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Complaint

IN THE MATTER OF

INTERNATIONAL INVENTORS INCORPORATED, EAST,
ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2976. Complaint, July 5, 1979 — Decision, July 5, 1979*

This consent order, among other things, requires an Alexandria, Va. idea promotion firm to cease failing to provide fair and thorough evaluations as to the commercial feasibility of customers' ideas; and misrepresenting that they successfully promote and negotiate with interested manufacturers on clients' behalf; that they secure lucrative contracts for their customers through such efforts; and that the Document Disclosure Program of the United States Patent and Trademark Office protects clients' ideas prior to the filing of a formal patent application. The order requires that prescribed disclosures regarding the financial success of previous clients, the lack of legal protection for ideas, and the advisability of consulting with a patent attorney before signing an agreement be included in contracts and promotional material; and prohibits the company from accepting any fees for promotional services, other than a percentage of royalties earned through its endeavors. Additionally, respondents are required to maintain particular records for a specified period, and institute a continuing surveillance program designed to ensure compliance with the terms of the order.

*Appearances*For the Commission: *Richard C. Donohue.*For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that International Inventors Incorporated, East, a corporation, and James H. Haren, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating charges in that respect as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purpose of this complaint the following definitions shall apply:

- (a) The term "idea" shall mean any idea, invention or concept, but

does not include a product that has already been manufactured prior to contact with respondents.

(b) The term "client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea."

(c) The term "financial gain" shall mean an amount of money derived by a "client" from respondents' "promotion" of the "client's idea" that is greater than the amount of money paid by a "client" to respondents.

(d) The term "promotion" shall mean the advertising, evaluation, development, manufacturing, marketing or assistance in developing, manufacturing or marketing and/or otherwise contributing to the success or growth of an "idea," but does not include the seeking of legal protection under the patent laws of the U.S.

II. RESPONDENTS

PAR. 2. Respondent International Inventors Incorporated, East, (hereinafter IIIE), is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Suite 309, 4900 Leesburg Pike, Alexandria, Virginia.

Respondent James H. Haren is an individual and is the principal owner and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

III. NATURE OF TRADE AND COMMERCE

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising for, offering to enter into and entering into contracts for present or future services in connection with the promotion of ideas.

IV. JURISDICTION

PAR. 4. In the course and conduct of their business, respondents cause, and for some time last past have caused, their services and related materials to be offered for sale and sold from their principal place of business in Virginia to clients and prospective clients located in various other States in the United States and the District of Columbia by means of advertisements placed in newspapers of interstate circulation. In addition, respondents now cause, and have caused, their advertising materials, contracts, and various business papers to be transmitted by means of the U.S. mail from their principal

place of business in the Commonwealth of Virginia to clients, prospective clients, and potential manufacturers in various other States of the United States and the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents are now, and have been, in substantial competition, in commerce, with corporations, firms, and individuals offering contracts for present or future services in connection with the promotion of ideas.

COUNT I

PAR. 6. The allegations of Paragraphs One through Five above are incorporated by reference in Count I as if fully set forth verbatim.

V. ACTS AND PRACTICES

PAR. 7. In the course and conduct of the aforesaid business, and for the purpose of inducing the purchase of their services and related materials, respondents have made numerous statements and representations in advertisements inserted in newspapers of interstate circulation, in letters and other promotional materials, and by the oral statements and representations of their sales personnel to prospective clients. Through such advertising or statements, respondents have represented, directly or by implication, contrary to fact, that:

1. Respondents gave, and still give, clients' ideas a fair and thorough evaluation of their commercial feasibility on which said clients can rely.
2. Respondents could be expected to actively and successfully promote and negotiate, on behalf of their clients, with manufacturers who were interested in acquiring rights to new ideas.
3. The United States Patent and Trademark Office's Document Disclosure Program provides legal protection for clients' ideas prior to the filing of formal patent applications in the United States Patent and Trademark Office.
4. Respondents, in many instances, could and did obtain manufacturing contracts for their clients.
5. Respondents services have resulted and may likely result in financial gain for their clients including, but not limited to, potential income to be derived by their clients from sales, licensing or royalty agreements.

The acts and practices alleged in Paragraph Seven herein are unfair, deceptive and misleading, and therefore, are in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

PAR. 8. The allegations of Paragraphs One through Five and Seven above are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 9. Respondents, in the course and conduct of their idea promotion business, have performed and are performing their services in a manner which is not reasonably calculated to produce the results that have been and are claimed by the statements and representations described in Paragraph Seven, *supra*.

PAR. 10. It was and is an unfair or deceptive act and practice for respondents to sell their services in the manner set forth in Paragraph Nine herein, while they know or should know that their services were not and are not reasonably calculated to produce the results represented.

Therefore, the acts and practices of respondents as alleged herein constituted and now constitute a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 11. The use by the respondents of the aforementioned false, misleading and deceptive acts, practices, statements or representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and to induce the purchase of substantial quantities of respondents' products and services and into the execution of contracts with respondents by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, were and are now causing pecuniary losses to persons contracting with respondents and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption

hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents 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, 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 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 filed thereafter by 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 International Inventors Incorporated, East is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at Suite 309, 4900 Leesburg Pike, Alexandria, Virginia.

Respondent James H. Haren is the principal officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his business address is the same as that of said corporation.

2. 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.

For the purpose of this order the following definitions shall apply:

(a) The term "idea" shall mean any idea, invention or concept.

(b) The term "client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea."

(c) The term "financial gain" shall mean the amount of money derived by a "client" from respondents' "promotion" of the "client's idea."

(d) The term "promotion" or "promote" shall mean the advertising, evaluation, development, manufacturing, marketing or assistance in developing, manufacturing or marketing and/or otherwise contributing to the success or growth of an "idea," but does not include the seeking of legal protection under the patent laws of the U.S.

II.

It is ordered, That respondents International Inventors Incorporated, East, a corporation, its successors and assigns, and James H. Haren, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising for, offering to enter into and entering into contracts for present or future services in connection with the promotion of ideas, or any other like or similar services, in or affecting commerce, as it is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing, in the normal course of business, to give clients' ideas a fair and thorough evaluation of the ideas' commercial feasibility, upon which said clients can rely.

2. Representing, directly or indirectly, orally or in writing, that respondents, in the normal course of business, can be expected to actively and successfully promote and negotiate, or in any way promote and negotiate, on behalf of their clients, with manufacturers who are interested in acquiring rights to ideas.

3. Representing, directly, or indirectly, orally or in writing, that the United States Patent and Trademark Office's Document Disclosure Program can provide legal protection for clients' ideas prior to the filing of a formal patent application in the United States Patent and Trademark Office. Provided that nothing in this agreement shall prohibit respondents from referring clients to consult a patent attorney or licensed patent agent.

4. Representing, directly or indirectly, orally or in writing, that respondents services can and do result in manufacturing contracts or licensing agreements between manufacturers and respondents' clients that produce financial gain for their clients.

5. Failing to make the following disclosures on any contract or other binding instrument to be executed by prospective clients. Said

disclosures shall be in more conspicuous print than all other language in said instrument other than respondents' name, but in no case shall they be smaller than 12-point uppercase type. Said disclosures and instrument shall be delivered to prospective clients at least 10 days prior to the time prospective clients execute said instrument. The disclosures shall be in the following form set off from the rest of the instrument by a black border and immediately above the line for the prospective clients' signatures:

NOTICE

(A) IN THE LAST FIVE YEARS THAT WE HAVE BEEN DOING BUSINESS, WE HAVE CONTRACTED TO PROMOTE IDEAS, INVENTIONS OR CONCEPTS FOR (NUMBER) CLIENTS. AS A RESULT OF OUR SERVICES:

1. (number) (____ %) OF OUR CLIENTS
EARNED \$0-99.
2. (number) (____ %) OF OUR CLIENTS
EARNED \$100-499.
3. (number) (____ %) OF OUR CLIENTS
EARNED \$500-\$1,000.
4. (number) (____ %) OF OUR CLIENTS
EARNED OVER \$1,000.
5. (number) (____ %) OF OUR CLIENTS
EARNED MORE THAN THEY PAID US.

(B) WITHOUT PATENT PROTECTION, RECOGNIZED BY THE U.S. PATENT & TRADEMARK OFFICE, YOU MAY LOSE THE OPPORTUNITY TO OBTAIN FINANCIAL BENEFIT FROM YOUR IDEA. WE DO NOT PROVIDE ANY LEGAL SERVICES FOR OBTAINING PATENT PROTECTION RECOGNIZED BY THE U.S. PATENT & TRADEMARK OFFICE. YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY OR AGENT BEFORE YOU SIGN THIS AGREEMENT.

(C) YOU SHOULD TREAT YOUR IDEA AS A CONFIDENTIAL SUBJECT IN ORDER TO AVOID LOSING ANY PATENT RIGHTS YOU MAY HAVE.

(D) TODAY IS (Date). WE CANNOT ASK YOU TO SIGN AN AGREEMENT UNTIL 10 BUSINESS DAYS HAVE ELAPSED WHICH WILL BE ON (MONTH/DAY/YEAR).

I, (Name of Customer), hereby acknowledge receipt of a copy of this agreement on the data specified below.

Customer's Signature Date

Accurate disclosures, given without comment, as required by this

paragraph of the order, shall not be deemed a violation of Paragraph 4 of this order.

6. Executing contracts or other agreements with a client prior to the expiration of the 10-day period disclosed in accordance with Paragraph 5 herein.

7. Failing to retain executed copies of all disclosures required by Paragraph 5 of this order for a period of five (5) years after such disclosure is made regardless of whether prospective clients ultimately execute contracts with respondents. Respondents shall make accurate statistical disclosures required by this paragraph and maintain records for a period of five (5) years sufficient to verify the accuracy of each disclosure.

8. Failing to include on all contracts or other binding instruments to be executed by prospective clients a schedule detailing the entire amount of any and all fees or other consideration which may be required from or paid by the client during the course of his business relationship with respondents.

It is further ordered, That:

1. Respondents shall conspicuously place in all printed advertisements, pamphlets, brochures and other promotional material, the statement below in print at least as large as the largest print in the advertising material other than respondents' name and shall state:

(Number)% of our clients have earned more than they paid to us as a result of our efforts to promote their idea.

2. In all advertisements broadcast by radio, or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest spoken part of the advertisement.

3. Respondents shall maintain for a period of three (3) years after any of respondents' advertisements are disseminated:

(a) Records disclosing the date or dates each such advertisement was published;

(b) Records disclosing the names and addresses of the newspapers, other publications or broadcast media disseminating said advertisement; and

(c) Representative copies or representative scripts of all of respondents' advertisements published or disseminated by any media.

It is further ordered, That:

1. At the time respondents submit advertising to any newspaper or other written medium, they shall provide a copy of the following notice to each such medium:

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Decision and Order

NOTICE

The Federal Trade Commission has issued a cease and desist order against (Name of Respondent). A copy of the Commission's News Release is available from (Name of Respondent) upon request.

2. At the time respondents submit advertising to any radio or television station, they shall provide a copy of the following notice to each such station:

NOTICE

The Federal Trade Commission has issued a cease and desist order against (Name of Respondent). A copy of the Commission's News Release is available from (Name of Respondent) upon request. Your attention is directed to an agreement between the Federal Trade Commission and the Federal Communications Commission dated April 27, 1972.

It is further ordered, That respondents shall make all disclosures required by this order accurately, making such disclosures or copies thereof available to the Federal Trade Commission or any member of its staff on request.

It is further ordered, That respondents, upon receipt of a complaint from a client alleging facts that indicate this order may have been violated, rescind the contract, refund monies paid and cancel any outstanding obligations where respondents determine, after a good faith investigation, that one or more of the paragraphs of this order may have been violated in connection with such client's transaction with respondents.

It is further ordered:

1. That respondents deliver, by hand or by certified mail, a copy of this order to each of their present or future salesmen, independent brokers, franchise owners, employees or any other person who sells or promotes the sale of respondents' products or services;
2. That respondents provide each person so described in subparagraph 1. above with a form returnable to respondents, clearly stating an intention to conform sales practices to the requirements of this order and retain such form for a period of three (3) years after it is executed by said persons;
3. That respondents inform each person described in subparagraph 1. above that respondents shall not use any such person, or the services of any such person, until such person agrees to and files notice with respondents to be bound by the provisions contained in this order;
4. That in the event such person will not agree to file such notice with respondents and be bound by the provisions of this order, respondents shall not use such person, or the services or such person;

5. That respondents institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in subparagraph 1. conform to the requirements of this order; and

6. That respondents discontinue dealing with any person described in subparagraph 1. of this order who engages in the acts or practices prohibited by this order.

It is further ordered, That respondents may accept compensation from a client for the promotion of the client's idea only as a percentage of royalties or other financial gain derived through respondents' efforts. Respondents may not accept any other fee or monetary consideration from a client.

It is further ordered, That respondents shall not sell, lease, exchange or otherwise alienate a client's idea or disclose a client's name, address, telephone number or other personal data to any party which will or may request such client to pay a fee or other monetary consideration for the promotion of that client's idea.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That:

1. The individual respondent named herein, and every firm, partnership, association, corporation or other business entity which he now or hereafter controls or manages, and which offers, or purports to offer, any service, product, or program, in connection with the advertising, evaluation, development, manufacturing, marketing, or assistance in developing, manufacturing, or marketing, or otherwise contributing to the success of any client's product or service, shall conspicuously place in all printed contracts, agreements, advertisements, pamphlets, brochures or other promotional materials, the statement below in print at least as large as the largest print on the material other than the business entity's name and shall state:

(Number)% of our clients have earned more than they paid us as a result of our efforts to (describe service, product, or program sold by such business entity.)

2. In all advertisements broadcast by radio or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest spoken part of the advertisement.

3. Individual respondent shall maintain for a period three (3) years after any of respondent's advertisements are disseminated:

(a) Records disclosing the date or dates each such advertisement was published;

(b) Records disclosing the names and addresses of the newspapers, other publications or broadcast media disseminating said advertisement; and

(c) Representative copies or representative scripts of all advertisements published or disseminated by any media.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of 10 years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising out of this order.

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

It is further ordered, That nothing contained in this order shall relieve respondents of any additional obligations respecting idea promotion imposed by any state. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon a showing of inconsistency, shall make such modifications as may be warranted.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

FEDERAL TRADE COMMISSION DECISIONS

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IN THE MATTER OF

NESTLE ALIMENTANA, S.A., ET AL.

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

Docket 9008. Complaint, Jan. 7, 1975 — Decision, July 9, 1979

This consent order, among other things, requires a Vevey, Switzerland food processor and an affiliated Panamanian holding company to divest, within one year, the entire frozen prepared foods facility located in Darien, Wisconsin, together with the associated frozen bulk vegetable processing facility and adjoining cold storage warehouse. Additionally, for ten years, effective from January 7, 1975, the date of the complaint, Nestle is prohibited from making any large acquisition in the frozen prepared foods industry without prior Commission approval.

Appearances

For the Commission: *Raymond L. Hays, Carl J. Batter, Jr. and Chauncey Hopkins.*

For the respondents: *Allen F. Maulsby, Cravath, Swaine & Moore, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nestle Alimentana S.A. and its affiliated company, Unilac Inc., have acquired the Stouffer Corporation in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), hereby issues this complaint pursuant to Section 11 of the Clayton Act, as amended, (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, as amended, (15 U.S.C. 45(b)), charging in that respect as follows:

I

Definitions

1. For the purposes of this complaint, the following definitions shall apply:

(a) *Frozen Prepared Foods* consist of frozen foods which have been cooked or processed in some manner beyond the blanching of vegetables and fruits in the freezing process or beyond the freezing of cut or cut meats and seafoods. Frozen prepared foods include, for example,

frozen (TV) dinners, desserts, meat (pot) pies, baked goods (such as cakes), breaded shrimp, snacks (such as pizzas and hors d'oeuvres), soups, breaded and precooked poultry, prepared vegetables, and entrees.

(b) *Frozen entrees* consist of frozen prepared foods which are usually served as the main dish of the principal meal of the day. Generally served with entrees to complete the meal are other home prepared or separately purchased items such as a salad, vegetable or soup.

(c) *Quality frozen entrees* are those entrees which are advertised and marketed as quality or superior food products and which are generally able to command higher than average per-ounce retail prices.

II

Respondents

2. Nestle Alimentana S.A. (Nestle) is a publicly held company organized and existing under the laws of Switzerland. Its principal offices are located in Vevey, Switzerland.

3. Unilac Inc. is a company affiliated and associated with Nestle, organized and existing under the laws of the sovereign Republic of Panama. Its principal offices are located in Panama City, Panama. The shares of Nestle and Unilac are traded together, and the stockholders of the two companies are identical. References to Nestle hereinafter shall be understood to include Unilac Inc.

4. Nestle is a leading processor of food products throughout much of the world, with plants in approximately seventy (70) countries, employing close to ninety thousand (90,000) persons. Nestle is ranked twelfth on Fortune's list of the 300 largest foreign companies for 1972.

5. In 1973, Nestle worldwide sales (in U.S. dollars) were approximately \$5.5 billion and its profits were about \$230.7 million. Its principal worldwide products include sweetened condensed milk, evaporated milk, pasteurized, skimmed, or sterilized milk and cream, milk powder, cheese, butter, and yogurt, dietetic milk foods, dietetic specialties without milk, cereal foods for infants, strained and junior foods, coffee and tea extracts, instant chocolate drinks, liquid drinks chocolate, cocoa, and confectionery products, soups, bouillon, seasonings and condiments, prepared dishes, frozen foods and ice cream. In 1971, Nestle purchased approximately 5 percent of the world's total cocoa exports and about 7.7 percent of the world's total coffee export

6. Nestle's main United States subsidiary is The Nestle Company (referred to by Nestle as "TNCo"), with its principal offices located White Plains, New York. In 1972 TNCo had sales of about \$48'

million, primarily in chocolate products and instant coffee and tea drinks.

7. Nestle was a minority shareholder in Libby, McNeill and Libby (Libby), with its principal offices located in Chicago, Illinois, beginning in 1960, and has been the majority shareholder in Libby since 1970. Libby's major product lines include canned vegetables, canned meats, canned fruits, canned juices and drinks, and frozen foods, including frozen vegetables, fruits juices, and prepared foods. Libby's sales worldwide for the year ending June 30, 1973 were about \$434 million.

8. Nestle, directly or through its subsidiaries and affiliates, ranks among the nation's leading manufacturers of branded consumer food products, including Taster's Choice freeze dried instant coffee, Nescafe instant coffee, Nestle instant tea, Nestle's Quik, Nestle's Crunch, Libby canned vegetables, canned fruits, and canned meats, Libbyland frozen dinners for children, Maggi bouillon cubes, and Crosse and Blackwell preserved foods. In the United States, Nestle was and is, directly or through its subsidiaries, or affiliates, (i) a company engaged in the manufacture of grocery products, (ii) a company with assets in excess of \$250 million, (iii) a company involved in extensive promotional efforts, selling highly differentiated consumer products, and producing a number of products in some of which it holds a strong market position.

9. At all times relevant herein, Nestle, directly or through its subsidiaries or affiliates, sold and shipped and is now selling and shipping products in interstate commerce throughout the United States and in foreign commerce. Nestle was at the time of the acquisition challenged herein and is now engaged in commerce as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act.

III

The Acquired Company

10. Prior to 1973, the Stouffer Corporation (Stouffer), a corporation organized and existing under the laws of the State of Ohio, with principal offices located in Solon, Ohio, was a wholly-owned subsidiary of Litton Industries, which had acquired it in 1967. Prior thereto, Stouffer had been an independent publicly-held corporation, Stouffer Foods Corporation. It was and is a food processor or manufacturer which was and is engaged in the operation of restaurants and inns, and the production and distribution of frozen food products to the institutional and consumer markets. The Stouffer Corporation is the continuation of a family restaurant business started

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by Vernon Stouffer and A. E. Stouffer in 1924. It was incorporated in 1929.

11. Stouffer's sales have risen for its fiscal years 1968-1973, from about \$95.5 million to about \$144.2 million. Its sales of prepared frozen food rose during the same period about \$29.4 million to about \$66.9 million. Its assets at the time of the acquisition were about \$67 million.

12. Stouffer frozen prepared consumer food products include entrees, side dishes, bakery products, and soups.

13. Stouffer has a strong position and is the leading firm in the quality frozen entree market and the second ranking factor in the frozen entree market. Stouffer (i) is and was engaged in the manufacture of grocery products, and (ii) is and was among the top eight producers of one or more important grocery products and has more than a 5 percent share of the frozen entree market.

14. Stouffer is engaged in promotional efforts, and sells highly differentiated consumer products.

15. At all times relevant herein, Stouffer sold and shipped and is now selling and shipping products in interstate commerce throughout the United States. Stouffer was at the time of the acquisition challenged herein and is now engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

IV

The Acquisition

16. On or about March 5, 1973, Nestle purchased all the outstanding shares of the Stouffer Corporation, for approximately \$105 million cash, from Litton Industries, Inc. This acquisition falls within the criteria set forth in the Commission's May 15, 1968 enforcement policy with respect to product extension mergers in grocery products manufacturing.

V

Trade and Commerce

17. The frozen entree market and the quality frozen entree market each has four-firm concentration in excess of 50 percent, high product differentiation, and high barriers to entry.

18. In the food industry generally since World War II there have been trends toward market concentration and dominance by large, multi-product companies with vast financial resources, accompanied by declining trends in the number of competitors. Trends toward concentration are also apparent in the frozen entree market. This market has

been transformed from one composed largely of independent, medium-size companies to one dominated by a small number of multi-product companies of large absolute size which entered the market by acquisition.

VI

Effects of the Acquisition

19. The effect of the acquisition of Stouffer by Nestle has been or may be substantially to lessen competition or to tend to create a monopoly or to restrain trade in the manufacture, distribution and sale of frozen entrees and quality frozen entrees, or either of these, in the United States or sections thereof, in violation of Section 7 of the Clayton Act, as amended, and in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways, among others:

(a) Nestle has been eliminated as an actual competitor in the frozen entree market.

(b) Nestle has been eliminated as a potential competitor in the frozen entree market and in the quality frozen entree market.

(c) The dominant position of Stouffer in the quality frozen entree market has been, or may be, further strengthened and Stouffer's dominance has been, or may be, further entrenched.

(d) Concentration has been further increased in the frozen entree market, and the segments thereof.

(e) Barriers to entry in the frozen entree market and the quality frozen entree market, already high, have been or may be further raised.

(f) Forbearance of competition in the frozen entree market as well as in the food industry generally has resulted or may result or has been or may be increased.

VII

Violation

20. The acquisition of Stouffer by Nestle as alleged herein constitutes a 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).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the

respondents named in the caption hereof with violations of Section 7 of the Clayton Act, as amended, and of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent Nestle, 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 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, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Nestle S.A. is a corporation organized, existing and doing business under and by virtue of the laws of the Swiss Confederation, with its office and principal place of business located at 1800 Vevey, Switzerland, and Unilac Inc., a holding company affiliated with Nestle S.A., is a corporation organized and existing under the laws of the Republic of Panama, with its principal office located in Panama City, Panama.

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

I

It is ordered, That, within one (1) year from the date on which this order becomes final, respondent Nestle S.A. (hereinafter respondent), its subsidiaries, affiliates, successors or assigns, shall divest the entire frozen prepared foods facility, together with the associated frozen bulk vegetable processing facility and adjoining cold storage warehouse,

located in Darien, Wisconsin, such divestiture to be made by sale to a third party to be approved in writing by the Commission.

II

It is further ordered, That, for a period of ten (10) years from the date of the issuance of the Commission's complaint on January 7, 1975, respondent, its subsidiaries, affiliates, successors and assigns, shall not, without the prior written approval of the Federal Trade Commission, acquire or acquire and hold, directly or indirectly, the whole or any part of the assets or voting securities of any corporation, firm or partnership that manufactures, processes, handles, distributes, sells or brokers frozen prepared foods and which activities are in or affect United States commerce ("Acquired Person"); *provided, however,* that the foregoing provision shall not apply to any merger, acquisition or other such transaction (i) which shall have been publicly announced prior to the date of service upon respondent of this order or (ii) which involves an Acquired Person the gross sales of which of frozen prepared foods in the fiscal year immediately preceding such merger, acquisition or other such transaction shall have been less than \$10 million.

III

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

IV

It is further ordered, That, during the period described in Paragraph II, respondent shall notify the Commission of any acquisition of any material assets of, or any equity interest in, any Acquired Person (as defined herein) for which no Commission approval is required under Paragraph II of this order, by the filing, at least sixty (60) days prior to closing any such transaction, of the completed Notification and Report Form as promulgated under Section 7A of the Clayton Act, 15 U.S.C. 18A, and the Rules thereunder, regarding each such transaction; *provided, however,* that this paragraph shall not apply to (i) any acquisition of assets which results in respondent's holding less than 2.5 million of assets of an Acquired Person or (ii) any purchase of any

equity interest which results in respondent's holding less than five percent of the outstanding voting securities of an Acquired Person.

V

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order, and every sixty (60) days thereafter until the divestiture is fully affected, submit to the Commission a detailed written report of its actions, plans and progress in complying with the divestiture provisions of this order. All reports shall include, among other things that may be from time to time required, a summary of all contacts and negotiations with any person or persons interested in acquiring the assets to be divested under this order, the identity of each such person or persons, and copies of all written communications to and from each such person or persons relating to such divestiture. Annual reports of compliance with the remaining provisions of this order shall be submitted to the Commission on the anniversary date of the service of this order.

It is further ordered, That the complaint against Unilac Inc., is dismissed.

Interlocutory Order

94 F.T.C.

IN THE MATTER OF
AMREP CORPORATION*Docket 9018. Interlocutory Order, July 12, 1979*ORDER DENYING MOTION FOR A STAY OF THE INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

On June 14, 1979, respondent, AMREP Corporation, filed a motion with the Commission requesting that the Commission stay the Initial Decision of the administrative law judge so that respondent could have an opportunity to address the Commission on the matter of *ex parte* communications prior to the issuance of the Initial Decision.¹

Respondent makes two arguments in support of its motion. Respondent first argues that Section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(c), and Rule 3.41(c) of the Commission's Rules of Practice, require that the comments regarding *ex parte* communications be made on the record prior to the Initial Decision. Respondent also argues that Rule 3.54(c) limits the Commission's authority to take evidence in that the Commission has no authority to hear evidence regarding the *ex parte* communications unless such evidence is brought up in the hearings below. However, we find nothing in the text of any of these citations to support respondent's arguments.

Indeed, the respondent has previously sought injunctive relief on this same issue from the United States District Court for the District of Columbia. That relief was denied by Judge Gasch on April 9, 1979, for failure of the respondent to exhaust its administrative remedies. In his opinion, Judge Gasch ruled that respondent ". . . will have full opportunity to address the Commission on the matter of the *ex parte* communications. Furthermore, the Commission, if necessary, is empowered to take additional evidence, if indeed the Administrative Law Judge's initial decision goes to the Commission." Opinion at page 8.

We fully agree with the opinion of Judge Gasch. The Commission's appellate procedures provide respondent with an adequate mechanism to address the issue of *ex parte* communications should it be necessary.² Under the circumstances, it is unnecessary to stay the Initial Decision.³ Accordingly,

¹ Respondent also filed a motion to extend time for filing the Initial Decision because of the unlikelihood that the Commission could decide the motion for a stay before what had been a June 22, 1979 filing date. Inasmuch as that date was extended by the Commission to July 13, 1979, and a decision is now being made on the motion for a stay, the motion for an extension of time is denied as moot.

² Moreover, Rule 3.54(a) of the Commission's Rules allows the Commission to hear and take additional evidence on appeal from, or review of, an Initial Decision. See also 5 U.S.C. 557(b).

³ Since our decision not to grant respondent's motion is based on the fact that adequate procedures exist on appeal, we intimate no opinion on complaint counsel's assertion that the motion should be denied as a dilatory abuse of the Commission's Rules of Practice.

Interlocutory Order

It is ordered, That the motion for a stay of the initial determination by the administrative law judge be, and the same hereby is, denied.

IN THE MATTER OF
RHINECHEM CORPORATION, ET AL.

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

Docket 9116. Complaint, Aug. 23, 1978 — Dismissal Order, July 12, 1979*

This order dismisses the August 23, 1978 complaint issued against Allegheny Ludlum Industries, Inc. and its subsidiary, Chemetron Corporation, a producer of organic pigments, for alleged violations of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint was dismissed on grounds that changed circumstances which have occurred since issuance of the complaint have provided the Commission with adequate assurances that the challenged matter will not reoccur, and additional relief will not be necessary.

Appearances

For the Commission: *Glenn M. Fellman* and *Michael P. Waxman*.

For the respondents: *Thomas L. VanKirk, Buchanan, Ingersoll, Roderwald, Kyle & Buerger*, Pittsburgh, Pa. and *A.F. Maulsby, Cravath, Swaine & Moore*, New York City.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE LAW
JUDGE

MAY 30, 1979

PRELIMINARY STATEMENT

The complaint in this matter was issued by the Commission on August 23, 1978, alleging that the Commission had reason to believe that the above-named respondents had entered into a merger agreement which, 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. Rhinechem Corporation filed its answer to the complaint on October 2, 1978, and Allegheny Ludlum Industries, Inc. and Chemetron Corporation filed their answer to the complaint on September 29, 1978.

On October 20, 1978, Judge Joel M. Flaum, presiding in the United States District Court for the Northern District of Illinois, enjoined consummation of the acquisition "during the pendency of the adminis-

* Complaint previously reported at 98 F.T.C. 883.

trative proceedings and any subsequent judicial review." Following the issuance of the injunction, the parties to the merger agreement announced the proposed sale would not be pursued. On November 20, 1978, Allegheny Ludlum Industries, Inc. announced that it would sell the Chemetron Pigments Division ("CPD") to BASF Wyandotte Corporation ("BASF"). This sale of the Chemetron Pigments Division to BASF was consummated on March 23, 1979. Thereafter, on April 5, 1979, the Commission issued a complaint challenging the sale of CPD to BASF under Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act (*In the Matter of BASF Wyandotte Corporation*, Dkt. 9125). Allegheny Ludlum Industries, Inc. was not named as a party respondent in the BASF complaint.

At the prehearing conference held on December 19, 1978, it was stated by complaint counsel that Rhinechem Corporation was desirous of negotiating a consent order and would not be present at the prehearing conference. Such a consent agreement was negotiated and the Commission withdrew this matter from adjudication with respect to respondent Rhinechem Corporation on January 15, 1979.

Allegheny Ludlum Industries, Inc. and Chemetron Corporation subsequently filed a motion to dismiss the complaint as to them on the grounds that the proposed acquisition by Rhinechem Corporation had been abandoned and that there was no public interest in allowing this proceeding to continue. The Commission denied this motion (Order Denying Respondents' Motion For Dismissal of Complaint, February 12, 1979) [93 F.T.C. 233]. [2]

Counsel supporting the complaint, by motion filed pursuant to Section 3.22(a) of the Rules of Practice, have requested dismissal of the complaint for lack of public interest. Complaint counsel state that since the assets of CPD are no longer under the influence or control of Allegheny Ludlum Industries, Inc. and the Commission is presently challenging the sale of those assets to BASF, it is extremely unlikely that the respondents in this matter could return to the challenged acquisition after the complaint herein is dismissed and the injunction dissolved. Complaint counsel further state that the changed circumstances which have occurred have given the Commission the assurances it needs to conclude that the matter will not reappear in a disadvantageous context and that no additional relief is necessary. Counsel supporting the complaint, therefore, move that an order dismissing the instant complaint for lack of public interest be entered.

Section 3.22(e) of the Rules of Practice requires that when a motion to dismiss a complaint is granted with the result that the proceeding before the administrative law judge is terminated, an initial decision in accordance with the provisions of Section 3.51 shall be filed.

Having carefully reviewed the record of this proceeding, the administrative law judge makes the following findings of fact and conclusions and issues the order set out at the end hereof.

FINDINGS OF FACT

1. This matter has been withdrawn from adjudication as to respondent Rhinechem Corporation ("Rhinechem") (Order Withdrawing Matter From Adjudication With Respect To Rhinechem Corporation, January 15, 1979).

2. Allegheny Ludlum Industries, Inc. ("Allegheny") is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 2700 Two Oliver Plaza, Pittsburgh, Pennsylvania (Answer, Par. 9).

3. Chemetron Corporation ("Chemetron") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 111 E. Wacker Drive, Chicago, Illinois (Answer, Par. 8). Chemetron is a wholly-owned subsidiary of Allegheny (Answer, Par. 9). [3]

4. Chemetron and Allegheny, at all times relevant herein, have been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affects commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44. (Answer, Pars. 9, 10, 14).

5. On or about June 12, 1978, Rhinechem entered into an agreement in principle which provided, *inter alia*, for the acquisition by Rhinechem of the assets of Chemetron's Pigment Division (Answer, Par. 15). On August 25, 1978 Rhinechem entered into a written agreement providing that the sale be consummated on August 30, 1978, or such other date as fixed by them. The Commission, on August 25, 1978 issued its complaint alleging that the merger, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act (complaint). The Commission also brought suit to preliminarily enjoin the proposed purchase under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). The United States District Court for the Northern District of Illinois, on October 10, 1978, issued an injunction prohibiting consummation of the purchase agreement during the pendency of the administrative proceeding and any subsequent review thereof (*Federal Trade Commission v. Rhinechem Corporation, et al.*, CCH Trade Cases 1978-2 ¶ 62,350).

6. On October 23, 1978 the purchase agreement between Rhinechem and Allegheny and Chemetron was terminated by mutual

agreement of the parties (Motion For Dismissal Of Complaint, filed by Allegheny Ludlum Industries, Inc. and Chemetron Corporation, December 20, 1978, with attached affidavit of Clayton A. Sweeney, Vice President, Allegheny Ludlum Industries, Inc.).

7. On or about November 18, 1978, BASF Wyandotte Corporation ("BASF") and Allegheny and Chemetron entered into a definitive agreement which provided for the acquisition by BASF of the assets of Chemetron's Pigment Division. On or about March 23, 1979 BASF acquired the assets of Chemetron's Pigment Division (*In the Matter of BASF Wyandotte Corporation*, complaint, Dkt. 9125, April 5, 1979).

CONCLUSIONS

Since the assets of Chemetron's Pigment Division are no longer under the control of Allegheny and Chemetron, but have been purchased by BASF in a transaction now being challenged by the Commission in another proceeding, it is [4] extremely unlikely that the respondents herein can return to the acquisition which was challenged in this instant proceeding. The changed circumstances which have occurred since issuance of the complaint herein have provided the Commission with adequate assurances that the matter which was challenged in the complaint will not reoccur and no additional relief is necessary. Accordingly, further pursuance of this complaint is not in the public interest.

ORDER

It is ordered, That the complaint in this matter be, and it hereby is, *dismissed* as to respondents Allegheny Ludlum Industries, Inc. and Chemetron Corporation.

FINAL ORDER

The administrative law judge filed an Initial Decision in this matter on May 30, 1979, dismissing the complaint against respondents Allegheny Ludlum Industries, Inc. and Chemetron Corporation on the ground that changed circumstances which have occurred since issuance of the complaint have provided the Commission with adequate assurances that the matter which was challenged in the complaint will not reoccur and no additional relief is necessary. No appeal from the Initial Decision was filed.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the Initial Decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice, [2]

Final Order

94 F.T.C.

It is ordered, That the Initial Decision and order contained therein shall become effective on July 12, 1979.

Modifying Order

IN THE MATTER OF
NORRIS INDUSTRIES, INC.MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2946. Decision, Dec. 27, 1978 — Modifying Order, July 12, 1979

This order modifies the cease and desist order issued on December 27, 1978, 44 FR 6880, 92 F.T.C. 989, by revising Paragraph "2." of Part II of the original order to require affirmative disclosures and include definitions of "clear and conspicuous" for purposes of print, radio, and television advertising.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on April 25, 1979, issued its Order to Show Cause why this proceeding should not be reopened and its order of December 27, 1978, modified.

Respondents filed an Answer on May 31, 1979, setting forth objections to the Order to Show Cause, and proposing certain amendments. Commission staff interposed no objections and recommended that the respondent's amendments be incorporated into the order,

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the Order to Show Cause and the Respondent's Answer, without necessity of further action by the Commission, as follows:

ORDER

PART I

It is ordered, That Norris Industries, Inc., [hereinafter referred to as the respondent], its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of dishwashers in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can sterilize or destroy all microorganisms on utensils placed in the dishwasher.
2. Representing directly, or by implication, that the stainless steel parts in any dishwasher manufactured or sold by respondent are rustproof or will not rust under normal household conditions.

Modifying Order

94 F.T.C.

3. Representing, directly or by implication, that the disposo-drain in any dishwasher manufactured or sold by respondent will remove all soft food waste from the dishwasher.

4. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can completely clean dishes, cookware, and other utensils placed in the dishwasher, without prior scraping, scouring, or rinsing.

5. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can be randomly loaded or that there are no special instructions to follow when loading.

PART II

It is further ordered, That respondent, its successors and assigns, either jointly or individually, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of major home appliances in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Making any statements or representations, directly or by implication, concerning the performance of such products unless at the time that the statements or representations are made respondent possesses and relies on a reasonable basis for such statements or representations, which shall consist of a competent and reliable scientific test, as defined in Paragraph One (b) hereafter.

(b) For purposes of this order a "competent and reliable scientific test" is one in which one or more persons with education, knowledge, and experience in the field conduct a test and evaluate its results in an objective manner using testing, evaluation, and analysis procedures generally accepted in the profession and which best insure valid and reliable results. Moreover, the test results must either accurately predict, or be correlated with, the results that a consumer ordinarily would obtain using the product under normal household conditions.

2. Failing to make a "clear and conspicuous disclosure" that product features, depicted or described in advertising for a product, apply only to the model being advertised or, if applicable, only to certain models. Such disclosure shall identify the model(s) by number(s) (and name(s) if applicable) to which the product features do or, at the respondent's option, do not apply. This disclosure shall not be required where the advertisement clearly and conspicuously identifies the model by number (and model name if applicable) to which the product features being advertised apply.

For purposes of this provision:

Television Advertising – clear and conspicuous shall be as set forth in the FTC's Statement of Enforcement Policy of October 21, 1970;

Radio Advertising – the disclosure shall be clear and conspicuous and shall be made with no other sounds including music;

Print Advertising – clear and conspicuous shall mean that the disclosure of the model number and name, if applicable, shall be in no less a type size than that used to describe the product features and shall be in immediate conjunction with the description of the product features.¹

3. Making any statements or representations, directly or by implication, in connection with the advertisement of any such product, which are inconsistent in any material respect with any statements or representations contained, directly or by implication, in post purchase material(s) supplied to the purchaser of such products.

4. For purposes of this order the term "major home appliances" means the following appliances presently manufactured or sold by the respondent: automatic dishwashers; garbage disposers; trash compactors; and microwave ovens.

PART III

It is further ordered, That respondent, its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, distribution or sale of "major home appliances" in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain the following accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) documentation in support of and on which respondent relied in making any claim included in advertising, sales promotional material, or post purchase materials, disseminated by respondent or by any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or

¹ The provisions of this order in respect to print advertising will be implemented per the following schedule: (1) Reproducible advertising for use by distributors and retail dealers – when stock in existence on June 1, 1979, is exhausted but in any event no later than January 1, 1980; (2) Advertising for placement by respondent – promptly upon the effective date of this modification to the final order; (3) Brochures – when stock in existence on June 1, 1979, is exhausted but in any event no later than January 1, 1980, except, respondent's brochure identified as Exhibit 22 in the Compliance Report dated as of April 12, 1979 – promptly upon the effective date of this modification to the final order.

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subsidiary, concerning the performance characteristics of any of respondent's major home appliances;

(b) documentation which contradicts, qualifies or calls into serious question any claim included in advertising, sales promotional material or post purchase materials disseminated by respondent or by any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or subsidiary, concerning the performance characteristics of any of respondent's major home appliances.

Such documentation shall be retained by respondent for a period of three years from the date such advertising, sales promotional or post purchase materials were last disseminated.

PART IV

It is further ordered, That respondent notify the Commission at least 30 days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its officers, agents, representatives or employees of the respondent's Thermador/Waste King division who are engaged in the preparation, placement, or review of advertisements for the "major home appliances" defined in this order.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

TRANS WORLD ACCOUNTS, INC., ET AL.

MODIFIED ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9059. Decision, October 25, 1977 — Modified Order, July 25, 1979

This modified order to cease and desist replaces an order issued on October 25, 1977, 43 FR 2388, 90 F.T.C. 350. To clarify and reformulate the earlier order in accordance with the March 29, 1979 mandate of the Court of Appeals for the Ninth Circuit, 594 F.2d 212, Paragraph 3, which is the subject of further proceeding, has been omitted, but Paragraph 4 has not been renumbered.

MODIFIED ORDER TO CEASE AND DESIST

On February 21, 1978, respondents filed in the United States Court of Appeals for the Ninth Circuit a petition to review an order to cease and desist issued herein on October 25, 1977. The Court thereafter rendered its decision and judgment, affirming and enforcing the Commission's order with the exception of numbered Paragraph 3 thereof which was remanded for clarification pursuant to the decision of the Court. The time in which to file a petition for certiorari has now expired without any party having filed such a petition, and, accordingly, the order of the Commission shall be rendered in accordance with the mandate of the Court. See 15 U.S.C. 45(i).

Therefore, It is ordered, That the aforesaid order to cease and desist, save for numbered Paragraph "3" (which is the subject of further proceedings), be rendered to read as follows:

ORDER

It is ordered, That respondents, Trans World Accounts, Inc., a corporation, its successors and assigns, and its officers, and Floyd T. Watkins, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by their appearance,

content, or otherwise, misrepresent that they are telegrams or a telegram.

2. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by simulating telegrams or other methods or forms or types of communication misrepresent the nature, import, or urgency of any communication.

4. Placing in the hands of others the means and instrumentalities to accomplish any of the matters prohibited in this order, or which fail to comply with the requirements of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives, or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each person.

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his employment with Trans World Accounts, Inc., and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, the individual respondent named herein shall promptly notify the Commission of his affiliation with a new business or employment whose principal activities include the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, alleged delinquent debts, or of his affiliation with a new business or employment in which his own duties and responsibilities involve the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts. Such notice shall include individual respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The

expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall, within sixty (60) days from the date this order becomes final, and periodically thereafter as required by the Federal Trade Commission, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

Complaint

94 F.T.C.

IN THE MATTER OF

MACLEOD MOBILE HOMES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9068. Complaint, Dec. 19, 1975 — Decision, July 25, 1979*

This consent order, among other things, requires a Riverhead, N.Y. mobile homes dealer and its affiliates to cease entering into, or enforcing any arrangement or rule which restricts the availability of mobile home sites to only those parties who purchase, lease or rent mobile homes, accessories and services from MacLeod Mobile Homes, Inc. or other designated sources.

Appearances

For the Commission: *Elliot Feinberg, Herbert S. Forsmith and Henry R. Whitlock.*

For the respondents: *Wayne S. Hyatt, Hyatt & Rhoads, Atlanta, Ga.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purpose of this complaint, the following definitions shall apply:

(a) "Mobile home" means a transportable unit or units designed to be placed without a permanent foundation, connected to utilities, and used or capable of being used for year-round living.

(b) "Mobile home park" means a tract of land utilized specifically for the purpose of renting sites for the placement of mobile homes for residential purposes, and in which utility connections and various communal services are commonly provided.

II. RESPONDENTS

PAR. 2. Respondent MacLeod Mobile Homes, Inc. is a corporation

organized under the laws of the State of New York, with its principal office located at 525 Riverleigh Ave., Riverhead, New York.

PAR. 3. Respondent Pashisha, Inc., an affiliate of MacLeod Mobile Homes, Inc., is a corporation organized under the laws of the State of New York, with its principal office located at 525 Riverleigh Ave., Riverhead, New York.

PAR. 4. Respondents Myron T. MacLeod and John J. Couch, individuals, are officers of said corporations. They formulate, direct, approve, authorize and control the acts and practices of said corporation, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

PAR. 5. (a) Respondent MacLeod Mobile Homes, Inc. has been and is now engaged in the advertising, offering for sale, sale and distribution of mobile homes and mobile home accessories. Respondent MacLeod Mobile Homes, Inc. further has been and is now engaged in the development and operation of the MacLeod's Mobile Home Park, located at 525 Riverleigh Ave., Riverhead, New York.

(b) Respondent Pashisha, Inc. has been and is now engaged in the advertising, offering for sale, and distributing of mobile homes and mobile home accessories.

(c) In fiscal year 1975, sales of mobile homes by corporate respondents exceeded \$600,000.

III. JURISDICTION

PAR. 6. (a) In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, advertising to be disseminated to prospective purchasers of mobile homes and prospective mobile home park tenants located in various States of the United States across state lines and in interstate commerce within the United States, as "commerce" is defined in the Federal Trade Commission Act, as amended.

(b) In the course and conduct of their business as aforesaid, respondents have purchased and continue to regularly purchase mobile homes and other products from suppliers in states other than New York for the purpose of offering said products for sale, to maintain an available inventory for sale and to fill special purchase orders received from their customers.

(c) Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in

this complaint, respondents have been and are in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the sale of mobile homes and mobile home accessories and with persons or firms engaged in the operation and maintenance of mobile home parks.

IV. VIOLATIONS

PAR. 8. In the course and conduct of their business as aforesaid, respondents have engaged, and are engaging, in various courses of action, including:

- (a) refusing to rent sites in their mobile home park for the accommodation of mobile homes which have not been purchased from them, thereby making the rental of these sites conditional and dependent upon the purchase of mobile homes from said respondents;
- (b) refusing to rent sites to persons who have purchased their mobile homes directly from park tenants, unless such tenants or purchasers make substantial payments to respondents;
- (c) requiring tenants in their parks to purchase heating fuel and bottled gas from suppliers designated by respondents.

V. EFFECTS

PAR. 9. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, have, or tend to have, the effect of:

- (a) reducing competition in the sale of mobile homes;
- (b) foreclosing potential competitors in the sale of mobile homes by raising entry barriers;
- (c) foreclosing substantial sales by dealers of mobile homes to actual or prospective tenants of sites in respondents' mobile home parks;
- (d) inflating the prices of mobile homes purchased from respondents;
- (e) depriving tenants who resell their mobile homes of a substantial part of the value of said homes;
- (f) restricting mobile home owners' rights to alienate or freely sell their property;
- (g) reducing competition in the sale of heating fuel and bottled gas to mobile home owners;
- (h) inflating the cost of heating fuel and bottled gas purchased by tenants of respondents' mobile home park;
- (i) depriving consumers of the benefits of competition.

PAR. 10. The aforesaid acts, practices and methods of competition,

constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended, and constitute unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having issued its complaint on December 19, 1975, charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and

Respondents and complaint counsel, by joint motion filed December 9, 1976, having moved to have this matter withdrawn from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued January 11, 1977, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

Each of the respondents and counsel supporting the complaint having executed an agreement containing a consent order, which includes an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers as required by the Commission's Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of one hundred and eighty (180) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules and the recommendation of its staff, and having concluded that the consent agreements should be modified along the lines suggested by staff, with changes; and

Respondents and complaint counsel having thereafter executed and submitted a revised agreement containing consent order dated April 23, 1979, containing modifications agreed to by the Commission; and

The executed agreement dated April 23, 1979, as modified, containing the following consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers as required by the Commission's Rules;

Now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

ORDER

It is ordered, That MacLeod Mobile Homes, Inc. and Pashisha, Inc., corporations, their successors and assigns, and their officers and Myron T. MacLeod and John J. Couch, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale, lease or rental of mobile homes, mobile home sites or any other product, service, real estate or thing, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. The offering, execution, maintenance or enforcement of any lease, agreement, understanding or other arrangement which, directly or indirectly, conditions the lease, rental or sale of a mobile home site upon the lease, rental or purchase of a mobile home from a respondent, or a source designated by a respondent.

2. The offering, execution, maintenance or enforcement of any lease, agreement, understanding or other arrangement, which, directly or indirectly, conditions the lease, rental or sale of any product, service, real estate or thing upon the lease, rental or purchase of any other product, service, real estate or thing from a respondent or a source designated by a respondent.

3. Refusing to offer, enter into, or maintain a lease or any other arrangement relating to the sale, lease or rental of any mobile home site unless or until the prospective tenant leases, rents, acquires or purchases, or promises or agrees to lease, rent, acquire or purchase a mobile home, or any other product, service, real estate or thing, from a respondent, or a source designated by a respondent.

4. Establishing, maintaining or enforcing any rule, practice or arrangement in a mobile home park owned, controlled or operated by a respondent whereby:

a) a mobile home sold, rented or leased by a tenant of a respondent must be removed from its site for the reason that said mobile home was not sold, rented or leased by, through or with the cooperation of a respondent or the designee of a respondent;

b) a mobile home park tenant who sells, rents or leases a mobile home is required to subscribe to or purchase or accept the services of a respondent or person or firm designated by a respondent;

c) a mobile home park tenant or prospective tenant is required to

compensate a respondent, or a person or firm designated by a respondent, who has not provided any services in connection with the sale, rental or lease of a mobile home by such tenant or the purchase, rental or lease of a mobile home by such a prospective tenant;

d) a prospective tenant purchasing a mobile home from any tenant of a respondent is not permitted to rent the mobile home site occupied by such mobile home, provided that any such prospective tenant would otherwise qualify for tenancy in such mobile home park under reasonable rules and regulations established for the operation thereof, which rules shall not be inconsistent with state law; or

e) a tenant of a respondent is threatened with or subjected to eviction or any coercive action or detriment for refusal or failure to agree to lease, rent, acquire or purchase any product, service, real estate or thing from a respondent or a source designated by a respondent.

Provided, however, that respondents may exercise their lawful rights as businessmen, including the right to set reasonable rules, regulations and standards concerning the appearance of mobile homes and acceptance of tenants in respondents' mobile home parks and the operation, maintenance and appearance of mobile homes, mobile home parks and mobile home sites, except insofar as limited by the provisions of this order; and

Provided further, that nothing in this order shall prevent respondents from establishing, maintaining or enforcing reasonable rules or regulations that are necessary to protect respondents' property, or are otherwise explicitly authorized under existing state law.

Provided further, that nothing in this order shall exempt any person or firm from the duty to comply with all applicable laws or regulations which are consistent with the provisions of this order.

It is further ordered, That respondents shall, within thirty (30) days of service of this order, distribute, and obtain a signed receipt therefor, a copy of this order to each of their operating divisions and respondents' employees engaged in the sale or rental of mobile homes or mobile home sites.

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment, and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, each individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale of mobile homes or the rental of mobile home sites or of his affiliation with a new business or

employment in which his own duties and responsibilities involve the sale of mobile homes or the rental of mobile home sites. Such notice shall include this respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

It is further ordered, That respondents maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for at least three years after it is made.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
MOBILE HOMES-MULTIPLEX CORPORATION, ET AL.

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

Docket 9069. Complaint, Dec. 19, 1975 — Decision, July 25, 1979

This consent order, among other things, requires a Mt. Holly, N.J. mobile home dealer and its subsidiaries to cease entering into or enforcing any arrangement or rule which restricts the availability of mobile home sites to only those parties who purchase, lease or rent mobile homes, accessories and services from Mobile Homes-Multiplex Corp. or other designated sources.

Appearances

For the Commission: *Herbert Forsmith, Henry R. Whitlock and Elliot Feinberg.*

For the respondents: *John W. Kormes, Philadelphia, Pa.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purposes of this complaint, the following definitions shall apply:

(a) "Mobile home" means a transportable unit or units designed to be placed without a permanent foundation, connected to utilities, and used or capable of being used for year-round living.

(b) "Mobile home park" means a tract of land utilized specifically for the purpose of renting sites for the placement of mobile homes for residential purposes and in which utility connections and various communal services are commonly provided.

II. RESPONDENTS

PAR. 2. (a) Respondent Mobile Homes-Multiplex Corp. is a corporation organized under the laws of the State of Delaware with its

principal office located at Mobile Estates, Inc., Route 206, Mt. Holly, New Jersey.

(b) Respondent Mobile Estates, Inc. is a corporation organized under the laws of the State of New Jersey with its principal office located at Route 206, Mt. Holly, New Jersey.

(c) Respondent Mobile Estates of Southampton, Inc. is a corporation organized under the laws of the State of New Jersey with its principal office located at Route 206, Mt. Holly, New Jersey.

(d) Respondents Mobile Estates, Inc. and Mobile Estates of Southampton, Inc. are wholly-owned subsidiaries of respondent Mobile Homes-Multiplex Corp., a holding company, which dominates and controls the acts and practices of said wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

PAR. 3. Respondent Tower Trailer Park, Inc. is a corporation organized under the laws of the State of New Jersey with its principal office located at 26 Dalbert St., Carteret, New Jersey.

PAR. 4. Respondent George R. Searle, an individual, is the president of respondents Mobile Homes-Multiplex Corp., of Mobile Estates, Inc., of Mobile Estates of Southampton, Inc. and of Tower Trailer Park, Inc. He formulates, directs, approves, authorizes and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of corporate respondent Mobile Estates, Inc.

PAR. 5. Hereinafter respondents Mobile Homes-Multiplex Corp., Mobile Estates, Inc., Mobile Estates of Southampton, Inc., and George R. Searle shall sometimes be referred to collectively as "Mobile Estates."

PAR. 6. (a) Respondent Mobile Estates, Inc. is now, and for some time last past has been, engaged in the business of advertising, offering for sale, sale and distribution of mobile homes and mobile home accessories. In fiscal year 1972, sales of mobile homes by respondent Mobile Estates, Inc. were approximately \$700,000.

(b) Respondent Mobile Estates of Southampton, Inc. is now, and for some time last past has been, engaged in the development and operation of a mobile home park located at Route 206, Mt. Holly, New Jersey.

(c) Respondent Tower Trailer Park, Inc. is now, and for some time last past has been, engaged in the development and operation of a mobile home park located at 26 Dalbert St., Carteret, New Jersey.

III. JURISDICTION

PAR. 7. (a) In the course and conduct of their business as aforesaid, respondents "Mobile Estates" now cause, and for some time last past

have caused, advertising to be disseminated to prospective purchasers of mobile homes and prospective mobile home park tenants located in various States of the United States across state lines and in interstate commerce within the United States, as "commerce" is defined in the Federal Trade Commission Act, as amended.

(b) In the course and conduct of their business as aforesaid, respondents "Mobile Estates" have purchased and continue to regularly purchase mobile homes and other products from suppliers in states other than New Jersey for the purpose of offering said products for sale, to maintain an available inventory for sale and to fill special purchase orders received from their customers.

(c) In the course and conduct of its business, respondent Tower Trailer Park, Inc. has entered into agreements with respondents "Mobile Estates," which are essential to make effective the restraints on interstate commerce alleged in Paragraph Ten hereof.

(d) Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 8. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondents have been and are in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the sale of mobile homes and mobile home accessories and with persons or firms engaged in the operation and maintenance of mobile home parks.

IV. VIOLATIONS

PAR. 9. In the course and conduct of their business as aforesaid, respondents "Mobile Estates" have engaged, and are engaging, in various courses of action, including:

(a) refusing to rent sites in their mobile home park for the accomodation of mobile homes which have not been purchased from them, thereby making the rental of these sites conditional and dependent upon the purchase of mobile homes from said respondents;

(b) refusing to rent sites to persons who have purchased their mobile homes directly from park tenants;

(c) requiring tenants desiring to sell their mobile homes to consign their homes to respondents for resale or to have said homes removed from the park upon resale.

PAR. 10. In the further course and conduct of their businesses as aforesaid, respondents Tower Trailer Park, Inc. and "Mobile Estates" have entered into an agreement under which Tower Trailer Park, Inc. refuses to rent its sites for the accomodation of mobile homes which have not been purchased from "Mobile Estates," thereby making the rental of said sites conditional and dependent upon the purchase of mobile homes from "Mobile Estates."

V. EFFECTS

PAR. 11. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, have or tend to have the effect of:

- (a) reducing competition in the sale of mobile homes;
- (b) foreclosing potential competitors in the sale of mobile homes by raising entry barriers;
- (c) foreclosing substantial sales by dealers of mobile homes to actual or prospective tenants of sites in respondents' mobile home parks;
- (d) inflating the prices of mobile homes purchased from respondents;
- (e) depriving tenants who resell their mobile homes of a substantial part of the value of said homes;
- (f) restricting mobile home owners' rights to alienate or freely sell their property;
- (g) depriving consumers of the benefits of competition.

PAR. 12. The aforesaid acts, practices and methods of competition, constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended, and constitute unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having issued its complaint on December 19, 1975, charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and

Respondents and complaint counsel, by joint motion filed December 9, 1976, having moved to have this matter withdrawn from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued January 11, 1977, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

Each of the respondents and counsel supporting the complaint having executed an agreement containing a consent order which includes an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers as required by the Commission's Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of one hundred and eighty (180) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules and the recommendations of its staff, and having concluded that the consent agreements should be modified along the lines suggested by staff, with changes; and

Respondents and complaint counsel having thereafter executed and submitted a revised agreement containing consent order dated June 7, 1979, containing modifications agreed to by the Commission; and

The executed agreement dated June 7, 1979, as modified, containing the following consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers as required by the Commission's rules,

Now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Mobile Homes-Multiplex Corp. is a corporation organized under the laws of the State of Delaware with its principal office located at Mobile Estates, Inc., Route 206, Mt. Holly, New Jersey.

Respondent Mobile Estates, Inc. is a corporation organized under the laws of the State of New Jersey with its principal office located at Route 206, Mt. Holly, New Jersey.

Respondent Mobile Estates of Southampton, Inc. is a corporation organized under the laws of the State of New Jersey with its principal office located at Route 206, Mt. Holly, New Jersey.

Respondents Mobile Estates, Inc. and Mobile Estates of Southampton, Inc. are wholly-owned subsidiaries of respondent Mobile Homes-Multiplex Corp., a holding company, which dominates and controls the acts and practices of said wholly-owned subsidiaries.

Respondent Tower Trailer Park, Inc. is a corporation organized

under the laws of the State of New Jersey with its principal office located at 26 Dalbert St., Carteret, New Jersey.

Respondent George R. Searle, an individual, is the president of respondents Mobile Homes-Multiplex Corp., Mobile Estates, Inc., Mobile Estates of Southampton, Inc. and Tower Trailer Park, Inc. He formulates, directs, approves, authorizes and controls the acts and practices of said corporate respondents. His business address is the same as that of corporate respondent Mobile Estates, Inc.

2. 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

It is ordered, That respondents Mobile Homes-Multiplex Corp., Mobile Estates, Inc., Mobile Estates of Southampton Inc., and Tower Trailer Park, Inc., corporations, their successors and assigns, and their officers and George R. Searle, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale, lease or rental of mobile homes, mobile home sites or any other product, service, real estate or thing, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. The offering, execution, maintenance or enforcement of any lease, agreement, understanding or other arrangement which, directly or indirectly, conditions the lease, rental or sale of a mobile home site upon the lease, rental or purchase of a mobile home from a respondent, or a source designated by a respondent.

2. The offering, execution, maintenance or enforcement of any lease, agreement, understanding or other arrangement, which, directly or indirectly, conditions the lease, rental or sale of any product, service, real estate or thing upon the lease, rental or purchase of any other product, service, real estate or thing from a respondent, or a source designated by a respondent.

3. Refusing to offer, enter into, or maintain a lease or any other arrangement relating to the sale, lease or rental of any mobile home site unless or until the prospective tenant leases, rents, acquires or purchases, or promises or agrees to lease, rent, acquire or purchase a mobile home, or any other product, service, real estate or thing, from a respondent, or a source designated by a respondent.

4. Establishing, maintaining or enforcing any rule, practice or arrangement whereby:

(a) a mobile home sold, rented or leased by a tenant of a respondent must be removed from its site for the reason that said mobile home was not sold, rented or leased by, through or with the cooperation of a respondent or the designee of a respondent;

(b) a prospective tenant purchasing, renting or leasing a mobile home from any tenant of a respondent is not permitted to rent the mobile home site occupied by such mobile home, provided that any such prospective tenant would otherwise qualify for tenancy in such mobile home park under reasonable rules and regulations established for the operation thereof, which rules shall not be inconsistent with state law; or

(c) a tenant of a respondent is threatened with or subjected to eviction or any coercive action or detriment for refusal or failure to agree to lease, rent, acquire or purchase any product, service, real estate or thing from a respondent or a source designated by a respondent.

Provided, however, that except insofar as limited by the provisions of this order, respondents may exercise their lawful rights as businessmen, including, for example, the right to advertise and sell their products and services, and the right to set reasonable rules, regulations and standards concerning the appearance of mobile homes and acceptance of tenants in respondents' mobile home parks, and the operation, maintenance and appearance of mobile homes, mobile home parks, and mobile home sites; and

Provided further, that nothing in this order shall prevent respondents from establishing, maintaining or enforcing reasonable rules or regulations that are necessary to protect respondents' property, or are otherwise explicitly authorized under existing state law.

Provided further, that nothing in this order shall exempt any person or firm from the duty to comply with all applicable laws or regulations which are consistent with the provisions of this order.

It is further ordered, That respondents shall, within thirty (30) days of service of this order, distribute, and obtain a signed receipt therefor, a copy of this order to each of their operating divisions and respondents' employees engaged in the sale or rental of mobile homes or mobile home sites.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such

notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order. This paragraph shall not prohibit the individual respondent from discontinuing his present business or employment or from affiliating with a new business or employment.

It is further ordered, That respondents maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for at least three years after it is made.

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

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
JONATHAN LOGAN, INC.

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

Docket C-2977. Complaint, July 25, 1979 — Decision, July 25, 1979

This consent order, among other things, requires a Secaucus, N.J. manufacturer of wearing apparel to cease establishing, maintaining and enforcing resale prices and sale periods; and recommending resale prices for a period of three years. All price lists disseminated by the firm after that period must note that the prices are merely suggested. Respondent is also prohibited from policing the retail prices of its customers; and threatening or taking adverse action against recalcitrants. Additionally, the order requires the firm to reinstate former customers who were terminated for failing to adhere to established prices; and maintain applicable records for five years.

Appearances

For the Commission: *Judith Braun.*

For the respondent: *Joshua F. Greenberg, Kay, Scholer, Furman, Hays & Handler, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Jonathan Logan, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jonathan Logan, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 50 Terminal Road, Secaucus, New Jersey.

PAR. 2. Respondent is now, and has been engaged in the manufacture, sale and distribution of wearing apparel including Misty Harbor rainwear. In 1977, Jonathan Logan, Inc. had net sales in excess of \$400,000,000.

PAR. 3. Respondent sells and distributes wearing apparel to resellers located throughout the United States who in turn sell to the general public. In connection with the sale of its rainwear, respondent maintains a factory in Baltimore, Maryland and sells its products from

showrooms located in New York City, Boston, Chicago, San Francisco, Atlanta, Charlotte, Kansas City and Dallas.

PAR. 4. Respondent maintains and at all times mentioned herein has maintained a substantial course of trade in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended.

PAR. 5. For purposes of the complaint, the following definitions shall apply:

"Reseller" is any person, partnership, firm or corporation which purchases any product from respondent.

"Prospective reseller" is any person, partnership, firm or corporation which requests to purchase any product from respondent.

"Resale price" is any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any reseller for pricing any product.

"Sale period" is any break date, end of season or period for selling or advertising any product at a price other than the suggested, established or customary price.

PAR. 6. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition with persons or firms engaged in the manufacture, distribution or sale of apparel.

PAR. 7. Respondent unilaterally or in combination, agreement or understanding with some resellers has through its Misty Harbor Division engaged in the following acts or practices, among others:

(a) establishing agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective resellers will maintain certain resale prices or sale periods;

(b) informing resellers or prospective resellers, by direct and indirect means, that respondent expects or requires such resellers or prospective resellers to maintain or adhere to certain resale prices or sale periods;

(c) furnishing resellers or prospective resellers with price lists and supplements thereto containing established or suggested resale prices or sale periods for respondent's products and otherwise indicating the resale prices respondent deems appropriate;

(d) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective resellers will not advertise respondent's first-line quality products at resale prices other than those established, suggested or deemed appropriate by respondent;

(e) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective resellers will refrain from advertising respondent's close-out or promotional products or second-line quality or irregular products as having been manufactured by respondent;

(f) directing, soliciting or encouraging resellers to cooperate and assist in identifying and reporting any reseller or prospective reseller who is engaged in any of the following activities:

(1) offering for sale or selling any product at a resale price other than that which respondent has established, suggested or deemed appropriate.

(2) advertising any first-line quality product at a resale price other than that which respondent has established, suggested or deemed appropriate.

(3) advertising any close-out or promotional product or second-line quality or irregular product as having been manufactured by respondent.

(g) threatening to terminate, terminating or warning resellers engaged in, or suspected of engaging in, any of the activities set forth in subparagraph (f)(1)-(3) above and using various forms of coercion and discipline, including but not limited to delaying order shipments, limiting the frequency of visits by sales personnel and restricting the availability of products, against such resellers;

(h) refusing to deal with certain prospective resellers who may engage in any of the activities set forth in subparagraph (f)(1)-(3) above; or

(i) conditioning allowances or other benefits to resellers upon adherence to established, suggested or customary resale prices.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, have the capacity, tendency or the effect of:

(a) fixing, maintaining or stabilizing resale prices for respondent's rainwear;

(b) suppressing or eliminating competition between or among resellers of respondent's rainwear;

(c) depriving resellers of their freedom to function as free and independent businesspersons in connection with the sale of rainwear; and

(d) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition constitute unfair methods of competition or unfair acts or practices in

or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 New York 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, 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 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 Jonathan Logan, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 50 Terminal Road, Secaucus, New Jersey.
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

For purposes of this order, the following definitions shall apply:
"Reseller" is defined as any person, partnership, firm or corporation which purchases any product from respondent.
"Prospective reseller" is defined as any person, partnership, firm or corporation which requests to purchase any product from respondent.

"Resale price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any reseller for pricing any product. Such term includes but is not limited to any suggested, established or customary resale price.

"Sale period" is defined as any break date, end of season or period for selling or advertising any product at a price other than the suggested, established or customary price.

"Product" is defined as apparel including but not limited to rainwear, coats, dresses and sportswear.

I

It is ordered, That respondent Jonathan Logan, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, offering for sale, sale, distribution or advertising of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Establishing, exacting assurances to comply with, continuing or enforcing any combination, agreement, understanding or arrangement to fix, establish, control, maintain or enforce, directly or indirectly, the price at which any product is to be resold or advertised by any reseller or prospective reseller.

2. Communicating, publishing, circulating, disseminating or providing by any means any resale price or sale period to any reseller or prospective reseller for a period of three (3) years from the date of service of this order.

Provided, however, that after said three (3) year period, respondent shall not suggest resale prices or sale periods unless it is clearly and conspicuously stated on those pages of any list, book, advertising or promotional material or other document where any suggested resale price or sale period appears:

THE [RESALE PRICES OR SALE PERIODS] QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN [RESALE PRICES OR SALE PERIODS].

Provided further, however, that after said three (3) year period, respondent shall not suggest resale prices on any tag, ticket or comparable marking affixed or to be affixed to any product.

3. Requiring or coercing any reseller or prospective reseller to

establish, maintain, issue, adopt or adhere to any resale price or sale period.

4. Requiring or soliciting any reseller, prospective reseller, or employee or agent of respondent, either directly or indirectly, to report any reseller, prospective reseller, person or firm that does not adhere to any resale price or sale period.

5. Communicating with any reseller or prospective reseller concerning its deviation or alleged deviation from any resale price or sale period.

6. Suggesting or requiring that any reseller or prospective reseller refrain from or discontinue advertising any product at a certain resale price.

7. Stating directly or indirectly that any action may or will be taken against any reseller if it deviates from any resale price or sale period.

8. Threatening to withhold or withholding advertising allowances or any other assistance, payment, service or consideration from any reseller, or limiting or restricting the eligibility of any reseller to receive such benefits because said reseller advertises or sells any product at a certain resale price.

9. Making any payment or granting any other consideration or benefit to a reseller because another reseller has sold any product at a certain resale price.

10. Hindering or precluding the lawful use by any reseller of a brand name of respondent in conjunction with the sale or advertising of any product at any price.

11. Terminating, suspending, delaying shipments to or taking or threatening any action against any reseller because the reseller has, or was alleged to have, sold or advertised any product at a certain resale price or because the reseller may engage in any such activity in the future. Provided that respondent retains the right to terminate any reseller for lawful business reasons not inconsistent with this paragraph or any other paragraph of this order.

12. Attempting to secure any promise or assurance from any reseller or prospective reseller regarding the price at which such reseller or prospective reseller will or may advertise or sell any product; or requesting or requiring any reseller or prospective reseller to obtain approval from respondent for any price at which such reseller or prospective reseller may or will advertise or sell any product.

II

It is further ordered, That respondent, its successors and assigns, shall:

1. Within sixty (60) days after the date of service of this order, mail under separate cover a copy of either this order or the Federal Trade Commission's news release in this matter to every present reseller of Jonathan Logan, Inc. An affidavit of mailing shall be sworn to by an official of respondent verifying that said mailing was completed.

2. Mail a copy of either this order or the Federal Trade Commission's news release in this matter to any reseller that purchases any product from Jonathan Logan, Inc. within five (5) years after the date of service of this order. The mailing required by this paragraph shall occur within thirty (30) days after first purchase by said reseller.

3. Within thirty (30) days after the date of service of this order distribute a copy of this order to respondent's operating divisions and subsidiaries in the United States and to all officers, sales personnel, sales agents and sales representatives and secure from each entity or person a signed statement acknowledging receipt of said order.

4. Upon written request received within six (6) months from the date of service of this order, reinstate any reseller terminated by respondent since January 1, 1974 for failing to maintain a certain resale price or sale period, provided that such reseller meets the credit requirements applied by respondent in the retention of resellers.

5. Notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.

6. For a period of five (5) years from the date of service of this order maintain complete business records which fully disclose the manner and form of respondent's compliance with the order, including but not limited to any records referring or relating in whole or in part to:

- (a) any communication between respondent and any reseller or prospective reseller relating to the price at which any reseller or prospective reseller is selling, proposes to sell, is advertising or proposes to advertise any product;
- (b) the termination or suspension of any reseller for any reason;
- (c) the refusal to deal with any prospective reseller for any reason, including the name and address of the prospective reseller; or
- (d) any request for reinstatement pursuant to Part II Paragraph 4 of this order.

The records required by this paragraph shall be made available to Commission staff upon reasonable notice.

7. File with the Commission within sixty (60) days after service of this order a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

UNIVERSAL TRAINING SERVICE, INC., ET AL.

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

Docket 9106. Complaint, Jan. 11, 1978 — Decision, July 27, 1979

This consent order, among other things, requires eight affiliated vocational schools, headquartered in Miami, Fla., and five corporate officers to cease misrepresenting the prospective earnings, employment opportunities and demand for graduates of their respective courses; the effectiveness of their job placement service; and the extent of job placement assistance they provide to their graduates. They must furnish potential customers with prescribed disclosures concerning educational and other factors considered by employers in hiring; the job success of former graduates; and contracting party's right to cancellation and refund within the provided 14-day "cooling-off" period. Additionally, the schools are required to make restitution to former eligible students in a specified manner.

Appearances

For the Commission: *Charles Peterson, Arnold C. Celnicker, and H. Marshall Korschun.*

For the respondents: *David Yelen, Yelen & Yelen, Coral Gables, Fla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Universal Training Service, Inc., Universal Heavy Construction Schools, Inc., Universal Truck Drivers School, Inc., Universal Airlines Personnel Schools, Inc., Universal Motel Schools, Inc., Insurance Adjusters Schools, Inc., Universal Diesel Mechanic Schools, Inc., corporations, and E. McSwiggan & Associates, a partnership, and Edward McSwiggan, Edward W. McSwiggan, Jr., Gerald W. McSwiggan and Agnes McSwiggan, individually and as officers or directors of each of the above-listed corporations and as a partner in E. McSwiggan & Associates, and Marilyn Anne McSwiggan, individually and as an officer of each of the above-listed corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Universal Training Service, Inc., Univer-

sal Heavy Construction Schools, Inc., Universal Truck Drivers School, Inc., Universal Airlines Personnel Schools, Inc., Universal Motel Schools, Inc., Insurance Adjusters Schools, Inc., and Universal Diesel Mechanic Schools, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, and all have their principal offices and places of business located at 1901 N.W. Seventh St., Miami, Florida.

Respondent E. McSwiggan & Associates is a partnership not registered under the laws of the State of Florida, with its principal office and place of business at 1901 N.W. Seventh St., Miami, Florida.

Respondent Edward McSwiggan is an individual and is a partner in E. McSwiggan & Associates, and he has been an officer in each of the respondent corporations except Universal Diesel Mechanic Schools, Inc., and is now Chairman of the Board of Directors of each of the respondent corporations.

Respondents Edward W. McSwiggan, Jr., and Gerald W. McSwiggan are individuals, and each is a partner in E. McSwiggan & Associates, and each is an officer and/or director in all of the respondent corporations.

Respondent Agnes McSwiggan has been an officer in each of the respondent corporations.

Respondent Marilyn Anne McSwiggan is, or has been, an officer of all of the respondent corporations.

The said individual respondents cooperate and act together in formulating, directing and controlling the acts and practices of the corporate respondents and the partnership, including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of formulating, developing, advertising, offering for sale, selling, distributing, administering and servicing courses of instruction purporting to prepare graduates thereof for employment as heavy equipment operators, tractor-trailer drivers, airline stewardesses, airline hostesses, airline customer service representatives, motel managers, insurance claims adjusters and investigators, diesel mechanics, welders, motorcycle mechanics and other closely related occupations. Said courses include a number of correspondence lessons and a period of resident training at facilities located at Homestead, Florida; Miami Beach, Florida; or Las Vegas, Nevada, which facilities are operated by respondents.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, advertisements relating to the said courses of instruction to be published in newspa-

pers of general circulation and in magazines and in interstate radio and television broadcasts and by and through the use of such advertisements, respondents have obtained the names and addresses of prospective purchasers of the said courses of instruction and have furnished such names and addresses to salesmen authorized by respondents to sell such courses. Such salesmen have contacted the prospective purchasers identified through the use of respondents' advertisements and have sold such courses to members of the public located in states other than the State of Florida. Said salesmen receive from and transmit to respondents through the U.S. mail "enrollment agreements," contracts, checks and other instruments of a commercial nature relating to the sale of said courses to said purchasers. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of instruction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of enrolling prospective students and thereby promoting the sale of the aforesaid courses and various other courses of instruction, respondents make numerous statements through advertisements inserted and published in newspapers and periodicals having general circulation throughout the United States; in pamphlets, leaflets, circulars, form letters, cards, printed contracts and other media distributed through the U.S. mail; and through oral representations made by said representatives, on radio and television, and by other means and media, with respect to the nature of such courses of instruction and the advantages and benefits which the enrollees therein will receive from completion of said courses.

PAR. 5. By and through the use of the aforesaid statements, respondents and their salesmen now represent, and have represented, directly or by implication, that:

1. Persons who purchase and complete one of respondents' courses may reasonably expect to secure entry-level employment in the job classification for which they purportedly have been trained without additional training.

2. a. Persons graduating from respondents' courses at the time such representations were made, were earning; or

- b. Persons then enrolling in respondents' courses would earn, when they graduated,

"big money" or high pay.

3. There is an urgent need or demand by employers for many

additional persons who have purchased and completed respondents' courses of instruction.

4. Respondents' placement service will secure an entry-level position in the subject fields of the courses offered by respondents for most, if not all, graduates of said courses who request placement assistance.

PAR. 6. In truth and in fact:

1. Persons who purchase and complete one of respondents' courses may not reasonably expect to secure entry-level employment in the job classifications for which they purportedly have been trained without additional training.

2. a. Persons graduating from respondents' courses, at the time such representations were made, were not earning; or

b. Persons then enrolling in respondents' courses would not earn, when they graduated,

"big money" or high pay.

3. There was not, and is not, an urgent need or demand by employers for many additional persons who have purchased and completed respondents' courses of instruction.

4. Respondents' placement service has not secured, and will not now secure, an entry-level position in the subject fields of the courses offered by respondents for most, if not all, graduates of said courses who request placement assistance.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were, and are, false, misleading, unfair or deceptive acts or practices.

PAR. 7. Respondents have offered, and are now offering for sale training courses purporting to prepare purchasers thereof for employment as heavy equipment operators, tractor-trailer drivers, airline stewardesses, airline hostesses, airline customer service representatives, motel managers, insurance claims adjusters and investigators, diesel mechanics, welders, motorcycle mechanics and other closely related occupations without disclosing in advertising, promotional brochures or through sales representatives that many employers hire on the basis of other factors, such as, but not limited to, age, union membership, prior actual experience, college education, and participation in employer training programs. In many cases, the foregoing factors have prevented or have substantially impeded purchasers of respondents' courses from obtaining employment in the positions for which they have purportedly been trained.

Knowledge by prospective purchasers of respondents' training courses of factors such as those set out above is pertinent for the purpose of evaluating the possibility of securing future employment upon completion of the training courses and the nature of such employment. Thus, respondents have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts or practices were, and are, false, misleading, unfair or deceptive acts or practices.

PAR. 8. In the further course of their aforesaid business, and at all times mentioned herein, respondents have offered for sale courses intended to train students for employment in certain positions or career fields without disclosing in their advertising, promotional brochures or through sales representatives:

1. The percentage of students recently completing the courses who were able to secure employment in the positions or career fields for which they were trained;
2. The initial salary received by such completing students; and
3. The percentage of recent students for each course offered that have failed to complete their course of instruction.

Knowledge of such facts by prospective students of respondents' courses would indicate that a significant number of students have not completed such courses and not secured employment. Thus, respondents have failed to disclose material facts which, if known to certain prospective students, would be likely to affect their consideration of whether to purchase such courses.

Therefore, the aforesaid acts or practices were and are false, misleading, deceptive or unfair acts or practices.

PAR. 9. In a substantial number of instances, through the use of false, misleading or deceptive acts or practices set forth herein, respondents or their representatives have been able to induce prospective enrollees into executing enrollment contracts upon initial contact without affording the enrollee sufficient time to carefully consider the purchase of the training course and the consequences thereof. Therefore, the aforesaid acts or practices of respondents were and are unfair acts or practices.

PAR. 10. Through the false, misleading, deceptive, or unfair acts or practices herein set forth, respondents have induced students and other persons or entities to pay, or contract to pay, to respondents substantial sums of money to purchase or pay for respondents' courses. In many instances such monies were paid to and received by respondents although such courses were of little value to students.

Respondents have received the aforesaid monies and have failed to offer or refund such sums to, or to rescind the contractual obligations of, many students and other persons or entities participating in the financing of such courses.

By inducing students and other persons or entities to pay, or contract to pay, to respondents substantial sums of money for respondents' courses where such courses are of little value to students and by failing to offer or refund such sums to, or to rescind the contractual obligations of many students and other persons or entities where such courses are of little value, respondents have engaged in unfair acts or practices.

Therefore, the said acts or practices constitute unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 11. By and through the use of the aforesaid acts, practices, or representations, respondents have placed in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 12. The use by respondents of the false, misleading, unfair or deceptive statements, representations, acts or practices and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete and to induce a substantial number of such persons to purchase said courses of study and instruction offered by respondents by reason of such erroneous and mistaken belief.

PAR. 13. The aforesaid acts or practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their 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 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, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondents Universal Training Service, Inc., Universal Heavy Construction Schools, Inc., Universal Truck Drivers School, Inc., Universal Airlines Personnel Schools, Inc., Universal Motel Schools, Inc., Insurance Adjusters Schools, Inc., Universal Diesel and Construction Mechanic Schools, Inc., and Universal School of Heavy Equipment Operations, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, and all have their principal office and place of business at 1901 N.W. Seventh St., Miami, Florida.

Respondent E. McSwiggan & Associates is a partnership with its principal office and place of business at 1901 N.W. Seventh St., Miami, Florida.

Respondent Edward McSwiggan is an individual and is a partner in E. McSwiggan & Associates and he has been an officer in each of the respondent corporations except Universal Diesel and Construction Mechanic Schools, Inc., and is now Chairman of the Board of Directors of each of the respondent corporations.

Respondents Edward W. McSwiggan, Jr., and Gerald W. McSwiggan are individuals, and each is a partner in E. McSwiggan & Associates, and each is an officer or director in all of the respondent corporations.

Respondent Agnes McSwiggan is an individual, a partner in E. McSwiggan & Associates, and has been an officer in each of the respondent corporations.

Respondent Marilyn Anne McSwiggan is, or has been, an officer of all of the respondent corporations.

The said individual respondents' addresses are the same as that of the corporate respondents.

2. 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 respondents Universal Training Service, Inc., a corporation, Universal Heavy Construction Schools, Inc., a corporation, Universal Truck Drivers School, Inc., a corporation, Universal Airlines Personnel Schools, Inc., a corporation, Universal Motel Schools, Inc., a corporation, Insurance Adjusters Schools, Inc., a corporation, Universal Diesel and Construction Mechanic Schools, Inc., a corporation, and Universal School of Heavy Equipment Operations, Inc., a corporation, their successors and assigns and their officers, E. McSwiggan & Associates, a partnership, Edward McSwiggan, Edward W. McSwiggan, Jr., Gerald W. McSwiggan and Agnes McSwiggan, individually, as officers or directors of said corporations, and as partners trading and doing business as E. McSwiggan & Associates, and Marilyn Anne McSwiggan, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of heavy equipment operation, tractor-trailer driving, airline personnel, motel management, insurance claim adjusting, diesel and construction mechanics, welding, motorcycle mechanics, or any other subject, trade or vocation in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, visually, in writing or in any other manner, directly or by implication, except as hereafter provided in Paragraph 10 of Part I of this order that:

a. Graduates of respondents' courses may reasonably expect to secure entry-level employment in the job classification for which they purportedly have been trained.

b. Graduates of respondents' courses have earned or will or may earn any specified amount of money, or otherwise representing by any means, the prospective earnings of respondents' graduates.

c. There is a significant and substantial need or demand for graduates of respondents' courses.

d. Respondents' placement service has secured or will secure an entry-level position in the subject fields of the courses offered by

respondents for most, if not all, graduates of said courses who requested or request placement assistance.

2. Representing orally, visually, in writing or in any other manner, directly or by implication, unless respondents disclose the information required in Paragraph 10 of Part I of this order:

a. The general conditions or employment demand in any employment market now or any time in the future.

b. The amount of salary or earnings generally available to persons employed in any occupation.

3. Misrepresenting, orally, visually, in writing or in any other manner, directly or by implication:

a. The employment opportunities available to graduates of any of respondents' courses.

b. The effectiveness or success of respondents' placement service in obtaining employment for graduates of any of respondents' courses.

c. The extent of any placement assistance or service furnished by respondents to help graduates of respondents' courses obtain employment.

4. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any tractor-trailer or truck driving course offered by respondents, the following information:

a. The title "IMPORTANT INFORMATION" printed in ten (10) point boldface type above the information specified in subparts b, c and d of this paragraph.

b. Many employers of tractor-trailer or truck drivers prescribe a minimum age of 21 years for drivers.

c. Many employers of tractor-trailer or truck drivers give preferential consideration in hiring to driver applicants who are 25 years of age or more.

d. Many employers of tractor-trailer or truck drivers give preferential consideration in hiring to driver applicants with actual tractor-trailer or truck driving experience.

5. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any heavy equipment operators training course offered by respondents, the following information:

a. The title "IMPORTANT INFORMATION" printed in ten (10) point

boldface type above the information specified in subpart b of this paragraph.

b. Many employers of heavy equipment operators hire only operators belonging to unions and heavy equipment operators' unions will not necessarily grant graduates of [name of school] membership based upon the school's training.

6. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any insurance adjusters training course offered by respondents, the following information:

a. The title "IMPORTANT INFORMATION" printed in ten (10) point boldface type above the information specified in subparts b, c and d of this paragraph.

b. Many employers of insurance adjusters prescribe a minimum educational level of two (2) or four (4) years of college.

c. Many employers of insurance adjusters give preferential consideration in hiring to applicants with actual adjusting experience.

d. Many employers of insurance adjusters train their own personnel and training given by [name of school] is not accepted as a replacement for the employers' own training.

7. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any airlines personnel course offered by respondents, the following information:

a. The title "IMPORTANT INFORMATION" printed in ten (10) point boldface type above the information specified in subpart b of this paragraph.

b. Most, if not all, airlines train their own personnel and training given by [name of school] is not accepted as a replacement for the airlines' own training.

8. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any motel management course offered by respondents, the following information:

a. The title "IMPORTANT INFORMATION" printed in ten (10) point boldface type above the information specified in subparts b, c and d of this paragraph.

b. Many employers of motel managers require significant work experience in subordinate positions, either within their own organization, or with other companies within the industry.

c. Many employers of motel managers require that applicants without significant work experience within the industry be college graduates.

d. Many employers of motel managers have their own training programs and training given by [name of school] is not accepted as a replacement for their own programs.

9. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any diesel mechanics course offered by respondents, the following information:

a. The title "IMPORTANT INFORMATION" printed in ten (10) point boldface type above the information specified in subparts b and c of this paragraph.

b. Many employers of diesel mechanics require significant work experience or, for applicants without significant work experience within the industry, completion of a training or apprenticeship program lasting several years.

c. Many employers of diesel mechanics require new diesel mechanics to provide their own tools.

10. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course of instruction or study offered by respondents, the following information concerning that course in the format depicted in Appendix A for the most recent base period:

For purposes of this paragraph, the "most recent base period" shall mean the most recent six month period, either from January 1 through June 30, or from July 1 through December 31, in which the course was offered, not including any base period that ended within four months of the time disclosures are required to be made pursuant to this paragraph.

a. The number and percentage of enrollees who have failed to complete their course of instruction.

b. The job placement rate, ratio or percentage for enrollees and graduates of the course, and also the numbers upon which such rates, ratios or percentages are based. Job placement shall be determined by the number of enrollees and graduates who (1) left or completed the course within the most recent base period and (2) within four months of leaving or completing the course, obtained employment in jobs for which respondents' course prepared them.

c. The salary range of respondents' graduates, stated in salary increments of \$2,000, based upon annual gross salary.

The above disclosures, however, shall not be required for any course newly introduced by respondents, until such time as the new course has been in operation for one base period (either from January 1 through June 30, or from July 1 through December 31) and an additional four months after the base period. However, during such time, the following statement, and no other, shall be made in lieu of the Appendix A Disclosure Form required by this paragraph:

DISCLOSURE NOTICE

This course has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this course.

A course previously offered, but discontinued for at least two (2) years before being offered again shall also be considered as a "course newly introduced" for purposes of this paragraph.

11. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice which substantiate the data and information required to be disclosed by Paragraph 10 of Part I of this order.

12. Contracting for the sale of any course of instruction in any subject, trade or vocation in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the signature of the prospective enrollee in boldface type of a minimum size of ten (10) points a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the fourteenth (14) day after the date of this transaction. Use attached notice of cancellation form to cancel this transaction.

13. Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction in any subject, trade or vocation offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in boldface type of a minimum size of ten (10) points the following:

CANCELLATION FORM

THE ENROLLMENT CONTRACT THAT YOU SIGNED WITH [NAME OF SCHOOL] ON [DATE] TO ENROLL IN [NAME OF COURSE] MAY BE CANCELLED BY YOU, FOR ANY REASON, IF YOU SIGN THIS STATEMENT AND MAIL IT TO THE ABOVE NAMED SCHOOL WITHIN FOURTEEN (14) DAYS FROM THE TIME THAT YOU RECEIVED THIS STATEMENT. YOU ARE THUS FREE TO CANCEL YOUR ENROLLMENT AND RECEIVE A FULL REFUND OF ANY MONIES YOU HAVE PAID TO THE SCHOOL. IF YOU DO WANT TO CANCEL, YOU SHOULD SIGN YOUR NAME BELOW AND MAIL THIS STATEMENT TO THE SCHOOL

WITHIN FOURTEEN (14) DAYS. KEEP THE DUPLICATE COPY FOR YOUR OWN RECORDS.

DATE

SIGNATURE

14. Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

15. Misrepresenting in any manner the prospective enrollee's right to cancel.

16. Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within fourteen (14) days after the receipt of such notice, to: (a) refund all payments made under the contract or sale; and (b) cancel and return any negotiable instrument executed by the prospective enrollee in connection with the contract or sale.

17. Making any representations of any kind whatsoever which are not otherwise prescribed by other provisions of this order for which respondents have no reasonable basis prior to the making or disseminating thereof.

18. In the event the Commission promulgates a final Trade Regulation Rule on Advertising, Disclosure, Cooling-Off and Refund Requirements Concerning Proprietary Vocational and Home Study Schools, then, upon the effective date of such Rule, it shall completely supersede the provisions of this order set forth in Paragraphs 1, 2, 10, 12, 13, 14, 15, and 16 of Part I of this order provided that if no provision of the Rule relates in whole or in part to any matter covered by provisions of one of the aforesaid paragraphs of this order, then said provisions of said paragraph shall remain in full force and effect.

II

It is further ordered, That:

1. Within sixty (60) days after the date this order is served on respondents (hereinafter "date of service") Commission staff shall name an independent contractor to be employed by respondents, subject to respondents' approval. Approval shall be granted except for good cause shown.

2. Within sixty (60) days after the date of service, respondents shall compile a list from records in respondents' possession, custody, or control and from information which may be transmitted to respondents by the Commission or by others within said number of days. To the extent said records or information so indicate, that list shall state the following with respect to each person who graduated from respondents' tractor-trailer drivers, heavy equipment operators, diesel

mechanics, welders, motorcycle mechanics, insurance adjusters, motel management or airline personnel courses between January 11, 1975 and January 11, 1978:

- a. Name;
- b. Last known address;
- c. Course and date of completion;
- d. Total tuition paid by or for such graduate to respondents;
- e. Student number;
- f. Social Security Number; and
- g. The names and addresses of individuals listed as references or persons likely to know the whereabouts of the graduate.

3. Within sixty (60) days after the date of service, respondents shall give to the independent contractor and to Commission staff a copy of the list described in Part II, Paragraph 2 of this order.

4. Within one hundred (100) days after the date of service, the independent contractor shall deposit in the U.S. mail, first class postage prepaid, an envelope addressed to each graduate at his or her last known address. Each envelope shall bear the independent contractor's return address and shall contain:

- a. A copy of the letter in the form set out in Appendix B.
- b. A copy of the appropriate Questionnaire in the language, manner, and form shown in Appendices C-H.
- c. A first class postage prepaid envelope addressed to the independent contractor.

5. a. If any envelope mailed to a graduate pursuant to Part II, Paragraph 4 of this order is returned to the independent contractor by the United States Postal Service, then the independent contractor shall determine whether the graduate's social security number is included as part of the list described in Paragraph 2 of Part II of this order.

b. For those graduates whose social security number is available, the independent contractor shall compile a list of names and social security numbers. The independent contractor shall maintain said list for thirty (30) days after the date of the mailing done pursuant to Paragraph 4 of Part II of this order.

c. Within one hundred thirty-five (135) days after the date of service, the independent contractor shall deliver to Commission staff the list described in Paragraph 5(b).

d. Within one hundred fifty (150) days after the date of service, Commission staff shall deliver to the independent contractor or his designee a magnetic computer tape containing the names and social security numbers from the list described in Paragraph 5(b) and such

other names and social security numbers as Commission staff have obtained regarding potentially eligible class members who have not been located.

6. Within one hundred fifty (150) days after the date of service, the independent contractor shall request the assistance of the Social Security Administration, hereinafter SSA, in locating the potentially eligible class members by:

a. Signing a contract with SSA which, among other things, obligates the independent contractor to pay SSA's charges, *provided, however*, that the independent contractor shall not obligate itself to pay more than six dollars per potentially eligible class member unless the Commission agrees to reimburse it for said overage;

b. Providing SSA with the magnetic computer tape referred to in Paragraph 5(d) of Part II of the order;

c. Providing SSA with a letter for each potentially eligible class member in the form set out in Appendix I and a first class, postage prepaid envelope addressed to the independent contractor; and

d. Requesting SSA to mail such letters and return envelopes to the potentially eligible class members. SSA shall mail such letters within two hundred twenty (220) days after the date of service.

7. If the graduate's social security number is not available from the list, or if SSA is unwilling or unable to provide the services described in Paragraph 6 of Part II of the order, the independent contractor shall, within one hundred thirty-five (135) days after the date of service, mail an envelope to each name and address described in Part II, Paragraph 2(g) of this order. Each envelope shall bear the independent contractor's return address and shall contain:

a. A letter in the language, manner, and form shown in Appendix J; and

b. A first class postage prepaid envelope addressed to the independent contractor.

8. a. If, within two hundred seventy (270) days after the date of service, the independent contractor receives from any source a new address or addresses for graduates whose names appear on the list described in Part II, Paragraph 2 of this order, then, within seven (7) days after receiving such new addresses, the independent contractor shall deposit in the U.S. mail, first class postage prepaid, envelopes which shall be addressed to the graduates at the new address or addresses, bear the independent contractor's return address, and

contain the items described in Part II, Paragraphs 4(a), 4(b) and 4(c) of this order.

b. If, within two hundred seventy (270) days after the date of service, the independent contractor receives requests from anyone for a copy of Appendices B-H, or for information necessary for the implementation of Part II of this order, then, within seven (7) days after receiving such requests, the independent contractor shall deposit in the U.S. mail, first class postage prepaid, envelopes which shall be addressed to the persons making the requests, bear the independent contractor's return address, and contain the items described in Part II, Paragraphs 4(a), 4(b) and 4(c) of this order.

9. Within three hundred fifteen (315) days after the date of service, the independent contractor shall make an initial determination of those students who are eligible class members pursuant to the criteria enumerated in this paragraph, and in accordance with the instructions set forth in Appendix K of this order. An eligible class member is defined as a person who:

a. Graduated from one of respondents' courses between January 11, 1975, and January 11, 1978.

b. Took the course to get a job in a new or different field or to get a better job in the same field.

c. Did not have all of his tuition paid for by an employer or a governmental agency other than the Veterans Administration.

d. After graduation, made a serious effort to find a job in the field of his training.

e. After graduation, contacted four (4) or more companies for the purpose of securing employment.

f. Failed to secure a job in the field of his training.

g. Failed to obtain an offer for a job in the field of his training.

h. Demonstrated his eligibility by responses to the questionnaire and any subsequent inquiry mailed by the contractor pursuant to the provisions of this order before three hundred ten (310) days after the date of service.

Any person who does not satisfy the criteria in a-h listed above is an ineligible class member.

10. Within three hundred fifteen (315) days after the date of service, the independent contractor shall transmit to the respondents and to the Commission staff a list of the tentatively eligible class members as initially determined pursuant to Paragraph 9 of Part II of this order. This list shall be referred to as "tentatively eligible class

members." Said list shall be segregated by year of graduation and shall contain the following information:

- a. The graduate's name.
- b. The graduate's current address.
- c. The graduate's student number as stated in the answer to question 4 of the Eligibility Questionnaire.
- d. Total tuition paid as stated in the answer to question 7 of the Eligibility Questionnaire.
- e. Whether the course was taken under Universal's special rate for couples and, if so, with whom, as stated in the answer to question 8 of the Eligibility Questionnaire.
- f. The amount of the tuition paid by a government agency other than the Veterans Administration as stated in the answer to question 9 of the Eligibility Questionnaire.
- g. The amount of the tuition paid by the graduate's employer and which the graduate did not have to repay, as stated in the answer to question 10 of the Eligibility Questionnaire.
- h. The amount of the tuition previously refunded to the graduate by Universal as stated in the answer to question 11 of the Eligibility Questionnaire.

11. Within three hundred fifteen (315) days after the date of service, the independent contractor shall transmit to the respondents and to the Commission staff a list of the tentatively ineligible class members as initially determined pursuant to Paragraph 9 of Part II of this order. This list shall be referred to as "tentatively ineligible class members." Said list shall contain the following information:

- a. Graduate's name.
- b. Graduate's address.

12. Within three hundred fifteen (315) days after the date of service, the independent contractor shall transmit to respondents a copy of all Eligibility Questionnaires and other documents used in compiling the lists of tentatively eligible class members and tentatively ineligible class members.

13. Respondents may challenge the classification of any graduate and the factual accuracy of information appearing on the list of tentatively eligible class members; provided, however, that respondents set forth the factual basis for their challenges and furnish copies of documents relied upon. Respondents shall not rely upon information secured subsequent to September 29, 1978, directly or indirectly from the mailing of job information requests similar in form or substance to

Appendix U; *provided, however*, that respondents may rely upon an employer's verification that a graduate secured employment in a specific occupation. Respondents' challenges shall be contained in a document entitled "Respondents' Challenges."

Within three hundred forty-five (345) days after the date of service, respondents shall transmit to Commission staff "Respondents' Challenges," and the copies of the Eligibility Questionnaires and other documents used in compiling the lists of tentatively eligible class members and tentatively ineligible class members.

14. Within three hundred seventy-five (375) days after the date of service, Commission staff shall advise respondents if they agree with any of respondents' challenges. If Commission staff do not agree with a certain challenge, they shall so state and provide documentary evidence relied upon.

15. Commission staff may challenge the classification of any graduate and the factual accuracy of information appearing on the list of tentatively eligible class members; *provided, however*, that Commission staff set forth the factual basis for their challenges and furnish copies of documents relied upon. Commission challenges shall be contained in a document entitled, "Commission Staff's Challenges."

Within three hundred seventy-five (375) days after the date of service, Commission staff shall transmit to respondents "Commission Staff's Challenges," and the copies of the Eligibility Questionnaires and other documents used in compiling the lists of tentatively eligible class members and tentatively ineligible class members.

16. Within three hundred ninety (390) days after the date of service, respondents shall advise Commission staff if they agree with any of Commission staff's challenges. If respondents do not agree with a certain challenge, they shall so state and provide documentary evidence relied upon.

17. Within three hundred ninety-five (395) days after the date of service, Commission staff shall notify the independent contractor of reclassifications of graduates and any other mutually agreed upon changes in the list of tentatively eligible class members. The independent contractor shall incorporate said changes in the lists of tentatively eligible class members and tentatively ineligible class members.

18. Any remaining disputes concerning the factual information contained in the list of tentatively eligible class members shall be resolved by the independent contractor based upon the information and documents contained in "Respondents' Challenges" and "Commission Staff's Challenges." The independent contractor shall incorporate said changes in the lists of tentatively eligible class members and tentatively ineligible class members. The remaining disputes concern-

ing the classification of a graduate as eligible shall be resolved by arbitration pursuant to Paragraph 19.

19. a. Within three hundred ninety-five (395) days after the date of service, if either party continues to believe a graduate is improperly classified they may demand arbitration by mailing a letter in the form and manner set out in Appendix M and \$100.

b. Arbitration shall be governed by the special rules set out in Appendix N and such rules of AAA as are not inconsistent therewith.

c. The arbitrator's decision in each matter shall be limited to finding whether the graduate is an eligible class member and such decision shall be final.

d. The arbitrator's decision in each and every matter shall be transmitted to respondents, Commission staff and the independent contractor within four hundred fifty-five (455) days after the date of service. The independent contractor shall incorporate said changes in the list of tentatively eligible class members and tentatively ineligible class members.

e. If neither party demands arbitration, the time periods following herein shall be advanced by sixty (60) days.

20. Subsequent to the procedures contained in Paragraph 19, the list of tentatively eligible class members shall be referred to as the "list of eligible class members" and the list of tentatively ineligible class members shall be referred to as the "list of ineligible class members."

21. Within four hundred ninety (490) days after the date of service, the independent contractor shall determine the refund due each graduate on the list of eligible class members by the following method:

a. For each graduate who did not take a course under respondents' special rate for couples:

(1) Subtract from the total tuition paid:

a) amount of tuition paid by a government agency other than the Veterans Administration;

b) amount of tuition paid by the graduate's employer and which the graduate did not have to repay;

c) amount of tuition previously refunded to the graduate by respondents.

The remainder shall be defined as "net tuition paid" and shall be recorded on the list of eligible class members.

b. For each graduate who did take a course under respondents' special rate for couples:

1) Subtract from the total tuition paid:

a) amount of tuition paid by a government agency other than the Veterans Administration;

b) amount of tuition paid by the graduate's employer and which the graduate did not have to repay;

c) amount of tuition previously refunded to the graduate by respondents.

2) Add together the results obtained through the procedure in subparagraph 21(b)(1) for each of the two graduates comprising a couple and divide the sum by 2. The quotient shall be defined as "net tuition paid" and shall be recorded on the list of eligible class members.

c. Multiply "net tuition paid," as defined by Paragraph 21(a) or 21(b), by .75. The product shall be defined as "75% of net tuition paid."

d. Add together 75% of net tuition paid for each eligible class member. Determine if this total exceeds \$750,000 less administrative costs, hereinafter referred to as "the cap."

e. If the total derived in subparagraph (d) above is less than the cap, enter 75% of net tuition paid for each eligible class member on the list of eligible class members under the heading "refund due." Enter 1/3 of "refund due" on the list under the heading "1/3 refund due."

f. If the total derived in subparagraph (d) above exceeds the cap, reduce the 75% of tuition paid for each eligible class member on a pro rata basis so that the total refunds due equal the cap. Enter the pro rata refund so derived for each eligible class member on the list of eligible class members under the heading "refund due." Enter 1/3 of refund due on the list under the heading "1/3 refund due."

22. Administrative costs shall only include:

a. The independent contractor's fee, including such mailings, and only such mailings, as are provided for in this order.

b. Reimbursement of one half of the arbitration fee paid by the party requesting arbitration.

c. The sum charged by the Social Security Administration for locating potential class members, not to exceed six dollars per potential class member.

Administrative costs shall be borne by respondents.

23. Within five hundred five (505) days after the date of service,

the independent contractor shall deposit in the U.S. mail letters to eligible class members in the form set out in Appendix O and accompanied by a release in the form set out in Appendix P. The envelopes shall be mailed first class, postage prepaid.

24. Within five hundred five (505) days after the date of service, the independent contractor shall deposit in the U.S. mail to each person on the list of ineligible class members a letter in the form set out in Appendix Q. The envelopes shall be mailed first class, postage prepaid.

25. Within five hundred forty-five (545) days after the date of service, the independent contractor shall indicate on the list of eligible class members those graduates who returned releases within five hundred forty (540) days after the date of service and shall provide a copy of said list to respondents and to Commission staff.

26. Any letters, documents or other communications received by the independent contractor subsequent to five hundred forty-five (545) days after the date of service shall be provided to Commission staff.

27. Within five hundred sixty (560) days after the date of service, respondents shall mail the first one-third of the refund due to eligible class members who returned releases as indicated on the list provided by the independent contractor pursuant to Paragraph 25. All refunds made pursuant to this order shall be mailed first class, postage prepaid. The letter accompanying the refund shall be in the form set out in Appendix R.

28. Within nine hundred twenty-five (925) days after the date of service, respondents shall mail the second one-third of the refund due to eligible class members who returned releases as indicated on the list provided by the independent contractor pursuant to Paragraph 25.

The letter accompanying the refund shall be in the form set out in Appendix S and shall be mailed first class, postage prepaid.

29. Within one thousand two hundred ninety (1290) days after the date of service, respondents shall mail the final one-third of the refund due to eligible class members who returned releases as indicated on the list provided by the independent contractor pursuant to Paragraph 25.

The letter accompanying the refund shall be in the form set out in Appendix T and shall be mailed first class, postage prepaid.

30. If a letter mailed pursuant to Paragraphs 27, 28 or 29 is returned unopened, the Commission shall be so notified upon its return and shall have one hundred twenty (120) days after respondents so notify to secure a more recent address for the addressee. If the Commission cannot secure an address to which the letter is deliverable, the sum represented by the undelivered check shall be added to the sum remaining in the cap.

31. Within one thousand four hundred ten (1410) days after the

date of service, the Commission staff shall advise respondents of any graduate who should have received a refund under this part of the order, but did not, due to error in administering the procedures of this part. If funds remain in the cap to make additional disbursements, Commission staff and respondents shall make a good faith effort to determine if refunds should be made to said graduates.

32. For good cause shown, the Regional Director of the Commission's Atlanta Regional Office may grant extensions of time to respondents, the independent contractor, or Commission staff. The Regional Director shall grant extensions requested by the arbitrator or the Social Security Administration. When an extension of time is granted, all other time periods in this order shall be automatically adjusted accordingly.

33. Subsequent to January 8, 1979, and prior to three hundred fifteen (315) days after the date of service, respondents shall not initiate contact with any person graduating from respondents' courses between January 11, 1975, and January 11, 1978, *provided, however*, that respondents may communicate job vacancies evidenced by a current letter from the potential employer.

III

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporations and said partnership, and to present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of said order.

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

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his or her present business or employment and of his or her affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondents shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in any subject, trade or vocation. Such notice shall include the respondent's new business address and a statement of the nature of the business or

employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. In addition, until such time as the final compliance report is submitted pursuant to Part III of this order, each individual respondent shall promptly notify the Commission of any change in his or her address. The expiration of the notice provisions of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with Parts I and III of this order.

It is further ordered, That respondents herein shall, within six hundred twenty (620) days, nine hundred eighty-five (985) days, and one thousand four hundred seventy (1470) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with Part II of this order.

APPENDIX A

[NAME OF SCHOOL]

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the [name of course] between [date] and [date]. Please read this page carefully before you decide whether or not to enroll in this course.

1. Total number of students: [number]
2. Students who failed to complete the course: [number] - [percent]
3. Students (whether graduating or not) who obtained employment as [occupation]: [number] - [percent]
4. Graduates who obtained employment as [occupation]: [number] - [percent]
5. Starting salaries of students who obtained employment as [occupation]:

Less than \$6,000 per year:	[number] - [percent]
\$6,000 - \$7,999 per year:	[number] - [percent]
\$8,000 - \$9,999 per year:	[number] - [percent]
\$10,000 - \$11,999 per year:	[number] - [percent]
\$12,000 - \$13,999 per year:	[number] - [percent]
\$14,000 - \$15,999 per year:	[number] - [percent]
Over \$16,000 per year:	[number] - [percent]

NOTE: In compiling the foregoing data, information was sought from all students (indicated by item 1 above) and responses were received from _____ students.

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APPENDIX B

[Name]
[Address]

Dear [Name]:

In accordance with an agreement between the United States Federal Trade Commission and Universal Training Service, Universal has consented to an order whereby Universal shall make adjustments in tuition for certain individuals who graduated from Universal's schools between January 11, 1975 and January 11, 1978.

Enclosed you will find a questionnaire. You may already have received a similar questionnaire from the Federal Trade Commission, the Veterans Administration or Universal Training Service. The enclosed questionnaire, however, seeks different information which is necessary to determine your eligibility for a tuition adjustment. We urge you to answer this questionnaire to the best of your ability no matter how you answered past questionnaires.

You are under no obligation to fill out and return the enclosed questionnaire. However, if you wish to be considered for a tuition adjustment, you must fill out and return the enclosed questionnaire.

DIRECTIONS: Please complete the questionnaire and return it in the enclosed, stamped, addressed envelope. It is suggested that you fill out and mail this questionnaire as soon as possible. If you don't mail it within 21 days, it may not arrive in time for us to consider you for a tuition adjustment. If you misplace the envelope provided, please mail your questionnaire to [name and address of party on return envelope].

You must follow the directions and should answer all questions which apply to you *completely and truthfully*, to the best of your knowledge. Questionnaires which are incomplete or improperly filled out could affect your eligibility.

During 1977, a few students took "combination courses" which consisted of 3 weeks of one subject plus 2 weeks of another subject (for example, heavy equipment plus diesel mechanics, diesel mechanics plus truck driving, heavy equipment plus truck driving, etc.). If you took a combination course, we enclosed a questionnaire which should reflect your major (that is, the course you took for 3 weeks). This is the questionnaire that will be used to determine your eligibility for a tuition adjustment.

Universal sometimes offered a special tuition rate when 2 people signed up for a course together (for example, husband & wife). If you took the course under this plan, we would like you and the person you enrolled with each to fill out a separate questionnaire. If the person you enrolled with did not receive a questionnaire, please make a copy of the enclosed questionnaire for their use or write to us and we will send an additional questionnaire.

After you have answered every applicable question in the questionnaire, do not sign the questionnaire. Take it to a Notary Public. Then sign and swear to the questionnaire in the presence of that person. He or she will then notarize it. Notaries can usually be found at banks, real estate offices, auto dealers, and, in some areas, pharmacies.

You will be notified whether or not you are eligible. Therefore, it is important that we

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know your current address. Please send notification of any change in your home address to [name and address on the return envelope].

If you have any questions regarding this letter, please contact [name and address of independent contractor].

Your cooperation is appreciated.

Sincerely,

[Independent Contractor]

Enclosure

APPENDIX C

QUESTIONNAIRE FOR GRADUATES
OF
UNIVERSAL DIESEL AND CONSTRUCTION MECHANIC
SCHOOL

1. Did you ever take Universal's Diesel Mechanic, Welding or Motorcycle Mechanic Course?
Yes No
If your answer to Question 1 was "Yes", skip to Question 3.
2. If your answer to Question 1 was "No", did you take a different course from Universal?
Yes No
If so, which one? _____
(Skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
3. Did you receive a certificate of completion?
Yes No
If so, give the date you received it, if known: _____
(If your answer to Question 3 was "No", skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
4. Give your Universal student identification number, if known: _____
5. Did you have a job in the field of your course *when you enrolled in the course*?
Yes No
If so, what kind of job did you have?

6. What was the *most important* reason you took the course? (Look over all of the reasons below and then put a check next to the *one* most important reason).
A. To get a job in a new or different field.
B. To get a better job in the same field.
C. To learn something new or useful, but not to get a new or better job.
D. Other, please explain:

7. What was the total tuition cost for the course?
\$ _____
8. Did you take the course with a friend or relative under Universal's special rate for couples?
Yes No
If so, please give the name of the friend or relative:

9. Did a governmental agency other than the Veterans Administration (for example, a Job Corps agency or a manpower rehabilitation agency) pay any part of this tuition?
Yes No
If so, how much? \$ _____
(Give amount which a government agency other than VA paid. Do not give amount which VA paid).

10. Did your employer pay any part of this tuition?
 Yes No
 If so, how much? \$ _____
 If so, did you have to repay your employer?
 Yes No
11. Did you ever get a full or partial tuition refund from Universal?
 Yes No
 If so, how much? \$ _____
12. After finishing the resident training part of the course, did you make a *serious effort* to find a job as a diesel mechanic, welder or motorcycle mechanic?
 Yes No
 If the answer is "No", skip to Question 18.
13. ANSWER ALL PARTS OF THIS QUESTION AS *PRECISELY AS POSSIBLE*.
- (a) After you finished the resident training part of the course, did you personally visit, telephone, or write any companies for the purpose of getting a job in the field of your training course?
 Yes No
- (b) If your answer to Question 13(a) is "Yes", what is the total number of companies you personally visited, telephoned, or wrote for the purpose of getting a job?
 (If you do not know the exact number, give your best estimate).

- (c) Give the names and locations of the companies that you contacted for the purpose of getting a job. Check type of contact. (Do not give more than seven companies, even if you remember more).
- | NAME OF COMPANY | LOCATION | VISITED | TELEPHONED | WROTE |
|-----------------|----------|--------------------------|--------------------------|--------------------------|
| (1) _____ | _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) _____ | _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) _____ | _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) _____ | _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (5) _____ | _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (6) _____ | _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (7) _____ | _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
- (d) After you contacted companies which you described in 13(c), did you make a *second* contact to any of these companies for the purpose of obtaining employment?
 Yes No
14. After you completed the resident training part of the course, and after you started looking for a job, did you ever contact Universal for more help in finding a job?
 Yes No
15. Since completing your resident training, have you ever worked as a diesel mechanic, welder or motorcycle mechanic?
 Yes No
 (If your answer is "Yes", skip to Question 17).
16. Since completing your resident training, have you ever been offered a job as a diesel mechanic, welder or motorcycle mechanic?
 Yes No
17. My present job is: _____

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My present business address is:

Employer's Name		
Number	Street	
City	State	Zip Code

My business telephone number is: (Area Code) _____

18. My present home address is:

Number	Street	Apartment
City	State	Zip Code

My home telephone number is: (_____) _____

 Signature
 (Please read the accompanying
 letter before signing).

State of _____
 County of _____
 Subscribed and sworn to before me
 this _____ day of _____,
 19____.

 Notary Public

My commission expires: _____

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Sec. 1001.

APPENDIX D

QUESTIONNAIRE FOR GRADUATES
 OF
 UNIVERSAL TRUCK DRIVERS SCHOOL

- Did you ever take Universal's Truck Driving Course?
 Yes No
 If your answer to Question 1 was "Yes", skip to Question 3.
- If your answer to Question 1 was "No", did you take a different course from Universal?
 Yes No
 If so, which one? _____

(Skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).

3. Did you receive a certificate of completion?
 Yes No
 If so, give the date you received it, if known: _____
 (If your answer to Question 3 was "No", skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
4. Give your Universal student identification number, if known: _____
5. Did you have a job in the field of your course *when you enrolled in the course*?
 Yes No
 If so, what kind of job did you have?

6. What was the *most important* reason you took the course? (Look over all of the reasons below and then put a check next to the *one* most important reason).
 A. To get a job in a new or different field.
 B. To get a better job in the same field.
 C. To learn something new or useful, but not to get a new or better job.
 D. Other, please explain:

7. What was the total tuition cost for the course?
 \$ _____
8. Did you take the course with a friend or relative under Universal's special rate for couples?
 Yes No
 If so, please give the name of the friend or relative:

9. Did a governmental agency other than the Veterans Administration (for example, a Job Corps agency or a manpower rehabilitation agency) pay any part of this tuition?
 Yes No
 If so, how much? \$ _____
 (Give amount which a government agency other than VA paid. Do not give amount which VA paid).
10. Did your employer pay any part of this tuition?
 Yes No
 If so, how much? \$ _____
 If so, did you have to repay your employer?
 Yes No
11. Did you ever get a full or partial tuition refund from Universal?
 Yes No
 If so, how much? \$ _____
12. After finishing the resident training part of the course, did you make a *serious effort* to find a job as a tractor-trailer driver or a second driver of a tractor-trailer?
 Yes No
 If the answer is "No", skip to Question 18.
13. ANSWER ALL PARTS OF THIS QUESTION AS *PRECISELY AS POSSIBLE*.

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(a) After you finished the resident training part of the course, did you personally visit, telephone, or write any companies for the purpose of getting a job in the field of your training course?

Yes No

(b) If your answer to Question 13(a) is "Yes", what is the total number of companies you personally visited, telephoned, or wrote for the purpose of getting a job?

(If you do not know the exact number, give your best estimate).

(c) Give the names and locations of the companies that you contacted for the purpose of getting a job. Check type of contact. (Do not give more than seven companies, even if you remember more).

NAME OF COMPANY	LOCATION	VISITED	TELEPHONED	WROTE
(1) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(d) After you contacted companies which you described in 13(c), did you make a *second* contact to any of these companies for the purpose of obtaining employment?

Yes No

14. After you completed the resident training part of the course, and after you started looking for a job, did you ever contact Universal for more help in finding a job?

Yes No

15. Since completing your resident training, have you ever worked as a tractor-trailer driver or second driver on a tractor-trailer?

Yes No

(If your answer is "Yes", skip to Question 17).

16. Since completing your resident training, have you ever been offered a job as a tractor-trailer driver or second driver on a tractor-trailer?

Yes No

17. My present job is: _____

My present business address is:

Employer's Name

Number

Street

City

State

Zip Code

My business telephone number is: (Area Code) _____

8. My present home address is:

Number

Street

Apartment

 City State Zip Code
 My home telephone number is: (_____) _____

 Signature
 (Please read the accompanying
 letter before signing).

State of _____
 County of _____
 Subscribed and sworn to before me
 this _____ day of _____,
 19____.

 Notary Public

My commission expires: _____

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Sec. 1001.

APPENDIX E

QUESTIONNAIRE FOR GRADUATES
 OF
 UNIVERSAL AIRLINES PERSONNEL SCHOOL

1. Did you ever take Universal's Airlines Personnel Course?
 Yes No
 If your answer to Question 1 was "Yes", skip to Question 3.
2. If your answer to Question 1 was "No", did you take a different course from Universal?
 Yes No
 If so, which one? _____
 (Skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
3. Did you receive a certificate of completion?
 Yes No
 If so, give the date you received it, if known: _____
 (If your answer to Question 3 was "No", skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
4. Give your Universal student identification number, if known: _____
5. Did you have a job in the field of your course *when you enrolled in the course*?
 Yes No
 If so, what kind of job did you have? _____
6. What was the *most important* reason you took the course? (Look over all of the reasons below and then put a check next to the *one* most important reason)

- A. To get a job in a new or different field.
- B. To get a better job in the same field.
- C. To learn something new or useful, but not to get a new or better job.
- D. Other, please explain:
-
-
-

7. What was the total tuition cost for the course?
\$ _____
8. Did you take the course with a friend or relative under Universal's special rate for couples?
Yes No
If so, please give the name of the friend or relative:

9. Did a governmental agency other than the Veterans Administration (for example, a Job Corps agency or a manpower rehabilitation agency) pay any part of this tuition?
Yes No
If so, how much? \$ _____
(Give amount which a government agency other than VA paid. Do not give amount which VA paid).
10. Did your employer pay any part of this tuition?
Yes No
If so, how much? \$ _____
If so, did you have to repay your employer?
Yes No
11. Did you ever get a full or partial tuition refund from Universal?
Yes No
If so, how much? \$ _____
12. After finishing the resident training part of the course, did you make a *serious effort* to find a job as a flight attendant, ticket agent, reservations agent, cargo agent, travel agent or ship-line agent?
Yes No
If the answer is "No", skip to Question 18.
13. ANSWER *ALL PARTS OF THIS QUESTION AS PRECISELY AS POSSIBLE*.
- (a) After you finished the resident training part of the course, did you personally visit, telephone, or write any companies for the purpose of getting a job in the field of your training course?
Yes No
- (b) If your answer to Question 13(a) is "Yes", what is the total number of companies you personally visited, telephoned, or wrote for the purpose of getting a job?
(If you do not know the exact number, give your best estimate).

- (c) Give the names and locations of the companies that you contacted for the purpose of getting a job. Check type of contact. (Do not give more than seven companies, even if you remember more).

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NAME OF COMPANY	LOCATION	VISITED	TELEPHONED	WROTE
(1) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(d) After you contacted companies which you described in 13(c), did you make a *second* contact to any of these companies for the purpose of obtaining employment?
 Yes No

14. After you completed the resident training part of the course, and after you started looking for a job, did you ever contact Universal for more help in finding a job?
 Yes No
15. Since completing your resident training, have you ever worked as a flight attendant, ticket agent, reservations agent, cargo agent, travel agent, or ship-line agent?
 Yes No
 (If your answer is "Yes", skip to Question 17).
16. Since completing your resident training, have you ever been offered a job as a flight attendant, ticket agent, reservations agent, cargo agent, travel agent, or ship-line agent?
 Yes No
17. My present job is: _____

My present business address is:

Employer's Name

Number

Street

City

State

Zip Code

My business telephone number is: (Area Code) _____

18. My present home address is:

Number

Street

Apartment

City

State

Zip Code

My home telephone number is: (_____) _____

Signature

(Please read the accompanying letter before signing).

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State of _____
 County of _____
 Subscribed and sworn to before me
 this _____ day of _____,
 19____.

 Notary Public

My commission expires: _____

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Sec. 1001.

APPENDIX F

QUESTIONNAIRE FOR GRADUATES
 OF
 UNIVERSAL MOTEL SCHOOL

1. Did you ever take Universal's Motel Course?
 Yes No
 If your answer to Question 1 was "Yes", skip to Question 3.
2. If your answer to Question 1 was "No", did you take a different course from Universal?
 Yes No
 If so, which one? _____
 (Skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
3. Did you receive a certificate of completion?
 Yes No
 If so, give the date you received it, if known: _____
 (If your answer to Question 3 was "No", skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
4. Give your Universal student identification number, if known: _____
5. Did you have a job in the field of your course *when you enrolled in the course*?
 Yes No
 If so, what kind of job did you have?

6. What was the *most important* reason you took the course? (Look over all of the reasons below and then put a check next to the *one* most important reason).
 A. To get a job in a new or different field.
 B. To get a better job in the same field.
 C. To learn something new or useful, but not to get a new or better job.
 D. Other, please explain:

7. What was the total tuition cost for the course?
 \$ _____
8. Did you take the course with a friend or relative under Universal's special rate for couples?
 Yes No
 If so, please give the name of the friend or relative: _____

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a Job Corps agency or a manpower rehabilitation agency) pay any part of this tuition?

Yes No

If so, how much? \$ _____

(Give amount which a government agency other than VA paid. Do not give amount which VA paid).

10. Did your employer pay any part of this tuition?

Yes No

If so, how much? \$ _____

If so, did you have to repay your employer?

Yes No

11. Did you ever get a full or partial tuition refund from Universal?

Yes No

If so, how much? \$ _____

12. After finishing the resident training part of the course, did you make a *serious effort* to find a job as a hotel or motel manager, assistant manager, front desk clerk, executive housekeeper or night auditor?

Yes No

If the answer is "No", skip to Question 18.

13. ANSWER ALL PARTS OF THIS QUESTION AS *PRECISELY AS POSSIBLE*.

(a) After you finished the resident training part of the course, did you personally visit, telephone, or write any companies for the purpose of getting a job in the field of your training course?

Yes No

(b) If your answer to Question 13(a) is "Yes", what is the total number of companies you personally visited, telephoned, or wrote for the purpose of getting a job?

(If you do not know the exact number, give your best estimate).

(c) Give the names and locations of the companies that you contacted for the purpose of getting a job. Check type of contact. (Do not give more than seven companies, even if you remember more).

NAME OF COMPANY	LOCATION	VISITED	TELEPHONED	WROTE
(1) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(d) After you contacted companies which you described in 13(c), did you make a *second contact* to any of these companies for the purpose of obtaining employment?

Yes No

14. After you completed the resident training part of the course, and after you started looking for a job, did you ever contact Universal for more help in finding a job?

Yes No

15. Since completing your resident training, have you ever worked as a hotel or

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motel manager, assistant manager, front desk clerk, executive housekeeper or night auditor?

Yes No

(If your answer is "Yes", skip to Question 17).

16. Since completing your resident training, have you ever been offered a job as a hotel or motel manager, assistant manager, front desk clerk, executive housekeeper or night auditor?

Yes No

17. My present job is: _____

My present business address is:

Employer's Name

Number

Street

City

State

Zip Code

My business telephone number is: (Area Code) _____

18. My present home address is:

Number

Street

Apartment

City

State

Zip Code

My home telephone number is: (_____) _____

Signature

(Please read the accompanying letter before signing).

State of _____

County of _____

Subscribed and sworn to before me
this _____ day of

_____,
19____.

Notary Public

My commission expires: _____

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Sec. 1001.

APPENDIX G

QUESTIONNAIRE FOR GRADUATES
OF
UNIVERSAL HEAVY CONSTRUCTION SCHOOL

1. Did you ever take Universal's Heavy Equipment Operating Course?
Yes No
If your answer to Question 1 was "Yes", skip to Question 3.
2. If your answer to Question 1 was "No", did you take a different course from Universal?
Yes No
If so, which one? _____
(Skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
3. Did you receive a certificate of completion?
Yes No
If so, give the date you received it, if known: _____
(If your answer to Question 3 was "No", skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
4. Give your Universal student identification number, if known: _____
5. Did you have a job in the field of your course *when you enrolled in the course*?
Yes No
If so, what kind of job did you have?

6. What was the *most important* reason you took the course? (Look over all of the reasons below and then put a check next to the *one* most important reason).
A. To get a job in a new or different field.
B. To get a better job in the same field.
C. To learn something new or useful, but not to get a new or better job.
D. Other, please explain:

7. What was the total tuition cost for the course?
\$ _____
8. Did you take the course with a friend or relative under Universal's special rate for couples?
Yes No
If so, please give the name of the friend or relative:

9. Did a governmental agency other than the Veterans Administration (for example, a Job Corps agency or a manpower rehabilitation agency) pay any part of this tuition?
Yes No
If so, how much? \$ _____
(Give amount which a government agency other than VA paid. Do not give amount which VA paid).
10. Did your employer pay any part of this tuition?
Yes No
If so, how much? \$ _____
If so, did you have to repay your employer?
Yes No

11. Did you ever get a full or partial tuition refund from Universal?
 Yes No
 If so, how much? \$ _____
12. After finishing the resident training part of the course, did you make a *serious effort* to find a job as a heavy equipment operator?
 Yes No
 If the answer is "No", skip to Question 18.
13. ANSWER ALL PARTS OF THIS QUESTION AS *PRECISELY AS POSSIBLE*.
 - (a) After you finished the resident training part of the course, did you personally visit, telephone, or write any companies for the purpose of getting a job in the field of your training course?
 Yes No
 - (b) If your answer to Question 13(a) is "Yes", what is the total number of companies you personally visited, telephoned, or wrote for the purpose of getting a job?
 (If you do not know the exact number, give your best estimate).

 - (c) Give the names and locations of the companies that you contacted for the purpose of getting a job. Check type of contact. (Do not give more than seven companies, even if you remember more).

NAME OF COMPANY	LOCATION	VISITED	TELEPHONED	WROTE
(1) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- (d) After you contacted companies which you described in 13(c), did you make a *second* contact to any of these companies for the purpose of obtaining employment?
 Yes No
14. After you completed the resident training part of the course, and after you started looking for a job, did you ever contact Universal for more help in finding a job?
 Yes No
15. Since completing your resident training, have you ever worked as a heavy equipment operator?
 Yes No
 (If your answer is "Yes", skip to Question 17).
16. Since completing your resident training, have you ever been offered a job as a heavy equipment operator?
 Yes No
17. My present job is: _____

My present business address is:

 Employer's Name

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Number	Street	
City	State	Zip Code

My business telephone number is: (Area Code) _____

18. My present home address is:

Number	Street	Apartment
City	State	Zip Code

My home telephone number is: (_____) _____

Signature
(Please read the accompanying
letter before signing).

State of _____
County of _____
Subscribed and sworn to before me
this _____ day of _____,
19_____.

Notary Public

My commission expires: _____

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Sec. 1001.

APPENDIX H

QUESTIONNAIRE FOR GRADUATES
OF
UNIVERSAL INSURANCE ADJUSTERS SCHOOL

- Did you ever take Universal's Insurance Adjusting Course?
Yes No
If your answer to Question 1 was "Yes", skip to Question 3.
- If your answer to Question 1 was "No", did you take a different course from Universal?
Yes No
If so, which one? _____
(Skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).
- Did you receive a certificate of completion?
Yes No

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If so, give the date you received it, if known: _____

(If your answer to Question 3 was "No", skip to Question 18, sign this document and return it in the enclosed postage paid envelope *without having it notarized*).

4. Give your Universal student identification number, if known: _____
5. Did you have a job in the field of your course *when you enrolled in the course*?
Yes No
If so, what kind of job did you have? _____
6. What was the *most important* reason you took the course? (Look over all of the reasons below and then put a check next to the *one* most important reason).
A. To get a job in a new or different field.
B. To get a better job in the same field.
C. To learn something new or useful, but not to get a new or better job.
D. Other, please explain:

7. What was the total tuition cost for the course?
\$ _____
8. Did you take the course with a friend or relative under Universal's special rate for couples?
Yes No
If so, please give the name of the friend or relative: _____
9. Did a governmental agency other than the Veterans Administration (for example, a Job Corps agency or a manpower rehabilitation agency) pay any part of this tuition?
Yes No
If so, how much? \$ _____
(Give amount which a government agency other than VA paid. Do not give amount which VA paid).
10. Did your employer pay any part of this tuition?
Yes No
If so, how much? \$ _____
If so, did you have to repay your employer?
Yes No
11. Did you ever get a full or partial tuition refund from Universal?
Yes No
If so, how much? \$ _____
12. After finishing the resident training part of the course, did you make a *serious effort* to find a job as an insurance adjuster or investigator?
Yes No
If the answer is "No", skip to Question 18.
13. ANSWER ALL PARTS OF THIS QUESTION AS *PRECISELY AS POSSIBLE*.
(a) After you finished the resident training part of the course, did you personally visit, telephone, or write any companies for the purpose of getting a job in the field of your training course?
Yes No
(b) If your answer to Question 13(a) is "Yes", what is the total number of

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companies you personally visited, telephoned, or wrote for the purpose of getting a job?
(If you do not know the exact number, give your best estimate).

(c) Give the names and locations of the companies that you contacted for the purpose of getting a job. Check type of contact. (Do not give more than seven companies, even if you remember more).

NAME OF COMPANY	LOCATION	VISITED	TELEPHONED	WROTE
(1) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(d) After you contacted companies which you described in 13(c), did you make a *second* contact to any of these companies for the purpose of obtaining employment?

Yes No

14. After you completed the resident training part of the course, and after you started looking for a job, did you ever contact Universal for more help in finding a job?

Yes No

15. Since completing your resident training, have you ever worked as an insurance adjuster or investigator?

Yes No

(If your answer is "Yes", skip to Question 17).

16. Since completing your resident training, have you ever been offered a job as an insurance adjuster or investigator?

Yes No

17. My present job is: _____

My present business address is:

Employer's Name

Number

Street

City

State

Zip Code

My business telephone number is: (Area Code) _____

18. My present home address is:

Number

Street

Apartment

City

State

Zip Code

My home telephone number is: (_____) _____

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 Signature
 (Please read the accompanying
 letter before signing).

State of _____
 County of _____
 Subscribed and sworn to before me
 this _____ day of
 _____,
 19_____.

 Notary Public

My commission expires: _____.

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Sec. 1001.

APPENDIX I

[NAME]
 [ADDRESS]

DEAR [NAME]:

In accordance with an agreement between the United States Federal Trade Commission and Universal Training Service, Universal has consented to an order whereby Universal shall make adjustments in tuition for certain individuals who graduated from Universal's schools between January 11, 1975, and January 11, 1978.

On [Date], we sent out questionnaires to certain graduates. Your name was on this mailing list. However, because of the age of Universal's files, we are afraid that the questionnaire may not have reached you. We, therefore, request that you send us your current address. It is important that you furnish your name, address and telephone number to us in the enclosed prepaid envelope within 14 days after you receive this letter. Otherwise we may not be able to get an Eligibility Questionnaire delivered to you. Should you lose the envelope, send your name, address and telephone number to [name and address of independent contractor].

This letter was forwarded to you by the Social Security Administration which agreed to assist in contacting you because of the circumstances of this matter. However, the Social Security Administration has not revealed your home or business address to the Federal Trade Commission or any other party. You are free, therefore, to reply or not as you choose.

[Independent Contractor]

 (cut here)

Name: _____
 Current Address: _____
 Telephone Number: (Area Code) _____

APPENDIX J

[NAME]
[ADDRESS]

DEAR [NAME]:

In accordance with an agreement between the United States Federal Trade Commission and Universal Training Service, you are requested to provide us with the last known address of [insert name of student].

It is believed that this person graduated from one of Universal's courses between January 11, 1975, and January 11, 1978. The Federal Trade Commission has determined that it is necessary to collect information from certain graduates of Universal Training Service's courses to implement the terms of an order which, among other things, requires the company to make tuition adjustments for certain graduates, possibly including the person named above.

If you know the current address of the person named above, please write it in the place provided at the bottom of this page and return it to us in the enclosed postage prepaid envelope as soon as possible, but *not later than* 14 days after you receive this letter. If you lose the envelope, send the information requested to [name and address of independent contractor].

Your cooperation will be appreciated.

Sincerely,

[Independent Contractor]

(current address of person listed above)

APPENDIX K

Instructions to Independent Contractor

The tasks to be performed by the independent contractor and the time period in which to perform said tasks are set out in Part II of this order.

The contractor shall receive the responses to Appendices C-H (Eligibility Questionnaires). From these responses the contractor will determine all eligible class members and, supplemented by information furnished pursuant to this order, the amount of refund to which each member is entitled. All references to question numbers refer to the questions on the Eligibility Questionnaires.

- a. If the answer to question 1 is "no," go to question 2; if the answer is "yes," go to question 3.
- b. If the answer to question 2 is "yes," send the graduate the appropriate Eligibility Questionnaire; if it is "no," place the individual on the list of "ineligibles."
- c. If the answer to question 3 is "no," place the graduate on the list of ineligible.
- d. Disregard questions 4 and 5 for purposes of determining eligibility.
- e. If the answer to question 6 is A or B, continue. If the answer is C, place the graduate on the ineligible list.

Answer D allows the graduate to state his own reason for taking the course. Analyze this answer and determine whether it resembles A, B or C. Treat the answer in the same manner as the one that it most closely resembles.

- f. Disregard questions 7 and 8 for purposes of determining eligibility.
- g. If the answer to question 9 is "yes" and the dollar amount is the same as listed in question 7, place the graduate on the list of ineligible.
- h. If the answer to the first part of question 10 is "yes" and the dollar amount is the same as listed in question 7 and the answer to the last part of question 10 is "no," place the graduate on the list of ineligible.
- i. If the answer to question 11 is "yes" and the dollar amount is the same as that listed in question 7, place the graduate on the list of ineligible.
- j. If the answer to question 12 is "no," place the graduate on the list of ineligible.
- k. If the answer to question 13(a) is "no," place the graduate on the list of ineligible.
- l. If the answer to question 13(b) is less than 4, place the graduate on the list of ineligible.
- m. If the answer to question 13(c) includes the names of one or more companies, or if the answer indicates that the graduate does not remember any names, continue to question 13(d).
- n. If the graduate leaves 13(c) blank, send him a letter in the form set out in Appendix L and a copy of question 13(c).
- o. If in response to Appendix L the graduate does not list the name and address of at least one company or state he does not remember, place his name on the list of ineligible.
- p. Disregard questions 13(d) and 14 for purposes of determining eligibility.
- q. If the answer to question 15 is "yes," place the graduate on the list of ineligible.
- r. If the answer to question 16 is "yes," place the graduate on the list of ineligible.
- s. Place all graduates who have not been placed on the list of ineligible on the list of eligible class members and determine the refund due.

It is your duty to determine whether a graduate is an eligible class member. If a returned questionnaire is not signed and notarized and the answers to the questions do not place the graduate on the list of ineligible, return the questionnaire to the graduate requesting that he sign it in the presence of a notary public. If the answer to a question is absent or unclear and the answers to the remaining questions do not place the graduate on the list of ineligible, you must write to him and request a clarification. If you receive no response, place the graduate on the list of ineligible. If you receive a response, use it, in conjunction with the other information you have, to determine if the graduate is eligible or ineligible.

APPENDIX L

[NAME]
[ADDRESS]

DEAR [NAME]:

When you filled out a recent questionnaire regarding the course you took with Universal Training Service, you failed to answer question 13(c). It will be necessary for us to have an answer to this question before we can determine your eligibility for a tuition adjustment.

Please answer the enclosed copy of question 13(c) and return it in the enclosed postage prepaid envelope. If you do not remember the companies you contacted, so state.

If you lose the envelope, send the answer to [name and address of independent contractor].

[Independent Contractor]

APPENDIX M

DEMAND FOR ARBITRATION
THROUGH THE
AMERICAN ARBITRATION ASSOCIATION

DATE _____

To: American Arbitration Association

140 West 51st Street
New York, New York 10020
Attn: Mr. Michael Hoellering

From: [Name and Address of Requester]

Re: [Name and Address of Potentially Eligible Graduate]

Pursuant to the terms of the consent order between the Federal Trade Commission and Universal Training Service, an independent contractor has classified the above-named individual as [an eligible or ineligible] member of the restitution class. The undersigned challenges that classification. It is requested that a determination be made as to the correct classification of the named individual.

Copies of the graduate's questionnaire, evidence relied upon by respondents and Commission staff and the requisite fee are enclosed herewith.

The undersigned alleges that the named individual is [an eligible or ineligible] class member because:

Signed,

APPENDIX N

SPECIAL ARBITRATION RULES FOR NEGOTIATED
CONSENT ORDER (DOCKET NO. 9106) BETWEEN
THE FEDERAL TRADE COMMISSION AND
UNIVERSAL TRAINING SERVICE, INC.
FOR ARBITRATION THROUGH
THE AMERICAN ARBITRATION ASSOCIATION

I. *Initiation of Arbitration*

With respect to each potentially eligible graduate, for purposes of a tuition adjustment, Federal Trade Commission staff or respondents Universal Training Service, *et al.*, hereinafter "the party(ies)," shall initiate an arbitration proceeding within the time specified in Part II, Paragraph 19 of the order, by sending to the American Arbitration Association, hereafter "AAA," the following information and documents in duplicate:

1. A "Demand for Arbitration" in the language, manner, and form shown herein as Appendix M.
2. A copy of the Eligibility Questionnaire and a copy of all other documents relied upon by the independent contractor, Commission staff or respondents in connection with any of the provisions of Part II of the order. Respondents shall

not rely upon information secured subsequent to September 29, 1978, directly or indirectly from the mailing of job information requests similar in form or substance to Appendix U; *provided, however*, that respondents may rely upon an employer's verification that a graduate secured employment in a specific occupation.

3. A copy of Part II of the order and the instructions to the independent contractor.

II. *Appointment of Arbitrator*

With respect to each matter for which a Demand for Arbitration is submitted, AAA shall appoint an arbitrator to arbitrate said dispute, and shall appoint another arbitrator whenever an appointed arbitrator is unable to serve promptly. All such arbitrators appointed by AAA, including any such arbitrators employed by AAA, shall be persons qualified by AAA as arbitrators.

III. *Determination by Arbitrator as to Whether the Party Has a Reasonable Basis for Demanding Arbitration*

Upon receipt of the Demand for Arbitration from the party, the arbitrator shall examine the accompanying documents described in Part I of these Rules and shall determine whether there is any factual basis for putting through arbitration the party's claim that the potentially eligible graduate was misclassified. In making the determination the arbitrator shall be limited to and bound by the standards and definitions of Part II of the order, and the instructions to the independent contractor. If the arbitrator decides that the demand for arbitration by the requesting party is inconsistent with Part II of the order, the arbitrator shall so inform the requesting party by letter and shall close the case if the party, within ten (10) days after receipt of said letter, fails to provide the arbitrator with material facts which demonstrate that arbitration would not be inconsistent with Part II of the order.

IV. *Evidence by Filing of Documents*

All evidence submitted by parties to the arbitrated dispute shall consist of written information or documents. No oral testimony shall be accepted.

V. *Relevancy and Materiality of Evidence*

The arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered.

VI. *Transmittal of Evidence to Opposing Party*

Upon determining that respondents' request for arbitration is not inconsistent with Part II of the order, the arbitrator shall mail to the non-requesting party copies of the requesting party's Demand for Arbitration and all documents submitted to the arbitrator by the requesting party.

VII. *Additional Evidence*

The arbitrator may request such additional evidence as he or she deems necessary from either party, the potentially eligible graduate or anyone else, before closing the arbitration and shall allow said individual fifteen (15) days after the date of said request to provide such evidence.

VIII. *Arbitrator's Decision*

With respect to each arbitration proceeding, and on the basis of evidence received pursuant to these Rules, the arbitrator shall render his or her decision within ten (10) days after said arbitration proceeding is closed. The arbitrator's decision shall be limited to whether the potentially eligible graduate was misclassified. The decision shall not be made solely on the failure of a party to submit rebuttal evidence or evidence requested. The decision shall be final and binding on all parties.

The AAA shall mail a notice of the arbitrator's decision to both parties and to the independent contractor without including in said notice any detailed findings of fact or opinion.

IX. Burden of Proof

In all cases referred to arbitration, the requesting party shall carry the burden of proof to establish that a potentially eligible graduate was misclassified.

X. General Provisions

- A. To the extent not inconsistent with these special Rules, the Commercial Arbitration Rules of AAA shall apply to proceedings under these Rules.
- B. Either party may have evidence submitted under these Rules by an attorney representing said party. However, use of an attorney is not required.

XI. Costs

The administrative fee payable to the AAA for each matter submitted to arbitration shall be \$100.00. When the requesting party demands arbitration, it shall tender said fee with its Demand for Arbitration.

XII. Nothing in These Rules Shall Invalidate or Restrict Any Right or Remedy of Any Consumer Under Any State or Federal Law.

APPENDIX O

[NAME]

[ADDRESS]

DEAR [NAME]:

In accordance with an agreement between the United States Federal Trade Commission and Universal Training Service, Universal has consented to an order whereby Universal shall make adjustments in tuition for certain individuals who graduated from Universal's schools between January 11, 1975 and January 11, 1978.

The order of the Commission contains the provisions identifying the class of persons eligible for adjustments, and the procedures for making adjustments. (You may obtain a copy of the order without charge by writing to the Federal Trade Commission, Public Reference Branch, Room 130, Washington, D.C. 20580. Refer to Universal Training Service, Inc., Docket No. 9106).

In accordance with the provisions of the order, it has been determined that you are entitled to a tuition adjustment of \$ _____.

Pursuant to the Commission's order, *to get a refund you must sign and return the enclosed release* which waives any legal claims against Universal for additional refunds. It is important that you return the release in the enclosed postage paid envelope within 14 days after you receive this letter.

Under terms of the order you will receive 1/3 of the sum above after a signed release is returned, 1/3 at the end of one year and the remaining 1/3 at the end of two years. We will need your most current address in order to send your refunds. Therefore, make sure you let us know if you move.

If you lose the envelope, send the release to [name and address of independent contractor].

[Independent Contractor]

APPENDIX P

RELEASE

In consideration of the partial refund payment to be made to me pursuant to the Federal Trade Commission's order issued in Docket 9106, I hereby release Universal Training Service, Inc., [name of school attended by the graduate], and all of its affiliates from any

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and all further claims, known or unknown, with respect to or relating to my tuition for a Universal course.

 (Signature)

 (Date)

 Print name and address:

APPENDIX Q

IMPORTANT NOTICE

Pursuant to an order of the Federal Trade Commission, Universal Training Service agreed to make a partial tuition adjustment to certain former students in its courses. The order of the Commission contains provisions identifying the class of persons eligible for adjustments and the procedures for making adjustments.

In accordance with Part II of the order, it has been determined, based upon your response to the "Eligibility Questionnaire," that you are not eligible for an adjustment. A copy of this order may be obtained from the Federal Trade Commission, Public Reference Branch, Room 130, Washington, D.C. 20580, without charge. Refer to Universal Training Service, Inc., Docket No. 9106.

[Independent Contractor]

APPENDIX R

[NAME]

[ADDRESS]

DEAR [NAME]:

Enclosed is a check for the first one-third of your tuition refund pursuant to the Federal Trade Commission order against Universal Training Service about which you were informed. To make sure that you receive the remaining parts of your refund, please notify [name and address of independent contractor] of a change in your name or address.

 UNIVERSAL TRAINING SERVICE,
 INC.

APPENDIX S

[NAME]

[ADDRESS]

DEAR [NAME]:

Enclosed is a check for the second one-third of your tuition refund pursuant to the

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Federal Trade Commission order against Universal Training Service about which you were informed. To make sure that you receive the remaining part of your refund, please notify [name and address of independent contractor] of a change in your name or address.

UNIVERSAL TRAINING SERVICE,
INC.

APPENDIX T

[NAME]
[ADDRESS]

DEAR [NAME]:

Enclosed is a check for the final one-third of your tuition refund pursuant to the Federal Trade Commission order against Universal Training Service about which you were informed. It will no longer be necessary for you to notify [name of independent contractor] of a change in your name or address.

UNIVERSAL TRAINING SERVICE,
INC.

APPENDIX U

Dear Graduate,

We sincerely hope you have found success in the vocational field you trained for.

Are you working? If so, please tell us about it. The information requested below will keep your file current.

You may be interested to know that *Universal Schools* awards a \$10.00 cash bonus for each graduate who notifies us of his employment, past or present.

To qualify, you must have *either worked or are currently working* in a job that is related to your training program at the school.

If you are having difficulty finding a job, let us know, additional placement assistance will be forthcoming.

Sincerely,

UNIVERSAL TRAINING SERVICE, INC.

Barbara Desi
Placement Director

-
1. Name and address of employer. _____

 2. What are your duties and job title where employed. _____

 3. Since graduation have you ever worked in a occupation related to your training? YES NO
 4. If yes, where did you work? _____
A. What were your duties? _____
B. How long did you work there? _____

SIGNED _____

Student Number _____

Your mailing address _____
