

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 02–21050—CIV

U.S. DISTRICT JUDGE UNGARO-BENAGES / U.S. MAGISTRATE JUDGE BROWN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAPITAL CHOICE CONSUMER CREDIT, INC., *et al.*,

Defendants.

**Stipulated Final Judgment and Order as to
Defendants E-Credit Solutions, Inc.,
Scott A. Burley and Zentel Enterprises, Inc.**

Plaintiff Federal Trade Commission (“FTC” or “Commission”) commenced this action by filing a Complaint pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, charging defendants **E-CREDIT SOLUTIONS, INC.**, **SCOTT A. BURLEY** and **ZENTEL ENTERPRISES, INC.**, and others with engaging in unfair or deceptive acts or practices in connection with the sale of advance fee credit cards, auto club memberships and telephone cards, in violation of Sections 5 and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b) and 57, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101, *et seq.*, and charging defendants **E-CREDIT SOLUTIONS, INC.**, **SCOTT A. BURLEY** and **ZENTEL ENTERPRISES, INC.**, and others with deceptively

marketing advance fee credit cards and debiting consumers' bank accounts without obtaining consumers' authorizations for such debits, in violation of Section 5 of the FTC Act and the Telemarketing Sales Rule, and with failing to provide the disclosures required by Section 310.4(d) of the Telemarketing Sales Rule.

THE PARTIES

1. **PLAINTIFF FEDERAL TRADE COMMISSION** is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule ("TSR" or "the Rule"), 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and the TSR to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

2. **DEFENDANT E-CREDIT SOLUTIONS, INC.** ("E-Credit"), is a Nevada corporation with its principal place of business located at 1400 Colorado Avenue, Boulder City, Nevada. E-Credit transacted business in the Southern District of Florida at 9590 NW 25th Street, Miami, Florida, until at least April 11, 2002.

3. **DEFENDANT SCOTT A. BURLEY**, at all times material to the Complaint in this case, was the owner and sole officer and director of defendant E-Credit. Defendant Burley transacted business in the Southern District of Florida until at least April 11, 2002.

4. **DEFENDANT ZENTEL ENTERPRISES, INC.** (“Zentel”) is a Nevada corporation with its principal place of business located at 4410 W. Hillsborough, Suite F, Tampa, Florida. Zentel transacted business in the Southern District of Florida until at least April 11, 2002. By Order of the United States District Court for the Western District of Texas, Waco Division, filed February 4, 2003, In the Matter of *FTC v. Assail, Inc., et al.*, Civil No. W03CA007, **Zentel Enterprises, Inc.**, was placed in receivership. The Court-appointed receiver is Robb Evans and Associates LLC.

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the Federal Trade Commission Act, 15 U.S.C. §§ 53(b), and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.* The Complaint seeks permanent injunctive relief against defendants E-CREDIT, SCOTT A. BURLEY, ZENTEL and others in connection with the sale of advance fee credit cards and certain “upsales,” such as auto club memberships and telephone cards.

2. This Court has jurisdiction over the subject matter of this case and over defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL. Venue in the Southern District of Florida is proper.

3. The Complaint states a claim upon which relief may be granted against defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 5(a), 53(b) and 57b, and the Commission’s Telemarketing Sales Rule, 16 C.F.R. Part 310.

4. The Commission has the authority under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, to seek the relief it has requested.

5. The activities of defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL charged in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. By stipulating and consenting to the entry of this Order, defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL do not admit any of the allegations in the Complaint, except those contained in **Paragraphs 1 through 5** herein. Likewise, by executing this Order, the FTC does not admit that any defense to the Complaint is valid.

7. This action and the relief awarded herein concerns only the sale by Zentel of the E-Credit Solutions credit card package, Hartford Auto Club memberships and the 1,000 Mega Minute Saver and Premium Mega Saver phone cards. It is addition to, and not in lieu of, any other remedies as may be provided by law in any presently instituted or future civil FTC enforcement action, any other civil action and any any criminal action—including, but not limited to, *Federal Trade Commission v. Assail, Inc., et al.*, Civil Action No. W03CA007 (W.D. Tex., Waco Div.), and any future civil action against Zentel concerning the sale of products or services not named in this paragraph.

8. Defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL enter into this Order freely and without coercion, and acknowledge that they understand the provisions of this Order and are prepared to abide by its terms. At all times, defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL have been represented by counsel, including the negotiations that led to this Order.

9. Any voluntary bankruptcy petition filed by defendants E-CREDIT, SCOTT A. BURLEY and/or ZENTEL does not automatically stay this action, which the Court finds is the “commencement or continuation

of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power," as set forth in 11 U.S.C. § 362(b)(4).

10. Any voluntary bankruptcy petition filed by any defendant does not divest this Court of jurisdiction to enter this final judgment against defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL.

11. Entry of this Order is in the public interest.

O R D E R

DEFINITIONS

1. **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 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.

2. **Defendants** means E-CREDIT SOLUTIONS, INC., SCOTT A. BURLEY and ZENTEL ENTERPRISES, INC.

3. **Consumer** means any person, including any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

4. **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.

5. *And* and *or* have both conjunctive and disjunctive meanings.

I.

RESTRICTIONS ON THE SALE OF ADVANCE FEE CREDIT CARDS

IT IS HEREBY ORDERED that defendant SCOTT A. BURLEY, whether acting directly or through any corporation, limited liability company, subsidiary, division or other device, is hereby permanently restrained and enjoined from engaging or participating in the advertising, offering for sale, sale or distribution of advance fee credit cards.

II.

TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that defendants and their agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division or other device, are hereby permanently restrained and enjoined from violating the Telemarketing Sales Rule—specifically including, but not limited to:

A. Violating Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, that after paying a fee, consumers will receive, or are highly likely to receive, an unsecured major credit card;

B. Violating Section 310.4(d) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(d), by failing to disclose promptly and in a clear and conspicuous manner in outbound telephone calls to the persons receiving the calls, the following information:

1. The identity of the seller;
2. That the purpose of the call is to sell goods or services; and
3. The nature of the goods or services.

C. Violating Section 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b), by providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Section 310.3(a), 310.3(c), or Section 310.4, of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a), 310.3(c) or 310.4; or

D. Violating or assisting others in violating any other provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

A copy of the Telemarketing Sales Rule is appended to this Order as Attachment A and is incorporated herein as if fully rewritten. In the event that the Telemarketing Sales Rule is amended by the Commission in a manner which would create a new or different standard applicable to defendants' obligations under this Order, defendants' compliance with the Telemarketing Sales Rule as so amended shall not be deemed a violation of this Order.

III.

PROHIBITIONS AGAINST DISTRIBUTION OF CUSTOMER LISTS

IT IS FURTHER ORDERED that defendants and their agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division or other device, are permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number or other identifying information of any person who paid any money to defendants E-CREDIT and/or SCOTT A. BURLEY and/or ZENTEL at any time in connection with the offering for sale or sale of any good or service; *provided, however*, that any defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order, and shall disclose such identifying information to the Commission pursuant to this Order.

IV.

PROHIBITION ON TRANSFERRING BUSINESS INFORMATION

IT IS FURTHER ORDERED that defendants and their agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division or other device, are hereby restrained and enjoined from transferring or in any other

way providing to any person (other than a federal, state or local law enforcement agency or pursuant to a court order), directly or indirectly, any books, records, tapes, disks, accounting data, manuals, electronically stored data, banking records, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form, in the possession, custody or control of defendants, or any trade secrets or knowledge, whether recorded or otherwise, that are in any way related to defendants E-CREDIT and/or ZENTEL.

V.

MONETARY RELIEF

IT IS FURTHER ORDERED that defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL, jointly and individually, are 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 SIX HUNDRED AND ONE THOUSAND, THIRTY-ONE DOLLARS AND FIFTY-EIGHT CENTS (\$601,031.58). Such payment shall be remitted to the Federal Trade Commission, East Central Region, Eaton Center, 1111 Superior Avenue—Suite 200, Cleveland, Ohio 44114–2507, by certified or cashier’s check within five (5) days of the entry of this Order. The monetary relief ordered herein does not constitute full compensation for the monetary harm alleged in the Complaint in this action, and is not accepted as such. Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between the Commission and defendants of the Commission’s claims in this action. Defendants acknowledge and agree that they will execute and file any and all documents necessary to transfer all assets in the Court’s

depository account to the Commission to satisfy, in whole or in part, the \$601,031.58 consumer redress/disgorgement amount provided for in this section.

VI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that, within ten (10) business days after entry of this Order, defendants E-CREDIT, SCOTT A. BURLEY and ZENTEL shall each submit to the Commission a truthful sworn and notarized statement, in the form shown on Attachment B, *infra*, that shall acknowledge receipt of this Order as entered.

VII.

LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of the assets of defendants E-CREDIT and SCOTT A. BURLEY, imposed in the Preliminary Injunction entered in this proceeding, shall be lifted upon the entry of this Order.

VIII.

USE OF CONSUMER REDRESS AND DISGORGEMENT FUNDS

IT IS FURTHER ORDERED that:

- A. Plaintiff shall deposit funds received from defendants pursuant to this Order in an interest-bearing account administered by plaintiff or its agent;
- B. All funds paid pursuant to this section shall 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, plaintiff may apply any remaining funds to such other equitable relief (including consumer education remedies) as they determine to be reasonably related to the defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited as disgorgement to the United States Treasury.

IX.

COMPLIANCE MONITORING

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, defendants 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 defendants' possession or direct or indirect control to inspect the business operation. *Provided, however*, that defendant Burley expressly reserves the right to assert his privilege against self-incrimination under the Fifth Amendment to the United States Constitution in response to any request for additional written reports, sworn to under penalty of perjury, any request to produce documents for inspection and copying, or any request to appear for deposition. *Provided further*, that if defendant Burley asserts such right, the Commission may still seek an order of the Court to compel the compliance called for herein.

B. In addition, the Commission is authorized to monitor compliance with this 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 defendants' employees, or any other entity managed or controlled in whole or in part by defendants;

provided that 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 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. Defendants 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 Order. The person interviewed may have counsel present.

X.

COMPLIANCE REPORTING BY DEFENDANTS

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,
 1. Defendant Scott A. Burley 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;
 - c. Any changes in defendant's name or use of any aliases or fictitious names;
and
2. Defendants shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this 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 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 Order, defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to subparagraph (A) above;
2. A copy of each acknowledgment of receipt of this Order obtained by defendants pursuant to Paragraph XIV.

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

**REGIONAL DIRECTOR
Federal Trade Commission
East Central Region
Eaton Center
1111 Superior Avenue — Suite 200
Cleveland, Ohio 44114-2507**

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D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with defendant Scott A. Burley.

XI.

RECORDKEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendants and their agents, employees, officers, corporations, successors, and assigns, and those

persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, 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.

XII.

DISTRIBUTION OF ORDER BY DEFENDANT

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

A. Defendants E-Credit and Zentel shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendants E-Credit and Zentel shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

B. Defendant Scott A. Burley shall deliver a copy of this Order to the principals, officers, directors, managers and employees under his control for any business that (a) employs or contracts for personal services from him and (b) has responsibilities with respect to the subject matter of this Order. Defendant Scott A. Burley shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

XIII.

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 Order.

XIV.

INDEPENDENCE OF OBLIGATIONS

IT IS FURTHER ORDERED that the expiration of any requirements imposed by this Order shall not affect any other obligation arising under this Order.

XV.

COSTS AND ATTORNEYS FEES

IT IS FURTHER ORDERED that each party to this Order bear its own costs and attorneys fees incurred in connection with this action.

XVI.

ENTRY BY CLERK

THERE BEING NO JUST REASON FOR DELAY, the Clerk of Court is hereby directed to enter this Order.

SO ORDERED and ADJUDGED this _____ day of _____, 20_____.

URSULA UNGARO-BENAGES
United States District Judge

STIPULATED TO BY:

PLAINTIFF
FEDERAL TRADE COMMISSION

BRINLEY H. WILLIAMS **FL #A5500653**
BRENDA W. DOUBRAVA **FL #A5500650**
MICHAEL MILGROM **FL #A5500652**
MICHAEL B. ROSE **FL #A5500651**
STEVEN W. BALSTER **IL # 189072**
East Central Region—Federal Trade Commission
Eaton Center — 1111 Superior Avenue, Suite 200
Phone (216) 263-3414 or (216) 263-3455
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E-mail MMilgrom@FTC.gov
E-mail MRose@FTC.gov
COUNSEL FOR PLAINTIFF FTC

CORPORATE DEFENDANT
E-CREDIT SOLUTIONS, INC.

By: _____
SCOTT A. BURLEY
Officer and Director of Defendant Corporation
E-CREDIT SOLUTIONS, INC.

Date: _____

INDIVIDUAL DEFENDANT
SCOTT A. BURLEY

SCOTT A. BURLEY
Individually and as an Officer and Director of
Corporate Defendant E-CREDIT SOLUTIONS, INC.

Date: _____

CORPORATE DEFENDANT
ZENDEL ENTERPRISES, INC.

By: _____
KYLE KIMOTO
President
Corporate Defendant ZENDEL ENTERPRISES, INC.

Date: _____

COURT-APPOINTED
RECEIVER FOR DEFENDANT
ZENDEL ENTERPRISES, INC.

By: _____

Deputy for the Receiver
Robb Evans and Associates, L.L.C.
11450 Sheldon Street
Sun Valley, California 91352
Phone 818-768-8100

Date: _____

COUNSEL FOR DEFENDANTS
E-CREDIT SOLUTIONS, INC.

SCOTT A. BURLEY
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FL #562122

Date: _____