

**#2003-39**

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of: )  
 )  
First Consumers National Bank, )  
Beaverton, Oregon )  
\_\_\_\_\_ )

AA-EC-2003-08

**CONSENT ORDER**

**WHEREAS**, on March 14, 2003, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) commenced a cease and desist proceeding against First Consumers National Bank, Beaverton, Oregon (“Bank”) through the issuance of a Notice of Charges for an Order to Cease and Desist pursuant to 12 U.S.C. § 1818(b), and the issuance of a Temporary Order to Cease and Desist pursuant to 12 U.S.C. § 1818(c); and

**WHEREAS**, the Bank, by and through its duly elected and acting Board of Directors (“Board”), desiring to cooperate with the OCC, has executed a Stipulation and Consent to the issuance of a Consent Order (“Stipulation and Consent”), dated April 15, 2003, which is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated herein by reference as if fully set forth herein, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

**NOW, THEREFORE**, the Comptroller, acting by and through his designated representative, and by virtue of the authority conferred by 12 U.S.C. § 1818(b),

**HEREBY ORDERS THAT:**

## ARTICLE I

### CEASE SERVICING

(1) The Bank shall cease performing its duties as Servicer under the relevant Securitization Agreements upon the appointment of a successor servicer for each Securitization Trust by the Trustee, but in no event later than June 30, 2003, unless the Comptroller otherwise directs in writing.

(2) The Bank may continue to perform the duties and responsibilities as Servicer pursuant to the relevant Servicing Agreements until the earlier of June 30, 2003 or the date by which a successor servicer is appointed and assumes the Bank's servicing obligations, but only to the extent these duties and responsibilities do not conflict with the requirements of this Order.

## ARTICLE II

### SERVICING COMPENSATION

(1) The Bank shall immediately, and on a daily basis thereafter, withhold its Servicing Fee from funds collected by the Bank as Servicer to be remitted to the Collection Account.

(2) The Servicing Fee for the Bank's servicing for the Spiegel Credit Card Master Note Trust, First Consumers Master Note Trust and First Consumers Master Trust for each day of determination shall be an amount equal to: (a) the product of (x) 1/12, (y) the Servicing Fee Percentage (as defined below) and (z) the Aggregate Collateral Amount (as defined in the

Securitization Agreements) for each Securitization Trust as of the last day of the calendar month preceding the month in which such day occurs, divided by (b) the number of days in the current calendar month.

(a) The Servicing Fee Percentage for the Spiegel Credit Card Master Note Trust shall be as follows:

- (i) 6% per annum for the calendar month of April 2003
- (ii) 5% per annum for the calendar month of May 2003
- (iii) 4% per annum for the calendar month of June 2003

(b) The Servicing Fee Percentage for the First Consumers Master Note Trust and First Consumers Master Trust shall be as follows:

- (i) 7% per annum for the calendar month of April 2003
- (ii) 6% per annum for the calendar month of May 2003
- (iii) 5% per annum for the calendar month of June 2003

(3) The Bank shall calculate its Servicing Fee, in accordance with paragraph (2) of this Article, for the calendar month of March 2003 and for the period of April 1, 2003 to April 15, 2003 based on a Servicing Fee Percentage of 6% per annum for servicing the Spiegel Credit Card Master Note Trust and 7% per annum for the servicing the First Consumers Master Note Trust and the First Consumers Master Trust (“Retroactive Servicing Fees”). The Bank shall then add the difference of any shortfall (between the Retroactive Servicing Fees and what the Bank withheld in servicing compensation for the period of March 1, 2003 through April 15, 2003

pursuant to the terms of the Temporary Cease and Desist Order) to the remainder of its April 2003 servicing fee by allocating any such shortfall *pro rata* over the remaining calendar days in April.

(4) The Bank shall maintain a segregated account at the Bank bearing a designation clearly indicating that the funds remitted therein are the Servicing Fees. The Bank shall remit all Servicing Fees, calculated and deducted in accordance with paragraphs (2) and (3) of this Article, into such account and the funds in such account shall be dedicated to paying the costs of servicing.

### ARTICLE III

#### PROGRESS AND OTHER REPORTS

(1) Within ten (10) days of the effective date of this Order, and on a weekly basis thereafter, the Board shall submit a written progress report to the Director of Special Supervision (the "Director") setting forth in detail:

- (a) actions taken to comply with each Article of this Order; and
- (b) the results of those actions.

### ARTICLE IV

#### DEFINITIONS

(1) As used in this Order, the following terms shall have the below-described meanings:

(a) The term “Securitization Trusts” shall mean the securitization series of the Spiegel Credit Card Master Note Trust and the First Consumers Credit Corporation Master Note Trust, including, but not limited to: First Consumers Master Trust 1999-A, First Consumers Credit Card Master Note Trust Series 2001-A, First Consumers Credit Card Master Note Trust 2001-VFN, Spiegel Credit Card Master Note Trust 2001-A, Spiegel Credit Card Master Note Trust Series 2001-A, and Spiegel Credit Card Master Note Trust Series 2001-VFN.

(b) The term “Securitization Agreements” shall include, but shall not be limited to, any pooling and servicing agreements, transfer and servicing agreements, trust agreements, receivables purchase agreements, master indenture agreements, administration agreements, collateral series agreements, and any supplements, amendments or restatements of any pooling and servicing agreements, transfer and servicing agreements, master indenture agreements, or collateral series agreements related to either the Spiegel Credit Card Master Note Trust, the First Consumers Credit Corporation Master Note Trust or the First Consumers Master Trust.

(c) The term “Servicing Agreement” shall include, but shall not be limited to, any pooling and servicing agreements and any transfer and servicing agreements.

(d) The term “Servicer” shall have the same meaning it has in the Securitization Agreements.

(e) The term “Trustee” shall mean the parties described in the

Securitization Agreements as trustee, indenture trustee, owner trustee, and/or successor trustee.

(f) The term “Collection Account” shall have the same meaning as it has in the Securitization Agreements.

## ARTICLE VI

### NOTICE TO THE PARTIES

(1) All correspondences related to this Order, and any information or documentation required hereunder to be submitted (other than by e-mail) to the Director or the OCC, shall be sent by overnight mail, hand delivery, or facsimile to:

Ronald G. Schneck  
Director for Special Supervision  
Office of the Comptroller of the Currency  
250 E Street, SW  
Mail Stop 6-4  
Washington, DC 20219  
202-874-4450; 202-874-5214 (fax)

and to:

Office of the Comptroller of the Currency  
2350 Market Street, Suite 100  
St. Louis, Missouri 63103  
314-436-3078; 314-588-0937 (fax)

(2) All correspondence related to this Order, and any requests to the Bank for information or documentation made pursuant to the provisions of this Order, shall be sent by overnight mail, hand delivery, facsimile or electronic mail to:

James Huston  
President  
First Consumers National Bank  
9300 S.W. Gemini Drive  
Beaverton, Oregon 97008

and

Richard M. Alexander  
Arnold & Porter  
555 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20004

## ARTICLE V

### ENFORCEABILITY AND GENERAL PROVISIONS

(1) This Order, and each of its provisions, shall be considered a final, unappealable order issued by the Comptroller pursuant to 12 U.S.C. § 1818(b)(1). The Order shall be deemed an “order issued with the consent of the depository institution . . . concerned” as that phrase is used in 12 U.S.C. § 1818(h)(2), and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i)(1). Upon the issuance of this Order, the Temporary Order to Cease and Desist issued on March 14, 2003 shall be superseded and considered terminated. The Consent Order issued by the OCC on May 14, 2002, against the Bank shall remain in place and in full force and effect. However, to the extent that the provisions of this Order conflict with the May 14, 2002 Consent Order, the provisions of this Order shall be controlling.

(2) The provisions of this Order shall become effective upon execution of this Order by the Comptroller, through his authorized representative whose signature appears below, and

shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated by the Comptroller through the exercise of his sole discretion.

(3) Any time limitations imposed by this Order shall commence on the effective date of this Order. Such time limitations may be extended by the Comptroller, at his sole discretion, for good cause upon written application by the Bank.

(4) It is expressly and clearly understood that if at any time the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action involving or affecting the Bank, including but not limited to, the appointment of a conservator or receiver, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from doing so.

**WITNESS**, my signature on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C., this 15<sup>th</sup> day of April, 2003.

*/s/ David D. Gibbons*

*April 15, 2003*

\_\_\_\_\_  
David D. Gibbons  
Deputy Comptroller for Special Supervision  
Office of the Comptroller of the Currency

\_\_\_\_\_  
Date



**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

|                                |   |               |
|--------------------------------|---|---------------|
| In the Matter of:              | ) |               |
|                                | ) | AA-EC-2003-08 |
| First Consumers National Bank, | ) |               |
| Beaverton, Oregon              | ) |               |
| _____                          | ) |               |

**STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER**

**WHEREAS**, on March 14, 2003, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) commenced a cease and desist proceeding against First Consumers National Bank, Beaverton, Oregon (“Bank”) through the issuance of a Notice of Charges for an Order to Cease and Desist pursuant to 12 U.S.C. § 1818(b), and the issuance of a Temporary Order to Cease and Desist pursuant to 12 U.S.C. § 1818(c); and

**WHEREAS**, the Bank, by and through its duly elected and acting Board of Directors (“Board”), desiring to cooperate with the OCC, has executed a Stipulation and Consent to the issuance of a Consent Order (“Stipulation and Consent”), dated April 15, 2003, which is accepted by the Comptroller. By this Stipulation and Consent, the Bank has consented to the issuance of a Consent Order (“Order”) by the Comptroller dated April 15, 2003, and incorporated herein by this reference as though fully set forth;

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, by and through its Board, hereby stipulate and agree to the following:

## **ARTICLE I**

(1) The Bank is a national bank, chartered, supervised and examined by the Comptroller pursuant to the National Bank Act, as amended, 12 U.S.C. § 1 et seq.

(2) The Office of the Comptroller of the Currency is the “appropriate Federal banking agency” with regulatory and supervisory responsibility for the Bank pursuant to 12 U.S.C. § 1813(q), and § 1818(b).

(3) The Bank is an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2) and within the meaning of 12 U.S.C. § 1818(b)(1).

(4) The Bank acknowledges that it is currently solvent.

## **ARTICLE II**

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller. The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i)(1).

## **ARTICLE III**

(1) The Bank, by signing this Stipulation and Consent, admits to the jurisdiction of the Comptroller with respect to the matters set forth in the Order pursuant to 12 U.S.C. § 1818(b).

(2) The Bank, by signing the Stipulation and Consent, hereby waives:

(a) any and all procedural rights available in connection with the issuance of

the Order including the right to the issuance of a notice of charges, an administrative hearing and all post hearing procedures available pursuant to 12 U.S.C. § 1818;

(b) all rights to seek any type of administrative or judicial review of the Order, or any provision hereof, including all such rights provided by 12 U.S.C.

§ 1818(h);

(c) any and all rights to challenge or contest in any manner the basis, issuance, validity, terms, effectiveness or enforceability of the Order or any provision hereof;

(d) entry of findings of fact and conclusions of law; and

(e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter and/or the Order, whether arising under common law or under the terms of any statute, including but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

#### **ARTICLE IV**

(1) The provisions of the Order shall become effective upon execution of the Order by the Comptroller, through his authorized representative whose signature appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of the Order shall have been amended, suspended, waived, or terminated by the Comptroller through the exercise of his sole discretion.

**ARTICLE V**

(1) The Bank agrees that the provisions of this Stipulation and Consent, and the Order, shall not be construed as an adjudication on the merits, and shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action involving or affecting the Bank, if at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America, including but not limited to, the appointment of a conservator or receiver, or the commencement of any other action that he deems to be appropriate as a result of findings arising from any examination of the Bank.

(2) The Bank understands and agrees that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Stipulation and Consent or the terms and provisions of the Order, and that nothing herein constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

**IN TESTIMONY WHEREOF**, the undersigned, authorized by the Comptroller as his representative, has hereunto set her hand on behalf of the Comptroller.

*/s/ David D. Gibbons*

*April 15, 2003*

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David D. Gibbons  
Deputy Comptroller for Special Supervision  
Office of the Comptroller of the Currency

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Date

**IN TESTIMONY WHEREOF**, the undersigned members of the Board of Directors of the Bank have hereunto set their hands on behalf of the Bank:

Signed

\_\_\_\_\_  
James Huston

04-15-03

\_\_\_\_\_  
Date

Signed

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Stella Standifer

04/15/03

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Date

Signed

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Charlotte Curry

4/15/03

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Date

Signed

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Nicole Pulver

4/15/03

---

Date



Signed

---

John Collins

4/15/03

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Date