

IN THE MATTER OF
BANKERS LIFE AND CASUALTY COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9075. Complaint, Feb. 26, 1976 — Decision, Aug. 27, 1979

This consent order, among other things, requires Bankers Life and Casualty Company (Bankers Life), an individual, and eleven corporate associates, all engaged in the advertising, promotion and sale of undeveloped land, to cease misrepresenting that undeveloped land purchase is a safe investment; involves little financial risk; and is a means of achieving financial security. The order requires that all advertising, promotional materials and sales contracts include specified disclosures regarding risks involved in undeveloped land investment; the advisability of consulting with a real estate specialist prior to contracting; the availability and cost of utilities; and the identity of lots in flood plain areas. Respondents must provide purchasers with cooling-off periods and information regarding their right to cancellation and refund. The firms are also prohibited from mortgaging any subdivision in the future, without ensuring that paid-up purchasers of lots in that subdivision will receive their warranty deeds, and be permitted to retain their rights. Additionally, the order requires respondents to make prescribed restitution to eligible purchasers who defaulted on their payments; and provide all active and paid-in-full purchasers, who had contracted for land at particular subdivisions during a certain time period, with an opportunity to cancel their contracts and receive specified refunds. The order holds Bankers Life responsible for assuring that proper restitution is made.

Appearances

For the Commission: *Gerald H. Jagers, William K. Hickey, John T. Hankins and Jay W. Madden.*

For the respondents: *William T. Kirby and James T. Griffin, Hubachek, Kelley, Rauch & Kirby, Chicago, Ill. for Bankers Life and Casualty Company, Robert D. Inman, Inman & Flynn, Denver, Colo. for San Luis Valley Ranches, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc., Materic, Inc., G-R-P Corporation, and Richard Greenberg, Alan H. Bucholtz, Quiat, Bucholtz, Bull & Laff, Denver, Colo. for Colorado Properties, Inc. and Milco Associates, Inc., J. Wallace Adair and John F. Bruce, Howrey & Simon, Washington, D.C. for Southern Realty & Utilities Corporation, Hartsel Ranch Corporation and Estates of the World, Inc. and Jeffrey P. Berg, Berg & Spire, Beverly Hills, Calif. for Alice Holguin.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as

amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties as set forth in the caption hereof, hereinafter sometimes referred to as respondents, have violated provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect in the enumerated paragraphs below.

Allegations in the enumerated paragraphs of respondents' present acts and practices include respondents' past acts and practices. Allegations in said paragraphs of respondents' representations include such representations in advertising, promotional materials or sales communications made orally, visually or in writing, directly or by implication.

PARAGRAPH 1. Respondent Bankers Life and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 4444 West Lawrence Ave., Chicago, Illinois. It also conducts business at 1001 Park Ave., Lake Park, Florida. Respondent Bankers Life and Casualty Company dominates and controls the acts and practices of respondents Southern Realty & Utilities Corp., Hartsel Ranch Corporation and Estates of the World, Inc.

Respondent Southern Realty & Utilities Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1001 Park Ave., Lake Park, Florida. Respondent Bankers Life and Casualty Company has a majority ownership interest in respondent Southern Realty & Utilities Corp.

Respondent Hartsel Ranch Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 1001 Park Ave., Lake Park, Florida. It is a wholly-owned subsidiary of respondent Southern Realty & Utilities Corp.

Respondent Estates of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its principal place of business located at 4810 North Kenneth Ave., Chicago, Illinois. Respondent Bankers Life and Casualty Company has a majority ownership interest in respondent Estates of the World, Inc.

Respondent John D. MacArthur is an individual and an officer, former officer or Chairman of the Board of Directors of corporate respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., and Hartsel Ranch Corporation. He owns all of the outstanding stock of Bankers Life and Casualty Company. He

dominates and controls the acts and practices of the said corporate respondents and their subsidiaries. His address is 101 Ocean Ave., Palm Beach Shores, Florida.

Respondent Larwill Costilla Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Rio Grande Ranches of Colorado, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is a wholly-owned subsidiary of respondent Larwill Costilla Ranches, Inc.

Respondent Trustees of Colorado Properties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Top of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is a wholly-owned subsidiary of respondent Trustees of Colorado Properties, Inc.

Respondent Milco Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is the sales agent or broker for respondents Hartsel Ranch Corporation and Estates of the World, Inc.

Respondent Irving E. Miller is an individual and an officer of Milco Associates, Inc. He owns all of the stock in respondents Milco Associates, Inc., Trustees of Colorado Properties, Inc., and Larwill Costilla Ranches, Inc. He formulates, directs and controls the acts and practices of the said corporate respondents and their subsidiaries. His address is 2601 Biscayne Boulevard, Miami, Florida.

Respondent San Luis Valley Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado. It is the sales agent or broker for respondent Larwill Costilla Ranches, Inc.

Respondent G-R-P Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located in Blanca, Colorado. It is the sales agent or broker for respondents Rio Grande Ranches of Colorado, Inc. and Top of the World, Inc.

Respondent Materic, Inc. is a corporation organized, existing and

doing business under and by virtue of the laws of the State of California, with its principal place of business located at 8648 Wilshire Boulevard, Beverly Hills, California. It is the advertising agent for respondents Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc. and San Luis Valley Ranches, Inc.

Respondents Albert R. Linnick and Richard Greenberg are individuals and officers, directors or principal stockholders in respondents San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc. They formulate, direct and control the acts and practices of the said corporate respondents. Their address is 8648 Wilshire Boulevard, Beverly Hills, California.

PAR. 2. Respondents cooperate and act together in effecting the acts and practices as hereinafter set forth.

PAR. 3. Respondents are engaged, directly or through their wholly-owned subsidiaries, agents and other devices, in the business of acquiring undeveloped land, subdividing said land into lots, and advertising, offering for sale and selling said lots to the public. Respondents are in substantial competition with corporations, firms and individuals in the sale of land.

PAR. 4. Respondents' volume of business is substantial and their acts and practices, as hereinafter set forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the conduct of their aforesaid business, respondents represent that the lots which respondents offer for sale are good investments and that there is little or no financial risk involved in the purchase of said lots.

PAR. 6. In truth and in fact, a significant number of the aforesaid lots are not good investments involving little or no financial risk to purchasers from respondents. Therefore, the acts and practices described in Paragraph Five are unfair or deceptive.

PAR. 7. In the further conduct of their aforesaid business, respondents offer for sale and sell lots in their subdivisions without disclosing to prospective purchasers that the purchase of said lots is a risky investment in that, *inter alia*, the future value of said lots is uncertain and the purchaser will probably be unable to resell his or her lot at or above the purchase price. Therefore, respondents have failed to disclose material characteristics of their lots which would be likely to affect the consideration by purchasers of whether or not to purchase a lot from respondents. The failure to disclose such information is an unfair or deceptive act or practice.

PAR. 8. In the further conduct of their aforesaid business, respon-

dents represent that the value of the undeveloped land and lots in their subdivisions is growing at a rate which corresponds to the growth rate of the value, at the undeveloped stage, of land and lots in more fully developed and populated areas.

PAR. 9. In truth and in fact, the growth rate of the value of the undeveloped land and lots in respondents' subdivisions does not correspond to the growth rate of the value, at the undeveloped state, of land and lots in more fully developed and populated areas referred to in Paragraph Eight. Therefore, the acts and practices described in Paragraph Eight are unfair or deceptive.

PAR. 10. In the further conduct of their aforesaid business, respondents represent that the lots in respondents' subdivisions are useable as homesites.

PAR. 11. In truth and in fact, all or most of the aforesaid lots are not useable as homesites because of, *inter alia*, the lack or unreasonable cost of utilities, the difficulty in obtaining home construction financing, the remote location of the property and the poor quality of the land. Therefore, the acts and practices described in Paragraph Ten are unfair or deceptive.

PAR. 12. In the further conduct of their aforesaid business, respondents offer for sale and sell lots in their subdivisions without disclosing to prospective purchasers the total cost of all utilities, that one or more utility services may not be available and that home construction financing is difficult to obtain. Therefore, respondents have failed to disclose material characteristics of their lots which would be likely to affect the consideration by purchasers of whether or not to purchase a lot from respondents. The failure to disclose such information is an unfair or deceptive act or practice.

PAR. 13. In the further conduct of their aforesaid business, respondents represent that the land in their subdivisions will soon be unavailable and that prospective buyers must purchase lots immediately or risk being unable to do so.

PAR. 14. In truth and in fact, respondents' land is not selling at such a rate that prospective buyers cannot wait a substantial period of time and still be able to obtain land in the subdivision being offered. Therefore, the acts and practices described in Paragraph Thirteen are unfair or deceptive.

PAR. 15. In the further conduct of their aforesaid business, respondents represent that the money paid to respondents by purchasers is fully protected or "Guaranteed" by respondents' refund plan.

PAR. 16. In truth and in fact, the money paid to respondents by purchasers is not fully protected or "Guaranteed" by respondents' refund plan because of the conditions required of purchasers to get

refunds including, but not limited to, the conditions that purchasers must bear the cost of traveling to the property and that purchasers must request a refund immediately upon completion of a required company guided tour when it may not be possible for purchasers to determine if the property is as represented at that time. Therefore, the Acts and practices described in Paragraph Fifteen are unfair or deceptive.

PAR. 17. In the further conduct of their aforesaid business, respondents represent that their subdivision land and the area in which said land is located is similar or comparable to urban, metropolitan and industrial areas as well as to mountain resort areas and recreation areas.

PAR. 18. In truth and in fact, respondents' land is not similar or comparable either to urban, metropolitan and industrial areas or to mountain resort areas or to recreation areas. Therefore, the acts and practices described in Paragraph Seventeen are unfair or deceptive.

PAR. 19. In the further conduct of their aforesaid business, respondents use land sales contracts which contain declarations that the contract contains the entire agreement of the parties and that no representations were made to the lot purchaser to induce said purchaser to enter into the contract other than those representations expressed in the contract.

PAR. 20. Use by respondents of the contract declarations described in Paragraph Nineteen is an unfair or deceptive act and practice because respondents and their agents make representations which differ in material respects from, or which obscure, the rights and obligations of purchasers and respondents under said contracts.

PAR. 21. In the further conduct of their aforesaid business, respondents use land sales contracts which contain a provision that defaulting purchasers forfeit all payments previously made to respondents under the contract. When purchasers default and forfeit previously made payments, respondents retain and fail to offer refunds of those amounts of the purchasers' total payments which exceed respondents' reasonable damages caused by the defaults.

PAR. 22. Use by respondents of the contract provision described in Paragraph Twenty-One and the retaining by respondents of purchasers' payments in excess of reasonable damages are unfair acts or practices.

PAR. 23. In the further conduct of their aforesaid business, respondents use land sales contracts which contain a provision that prevents purchasers from acquiring title to the lot being purchased until said purchasers have paid the full purchase price of the lot. Further, respondents enter into mortgages and other security agreements

among themselves in which the subdivision land is the security and which contain default provisions giving the secured party respondent the right to repossess the subdivision land and its title from the respondent nominally selling the subdivision while not requiring the secured party respondent either to honor the land sales contracts of the individual lot purchasers or to notify said purchasers that the subdivision selling respondent has lost its right or interest in the land. Thus, the interest in the land that lot purchasers may have can be cut off by implementation of the said security agreements among the respondents. The failure by respondents to protect the interest of lot purchasers is an unfair or deceptive act or practice.

PAR. 24. In the further conduct of their aforesaid business, respondents induce members of the public through the unfair and deceptive acts and practices, described in the enumerated paragraphs above, to pay to them, in advance of the passage of title, substantial sums of money toward the purchase of lots located within respondents' subdivisions. Said lots are of little or no use or value to purchasers as investments or as homesites. Respondents retain said sums of money.

PAR. 25. Respondents' retaining of the sums of money obtained through the acts and practices described in Paragraph Twenty-Four is an unfair act and practice.

PAR. 26. The use by respondents of the aforementioned unfair or deceptive statements, representations, and practices has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true and to cause the purchase of substantial numbers of respondents' lots because of said mistaken and erroneous belief.

PAR. 27. The aforementioned acts and practices, as herein alleged, are all to the prejudice and injury of the public and respondents' competitors and constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth

in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25(f) of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Bankers Life and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 4444 West Lawrence Ave., Chicago, Illinois.

Respondent Southern Realty & Utilities Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1301 Copans Road, Pompano Beach, Florida.

Respondent Hartsel Ranch Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 1301 Copans Road, Pompano Beach, Florida.

Respondent Estates of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its principal place of business located at 4810 North Kenneth Ave., Chicago, Illinois.

Respondent San Luis Valley Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado.

Respondent Larwill Costilla Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado.

Respondent Rio Grande Ranches of Colorado, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado.

Respondent Top of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado.

Respondent Materic, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business located at 2049 Century Park East, Los Angeles, California.

Respondent G-R-P Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2049 Century Park East, Los Angeles, California.

Respondent Trustees of Colorado Properties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Milco Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Richard Greenberg is an individual whose address is 2049 Century Park East, Los Angeles, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For purposes of this order, unless otherwise provided, the following definitions shall be applicable:

"Purchaser" shall mean a person to whom a respondent offers to sell or sells one or more lots in a subdivision; *provided, however*, that a "purchaser" shall not include a person who purchases land in a single transaction for a sum in excess of \$25,000.

"Land" or "subdivision" shall mean any real property which is divided or proposed to be divided into 50 or more units, whether contiguous or not, for the purpose of sale or lease to purchasers as part of a common promotional plan.

"Contract" shall mean a written agreement for the sale of land to purchasers.

"Business day" shall mean any calendar day except Saturday, Sunday, or the following business holidays: New Year's Day, Washing-

ton's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

"Property Report" includes documents sometimes referred to as an Offering Statement or Prospectus.

"Respondent which sold the lot" shall mean the title owner or his sales agent.

"Inconsistent" shall mean mutually repugnant or contradictory one to the other.

For purposes of this order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting directly or indirectly. For purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

I.

It is ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., corporations, and their officers, successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing:

1. That land or lots are a good or safe investment, or that the purchase of a lot is a good or safe investment.
2. That there is little or no financial risk involved in the purchase of lots.
3. That the resale of a purchased lot is not difficult.
4. That the value of, or demand for, any land, including lots being offered for sale or previously sold, has increased, or will increase, or that purchasers have made, or will in the future make, a profit by reason of having purchased such land.
5. That the prices of lots periodically rise or that prices of said lots are increasing, have increased or will increase, without disclosing at the same time, and by the same medium by which the price increases are communicated, that the price increases of lots do not in any way relate to the value of said lots.

6. That the purchase of a lot is a way to achieve financial security or prosperity, to deal with inflation or to become wealthy.

7. That the land in any subdivision will soon be unavailable or that prospective purchasers must purchase a lot in a subdivision immediately to ensure that such lot will be available.

8. That subdivision land and the area surrounding it are comparable, similar or analogous either to urban, metropolitan and industrial areas or to mountain resort areas or to recreation areas.

9. That the growth in land values or potential growth in land values at a subdivision corresponds to or will correspond to the growth in land values at any other locality. The word "locality" includes, but is not limited to, cities, towns, counties, townships, boroughs, states and regions.

Provided, however, it shall be a defense that at the time a representation was made, it was true and the maker of the representation possessed data substantiating the representation. Such substantiating data shall be maintained for at least three years from the making of the representation it substantiates and shall be made available to the Commission upon request.

B. Including in any contract for the sale of subdivision land, or in the documents shown or provided to purchasers or prospective purchasers of subdivision land:

1. Language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of such land, other than those set forth in the contract.

2. Language to the effect that upon a failure of the purchaser to pay any installment due under the contract or otherwise to perform any obligation under the contract, the respondent which sold the lot shall be entitled to retain sums previously paid thereunder by the purchaser, except as provided in Section V of this order.

3. Any waiver, limitation or condition on the right of a purchaser to cancel a transaction or receive a refund under any provision of this order, except as such waiver, limitation or condition is expressly allowed by this order.

C. Misrepresenting the right of a purchaser under any provision of this order or any applicable statute or regulation to cancel a transaction or receive a refund.

D. Making misrepresentation concerning the rights or obligations of a respondent or purchaser which differs in any respect from the rights or obligations of the parties as stated in the contract or Property Report.

E. Making any statement or representation concerning the proxim-

ity to any subdivision of any existing or future city, place, facility, body of water or road without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement of representation, the approximate distance to the nearest two (2) miles in road miles from the center of the subdivision to the downtown or geographical center of the city, place or facility referred to, or in the case of a body of water or a road, to the nearest point at which such body of water or road is accessible to entry and use by purchasers.

F. Making any statement or representation concerning any credit, refund or other monetary benefit or remuneration to purchasers or prospective purchasers from the respondent which sold the lot unless such is a fact and unless any conditions or limitations attached to such credit, refund, benefit or remuneration are disclosed.

II.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., corporations, and their officers, successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith:

A. Set forth in all sales and promotional material and advertising relating to the sale of land, except billboards, the following statement:

Risk Factor: Since land values are uncertain, you should consult a qualified professional before purchasing.

B. Set forth as the title on the first page of any contract for the sale of land in 12-point boldface type "CONTRACT FOR THE PURCHASE OF LAND."

C. Set forth on the first page of all contracts for the sale of land in 10-point boldface type the following statement:

THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND.

THE FUTURE VALUE OF THIS LAND, AS WELL AS ALL UNDEVELOPED REAL ESTATE, IS UNCERTAIN. YOU SHOULD NOT ASSUME THAT THE VALUE OF LAND WILL INCREASE. DO NOT ASSUME THAT YOU WILL BE ABLE TO RESELL YOUR LAND WITHOUT SIGNIFICANT COMMUNITY DEVELOPMENT AND POPULATION GROWTH.

D. Set forth on the first page of all contracts for the sale of lots such of the following statements as are applicable:

1. For contracts for the sale of lots where the respondent which sold the lot is not obligated to provide electricity, water, and sewage disposal by central systems, but where all such utilities are available by other means, the following statement:

This undeveloped land has been planned for use as a vacation homesite. Electricity, water, and sewage disposal are available at the purchaser's expense. Electricity is obtainable by generator, water by well, and sewage disposal by septic tank. Access will be by unpaved roads.

Provided that, if a central system is provided instead of a generator or well or septic tank, then the above statement may be modified only to the extent necessary to so indicate.

Provided further that, if paved roads are provided, then the above statement may be modified only to the extent necessary to so indicate.

Provided further that, if roads are county accepted, then the above statement may be modified only to the extent necessary to so indicate.

2. For contracts for the sale of lots where the respondent which sold the lot is not obligated to provide any utilities and where utilities are not known to be available, the following statement in lieu of the above statement:

This completely undeveloped land is being sold "as is." No improvements are planned for this subdivision other than county-approved and maintained roads. No representation is made as to the availability of water or sewer.

Provided that, if the roads are not county-approved and maintained, this statement shall be modified to disclose the status of the roads if any.

E. Set forth the following statement in any contract for land requiring a Property Report; immediately below the statement required by paragraph D. above.

Note to Buyer: See page [insert page number] of the Property Report for statements relating to the additional expense for improvements.

F. Set forth in any contract for the sale of land which does not require a Property Report, immediately below the statements required by paragraph D. above, a statement providing the cost of improvements.

G. Whenever prospective buyers are provided with a contract for the sale of land by any means other than by mailing said contract directly to such purchasers:

1. Furnish each purchaser, at the time the purchaser signs a contract for the sale of land, with two copies of a form, captioned in

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boldface type "NOTICE OF CANCELLATION," which shall contain in boldface type the following information and statements:

NOTICE OF CANCELLATION

Date of Transaction

Contract Number

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE SHOWN ON THE CONTRACT.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT ISSUED BY YOU WILL BE RETURNED WITHIN TWENTY BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [name of respondent which sold the lot], AT [address of said respondent's place of business] NOT LATER THAN MIDNIGHT OF [date].

I (WE) HEREBY CANCEL THIS TRANSACTION (EACH PURCHASER MUST SIGN THIS NOTICE.)

Signature of Purchaser

Date

Signature of Purchaser

Date

2. Before furnishing copies of the above "Notice of Cancellation" to the purchaser, complete both of the copies by entering the name of the respondent which sold the lot, the address of said respondent's place of business, the date of the transaction, the contract number and the date by which the purchaser may give notice of cancellation, but in no event may such date be earlier than the tenth business day following the date of the transaction.

3. Where a timely notice of cancellation is received and said notice is not properly signed and the respondent which sold the lot does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

4. Where the signature of a prospective purchaser is solicited

during the course of a sales presentation, inform each person orally, at the time he signs the contract, of his right to cancel as stated in paragraph II.G.5. of this order.

5. Include clearly and conspicuously in each contract for the sale of land the following statement in boldface type:

PURCHASER HAS THE RIGHT TO CANCEL THE CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT. SEE THE ATTACHED "NOTICE OF CANCELLATION" FOR AN EXPLANATION OF THIS RIGHT.

6. Within twenty business days after the receipt of a timely notice of cancellation signed by a purchaser, refund all payments made under the contract, and cancel and return any monies paid by the purchaser in connection with the contract.

H. Furnish any report required to be furnished to a purchaser at or before the signing of a contract by Federal or State law or by this order (i) with the first written materials furnished to a prospective purchaser in connection with the sale of a lot or (ii) during the first contact which the prospective purchaser has with any agent or employee of the respondent which is offering the lot for sale, in connection with the sale of a lot.

I. Inform all prospective purchasers that a bank or other lender located near the subdivision should be consulted prior to the purchase of land if the purchaser intends to finance the building of a house on that land.

J. If a refund is offered contingent upon the purchaser taking a company-guided inspection tour or making a registered inspection of the property in which the purchaser's lot is located:

1. Provide the purchaser three business days after taking said tour or making said inspection within which to request a refund.

2. Include in any contract with the original purchaser, in immediate proximity to the provision setting forth the availability of a refund upon the completion of a company-guided tour or registered inspection of the property, the following statements:

If you take a company-guided tour of the property within [designate time period] months of your purchase and you have not been declared in default, you will have three days after the tour to cancel your purchase and get your money back.

You, the purchaser, pay your own expenses for travel to the property in order to take the tour.

3. Furnish each purchaser at the completion of the tour or inspection a completed form in duplicate, captioned "NOTICE OF

CANCELLATION," which shall contain in boldface type the following statements:

NOTICE OF CANCELLATION

Date of Company-Guided Inspection Tour
or Registered Inspection of Property

Contract Number

YOU MAY CANCEL YOUR CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TWENTY BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [name of respondent which sold the lot], AT [address of said respondent's place of business] NOT LATER THAN MIDNIGHT OF [date].

I (WE) HEREBY CANCEL THE CONTRACT. (EACH PURCHASER MUST SIGN THIS NOTICE.)

Signature of Purchaser

Date

Signature of Purchaser

Date

4. Before furnishing copies of the above "Notice of Cancellation" to purchaser, complete both copies by entering the name of the respondent which sold the lot and the address of said respondent's place of business, the date of the company-guided inspection tour or the registered inspection of the property, the contract number and the date by which the purchaser may give notice of cancellation, but in no event may such date be earlier than the third business day following the date of said tour or inspection.

5. Where a timely notice of cancellation is received but said notice is not properly signed and the respondent which sold the lot does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the

seventh day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

K. Disclose in each instance where all or part of any printed article, publication, endorsement or testimonial is used, published or referred to, the date when such article, publication, endorsement or testimonial was originally published or made and the source of such article, publication, endorsement or testimonial.

L. Notify prospective purchasers of any lot offered for sale in a flood plain area that said lot is in a flood plain area.

III.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., corporations, and their officers, successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any land may be used now or in the future:

A. As a homesite, unless the contracts or Property Reports accurately set forth:

1. That water is available to the purchaser by drilling a well or by central water system.
2. That sewage disposal is available to purchasers by installation of a septic tank or by hook-up to a central sewage system.
3. That electricity will be available to the purchaser from a utility company.

B. As a vacation homesite, unless the contracts or Property Reports set forth:

1. That water is available to the purchaser by drilling a well.
2. That percolation on the property purchased is sufficient to support a septic tank.
3. That electricity is available to the purchaser by installing a generator.

IV.

It is further ordered, That, where applicable, each of the respondents, Bankers Life and Casualty Company, Southern Realty &

Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., corporations, and their officers, successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, which has or obtains, prior to the payment by the purchaser of the total purchase price, either a security interest or title in the land:

A. Shall execute and record a covenant providing that, if the purchaser pays the total purchase price pursuant to the terms of a contract for the purchase of land, then a general warranty deed free of liens will be delivered conveying title in accordance with said contract.

1. With respect to land in which it has a security interest or title as of the effective date of this order, within 90 days of the effective date of this order.

2. With respect to land in which it obtains a security interest or title after the effective date of this order, at the same time such security interest or title is recorded.

B. Shall not grant a lien or security interest on land to any third party unless it is provided in the instrument granting said lien or security that, if the purchaser pays the total purchase price pursuant to the terms of the contract for the purchase of land, then a general warranty deed free of liens will be delivered conveying title.

V.

For purposes of Section V of this order, the following shall be applicable:

The subdivision land to be covered is presently known as Hartsel Ranch, Estates of the World, Rio Grande Ranches, Larwill Costilla Ranches, Top of the World, and San Luis Valley Ranches.

It is further ordered, That:

A. Each of the respondents Hartsel Ranch Corporation, Estates of the World, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., with respect to the refund of monies to each purchaser who entered into a contract for the purchase of land in its own subdivision between January 1, 1971 and January 1, 1974, who was an active or deeded account and had not been notified of a default on his present contract as of the date the agreement containing this order was accepted by the Commission, shall:

1. Within ninety (90) days of the effective date of this order cause a

letter to be sent by first class mail to all such purchasers, said letter to be in the form as set forth in Exhibit A attached hereto.

2. In the event that the letter referred to in subparagraph 1 above is returned undelivered, promptly review its files and make other reasonable efforts such as contacting credit bureaus, telephone and utility companies, in order to obtain the present address of each such purchaser whose letter was not delivered, and to those purchasers for whom a present address is obtained by these means or otherwise, send the letter required by subparagraph 1 above within sixty days of obtaining the purchaser's present address; *provided, however*, that all obligations to send the letter required by subparagraph 1 above shall terminate twenty-four months after the effective date of this order.

3. Cause refunds to be made in accordance with the terms of the letter sent pursuant to subparagraphs 1 and 2 above. *Provided, however*, that refunds under this subparagraph may be conditioned upon purchaser's execution of a quit-claim deed, release or other document necessary to free any and all liens or encumbrances to effect a full release of any interest or right whatsoever flowing from the terms of the contract.

4. Maintain, for three years after the effective date of this order or three years after the last refund payment is made, whichever occurs last, records which are adequate to disclose said respondent's compliance with subparagraph 3 above, such records to be furnished by said respondent to the Federal Trade Commission upon request.

B. Each of the respondents Hartsel Ranch Corporation, Estates of the World, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc., and San Luis Valley Ranches, Inc., with respect to the refund of monies to defaulted purchasers who entered into contracts for the purchase of land in its own subdivision between January 1, 1971 and January 1, 1974 shall:

1. Compile a list of the names and last-known addresses of all identifiable such purchasers, who defaulted on said contracts prior to the date the Agreement containing this order was accepted by the Commission and who forfeited payments in excess of 30% of the cash purchase price.

2. Send a letter within six months of the effective date of this order, by first class mail, to each purchaser referred to in subparagraph 1 above, advising him of his right to a refund, the approximate time period and manner in which such refund will be made, the need to execute and return within 30 days the enclosed quit-claim deed, release or similar document, if such is required for the purchaser to obtain a refund, and the need for notifying said respondent of any future change of residence or address where such refund can be delivered.

3. Enclose with the letter referred to in subparagraph 2 above a form for notification of any change of the purchaser's address and any quit-claim deed, release or other document which is required to be executed by the purchaser for the purchaser to receive a refund.

4. In the event that the letter referred to in subparagraph 2 above is returned undelivered, promptly review its files and make other reasonable efforts such as contacting credit bureaus, telephone and utility companies, in order to obtain the present address of each such purchaser whose letter was not delivered, and to those purchasers for whom a present address is obtained by these means or otherwise, send the letter required by subparagraph 2 above within sixty days of obtaining the present address; *provided, however*, that all obligations to send the letter required by this subparagraph shall terminate twenty-four months after the effective date of this order.

5. Refund to each purchaser, for whom a current mailing address has been obtained pursuant to subparagraph 2 or 4 above, all payments paid by such purchaser in excess of 30% of the cash purchase price disclosed in the contract. *Provided, however*, that refunds under this subparagraph may be conditioned upon purchaser's execution of a quit-claim deed, release or other document necessary to free any and all liens or encumbrances to effect a full release of any interest or right whatsoever flowing from the terms of the contract.

6. Refund the amount due under subparagraph 5 above between 12 months and 24 months after the effective date of this order.

7. Maintain, for three years after the effective date of this order or three years after the last refund payment is made, whichever occurs last, records which are adequate to disclose said respondent's compliance with subparagraph 5 above, such records to be furnished by said respondent to the Federal Trade Commission upon request.

C. Respondent Bankers Life and Casualty Company shall guarantee that the refunds required by Paragraphs A and B above are made in the time required therein.

D. With respect to purchasers who contract to buy land after the effective date of this order, the sales contract shall contain a provision that in the event purchaser thereafter defaults, if purchaser's total payments exceed 40% of the cash purchase price, purchaser shall be entitled to receive a refund of 65% of payments made in excess of 40% of the cash purchase price. *Provided, however*, that refunds hereunder may be conditioned upon purchaser's execution of a quit-claim deed, release or other document necessary to free any and all liens or encumbrances to effect a full release of any interest or right whatsoever flowing from the terms of the contract.

VI.

For purposes of Section VI of this order, the following definitions shall be applicable:

"Subdivision business" shall mean the acquiring of land for subdividing, the dividing of land into subdivision lots, or the advertising, promotion or selling of subdivided lots to purchasers.

It is further ordered, That respondent Richard Greenberg, individually or as officer, director, stockholder, employee, agent or manager, of any corporation or other entity does forthwith cease and desist from engaging in the subdivision business unless such subdivision business is conducted with or through entities which agree to be bound by and which act in accordance with the Agreement Containing Consent Order to Cease and Desist entered in this proceeding between the Commission and Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc.

VII.

It is further ordered, That if the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701-20 (1970), or any regulation that has been or may be promulgated pursuant thereto requires an act or practice that is prohibited by any provision of this order, or prohibits an act or practice that is required by any such provision, or is otherwise inconsistent with any such provision of this order, any such provision of this order shall be without legal force or effect.

VIII.

It is further ordered, That in the event the Federal Trade Commission promulgates a valid Trade Regulation Rule applicable to respondents' sale of land, then to the extent there are any inconsistencies between this order and such Rule, the Trade Regulation Rule will govern.

IX.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill

Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc.:

1. Deliver, by hand or by certified mail, a copy of Sections I, II, and III of this order to each of their present or future employees and salesmen, and independent brokers, who sell or promote the sale of land to purchasers.

2. Provide each person so described in Paragraph 1 above with a form, returnable to said respondents, clearly stating such person's intention to be bound by and to conform his sales practices to the requirements of this order.

3. Inform each person described in Paragraph 1 above that said respondents shall not use any such person, or the services of any such person, unless such person agrees to and does file notice with said respondents that such person will be bound by the provisions contained in this order.

4. That in the event such person will not agree to so file notice with said respondents and to be bound by the provisions of this order, said respondents shall not use such person, or the services of such person.

5. Inform the persons described in Paragraph 1 above that said respondents are obligated by this order to discontinue dealing with those persons who engage on their own in the acts and practices prohibited by this order.

6. Institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in Paragraph 1 above conform to the requirements of Sections I, II, and III of this order.

7. Discontinue dealing with any person described in Paragraph 1 above, revealed by the aforesaid program of surveillance, who repeatedly engages on his own in the acts or practices prohibited by Sections I, II, and III of this order; *provided, however*, that, in the event remedial action is taken, evidence of such dismissal or termination shall not be admissible against said respondents in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order.

X.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., shall forthwith

distribute a copy of this Order to each of their subsidiaries engaged in the sale of land.

XI.

It is further ordered, That in the event that any of the respondents Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., transfers all or a substantial part of its subdivision land to any other corporation or to any other person engaged in subdivision land sales or transfers all or part of its ownership interest to wholly-owned subsidiaries, such respondent shall require the transferee to file promptly with the Commission a written agreement to be bound by all the terms of this Order; *provided*, that, if such respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said transferee, such respondent shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

XII.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., notify the Commission at least thirty days prior to any proposed corporate change, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in said respondent which may affect compliance obligations arising out of this order.

XIII.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation, Materic, Inc., and Richard Greenberg shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the

manner and form in which said respondent has complied with this order. Thereafter, each of said respondents, where applicable, will submit a supplemental compliance report on or before sixty (60) days after the date scheduled for the completion of the restitution provision of Section V.

EXHIBIT A

Dear [Customer Name]:

Our records show that you purchased Lot[s] ----- in Block ----- of Section ----- of [development name] on [date] for [contract price]. At the present time we show a balance owed of \$----- and a paid-in amount [principal and interest] of \$-----.

In settlement of litigation with the Federal Trade Commission, in which we admit no liability, we have agreed to offer you an opportunity to cancel your contract on the above lot on the following terms. If you elect to cancel your contract at this time you may obtain a 70% refund on [paid-in amount], or \$-----, which will be paid to you in four quarterly payments commencing [date to be set within 120 days after date letter sent]. Of course, if you elect to cancel the contract, you do not need to make any more payments.

If you decide to accept our offer, sign the enclosed [quit-claim deed] [rescission and release agreement], have it notarized and return it within 30 days of receiving this letter. Also you should fill in the enclosed change of address card and send it to us if your mailing address changes.

See Attached Fact Sheet.

FACT SHEET

WATER: The source of domestic water for the property is individual wells drilled by the owner at his expense. The cost of drilling a well is approximately [\$10 per foot [North]] [\$12 to \$16 per foot [South]] plus the cost of a pump; and water is generally available from approximately 100 feet to 300 feet, depending on its location.

SEWAGE DISPOSAL: Sewage disposal is handled by the use of individual septic tanks which for most pieces of property cost from approximately \$800 to \$1500. Percolation tests have shown that most of the properties are well suited for such a system.

ELECTRICITY: Electric power is available from local cooperative power associations. The cost of such electric power may be impractical because of the distance from the nearest power line. Generators can be purchased new by the owner of the property from approximately \$1,100 to \$2,500.

TELEPHONE: Telephone service is available but may be impractical because of the distance from existing telephone lines.

ROADS: Roads were built by the developer to give access to the property but have not been maintained in areas where no development has occurred. Some of the roads were dedicated to the county which is responsible for maintaining them on evidence of need. The other roads will be maintained by the developer on evidence of need until dedicated to the county.

With regard to the future value of land such as that which you bought, the

Department of Housing and Urban Development requires the following statement in all Property Reports:

The future value of land is uncertain; do not count on appreciation. You should consider the competition which you may experience from the developer in attempting to resell your lot and the possibility that real estate brokers may not be interested in listing your lot.

ORDER DISMISSING COMPLAINT AS TO RESPONDENT ALICE
HOLGUIN

By order of October 11, 1978, Administrative Law Judge Lewis F. Parker (the "ALJ") substituted Alice Holguin for Albert R. Linnick as a party in this proceeding. Respondent Holguin is executrix of the estate of Mr. Linnick, who died in January, 1978.

On January 3, 1979, the Commission entered an order affirming the ALJ's substitution of the executrix. The Commission's order of January 3 indicated that the purpose of substitution was to preserve access to the assets of the decedent as a potential source of redress for injured consumers.

On March 15, 1979, this case was withdrawn from adjudication as to all but one of the fifteen respondents, and on May 2, 1979, the Commission accepted an Agreement Containing a Consent Order covering thirteen respondents. The parties' Joint Motion for Withdrawal from Adjudication recorded the agreement of complaint counsel and the consenting respondents that the complaint should be dismissed as to Ms. Holguin. Furthermore, the Agreement provides that the relief set forth in the contemplated Order "fully satisfies any claim for consumer redress . . . arising out of the acts and practices alleged in the complaint . . ."

By its acceptance of the Agreement and by its issuance of the contemplated order, the Commission has foregone any claim for additional consumer redress arising out of the complaint in this matter. Since the purpose of substituting Ms. Holguin was to preserve access to a potential source of redress and since further redress is precluded, there is no reason to retain Ms. Holguin as a respondent. Accordingly,

It is ordered, That as to respondent Alice Holguin, the complaint in the above-captioned matter be, and it hereby is, dismissed.

Interlocutory Order

94 F.T.C.

IN THE MATTER OF

UNNAMED DEBT COLLECTION AGENCIES, CREDITORS OR OTHERS

*File No. 782 3078. Interlocutory Order, Aug. 31, 1979*ORDER DENYING MOTION TO REIMBURSE COSTS OF COMPLYING
WITH SUBPOENA DUCES TECUM

Creditors Service Bureau of El Paso, Inc. (CSB), moves that it be reimbursed for expenses incurred in complying with a subpoena duces tecum issued on January 22, 1979, which required the production of documents relating, *inter alia*, to the practices used by CSB to collect consumer debts. The instructions appended to the subpoena provided for the submission of verified copies in lieu of originals for any of the responsive documents.

A subpoena respondent is not automatically entitled to the reimbursement of expenses incurred in complying with Commission process. Rather, subpoenaed parties are expected to absorb reasonable expenses of compliance as a cost of doing business. *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1033 (D.C. Cir. 1978), *cert. denied*, 99 S. Ct. 841 (1979); *FTC v. Texaco, Inc.*, 555 F.2d 862, 881-82 (D.C. Cir.) (en banc), *cert. denied*, 431 U.S. 974 (1977) (modification of investigative subpoenas is not justified "unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business").

To justify its claim for reimbursement, CSB must demonstrate that the costs of complying with the Commission subpoena are unreasonable (see *FTC v. Rockefeller*, 591 F.2d 182, 190 (2d Cir. 1979); *United States v. Tivian Labs, Inc.*, 589 F.2d 49, 55 (1st Cir. 1978); *United States v. Davey*, 543 F.2d 996, 1000 (2d Cir. 1976)), and in determining whether a subpoena respondent has met that burden, we consider chiefly the costs of compliance in relation to the size and resources of the producing party. *E.g.*, *FTC v. Carter*, 464 F. Supp. 633, 641 (D.D.C. 1979), *appeal docketed*, No. 79-1331 (D.C. Cir. Mar. 27, 1979). The costs incurred by CSB in responding to the subpoena—\$847.37—seem minor in relation to the financial position of the firm. Moreover, we note that the subpoena calls in substantial part for the production of corporate, operating, and other business records which are incident to the conduct of CSB's business and under such circumstances, a claim for reimbursement is difficult to sustain. See *FTC v. Rockefeller*, *supra*, 591 F.2d at 191. Finally, CSB has not shown that its decision to incur copying expenses (\$100.00) was based on a business need for continued access to