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10 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

11 _____)
FEDERAL TRADE COMMISSION,)

12 Plaintiff,)
13)

14 v.)

15 CAPITAL CITY MORTGAGE CORP.,)
a Maryland corporation, MARCIA)
16 C. FIDIS and CAROLINE KOESTER)
NASH, in their capacities as)
representatives of)
17 the Estate of THOMAS K. NASH,)
and ERIC J. SANNE,)

18 Defendants, and)
19)

20 JANE DOES NOS. 1 - 3,)
KATHERINE R. NASH TRUST,)
ANN E. NASH TRUST,)
21 CAROLYN D. NASH TRUST,)
ALAN W. NASH, in his capacity)
22 as trustee, and)
DONALD S. NASH,)

23 Relief Defendants.)
24 _____)

25 SECOND AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
26 EQUITABLE RELIEF AND MONETARY CIVIL PENALTIES

1 Plaintiff, the Federal Trade Commission ("Commission"), by
2 its undersigned attorneys, alleges as follows:

3
4 JURISDICTION AND VENUE

5 1. This is an action under §§ 5(a), 5(m)(1)(A), 9, 13(b),
6 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"),
7 15 U.S.C. §§ 45(a), 45(m)(1)(A), 49, 53(b), 56(a), and 57b,
8 § 108(c) of the Truth in Lending Act ("TILA"), 15 U.S.C.
9 § 1607(c), § 814(a) of the Fair Debt Collection Practices Act
10 ("FDCPA"), 15 U.S.C. § 1692j(a), and § 704(c) of the Equal Credit
11 Opportunity Act ("ECOA"), 15 U.S.C. § 1691c(c), to secure
12 permanent injunctive relief and other equitable relief, including
13 rescission, restitution, and disgorgement, against Capital City
14 Mortgage Corporation ("Capital City") and the Estate of Thomas K.
15 Nash, through its representatives Marcia C. Fidis and Caroline
16 Koestner Nash ("the Estate of Nash") for Capital City's and
17 Thomas K. Nash's ("Nash") unfair or deceptive acts or practices
18 in violation of § 5(a) of the FTC Act, as amended, 15 U.S.C.
19 § 45(a), and acts or practices in violation of the TILA, 15
20 U.S.C. §§ 1601-1666j, and its implementing Regulation Z, 12
21 C.F.R. § 226, and the FDCPA, 15 U.S.C. § 1692; to obtain a
22 monetary civil penalty from Capital City and the Estate of Nash
23 for violations of the ECOA, 15 U.S.C. § 1691, and its
24 implementing Regulation B, 12 C.F.R. § 202; to secure equitable
25 relief against Jane Does Nos. 1-3, the Katherine R. Nash Trust,
26 the Ann E. Nash Trust, the Carolyn D. Nash Trust, Alan W. Nash,

1 in his capacity as trustee and Donald S. Nash (collectively the
2 "Relief Defendants") for the ill-gotten gains they received that
3 were generated by the unfair and deceptive practices of Capital
4 City and Nash; and to secure permanent injunctive relief and
5 obtain a monetary civil penalty against Eric J. Sanne for
6 engaging in acts or practices in violation of the FDCPA, 15
7 U.S.C. § 1692.

8
9 2. This Court has subject matter jurisdiction over this matter
10 pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15
11 U.S.C. §§ 45(a), 45(m)(1)(A), 49, 53(b), 56(a), 57b, 1607(c),
12 1692j(a), and 1691c(c).

13
14 3. Venue is proper in the United States District Court for the
15 District of Columbia under 28 U.S.C. § 1391(b) and (c), 1395(a),
16 and 15 U.S.C. § 53(b).

17
18 DEFINITIONS

19 4. As used in reference to the TILA, the terms "advertisement,"
20 "amount financed," "annual percentage rate" ("APR"), "closed-end
21 credit," "consumer," "consumer credit," "creditor," "dwelling,"
22 "finance charge," "payment schedule," "security interest," and/or
23 "total of payments" are defined in §§ 103 and 128 of the TILA, 15
24 U.S.C. §§ 1602 and 1638, and §§ 226.2, 226.4, and 226.18 of
25 Regulation Z, 12 C.F.R. §§ 226.2, 226.4, and 226.18. As used in
26 reference to the FDCPA, the terms "creditor," "debt," and "debt

1 collector" are defined in § 803 of the FDCPA, 15 U.S.C. § 1692a.
2 As used in reference to the ECOA, the terms "adverse action,"
3 "applicant," "application," and "creditor" are defined in § 702
4 of the ECOA, 15 U.S.C. § 1691a, and Regulation B, 12 C.F.R.
5 § 202.2.

6

7 5. "Loan instrument" means the legal obligations between
8 Capital City and Nash and a borrower that are created in
9 extending credit.

10

11 6. "Monthly payment" means a monthly or other periodic payment
12 a borrower must make under the loan instrument to repay the loan
13 principal, pay interest on the principal, and, if necessary, fund
14 escrow accounts for insurance and/or real estate taxes.

15

16 7. "Overdue balance" means the sum a borrower must pay under
17 the loan instrument to bring current a loan.

18

19 8. "Arrears" means a sum which, pursuant to the loan
20 instrument, is owed by a borrower but not claimed due by Capital
21 City and Nash until the loan is paid off or foreclosed upon.

22

23 9. "Service fees" means fees for late payments, inspections,
24 courier services, appraisals, legal services, reinstatement,
25 penalties for "no insurance," and other penalties and fees which
26 a borrower must pay when billed by Capital City and Nash.

1 10. "Advances" means expenses that Capital City and Nash
2 incurred which a borrower must pay when billed by defendants
3 Capital City and Nash.

4
5 11. "Pay-off amount" means the sum a borrower must pay under the
6 loan instrument completely to extinguish a loan.

7
8 12. "Loan payments" incorporates by reference the "monthly
9 payment," "overdue balance," "arrear," "service fees,"
10 "advances," "pay-off amount," "annual percentage rate," "finance
11 charge," "amount financed," "total of payments," and/or "payment
12 schedule."

13
14 13. "Loan terms" means the terms of a loan instrument,
15 including, but not limited to, the duration of the loan in years,
16 the interest rate, whether the loan is amortizing or interest-
17 only, the terms of default, the requirements for reinstatement,
18 the monthly payment, and the amounts of service fees.

19
20 THE PARTIES

21 14. The Commission is an independent agency of the United States
22 Government given statutory authority and responsibility by the
23 FTC Act, as amended, 15 U.S.C. §§ 41-58. The Commission is
24 charged, inter alia, with enforcing § 5(a) of the FTC Act, 15
25 U.S.C. § 45(a), which prohibits unfair or deceptive acts or
26 practices in or affecting commerce, the TILA, 15 U.S.C. §§ 1601-

1 1666j, which grants to consumers certain substantive rights in
2 credit transactions, the FDCPA, 15 U.S.C. § 1692, which prohibits
3 certain debt collection practices, and the ECOA, 15 U.S.C.
4 § 1691, which prohibits certain forms of discrimination in credit
5 transactions. The Commission is authorized by § 13(b) of the FTC
6 Act, 15 U.S.C. § 53(b), the TILA, 15 U.S.C. §§ 1601-1666j, and
7 the FDCPA, 15 U.S.C. § 1692, respectively, to initiate court
8 proceedings to enjoin violations of the FTC Act, the TILA and
9 Regulation Z, and the FDCPA and to secure such equitable relief
10 as may be appropriate in each case. The Commission also is
11 authorized by the FTC Act, 15 U.S.C. § 45(m)(1)(A), and the ECOA,
12 15 U.S.C. § 1691c(c), to initiate court proceedings to obtain a
13 civil penalty for violations of the ECOA if the Attorney General
14 does not file within 45 days of the Commission's referral the
15 Commission's complaint alleging violations of the ECOA and
16 Regulation B.

17
18 15. Defendant Capital City Mortgage Corp. ("Capital City") is a
19 for-profit corporation organized, existing, and doing business
20 under the laws of the State of Maryland. Its principal place of
21 business is at 1223 11th Street, N.W., Washington, D.C. 20001.
22 Capital City transacts business in this District.

23
24 16. Defendants Marcia C. Fidis and Caroline Koestner Nash, also
25 known as Caroline M. Nash, as co-representatives of the Estate of
26 Nash, represent the probate estate of Nash, who transacted

1 business in this District. Nash was the President and sole
2 shareholder of Capital City, and directed, supervised,
3 controlled, formulated, and participated in the acts and
4 practices of defendant Capital City, including those acts and
5 practices complained of herein. Nash's principal place of
6 business was the same as Capital City's. Nash died on April 6,
7 2002.

8
9 17. Defendant Eric J. Sanne ("Sanne") is an individual who, at
10 the time the First Amended Complaint was filed, transacted
11 business in this District. He was an employee of Capital City
12 and served as its General Counsel and Systems Manager; his
13 principal place of business was the same as Capital City's.

14
15 18. Relief defendant Jane Doe No. 1 is the beneficiary and/or
16 recipient of funds from the Mortgage Banking Trust ("MBT").
17 Until the time of his death, Nash was the trustee and sole
18 beneficiary of MBT, which owns Capital City, invests in loans
19 serviced by Capital City and received funds and other property
20 that were obtained unlawfully from consumers as a consequence of
21 the acts and practices complained of herein.

22
23 19. Relief defendant Jane Doe No. 2 is the beneficiary and/or
24 recipient of funds from the Capital City Mortgage Corporation
25 Profit Sharing Plan Trust ("CCMC Profit Sharing Plan Trust").
26 Until the time of his death, Nash was the trustee and sole

1 beneficiary of the CCMC Profit Sharing Plan Trust, which invests
2 in loans serviced by Capital City and received funds and other
3 property that were obtained unlawfully from consumers as a
4 consequence of the acts and practices complained of herein.
5

6 20. Relief defendant Jane Doe. No. 3 is the beneficiary and/or
7 recipient of funds from the FIAC-PIAP, investment annuity plan.
8 Until the time of his death, Nash was the sole annuitant and
9 beneficiary of the FIAC-PIAP plan, which invests in loans
10 serviced by Capital City and received funds and other property
11 that were obtained unlawfully from consumers as a consequence of
12 the acts and practices complained of herein.
13

14 21. Relief defendant Katherine R. Nash Trust is a trust fund
15 that invested in loans serviced by Capital City and received
16 funds and other property that were obtained unlawfully from
17 consumers as a consequence of the acts and practices complained
18 of herein.
19

20 22. Relief defendant Ann E. Nash Trust is a trust fund that
21 invested in loans serviced by Capital City and received funds and
22 other property that were obtained unlawfully from consumers as a
23 consequence of the acts and practices complained of herein.
24

25 23. Relief defendant Carolyn D. Nash Trust is a trust fund that
26

1 | invested in loans serviced by Capital City and received funds and
2 | other property that were obtained unlawfully from consumers as a
3 | consequence of the acts and practices complained of herein.
4 |

5 | 24. Relief defendant Alan W. Nash is the trustee for the
6 | Katherine R. Nash trust, the Ann E. Nash Trust and the Carolyn D.
7 | Nash Trust, and holds title to the trust property.
8 |

9 | 25. Relief defendant Donald S. Nash, is the father of Nash, and
10 | is an investor in loans serviced by Capital City. As an
11 | investor, Donald S. Nash received funds and other property that
12 | were obtained unlawfully from consumers as a consequence of the
13 | acts and practices complained of herein.
14 |

15 | THE BUSINESS OF CAPITAL CITY AND NASH

16 | 26. Capital City and Nash have maintained a substantial course
17 | of trade in offering and extending credit to consumers and
18 | others, including, but not limited to: (1) consumer credit
19 | transactions in which Capital City and Nash have acquired or
20 | retained a security interest in a borrower's dwelling and (2)
21 | business credit transactions in which Capital City and Nash
22 | sometimes acquired a security interest in an applicant's dwelling
23 | or other real property.
24 |

25 | 27. In many instances, Capital City and Nash's borrowers have
26 | been minority and/or elderly persons living on fixed or low

1 incomes in Washington, D.C., Maryland, and Virginia, who borrow
2 primarily for personal, family, or household purposes.
3

4 28. Capital City and Nash have found borrowers by word-of-mouth,
5 advertisements, and other solicitations. They have often
6 qualified borrowers for loans not on creditworthiness but on
7 equity in property. They have funded the loans using their own
8 monies and monies from other sources and have serviced all the
9 loans, including, but not limited to, monitoring all payments,
10 maintaining books of account, taking action to collect on loans
11 in default, and selling or transferring the loans to others. In
12 connection with offering and extending credit, Capital City and
13 Nash have been the creditor on a number of loans.
14

15 29. In offering credit, Capital City and Nash routinely have
16 represented to prospective borrowers material facts about loan
17 terms, including, but not limited to: the term of the loan in
18 years; the terms of default; whether it is an amortizing loan or
19 an interest-only balloon loan; the interest rate; the monthly
20 payment; that borrowers will have access to records of their loan
21 accounts, including that an annual escrow accounting will be
22 provided; and that as long as a borrower complies with the terms
23 of the loan, Capital City and Nash would not take title to the
24 property securing the loan.
25
26

1 30. After extending credit, Capital City and Nash have not
2 provided borrowers with coupon books or payment books setting out
3 the amounts and due dates of loan payments. Instead, Capital
4 City and Nash routinely have sent borrowers monthly or periodic
5 statements ("monthly statements") purporting to represent the
6 loan payment due under the loan instrument.

7
8 31. Capital City and Nash's finance charges on their loans have
9 included, but have not been limited to, interest rates that
10 generally have ranged between 20 and 24 percent for loans secured
11 by home equity and between 9 and 12 percent for purchase money
12 loans. In many instances, the loans have been interest-only
13 balloon loans rather than amortizing loans.

14
15 32. In the course and conduct of offering and extending credit
16 and throughout the duration of their loans, Capital City and Nash
17 have engaged in acts or practices having the result that a number
18 of borrowers were overcharged on their loans, were defaulted, and
19 often had title to their homes or other property impaired or
20 completely lost title to their homes or other property and their
21 equity therein, and of which the following are illustrative:

22
23 (a) in offering credit, Capital City and Nash represented a loan
24 was an amortizing loan when, in fact, it was an interest-
25 only balloon loan;

26

- 1 (b) in offering credit, Capital City and Nash represented there
2 would be only a slight difference between the loan payment
3 on an existing loan and on a new loan consolidating the
4 existing loan and providing new funds, when, in fact, the
5 new loan payment was substantially higher and exceeded the
6 monthly income disclosed in the borrower's loan application;
- 7 (c) Capital City and Nash represented that a borrower's loan
8 payment was higher than it should have been under the loan
9 instrument, by demanding that the borrower:
- 10 (1) pay for utility services that were provided not to the
11 borrower but to Capital City and Nash;
- 12 (2) pay a litter control charge imposed by government on
13 Capital City and Nash or a related entity before the
14 borrower purchased the property from Capital City and Nash
15 or the related entity; and
- 16 (3) pay a "no-insurance" penalty of one percent of the
17 outstanding loan balance when Capital City and Nash were to
18 provide insurance or the borrower timely had purchased
19 appropriate insurance;
- 20 (d) Capital City and Nash collected real estate tax escrow
21 payments from a borrower, failed to pay the taxes, and then
22 represented to the borrower, a church, that they had paid
23 the taxes;
- 24 (e) Capital City and Nash refused to explain overcharges, such
25 as set forth above, to borrowers who asked for explanations;
26

- 1 (f) Capital City and Nash initiated foreclosure proceedings
2 after a borrower did not pay overcharges, such as set forth
3 above, and obtained title by foreclosing or taking a deed in
4 lieu thereof;
- 5 (g) without notice to a borrower, Capital City and Nash added
6 various charges to arrears or the loan principal, thereby
7 accruing compound interest on these amounts at the note rate
8 and increasing the borrower's pay-off amount;
- 9 (h) after receiving a payment sufficient to pay-off a borrower's
10 loan, Capital City and Nash refused to release their lien on
11 the borrower's property without further payment by the
12 borrower;
- 13 (i) Capital City and Nash refused to reinstate a borrower after
14 the borrower paid Capital City and Nash's designated
15 reinstatement fee; and
- 16 (j) after loaning funds to buy and remodel a property, Capital
17 City and Nash withheld remodeling funds from a borrower
18 while collecting loan payments sufficient to repay the full
19 amount of the loan.

20

21 33. Capital City and Nash often have foreclosed upon properties
22 securing their loans. After foreclosing, Capital City and Nash
23 have bought the foreclosed-upon property at the foreclosure
24 auction at which they were the only bidder, for a price
25 substantially less than appraised value. Capital City and Nash
26

1 then resold the property, and the foreclosed-upon borrower did
2 not receive the surplus from the resale.

3
4 34. Capital City and Nash's course of trade has been in or
5 affecting commerce, as "commerce" is defined in § 4 of the FTC
6 Act, 15 U.S.C. § 44.

7
8 VIOLATIONS OF SECTION FIVE OF THE FTC ACT

9 COUNT I

10 35. In the course and conduct of offering and extending credit,
11 Capital City and Nash have represented, expressly or by
12 implication, that the terms on which credit was granted would be
13 the same terms on which credit was offered.

14
15 36. In truth and in fact, in a number of instances, because of
16 practices such as those described in Paragraphs 26 through 34,
17 above, the terms on which credit was granted were not the same
18 terms on which credit was offered. Therefore, the representation
19 set forth in Paragraph 35, above, was, and is, false and
20 misleading.

21
22 COUNT II

23 37. In the course and conduct of offering and extending credit,
24 and throughout the duration of their loans, Capital City and Nash
25 have represented, expressly or by implication, that loan payments
26

1 demanded would comply with and be accurate under the loan
2 instrument.

3
4 38. In truth and in fact, in a number of instances, because of
5 practices such as those described in Paragraphs 26 through 34,
6 above, Capital City and Nash's representations of loan payments
7 did not comply with or were not accurate under the loan
8 instrument. Therefore, the representations set forth in
9 Paragraph 37, above, were, and are, false and misleading.

10
11 COUNT III

12 39. In the course and conduct of offering and extending credit,
13 and throughout the duration of their loans, Capital City and Nash
14 have represented, expressly or by implication, that they
15 possessed and relied on a reasonable basis substantiating their
16 representations that loan payments demanded would comply with and
17 be accurate under the loan instrument.

18
19 40. In truth and in fact, in a number of instances, Capital City
20 and Nash did not possess and rely on a reasonable basis
21 substantiating their representations that loan payments demanded
22 complied with and were accurate under the loan instrument.
23 Therefore, the representations set forth in Paragraph 39, above,
24 were, and are, false and misleading.

COUNT IV

1
2 41. In the course and conduct of offering and extending credit,
3 and throughout the duration of their loans Capital City and Nash
4 have represented, expressly or by implication, that they would
5 maintain and provide to borrowers accurate records of borrower
6 accounts.

7
8 42. In truth and in fact, in a number of instances, Capital City
9 and Nash did not maintain and provide to borrowers accurate
10 records of borrower accounts. Therefore, the representations set
11 forth in Paragraph 41, above, were, and are, false and
12 misleading.

13
14 COUNT V

15 43. In the course and conduct of offering and extending credit,
16 and throughout the duration of their loans, Capital City and Nash
17 have represented, expressly or by implication, that they would
18 not give notice of an intent to take or take title to a secured
19 property from a borrower while the borrower was complying with
20 the loan instrument.

21
22 44. In truth and in fact, in a number of instances, Capital City
23 and Nash have given notice of an intent to take or have taken
24 title to a secured property from a borrower while the borrower
25 was complying with the loan instrument. Therefore, the
26

1 representations set forth in Paragraph 43, above, were, and are,
2 false and misleading.

3
4 COUNT VI

5 45. In the course and conduct of offering and extending credit,
6 Capital City and Nash in a number of instances: (a) failed to
7 disburse loan proceeds to borrowers; and (b) required borrowers
8 either to pay monies not due under their loan instrument or by
9 operation of law, or suffer impairment or clouding of title to
10 the home or other property securing their loan and/or lose title
11 to their home or other property and the equity therein.

12
13 46. Capital City and Nash's acts and practices set forth in
14 Paragraph 45, above, have caused substantial injury to consumers
15 which has not been reasonably avoidable by consumers themselves
16 and has not been outweighed by countervailing benefits to
17 consumers or to competition.

18
19 47. By engaging in the acts or practice set forth in Paragraphs
20 35, 37, 39, 41, 43, and 45, above, Capital City and Nash have
21 engaged in unfair or deceptive acts or practices in violation of
22 §§ 5(a) and (n) of the FTC Act, 15 U.S.C. §§ 45(a) and (n).

23
24 48. Capital City and Nash passed the ill-gotten gains derived
25 from these unfair and deceptive practices to the Relief
26 Defendants, thereby unjustly enriching them. Equity requires

1 that the Relief Defendants should not be allowed to keep the ill-
2 gotten gain derived from these unfair and deceptive practices.

3
4 VIOLATIONS OF THE TRUTH IN LENDING ACT

5 49. Capital City and Nash are or were "creditors" as that term
6 is defined in § 103 of the TILA, 15 U.S.C. § 1602, and
7 § 226.2(a)(17) of Regulation Z, 12 C.F.R. § 226.2(a)(17), and
8 therefore are required to comply with the applicable provisions
9 of the TILA and Regulation Z.

10
11 COUNT VII

12 50. In the course and conduct of offering and extending credit,
13 Capital City and Nash in many instances violated the requirements
14 of the TILA and Regulation Z in the following and other respects:

- 15
16 (a) by failing to identify the creditor in violation of § 128 of
17 the TILA, 15 U.S.C. § 1638, and § 226.18(a) of Regulation Z,
18 12 C.F.R. § 226.18(a);
19 (b) by stating a rate of finance charge without disclosing the
20 "annual percentage rate" or "APR" in violation of § 144 of
21 the TILA, 15 U.S.C. § 1664, and § 226.24(b) of Regulation Z,
22 12 C.F.R. § 226.24(b);
23 (c) by failing to make required TILA disclosures before
24 consummating a consumer credit transaction in violation of
25 §§ 121 and 128 of the TILA, 15 U.S.C. §§ 1631 and 1638, and
26

1 §§ 226.17 and 226.18 of Regulation Z, 12 C.F.R. §§ 226.17
2 and 226.18;

3 (d) by failing to make required TILA disclosures in the required
4 manner and form before consummating a consumer credit
5 transaction in violation of §§ 121 and 128 of the TILA, 15
6 U.S.C. §§ 1631 and 1638, and §§ 226.17 and 226.18 of
7 Regulation Z, 12 C.F.R. §§ 226.17 and 226.18;

8 (e) by failing timely to make or correct certain "good faith"
9 disclosures in violation of § 226.19 of Regulation Z, 12
10 C.F.R. § 226.19;

11 (f) by understating the disclosed finance charge in violation of
12 § 128 of the TILA, 15 U.S.C. § 1638, and § 226.18(d) of
13 Regulation Z, 12 C.F.R. § 226.18(d);

14 (g) by overstating the amount financed in violation of § 128 of
15 the TILA, 15 U.S.C. § 1638, and § 226.18(b) of Regulation Z,
16 12 C.F.R. § 226.18(b);

17 (h) by understating the disclosed annual percentage rate in
18 violation of § 128 of the TILA, 15 U.S.C. § 1638, and
19 § 226.18(e) of Regulation Z, 12 C.F.R. § 226.18(e);

20 (i) by failing to disclose or accurately disclose the "payment
21 schedule" or the "total of payments," including but not
22 limited to failing to disclose a balloon payment, in
23 violation of § 128 of the TILA, 15 U.S.C. §§ 1638, and
24 §§ 226.18(g) and (h) of Regulation Z, 12 C.F.R. §§ 226.18(g)
25 and (h); and
26

1 (j) by making disclosures that do not reflect accurately the
2 legal obligation between the parties in violation of § 128
3 of the TILA, 15 U.S.C. §§ 1638, and § 226.17(c) of
4 Regulation Z, 12 C.F.R. § 226.17(c).

5
6 51. Pursuant to § 108(c) of the TILA, 15 U.S.C. § 1607(c), every
7 violation of the TILA and Regulation Z constitutes a violation of
8 the FTC Act.

9
10 52. By engaging in the violations of the TILA and Regulation Z
11 set forth in Paragraph 50, above, Capital City and Nash also have
12 engaged in unfair or deceptive acts or practices in violation of
13 § 5(a) of the FTC Act, 15 U.S.C. § 45(a).

14
15 VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

16 53. In the course and conduct of offering and extending credit,
17 Nash, as creditor, occasionally endorsed loans in default over to
18 Capital City for collection.

19
20 54. In the course and conduct of attempting to collect debts
21 allegedly owed to Capital City, Eric J. Sanne sent to Capital
22 City borrowers debt collection letters that identified him as
23 "Attorney at Law" or as "General Counsel," but not as a Capital
24 City employee. Sanne is therefore a "debt collector" as that
25 term is defined in § 803(6) of the FDCPA, 15 U.S.C. § 1692a(6),
26

1 and is required to comply with the applicable provisions of the FDCPA.

2
3 55. Because of conduct such as that described in Paragraphs 53
4 and 54, Capital City, and Nash, as the person who controlled the
5 acts and practices of Capital City, and Sanne, are "debt
6 collectors" as that term is defined in § 803(6) of the FDCPA, 15
7 U.S.C. § 1692a(6), and therefore are and were required to comply
8 with the applicable provisions of the FDCPA.

9
10 COUNT VIII

11 56. Capital City, Nash and Sanne in many instances violated the
12 requirements of the FDCPA, in the following and other respects:

13 (a) by making false and misleading representations such as those
14 alleged in Paragraphs 32 and 54, above, in violation of § 807 of
15 the FDCPA, 15 U.S.C. § 1692e; and (b) by engaging in unfair or
16 unconscionable debt collection practices such as those alleged in
17 Paragraph 24, above, in violation of § 808 of the FDCPA, 15
18 U.S.C. 1692f.

19
20 57. Pursuant to § 814(a) of the FDCPA, 15 U.S.C. § 16921(a),
21 every violation of the FDCPA constitutes a violation of the FTC
22 Act.

23
24 58. Therefore, by engaging in the violations of the FDCPA set
25 forth in Paragraph 56, above, Capital City, Nash and Sanne also
26

1 have engaged in unfair or deceptive acts or practices in
2 violation of § 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3
4 VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT

5 59. Capital City and Nash are or were "creditors" as that term
6 is defined by § 702(e) of the ECOA, 15 U.S.C. § 1691a(e), and
7 § 202.2(1) of Regulation B, 12 C.F.R. § 202.2(1), and therefore
8 are and were required to comply with the applicable provisions of
9 the ECOA and Regulation B, 12 C.F.R. § 202.

10
11 COUNT IX

12 60. In the course and conduct of offering and extending credit,
13 Capital City and Nash in many instances violated the requirements
14 of the ECOA and Regulation B in the following and other respects:

15
16 (a) by having failed to take a written application for credit
17 primarily for the purchase or refinancing of a dwelling
18 occupied or to be occupied by the applicant as a principal
19 residence, where the extension of credit will be secured by
20 the dwelling, in violation of § 202.5(e) of Regulation B,
21 12 C.F.R. § 202.5(e);

22 (b) by having taken a written application for credit primarily
23 for the purchase or refinancing of a dwelling occupied or to
24 be occupied by the applicant as a principal residence, where
25 the extension of credit would be secured by the dwelling,
26 but having failed to do the following in violation of

1 §§ 202.13(a), (b), and (c) of Regulation B, 12 C.F.R.

2 §§ 202.13(a), (b), and (c):

3 (1) request as part of the application the following
4 information about the applicant(s):

5 (i) race or national origin, using the categories
6 American Indian or Alaskan native; Asian or Pacific
7 Islander; Black; White; Hispanic; or Other (Specify);

8 (ii) sex;

9 (iii) marital status, using the categories Married,
10 Unmarried, and Separated; and

11 (iv) age;

12 (2) list questions regarding race or national origin,
13 sex, marital status, and age on the application form or
14 on a separate form that refers to the application;

15 (3) note the race or national origin and sex of the
16 applicant(s) on the basis of visual observation or
17 surname when the applicant chose not to provide the
18 information or any part of it; or

19 (4) inform the applicant(s) that:

20 (i) the information regarding race or national origin,
21 sex, marital status, and age is being requested by the
22 federal government for the purpose of monitoring
23 compliance with federal statutes that prohibit
24 creditors from discriminating against applicants on
25 those bases; or
26

1 (ii) if the applicant(s) chooses not to provide the
2 information, the creditor is required to note the race
3 or national origin and sex of the applicant(s) on the
4 basis of visual observation or surname;

5 (c) by having failed to provide applicant(s) for credit with
6 written notification of adverse action on an application in
7 violation of § 701(d) of the ECOA, 15 U.S.C. § 1691(d), and
8 § 202.9(a) of Regulation B, 12 C.F.R. § 202.9(a); and

9 (d) by having provided written notification of adverse action on
10 an application for credit, but failing to provide the
11 applicant(s) with: (1) the correct principal reasons for the
12 action taken; or (2) the correct name and address of the
13 federal agency that administers compliance with the ECOA
14 with respect to Capital City and Nash, in violation of §
15 701(d) of the ECOA, 15 U.S.C. § 1691(d), and §§ 202.9(a) and
16 (b) of Regulation B, 12 C.F.R. §§ 202.9(a) and (b).

17
18 61. Pursuant to § 704(c) of the ECOA, 15 U.S.C. § 1691c(c),
19 every violation of the ECOA and Regulation B constitutes a
20 violation of the FTC Act.

21
22 62. Therefore, by having engaged in the violations of the ECOA
23 and Regulation B set forth in Paragraph 60, above, Capital City
24 and Nash also have engaged in unfair or deceptive acts or
25 practices in violation of § 5(a) of the FTC Act, 15 U.S.C. §
26 45(a).

CIVIL PENALTY

63. Sanne has violated the FDCPA, as described in Paragraph 56, above, with knowledge, as set forth in § 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

64. Each instance, during the five years preceding the filing of this complaint, in which defendant Sanne has violated the FDCPA in one or more of the ways described above constitutes a separate violation for which plaintiff seeks a monetary civil penalty.

65. Capital City and Nash have violated the ECOA and Regulation B, as described in Paragraph 60, above, with knowledge as set forth in § 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

66. Each loan application, during the five years preceding the filing of this complaint, with respect to which Capital City and Nash have violated the ECOA and Regulation B in one or more of the ways described above constitutes a separate violation for which plaintiff seeks a monetary civil penalty.

67. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes this Court to award a monetary civil penalty of not more than \$11,000 for each violation of the FDCPA, the ECOA and Regulation B.

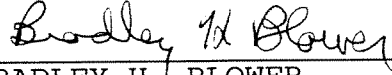
1 as authorized by §§ 5(a), 5(m)(1)(A), 9, 13(b), and 19 of the FTC
2 Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 49, 53(b), and 57b, §108(c)
3 of the TILA, 15 U.S.C. § 1607(c), § 814(a) of the FDCPA, 15
4 U.S.C. § 16921(a), and § 704(c) of the ECOA, 15 U.S.C.
5 § 1691c(c), and pursuant to its own inherent equitable powers:

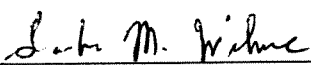
- 6 (a) Enter judgment against defendants and in favor of plaintiff
7 for each violation charged in the complaint;
- 8 (b) Permanently enjoin and restrain defendant Capital City from
9 violating § 5(a) of the FTC Act in connection with offering
10 and extending credit and any provision of the TILA and
11 Regulation Z, the FDCPA, and the ECOA and Regulation B;
- 12 (c) Find the defendants Capital City and the Estate of Nash
13 jointly and severally liable for redress to all borrowers
14 who were injured as a result of Capital City and Nash's
15 violations of § 5(a) of the FTC Act, the TILA, and the ECOA;
- 16 (d) Award such relief as the Court deems necessary to prevent
17 unjust enrichment and to redress borrower injury resulting
18 from Capital City and Nash's violations of § 5(a) of the FTC
19 Act, the TILA, and the ECOA, including, but not limited to,
20 rescission of contracts, the refund of monies paid, and
21 disgorgement of ill-gotten gains;
- 22 (e) Award plaintiff monetary civil penalties for each of Capital
23 City and Nash's violations of the ECOA and Regulation B
24 alleged in this complaint occurring within the five years
25 preceding the filing of this complaint;
- 26

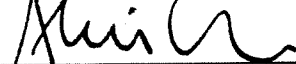
- 1 (f) Permanently enjoin and restrain Sanne from violating the
2 FDCPA;
- 3 (g) Award plaintiff monetary civil penalties from Sanne for each
4 violation of the FDCPA alleged in this complaint occurring
5 within the five years preceding the filing of this
6 complaint;
- 7 (h) impose a constructive trust on any ill-gotten gains derived
8 from the acts and practices complained of herein and passed
9 to the Relief Defendants; and
- 10 (i) Award plaintiff its costs of bringing this action, as well
11 as such other additional equitable relief as the Court may
12 determine to be just and proper.

13 Respectfully submitted,

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26 Dated: April 17, 2002