

IN THE MATTER OF

ELEXIS CORPORATION, ET AL.

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

Docket C-3370. Complaint, Feb.6, 1992 -- Decision, Feb. 6, 1992

This consent order prohibits, among other things, a Miami-based manufacturer and its officer from calling its ultrasonic dog and cat collars by names such as Flea Relief, Pet Shield, Flea Buster, Flea and Tick Collar, and from representing that such collars will eliminate or repel fleas or repel ticks without the use of chemicals.

Appearances

For the Commission: *Timothy T. Hughes* and *John C. Hallerud*.
For the respondents: *Leslie D. Locke, Ross & Hardies*, Chicago,
IL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Elexis Corporation, a corporation, and Frank J. Bianco, individually and as an officer of Elexis Corporation, hereinafter sometimes referred to as respondents, have violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Elexis Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and is authorized pursuant to the laws of the State of Florida to transact business in the State of Florida. Its office and principal place of business is at 7000 N.W. 46 Street, Miami, Florida. (b) Respondent Frank J. Bianco is an officer of the corporate respondent named herein. He has formulated,

directed and controlled the acts and practices of the corporation, including all the acts and practices set forth below. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are, and have been, engaged in the business of manufacturing, offering for sale, promoting, distributing and advertising ultrasonic pet care consumer products and other consumer products to the public, including, but not limited to, the "Microtech," "Microtech-2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," and "Flea Buster" ultrasonic flea and tick collars, and the "Microtech Home Unit" and "Microtech Pest Repeller."

PAR. 3. Respondents' acts or practices, including those alleged in this complaint, are, and have been, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. Respondents have disseminated or have caused to be disseminated print advertisements and promotional materials for respondents' "Microtech-2" ultrasonic flea collar and other ultrasonic flea collars, and the "Microtech Home Unit" and "Microtech Pest Repeller," including but not necessarily limited to the attached Exhibits A-I. The respondents advertising, packaging, and promotional materials for such ultrasonic flea and tick collars contain the following statements:

- (a) "Repel fleas from your dog and cat with the Microtech-2 Electronic Flea Collar, the laboratory-tested and proven non-toxic method of flea control."

* * * *

"In hundreds of tests, including evaluations by veterinarians, the Microtech-2 was shown to repel fleas from both short and long haired pets." (Exhibit A).

- (b) "The comfortable Microtech-2 Flea and Tick Collar, the alternative to poisons & powders for flea control."

* * * *

"Put the Microtech-2 Flea Collar on your dog or cat and throw away your poisons. 72 hours later you will forget your pet ever had fleas."

* * * *

"Hundreds of tests were conducted under various weather conditions, and the results were consistent and dramatic. Veterinarians conducted extensive tests and the units worked to their satisfaction."

* * * *

"From a Veterinarian Report on Microtech-2

'Microtech-2 has demonstrated its effectiveness in significantly reducing, or totally eliminating fleas from pets.' " (Exhibit B).

- (c) "SHOO FLEA FOR DOGS AND CATS The new safe and easy way to make fleas stay away from pets without chemicals and poisons. "

* * * *

"The PMBC or 'Pulse Modulated Burst Circuit' creates an inaudible high frequency sound that surrounds your pet from head to tail with flea-repelling effectiveness that drives fleas off your pet." (Exhibit C).

- (d) "Quick Relief Electronic Flea Collar for Dogs and Cats." (Exhibit D).
 (e) " 'How could an electronic module worn on a pet's collar effectively repel fleas and ticks? Well, I have personally tested the collar and was very satisfied with the results.' Robert P. Knowles, DVM, Knowles Animal Hospital, Inc." (Exhibit E).

- (f) "Microtech-2 electronic flea collar

Now, there's a better way to combat annoying fleas. . .without chemicals. The Microtech-2 electronic flea collar uses Pulse Modulated Burst Circuit (PMBC) sound to repel fleas off pets." (Exhibit F).

- (g) "Microtech Home Flea Control System

Repels Fleas from Your Home Electronically

A high-intensity sound is emitted by a tiny speaker. This showers any 30 X 30 room with protection from biting, disease-carrying fleas around the clock." (Exhibit G).

- (h) "Controls Fleas in Your Home Without Chemicals"

* * * *

"PMBC Sound prevents fleas from jumping on your pet or your family" (Exhibit H).

- (i) "The Pest Repeller, utilizing the same safe and effective ultrasonic technique as the Microtech drives the fleas away from your home!" (Exhibit I).

- (j) "At the heart of our flea collar is a patented electronic 'PULSE MODULATED BURST CIRCUIT' (PMBC) which emits a high frequency sound wave that attacks the sensory system of fleas, while remaining inaudible and harmless to pets and humans." (Exhibit A).

- (k) "The PMBC or 'Pulse Modulated Burst Circuit' creates an inaudible high frequency sound that surrounds your pet from head to tail with flea-repelling effectiveness that drives fleas off your pet. The frequency is beyond the hearing range of dogs, cats and humans. Only the fleas are affected." (Exhibit C).

PAR. 5. Through the use of the statements referred to in paragraph four (a) through four (k), and others not specifically set forth in this complaint, respondents, have represented, and/or now represent, directly or by implication, that:

(a) Respondents' "Microtech-2" and other similar ultrasonic flea collars eliminate fleas on dogs and cats without the use of chemicals.

(b) Respondents' "Microtech-2" and other similar ultrasonic flea collars and flea and tick collars and the Microtech Home Unit and Microtech Pest Repeller reduce flea and/or tick populations on dogs and cats and in indoor environments without the use of chemicals.

(c) Respondents' "Microtech-2" and other similar ultrasonic flea collars and flea and tick collars and the Microtech Home Unit and Microtech Pest Repeller repel fleas and/or ticks from dogs, cats, and indoor environments without the use of chemicals.

(d) Respondents' "Microtech-2" and other similar ultrasonic flea collars and flea and tick collars produce sound at frequencies beyond the hearing ranges of dogs and cats.

(e) Respondents' "Microtech-2" and other similar ultrasonic flea collars and flea and tick collars, and the Microtech Home Unit and Microtech Pest Repeller, when used as directed, produce sound that is not heard by and does not irritate dogs, cats or other pets.

PAR. 6. Through the use of terms such as "Flea Relief" "Pet Shield," "Shoo Flea," "Flea Chaser," "Flea Buster," "flea collar," "flea and tick collar," and "pest repeller" in advertising, marketing, and packaging the "Microtech-2" and other similar ultrasonic flea and flea and tick control products, respondents have represented, and now represent, directly or by implication, that respondents' "Microtech-2" and other similar ultrasonic flea and tick control products repel fleas and/or ticks from dogs, cats, and indoor environments and reduce flea and/or tick populations on dogs and cats and in indoor environments without the use of chemicals.

PAR. 7. Through the use of the statements referred to in paragraph four (a), (b), and (e) respondents have represented that laboratory and veterinarian tests conducted in accordance with scientifically acceptable procedures have substantiated the claim that the "Microtech-2" and other similar flea collars and flea and tick collars repel fleas and/or ticks from dogs and cats and reduce or eliminate flea and/or tick populations on dogs and cats without the use of chemicals.

PAR. 8. Through the use of the statements referred to in paragraph four (a) through four (k) respondents have represented that at

the time they made the representations in paragraphs five (a) through five (e), six, and seven they possessed and relied upon a reasonable basis for the representations.

PAR. 9. The representations set forth in paragraphs five through eight are false and misleading. In truth and in fact:

(a) Respondents' Microtech-2 and other similar ultrasonic flea collars do not eliminate fleas on dogs and cats without the use of chemicals.

(b) Respondents' Microtech-2 and other similar ultrasonic flea collars and flea and tick collars, and the Microtech Home Unit and Microtech Pest Repeller do not reduce flea and/or tick populations on dogs and cats and in indoor environments without the use of chemicals.

(c) Respondents' Microtech-2 and other similar ultrasonic flea collars and flea and tick collars, and the Microtech Home Unit and Microtech Pest Repeller do not repel fleas and/or ticks from dogs, cats, or indoor environments without the use of chemicals.

(d) Respondents' Microtech-2 and other similar ultrasonic flea and flea and tick collars do produce sound at frequencies within the hearing range of dogs and cats.

(e) Respondents do not have laboratory and veterinarian tests conducted in accordance with scientifically acceptable procedures that substantiate the claim that the "Microtech-2" and other similar flea collars and flea and tick collars repel fleas and/or ticks from and reduce or eliminate flea and/or tick populations on dogs or cats without the use of chemicals.


(f) At the time respondents made the representations in paragraphs five (a) through five (e), six and seven they did not possess and rely upon a reasonable basis for those representations.

PAR. 10. Respondents' dissemination of the aforesaid false and misleading representations and the placement in the hands of others of means and instrumentalities by and through which others may have used the aforesaid false and misleading representations constitute deceptive acts or practices in or affecting commerce and the making of false advertisements in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).


NEW

microtech-2TM

Electronic Flea Collar



microtech-2TM
electronic flea collar
for dogs



microtech-2TM
electronic flea collar
for cats

AVOID
POISONS AND HARMFUL CHEMICALS

Over 1 Million Satisfied Customers.
Repel fleas from your dog and cat with the Microtech-2 Electronic Flea Collar, the laboratory-tested and proven non-toxic method of flea control.


How It Works.
At the heart of our flea collar is a patented* electronic "PULSE MODULATED BURST CIRCUIT" (PMBC) which emits a high frequency sound wave that attacks the sensory system of fleas, while remaining inaudible and harmless to pets and humans.

The Logical Choice For Flea Control
If you don't like the idea of working with poisons, chemicals and dips... or the hassle of trying to apply them to your pet, pick-up a Microtech-2 Electronic Flea Collar. You'll be amazed at the results.

Veterinarian Tested... 100% Safe.
In hundreds of tests, including evaluations by veterinarians, the Microtech-2 was shown to repel fleas from both short and long haired pets. And it did this with no reported adverse reactions or side effects. Results were consistent in a variety of weather conditions and frequently dramatic... even in cases of heavy infestation.



Easy To Use... New Lower Price.
Microtech-2 comes in models for both dogs and cats. The cat model (in white) features a safety designed break-away collar. The dog model (in tan) uses a sturdy, long lasting nylon collar. Both come complete with a replaceable long-life lithium battery, test light and a 1-year limited warranty.

Satisfaction Guaranteed!
Use our collar for at least 30 days. Then if you are not satisfied with the improvement, we offer a Money Back Guarantee. Simply return the unit to the place of purchase for a full refund.** (For difficult cases, Veterinarians recommend that you fog or spray the home and yard one or two times to cleanse the environment.)



Miami, Florida

Available in The Camera Department At:

*U.S. Patent #,725,995. International Patents Pending. **Check with place of purchase regarding store's return policy.

Complaint

115 F.T.C.

EXHIBIT B



The comfortable Microtech-2® Flea and Tick Collar, the alternative to poisons & powders for flea control.

NO MORE POISONS**Fleas gone or your money back.**

"Introducing the Microtech-2® Flea Collar, the revolutionary new breakthrough in flea control."

Put the Microtech-2® Flea Collar on your dog or cat and throw away your poisons. 72 hours later you will forget your pet ever had fleas.

It's that easy. Once every 12 months you change the battery. That's it!

HOW DOES IT WORK?

The Microtech-2® Flea Collar uses PMBC™ (Pulsed Modulated Burst Circuit), fancy words, but one of the Microtech-2® engineers explained it this way.

Have you ever found yourself near a loud siren or alarm? Didn't you want to get away from the noise? Now multiply this effect several times and you'll have an idea of what is happening to the fleas **FLEAS CAN'T STAND IT! THEY'VE GOT TO GET OUT!** And they do.

WHO TESTED ITS EFFECTIVENESS?

Hundreds of tests were conducted under various weather conditions, and the results were consistent and dramatic. Veterinarians conducted extensive tests and the units worked to their satisfaction.

From a Veterinarian Report on Microtech-2®

"Microtech-2® has demonstrated its effectiveness in significantly reducing, or totally eliminating fleas from pets."

R.P.K., DVM

IS IT SAFE?

In over 2 years of testing, no adverse reactions were reported. The frequency of waves put out are tuned to the perception of fleas and are fully out of the range of human and dog hearing. Yet it is as loud as standing next to a jackhammer for pests, and there is no shock hazard when wet or dry.

Compare this to the poisons and chemicals in conventional flea collars, shampoos and sprays, or to the side effects that certain drugs for flea treatment can have on your dog, (not to mention the effects these poisons may have on you or your children).

IS IT EASY?

Unless you enjoy:

- chasing your pet for hours every week to bathe him
- seeing him roll around in the dirt after every bath
- hassling with chemicals and powders.

Then the Microtech-2® Flea Collar is for you.

IS THERE ANYTHING ELSE TO BUY?

No. Microtech-2® is supplied complete with a durable nylon collar, long life lithium battery and a 1 year limited warranty.

MONEY BACK GUARANTEE

The Microtech-2® Flea Collar is very sturdy, made for and tested on active pets. If you are not completely satisfied with the reduction in fleas, you may return the unit to place of purchase for a full refund.*

What Satisfied Users Say

We tell everyone we can about your product — our vet was impressed too! It's so nice not to have fleas in the house since our cat doesn't bring them in!

A.W., Pt. Arthur, TX

Last year our beloved Irish Setter Kerry was so flea prone, even with all the veterinary help offered, allergy pills, etc. she had to wear a huge Elizabethan collar around the dock to keep her from ripping out her fur. The flea situation with Kerry was hopeless. NO MORE she is never without her collar, and not a trace of fleas... Thanks from Kerry, and from us.

P.B., Knoxville, TN

We now have two contented beagles, each with one of your collars. The flea and tick problem at our house is nonexistent.

G.R., Key West, FL

* Time allowed for return or refund may vary by state claim. Please check with your store to determine what their refund policy is.

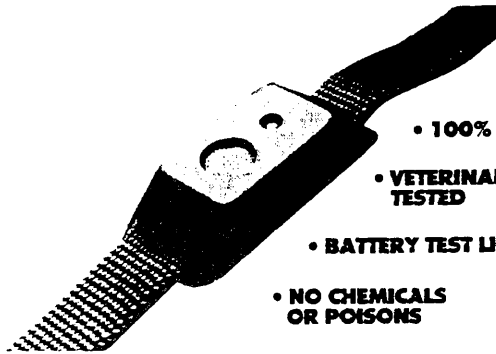
ELEXIS

Elexis Corporation
Miami, Florida

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EXHIBIT

EXHIBIT C



- 100% SAFE
- VETERINARIAN TESTED
- BATTERY TEST LIGHT
- NO CHEMICALS OR POISONS



• OVER 1 MILLION SOLD

SHOO FLEA™ ELECTRONIC FLEA COLLAR FOR DOGS AND CATS

SHOO FLEA FOR DOGS & CATS

The new safe and easy way to make fleas stay away from pets without chemicals and poisons. Exclusive patented "Pulse Modulated Burst Circuit" (PMBC)™ creates a high frequency shower that is heard only by fleas. It's water resistant, veterinarian tested and effective. Includes long-life replaceable Lithium batteries that last up to one season. Durable nylon collar adjusts to fit pets of all sizes.

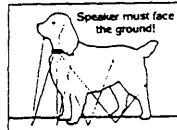
VETERINARIAN TESTED

Hundreds of tests were conducted under various weather conditions, and the results were consistent and dramatic. Veterinarians conducted extensive tests and the units worked to their satisfaction. Copies of the test results are available upon request.

A GOOD INVESTMENT

Surveys have indicated that over 40% of pet owners spend over \$50 per year on flea & tick collars or other chemicals. Shoo Flea is safe, effective and the results are easy to observe. Your dog or cat simply stops suffering and there's no more scratching.

PATENTED PMBC™ CIRCUIT



dogs, cats and humans. Only the fleas are affected.

The PMBC™ or "Pulse Modulated Burst Circuit" creates an inaudible high frequency sound that surrounds your pet from head to tail with flea-repelling effectiveness that drives fleas off your pet. The frequency is beyond the hearing range of

NO HARMFUL CHEMICALS

Pet owners are familiar with the fact that certain chemicals or poisons can kill fleas. They do not totally get rid of fleas, but they poison enough of them to give some relief to your pet. A growing number of pet owners refuse to put chemically impregnated collars on their pets.

ABSOLUTELY SAFE

The Shoo Flea collar is a low-power device that uses long-life lithium batteries (included). Because of its low power, it is completely safe. In fact, just rubbing a cat's fur creates more of a charge than the flea collar's batteries themselves.

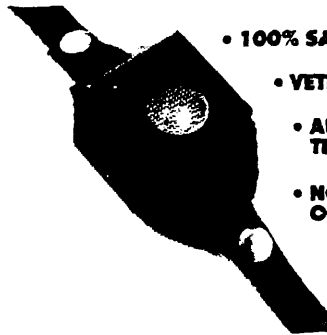
EXHIBIT C

EXHIBIT D

Introducing

Quick Relief

electronic flea collar



- 100% SAFE
- VETERINARIAN TESTED
- AUTOMATIC BATTERY TEST LIGHT
- NO CHEMICALS OR POISONS



• OVER 1 MILLION SOLD

QUICK RELIEF™ ELECTRONIC FLEA COLLAR FOR DOGS AND CATS

QUICK RELIEF FOR DOGS & CATS

The new safe and easy way to make fleas stay away from pets without chemicals and poisons. Exclusive patented "Pulse Modulated Burst Circuit" (PMBC)™ creates a high frequency shower that is heard only by fleas. It's water resistant, veterinarian tested and effective. Includes long-life replaceable Lithium batteries that last up to one season. Durable nylon collar adjusts to fit pets of all sizes.

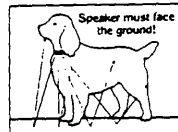
VETERINARIAN TESTED

Hundreds of tests were conducted under various weather conditions, and the results were consistent and dramatic. Veterinarians conducted extensive tests and the units worked to their satisfaction. Copies of the test results are available upon request.

A GOOD INVESTMENT

Surveys have indicated that over 40% of pet owners spend over \$50 per year on flea & tick collars or other chemicals. Quick Relief is safe, effective and the results are easy to observe. Your dog or cat simply stops suffering and there's no more scratching.

PATENTED PMBC™ CIRCUIT



Dogs, cats and humans. Only the fleas are affected.

The PMBC™ or "Pulse Modulated Burst Circuit" creates an inaudible high frequency sound that surrounds your pet from head to tail with flea-repelling effectiveness that drives fleas off your pet. The frequency is beyond the hearing range of

NO HARMFUL CHEMICALS

Pet owners are familiar with the fact that certain chemicals or poisons can kill fleas. They do not totally get rid of fleas, but they poison enough of them to give some relief to your pet. A growing number of pet owners refuse to put chemically impregnated collars on their pets.

ABSOLUTELY SAFE

The Quick Relief collar is a low-power device that uses long-life lithium batteries (included). Because of its low power, it's completely safe. In fact, just rubbing a cat's fur creates more of a charge than the flea collar's batteries themselves.

NON CHEMICAL PEST REPELLENT COLLAR FOR DOGS AND CATS



Electronic Flea Collar



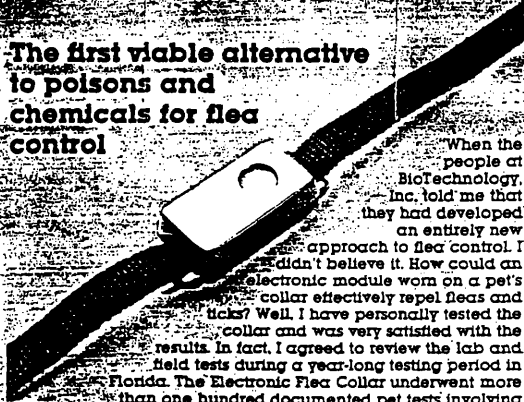
Electronic Flea Collar is a safe, effective, and economical way to protect your pet from fleas and ticks. It is a non-chemical, non-toxic collar that emits a low-frequency electromagnetic field that repels and kills fleas and ticks before they can bite your pet. The collar is made of a special material that is safe for your pet and does not irritate their skin. It is easy to use and lasts for up to one year.

- No chemicals or poisons
- No mess or weekly bath
- 100% safe
- Effective & economical
- Nothing else to buy
- One year warranty

LK00C406

Developed and manufactured in U.S.A.
 by Biotechnology, Inc., Miami, Florida
 EPA Establishment No. 53498-F-01

**The first viable alternative
 to poisons and
 chemicals for flea
 control**



When the people at Biotechnology, Inc. told me that they had developed an entirely new approach to flea control, I didn't believe it. How could an electronic module worn on a pet's collar effectively repel fleas and ticks? Well, I have personally tested the collar and was very satisfied with the results. In fact, I agreed to review the lab and field tests during a year-long testing period in Florida. The Electronic Flea Collar underwent more than one hundred documented pet tests involving both cats and dogs of various sizes, fur length, and level of flea infestation.

I invite you to test this revolutionary new method of flea control. The Electronic Flea Collar warranty of "Fleas gone in 10 days or your money back" is assurance of satisfaction. I am sure that you will be as satisfied as I and many of my clients are.

Robert P. Knowles, DVM, Knowles Animal Hospital, Inc.

17
EXHIBIT
E

ELEXIS

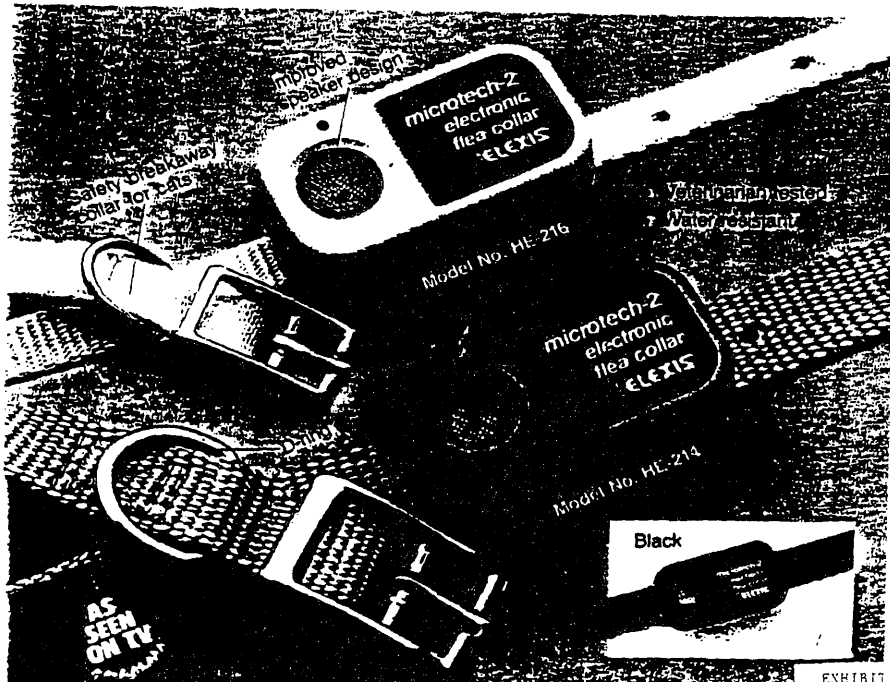
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microtech-2[®] electronic flea collar

Now, there's a better way to combat annoying fleas... without chemicals. The microtech-2 electronic flea collar uses Pulse Modulated Burst Circuit™ (PMBC) sound to repel fleas off pets.

- Comes with sturdy nylon collar.
- Uses long-life lithium batteries.
- Automatic battery test light.



Complaint

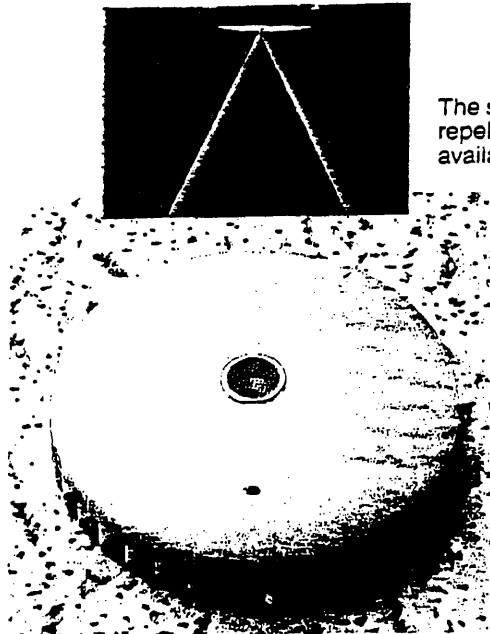
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EXHIBIT G

microtech

Home Flea Control System

Repels Fleas from Your Home Electronically



Model no. HE-230

The same technology used to repel fleas from your pet is now available in a unit for your home.

- No poisons or chemicals
- Easy to install
- Covers 900 square feet
- Replaceable batteries
- 24-hour protection

A high-intensity sound is emitted by a tiny speaker. This sound showers any 30 x 30 foot room with protection from biting, disease-carrying fleas around the clock.

ELEXIS

ELEXIS Corporation
7000 N.W. 46th Street
Miami, Florida 33166
Phone (305) 592-6069

LX002121

EXHIBIT

EXHIBIT H

ELEXIS

Control Fleas
in Your Home
Without Chemicals!

In-Home Flea Control
Microtech® Home Unit
Mounts on Ceiling

The Microtech Home Unit,
used with the Microtech-2
Electronic Flea Collar, makes
the perfect flea control program.



- No poisons or chemicals
- Effective
- Covers 900 square feet
- Automatic test light
- Includes battery

EX 000123

Box printed in
Taiwan.
Made in USA.
Elexis
Corporation
Miami, FL 33166
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The Microtech® Home Unit,
used with the Microtech-2®
Electronic Flea Collar, makes
the perfect flea control
program.

ELEXIS

Part No. 61-0086



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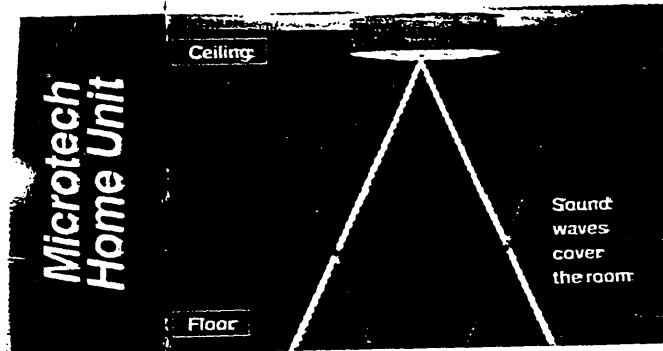
Tomorrow's
Technology
Today!

ELGTS

ELGTS

Tomorrow's
Technology
Today!

In-Home Flea Control
Microtech® Home Unit
Mounts on Ceiling



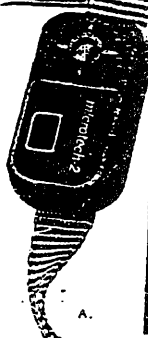

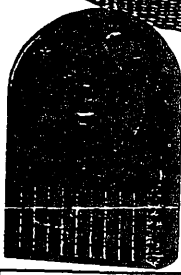
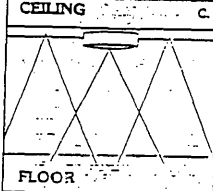


- PMBC® Sound prevents fleas from jumping on your pet or your family.
- Takes effect in minutes and keeps working.
- Chemical-free flea control.

EXHIBIT I

GET RID OF FLEAS

Now! Special Design For Cats Too! Breakaway Collar

**A. A revolutionary idea in flea protection! The Microtech® Flea Collar safely rids your pet of fleas without chemicals or poisons. It emits high frequency sound that repels the pests and creates a 4-foot zone of protection around your pet. The sound is inaudible to humans and pets. Veterinarian tested and approved 100% safe! Watch fleas disappear in 5 days or less! We guarantee it. Available in two styles — one for dogs and puppies, and a new model specially designed for cats. It is smaller and features a "breakaway" collar that allows a cat to escape if it catches the collar on an object. Both units come with durable nylon collar, a lithium battery (up to 6 months continuous use), and one year warranty on materials.
 #D10-0133 for dogs (fits 14" - 26" neck) ..\$36.00 ea.; 3 or more ..\$32.00 ea.
 #D10-0081 for cats ..\$36.00 ea.; 3 or more ..\$32.00 ea.
BATTERIES
 Fits all styles of Microtech® collars (set of 2)
 #D30-0823 ..\$5.99**

B. Microtech™ Pest Repeller
 B. A perfect flea-fighting companion to our popular Microtech® collars — the new Pest Repeller! After the Microtech® collar drives the fleas off of your dog, the fleas have to go somewhere . . . and that somewhere is all too often your carpet. The Pest Repeller, utilizing the same safe and effective ultrasonic technique as the Microtech® drives the fleas away from your home! Compact, inconspicuous, battery operated unit can be wall mounted. Unnoticeable to house pets or humans. Protects up to 385 sq. ft. automatically, 24 hours a day. Operates on a standard 9-volt alkaline battery (not included.) 4 1/4" x 2 3/4".
 #D30-0823 ..\$29.95

C. Now! Drive Fleas Away With Ultrasound!
 C. Now! The Microtech® Home Unit mounts on your ceiling and sends forth a battery of inaudible PMBC® ultrasonic sound waves that drive fleas out of your room. Perfect when used with our Microtech® collar (sold above) for complete, effective flea control. Includes mounting strip and unit. Requires 9-volt battery (not included.) Approx. 4" D. (Covers 900 sq. ft.) #D10-0198 ..\$39.00 ea.

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 Chicago Regional Office 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, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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, 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. (a) Respondent Elexis Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and is authorized to transact business in the State of Florida pursuant to the laws of the State of Florida. Its office and principal place of business is at 7000 N.W. 46th Street, Miami, Florida.

(b) Respondent Frank J. Bianco is an officer of the corporate respondents named herein. He has formulated, directed and controlled the acts and practices of the corporation, including all the acts and practices set forth below. His address is the same as that of the corporate respondent.

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 Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing the "Microtech," "Microtech-2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," "Flea Buster," "Microtech Home Unit," "Microtech Pest Repeller" or any other ultrasonic flea and/or tick control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

- (a) That any such product can or will eliminate fleas on dogs or cats without the use of chemicals;
- (b) That any such product can or will reduce flea and/or tick populations on dogs or cats or in indoor environments without the use of chemicals; or
- (c) That any such product can or will repel fleas and/or ticks from dogs, cats or indoor environments without the use of chemicals.

II.

It is further ordered, That respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, advertising, labeling, packaging, offering for sale,

selling or distributing any ultrasonic pest control device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations, or purposes of any study, test, or other scientific data.

III.

It is further ordered, That respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing the "Microtech," "Microtech-2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," "Flea Buster," or any other ultrasonic flea and/or tick control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the terms "Flea Relief," "Pet Shield," "Shoo Flea," "Flea Chaser," "Flea Buster," "flea collar," "flea and tick collar" and "flea repellent".

IV.

It is further ordered, That respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device in connection with manufacturing, advertising, labeling, packaging, offering for sale selling, or distributing the "Microtech," "Microtech-2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," "Flea Buster," "Microtech Home Unit," "Microtech Pest Repeller" or any ultrasonic flea and/or tick control product that produces ultrasound at a frequency substantially similar to or below the forty (40) kilohertz frequency generated by these products in or

affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication that any such product can or will produce sound at frequencies beyond the hearing range of domestic dogs and cats.

V.

It is further ordered, That respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device in connection with manufacturing, advertising, labeling, packaging, offering for sale selling, or distributing the "Microtech," "Microtech-2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," "Flea Buster," "Microtech Home Unit," "Microtech Pest Repeller" or any similar ultrasonic flea and/or tick control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication that any such product, when used as directed, produces sound that is not heard by or does not irritate dogs, cats or other pets *unless*, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, for any experiment, analysis, research, study or other evidence to be "competent and reliable" it shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

VI.

It is further ordered, That respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device in connection with

manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing any ultrasonic pest control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, any performance characteristic of any ultrasonic flea, tick, mosquito, roach, rodent, or other ultrasonic pest control product *unless*, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, for any experiment, analysis, research, study or other evidence to be "competent and reliable" it shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

VII.

It is further ordered, That respondents shall, within thirty (30) days after the date of service of this order, send to each catalog company with whom the respondents have done business since January 1, 1987, a copy of this order and a notice that the catalog company shall immediately cease using or relying upon any Elexis advertising or promotional materials containing representations prohibited by this order.

VIII.

It is further ordered, That, for a period of three (3) years after the date of service of this order, respondents, their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- (a) All evidence relied upon to substantiate any representation covered by this order; and
- (b) All test reports, studies, surveys, or demonstrations in their possession or control that contradict, qualify, or otherwise call into question any such representation.

IX.

It is further ordered, That, for a period of three (3) years after the date of service of this order, respondents shall distribute a copy of this order to all managerial employees, distributors, independent sales agents, retailers and wholesale customers of any ultrasonic pest control product present and future.

X.

It is further ordered, That, for a period of five (5) years after the date of service of this order, respondent Frank J. Bianco shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment engaged in manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any flea, tick, mosquito, roach, rodent, or other pest control products or services, stating the nature of the business or employment in which he is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment and the address of such new business or employment.

XI.

It is further ordered, That, for a period of ten (10) years after the date of service of this order, the corporate respondent shall notify the Commission within thirty (30) days before any changes 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.

XII.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

TOWER LOAN OF MISSISSIPPI, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TRUTH IN LENDING ACT, REGULATION Z, AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9241. Complaint, June 27, 1990--Decision, Feb. 10, 1992

This consent order requires, among other things, the respondent to: accurately disclose the annual percentage rate, finance charge, and amount financed in accordance with the Truth in Lending Act; offer its customers an opportunity to cancel the credit insurance written on their loans and to obtain cash refunds or credits to their accounts; and provide future customers with a separate disclosure that sets out the costs of the loan with and without credit insurance and that emphasizes that the purchase of credit insurance is not required as a condition to obtaining a loan.

Appearances

For the Commission: *Stephen Cohen* and *Sandra M. Wilmore*.

For the respondent: *Stephen E. Gardner* and *Pat H. Scanlon*,
Young, Scanlon & Sessums, P.A., Jackson, MS. *Nancy L. Buc* and
Sheldon Feldman, Weil, Gotshal & Manges, Washington, D.C.
Robert L. Lepri, Trizna & Lepri, Chicago, IL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Tower Loan of Mississippi, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, and the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Tower Loan of Mississippi, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at 131 Channel 16 Way, Jackson, Mississippi.

PAR. 2. Respondent has been and is now engaged in the business of offering consumer credit to the public and is a creditor as defined in the Truth in Lending Act and Regulation Z.

PAR. 3. The acts and practices of respondent alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in the course and conduct of its business, has, on numerous occasions, required consumers to purchase credit life, accident, health or loss-of-income insurance in connection with an extension of credit, has failed to include the premiums for the insurance in the finance charge and the annual percentage rate disclosed to the consumer, and has wrongfully included the premiums for the insurance in the amount financed disclosed to the consumer.

PAR. 5. Respondent's aforesaid practice violates Sections 106, 107 and 128 of the TILA, 16 U.S.C. 1605, 1606 and 1638, respectively, and Sections 226.4(d), 226.22 and 226.18 (b), (d) and (e) of Regulation Z, 12 CFR 226.4 (d), 226.22 and 226.18(b), (d) and (e), respectively, and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

PAR. 6. Respondent, in the course and conduct of its business, has, on numerous occasions, in connection with its requirement that consumers purchase credit insurance as a condition of the extension of credit, required those consumers to execute statements to the effect that insurance was voluntarily chosen, when, in fact, insurance was required.

PAR. 7. Respondent's aforesaid practice, is unfair and violates Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

Decision and Order

115 F.T.C.

APPENDIX A

Dear [Consumer]:

Tower Loan made an error in determining the finance charge on your loan with us. For this reason, the Federal Trade Commission in Washington, D.C. ordered us to send this letter.

Because of our error, we are refunding to you \$ _____ .

If you have any questions about this letter, you may contact the Federal Trade Commission at (202) 326- .

Sincerely,

Jack R. Lee, President
Tower Loan of Mississippi, Inc.

DECISION AND ORDER

The Federal Trade Commission having issued its complaint charging Tower Loan of Mississippi, Inc., a corporation, with violations of the Truth in Lending Act and Section 5 of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorneys, 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 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(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Tower Loan of Mississippi, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Mississippi, with its office and principal place of business located at 131 Channel 16 Way, Jackson, Mississippi.

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 respondent Tower Loan of Mississippi, Inc., its successors and assigns, and its officers, agents representatives, and employees, directly or through any corporate or other device, in connection with any closed-end credit transaction originated by respondent, do forthwith cease and desist from:

A. Failing to include in the finance charge and the annual percentage rate disclosed to the consumer, as required by Sections 106, 107, and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606, and 1638, and Sections 226.4(d), 226.22, and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4(d), 226.22, and 226.18(d) and (e), the premiums for credit life or accident and health insurance (hereinafter referred to as "credit-related insurance premiums") that consumers are required to purchase;

B. Failing to exclude from the amount financed disclosed to the consumer, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. 1638 and Section 226.18(b) of Regulation Z, 12 CFR 226.18(b), the premiums for credit life or accident and health insurance that consumers are required to purchase; and

C. Failing to make all disclosures, determined in accordance with Sections 106 and 107 of the Truth in Lending Act, 15 U.S.C. 1605 and 1606, and Sections 226.4 and 226.22 of Regulation Z, 12 CFR 226.4 and 226.22, in the manner, form, and amount required by Sections 226.17, 226.18, 226.19, and 226.20 of Regulation Z, 12 CFR 226.17, 226.18, 226.19, and 226.20.

II.

REFUND PROGRAM

It is further ordered, That, no later than thirty (30) days following the date of service of this order, respondent shall provide Baird, Kurtz & Dobson, 400 W. Capitol Street, Suite 2500, Little Rock, AR., ("independent agent") with an itemized list containing the name and address of all consumers, and the name and address of the persons insured, if different, who have an account with respondent opened during the two-year period immediately preceding service of this order as to which payments are still owed on such date of service, on which credit-related insurance was written through respondent, excluding any consumer who has received a credit life or accident and health benefit from a policy written through respondent ("List 1"). Those consumers whose account is two or more payments delinquent at the time of service of this order shall be listed separately ("List 2"). No later than five (5) days thereafter, the independent agent shall send the letter contained in Appendix A ("refund letter") to each consumer on List 1 and the letter contained in Appendix B to each consumer on List 2 by first class mail. If any refund letter is returned as undeliverable, respondent shall make every reasonable effort to contact the consumer, including sending additional refund letters to the consumer's place of business, relatives, or any other location at which the consumer may be contacted based on information available to respondent.

For each such consumer on List 1 who, within sixty (60) days of the date of the postmark on the envelope containing Appendix A, returns that refund letter to the independent agent with the indication that the consumer does not desire to retain credit-related insurance, Tower shall within thirty (30) days after notice of the consumer's

election to cancel credit-related insurance: (1) adjust the consumer's account by refunding in one lump-sum payment the dollar amount of all credit-related insurance premiums and the related finance charges paid by the consumer to Tower prior to the date of the adjustment; and (2) adjust the consumer's account by reducing the consumer's remaining monthly payments by the dollar amount of all credit-related insurance premiums and the finance charges calculated thereon.

For each such consumer on List 2 who, within sixty (60) days of the date of receipt of Appendix B, returns that refund letter to the independent agent with the indication that the consumer does not desire to retain credit-related insurance, Tower shall within thirty (30) days after notice of the consumer's election to cancel credit-related insurance: (1) adjust the consumer's account by crediting the dollar amount of all credit-related insurance premiums and the related finance charges paid by the consumer to Tower prior to the date of the adjustment; and (2) adjust the consumer's account by reducing the consumer's remaining monthly payments by the dollar amount of all credit-related insurance premiums and the finance charges calculated thereon. If the amount of any such credit shall exceed the amount of the delinquency, respondent shall refund to the consumer the amount that exceeds the delinquency.

On any transaction with two or more borrowers, the refund letter must be directed to all borrowers and signed by all borrowers before the credit-related insurance shall be canceled. If the refund letter is returned with only one signature, the independent agent shall use Appendix E to return the refund letter to the borrower who has not signed.

If the borrowers reside at different addresses, the independent agent shall mail a copy of the refund letter to each address. A copy of the refund letter shall also be mailed to the co-signer on the transaction, if any, with the word "COPY" stamped in red on the letter.

For each such consumer excluded from either List 1 or List 2 because of receipt of a credit life or accident and health benefit, respondent shall provide the Associate Director for Credit Practices of the Federal Trade Commission with the consumer's name and address and a complete copy of the benefit check(s) (front and back) paid to each.

Tower shall bear all costs for the administration of the refund program.

III.

It is further ordered, That during the sixty (60) day period during which consumers are given the opportunity to cancel credit-related insurance, respondent and staff of the Federal Trade Commission shall not otherwise communicate directly with the consumers listed on Lists 1 and 2, orally or in writing, concerning the refund program, except to refer such consumers to the independent agent, which shall limit its conversations with such consumers to the text of a prepared statement that shall not deviate in substance from that attached hereto as Appendix C.

IV.

It is further ordered, That respondent shall, in connection with any closed-end credit transaction originated by respondent, cease and desist from requiring any consumer to sign or initial a statement that credit-related insurance has been voluntarily chosen if the consumer's purchase of such insurance was required.

V.

It is further ordered, That respondent shall, in connection with any closed-end credit transaction originated by respondent following the date of service of the order, cease and desist from failing to provide to each consumer before consummation of the transaction, a written statement containing the proposed monthly payment without credit-related insurance premiums and the proposed monthly payment with credit-related insurance premiums in accordance with the form attached hereto as Appendix D. This statement shall be signed by the consumer in duplicate with a copy given to the consumer and a copy retained in the consumer's loan file.

VI.

It is further ordered, That respondent shall maintain for at least three (3) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal

Trade Commission for inspection and copying all records and documents necessary to demonstrate fully its compliance with this order.

VII.

It is further ordered, That respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

VIII.

It is further ordered, That respondent, for a period of six (6) years following the date of service of this order, shall promptly 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 affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

IX.

It is further ordered, That respondent shall, within one hundred and eighty (180) days of the date of service 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.

Commissioner Azcuenaga not participating.

APPENDIX A

Dear [Consumer]:

When you got your loan from us, you bought credit life [and accident and health] insurance. Credit life insurance benefits are paid to you [or insured], less the balance of your loan, in the event of your [or insured's] death. Credit accident and health insurance benefits make your loan payments in the event you [or insured] become[s] totally disabled and are out of work for more than two weeks. The cost of this insurance was included in your monthly payment and this insurance coverage continues to be in force.

In settlement of an action brought by the Federal Trade Commission, Tower Loan has agreed to give you an opportunity to cancel your [or insured's] credit life [and accident and health] insurance.

If you did not want credit life [and accident and health] insurance when you got your loan, we will be happy to refund to you the amount of the insurance premiums you have paid plus the finance charges on the premiums, and cancel all future insurance payments. The following chart explains how this decision will affect your loan.

Your refund if you cancel insurance	\$ _____
Your present monthly payment with insurance	\$ _____
Your new monthly payment without insurance	\$ _____

If you cancel the insurance, you [or insured] will not have any insurance to pay off the loan in case of death or to make your monthly payments in case of total disability. Therefore, if you wish to keep your credit insurance coverage, you do not need to do anything in response to this letter and your insurance coverage will continue as before.

If you want to cancel the insurance, please date and sign this letter and return it in the postage paid envelope provided. If there is more than one borrower, each borrower must sign the letter. You must do so within 60 days from the postmark date on the envelope containing this letter. **THIS IS THE ONLY CHANCE YOU HAVE TO RESPOND TO THIS OFFER.**

If you have any questions concerning this letter, please contact _____ at _____'s toll-free number at xxx-xxx-xxxx. Please do not contact us.

You must keep paying your monthly installments on your loan from us, even if you cancel the insurance and request a refund. We value you as a customer and hope to serve your financial needs in the future.

Sincerely,

Jack R. Lee, President
Tower Loan of Mississippi, Inc.

I did not want credit life [and accident and health] insurance. Please cancel my credit life [and accident and health] insurance and send me a refund.

[consumer's name] date

[consumer's name] date

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Decision and Order

APPENDIX B

Dear [Consumer]:

When you got your loan from us, you bought credit life [and accident and health] insurance. Credit life insurance benefits are paid to you [or insured], less the balance of your loan, in the event of your [or insured's] death. Credit accident and health insurance benefits make your loan payments in the event you [or insured] become[s] totally disabled and are out of work for more than two weeks. The cost of this insurance was included in your monthly payment and this insurance coverage continues to be in force.

In settlement of an action brought by the Federal Trade Commission, Tower Loan has agreed to give you an opportunity to cancel your [or insured's] credit life [and accident and health] insurance.

If you did not want credit life [and accident and health] insurance when you got your loan, we will credit your account for the amount of the insurance premiums you have paid plus the finance charges on the premiums, and cancel all future insurance payments. The following chart explains how this decision will affect your loan.

Your present loan balance	\$ _____
Your credit if you cancel insurance	\$ _____
Your new loan balance	\$ _____
Your present monthly payment with insurance	\$ _____
Your new monthly payment without insurance	\$ _____

If you cancel the insurance, you [or insured] will not have any insurance to pay off the loan in case of death or to make your monthly payments in case of total disability. Therefore, if you wish to keep your credit insurance coverage, you do not need to do anything in response to this letter and your insurance coverage will continue as before.

If you want to cancel the insurance, please date and sign this letter and return it in the postage paid envelope provided. If there is more than one borrower, each borrower must sign the letter. You must do so within 60 days of the postmark date on the envelope containing this letter. **THIS IS THE ONLY CHANCE YOU HAVE TO RESPOND TO THIS OFFER.**

If you have any questions concerning this letter, please contact _____ at _____'s toll-free number at xxx-xxx-xxxx. Please do not contact us.

You must keep paying your monthly installments on your loan from us, even if you cancel the insurance and request a credit to your account. We value you as a customer and hope to serve your financial needs in the future.

Sincerely,

Jack R. Lee, President
Tower Loan of Mississippi, Inc.

I did not want credit life [and accident and health] insurance. Please cancel my credit life [and accident and health] insurance and credit my account.

[consumer's name] date

[consumer's name] date

APPENDIX C

1. Q. Why did I get this letter?
A. This letter is being sent to all of Tower's customers who have taken out a loan in the last two years. Tower has agreed to send this letter to settle an action brought by the Federal Trade Commission, a federal agency in Washington, D.C.
2. Q. What was the action about?
A. The Federal Trade Commission alleged that Tower violated the Truth in Lending Act by requiring its customers to purchase credit-related insurance and then failing to include the cost in the annual percentage rate. Tower denies any wrongdoing.
3. Q. What is credit life insurance?
A. Credit life insurance provides you with financial protection in case you should die. When you got your loan from Tower, you purchased credit life insurance. This means that if you [or insured] should die before you finish paying your loan with Tower, the life insurance company will pay off your loan and give your beneficiary the balance of the insurance proceeds, if any.
4. Q. I don't understand.
A. [If insured has level-term insurance, state:] Let me give you an example. Let's assume your original loan was \$1,000 and your monthly payments were \$100. If after 5 payments you were to die, the insurance company would pay \$500 to Tower to pay off your loan and \$500 to your beneficiary or your estate.
[If insured has decreasing-term insurance, state:] Let me give you an example. If the balance due on your loan is \$500 and you should die, the insurance company would pay Tower \$500 and you would not owe Tower any more money.
5. Q. What if I already have a life insurance policy?
A. The credit life insurance you purchased through Tower is in addition to any other life insurance policies you may have .
6. Q. What is accident and health insurance?
A. Accident and health insurance provides you with financial protection in case you become sick or injured. When you got your loan from Tower, you [or insured] purchased accident and health insurance. This means that if you [or insured] should become totally disabled and cannot work for more than two weeks in a row, the insurance company will make your monthly payments for you. Of course, once you [or insured] are able to return to work, the insurance company no longer makes these payments.
7. Q. What does this letter mean or why am I being given the chance to cancel my insurance?
A. Tower does not require borrowers to buy credit life or accident and health insurance to get a loan from it. This opportunity to cancel the insurance is being offered to you in case you believe you were required to purchase insurance or you did not wish to buy this insurance when you got the loan.
8. Q. What should I do if I want to cancel the insurance?
A. Sign the letter at the bottom and return it in the envelope provided. If there is more than one borrower, each must sign the letter.
9. Q. What should I do if I want to keep the insurance?

- A. You do not have to do anything. Your insurance coverage will remain in force.
10. Q. What happens to my loan if I cancel the insurance?
- A. If you are not two or more months past due in making your payments, you will receive a refund of all the insurance premiums you have paid plus any finance charges. The amount of the refund is on the letter Tower sent you. In addition, your monthly payment will be reduced so that you will not pay for insurance in the future. The amount of your new monthly payments are also listed on the letter Tower sent you.
11. Q. What if I am delinquent?
- A. If you are two or more months past due in making your payments, your account will be credited for all of the insurance premiums you have paid plus any finance charges. If the amount of the refund is more than what you owe Tower, the balance will be refunded to you. The amount of the credit is on the letter Tower sent you. In addition, your monthly payment will be reduced so that you will not pay for insurance in the future. The amount of your new monthly payment is also listed on the letter Tower sent you.
12. Q. If I cancel the credit life insurance and then die before the loan is paid in full, what will happen?
- A. [If principal borrower is insured, state:] You will not have credit life insurance through Tower to pay off your loan.
[If principal borrower is not insured, state:] You are not the person insured on this loan. That means if you died, the insurance would not pay off the loan anyway. The insurance would only pay off the loan if [insured] died.
13. Q. If I cancel the accident and health insurance and then get sick or become disabled before the loan is paid in full, what will happen?
- A. [If principal borrower is insured, state:] If you cannot work for more than two weeks in a row because of sickness or disability, you will not have insurance through Tower to make your monthly payments and you would still have to make the monthly payments.
[If principal borrower is not insured, state:] You are not the person insured on this loan. That means if you cannot work, the insurance would not make your monthly payments to Tower anyway. The insurance would only make the monthly payments if [insured] became sick or disabled.
14. Q. If I cancel the insurance, will Tower be willing to lend to me in the future?
- A. Canceling the insurance will not affect your ability to get credit from Tower in the future.

APPENDIX D

DO YOU WANT TO PURCHASE OPTIONAL CREDIT INSURANCE?

Tower Loan offers credit life, and accident and health insurance in connection with its loans. **Purchase of this insurance is not required to obtain a loan with us.** We are providing you with the following information to help you decide whether you want to buy this credit insurance.

Loan amount:	\$ _____
Your monthly payment without optional insurance:	\$ _____
Life insurance premium:	\$ _____
Accident and Health insurance premium:	\$ _____
Your monthly payment with optional insurance:	\$ _____

TRUTH IN LENDING DISCLOSURE
Insurance

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance _____ Signature
Credit Disability		I want credit disability insurance _____ Signature

APPENDIX E

Dear [Consumer]:

We have received a request to cancel your credit life [and accident and health] insurance. Before we can cancel the insurance and issue you a refund [credit], we need your signature also. If you wish to cancel the insurance, please sign the attached letter and return it in the envelope provided. You must do so within 30 days of the date of this notice or the insurance will not be cancelled.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL

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

Docket C-3372. Complaint, Feb. 25, 1992--Decision, Feb. 25, 1992

This consent order requires, among other things, a Houston, Texas, based corporation to divest, within twelve months, four Pierce Brothers funeral homes, and, for ten years, to obtain prior Commission approval before acquiring any additional funeral homes in the San Bernardino/Riverside, California, areas.

Appearances

For the Commission: *Katharine B. Alphin* and *John D. Jacobs*.

For the respondent: *Michael Byowitz, Wachtell, Lipton, Rosen & Katz*, New York, N.Y. and *Marcel Gremillow*, Service Corporation International, Houston, TX.

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 Service Corporation International, a corporation, hereinafter sometimes referred to as respondent, has entered into an agreement with Pierce Brothers Holding Company, a corporation, that violates 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 as follows:

I. DEFINITIONS

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

a. "*SCI*" means the respondent Service Corporation International, its subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents, and representatives.

b. "*Pierce Brothers*," means Pierce Brothers Holding Company, its subsidiaries, divisions, groups controlled by Pierce Brothers, successors and assigns, and their respective directors, officers, employees, agents, and representatives.

c. "*Funerals*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

II. THE RESPONDENT

2. Respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

3. Pierce Brothers 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 10621 Victory Boulevard, North Hollywood, California.

4. SCI and Pierce Brothers are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

III. THE AGREEMENT

5. On or about September 27, 1991, SCI entered into an Agreement and Plan of Merger with Pierce Brothers, in which Pierce Brothers would be merged into Pierce Brothers Acquisition Corp., a wholly-owned subsidiary of SCI. Pierce Brothers shareholders would receive cash and SCI common stock.

IV. THE RELEVANT MARKET

6. For purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition of Pierce Brothers is the provision of funerals.

7. For purposes of this complaint, the relevant section of the country in which to analyze the proposed acquisition is the following: all or part of the cities of Fontana, Rialto, Colton, San Bernardino, Loma Linda, Grand Terrace and Redlands, and the community of Bloomington, all located in San Bernardino County, California; and the city of Riverside and the community of Rubidoux, both located in Riverside County, California; and their immediate environs (hereinafter "San Bernardino/Riverside").

8. In the relevant section of the country described in paragraph 7, the industry providing funerals is concentrated, whether measured by the Herfindahl-Hirschmann Index or by two-firm or four-firm concentration ratios.

9. Entry into the relevant market is difficult.

10. In the relevant market both SCI and Pierce Brothers own funeral establishments and are actual competitors in the provision of funerals. Pierce Brothers is the largest firm and SCI the second largest firm providing funerals in the San Bernardino/Riverside, California area.

V. EFFECTS OF THE ACQUISITION

11. The effects of the acquisition may be to substantially lessen competition in the relevant market in violation of Section 7 of the

Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating actual competition between SCI and Pierce Brothers; and
- b. By tending to create a dominant firm in the relevant market.

VI. VIOLATION CHARGED

12. The agreement described above violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and the acquisition described above, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Service Corporational International ("SCI"), a corporation, and SCI, having been furnished with a copy of a draft of complaint that the Atlanta Regional Office proposed to present to the Commission for its consideration, and that, if issued by the Commission, would charge Service Corporation International with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent SCI, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 had violated the said Acts, 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 (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 SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, in the City of Houston, State of Texas.

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

ORDER

I.

As used in this order, the following definitions shall apply:

A. "*SCI*" or "*respondent*" means Service Corporation International, its subsidiaries, divisions, groups and affiliates controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents and representatives.

B. "*Pierce Brothers*" means Pierce Brothers Holding Company, its subsidiaries, divisions, groups and affiliates controlled by Pierce Brothers, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. "*Funerals*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

D. "*Funeral establishment*" means the Assets and Businesses of a facility that provides funerals.

E. "*Assets and Businesses*" include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including, but not limited to, the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;
3. All right, title and interest in the trade name of each funeral establishment, *provided that* the trade name "Pierce Brothers" need not be included;
4. All right, title and interest in the books, records and files pertinent to any of the Properties to be Divested.

F. "*Properties to be Divested*" means all of the Assets and Businesses of the following funeral establishments:

1. Cortner-Pierce Brothers Chapel, 221 Brookside Ave., Redlands, CA.
2. Pierce Brothers Ingold Chapel, 8277 Juniper Ave., Fontana, CA.
3. Mark B. Shaw, 1525 N. Waterman Ave., San Bernardino, CA.
4. Rubidoux Mortuary, 6091 Mission Blvd., Riverside, CA.

II.

It is ordered, That, within twelve (12) months after the date this order becomes final, respondent shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestitures required by this order is to ensure the continuation of the Properties to be Divested as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

III.

It is further ordered, That, pending divestiture, respondent shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or businesses of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

IV.

It is further ordered, That:

A. If respondent has not divested the Properties to be Divested as required by paragraph II of this order within twelve (12) months after the date this order becomes final, respondent shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondent shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to paragraph 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by SCI to comply with this order.

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

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld.

The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

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

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in paragraph II; *provided, however*, that if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

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

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

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

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

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V.

It is further ordered, That, respondent shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until respondent has divested the Properties to be Divested or until such other time as the Agreement to Hold Separate provides.

VI.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

VII.

It is further ordered, That, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission, any assets of or any stock, share capital or equity or other interest in a funeral establishment located within portions of San Bernardino County and Riverside County, being more particularly described as follows: Beginning at the intersection of Interstate 15 and Highland Avenue in San Bernardino County, thence turning southerly along Interstate 15 to its intersection with the Riverside Freeway, Route 91, thence north-easterly along the Riverside Freeway to its intersection with Central Avenue, thence easterly along Central Avenue to its easterly terminus at Alessandro Boulevard, thence easterly to the intersection of Interstate 215 and Route 60, thence easterly along Route 60 to the intersection of Moreno Beach Drive, thence northerly along Moreno Beach Drive to its northern terminus, thence northerly to the intersection of Interstate 10 and Orange Street, thence northerly along Orange Street to its intersection with Boulder Avenue, thence northerly along Boulder Avenue to its Intersection with Highland Avenue, thence westerly along Highland Avenue to its easterly intersection with Route 259, thence westerly along Route 259 to its westerly intersection with Highland Avenue, thence westerly along Highland Avenue to its intersection with Interstate 15 and the point of the beginning; *provided, however,* that this prohibition shall not apply to the construction of new facilities by respondent. The geographic areas defined above are to be interpreted in accordance with the *1990 Thomas Street Guide and Directory* for each of Riverside County and San Bernardino County.

VIII.

It is further ordered, That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of paragraph VII. hereof, respondent may acquire through default or foreclosure proceedings any interest in a funeral establishment

located in the areas defined in paragraph VII; *provided, however*, that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of paragraphs II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or, if the acquisition is not approved, until the interest is divested, respondent shall hold separate, as required by the Hold Separate Agreement attached hereto, any funeral establishment in which such an interest is acquired.

IX.

It is further ordered, That, one year after the date this order becomes final and annually thereafter for nine (9) years, and at such other times as the Commission may require, respondent shall file with the Commission a verified written report of its compliance with paragraphs VII. and VIII. of this order. Such reports shall include, but not be limited to, a listing of all acquisitions and the acquired locations' addresses, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by respondent during the 12 months preceding the date of the report.

X.

It is further ordered, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the

possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

XI.

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

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and between Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive offices located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on or about September 27, 1991, SCI entered into an Agreement and Plan of Merger with Pierce Brothers Holding Company ("Pierce Brothers"), in which (1) Pierce Brothers would be merged into Pierce Brothers Acquisition Corp., a wholly-owned subsidiary of SCI, and (2) Pierce Brothers shareholders would receive cash and SCI common stock (hereinafter the "Acquisition"); and

Whereas, both Pierce Brothers and SCI own funeral establishments that provide funerals to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (the "SCI/Pierce Consent Agreement"), the Commission must place the SCI/Pierce Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the *status quo ante* and holding separate the assets and businesses of certain Pierce Brothers funeral establishments listed in Exhibit A attached hereto and made a part hereof (hereinafter "Hold Separate Assets") until the divestitures contemplated by the SCI/Pierce Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, if the Commission finally accepts the order contained in the SCI/Pierce Consent Agreement, SCI agrees, for a period of 10 years after the date the order becomes final, to notify the Commission of the acquisition, by default or foreclosure proceedings, of any interest in a funeral establishment in three specified geographic areas and to hold such funeral establishment separate until such time as the Commission approves the acquisition or the interest is divested; and

Whereas, the purposes of this Agreement are to: (1) preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI/Pierce Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments required by the SCI/Pierce Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

Whereas, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

Whereas, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the SCI/Pierce Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI/Pierce Consent Agreement to which it is annexed and made a part thereof and any order issued against SCI, as follows:

1. SCI agrees to execute and be bound by the SCI/Pierce Consent Agreement.

2. SCI shall hold the Hold Separate Assets separate and apart as follows: (i) the funeral establishments to be divested under paragraph II of the order contained in the SCI/Pierce Consent Agreement from the date this agreement is accepted until the first to occur of (a) ten business days after the Commission withdraws its acceptance of the SCI/Pierce Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules or (b) the date the divestitures required by the order contained in the SCI/Pierce Consent Agreement are accomplished; and (ii) any funeral establishments acquired by SCI through default or foreclosure and subject to paragraph VIII of the order contained in the SCI/Pierce Consent Agreement from the date SCI acquires any interest through default or foreclosure in any such funeral establishment until (a) the Commission grants approval of the acquisition or (b) any divestiture ordered by the Commission is accomplished. SCI's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions and for the periods set forth in Exhibit A:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve

the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate financial statements for the Hold Separate Assets and shall provide the Commission with quarterly and annual financial statements for each funeral establishment within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, SCI shall not receive or have access to, or the use of, any of the Hold Separate Assets' "material confidential information" not in the public domain, except as such information would be available to SCI in the normal course of business if the acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to SCI from sources other than Pierce Brothers, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

i. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business, and SCI may sell or otherwise dispose of assets, property or business

to accomplish the divestitures required by any order issued against SCI.

3. The parties agree that, if the Commission finally approves and issues the order in the SCI/Pierce Consent Agreement this Agreement shall remain in effect until ten (10) years after the date said order becomes final.

4. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Pierce Brothers stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Pierce Brothers that it may hold, or to seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to SCI made to its principal office, SCI shall make available to any duly authorized representative or representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of SCI relating to any matters contained in this Agreement, for inspection and copying during office hours and in the presence of counsel; and

b. Upon five (5) days notice to SCI, and without restraint or interference from SCI, officers or employees of SCI, who may have counsel present, for interviews regarding any such matters.

This agreement shall not be binding until approved by the Commission.

EXHIBIT A

HOLD SEPARATE ASSETS AND TIME PERIOD
OF HOLD SEPARATE OBLIGATIONS

1. The following six funeral establishments shall be held separate until the divestiture of Cortner-Pierce Brothers Chapel, Pierce Brothers Ingold Chapel, Mark B. Shaw, and Rubidoux Mortuary pursuant to the order as is set forth in the SCI/Pierce Consent Agreement:

Cortner-Pierce Brothers Chapel
221 Brookside Ave.
Redlands, CA 92373

Pierce Brothers Ingold Chapel
8277 Juniper Ave.
Fontana, CA 92335

Mark B. Shaw
1525 N. Waterman Ave.
San Bernardino, CA 92404

McNearney-Pierce Brothers Mortuary
130 S. Willow Ave.
Rialto, CA 92376

Pierce Brothers Crestlawn Mortuary
11500 Arlington Ave.
Riverside, CA 92505

Rubidoux Mortuary
6091 Mission Blvd.
Riverside, CA 92509

2. Any funeral establishment located in the area described in paragraph VII of the SCI/Pierce Consent Agreement, in which funeral establishment SCI acquires an interest through default or foreclosure, shall be held separate until either the Commission finally approves the acquisition of that funeral establishment pursuant to paragraph VIII of the SCI/Pierce Consent Agreement or the funeral establishment is divested.

IN THE MATTER OF

EXCELL MORTGAGE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TRUTH IN LENDING ACT, REGULATION Z, AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3371. Complaint, Feb. 26, 1992--Decision, Feb. 26, 1992

This consent order prohibits, among other things, a New Jersey corporation to accurately calculate and disclose the annual percentage rate, finance charge, payment schedule and other information required by Regulation Z. The order also requires respondent to make adjustments to the accounts of consumers extended an adjustable rate mortgage on or after January 1, 1987, and before January 1, 1990, and who had an open loan as of April 1, 1991, to whom it disclosed annual percentage rates (APRs) that were miscalculated by more than 1/4 of one percentage point below the APR determined in accordance with Regulation Z.

Appearances

For the Commission: *Carole L. Reynolds* and *Rolando Berrelez*.
For the respondent: *Morton R. Covits* (President), Englewood Cliffs, N.J.

COMPLAINT

The Federal Trade Commission, having reason to believe that Excell Mortgage Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR Part 226, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Excell Mortgage Corporation is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New Jersey, with its principal place of business at 550 Sylvan Avenue, Englewood Cliffs, New Jersey.

PAR. 2. Respondent has been and is now engaged in the business of offering "consumer credit" to the public and is a "creditor," as those terms are defined in the TILA and Regulation Z.

PAR. 3. The acts and practices of respondent alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

PAR. 4. Respondent, in the course and conduct of its business, on numerous occasions, has failed to disclose accurately a composite annual percentage rate and, thus, has underdisclosed the annual percentage rate and finance charge in its TILA disclosures for discounted adjustable rate mortgages.

PAR. 5. Respondent's aforesaid practice violates Sections 106, 107 and 128 of the TILA, 15 U.S.C. 1605, 1606 and 1638, respectively, and Sections 226.4, 226.22 and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18(d) and (e), respectively, and Section 226.17(c)(1) of Regulation Z, 12 CFR 226.17(c)(1), as more fully set out in Section 226.17(c)(1)-8 and 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff Commentary to Regulation Z (Commentary), 12 CFR 226.17 (c)(1)-8 and 226.17(c)(1)-10, formerly Sections 226.18(f)-2 and 226.18(f)-8 of the Commentary, 12 CFR 226.18(f)-2 and 226.18(f)-8, and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

PAR. 6. Respondent, in the course and conduct of its business, on numerous occasions, has failed to disclose accurately the number, amount, and timing of payments scheduled to repay the obligation in its TILA disclosures.

PAR. 7. Respondent's aforesaid practice violates Sections 128 of the TILA, 15 U.S.C. 1638, and Sections 226.18(g) of Regulation Z, 12 CFR 226.18(g), and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Commissioner Yao not participating.

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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act, 15 U.S.C. 1601, *et seq.*, and its implementing Regulation Z, 12 CFR Part 226, and the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondent 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 considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts and Regulation, 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 Excell Mortgage Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its principal office and place of business located at 550 Sylvan Avenue, Englewood Cliffs, New Jersey.

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

ORDER

DEFINITIONS

For purposes of this order, the following definitions apply:

1. "*Composite APR*" means a blend of interest rates as described in Section 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff Commentary to Regulation Z;

2. "*First adjustment date*" is the date on which the consumer's monthly payment of principal and interest is first changed, in accordance with the terms set forth in the consumer's note or adjustable rate rider;

3. "*Original TILA disclosure*" is the last TILA disclosure given to a consumer by respondent before consummation of the loan.

4. "*Open loan*" is any loan that has not been paid off or refinanced.

I.

It is ordered, That respondent Excell Mortgage Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to disclose accurately in its discounted adjustable rate mortgages the finance charge and the annual percentage rate by failing to disclose accurately the composite annual percentage rate, as required by Sections 106, 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606 and 1638 and Sections 226.4, 226.22 and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18(d) and (e), and Section 226.17(c)(1) of Regulation Z, 12 CFR 226.17(c)(1), as more fully set out in Sections 226.17(c)(1)-8 and 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff

Commentary to Regulation Z, 12 CFR 226.17(c)(1)-8 and 226.17(c)(1)-10.

B. Failing to disclose accurately the number, amount, and timing of payments scheduled to repay the obligation, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. 1638, and Section 226.18(g) of Regulation Z, 12 CFR 226.18(g).

C. Failing to make all disclosures determined in accordance with Sections 106 and 107 of the Truth in Lending Act, 15 U.S.C. 1605 and 1606, and Sections 226.4 and 226.22, 12 CFR 226.4 and 226.22, and in the manner, form and amount required by Sections 226.17, 226.18, 226.19, 226.20 of Regulation Z, 12 CFR 226.17, 226.18, 226.19 and 226.20.

II.

It is further ordered, That:

A. Respondent, its successors and assigns shall make adjustments to the accounts of each consumer who was extended an adjustable rate mortgage loan on or after January 1, 1987 and before January 1, 1990 and who had an open loan as of April 1, 1991, to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than 1/4 of 1 percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, so that each such consumer will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of the dollar equivalent of 1/4 of 1 percentage point; except, the adjustment shall be limited to the time period up to the first adjustment date.

B. Respondent, its successors and assigns shall have a three-year period in which to complete the adjustments described in paragraph A above; except, where the amount of the adjustment is \$200 or less, the adjustment shall be completed by the end of the first year. Each consumer shall receive payment from respondent, its successors and assigns for at least one third of the applicable adjustment for that

consumer no later than the last day of each calendar year beginning with the current year.

III.

It is further ordered, That all adjustments required by this order shall be made by mailing the consumer a check by first class mail to the current or last known address of each such consumer. For each consumer for whom a check is returned as undelivered, respondent, its successors and assigns shall make all reasonable efforts to obtain the current address of each such consumer, including contacting all subsequent holders and servicers of the loans that are not currently held or serviced by respondent. For each consumer for whom a new address is located, respondent, its successors and assigns shall re-mail the check by first class mail to the consumer at the new address.

IV.

It is further ordered, That respondent, its successors and assigns shall include with each check mailed pursuant to this order the letter contained in Appendix A. Respondent, its successors and assigns shall mail the check and letter in an envelope approved by the Federal Trade Commission Division of Credit Practices.

V.

It is further ordered, That for four years after the date of service of this order respondent, its successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI.

It is further ordered, That respondent, its successors and assigns shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondent, its

successors and assigns shall secure from each such person a signed statement acknowledging receipt of said order.

VII.

It is further ordered, That respondent, its successors and assigns shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate entity 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.

VIII.

It is further ordered, That respondent, its successors and assigns shall, within ninety (90) days of the date of service 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. Within thirty (30) days of the end of each year for three years, starting with the current year, respondent, its successors and assigns shall forward a copy of all checks mailed to consumers in that year to the Federal Trade Commission, Enforcement Division, Washington, D.C.

Commissioner Yao not participating.

APPENDIX A

Dear [Consumer]:

Excell Mortgage Corporation made an error in determining the finance charge on your mortgage loan. For this reason, the Federal Trade Commission in Washington, D.C. ordered us to send this letter.

Because of this error, we are refunding to you \$ _____.

If you have any questions about this letter, you may contact the Federal Trade Commission at (202) 326-

Sincerely,

Morton Covitz, President
Excell Mortgage Corporation