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MAR 07 1991

CLERK, U. S. DISTRICT COURT
DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 29 1991

at 10 o'clock and 25 min.
WALTER A. Y. H. CHINN, Clerk

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

v.

FIRST HAWAIIAN, INC., and
FIRST INTERSTATE OF HAWAII, INC.,

Defendants.

CIVIL NO. 90-00904 DAE

FINAL JUDGMENT

Entered: May 29, 1991

FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, having filed its Complaint herein on December 28, 1990, defendants having filed their respective answers to the Complaint on January 17, 1991, and plaintiff and defendants, by their respective attorneys, having

ATTEST: A True Copy
WALTER A.Y.H. CHINN
Clerk, United States District
Court, District of Hawaii
Walter A. Y. H. Chinn

consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain termination of the First Interstate System franchise and divestiture of bank branches are of the essence of this agreement, and defendants have represented to plaintiff that the franchise termination and divestitures required herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the franchise termination or divestiture provisions contained herein;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

DEFINITIONS

As used in this Final Judgment:

A. "American Savings Bank" means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, any other persons under its direct or indirect control, and any other person acting for or on behalf of it.

B. "Bank of Hawaii" means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, any other persons under its direct or indirect control, and any other person acting for or on-behalf of it.

C. "Business banking services" means banking services offered to business customers which include at a minimum:

1. "transaction account deposits," i.e., money deposited with a depository institution either at an agreed upon interest rate or at no interest, withdrawable in practice upon demand, and upon which third-party drafts may be drawn by the depositor, including checking accounts and NOW accounts; and

2. "commercial loans," i.e., secured or unsecured loans to businesses, excluding commercial mortgages.

Business banking services may also include additional services such as cash and coin, lockbox, cash management, and business expertise and advice offered to business customers. Business banking

services excludes services offered only to individual consumers.

D. "Branch assets" means personal property; cash on hand; the branch loan portfolio; all safe deposit boxes at the branches, exclusive of contents; all prepaid expenses, including security deposits, of the branches, determined in accordance with generally accepted accounting principles, as of the closing date; all rights of defendants to all contracts relating to the branch; all records and original documents in defendants possession pertaining to the leasehold, the personal property, the branch loans, the mortgage loans and the nondeposit liabilities; any leasehold; any real estate, buildings, structures, drive-in teller facilities, ATMs, fixtures and improvements thereon which are owned and used by defendants as premises for the branches; and any other assets required for the branch to compete effectively in offering business banking services.

E. "Branch deposits" means liabilities allocated to a branch that constitute the unpaid balance of money or its equivalent received or held by the branch in the usual course of business and for which the branch has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the branch.

F. "Central Pacific Bank" means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, any other persons under its direct

or indirect control, and any other person acting for or on behalf of it.

G. "Commercial mortgages" means loans secured by real estate as evidenced by mortgages or other liens on business and industrial properties.

H. "Defendants" means FH and FIHI, either individually or collectively.

I. "FH" means the defendant First Hawaiian, Inc., its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, agents, and employees, any other persons under its direct or indirect control, and any other person acting for or on behalf of it. FH shall include FIHI and any of its assets after such time, if any, as FH acquires FIHI.

J. "FI" means First Interstate Bancorp or its successors and assigns who own the First Interstate System franchise.

K. "FIHI" means the defendant First Interstate of Hawaii, Inc., its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, agents, and employees, any other persons under its direct or indirect control, and any other person acting for or on behalf of it.

L. "First Interstate System franchise" means a license from FI which includes, among other things (as described more specifically in the franchise agreement), certain identified service marks, trademarks, tradenames and styles including distinctive logos, and certain copyrighted material embodying the use of such marks.

M. "Franchise" or "franchise agreement" means the Agreement dated as of September 20, 1982, with subsequent amendments, by and between FI and American Security Bank (now operating under the name First Interstate Bank of Hawaii) which grants the control and use of the First Interstate System franchise in the state of Hawaii to FIHI.

N. "Hawaii Kai" means the FIHI office located at 377 Keahole Street, Honolulu, Hawaii 96825 on the island of Oahu.

O. "Hilo" means the First Hawaiian Creditcorp, Inc. office located at 250 Keawe Street, Hilo, Hawaii 96720 on the eastern portion of the island of Hawaii.

P. "Kailua" means the FIHI office located at 30 Aulike Street, Honolulu, Hawaii 96863 on the island of Oahu.

Q. "Kona" means the FIHI office located at 75-5722 Kuakini Highway, Kailua-Kona, Hawaii 96740 on the western portion of the island of Hawaii.

R. "Lahaina" means the FIHI office located at 135 Papalaua Street, Lahaina, Hawaii 96761 on the island of Maui.

S. "Lihue" means the FIHI office located at 4444 Rice Street, Lihue, Hawaii 96766 on the island of Kauai.

T. "Merger" means the Agreement and Plan of Merger Among First Interstate of Hawaii, Inc., First Hawaiian, Inc. and FHI Acquisition Corp. dated as May 11, 1990, with subsequent amendments.

U. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

V. "Wailuku" means the FIHI office located at 2005 Main Street, Wailuku, Hawaii 96793 on the island of Maui.

III.

APPLICABILITY

A. The provisions of this Final Judgment shall apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV.

TERMINATION OF FRANCHISE

A. Defendants are ordered and directed, two (2) business days from the entry date of this Final Judgment, to deliver written termination notice of the franchise to FI. Defendants further agree to deliver a copy of the franchise termination notice on the

same date to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, Department of Justice. Defendants are further ordered and directed to relinquish all control of and use of the franchise no later than one (1) year from the delivery date of termination notice to FI.

B. Defendants are further directed and ordered for the duration of their control of the franchise to abide by all contractual obligations under the franchise agreement to maintain the First Interstate System franchise in a manner that will continue to perpetuate the marketability of the franchise to a new franchisee in the state of Hawaii.

C. Defendants are enjoined and restrained from purchasing, attempting to purchase, or engaging in any negotiations to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

V.

DIVESTITURE OF BRANCHES

A. Defendants are hereby ordered and directed to divest to a qualified purchaser(s), within six (6) months of the date of filing of this Final Judgment, all of their direct and indirect ownership and control in the branch assets and deposits identified below. The purchaser(s) shall be independent of FH or FIHI; shall be federally insured financial institution(s) that offer business customers, at a minimum, transaction account deposits and commercial loans; shall deliver promptly to plaintiff following the

execution of a binding contract(s), an affidavit from an authorized officer stating a present intention that the branch(s) purchased will offer business banking services in the geographic area currently served by the branch(s); and shall be subject to approval by plaintiff. The obligation to divest shall be satisfied if, within six (6) months of the date of filing of this Final Judgment, defendants enter into a binding contract(s) with qualified purchasers for the sale of the branch assets and deposits at each location listed below to a purchaser(s) according to terms approved by plaintiff that are contingent upon compliance with the terms of this Final Judgment and that specify a prompt and reasonable closing date no later than ten (10) business days after compliance with all federal or state bank regulatory requirements and if the sale is completed pursuant to the contract(s). In the event that any proposed divestiture is denied approval by the Board of Governors of the Federal Reserve System or any other federal or state bank regulatory agency, the time period specified herein in which defendants must complete the sale of the Section V.B. branch locations will expire on the six (6) month anniversary date of the filing of this Final Judgment, unless plaintiff under Section V.C grants additional time.

B. Defendants are hereby ordered and directed to divest:

1. the Hawaii Kai branch assets and deposits on the island of Oahu. The purchaser cannot be Bank of Hawaii or Central Pacific Bank.

2. the Kailua branch assets and deposits on the island

of Oahu. The purchaser cannot be Bank of Hawaii or Central Pacific Bank.

3. the Lahaina branch assets and deposits on the island of Maui. The purchaser cannot be Bank of Hawaii, Central Pacific Bank or American Savings Bank, provided, however, that if the defendants do not succeed in selling the Lahaina branch assets and deposits within six (6) months of the date of filing of this Final Judgment, and the sale of the branch assets and deposits is assigned to a trustee under the terms of Section VI. of this Final Judgment, Central Pacific Bank is permitted to bid on the Lahaina branch assets and deposits. If the trustee proposes selling the Lahaina branch assets and deposits to Central Pacific Bank, the trustee shall require as a condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

4. the Wailuku branch assets and deposits on the island of Maui. The purchaser cannot be Bank of Hawaii, Central Pacific Bank or American Savings Bank.

5. the Kona branch assets and deposits on the island of Hawaii. The purchaser cannot be Bank of Hawaii or American Savings Bank. Plaintiff will not object, provided that the terms of Section V. are complied with, to the purchase of the Kona branch assets and deposits by Central Pacific Bank, provided, however, that defendants shall require as a

condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

6. the Lihue branch assets and deposits on the island of Kauai. The purchaser cannot be Bank of Hawaii, American Savings Bank or Central Pacific Bank, provided, however, that if the defendants do not succeed in selling the Lihue branch assets and deposits within six (6) months of the filing date of this Final Judgment and the sale of the branch assets and deposits is assigned to a trustee under the terms of Section VI. of this Final Judgment, Central Pacific Bank is permitted to bid on the Lihue branch assets and deposits. If the trustee proposes selling the Lihue branch assets and deposits to Central Pacific Bank, the trustee shall require as a condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

7. Defendant FH, prior to the filing of this Final Judgment, has entered into a binding contract for the sale of the assets and deposits of the Hilo branch of First Hawaiian Creditcorp on the island of Hawaii, subject only to regulatory approval and the entry of this Final Judgment, to Hawaii National Bank which intends to consolidate the Hilo branch with one of its preexisting branches located in Hilo, Hawaii.

In the event that regulatory approval is denied, the defendants must sell the Hilo branch assets and deposits to a purchaser that will operate the Hilo branch as a branch (or as a branch consolidated with a preexisting branch) that offers business banking services. The purchaser cannot be Bank of Hawaii, American Savings Bank or Central Pacific Bank.

C. If defendants have not accomplished the required divestiture(s), within six (6) months of the filing date of this Final Judgment, plaintiff may, in its sole discretion, extend this time period, separately for each Section V.B branch location, for an additional period of time, if defendants request such an extension and demonstrate to plaintiff's satisfaction for each such branch location that they are then engaged in negotiations with a prospective purchaser(s) that are likely to result in the required divestiture(s) but that the divestiture(s) cannot be completed by the six (6) month anniversary date of the filing of this Final Judgment.

D. Defendants agree to take all reasonable steps to accomplish quickly said divestitures. In carrying out their obligation to divest the branch assets and deposits at each location identified in Section V.B. of this Final Judgment, defendants may divest these branch assets alone, or may divest along with these branch assets any other assets of FH or FIHI.

E. In accomplishing the divestitures (other than the divestiture of the Kona branch assets and deposits to Central Pacific Bank) ordered by this Final Judgment, the defendants

promptly after filing of this Final Judgment shall make known in the Wall Street Journal, the American Banker, and in the state of Hawaii, by usual and customary means, the availability of the Section V.B. branch locations, for sale as ongoing branches that offer business banking services. The defendants shall notify any person making an inquiry regarding the possible purchase of any or all of the Section V.B. branch locations that the sale is being made pursuant to this Final Judgment and that this Final Judgment requires approval of this Court. The defendants shall provide any such person with a copy of this Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of any or all of the Section V.B. branch locations, subject to customary confidentiality assurances, all pertinent information regarding each Section V.B. branch location. Defendants shall provide such information to the plaintiff as soon as possible, but no later than two (2) business days after they furnish such information to any other person. Defendants shall permit prospective purchasers of any or all of the Section V.B. branch locations to have access to personnel at each Section V.B. branch location and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of each Section V.B. branch location. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to defendants' banking business, except to the extent it relates to the Section V.B. branch locations' operations and business.

Defendants shall not object to any application for new bank charters sought to facilitate any divestiture(s).

F. Divestiture required by Section V.B of this Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion that the purchaser is qualified in the following two respects: (1) the purchaser intends to use the Section V.B. branch location to compete in the provision of business banking services in the geographic area currently served by the branch, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the provision of such business banking services.

G. Defendants FH and FIHI shall not acquire or attempt to acquire any branch assets divested pursuant to Section V.B. of this Final Judgment without first receiving prior approval from the plaintiff during the duration of this Final Judgment.

H. Except to the extent otherwise approved by plaintiff, any branch assets divested pursuant to this Final Judgment shall be divested free and clear of (1) all mortgages, encumbrances and liens to FH or FIHI, and (2) any contractual commitments or obligations to FH or FIHI existing as of the date of divestiture, unless plaintiff is satisfied that the purchaser of a divested branch location wishes to voluntarily assume the future performance of any such existing contracts, and plaintiff consents thereto.

VI.

APPOINTMENT OF TRUSTEE

A. If defendants have not accomplished the divestiture(s) required by Section V.B. of this Final Judgment by the five (5) month anniversary date of the filing of this Final Judgment, defendants shall notify plaintiff in writing of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to Section V.C., whichever is later, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. Defendants shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court with the names and qualifications of its proposed nominees and the

names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished all of the divestiture(s) required by Section V.B. of this Final Judgment at the expiration of the time period specified in Sections V.A. or V.C. of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the not yet divested Section V.B. branch locations according to the terms of this Final Judgment; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendants have notified plaintiff pursuant to Section VII. of this Final Judgment of a proposed divestiture(s) of Section V.B. branch locations and plaintiff has not filed a written notice that it objects to said proposed divestiture(s).

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell any Section V.B. branch location as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestitures to a purchaser(s) acceptable to the plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VII. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale of the Section V.B. branch locations by the

trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with Section VII. of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based upon a fee arrangement which includes an incentive based upon the price of the divestitures and the speed with which they are accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all costs and expenses incurred in connection with its assignment in this matter. After approval by the Court of the trustee's accounting, including fees and reasonable expenses for his or her services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s) and shall, if requested by the trustee, use their best efforts to assist the trustee in accomplishing the required divestiture(s). The trustee shall have full and complete access to the personnel, books, records, and facilities of the Section V.B. branch locations which the trustee is designated to divest, and defendants shall develop such financial or other information relevant to the Section

V.B branch locations being divested as the trustee may request.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture(s) as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted, or made an inquiry about acquiring, any ownership interest in the Section V.B. branch locations, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Section V.B branch locations and shall provide additional information to plaintiff upon its request.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture(s) required by Section V.B of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why any required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent the report contains information that the trustee deems confidential, the report shall

not be filed in the public docket of the Court. The trustee shall at the same time furnish the report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust and the term of the trustee's appointment.

VII.

NOTIFICATION

Immediately following execution of a binding contract(s), contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestitures pursuant to Section V. of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify plaintiff of the proposed divestitures. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transactions and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Section V.B. branch locations, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture(s) and the proposed purchaser(s). Defendants and/or the trustee shall furnish any additional information requested within twenty (20) days of receipt

of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and to the trustee, if there is one, stating whether or not it objects to the proposed divestiture(s). If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestiture(s) may be consummated, subject only to defendants' limited right to object to the sale under the proviso in Section VI.C. Upon objection by plaintiff, a divestiture proposed under Section V. shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section VI.C., a divestiture proposed under Section VI. shall not be consummated unless approved by the Court.

VIII.

AFFIDAVITS

Within five (5) business days of filing of this Final Judgment and every thirty (30) days thereafter until the divestitures have been completed or authority to effect divestitures passes to the trustee pursuant to Section VI. of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section V. of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of

each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the Section V.B. branch locations, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest the Section V.B. branch locations.

IX.

FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV., V. or VI. of this Final Judgment without plaintiff's prior consent.

X.

PRESERVATION OF ASSETS

Until the relinquishment of control of the franchise and divestiture of the Section V.B. branch locations required by this Final Judgment have been accomplished:

A. The defendants shall take all steps necessary to assure that the Section V.B. branch locations will be maintained as economically viable, ongoing branches that offer business banking services. The defendants shall use all reasonable efforts to maintain and increase sales of business banking services at the Section V.B. branch locations, and continue with any current plans

for development of business banking services at those locations.

B. The defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, any branch assets required to be divested pursuant to Section V.B., except that any component of such branch assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendants shall provide capital and provide and maintain sufficient working capital to maintain the Section V.B. branch locations, including funds for commercial lending, as viable, ongoing branches that offer business banking services consistent with the requirements of Section X.A.

D. The defendants shall preserve the First Interstate System franchise required to be relinquished pursuant to Section IV. Defendants shall also preserve the branch assets and deposits required to be divested pursuant to Sections V. and VI., except those replaced with newly acquired branch assets and deposits in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records relating to the franchise until the date of relinquishment of control over the First Interstate System franchise. Defendants shall preserve the documents, books and records of the Section V.B. branch locations until the date of

divestiture.

E. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Section XI., the defendants shall refrain from terminating or altering one or more current employment, salary, or benefit agreements for one or more managerial or commercial loan personnel of the Section V.B. branch locations, and shall refrain from transferring any employee so employed without the prior written approval of plaintiff.

F. Defendants shall refrain from taking any action that would jeopardize the sale of the Section V.B. branch locations or the subsequent licensing of the First Interstate System franchise after defendants have relinquished control to FI.

XI.

EMPLOYMENT OFFERS

A. Defendants are hereby enjoined and restrained until two (2) years following the date of divestiture, from employment of, or making offers of employment to, any person who currently is a commercial loan manager, officer or representative, the preponderance of whose duties relate to the successful operation of the Section V.B. branch locations. This provision, however, does not apply to any employee who is terminated by the purchaser of a divested branch. Defendants shall encourage and facilitate employment by the purchaser of such employees, and shall remove any impediments that exist which may deter such employees from accepting employment with the purchaser of any Section V.B. branch

location, including, but not limited to, the payment of all bonuses accrued up to the closing date of sale of each Section V.B. branch location to which such employees would otherwise have been entitled had they remained in the employment of defendants until December 31, 1991.

XII.

VISITORIAL CLAUSE

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section XII. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XIII.

EXPIRATION OF JUDGMENT

This Final Judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

XIV.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XV.

TERMINATION OF AUTOMATIC STAY

Upon entry of this final judgment, the statutory stay, imposed under 12 U.S.C. § 1849(b)(1), that currently enjoins the merger of defendants, shall terminate.

XVI.

STATEMENT OF PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

This judgment shall be effective without further order or action by this Court upon publication in the Federal Reporter of the three written comments the United States received as the United States response to those comments.

Dated:

May 29, 1991

*Donald J. ...
U.S. District Judge*

[Signature]
United States District Judge

USA v. First Hawaiian, Inc., et al.
Civil No. 90-00904 DAE
Stipulation; Final Judgment