

1 II. FACTS AND PROCEDURAL HISTORY

2 A. THE PARTIES

3 Defendant Gill is a licensed attorney who did business as a
4 sole practitioner at the Law Offices of Keith Gill. See Summ. J.
5 Order at 2. In addition to a general law practice, Gill had

1 | alleged that Defendants were charging and receiving payment for

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1 Court also sent the Order to all parties on November 4, 1999.

2 Both Defendants have appealed the Court's Order to the Ninth
3 Circuit. Neither Defendant has obtained a stay of the Court's
4 Order during the pendency of the appeal.

5 C. Injunctive Provisions of the Summary Judgment Order

6 The Court's Summary Judgment Order included a mandatory

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2. Prohibition on Specified Representations

The Court barred Defendants from making specific representations to consumers. The Court specified:

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or advising any consumer to induce, encourage, or

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request, any creditor to report false or

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misleading information with respect to any

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concealing adverse information that is
accurate and not obsolete.

Id. at 40-42.

3. Prohibition on Demanding Payment and the Customer
Notification Requirement

The Court included a requirement that Defendants provide

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credit repair service signed prior to March 4,

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1999 stating that as a result of a court order

1 freeze, appointment of temporary receiver, and order authorizing
2 immediate access and expedited discovery. The Court also issued
3 an order temporarily freezing assets of Murkey and CRCA,
4 appointing a temporary receiver over CRCA, authorizing immediate
5 access to CRCA and expedited discovery. The Court held a hearing
6 on June 7, 2001 regarding the preliminary relief granted and
7 ordered further briefing on the OSC regarding contempt.

8 **E. Hearing on OSC Re: Contempt**

9 On June 25, 2001, the Court held a hearing on the OSC
[REDACTED]

1 findings set out below.

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1 Ex. 13 at 152-53, 164, 182 (same). In general, the infomercials
2 solicit customers for CRCA's services. See Stahl Decl. ¶ 7.

3 During expedited discovery, Plaintiff was able to confirm
4 that CRCA has regularly advertised on CRN. See Suppl. Decl. of

5 See Stahl in Supp. of Pl.'s Motion for Expedited Discovery, Keith

1 Re:New Clients in Supp. of Pl.'s Applic. for Contempt Sanctions
2 ("Stahl Decl. Re: New Clients") at ¶ 5, Ex. 22. The evidence
3 shows that there were binders for each month since November 1999

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2. Representations

Murkey continues to represent, through the CRCA, that he can lawfully and permanently remove accurate, nonobsolete information from credit reports.

The message conveyed by the infomercials is that the CRCA can and will improve anyone's credit report by removing all the

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1 404-07 (emphasis in original).

2 **3. Payment from Customers and Failure to Issue**
3 **Notices and to File Compliance Reports**

4 Murkey has continued to demand payment from consumers of the
5 CRCA who signed up for credit repair service prior to March 1998.
6 See Consumer Decls. in Supp. of OCS: Frye Decl. ¶ 5, Ex. 4;
7 Wachuku Decl. ¶¶ 7-12, Exs. 4-9. Evidence from CRCA offices and
8 clients' files shows that invoices demanding additional payment
9 were sent to clients who entered into contracts prior to March 4,
10 1998. See Suppl. Stahl Decl. at ¶¶ 7-8; Ex. 25, pgs. 26, 51, 89-
11 90, 125, 163.

1 | FTC on November 18, 1999.² See Defs.' Ex. 2.

2 | **III. LEGAL STANDARD**

3 | District courts have the inherent power to enforce their

1 F.2d 850, 856-57 (9th Cir. 1992).

2 Sanctions for civil contempt may be imposed to coerce
3 obedience to a court order, or to compensate the party pursuing
4 the contempt action for injuries resulting from the contemptuous
5 behavior, or both. See United States v. United Mine Workers, 330
6 U.S. 258, 303-04. "[R]emedial or compensatory actions [for
7 contempt] are essentially backward looking seeking to compensate

1 advertised, promoted, and offered for sale credit repair service.

2 Plaintiff's evidence of transcribed infomercials and exist

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Second, the Court's Order also enjoined Defendants from

2 making representations to government regarding Defendants' abilities

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[REDACTED]

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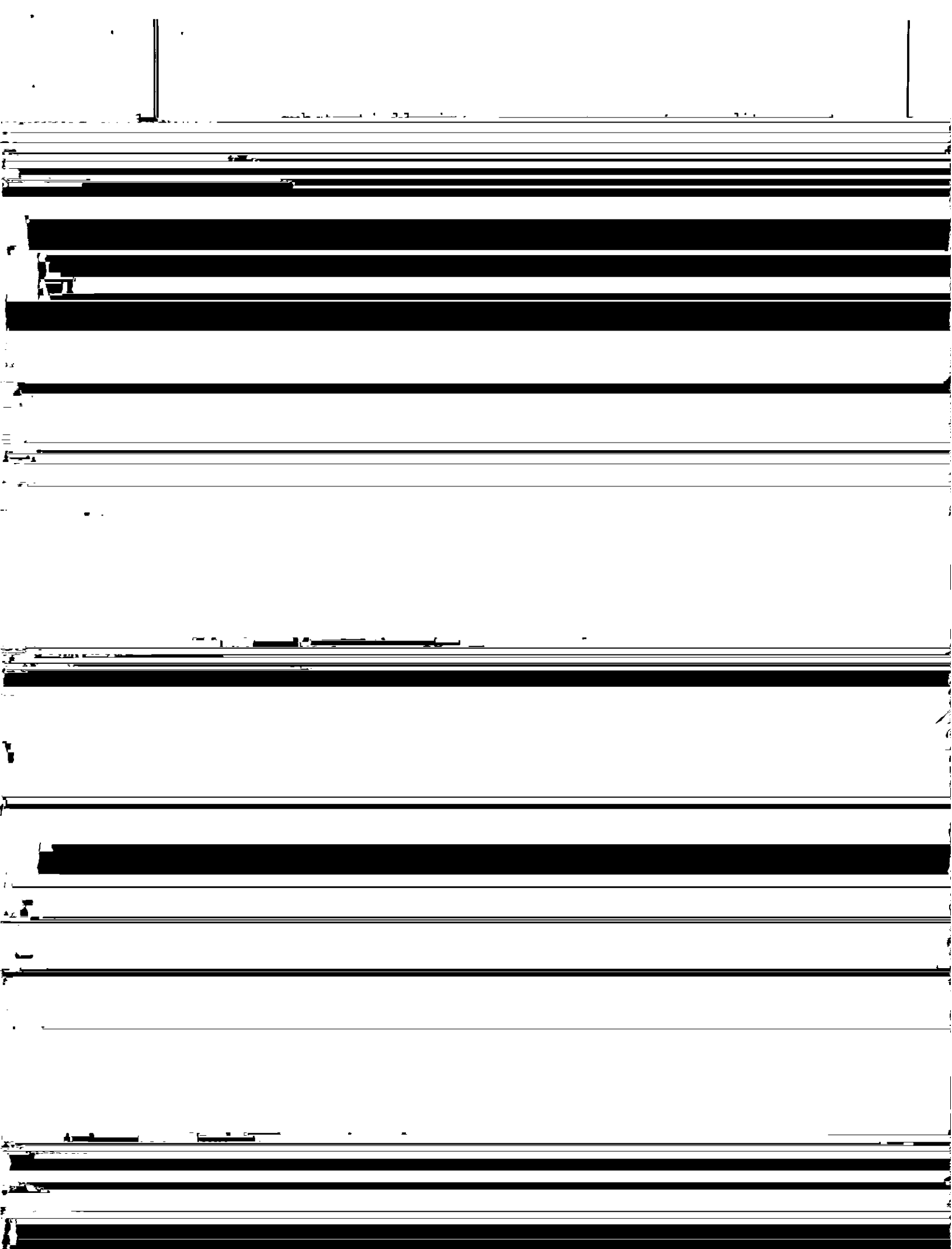
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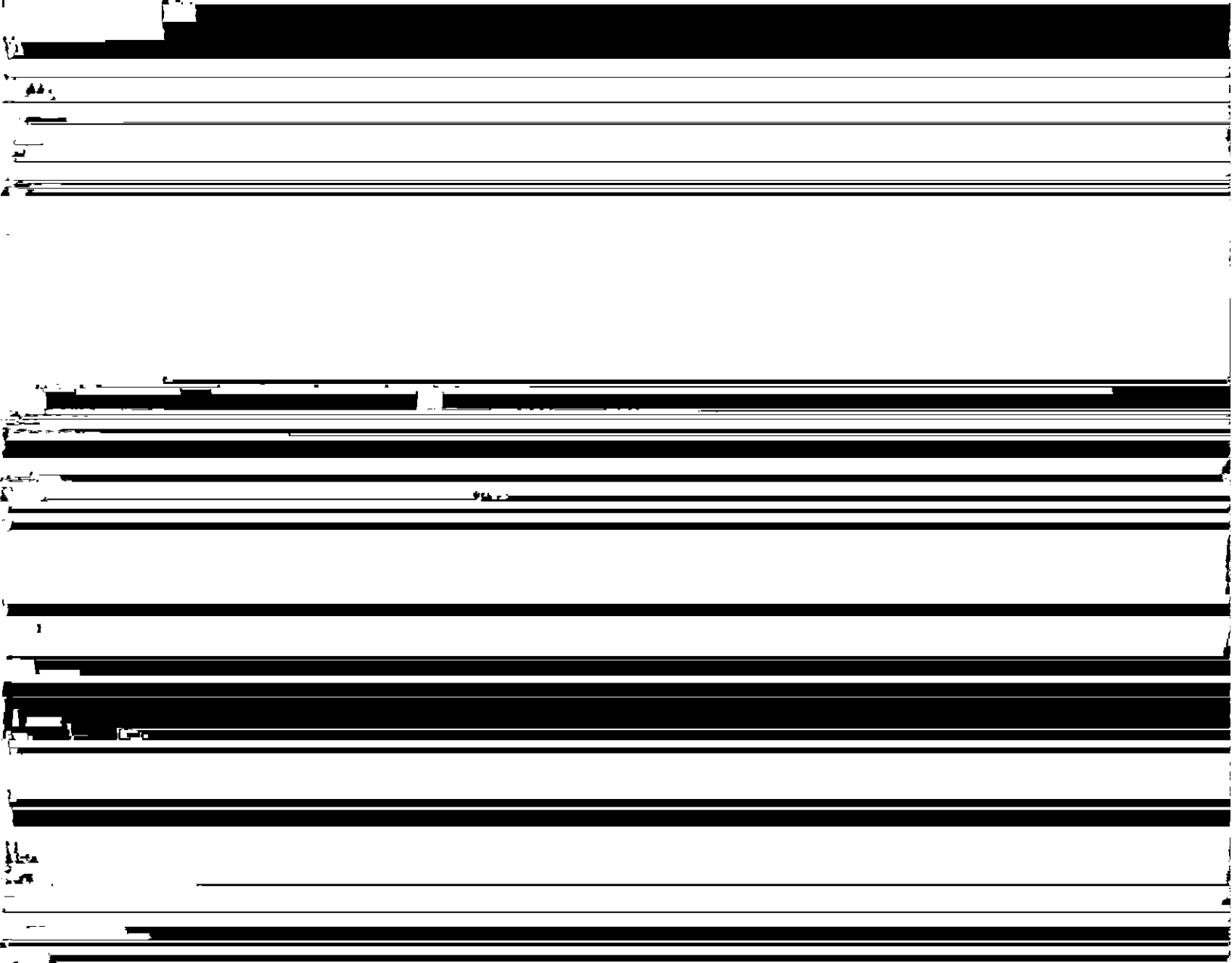
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using any untrue or misleading statement, or
counseling or advising any consumer to make
any untrue or misleading statement, the
intended effect of which is to alter the
consumer's identification to prevent the
display of the consumer's credit record,
history, or rating for the purpose of
concealing adverse information that is
accurate and not obsolete.

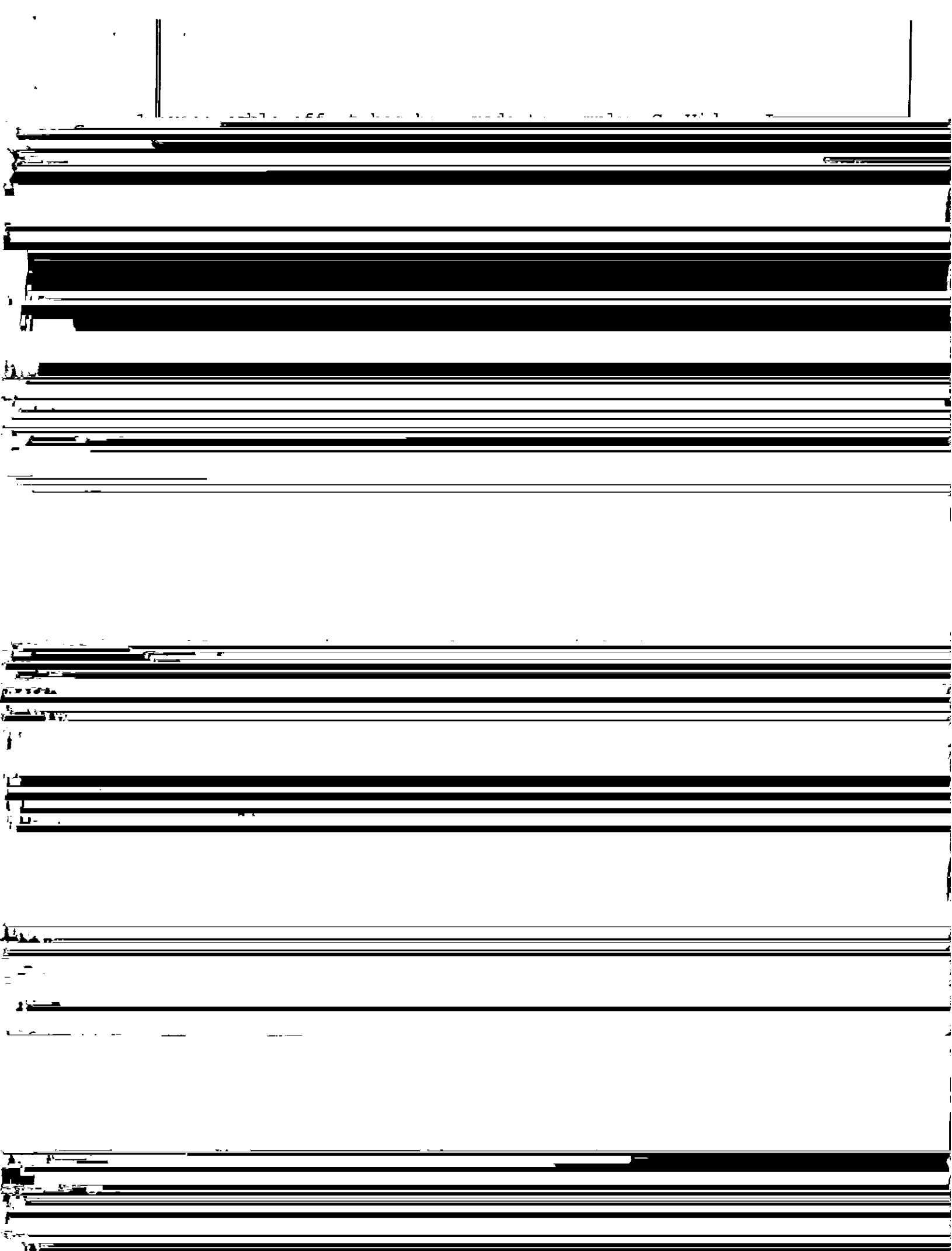
Summ. J. Order at 40-42. Plaintiff's evidence illustrates that
Murkey has continued to make such representations in

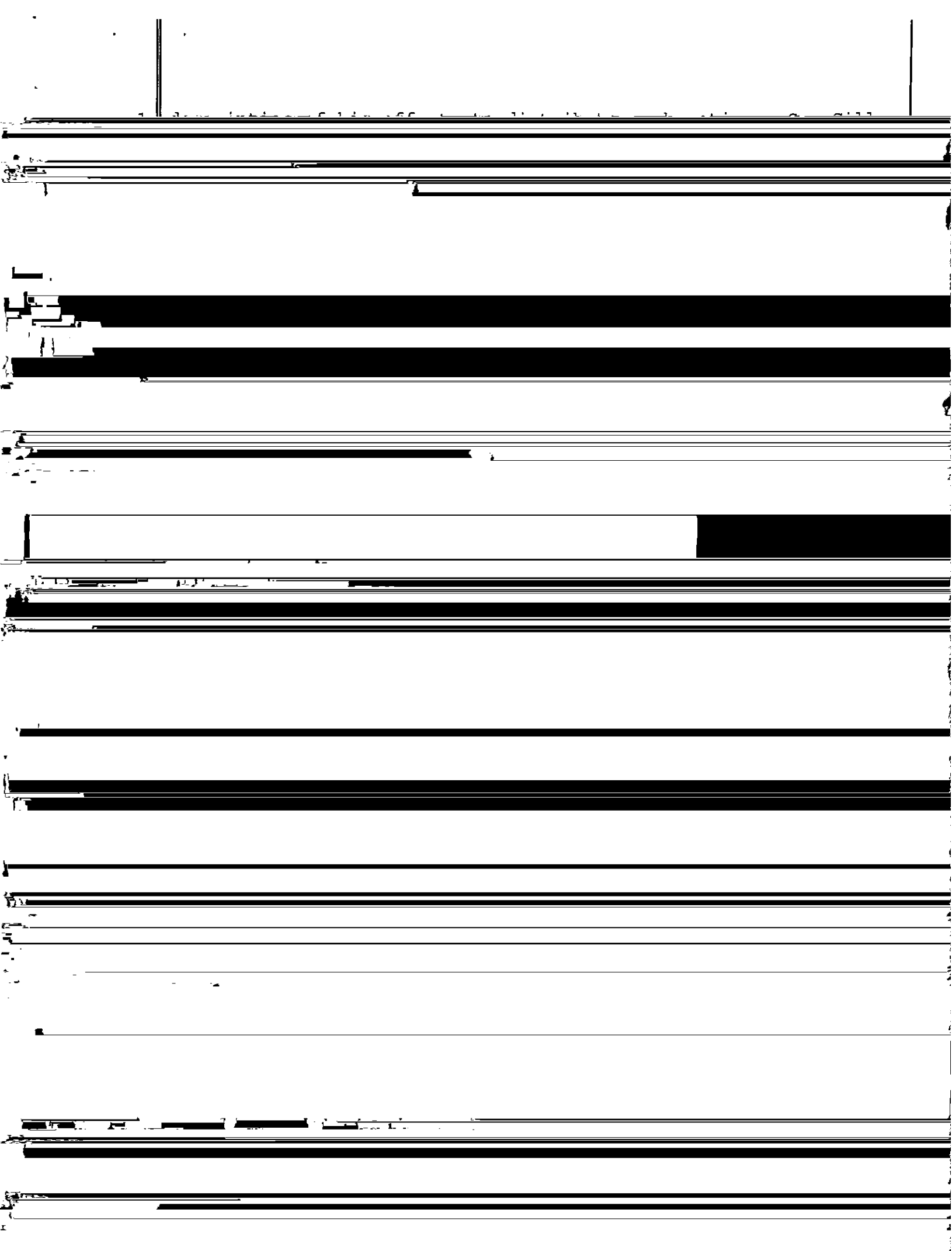


1 notifications of rescission and have failed to report to
2 Plaintiff on their efforts to comply with this requirement.

3 Plaintiff claims that Murkey has not provided a compliance
4 report. Murkey has shown that he provided a compliance report by
5 letter immediately after the Court issued its Order. See
6 Murkey's Opp'n at 4; Murkey Decl. ¶ 3; Defs.' Ex. 2. However, the
7 letter, dated November 18, 1999, does not satisfy the
8 requirements of the Court's Order which specifically and clearly
9 set forth the required content for such a report:

10 [E]ach Defendant shall provide a written report to the
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1 supply Plaintiff with a complete compliance report. Gill's

1 at 39-42. Accordingly, although CRCA claims to be a nonprofit
2 organization and is not a Defendant in this case, its
3 participation in and facilitation of Murkey's conduct makes it
4 eligible for liability.

5 CRCA argues that it never had any direct notice of the
6 Court's Order and its nonprofit status exempts it from this

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1 "Taxes," in an envelope labeled "CRCA 3d Quarter." See Suppl.
2 Stahl Decl. ¶ 24, Ex. 36, pgs 3334-372. In fact, Murkey kept his
3 receipt for the shipment of his brief to the Ninth Circuit Court
4 of Appeals with other CRCA receipts. See *id.* at 332-33. See
5 Lastly, Murkey lives in the CRCA offices. See *id.*; Murkey Decl. ¶
6 21. Based on this evidence, the Court finds that Murkey had
7 complete control of CRCA, co-mingled personal funds with funds
8 belonging to CRCA, and failed to adhere to the corporate form.⁵

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Based on the clear and convincing evidence presented by

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Plaintiff the Court finds that Markov Gill and ONCA violated

1 that the defendant made material misrepresentations, that they
2 were widely disseminated and that consumers purchased the

1 In determining the proper amount of a coercive sanction, the
2 Court should consider the "character and magnitude of the harm
3 threatened by continued contumacy, and the probable effectiveness
4 of any suggested sanction." *United Mine Workers*, 330 U.S. at 204

1 to take any action necessary for the termination of the
2 corporation and for the provision of rescission notices and
3 restitution to CRCA clients.

4 **VI. CONCLUSION**

5 For the foregoing reasons, the Court HOLDS Murkey, Gill, and
6 CRCA in civil contempt. The Court hereby adopts and incorporates
7 Plaintiff's proposed order, with modifications.

1 and sale of credit repair service, directly and through CRCA,
2 after he was served with the Final Order..

3 6. Murkey has violated the provision in the Final Order that

1 and not obsolete.

2 9. Murkey is liable for contempt for violating the
3 provisions of the Final Order that prohibit the defendants, and
4 those in active concert or participation with them, from (i)
5 representing that they can substantially improve most consumers'

1 effectuating the permanent lawful removal of bankruptcies, liens,
2 judgments, charge offs, late payments, foreclosures

1 days after entry of the Final Order, to all credit repair clients
2 who had payments that were due or would thereafter become due on
3 contracts for the performance of credit repair service signed
4 prior to to March 4, 1999, stating that as a result of a court

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[Redacted]

[Redacted]

[Redacted]

1 performance or distribution of credit repair service, including
2 participation in the billing or demanding of payment for any
3 credit repair service. The purpose of this fine is to coerce
4 compliance with the Final Order.

5 IT IS FURTHER ORDERED that Susan Montgomery, who was
6 appointed the Temporary Receiver over CRCA is hereby appointed

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II.

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Sanctions For Violating Prohibition on Specified Representations

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THE COURT HEREBY ORDERS THAT DEFENDANT SHALL BE

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1 Assets of Defendant Murkey and CRCA, Appointing Temporary

2 Receiver over CRCA. Authorizing Immediate Access to CRCA and

1 to pay for the defendants' service, stating that as a result of a
2 court order the contracts are rescinded and no further payments
3 are due, then each defendant shall be required to pay to the U.S.
4 Treasury a fine in the amount of \$1,000 per day until such
5 notices have been sent to all such consumers.

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IV.

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Sanctions for Violating Prohibition on Billing Prior Customers

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IT IS FURTHER ORDERED that Defendant Murkey shall be

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required to pay to the U.S. Treasury a fine in the amount of

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\$1,000 per day until such notices have been sent to all such consumers.

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V.

**Sanctions for Violating Requirement of
Submitting Compliance Report**

IT IS FURTHER ORDERED that, if Defendant Murkey has, by the
twentieth business day following entry of this Order, failed to