

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**BRENT CHIVERS,**

doing business as Credit Card Services  
and Destyni Enterprises,

Defendant.

Civil Action No. 3-02CV1727-G

**STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (“Commission”), commenced this action by filing its complaint pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC ACT”), 15 U.S.C. §§ 53(b) and 57b, charging the defendant Brent Chivers, doing business as Credit Card Services and Destyni Enterprises, with deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310.

Plaintiff, through its counsel, and defendant Brent Chivers have agreed to entry of this Final Judgment and Order by this Court in order to resolve all matters in dispute in this action. The

Commission and the defendant have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without the defendant

admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the parties, the Commission and Brent Chivers, to enter this Final Judgment and Order,

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

### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case, and all parties thereto;
2. The complaint states a claim upon which relief may be granted against the defendant under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b, and the Telemarketing Sales Rule;
3. Venue in this district is proper under 28 U.S.C. § 1391(b), 15 U.S.C. §§ 53 (b) and 57b, and the Telemarketing Sales Rule;
4. The activities of the defendant are in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Entry of this Final Judgment and Order is in the public interest; and
6. Defendant has waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order.

## DEFINITIONS

For the purpose of this Stipulated Final Judgment and Order, the following definitions shall apply:

1. ***“Plaintiff,” “Commission,”*** or ***“FTC”*** means the Federal Trade Commission.
2. ***“Defendant”*** means Brent Chivers and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, unless specified otherwise.
3. ***“Assets”*** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.
4. ***“Document”*** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

5. **“Telemarketing”** means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. *Provided* that the term “telemarketing” shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited. *Provided further*, that for the purposes of Section I(C), the definition of telemarketing shall be consistent with 16 C.F.R. § 310.2.

6. **“Assisting others”** means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

7. **“Credit related goods and services”** means any good or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any credit or credit device, including but not limited to, credit cards, loans, or financing.

## ORDER

### I. INJUNCTION AGAINST MISREPRESENTATIONS

A. **IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, or sale of services relating to loans, credit cards or other extensions of credit, defendant Brent Chivers and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from:

1. Misrepresenting, expressly or by implication, that consumers who pay a required fee can reasonably expect to receive a loan, credit card or other extension of credit;
2. Misrepresenting, expressly or by implication, that defendant has connections with sources that are likely to result in the provision of credit cards, loans, or other extensions of credit; and
3. Misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase services relating to loans, credit cards or other extensions of credit.

B. **IT IS FURTHER ORDERED** that, with respect to the advertising, marketing, promoting, offering for sale, or sale of any good or service, defendant Brent

Chivers, and each of his successors, assigns, agents or employees, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase defendant's products or services; and

- C. IT IS FURTHER ORDERED** that defendant Brent Chivers and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained from violating or assisting others in violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to: (1) stating that consumers have a high likelihood of obtaining a loan or credit card in return for the payment of a fee; and (2) requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when they have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit.

## **II. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that defendant Brent Chivers is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased services from defendant at any time prior to the date this Final Judgment and Order is entered. Provided, however, that defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

## **III. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

- A.** Judgment in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) is entered against defendant Brent Chivers; provided, however, that upon the fulfillment of the payment obligations of Section III(B) and Section III(C) of this Final Judgment and Order by defendant, this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Section IV of this Final Judgment and Order.
- B.** Defendant Brent Chivers shall be liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of EIGHTY FIVE THOUSAND DOLLARS (\$85,000.00).

- C.** Within ten (10) days of the execution of this Final Judgment and Order, defendant Brent Chivers shall turn over the entire payment of EIGHTY FIVE THOUSAND DOLLARS (\$85,000.00) required pursuant to Paragraph III(B) to his attorney who shall hold it in an escrow account until the entry of this Final Judgment and Order.
- Within ten (10) days of the date of entry of this Final Judgment and Order, defendant shall transfer the escrowed amount in the form of a wire transfer or certified or cashier's check made payable to the Commission, or such agent as the Commission may direct.
- D.** Time is of the essence for the payments specified above. In the event that defendant Brent Chivers does not fulfill, or only partially fulfills, the payment obligations set forth in this Paragraph, defendant shall be immediately liable for payment of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), which is the entire amount of the judgment, plus interest, less any payments already made. Notwithstanding any other provision of this Final Judgment and Order, defendant agrees that, if he fails to meet the payment obligations set forth in this Paragraph, the facts as alleged in the Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Judgment and Order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.
- E.** All funds paid pursuant to this Final Judgment and Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief,



including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant Brent Chivers shall have no right to challenge the Commission's choice of remedies under this Section.

- F.** Defendant Brent Chivers shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

#### **IV. FINANCIAL STATEMENTS**

- A. IT IS FURTHER ORDERED** that the Commission's agreement to and the Court's approval of this Final Judgment and Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided to the Commission by defendant Brent Chivers on or about August 20, 2002, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Final Judgment and Order.
- B. IT IS FURTHER ORDERED** that if the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material

asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Final Judgment and Order for the sole purpose of allowing the Commission to modify the monetary liability of the defendant. If the Court finds that the defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against the defendant, in favor of the Commission, in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), which the defendant and the Commission stipulate is the amount of consumer injury caused by the defendant, as set forth in Section III of this Final Judgment and Order. Provided, however, that in all other respects this Final Judgment and Order shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Final Judgment and Order. Solely for the purposes of reopening or enforcing this Paragraph, defendant waives any right to contest any of the allegations set forth in the Complaint filed in this matter.

**V. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Final Judgment and Order,

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, defendant Brent Chivers shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Final Judgment and Order by all other lawful means, including but not limited to the following:
1. Obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
  2. Posing as consumers and suppliers to: defendant's employees, or any other entity managed or controlled in whole or in part by defendant, without the necessity of identification or prior notice;

**Provided** that nothing in this Final Judgment and Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

- C. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed

to such an interview, relating in any way to any conduct subject to this Final Judgment and Order. The person interviewed may have counsel present.

**VI. COMPLIANCE REPORTING BY DEFENDANT**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Final Judgment and Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Judgment and Order:
  - 1. Defendant Brent Chivers shall notify the Commission of the following:
    - a. Any changes in defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - b. Any changes in defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of

defendant's duties and responsibilities in connection with the business;  
and

c. Any changes in defendant's name or use of any aliases or fictitious names.

2. Defendant shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Final Judgment and Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Judgment and Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

**B.** One hundred eighty (180) days after the date of entry of this Final Judgment and Order, defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Final Judgment and Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subsection A above; and
  2. A copy of each acknowledgment of receipt of this Final Judgment and Order obtained by defendant pursuant to Section VIII.
- C. For the purposes of this Final Judgment and Order, defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:
- Regional Director  
Southwest Region  
Federal Trade Commission  
Suite 2150, 1999 Bryan Street  
Dallas, Texas 75201  
Re: FTC v. Defendant, Civil Action No. 3-02CV1727-G.
- D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with defendant Brent Chivers.

## **VII. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, defendant Brent Chivers and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the promotion, offering for sale, or sale of

services relating to loans, credit cards or other extensions of credit or assisting others engaged in the promotion, offering for sale, or sale of services relating to loans, credit cards or other extensions of credit, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

#### **VIII. DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Judgment and Order, defendant shall deliver a copy of this Final Judgment and Order to the principals, officers, directors, managers and employees under defendant's control for any business that

(a) employs or contracts for personal services from defendant and (b) has responsibilities with respect to the subject matter of this Final Judgment and Order. Defendant shall secure from each such person a signed and dated statement acknowledging receipt of the Final Judgment and Order within thirty (30) days after the date of service of the Final Judgment and Order or the commencement of the employment relationship.

**IX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that defendant, within five (5) business days of receipt of this Final Judgment and Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Judgment and Order.

**X. ATTORNEYS' FEES**

**IT IS FURTHER ORDERED** that each party to this Final Judgment and Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

**XI. LIFT OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze of defendant's assets, imposed in the Preliminary Injunction entered in this proceeding, shall be lifted upon the entry of this Final Judgment and Order.



**XII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Final Judgment and Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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**A. JOE FISH**  
**UNITED STATES DISTRICT JUDGE**

**SO STIPULATED:**

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Gary D. Kennedy  
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