

IN THE MATTER OF

CABLEVISION SYSTEMS CORPORATION

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-3804. Complaint, April 27, 1998--Decision, April 27, 1998

This consent order requires, among other things, Cablevision Systems Corporation to divest, to a Commission-approved buyer, Tele-Communication, Inc.'s cable systems assets in Paramus and Hillsdale, New Jersey.

Appearances

For the Commission: *Jill Frumin, Phillip Broyles and William Baer.*

For the respondent: *Yvonne Quinn and James Masella, Sullivan & Cromwell, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Cablevision Systems Corporation ("CVS"), a corporation subject to the jurisdiction of the Commission, proposes to acquire certain cable television systems owned by Tele-Communications, Inc. ("TCI"), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. CVS

PARAGRAPH 1. Respondent CVS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1 Media Crossways, Woodbury, New York.

PAR. 2. Respondent CVS is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation

whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. TCI

PAR. 3. TCI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 5619 DTC Parkway, Englewood, Colorado.

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

III. THE PROPOSED ACQUISITION

PAR. 5. Respondent CVS entered into an agreement with TCI in which CVS will acquire certain cable television systems presently owned and operated directly or indirectly by TCI in New Jersey and New York serving approximately 820,000 subscribers, in exchange for CVS voting securities valued at approximately \$423,000,000 ("the acquisition").

IV. THE RELEVANT MARKETS

PAR. 6. The relevant line of commerce in which to analyze the effects of the acquisition is the distribution of multichannel video programming by cable television.

PAR. 7. The relevant geographic areas in which to analyze the effects of the acquisition are the Boroughs of Paramus and Hillsdale, in Bergen County, New Jersey.

PAR. 8. The relevant line of commerce is highly concentrated with only two cable television providers -- CVS and TCI -- in the relevant geographic areas.

PAR. 9. Respondent CVS is an actual and potential competitor of TCI in the relevant line of commerce in the relevant geographic areas.

PAR. 10. Timely and effective entry in the relevant line of commerce in the relevant geographic areas is unlikely.

V. EFFECTS OF THE ACQUISITION

PAR. 11. The effects of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in the following ways, among others:

- a. Actual competition between CVS and TCI to serve existing residential neighborhoods, hotels, and apartment complexes will be eliminated;
- b. Actual competition between CVS and TCI to serve new residential neighborhoods, hotels, and apartment developments will be eliminated; and
- c. Actual and potential competition between CVS and TCI to extend their cable systems throughout the relevant geographic areas will be eliminated.

VI. VIOLATIONS CHARGED

PAR. 12. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

PAR. 13. The acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Cablevision Systems Corporation ("Cablevision") of certain cable television systems owned and operated by Tele-Communications, Inc. ("TCI"), and it now appearing that Cablevision, hereinafter sometimes referred to as "respondent," has been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondent with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the

executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment received, 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 Cablevision Systems Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1 Media Crossways, Woodbury, New York.

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.

It is ordered, That:

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

A. "*Agent*" or "*representative*" means a person that is acting in a fiduciary capacity on behalf of a principal with respect to the specific conduct or action under review or consideration.

B. "*Acquisition*" means the acquisition by Cablevision of certain cable television systems owned and operated directly or indirectly by TCI and serving various communities in New Jersey and New York, as set forth in paragraph five of the draft of complaint.

C. "*Respondent*" or "*Cablevision*" means Cablevision Systems Corporation and all of its directors, officers, employees, agents, and representatives, and also includes (1) all of Cablevision Systems Corporation's predecessors, successors, assigns, subsidiaries, and divisions and all of their respective directors, officers, employees, agents, representatives, successors, and assigns; and (2) any partnerships, joint ventures, and affiliates that Cablevision Systems Corporation Controls and the respective directors, officers, employees, successors and assigns of each.

D. "*TCI*" means Tele-Communications, Inc. and all of its directors, officers, employees, agents, and representatives, and also includes (1) all of Tele-Communications, Inc.'s, predecessors, successors, assigns, subsidiaries, and divisions and all of their respective directors, officers, employees, agents, representatives, successors, and assigns; and (2) any partnerships, joint ventures, and

affiliates that Tele-Communications, Inc., controls and the respective directors, officers, employees, successors and assigns of each.

E. "*Control*" has the meaning set forth in 16 C.F.R. 801.1 as that regulation read on November 1, 1997.

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

G. "*TCI Paramus and Hillsdale Systems Assets*" means the Cable Television System Assets that were owned directly or indirectly by TCI prior to this Acquisition and that are physically located in the relevant geographic area, and all other properties, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description that are owned, leased, held or used in the provision of Cable Television Service by TCI solely in and for the relevant geographic area, including governmental permits, franchises, intangibles, equipment and real property; provided, however, that "TCI Paramus and Hillsdale Systems Assets" shall not include:

1. The TCI Optical Transfer Network (the "OTN") that distributes Cable Television Service to certain municipalities, townships and boroughs north and south of Paramus and which is located at the intersection of Bluebell Court and Pascack Road near the border of Paramus and Washington Township;

2. The TCI fiber optic cable that distributes Cable Television Service to certain municipalities, townships and boroughs north of Paramus, and which is located on the border of Paramus and Washington Township along Blue Bell Court, Pascack Road and Linwood Avenue;

3. The TCI fiber optic cable that distributes Cable Television Service to certain municipalities, townships and boroughs north of Paramus, and which is located on the border of Paramus and Ridgewood Township along Gateway Road and along that portion of Linwood Avenue between Gateway Road and Paramus Road;

4. The TCI fiber optic cable that distributes Cable Television Service to certain municipalities, townships and boroughs south of Paramus and which is located along Pascack Road, Fairview Road, Century Road, Spring Valley Road and Howland Avenue; and

5. All other TCI fiber optic cables located within the relevant geographic area that are not used to provide Cable Television Service in the relevant geographic area.

H. "*Cable Television Service*" means the delivery of video entertainment and informational programming via a Cable Television System.

I. "*Cable Television System*" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide video entertainment and informational programming to multiple subscribers within a community.

J. "*Cable Television System Assets*" means those physical assets including but not limited to coaxial cable and amplifiers, that make up the facility that is a Cable Television System.

K. "*Relevant geographic area*" means that area within the official municipal boundaries of each of the Boroughs of Paramus and Hillsdale in the County of Bergen in the State of New Jersey.

L. "*Competitiveness, viability and marketability*" of the TCI Paramus and Hillsdale Systems Assets means that, subject to paragraph II.D, Cablevision shall continue the operation of the TCI Paramus and Hillsdale Systems Assets in the ordinary course of business without material change or alteration that may adversely affect the value or goodwill of the TCI Paramus and Hillsdale Systems Assets, which do not include a headend and which are currently operated (including the selection of video programming for distribution over those assets and the marketing and pricing of Cable Television Service delivered over those assets) as a part of and from the single headend of the TCI Northern New Jersey Cable Television System.

M. "*Headend*" means the control center of a Cable Television System, where incoming signals are amplified, converted, and combined, together with signals originated in the Cable Television System, in a common transmission medium for distribution to subscribers.

N. "*Person*" means a corporation, partnership, joint venture or other business entity, whether incorporated or unincorporated.

O. "*News 12 N.J.*" means the regional video programming service known as News 12 New Jersey.

P. "*TCI Northern New Jersey Cable Television System*" means the Cable Television System owned directly or indirectly by TCI that serves fifty-three communities in northern New Jersey from a single headend located in Oakland, New Jersey, and that, at the time of the Acquisition, includes the TCI Paramus and Hillsdale Systems Assets.

Q. "*Signing date*" means the date the respondent executes the agreement containing consent order.

R. "*Divestiture period*" means the six (6) month period from the signing date.

S. "*Signal services*" means the transmission by Cablevision from one or more of its headends of the signals of one or more

programming services (including broadcast television signals) to the acquirer of the TCI Paramus and Hillsdale Systems Assets, subject to Cablevision's and such acquirer's having the necessary licenses or other authorizations to re-transmit such programming service(s).

T. "*Bergen Cable Television System*" means the Cable Television System owned by Cablevision prior to the Acquisition that serves the relevant geographic area and a number of other communities in and around Bergen County in New Jersey from a single headend.

II.

It is further ordered, That:

A. Cablevision shall divest, absolutely and in good faith, the TCI Paramus and Hillsdale Systems Assets within the divestiture period; provided, however, that, if respondent has entered into a binding contract with and has obtained the Commission's approval for an acquirer and filed all applications for other required governmental approvals within six (6) months from the signing date, the divestiture period shall be extended by (i) an additional period of time equivalent to the number of days that any governmental body (other than the Commission) takes to approve or disapprove an application necessary to be approved or disapproved prior to completion of the divestiture, and (ii) an additional five business days to enable the closing of the divestiture. Cablevision shall undertake its best efforts to facilitate any governmental approvals required to effect divestiture of the TCI Paramus and Hillsdale Systems Assets and their continued use in Cable Television Service in the relevant geographic area. Cablevision shall grant to the acquirer or acquirers of the TCI Paramus and Hillsdale Systems Assets an indefeasible right to use the two fibers (the "Fibers") that link the TCI Cable Television System Assets in Paramus and the TCI Cable Television System Assets in Hillsdale for so long as the acquirer or acquirers (and/or their successors in interest) use the Fibers to provide Cable Television Service, and/or voice, data or internet transmissions, in or to the TCI Paramus and Hillsdale Systems Assets. To ensure the availability of cable programming services to the TCI Paramus and Hillsdale Systems Assets after divestiture, for the period of this order, Cablevision shall waive and not obtain, solely with respect to delivery by the acquirer of the TCI Paramus and Hillsdale Systems Assets by means of a Cable Television System in the relevant geographic area, any exclusive rights to cable programming services, except for News 12 N.J.

B. For the purpose of facilitating the divestiture of the TCI Paramus and Hillsdale Systems Assets, Cablevision shall, within the earlier of the termination of the divestiture period or divestiture:

1. Extend the coaxial trunk cable currently located on Hillsdale Avenue in the Borough of Hillsdale in order to provide Cable Television Service to those homes that are located in the Borough of Hillsdale and to the west of the Garden State Parkway.

2. Create within one hundred (100) yards of the OTN a point of connection to the TCI Paramus System Assets such that the acquirer or acquirers of such assets can directly or indirectly connect a headend to such assets through that point of connection.

C. Cablevision shall divest the TCI Paramus and Hillsdale Systems Assets 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 divestiture of the TCI Paramus and Hillsdale Systems Assets is to ensure the continued use of the TCI Paramus and Hillsdale Systems Assets as an ongoing, viable deliverer of Cable Television Service in the relevant geographic area, and to remedy the lessening of competition resulting from the proposed acquisition of the TCI Paramus and Hillsdale Systems Assets by Cablevision as alleged in the Commission's complaint.

D. Until divestiture of the TCI Paramus and Hillsdale Systems Assets, Cablevision shall take such actions as are necessary to maintain the competitiveness, viability and marketability, as such existed at the time of the Acquisition, of the TCI Paramus and Hillsdale Systems Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the TCI Paramus and Hillsdale Systems Assets except for ordinary wear and tear; provided, however, that nothing in this order or the annexed Agreement to Hold Separate shall be construed:

1. To prohibit Cablevision from altering the programming offered on, branding, or channel line-up of the Cable Television Service delivered over the TCI Paramus and Hillsdale Systems Assets to subscribers located in the relevant geographic area, if Cablevision alters in the same way the programming offered on, branding, or channel line-up of Cable Television Service delivered from the headend serving the TCI Northern New Jersey Cable Television System to other communities served from that headend;

2. Either to require or to prohibit Cablevision from constructing an independent headend, trunk cable(s), node(s), and/or any other

facilities for the purpose of permitting the distribution of Cable Television Service to subscribers located in the relevant geographic area;

3. To require Cablevision to divest any assets, properties, privileges, rights, interests, claims, real or personal, tangible or intangible, of TCI Northern New Jersey other than those that are the TCI Paramus and Hillsdale Systems Assets; or

4. To prohibit Cablevision from providing headend services, including signal services, to the acquirer or acquirers of the TCI Paramus and Hillsdale Systems Assets for up to twelve (12) months following divestiture.

E. Until divestiture of the TCI Paramus and Hillsdale Systems Assets, any promotion for the Cable Television Service delivered over Cablevision's Bergen Cable Television System that is offered by Cablevision to existing or potential subscribers located in the relevant geographic area shall be offered on comparable terms to other existing or potential subscribers to the Bergen Cable Television System.

III.

It is further ordered, That:

A. If Cablevision has not obtained the Commission's approval of an acquirer for the TCI Paramus and Hillsdale Systems Assets within the divestiture period:

1. The Commission may appoint a trustee to divest the TCI Paramus and Hillsdale Systems Assets. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Cablevision shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order; and

2. Cablevision shall construct a headend with the necessary capability to enable the TCI Paramus and Hillsdale Systems Assets to provide Cable Television Service comparable to that being provided over the TCI Paramus and Hillsdale Systems Assets in the

relevant geographic area on the signing date. Cablevision shall initiate the process of creating this headend at the time this paragraph III.A.2 becomes applicable, if ever, and shall complete the construction of this headend no later than twelve months from the date this order becomes final; provided, however, that paragraph III.A.2 shall not apply in the event that an acquirer that has entered into a binding agreement to acquire the TCI Paramus and Hillsdale Systems Assets notifies Cablevision and the Commission in writing that the acquirer would prefer to construct the headend itself after its acquisition of the TCI Paramus and Hillsdale Systems Assets.

B. If Cablevision has, prior to the end of the divestiture period, both obtained the Commission's approval of an acquirer for the TCI Paramus and Hillsdale Assets and filed all applications for other governmental approvals that must be obtained prior to divestiture, but one or more of such approvals are denied after the divestiture period, then the divestiture period shall be extended by a period of time equal to the time between the date of submission of the application for the approval(s) that were denied and the date that such approval(s) were denied. Notwithstanding this extension of the divestiture period, the requirements of paragraph III.A.2 shall apply.

C. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A.1 of this order, Cablevision shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

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

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

3. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the TCI Paramus and Hillsdale Systems Assets.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.C.2 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the period for divestiture by the trustee may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the TCI Paramus and Hillsdale Systems Assets or to any other relevant information as the trustee may request. Cablevision shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Cablevision shall not take any action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Cablevision shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate expeditiously the most favorable price and terms available in each contract that is submitted to the Commission, subject to Cablevision's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, 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 Cablevision from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Cablevision, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Cablevision, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from

the divestiture 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 Cablevision, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the TCI Paramus and Hillsdale Systems Assets.

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

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A.1 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 TCI Paramus and Hillsdale Systems Assets.

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

IV.

It is further ordered, That:

Cablevision shall comply with all terms of the Hold Separate Agreement, attached to this order and made a part hereof as Appendix I. The Hold Separate Agreement shall continue in effect until such time as the TCI Paramus and Hillsdale Systems Assets shall have been divested as required by this order.

V.

It is further ordered, That:

A. For a period of ten (10) years from the date this order becomes final, Cablevision shall not, without providing advance written

notification to the Commission, directly or indirectly through subsidiaries, partnerships or otherwise:

1. Acquire any stock, share capital, equity, or other ownership interest (an "Interest") in any concern, corporate or non-corporate, that is engaged at the time of such acquisition, or that has been engaged within the two (2) years preceding such acquisition, in providing Cable Television Service within the relevant geographic area; or

2. Acquire any assets used for or previously used for (and still suitable for use for) providing Cable Television Service within the relevant geographic area; provided, however, that this paragraph V shall not apply to the acquisition of products or services in the ordinary course of business; and provided, further, that this paragraph V shall not apply to:

(i) The acquisition by Cablevision of any Interest in a person that is engaged in the business described in subparagraph V.A.1 or that owns any assets described in subparagraph V.A.2 that results in Cablevision's owning no more than 5% of the total Interests in that person and that does not give Cablevision Control of that person;

(ii) The acquisition by Cablevision of any Interest in a person that is engaged in the business described in subparagraph V.A.1 or that owns any assets described in subparagraph V.A.2 if (a) the value of such business or assets represents no more than 10% of the total value of such person, (b) in connection with such acquisition such person agrees with Cablevision to divest such business or assets prior to the consummation of such acquisition, and (c) such business or assets are, in fact, so disposed of within such period;

(iii) The acquisition by any person of the business described in subparagraph V.A.1 or of any assets described in subparagraph V.A.2 if (a) Cablevision owned an Interest in that person prior to such person's acquisition of such business or assets, (b) the value of such business or assets represents no more than 5% of the total value of such person following its acquisition, and (c) Cablevision owns no more than 33 $\frac{1}{3}$ % of the total Interests in such person; or

(iv) The formation and operation, with any person that is engaged in the business described in subparagraph V.A.1 or that owns any assets described in subparagraph V.A.2, of any joint venture, enterprise or partnership concerning any telecommunication service (including, but not limited to video, data or voice) and ancillary services related thereto that does not involve the TCI Paramus and Hillsdale Systems Assets.

B. Notification required under this provision shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where, appropriate, granted by letter from the Commission's Bureau of Competition; provided, however, that prior notification shall not be required by this paragraph V for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Cablevision has fully complied with the provisions of paragraphs II, III, and IV of this order, Cablevision 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, and has complied with paragraphs II, III, and IV of this order. Cablevision shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, and IV of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Cablevision shall include in its compliance reports copies of all written communications to and from such parties, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require,

Cablevision shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VII.

It is further ordered, That:

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

VIII.

It is further ordered, That:

For the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Cablevision, Cablevision shall permit any duly authorized representative of the Commission:

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

B. Upon five (5) days' notice to Cablevision and without restraint or interference from it, to interview officers, directors, or employees of Cablevision, who may have counsel present, relating to any matters contained in this order.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement To Hold Separate ("Agreement") is by and between Cablevision Systems Corporation ("Cablevision"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 1 Media Crossways, Woodbury, New York; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*

Whereas, Cablevision entered into an agreement with Telecommunications, Inc. ("TCI"), a Delaware corporation, whereby Cablevision will acquire certain Cable Television Systems owned and operated by TCI (hereinafter the "Acquisition"); and

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

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Agreement"), which would require the divestiture of the TCI Paramus and Hillsdale Systems Assets (as defined in the Consent Agreement), the Commission must place the Consent Agreement on the public record 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 independent pricing and marketing of the Cable Television Service provided over the TCI Paramus and Hillsdale Systems Assets in the relevant geographic area during the period prior to the final acceptance and issuance of the Consent Agreement by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the assets described in paragraph II of the Consent Agreement; and

Whereas, the purpose of this Agreement and the Consent Agreement is to preserve the TCI Paramus and Hillsdale Systems Assets pending divestiture, and to remedy any anticompetitive effects of the Acquisition; and

Whereas, Cablevision's entering into this Agreement shall in no way be construed as an admission by Cablevision that the Acquisition is illegal or has any anticompetitive effects; and

Whereas, Cablevision 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, upon the understanding that the Commission has not yet determined whether it will challenge the Acquisition, and in consideration of the Commission's agreement to accept the Consent

Agreement for public comment and grant early termination of the HSR waiting period, the parties agree as follows:

1. Cablevision agrees to execute and be bound by the attached Consent Agreement.

2. Cablevision agrees that it will comply with the provisions of paragraph 3 of this Agreement from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a-2.b:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the Consent Agreement has been completed.

3. Pending divestiture, Cablevision shall operate the TCI Paramus and Hillsdale Systems Assets on the following terms and conditions:

a. Cablevision will retain two (2) members of the management of TCI Northern New Jersey (the "management team"), who are fully familiar with the TCI Paramus and Hillsdale Systems Assets, to price and market the Cable Television Service delivered over the TCI Paramus and Hillsdale Systems Assets. The individuals on the management team shall price and market such Cable Television Service independently of the management of Cablevision's other businesses, including Cablevision's Paramus and Hillsdale Cable Television Systems. The individuals on the management team shall not be involved in any way in the operation or management of any other Cablevision Cable Television System. If any member of the management team is unable or unwilling to continue to serve on the management team (or becomes unable to do so during the term of this Agreement) that position will be filled by an individual not involved in any way in the operation or management of any other Cablevision Cable Television System.

b. The management team, in its capacity as such, shall report directly and exclusively to an individual to be designated by Cablevision (the "Cablevision Contact") who has no direct responsibilities for Cable Television System operations and who is competent to assure the continued operations of the TCI Paramus and Hillsdale Systems Assets in accordance with this Agreement.

c. Cablevision shall not exercise direction or control over, or influence directly or indirectly, the management team or any of its activities relating to the pricing and marketing of Cable Television Service delivered by the TCI Paramus and Hillsdale Systems Assets;

provided, however, that Cablevision may exercise such direction and control over the management team and the TCI Paramus and Hillsdale Systems Assets as is necessary to ensure compliance with this Agreement and with the Consent Agreement and with all applicable laws.

d. Pending divestiture and subject to paragraphs II.D and I.L of the Consent Agreement, Cablevision shall maintain the competitiveness, viability and marketability of the TCI Paramus and Hillsdale Systems Assets and shall not sell, transfer, encumber (other than in the ordinary course of business), or otherwise impair their competitiveness, viability or marketability (as defined in the Consent Agreement).

e. Except for the Cablevision Contact and the management team, Cablevision shall not permit any other Cablevision employee, officer, or director to be involved in the pricing or marketing of Cable Television Service delivered by TCI Paramus and Hillsdale Systems Assets; provided, however, that Cablevision employees involved in engineering, construction, customer service, data processing, training, human resources, finance, legal services, tax, accounting, insurance, internal audit, payroll, programming, purchasing, real estate, risk management, telephony, compliance with FCC regulations, contract administration, and similar services may provide such services to the TCI Paramus and Hillsdale Systems Assets.

f. The management team shall serve at the cost and expense of Cablevision. Cablevision shall indemnify the management team against any losses or claims of any kind that might arise out of management team members' involvement under this Agreement, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the management team.

g. If any member of the management team ceases to act or fails to act diligently, a substitute member shall be appointed.

4. Should the Federal Trade Commission seek in any proceeding to compel Cablevision to divest any of the TCI Paramus or Hillsdale Systems Assets, as provided in the Consent Agreement, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Agreement or this Agreement, or in any way relating to the Acquisition, as defined in the Consent Agreement, Cablevision 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.

Cablevision also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires Cablevision to take, or prohibits Cablevision from taking, certain actions that otherwise may be required or prohibited by contract, Cablevision shall abide by the terms of this Agreement or the Consent Agreement and shall not assert as a defense such contractual requirements in any action brought by the Commission to enforce the terms of this Agreement or the Consent Agreement.

6. 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 Cablevision made to its principal office, Cablevision shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Cablevision and in the presence of counsel to inspect any facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Cablevision relating to compliance with this Agreement; and

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

7. This Agreement shall not be binding until approved by the Commission.

Complaint

125 F.T.C.

IN THE MATTER OF

CUC INTERNATIONAL INC., ET AL.

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

Docket C-3805. Complaint, May 4, 1998--Decision, May 4, 1998

This consent order requires, among other things, the New Jersey-based corporation to divest all of its Interval timeshare exchange business assets to Interval Acquisition Corporation, a new entrant into the timeshare exchange services market controlled by a venture capital firm, Willis Stein & Partners, L.P.

Appearances

For the Commission: *Jacqueline Mendel, Eric Elmore, Ann Malester and William Baer.*

For the respondents: *Ilene Knable Gotts, Wachtell, Lipton, Rosen & Katz, New York, N.Y. and Michael L. Weiner, Skadden, Arps, Slate & Meagher, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that CUC International Inc. has agreed to acquire HFS Incorporated, both corporations subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent CUC International Inc. ("CUC") 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 707 Summer Street, Stamford, Connecticut.

2. Respondent HFS Incorporated ("HFS") 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 6 Sylvan Way, Parsippany, New Jersey.

3. For purposes of this proceeding, respondents are, and at all times relevant herein have been, engaged in commerce as

"commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE ACQUISITION

4. Pursuant to an Agreement and Plan of Merger dated May 27, 1997, CUC will acquire all of the voting shares of HFS for approximately \$8.7 billion ("the Acquisition").

III. THE RELEVANT MARKET

5. For purposes of this complaint, the relevant line of commerce in which to analyze the effect of the Acquisition is the sale of timeshare exchange services to timeshare developers and owners. A significant benefit of timeshare ownership is the right to exchange the use of that unit for another comparable unit at a different resort property (or at the same resort for a different time period). The ability of timeshare owners to trade timeshare ownerships for vacation through worldwide exchange networks is a major reason why consumers decide to purchase timeshare interests. In lieu of returning to the same resort every year for a vacation, the timeshare exchange program allows an owner the opportunity to stay at many different vacation destinations. The owner of a particular resort unit relies on the timeshare exchange company to provide the exchange properties and to process the exchange. Exchange companies label time periods according to whether they are high, mid, or low season. They also grade and rate each property to provide for an equal or fair exchange.

6. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the Acquisition is the world.

7. The relevant market set forth in paragraphs five and six is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios. CUC and HFS are the only two competitors in the relevant market; thus the Acquisition would result in a monopoly in the relevant market.

8. Entry into the relevant market, which requires significant sunk costs, would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraphs nine and ten because of, among other things, the difficulty of establishing a worldwide network of timeshare resorts in order to provide the relevant services. The significant network externalities in this market result in high entry barriers: a new entrant cannot sign up members unless it already has a substantial membership and it cannot get a substantial membership if it cannot sign up new members. Thus, it is

extremely unlikely that a new entrant not already in the timeshare exchange business could enter successfully.

IV. EFFECTS OF THE ACQUISITION

9. The effect of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct actual competition between CUC and HFS;

b. By increasing the likelihood that the firm created by the merger of CUC and HFS would unilaterally exercise market power;

c. By increasing the likelihood that timeshare resort developers and timeshare owners would be forced to pay higher affiliation and exchange fees; and

d. By increasing the likelihood that timeshare exchange service provided to developers and owners would be reduced.

10. All of the above increase the likelihood that the only firm in the relevant market would increase prices or reduce services in the near future and in the long term.

V. VIOLATIONS CHARGED

11. The acquisition agreement described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

12. The Acquisition described in paragraph four, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

Commissioner Thompson not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition of HFS Incorporated by CUC International Inc., and the respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with

violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of 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 Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now in further conformity with the procedure described 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 CUC International Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 707 Summer Street, Stamford, Connecticut.

2. Respondent HFS Incorporated 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 6 Sylvan Way, Parsippany, New Jersey.

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

ORDER

I.

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

A. "*CUC*" means CUC International Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its present and future subsidiaries, divisions, groups, and affiliates controlled by CUC International Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each. CUC, after consummation of the Acquisition, includes HFS Incorporated.

B. "*HFS*" means HFS Incorporated, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its present and future subsidiaries, divisions, groups, and affiliates controlled by HFS Incorporated, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Respondents*" means CUC and HFS, individually and collectively.

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

E. "*Acquisition*" means the merger of HFS with and into CUC pursuant to the Agreement and Plan of Merger dated as of May 27, 1997.

F. "*Interval*" means (a) Interval Holdings, Inc., a wholly-owned subsidiary of CUC International Inc., organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 6262 Sunset Drive, Miami, Florida; (b) CUC Vacation Exchange, Inc., a wholly-owned subsidiary of CUC International Inc., organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 707 Summer Street, Stamford, Connecticut; and (c) all assets of and equity interests in all direct and indirect subsidiaries of Interval Holdings, Inc. or CUC Vacation Exchange, Inc., except for those subsidiaries listed in Appendix A to the order.

G. "*RCI*" means Resort Condominiums International, Inc., a wholly-owned subsidiary of HFS, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 3502 Woodview Trace, Indianapolis, Indiana, and all assets of and equity interests in all direct and indirect subsidiaries of Resort Condominiums International, Inc., including, but not limited to, Resort Computer Corporation.

H. "*Timeshare Exchange*" means the offering for exchange, trade, barter or other temporary use of the right to accommodations at a vacation development previously allocated to any individual, corporation, partnership or other business entity for a specified period of time each year, for a specified number of years (including for perpetuity)("such properties") in exchange for the temporary use of such properties at other times and/or locations.

I. "*Timeshare Exchange Business*" means the business of conducting Timeshare Exchanges including, without limitation, the provision of those goods and services associated with conducting such Timeshare Exchanges.

J. "*CUC Timeshare Exchange Business*" means:

1. Interval;
2. All books, records, and files relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
3. All copies of all customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature and advertising materials relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
4. All rights, titles and interests in contracts entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
5. All rights under any trademarks used in the Timeshare Exchange Business as operated by CUC prior to the Acquisition, including, but not limited to, all rights under trademarks held by CUC Publishing, Inc.; and
6. All rights under warranties and guarantees, express or implied relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition.

K. "*HFS Timeshare Exchange Business*" means:

1. RCI;
2. All books, records and files relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition;
3. All copies of all customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature and advertising materials relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition;
4. All rights, titles and interests in contracts entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition; and
5. All rights under warranties and guarantees, express or implied relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition.

L. "*IAC*" means Interval Acquisition Corp., a Delaware corporation, or an affiliate thereof, formed, and controlled, directly

or indirectly, by Willis Stein & Partners, L.P. for the purpose of acquiring the CUC Timeshare Exchange Business from CUC.

M. "*Stock Purchase Agreement*" means the stock purchase agreement entered into between CUC and IAC dated as of October 29, 1997.

N. "*Non-public member information*" means any information not in the public domain furnished by Interval to CUC prior to the effective date, or during the term, of a transition services agreement contemplated by paragraph V of this order for the purpose of securing services from CUC for Interval members. Non-public information shall not include (i) information which subsequently falls within the public domain through no violation of this order by CUC, or (ii) information which subsequently becomes known to CUC from a third party, which to the knowledge of CUC is not in breach of a confidential disclosure agreement with Interval.

O. "*RCC software*" means the computer software which has been designed and developed, or may be designed and developed, by RCI or its affiliates, in each case, for use by timeshare property developers in managing their respective timeshare properties, including, but not limited to, such software which has been offered under the names "RCC Premier" and "RCC Express."

II.

It is further ordered, That:

A. (1) Respondents shall divest, absolutely and in good faith, the CUC Timeshare Exchange Business to IAC, pursuant to the Stock Purchase Agreement, no later than ten (10) days after the Acquisition.

(2) If respondents have not divested the CUC Timeshare Exchange Business as required by paragraph II.A(1) of the order, and if the Acquisition has occurred, respondents shall divest the HFS Timeshare Exchange Business within six (6) months after the date on which respondents signed the agreement containing consent order. Respondents shall divest the HFS Timeshare Exchange Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

(3) Provided, however, that if respondents have divested the CUC Timeshare Exchange Business to IAC pursuant to the Stock Purchase Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that IAC is not an acceptable acquirer, or the Stock Purchase Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with IAC and shall divest within one hundred twenty

(120) days of the date the order becomes final either (a) the CUC Timeshare Exchange Business, or (b) the HFS Timeshare Exchange Business. Respondents shall divest the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

B. The purpose of the divestiture of the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business is to ensure the continued use of the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business, as the case may be, in the same business in which it is engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business, as the case may be, respondents shall take such actions as are necessary to maintain the viability, marketability and competitiveness of the CUC Timeshare Exchange Business and the HFS Timeshare Exchange Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of the CUC Timeshare Exchange Business and the HFS Timeshare Exchange Business except for ordinary wear and tear.

III.

It is further ordered, That:

A. If respondents fail to divest absolutely and in good faith the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business pursuant to paragraph II.A of this order, the Commission may appoint a trustee to divest the HFS Timeshare Exchange Business. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, respondents shall consent to the

following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

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

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to accomplish the divestiture described in paragraph III.A of the order.

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

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan for the divestiture required by this order or believes that the divestiture required by this order can be achieved within a reasonable time, then that divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the period for the divestiture only two (2) times.

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

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner consistent with the terms of this order; provided, however, 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 respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture 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 the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestiture required by paragraph III.A.

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

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

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 reasonably necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the HFS Timeshare Exchange Business.

12. The trustee shall have no obligation or authority to operate or maintain the HFS Timeshare Exchange Business.

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

IV.

It is further ordered, That, if respondents divest the CUC Timeshare Exchange Business pursuant to paragraph II.A of the order:

A. For the period beginning on the date the sale of the CUC Timeshare Exchange Business closes ("Closing Date") and ending two years following the Closing Date (the "Extended Restricted Period"), respondents shall not:

1. Hire or solicit for employment any person who is employed with Interval either as of the date respondents sign the agreement containing consent order or as of the Closing Date;

2.a. (i) Solicit, induce or attempt to induce any customer or client (including developers) of Interval as of the date respondents sign the agreement containing consent order or the Closing Date ("Interval Client") to terminate any existing contract between such Interval Client and Interval (each, an "Existing Interval Contract"); or (ii) in the case of any Existing Interval Contract which by its terms expires or terminates during the Extended Restricted Period, solicit the Interval Client which is a party to such Existing Interval Contract to not renew such Existing Interval Contract; or

b. Solicit any Interval Client to transfer to respondents during the term of any Existing Interval Contract any projects (including adjacent locations) which are subject to such Existing Interval Contract;

provided, however, that the restrictions in this paragraph IV.A.2 shall in no event limit any activity of respondents with respect to any Existing Interval Contract after the term of such Existing Interval Contract;

3. Enter into any contract with any Interval Client with respect to any project (including adjacent locations) subject to an Existing Interval Contract during the term of such Existing Interval Contract

(except for contracts entered into in the second year of the Extended Restricted Period with any Interval Client which will not take effect with respect to any project (including adjacent locations) subject to an Existing Interval Contract during the period such project is subject to such Existing Interval Contract); or

4. Enter into any contract with respect to the Timeshare Exchange Business with any Interval Client relating to a project subject to an Existing Interval Contract which Existing Interval Contract may be terminated by such Interval Client as a result of the transactions contemplated by this agreement and is terminated pursuant to such right.

B. During the Extended Restricted Period, respondents shall make available to timeshare property developers who are, at any time during the Extended Restricted Period, actual or prospective clients of Interval, licenses for use of RCC software. Such licenses shall be at the same price or prices and on substantially the same terms with respect to:

1. The availability of any third party software which is required in connection with the use or operation of such RCC Software; and

2. The duration of the license and the availability of ongoing maintenance and support services

as respondents are, at the applicable time, then making available to those clients of RCI having substantially the same requirements, installations and other qualifications; provided, however, that such licenses of RCC software may not require that actual or prospective clients of Interval or any owners' association or other entity associated with such client enter into any timeshare exchange affiliation agreement with respondents.

C. For the period beginning on the Closing Date and ending one year following the Closing Date (the "Initial Restricted Period"), respondents shall not:

1. Solicit, induce or attempt to induce any Interval Client with an Existing Interval Contract which expires or terminates by its terms during the Initial Restricted Period, not to renew such Existing Interval Contract or otherwise to do business with the respondents with respect to projects subject to such Existing Interval Contract, whether or not the term of such Existing Interval Contract has expired or terminated; or

2. Enter into any contract with any Interval Client with respect to any project (including adjacent locations) subject to an Existing Interval Contract during the term of such Existing Interval Contract.

Nothing in this paragraph IV shall restrict respondents' ability to (1) do business with, or take action with respect to, any Interval Client to the extent such business pertains to any project or matter that is not subject to an Existing Interval Contract; or (2) make general solicitations with respect to natural persons who are members of the HFS Timeshare Exchange Business at the time of such solicitations, provided that respondents shall not intentionally target natural persons who are members of both the CUC Timeshare Exchange Business and the HFS Timeshare Exchange Business; or (3) engage in general advertising or marketing activities which are not directed at the termination of specific Existing Interval Contract(s).

V.

It is further ordered, That, if respondents divest the CUC Timeshare Exchange Business:

A. At the acquirer's request, for a period of no more than seven (7) years from the Closing Date, respondents shall supply to the CUC Timeshare Exchange Business certain services that respondents currently supply to the CUC Timeshare Exchange Business, including services relating to travel, entertainment, dining, shopping, and credit card registration (the "Services"), to enable the CUC Timeshare Exchange Business to continue to offer on an uninterrupted basis the services it provides to its members, including, but not limited to, those Services that are part of the World Card Preferred program.

B. All Services provided by respondents to the CUC Timeshare Exchange Business shall be performed substantially in the same manner in which, and the extent to which, such Services were performed prior to the date of the closing. Respondents shall utilize the same method for determining the charges for the Services that they used prior to the Acquisition.

C. Respondents shall not provide, disclose, or otherwise make available to any employee of the HFS Timeshare Exchange Business any non-public member information nor shall respondents use any non-public member information obtained by them in their capacity as a provider of services to the CUC Timeshare Exchange Business for any purpose other than providing such services to the CUC Timeshare Exchange Business.

VI.

It is further ordered, That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II and III of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the requirements of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

VII.

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

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours 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 respondents relating to any matters contained in this order; and

B. Upon five days' notice to respondents and without restraint or interference from respondents, to interview officers, directors, or employees of respondents.

Commissioner Thompson not participating.

Modifying Order

125 F.T.C.

IN THE MATTER OF

RITE AID CORPORATION

MODIFYING 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-3546. Consent Order, Dec. 15, 1994—Modifying Order, May 18, 1998*

This order reopens a 1994 consent order -- that required the respondent to divest the Bucksport asset and two other pharmacies -- and this order modifies the consent order by eliminating the requirement to divest a retail pharmacy in Bucksport, Maine, that the company acquired when it bought the LaVerdiere's chain of drug stores, and this order substitutes the prior approval requirement with prior notification and waiting period requirements.

ORDER REOPENING AND MODIFYING ORDER

On March 3, 1998, Rite Aid Corporation ("Rite Aid"), the respondent named in the above-referenced consent order ("order") issued by the Commission on December 15, 1994, filed its Petition to Reopen and Vacate Consent Order ("Petition"). Rite Aid asks that the Commission reopen and set aside the order pursuant to Section 5(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.51, based on changed facts and the public interest and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement").¹ The thirty-day public comment period on Rite Aid's Petition ended on April 14, 1998. No comments were received.

The Commission has determined to grant, in part, Rite Aid's Petition by reopening the order and modifying it to set aside the requirements of paragraph II, but to deny the request to set aside the order in its entirety. Rather, the Commission has determined to substitute for the prior approval requirement of paragraph IV prior notification and waiting period requirements based on those of Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, for all non-HSR reportable acquisitions otherwise meeting the specifications of paragraph IV.

The complaint in this matter alleges that Rite Aid's acquisition of the voting stock of LaVerdiere's Enterprises, Inc. ("LEI"), would

¹ 60 Fed. Reg. 39745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

violate Section 5 of the FTC Act and Section 7 of the Clayton Act, 15 U.S.C. 18, by lessening competition and tending to create a monopoly in the market for the sale of prescription drugs in retail stores in the cities or towns of Bucksport, Maine; Lincoln, Maine; and Berlin, New Hampshire.

The resulting order became final on December 21, 1994.² paragraph II of the order requires Rite Aid to divest within 12 months either the LEI Pharmacy Assets or the Rite Aid Pharmacy Assets, as those assets are defined in the order, in Bucksport, Lincoln, and Berlin. Paragraph III provides for the appointment of a trustee should Rite Aid fail to divest within the required period; paragraph IV prohibits, for ten years, specified acquisitions in the three cities or towns without prior Commission approval; and paragraph V specifies Rite Aid's notification and reporting obligations. The purpose of the divestitures is to remedy the lessening of competition in the market for the sale of prescription drugs in retail stores in the three specified cities and towns.³ Rite Aid failed to divest within the time required, and the Commission approved the appointment of Mr. R. Steven Thing as trustee, on February 8, 1996.⁴ The trustee found acquirers for the Berlin, New Hampshire, and Lincoln, Maine, Pharmacy Assets, and those assets were divested on January 16, 1997, and March 10, 1997, respectively. Although his term was extended, the trustee failed to find an acquirer for the Bucksport, Maine, assets ("Bucksport Assets") before his term expired on September 12, 1997.

In its Petition, Rite Aid describes its and the trustee's efforts to divest and asserts, with supporting affidavits, that despite these efforts, an acquirer for the Bucksport Assets has not been found. The trustee believes that the value of the Bucksport Assets now is reduced to such an extent that "it is unlikely that any prudent businessperson that is capable of operating a pharmacy as a viable competitor in the local market place would purchase either Rite Aid store in Bucksport, Maine"⁵ Rite Aid also asserts that the prior approval provision of the order should be eliminated in light of the availability of the premerger notification and waiting period requirements of the HSR Act and "because there is nothing in the record to suggest that Rite

² 118 FTC 1206 (1994).

³ Order ¶ II.

⁴ Rite Aid subsequently paid civil penalties of \$900,000 to settle the Commission's allegations that it failed to divest and to comply with other provisions of the order.

⁵ Affidavit of R. Steven Thing at 3.

Aid would engage in the same acquisition as alleged in the complaint
.....⁶

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); Louisiana-Pacific Corp., Docket No. C-2956, Letter to John C. Hart (June 5, 1986) at 4 (unpublished) ("Hart Letter").⁷

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5.; 16 C.F.R. 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order.⁸ For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm. *Id.* at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth

⁶ Petition at 12.

⁷ See also *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

⁸ Letter to Joel E. Hoffman, *Damon Corp.*, C-2916 [1979-1983 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 22,207 at 22,585 (March 29, 1983) ("Damon Letter").

specific facts demonstrating in detail the nature of the changed conditions and the reasons why these conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the required showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in repose and the finality of Commission orders.⁹

After Rite Aid failed to divest as required by the order, the trustee made every effort to divest the Bucksport Assets. Immediately after his appointment, he pursued inquiries made by three parties who expressed an initial interest in the Bucksport Assets. One even submitted a contract, but ultimately withdrew it after performing a more detailed evaluation. The trustee now asserts that no prudent businessperson would acquire the Bucksport Assets.

Although the fact that the passage of time has reduced the value of the assets was foreseeable and thus does not constitute the change in fact necessary to compel reopening the order, it would be futile to continue to require Rite Aid to divest and inequitable to require it to keep paying a trustee to attempt the same. Accordingly, Rite Aid has demonstrated an affirmative need to reopen the order.

Having demonstrated an affirmative need to reopen the order, Rite Aid must also demonstrate that the reasons to set aside the divestiture requirements outweigh the need to continue to impose those obligations on it. The purpose of this particular divestiture was to increase competition in Bucksport, Maine. An acquirer could not be found, however, and the evidence indicates that the value of the Bucksport Assets is now so reduced that such an acquirer will not be found, regardless of additional effort. The diligent attempts of the trustee to market the Bucksport Assets demonstrate that further attempts to divest, even at no minimum price, are likely to be fruitless.¹⁰ The continued costs imposed by this provision now

⁹ *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

¹⁰ The respondents made the same showing in *Promodes, S.A.*, Docket No. 9228, in which the trustee accomplished divestiture of only some of the supermarkets to be divested, Order Granting Request to Reopen and Modify, 117 FTC 37 (1994), and in *Cooper Industries, Inc.*, Docket No. C-3469, in which the trustee failed to find an acquirer of the license and assets to be divested, Order Reopening and Modifying Order (December 15, 1997).

outweigh any benefit to be gained from continuing to compel a divestiture that almost certainly cannot be achieved, and, accordingly, this divestiture obligation of the order should be set aside.

In its Petition, Rite Aid also asks the Commission to vacate the prior approval provisions of paragraphs IV, which prohibits Rite Aid, for ten years, from making any acquisition of interests in or assets of specified entities without the prior approval of the Commission. Rite Aid contends that the prior approval is unwarranted "because there is nothing in the record to suggest that Rite Aid would engage in the same acquisition as alleged in the complaint. . . ." ¹¹

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of the HSR Act to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3. As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited

¹¹ Petition at 12.

respondents subject to such requirements "to submit a request to reopen the order." *Id.* at 4. The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement. *Id.*

The presumption is that setting aside the prior approval requirement of paragraph IV is in the public interest. The record contains no evidence suggesting that this matter presents the limited circumstances identified in the Prior Approval Policy Statement as appropriate for retaining a narrow prior approval provision, *i.e.*, a credible risk that, but for the prior approval provision, the respondent would attempt the same or approximately the same merger.

Prior notification, however, is appropriate for acquisitions in the markets specified because there is a credible risk that Rite Aid could engage in future anticompetitive acquisitions that would not be subject to the premerger notification and waiting period requirements of the HSR Act. Although the acquisition leading to the order exceeded the HSR Act threshold, the relevant markets subject to the order are local, and the acquisition of an interest in or the assets of any concern that engaged in the business of selling prescription drugs at retail stores within the six months preceding such acquisition could fall below the size-of-transaction threshold in the HSR Act.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened; and

It is further ordered, That the order be, and it hereby is, modified to eliminate the divestiture requirement of paragraph II as to the Bucksport Assets, as of the effective date of this order; and

It is further ordered, That paragraph IV of the order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

It is further ordered, That, for ten (10) years from the date this order becomes final, respondent shall not, without prior notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise: (A) Acquire any stock, share capital, equity, leasehold or other interest in any concern, corporate or non-corporate, where such concern within the six months preceding such acquisition engaged in the business of selling prescription drugs at retail stores located in any of the cities or towns listed in paragraph I.(J) of this order; or (B) Acquire any assets used, within six months of the offer to acquire, for (and still suitable for use for) the business of selling prescription drugs at retail stores located in any of the cities

or towns listed in paragraph I.(J) of this order. Provided, however, that these prohibitions shall not relate to the construction of new facilities.

The prior notification required by this paragraph IV shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

IN THE MATTER OF

STONE CONTAINER CORPORATION

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

Docket C-3806. Complaint, May 18, 1998--Decision, May 18, 1998

This consent order prohibits, among other things, the Illinois-based corporation from requesting, suggesting, or advocating that any manufacturer or seller of linerboard raise, fix, or stabilize prices or price levels, or engage in any other pricing action with regard to sales of linerboard to third parties. In addition, the consent order prohibits the respondent from entering into, attempting to enter into, or maintaining any combination, conspiracy, agreement or program with any manufacturer or seller of linerboard to fix, raise, establish or maintain prices, price levels, or any other pricing action.

Appearances

For the Commission: *Geoffrey Green, Michael Antalics and William Baer.*

For the respondent: *William Fifield, Sidley & Austin, Dallas, 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 Stone Container Corporation, a corporation, hereinafter sometimes referred to as respondent or "Stone Container," has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Stone Container Corporation 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 150 N. Michigan Avenue, Chicago, Illinois. Stone Container is the largest manufacturer of linerboard in the United States.

PAR. 2. In January 1993, Stone Container unsuccessfully attempted to increase the price for all grades of linerboard by \$30 per ton, to take effect the following March. Stone Container believed

that its attempted price increase failed in significant part because Stone Container and other firms in the industry had excess inventory.

PAR. 3. Stone Container devised a strategy to invite its competitors to increase the price of linerboard. As part of the strategy to effect a coordinated price increase, Stone Container planned to take downtime at its plants, to reduce its production by approximately 187,000 tons, and contemporaneously to purchase 100,000 tons of linerboard from competitors and to reduce Stone Container's inventory by 87,000 tons.

PAR. 4. During late June and early July 1993, Stone Container conducted a telephone survey of major U.S. linerboard manufacturers, asking competitors how much linerboard was available for purchase and at what price.

PAR. 5. Senior officers of Stone Container contacted their counterparts at competing linerboard manufacturers to inform them of the extraordinary planned downtime and linerboard purchases. In the course of these communications, Stone Container arranged and agreed to purchase a significant volume of linerboard from each of several competitors. The participation of high level executives in these communications was outside the ordinary course of business. The specific intent of Stone Container's communications with its competitors was to coordinate an industry wide price increase.

PAR. 6. During the second half of 1993, Stone Container communicated to competitors its intention to take mill downtime and to draw down industry inventory levels, and its belief that these actions would support a price increase. The methods of communication included private conversations and public statements, including press releases and published interviews.

PAR. 7. The acts and practices alleged herein constitute an invitation by Stone Container to its competitors to join a coordinated price increase. The invitation, if accepted, was likely to result in higher prices, reduced output, and injury to consumers. The acts and practices of Stone Container were undertaken with anticompetitive intent and without an independent legitimate business reason.

PAR. 8. The acts and practices alleged herein are in commerce or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The acts and practices alleged herein could be repeated in the absence of the relief requested.

Commissioner Swindle dissenting.

DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Stone Container Corporation 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 150 N. Michigan Avenue, Chicago, Illinois.

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

ORDER

I.

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

A. "*Respondent*" means Stone Container Corporation, its directors, officers, employees, agents and representatives, predecessors, successors and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by Stone Container

Corporation, and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. "*Linerboard*" means any grade of paperboard suitable for use in the production of corrugated containers, but excludes corrugating medium.

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

II.

It is ordered, That respondent, directly or indirectly, through any corporation, subsidiary, division, employee, agent or other device, forthwith cease and desist from:

A. Requesting, suggesting, urging, or advocating that any manufacturer or seller of linerboard raise, fix, or stabilize prices or price levels, or engage in any other pricing action with regard to sales of linerboard to third parties.

B. Entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, understanding, plan or program with any manufacturer or seller of linerboard to fix, raise, establish, maintain or stabilize prices or price levels, or engage in any other pricing action with regard to sales of linerboard to third parties.

Provided, that the following conduct by respondent as and when conducted in the ordinary course of business shall not, of itself, constitute a violation of paragraph II of this order: (1) agreeing to purchase linerboard from, or sell linerboard to, a competitor; (2) negotiating or agreeing upon the price at which linerboard will be sold to a competitor; (3) negotiating or agreeing upon the price at which linerboard will be purchased from a competitor; and (4) discussing the financial condition of Stone Container Corporation, or the condition of or the prospects for the market for linerboard, with persons who are not competitors, such as non-integrated customers, investors, shareholders, securities analysts, and news and financial reporters.

III.

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date on which this order becomes final, mail by first class mail a copy of this order, to all of its directors and officers, and to all of its management employees with responsibility for the manufacture, purchase and/or sale of linerboard (hereinafter referred to as "Management Employees");

B. For a period of three (3) years after the date on which this order becomes final, mail by first class mail a copy of this order to each person who becomes a director, officer, or Management Employee, within thirty (30) days of the commencement of such person's employment or affiliation with respondent; and

C. For a period of three (3) years after the date on which this order becomes final, require each of its directors, officers, and Management Employees to sign and submit to respondent within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject Stone Container Corporation to penalties for violation of the order.

IV.

It is further ordered, That respondent shall:

A. Within sixty (60) days from the date on which this order becomes final, and annually thereafter for five (5) years on the anniversary date of this order, and at such other times as the Commission may by written notice to the respondent require, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order;

B. For a period of five (5) years after the order becomes final, maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with any manufacturer or seller of linerboard relating to mill downtime, rates or levels of production, the purchase or sale of linerboard, or any aspect of pricing for linerboard; and

C. Notify the Commission at least thirty (30) days prior to any proposed changes in Stone Container Corporation 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 that may affect compliance obligations arising out of the order.

V.

It is further ordered, That this order shall terminate on May 18, 2018.

Commissioner Swindle dissenting.

CONCURRING STATEMENT OF COMMISSIONERS ROBERT PITOFSKY,
SHEILA F. ANTHONY AND MOZELLE W. THOMPSON

The Commission recognizes that in invitation to collude cases, a fundamental question is whether the alleged "invitation" was merely legitimate business conduct. Our colleague, Commissioner Orson Swindle, dissents in this matter on grounds that Stone Container Corporation's behavior in curtailing its own production, and simultaneously purchasing excess inventory from its competitors, was conduct that did not clearly lack an "independent legitimate business reason." As the Analysis To Aid Public Comment emphasized, however, it would have been more economical for Stone Container to keep its plants open than to purchase inventory from competitors, and competitors would have recognized that fact. This conduct and other statements by Stone Container made clear that its goal was to manipulate industry supply conditions to invite a coordinated price increase. It is for these reasons that we now have accorded final approval to the complaint and consent order.

While there may be some difference of view on the facts in this matter, we agree with Commissioner Swindle that there can be no implied invitation to collude when the actions that amount to the invitation are justified by business considerations.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I concur in the decision to issue the consent order but decline to join the separate statement of Chairman Pitofsky and Commissioners Anthony and Thompson. The consent agreement, which includes the consent order and the complaint on which it is based, constitutes the decisional document of the Commission. My substantive views on this matter are contained entirely within the four corners of the decisional document. *See* Dissenting Statement of Commissioner Mary L. Azcuenaga in Dell Computer Corp., at 21-23 (Docket No. 3658, May 20, 1996).

DISSENTING STATEMENT OF COMMISSIONER ORSON SWINDLE

I have voted against the Commission's issuance of its complaint and final order in this case because I do not believe that the facts unearthed and presented in the investigation support the allegation that Stone Container ("Stone") invited its competitors "to join a coordinated price increase."

The Commission's complaint alleges that Stone took several actions in the second half of 1993 that amounted to an invitation to

collude on linerboard prices. According to the complaint, Stone's invitation-to-collude strategy consisted at the outset of a plan "to take downtime at its plants, to reduce its production by approximately 187,000 tons, and contemporaneously to purchase 100,000 tons of linerboard from competitors and to reduce Stone Container's inventory by 87,000 tons." To carry out this plan, Stone allegedly "conducted a telephone survey of major U.S. linerboard manufacturers, asking competitors how much linerboard was available for purchase and at what price."

Pursuant to its scheme, Stone's "[s]enior officers" -- whose role in this regard is alleged to have been "outside the ordinary course of business" -- "contacted their counterparts at competing linerboard manufacturers to inform them of the extraordinary planned downtime and linerboard purchases." Stone "arranged and agreed to purchase a significant volume of linerboard from each of several competitors" and is alleged to have "communicated to competitors" -- both in private conversations and through public statements -- "its intention to take mill downtime and to draw down industry inventory levels, and its belief that these actions would support a price increase." The complaint asserts that Stone's communications with its competitors on these subjects were made with "[t]he specific intent . . . to coordinate an industry wide price increase" and that Stone's actions "were undertaken with anticompetitive intent and *without an independent legitimate business reason*" (emphasis added).

I have quoted at length from the complaint because it (together with the Analysis To Aid Public Comment that accompanied acceptance of the consent agreement) is the document in which the Commission sets forth its theory of violation and, to the extent permissible, the evidence underlying that theory. As I see it, the acts and communications of Stone alleged in the complaint, as well as other evidence in this case, do not sufficiently support the Commission's theory of violation.

As 1993 approached, Stone and other firms in the linerboard industry had been and were experiencing financial difficulties, including excess production capacity, alleged excess inventory, and depressed price levels. It should hardly be surprising that Stone chose mill downtime and inventory reductions as a normal competitive response to general industry conditions. "Extraordinary" as Stone's downtime and inventory purchases may have been, it is difficult to second-guess the rationality of those actions from a business perspective. The assertion in the complaint that Stone's actions "were undertaken with anticompetitive intent and without an independent

legitimate business reason" is a considerable stretch.¹ If senior officials of Stone had been more circumspect in their statements -- particularly their public statements -- about Stone's reasons for its own downtime and purchase decisions, I doubt that the Commission would have considered this matter a worthy target of our scarce resources.

The Commission's Analysis To Aid Public Comment discussed explicit and implicit invitations to collude and placed the present situation in the latter category. I agree with that categorization as far as it goes, since no one from Stone is alleged to have contacted a competitor and baldly suggested a price increase or an output reduction (and thus this case is not a replay of American Airlines). Instead, it is the totality of Stone's *conduct* -- when judged against the backdrop of Stone's remarks concerning low prices, excess capacity, and possible inventory overhang -- that has led the Commission to conclude that Stone implicitly invited its competitors to collusively raise prices.² I am unable to place on Stone's actions (and its explanations of them) the sinister characterization that would permit me to condemn its otherwise justifiable actions. I am concerned that the Commission's decision in this case may deter corporate officials from making useful public statements (*e.g.*, in speeches to investors or presentations to securities analysts) that candidly address industry conditions, individual firms' financial situations, and other important subjects.

I respectfully dissent.

¹ In their Concurring Statement, my colleagues rely on the Analysis To Aid Public Comment in this case for the proposition that "it would have been more economical for Stone Container to keep its plants open than to purchase inventory from competitors . . ." With all due respect, it is precisely the truth of that assertion that I find insufficiently supported by the evidence.

² The Analysis To Aid Public Comment cited Precision Moulding Co., Inc., Docket No. C-3682, as an example of an implicit invitation to collude. According to the Analysis, Precision Moulding "informed [its] competitor that its prices were 'ridiculously low' and that the competitor did not have to 'give the product away.'" I do not consider Stone's conduct and language to have communicated a message nearly as pointed as that conveyed by Precision Moulding.

IN THE MATTER OF

EYE RESEARCH ASSOCIATES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3807. Complaint, May 18, 1998--Decision, May 18, 1998

This consent order prohibits, among other things, the two Texas-based corporations and the owner from making any false claims and requires reliable scientific evidence to substantiate any safety, success or efficacy claims for Controlled Kerato-Reformation ("CKR") orthokeratology, a non-surgical eye care treatment or procedure to correct vision. In addition, the consent order requires that the respondents possess scientific evidence to support any testimonials or endorsements concerning the expected results of CKR, or else provide a disclosure stating what consumers may generally expect to achieve and that consumers should not expect to experience similar results.

Appearances

For the Commission: *Judith Shepherd* and *Thomas Carter*.

For the respondents: *Richard Powers* and *Steven Adducci*, *Butler & Binion*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Eye Research Associates, Inc., d/b/a Eye Care Associates, and ICKRS, Inc., d/b/a International Controlled Kerato Reformation Society, corporations, and Sami G. El Hage, O.D., individually and as an officer of the corporations ("respondents") have violated the 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:

1. Respondent Eye Research Associates, Inc., d/b/a Eye Care Associates ("ECA"), is a corporation formed under the laws of the state of Texas, with its principal office or place of business located at 5320 Richmond Avenue, Houston, TX.

2. Respondent ICKRS, Inc., d/b/a International Controlled Kerato Reformation Society ("ICKRS"), is a corporation formed under the laws of the state of Texas, with its principal office or place of business located at 5320 Richmond Avenue, Houston, TX.

3. Respondent Sami G. El Hage, O.D., is the sole owner and president of the corporate respondents. Individually, or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondents.

4. Respondents are engaged, and have been engaged, in the promotion, offering for sale, and the sale to the public of ophthalmic services, including orthokeratology ("ortho-k") or "Controlled Kerato-Reformation" ("CKR") services, which involves the use of a series of contact lenses purportedly to reshape the cornea gradually for the treatment of myopia (or "nearsightedness"), hyperopia (or "farsightedness") and astigmatism. The contact lenses used in these CKR ortho-k services are "devices," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

6. In the course and conduct of their business, respondents have disseminated or have caused to be disseminated advertisements or promotional materials for the purpose of promoting the sale of CKR ortho-k services. Respondents advertise and promote their services through the use of print advertisements, free consultations, videos, brochures, and pamphlets, which are provided to patients and prospective patients, and some of which are provided to other optometrists for distribution under their own name to patients and prospective patients. Respondents' advertisements and promotional materials include, but are not necessarily limited to, attached Exhibits A through F.

7. The advertisements and promotional materials referred to above, including but not necessarily limited to attached Exhibits A through F, contain the following statements:

A. "C.K.R. CONTROLLED KERATO-REFORMATION
Using Contact Lenses to Reshape the Cornea and Improve Vision ...
THE BENEFITS OF CKR
See better without help from glasses or contact lenses
Prevents deteriorating vision in children caused by myopia
Free of surgical complications or pain
Improvement occurs rapidly -- within weeks or months
No disruption of vision while your eyesight improves
Occupational unaided vision demands may be met for careers such as pilots,
policemen, firemen, athletes, etc."

NATURAL VISION IMPROVEMENT

Imagine being able to easily read the alarm clock without your glasses, see street signs clearly, or participate in sports without lenses of any kind.... This procedure has provided corrective eye care to many thousands of patients without the risks or complications associated with surgery.... CKR utilizes a series of molds prescribed in progressive stages to gently reshape the cornea, similar to the way braces are to straighten teeth.... The process can take from six weeks to a few months or longer to complete, depending on the severity of the problem. The result is dramatically improved vision with retainer lenses being worn on a limited basis, sometimes only at night during sleep, to maintain the new shape of the cornea.

Developed in 1962, Ortho-K has been used for years to help pilots, athletes, and others who required unaided vision for their occupations. Now, with new research developments such as computerized corneal topography (mapping which provides a more accurate fit and diagnosis) and new mold designs and materials, CKR, the second generation, is becoming the eye care trend of the future.

A SAFE ALTERNATIVE TO RK SURGERY

In contrast to Radial Keratotomy surgery which involves making incisions on the eye, CKR does not leave scar tissue which may cause vision glare at night or other side effects. CKR is also free of surgical complications or pain, and there is no disruption of vision as eyesight improves.

SAVING CHILDREN'S VISION

One of the most exciting uses for CKR is controlling myopia (nearsightedness) in children. Unfortunately, nearsightedness is a progressive disease, which is why 75% of the nearsighted population have to periodically increase their prescription. As years pass, from elementary school to college and in later life, a person's vision gradually worsens. For instance, only 4% of 8 year olds are nearsighted, while over 30% of the general population is nearsighted. CKR prevents this deteriorating vision in children by actually halting myopia in its tracks.

RESULTS

Myopia (Nearsightedness): CKR is highly effective in improving myopia. Mild to moderate degrees of myopia may be corrected from 20/400 to 20/20 - 20/30. Higher degrees of myopia can be controlled to allow functional vision without lenses.

Astigmatism: CKR usually either eliminates or greatly reduces mild astigmatism. Higher amounts of astigmatism can also be improved to enhance vision.

Hyperopia (Farsightedness): Occasionally may be improved....

SAFETY

Four university research studies have shown Corneal Reformation to be safe and effective, with no harmful side effects. These studies include the University of Houston College of Optometry (5 years), University of California at San Diego Medical School (7 years), University of California at Berkeley College of Optometry (3 years), and Pacific University College of Optometry (5 years)....

FIND OUT IF CKR IS RIGHT FOR YOU

If CKR is determined to be right for you, then you might also be one of the many who are no longer dependent on glasses or contacts. . . ."

[Exhibit A, Patient Brochure]

B. "WHAT IS CKR? INFORM YOUR PATIENT"

Both Dr. El Hage and Dr. Norman Leach appear on the video. Their participation is acknowledged with the thanks of the producer, ICKRS. Statements on the video including representations by Leach that 95% of those who complete CKR achieve "functional vision" and that CKR may be beneficial for farsighted individuals. The announcer describes CKR as an idea "very much like braces for teeth." The video also contains a number of patient testimonials, including the following:

"...I was looking for an option that was very safe and that was going to give me the results, and CKR gave me the results. I now have 20/20 vision without my contacts and get along absolutely great [The] FAA requires that we maintain 20/20 vision corrected.... [S]o I was looking for a way to improve uncorrected vision.... They're very comfortable, very easy to wear, and you don't know that the procedure is taking place.... It took about four to five months for me to get from 20/100 vision to 20/20 uncorrected. So progress comes very rapidly.... Hey, leave your contacts at home. Go -- go do what you want to do, ride your bicycle with the kids or climb mountains or scuba dive. It gives you so much more freedom than having to hassle with glasses or contacts."

Jay Redmon (commercial pilot, photographed with passenger jet)

"My vision just kept getting better and better and at night when I'd take my contacts out to sleep, then I'd notice I could see -- see things that I couldn't see before without my glasses.... [A]fter however long it takes for your vision to get corrected they give you retainer lenses. And the retainer lenses are lenses that you only have to wear for, like, certain amount of hours a week, whatever the doctor tells you to.... I never thought I'd have close to perfect vision again...."

Hani Shafi (young boy)

"I told my friends they give you a pair of contacts, and they -- um, they're going to start helping your eyes and to make them 20/20. But it will take a while, it won't take that long, but it will take a little while.... I would tell them to not be afraid because it's all easy and it works very good." *Carolina Araya (young girl)*

"And then I had regular glasses for when I didn't have my lenses on and then all of a sudden I had to get reading glasses, and then you've got sunglasses.... Everything I do outdoors I can now do without any lenses. And before I could not do anything, I could not walk without lenses or glasses.... It's wonderful. I can see again."

Sheryl Noble

[Exhibit B, Video promotion]

C. "CKR SUCCESS STORIES"

In just a couple of weeks I was able to see 20/20 without glasses or my special contacts. It's wonderful!! I no longer have to worry about taking my glasses on or off. I can even wear really 'cool' sunglasses without having to have them prescription made!...AY

I am able to read and see at distance with 20/20 acuity. I have been able to fly my plane without corrective lenses and I passed all required vision tests....VP [commercial airline pilot]

My vision has changed from needing corrective lenses to 20/20 in ten days. I am apprehensive about quick remedies for any kind of ailment, but I will not only

verify, I will spread the good news about the changes I have experienced with all my friends. I am a sports enthusiast and now I can get involved without the restrictions of glasses....GWM

I can see now!! I thought I would be prisoner to my contacts/glasses for the rest of my life. I am now enjoying normal vision for the first time in approximately 25 years. CKR gave me my freedom back!! At the very beginning of my treatment, I had my doubts. It sounded too good to be true. I am now a BELIEVER!! I no longer have a strong reliance on vision correction to see. It is such a delight to be able to see without correction. It has opened a whole new world!! I am no longer visually handicapped....CJC

Changes have been dramatic. I typically tested around 20/60 to 20/80 on yearly eye tests associated with my job and now I test 20/20. I now have greater freedom and flexibility of not having to wear lenses from sun up to sun down....KH

I have seen my vision improve dramatically since starting CKR. My vision went from reading the big E on the eye chart to seeing 20/20 without glasses. I also believe that the overall health of my eyes have greatly improved. No longer is there anxiety when taking physicals for my job. Along with better vision and healthier eyes, there is an increased self-confidence in all aspects of my life - especially so in my professional career. To make gains such as I have, without surgery - and especially the risks associated with surgery, is, without a doubt, the only way to go....JR [commercial airline pilot]."

[Exhibit C, promotional handout provided to Optometrists]

D. "IMPROVE VISION WITHOUT SURGERY

Adults and children now have the option to non-surgically correct nearsightedness and astigmatism. It is called Controlled Kerato-Reformation, or CKR for short.

CKR uses specially designed contact lenses that correct vision and reshape the cornea simultaneously. The CKR lenses, or molds, are worn daily, in place of glasses or other contact lenses. Within a period of a few days to a few months vision can be restored to 20/20 or close to 20/20 as possible, so that the patient can obtain good, functional vision without dependence on glasses or contacts, and without the risk and side effects commonly associated with surgical procedures.

'My vision improved the very first time I put the contacts on. And I had 20/20 vision about two weeks after I started wearing them.'

Edwin V.

'.... Within the first 24 hours, my vision was improved to about 20/30.... Since that initial change, my vision has progressed to 20/20, and I can see quite well during the day after taking my lenses out in the morning. This is the first time in 20 years that I have been able to go about my daily routine without the assistance of glasses or contacts.'

Amy D.

'Prior to correction I could not see clearly beyond arm's length... now I can drive without contacts or eyeglasses.... This is a painless, corrective procedure, scientifically proven, without the potential complications/ramifications of RFLK [sic]... My vision has improved from 400/300 to 30/20. I can see again!'

Hank N. (in the Nov. '95 issue only)

[Exhibit D, *Houston Health and Fitness Sports Magazine*, February, 1996, and November, 1995]

E. "HOUSTON RESIDENT ENJOYS IMPROVED VISION THROUGH A REVOLUTIONARY EYECARE PROCEDURE!

Sylvia's vision was 20/400 when she began treatment in November 1994. Today her vision is 20/20 unaided! Sylvia observes: 'I had forgotten what it was like to drive at night without so much glare that everything looked blurry. I wake up in the morning and I can see clearly. Softball, volleyball and swimming are all much more fun now that I don't have to wear glasses or contacts...'

'The procedure offers remarkable results for patients with nearsightedness, giving them freedom from glasses and contacts for everyday living,' says Dr. El Hage.... 'It's very exciting for me to be able to offer a safe and effective alternative to surgery for my patients.'

CKR is also used to treat astigmatism and farsightedness to a certain degree...."
[Exhibit E, *Houston Health & Fitness Sports Magazine* April, 1996]

F. "IMPROVED VISION WITHOUT SURGERY

Although millions of people suffer from nearsightedness and astigmatism, until recently there have not been many options for improved vision without lenses. A revolutionary procedure called Controlled Kerato-Reformation, (CKR for short), is changing the lives of many people who have relied on daily wear of glasses or contacts. CKR is a non-surgical procedure and an alternative to the well known surgical procedure, Radial Keratotomy.

.... Dr. El Hage is also the founder and president of the International Controlled Kerato-Reformation Society, which trains doctors to become CKR practitioners and updates them on the latest techniques in CKR.

.... Called "Braces for the Eyes," CKR actually gently reshapes the cornea through a series of specially designed, rigid gas permeable contact lenses, or molds. This process takes place over a period of two to twelve months, on average, after which retainer lenses, worn several hours per week, can maintain the new shape of the cornea on a long-term basis. In addition, CKR has been proven as safe as wearing traditional contacts....

One of the most valuable applications for CKR is controlling myopia (nearsightedness) in children. Nearsightedness is progressive for most people and becomes worse as the years pass. CKR can stop this progression of Myopia, preventing deteriorating vision as children grow older.

'The procedure offers remarkable results for patients with nearsightedness, giving them freedom from glasses and contacts for everyday living,' says Dr. El Hage, the inventor of a highly acclaimed computerized corneal topographer that maps the surface of the eye. 'It's very exciting for me to be able to offer a safe and effective alternative to surgery for my patients.'

CKR can also correct astigmatism and farsightedness to a certain degree...."
[Exhibit F, Newspaper advertisement, 2/28/96]

8. Through the means described in paragraph seven, respondents have represented, expressly or by implication, that:

A. CKR ortho-k corrects nearsightedness and astigmatism thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses, for nearsightedness and astigmatism.

B. All or most people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear CKR ortho-k devices occasionally or at night.

C. Studies at the University of Houston College of Optometry (1976-77), University of California at San Diego Medical School (1980), University of California at Berkeley College of Optometry (1982-83), and Pacific University College of Optometry (1984), prove that CKR ortho-k is safe and effective in correcting, controlling, or improving nearsightedness, farsightedness, and astigmatism.

D. Testimonials from consumers appearing in the advertisements for respondents' CKR ortho-k services reflect the typical or ordinary experience of members of the public who receive those services, which experience is that respondents' CKR patients typically achieve 20/20 vision and no longer need corrective eyewear.

9. In truth and in fact,

A. CKR ortho-k does not correct nearsightedness and astigmatism thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses, for nearsightedness and astigmatism.

B. All or most people cannot achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear CKR ortho-k devices occasionally or at night.

C. Studies at the University of Houston College of Optometry (1976-77), University of California at San Diego Medical School (1980), University of California at Berkeley College of Optometry (1982-83), and Pacific University College of Optometry (1984), do not prove that CKR ortho-k is safe and effective in correcting, controlling, or improving nearsightedness, farsightedness, and astigmatism.

D. Testimonials from consumers appearing in the advertisements for respondents' CKR ortho-k services do not reflect the typical or ordinary experience of members of the public who receive those services, which experience is that respondents' CKR patients typically achieve 20/20 vision and no longer need corrective eyewear.

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

10. Through the means described in paragraph seven, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eight A and B, at the time the representations were made.

11. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eight A and B, at the time the representations were made. Therefore, the representation set forth in paragraph ten was, and is, false or misleading.

12. Through the means described in paragraph seven, respondents have represented, expressly or by implication, that:

A. A significant number of people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear CKR ortho-k devices occasionally or at night.

B. All or most people will experience stabilized vision after only a few weeks or months of CKR ortho-k treatments.

C. CKR ortho-k prevents and reverses deteriorating nearsightedness in children.

D. CKR ortho-k is as safe as contact lenswear.

E. CKR ortho-k is as effective as refractive surgical methods in correcting, controlling, or improving nearsightedness, farsightedness, and astigmatism.

F. CKR ortho-k has helped thousands of people achieve normal vision.

G. CKR ortho-k provides pilots and other career professionals with stable 20/20 vision thereby enabling them to meet occupational requirements for unaided vision.

13. Through the means described in paragraph seven, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph twelve, at the time the representations were made.

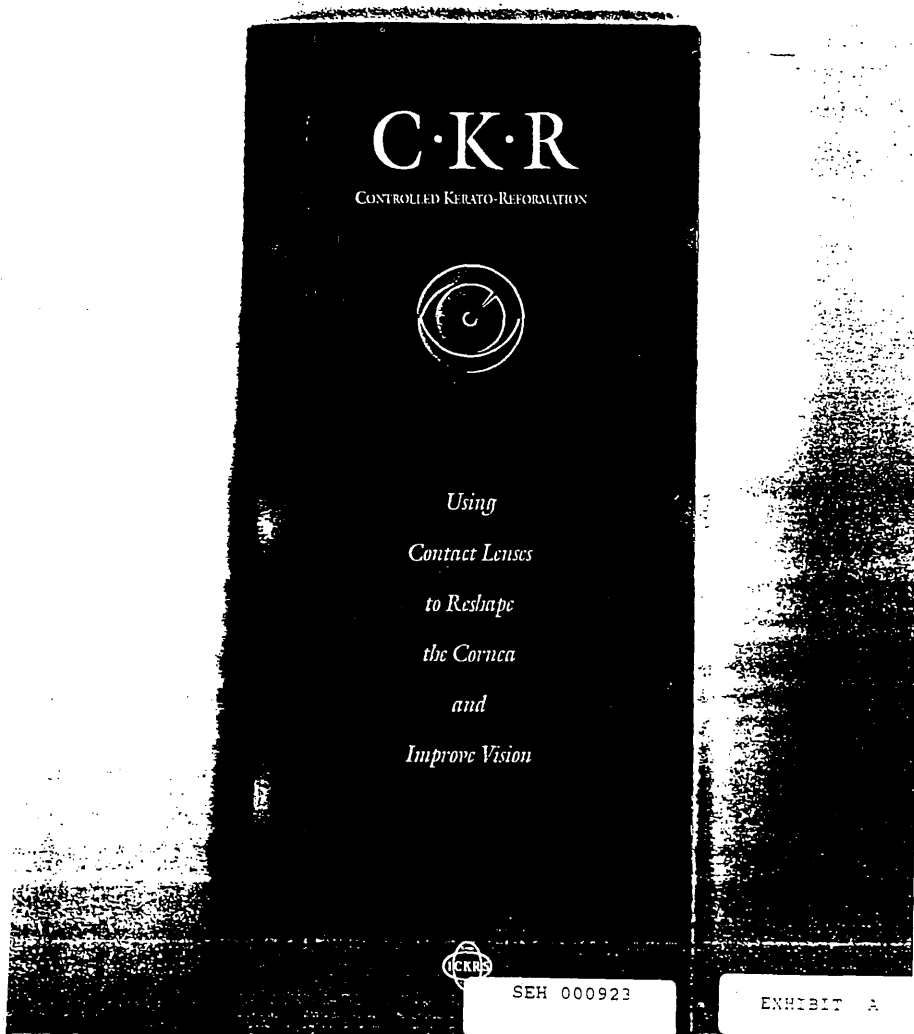
14. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph twelve, at the time the representations were made. Therefore, the representation set forth in paragraph thirteen was, and is, false or misleading.

15. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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Complaint

EXHIBIT A



C·K·R

CONTROLLED KERATO-REFORMATION



*Using
Contact Lenses
to Reshape
the Cornea
and
Improve Vision*



SEH 000923

EXHIBIT A

Complaint

125 F.T.C.

EXHIBIT A

SAMI EL HAGE, O.D., Ph.D., D.Sc.

For the past 30 years, Dr. Sami El Hage has been involved in research, teaching, clinical practice, and professional activities. His practice is well established as one of the most prominent in Houston. An internationally acclaimed writer and lecturer, he has written over 50 articles and chapters in scientific jour-



nals and books, and co-authored a book titled *The Optics Of The Eye* with professor Yves Le Grand. He has presented his research at over 100 university lectures and medical congresses worldwide. Dr. El Hage has taught over 20 differ-


ent university courses in optometry and speaks five languages. A leader in advanced eye care technologies, he has been featured in local, regional, national, and international publications. In addition to his literary successes, Dr. El Hage is the inventor of a computerized corneal topographer for which he holds four patents.

TRAINING AND EXPERIENCE

Dr. El Hage has had extensive academic experience in addition to his professional accomplishments. He received his O.D. degree from the Pennsylvania College of Optometry, and Ph.D and D.Sc. from the University of Paris. He also taught at the University of Paris and The University of Houston College of Optometry, where he was a tenured full professor and

Complaint

EXHIBIT A



graduate faculty member at the age of 33, Dr. El Hage has also lectured extensively, nationally and internationally. In 1967, he was invited by the British Council to the City University in London for post doctoral work. Dr. El Hage also founded the Corneal Research Laboratory with Professor Herbert Schöber "Institut für Medizinische Optik Der Universität München" in 1968. In 1969, he received a fellowship from the "Istituto Nazionale Di Ottica" Florence-Arezzo. He was also elected as an Honorary Fellow of the "Colegio de Optometristas de Venezuela" in 1974. He received the Grand Honors award from the National Eye Research Foundation in 1980. Dr. El Hage is a consultant to many organizations and is the founder and president of ERA (International Corneal Research Associates).

TECHNOLOGICAL ADVANCEMENTS

Dr. El Hage's invention of the Corneal Topographer is the result of more than 10 years of research and has revolutionized the field of contact lens fitting. The invention uses light reflection to map the surface of the eye. Because the shape of the eye's surface or cornea can be the cause of nearsightedness, astigmatism, and farsightedness, the Corneal Topographer is an excellent tool for pinpointing the extent of a vision problem. Accurate measurement of the cornea is also essential in the fitting of contact lenses. This is especially important in CKR since it allows Dr. El Hage to monitor changes in the shape of the cornea and provide the best fit possible.

SEH 000924

Complaint

125 F.T.C.

EXHIBIT A

NATURAL VISION IMPROVEMENT

Imagine being able to easily read the alarm clock without your glasses, see street signs clearly, or participate in sports without lenses of any kind. These are just a few of the ways peoples' lives are changing after

undergoing the procedure known as Controlled Kerato-Reformation, or CKR.

CKR is a non-invasive procedure that dramatically improves natural vision by reshaping the front curvature of the eye (called the cornea) with specially designed contact lenses, or molds. This procedure has provided corrective eye care to many thousands of patients without the risks or complications associated with surgery.

Visual defects known as nearsightedness (myopia), farsightedness (hyperopia), and astigmatism occur when light rays entering the cornea focus incorrectly, producing blurred vision. Often by changing the shape of the cornea the defect

THE BENEFITS OF CKR

See better without help from glasses or contact lenses

Prevents deteriorating vision in children caused by myopia

Free of surgical complications or pain

Improvement occurs rapidly - within weeks or months

No disruption of vision - your eyesight improves

Occupational unaided vision demands may be met for careers such as pilots, policemen, firemen, athletes, etc.

can be resolved. CKR utilizes a series of molds prescribed in progressive stages to gently reshape the cornea, similar to the way braces are used to straighten teeth. The lenses consist of a highly oxygen permeable material with a special design that encourages the natural tissue of the cornea to conform to the curvature of the lens. The changes are permanent.

Complaint

EXHIBIT A

the patient enjoys clear comfortable vision at all times.

The CKR procedure involves thorough examinations, mold changes, and/or mold modifications as needed until desired results are obtained. The process



can take from six weeks to a few months or longer to complete, depending on the severity of the problem. The result is dramatically

improved vision with retainer lenses being worn on a limited basis, sometimes only at night during sleep, to maintain the new shape of the cornea.

Developed in 1962, Ortho-K has been used for years to help pilots, athletes, and others who required unaided vision for their occupations. Now, with new research developments such as computerized corneal topography (mapping which provides a more accurate fit and diagnosis) and new mold designs and materials, CKR, the second generation, is becoming the eye care trend of the future.

A SAFE ALTERNATIVE TO RK SURGERY

In contrast to Radial Keratotomy surgery which involves making incisions on the eye, CKR does not leave scar tissue which may cause vision glare at night or other side effects. CKR is also free of surgical complications or pain, and there is no disruption of vision as eyesight improves.



SEE YOUR DOCTOR

Complaint

125 F.T.C.

EXHIBIT A

SAVING CHILDREN'S VISION

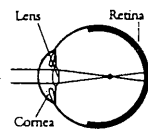
One of the most exciting uses for CKR is controlling myopia (nearsightedness) in children. Unfortunately, nearsightedness is a progressive disease, which is why 75% of the nearsighted population have to periodically increase their prescription. As years pass, from elementary school to college and in later life, a person's vision gradually worsens. For instance, only 4% of 8 year olds are nearsighted, while over 30% of the general population is nearsighted. CKR prevents this deteriorating vision in children by actually halting myopia in its tracks.

RESULTS

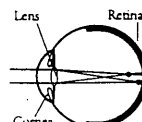
Myopia (Nearsightedness): CKR is highly effective in improving myopia. Mild to moderate degrees of myopia may be corrected from 20/400 to 20/20 - 20/50. Higher degrees of myopia can be controlled to allow functional vision without lenses.

Astigmatism: CKR usually either eliminates or greatly reduces mild astigmatism. Higher amounts of astigmatism can also be improved to enhance vision.

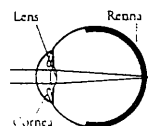
Hyperopia (Farsightedness): Occasionally improved to functional vision.



NEARSIGHTEDNESS



ASTIGMATISM



FARSIGHTEDNESS

Complaint

EXHIBIT A

Presbyopia ("Reading Vision"): This is due to a normal aging process by which the lens inside the eye does not respond to accommodation and therefore is not correctable with these procedures.

SAFETY

Four university research studies have shown Corneal Refractive to be safe and effective, with no harmful side effects. These studies include the University of Houston College of Optometry (5 years); University of California at San Diego Medical School (7 years); University of California at Berkeley College of Optometry (3 years); Pacific University College of Optometry (5 years).

A NEW LOOK ON LIFE

CKR enables people to participate in activities that were previously difficult or even impossible without lenses, such as contact sports and swimming. The procedure also provides functional vision without glasses or contacts, so that simple tasks such as reading an alarm clock or clearly seeing street signs are not difficult anymore.

FIND OUT IF CKR IS RIGHT FOR YOU

Call for an appointment to view an informative film and receive a free consultation and color computerized map of your eye to help determine if you are a candidate for this procedure.

If CKR is determined to be right for you, then you might also be one of the many who are no longer dependent on glasses or contacts.

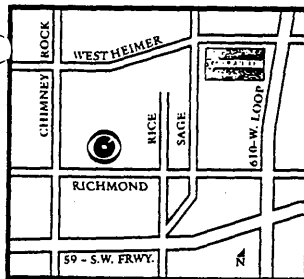
Call 713-621-9001 to schedule your appointment.

SEEK 111111

Complaint

125 F.T.C.

EXHIBIT A



"I am a sports enthusiast and now I can get involved without the restrictions of glasses." -G.M.

"I have been through the program and I am very happy with it, and I am bringing my daughter in to do it." -A.S.

"I never realized how precious the gift of sight was until I went through this procedure." -A.S.

"I am very happy with the program and I would recommend it with no reservation." -D.M.



Eye Care Associates

SAMU EL HAGE O.D., Ph.D., D.Sc.

5320 Richmond Avenue
Houston, Texas 77056
(713) 621-9001

SEE DECISION

Complaint

EXHIBIT B

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 9523405

TITLE ORTHO-KERATOLOGY PROVIDERS

DATE RECORDED: UNKNOWN
TRANSCRIBED: DECEMBER 14, 1996
CORRECTED: MARCH 5, 1997

PAGES 1 THROUGH 12

VIDEO-TAPED ENTITLED:
"WHAT IS CKR? INFORM YOUR PATIENT"

FOR THE RECORD, INC.
603 POST OFFICE ROAD, SUITE 309
WALDORF, MARYLAND 20602
(301)870-8025

EXHIBIT B

EXHIBIT B

1 FEDERAL TRADE COMMISSION

2

3 In the Matter of:)

4 Ortho-Keratology Providers) Matter No. 9523405

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12 The following transcript was produced from a video-tape
13 provided to For The Record, Inc. on December 13, 1996.

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For The Record, Inc.
Waldorf, Maryland
(301)870-8025

861

Complaint

EXHIBIT B

3

1 P R O C E E D I N G S

2

3 HANI SHAFI (Young Boy): And I left them on a brown
4 couch when I was over at a friend's house and then for some
5 reason -- I think we went swimming, and then when I came in, I
6 sat down on them and I broke the arm right off. And so I was
7 wearing my glasses with only one arm for about six months.

8 PATI MARIK: Glasses are -- are limiting. You know,
9 they get catty-whampus, you know, they're not -- they're --
10 they get greasy.

11 CAROLINA ARAYA (Young Girl): All the time you have
12 to clean them because they look all gross on the outside.

13 PATI MARIK: You have to be wiping them and then you
14 scratch them.

15 HANI SHAFI (Young Boy): I finally got some new
16 glasses, which were then too big. And then I got hit with a
17 basketball and then that made my glasses all crooked.

18 SHERYL NOBLE: And then I had regular glasses for
19 when I didn't have my lenses on and then all of a sudden I had
20 to get reading glasses, and then you've got sunglasses.

21 HANI SHAFI (Young Boy): I'll either have to wear
22 glasses or contacts the rest of my life and that really kind
23 of bummed me out to have to worry about glasses and just
24 getting thicker and thicker lenses.

25 ANNOUNCER: Glasses can make a person cross, one

Complaint

125 F.T.C.

EXHIBIT B

4

1 minute they're there and the next they're lost. Red marks on
2 your nose, ears that get sore. Buying new specks, money,
3 headaches galore. They scratch, they blur, they hide your
4 face. Wouldn't it be wonderful to keep them in their case?

5 JAY REDMON (Commercial Pilot): I don't trust
6 anybody putting a scalpel to my eyeballs. They're my
7 livelihood. They're how I make a living. So I was looking
8 for an option that was very safe and that was also going to
9 give me the results and CKR gave me the results. I now have
10 20/20 vision without my contacts and get along absolutely
11 great.

12 SHERYL NOBLE: Everything I do outdoors I can now do
13 without any lenses. And before I could not do anything, I
14 could not walk without lenses or glasses.

15 HANI SHAFI (Young Boy): When I go and talk to a
16 girl that I think is, like, pretty or something, you know,
17 like, before I was like oh, my gosh, my glasses are so dorky.
18 And, you know, it's just kind of like embarrassing. But now
19 you can just pretty much feel a bit more self-confidence.

20 ANNOUNCER: CKR, which stands for Controlled Kerato-
21 Reformation is a nonsurgical procedure that gradually reshapes
22 the cornea, thus dramatically improving one's natural vision.
23 The idea is very much like braces for the teeth.

24 DR. SAMI G. EL HAGE (Founder of ICKRS): Same idea,
25 like the braces for the eyes. Actually, some of our patients

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EXHIBIT B

5

1 come and ask us about it and call it the braces of the eye.
2 Indeed, we do change the curvature of the cornea, so people
3 with myopia on each side of 20/400 can see at, or close to,
4 20/20.

5 ANNOUNCER: Your eyes' ability to focus properly is
6 dependent on the lens and the cornea. Under normal
7 circumstances the images you see are projected on the light
8 sensitive part of the eye, which is called the retina.

9 The retina is like a film camera. An average shaped
10 cornea bends light so that the images you see land right on
11 the retina. For far-sighted people the images are projected
12 behind the retina, for near-sighted people the images are
13 projected in front. With astigmatism images are focused on
14 two different points. In all three cases vision is blurred.

15 CKR uses specially designed rigid gas-permeable
16 contact lenses, often referred to as molds. They're called
17 molds because of the way they change the shape of the cornea.
18 Changing the cornea's shape allows images to be focused on the
19 retina. That's when clear vision is achieved.

20 CAROLINA ARAYA (Young Girl): I told my friends that
21 they give you a pair of contacts and they -- um, they're going
22 to start helping your eyes and to make them 20/20. But it
23 will take a while, it won't take that long, but it will take a
24 little while.

25 SHERYL NOBLE: First time I noticed the difference

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125 F.T.C.

EXHIBIT B

6

1 in my vision was probably a week after I started. I mean,
2 immediately, I thought something was wrong because I couldn't
3 see out of these lenses anymore, and what it was doing was
4 changing my eyes.

5 NORMAN LEACH (Associate Professor, U of H College of
6 Optometry): CKR is -- is beneficial in patients who are
7 nearsighted and have small to moderate amounts of astigmatism,
8 and occasionally a far-sighted purpose -- person will benefit
9 from that as well. But mostly it's for those people who are
10 near-sighted.

11 DR. SAMI G. EL HAGE: That is not to say that we can
12 give everyone 20/20 vision, but in most cases we can give them
13 functional vision and less dependency on glasses and contact
14 lenses.

15 PATI MARIK (Teacher): Well, I just was not
16 satisfied at all with the way that I that could see things and
17 I knew there must be a better way some place, but I didn't
18 know where.

19 JAY REDMON: Of course, FAA requires that we
20 maintain 20/20 vision corrected and we also are tested
21 uncorrected and we have to meet standards there and right now
22 it's at 20/200 corrected to 20/20. And I could squeak out
23 2200, but it was a little nerve -- nerve-wracking, so I was
24 looking for a way to improve uncorrected vision.

25 DR. SAMI G. EL HAGE: CKR is the second generation

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7

1 of a procedure called ortho-keratology. It has been studied
2 by four universities, patient was monitored for over 40 years
3 closely and it proved to be a safe procedure.

4 Now, where CKR differs from ortho-keratology is that
5 we take the topography of the cornea. Like the topography of
6 the cornea behind me, the slide projected behind me, it shows
7 the hills and valleys of the cornea. It shows the asperisity
8 of the cornea. It shows the shape factor of the cornea.

9 From these measurements we design the specific mold.
10 These molds are based on the total topography, they do reshape
11 the cornea, modify and reform the cornea, and reduce near-
12 sightedness and improve vision.

13 In the past they used to guess about the shape of
14 the cornea. With this topographer we can measure up to 8300
15 points over the cornea.

16 ANNOUNCER: This is the cornea topographer that
17 Doctor El Hage invented. It's used to determine what kind of
18 molds a patient's cornea needs for reshaping.

19 NORMAN LEACH: This instrument reflects a series of
20 rings off the front of your eye and a computer then analyzes
21 these reflective rings and we get a color map of what the
22 cornea looks like.

23 By having this instrument then we can measure what
24 the corneal shape is to start with and then we can monitor the
25 changes that we're making as we go through the program. And

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1 as you improve in your vision then we will need to make
2 subsequent changes in the contact lenses, or the corneal
3 molds, so that we can keep the process going.

4 JAY REDMON: They're very comfortable, very easy to
5 wear, and you don't know that the procedure is taking place,
6 that he's making the improvements, because all -- you're just
7 wearing your contacts on a daily basis.

8 HANI SHAFI: My vision just kept getting better and
9 better and at night when I'd take my contacts out to sleep,
10 then I'd just notice that I could see -- see things that I
11 couldn't see before without my glasses.

12 JAY REDMON: It took about four to five months for
13 me to get from my 20/100 vision to 20/20 uncorrected. So
14 progress comes very rapidly.

15 DR. EL HAGE: The molding process, or re-formation
16 of the cornea, varies from one patient to another. It depends
17 on the near-sightedness or myopia of the patient and the
18 corneal rigidity of the patient. Everyone is different.

19 NORMAN LEACH: All a patient needs to be able to do
20 -- once they're determined to be a good candidate -- is to be
21 able to put on lenses, contact lenses, take off contact
22 lenses, follow the doctor's instructions carefully, and
23 maintain their follow-up visits.

24 HANI SHAFI: And then after however long it takes
25 for your vision to get corrected they give you retainer

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EXHIBIT B

9

1 lenses. And the retainer lenses are lenses that you only have
2 to wear for, like, certain amount of hours a week, whatever
3 the doctor tells you to, and then that's just to keep your
4 eyes in the shape they are so you can keep your vision.

5 NORMAN LEACH: The benefits of CKR attract people of
6 all ages from all walks of life with various vision
7 requirements. The thing that attracts them the most, perhaps,
8 is the fact that it's a nonsurgical procedure.

9 SHERYL NOBLE: I investigated a lot of things before
10 I decided on CKR, but I had a lot of friends try RK. I found
11 that it worked sometimes, it didn't sometimes. Sometimes you
12 had to go back and do it again. I don't like surgery.

13 PATI MARIK: It was painless, let me tell you that
14 off the bat.

15 CAROLINA ARAYA: I would tell them to not be afraid
16 because it's all easy and it works very good.

17 NORMAN LEACH: The only risks or side effects
18 associated with CKR are -- are those -- those same risks and
19 side effects that are associated with rigid gas-permeable
20 contact lenses. And those can be avoided, or certainly
21 reduced, by following proper hygiene in care of your lenses
22 and also by certainly following your doctors' instructions on
23 how to wear the contact lenses.

24 About 95 percent of those patients who complete the
25 CKR program do, in fact, achieve functional vision.

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EXHIBIT B

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1 ANNOUNCER: If you read through the comments we've
2 received from patients who have completed their CKR programs
3 with us, you'd see the words "thank you" written over and over
4 again. Thank you for the chance to play sports unencumbered.
5 Thank you for taking the pressure off my ears and nose. Thank
6 you for giving me my face back.

7 If you want to see better without glasses or contact
8 lenses CKR could be the answer for you. You'll see
9 improvement quickly with no surgery, no pain, and no
10 disruption to your vision as the improvements occur. What a
11 wonderful life it is not being so dependent on glasses and
12 contacts.

13 HANI SHAFI: I think sight is the most important
14 thing because that involves everything you do.

15 SHERYL NOBLE: I think the better you can see, the
16 better you feel.

17 CAROLINA ARAYA: I don't like wearing glasses when
18 I'm ice skating because they bother me.

19 JAY REDMON: Hey, leave your contacts at home. Go
20 -- go do what you want to do, ride your bicycle with the kids
21 or climb mountains or scuba dive. It gives you so much more
22 freedom than having to hassle with glasses or contacts.

23 PATI MARIK: You know, you really don't know what
24 you're missing until you see what you're missing.

25 HANI SHAFI: I never thought I'd have close to

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11


1 perfect vision again, you know.
 2 SHERYL NOBLE: It's wonderful. I can see again.
 3 (Whereupon, the vide-tape was concluded.)
 4

12

1 C E R T I F I C A T I O N O F T Y P I S T
 2
 3 DOCKET/FILE NUMBER: 9523405
 4 CASE TITLE: ORTHO-KERATOLOGY PROVIDERS
 5 TAPING DATE: UNKNOWN
 6 TRANSCRIPTION DATE: 12/14/96

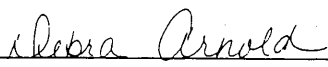
7
 8 I HEREBY CERTIFY that the transcript contained herein is
 9 a full and accurate transcript of the tapes transcribed by me
 10 on the above cause before the FEDERAL TRADE COMMISSION to the
 11 best of my knowledge and belief.

12
13 DATED: December 14, 1996

14
15 
 16 _____
 17 KATHY J. DE MENT

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19
 20 I HEREBY CERTIFY that I proofread the transcript for
 21 accuracy in spelling, hyphenation, punctuation and format.

22
23 
 24 _____
 25 DEBRA ARNOLD

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EXHIBIT C

CKR Success Stories

In just a couple of weeks I was able to see 20/20 without glasses or my special contacts. It's wonderful!! I no longer have to worry about taking my glasses on or off. I can even wear really "cool" sunglasses without having to have them prescription made! ... AY

My eyesight is much better. I am totally independent of my glasses. In fact, I can't see out of them. For those people who hate glasses like I do, this is an alternative to eye surgery. ... SW

I now can see clearer than I ever have without glasses. I drove without any corrective aids for the first time this week. No more glasses after removing my contacts. Even without contacts, I can function almost normally. I look forward to each visit with anticipation and I can see results daily. Several of my friends are charting my progress with intentions to have this done also. It's great! ... CN

My vision has improved dramatically. I don't have to be on top of my mirror to put make up on in the morning. I'm not constantly pushing my glasses back up on my nose and dealing with pressure from behind my ears. It is an extremely easy and painless procedure with a big payoff. I feel more confident without my glasses. I like not being dependent on them. ... DS

I am able to read and see at distance with 20/20 acuity. I have been able to fly my plane without corrective lenses and I passed all required vision tests. ... VP

I can see leaves on trees and I can see to drive at night where before I couldn't. It (CKR) has brought me out of a fog. ... RMH

My vision has improved dramatically. I am very close to 20/20. CKR has given me confidence, as I was growing increasingly concerned about my vision. Seeing is believing! ... DC

EXHIBIT C

SEH 000155

EXHIBIT C

CKR Success Stories

When I came to your office I could not see my alarm clock from my bed, or watch television without my glasses. I can now read the time from across the room, watch television from all the way across my living room and into my kitchen, and best of all, play sports without glasses or contacts to worry about breaking, slipping, or losing. I've been able to play softball and volleyball eye wear free. For scuba diving, it has made the biggest difference, since I never wanted to wear contacts in my mask. I genuinely like the concept of correcting my vision without cutting on my delicate, irreplaceable eyes. I look forward to water and snow skiing this year!! ... CEB

My eyesight got progressively better every week, and within two months I could see without the help of eyeglasses or contacts. ... HH

When I started the program, I could not see the "Big E" on the eye chart. Now without my lenses in I can see 20/40 and can enjoy reading a book. I can function and see with or without lenses. Many of my friends are excited about beginning the program. ... RR

Changes have been just amazing. No more squinting, walking around feeling for my glasses. It feels like the fog has finally lifted and all is clear. I thought surgery was the only way to get rid of my contacts and dispose of my glasses. Boy was I ever wrong! I've told my co-workers how remarkable this process is. ... JR

I'm beginning to notice (see) things I never realized I was missing and everything is so clear! My visual acuity has definitely improved. I no longer fear losing my sight altogether. My vision had begun to deteriorate rapidly and I was afraid I would be blind within the next few years. It's painless and the results are extraordinary. ... CW

Complaint

125 F.T.C.

EXHIBIT C

CKR Success Stories

After about 4 days I noticed when jogging that I could read the "Lotto" sign from 100's of yards, not possible before. I also could watch TV from a distance not possible prior to the treatment. I no longer have to rely on glasses and each year or two changing prescriptions or frames. I will pay for this treatment over and over. The savings goes into my pocket not having to buy glasses. ... JT

I feel better about myself. It has changed my life by giving me a sense of freedom and joy that I have not experienced in years due to the burden of eyeglasses. I'm no longer self conscious of my appearance in glasses because I don't need them. ... LH

My vision has changed from needing corrective lenses to 20/20 in ten days. I am apprehensive about quick remedies for any kind of ailment, but I will not only verify, I will spread the good news about the changes I have experienced with all my friends. I am a sports enthusiast and now I can get involved without the restrictions of glasses. ... GWM

I can see now!! I thought I would be prisoner to my contacts/glasses for the rest of my life. I am now enjoying normal vision for the first time in approximately 25 years. CKR gave me my freedom back!! At the very beginning of my treatment, I had my doubts. It sounded too good to be true. I am now a BELIEVER!! I no longer have a strong reliance on vision correction to see. It is such a delight to be able to see without correction. It has opened a whole new world!! I am no longer visually handicapped. ... CJC

I can see things I never have been able to see before. I really noticed a big difference this past week. I felt I could almost see as good with the lenses in as I could with them out! I really felt I made progress. I can swim now and see everything around me! I can see the alarm clock in the middle of the night without bringing it close to my face! I can even read the directions on the shampoo bottles in the shower!! I recommend it (CKR) to my students, family, and friends. They all follow my progress almost as closely as I do! ... RP

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Complaint

EXHIBIT C

CKR Success Stories

I have 20/20 vision without corrective eye wear! Three and a half months ago my vision was 20/400. I can now see the birds and squirrels playing on the wires and in neighboring yards without corrective eye wear. No more glasses sliding down my nose when I'm working outside. No more sore ears from ill fitting glasses. I now have freedom. I can see at concerts, etc. without having a line from my bifocals. No more tilting my head at angles to avoid the bifocal line when going down steps. ... SJ

Since starting the program 3 months ago, I have felt my vision improve dramatically. I have not been as dependent on contact lenses as I was before; and I no longer have to worry about going swimming or playing sports with contacts. Because of CKR, I will have 20/20 vision for the rest of my life. ... MM

In the first 7 days, I went from 20/100 left eye to 20/60, then in 11 days I went to 20/15 left eye. The right eye was 20/200 from the start and in 7 days went to 20/150 - no change in 14 days. Also, the astigmatism in both eyes is completely gone. I am excited about being able to see clearly without needing surgery, because I don't like pain and there is nothing painful about CKR. I absolutely recommend this service to others because, "why see a little when you can alot!" When I see people in restaurants with thick glasses, I want to go up to them and tell them about CKR. ... AW

My eyesight has improved to a point that I can go without contacts for periods of time. I can drive, play sports, and watch TV without contacts. I can do things without concern about losing a contact. Water activities in the lake and pool are much more enjoyable. ... PB

Drastic changes! I started the program not being able to read huge billboards. To this point, I can almost read street signs. Now I can hopefully get my aviation medical without restrictions. I believe this really works, I'm proof!! ... KI

SER 000153

Complaint

125 F.T.C.

EXHIBIT C

CKR Success Stories

Changes have been dramatic. I typically tested around 20/60 to 20/80 on yearly eye tests associated with my job and now I test 20/20. I now have greater freedom and flexibility of not having to wear lenses from sun up to sun down. ... KH

I have seen my vision improve dramatically since starting CKR. My vision went from reading the big E on the eye chart to seeing 20/20 without glasses. I also believe that the overall health of my eyes have greatly improved. No longer is there anxiety when taking physicals for my job. Along with better vision and healthier eyes, there is an increased self-confidence in all aspects of my life - especially so in my professional career. To make gains such as I have, without surgery - and especially the risks associated with surgery, is, without a doubt, the only way to go. ... JR

Complaint

EXHIBIT D

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IMPROVE VISION WITHOUT SURGERY



Sami El Hage O.D., Ph.D., D.Sc.



Adults and children now have the option to non-surgically correct nearsightedness and astigmatism. It is called Controlled Kerato-Reformation, or CKR for short.

CKR uses specially designed contact lenses that correct vision and reshape the cornea simultaneously. The CKR lenses, or molds, are worn daily, in place of glasses or other contact lenses. Within a period of a few days to a few months vision can be restored to 20/20 or close to 20/20 as possible, so that the patient can obtain good, functional vision without dependence on glasses or contacts, and without the risk and side effects commonly associated with surgical procedures.

The results of CKR have been phenomenal and life changing for my patients, says Dr. El Hage. Here's what just a few of them had to say about the remarkable improvement in their vision.

Sami El Hage O.D., Ph.D., D.Sc. creator of CKR

"My vision improved the very first time I put the contacts on. And I had 20/20 vision about two weeks after I started wearing them."

Edwin V.

"The initial change was very dramatic. Within the first 24 hours, my vision was improved to about 20/30. Since that initial change, my vision has progressed to 20/20, and I can see quite well during the day after taking my lenses out in the morning. This is the first time in 20 years that I have been able to go about my daily routine without the assistance of glasses or contacts. ... I was initially quite skeptical about the ability of a non-invasive procedure to achieve a significant improvement in my vision. Now I recommend CKR to anyone who will stand still long enough for me to tell them about my experience! ... Anyone who has to wear glasses or contacts understands the difference that good, unaided vision would make in their lives. This program is the single most important thing I have ever done to simplify and remove stress from my life."

Amy D.

"I can see TV without any lenses on. I can drive during the day without contacts. This is wonderful! Just by being able to see better, 20/20, I can get up in the morning and not have to wear my glasses or contacts. A great feeling indeed!"

Syana D.

Complaint

125 F.T.C.

EXHIBIT D

Nov. 95

IMPROVE VISION WITHOUT SURGERY

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Edwin V.

"The initial change was very dramatic. Within the first 24 hours, my vision was improved to about 20/30. Since that initial change, my vision has progressed to 20/70, and I can see quite well during the day after taking my lenses out in the morning."

"This is the first time in 20 years that I have been able to go about my daily routine without the assistance of glasses or contacts... I was initially quite skeptical about the ability of a non-invasive procedure to achieve a significant improvement in my vision. Now I recommend CKR to anyone who will stand still long enough for me to tell them about my experience!"

"Anyone who has to wear glasses or contacts understands the difference that good, unaided vision would make in their lives. This program is the single most important thing I have ever done to simplify and remove stress from my life."

Amy D.

"Prior to correction I could not see clearly beyond arm's length now I can drive without contacts or eyeglasses. This is a painless, corrective procedure, scientifically proven, without the potential complications/ramifications of REK. My vision has improved from 400/300 to 30/20. I can see again!"

Hank N.

To find out more about CKR, please contact our office. For more information and a free consultation, call (713) 621-9001 (Galleria Area)

prior to the event." At Vaseline on all joints, in ankles, hips, and elbows. After the race, assume a carbohydrate. This will improve grip and help bring about turn. Hydration remains you cross the finish line race festivities, make ment a priority. (To e dration, weigh yourself ounces of fluid for e during the race.) We help prevent leg cramp rice massage can be

FAUX

Runner Jill Was rector of nutrition Twelve Oaks Hospi runners on their di
• During pre-r runners do not ge hydrates, particu three days.

Good high choices include rice, pasta, polt cakes. "If they're a high-carbohydr they just need to pasta a day, and says Washburn.

Read pack according to siz 600 carb grams "If they're not get and junk foods u be hard to get crates," says W.

• Don't co during pre-ma carb-loading, weight gain. gain this ve gr this. Washburn.

• Don't be. Washburn.

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"It's remarkable. You owe it to yourself to find out more... What have you got to lose, you haven't already lost!"



SEX 000814

EXHIBIT E



Steve Hudson & Lacy Bankston

"Texas Bodyware is owned by athletes who use the products they sell and know the importance of product knowledge and crucial timing"

Steve Hudson-Owner

past year. With this issue of Health & Fitness we celebrate our first year in business. Without your support, my dream of providing quality nutritional products and creative designer wear would never have been accomplished.

With your encouragement and support much has been accomplished in the past year. We opened our first retail store on Kirby April 1995. In December 1995 we began production on the first ever National Fashion and Fitness Catalog; and finally, in March of this year we began plans to open a second retail store in Houston - WHAT A YEAR! Thanks again for your encouragement and support.

Steve

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Hot Body
Lacee Wear
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Houston Resident Enjoys Improved Vision Through A Revolutionary Eyecare Procedure!

When Houston resident Sylvia Dickerson read the newspaper article about a revolutionary procedure called Controlled Kerato-Reformation (CKR) that improved vision without surgery, she became very excited. Her vision had steadily worsened since 1984 when she was first prescribed glasses. She was concerned with where her eyesight was going, as well as with the high annual costs of correction lenses. "I was so concerned that I even investigated R.K. surgery," said Ms. Dickerson. "But, I was terrified of the permanence of eye surgery. What if something went wrong? When I learned about CKR it made much more sense to me."

Sylvia's vision was 20/400 when she began treatment in November 1994. Today her vision is 20/20 unaided! Sylvia observes, "I had forgotten what it was like to drive at night without so much glare that everything looked blurry. I wake up in the morning and I can see clearly. Softball, volleyball and swimming are all much more fun now that I don't have to wear glasses or contacts. I have enthusiastically recommended this procedure to my friends and co-workers."

The procedure offers remarkable results for patients with nearsightedness, giving them freedom



Sylvia Dickerson discusses her improvement in vision from 20/400 to 20/20 with Dr. Sam El Hage of Eye Care Associates.

from glasses and contacts for everyday living," says Dr. El Hage, the inventor of a highly acclaimed computerized corneal topographer that maps the surface of the eye. "It's very exciting for me to be able to offer a safe and effective alternative to surgery for my patients."

CKR is also used to treat astigmatism and farsightedness to a certain degree. To learn if you are a candidate for CKR you are invited to arrange a FREE CONSULTATION with Eye Care Associates, 5320 Richmond Ave., near the Galleria at (713) 621-9001.

Carol Mann, LPGA Hall of Famer

Kingwood Country Club to Host Ricco Golf Classic April 15

RICE UNIVERSITY'S Ricco Classic is set for April 15. Kingwood Country Club crowd-pleaser for tennis will benefit the Women's Department at Rice.

Entry is \$125, which includes 18 holes of championship green fees, golf cart, rain refreshments on course, door prizes, hole prizes and celebrity prizes.

Tournament registration starts at 8 a.m., with a shotgun start at 9 a.m. Carol Mann, LPGA Hall of Famer, is honorary chair. For more information, call 528-5411.

Celebs Join In To Fight Drug Abuse

ACTOR AND MARTIAL ARTS expert Chuck Norris kicked off the third annual Kick Drugs, America Tennis Invitational in Houston, April 19-20, at Westwood Country Club.

This annual event gets support of a wide range of celebrities and pro players. Special guests have included President George H.W. Bush's daughter, Chelsea Clinton, and singer Michael Jackson.

Presidents of the American Tennis Association and the International Tennis Federation will be in Houston for the tournament. The event is a joint effort of the U.S. Tennis Association and the American Tennis Association.

For more information, call 528-5411.

EXHIBIT F

By MICHAEL L. BERKE
New York Times

Eight weeks after Republicans as a whole of Congress, investment, crime, military spending, and the federal budget deficit, according to New York Times/CBS.

Republicans are generally more dependent on the Democratic and Independent members of the party in Congress is trying to do. But Speaker Newt Gingrich and his allies in the House believe that crime - issues that have not been taken up by the House and health care, which has not been taken up by the new Congress at all. People took exception to major

parts of the Republican crime bill, for the bill on national security. The poll also found that 45 percent of all job performance. Present in December. Apparently, the handling of the economy credit for the past year has high marks as opposed to last year.

Even more striking was a sharp improvement in the popularity of Speaker Gingrich. The poll found that 69 percent of Americans have a favorable view of the speaker, up from 56 percent in December. The poll also found that 53 percent of Americans have a favorable view of the speaker, up from 46 percent in December.

Of the 35 percent who said they were not sure, 23 percent held a favorable view of the speaker, up from 18 percent in December. The poll also found that 53 percent of Americans have a favorable view of the speaker, up from 46 percent in December.

ready through Saturday has a record of sampling error of plus or minus 2.5 percent. More than half of the respondents say they have nothing about the "Republican political," the House Republican majority. The poll also found that 53 percent of people who have been contacted have a favorable view of the speaker, up from 46 percent in December.

Even more striking was a sharp improvement in the popularity of Speaker Gingrich. The poll found that 69 percent of Americans have a favorable view of the speaker, up from 56 percent in December. The poll also found that 53 percent of Americans have a favorable view of the speaker, up from 46 percent in December.

SPECIALS
MARGARITA
MONSIEUR MARGARITA
3307 S. 174th Street, #101, Edina, MN 55425
612-935-1400

WE LOAN CASH IMMEDIATELY!
No Credit Check, No Wait, No Application.
WE MUST SEE YOUR PAY STUBS!
\$1,000 Loan for only 2% a month
Family Owned and Operated
Established Reputation of Integrity
10100 Bremer
One Best North of US
468-0795

Dr. El Hage shown explaining Controlled Kerato-Refraction or "Brimo" to the eyes.

Improved Vision Without Surgery

Although millions of people suffer from nearsightedness and improved vision recently there has not been a breakthrough for the Controlled Kerato-Refraction. A revolutionary procedure, glasses or contact lenses. Dr. El Hage has developed a non-surgical alternative to the well known surgical procedure, Radial Keratotomy.

Dr. El Hage, M.D., Ph.D., is in the Houston area by local doctor. He is a former professor of the University of Paris, Dr. El Hage is the founder and past president of the International Controlled Kerato-Refraction Society, which trains ophthalmologists in the use of this technique. Called "Brimo," vision dramatically improves with this technique. Called "Brimo," vision dramatically improves with this technique. Called "Brimo," vision dramatically improves with this technique. Called "Brimo," vision dramatically improves with this technique.

WE LOAN CASH IMMEDIATELY!
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Dr. El Hage shown explaining Controlled Kerato-Refraction or "Brimo" to the eyes.

Advanced Procedure Means Good Solution For Moderately Severe Bultions

Although millions of people suffer from nearsightedness and improved vision recently there has not been a breakthrough for the Controlled Kerato-Refraction. A revolutionary procedure, glasses or contact lenses. Dr. El Hage has developed a non-surgical alternative to the well known surgical procedure, Radial Keratotomy.

SPECIALS
MARGARITA
MONSIEUR MARGARITA
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612-935-1400

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1.a. Respondent Eye Research Associates, Inc., d/b/a Eye Care Associates ("ECA"), is a corporation formed under the laws of the state of Texas, with its principal office or place of business located at 5320 Richmond Avenue, Houston, TX.

1.b. Respondent ICKRS, Inc., d/b/a International Controlled Kerato Reformation Society ("ICKRS"), is a corporation formed under the laws of the state of Texas, with its principal office or place of business located at 5320 Richmond Avenue, Houston, TX.

1.c. Respondent Sami G. El Hage, O.D., is the sole owner and President of the corporate respondents. Individually, or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondents. His principal office or place of business is the same as that of the corporate respondents.

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

ORDER

DEFINITIONS

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

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

2. "*Clearly and prominently*" shall mean:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

D. In an advertisement on any electronic media received by consumers via computer, such as the Internet's World Wide Web or commercial on-line computer services, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multi-screen documents, the disclosure shall appear on the first screen and on any screen containing ordering information.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. "*Controlled Kerato-Reformation*" ("CKR") service shall mean the ophthalmic service or procedure using contact lenses or similar devices designed to reshape the cornea to reduce or eliminate visual defects known as nearsightedness (myopia), farsightedness

(hyperopia), and astigmatism (distorted vision), as trademarked by Sami G. El Hage.

4. "*Substantially similar service*" shall mean any ophthalmic service or procedure using contact lenses or similar devices to reshape the cornea to reduce or eliminate visual defects known as nearsightedness (myopia), farsightedness (hyperopia), and astigmatism (distorted vision).

5. For purposes of this order, "*respondents*" shall mean ECA and ICKRS, corporations, their successors and assigns and their officers; Sami G. El Hage, O.D., individually and as an officer of the corporations; and each of the above's agents, representatives and employees.

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

I.

It is ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, sale, or distribution of Controlled Kerato-Reformation ("CKR") services or any substantially similar service, in or affecting commerce, shall not represent, in any manner, expressly or by implication that:

A. Such service corrects nearsightedness and astigmatism thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses, for nearsightedness and astigmatism;

B. All or most people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear devices used with such service occasionally or at night; or

C. Studies at the University of Houston College of Optometry (1976-77), University of California at San Diego Medical School (1980), University of California at Berkeley College of Optometry (1982-83), and Pacific University College of Optometry (1984), prove that such service is safe and effective in correcting, controlling, or improving nearsightedness, farsightedness, and astigmatism.

II.

It is further ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, sale, or distribution of CKR services or

any substantially similar service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

A. The number of people who can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear devices used with such service occasionally or at night;

B. The number of people who will experience stabilized vision after only a few weeks or months of treatments under such service;

C. The ability of such service to prevent or reverse deteriorating nearsightedness in children;

D. The comparative safety of such service and contact lenswear;

E. The comparative effectiveness of such service and refractive surgical methods in eliminating nearsightedness, farsightedness, or astigmatism;

F. The number of people whom such service has helped achieve normal vision; or

G. The ability of such service to provide pilots or other career professionals with stable visual acuity sufficient to meet occupational vision requirements;

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

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

IV.

It is further ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, sale, or distribution of any service, procedure, or product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the service, procedure, or product represents the typical or ordinary experience of

members of the public who use the service, procedure, or product, unless:

A. The representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

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

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

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

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. 255.0(b).

V.

It is further ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, sale, or distribution of ophthalmic services, procedures, or products, purporting to treat, mitigate, or cure visual defects known as nearsightedness (myopia), farsightedness (hyperopia), or astigmatism (distorted vision), in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the relative or absolute efficacy, performance, benefits, safety, or success of any such service, procedure, or product, unless the representation is true and, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VI.

It is further ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, sale, or distribution of any service, procedure, or product in or affecting commerce, shall:

A. Not disseminate to any optometrist or eye care provider any advertising, promotional, or related marketing material containing any representations prohibited by this order;

B. Send by certified mail, return receipt requested, an exact copy of the notice attached hereto as Attachment A to each optometrist or eye care provider that attended a seminar on CKR services at which respondents taught since January 1, 1994, within thirty (30) days of the date this order becomes final, to the extent that such persons are known to respondents through a diligent search of their records, including but not limited to computer files, sales records, and inventory lists. The mailing shall not include any other documents; and,

1. In the event that respondents receive any information that subsequent to receipt of Attachment A any optometrist or eye care provider mentioned in subpart B of this part is using or disseminating any advertisement or promotional material furnished by a respondent that contains any representation prohibited by this order, if respondents have any agreement with that optometrist or eye care provider to market and/or perform CKR services, respondents shall immediately notify the optometrist or eye care provider that respondents will terminate said optometrist or eye care provider's right to market and/or perform CKR services if he or she continues to use such advertisements or promotional materials; and,

2. If respondents have any agreement with that optometrist or eye care provider to market and/or perform CKR services, respondents shall terminate any optometrist or eye care provider mentioned in subpart B of this part about whom respondents receive any information that such person has continued to use advertisements or promotional materials furnished by a respondent that contain any representation prohibited by this order after receipt of the notice required by subpart B of this part; and

C. For a period of three (3) years following service of this order, send by certified mail, return receipt requested, an exact copy of the notice attached hereto as Attachment A to each optometrist or eye care provider to whom respondents teach a seminar on CKR services after the date of service of this order who has not previously received the notice. Such notices shall be sent no later than the earliest of: (1) the execution of a sales or training agreement or contract between respondents and the prospective optometrist or eye care provider; or (2) the receipt and deposit of payment from a prospective optometrist or eye care provider of any consideration in connection with the sale of any service or rights associated with CKR. The mailing shall not include any other documents.

VII.

It is further ordered, That respondents ECA and ICKRS and their successors and assigns, and respondent Sami G. El Hage, O.D., shall, for three (3) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

C. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for such representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

It is further ordered, That respondents ECA and ICKRS, and their successors and assigns, and respondent Sami G. El Hage, O.D., shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, independent contractors and representatives having responsibilities with respect to the subject matter of this order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

It is further ordered, That respondents ECA and ICKRS, and their successors and assigns, for a period of five (5) years after the date of issuance of this order, shall notify the Commission at least thirty (30) days prior to any change in their legal form of organization, including but not limited to dissolution, assignment, sale or other change that would result in the emergence of a successor partnership(s) or corporation(s), the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in respondents' name or address. Provided, however, that, with respect to any proposed change in respondents' legal form about which respondents learn less than thirty (30) days prior to the date such action is to take

place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondent Sami G. El Hage, O.D., for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current businesses or employment, or of his affiliation with ECA or ICKRS, or of his affiliation with any new business or employment. The notice shall include the respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XI.

It is further ordered, That respondents ECA and ICKRS, and their successors and assigns, and respondent Sami G. El Hage, O.D., shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XII.

This order will terminate on May 18, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

ATTACHMENT A

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
[To Be Printed on ICKRS, Inc. letterhead]

[date]

Dear [optometrist or eye care provider]:

Eye Research Associates, Inc., d/b/a Eye Care Associates, ICKRS, Inc., d/b/a International Controlled Kerato Reformation Society, and Sami G. El Hage, O.D., recently settled a civil dispute with the Federal Trade Commission (FTC) involving advertising claims for our Controlled Kerato-Reformation (CKR) service. As a part of the settlements, we must make sure that you stop using or distributing advertisements or promotional materials that include these claims. Please see the attached settlement agreement for detailed information.

Our settlement with the FTC prohibits us from making false or unsubstantiated claims for CKR or any "substantially similar service," defined as "any ophthalmic service or procedure using contact lenses or similar devices to reshape the cornea to reduce or eliminate visual defects known as nearsightedness (myopia), farsightedness (hyperopia), and astigmatism (distorted vision)." Although we do not admit that the FTC's allegations are true, we have agreed to send this letter as a part of our settlement.

Sincerely yours,

Sami G. El Hage, O.D.
President
ICKRS, Inc.

IN THE MATTER OF

LANDAMERICA FINANCIAL GROUP, INC.

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-3808. Complaint, May 20, 1998--Decision, May 20, 1998

This consent order requires, among other things, the Virginia-based corporation to divest, to Commission-approved acquirers, prior to the acquisition of Reliance Group, all of its rights, title and interest in certain title plants serving designated areas. In addition, the consent order requires the respondent to also divest all user or access agreements pertaining to each divested title plant, and to continue to provide computer and other services previously provided for each divested title plant.

Appearances

For the Commission: *Patrick Roach, Michael Antalics and William Baer.*

For the respondent: *John Graybeal, Parker, Poe, Adams & Bernstein, Raleigh, N.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation ("LTC"), a corporation subject to the jurisdiction of the Commission, directly and through one of its subsidiaries, has entered into an agreement for the acquisition of certain assets that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and that such acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

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

a. "*Respondent*" or "*LTC*" means LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by LandAmerica Financial Group, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

b. "*Reliance Group*" means Reliance Group Holdings, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Reliance Group Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

c. "*Title plant*" means a privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.

d. "*Title plant services*" means providing selected information contained in a title plant to a customer or user or permitting a customer or user to have access to information contained in a title plant.

II. LANDAMERICA FINANCIAL GROUP, INC.

2. LTC is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its office and principal place of business located at 6630 West Broad Street, Richmond, Virginia.

3. LTC is the sole owner of Lawyers Title Insurance Corporation.

4. LTC is, and at all times relevant herein has been, a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

III. THE ACQUISITION

5. On December 11, 1997, LTC and its subsidiary Lawyers Title Insurance Corporation entered into an Amended and Restated Stock Purchase Agreement pursuant to which LTC agreed to purchase the

title insurance operations of Reliance Group, including Commonwealth Land Title Insurance Company and Transnation Title Insurance Company.

IV. TRADE AND COMMERCE

6. The relevant line of commerce is the production and/or sale of title plant services. Title plant services are used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with the underwriting and issuance of title insurance policies and for other purposes.

7. The relevant sections of the country are:

Washington, District of Columbia
Brevard County, Florida
Broward County, Florida
Clay County, Florida
Indian River County, Florida
Pasco County, Florida
St. Johns County, Florida
St. Lucie County, Florida
Ingham County, Michigan
Oakland County, Michigan
Wayne County, Michigan
St. Louis City & County, Missouri

8. The relevant markets set forth in paragraphs six and seven are highly concentrated.

9. There are no commercially reasonable substitutes for title plant services in the relevant markets set forth in paragraphs six and seven.

10. Entry into the relevant markets is difficult or unlikely to occur at a sufficient scale to deter or counteract the effect of the acquisition described in paragraph five.

11. LTC and Reliance Group, through its title insurance operations, are actual competitors in the relevant markets set forth in paragraphs six and seven.

V. EFFECT OF THE ACQUISITION

12. The effect of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct competition between LTC and Reliance Group in the relevant markets;
- b. By increasing the likelihood that LTC will unilaterally exercise market power in the relevant markets; and
- c. By increasing the likelihood of collusion in the relevant markets.

13. All of the above increase the likelihood that firms in the relevant markets will increase prices and restrict output both in the near future and in the long term.

VI. VIOLATIONS CHARGED

14. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

15. The acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by the respondent LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation, of certain assets of Reliance Group Holdings, Inc., and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act and the Clayton Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the

executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its office and principal place of business located at 6630 West Broad Street, Richmond, Virginia.

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

A. "*Respondent*" or "*LTC*" means LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by LandAmerica Financial Group, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. The term "*Reliance Group*" means Reliance Group Holdings, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Reliance Group Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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

D. The term "*title plant*" means a privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.

E. The "*Acquisition*" means the acquisition of the title insurance operations of Reliance Group by LTC, in exchange for the acquisition by Reliance Group of a minority voting interest in LTC and other

consideration, as described in the Amended and Restated Stock Purchase Agreement dated as of December 11, 1997.

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, within six months from the date the agreement containing consent order is signed by respondent, all of its rights, title and interest in the properties described below:

1. For each of the following counties or other local jurisdictions, either the rights, title and interest prior to the Acquisition of LTC or the rights, title and interest prior to the Acquisition of Reliance Group in all title plants serving such county or local jurisdiction:

Washington, District of Columbia
Brevard County, Florida
Broward County, Florida
Clay County, Florida
Indian River County, Florida
Pasco County, Florida
St. Johns County, Florida
St. Lucie County, Florida
Ingham County, Michigan
Oakland County, Michigan
Wayne County, Michigan
St. Louis City & County, Missouri

2. Respondent shall also divest all user or access agreements pertaining to each divested title plant. At the acquirer's option at the time of purchase, and at a commercially reasonable price, LTC shall continue to provide computer and other services previously provided for each divested title plant by LTC or Reliance Group, for a period up to three years from the date such title plant is divested, and shall assist the buyer in transferring the computer and other services to any other provider of such services.

B. Respondent shall divest the properties specified in paragraph II.A 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 divestiture is to ensure the continued use of the divested title plants as ongoing, viable title plants used in the production and/or sale of title information, and

to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the properties as specified in paragraph II.A, respondent shall take such actions as are necessary to maintain the viability and marketability of such properties and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the properties. LTC shall comply with the following requirements with respect to all title plants serving the counties or other local jurisdictions listed in paragraph II.A in which either LTC or Reliance Group has any rights, title or interest, during the period prior to the completion of the required divestiture for each such county or other local jurisdiction:

1. LTC shall cause the title plants to be maintained, including but not limited to updating the records and/or indices contained in the title plants, to the extent and in the manner maintained prior to the Acquisition.

2. LTC shall cause to be maintained in good faith all contracts or agreements for access to the title plants subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable under the terms of such contracts or agreements.

3. LTC shall cause access to the title plants to continue to be provided to accessors whose contracts or agreements for access to the title plants expire by their terms prior to the completion of the required divestiture, in good faith on terms, conditions and stipulations identical to those set forth in such contracts or agreements.

III.

It is further ordered, That:

A. If LTC has not divested, absolutely and in good faith and with the Commission's prior approval, all of the properties specified in paragraph II.A within six months from the date the agreement containing consent order is signed by respondent, the Commission may appoint a trustee to accomplish the required divestitures. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, LTC shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to

it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

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

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

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to accomplish the divestiture of the properties specified in paragraph II.A that have not been divested by LTC, including the authority, subject to the approval of the Commission, with respect to any of the listed counties or local jurisdictions as to which divestiture has not been completed by LTC, to determine whether to divest the rights, title and interest prior to the Acquisition of LTC or the rights, title and interest prior to the Acquisition of Reliance Group in title plants serving such county or local jurisdiction.

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

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the properties specified in paragraph II.A that have not been divested by LTC, and to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the trustee's period for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate expeditiously the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, 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.

7. 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 the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture 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 the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's completing divestiture of the properties specified in paragraph II.A that have not been divested by LTC.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses

incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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

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

11. The trustee shall have no obligation or authority to operate or maintain the properties specified in paragraph II.A that have not been divested by LTC.

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

IV.

It is further ordered, That:

A. For a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant serving any county or other local jurisdiction specified in paragraph II.A, where at the time of the acquisition the respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction; or

2. Acquire any assets (other than in the ordinary course of business) or ownership interest in a title plant serving any county or other local jurisdiction specified in paragraph II.A, where at the time of the acquisition the respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction.

Notification is not required to be made pursuant to this paragraph IV with respect to any acquisition by respondent of a copy of title records or other information from a person or entity which thereafter retains the original information in its ownership and control, and

where competition in the ordinary course between the parties is not otherwise restrained.

B. Notification pursuant to this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. In addition to the information required to be supplied on such Notification and Report Form pursuant to the above-referenced regulation, the respondent shall submit the following supplemental information in respondent's possession or reasonably available to respondent:

1. The name of each county or local jurisdiction to which the terms of paragraph IV.A.1 or 2 are applicable;
2. A description of the title plant assets or interests that are being acquired; and
3. With respect to each title plant serving each county or local jurisdiction to which the terms of paragraph IV.A.1 or 2 are applicable (including title plants in which the respondent has a direct or indirect ownership interest as well as other title plants known to the respondent) the names of all persons or entities who hold any direct or indirect ownership interest in the title plant and the percentage interest held by each; the time period covered by each category of title records contained in the title plant; whether the respective categories of title records are regularly being updated; the indexing system or systems used with respect to each category of title records; and the names of all persons, including but not limited to title insurers or agents, who have access to the title plant.

C. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered, That:

A. Within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondent has fully complied with the provisions of paragraphs II and III 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, and has complied with paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

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

VI.

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

VII.

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

A. Access, during office hours 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; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.