

STATE OF TEXAS

Plaintiff,

v.

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

Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353<sup>rd</sup> JUDICIAL DISTRICT

JAN 31 2007  
8:34

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this date, came on for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (hereinafter "State"), acting by and through Attorney General GREG ABBOTT is Plaintiff, and CROSS COUNTRY BANK, INC. and APPLIED CARD SYSTEMS, INC. are Defendants. Through their respective attorneys of record, Plaintiff and Defendants agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

**I. STIPULATIONS**

The parties, through their respective attorneys, make the following stipulations:

1.1 The Attorney General of the State of Texas has alleged certain claims and causes of action against Defendants alleging that Defendants have violated the Texas Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. & Com. Code, § 17.41 *et seq.* (Vernon 1987 & Supp 2004) and the Texas Debt Collection Act, TEX. FIN. CODE § 392.001 *et seq.* (Vernon 1998 & Supp. 2004).

1.2 This Agreed Final Judgment and Permanent Injunction and the consent of Defendants to the injunctive and monetary relief provided herein, shall not constitute, and shall

not be construed to be an admission of liability or an acknowledgment of the validity of any claims by any party that were or could have been asserted in this action.

1.3 The Office of the Attorney General and Defendants agree to and do not contest the entry of this Agreed Final Judgment and Permanent Injunction;

1.4 The corporate signatories hereto on behalf of the corporate Defendants are officers of their respective Defendant corporation, and are authorized to enter into this Agreed Final Judgment and Permanent Injunction, have read the Agreed Final Judgment and Permanent Injunction, and agree to the entry of same;

1.5 Defendants do not contest jurisdiction or venue in this case;

1.6 Defendants represent that they will not circumvent the intent of this Judgment by outsourcing their collection activities to any third party unless the outsourced entity agrees to be bound contractually to the terms of this Judgment.

1.7 This Agreed Final Judgment and Permanent Injunction in no way affects, preempts, precludes or resolves any matters with respect to any private claimants or other governmental agencies or departments.

## **II. DEFINITIONS**

For the purposes of this Judgment, the following definitions shall apply:

2.1 The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Judgment all conduct that might otherwise be construed to be outside of its scope.

2.2 The term “any” shall be construed as synonymous with “all” and shall be all inclusive.

2.3 The term “Affiliates” means any corporation, company, partnership or other entity of any kind: (i) which is the direct or indirect subsidiary of either Defendant; (ii) of which either Defendant is a direct subsidiary; (iii) which is a direct or indirect subsidiary of a corporation or company of which Defendant is a direct or indirect subsidiary; or (iv) in which either Defendant or Rocco Abessinio has an ownership interest.

2.4 The term “Authorized Purchases” shall mean all purchases for goods or services other than goods or services marketed or sold by Defendants.

2.5 The term “Authorized User” shall mean a customer of Defendant Cross Country Bank who is authorized to use the relevant credit card or a person who represents himself or herself to be a person who is authorized to use the credit card and the Defendant has no reason to believe that he or she is not such person.

2.6 “Clear and conspicuous” shall mean that a statement, representation, claim or term is readily noticeable and reasonably understandable.

2.7 The term “Express Consent” shall mean an Authorized User’s express and affirmative consent, either verbally or in writing, which is given after all material terms and conditions have been clearly and conspicuously disclosed, either verbally or in writing.

2.8 The term “Recorded Consent” shall mean (i) a written authorization by an Authorized User; or (ii) an audiotape or other audio recording of an Authorized User’s Express Consent.

2.9 The term “parties” as used in this Agreement shall collectively refer to Defendants and the Attorney General.

2.10 The term “person” shall mean any individual or entity, including without limitation any officer, employee, agent, representative, servant, contractor, franchisees, licensee,

corporation, subsidiary, division, unit, location, successor, or assignee.

2.11 “Qualified Consumer” shall mean a person in Texas who (a) between January 1, 2002 and July 30, 2004 was granted an unsecured credit card by Defendant Cross Country Bank, (b) exceeded the person’s established credit limit no more than 17 days after the date of such person’s first billing statement; and (c) did not charge any purchase to the card (other than a fee imposed by Defendants) more than 17 days after the date of such person’s first billing statement.

2.12 The term “represent” means stating, orally or in writing, directly or indirectly, in substance or effect, and whether by affirmative statements, implications, or omissions.

### **III. INJUNCTIVE RELIEF**

3.1 IT IS ORDERED that Defendants and their employees, officers, servants, successors, assigns, and affiliates, and all other persons or entities in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise shall, in the State of Texas, be permanently enjoined from:

- a. Misrepresenting the fees or charges a person will incur by applying for or using a credit card issued by any Defendant, or failing to clearly and conspicuously disclose in all written, Internet, or telephone solicitations or applications, in accordance with the federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (“TILA”), any fees required to be so disclosed therewith by TILA and Regulation Z promulgated thereunder;
- b. Misrepresenting the credit limit a person is eligible to receive, including but not limited to:
  1. Advertising pre-approved credit lines or limits “up to” a certain amount with the intent not to issue credit cards with such credit

lines or limits; or

2. Representing that a particular person may receive “up to” a certain credit limit that is significantly higher than Defendants’ “default credit limit,” without clearly and conspicuously disclosing the minimum available credit limit, after mandatory fees are deducted;
- c. Failing to clearly and conspicuously disclose, if true, that the initial available credit for a person will be reduced by all applicable up-front fees. Such fees may include, as applicable, the account origination fee, any initial annual fee or monthly maintenance fee and any additional optional charges, such as charges for the credit account protection plan or rapid approval express handling service;
  - d. Promoting in written solicitations that Defendants’ credit card accounts are useful in building or improving credit or otherwise represent that Defendants will provide advice or assistance with respect to improving any person’s credit record, credit history, or credit rating. This limitation shall not preclude Defendants from disclosing to prospective cardholders the fact that it will report its experience with such cardholders to one or more credit reporting agencies and that timely payment of amounts due and compliance with the other terms of the cardholder agreement may improve the cardholder’s credit standing;
  - e. Enrolling any person in any fee based product or service or charging a person’s account for any goods or services, including without limitation the credit account protection plan, Applied Advantage, Auto Advantage,

or Shopper's Advantage, without first disclosing the material terms of the product or service and obtaining the person's Recorded Consent. Defendants shall not misrepresent the characteristics, benefits, or terms of any such fee based product or service;

- f. Charging a person a fee on an annual or periodic basis for any optional product or service sold by Defendants without providing the customer written notice of the impending renewal charge at least 15 days, but not more than 60 days, before the fee is imposed. The notice of impending charge should include the amount of the charge and how the person can cancel the product or service to avoid the charge. Defendants shall further reverse the renewal charge for any person who requests reversal within 60 days after the date of the statement on which the charge initially appears if the person has not used the product or service from the date of the statement through the date reversal is requested;
- g. Representing that a particular credit card has "no annual fee" if the credit card includes a monthly maintenance fee or other similar mandatory periodic fee; it being understood that disclosure of such fees shall be made in compliance with the requirements of TILA and Regulation Z promulgated thereunder.
- h. Representing that a person may receive expedited processing of his or her credit card application for an additional charge (*e.g.* represent that a customer will receive "express," "immediate," or "rush" processing, or other words of similar effect), or accepting money from a person for

expedited processing, unless the terms of such expedited processing are clearly and conspicuously disclosed and unless there is a material difference in the length of time in which the application is processed if the additional fee is paid;

- i. Initiating any debit or demand draft from a person's bank account without first obtaining the Express Consent of an authorized user of such account;
- j. Misrepresenting that Defendants will waive a fee, including by way of example and not by limitation, an over-limit fee, a late fee, or a pay-by-phone fee;
- k. Misrepresenting that there will be "no collection calls" or "no late fees";
- l. Failing to investigate any dispute that an accountholder submits in writing regarding a credit card account; it being understood that such investigation will be in accordance with applicable federal law.
- m. Misrepresenting the steps Defendants have taken to investigate any dispute concerning a credit card account.

3.2 IT IS FURTHER ORDERED that Defendants and their employees, officers, servants, successors, assigns, and affiliates, and all other persons or entities in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, shall be permanently enjoined from engaging in the following debt collection practices with respect to persons in Texas:

- a. Misrepresenting the caller's identity and making any false, deceptive, or misleading representations regarding the identity of collection employees; provided it shall not be considered a violation of this Judgment for the

Defendants to approve and for Defendants' employees to use aliases so long as the use of the aliases does not serve to prevent the Defendants from identifying employees who have participated in specified collection calls;

- b. Failing to clearly and conspicuously disclose that the caller is communicating on behalf of Cross Country Bank in any written or oral communication with a debtor, including any message left on debtor's voice mail, answering machine, or similar message retrieval device;
- c. Engaging in any false, deceptive, or misleading technique to induce a person to take a telephone call, including without limitation, making any false, deceptive, or misleading representation, including without limitation a representation that creates a sense of urgency or emergency, in an attempt to induce a customer to take a collection call; provided however, it shall not be a violation of this subparagraph to advise that it is important for Defendants' representative to speak with a customer or for the customer to take action to resolve a delinquent account;
- d. Representing that the Defendants have the authority or intention to take actions if in fact they have no legal authority or intention to take such actions, including without limitation initiating arrests, commencing lawsuits, garnishing wages, withdrawing or debiting funds from a bank account without authorization, attaching, seizing or selling any property or exacting payments from third parties without authorization;
- e. Making any false, deceptive, or misleading representation to obtain a

- person's consent or authorization for the debit or withdrawal by Defendants of funds from the person's bank account;
- f. Representing that a payment amount will be sufficient to make an account current and avoid subsequent late fees if such amount will not be sufficient to bring the account current and avoid subsequent late fees; in connection therewith, the Defendants must advise the person of the date by which such payment must be received in order to bring the account current and avoid subsequent late fees;
  - g. Causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls to a person with intent to annoy, abuse, or harass any person at the called number, whether by a live operator or an automated telephone dialing system;
  - h. Making any telephone call to a person at his or her place of employment if, from the totality of the circumstances, Defendants know or have sufficient reason to know that the person's employer prohibits the person from receiving such calls;
  - i. Making any telephone call to a telephone number after any Defendant has been informed that the account holder Defendants are attempting to contact does not reside at that telephone number, unless Defendants have a good faith, reasonable belief that such information is erroneous;
  - j. Making any telephone call to any third party, for the purpose of acquiring location information about a customer, more than once unless requested to do so by such person or unless Defendants reasonably believe that the

- earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- k. Engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any consumer, including without limitation, using obscene language;
  - l. In the absence of a request or permission from the person in question, initiating any telephone call to any person before 7:55 a.m. or after 9:05 p.m. in the person's local time zone;
  - m. Initiating any communication if Defendants know the person is represented by an attorney with respect to such debt and have knowledge of, or can readily ascertain from the person or the person's attorney, such attorney's name and address, unless the attorney consents to direct communication with the person. Provided, however, this provision does not prohibit Respondents from mailing, directly to the person, periodic billing statements, as required by TILA, 15 U.S.C. § 1637(b) and the Fair Credit Billing Act, 15 U.S.C. §§ 1666-1666j;
  - n. Collecting or attempting to collect a debt from any debtor after having been informed that the debtor has filed for bankruptcy; provided, it shall not be deemed a violation to request the following information regarding the bankruptcy: date filed; the style of the bankruptcy case, including the case number; and the name, address, and telephone number of the attorney representing the debtor so that the bankruptcy filing can be verified; provided further that if the information needed to verify the bankruptcy

filing is not provided, or if the information provided is inaccurate so that the bankruptcy cannot be verified, Defendant may recontact the debtor to obtain such information or for any other purpose allowed by federal bankruptcy laws;

- o. Representing that the laws of another state authorize Defendants' conduct when the laws of the state of Texas prohibit such conduct;

3.3 IT IS FURTHER ORDERED that Defendant shall provide a full and prompt refund to each person who complains that his or her bank account was debited or drafted without his or her authorization, unless Defendant can produce Recorded Consent to the debit or draft.

3.4 IT IS ORDERED that Defendants shall, within thirty (30) days of the effective date of this agreement, provide notice of the terms of this Judgment to all officers, employees, successors, assigns, and affiliates of Defendants having responsibilities with respect to the subject matter of this Judgment.

3.5 IT IS ORDERED that Defendants shall maintain and enforce policies and procedures designed to ensure that all advertisements, solicitations, and debt collection practices are in compliance with the law and with the terms of this Judgment.

#### **IV. RESTITUTION**

4.1 IT IS ORDERED that Defendants CROSS COUNTRY BANK, INC., and APPLIED CARD SYSTEMS, INC., shall, jointly and severally, make restitution to Qualified Consumers as follows:

- a. Within forty-five (45) days of the Effective Date of this Judgment, Defendants shall provide a credit to the accounts of all Qualified Consumers in the amount of all charges, fees, and other amounts any

Defendant has charged to such Qualified Consumers' credit card, other than Authorized Purchases; and

- b. For any Qualified Consumer who paid to Defendants over the life of the account an amount greater than such person's Authorized Purchases, and who has filed or who, within 75 days of the effective date of this Judgment, files a complaint with any Defendant (or whose complaint is referred to any Defendant by a governmental or consumer protection agency or organization), Defendants shall provide a refund in the amount of the difference between the person's Authorized Purchases and the amount such person paid to Defendants over the life of the account; and

4.2 Any restitution or damages to be paid by Defendants pursuant to the previous paragraph shall be made by bank check, mailed directly to each eligible consumer, within forty-five (45) days of the receipt of the complaint or within forty-five (45) days of the Effective Date of this Judgment, whichever is later.

4.3 Within ninety (90) days of the Effective Date of this Judgment, Defendants shall take all necessary steps to report updated and corrected information regarding all Qualified Consumers to each and every credit reporting agency to which Defendants have previously reported information about such Qualified Consumers.

4.4 No later than one hundred fifty (150) days after the Effective Date of this Judgment, Defendant shall provide a written report to the Office of the Texas Attorney General, Attention: Assistant Attorney General C. Brad Schuelke, Consumer Protection and Public Health Division, P.O. Box 12548, Austin, Texas 78711. The report shall include:

- a. A list of all Qualified Consumers to whom credits were provided, and the amount of credit provided to each such Qualified Consumers;
- b. Details regarding what updated and corrected information regarding each Qualified Consumer was reported to the credit reporting agencies, and a list of the credit reporting agencies such information was reported; and
- c. A list of each Qualified Consumer who filed a complaint no later than 75 days after the Effective Date of this Judgment, and the amount of refund provided to each such Qualified Consumer.

#### **V. ATTORNEYS' FEES AND PAYMENT TO STATE**

5.1 Judgment is hereby entered against Defendants, jointly and severally, and it is ordered that upon execution of this agreement, Defendants shall pay the sum of One Million and No/100 Dollars (\$1,000,000.00) to the General Revenue Fund of the State of Texas. Such payment shall be made by wire transfer of immediately available funds to the Attorney General's Office of the State of Texas.

5.2 Judgment is hereby entered against Defendants, jointly and severally, and it is ordered that upon execution of this agreement, Defendants shall pay Plaintiff the sum of Two Hundred Ninety Thousand and No/100 Dollars (\$290,000.00) for attorney's fees and costs of investigation. Such payments shall be made by wire transfer of immediately available funds to the Attorney General's Office of the State of Texas.

#### **VI. MISCELLANEOUS PROVISIONS**

6.1 No Defendant shall effect any change in its form of doing business or its organizational identity as a method of avoiding the terms and conditions set forth in this Judgment.

6.2 This Judgment constitutes the entire agreement between the parties with regard to terminating the investigation, resolving the matters investigated and dismissal of parallel subpoena enforcement action, and all prior negotiations and understandings relating thereto between the parties shall be deemed merged into this Judgment.

6.3 No representations, warranties, or inducements have been made by Plaintiff to Defendants and no representations, warranties, or inducements have been made by Defendants to Plaintiff concerning this Judgment, other than those representations, warranties, and covenants contained in this Judgment.

6.4 No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made by order of a Court.

6.5 If any clause, provision, or section of this Judgment shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Judgment, and this Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

6.6 Any failure by any party to the Judgment to insist on strict performance by any other party of any provision of this Judgment shall not be deemed a future waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right to insist upon the specific performance of any and all of the provisions of this Judgment.

6.7 Each of the parties participated in the drafting of this Judgment, and therefore the terms of this Judgment are not intended to be construed against any of the parties by virtue of draftsmanship.

6.8 This Judgment constitutes the full and final resolution between the Attorney

General and Defendants, their employees, successors, assigns, affiliates and directors, including Rocco Abessinio, in his individual capacity, of all claims relating to Defendants' marketing of credit cards to Texas residents and debt collection practices in Texas which are the subject matter of this lawsuit or that could have been included within the subject matter of this lawsuit up to and including the Effective Date of this Judgment.

6.9 Before seeking to enforce the terms of this Agreement or punish any of the Defendants for breach of this Agreement, the State shall provide the Defendants with 30 days written notice of the conduct the State believes is or may be in violation of this Judgment and Defendants shall be given an opportunity to provide the State with written documentation that no such breach took place.

6.10 In the event that Defendants conclude, based on changed circumstances, that the terms of this Judgment are unfairly restrictive on their business practices, then Defendants may request that the Attorney General modify the terms of this Judgment. The Attorney General shall make a good faith evaluation of the then existing circumstances, and after collecting information the Attorney General deems necessary, make a prompt decision, but in no event more than ninety (90) days from Defendants' request for same (or 30 days after receiving all material information requested from Defendants, whichever is later), as to whether to modify this Judgment.

6.11 After the expiration of two years from the Effective Date of this Judgment, Defendants shall have a right to request that the Attorney General, based on Defendants' substantial compliance with the terms of this Judgment, modify or terminate this Judgment. The Attorney General shall make a good faith evaluation of Defendants' request, and after collecting information the Attorney General deems necessary, make a prompt decision, but in no event more than ninety (90) days from Defendants' request for same (or 30 days after receiving all

material information requested from Defendants, whichever is later), as to whether to modify or terminate this Judgment. The Attorney General shall not unreasonably decline a request for termination of this Judgment.

6.12 Any request by Defendants under the two preceding paragraphs shall reference Attorney General Case Number 00-1328947 and shall be sent via certified mail to the following address:

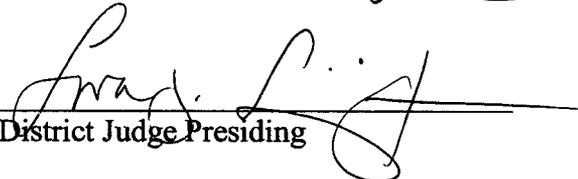
Chief of the Consumer Protection and Public Health Division  
Office of the Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711

6.13 In the event the Attorney General agrees to a modification or termination of this Judgment pursuant to paragraphs 6.10 or 6.11, the Attorney General shall take all reasonable and necessary steps to facilitate Defendants' obtaining an Agreed Order modifying or terminating the Judgment. In the event the Attorney General timely denies a requested modification or termination, Defendants reserves all rights to pursue any legal or equitable remedies that may be available to it. No waiver, termination, modification, or amendment of the terms of this Judgment shall be valid or binding unless made by order of a Court.

6.14 This judgment applies to and binds Defendants and its successors and assigns.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants be assessed all costs herein and that all relief not granted herein is hereby denied.

SIGNED AND ENTERED this 31<sup>st</sup> day of January, ~~2006~~ <sup>2007</sup>

  
District Judge Presiding

APPROVED AS TO FORM AND SUBSTANCE:

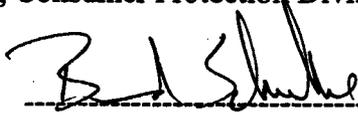
GREG ABBOTT  
Attorney General of Texas

KENT C. SULLIVAN  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection Division

By:



C. BRAD SCHUELKE  
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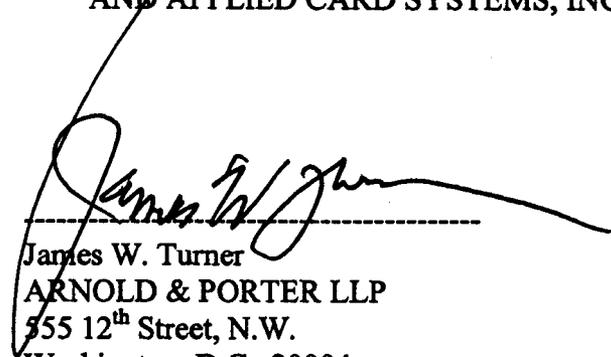
**ATTORNEYS FOR PLAINTIFF STATE OF TEXAS**

By:



ON BEHALF OF CROSS COUNTRY BANK, INC.  
AND APPLIED CARD SYSTEMS, INC.

Dated: 12-14-06



James W. Turner  
ARNOLD & PORTER LLP  
555 12<sup>th</sup> Street, N.W.  
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Texas State Bar No. 20318500

APPROVED AS TO FORM AND SUBSTANCE:

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Attorney General of Texas

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First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection Division

By: -----

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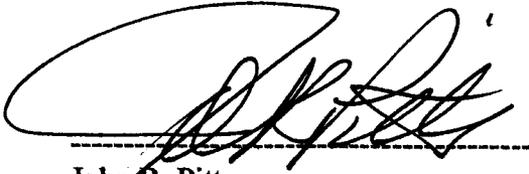
**ATTORNEYS FOR PLAINTIFF STATE OF TEXAS**

By:   
ON BEHALF OF CROSS COUNTRY BANK, INC.  
AND APPLIED CARD SYSTEMS, INC.

Dated: 12-14-06

-----  
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A handwritten signature in black ink, appearing to read "John R. Pitts", is written over a horizontal dashed line.

John R. Pitts  
P. O. Box 27130  
Houston, TX 77227  
Texas State Bar No. 16054700

**ATTORNEYS FOR DEFENDANTS CROSS COUNTRY BANK, INC. AND  
APPLIED CARD SYSTEMS, INC.**