

## 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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Decision and Order

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

office and principal place of business at 119 Garden Drive, Bakersfield, California.

PAR. 4. Respondent Crystal One, Inc., a California corporation doing business as Crystal Pools, is a licensed swimming pool contractor with its office and principal place of business at 217 Mount Vernon Avenue, Suite 11, Bakersfield, California.

PAR. 5. Respondent Mario F. Medina is an individual and the president of Crystal One, Inc., a California corporation doing business as Crystal Pools, a licensed swimming pool contractor with its office and principal place of business at 217 Mount Vernon Avenue, Suite 11, Bakersfield, California.

PAR. 6. Respondent Swimco Pools, Inc., a California corporation doing business as Executive Pools and Service, is a licensed swimming pool contractor with its office and principal place of business at 5650 District Boulevard, Suite 105, Bakersfield, California.

PAR. 7. Respondent Brad L. Ward is an individual and the president of Swimco Pools, Inc., a California corporation doing business as Executive Pools and Service, a licensed swimming pool contractor with its office and principal place of business at 5650 District Boulevard, Suite 105, Bakersfield, California.

PAR. 8. Respondent Neudeck Pools, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 509 Ming Avenue, Bakersfield, California.

PAR. 9. Respondent Robert D. Hamilton is an individual and the president of Neudeck Pools, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 509 Ming Avenue, Bakersfield, California.

PAR. 10. Respondent Capri Pools, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 2810 Case Street, Bakersfield, California.

PAR. 11. Respondent M. Kirt Campbell is an individual and the president of Capri Pools, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 2810 Case Street, Bakersfield, California.

PAR. 12. Respondent Randall R. Arvizu, an individual doing business as Pacific Pools and Spas, is a licensed swimming pool

contractor with his office and principal place of business at 12308 Clementa Avenue, Bakersfield, California.

PAR. 13. Respondent Robbie Smith, an individual doing business as Robbie Smith Construction and Pools by Robbie, is licensed swimming pool contractor with his office and principal place of business at 8416 Rockport Drive, Bakersfield, California.

PAR. 14. Respondent Rock Bottom, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 801 Angus Lane, Bakersfield, California.

PAR. 15. Respondent Chuck D. Holmes is an individual and the president of Rock Bottom, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 801 Angus Lane, Bakersfield, California.

PAR. 16. Respondent W.W. Harper Enterprises, a California corporation doing business as WW Harper Pools & Spas, is a licensed swimming pool contractor with its office and principal place of business at 2400 K Street, Bakersfield, California.

PAR. 17. Respondent Michael J. Harper is an individual and the president of W.W. Harper Enterprises, a California corporation doing business as WW Harper Pools & Spas, a licensed swimming pool contractor with its office and principal place of business at 2400 K Street, Bakersfield, California.

PAR. 18. Respondent Michael A. Severini, an individual doing business as Severini Pools and Spas, is a licensed swimming pool contractor with his office and principal place of business at 661 Delfino Lane, Bakersfield, California.

PAR. 19. Respondent Caribbean Enterprises Construction Co., a California corporation doing business as Caribbean Pools & Spas, is a licensed swimming pool contractor with its office and principal place of business at 5330 Office Center Court, #30, Bakersfield, California.

PAR. 20. Respondent Michael Webb is an individual and the president of Caribbean Enterprises Construction Co., a California corporation doing business as Caribbean Pools & Spas, a licensed swimming pool contractor with its office and principal place of business at 5330 Office Center Court, #30, Bakersfield, California.

PAR. 21. Respondent Sunburst Pools, Inc., a California corporation doing business as Sunnyside Pool Service, is a licensed swimming pool contractor with its principal office and place of business at 5630 District Blvd., Bakersfield, California.

PAR. 22. Respondent Keith E. Kelley is an individual and the president of Sunburst Pools, Inc., a California corporation doing business as Sunnyside Pools Service, a licensed swimming pool contractor with its principal office and place of business at 5630 District Blvd., Bakersfield, California.

PAR. 23. Respondent Pamela Gates, an individual doing business as Tiffany Pools, is a licensed swimming pool contractor with her office and principal place of business at 324 Oak Street, Suite N, Bakersfield, California.

PAR. 24. The acts and practices of respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 25. Respondents are all swimming pool contractors who are licensed by the State of California to construct swimming pools and do business in and around Bakersfield, a city of 224,000 people in Kern County in the Central Valley of California. Except to the extent that competition has been restrained as herein alleged, respondents have been, and are now, in competition among themselves and with other pool contractors in the Bakersfield area.

PAR. 26. Building a swimming pool entails a series of discrete tasks. Although swimming pool contractors may perform some of the construction work themselves, they generally hire a variety of subcontractors to do the work. First, a digger excavates the area where the pool is to be installed. Second, a steel subcontractor builds the steel reinforcing cage that forms the pool. Plumbers and electricians next install plumbing and electrical conduits. Third, a gunite subcontractor "shoots" nearly dry concrete into the hole to create the pool's shell. Fourth, a tile setter subcontractor lays the tile. Fifth, a decking subcontractor pours and molds the concrete deck surrounding the pool. Sixth, plumbers complete the plumbing and electrical work. Finally, a plasterer applies a coat of plaster to finish the pool's surface. Other related work that may be subcontracted includes landscaping (including but not limited to installation of decorative features such as waterfall, rocks or boulders), security, and fence services related to swimming pools.

PAR. 27. Homeowners usually hire a pool contractor to handle all these aspects of constructing a swimming pool. Some homeowners, however, may choose instead to enter into an arrangement, known in

the industry as an "owner-builder" arrangement, by which they hire subcontractors directly or use pool contractors as consultants only in arranging for subcontractors. In this way, homeowners who act as owner-builders are able to save a substantial amount of money. In such arrangements, however, liability in the event of an accident or injury during construction falls on the homeowner, rather than on the pool contractor.

PAR. 28. Home construction developers and contractors may hire pool contractors to handle all aspects of constructing a swimming pool. Home construction developers and contractors may also employ swimming pool subcontractors when they build homes with swimming pools. In those situations, the home construction contractor or developer, who is licensed by the State of California, is liable in the event of an accident or injury during construction much as a pool contractor is liable.

PAR. 29. Beginning in early March 1998, respondents and others, all competing pool contractors, began meeting on a regular basis in an informal group that later came to be known as the Southern Valley Pool Association, hereafter the "Association." Although one of the reasons respondents met was to discuss common concerns of the swimming pool construction trade, one of the subjects which developed was a belief that there was a lack of profitability in building swimming pools in Bakersfield.

PAR. 30. Through the Association meetings and other communications, some respondents, acting as a combination, acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements among themselves, express or implied, to fix or increase the prices homeowners paid for swimming pool construction.

PAR. 31. As a result of this combination, some respondents significantly increased prices to homeowners for constructing a swimming pool.

PAR. 32. Through the Association meetings and other communications, some respondents, acting as a combination, also engaged in a group boycott aimed at owner-builders and home construction developers and contractors. Some respondents viewed owner-builders as a major threat to the success of their efforts to raise prices to homeowners, primarily based upon a belief that most such contracting was being performed on a cash basis. Homeowners acting as owner-builders could work directly with subcontractors or use pool

contractors only as consultants and thereby defeat the price increase, many times by paying cash. Home construction developers and contractors could also work directly with subcontractors (rather than with pool contractors) and similarly defeat the price increase. Consequently, some respondents agreed to pressure their subcontractors to charge owner-builders 50 percent more (and to charge home construction contractors or developers 25 percent more) than the subcontractors were charging pool contractors. Some respondents set the price increases at these high levels in order to eliminate or reduce any savings homeowners and home construction developers and contractors would realize by bypassing pool contractors and dealing directly with subcontractors. Some respondents agreed among themselves to stop using subcontractors who refused to implement these price increases. Some respondents also agreed, as a further inducement to gain the subcontractors' agreement to this plan, to pay subcontractors a higher price for subcontractor services.

PAR. 33. In furtherance of the group boycott described in paragraph 32:

A. Some respondents agreed to call a series of meetings with all the members of each trade of subcontractor (guniters, excavators, deckers, etc.). Beginning in early April 1998, a series of meetings was held, with some of respondents and all or nearly all of each trade of subcontractors in attendance. At these meetings with subcontractors, subgroups of the respondents:

1. Instructed the subcontractors to raise their prices to owner-builders by 50 percent and to home construction developers and contractors by 25 percent;

2. Warned the subcontractors that the respondents would stop subcontracting with them if the subcontractors did not increase their prices to owner-builders and home construction developers and contractors as set forth above; and

3. Offered the subcontractors a *quid pro quo* whereby, if the subcontractors agreed to increase prices to owner-builders and home construction developers and contractors as set forth above, respondents would agree to a specified increase (the amount of which varied depending on the particular subcontracting work being done) in the price subcontractors charged respondents for subcontractor services.

B. As a direct result of these meetings, most of the subcontractors raised their prices to pool contractors by the specified amounts on or about May 15, 1998. Also as a direct result of these meetings, some subcontractors began charging or sought to charge owner-builders and home construction developers and contractors substantially higher prices than they charged swimming pool contractors. Other subcontractors stopped doing owner-builder jobs altogether, because they were fearful of losing their work with respondents.

PAR. 34. The acts and practices of the respondents as described in this complaint have had the purpose, tendency, effect, and capacity to restrain trade unreasonably and hinder competition in the provision of swimming pool contracting and subcontracting services in California in the following ways, among others:

A. To restrain competition among swimming pool contractors and subcontractors;

B. To fix or increase the prices that consumers pay for swimming pool contracting services and subcontracting services;

C. To deprive consumers of the benefits of competition among swimming pool contractors and subcontractors; and

D. To interfere with consumers' choice in deciding to build their swimming pool in an owner-builder arrangement or through home construction developers or contractors.

PAR. 35. The aforesaid acts and practices of the respondents are to the prejudice and injury of the public and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The acts and practices of the respondents, as herein alleged, are continuing and will continue or recur in the absence of the relief requested.

## DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of certain swimming pool contractors, sometimes acting collectively as the Southern Valley Pool Association, hereinafter sometimes referred to as "respondents," and the respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, and their respective 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 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 had reason to believe that the respondents have violated the said Act, 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 a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

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.

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.

3. Respondent Ricky Sneed, an individual doing business as Aloha Pools, is a licensed swimming pool contractor, with his office and principal place of business at 119 Garden Drive, Bakersfield, California.

4. Respondent Crystal One, Inc., a California corporation doing business as Crystal Pools, is a licensed swimming pool contractor with its office and principal place of business at 217 Mount Vernon Avenue, Suite 11, Bakersfield, California.

5. Respondent Mario F. Medina is an individual and the president of Crystal One, Inc., a California corporation doing business as Crystal Pools, a licensed swimming pool contractor with its office and principal place of business at 217 Mount Vernon Avenue, Suite 11, Bakersfield, California.

6. Respondent Swimco Pools, Inc., a California corporation doing business as Executive Pools and Service, is a licensed swimming pool contractor with its office and principal place of business at 5650 District Boulevard, Suite 105, Bakersfield, California.

7. Respondent Brad L. Ward is an individual and the president of Swimco Pools, Inc., a California corporation doing business as Executive Pools and Service, a licensed swimming pool contractor with its office and principal place of business at 5650 District Boulevard, Suite 105, Bakersfield, California.

8. Respondent Neudeck Pools, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 509 Ming Avenue, Bakersfield, California.

9. Respondent Robert D. Hamilton is an individual and the president of Neudeck Pools, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 509 Ming Avenue, Bakersfield, California.

10. Respondent Capri Pools, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 2810 Case Street, Bakersfield, California.

11. Respondent M. Kirt Campbell is an individual and the president of Capri Pools, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 2810 Case Street, Bakersfield, California.

12. Respondent Randall R. Arvizu, an individual doing business as Pacific Pools and Spas, is a licensed swimming pool contractor with his office and principal place of business at 12308 Clementa Avenue, Bakersfield, California.

13. Respondent Robbie Smith, an individual doing business as Robbie Smith Construction and Pools by Robbie, is licensed swimming pool contractor with his office and principal place of business at 8416 Rockport Drive, Bakersfield, California.

14. Respondent Rock Bottom, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 801 Angus Lane, Bakersfield, California.

15. Respondent Chuck D. Holmes is an individual and the president of Rock Bottom, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 801 Angus Lane, Bakersfield, California.

16. Respondent W.W. Harper Enterprises, a California corporation doing business as WW Harper Pools & Spas, is a licensed swimming pool contractor with its office and principal place of business at 2400 K Street, Bakersfield, California.

17. Respondent Michael J. Harper is an individual and the president of W.W. Harper Enterprises, a California corporation doing business as WW Harper Pools & Spas, a licensed swimming pool contractor with its office and principal place of business at 2400 K Street, Bakersfield, California.

18. Respondent Michael A. Severini, an individual doing business as Severini Pools and Spas, is a licensed swimming pool contractor with his office and principal place of business at 661 Delfino Lane, Bakersfield, California.

19. Respondent Caribbean Enterprises Construction Co., a California corporation doing business as Caribbean Pools & Spas, is a licensed swimming pool contractor with its office and principal place of business at 5330 Office Center Court, #30, Bakersfield, California.

20. Respondent Michael Webb is an individual and the president of Caribbean Enterprises Construction Co., a California corporation doing business as Caribbean Pools & Spas, a licensed swimming pool contractor with its office and principal place of business at 5330 Office Center Court, #30, Bakersfield, California.

21. Respondent Sunburst Pools, Inc., a California corporation doing business as Sunnyside Pool Service, is a licensed swimming pool contractor with its principal office and place of business at 5630 District Blvd., Bakersfield, California.

22. Respondent Keith E. Kelley is an individual and the president of Sunburst Pools, Inc., a California corporation doing business as Sunnyside Pools Service, a licensed swimming pool contractor with its principal office and place of business at 5630 District Blvd., Bakersfield, California.

23. Respondent Pamela Gates, an individual doing business as Tiffany Pools, is a licensed swimming pool contractor with her office and principal place of business at 324 Oak Street, Suite N, Bakersfield, California.

24. 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

##### I.

*It is ordered*, That, for the purposes of this order, the following definitions shall apply:

A. "*Respondents*" shall mean each of (1) the named individual respondents, any entity through which each of them conducts business, each of their representatives, agents, and employees; and (2) the named corporate respondents, and their respective directors, officers, employees, agents, representatives, successors and assigns, their respective subsidiaries, divisions, groups and affiliates controlled by the respective corporate respondents, and the respective directors, officers, employees, agents, representatives, successors and assigns of each such subsidiary, division, group and affiliate.

B. "*Swimming pool contractor*" shall mean any person licensed by a State to construct, renovate or remodel a swimming pool.

C. "*Subcontractor*" shall mean any person licensed by a State to perform any of the tasks involved in the construction, renovation or remodeling of swimming pools, including but not limited to excavation, structural steel installation, guniting, plumbing, electrical, concrete decking, tiling, plastering, engineering and architectural services. The term "subcontractor" shall also mean any person performing landscaping services (including but not limited to waterfall, decorative rock or boulder work), security, and fence installation related to a swimming pool.

D. "*Person*" shall mean both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

E. "*Owner-builder*" shall mean any homeowner who contracts with one or more subcontractors, either directly or by using a swimming pool contractor as a consultant only, in connection with the construction, renovation or remodeling of a swimming pool.

F. "*Meeting*" shall mean any assembly of three or more swimming pool contractors, whether in person, by telephone conference or otherwise, in which one or more respondent is participating, for any purpose other than social matters or discussions relating to a specific proposed or actual business transaction or project in which those involved are or would be in a contractor/subcontractor or other joint or cooperative working relationship.

G. "*Commission*" shall mean the Federal Trade Commission.

H. "*Soliciting*" for the purposes of this order means requesting, proposing, threatening, urging, recommending, advocating, or attempting to persuade in any way.

## II.

*It is further ordered*, That respondents, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall forthwith cease and desist from:

A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding, express or implied, with any person or among any persons:

(1) To fix, establish, raise, stabilize, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, or other aspect or term of the fees charged or to be charged for the construction, renovation or remodeling of swimming pools or fees paid or to be paid to any subcontractor in connection with the construction, renovation or remodeling of swimming pools; or

(2) To refuse to deal with owner-builders or home construction contractors or developers;

### B. Soliciting:

(1) Any person to fix, establish, raise, stabilize, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, or other aspect or term of the fees charged or to be charged for the construction, renovation or remodeling of swimming pools or fees paid or to be paid to any subcontractor in connection with the construction, renovation or remodeling of swimming pools;

(2) Any swimming pool contractor to refuse categorically to deal with owner-builders or home construction contractors or developers;

(3) Any subcontractor to refuse categorically to deal with owner-builders, home construction contractors or developers, or swimming pool contractors who act or wish to act as consultants for owner-builders; or

(4) Any subcontractor with respect to the terms of that subcontractor's dealings with owner-builders, home construction contractors or developers, or swimming pool contractors who act or wish to act as consultants for owner-builders; and

C. Inducing, suggesting, urging, encouraging, or assisting any person to take any action that if taken by any of the respondents would violate this order.

Provided, however, that nothing in paragraph II of this order prohibits any respondent from discussing and/or entering into a specific proposed or actual business transaction or project in which those involved are or would be in a contractor/subcontractor or other joint or cooperative working relationship.

### III.

*It is further ordered,* That for a period of five (5) years from the date this order becomes final, respondents shall make an audible tape recording of the entirety of any meeting and shall maintain a copy of the tape recording and all materials distributed at the meeting for a period of three (3) years from the date of the meeting. For the purpose of compliance with this paragraph, respondents may designate an individual as custodian of the tape recordings and materials to be maintained.

## IV.

*It is further ordered,* That respondents shall, in the event that they, or any of them, forms an organization or trade association, a purpose of which is to represent the interests of swimming pool contractors, incorporate paragraph II of this order by reference in the by-laws of any such organization or trade association and shall distribute by first-class mail a copy of the by-laws to each of the members of the organization or trade association.

## V.

*It is further ordered,* That each respondent shall notify the Commission at least thirty (30) days prior to any proposed change in his/her business format, including incorporation, the creation of or dissolution of any partnership, the assignment of any license, or sale, or in the case of any corporate respondent, any proposed change in any corporate respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising under this order.

## VI.

*It is further ordered,* That:

A. Within sixty (60) days after the date this order becomes final, each respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the respondent intends to comply, is complying, and has complied with paragraphs II through V of this order.

B. One (1) year from the date this order becomes final, annually for the next five (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, each respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with paragraphs II through V of this order.

C. The above described reports shall be submitted to: Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

## VII.

*It is further ordered,* That, for the purpose of determining or securing compliance with this order, upon written request, each respondent shall permit any duly authorized representative of the Commission:

A. Upon forty-eight (48) hours' prior notice to a respondent, access, during normal office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession or under the control of each respondent relating to any matter contained in this order; and

B. Upon five (5) business days' notice to a respondent, and without restraint or interference from that respondent, to interview that respondent or any employee or representative of that respondent.

## VIII.

*It is further ordered,* That this order shall terminate on November 1, 2019.

IN THE MATTER OF

TIGER DIRECT, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-3903. Complaint, Nov. 4, 1999--Decision, Nov. 4, 1999*

This consent order, among other things, prohibits Tiger Direct, a Florida-based advertiser and distributor of computer products, from representing that it provides on-site warranty service without disclosing all limitations or conditions that apply to obtaining the on-site service, prohibits the respondent from failing to adhere to the disclosure provisions of the Warranty Act, and requires the respondent, within a reasonable period of time, to fulfill its obligations under the warranty to the consumer.

*Participants*

For the Commission: *Colleen Lynch, Andrew Caverly and Margaret Patterson.*

For the respondent: *Kip Schwartz, Holland & Knight, Washington, D.C.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Magnuson-Moss Warranty Act ("the Warranty Act"), 15 U.S.C. 2301 *et seq.*, and Rules 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), 16 CFR Parts 701 and 702, promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Tiger Direct, Inc., a corporation, ("Tiger" or "respondent"), has violated the provisions of said Acts and Rules, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rules 701 and 702, 16 CFR 701.1 and 702, promulgated thereunder shall apply to the terms used in this complaint.

2. Respondent Tiger Direct, Inc., is a Florida corporation with its principal office or place of business at 8700 West Flagler Street, 4th Floor, Miami, Florida.

3. Respondent has advertised, offered for sale, sold and distributed, among other items, personal computers, software, hardware, printers, modems, and monitors, all of which are consumer products. Therefore, respondent is a supplier of consumer products.

4. In the ordinary course and conduct of its business, respondent sells or offers for sale consumer products for purposes other than resale or use in the ordinary course of the buyer's business. Therefore, respondent is a seller of consumer products.

5. 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 Federal Trade Commission Act.

#### VIOLATIONS OF SECTION 5(a)(1) OF THE FTC ACT

6. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Tiger-brand computer systems, including but not necessarily limited to the attached Exhibits A through C. These advertisements and promotional materials contain the following statements:

- a. ONE-YEAR ON-SITE WARRANTY!
- b. 1 YEAR PREMIUM ON-SITE WARRANTY

7. Through the means described in paragraph six, respondent has represented, expressly or by implication, that:

a. For a period of one year after purchase, respondent would provide the on-site services of a technician to purchasers of Tiger-brand computer systems when notified that the computer system or any of its parts was defective or had malfunctioned.

b. Respondent would fulfill its obligations under its on-site warranty within a reasonable period of time after first being notified by a purchaser of a Tiger-brand computer system of a defect or malfunction.

8. In truth and in fact,

a. Respondent did not always provide the on-site services of a technician to purchasers of Tiger-brand computer systems when notified of a defect or malfunction; rather, respondent would not send a technician to provide on-site services until respondent's agent or third party service provider diagnosed the problem as a hardware failure over the telephone and determined that the consumer could not

make the repair; and furthermore, respondent would not provide on-site services for the computer mouse, keyboard and speakers.

b. Respondent did not fulfill its obligations under its on-site warranty within a reasonable period of time after first being notified by a purchaser of a Tiger-brand computer system of a defect or malfunction.

Therefore, the representations set forth in paragraph seven were, and are, false or misleading.

#### VIOLATIONS OF THE PRE-SALE AVAILABILITY RULE

9. Respondent has offered for sale to consumers Tiger-brand computer products with written warranties by means of catalogs or mail order solicitations, but has failed to disclose material warranty terms or otherwise comply with 16 CFR 702.3(c)(2)(I).

10. Section 110(b) of the Warranty Act, 15 U.S.C. 2310(b), mandates that the failure to comply with a rule promulgated under the Warranty Act is a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Therefore, respondent's failure to comply with the provisions of the Pre-Sale Availability Rule, 16 CFR 702, was, and is, a deceptive practice.

#### VIOLATIONS OF THE DISCLOSURE RULE

11. Respondent has given or offered to give written warranties, and is therefore a warrantor as that term is defined in Section 701.1(g) of the Disclosure Rule, 16 CFR 701.1(g).

12. Respondent has provided written warranties, but has failed to disclose, as required by Section 701.3(a)(3) of the Disclosure Rule, 16 CFR 701.3(a)(3), what the warrantor will not pay for or provide, where necessary for clarification, specifically:

a. That on-site warranty service is only available after the technician and the customer determine that a hardware failure has occurred and that service is required; and

b. That on-site service does not include defects or malfunctions of the speakers, keyboard, mouse, or other external components.

13. Respondent has provided written warranties, but has failed to disclose, as required by Section 701.3(a)(5) of the Disclosure Rule, 16 CFR 701.3(a)(5), a step-by-step explanation of the procedure that the consumer should follow in order to obtain performance of any

warranty obligation, including the persons or class of persons authorized to perform warranty obligations.

14. Respondent has provided written warranties, attached as Exhibit D, that contain the following language:

LIMITATION OF LIABILITY

IN NO EVENT SHALL AEGIS BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS AND PROFITS

but has failed to disclose, as required by Section 701.3(a)(8) of the Disclosure Rule, 16 CFR 701.3(a)(8), the following: "Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you."

15. Respondent has provided written warranties but has failed to disclose, as required by Section 701.3(a)(9) of the Disclosure Rule, 16 CFR 701.3(a)(9), the following: "This warranty gives you specific legal rights, and you may also have other rights which vary from State to State."

16. Section 110(b) of the Warranty Act, 15 U.S.C. 2310(b), mandates that the failure to comply with a rule promulgated under the Warranty Act is a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Therefore, respondent's failure to comply with the provisions of the Disclosure Rule, 16 CFR 701, was, and is, a deceptive practice.

VIOLATIONS OF THE WARRANTY ACT

17. Section 103 of the Warranty Act, 15 U.S.C. 2303, provides that a warrantor of consumer products costing more than \$10 shall clearly and conspicuously designate any written warranty it offers as either a "full warranty" or a "limited warranty."

18. Respondent has made a written warranty for Tiger-brand computer products that cost more than \$10, but has failed to designate its written warranty as "full" or "limited" as provided in Section 103 of the Warranty Act, 15 U.S.C. 2303.

19. Respondent's failure to designate its written warranty as "full" or "limited" was, and is, a violation of Section 103 of the Warranty Act, 15 U.S.C. 2303, and, pursuant to Section 110(b), 15 U.S.C. 2310(b), was, and is, a deceptive practice.

517

Complaint

20. Section 108 of the Warranty Act, 15 U.S.C. 2308, provides that no supplier may disclaim or modify any implied warranty if the supplier makes any written warranty to the consumer with respect to a consumer product, except by limiting the duration of an implied warranty to the duration of a written warranty of reasonable duration.

21. Respondent has made a written warranty, attached as Exhibit D, that contains the following language:

THERE ARE NO OTHER WARRANTIES [sic] OR CONDITIONS RESPECTING THE EQUIPMENT, EXPRESS OR IMPLIED, AND AEGIS EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

22. Respondent's disclaimer of implied warranties was, and is, a violation of Section 108 of the Warranty Act, 15 U.S.C. 2308, and, pursuant to Section 110(b), 15 U.S.C. 2310(b), was, and is, a deceptive practice.

EXHIBIT A

09/26/98 10E 12:22 FAX 216 203 3426 PFC CLEVELAND 4012

# Prices Slashed On Genuine Intel Pentium Systems!

**Complete Multimedia Systems!** Featuring The New Pentium 200MHz!  
*Ready To Run Right Out Of The Box! WINDOWS 95 PRE-LOADED! Why Pay More For Intel Quality & Performance?*

Tiger presents a complete line of affordable Intel Pentium systems—ready to run with flawless Pentium performance as soon as you take them out of the box and plug them in. Three versions available, all featuring 1.6GB high-speed Enhanced IDE hard disks, high-speed EDO memory, Internet ready modems—and much more. These are complete multimedia systems with Windows 95 pre-loaded. They're remarkably low-priced—and you can purchase a complete multimedia system with true, reliable Pentium performance—up to an astounding 200MHz! All versions include genuine Intel Pentium processors with FPU, ranging at 133MHz, 166MHz, or the new 200MHz! Plus, you get a PCI motherboard with integrated, Enhanced IDE controller, and our best mid-tower case featuring 8 bays and triple-cooling fan design. With these complete multimedia systems, you can really feel that Pentium power!

**Complete Multimedia Systems!** Buy a complete system and you'll have a 1.6 GB hard drive, 16 MB of high-speed EDO RAM, a huge 25MB Floppy Bust Cache, a speedy 4X CD-ROM drive (3X on the 200MHz), spectacular 16-bit sound, 28.8Kbps modem (31.5K on the 200MHz) plus 64-bit accelerated PCI video with 3MB video memory (4MB with 3D video and 3D VIRTGE processor on the 200MHz). Today's new software runs like a champ. Plus—all these systems are Internet Ready (Windows 95 pre-loaded) and come complete with free technical support—starting at just \$1149.99! They include a 1.44MB floppy drive, 2 high-speed 16550 serial ports and an enhanced ECP/EPP parallel port, rugged Windows 95 keyboard and a PS/2 mouse.

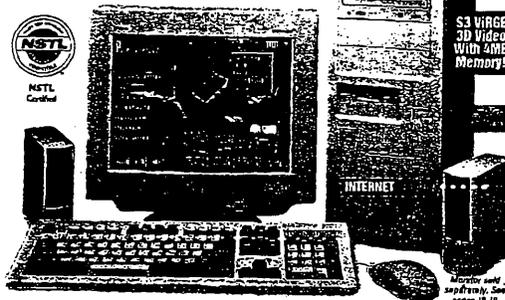


**Innovative Design!** The CD-ROM drive is built-in design and all the other multimedia extras you get, this is one great high-performance Pentium package. Care your need for speed...uncompromising!

## Complete Pentium Systems! Ready-To-Run!

**SALE! 133MHz, 166MHz, 200MHz Pentiums!**

- 1.6GB EIDE Hard Disk
- 16MB EDO RAM
- CD-ROM Drive
- 16-Bit Stereo Sound
- 28.8 or 31.5 Kbps Modem
- Windows 95 Loaded
- 1 Year Onsite Warranty
- 3D VIRTGE Video on P200



**ONE-YEAR ON-SITE WARRANTY!**

**3D VIRTGE 3D Video With 4MB Memory!**

**ONE YEAR ON-SITE WARRANTY—FREE!**  
 Extend Your Warranty To THREE YEARS, From... **\$89.99**

Model	Proc	Mem	HD	CD	Modem	Sound	Video	Case	Price
Pentium 133	PC	16MB	1.6GB	4X	28.8K	16-bit	2D	Mid-Tower	\$424.99
Pentium 166	PC	16MB	1.6GB	4X	28.8K	16-bit	2D	Mid-Tower	\$449.99
Pentium 200	PC	16MB	1.6GB	4X	31.5K	16-bit	3D VIRTGE	Mid-Tower	\$499.99

## Also Available Intel Upgrade Kits From Just \$424.99

**Available Motherboard/Case Upgrade Prices SLASHED! The Smartest Way To Upgrade!**

The Smartest Ways To Get A New Pentium! Upgrading your existing system is easy. The motherboard/case upgrade takes under an hour. Just add your hard drive, memory, video card, monitor, keyboard and mouse. This is the right way to upgrade an older computer. From 486 to Intel Pentium just like that! Top quality systems, built from the ground up with all the very latest in speed technology and Plug-and-Play simplicity. Is it difficult? Not anymore! If you've ever installed a video card—you can handle one of these upgrades—no sweat!

Buy Just An Intel Pentium As You Want! Starting from just \$424.99, you can have Pentium power plus this phenomenal system-chips motherboard delivered to your door. Includes onboard I/O Controller, 2 16550 serial ports, 1 ECP/EPP parallel port, 4 PCI slots, 256-Watt 9-Bay Mid-Tower Supply.

**Genuine Intel Pentium Motherboard Upgrades!**  
*Installs In Just A Few Minutes! Just Add RAM, Hard Disk, Video...*

- Dual Channel IDE Controller
- Two High-Speed Serial Ports with IEEE 1394
- EPP/ECP High-Speed Parallel Port
- Floppy Controller
- 4 PCI Expansion Slots, 3 ISA Expansion Slots
- Four 72-Pin DIMM Slots
- 256KB On-Chip Cache
- Pentium Processor with FPU and ZF Socket
- Cooling Fan Included
- Intel Triton Chipset

Model	Proc	Mem	HD	CD	Modem	Sound	Video	Case	Price
Pentium 133	PC	16MB	1.6GB	4X	28.8K	16-bit	2D	Mid-Tower	\$424.99
Pentium 166	PC	16MB	1.6GB	4X	28.8K	16-bit	2D	Mid-Tower	\$449.99
Pentium 200	PC	16MB	1.6GB	4X	31.5K	16-bit	3D VIRTGE	Mid-Tower	\$499.99

**Next Day Delivery Available! • Order Today 1-800-335-4055 • 24-hours, 7 days**

Exhibit A

08/20/99 10E 14:23 FAX 210 200 0740

# MMX Pentiums! Over 60% Faster! \$1379<sup>99</sup>

The World's Fastest PC! Ready To Run Right Out Of The Box! Why Pay More For Intel Quality & Performance?

Tiger presents a complete line of affordable Intel Pentium MMX systems—ready to run with flawless Pentium performance as soon as you take them out of the box and plug them in. All featuring huge high-speed hard drives, high-speed EDO memory, Internet-ready fax-modems—and much more. These are complete multimedia systems with Windows 95 pre-installed. They're lower priced than ever before—and you can purchase a complete multimedia system with true, reliable Pentium MMX performance—up to an astounding 200MHz! These new Pentium MMX systems cost less than last month's standard Pentium 100T—now with MMX technology!

**New Pentium MMX Technology!** These hot new processors were created specifically to handle laser video, audio and graphics. Look for the "MMX Enabled" logo on new applications for up to 60% increase in speed. You'll see it soon on applications for graphics, multimedia, video editing and the innovative design!

MMX technology also guarantees complete compatibility with existing software. If you're looking for great value, we also have a Pentium 133 system for under \$1000. While MMX technology increases speed for new MMX-enabled software, existing software only runs 7% faster. For under \$1000, the Pentium 133MHz is still a great business PC.

**Complete Multimedia MMX Systems!** Buy a ready-to-run MMX system and we'll throw in a giant 2.0 GB hard drive, 16 or 32 MB of EDO RAM, a speedy 4X or 8X CD-ROM drive, spectacular IBM WaveBlaster II audio with 3D Surround Sound, S3 PCI video with 3D graphics processing and 2 or 4 MB of video memory, 32KB of Pipelined Burst Cache, plus a 33.8K Video/Faxmodem that can be upgraded with software to the new 51.8K modem standard in the near future. Today's new software runs like a champ. Plus—all these systems are Internet Ready and come complete with free technical support—starting at just \$1379 for an MMX system! Includes a 1.44MB drive, 2 serial ports, parallel port, a pair of amplified stereo speakers, Win95 keyboard and PS/2 mouse. Just add a monitor!

## Complete Pentium MMX Systems!



SALE! 133, 166 And 200MHz Pentiums!

- Huge EDO Hard Disk
- CD-ROM Drive
- 32.8K Video/Faxmodem
- 1 Year On-site Warranty
- EDO RAM
- 16-8X 3D Sound
- Windows 95
- S3 Video



33 VIRGE 3D Video With 640 Memory!

ONE-YEAR ON-SITE WARRANTY!

**CUSTOM CONFIGURATIONS AVAILABLE!** Now we will custom-build these systems to your exact specifications! Please call us for a complete list of options and prices! Design the perfect system!

Monitor sold separately. See page 15 for monitors.  
mouse. Just add a monitor!  
You'll be upgrading to the legendary processing power of the new Pentium with MMX technology. Plus, you get an advanced PCI motherboard and our best mid-tower case featuring 9 bays and reliable triple-cooling fan design. With these complete, ready-to-run multimedia systems, you can really feel that MMX power!

Processor	System Unit	RAM	Hard Drive	CD-ROM	Modem	Video	Sound	Case	Price
Pentium 133	APC91 USA	16MB	5-8ay	4	0	220K	Yes	31.8K	OK
Pentium MMX 133	APC91 USA	32MB	5-8ay	2	2	512K	Yes	31.8K	OK
Pentium MMX 200	APC91 USA	32MB	5-8ay	2	2	512K	Yes	31.8K	OK

These systems come with a one year on-site warranty. We will gladly repair or at our option replace defective units. Sorry, but our prices are always changing on CPUs, we do not offer price protection in the same price rise or fall.

## Also Available Pentium MMX Upgrades From Just \$319<sup>99</sup>

**Motherboard/Case Upgrade Prices SLASHED! The Smartest Way To Upgrade!**

The Smartest Way To Get A New Pentium MMX! Upgrading your existing system is easy—and affordable thanks to these new 100T prices. The motherboard/case upgrade takes under an hour. Just add your hard drive, memory, video card, monitor, keyboard and mouse. This is the right way to upgrade an older computer. From 486 to Intel Pentium or new Pentium with MMX technology just like that!

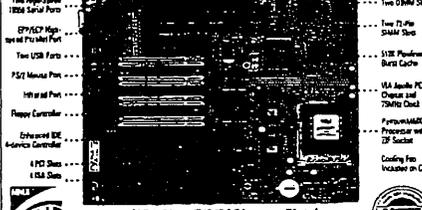
**Motherboard and Case Kit!** Top quality system, built from the ground up with all the very latest in speed technology and Plug-and-Play simplicity. Is it difficult? Not anymore! If you've ever installed a video card—you can handle one of these upgrades—no sweat!

**Buy Just As Much Pentium As You Want!** Starting from just \$319.99, you can have Pentium processing power plus this phenomenal 64-bit motherboard delivered to your door. Includes 512K Pipelined Burst cache, local bus BIOS Controller, 3 (1650) serial ports, 1 ECP/EPP parallel port, 4 PCI and 4 ISA expansion slots, USB ports and much more. Also includes two 72-pin DIMM sockets (ready for EDO or Fast-Page SDRAMs) plus two new 168-pin DIMM sockets that use new high-performance DIMMs. Your choice! A great way to upgrade any system.

Processor	System Unit	RAM	Hard Drive	CD-ROM	Modem	Video	Sound	Case	Price
Pentium 133	APC91 USA	Yes	32MB	Yes	2	1	512K	Yes	4
Pentium MMX 133	APC91 USA	Yes	32MB	Yes	2	2	512K	Yes	4
Pentium MMX 200	APC91 USA	Yes	32MB	Yes	2	2	512K	Yes	4

Sorry—As prices are always changing on CPUs, we do not offer price protection in the event prices rise or fall. Returns for defective exchanges only.

## Genuine Intel Pentium MMX Motherboard Upgrades!



**With New DIMM Memory Slots!** Take advantage of DIMM's faster 64-bit transfer rates & the size of SDRAM's 2.5 bit system. And this motherboard has 2 CD-ROM slots and 2 Serial ports.

Today's Most Advanced Pentium Motherboard! FREE Tech Support!

Processor	System Unit	RAM	Hard Drive	CD-ROM	Modem	Video	Sound	Case	Price
Pentium 133	APC91 USA	Yes	32MB	Yes	2	1	512K	Yes	4
Pentium MMX 133	APC91 USA	Yes	32MB	Yes	2	2	512K	Yes	4
Pentium MMX 200	APC91 USA	Yes	32MB	Yes	2	2	512K	Yes	4

Next Day Delivery! • Order Today 1-800-333-4033 • 24-hours, 7 days

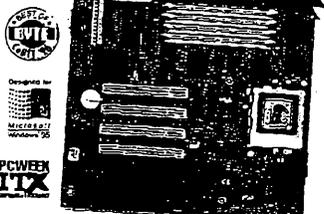
EXHIBIT C

From Tiger **The P200+ 6x86!** CPU by IBM! **FROM JUST \$399<sup>99</sup>**

Replace Your Motherboard With A New 6x86!

Put this new motherboard with 6x86 processor into your case for a difference you can see and feel. It beats upgrading a 486 motherboard with a new processor many times over. For starters, you'll get the high-performance speed of a new 6x86 processor, which we benchmarked to be the best processor for running DOS, Windows 3.1, and Windows 95 applications. You'll also get the high-performance advantages of a true, next-generation 64-bit motherboard. (A 486 motherboard is only 32-bit.) The onboard Enhanced IDE Controller supports four drives, including the fastest Mode 4 EIDE hard disks and IDE CD-ROM drives. The two onboard 16550 serial ports are ideal for the fastest 28.8K modems, and the ECP/EPP parallel port makes printing many times faster than earlier parallel ports. Run with processors

up to 200MHz! Plug-and-Play BIOS makes adding new adapters and new hard disks as easy as clicking "Auto-Detect". Comes with 256K of pipelined burst SRAM, four 72-pin SIMM slots, 4 PCI slots, 3 ISA slots, ZIP socket with 686 CPU, EIDE Controller, Floppy controller, 2 serial ports and 1 parallel port. Standard Baby-AT size motherboard fits standard cases. Takes just minutes!

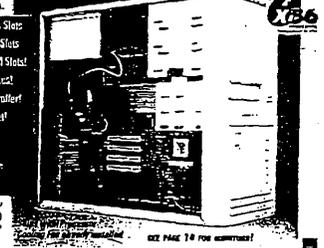


2 Upgrade, Case, Motherboard, Power Supply!

Does the idea of a great-looking mid-tower case to house your new high-performance 6x86 system appeal to you? Then this Upgrade Kit is what you've been looking for. It comes ready for you to install your drives, video card and memory—which is easier than you might think. We'll even show you how! This roomy case has three full-height external bays for your CD-ROM drive, 3.5-inch floppy drive and more. The two half-height external bays are for your 3.5-inch floppy, etc., plus there's another half-height internal bay for your hard disk. And the heavy-duty, 200-watt power supply will reliably power them all. All you need to add is memory, a video card, floppy drive, hard disk, mouse and keyboard. The motherboard has four 72-pin SIMM slots and supports standard Fast-Page RAM plus super-fast EDO RAM. With four high-performance PCI slots and three industry-standard ISA slots, adding a video card couldn't be easier. And with the latest BIOS setup, adding a hard disk is simply a matter of clicking "Auto-

Detect". The onboard I/O Controller supports up to four Enhanced IDE devices, which not only include old and new IDE hard drives, but also IDE CD-ROM drives. Team up this local bus Controller with a new Enhanced IDE. More 4 hard drive and you'll really notice the difference that 20MB/sec. transfer rates can make. SIX times faster than earlier hard disks. You also get an onboard Floppy controller, two high-speed 16550 serial ports and a fast ECP/EPP parallel port.

Simply Upgrade Your Hard Drive, Video Card and Performance. Takes About An Hour. Super O/S Performance! Fully Compatible! (Memory Caches Runs On Any Network!) Includes: Case, Motherboard, Case Cable, I/O Controller, Cooling Fans, Power Supply.



3 Complete Ready-To-Run 6x86 With Case, Keyboard, Mouse, Speakers!

Just plug it in—and start Windows 95 on Tiger's best computer! Your choice of processor speeds, 1, 15 or 32 MB of ultra-fast EDO RAM, the fastest IDE/Mode 4 hard drive in 1.3, 1.0 or 2.0 gigabyte size, 64-bit Internetworking modem, Windows 95 keyboard, 3-button mouse, 64-bit PCI video with 1, 2 or 4 MB of video memory, 16-bit multimedia stereo sound system, stereo speakers, 3.5-inch floppy drive, mid-tower case and AT/CE-ROM (6x on P200+ model). Also includes Windows 95 pre-installed. This is a complete multimedia PC with our fastest Windows processor! It's everything you need for multimedia CD-ROMs, stunning game action, the fastest Windows applications anywhere are right here—at a price that can't be beat. Just look at the chart below and pick the speed and configuration you want: P133+, P150+, P166+, or the new, blazingly fast P200+!



Choose From Four Screaming Speeds:

Speeds Available: P133+, P150+, P166+ and P200+. Experience the super-performance of the Tiger's 6x86—the world's fastest computer—manufactured by IBM. For ready-to-run convenience right out of the box, get the 6x86 Complete System with Windows 95 pre-installed. For do-it-yourselfers, choose from the Motherboard Only (with 6x86 processor), or the Upgrade Kit consisting of a motherboard (with 6x86 processor) installed in our roomy mid-tower case. Call for more information.

Monitor Not Included. See page 14 for great monitor offers! Case design may vary.

Configure Systems to Include:  
 - CD-ROM  
 - PCI Modem  
 - 16-Bit Audio Expansion  
 - EDO RAM 4MB to 32MB  
 - Keyboard/Mouse 28.8K  
 - 16-Megabyte Windows 95  
 - Pre-Installed 15" Floppy

Model	Processor	RAM	Hard Drive	Modem	Keyboard	Mouse	Speakers	Case	Price
6x86-P133+	133MHz	16MB	1.3GB	Yes	Yes	Yes	Yes	Yes	\$499.99
6x86-P150+	150MHz	16MB	1.0GB	Yes	Yes	Yes	Yes	Yes	\$549.99
6x86-P166+	166MHz	16MB	2.0GB	Yes	Yes	Yes	Yes	Yes	\$599.99
6x86-P200+	200MHz	32MB	2.0GB	Yes	Yes	Yes	Yes	Yes	\$699.99

Complaint

EXHIBIT D



# Tiger

Exhibit D

## Warranty



Your Serial #



Nationwide Service

**1-(905)-669-8699**

*(Important document. Keep in a safe place)*



Complaint

128 F.T.C.

EXHIBIT D

WARRANTY CERTIFICATE

Terms and Conditions

This Certificate sets forth the terms and conditions to which AEGIS will provide "On-Site" service ("Service") on the specific equipment ("Equipment") and related to eligible for On-Site warranty service on the Product ("Product"). Service shall consist of labor and parts provided by AEGIS or its authorized service provider necessary to return the Equipment to normal operating conditions in accordance with Equipment specifications and/or descriptions.

TERMS

This Warranty shall commence upon the Purchase date and shall continue for twelve (12) months.

SERVICES PROVIDED

The Services provided hereunder are only available for the specific equipment as indicated on the Product. AEGIS or its authorized service provider shall use its reasonable skills to diagnose and repair the Equipment, but will not be responsible for damage to property or persons which may be caused by the Equipment. AEGIS or its authorized service provider shall not be responsible for damage to property or persons which may be caused by the Equipment. All replacement parts shall become the property of AEGIS. AEGIS or its authorized service provider reserves the right to change Customer at AEGIS' then current rates for consumable parts or other parts required by customer such as belts, gaskets, oil, oil pan, oil pump, oil filter, rollers, belts, spacers, bearings, burned plunger in CDTY and laser. Service shall be provided during the hours from 8:00am to 7:00pm EST, Monday through Friday, exclusive of statutory holidays ("Normal Hours"). Unless Customer pays for extended coverage.

SERVICE LIMITATIONS

The following services are outside the scope of Service and will, upon Customer's request, be furnished by AEGIS on an as-available basis at AEGIS or its authorized service provider's then current fees and applicable charges: (a) any request for Service outside of covered hours; (b) requests, requirements or adjustments or increased service time required as a result of improper installation or software setup furnished by AEGIS; (c) any cause external to the Equipment, including but not limited to any act of God, lightning or power surge, flood, shock, negligence, accident or failure to maintain the good operating environment; (d) installation, alterations, adjustments or services made or performed by persons other than AEGIS; (e) use of equipment, programs, attachments or devices not approved by AEGIS; and (f) requests, requirements or adjustments or increased service time due to software or software viruses.

WARRANTY LIMITATION

THERE ARE NO OTHER WARRANTIES OR CONDITIONS RESPECTING THE EQUIPMENT, EXPRESS OR IMPLIED, AND AEGIS EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

CUSTOMER'S OBLIGATIONS

Customer must maintain Equipment in a good operating environment, including proper electrical supply, in accordance with manufacturer's instructions, including cleaning. The Customer shall be responsible for all proper packaging, freight and insurance charges to and from AEGIS authorized depot location. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ADEQUATE BACK UP OF ALL FILES ON A DAILY BASIS.

WHEN SERVICE IS NEEDED

Please call 1-905-669-8699 when you require service. Please retain this Warranty Certificate as evidence of your coverage.

OUT-OF-BUSINESS SERVICES

Any other services performed by AEGIS at Customer's request which are outside the scope of Service or stated packages for any Customer shall be performed by AEGIS or its authorized service provider and paid within ten (10) days of Customer's receipt of the invoice.

LIMITATION OF LIABILITY

IN NO EVENT SHALL AEGIS BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS AND PROFITS.

GENERAL

Customer may not assign this Certificate without AEGIS' prior written consent. All notices hereunder shall be in writing addressed to the parties at their respective addresses set forth in the Invoice. This Certificate is the complete agreement between the parties with respect to the subject matter and supersedes all prior or contemporaneous agreements, printed and proposed, whether oral or written, between the parties. No term or condition hereof shall be deemed waived and no breach or default assumed unless such waiver or excuse shall be in writing and signed by the party to be charged. In the event that any one or more provisions contained in this Agreement should be held to be unenforceable, its unenforceability shall not affect any other provisions of the Agreement.

FOR SERVICE, CALL:

1-905-669-8699

000230

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint that the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 had reason to believe that the respondent has violated the said Act, 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 a period of sixty (60) days, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Tiger Direct, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office or principal place of business located at 8700 West Flagler Street, 4th Floor, Miami, Florida.

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

## ORDER

## DEFINITIONS

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

1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rules 701 and 702, 16 CFR Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder, shall apply to the terms used in this order.

2. Unless otherwise specified, "*respondent*" shall mean Tiger Direct, Inc., a corporation, its successors, assigns, officers, agents, representatives, and employees.

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

4. "*On-Site Service*" shall mean providing the services of a qualified technician at the location of a product sold or supplied by respondent to remedy a problem with the product.

5. "*Clearly and prominently*" shall mean as follows:

A. In an advertisement communicated through electronic medium (such as television, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instruction manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an

ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

6. "*Reasonable period of time*" shall mean that period of time specified in respondent's advertisements, promotional materials or solicitations if such period is clearly and prominently disclosed in the advertisement, promotional material or other solicitation; or if no period of time is clearly and conspicuously disclosed in the advertisement, promotional material or other solicitation, a period no longer than thirty (30) days following the date the respondent first receives notice from the consumer of a problem with a product.

I.

*It is ordered*, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, sale, offering for sale or distribution of any consumer product, shall not represent, in any manner, expressly or by implication, that it provides On-Site Service unless respondent discloses, clearly and prominently and in close proximity to the representation, all limitations and conditions that apply to obtaining On-Site Service.

II.

*It is further ordered*, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, sale, offering for sale or distribution of any consumer product for which the respondent offers a written warranty, shall within a reasonable period of time after receiving notice from a consumer of a problem, fulfill its obligations under the warranty to the consumer.

III.

*It is further ordered*, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, sale, offering for sale or distribution of

any consumer product for which the respondent offers a written warranty, do forthwith cease and desist from:

A. Failing to make the text of any written warranty on a consumer product readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in Section 702.3(c) of the Pre-Sale Availability Rule, 16 CFR 702.3(c);

B. Failing to disclose, as provided in Section 701.3(a)(3) of the Disclosure Rule, 16 CFR 701.3(a)(3), a statement of what the warrantor will not pay for or provide, where necessary for clarification;

C. Failing to disclose, as provided in Section 701.3(a)(5) of the Disclosure Rule, 16 CFR 701.3(a)(5), a step-by-step explanation of the procedure the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations;

D. Excluding liability for any incidental or consequential damages arising from any consumer injury without clearly and conspicuously disclosing, as provided in Section 701.3(a)(8) of the Disclosure Rule, 16 CFR 701.3(a)(8), that some states do not allow for such exclusion;

E. Failing to disclose, as provided in Section 701.3(a)(9) of the Disclosure Rule, 16 CFR 701.3(a)(9), that certain states may give the consumer legal rights in addition to those provided by the warranty;

F. Failing to designate, as provided in Section 103 of the Warranty Act, 15 U.S.C. 2303, any written warranty that it offers for products costing more than \$10 as either "full" or "limited"; and

G. Disclaiming any implied warranty, except as permitted by Section 108 of the Warranty Act, 15 U.S.C. 2308.

#### IV.

*It is further ordered,* That respondent 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 secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

## V.

*It is further ordered,* That respondent shall provide written instructions to all current and future managers, employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility on behalf of respondent as to respondent's specific obligations and duties under this order and under the Magnuson-Moss Warranty Act (15 U.S.C. 2301, *et seq.*), including, but not limited to, Sections 103 and 108 (15 U.S.C. 2303 and 2308), thereof, and Rules 701 and 702, 16 CFR Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder. Respondent shall provide these instructions to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

## VI.

*It is further ordered,* That respondent shall, for a period of ten (10) years from the date of service of the order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondent to its managers, employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility on behalf of respondent pursuant to Part V., above; (ii) all warranties on consumer products costing more than \$15 for which the respondent is the warrantor; and (iii) exemplars of all advertising by the respondent.

## VII.

*It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation 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 respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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.

#### VIII.

*It is further ordered*, That respondent 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 it has complied with this order.

#### IX.

This order will terminate on November 4, 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.

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Complaint

IN THE MATTER OF

THE KROGER CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3905. Complaint, Nov. 8, 1999--Decision, Nov. 8, 1999*

This consent order, among other things, requires Kroger and Groub, supermarket corporations, to divest certain assets to Roundy's, Inc., which is one of the largest food wholesalers in the United States and an operator of company-owned supermarkets.

*Participants*

For the Commission: *Michael Rose, Laurel Price, Richard Parker, Jeremy Bulow and Alan Fisher.*

For the respondents: *Deborah Feinstein, Arnold & Porter, Washington, D.C. and Eric Moy, Barnes & Thornburg, Indianapolis, IN.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent The Kroger Co. ("Kroger") has entered into an agreement to acquire substantially all of the assets of respondent The John C. Groub Company, Inc. ("Groub"), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

DEFINITION

PARAGRAPH 1. For the purposes of this complaint, the term "Supermarket" means a full-line retail grocery store with annual sales of at least \$2 million that carries a wide variety of food and grocery

items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including non-food items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

THE KROGER CO.

PAR. 2. Respondent Kroger is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1014 Vine Street, Cincinnati, Ohio.

PAR. 3. Respondent Kroger, directly and through Dillon Companies, Inc., and Fred Meyer, Inc., its wholly-owned domestic subsidiaries, is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. Kroger and its wholly-owned domestic subsidiaries operate approximately 2,200 supermarkets in these states under the Kroger, Fry's, Dillons, King Soopers, City Markets, Fred Meyer, Smith's Food & Drug Centers, Ralph's, Quality Food Centers, Price Rite, Food 4 Less, Cala, Bell, FoodsCo., and Gerbes trade names. Kroger had approximately \$26.57 billion in total United States sales for the fiscal year that ended on December 27, 1997.

PAR. 4. Respondent Kroger is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

## THE JOHN C. GROUB COMPANY, INC.

PAR. 5. Respondent Groub is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 900 "A" Avenue East, Seymour, Indiana.

PAR. 6. Respondent Groub is, and at all times relevant herein has been, engaged in the operation of supermarkets in Indiana. Groub operates approximately 30 supermarkets under the Jay C, Foods Plus, and Ruler Discount Foods trade names. Groub had \$251.8 million in total sales for the fiscal year 1997.

PAR. 7. Respondent Groub is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

## ACQUISITION

PAR. 8. On or about October 12, 1998, Groub and Kroger LP I, a wholly-owned subsidiary of Kroger, executed a definitive Asset Purchase Agreement under which Kroger will acquire substantially all of the assets of Groub.

## TRADE AND COMMERCE

PAR. 9. The relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition described herein is the retail sale of food and grocery products in supermarkets.

PAR. 10. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")) as well as a deep inventory of those SKUs. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

PAR. 11. Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices

on the prices of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

PAR. 12. Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

PAR. 13. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the areas in and near the following cities and towns:

- a. Columbus, Indiana, and
- b. Madison, Indiana.

#### MARKET STRUCTURE

PAR. 14. The Columbus and Madison, Indiana relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios. The acquisition would substantially increase concentration in each market. Kroger and Groub would have a combined market share in the geographic markets of Columbus and Madison of near or greater than 66% and 54%, respectively. The post-acquisition HHIs would be 5,254 in Columbus and 4,262 in Madison.

#### ENTRY CONDITIONS

PAR. 15. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant markets.

#### ACTUAL COMPETITION

PAR. 16. Kroger and Groub are actual and direct competitors in and near Columbus and Madison, Indiana.

## EFFECTS

PAR. 17. The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant line of commerce in the relevant sections of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct competition between supermarkets owned or controlled by Kroger and supermarkets owned or controlled by Groub;
- b. By increasing the likelihood that Kroger will unilaterally exercise market power; and
- c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction,

each of which increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country.

## VIOLATIONS CHARGED

PAR. 18. The Asset Purchase Agreement between Kroger and Groub, pursuant to which Kroger will acquire substantially all of the assets of Groub, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the proposed acquisition would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

## DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by The Kroger Co. ("Kroger"), through its wholly-owned subsidiary, Kroger Limited Partnership I, of substantially all of the assets of The John C. Groub Company, Inc. ("Groub"), and it now appearing that Kroger and Groub, hereinafter sometimes referred to as "respondents," having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its

consideration and which, if issued by the Commission, would charge respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

The respondents, their attorneys, 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 had reason to believe that the respondents have violated the said Acts, and 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 a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Kroger is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1014 Vine Street, Cincinnati, Ohio.

2. Respondent Groub is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 900 "A" Avenue East, Seymour, Indiana.

3. 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

##### I.

*It is ordered*, That, as used in this order, the following definitions shall apply:

A. "*Kroger*" means The Kroger Co., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by The Kroger Co., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Groub*" means The John C. Groub Company, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by The John C. Groub Company, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Respondents*" means Kroger and Groub, individually and collectively.

D. "*Commission*" means the Federal Trade Commission.

E. "*Acquisition*" means Kroger's proposed acquisition of substantially all of the assets of Groub pursuant to the *Asset Purchase Agreement Between Kroger Limited Partnership I and the John C. Groub, Company, Inc.* dated October 12, 1998.

F. "*Assets To Be Divested*" means the Supermarkets To Be Divested in this Order and all assets, leases, properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarkets To Be Divested, but shall not include those assets consisting of or pertaining to any of the respondents' trade marks, trade dress, service marks, or trade names.

G. "*Supermarket*" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; frozen and refrigerated food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including non-food items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

H. "*Supermarkets To Be Divested*" means the following Supermarkets:

1. Groub store no. 92 operating under the "Foods Plus" trade name, which is located at 1343 North National Road, Columbus, Indiana;
2. Groub store no. 89 operating under the "Jay C" trade name, which is located at 2540 Eastbrook Plaza, Columbus, Indiana; and
3. Kroger store no. 304 operating under the "Kroger" trade name, which is located at 748 Jefferson Court, Madison, Indiana.

I. "*Roundy's*" means Roundy's, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal place of business located at 23000 Roundy Drive, Pewaukee, Wisconsin.

J. "*Groub Agreement*" means the Purchase Agreement between Roundy's and Groub executed on June 10, 1999, for the divestiture by Groub of its stores listed in the Supermarkets To Be Divested.

K. "*Kroger Agreement*" means the Purchase Agreement between Roundy's and Kroger executed on June 22, 1999, for the divestiture by Kroger of its store listed in the Supermarkets To Be Divested.

L. "*Roundy's Agreements*" means the Groub Agreement and the Kroger Agreement.

M. "*Acquirer(s)*" means Roundy's and/or the entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this order, individually and collectively.

N. "*Third Party Consents*" means all consents from any other person, including all landlords, that are necessary to effect the complete transfer to the Acquirer(s) of the Assets To Be Divested.

## II.

*It is further ordered, That:*

A. Respondents shall divest, absolutely and in good faith, the Assets To Be Divested to Roundy's, in accordance with the Roundy's Agreements (which agreements shall not be construed to vary or contradict the terms of this order), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Assets To Be Divested to Roundy's pursuant to the Roundy's Agreements prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Roundy's is not an acceptable Acquirer or that either the Kroger Agreement or the Groub Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the respective transaction with Roundy's and shall divest the respective Assets To Be Divested within three (3) months of the date the order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.

Provided, further, that respondents shall not be required to divest any front-end system, computer scanners, Kroger bascart, satellite dishes, leased cable lines, fixtures, equipment or inventory, at any Supermarket To Be Divested that the Acquirer of the Assets To Be Divested indicates that it does not want to acquire, if the Commission approves the divestiture to such Acquirer and approves the manner of the divestiture excluding such assets.

B. Respondents shall obtain all required Third Party Consents prior to the closing of the Roundy's Agreements, or any other agreement pursuant to which the Assets To Be Divested are divested to an Acquirer.

C. The purpose of the divestitures is to ensure the continuation of the Assets To Be Divested as ongoing viable enterprises engaged in the Supermarket business and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

### III.

*It is further ordered, That:*

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within the time required by paragraph II of this order, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(I) of the Federal Trade Commission Act, 15 U.S.C. 45(I), or any other statute enforced by the Commission, respondents shall consent to the appointment of a

trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A. of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect each divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in paragraph III.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the period for no more than two (2) additional periods.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestitures shall be made in a manner that receives the prior approval of the Commission and to an Acquirer or Acquirers that receive the prior approval of the Commission; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by Kroger from among those approved by the Commission; provided further, however, that Kroger shall select such entity within five (5) days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Kroger, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a

commission arrangement contingent on the trustee's divesting the Assets To Be Divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish each divestiture required by this order.

11. In the event that the trustee determines that he or she is unable to divest the Assets To Be Divested in a manner consistent with the Commission's purpose as described in paragraph II, the trustee may divest additional ancillary assets of respondents and effect such arrangements as are necessary to satisfy the requirements of this order.

12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

13. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish each divestiture required by this order.

#### IV.

*It is further ordered,* That respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of the Assets To Be Divested, nor shall they cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Assets To Be Divested. Respondents shall comply with the terms of this paragraph until such time as respondents have divested the Assets To Be Divested pursuant to the terms of this order. Respondents shall conduct or cause to be conducted the business

of the Assets To Be Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operation of any Supermarket To Be Divested. Respondents shall continue to maintain the inventory of each Supermarket To Be Divested at levels and selections (*e.g.*, stock-keeping units) consistent with those maintained by such respondent(s) at such Supermarket in the ordinary course of business consistent with past practice. Respondents shall use best efforts to keep the organization and properties of each Supermarket To Be Divested intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with the Supermarket. Included in the above obligations, respondents shall, without limitation:

A. Maintain operations and departments and not reduce hours at each Supermarket To Be Divested;

B. Not transfer inventory from any Supermarket To Be Divested other than in the ordinary course of business consistent with past practice;

C. Make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with any Supermarket To Be Divested, in each case in a manner consistent with past practice;

D. Maintain the books and records of each Supermarket To Be Divested;

E. Not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any respondent is moving its operations at a Supermarket To Be Divested to another location, or that indicates a Supermarket To Be Divested will close;

F. Not remove the trade marks, trade dress, service marks, or trade names of respondents at any of the Supermarkets To Be Divested;

G. Not conduct any "going out of business," "close-out," "liquidation" or similar sales or promotions at or relating to any Supermarket To Be Divested; and

H. Not change or modify in any material respect the existing advertising practices, programs and policies for any Supermarket To Be Divested, other than changes in the ordinary course of business consistent with past practice for Supermarkets of the respondents not being closed or relocated.

V.

*It is further ordered*, That, for a period of ten (10) years from the date this order becomes final, Kroger shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the Commission:

A. Acquire any ownership or leasehold interest in any facility that has operated as a Supermarket within six (6) months prior to the date of such proposed acquisition in the counties of Bartholomew or Jefferson, Indiana; or

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any Supermarket or owned any interest in or operated any Supermarket within six (6) months prior to such proposed acquisition in the counties of Bartholomew or Jefferson, Indiana.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Kroger or the acquisition of or leasing of a facility that has not operated as a Supermarket within six (6) months prior to Kroger's offer to purchase or lease.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the "Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Kroger and not of any other party to the transaction. Kroger shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning

of 16 CFR 803.20), Kroger shall not consummate the transaction until twenty (20) days after substantially complying with such request. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

#### VI.

*It is further ordered*, That, for a period of ten (10) years commencing on the date this order becomes final:

A. Kroger shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. 12(a)) that acquires any Supermarket, any leasehold interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after July 13, 1999, in the counties of Bartholomew or Jefferson, Indiana, to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Kroger.

B. Kroger shall not remove any fixtures or equipment from a property owned or leased by Kroger in the counties of Bartholomew or Jefferson, Indiana, that is no longer in operation as a Supermarket, except (1) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; or (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Kroger.

#### VII.

*It is further ordered*, That:

A. Within thirty (30) days after the date respondents signed the Agreement Containing Consent Order and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II, III, and IV of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II, III, and IV of this order. Respondents shall include in their compliance reports, among other

things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, and IV of the order, including a description of all substantive contacts or negotiations for divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, Kroger shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

#### VIII.

*It is further ordered,* That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in respondents that may affect compliance obligations arising out of the order.

#### IX.

*It is further ordered,* That, for the purpose of determining or securing compliance with this order, upon written request with five (5) days' notice, respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect the facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

B. Without restraint or interference from respondents, to interview officers, directors, or employees of respondents in the presence of counsel.

## IN THE MATTER OF

## PROLONG SUPER LUBRICANTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3906. Complaint, Nov. 22, 1999--Decision, Nov. 22, 1999*

This consent order, among other things, requires Prolong Super Lubricants, Inc., the marketer of one of the largest selling motor oil additives sold in the U.S., to have scientific substantiation for its claims regarding the performance, benefits, efficacy, attributes, or use of its product. The consent order prohibits the misrepresentation of the superiority or comparability of its product with respect to any other product, and the existence or results of any test, study, or research. In addition, the consent order prohibits the representation of user testimonials or endorsements, unless certain disclosures are made.

*Participants*

For the Commission: *Gerald Wright and Jeffrey Klurfeld.*

For the respondent: *Neil Goteiner, Braun & Martel, San Francisco, CA.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Prolong Super Lubricants, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Prolong Super Lubricants, Inc. is a Nevada corporation with its principal office or place of business at 6 Thomas, Irvine, CA.
2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to the public, including Prolong Engine Treatment Concentrate, a motor oil additive ("Prolong ETC").
3. 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 Federal Trade Commission Act.
4. Respondent has disseminated or has caused to be disseminated advertisements for Prolong ETC, including but not necessarily limited

to the attached Exhibits A through C. These advertisements contain the following statements, demonstrations, and other visual depictions:

A. A program-length television advertisement for Prolong-branded products, entitled "The Prolong World Challenge" (Exhibit A):

(1) Host: "...Prolong is here to set the record straight, with some amazing proof to demonstrate why experts are saying, 'Prolong has no equal in the world!' In fact, Prolong is so superior to other lubricants, they're offering a \$1 million world challenge." (Exhibit A, p. 3)

(2) The "Duel in the Desert" Demonstration

Announcer: "We have automobiles, trucks and motorcycles representing almost every kind of vehicle manufacturer...A pick-up truck with over 100,000 miles...These vehicles have been treated with the patented Prolong Engine Treatment, and drained of all their engine oil." (pp. 4-5)

Yeager: {Previously identified in on-screen super as "Steve Yeager World Series MVP"}: I just saw him drain the oil from my vehicle, and I really have my doubts if this car will go out there, with the inclines, and the downhills and the curves, and not overheat, and just freeze up. (p. 6)

{Ad depicts vehicles driving laps in the desert after their oil has allegedly been drained. One driver is identified as "Al Unser, 4 time Indy 500 Winner."}

{After unspecified lapse of time}

Unser: I just didn't believe that it would make it...and the thing is still running good. The oil light never went off, or the gauge ever moved...I ran almost 90 mph!...With no oil in it. (pp. 33-34)

(3) The "Friction Test Machine Demonstration"

Announcer: "The automotive professionals of J.E. Pistons...will witness the world challenge as Prolong is compared to other well-known lubricants. (p. 7)

Host: Elton's [Elton Alderman, President of respondent] using a torque bar on a friction test machine to apply tremendous pressure on a static bearing against a spinning race...Pressure is added until the test lubricant fails, damaging the bearing and seizing the motor...Professionals use a torque wrench to apply extreme pressure to accurately measure the shock load engines experience on start-up. (p. 7)

{Ad depicts various lubricants being poured into the machine, and pressure being applied. After each lubricant is tested, the screen shows the bearing with its "wear scar" from the pressure that was applied. The size of the "wear scar" varies from lubricant to lubricant.}

First Pennzoil was tested. {Super: "Certified Test."} Look at the bearing up close, as certified by a licensed professional engineer, and you can see the severe damage." {Super: "Failed."} {Ad depicts bearing with large "wear scar."} Next, look at the wear with Castrol Syntech, a leading synthetic oil, tested under the same load. {Super: "Failed."} {Ad depicts bearing with large "wear scar."} Then Slick 50 Engine Treatment was tested. {Super: "Failed."} {Ad depicts bearing with large

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"wear scar."} They all ended up with severe damage...{The ad depicts other lubricants being tested and "failing," with large "wear scars."} (pp. 7-8)

. . . . .  
{Ad depicts machine continuing to run after a small amount of Prolong ETC is applied.}

. . . . .  
Now, let's test the Prolong Engine Treatment! Watch as the torque wrench applies the maximum shock load of over 200,000 pounds per square inch at point-to-point contact....The motor continues to run with no strain, as shown by the amp meter. (p. 10)....{Ad depicts bearing with very small "wear scar."} After all this tremendous abuse, you can see that the other lubricants don't even come close to comparing! Indisputable proof that Prolong has no equal in the world! {Super: No Equal In The World}" (pp. 10-11)

. . . . .  
(4) Consumer endorser: "Once the product is into the motor, and found the friction points, and taking care of those friction points, that same engine made eight more horsepower! {Super: Lee Chapin, AVP Mktg. Mikuni American Corp}" (p. 11)

. . . . .  
(5) The "Test Tube" Demonstration:  
{Ad depicts a bearing partially submerged in lubricant in a test tube, which is then heated.}

Announcer: "We coated a test bearing with a well-known engine treatment that was heated and left for a short period of time. Look at the corrosion on the bearing, just from the fumes! And look at the bottom which was actually submerged! When Prolong is put to the same test, look at the difference with its anti-corrosion formula! The high temperatures in your engine can cause lubricants to break down and become corrosive. ...But Prolong's patented formula fights corrosion, and extends the life of your car, which saves you money! {Super: "Fights Corrosion."} (pp. 13-14)

. . . . .  
(6) Consumer endorser: "I ran 30 miles with no oil, no oil pressure, with the oil light staring me directly in the eye, and the car kept going. The last ten years I haven't won a race. Now starting using Prolong, two years later I'm winning races now. {Dan Mathews, Race Car Builder/Driver}" (p. 17)

(7) Guerrero [Identified earlier in ad as Roberto Guerrero, Indy 500 Single Lap Speed Record Holder.]: "If it's going to work on the race car, it's going to work on the road car 100 times better, so it really is amazing." (p. 17)

(8) The "Four-Hour Drive" Demonstration  
{Ad depicts two women driving a car which has been treated with Prolong ETC and then allegedly had the oil, oil filter, and oil plug removed.}

Announcer: "...Sandra Bartley has gone an unbelievable four hours and 40 minutes with no oil, no oil filter, or oil plug! {Super: "4 HR 40 MIN 7 SEC"} She's been in stop-and-go city traffic on a hot summer day in Southern California. Freeway driving above 60 miles per hour, as well as steep hills which really put a strain on the engine." (p. 23)

. . . . .

(9) Announcer: "Today's motor oils are better than ever. But they have their limitations! Friction causes heat which leads to engine wear, poor performance, lower gas mileage and even engine breakdown. {Super: "Friction Causes Engine Wear; Poor Performance; Lower Gas Mileage"} Prolong Engine Treatment turns any motor oil into a super lubricant. {Super: "Turns Any Motor Oil Into a Super Lubricant."} Prolong is specially formulated to bond to the metal, creating a low-friction surface, one molecule thick, that lubricates your engine on start-up, whether it's 20 below and freezing cold, or 100-plus in scorching heat. This means you prolong engine life! {Super: "Prolong Engine Life! Improve Performance! Increase Gas Mileage!"} Improve performance, and increase gas mileage...." (p. 18)

(10) Consumer Endorser: "This transmission was probably due for some serious service, like being rebuilt, and I decided well, I'll put it off, and I just "Prolonged" it, and it held in there for, like I say, another 40 to 50,000 miles! {Ken McClintick, Aerospace Engineer}" (p. 21)

(11) "Sand in the Engine" Demonstration

Announcer: "...Elton [Alderman, President of respondent] has drained the oil on a Chrysler V-8 engine, and you can see it's empty by the window installed in the oil pan...And now he's going to do something you have to see to believe! ...{Super: "For Demonstration Purposes Only; Always Follow MFG Instructions"} All these demonstrations show you that Prolong can protect your engine, even under extreme conditions!" (p. 24)

{Ad depicts sand being poured in the motor, then the water hose being cut and the engine being revved up. The engine keeps running.}

Host: "...It's not only running but it's running smoothly. {Super: "5000 RPM -- No Oil! No Water! 10 lbs. Sand In The Engine"}... We've taken all of the oil out, all of the water out, it's been treated with Prolong, we've poured sand on the engine, and it's still running as if it were a brand new engine!" (p.27)

(12) Announcer: "Whether your car is old or new, the sooner you add Prolong, the better! {Super: "The Sooner, The Better"} Because up to 70% of friction and wear occurs at start-up {Super: "70% Engine Damage on Start-Up"}, before your engine is coated with motor oil! Friction causes heat, which leads to engine wear, poor performance, lower gas mileage, and even engine breakdown. {Super: "Friction Causes Engine Wear; Poor Performance; Lower Gas Mileage"}" (p. 29)

(13) SUPER: "Jim Snelling, First Lane Racing School"

Snelling: "Starting a car first thing in the morning, 'cause there's no oil protecting that motor. None. There's no friction protection at all. Now what you get, and most people don't understand is, that's where you get the wear and tear on rings and pistons. And over a period of years, that's what wears on motors, and that's why you have to have it re-ringed and re-valved, and everything else!... {Referring to Prolong Engine Treatment Concentrate bottle} I think you've got something that's going to protect that, I definitely think you do." (p. 30)

B. Prolong Engine Treatment Concentrate Bottle Labeling  
(Exhibit B)

"Prolongs Engine Life"

C. Promotional Brochure (Exhibit C):

(1) "This report describes friction and wear testing of Prolong Engine Treatment...110 tests performed. The product was found to have a significant wear reducing effect...friction was reduced up to 51.6%, temperature was reduced up to 38.67% and wear was reduced up to 78%.' Sintef Laboratories, Report No. STF18 F87013"

(2) "A lonely road can be even lonelier without Prolong protection.' We hope that you will never have to drive your car for miles without oil in 150 degree desert road temperatures, but its [sic] nice to know its [sic] been done successfully using Prolong Engine Treatment."

5. Through the means described in paragraph four, including but not limited to the below-enumerated subsections of paragraph four, respondent has represented, expressly or by implication, that:

A. Compared to motor oil alone, Prolong ETC:

- (1) Reduces engine wear at start-up [Subsections A(9), A(12), A(13)]; and
- (2) Extends the duration of engine life [Subsections A(5), A(9), B(1)];

B. Prolong ETC:

- (1) Reduces corrosion in engines [Subsection A(5)]; and
- (2) Protects against engine breakdowns [Subsections A(2), A(8), A(9), A(11)-(13), C(2)];

C. Benefits that may be achieved through use of Prolong ETC in race cars or under racing conditions can be achieved in ordinary automobiles in conventional use [Subsections A(6), A(7)]; and

D. Testimonials from consumers appearing in the advertisements for Prolong ETC reflect the typical or ordinary experience of members of the public who use the products.

6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Leary not participating.

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## EXHIBIT A

[Transcription of tape labeled, "The Prolong World Challenge -  
Call 1-800-533-5100 to order the PROLONG CAR CARE KIT  
PROLONG INTERNATIONAL CORP. is traded on the OTC Bulletin Board.  
Symbol 'PROL'"]

{On-screen Super: Prolong Super Lubricants. The following is a  
paid commercial program for Prolong Super Lubricants. Prolong  
International Corporation. A Public Company Traded OTC. Symbol  
PROL -- The following tests are for demonstration purposes only.  
Do not attempt any of these demonstrations.}

Announcer: The following is a paid program for Prolong Super  
Lubricants.

You're about to witness the greatest breakthrough in the  
history of lubrication. On the program today, see what happens  
when you pour 10 pounds of dirt, sand and gravel in an open  
engine. {Super: 10 lbs. Sand Open Engine} What happens when  
racing legend Al Unser drives a \$60,000 Viper in the desert at 90  
mph with no oil. {Super (flashing): 90 MPH No Oil} Watch while  
this engine's put to the test as it attempts to set an undisputed  
world record, running 500 hours with no oil! {Super: 500 hrs No  
Oil! ("No oil" flashes on and off)}

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This test driver is going to put this car through a real-world endurance test with no oil, no oil plug, and no oil filter! How far can they go? {Super: No oil! No oil plug! No oil filter!} This engine is running at an unbelievable 6,000 RPM with no oil pan! What fantastic lubricant makes this possible? {Super: No oil pan! 6,000 RPM!} {Super: Never run your car without oil or water. Always follow your manufacturer's service advice.} Stick around to hear the answers, and to find out how for the first time in the history of lubrication, your car can be protected in a way you never dreamed possible, and it's going to save you money, increase gas mileage, and prolong the life of your car! {Super: Saves You Money! Increase Gas Mileage! Prolong The Life Of Your Car!}

Unser: Lives up to what they say it can do, and I have to, as they say, take my hat off to 'em because I didn't think it could make it, I really didn't. You just can't run an engine, any engine, whether it's a Viper or what, without oil in it! {Super: Al Unser, 4 Time Indy 500 Winner}

Announcer: Welcome to the Prolong World Challenge! On the show today we have racing legend, 4-time Indy 500 winner Al Unser!

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{Super: Al Unser 4 Time Indy 500 Winner} Indy single lap record holder, Roberto Guerrero. {Super: Roberto Guerrero, Indy 500 Single Lap Speed Record Holder}. Nine time Olympic Gold Medalist Mark Spitz. {Super: Mark Spitz 9-Time Olympic Gold Medalist} World Series MVP Steve Yeager. {Super: Steve Yeager World Series MVP}. Mr. Motorcycle himself, Nick Nichols! {Super: Nick Nichols Motorcycle Product Test Expert}. Racing commentator Larry Huffman. {Super: Larry Huffman Racing Commentator} Hosted by Bob Eubanks! {Super: Bob Eubanks}

Eubanks: Hi there, I'm Bob Eubanks, and welcome to the beautiful Peterson automotive museum in Los Angeles, California. The automobiles you see here have made history because of their design, beauty or engine performance. That's why we've chosen an automobile environment to introduce a history-making lubricant. Prolong is here to set the record straight, with some amazing proof to demonstrate why experts are saying, "Prolong has no equal in the world!" In fact, Prolong is so superior to other lubricants, they're offering a \$1 million dollar world challenge. That's right, \$1 million. {Super: \$1,000,000 WORLD CHALLENGE} Well if seeing is believing, then let's get right down to it.

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Huffman: Thanks Bob, we're here at Willow Springs International Raceway in the Mohave Desert. The track temperature, it's August, is 146 degrees!

Announcer: It's so hot that even Gila Monsters are carrying canteens!

Huffman: Al, you're driving a \$60,000 Viper; a V-10 -- you're going to take it out there on the track and go with no oil whatsoever.

Unser: First, it's not my car. If it was my car, I still wouldn't do it. And secondly, I don't think it'll make it half a lap!

Announcer: We have automobiles, trucks and motorcycles representing almost every kind of vehicle manufacturer, including General Motors, Ford, Chrysler, European and Japanese makes, {Super: General Motors, Ford, Chrysler, European, Japanese} a pickup truck with over 100,000 miles, and Mr. Motorcycle himself, Nick Nichols on his Harley Davidson! These vehicles have been treated with the patented Prolong Engine Treatment, and drained

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## EXHIBIT A

of all their engine oil. The oil plugs will be held by the automobile club's former chief automotive engineer, Louis J. Bintz, who will certify this extreme test of a Prolong Engine treatment.

Huffman: They've taken the drain plug out of the car, and have you ever seen anything like this before?

Bintz: No, I don't think it's such a great idea. Without any oil in these cars, I think some of 'em are going to freeze.

{Super: Louis J. Bintz, PE Chief Automotive Engineer, Ret. Auto Club of So. Cal.}

Huffman: And also with the heat, it's tremendously hot out there, that's got to be a factor too.

Bintz: Oh, very definitely!

Spitz: The heat's going to start building up; there's friction and there's no oil in this car's crankcase whatsoever but just Prolong. It will be very interesting!

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Yeager: I just saw him drain the oil from my vehicle, and I really have my doubts if this car will go out there, with the inclines, and the downhills and the curves, and not overheat, and just freeze up.

Huffman: Alright gentlemen, start your engines! Can you see the oil temp, the oil pressure gauge? It's on zero, it's not moving at all. This has got to be a first in your career; starting a race with no oil!

Unser: That it is; I've never seen a gauge like that, not move, but I know, I know awhile ago when I drove this car, the gauge was moving.

Huffman: It has got to be a funny feeling.

Unser: Yes it does!

Huffman: On the count of three -- one, two, three!

Announcer: The Prolong World Challenge metal-to-metal, duel in the desert is under way! These cars are being tested to their

## EXHIBIT A

limits! Remember, they have no oil whatsoever! Will heat and friction take its toll on the Viper? Will Prolong make the difference? Stay tuned and we'll see what happens!

Now let's go to Bob Eubanks at the world-renowned J.E. Pistons in Huntington Beach, California, {Super: Headquarters, Huntington Beach, CA} where they build pistons for high performance engines that win many of today's top auto races. He's there with Prolong's President, Elton Alderman, and the automotive professionals of J.E. Pistons who will witness the world challenge as Prolong is compared to other well-known lubricants.

Elton's using a torque bar on a friction test machine, to apply tremendous pressure on a static bearing against a spinning race. {Super: "Spinning Race" appears at lower left screen with an arrow pointing at part of the machine, while the words "Static Bearing" appear in the upper right corner with an arrow pointing to another part of the machine.} Pressure is added until the test lubricant fails, damaging the bearing and seizing the motor. You may have seen other companies demonstrate their products using a fish scale. But professionals use a torque wrench to apply extreme pressure to accurately measure the shock load engines experience on startup. First Pennzoil was tested.

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{Super: Certified Test} Look at the bearing up close, {Super: Failed} as certified by a licensed professional engineer, and you can see the severe damage. Next, look at the wear with Castrol Syntech, a leading synthetic oil, tested under the same load. {Super: Failed} Then Slick 50 engine treatment was tested. {Super: Failed} They all ended up with severe damage. They even tested Lubricator 2001 per the manufacturer's instructions. And it too failed. {Super: Failed} Now, let's see what happens when Dura Lube meets Prolong head to head!

Alderman: Let's give it a little more than that, let's just give it a full bath.

Eubanks: That's more than you'd normally add?

Alderman: Absolutely! Let's give it a big advantage!

Eubanks: OK!

Alderman: So let's put this back on. Same type of a test. Now Bob I can make this look real good if I pull it real slow. It

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Complaint

EXHIBIT A

shows better than normal if I pull it real slow. But with this product.

Eubanks: And it stops with Slick 50, it stops!

Announcer: Then Elton did something that we had no idea he was going to do! And beyond amazing, he took a small Q-tip and dipped it in the Prolong. He didn't even bother to pour any in! Now, watch what happens!

Alderman: Just take a Q-tip.

Eubanks: Alright.

Alderman: Add a little Prolong. Pull it to the max.

Eubanks: The noise changes and everything.

Alderman: Just touch the metal.

Eubanks: It doesn't stop! Wonderful!

Complaint

128 F.T.C.

## EXHIBIT A

Alderman: With just a Q-tip.

Eubanks: That's just a little bit of Prolong on there. I mean, this is a product like no other product. But this is a patent product, isn't it?

Alderman: As we say, it has no equal in the world, Bob.

Announcer: Let's continue the challenge and look at the damage up close on the Duralube bearing! Under no nonsense testing, like the rest, it also failed to protect the bearing. {Super: Failed} We tested the STP engine treatment. Again, severe damage! {Super: Failed} Tribotech additive was also tested, and as you can see by the scar it came up way short! {Super: Failed} Now, let's test the Prolong engine treatment! Watch as the torque wrench applies the maximum shock load of over 200,000 pounds per square inch at point-to-point contact. {Super: 200,000 psi} Look how far the bar is bending as it goes past the end of the scale, while the motor continues to run with no strain, as shown by the amp meter. {Super: amps} After all this tremendous abuse, you can see that the other lubricants don't even come

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Complaint

## EXHIBIT A

close to comparing! Indisputable proof that Prolong has no equal in the world! {Super: No Equal In The World}

Guerrero: If I wasn't seeing it, I wouldn't believe it! You know, you can hear people telling you that yeah, yeah, but I mean, seeing it is really quite amazing and it's unbelievable!

Kahn: We currently are using the product in all of our used cars. We felt it would be safer to put Prolong in the vehicles that the time we smog and safety the vehicle, and cut down on our possible losses! {Super: Michael Kahn, GM Crown Lexus/Toyota, Ontario CA}

Chapin: Because we use the same adjectives for products that just simply don't work; this product does! Once the product is into the motor, and found the friction points, and taking care of those friction points, that same engine made eight more horsepower!" {Super: Lee Chapin, AVP Mktg. Mikuni American Corp}

Pickles: Slick 50, Dura Lube, it's just like, you put it in, and you can't even tell that it's really in there, other than you're a little lighter in the pocketbook! I use synthetic oils in the

## EXHIBIT A

rear end of the transmission with Prolong additive, and boy, I tell you, it's the best thing since printed money!" (Super: Ron Pickles, Independent Transporter)

Eubanks: I've also seen this product on television. Let me ask you a question. I mean, a lot of engines heat up; what happens to these additives when your engine heats up, say like to 300 degrees?

Alderman: Well, I'll tell you, Bob, what happens. This product, this one I'd like to show you. (Alderman holds up a test tube with a substance in it.) That was heated up to just over 300 degrees in less than a minute.

Eubanks: Now this is a popular oil additive?

Alderman: Absolutely! It's just solid tar! (Alderman holds up a different test tube) This is a leading product; it has PTFE resins in it. Like a teflon powder that was heated in the same type of test.

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Complaint

EXHIBIT A

Eubanks: So they actually put teflon in the oil additives?

Alderman: Absolutely! Solid particles. Also Bob, here's Prolong. {Alderman holds up a third test tube} Put through the same type of a test.

Eubanks: Heated again.

Alderman: Absolutely! {Ad depicts substances in first two test tubes appear to have solidified; Prolong still appears to be liquid} Which one would you like to have in your motor?

Eubanks: Which one do you think, I mean, it's Prolong!

Announcer: Your car engine runs at extremely high temperatures. So we wanted to show what happens to engine treatments under these conditions. Look at this product, when it's heated up! It becomes unstable, starts smoking and turns black at around 325 degrees! Then we put Prolong, with its patented anti-corrosive formula to the same test. Even when heated much higher, it still remains stable! We coated a test bearing with a well-known engine treatment that was heated and left for a short period of

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## EXHIBIT A

time. Look at the corrosion on the bearing, just from the fumes!  
And look at the bottom which was actually submerged!. When  
Prolong is put to the same test, look at the difference with its  
anti-corrosion formula!

The high temperatures in your engine can cause lubricants to  
break down and become corrosive. {Super: Other Engine Treatment;  
Prolong Engine Treatment} But Prolong's patented formula fights  
corrosion, and extends the life of your car, which saves you  
money! {Super: Fights Corrosion} Now, let's see how the cars  
are doing as we return to the metal-to-metal duel in the desert!  
With Al Unser, Mark Spitz, Steve Yeager and Larry Huffman!  
{Super: Never run your car without oil or water. Always follow  
your manufacturer's service advice.}

Unidentified voice: My light's never blinked, it's always been  
on green!

Unidentified voice: I'll tell you what, this big car is handling  
very nicely!

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## EXHIBIT A

Unidentified voice: I'm definitely gassing this thing around a heck of a lot harder than if it was just normal driving. I mean, just trying to stay up with you guys and Al!

Announcer: Well, you can hear it for yourself from the radios they have in the cars. And I think Steve Yeager pretty well tells the story with this comment:

Yeager: It's like an ever-ready, still going.

Huffman: Bob, it's unbelievable, they're still running! Al Unser in the red Viper out in front, with the temperature still hovering just under 150 degrees, and the test continues!

Announcer: As if 7 cars and a motorcycle at Willows Springs aren't enough, we put Sandra Bartley, 20 year test and race car driver, through a real world endurance drive with no oil; no oil plug and no oil filter, to see how far the car could go. (Super: No Oil! No Oil Plug! No Oil Filter!) Sandra, being a skeptic, wanted to make sure that there really was no filter, so she got under the car to check for herself. Then, she and her friend Linda were off from the Peterson Museum on a hot summer day. Not

## EXHIBIT A

just to drive the freeway where you can cruise, but to put the car through the same conditions we all drive everyday, stop and go city traffic! And of all places, in southern California! She went through Beverly Hills, up Rodeo Drive, down the Avenue of the Stars in West L.A., and around Westwood.

Bartley: Look at this Linda; we've been driving about an hour and ten minutes right now (Super: One Hour) and we've been going uphill and downhill, and normally that would be a real big load on the engine.

Announcer: At two hours out, we left L.A., (Super: Two Hours) heading north on Pacific Coast Highway, and decided to take a mountain climb to really torture the engine. And still no problems! When we come back, we'll see how much farther the car can go with plenty of gas but no oil!

Johnson: Starting seventeenth in a race, we were coming through the field, and about the 12th or 13th lap we exploded a radiator hose. It immediately pumped all the water out of the car. At that point we were running so well I figured, well, engine needs rebuilding, keep running. Let's see what happens. If it blows

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## EXHIBIT A

up, it blows up. We were running Prolong in the motor, car ran 30 laps, we finished the race, it was still in one piece, took it to the engine rebuilder Monday. My engine builder's been building engines for over 30 years. He calls and he asks me what kind of oil we were running. I tell him, and he says "Well, no, that oil wouldn't do this." He says, "What else were you running?" So I told him we were running Prolong. And he says, "Whatever it is, it just saved you over \$6,000." {Super: A. J. Johnson, USAC Midget Car Race Driver}

Mathews: I ran 30 miles with no oil, no oil pressure, with the oil light staring me directly in the eye, and the car kept going. The last 10 years I haven't won a race. Now starting using Prolong, two years later I'm winning races now. {Super: Dan Mathews, Race Car Builder/Driver}

Guerrero: If it's going to work on the race car, it's going to work on the road car 100 times better, so it really is amazing.

Announcer: Coming up, the grand finale of the duel in the desert with Al Unser, Sandra Bartley's real world endurance drive.

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## EXHIBIT A

Prolong's undisputed world record at 500 hours with no oil! Ten pounds of dirt, sand and gravel in an open engine with no oil, and no water! {Super: Paid Commercial Program For Prolong Super Lubricants} Plus, the \$1 million world challenge! Stay tuned!

Today's motor oils are better than ever. But they have their limitations! Friction causes heat which leads to engine wear, {Super: Friction Causes Engine Wear; Poor Performance; Lower Gas Mileage} poor performance, lower gas mileage and even engine breakdown. Prolong engine treatment turns any motor oil into a super lubricant. {Super: Turns Any Motor Oil Into A Super Lubricant} Prolong is specially formulated to bond to the metal creating a low friction surface, one molecule thick, that lubricates your engine on startup, whether it's 20 below and freezing cold, or 100 plus in scorching heat. This means you prolong engine life! {Super: Prolong Engine Life!; Improve Performance! Increase Gas Mileage!} Improve performance, and increase gas mileage. Which saves you money! {Super: Saves You Money} Prolong is the only patented product of its kind in the world. Not just patent pending as claimed by other companies. {Super: Patented} It's actually been awarded patents both nationally and internationally. {Super: Patented Nationally; Internationally} Which means no one else in the world but

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## EXHIBIT A

Prolong has the super lubricant formula. Other products make claims, but under only moderate load the bearing damage is undeniable with engine treatments such as Duralube, Slick 50, STP, Tribotech, X1R and Lubricator 2001. (Super: Dura Lube; Slick 50; STP; Tribotech; X-1R; Lubricator 2001) But even under enormous shock load with Prolong, you can hardly see a mark. Which proves beyond a shadow of a doubt Prolong has no equal in the world. (Super: No Equal In The World)

Mahar: (Ad depicts endorser standing in front of a boat) I've used Slick 50; I've used Duralube; I've used everything in the world trying to just get that little extra out of that engine. And with Prolong immediately I noticed that I had to change the RPMs on my idle. Which means to me as a mechanic means that there's not as much friction in that thing. Just with the oil, I noticed about an 18% increase in my fuel efficiency! (Super: Gordon Mahar, Pres. Denali Wilderness Adventures, Alaska)

Announcer: All these motor oils fail at around 5-12 foot-pounds on the friction machine. (Ad depicts graph explain further here) But look what happens when Prolong is added. It turns them all into super lubricants, sending them completely off the scale! So

## EXHIBIT A

no matter what motor oil you use in your car, when Prolong is added, {Super: Premium Motor Oil} it simply becomes a super lubricant that creates the low friction surface you need for the ultimate in protection and performance. {Super: Without Prolong; With Prolong} {Super: "The Ultimate In Protection And Performance"} This means you prolong engine life, increase gas mileage and have a smoother running engine with less breakdown. Which saves you money! {Super: Prolong Engine Life; Increase Gas Mileage; Smoother Running Engine; Less Breakdowns} {Super: Saves You Money!} Prolong has been tested and proven around the world for years. In heavy industry, commercial and automotive applications. It contains no solid particles, and is compatible with other oils and lubricants including synthetics. Now, Prolong is available to the general public! In a complete car care kit!

Unser: This is very impressive! And I have not seen anything that is this good.

Spitz: The fact is that in comparison to the leading brands that we're aware of that we see on TV, or household names that we've

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Complaint

## EXHIBIT A

become familiar with over the last 20 years, I mean, it just beat it hands down.

Yeager: Whatever it costs it's certainly worthwhile to put it to protect, like you said earlier it's a life insurance policy that comes in a container!

Announcer: Now, you can have the Prolong engine treatment plus the Prolong transmission treatment which gives you smoother shifts and extends the life of your transmission. {Super: Smoother Shifts; Extends Life}

McClintick: This transmission was probably due for some serious service, like being rebuilt, and I decided well, I'll put it off, and I just "Prolonged" it, and it held in there for, like I say, another 40-50,000 miles! {Super: Ken McClintick, Aerospace Engineer}

Announcer: You also get the Prolong fuel system treatment which cleans your fuel system and treats the top part of your engine to improve gas mileage and increase performance.

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## EXHIBIT A

Stromquist: It went up by 10 miles a gallon easily! Yes, it is "wow." I mean, I'm happy! I'm happy! (Super: Bertha Stromquist, Accountant) (Super: Your mileage may vary).

Announcer: You get the engine, transmission, and fuel system treatments all three for only \$39.95. (Super: \$39.95) (Super: 1-800-533-5100) And if you order right now, we'll include at no extra cost, the Prolong SPL 100 -- Super Penetrating Lubricant that outperforms WD40, Liquid Wrench, and all other spray lubricants hands down! It can be used at home or on the job! On bicycles, hinges, locks, sliding doors, rusty bolts, and a thousand other applications. And for a limited time we'll include this multi-purpose precision oiler, and for those smaller hard-to-reach areas that require a light oil. Good for sewing machines, electric motors, clocks, toys, fishing reels, to name a few! You get the engine, transmission, and fuel system treatments as well as the Super Penetrating Spray Lubricant and the precision oiler, all containing the patented Prolong formula! For only \$39.95, but you have to order now! (Super: \$39.95 1-800-533-5100) Operators are standing by, have your credit card ready, and call the number on your screen right now, or send check or money order for \$39.95 plus shipping and handling to:

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Complaint

## EXHIBIT A

Prolong Super Lubricants, PO Box 6879, Burbank, California  
91510. Prolong the life of your car with Prolong Super  
Lubricants! No equal in the world! (On-screen super depicts  
address and ordering information)

Can Prolong actually set an undisputed world's record by  
running an engine five hundred hours with no oil while being  
revved over 4,000 RPM? Watch the crowd's reaction, and the hour  
meter on the engine!

Unidentified person (depicted pointing to an engine): We have a  
motor that has gone over 500 hours, running without oil in it.  
And the only protection it's enjoyed during that period is in  
fact the Prolong.

Announcer: Now, from the extraordinary to the amazing, Sandra  
Bartley has gone an unbelievable 4 hours and 40 minutes with no  
oil, no oil filter, or oil plug! (Super: 4 HR 40 MIN 7 SEC)  
She's been in stop-and-go city traffic on a hot Summer day in  
southern California. Freeway driving above 60 miles per hour, as  
well as steep hills which really put a strain on the engine.  
Let's see what happened that finally stopped the car!

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## EXHIBIT A

Bartley: We stopped to eat, we were hungry! You know, we needed some sustenance! (Super: Sandra Bartley, Motorsports) But it was great; it was relaxed, it was great. We had the air conditioning running about 90% of the time, we went through a lot of high inclines and down; a lot of altitude changes, and a lot of city traffic. That's why it took over 4 hours to get from Los Angeles to Santa Barbara. It was fabulous.

Kuester: I'm completely amazed and I can't believe that I got into a car without oil, and trusted all these people, and drove to Santa Barbara, and I don't think that any woman should ever leave her house without being protected by Prolong Super Lubricants! (Super: Linda Kuester, Health Care Administrator)

Announcer: Now we're going back to J.E. Pistons where Elton has drained the oil out of a Chrysler V-8 engine, and you can see it's empty by the window installed in the oil pan. He has the valve covers removed, and now he's going to do something you have to see to believe! (Super: For Demonstration Purposes Only; Always Follow MFG Instructions) All these demonstrations show you that Prolong can protect your engine, even under extreme conditions!

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Complaint

EXHIBIT A

Alderman: Now we're going to put it through the test, or even worse. We're going to pour some sand in here, and pour it across the top of that.

Eubanks: I mean this one of those tests that's never been done before. I mean, they're actually pouring sand inside this engine.

Alderman: Absolutely!

Eubanks: And the engine is running just as smooth as it was a moment ago when it had oil in it. He wants you to pour some more in it, Mike. Yeah, go ahead! Let's put it to the real test!

Unidentified voice: I'm going to rev it up more!

Eubanks: Isn't that incredible?!

Alderman: Now on top of that, we're going to do something different. We're going to cut the water hose.

Eubanks: So no oil.

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## EXHIBIT A

Alderman: No oil.

Eubanks: No water.

Alderman: No water.

Eubanks: And sand in the engine!

Alderman: And sand in the engine!

Eubanks: And still Prolong keeps it running?

Alderman: Absolutely.

Eubanks: Am I going to get hurt?

Alderman: Step back a little bit, Mike.

Eubanks: I'll step back more than a little bit.

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Complaint

## EXHIBIT A

Eubanks: Look at that. Isn't that amazing; you know what, this engine is running just as smooth as it did a minute ago! Go ahead, rev it up!

Unidentified voice: I don't believe it!

Eubanks: OK, the engine was treated with Prolong prior to all these tests. You can rev it up now; OK, go ahead. Look out, fellas! Isn't this amazing?

Alderman: It's incredible. Look at that! (Super: 5000 RPM)  
It should have blown up a long time ago!

Eubanks: Now what I'm fascinated by is, it's still running just as smooth as when they first started. I mean, it's not only running but it's running smoothly. (Super: 5000 RPM; No Oil! No Water! 10 lbs. Sand In The Engine) That I think is probably the ultimate test of all time, ladies and gentlemen, when it comes to a product. I mean here what we've done is we've taken all of the oil out, all of the water out, it's been treated with Prolong, we've poured sand on the engine, and it's still running as if it were a brand new engine! What an incredible, incredible

Complaint

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## EXHIBIT A

display of a product that just can't be beat! You will never, ever see another demonstration like that with any kind of product. Congratulations to you!

Alderman: Thank you!

Eubanks: You did a great job!

Announcer: If any of you are wondering what happened to the engine, here's the oil pan later when they took it off. Look at the sand and water!

Unidentified voices: Holy cow! Man! Whoa!

Announcer: Now watch this. They left it off, and with no oil pan, held the engine at 6,000 rpms! You can see the bare crankshaft at the bottom of the engine. If any of you are still wondering how well Prolong protects an engine, here is proof that you can see with your own eyes.

Eubanks: Remember I told you earlier in the show about the Prolong \$1 million challenge? Well, here it is! If any oil

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Complaint

## EXHIBIT A

company in the world accepts the Prolong challenge, and proves through identical tests that it makes a better engine treatment than Prolong, without infringing on the Prolong patents, then the Prolong Super Lubricant company will write a check for \$1 million to the charity of their choice! That's how confident we are in this marvelous product! It is our \$1 million challenge! We know that what we have is truly the best! It's Prolong! There's no equal in the world! {Super: Grand Finale With Al Unser} {Super: Paid Commercial Program For Prolong Super Lubricants}

Announcer: Coming up, the grand finale of the Prolong World challenge with Al Unser.

Whether your car is old or new, the sooner you add Prolong, the better! {Super: The Sooner; The Better} Because up to 70% of friction and wear occurs at startup, {Super: 70% Engine Damage on Start-Up} before your engine is coated with motor oil! Friction causes heat, which leads to engine wear, poor performance, lower gas mileage, and even engine breakdown. {Super: Friction Causes Engine Wear; Poor Performance; Lower Gas Mileage}

Complaint

128 F.T.C.

## EXHIBIT A

Snelling: Starting a car first thing in the morning, cause there's no oil protecting that motor. (Super: Jim Snelling, First Lane Racing School) None. There's no friction protection at all. Now what you get, and most people don't understand is, that's were you get the wear and tear on rings and pistons. And over a period of years, that's what wears on motors, and that's why you have to have it re-ringed and re-valved, and everything else!

Huffman: What about this? (Indicating a bottle of Prolong Engine Treatment Concentrate)

Snelling: I think you've got something that's going to protect that, I definitely think you do.

Announcer: Prolong Engine Treatment with its patented formula makes regular motor oil perform like a super lubricant. (Ad depicts add whatever } Today's motor oils are better than ever. But they do have their limitations. Prolong creates a low-friction surface by bonding to the metal, providing constant protection and instant lubrication on startup. This means you prolong engine life, improve performance, and increase gas

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Complaint

## EXHIBIT A

mileage. Which saves you money! {Super: Prolong Engine Life!; Improve Performance!; Increase Gas Mileage!} {Super: Saves You Money!}

Thorson: There are 29 buses that are in service right now for the city of Red Deer and savings of approximately \$16,000/year just with those 29 buses. {Super: Doug Thorson, Mechanical Superintendent, City of Red Deer}

Webster: Total savings per year of \$17,000. After that one year, we changed the whole fleet over to Prolong, and we haven't looked back since. {Super: Dave Webster, Manager, Firemaster Oilfield Services}

Hall: It's a wonderful transition, and the best way I can describe the transition {Super: Gary Hall, Pres. Hall Pantera, Paramount, CA}, it's like taking a cube of butter which is real frozen; sticking a knife in it, and trying to move it. And then you take the same cube of butter after it's been out in the air for a couple hours, and it's got soft and you put your knife in there and you move it real easy. Now that's the difference with

Complaint

128 F.T.C.

## EXHIBIT A

the way the car shifts without Prolong, or with Prolong. I mean it's a vast improvement.

Edgar: Even in the gearbox you can do your own test. Change the oil, put oil in, run the thing for awhile. Put your hand on it - - hot. Put some Prolong in. Run it for the same interval of time again; put your hand on it. Not as hot. There's an easy test for anybody to try! (Super: Robbin J. Edgar, Agricultural Equipment Contractor)

Announcer: Now, Prolong is available to the general public in a complete car care kit. Follow your manufacturer's service recommendations, but always insist on Prolong to give you car the extra protection it needs. Treating your car with Prolong is simple; just pour it in; and it starts working immediately. You get the engine, transmission, and fuel system treatments, as well as the Super Penetrating Spray Lubricant and the precision oiler, all containing the patented Prolong formula, for only \$39.95. But you have to order now. (Super: 1-800-533-5100) Operators are standing by; have your credit card ready, and call the number on your screen right now, or send \$39.95 plus shipping

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Complaint

## EXHIBIT A

and handling to: Prolong Super Lubricants, P.O. Box 6879,  
Burbank, California 91510. Prolong the life of your car with  
Prolong Super Lubricants! No equal in the world! (Ad depicts  
ordering information)

Alright, lets go back to Willows Springs International Raceway  
where they have the checkered flag; it should be coming in!

Huffman: Al Unser got the checkered flag; he was supposed to  
pull in, pulled into the pit, but suddenly floorboarded it, and  
took it out again; and he's on a very fast lap right now. I  
don't really know what Al's trying to do! Al Unser, you took  
another lap! You were supposed to pull in; what's the story!

Unser: I just didn't believe that it would make it, so I just  
had to try one more lap. I said, it can't make it, and the thing  
is still running good. The oil light never went off, or the  
gauge ever moved.

Huffman: How fast were you going the final lap?

Unser: Well back in the back, back there, I ran almost 90 mph!

Complaint

128 F.T.C.

## EXHIBIT A

Huffman: With no oil.

Unser: With no oil in it. I can't believe it!

Huffman: Unbelievable!

Unser: Yes it is; it really did it, too!

Bintz: We've run many tests on many products, in the hundreds, and none of them ever really worked. None of the oil additives we tested; this was the first one I've ever seen that really seems to be what it claims.

Spitz: I was saying, you know, I'm driving this car a lot harder than if I was just city driving, or freeway driving; I mean, I was up shifting, and down shifting with the automatic transmission; I was putting it through a lot of strain. I would have never dreamt of going in an automobile that long without any oil.

Nichols: Never ran better! Unbelievable! I finally got these guys out of my way! I was gonna run Unser down! But he told me

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Complaint

## EXHIBIT A

yesterday, if you fall down, don't let me run over you, and I wasn't worried about that. I was cooking it up pretty good, too, and if they would have turned me out of here this afternoon, I think I would have gone back to Texas.

Huffman: How fast were you going?

Nichols: I was running 85 and 90.

Huffman: With no oil?

Nichols: No oil! You just put the sticker -- or put a Prolong sticker over the oil light, and kept going! You know, so it won't bother you!

Huffman: With the conditions we ran today, would you try Prolong Super Lubricants in your own car?

Yeager: I need an oil change, it's right over there. So put it in there right now; let's go. If we drained these, we can drain that one! No big deal; it's high you don't even have to put a lift on it!

## EXHIBIT A

Unser: Want me to drain yours?

Yeager: Sure!

Unser: You got a wrench? .

Yeager: Yep!

Unser: Here, let's go do it.

Yeager: Alright!

Unser: That's a believer!

Unser: No problems! The thing still runs good right now! It's hard to believe; it's incredible!

Huffman: It is incredible; Prolong Super Lubricants; I guess it lives up to the name!

Unser: Yes, it does! I'm really surprised, now I mean that!

## EXHIBIT A

{Super: Lubricants on this program other than Prolong are shown for comparative purposes only and are not intended as an evaluation of their efficacy. None of the following companies are affiliated with nor do they sponsor this product. Pennzoil is a registered trademark of Pennzoil Products Co. STP is a registered trademark of First Brands Corp. Quaker State is a registered trademark of Quaker State Corp. Mobil is a registered trademark of Mobil Oil Corp. Slick 50 is a registered trademark of Petrolon Management, Inc. Dura-Lube is a registered trademark of Howe Laboratories, Inc. X-1R is a trademark of Sun Coast Chemicals of Daytona, Inc. Lubricator 2001 is a trademark of Turtle Wax, Inc. Tribotech is a registered trademark of Simon Petrochemicals, Inc. WD40 is a registered trademark of WD 40 Co. Liquid Wrench is a registered trademark of Radiator Specialty Co. CRC is a registered trademark of CRC Industries Inc. Telton is a registered trademark of E.I. Dupont Inc. Castrol Syntec is a registered trademark of Castrol North American Automotive Inc. Havoline is a registered trademark of Texaco Refining and Marketing, Inc. Valvoline is a registered trademark of Ashland Oil, Inc.)

## EXHIBIT A

Announcer: The preceding was a paid program for Prolong Super Lubricants.

{Super: Prolong Super Lubricants. The preceding was a paid commercial program for Prolong Super Lubricants. Prolong International Corp. A public company traded OTC - Symbol PROL. The preceding tests were for demonstration purposes only. Do not attempt any of these demonstrations.}.

549

Complaint

EXHIBIT B

EXHIBIT B



Complaint

128 F.T.C.

## EXHIBIT C

EXHIBIT C

## FACTS

### You Should Know About The Products In Your Prolong Deluxe Car Care Kit

You now own the most advanced lubricant in the world today... Prolong Super Lubricants have "No Equal in the World." That's why our Prolong television commercial offers a \$1,000,000 world challenge.

The Prolong Engine, Transmission, and Fuel System Treatments contained in your Prolong Car Care Kit are the three essential products to keep your car or truck engine, transmission, and fuel system in top shape. Whether you drive a new car or a car with many miles on it, you won't find a better lubricant than Prolong.

*"Prolong will protect your car or truck from extreme friction temperature, and wear"*

All Prolong products treat metal surfaces with a polarized layer of oil molecules that bond to the metal, assuring you "the Ultimate in Protection and Performance™."

Prolong Engine Treatment and Fuel System Treatment work well in both gas and diesel engines. Prolong Transmission Treatment provides another level of protection and performance you can count on in either manual or automatic transmissions.

*"Prolong products offer 'peace of mind' with performance quality"*

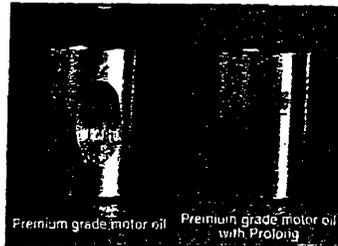
In older vehicles, you will notice the difference in performance almost immediately. In newer vehicles, you can count on continued quality performance. When you hear the quieter engine, and when you feel the new smoothness, there will come the peace of mind that your car or truck is performing at its best.

*"A lonely road can be even lonelier without Prolong protection."*

We hope that you will never have to drive your car for miles without oil in 150° desert road temperatures, but it's nice to know it's been done successfully using Prolong Engine Treatment. It's comforting to know you or your loved ones are starting out on a trip with an added level of protection.

*"...Prolong...compatible with all motor oil brands...additives"*

Prolong Engine Treatment delivers less friction and wear, and is compatible with all motor oil brands including synthetics. It is also compatible with other engine treatments and additives, and will automatically compensate for any previous engine treatment or oil additives that you've tried in your engine.



*Prolong's patented formula protects the internal metal surfaces of your engine with a super high strength film of oil that does not drain away with your engine oil when you stop your engine. Prolong Engine Treatment can reduce engine wear up to 80% by eliminating most of the initial wear that occurs at start-up.*

*"There is no need to remove any oil from your engine...when adding Prolong Engine Treatment."*

There is no need to remove any oil from your car's engine to prevent over-filling your crankcase when using Prolong Engine Treatment. Just pour it in and you are on your way to Prolong's performance.



NO EQUAL IN THE WORLD™

EXHIBIT C

TESTIMONIALS

"Prolong will undoubtedly revolutionize the lubrication industry."

Ken Maloney,  
Former Chief Energy Engineer  
Petrozil

"This report describes friction and wear testing of Prolong Engine Treatment ...110 tests performed. The product was found to have a significant wear reducing effect...friction was reduced up to 51.6%, temperature was reduced up to 38.7% and wear was reduced up to 78%."

Sinuf Laboratories,  
Report No. STF18 F87013

"I didn't think it would run this long (speaking of a V8 test engine that was still running normally after more than an hour with no oil or water, after being treated with Prolong Engine Treatment). I've never seen anything perform as well as this product.

I'm going to put some in my cars."

Louis J. Binz, PE  
Former Chief Engineer  
Automobile Club of Southern California

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Anahcim, CA 92806

prolong  
SUPER LUBRICANTS

DELUXE CAR  
CARE KIT

CONGRATULATIONS!



Al Unser Sr., 4 time Indy 500 Winner.

You have just purchased the finest lubricants in the world. You are about to find out, (as I did in the Prolong World Challenge), Prolong's patented Super Lubricants have "No Equal in the World."

You'll experience remarkable power and smoothness in your engine that will provide you with an extra edge of confidence and protection, whenever you are motoring.

So, congratulations again on a wise choice, and welcome to the Prolong Super Lubricants family.

Sincerely,  
*Al Unser Sr.*  
Al Unser Sr.

prolong  
SUPER LUBRICANTS

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 had reason to believe that the respondent has violated the said Act, 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 a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Prolong Super Lubricants, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 6 Thomas, Irvine, CA.

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

## ORDER

## DEFINITIONS

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

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondent*" shall mean Prolong Super Lubricants, Inc., a corporation, its successors and assigns and its officers and each of its agents, representatives and employees.

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

## I.

*It is ordered*, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Prolong Engine Treatment Concentrate or any other product for use in a motor vehicle, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

a. Compared to motor oil alone, use of such product:

- (1) Reduces engine wear at start-up; or
- (2) Extends the duration of engine life,

under any or all circumstances or conditions or by any quantitative figure, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

b. Use of such product:

- (1) Reduces corrosion in engines; or
- (2) Protects against engine breakdowns,

under any or all circumstances or conditions or by any quantitative figure, unless, at the time the representation is made, respondent

possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

c. Benefits that may be achieved through use of such product in race cars or under racing conditions will be achieved in ordinary automobiles in conventional use,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

## II.

*It is further ordered,* That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the performance, benefits, efficacy, attributes, or use of such product, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

## III.

*It is further ordered,* That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent in any material manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

## IV.

*It is further ordered,* That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time such representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product, or

2. The applicability of the endorser's experience to what consumers may generally expect to achieve, and if appropriate, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean such word as defined in 16 CFR 255.0(b).

V.

*It is further ordered*, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent in any material manner, expressly or by implication, that any demonstration, picture, experiment, or test proves, demonstrates, or confirms any material quality, feature, or merit of any such product, or the superiority or comparability of the product in a material respect relative to any other product.

VI.

*It is further ordered*, That respondent Prolong Super Lubricants, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All labeling, packaging, advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the

representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

#### VII.

*It is further ordered,* That respondent Prolong Super Lubricants, Inc., and its successors and assigns, 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 secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

#### VIII.

*It is further ordered,* That respondent Prolong Super Lubricants, Inc., and its successors and assigns, shall for five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying signed receipts received pursuant to Part VII of this order.

#### IX.

*It is further ordered* that respondent Prolong Super Lubricants, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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 respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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 respondent Prolong Super Lubricants, Inc., and its successors and assigns, 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 it has complied with this order.

## XI.

This order will terminate on November 22, 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.

Commissioner Leary not participating.

STATEMENT OF COMMISSIONER ORSON SWINDLE  
CONCURRING IN PART AND DISSENTING IN PART

The Commission has issued a consent order settling allegations that Prolong Super Lubricants, Inc., et al. ("Prolong"), made unsubstantiated claims about the attributes and benefits of Prolong's motor oil additive. I support the provisions in the order prohibiting Prolong from making such claims in the future without adequate substantiation.

The order, however, also contains provisions prohibiting Prolong, in connection with the sale of any product, from misrepresenting the existence or results of tests and from misrepresenting that a demonstration confirms the benefits of a product. While firms should not misrepresent the existence or results of tests or demonstrations, it is inappropriate to include specific establishment and demonstration requirements as remedies in an order without corresponding complaint allegations. In this case, and in others from the recent past, there is a troubling lack of symmetry between the complaint and the order.

Accordingly, I dissent as to paragraphs III and V of the order.