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FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION

2009 SEP 30 PM 1:04

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

EXECUTIVE FINANCIAL CREDIT SERVICES; TODD SWICK, an individual; MICHAEL SARDO, an individual; and DOES 1 THROUGH 20 inclusive;

Defendants.

Case No. 37-2009-00099471-CU-MC-CTL

COMPLAINT FOR CIVIL PENALTIES, INJUNCTION AND OTHER EQUITABLE RELIEF

The People of the State of California, by and through Edmund G. Brown Jr., Attorney General of the State of California, allege the following on information and belief:

VENUE AND JURISDICTION

1. Defendants at all times mentioned herein have advertised and transacted business in the County of San Diego and elsewhere within the State of California. The violations

1 of law described herein have been and are now being committed in the County of San Diego and
2 elsewhere in the State of California.

3 **DEFENDANTS**

4 1. Executive Financial Credit Services, is a business entity of unknown structure
5 conducting business in San Diego County and elsewhere.

6 2. Defendants Todd Swick and Michael Sardo are both sued in their individual
7 capacities as owners and principals of Executive Financial Credit Services. Defendants Swick
8 and Sardo operate, control, manage, supervise, and direct the operations and activities of
9 Executive Financial Credit Services. Defendants Swick and Sardo, Defendant Does 1-20, shall
10 hereafter be referred to as "Defendants."

11 3. The true names and capacities of Defendants sued under the fictitious names of
12 Does 1 through 20, inclusive, are unknown to Plaintiff who therefore sues those defendants by
13 such fictitious names. Plaintiff will amend its complaint to show the true names of those
14 Defendants when they have been ascertained.

15 4. Whenever reference is made in this complaint to any act or transaction of any
16 defendant corporation, company, association, business entity, or partnership, such allegation shall
17 be deemed to mean that said defendants and their owners, officers, directors, agents, employees,
18 or representatives did or authorized such acts while engaged in the management, direction, or
19 control of the affairs of the defendant and while acting within the scope and course of their duties.

20 5. Whenever reference is made in this complaint to any act of any individual
21 defendant, the allegation shall be deemed to mean that the defendant is and was acting as a
22 principal, under express or implied agency, or with actual or ostensible authority to perform the
23 acts alleged.

24 6. Whenever reference is made in this complaint to any act of any defendant, the
25 allegation shall be deemed to mean the act of each defendant herein, acting individually and
26 jointly.

27 7. At all times mentioned herein, each Defendant knew or realized that the other
28 Defendants were engaging in or planned to engage in the violations of law alleged in this

1 complaint. Knowing or realizing that other Defendants were engaging in unlawful conduct, each
2 defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant
3 intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, and
4 thereby aided and abetted the other defendants in the unlawful conduct.

5 8. Defendants have engaged in a conspiracy, common enterprise, and common
6 course of conduct, the purpose of which is and was to engage in the violations of law alleged in
7 this Complaint. The conspiracy, common enterprise, and common course of conduct continue to
8 the present.

9 9. At all times mentioned, each of the Defendants acted as the principal, agent or
10 representative of each of the other Defendants, and in doing the acts alleged, each Defendant was
11 acting within the course and scope of the agency relationship with each of the other Defendants,
12 and with the permission and ratification of each of the other Defendants.

13 **DEFENDANTS' BUSINESS PRACTICES**

14 10. Defendants operate a "Credit Services Organization" within the meaning of
15 Civil Code section 1789.12, subdivision (a). Defendants represent they can assist in repairing the
16 credit ratings of members of the public who purchase their service (Consumers). Defendants
17 claim they will dispute unfavorable information contained in the credit reports of Consumers of
18 their service, removing negative items, and increasing consumers' credit scores. Those services
19 are sometimes also referred to as "credit restoration" or "credit repair."

20 11. Although Defendants have operated as a Credit Services Organization they
21 have never obtained a certificate of registration from the California Department of Justice, as
22 required by Civil Code section 1789.25.

23 12. Defendants send out solicitations for their Credit Services Organization
24 business both through e-mail and regular mail, and advertise through their own Executive
25 Financial Credit Services website. Defendants charge a standard initial fee of \$499, to be paid up
26 front by the consumer when the contract is initially signed, and then charge an additional fee of
27 \$199 per month for six months thereafter.

28

1 13. Defendants have never obtained a surety bond, as required by Civil Code
2 section 1789.18.

3 **FIRST CAUSE OF ACTION**
4 **UNFAIR COMPETITION AS DEFINED IN BUSINESS AND**
5 **PROFESSIONS CODE SECTION 17200**

6 14. Plaintiff re-alleges and incorporates by reference the allegations contained in
7 paragraphs 1 through 13.

8 15. Beginning on an exact date unknown to Plaintiff but within four years
9 preceding the filing of this Complaint, except where otherwise specified, Defendants have
10 engaged in acts of unfair competition as defined in Business and Professions Code section 17200,
11 including but not limited to, the following:

12 (a) Defendants have violated Civil Code section 1789.25, in that they have
13 conducted business as a Credit Services Organization without having obtained a certificate of
14 registration from the California Department of Justice.

15 (b) Defendants have violated Civil Code section 1789.18, in that they
16 conducted business as a Credit Services Organization without having obtained and filed with the
17 Secretary of State a surety bond in the amount of \$100,000.

18 (c) Defendants have violated Civil Code section 1789.13, subdivision (a), by
19 charging or receiving money from Consumers before fully and completely performing the
20 services they have agreed to perform.

21 (d) Defendants have violated Civil Code section 1789.13, subdivision (i),
22 advertising as a Credit Service Organization without being registered with the Department of
23 Justice.

24 **SECOND CAUSE OF ACTION**
25 **VIOLATING THE CREDIT SERVICES ACT OF 1984, CIVIL CODE**
26 **SECTIONS 1789.10 ET SEQ.**

27 16. Plaintiff re-alleges and incorporates by reference the allegations contained in
28 paragraphs 1 through 15.

1 17. Each and every action by Defendants set forth in paragraphs 15(a) through
2 15(d) constitutes a violation of the Credit Services Act of 1984, Civil Code sections 1789.10, et
3 seq.

4 REQUEST FOR RELIEF

5 1. Permanently enjoin, under Business and Professions Code section 17203,
6 Defendants and their officers, directors, principals, agents, representatives, employees,
7 successors, and assignees and all persons, corporations and other entities acting by, through,
8 under or on behalf of Defendants, or acting in concert or participation with Defendants from
9 committing any acts of unfair competition, including the violations alleged above.

10 2. Restrain and enjoin, under Civil Code section 1789.20, Defendants and their
11 officers, directors, principals, agents, representatives, employees, successors, and assignees and
12 all persons corporations and other entities acting by, through, under or on behalf of said
13 Defendants, or acting in concert or participation with defendants from directly or indirectly
14 violating the Credit Services Act of 1984, Civil Code Sections 1789.10 et seq., including, but not
15 limited to those acts alleged above.

16 3. Civil penalties, under Business and Professions Code section 17206, against
17 Defendants, and each of them, of \$2,500 for each act of unfair competition as defined in Business
18 and Professions Code section 17200, as proved at trial, but in an amount of not less than
19 \$200,000.

20 4. Defendants be ordered, under Business and Professions Code section 17203, to
21 restore to every person in interest all money and property that was acquired by Defendants
22 through their unfair or unlawful conduct as proven at trial.

23 5. Any further relief that this Court deems proper to fully and successfully
24 dissipate the effect of the unfair or fraudulent business practices and untrue or misleading
25 representations of Defendants.

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6. That Plaintiff recover its costs.

Dated: September 30, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANCIS T. GRUNDER
Senior Assistant Attorney General
CATHERINE Z. YSRAEL
Supervising Deputy Attorney General



HOWARD WAYNE
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