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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FIRST CREDIT ALLIANCE, INC.,
CREDIT SERVICES OF AMERICA, INC.,
PHILIP D. PESTRICHELLO, a.k.a.
PHILIP DANIEL, and
ALLYSON PESTRICHELLO, a.k.a.
ALLYSON SILVER,

Defendants.

CV: 3:00CV1049 (CFD)

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
FOR ALLYSON PESTRICHELLO**

Plaintiff, the Federal Trade Commission ("Commission"), filed its complaint on June 8, 2000 for permanent injunction and other relief, including restitution to consumers, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, charging Defendants First Credit Alliance, Inc. ("FCA"); Credit Services of America, Inc. ("CSA"); Philip D. Pestrichello, and Allyson Pestrichello with violating Section 5 of the FTC Act.

The Commission and Allyson Pestrichello, represented by the attorneys whose names appear herein, have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction ("Order") and has requested that the Court enter the same to resolve all matters of dispute between them in this action without trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and Defendant Allyson Pestrichello having requested this Court to enter this Final Judgment, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and all parties hereto;
2. Venue is proper as to all parties in the District of Connecticut;
3. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44;
4. The complaint states a claim upon which relief may be granted under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b;

5. Defendant Allyson Pestrichello waives all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat 847, 863-64 (1996);
6. Defendant Allyson Pestrichello waives all rights to seek judicial review or otherwise to challenge or contest the validity of this Order, and further waives any claim she may have against the Commission, or their employees and agents;
7. Entry of this Order is in the public interest; and
8. This Order shall not constitute and shall not be interpreted to constitute either an admission by Defendant Allyson Pestrichello that she has engaged in violations of the FTC Act.

DEFINITIONS

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

1. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services.
2. “Assisting others” means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, and communicating with consumers about extensions of credit; (2) developing or providing or arranging for the development or provision of sales scripts or any other marketing material; (3) providing names of, or arranging for the provision of names of, potential customers; or (4) performing marketing services of any kind.
3. “Defendants” means FCA, CSA, Philip D. Pestrichello, and Allyson Pestrichello.

4. “Plaintiff” means the Federal Trade Commission.

PROHIBITED BUSINESS PRACTICES

I.

IT IS FURTHER ORDERED that in connection with the advertising, marketing, promoting, offering for sale, or sale of products or services, or assisting others, including but not limited to Philip Pestrichello, engaged in the advertising, marketing, promoting, offering for sale, or sale of products or services, Defendant Allyson Pestrichello, and her successors, assigns, directors, officers, agents, servants, employees, salespersons, corporations, subsidiaries, affiliates, and other persons directly or indirectly under her control or in active concert or participation with her who receive actual notice of this Order by personal service, facsimile or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, is hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, that:

- A. that after paying a fee, consumers will receive a credit card or other extension of credit;
- B. that a consumer’s processing fee will be refunded if they do not obtain the promised credit card;
- C. the nature or terms of Defendants’ refund or cancellation policies;
- D. any fact material to a consumer’s decision to pay a fee for any loan or extension of credit; and
- E. any other fact material to a consumer’s decision to purchase any product or service.

II.

IT IS FURTHER ORDERED that in connection with the advertising, marketing, promoting, offering for sale, or sale of any products or services, Defendant Allyson Pestrichello is hereby permanently restrained and enjoined from using any aliases, pen names, or pseudonyms, or otherwise misrepresenting her true identity in the course of business dealings or in publicly filed documents.

CUSTOMER LISTS

III.

IT IS FURTHER ORDERED that Defendant Allyson Pestrichello, and her successors, assigns, directors, officers, agents, servants, employees, salespersons, corporations, subsidiaries, affiliates, and other persons directly or indirectly under her control or in active concert or participation with her who receive actual notice of this Order by personal service, facsimile or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, is hereby permanently restrained and enjoined from using or selling, leasing, transferring, or otherwise disclosing to any person the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of: (1) any person who paid any money to Defendants; (2) any person solicited by Defendants; or (3) any person on a list maintained by Defendants for future solicitation. Defendant Allyson Pestrichello is further ordered to turn over to the Commission within three (3) days of the entry of this Order, all such identifying information and all copies thereof in her possession, custody or control, in whatever format maintained, including but not limited to mailing lists, mailing labels, computer disks, and data compilations. *Provided, however,* that Defendant Allyson Pestrichello may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

CONSUMER REDRESS

IV.

IT IS FURTHER ORDERED that judgment is hereby entered against Defendant Allyson Pestrichello in the amount of \$80,888.58, which shall be satisfied and paid as follows:

A. After entry of all final Orders as to all Defendants, Defendant Allyson Pestrichello shall, within five (5) days, turn over to the Commission the \$80,888.58 in proceeds from the sale of home located at 8 Atwater Terrace, Farmington, Connecticut which were subject to the asset freeze and all interest accrued on such funds as of the date of turn over to the Commission. Defendant Allyson Pestrichello shall make said transfer in accordance with instructions given by Federal Trade Commission staff.

B. All funds paid pursuant to this Paragraph 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 Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant Allyson Pestrichello shall have no right to challenge the Commission's choice of remedies under this Paragraph. No portion of this Judgment for equitable monetary relief shall be deemed a fine, penalty or punitive assessment, or forfeiture. The Commission shall have full and sole discretion to:

1. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Order;
2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and
3. Delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay reasonable fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order.

C. Defendant Allyson Pestrichello expressly waives her rights to litigate the issue of disgorgement. Defendant Allyson Pestrichello acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between Plaintiff and Defendants; and

D. Within five (5) days after entry of this Order, Defendant Allyson Pestrichello shall submit to the Commission a truthful sworn and notarized statement, in the form shown on Appendix A, that shall reaffirm and attest to the truthfulness, accuracy, and completeness of her financial statement originally dated February 28, 2001 and revised as of July 23, 2001, and related documents (collectively designated the "Financial Statements"). The Commission's agreement to this Order, requiring that Defendant Allyson Pestrichello be liable for less than the full amount of consumer injury, which is approximately \$1,191,200, is expressly premised upon the truthfulness, accuracy and completeness of the Financial Statements. Such Financial Statements contain material information upon which the Commission relied in negotiating and agreeing to this Order. The Commission is authorized to verify any

information provided in the Financial Statements with any appropriate third party, including but not limited to, any financial institution or credit reporting bureau.

E. If, upon motion by the Commission, this Court finds that Defendant Allyson Pestrichello failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation in or omission the financial statements provided to Plaintiff, the Court shall order her to turn that asset, or its exact liquid value, over to the Commission. *Provided, however*, that in all other respects this judgment shall remain in full force and effect, unless otherwise ordered by the Court. For purposes of this Paragraph and any subsequent proceedings to enforce payment, including but not limited to, a non-dischargeability complaint filed in a bankruptcy proceeding, Defendant Allyson Pestrichello waives any right to contest any of the allegations in the Commission's complaint.

F. Defendant Allyson Pestrichello is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC her taxpayer identifying numbers (Social Security Number or Employer Identification Number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of her relationship with the government.

G. Upon entry of this Order, and payment in full received by the Commission pursuant to this Paragraph, the freeze of Defendant Allyson Pestrichello's assets shall be lifted and the FTC shall file a satisfaction of judgment with the court.

V.

IT IS FURTHER ORDERED that any redress administrator shall destroy all records relating to this matter six (6) years after the transfer of any remaining redress funds to the FTC Treasury account or the closing of the account from which such funds were disbursed, whichever is earlier,

provided that no records shall be destroyed unless and until a representative of the Commission has received and approved the redress administrator's final accounting report. Records shall be destroyed in accordance with disposal methods and procedures to be specified by the Commission. The Commission may, in its sole discretion, require that such records, in whole or in part, be transferred, in lieu of destruction, to the Commission.

RECORD KEEPING REQUIREMENTS

VI.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant Allyson Pestrichello, in connection with any business where she is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in the sale of products or services to consumers, is hereby permanently restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. 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. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased or provided, and description of items or services purchased or provided for all consumers to whom such business has sold or provided any goods or services;

D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:

1. The consumer's name, address, telephone number and the dollar amount paid by the consumer;
2. The written complaint or refund request, if any, and the date of the complaint or refund request;
3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted by Defendant Allsyon Pestrichello concerning any complaint;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; *provided* that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for (3) years after the last date of dissemination of any such materials.

MONITORING COMPLIANCE OF SALES PERSONNEL

VII.

IT IS FURTHER ORDERED that Defendant Allyson Pestrichello, in connection with any business where she is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in the sale of products or services to consumers, is hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I through III of this Order. Such steps shall include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved; *provided* that this Part does not authorize or require Defendant to take any steps that violate any federal, state, or local laws;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Part applies; and

C. Failing to take corrective action with respect to any sales person whom any Defendant determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

COMPLIANCE REPORTING

VIII.

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

A. For a period of three (3) years from the date of entry of this Order, Defendant Allyson Pestrichello shall notify the Commission of the following:

1. Any changes in her residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
2. Any proposed change in the corporate structure of Defendant CSA, or any proposed change in the structure of any business entity owned or controlled by her, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; *provided, however*, that, with respect to any proposed change in the corporation about which Defendant Allyson Pestrichello learns less than thirty (30) days prior to the date such action is to take place, she shall notify the Commission as soon as is practicable after learning of such proposed change; and
3. Any change in Allyson Pestrichello's employment status where she is the majority owner of the business or directly or indirectly manages or controls the

business and where the business is engaged in the sale of products or services to consumers, within ten (10) days of the date of such change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant Allyson Pestrichello shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which she has complied with and is complying with this Order.

This report shall include but not be limited to:

1. Her then current residential address and telephone number;
2. A copy of each acknowledgment of receipt of this Order obtained by her pursuant to Part XI; and
3. A statement describing the manner in which she has complied and is complying with the (a) the injunctive provisions of this Order, and (b) the consumer redress provisions of this Order;

C. Upon written request by a representative of the Commission, Defendant Allyson Pestrichello shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days notice with respect to any conduct subject to this Order;

D. For the purposes of this Order, Defendant Allyson Pestrichello shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

Re: *FTC v. First Credit Alliance, et al.*

E. For the purposes of this Part, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom any Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Part, the Commission is authorized by Defendant Allyson Pestrichello to communicate directly with her.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IX.

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant Allyson Pestrichello's compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of Court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant Allyson Pestrichello's compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any of the Defendants where the business is engaged in the sale of products or services to consumers, without the necessity of identification or prior notice.

C. Nothing in this 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 investigate whether Defendant Allyson Pestrichello has violated any provision of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45.

ACCESS TO BUSINESS PREMISES

X.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant Allyson Pestrichello shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where: (1) Allyson Pestrichello is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in the sale of products or services to consumers. In providing such access, Defendant Allyson Pestrichello shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives access to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Paragraph (A)

of this Part applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission, the Court may enter an *ex parte* order granting immediate access to business premises subject to access under paragraph A for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

ORDER DISTRIBUTION

XI.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendant Allyson Pestrichello shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where: (1) she is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in the sale of products or services to consumers; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Section (A) of this Part.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

XII.

IT IS FURTHER ORDERED that within five (5) business days after receipt by Defendant Allyson Pestrichello of this Order as entered by the Court, Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix B, that shall acknowledge receipt of this Order.

RETENTION OF JURISDICTION

XIII.

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or the punishment of violations thereof.

Plaintiff and Defendant Allyson Pestrichello, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof. This Order may be executed on separate pages.

FOR DEFENDANT:

Eliot Gersten
Gersten & Clifford (CT05213)
214 Main St.
Hartford, Connecticut 06106
(860) 527-7044
Attorney for Defendant
Allyson Pestrichello

Allyson Pestrichello, individually

FOR PLAINTIFF

Barbara Anthony
Regional Director

Ronald L. Waldman (CT21531)
Ann F. Weintraub (CT21824)
Attorneys
Federal Trade Commission, Northeast Region
One Bowling Green, Suite 318
New York, New York 10004
(212) 607-2829

SO ORDERED, this _____ day of _____, 2001.

Christopher F. Droney
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FIRST CREDIT ALLIANCE, INC.,
CREDIT SERVICES OF AMERICA, INC.,
PHILIP D. PESTRICHELLO, a.k.a.
PHILIP DANIEL, and
ALLYSON PESTRICHELLO, a.k.a.
ALLYSON SILVER,

Defendants.

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Appendix A

I, Allyson Pestrichello, hereby state that the information contained in my personal financial disclosure form sworn to on July 23, 2001 (the date of the final revisions to the disclosure form) is true, accurate, and complete as of the date of its execution and of its submission to the Federal Trade Commission. A copy of the aforementioned financial statement is attached hereto as Attachment A.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2001.

Allyson Pestrichello, individually

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FIRST CREDIT ALLIANCE, INC.,
CREDIT SERVICES OF AMERICA, INC.,
PHILIP D. PESTRICHELLO, a.k.a.
PHILIP DANIEL, and
ALLYSON PESTRICHELLO, a.k.a.
ALLYSON SILVER,

Defendants.

CV: 3:00CV1049 (CFD)

Appendix B

AFFIDAVIT OF ALLYSON PESTRICHELLO

Allyson Pestrichello, being duly sworn, hereby states and affirms as follows:

1. My name is Allyson Pestrichello. My current residence address is 4498 NW 25 Way Boca Raton, Florida 33434. I am a citizen of the United States of America and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a defendant in FTC v. First Credit Alliance, et al., Civil Action Number 3:99-CV-1049, pending in the United States District Court for the District of Connecticut.
3. On _____, I received a copy of the Stipulated Judgment and Order for Permanent Injunction Consent Decree (“Stipulated Judgment”), which was signed by the Honorable

Christopher F. Droney and entered by the Court on _____. A true and correct copy of the Stipulated Judgment I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, at _____.

Allyson Pestrichello

State of _____, City of _____

Subscribed and sworn to before me this ____ day of _____, 2001.

Notary Public
My Commission Expires: