

P-17

STATE OF TEXAS,

vs.

JUBILEE FINANCIAL SOLUTIONS, L.P.
D/B/A THE CREDIT CARD SOLUTION;
JUBILEE FINANCIAL MANAGEMENT,
L.L.C.; ROBERT M. LINDSEY; and
FREEDOM FROM DEBT ALLIANCE

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
215th JUDICIAL DISTRICT

FILED

Chris Daniel
District Clerk

APR 20 2011

11:36 AM

Harris County, Texas

Time:

By:

Deputy

CHARGE OF THE COURT

Members of the Jury:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

Remember my previous instructions: Do not discuss the case with anyone else. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your mobile phone or any other electronic devices during your deliberations.

Any notes you have taken are for your own personal use and may be taken back into the jury room and consulted by you during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely upon your independent recollection of the evidence and not be influenced by the fact that another juror has taken notes.

1. Do not let bias, prejudice, or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation and/or alterations were present at the time of filming

3. Since every answer that is required by this charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No."

The term "**preponderance of the evidence**" means the greater weight of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true. Whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

“Intent” means actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, coupled with the specific intent that consumers act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness.

Intent may be inferred from objective manifestations that indicate that the person acted intentionally or from facts showing that a defendant acted with flagrant disregard of prudent and fair business practices to the extent that the defendant should be treated as having acted intentionally. Intent can be proven by circumstantial evidence.

In answering questions about money, answer each question separately in accordance with the evidence. Do not increase or reduce the amount in one answer because of your answer to any other question about money. Do not speculate about what the ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

The **“Lindsey defendants”** shall mean Jubilee Financial Solutions, L.P. D/B/A The Credit Card Solution; Jubilee Financial Management, L.L.C.; and Robert M. Lindsey individually.

“FFDA” shall mean Freedom From Debt Alliance.

QUESTION REGARDING
THE DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT

QUESTION No. 1

Did the Defendants engage in any false, misleading, or deceptive act or practice in the conduct of trade or commerce?

“False, misleading, or deceptive act or practice” means any of the following:

1. An act or series of acts that have the tendency to deceive an average ordinary person, even though that person may have been ignorant, unthinking, or credulous; or
2. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services; or
3. Representing that goods or services had or would have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not; or
4. Advertising goods or services with intent not to sell them as advertised; or
5. Representing that an agreement confers or involves rights, remedies, or obligations that it did not have or involve, or which are prohibited by law; or
6. Failing to disclose information about goods or services that was known at the time of the transaction with the intention to induce identifiable persons into a transaction that identifiable persons otherwise would not have entered into if the information had been disclosed.

Please answer in the blank with a “yes” or “no” for each defendant

The Lindsey defendants

FFDA

Yes
Yes

QUESTION REGARDING
THE CREDIT SERVICES ORGANIZATION ACT

QUESTION No. 2

You are instructed that:

"Credit services organization" means a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others:

- a) Improving a consumer's credit history or rating;
- b) Obtaining an extension of consumer credit for a consumer; or
- c) Providing advice or assistance to a consumer with regard to improving a consumer's credit history or rating or obtaining an extension of consumer credit for a consumer.

"Consumer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.

"Extension of consumer credit" means the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment.

"Valuable consideration" means something of worth or value, including money.

Did the Defendants engage in any of the following conduct?

1. Failing to register with the Texas Secretary of State as a "credit services organization" before conducting business in this state, or
2. Charging or receiving from a consumer valuable consideration before completely performing all the services the organization has agreed to perform for the consumer, without obtaining a surety bond or establishing a surety account, or
3. Making or using a false or misleading representation in the offer or sale of services of the organization.
 - a. A false or misleading representation includes but is not limited to a guarantee to "invalidate" or "erase" credit card debt or words to that effect, unless the representation clearly discloses this can be done only if the credit history is inaccurate or obsolete.
 - b. A false or misleading representation includes but is not limited to guaranteeing an extension of consumer credit regardless of the person's credit history, unless the representation clearly discloses the eligibility requirements for obtaining the extension

-or-

4. Making, or advising a consumer to make, a statement relating to a consumer's creditworthiness, credit standing, or credit capacity that the person knows, or should know by the exercise of reasonable case, to be false or misleading to a (1) consumer reporting agency/credit bureau or (2) person who extended

consumer credit to a consumer or to whom a consumer is applying for an extension of consumer credit, or,

5. Advertising the services of the credit services organization when the organization has not filed a registration statement with the Secretary of State.

Please answer in the blank with a "yes" or "no" for each defendant

The Lindsey defendants

yes

FFDA

yes

**QUESTION REGARDING
THE BUSINESS OPPORTUNITY ACT**

QUESTION No. 3

Did the Defendants engage in any of the following conduct?

You are instructed that:

"Business opportunity" means a sale or lease for an "initial consideration" of more than \$500 of products, equipment, supplies, or services that will be used by or for the purchaser to begin a business in which the seller represents that (1) the purchaser will earn or is likely to earn a profit in excess of the amount of the initial consideration the purchaser paid; and (2) the seller will: (A) provide a location or assist the purchaser in finding a location for the use or operation of the products, equipment, supplies, or services on premises that are not owned or leased by the purchaser or seller; (B) provide a sales, production, or marketing program; or (C) buy back or is likely to buy back products, equipment, or supplies purchased or products made, produced, grown, or bred by the purchaser using wholly or partly the products, equipment, supplies, or services that the seller initially sold or leased or offered for sale or lease to the purchaser.

"Initial consideration" means the total amount a purchaser is obligated to pay under a business opportunity contract before or at the time products, equipment, supplies, or services are delivered or within six months after the date the purchaser begins operation of the business opportunity plan. The term means the total sale price if the contract states a specific total sale price for purchase of the business opportunity plan and the total sale price is to be paid as a down payment and one or more additional payments.

1. Failing to register the business opportunity with the Texas Secretary of State before selling or offering to sell (including advertising) the business opportunity, or,
2. Making a representation that the purchaser will earn or is likely to earn a profit in excess of the amount of the initial consideration the purchaser paid, without obtaining a surety bond or establishing a surety account or obtaining an irrevocable letter of credit, or,
3. Employing a representation, device, scheme, or artifice to deceive a purchaser, or,
4. Making an untrue statement of material fact or omit to state a material fact in connection with the documents and information required to be provided to the Secretary of State or purchaser.
5. Representing that the business opportunity provides or will provide income or earning potential (unless the seller had documented data to substantiate the representation of income or earning potential and disclosed the data to the purchaser when the representation was made).

Please answer in the blank with a "yes" or "no" for each defendant

QUESTION REGARDING CONSUMERS
65 YEARS OF AGE OR OLDER

If you answered "yes" for the Defendants in any part of QUESTION No. 1, 2, or 3, then answer QUESTION No. 4 only for those same parts to which you answered "yes." Otherwise, do not answer QUESTION No. 4.

QUESTION No. 4

Do you find that the Defendants engaged in any of the acts or practices on which you based your answer(s) to QUESTION No. 1, 2, or 3 in a manner that was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred?

Please answer separately, in the blanks below, with a 'yes' or 'no':

Answer as to the Lindsey Defendants:

Deceptive Trade Practices-Consumer Protection Act

yes

Credit Services Organization Act

yes

Business Opportunity Act

yes

Answer as to the FFDA:

Deceptive Trade Practices-Consumer Protection Act

yes

Credit Services Organization Act

yes

Business Opportunity Act

no

QUESTION REGARDING NUMBER OF VIOLATIONS

If you answered "yes" for the Defendants in any part QUESTIONS No. 1, 2, or 3 then answer QUESTION No. 5 only for those same QUESTIONS to which you answered "yes." Otherwise, do not answer QUESTION No. 5.

QUESTION No. 5

On how many occasions do you find that the Defendants engaged in the acts or practices upon which you based your answers to QUESTION No. 1, 2, or 3?

You are instructed to first determine the number of occasions of each act or practice, based upon your answers to Questions 1, 2, and/or 3.

The total amount of this calculation, to be entered below, will be the total number of violations committed for each act or practice against each consumer.

Answer as to the Lindsey Defendants:

Total number of violations of Deceptive Trade Practices-Consumer Protection Act	<u>700</u>
Total number of violations of Credit Services Organization Act	<u>700</u>
Total number of violations of Business Opportunity Act	<u>18</u>

Answer as to the FFDA:

Total number of violations of Deceptive Trade Practices-Consumer Protection Act	<u>160</u>
Total number of violations of Credit Services Organization Act	<u>160</u>
Total number of violations of Business Opportunity Act	<u>0</u>

**QUESTION REGARDING CIVIL PENALTIES
FOR VIOLATIONS**

If you answered "yes" to any part of QUESTION No. 1, 2, or 3, then answer QUESTION No. 6 only for those same parts to which you answered "yes." Otherwise, do not answer QUESTION No. 6.

QUESTION No. 6

What sums of money should be assessed against the Defendants as civil penalties for the acts or practices on which you based your answer(s) to QUESTIONS No. 1, 2, 3, 4, and/or 5?

You are hereby instructed that civil penalties may be assessed against the **Defendants** for every act or practice.

A "civil penalty" means an amount not more than \$20,000.00 per violation that you may in your discretion award as punishment of the wrongdoer and as a warning and example to the wrongdoer and others to deter the same or similar conduct in the future.

A civil penalty is a sum of money payable to and for the benefit of a governmental unit, of which the law exacts payment by way of punishment for doing some act that is prohibited, or omitting to do some act that is required to be done.

A civil penalty is not compensation for actual pecuniary loss.

If you find that the **Defendants** engaged in any of the acts or practices on which you based your answer(s) to QUESTION No. 1, 2, or 3, in a manner that was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred, you may award an additional penalty amount of not more than \$250,000.00.

In determining the amount of a penalty, if any, you shall consider:

- the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act or practice;
- the history of previous violations;
- the amount necessary to deter future violations;
- the economic effect on the person against whom the penalty is to be assessed;
- knowledge of the illegality of the act or practice; and
- any other matter that justice may require.

Please answer in dollars and cents the total amount of civil penalties to be imposed (in other words, for each act or practice, the number of violations determined in Question 5 multiplied by the per violation civil penalty):

Answer as to the Lindsey Defendants:

Deceptive Trade Practices-Consumer Protection Act

\$ 3,750,000.00

Credit Services Organization Act

\$ 3,750,000.00

Business Opportunity Act

\$ 90,000.00

Answer as to the FFDA:

Deceptive Trade Practices-Consumer Protection Act

\$ 0

Credit Services Organization Act

\$ 0

Business Opportunity Act

\$ 0

If you answered "yes" to any parts of QUESTION No. 1, 2, or 3, then answer QUESTION No. 7 only for those same parts to which you answered "yes." Otherwise, do not answer QUESTION No. 7.

QUESTION No. 7

What total sum of money if paid now is necessary to restore money taken from consumers by means of any of the acts or practices committed by the Defendants?

Please answer in dollars and cents in the blank below:

Deceptive Trade Practices-Consumer Protection Act

\$ 3,750,000.00

Credit Services Organization Act

\$ 2,034,000.00

Business Opportunity Act

\$ 90,000.00

QUESTIONS REGARDING FRAUD AGAINST CONSUMERS

QUESTION No. 8

Do you find that the Lindsey Defendants committed actual fraud against consumers?

You are instructed that a person commits fraud when—

- a. He makes a representation;
- b. At the time they were made he knew the representation was false;
- c. The representation was made with the intent and purpose to deceive consumers;
- d. Consumers relied on such representation; and
- e. Consumers suffered injury as a proximate result of the representation.

“Intent” may be inferred from objective manifestations that indicate that the person acted intentionally or from facts showing that a Defendant acted with flagrant disregard of prudent and fair business practices to the extent that the defendant should be treated as having acted intentionally.

Intent can be proven by circumstantial evidence, such as the Defendants’ actions.

Answer “Yes” or “No”

Yes

QUESTION No. 9

Do you find that the Lindsey Defendants obtained money from consumers using false representations?

You are instructed that a person obtains money using false representations when—

- a. He makes a knowing and fraudulent falsehood;
- b. Describing past or current facts; and
- d. Consumers relied on the falsehood.

A false representation is made through an express statement.

A false representation requires intentional conduct that was intended to create and foster a false impression.

Answer “Yes” or “No”

Yes

QUESTION No. 10

Do you find that the Lindsey Defendants obtained money from consumers using false pretenses?

You are instructed that a person obtains money using false pretenses when—

- a. He makes a knowing and fraudulent falsehood;
- b. Describing past or current facts; and
- d. Consumers relied on the falsehood.

A false pretense may be premised on misleading conduct without an express statement.

A false pretense requires intentional conduct that was intended to create and foster a false impression.

Answer "Yes" or "No"

yes

QUESTION No. 11

Do you find that the funds in the Defendant's bank accounts held in Amegy Bank and Westbound Bank originated from consumers of Defendants?

Answer "Yes" or "No" as to each account.

- a) Amegy Bank Account ****5353
- b) Amegy Bank Account ****2023
- c) Amegy Bank Account ****2927
- d) Westbound Bank Account ****5173
- e) Westbound Bank Account *****5165
- f) Westbound Bank Account ****3297

yes
yes
yes
yes
yes
yes

QUESTION REGARDING FEES TO PROSECUTE THE CASE

If you answered "yes" to any part of QUESTION No. 1, 2, or 3 as to any of the Defendants, then answer QUESTION No. 10. Otherwise, do not answer QUESTION No. 10.

QUESTION No. 12

What is a reasonable fee for the necessary services of the Office of the Attorney General of the State of Texas in this case?

"Reasonable and necessary attorneys' fees" mean the sum of money that would fairly and reasonably compensate the State of Texas for its attorneys' fees.

Factors that should be considered when determining the reasonableness of a fee include:

- the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- the likelihood . . . that the acceptance of the particular employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or by the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Please answer separately in the blank following each stage of work in dollars and cents, if any, for each of the following:

For preparation and trial

\$ 342,590.00

In the event of an appeal to the Court of Appeals

\$ 21,600.00

In the event that discretionary review by the Supreme Court of Texas is sought

\$ 8,640.00

In the event that discretionary review by the Supreme Court of Texas is granted

\$ 8,640.00

When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

Presiding Juror

The presiding juror has these duties:

- a. Have the complete charge read aloud if it will be helpful to your deliberations.
- b. Preside over your deliberations. This means the presiding juror will manage the discussions, and see that you follow the instructions.
- c. Give written questions or comments to the bailiff who will give them to the judge.
- d. Write down the answers you agree on.
- e. Get the signatures for the verdict certificate.
- f. Notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate

1. You may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you cannot have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.
If 11 jurors agree on every answer, those 11 jurors sign the verdict.
If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.



Judge Presiding

Verdict Certificate

Check one:

Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

Signature of Presiding Juror

Printed name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

1. Sharon Day

Sharon Day

2. B. Annette Nagel

Barbara Annette Nagel

3. J.M.

Thomas Mathis

4. Martha Stripling

Martha Stripling

5. Mary Dawson

MARY DAWSON

6. Tina Myers

Tina Myers

7. Sylvia Gutierrez

Sylvia Gutierrez

8. Rosie M. Creswell

Rosie M. Creswell

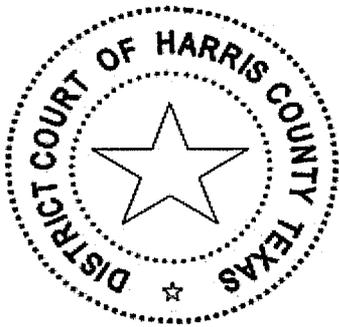
9. Rhonda K. Davis

Rhonda K. Davis

10. Gayla Land

Gayla Land

11.



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this April 21, 2011

Certified Document Number: 48523332 Total Pages: 17

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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