

IN THE MATTER OF

FLEET FINANCE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE TRUTH IN LENDING ACT, REGULATION Z AND THE
FEDERAL TRADE COMMISSION ACT*Docket C-3899. Complaint, Oct. 5, 1999--Decision, Oct. 5, 1999*

This consent order, among other things, requires Fleet Finance, Inc., and its successor companies to pay \$1.3 million in consumer redress and administrative costs, and prohibits the respondents from future violations of the Truth in Lending Act and from making various misrepresentations of credit costs and terms of home equity loans or any credit transaction.

Participants

For the Commission: *Carole Reynolds, Thomas Kane, Margaret Patterson and James Lacko.*

For the respondents: *Harold Shaw, King & Spalding, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Fleet Finance, Inc., incorporated in Delaware ("Fleet Finance"), a corporation, and a related now-defunct corporation, Fleet Finance, Inc., which was incorporated in Rhode Island, have violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Fleet Finance is a Delaware corporation with its principal office or place of business at 6 Executive Park Drive, Atlanta, Georgia.
2. Respondent Fleet Finance has engaged in the business of offering and extending "consumer credit" to the public and is a "creditor," as those terms are defined in the TILA and Regulation Z.

3. Respondent Fleet Finance's consumer credit transactions have included, but not been limited to, those in which Fleet acquires or retains a security interest in a consumer's principal dwelling. Respondent Fleet Finance has also purchased through assignments consumer credit transactions, including but not limited to those in which Fleet Finance obtained a security interest in the consumer's principal dwelling.

4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.

TRUTH IN LENDING ACT AND FTC ACT VIOLATIONS

Count I: Failure to Provide the Right to Rescind in Extended Transactions

5. Respondent Fleet Finance, in the course and conduct of its business, has, on numerous occasions, extended consumer credit transactions in which Fleet Finance acquired or retained a security interest in the consumers' principal dwellings and failed to provide these consumers with the right to rescind the credit transactions by:

(a) Failing to provide consumers with notices of the right to rescind;

(b) Waiving consumers' right to rescind, and disbursing funds, pursuant to rescission waivers that: (i) failed to describe, in writing, a *bona fide* personal financial emergency of the consumers; (ii) failed to modify or waive consumers' right to rescind in writing; and/or (iii) involved verbal waivers; and

(c) Failing to take actions terminating the security interest and returning any money and property given by consumers in connection with the credit transactions when consumers exercise their right to rescind.

6. Respondent Fleet Finance's aforesaid acts and practices violate Sections 125(a), (b) and (d) of the TILA, 15 U.S.C. 1635(a), (b) and (d) and Sections 226.23(a), (b), (c), (d) and (e) of Regulation Z, 12 CFR 226.23(a), (b), (c), (d) and (e), and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Count II: Failure to Provide the Right to Rescind
in Purchased Transactions

7. Respondent Fleet Finance, in the course and conduct of its business, has, on numerous occasions, purchased consumer credit transactions through assignments in which Fleet Finance acquired or retained security interests in the consumers' principal dwellings that failed to provide these consumers with the right to rescind the credit transactions by:

(a) Failing to provide consumers with notices of the right to rescind;

(b) Failing to permit consumers the right to rescind the credit transaction until, and disbursing funds before, midnight of the third business day following the later of consummation, delivery of the rescission notice or delivery of all material disclosures;

(c) Waiving consumers' right to rescind the credit transactions, and disbursing funds, pursuant to rescission waivers that failed to describe, in writing, a *bona fide* personal financial emergency of the consumers; and/or

(d) Including requirements that consumers pay certain costs and release fees if the consumers choose to exercise their right to rescind.

8. Respondent Fleet Finance's aforesaid acts and practices, based on its assignee liability in Section 131 of the TILA, 15 U.S.C. 1641, violate Sections 125(a), (b) and (d) of the TILA, 15 U.S.C. 1635(a), (b) and (d) and Sections 226.23(a), (b), (c), (d) and (e) of Regulation Z, 12 CFR 226.23(a), (b), (c), (d) and (e) and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Count III: Failure to Provide TILA Disclosures and/or Failure to
Provide Timely TILA Disclosures in Extended Transactions

9. Respondent Fleet Finance, in the course and conduct of its business, has, on numerous occasions, extended consumer credit transactions and failed to provide consumers with all TILA disclosures of the costs and terms of credit and/or to provide all TILA disclosures prior to consummation of credit transactions.

10. Respondent Fleet Finance's aforesaid acts and practices violate Sections 121 and 128 of the TILA, 15 U.S.C. 1631 and 1638,

and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Count IV: Failure to Provide TILA Disclosures and/or Failure to Provide Timely TILA Disclosures in Purchased Transactions

11. Respondent Fleet Finance, in the course and conduct of its business, has, on numerous occasions, purchased consumer credit transactions through assignments that failed to provide consumers with all TILA disclosures of the costs and terms of credit and/or that failed to provide all TILA disclosures prior to consummation of credit transactions.

12. Respondent Fleet Finance's aforesaid acts and practices, based on its assignee liability in Section 131 of the TILA, 15 U.S.C. 1641, violate Sections 121 and 128 of the TILA, 15 U.S.C. 1631 and 1638, and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Count V: Failure to Provide or Failure to Provide Accurately TILA Disclosures in Extended Transactions

13. Respondent Fleet Finance, in the course and conduct of its business, has, on numerous occasions, extended consumer credit transactions and failed to provide or failed to provide accurately certain TILA disclosures, including but not limited to the following:

- (a) The annual percentage rate;
- (b) The number, amount, and timing of payments scheduled to repay the obligation; and
- (c) The total of payments.

14. Respondent Fleet Finance's aforesaid acts and practices violate Sections 107 and 128 of the TILA, 15 U.S.C. 1606 and 1638, and Sections 226.18(e), (g) and (h) and 226.22 of Regulation Z, 12 CFR 226.18(e), (g) and (h) and 226.22, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Count VI: Failure to Provide or Failure to Provide Accurately
TILA Disclosures in Purchased Transactions

15. Respondent Fleet Finance, in the course and conduct of its business, has, on numerous occasions, purchased consumer credit transactions through assignments that failed to provide or failed to provide accurately certain TILA disclosures, including but not limited to the following:

- (a) The identity of the creditor;
- (b) The number, amount, and timing of payments scheduled to repay the obligation; and
- (c) The total of payments.

16. Respondent Fleet Finance's aforesaid acts and practices, based on its assignee liability in Section 131 of the TILA, 15 U.S.C. 1641, violate Section 128 of the TILA, 15 U.S.C. 1638, and Sections 226.18(a), (g) and (h) of Regulation Z, 12 CFR 226.18(a), (g) and (h), and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Count VII: Failure to Retain Documents in Extended Transactions

17. Respondent Fleet Finance, in the course and conduct of its business, has, on numerous occasions, extended consumer credit transactions and failed to retain TILA disclosures, TILA notices of the right to rescind, promissory notes and/or other evidence of the terms and conditions of consumer credit transactions for two years after the date disclosures are required to be made or action is required to be taken concerning the transaction.

18. Respondent Fleet Finance's aforesaid acts and practices violate Section 226.25(a) of Regulation Z, 12 CFR 226.25(a).

Count VIII: Failure to Retain Documents in Purchased Transactions

19. Respondent Fleet Finance, in the course and conduct of its business, has, on numerous occasions, purchased consumer credit transactions through assignments that failed to retain TILA disclosures, TILA notices of the right to rescind, promissory notes and/or other evidence of the terms and conditions of consumer credit transactions for two years after the date disclosures are required to be made or action is required to be taken concerning the transaction.

20. Respondent Fleet Finance's aforesaid acts and practices, based on its assignee liability in Section 131 of the TILA, 15 U.S.C. 1641, violate Section 226.25(a) of Regulation Z, 12 CFR 226.25(a).

DECISION AND ORDER

The Federal Trade Commission ("the Commission") having initiated an investigation of certain acts and practices of respondent Fleet Finance, Inc., incorporated in Delaware ("Fleet Finance") named in the caption hereof and a predecessor corporation, Fleet Finance, Inc., which was incorporated in Rhode Island ("Fleet Finance (RI)") and is now succeeded by Home Equity U.S.A., Inc. incorporated in Rhode Island ("Home Equity U.S.A. (RI)"), and Home Equity U.S.A., Inc., incorporated in Delaware ("Home Equity U.S.A. (DE)"), corporations, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent Fleet Finance with violation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* and its implementing Regulation Z, 12 CFR 226, and the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondents named in the caption, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that respondent Fleet Finance has violated the said Acts and Regulation, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdiction findings and enters the following order:

1. Respondent Fleet Finance is a Delaware corporation with its principal office or place of business at 6 Executive Park Drive, Atlanta, Georgia.

2. Respondent Home Equity U.S.A. (RI) is a Rhode Island corporation with its principal office or place of business at 6 Executive Park Drive, Atlanta, Georgia.

3. Respondent Home Equity U.S.A. (DE) is a Delaware corporation with its principal office or place of business at 6 Executive Park Drive, Atlanta, Georgia.

4. 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

DEFINITIONS

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

1. "*Address*" or "*addresses*" means the full street address, including the: street number and, where applicable, apartment or condominium number; city or town; state; and zip code.

2. "*Advertisement*," "*business day*," "*consumer*," "*consumer credit*," "*dwelling*," and "*security interest*" are defined as provided in Regulation Z, 12 CFR 226.2(a), as amended, and the Federal Reserve Board Commentary to Regulation Z ("*Regulation Z Commentary*"), 12 CFR 226.2(a), Supp. 1, as amended.

3. "*Applicable respondent*" means the entity among the respondents who is the creditor for the particular consumer credit transaction.

4. "*Date of foreclosure*" means the date of foreclosure by Fleet Finance or Fleet Finance (RI) on the property involved in the eligible foreclosed consumer's transaction that was extended or purchased by Fleet Finance or Fleet Finance (RI) between January 1, 1990 and December 31, 1993.

5. "*Foreclose*" means that foreclosure proceedings were instituted with respect to the applicable consumer. In a state where judicial proceedings were not utilized, the term means an official notice was provided to the consumer, by Fleet Finance or Fleet Finance (RI) that foreclosure had, in fact, commenced.

6. "*Mailing address*" means the street or U. S. Post Office box, city, state, and zip code.

7. "*Name*" means: (a) the consumer's full name in respondents' primary listing of borrowers' names and addresses and shall include, where available, the consumer's first name, middle initial and last name; (b) a consumer's name provided to the independent agent by the Commission; or (c) the full name provided by the consumer to the independent agent, including, where available, the first name, middle initial and last name.

8. "*Paid off by foreclosure by Fleet Finance or Fleet Finance (RI)*" means that the consumer's obligation was paid off by foreclosure proceedings instituted by Fleet Finance or Fleet Finance (RI) and subsequent sale of the property to, or subsequent payment of the balance by, someone other than the respective consumer.

9. "*Eligible consumer*" means every consumer who meets the following three requirements: (a) the consumer had a consumer credit transaction that was secured by the consumer's principal dwelling, and the transaction was either extended or purchased by Fleet Finance or Fleet Finance (RI) at any time from January 1, 1990 through December 31, 1993; (b) the consumer is one for whom respondents have a computer or other readily available record or whose name is provided to the independent agent by the Commission; and (c) the consumer's transaction described in this subparagraph was, at any time prior to the date of this order, paid off to or written off by Fleet Finance or Fleet Finance (RI) or any other Fleet Financial Group, Inc. entity, either prior to, at, or after maturity of the obligation, in any manner excluding paid off by foreclosure by Fleet Finance, Fleet Finance (RI) or any other Fleet Financial Group, Inc. entity. Respondents shall make good faith efforts to locate their computer or other readily identifiable records with the names of eligible consumers.

10. "*Eligible foreclosed consumer*" means every consumer who meets the following three requirements: (a) the consumer had a consumer credit transaction that was secured by the consumer's principal dwelling and was either extended or purchased by Fleet Finance or Fleet Finance (RI) at any time from January 1, 1990 through December 31, 1993; (b) the consumer is one for whom respondents have a computer or other readily available record or whose name is provided to the independent agent by the Commission; and (c) the consumer's transaction described in this subparagraph was, at any time prior to the date of this order, paid off by foreclosure by Fleet Finance, Fleet Finance (RI) or any other Fleet Financial Group,

Inc. entity, either prior to, at, or after maturity of the obligation. Respondents shall make good faith efforts to locate their computer or other readily identifiable records with the names of eligible foreclosed consumers.

11. "*Independent agent*" means the independent agent designated by the Commission to oversee redress for this matter.

12. Unless otherwise specified, "*respondents*" means Fleet Finance, Home Equity U.S.A. (RI), and Home Equity U.S.A. (DE), corporations, their successors and assigns and their officers; and each of the above's agents, representatives, and employees.

13. "*Commerce*" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with any extension of consumer credit or advertisement to promote directly or indirectly any extension of consumer credit in or affecting commerce, shall not, in any manner, expressly or by implication:

- A. Misrepresent the annual percentage rate;
- B. Misrepresent the number, amount, and timing of payments scheduled to repay the obligation and the total of payments;
- C. Misrepresent the right to rescind the credit transaction;
- D. Misrepresent any term or condition of financing for any consumer credit transaction;
- E. In rescindable credit transactions under Regulation Z, fail to deliver to consumers two copies of a Notice of Right to Rescind, conforming to the requirements of Section 226.23(a) and (b) of Regulation Z, 12 CFR 226.23(a) and (b), as amended, and Section 226.23(a) and (b) of the Regulation Z Commentary, 12 CFR 226.23(a) and (b), Supp. 1, as amended, affording consumers until midnight of the third business day following the later of consummation, delivery of the Notice of Right to Rescind, or delivery of all material disclosures, the right to rescind the credit transaction creating any of respondents' security interests in consumer credit transactions, as required by Section 125(e) of the TILA, 15 U.S.C. 1635(e), as amended, Section 226.23(f) of Regulation Z, 12 CFR 226.23(f), as amended, and Section 226.23(f) of the Regulation Z Commentary, 12 CFR 226.23(f), Supp. 1, as amended;

F. In rescindable credit transactions under Regulation Z, modify or waive a consumer's right to rescind a credit transaction unless and until the consumer gives to the applicable respondent a dated written statement that (1) describes a bona fide personal financial emergency; (2) specifically modifies or waives the right to rescind the credit transaction; and (3) bears the signature of all consumers entitled to rescind the credit transaction, as required by Section 125 of the TILA, 15 U.S.C. 1635(d), as amended, Section 226.23(e) of Regulation Z, 12 CFR 226.23(e), as amended, and Section 226.23(e) of the Regulation Z Commentary, 12 CFR 226.23(e), Supp. 1, as amended;

G. In rescindable credit transactions under Regulation Z, disburse any money, other than to escrow, perform any service, or deliver any materials (other than taking the steps provided in Section 226.23(c) of Regulation Z, 12 CFR 226.23(c), as amended, and Section 226.23(c)-3 of the Regulation Z Commentary, 12 CFR 226.23(c)-3, Supp. 1, as amended), unless and until any of the following occur: (1) time has expired for receipt of mail from consumers who have the right to rescind the credit transaction that is postmarked before midnight of the third business day following the later of consummation of the credit transaction, delivery of the Notice of Right to Rescind, or delivery of all material disclosures under the TILA, Regulation Z, and the Regulation Z Commentary, and the applicable respondent has not received notice of rescission from the consumer; (2) consumers entitled to waive their right of rescission do so pursuant to Section 125(d) of the TILA, 15 U.S.C. 1635(d), as amended, Section 226.23(e) of Regulation Z, 12 CFR 226.23(e), as amended, and Section 226.23(e) of the Regulation Z Commentary, 12 CFR 226.23(e), Supp. 1, as amended; or (3) after midnight of the third business day following the later of consummation of the credit transaction, delivery of the Notice of Right to Rescind, or delivery of all material disclosures required by the TILA and Regulation Z, the applicable respondent obtains a signed written statement from all consumers entitled to rescind the credit transaction stating that three business days have passed since the later of consummation of the credit transaction, delivery of the Notice of Right to Rescind, or delivery of all material disclosures, and that no consumer has rescinded the credit transaction;

H. In rescindable credit transactions under Regulation Z, fail to take actions terminating the security interest created under a credit transaction and return any money and property given by consumers

in connection with the credit transaction when consumers exercise their right to rescind, as required by Section 125(b) of the TILA, 15 U.S.C. 1635(b), as amended, Section 226.23(d) of Regulation Z, 12 CFR 226.23(d), as amended, and Section 226.23(d) of the Regulation Z Commentary, 12 CFR 226.23(d), Supp. 1, as amended, and this order;

I. Fail to accurately make all disclosures, and in the manner, required by Sections 121, 122, 125, 127A, 128, 129, and 137 of the TILA, 15 U.S.C. 1631, 1632, 1635, 1637a, 1638, and 1647, as amended, and Sections 226.5b, 226.17, 226.18, 226.19, 226.20, 226.23, and 226.32 of Regulation Z, 12 CFR 226.5b, 226.17, 226.18, 226.19, 226.20, 226.23, and 226.32, as amended, and Section 226.5b, 226.17, 226.18, 226.19, 226.20, 226.23, and 226.32 of the Regulation Z Commentary, 12 CFR 226.5b, 226.17, 226.18, 226.19, 226.20, 226.23, and 226.32, Supp. 1, as amended, including but not limited to the following: the identity of the creditor required to make the disclosure; the annual percentage rate; the number, amount, and timing of payments scheduled to repay the obligation; and the total of payments; and

J. Fail in any other manner to meet the requirements of the TILA, 15 U.S.C. 1601 *et seq.*, as amended, including but not limited to 15 U.S.C. 1615, as amended, and its implementing Regulation Z, 12 CFR 226, as amended, and the Regulation Z Commentary, 12 CFR 226, Supp. 1, as amended.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, shall not, in any manner, purchase, by any means, any promissory note or other consumer credit transaction in which the disclosures required by Sections 121, 122, 125, and 128 of the TILA, 15 U.S.C. 1631, 1632, 1635, and 1638, as amended, violate, on their face, any provision of the TILA, 15 U.S.C. 1601 *et seq.*, as amended, Regulation Z, 12 CFR 226, as amended, and the Regulation Z Commentary, 12 CFR 226, Supp. 1, as amended, by, for example, inaccuracies or incompleteness or absence of disclosures required by the TILA, Regulation Z and the Regulation Z Commentary.

III.

It is further ordered, That respondents shall pay to the Commission as consumer redress and attendant costs of administration the sum of one million three hundred thousand dollars

(\$1,300,000). Respondent shall make the payment by electronic transfer on or before the tenth day following the date of service of this order. The payment shall be deposited into a suspense account established by the Commission. In the event of any default in the payment, respondents shall also pay interest as computed under 28 U.S.C. 1961(a), which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

The payment made by respondents shall, in the discretion of the Commission, be used by the Commission to provide direct redress to consumers as specified in this order in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury.

The independent agent shall establish an escrow account for the payment. The independent agent shall deposit the payment into the escrow account upon transfer of the payment from the Commission to the independent agent. At any time after this order becomes final, the Commission or the independent agent may direct that the payment be distributed as provided in this order.

Respondents relinquish all dominion, control and title to the payment made to the Commission. Respondents shall make no claim to or demand for return of the payment, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the payment is not part of the debtor's estate, nor does the estate have any claim or interest therein.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, shall comply with paragraphs I, III, and IV of Appendix A to this order and shall also provide reasonable cooperation to the Commission and the independent agent in connection with administration of the Consumer Redress Program and Other Consumer Redress Requirements as described in Appendices A, B, C, D, and E to this order, hereby incorporated into this order.

V.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, shall not communicate directly with eligible consumers or eligible foreclosed consumers, orally or in writing, concerning the Consumer Redress Program and Other Consumer Redress Requirements as described in Appendices A, B, C, D, and E to this order prior to being notified by Commission staff that the Consumer Redress Program and Other Consumer Redress Requirements have been completed, except to refer consumers to the 800-number provided by the independent agent.

VI.

It is further ordered, That respondents shall, for five (5) years from the date of this order, maintain and upon request promptly and within a reasonable period of time make available to the Federal Trade Commission for inspection and copying all documents that will demonstrate compliance with this order, provided, however, that nothing in this Part shall limit respondents' continuing obligation to retain evidence of compliance with Regulation Z, pursuant to Section 226.25(a) of Regulation Z, 12 CFR 226.25(a).

VII.

It is further ordered, That respondents are required, in accordance with 31 U.S.C. 7701, to furnish to the Commission the respective taxpayer identifying numbers (employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of such person's relationship with the Commission.

VIII.

It is further ordered, That respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall obtain from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order and obtain the signed receipt to such currently employed personnel within thirty (30) days after the date of service

of this order, and to such future employed personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

It is further ordered, That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporation(s) 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 proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all aspects of this order and the appendices to this order.

XI.

It is further ordered, That respondents shall not be liable for any acts or omissions of the independent agent that do not involve the acts or omissions of respondents.

XII.

This order will terminate on October 5, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order,

whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

CONSUMER REDRESS PROGRAM

I. Not later than ten (10) business days after the date of service of this order, respondents shall deliver to the independent agent on magnetic tape or other electronic medium, and deliver to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission ("Division of Enforcement"), a paper copy and a computerized copy of: (a) a list entitled "Eligible Consumers" containing the names, mailing addresses, and loan dates of all eligible consumers in their records; (b) a separate list entitled "Eligible Foreclosed Consumers" containing the names, mailing addresses, loan dates, and dates of foreclosures of all eligible foreclosed consumers in their records; and (c) a sworn statement signed by a responsible company official of respondents that these lists constitute true, accurate and complete lists of all such consumers in their records. In creating the lists described in this paragraph, respondents shall make good faith efforts to locate within their files the consumer's full name and current address. If, before the date of service of this order, respondents have provided to the Commission lists and a sworn statement that meet the requirements of this paragraph, respondents shall provide a statement to that effect to the Division of Enforcement and shall not be required to provide the lists and sworn statement again thereafter.

II. The independent agent shall add to each respective list referred to in Paragraph I of this Appendix A, in a segregated format, the names and addresses of those consumers that the Division of Enforcement specifies are eligible consumers or eligible foreclosed consumers under this order and provides to the independent agent. The independent agent shall assign a control number for each consumer on these two lists. The independent agent shall update the addresses on these two lists by conducting a standard address search using the national change of address system ("NCOA").

III. Respondents shall also provide promptly and within a reasonable period of time any additional information that the independent agent reasonably needs to carry out the Consumer Redress Program and Other Consumer Redress Requirements described in this order and the appendices to this order.

Respondents shall deliver to the independent agent all data and information required by this order and the appendices to this order, in a clear format compatible with the independent agent's computers.

IV. During the sixty (60)-day period beginning on the date the order is published in the Federal Register for notice and comment, respondents shall cooperate fully with the independent agent in a test run by the independent agent designed to examine the compatibility of the data's format with the independent agent's computers and to test the procedures for preparing and mailing the letter described in Appendix B to this order ("Appendix B letter") to the consumers on the two lists described in Paragraph I of this Appendix A.

V. Not later than the later of thirty (30) days after receiving from respondents the information described in Paragraph I of this Appendix A or the date of this order, the independent agent shall: (a) retain a copy of the information described in Paragraph I of this Appendix A with a record of the date it was received from respondents; and (b) mail a letter substantially identical to the Appendix B letter, an envelope addressed to the independent agent, and a claim form substantially identical to the form in Appendix C ("Claim Form") to all consumers on the two lists described in Paragraph I of this Appendix A.

VI. For Appendix B letters that are returned due to an undeliverable address, the independent agent shall conduct an address search using consumer databases and then shall remail the letter, the envelope, and the Claim Form to any updated address by first class regular mail through the U.S. Postal Service.

VII. Any recipient of an Appendix B letter whose Claim Form is not received by the independent agent within sixty (60) days of the date on such consumer's Appendix B letter shall not receive a redress payment; provided, that the independent agent may at its discretion accept and

process an untimely Claim Form that it receives within ninety (90) days of the date on the consumer's Appendix B letter.

VIII. For any consumers not included on the two lists described in Paragraph I of this Appendix A who contact the independent agent not later than sixty (60) days after the date of this order regarding a possible redress payment, the independent agent shall specify that, to qualify for a redress payment, the consumers must submit, not later than ninety (90) days after the date of this order, certain documents. Those documents must show that the consumer meets either of the following: (a) the requirements of subparagraphs 9(a) and 9(c) of the definition of "eligible consumer" under this order; or (b) the requirements of subparagraphs 10(a) and 10(c) of the definition of "eligible foreclosed consumer" under this order. Not later than 120 days after the date of this order, the independent agent shall review any documents submitted and decide which consumers, if any, qualify for a redress payment. Within the same time period, the independent agent shall submit to the Division of Enforcement for approval a list of those consumers it has found to qualify for a redress payment under this paragraph. If the independent agent is unable to decide whether a particular consumer qualifies for a redress payment under this paragraph, the independent agent shall forward the consumer's documents to the Division of Enforcement, who will make the determination. After receiving from the Division of Enforcement a list of consumers who are approved to receive a redress payment under this paragraph ("qualified consumers"), the independent agent shall retain that list.

IX. The independent agent shall calculate the proposed amount of redress ("proposed amount"), which shall be an equal amount for each consumer, to be given to all consumers who either: (1) were sent an Appendix B letter and submitted a Claim Form in accordance with this order; or (2) were deemed qualified consumers under Paragraph VIII of this Appendix A. The independent agent shall calculate the proposed amount by starting with the total amount of money in the redress fund available for distribution ("total available redress") and dividing that figure by the following figure: the number of Claim Forms received by the independent agent, plus the number of qualified consumers under Paragraph VIII of this Appendix A. The available redress shall be the \$1,300,000 paid by respondents in accordance with this order less: (a) the amount of the independent agent's estimated fees; (b) \$10,000 to be reserved for contingencies; and (c) an additional amount, if the independent agent deems it appropriate, to be reserved to pay the redress fund's tax liabilities. The amount of redress paid to each consumer shall not exceed a total amount of \$1,000, regardless of whether there is a one-round or two-round distribution under this order. The independent agent shall submit the proposed amount to the Division of Enforcement for approval. No

consumer shall receive more than one redress payment under this order, regardless of the number of transactions he or she may have had that were either extended or purchased by Fleet Finance or Fleet Finance (RI).

X. Upon receiving notice of approval of the proposed amount, including any corrections, by the Division of Enforcement, the independent agent shall send by first class mail a check in that amount to each consumer who: (a) was mailed an Appendix B letter and submitted a Claim Form; or (b) was deemed a qualified consumer under Paragraph VIII of this Appendix A. The letter accompanying the check shall be substantially identical to the letter shown in Appendix D. In addition, the independent agent shall include the Commission's consumer education pamphlet pertaining to home equity loans. For those consumers not deemed qualified consumers under Paragraph VIII of this Appendix A, the independent agent shall mail a letter substantially identical to the letter attached to this order as Appendix E ("Appendix E letter").

XI. The independent agent shall establish and maintain a toll-free telephone number for consumers covered by this Order that shall be included on all Appendix B, D and E letters sent pursuant to this order that consumers may call to inquire about the Consumer Redress Program under this order. The toll-free telephone number shall continue for as long as necessary, but in no event longer than nine (9) months from the date of this order.

XII. The independent agent shall redeposit into the redress fund the funds from any returned checks or checks not cashed within 90 days after distribution to consumers. The independent agent shall make a second-round distribution of the funds remaining in the redress fund in the same manner as set forth above for the initial distribution; provided, however, that if the Division of Enforcement determines that insufficient funds are available to warrant a second-round distribution, the Division of Enforcement shall so notify the independent agent and the independent agent shall pay the balance of the redress fund to the United States Treasury in lieu of making a second-round distribution.

XIII. The independent agent shall create and retain the following lists: (a) the names and addresses of all consumers who were mailed an Appendix B letter and the last date of such mailing; (b) the names and addresses of all consumers who were mailed an Appendix B letter and returned a Claim Form; (c) the names and addresses of any consumers who were not mailed an Appendix B letter but returned a Claim Form; (d) the names and addresses of all consumers who were mailed an Appendix B letter but did not return a Claim Form; (e) the date each consumer who was mailed an Appendix B letter and returned a Claim Form was mailed a redress check; (f) the names and addresses of all consumers who were deemed qualified consumers under Paragraph VIII of this Appendix A and

the date each such consumer was mailed a redress check; and (g) the date each redress check was paid to each consumer who was mailed such a check.

XIV. If any funds remain in the redress fund after the final distribution to consumers, payment of the independent agent's fees, discharge of the redress fund's tax liabilities, and any other expense of the redress fund, the independent agent shall pay such funds over to the United States Treasury.

XV. The independent agent shall manage the money deposited into the redress fund in a manner reasonably calculated to maximize the amount available for distribution, provided, however, that the money in the fund shall be invested in interest-bearing bank accounts that are insured by an agency of the United States government or in United States government obligations.

XVI. The independent agent shall ensure that the redress fund is in compliance with all applicable federal, state, and local laws and regulations. In particular, the independent agent shall file all required tax returns.

XVII. After disposing of all funds in the redress fund, the independent agent shall submit to the Division of Enforcement a final report, accounting for all funds received into the fund and paid out of the fund.

XVIII. The fee due the independent agent for performing the duties described herein shall be determined according to its contract with the Commission. This fee is to be paid from the redress fund.

XIX. The independent agent shall maintain all records related to the performance of its duties under this order for a period of five (5) years after the final accounting report is approved by the Commission.

APPENDIX B

OTHER CONSUMER REDRESS REQUIREMENTS

[For Eligible Consumers and Eligible Foreclosed Consumers]

[Date of Letter]

[Control Number
Name of Consumer
Mailing Address of Consumer]

Dear Consumer:

As part of a settlement between the U.S. Federal Trade Commission ("the FTC") and Fleet Finance and its related companies ("Fleet") concerning certain home loans that Fleet made or purchased between January 1, 1990 and December 31, 1993, Fleet paid the FTC an amount for use in making redress payments to consumers who obtained such loans.

Because you are among this group of consumers, you will be mailed a redress payment if you fill out the attached Claim Form and sign it, place a stamp on the enclosed addressed envelope, and mail the Claim Form in the envelope. For you to receive the redress payment, the independent agent must receive your Claim Form within sixty (60) days from the date on the top of this letter. Please mail back your Claim Form promptly.

We do not yet know how large the redress payment to each consumer will be. That amount will depend on the number of consumers who submit Claim Forms. The redress payment will not be greater than \$1,000, and it could be much less.

If you have questions about this letter or about the redress program, please call the independent agent set up by the FTC at the following toll-free number: 1-800-[insert number].

Again, to receive the redress payment, simply fill out the Claim Form, sign it, put it in the envelope, place a stamp on the envelope, and mail it.

Sincerely,

Federal Trade Commission

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Decision and Order

APPENDIX C

OTHER CONSUMER REDRESS REQUIREMENTS

CLAIM FORM

[Control Number
Name of Consumer
Mailing Address of Consumer]

Please send me the redress payment in connection with the settlement between the U.S. Federal Trade Commission and Fleet.

Signed: _____ Date: _____
[Name of Consumer]

If the address above is incorrect, please add your correct address below:

Apartment: _____

Street Address: _____

City, State, Zip: _____

PRIVACY ACT NOTICE: The FTC seeks this information to provide refunds to eligible consumers. Providing this information is voluntary. If you decide not to provide this information, it could delay processing, or in some cases, make it impossible to process your claim. This information may be disclosed as authorized by Privacy Act, such as to another government agency. 5 U.S.C. 552a, 47 Fed. Reg. 32,662.

APPENDIX D

OTHER CONSUMER REDRESS REQUIREMENTS**[Letter to Accompany Redress Payments]**

[Date of Letter]

[Control Number
Name of Consumer
Mailing Address of Consumer]

Dear Consumer:

Thank you for your correspondence in connection with the settlement between the U.S. Federal Trade Commission and Fleet Finance and its related companies ("Fleet"). We have enclosed a check made out to you for \$_____. Please cash your check as soon as possible and not later than 90 days after the date of this letter. After 90 days, the check will not be good.

The Federal Trade Commission is committed to enforcing federal laws that protect consumers from unfair or deceptive practices.

If you have any questions about this check or about the redress program in general, please call the independent agent, at 1-(800) XXX-XXXX.

Sincerely,

Jodie Bernstein, Director
Bureau of Consumer Protection
Federal Trade Commission

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APPENDIX E

OTHER CONSUMER REDRESS REQUIREMENTS

[Letter to Consumers Who Do Not Qualify for a Redress Payment]

[Date of Letter]

[Control Number

Name of Consumer

Mailing Address of Consumer]

Dear Consumer:

Thank you for your correspondence regarding the recent settlement between the U.S. Federal Trade Commission ("the FTC") and Fleet Finance and its related companies ("Fleet"). We have reviewed the information you submitted. Unfortunately, your transaction is not covered by the settlement, and you do not qualify for a redress payment.

If you have questions about this letter or about the redress program, please call the independent agent set up by the FTC at the following toll-free number: 1-800-[insert number].

Sincerely,

Federal Trade Commission

Complaint

128 F.T.C.

IN THE MATTER OF

POOLS BY IKE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3902. Complaint, Nov. 1, 1999--Decision, Nov. 1, 1999*

This consent order, among other things, prohibits the California-based association of pool construction contractors from conspiring or agreeing (1) to fix or raise prices or fees for the construction or remodeling of swimming pools or (2) to refuse to deal with owner-builders, home construction contractors or developers.

Participants

For the Commission: *Thomas Dahdouh, David Newman, Jeffrey Klurfeld and Marianne Bitler.*

For the respondents: *Grover Waldon, Clifford & Brown, Bakersfield, CA., John Linford and H. Dennis Beaver, Bakersfield, CA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the individuals and corporations named above, hereinafter respondents, have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Pools by Ike, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 1730 Art Street, Bakersfield, California.

PAR. 2. Respondent Isaac W. Hornsby II is an individual and the president of Pools by Ike, Inc, a California corporation, a licensed swimming pool contractor with its office and principal place of business at 1730 Art Street, Bakersfield, California.

PAR. 3. Respondent Ricky Sneed, an individual doing business as Aloha Pools, is a licensed swimming pool contractor, with his