacted that day, we should again try to talk them into making a payment, and if they

refuse, tell them that we will keep calling them until the situation is resolved. I made such statements myself.” (Dagastine Aff., Exhibit W.)

“These account holders would become very upset over these repeated calls, but I would tell them that I was going to continue calling them until we resolved the debt. I would continue to call these account holders until they no longer answered the telephone.” (Ross Aff, Exhibit Y.)

“I remember one Cross Country Bank Representative said, ‘I’ll call you as many times as I want to call you until we get our money.’ I heard taunts similar to this several times per week.” (Weston Aff., Exhibit H-21.)

“The representative responded, ‘I don’t give a damn, I’m not going to stop calling you until I get his [my ex-husband’s] money.’ She then hung up on me.” (Affidavit of Jeannine Wright, dated July 24, 2002, Exhibit H-22.)

See also, Speed Aff., Exhibit H-19; Reid Aff., Exhibit H-15; Affidavit of Kevin Hoepper, dated September 29, 2002, Exhibit H-10; and Roberts Aff., Exhibit H-16.

49. If an account holder “hangs up” on an ACS collector, the collector often punishes the account holder by making repeated and successive calls to that account holder.

“If a card holder hung up the phone, we were instructed by Roberta Stone to keep calling them back until we either get a payment or find out why they are not making a payment. We were told to call back fifteen times if we had to. I personally called card holders back ten, fifteen, and even twenty times. Some days I would do this three or four times.” (Duncan Aff., Exhibit X.)

“[L]ast night, which was the 16th, around 7:30 PM I received another phone call from Cross Country. The creditor on the phone said her name was “Tara” and asked to speak with Alonzo. I asked her where she was calling from and she told me she was calling from my bank. When I asked her was she calling from The Dime, which is MY [sic] bank, she refused to give me a straight answer. I then hung up. It was not right to hang up, but at that time I was just about fed up with their shenanigans. She proceeded to call back and ask me when I was going to grow up. I hung up again.

She called back trying to speak over my voice, and each time when I got tired of arguing with her I hung up. Tara proceeded to call me back no less than 5 times. When I got tired of her foolishness I would hang up and she would call back. This time when Tara called back I told her that I sent off her payment on yesterday just like I told the creditor I would. I also told Tara that if she continued to call and harass me I would make a call to the Attorney General's Office. She then asked me if I was threatening her. I said yes, I'm threatening to call the proper authorities if she didn't stop this nonsense. I then hung up. My phone rang again. This time there was a gentleman on the phone. He asked me if I was threatening Tara. I told him I was going to call the Attorney General's office about their procedures. I then hung up the phone. This gentleman called me back playing games on my phone. He proceeded to tell me that he could play phone games as long as I could. I hung up. He called back. I hung up. He called back. He called no less than five times. Just calling me back every time I hung up on him. He finally asked me if I had sent the payment off, and how much did I send. By this time I was thoroughly disgusted and told him to ask Tara about the information I had given her 10 minutes ago. He refused. I hung up. He called me back again, asking me the same question. I hung up, but this time he didn't call back." (Complaint of Alonzo Harley, dated January 17, 2002, Exhibit I-73.)

"On Aug. 4th I received 5 phone calls from them (2x at work and 3x at home), the last person that called me told me that if I didn't listen to him and if I hung up on him he was going to keep calling me. I hung up on him and he called back 5x right away. I finally took the phone off the hook." (Haag Complaint, Exhibit I-195.)

"...The last time I got a call from the bank. I told them I was going to have someone arrested for harassment and hung up the phone he called me back and kept saying so you going to have me arrested over and over. He called me back three times saying the same thing." (Cancer Complaint, Exhibit I-22.)

"If I hang up to end the abuse, they call right back." (Carol Snyder Aff., Exhibit H-17.)

See also, Zerlinda Jackson Complaint, Exhibit I-86.)

50. Many account holders enter into payment plans with ACS in order to stop the

collection calls. ACS, however, continues to call, even after receiving payments under a plan.

“Sometimes, we would enter into payment arrangements with account holders whereby the account holders would agree to make a payment, but in an amount insufficient to cure their delinquencies. The account holders would continue to receive collection calls, even though most of them believed when they made their payments that the calls would be stopped. When collectors called account holders who had earlier entered into a payment arrangement, we were instructed to ask the account holder to make arrangements to pay the additional amounts owed.”
(Dagastino Aff., Exhibit W.)

“I got behind 1-2 monthly payments on credit card. Called and asked for payment plan and to freeze my account until I caught up. They agreed to \$40.00 payments every other week to be debited directly from my checking account from 11/01 thru 5/3/02. Cross Country continues to charge late fees, harassing my home and work up to 7-8 times daily.” (Complaint of Marcia Walker, dated February 9, 2002, Exhibit I-179.)

See also, Complaint of Gail Marshall, dated July 1999, Exhibit I-108; Polak Complaint, Exhibit I-134; Complaint of Judy Monthony, dated January 19, 2001, Exhibit I-203; and complaint reports on file with the FTC, Exhibit J.

51 Respondents also bill consumers and engage in collection activities even though the consumer never opened a credit card account or received a credit card from Cross Country.

“Applied for credit card. Did not receive card. Received bill in mail. Called to say did not receive it, and to cancel card. Co. would not cancel card but reported it stolen instead. Card has never been activated. Received phone call from co. on 9/26/01 stating I was 2 payments behind. Explained situation about card with no avail.” (Complaint of Nickola P. Capozzi, II, dated September 27, 2002, Exhibit I-23.)

“I received a credit card from this bank in the mail and before activating the card I received a bill from the same company stating I owed a balance of \$35.00.” (Complaint of Crystal Sargent, dated October 31, 2001, Exhibit I-151.)

"I have never opened an account with this company. The file was brought to my attention, when I had asked Trans Union for a copy of my credit report. They have indicated on my credit report that I owe them 481 dollars and have charged 'my file' with them as bad credit" (Complaint of Bryon Brown, dated July 26, 2001, Exhibit I-16.)

"Jan. of 96 I applied for credit at Cross Country I moved in Jan never heard or Seen anything from them. Then later on that year I got a call to pay my bill. I told her I never used or received the card and they have been hounding me every since." (Complaint of Cindy L. Henry, dated October 21, 1999, Exhibit I-75.)

"I never asked for any of this and I want all of this retracted." (Complaint of Stephen Barath, dated August 23, 1999, Exhibit I-6.)

"About 4 months ago I received a bill for this credit card. I then called to tell them I did not have this card, they told me it got sent back to the bank." (Complaint of Brenda L. Fortino, dated December 9, 1998, Exhibit I-51.)

"In 1997 I received a credit card in the mail from Cross Country Bank at that time when I got it I had just gotten 2 regular cards that were not secured accounts so I called them and told them I did not want it. The rep. on the phone told me to mail it back. So I did. That was the last time I saw the card and never used it to buy anything it is now 200 and this card had destroyed my credit rating." (Complaint of Marina Xydous, Exhibit I-186.)

See also, Complaint of Lynn Spoly, dated January 21, 2002, Exhibit I-161.

Unauthorized Debits

52. Since at least July 2002, ACS has repeatedly engaged in a practice which their collectors refer to as "assumptive pay-by-phones," which is designed to lure account holders into authorizing payments they did not wish to make. This practice entails the ACS collector telling an account holder--who had not authorized any payment to Cross Country or ACS--that the purpose of the call is to confirm that the account holder had authorized a particular payment (to be made electronically by debiting the account holder's checking account) on a particular date.

The collector then tells the account holder to get a pen and paper so that they can take down an authorization number for their records.

“[C]ollectors were instructed by our supervisors to use a practice which they referred to as “assumptive pay-by-phones.” This practice, which was implemented to address our low collection rates, entailed calling account holders for whom we had a checking account number, telling them that we were taking a set amount of money out of their account for payment, and instructing them to call customer service if they had any questions. The goal of the practice was to confuse the account holders and make it difficult for them to cancel these transactions.” (Ross Aff., Exhibit Y.)

“[T]he supervisors were pressuring all of the collectors to engage in a practice I refer to as ‘assumptive pay-by-phones.’ This practice entailed the collector calling a card holder to confirm that the card holder had agreed to authorize a payment (by ACH) of a certain amount on a certain date, even though the card holder had made no such representation. For example, we were told to say something to this effect: ‘Miss Duncan this is Miss Stone calling you on behalf of CCB, you have a payment set up for August 23rd for \$100.00, I just need to verify that the payment can be taken out of your account on that date.’ It was explained to us that this would be an effective method of obtaining payment because the card holder would believe that they had agreed to the payment but had simply forgotten about it.” (Duncan Aff., Exhibit X.)

53 Some collectors have taken this practice a step further and processed payments merely by leaving authorization numbers on account holders’ answering machines, without ever having spoken with the account holder about the payment.

“I also complained that the supervisors were permitting one collector, Ashley Whitmore, to process unauthorized payments over the phone. By unauthorized, I mean that she would use the account information we had on a card holder she called to process an electronic debit from the card holder’s account without the card holder’s consent. I regularly overheard this collector leaving messages on card holders’ machines saying something to this effect: ‘we are showing that you have a payment set up for this day and for this amount and if you have a problem with that you need to call customer service and handle it.’ She would then go ahead

and electronically debit the amount of the payment from the card holder's account. When I complained to my supervisors about this practice, they laughed and told me it was not my concern." (Duncan Aff., Exhibit X.)

"Bank called for payment on my charge account. I told them to call November 28, 2001 and I would let them know if I can make a payment. They went ahead and looked up my wife's account...and took \$105.00 out of my wife's checking account without any authorization." (Complaint of John Brewer, dated December 26, 2001, Exhibit I-12.)

54. Account holders and other consumers whose checking accounts are debited by ACS without their knowledge or consent often do not learn that their accounts had been debited until they receive notice from their banks.

"My daughter, Megan Weston, has an account with Cross Country Bank. To collect money owed on this account, Cross Country Bank accessed and took \$35.00 from my personal account at Rome Bank. I never gave Cross Country Bank permission to do such a thing." (Weston Aff., Exhibit H-21.)

"During a regular visit to my bank on September 25, 2001, I was told that Cross Country Bank had illegally withdrawn \$100.00 from my account." (Curtis Complaint, Exhibit I-199.)

"They were authorized to take one payment from my checking account, they proceeded to take \$600, the limit on the account." (Complaint of Earl C. Sterling Jr., dated January 3, 2001, Exhibit I-165.)

"On October 15, 2001 Cross Country did a deduction out of my checking account of \$31.00 without my permission." (Frennier Complaint, Exhibit I-53.)

"It has come to my attention that you have taken money out of my checking account without permission, after I distinctly told you not to do this any longer. My money, in the sum of \$89.00 on September 5, 2001 and \$150.00 taken on October 1, 2001. There was no money in the account on that date (October 1, 2001) which caused an over-draft amount of \$20.00....When I gave you permission in February of 2001, that was for one monthly, you told

me at that time you would call for my permission to withdraw funds after that two more times under duress I allowed it to be withdrawn. I never gave permission in September or October.” (Montero Complaint, Exhibit I-119.)

Misrepresenting Re-Payment Plans

55. From time to time, ACS offers account holders whose accounts are seriously delinquent and in danger of being charged-off an opportunity to have their account taken out of ‘delinquent’ status by making certain payments for a period of months. If the account holder complies with the agreement, the account will be considered current and ACS will cease imposing late fees. ACS refers to this process as “Re-Aging.”

56. In explaining the re-aging process and offer to account holders, collectors routinely fail to disclose the fact that, while the account is being re-aged, ACS will continue to impose over-the-limit fees, and that once the account has been re-aged and is current, the account holder will need to pay the full amount due--including that portion of the balance attributable to over-the-limit and previously imposed late fees in order to remain current.

“Occasionally, we would offer an account holder an opportunity to stop having late fees applied against their account by making timely payments of their minimum amount due for three or more successive months. This process was referred to as “re-aging.” These account holders, however, were usually not told that, while they are paying their minimum monthly payments, over-the-limit fees would continue to be imposed and, therefore, their balance would change little, if at all by the end of the re-aging process.” (Dagastino Aff., Exhibit W.)

“On occasion, we offered account holders an opportunity to “re-age” their accounts by making four timely payment of approximately \$35. At the end of the re-aging process, the account would no longer be considered delinquent and late fees would not be charged. We did not inform these account holders, however, that over-the-limit fees, which had been accruing on most of these accounts, would continue to accrue during and after the re-aging

process. Consequently, unless the account holder received a credit line increase at the end of the re-aging process, they would be unable to make their minimum monthly payments and would again be delinquent on their account.” (Ross Aff., Exhibit Y.)

Because most account holders owe a significant amount of late and over-the-limit fees before they are given the opportunity to re-age their account, their balances often exceed their credit limit and must be paid in full, or substantially reduced, in order to avoid additional over-the-limit and late fees. Thus, unless these account holders receive credit line increases, from which they can pay down their balance, they will usually be unable to pay the balance due at the expiration of the re-aging process, and will remain delinquent.

“I got behind 1-2 monthly payments on credit card. Called and asked for payment plan and to freeze my account until I caught up. They agreed to \$40.00 payments every other week to be debited directly from my checking account from 11/01 thru 5/3/02. Cross Country continues to charge late fees, harassing my home and work up to 7-8 times daily.” (Walker Complaint, Exhibit I-179.)

Misrepresenting Pay-Off Amounts

58. Many account holders, frustrated by ACS’s continuous and aggressive collection efforts, choose to close out their accounts by paying off their account balances.

59. Because Cross Country’s credit card agreements do not provide for a grace period, and finance charges are imposed on a daily basis, account balances increase every day. Consequently, an account holder can only pay off their account by paying the amount which is due on the date the payment is posted to the account.

ACS collectors routinely fail to disclose to account holders who wish to close out their accounts that, unless payment is actually received on that day, either by telephone or wire, they will need to pay a greater amount than that currently due, and also fail to disclose what that

amount is.

“I overheard some collectors fail to inform card holders who wanted to pay off their balances that they would need to include the interest that would be accumulating on the account every day in their payment. These omissions had serious consequences to the card holders because ACS did not send billing statements when the card holder owed \$7.00. Rather, they would wait until the following month, by which time, the card holder would already owe an additional \$30 late fee for failing to make the previous month’s minimum payment.” (Duncan Aff., Exhibit X.)

“By looking at the CPO screen of accounts that I called, I could tell that Collectors often failed to provide account holders with correct pay-off amounts, which resulted in accounts remaining open after the account holder had believed they paid them off. Because these accounts remained open without the account holder’s knowledge, the accounts would go unpaid and interest would accrue and even late fees would be imposed. In fact, at least twice a week, I would See an account which remained open because the account holder was given an incorrect pay-off amount. Sometimes, the account holder would end up with a \$300-\$400 balance on an account as a result of these mistakes.” (Dagastine Aff., Exhibit W.)

61. ACS collectors have also failed to disclose fees which will be charged to the account in connection with the close-out payment, such as a transaction fee if the payment is made over the phone.

“Collectors who worked on the seriously delinquent accounts were instructed by Roberta Stone not to tell card holders who wanted to pay off their balance and close their accounts about the \$7.00 pay-by-phone fee. This way the card holder could not pay off their balance and close their account.” Duncan Aff., Exhibit X.)

62. Consequently, many account holders mail in a payment that is less than the balance owed on the date the payment is received, and, as a result, their accounts remain open and continue to accrue late charges, and finance and other charges.

On December 18, 1999 Iris Custer authorized Cross Country to immediately debit her account in the amount \$548.73, the full

balance due at that time, and instructed them to close her account. On January 18, 2000, Ms. Custer received a bill from Cross Country for \$65.42. The bill reflected an Annual Fee charge of \$50.00, an Account Information fee of \$0.50, a Phone Pay fee of \$7.00, and Finance Charge of \$1.97. In justifying these charges, Cross Country claimed that Ms. Custer failed to close out her account because the balance due on the date of Ms. Custer's payment was \$554.36 and she only paid \$548.73. (Complaint of Iris Custer, dated April 22, 2000, Exhibit I-31.)

"In late March of this year after falling behind on credit card payments, I contacted [ACS] by telephone and was told that my total bill was \$513.05. On March 28, I mailed a money order for this amount, along with the cut up credit card for the existing account. I believed that our business was indeed concluded until I received another invoice from this company...If by some chance I owed \$2.45 after paying what the company said was the final total, I should have been informed of the debt and been given a chance to pay it. Instead, my first notice of this fact includes a whopping \$30.50 surcharge along with the amount supposedly owed." (Complaint of Bria Burgess, dated May 31, 2001, Exhibit I-19.)

63. These account holders often do not find out that their accounts are still open until they begin receiving billing statements or collection calls from ACS.

"I wrote a letter to CCB, cut up the card, sent my payment and did a change of address. In February 2001, I received an outstanding balance letter from CCB and I started receiving three phone calls a day." (French Affidavit, Exhibit H-9.)

"I tried for nearly one year to pay off and close my account, but CCB made it nearly impossible to do so. Every time I was given a closing balance and paid it, CCB would continue to bill me late fees and other charges and harass me by telephone and mail for payment. On May 31, 2001, I called CCB for the payoff amount and was told it was \$1,537.32. I specifically asked whether my account would be closed out if I paid that amount and was told that it would be. The following day June 1, 2001, I sent a check for the full \$1,537.32 to CCB, believing that this would close my account. CCB received and cashed the check. Approximately one month later, I received a bill from CCB for a late fee of \$30.00...CCB's conduct was outrageous. They refused to close my account, continued to bill for late charges, and harassed me continuously

despite the fact that I tried to pay off my account three times based on their own close out figures.” (Affidavit of Colin House, dated July 22, 2002, Exhibit H-11.)

“After paying the \$400.00 on December 2, 1998 to close my account, I received additional statements stating that my account was past due. In January of 1999, I received a statement that stated the balance on my account was \$164.03. On January 15, 1999, I received a letter in the mail that stated I had a balance of \$189.03. Again, on January 19, 1999, I received a letter that stated the account balance was \$164.03. Finally on January 26, 1999, I received a letter from Cross Country Bank stating that I had a balance of \$189.03.” (Affidavit of Roderick Wedlowe, dated October 16, 2002, Exhibit H-20.)

“In an effort to stop the calls, I asked a representative of Cross Country for an amount that would bring my account up to date and was told approximately \$200.00. I paid that amount but the calls continued.” (Roberts Aff., Exhibit H-16.)

“I closed my account on my own accord months ago [and] paid the [account] in full. All they continue to do is send me statements and letters with accumulative fees on a “0” balance [account]. I do not owe these fees and their harassment calling me every hour, weekends, holidays, work phones, e-mail, cell phone, is appalling.” (Complaint of Janet E. Gordon, dated February 17, 2002, Exhibit I-63.)

“I paid Cross Country Bank off in full. They sent me a letter saying that I have [zero] balance with them, and my account is closed. That was on June 18, 2001. Then a few months later their saying I owe more money.” (Complaint of Kelly Potter, dated November 8, 2001, Exhibit I-135.)

“Payment was made in full on credit card. A dispute was sent to VP- Customer Service for various charges. I heard nothing back. Customer Services states they would send another letter why charges had to be paid. [I] never received it. I keep getting more bills and phone calls from the company. I told them they were paid.” Complaint of Maria Steckman, dated October 11, 2000, Exhibit I-163.

“On March 20, 2000 I called Cross Country Bank because I wanted to pay off my account and close it out. I was told by the woman I

spoke to how much the total payoff would be and I paid all of it on the phone to her. I asked her [two] times if this will pay off my account to close [and] she said yes. I also spoke to another gentleman that she transferred me to so he could verify the closing of my account. [Two] months later they started sending threatening letters and threatening phone calls.” (Complaint of Mark Roody, Dated August 20, 2000, Exhibit I-144.)

“Credit Card [account] was requested to be closed July 2001. Balance of \$70 was quoted by company to close the [account]. Payment was made and [received]. Within [approximately] a 6 week period, numerous phone calls, sometimes 3-4 times a day were [received] by us at home. [Cross Country] claimed we owed \$79.24 and we found out [account] was not closed.” (Complaint of Thomas Hart, dated November 8, 2001, Exhibit I-74.)

See also, Custer Complaint, Exhibit I-31; Burgess Complaint, Exhibit I-19; Complaint of Donald J. Scholl, Jr., dated March 17, 2002, Exhibit I-152; Complaint of Michael K. Reed, dated March 4, 2002, Exhibit I-138; Complaint of Fernando Diaz, dated February 28, 2002, Exhibit I-38; Complaint of Ethel E. Rushford, dated September 29, 2001, Exhibit I-148; Complaint of Lynette M. Rohde, dated March 20, 2001, Exhibit I-198; Complaint of Karen A. Davis, dated November 20, 2000, Exhibit I-33; Complaint of Barbara Brooks, dated October 18, 2000, Exhibit I-14; Complaint of Jeffrey Gieseler, dated October 10, 2000, Exhibit I-201; Complaint of Joseph C. Green, dated August 9, 2000, Exhibit I-64; Complaint of Beth Dunn-Fox, dated July 12, 2000, Exhibit I-42; Complaint of Raphael Simpkins, dated June 24, 2000, Exhibit I-159; Complaint of Elaine Nieves, dated April 12, 2000, Exhibit I-124; Complaint of Christopher J. White, dated March 2, 1999, Exhibit I-180; Complaint of Adam Knapp, dated October 12, 1998, Exhibit I-91; Complaint of Lisa G. Side, dated November 8, 1999, Exhibit I-157.

64. Some collectors misrepresent an account holder’s payoff amount by inflating the amount of money due. For example, some collectors will tell an account holder that, in order to

close out their account, they will need to pay an amount equal to the current balance due plus the finance charges which were assessed the previous month, and a \$30 late fee and \$30 over-the-limit fee, even though some of those charges have yet to be imposed.

“When card holders wanted to pay off their balance so they could close their accounts, I would tell the card holder what the balance would be in ten days. I would also tell them to pay an additional \$60.00 for late fees and over the limit fees, the amount in finance charges that would be due the next month, and a \$7.00 pay-by-phone fee. I added the finance charge due the next month--as I was taught by my supervisors--despite the fact that the payoff figure already included all of the daily interest that was charged to the account. I realize now that we were trying to collect finance charges before they actually accrued and were payable.” (Duncan Aff., Exhibit X.)

“When account holders wanted to pay off their accounts, we sometimes over-charged them by telling them that they had to pay an amount equal to the balance that would be due in ten days plus a \$30.00 late fee and \$30.00 over-the-limit fee, and any transaction fee allowed under the credit agreement. We did not explain all of these charges to the account holder, but rather merely told them the total amount due.” (Ross Aff., Exhibit Y.)

Check Truncation

65. Cross Country has entered into many credit card agreements that contain a term which authorizes Cross Country to convert a check or other payment instrument into an electronic debit transaction that will be processed through the Automated Clearing House system (“ACH”) and electronically debited from the account on which it was drawn. Cross Country sometimes refers to this process as check “truncation.” (See sections of Cross Country credit agreements annexed hereto as Exhibit G entitled “Promise to Pay” or “Check Truncation.”)

66. Truncation allows Cross Country to immediately withdraw funds from the customer’s account without having to present the check or other instrument for payment to the

customer's bank and wait for it to clear. Consequently, a payment that might take a few days if processed by check, can be processed electronically within a few minutes. Consumers may opt out of the truncation provision by sending a letter to Cross Country's customer service department stating their desire to do so.

67. Cross Country's truncation provisions are generally buried in tiny print in the middle of Cross Country's credit agreements. They are inconspicuous, not set apart from other terms, and typically are inserted under the misleading heading entitled "Promise to Pay." (See sections of Cross Country credit card agreements annexed hereto as Exhibit G entitled "Promise to Pay" or "Check Truncation.")

68. Most account holders are unaware of the truncation provision and do not understand that their payment checks will be turned into ACH withdrawals which can be processed immediately upon receipt. As a result, many account holders make a payment by check believing they will have sufficient time to cover the check by making a deposit into their checking account, only to find out later that the amount of the check was immediately debited from their account before they could cover it. This has caused many consumers to be overdrawn on their checking accounts for which they were billed returned check fees by their banks.

"Another problem I would see from time to time involved ACS's practice of using the information on paper checks to make an immediate electronic withdrawal from an account holder's checking account, a practice referred to as "check truncation." Many account holders paid by check, believing that they would have a few days to deposit money into their account to cover the check, only to find out that the check resulted in an immediate debit before they could deposit money into their accounts. As a result, these account holders would be charged an insufficient fund fee by their banks." (Dagastine Aff., Exhibit W.)

“Another billing practice that harmed account holders was the practice of using an account holder’s paper check to process an immediate electronic debit from the account holder’s checking account. This practice often resulted in account holders having insufficient funds in their accounts at the time the account was debited, and being charged a fee by their bank. In addition, these account holders would be charged additional fees by ACS because the debit did not go through.” (Ross Aff., Exhibit X.)

“In June of 2001, CCB did an unauthorized withdrawal from my checking account with SEFCU, causing me to be overdrawn on that account. I also, was assessed an insufficient funds fee and a \$30.00 late fee. In addition to that fee, I was charged an over-the-limit fee which put me over my limit of \$600.00. ...I became aware of the unauthorized withdrawal when my bank notified me that I had overdrawn on a \$11.00 check and accrued an \$20.00 overdraft fee. I then went on line to See why this occurred. I noticed a code for a \$35.00 withdrawal that I had never Seen before. I inquired with my bank and they told me it was an electronic debit withdrawal and that CCB had authorized it. I immediately placed a block on my checking account costing me an additional \$10.00 and contacted CCB regarding the unauthorized withdrawal. I also, filed a complaint with CCB and closed my account. All of the representatives that I spoke with gave me a difficult time. I then asked to speak to a supervisor and I notified the supervisor that I did not authorize electronic withdrawals from my account and that I wanted my checks cashed as they had been. At that time, I was told that the electronic withdrawal was appropriate and that I was notified of such transaction by an insert placed in with my statement.” (Jessica Christensen Affidavit, Exhibit H-4.)

“[Cross Country] tried to illegally obtain payment through my checking account. The action was stopped through the help of my bank. Charges were added to my account, that I felt I shouldn’t have been accountable for since I was paying by check in a timely fashion. I disputed the charges and was assured the incident wouldn’t happen again. The next month I received another set of charges because they once again tried to obtain money from my checking account illegally.” (Fecura Complaint, Exhibit I-45.)

“I received a credit card through Cross Country Bank. I tried to make payments to them. Do to a truncation error I received 3 late fees. The error was on their part.” (Complaint of Mike LaForest,

dated December 16, 2001, Exhibit I-197.)

(See also, Complaint of Carol Shepard, dated December 18, 2001, Exhibit I-156; Complaint of Cathy Zdubek, dated June 13, 2001, Exhibit I-187.)

CONCLUSION

69. Respondents prey upon the most vulnerable members of the financial services market by first inducing these consumers to enter into severely onerous and confusing credit agreements that provide little benefit to consumers but profit respondents greatly, and then employing hyper-aggressive collection tactics, which are intended to abuse, harass and deceive consumers into making payments. Unless enjoined, respondents will continue to engage in this unlawful and deceptive scheme and cause substantial injury to unsuspecting consumers.

WHEREFORE, it is respectfully requested that the Petition be granted in all respects.

Dated: Albany, New York
March 28, 2003


MARK D. FLEISCHER