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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NU WEST, INC., a Washington corporation, and

GEORG FREY, individually and as sole officer
and shareholder of Nu West, Inc.,

Defendants.

Civil No. **00-1197**
**COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

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

Jurisdiction and Venue

1. This is an action under Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), and Section 108(c) of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1607(c), to obtain preliminary and permanent injunctive relief, rescission, restitution, reformation, disgorgement, and other equitable relief against defendants for engaging in acts or practices in violation of TILA, 15 U.S.C. §§ 1601-1666j, as amended, including, but not limited to, the Home Ownership and Equity Protection Act of 1994 ("HOEPA"), as amended,

1 and TILA's implementing Regulation Z, 12 C.F.R. 226, as amended, and for unfair or deceptive
2 acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as amended.

3 2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C.
4 §§ 45(a), 53(b), and 1607(c), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

5 3. Venue in the United States District Court for the Western District of Washington
6 is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

7 Definitions

8 As used in this Complaint:

9 4. The terms "annual percentage rate," "consumer," "consummation," "credit,"
10 "creditor," "dwelling," "finance charge," "mortgage," "points and fees," "residential mortgage
11 transaction," "reverse mortgage transaction," and "security interest" are defined as set forth in
12 Sections 103 and 128 of TILA, 15 U.S.C. §§ 1602 and 1638, and Sections 226.2, 226.4, 226.18,
13 226.22, 226.32, and 226.33 of Regulation Z, 12 C.F.R. §§ 226.2, 226.4, 226.18, 226.22, 226.32,
14 and 226.33.

15 5. The term "HOEPA" means the Home Ownership and Equity Protection Act of
16 1994 which, inter alia, amended TILA by adding Section 129 of TILA, 15 U.S.C. § 1639, and is
17 implemented by, inter alia, Sections 226.31 and 226.32 of Regulation Z, 12 C.F.R. §§ 226.31 and
18 226.32. HOEPA, which took effect on October 1, 1995, provides special protections for
19 consumers who obtain high-rate or high-fee loans secured by their principal dwellings by
20 requiring creditors to provide certain material information at least three days before the loan is
21 consummated, prohibiting the use of certain loan terms, and barring specified practices.

22 6. The term "HOEPA mortgage loan" means a consumer credit transaction
23 consummated on or after October 1, 1995, that is secured by the consumer's principal dwelling,
24 other than a residential mortgage transaction, a reverse mortgage transaction or an open-end
25 credit plan, in which: (1) the annual percentage rate at consummation of the transaction will
26 exceed by more than 10 percentage points the yield on Treasury securities having comparable
27 periods of maturity to the loan maturity as of the 15th day of the month immediately preceding
28 the month in which the application for the extension of credit is received by the creditor; or (2)

1 the total points and fees payable by the consumer at or before loan closing will exceed the greater
2 of 8% of the total loan amount or \$400 (adjusted annually by the Board of Governors of the
3 Federal Reserve System ("FRB") on January 1 by the annual percentage change in the Consumer
4 Price Index that was reported on June 1 of the preceding year), which is covered by HOEPA,
5 pursuant to Section 129 of TILA, 15 U.S.C. § 1639, and Section 226.32 of Regulation Z, 12
6 C.F.R. § 226.32. As used herein, the "total loan amount" is calculated as described in Section
7 226.32(a)(1)(ii)-1 of the FRB Official Staff Commentary on Regulation Z, 12 C.F.R.
8 § 226.32(a)(1)(ii)-1, Supp. 1.

9 7. The term "Regulation Z" means the regulation the FRB promulgated to implement
10 TILA and HOEPA, 12 C.F.R. 226, as amended. The term also includes the FRB Official Staff
11 Commentary on Regulation Z, 12 C.F.R. 226, Supp.1, as amended.

12 8. The term "TILA" means the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as
13 amended. TILA, which took effect on July 1, 1969, is intended to promote the informed use of
14 consumer credit by requiring creditors to disclose credit terms and costs, requiring additional
15 disclosures for loans secured by consumers' homes, and permitting consumers to rescind certain
16 transactions that involve their principal dwellings.

17 Parties

18 9. Plaintiff, the Commission, is an independent agency of the United States
19 Government created and given statutory authority and responsibility by the FTC Act, as
20 amended, 15 U.S.C. §§ 41-58. The Commission is charged, inter alia, with enforcing Section
21 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
22 affecting commerce, and TILA. The Commission is authorized by Section 13(b) of the FTC Act,
23 15 U.S.C. § 53(b), and Section 108(c) of TILA, 15 U.S.C. § 1607(c), to initiate federal district
24 court proceedings to enjoin violations of the FTC Act, TILA, HOEPA, and Regulation Z and to
25 secure such equitable relief as may be appropriate in each case including, but not limited to,
26 redress and disgorgement.

27 10. Defendant Nu West, Inc., is a for-profit corporation organized, existing, and doing
28 business under the laws of the State of Washington. Its principal place of business is at 2125

1 112th Avenue, NE, Building Six, Suite 100, Bellevue, Washington 98004. Nu West, Inc.,
2 transacts business in this district.

3 11. Defendant Georg Frey is the sole officer and shareholder of Nu West, Inc.
4 Individually or in concert with others, at certain times material to this action, he has formulated,
5 directed, controlled, supervised, and/or participated in the acts and practices of defendant Nu
6 West, Inc., including the acts or practices set forth in this Complaint. He resides and transacts
7 business in this district.

8 12. Defendant Nu West, Inc., is a "creditor," as that term is defined in Section 103(f)
9 of TILA, 15 U.S.C. § 1602(f), and Section 226.2(a)(17) of Regulation Z, 12 C.F.R.
10 § 226.2(a)(17), and therefore is required to comply with applicable provisions of TILA, HOEPA,
11 and Regulation Z.

12 Defendants' Business

13 13. Since at least October 1, 1995, defendants have maintained a substantial course of
14 trade in offering and/or extending credit to consumers and others including, but not limited to,
15 HOEPA mortgage loans.

16 14. Defendant Nu West, Inc., is a corporation engaged in business as a subprime
17 lender. Subprime lending refers to the extension of credit to higher risk borrowers. This practice
18 is commonly referred to as "B/C" or "nonconforming" credit.

19 15. Defendant Nu West, Inc.'s, HOEPA mortgage loans typically include, inter alia,
20 interest rates of 12% and up-front fees that include origination fees of 4% and mortgage broker
21 fees of 4% of the loan amount.

22 16. In the course of offering and extending credit to consumers, defendants have
23 failed to provide material information required to be disclosed by HOEPA and TILA, included
24 loan terms prohibited by HOEPA, and/or engaged in unfair or deceptive acts or practices.

25 17. At all times relevant to this Complaint, defendants have maintained a substantial
26 course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act,
27 15 U.S.C. § 44.

28

1
2 Violations of HOEPA and FTC Act

3 **COUNT ONE**

4 **(HOEPA Disclosure Violations)**

5 18. In the course and conduct of offering and making HOEPA mortgage loans,
6 defendant Nu West, Inc., in numerous instances has violated, and continues to violate, the
7 requirements of HOEPA and Regulation Z in the following and other respects by:

8 (a) failing to disclose in writing the following notice:

9 You are not required to complete this agreement merely because you have
10 received these disclosures or have signed a loan application. If you obtain this
11 loan, the lender will have a mortgage on your home. You could lose your home,
and any money you have put into it, if you do not meet your obligations under
the loan,

12 in violation of Section 129(a)(1) of TILA, 15 U.S.C. § 1639(a)(1), and Section
13 226.32(c)(1) of Regulation Z, 12 C.F.R. § 226.32(c)(1);

14 (b) failing to disclose, or accurately disclose:

15 (i) the annual percentage rate, in violation of Section 129(a)(2) of TILA, 15
16 U.S.C. § 1639(a)(2), and Section 226.32(c)(2) of Regulation Z, 12 C.F.R.
17 § 226.32(c)(2); and

18 (ii) the regular payment amount, in violation of Section 129(a)(2) of TILA, 15
19 U.S.C. § 1639(a)(2), and Section 226.32(c)(3) of Regulation Z, 12 C.F.R.
20 § 226.32(c)(3); and

21 (c) failing to make the disclosures described in Paragraph 18(a) and (b) above clearly
22 and conspicuously in writing at least three business days prior to consummation of a
23 HOEPA mortgage loan transaction, in violation of Section 129(b)(1) of TILA, 15 U.S.C.
24 § 1639(b)(1), and Section 226.31(b) and (c)(1) of Regulation Z, 12 C.F.R. § 226.31(b)
25 and (c)(1).

26 19. By failing to disclose, or accurately disclose, material credit information, as
27 described in Paragraph 18 above, defendants Nu West, Inc., and Georg Frey have engaged, and
28

1 continue to engage, in deceptive acts or practices in violation of Section 5(a) of the FTC Act,
2 15 U.S.C. § 45(a).

3 **Violations of HOEPA**

4 **COUNT TWO**

5 **(Prohibited Loan Terms)**

6 20. In the course and conduct of offering and making HOEPA mortgage loans,
7 defendant Nu West, Inc., in numerous instances has violated, and continues to violate, the
8 requirements of HOEPA and Regulation Z in the following and other respects by:

9 (a) including a prohibited "balloon payment" provision, in violation of Section 129(e)
10 of TILA, 15 U.S.C. § 1639(e), and Section 226.32(d)(1) of Regulation Z,
11 12 C.F.R. § 226.32(d)(1); and

12 (b) including a prohibited "increased interest rate" provision, in violation of Section
13 129(d) of TILA, 15 U.S.C. § 1639(d), and Section 226.32(d)(4) of Regulation Z, 12
14 C.F.R. § 226.32(d)(4).

15 **COUNT THREE**

16 **(Direct Payments to Home Improvement Contractors)**

17 21. In the course and conduct of offering and making HOEPA mortgage loans,
18 defendant Nu West, Inc., in numerous instances has violated, and continues to violate, the
19 requirements of HOEPA and Regulation Z by making direct payments to home improvement
20 contractors, in violation of Section 129(i) of TILA, 15 U.S.C. § 1639(i), and Section 226.32(e)(2)
21 of Regulation Z, 12 C.F.R. § 226.32(e)(2).

22 **Violations of TILA and FTC Act**

23 **COUNT FOUR**

24 **(TILA Disclosure Violations)**

25 22. In the course and conduct of offering and making HOEPA mortgage loans and/or
26 extending other consumer credit, defendant Nu West, Inc., in numerous instances has violated,
27 and continues to violate, the requirements of TILA and Regulation Z in the following and other
28 respects by:

1 (a) failing to disclose, or accurately disclose, the following information:

2 (i) the finance charge, in violation of Sections 106 and
3 128(a)(3) of TILA, 15 U.S.C. §§ 1605 and
4 1638(a)(3), and Sections 226.4 and 226.18(d) of
5 Regulation Z, 12 C.F.R. §§ 226.4 and 226.18(d);
6 and

7 (ii) the annual percentage rate, in violation of Sections
8 107 and 128(a)(4) of TILA, 15 U.S.C. §§ 1606 and
9 1638(a)(4), and Sections 226.18(e) and 226.22 of
10 Regulation Z, 12 C.F.R. §§ 226.18(e) and 226.22.

11 23. By failing to disclose, or accurately disclose, material credit information, as
12 described in Paragraph 22 above, defendants Nu West, Inc., and Georg Frey have engaged, and
13 continue to engage, in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15
14 U.S.C. § 45(a).

15 COUNT FIVE

16 (Rescission-Related Violations)

17 24. In the course and conduct of offering and making HOEPA mortgage loans and/or
18 extending other consumer credit, defendant Nu West, Inc., in numerous instances has violated,
19 and continues to violate, the requirements of TILA and Regulation Z in the following and other
20 respects by:

21 (a) failing to deliver the required notice of the right to rescind consumer credit
22 transactions in which security interests are or will be retained or acquired in consumers'
23 principal dwellings, in violation of Section 125(a) of TILA, 15 U.S.C. § 1635(a), and
24 Section 226.23(b) of Regulation Z, 12 C.F.R. § 226.23(b);

25 (b) failing to deliver two copies of the required notice of the right to rescind to each
26 consumer entitled to rescind, in violation of Section 125(a) of TILA, 15 U.S.C. § 1635(a),
27 and Sections 226.17(d) and 226.23(b) of Regulation Z, 12 C.F.R. §§ 226.17(d) and
28 226.23(b);

1 (c) disbursing money before the TILA rescission period has expired, in violation of
2 Section 125 of TILA, 15 U.S.C. § 1635, and Section 226.23(c) of Regulation Z, 12 C.F.R.
3 § 226.23(c); and

4 (d) engaging in any of the practices described in Paragraph 24(a) through (c) above,
5 thereby depriving consumers of the right to rescind, in violation of Section 125(a) of
6 TILA, 15 U.S.C. §1635(a) and Section 226.23(a) of Regulation Z, 12 C.F.R. §226.23(a).

7 25. By failing to disclose, or accurately disclose, material information relating to, or
8 making misrepresentations regarding, the TILA right of rescission, as described in Paragraph 24
9 above, defendants Nu West, Inc., and Georg Frey have engaged, and continue to engage, in
10 deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 **Violation of FTC Act**

12 **COUNT SIX**

13 **(Sham Business Loans)**

14 26. Pursuant to Section 102(a) of TILA, 15 U.S.C. § 1601(a), and Section 226.1(c) of
15 Regulation Z, 12 C.F.R. § 226.1(c), TILA and HOEPA apply to credit, inter alia, offered or
16 extended to a consumer primarily for personal, family or household purposes. Pursuant to
17 Section 104(1) of TILA, 15 U.S.C. § 1603(1), and Section 226.3(a)(1) of Regulation Z, 12 C.F.R.
18 § 226.3(a)(1), TILA and HOEPA do not apply to credit transactions involving extensions of
19 credit primarily for business, commercial or agricultural purposes.

20 27. In the course and conduct of offering and making HOEPA mortgage loans,
21 defendants in numerous instances have directed, and continue to direct, consumers to falsely state
22 in loan applications, as well as business purpose “affidavits,” that loans are for business
23 purposes. To induce consumers to make such false statements, defendants have represented,
24 directly or by implication, that doing so will expedite the processing of loans, that they are
25 merely a formality, and/or that completing business purpose documents is required for loan
26 approval.

27 28. By making the representations set forth in Paragraph 27 above, defendants have
28 failed, and continue to fail, to disclose to consumers that, by falsely stating that loans are for

1 business purposes, consumers may lose important rights and protections to which they are
2 entitled under federal and state consumer protection laws, including HOEPA and TILA. This
3 information is material to consumers' decisions to obtain loans from defendants.

4 29. By directing or requiring consumers to falsely state that loans are for business
5 purposes and failing to disclose the effect of making such false statements, as set forth in
6 Paragraphs 27 through 28 above, defendants have engaged, and continue to engage, in deceptive
7 acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8 Injury

9 30. Consumers have suffered, and will continue to suffer, substantial injury as a result
10 of defendants' violations of HOEPA, TILA, and Section 5(a) of the FTC Act, as set forth above.

11 This Court's Power to Grant Relief

12 31. This Court has authority pursuant to Section 13(b) of the FTC Act, 15 U.S.C.
13 § 53(b), Section 108(c) of TILA, 15 U.S.C. § 1607(c), and its own inherent equitable powers, to
14 grant injunctive relief to prevent and remedy violations of any provision of law enforced by the
15 Commission. Defendants' violations of HOEPA, TILA, and/or Section 5(a) of the FTC Act have
16 injured consumers and, absent injunctive and other relief by this Court, are likely to continue to
17 injure consumers and harm the public interest.

18 Request for Relief

19 WHEREFORE, plaintiff respectfully requests that this Court, as authorized by Sections
20 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), Section 108(c) of TILA, 15 U.S.C.
21 § 1607(c), and pursuant to its own inherent equitable powers:

- 22 (1) Enter judgment against defendants and in favor of plaintiff for each violation
23 charged in the Complaint;
- 24 (2) Permanently enjoin and restrain defendant Nu West, Inc., from violating any
25 provision of HOEPA, TILA, and Regulation Z, and, in connection with offering or
26 extending credit, permanently enjoin and restrain defendants from violating
27 Section 5(a) of the FTC Act;
- 28


- 1 (3) Find the defendants jointly and severally liable for redress to all consumers who
2 were injured as a result of defendants' violations of HOEPA, TILA, Regulation Z,
3 and/or Section 5(a) of the FTC Act;
- 4 (4) Award such relief as the Court deems necessary to prevent unjust enrichment and
5 to redress consumer injury resulting from defendants' violations of HOEPA,
6 TILA, Regulation Z, and/or Section 5(a) of the FTC Act including, but not limited
7 to, rescission or reformation of contracts, refund of monies paid, and/or
8 disgorgement of ill-gotten gains; and
- 9 (5) Award plaintiff its costs of bringing this action, as well as such other additional
10 equitable relief as the Court may determine to be just and proper.

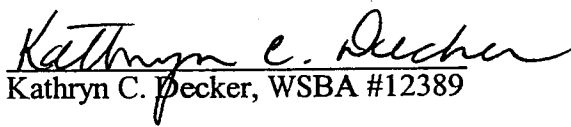
11
12 DATED: July 17, 2000.

13
14 Respectfully submitted,

15 DEBRA A. VALENTINE
16 General Counsel

17 CHARLES A. HARWOOD
18 Regional Director

19 
20 Madine S. Samter, WSBA # 23881

21 
22 Kathryn C. Pecker, WSBA #12389

23 ATTORNEYS FOR PLAINTIFF
24 FEDERAL TRADE COMMISSION

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NU WEST, INC., a Washington corporation, and

GEORG FREY, individually and as sole officer
and shareholder of Nu West, Inc.,

Defendants.

Civil No.

C00-1197
STIPULATED FINAL
JUDGMENT AND ORDER

Plaintiff, Federal Trade Commission ("Commission"), has filed a Complaint for a permanent injunction and other equitable relief pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), and Section 108(c) of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1607(c), alleging that defendants have violated TILA, 15 U.S.C. §§ 1601-1666j, as amended, including, but not limited to, the Home Ownership and Equity Protection Act of 1994 ("HOEPA"), as amended, TILA's implementing Regulation Z, 12 C.F.R. 226, as amended, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as amended.

Plaintiff and defendants Nu West, Inc., and Georg Frey, by and through their respective counsel, have agreed to entry of this Stipulated Final Judgment and Order ("Order") by this Court, without trial or adjudication of any issue of fact or law. The said parties having requested the Court to

1
2 enter this Order, it is therefore ORDERED, ADJUDGED, AND DECREED as follows:

3 **FINDINGS**

4 1. This Court has jurisdiction over defendants and the subject matter of this action. Venue
5 in the Western District of Washington is proper.

6 2. The Complaint states a claim upon which relief may be granted under Sections 101 to
7 171 of TILA, 15 U.S.C. §§ 1601-1666j, and Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C.
8 §§ 45(a) and 53(b).

9 3. The Commission has the authority under Sections 5(a) and 13(b) of the FTC Act, 15
10 U.S.C. §§ 45(a) and 53(b), and Section 108(c) of TILA, 15 U.S.C. § 1607(c), to seek the relief it has
11 requested.

12 4. The activities of defendants are in or affecting commerce, as "commerce" is defined in
13 Section 4 of the FTC Act, 15 U.S.C. § 44.

14 5. Defendants, while neither admitting nor denying any of the allegations of wrongdoing set
15 forth in the Complaint, stipulate and agree to entry of this Order.

16 6. Plaintiff and defendants waive all rights to seek judicial review or otherwise challenge or
17 contest the validity of this Order, and defendants waive any right that may arise under the Equal Access
18 to Justice Act, 28 U.S.C. § 2412.

19 7. Entry of this Order is in the public interest.

20 **DEFINITIONS**

21 As used in this Order:

22 A. The terms "annual percentage rate," "consumer," "consumer credit," "consummation,"
23 "credit," "creditor," "dwelling," "finance charge," "mortgage," "open-end credit," "person," "points and
24 fees," "residential mortgage transaction," "reverse mortgage transaction," and "security interest," are
25 defined as set forth in Sections 103 and 128 of TILA, 15 U.S.C. §§ 1602 and 1638, and Sections
26 226.2, 226.4, 226.18, 226.22, 226.32, and 226.33 of Regulation Z, 12 C.F.R. §§ 226.2, 226.4,
27 226.18, 226.22, 226.32, and 226.33.

28 B. The term "HOEPA" means the Home Ownership and Equity Protection Act of 1994

1
2 which, inter alia, amended TILA by adding Section 129 of TILA, 15 U.S.C. § 1639, and is
3 implemented by, inter alia, Sections 226.31 and 226.32 of Regulation Z, 12 C.F.R. §§ 226.31 and
4 226.32.

5 C. The term "HOEPA mortgage loan" means a consumer credit transaction consummated
6 on or after October 1, 1995, that is secured by the consumer's principal dwelling, other than a
7 residential mortgage transaction, a reverse mortgage transaction or an open-end credit plan, in which:
8 (1) the annual percentage rate at consummation of the transaction will exceed by more than 10
9 percentage points the yield on Treasury securities having comparable periods of maturity to the loan
10 maturity as of the 15th day of the month immediately preceding the month in which the application for
11 the extension of credit is received by the creditor; or (2) the total points and fees payable by the
12 consumer at or before loan closing will exceed the greater of 8% of the total loan amount or \$400
13 (adjusted annually by the Board of Governors of the Federal Reserve System ("FRB") on January 1 by
14 the annual percentage change in the Consumer Price Index that was reported on June 1 of the
15 preceding year), which is covered by HOEPA, pursuant to Section 129 of TILA, 15 U.S.C. § 1639,
16 and Section 226.32 of Regulation Z, 12 C.F.R. § 226.32. As used herein, the "total loan amount" is
17 calculated as described in Section 226.32(a)(1)(ii)-1 of the FRB Official Staff Commentary on
18 Regulation Z, 12 C.F.R.
19 § 226.32(a)(1)(ii)-1, Supp. 1.

20 D. The term "open HOEPA mortgage loan" means a HOEPA mortgage loan that, on the
21 date of entry of this Order, has not been paid off in full or foreclosed upon.

22 E. The term "Regulation Z" means the regulation the FRB promulgated to implement TILA
23 and HOEPA, 12 C.F.R. 226, as amended. The term also includes the FRB Official Staff Commentary
24 on Regulation Z, 12 C.F.R. 226, Supp. 1, as amended.

25 F. The term "TILA" means the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as
26 amended.
27
28

1
2 **ORDER**

3 **I.**

4 **Injunction Against HOEPA and Related FTC Act Violations**

5 IT IS THEREFORE ORDERED that defendants, and each of them, their successors, assigns,
6 officers, agents, servants, employees, and all other persons or entities in active concert or participation
7 with them who receive actual notice of this Order by personal service or otherwise, whether acting
8 directly or through any business, entity, corporation, subsidiary, division or other device, in connection
9 with offering or making any HOEPA mortgage loan, are permanently restrained and enjoined from:

10 A. Failing to provide the notice required by Section 129(a)(1) of TILA, 15 U.S.C.
11 § 1639(a)(1), and Section 226.32(c)(1) of Regulation Z, 12 C.F.R. § 226.32(c)(1), and Section 5(a)
12 of the FTC Act, 15 U.S.C. § 45(a);

13 B. Failing to disclose, or accurately disclose, the annual percentage rate, as required by
14 Section 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(2) of Regulation Z, 12
15 C.F.R. § 226.32(c)(2), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

16 C. Failing to disclose, or accurately disclose, the regular payment amount, as required by
17 Section 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(3) of Regulation Z, 12
18 C.F.R. § 226.32(c)(3), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

19 D. Failing to make any disclosure described in Section I.A through I.C of this Order
20 clearly and conspicuously in writing at least three days prior to consummation of a HOEPA mortgage
21 loan transaction, as required by Section 129(b)(1) of TILA, 15 U.S.C. § 1639(b)(1), and Section
22 226.31(b) and (c)(1) of Regulation Z, 12 C.F.R. § 226.31(b) and (c)(1), and Section 5(a) of the FTC
23 Act, 15 U.S.C. § 45(a);

24 E. Including a prohibited "balloon payment" provision, in violation of Section 129(e) of
25 TILA, 15 U.S.C. § 1639(e), and Section 226.32(d)(1) of Regulation Z, 12 C.F.R. § 226.32(d)(1),
26 and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

27 F. Including a prohibited "increased interest rate" provision, in violation of Section 129(d)
28 of TILA, 15 U.S.C. § 1639(d), and Section 226.32(d)(4) of Regulation Z, 12 C.F.R. § 226.32(d)(4),

1
2 and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

3 G. Making a direct payment to a home improvement contractor, in violation of Section
4 129(I) of TILA, 15 U.S.C. § 1639(I), and Section 226.32(e)(2) of Regulation Z, 12 C.F.R.
5 § 226.32(e)(2); and

6 H. Failing to comply with any other provision of HOEPA.

7 **II.**

8 **Injunction Against TILA and Related FTC Act Violations**

9 IT IS FURTHER ORDERED that defendants, and each of them, their successors, assigns,
10 officers, agents, servants, employees, and all other persons or entities in active concert or participation
11 with them who receive actual notice of this Order by personal service or otherwise, whether acting
12 directly or through any business, entity, corporation, subsidiary, division or other device, in connection
13 with offering or extending consumer credit, are permanently restrained and enjoined from:

14 A. Failing to deliver the required notice of the right to rescind a consumer credit
15 transaction in which a security interest is or will be retained or acquired in the consumer's principal
16 dwelling, as required by Section 125(a) of TILA, 15 U.S.C. § 1635(a), and Section 226.23(b) of
17 Regulation Z, 12 C.F.R. § 226.23(b), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

18 B. Failing to deliver two copies of the required notice of the right to rescind to each
19 consumer entitled to rescind, as required by Section 125(a) of TILA, 15 U.S.C. § 1635(a), and
20 Sections 226.17(d) and 226.23(b) of Regulation Z, 12 C.F.R. §§ 226.17(d) and 226.23(b), and
21 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

22 C. Disbursing money before the TILA rescission period has expired, in violation of Section
23 125 of TILA, 15 U.S.C. § 1635, and Section 226.23(c) of Regulation Z, 12 C.F.R. § 226.23(c), and
24 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

25 D. Engaging in any practice that deprives a consumer of the right to rescind, in violation of
26 Section 125(a) of TILA, 15 U.S.C. § 1635(a), and Section 226.23(a) of Regulation Z, 12 C.F.R.
27 § 226.23(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); and

28 E. Failing to comply with any other provision of TILA or Regulation Z.

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III.

Injunction Against FTC Act Violations

IT IS FURTHER ORDERED that defendants, and each of them, their successors, assigns, officers, agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any business, entity, corporation, subsidiary, division or other device, in connection with advertising, offering, brokering or extending credit, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, are permanently restrained and enjoined from:

A. Misrepresenting in any manner, directly or by implication, any material fact, including but not limited to:

1. Any credit cost or term, including but not limited to the annual percentage rate or finance charge;
2. The effects of entering into a business or commercial credit transaction; and
3. The effects of entering into a consumer credit transaction; and

B. Directing a consumer to falsely state the purpose of an extension of credit, including but not limited to stating that the extension of credit is primarily for a business or commercial purpose when, in fact, it is primarily for a personal, family or household purpose.

IV.

Payment of Consumer Redress

IT IS FURTHER ORDERED that defendants, their successors and assigns, jointly and severally, shall pay redress to consumers in the amount of \$160,182.16. Defendants shall transfer the sum of \$160,182.16 into an escrow account designated by plaintiff, on or before five (5) days after the date of entry of this Order. This sum shall be used to provide redress to consumers who obtained HOEPA mortgage loans between October 1, 1995, and the date of entry of this Order, and to pay any attendant expenses of administration. The FTC shall determine, in its sole discretion, which consumers are eligible for redress as well as the amounts to be paid.

A. If the Commission determines, in its sole discretion, that redress to consumers is wholly

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2 or partially impracticable, any funds not so used shall be deposited into the United States Treasury.
3 Defendants shall be notified as to how funds are disbursed, but shall have no right to contest the manner
4 of distribution chosen by the Commission.

5 B. Notwithstanding any other provision of this Order, defendants agree that if they fail to
6 meet the payment obligations set forth in Section IV of this Order, they shall pay the costs and
7 attorneys fees incurred by the Commission and its agents in any attempts to collect amounts due
8 pursuant to this Order. Defendants further agree that the facts as alleged in the Complaint filed in this
9 action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights
10 pursuant to this Order, including but not limited to, a nondischargeability complaint in any subsequent
11 bankruptcy proceeding.

12 V.

13 **Reformation of Contracts**

14 IT IS FURTHER ORDERED that, on or before fourteen (14) days after the date of entry of
15 this Order, for each open HOEPA mortgage loan that is wholly or partially owned by defendants on the
16 date of entry of this Order, defendants, their successors and assigns, shall:

17 A. If the note or contract contains a "balloon payment" provision in violation of Section
18 129(e) of TILA, 15 U.S.C. § 1639(e), and Section 226.32(d)(1) of Regulation Z, 12 C.F.R.
19 § 226.32(d)(1), reform the note or contract by nullifying that provision and, without altering any other
20 provision, extending the term of the loan such that the outstanding principal balance will be due not
21 sooner than five years after the date of entry of this Order; and

22 B. If the note or contract provides for an increase in the interest rate in the event of default
23 in violation of Section 129(d) of TILA, 15 U.S.C. § 1639(d), and Section 226.32(d)(4) of Regulation
24 Z, 12 C.F.R. § 226.32(d)(4), reform the note or contract by nullifying that provision; and

25 C. Mail or deliver to each consumer obligated in a note or contract reformed pursuant to
26 Section V of this Order a clear and conspicuous written notice describing each change made in the note
27 or contract and stating that each nullified provision will not be enforced by any party, and that does not
28 contain any other information.

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VI.

Commission's Authority to Monitor Compliance

IT IS FURTHER ORDERED that the Commission is authorized to monitor defendants' compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to any defendant, defendants' employees, or any other entity managed or controlled in whole or in part by any defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether any defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

VII.

Record Keeping Requirements

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendants, their successors and assigns, in connection with any business where:

(1) any individual defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where

(2) the business is engaged in offering or extending consumer credit,

are hereby permanently restrained and enjoined from failing to retain for a period of five (5) years following the date of their creation, unless otherwise specified:

A. Each disclosure statement, notice or other document provided by or on behalf of a defendant to any consumer pursuant to any provision of TILA, HOEPA or Regulation Z, including but not limited to Sections 226.18, 226.23, and 226.32 of Regulation Z, 12 C.F.R. §§ 226.18, 226.23,

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2 and 226.32; each waiver received pursuant to Sections 226.23(e) or 226.31(c)(1)(iii) of Regulation Z,
3 12 C.F.R. §§ 226.23(e) or 226.31(c)(1)(iii); each worksheet or other calculation tool used to produce
4 TILA or HOEPA disclosures, including but not limited to computer programs and software; and all
5 other records necessary to demonstrate defendants' compliance with TILA, HOEPA, and Regulation
6 Z; *provided, however*, that nothing in Section VIII.A of this Order shall be construed to supersede or
7 limit defendants' ongoing obligation to retain evidence of compliance with Regulation Z pursuant to
8 Section 226.25(a) of Regulation Z, 12 C.F.R. § 226.25(a), and Section II.E of this Order;

9 B. Each disclosure statement, notice or other document provided by or on behalf of a
10 defendant to any person pursuant to any provision of the Real Estate Settlement Procedures Act, 12
11 U.S.C. §§ 2601-2617, as amended, or its implementing Regulation X, 24 C.F.R. 3500, as amended,
12 including but not limited to all good faith estimates and settlement statements, regardless of whether they
13 are the final versions thereof;

14 C. Each credit application, report from a consumer reporting agency, property appraisal,
15 and other document obtained concerning any applicant or application;

16 D. Each note, contract, security agreement, mortgage, deed of trust, other document
17 signed by the borrower or prepared in connection with the transaction (whether signed or not), and
18 other document relating to the servicing of an account, the collection of a delinquent or slow account or
19 foreclosure, as well as each rider, amendment or other document that modifies any of the foregoing;

20 E. Each loan register, ledger or other document that lists (chronologically, alphabetically or
21 otherwise) loans made by any defendant, including such information as borrowers' names, loan
22 numbers, loan types, dates of consummation, and/or loan amounts;

23 F. Each written statement concerning a defendant's policies, procedures or practices in
24 connection with extending credit, including but not limited to compliance with TILA, HOEPA or
25 Regulation Z;

26 G. Each printed advertisement and promotional item relating to credit, including but not
27 limited to newspaper and magazine advertisements, pamphlets, brochures, flyers, mailers, and signs;

28 H. Each audio and video tape used to advertise or promote credit, and a printed transcript

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2 for each such audio and video tape;

3 I. In printed form, each advertisement and promotional item relating to credit posted in
4 any Internet news group, on the World Wide Web, on any electronic bulletin board system, in any
5 online interactive conversational space or chat room, in the classified advertising section of any online
6 service, or in any other location accessible by modem communications, including an indication of the
7 online location where the material was posted;

8 J. Each complaint or refund request received in connection with an extension of credit and
9 the response thereto; and

10 K. Each signed statement secured by any defendant pursuant to Section VIII of this Order.

11 **VIII.**

12 **Distribution of Order**

13 IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this
14 Order, defendants, their successors and assigns, shall:

15 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
16 receipt of same from, each officer or director, each individual serving in a management capacity, all
17 personnel involved in responding to consumer complaints or inquiries, all sales personnel, whether
18 designated as employees, consultants, independent contractors or otherwise, immediately upon
19 employing or retaining any such persons, for any business where:

20 (1) any individual defendant is the majority owner of the business or directly or
21 indirectly manages or controls the business, and where

22 (2) the business is engaged in offering or extending consumer credit; and

23 B. Maintain for a period of five (5) years after creation, and upon reasonable notice, make
24 available to representatives of the Commission, the original signed and dated acknowledgments of the
25 receipt of copies of this Order, as required in Section VIII.A of this Order.

26 **IX.**

27 **Compliance Reporting by Defendants**

28 IT IS FURTHER ORDERED that, to assist the Commission in monitoring defendants'

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2 compliance with this Order, defendants, their successors and assigns:

3 A. For a period of five (5) years from the date of entry of this Order, shall notify the
4 Commission of the following:

5 1. Any changes in defendant's residence, mailing addresses, or telephone
6 numbers, within ten (10) days of the date of such change;

7 2. Any changes in defendant's employment status (including self-
8 employment) within ten (10) days of the date of such change. Such notice shall include
9 the name and address of each business that defendant is affiliated with or employed by,
10 a statement of the nature of the business, and a statement of defendant's duties and
11 responsibilities in connection with the business or employment; and

12 3. Any proposed change in the structure of any business entity owned or
13 controlled by any individual defendant, such as creation, incorporation, dissolution,
14 assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a
15 bankruptcy petition, or change in the corporate name or address, or any other change
16 that may affect compliance obligations arising out of this Order, thirty (30) days prior to
17 the effective date of any proposed change; *provided, however*, that, with respect to
18 any such proposed change about which such defendant learns less than thirty (30) days
19 prior to the date such action is to take place, defendant shall notify the Commission as
20 soon as is practicable after learning of such proposed change;

21 B. One hundred eighty (180) days after the date of entry of this Order, shall provide a
22 written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner
23 and form in which such defendant has complied and is complying with this Order. This report shall
24 include but not be limited to:

25 1. Defendant's then-current residence address, mailing addresses, and telephone
26 numbers;

27 2. Defendant's then-current employment, business addresses and
28 telephone numbers, a description of the business activities of each employer, and

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2 defendant's title and responsibilities for each employer;

3 3. A copy of each acknowledgment of receipt of this Order obtained by
4 defendant pursuant to Section VIII of this Order; and

5 4. A statement describing the manner in which defendant has complied
6 and is complying with the provisions of Sections I through IX of this Order;

7 C. Upon written request by a representative of the Commission, shall submit additional
8 written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with
9 respect to any conduct subject to this Order;

10 D. For the purposes of Section IX of this Order, "employment" includes the performance
11 of services as an employee, consultant, or independent contractor; and "employer" includes any
12 individual or entity for whom any defendant performs services as an employee, consultant, broker, or
13 independent contractor; and

14 E. For purposes of the compliance reporting required by Section IX of this Order, the
15 Commission is authorized to communicate directly with any defendant.

16 X.

17 **Access to Business Premises**

18 IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this
19 Order, for the purpose of further determining compliance with this Order, defendants, their successors
20 and assigns shall permit representatives of the Commission, within three (3) business days of receipt of
21 written notice from the Commission:

22 A. Access during normal business hours to any office or facility storing documents of any
23 corporate defendant or any business where:

24 (1) any individual defendant is the majority owner of the business or directly or
25 indirectly manages or controls the business, and where

26 (2) the business is engaged in offering or extending consumer credit.

27 In providing such access, defendants shall permit representatives of the Commission to inspect and
28 copy all documents relevant to any matter contained in this Order, and shall permit Commission

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each party to bear its own costs and attorney fees incurred in connection with this action.

SO ORDERED, this __ day of _____, 2000.

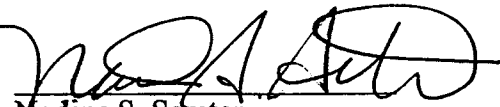
UNITED STATES DISTRICT JUDGE


The parties hereby stipulate and agree to the terms and conditions set forth above and consent to entry of this Stipulated Final Judgment and Order.

DATE: _____

PRESENTED BY:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:



Nadine S. Samter
WSBA # 23881


Kathryn C. Decker
WSBA # 12389


Attorneys for Plaintiff
Federal Trade Commission

FOR THE DEFENDANTS:

NU WEST, INC.

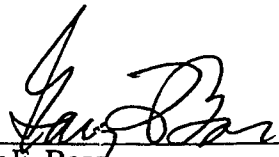
By: 
Georg Frey
President, Nu West, Inc.

GEORG FREY


Georg Frey, Individually

FEDERAL TRADE COMMISSION
915 Second Ave., Ste. 2896
Seattle, Washington 98174
(206) 220-6350

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By: _____

Gary F. Bass
1611 Pacific Building
720 Third Avenue
Seattle, Washington 98104
(206) 625-1212

Attorney for Defendants Nu West, Inc., and Georg Frey

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ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NU WEST, INC., a Washington corporation, and

GEORG FREY, individually and as sole officer and
shareholder of Nu West, Inc.,

Defendants.

Civil No.

DECLARATION OF GEORG FREY AS TO RECEIPT OF ORDER

Pursuant to 28 U.S.C. § 1746, Georg Frey declares as follows:

1. My name is Georg Frey. My current residence address is

_____. I am over the age of eighteen. I have personal knowledge of the
facts set forth in this Declaration.

2. I am a defendant in *FTC v. Nu West, Inc., et al.*, Civil No. _____
(U.S. District Court, Western District of Washington), and the sole officer and shareholder of Nu
West, Inc.

3. On _____, 2000, I received a copy of the Stipulated Final Judgment and

FEDERAL TRADE COMMISSION
915 Second Ave., Ste. 2896
Seattle, Washington 98174
(206) 220-6350

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Order, which was signed by the Honorable [name of U.S. District Judge] and entered by the Court on _____, 2000. A true and correct copy of the Order I received is appended to this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2000.

Georg Frey

