

Complaint

120 F.T.C.

IN THE MATTER OF

BODY WISE INTERNATIONAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3617. Complaint, Sept. 25, 1995--Decision, Sept. 25, 1995*

This consent order prohibits, among other things, a California-based company from falsely representing that any nutritional supplement, food or drug contains any ingredient that can cause or contribute to achieving or maintaining weight loss without diet or exercise, and bars unsubstantiated weight-loss, weight-loss maintenance, cholesterol reduction, or other health benefit claims for such products. In addition, the consent order prohibits the deceptive use of consumer testimonials or professional endorsements, and requires clear disclosures of any financial connection between endorsers and the respondent or its products.

Appearances

For the Commission: *David M. Newman and Jeffrey A. Klurfeld.*
For the respondent: *Robert Armstrong, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Body Wise International, Inc., a Nevada corporation (hereinafter "Body Wise"), has 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:

PARAGRAPH 1. Respondent Body Wise is a Nevada corporation with its principal office and place of business located at 6350 Palomar Oaks Court, Suite A, Carlsbad, California.

PAR. 2. Respondent has advertised or otherwise promoted, offered for sale, sold and distributed nutritional supplements, including but not limited to Future Perfect, Right Choice AM, Right Choice PM and The Reshape Formula (hereinafter "weight loss products"), as weight loss products, through a multi-level network of distributors. Respondent has also advertised or otherwise promoted,

offered for sale, sold and distributed Cardio-Wise, a nutritional supplement, as a product that reduces serum cholesterol. Each of respondent's nutritional supplements is a "food" or "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52, 55.

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

PAR. 4. Respondent has disseminated or caused to be disseminated advertisements and promotional materials for its weight loss products, including but not necessarily limited to, the attached Exhibits A-H. Respondent has disseminated these advertisements and promotional materials directly to consumers and has provided these advertisements and promotional materials to its distributors for dissemination to consumers. These advertisements and promotional materials contain the following statements:

1. "Diets Don't Work, Body Wise Does" (Exhibit A)
 "Diets don't work . . . *Body Wise Does!*" (Exhibit C)
 "DIETS DON'T WORK *BODY WISE DOES!*" (Exhibit D)
2. "The Body Wise Weight Management System has been designed to assist you to lose fat and create lean body mass -- all without drugs, deprivation or denial..." (Exhibit A)
 "The Body Wise Weight Management System is designed to assist you in losing fat and creating lean body mass -- all without drugs, deprivation or denial." (Exhibit B)
 "The Body Wise Weight Management System has been designed to assist you to lose fat and create lean body mass -- all without drugs, deprivation, or denial ..."
 (Exhibit C)
3. "Results That Can Last a Lifetime" (Exhibit C)
4. "Whether based on drugs, deprivation or denial, [diets] almost always result in on-again, off-again cycle of weight bounce . . . Body Wise can help provide a long-term solution." (Exhibit A)
5. "LOSE FAT -- FOR LIFE!" (Exhibit B)
6. "I have lost 39 pounds, four inches in the waist, lowered my cholesterol 42 points and reduced my body fat by 14 percent." (Exhibit A)
 "I lost 39 pounds, 4 inches in my waist, lowered my cholesterol 42 points and reduced my body fat 4%." (Exhibit C)
 "I've lost 39 pounds, four inches in the waist, lowered my cholesterol 42 points and reduced my body fat by 14%." (Exhibit D)
 "I've lost 39 pounds, lowered my cholesterol 42 points and reduced my body fat by 14 percent." (Exhibit F)

"I have lost 39 pounds, 4 inches in the waist, lowered my cholesterol 42 points, and reduced my body fat by 4%." (Exhibit H-2)

7. "As an Orthopedic Surgeon, Body Wise has my endorsement. In six weeks I lowered my cholesterol 60 points, triglycerides over 100 points and lost 12 pounds!" (Exhibit A)

8. "My patients on the program are losing fat and feeling great. I personally lost 17 pounds and five percent body fat!" (Exhibit A)

9. "My patients are doing exceptionally well on this program. My staff and I marvel at their lab results, weight loss and improved overall well-being. Personally, I have lost 15 pounds and lowered my cholesterol 45%." (Exhibit E)

"My patients are doing exceptionally well on this program. My staff and I marvel at their lab results, weight loss and improved overall being. Personally, I have lost 15 pounds and lowered my cholesterol 45 points." (Exhibit G)

10. "I LOST 58 POUNDS! My waist went from an extended 40 inches to a comfortable 34." (Exhibit B)

"In just three months I lost 58 pounds and lowered my cholesterol level 104 points. The inches fell off!" Exhibit C)

"I lowered my cholesterol level 104 points and lost 58 pounds in scale weight! My waist went from an extended 40 inches to a comfortable 34." (Exhibit F-2)

11. "In 30 days I lost 3½ inches from my waist, 4 inches from my hips and my body fat dropped 11%." (Exhibit D)

"My body fat dropped 11 percent while my cholesterol level was lowered 26 points! I lost 3½ inches from my waist and four inches from my hips!" (Exhibit F-2)

12. "In seven weeks, I lost 27 pounds, 24 inches of body fat and lowered my cholesterol 43 points!" (Exhibit G)

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-H, respondent has represented, directly or by implication, that the use of respondent's weight loss products will enable consumers to lose weight without dieting.

PAR. 6. In truth and in fact, the use of respondent's weight loss products will not enable consumers to lose weight without dieting. Therefore, respondent's representation as set forth in paragraph five was and is false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-H, respondent has represented, directly or by implication, that the use of respondent's weight loss products will enable consumers to maintain significant long-term or permanent weight loss.

PAR. 8. Through the use of the statements contained in the advertisements and promotional material referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-H, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph seven, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 9. In truth and in fact, at the time it made the representation set forth in paragraph seven, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph eight was and is false and misleading.

PAR. 10. Respondent has disseminated or caused to be disseminated advertisements and promotional materials for Cardio-Wise, including but not necessarily limited to, the attached Exhibits C-D and G. Respondent has disseminated these advertisements and promotional materials directly to consumers and has provided these advertisements and promotional materials to its distributors for dissemination to consumers. These advertisements and promotional materials contain the following statements:

1. "Formulated for a cholesterol conscious America, Cardio Wise offers extra nutritional insurance where additional lipid management is indicated."

Highlight Ingredients: "Niacin"

"This crystalline ingredient has been clinically demonstrated to lower serum cholesterol." (Exhibit D)

2. "Cardio Wise® is one of the miracles in nutrition offered by Body Wise for a cholesterol conscious America. It focuses on the use of Niacin . . . because it expands the blood capillaries . . . [and] has been found effective in . . . lowering the level of cholesterol in the blood." (Exhibit C-3)

3. "FOR OPTIMUM HEALTH . . .

Special emphasis is on nutrients for . . . cholesterol management through use of niacin . . ." (Exhibit H)

4. "In rigorous studies, biologically active chromium has been shown to:

* * *

"Lower both total cholesterol and LDL cholesterol." (Exhibit C-2)

5. "Grapefruit Pectin Cellulose -- Which has been demonstrated clinically to be the preferred form of fiber for cholesterol reduction." (Exhibit C-3)

6. "I reduced my cholesterol over 100 points! I began taking Cardio Wise shortly after major surgery. My cholesterol dropped 113 points in six weeks." (Exhibit D)

PAR. 11. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph ten, including but not necessarily limited to the advertisements and promotional literature attached as Exhibits C-D and G, respondent has represented, directly or by implication, that:

- (a) Cardio Wise significantly reduces serum cholesterol levels; and
- (b) Scientific studies on the ingredients in Cardio Wise demonstrate that Cardio Wise significantly reduces serum cholesterol levels.

PAR. 12. Through the use of the statements contained in the advertisements and promotional material referred to in paragraph ten, including but not necessarily limited to the advertisements and promotional literature attached as Exhibits C-D and G, respondent has represented, directly or by implication, that at the time respondent made the representations set forth in paragraph eleven, it possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 13. In truth and in fact, at the time respondent made the representations set forth in paragraph eleven, it did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph twelve was and is false and misleading.

PAR. 14. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraphs four and ten, including, but not necessarily limited to, the attached Exhibits A-H, respondent has represented, directly or by implication, that testimonials from consumers appearing in advertisements for respondent's weight loss products and for Cardio Wise reflect the typical or ordinary experience of members of the public who have used the products.

PAR. 15. In truth and in fact, the testimonials from consumers appearing in advertisements for respondent's weight loss products and for Cardio Wise do not reflect the typical or ordinary experience of members of the public who have used the products. Therefore, the representation set forth in paragraph fourteen was and is false and misleading.

PAR. 16. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four and ten, including, but not necessarily limited to, the attached Exhibits A-H, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph fourteen, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 17. In truth and in fact, at the time it made the representation set forth in paragraph fourteen, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, respondent's representation as set forth in paragraph sixteen was and is false and misleading.

PAR. 18. The advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the attached Exhibits A-H, contain endorsements of respondent's products by physicians, other health care professionals, and lay persons who are distributors of Body Wise products and who derive income from the sale of Body Wise products. Respondent has failed to disclose, either in its advertising and promotional materials or otherwise, that the physicians, other health care professionals and lay persons whose endorsements of respondent's products are contained in respondent's advertising and promotional materials are distributors of Body Wise products and may have a financial interest in promoting the sale of Body Wise products. This fact would be material to consumers in their purchase decision regarding respondent's products. The failure to disclose this fact, in light of the representations made, was and is a deceptive practice.

PAR. 19. In the course and conduct of its business, respondent actively recruits physicians and other health-care professionals as Body Wise distributors. Respondent directs such physicians and other health-care professionals to endorse the use of Body Wise products to individual consumers on behalf of other Body Wise distributors. The physicians and other health-care professionals are affiliated with these other Body Wise distributors and derive income from their sale of Body Wise products. Respondent has failed to disclose, in its advertising or promotional materials or otherwise, that the physicians and other health-care professionals who endorse respondent's products to individual consumers, on behalf of other distributors, have a material connection to respondent, in that they are also Body Wise distributors with a direct financial interest in

promoting the other distributors' sale of Body Wise products. This fact would be material to consumers in their purchase and use decisions regarding respondent's products. In light of respondent's practice of directing such physicians and other health-care professionals to endorse respondent's products, the failure to disclose this fact was and is a deceptive act or practice.

PAR. 20. The acts and practices of respondent 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, 15 U.S.C. 45(a) and 52.

EXHIBIT A

Spectacular Weight Loss!



Reshape Your Future

YOUR BODY WISE INTERNATIONAL INDEPENDENT CONSULTANT IS:

SP2 © 1991. Future Perfect, The Reshape Program, Right Choices and Reshaping America are trademarks of Body Wise International, Inc. All Rights Reserved. All statements regarding individual health and medical claims are reflections of individual experience and opinion of Body Wise International Independent Consultants and do not constitute claims by Body Wise International, Inc. CODE #244

The Body Wise Weight Management System is Reshaping America!

Diets Don't Work, Body Wise Does

Most Americans are at nutritional risk. Over 34 million people are afflicted with potentially life-threatening obesity. To complicate matters, according to a USDA Food Consumption Survey, not a single person of more than 21,500 surveyed consumed 100 percent of the Recommended Dietary Allowances for 10 key nutrients. This statistic alone establishes the need for responsible nutritional supplementation. Quite simply, our foods no longer support a condition of optimum health.

Part of the Problem is Lack of Knowledge

Despite what we now know about weight loss and weight gain, people still resort to dieting to lose weight. Yet, the evidence is clear: Diets Don't Work! Whether based on drugs, deprivation or denial, they almost always result in an on-again, off-again cycle of weight bounce. Nothing is more frustrating than gaining back more than you lose. Body Wise can help provide a long-term solution.

If Diets Don't Work, Then What Does?

Scientists now emphasize nutritional supplementation and proper exercise as keys to optimum health. Add to this the U.S. Surgeon General's recommendations on how to eat right, which are reduce consumption of fat, achieve and maintain a desirable body weight; increase consumption of complex carbohydrates and fiber, and reduce intake of sodium and alcohol.

Body Wise Results

The Body Wise Weight Management System has been designed to assist you to lose fat and create lean body mass — all without drugs, deprivation or denial which result in the on-again, off-again cycle of weight bounce so often experienced with conventional weight-loss programs.

"As an Orthopedic Surgeon, Body Wise has my endorsement. In six weeks I lowered my cholesterol 60 points, triglycerides over 100 points and lost 12 pounds!"
Richard Saxey, M.D.
Mansfield, OH

"Over the past sixteen weeks, I have lost 39 pounds, four inches in the waist, lowered my cholesterol 42 points and reduced my body fat by 14 percent. I am very pleased to offer my patients this quality nutrition management program."
R. Stephen Jennings, M.D.
Huntington Beach, CA

"I started taking the Body Wise Products and something beautiful happened to me. I lost 35 pounds and six inches off my waist. I had more energy than I had ever had in my whole lifetime!"
Alice Verfurth
Springfield, MO

"I lost 43 pounds, dropped four dress sizes and reduced my cholesterol 60 points. The increased vitality and energy was noticeable right away, creating a tremendous effect on my productivity and overall sense of well-being."
Jan Anderson
San Diego, CA

"My patients on the program are losing fat and feeling great. I personally lost 17 pounds and five percent body fat!"
Michael F. Draimondo, D.C.
Huntington Beach, CA

"I lost 25 pounds with the Body Wise Weight Management System. The program is easy and it works! I feel fantastic and ten years younger. Good-bye fat!"

Exhibit A

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EXHIBIT B

Body Wise is Reshaping America™!



"I LOST 58 POUNDS!"

"My waist size went from an extended 40 inches to a comfortable 34. My results are proof of this dynamic health and nutrition program!"

Jeff Gordon
Henderson, NV



LOSE FAT — FOR LIFE!

The Body Wise Weight Management System is designed to assist you in losing fat and creating lean body mass — all without drugs, deprivation or denial.

Through the dynamic and powerful Body Wise educational video and nutritional supplements you will experience the techniques of personal empowerment and with the use of the Body Wise nutritional supplements you will restore and maintain your body's vitality.

Body Wise is your passport to freedom from fat!

- ◆ Fat Reduction
- ◆ Hunger Control
- ◆ Muscle Definition



The Body Wise Weight Management System

- ◆ **Future Perfect Drink**
- ◆ **Right Choice AM /PM Multi Formula Caplets**
- ◆ **The Reshape Formula**
- ◆ **Weight Management System Video**
- ◆ **Fat Gram Counter**

★ *The Networking Company that's Reshaping America!*

Body Wise
INTERNATIONAL, INC.

Exhibit B

EXHIBIT B-2

Body Wise Benefits Every Body!



Body Wise Benefits Every Body!

"The Body Wise Weight Management System and a personal exercise routine served me well in my research on high level athletes."
James S. Lindberg, M.D.
University of California
Irvine School of Medicine



Bruce Mathison, Omaha, Nebraska
NFL Quarterback 1983-1988
Body Wise Consultant



James Mizner, Triathlete and Marianne Berglund, Road Racing Champion
La Jolla, California
Body Wise Consultants



Mark Mathews, Kansas City, Missouri
Mr. Missouri, 1990
Body Wise Consultant



Lowered Cholesterol!
"In one month with Body Wise, I lost 25 pounds and dropped 7% body fat. I lowered my cholesterol 50 points, kept my strength and maintained the intensity of my workouts. I'll use Body Wise the rest of my life."
Craig Chambers
Co-Owner Health & Fitness Club
Kansas City, Missouri



Fantastic Results!
"The results are fantastic! In 30 days, I lost 3 1/2 inches from my waist, 4 inches from my hips and my body fat dropped 11%. With all this extra energy, I can't help but share the excitement about Body Wise."
Christine Padgett
Body Wise Consultant
San Diego, California



Body Wise Works!
"In my first 30 days on Body Wise, I lost 15 unwanted pounds of fat. The products are outstanding. I feel the difference every day!"
Gary DeWitt
Body Wise Consultant
Fountain Valley, California

To make a *Body Wise* decision for your future, call me:

- ★ Health Enhancement
- ★ Weight Management
- ★ Cholesterol Concern
- ★ Athletic Performance



Body Wise
INTERNATIONAL, INC.

Exhibit B-2

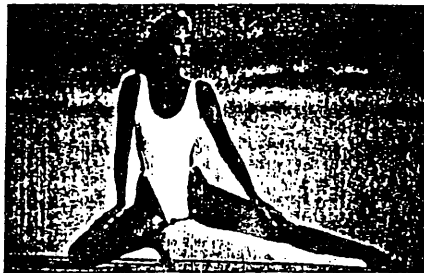
Carlsbad, California 92009

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EXHIBIT C

Diets don't work...

Body Wise Does!**SPECTACULAR WEIGHT LOSS****Results That Can Last A Lifetime™**

The *Body Wise* Weight Management System has been designed to assist you to lose fat and create lean body mass – all without drugs, deprivation, or denial which result in the on-again, off-again cycle of weight bounce so often experienced with conventional weight-loss programs.

In 16 weeks I lost 39 pounds, 4 inches in my waist, lowered my cholesterol 42 points, and reduced my body fat 4%. I am now recommending the *Body Wise* program to my patients.
R. Stephen Jennings, M.D.
Huntington Beach, CA

In four months time I lost 43 pounds and reduced my body fat 5%. My wife Marilyn lost 12 pounds of fat, 3 inches in her waist, 2 inches in her thighs, and reduced her body fat 8%.
Marc & Marilyn Wilson
Burling, IL

I dropped 6 inches from my waist, lost 55½ pounds, lowered my cholesterol 64 points. I feel 20 years younger. It's great to be 70 and feel 50 again!

Paul Williams
Lincoln, NE

I lost 20 pounds on the *Body Wise* Weight Management System. I lost 3½ inches off my waist and lowered my cholesterol 49 points. Now people tell me I look like a different person!

Bernice Bryant
Lincoln, NE

In just three months I lost 58 pounds and lowered my cholesterol 104 points. The inches fell off! It was an easy and amazing life changing process.

Jeff Gordon
Henderson, NV

*Thank You, Body Wise!*Your *Body Wise* Consultant is:

HEALTH SCIENCES, INC.
13301 WATERFORD RUN DRIVE
RIVERVIEW, FLORIDA 33569

Exhibit C

EXHIBIT C-2

The Body Wise™ Products

The Body Wise products form a system for optimal health and fitness that combines advanced nutritional technology with educational understanding and incorporates the latest breakthroughs in research in the fields of nutrition, human physiology and medicine.

Body Wise products focus on sound science and deliver personal results.

Body Wise™ Right Choice® AM/PM Formula

1. *Right Choice®* is the nutritional foundation upon which all Body Wise Nutrition systems are built—it provides the equivalent of daily nutritional insurance.
2. *Right Choice® AM & PM* are team players that help meet the body's very different needs for daytime and nighttime activity. There are certain nutritional factors that tend to empower our systems to give us energy for daytime activity, and other nutrients that tend to replenish our bone matrix and cell structure—which is particularly important for nighttime.
 - A. AM — The AM (morning) multi-formula is for use soon after we first awake. It furnishes the water and fat soluble vitamins with associated cofactors essential for energy empowerment.
 - B. PM — The PM (evening) multi-formula is specially formulated for replenishment of the skeletal matrix and essential cell repair. Sleep is a recreating event. Minerals are vital catalysts during this period. Proper nighttime nutrition, therefore, contributes to a coordination of rest and a feeling of well-being.
3. *Right Choice®* contains two advanced formulas:
 - A. Biopotential Nutrients — This process, unique to Body Wise, enrobes the water soluble vitamins with a protein so that our bodies can handle it easier. It makes the vitamins "cell ready" for maximum assimilation (few supplements take advantage of this technology, so much less of the nutritional value is absorbed by the body).
 - B. Krebs Cycle Chelates — This process goes beyond normal methods of chelation to maximize active absorption of minerals at the cellular level.
4. *Right Choice®* contains Krebs Cycle Chromium.

This is one of the spectacular, home-run nutrients in Right Choice. Krebs Cycle Chromium is a patented mineral similar in form to minerals found in mother's milk and exclusive to Body Wise. In rigorous studies, biologically active chromium has been shown to:

 - Increase lean body mass while burning off fat.
 - Lower both total cholesterol and LDL cholesterol.
 - Optimize the entire metabolic system & boost energy.
 - Increase tissue sensitivity to the anabolic hormone insulin.
 - Contribute directly to weight loss.
 - Improve glucose tolerance.
 - Increase glycogen storage.

Body Wise's Krebs Cycle Chromium works to support the proper functioning of insulin—one of the body's primary anabolic hormones. A key role of insulin is to "escort" amino acids out of the blood stream and into cells where they are assembled into enzymes, organ and muscle tissue. Without biologically active chromium, insulin simply doesn't work—and muscles aren't synthesized. With Body Wise's Krebs Cycle Chromium, tests confirm a 34% gain in lean body mass formulation when compared to control group. Additional highlight nutrients include:

 - A. Beta Carotene — A powerful, non-toxic vitamin, which according to government research, is required to prevent cancer in living tissue.
 - B. Esterified Vitamin C — A user-friendly, scientifically buffered Vitamin C which matches the mood of the body in order to prevent acid upset.
 - C. Boron — A unique mineral which research shows aids in calcium retention.

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EXHIBIT C-3

Page 2

Future Perfect®

Future Perfect® is a delicious carbohydrate meal replacement drink that contains several key nutrient factors to provide sustained energy and help lower body fat and increase lean body mass. Highlight nutrients include:

- A. **Inulin** — A botanical from the Dahlia root and Jerusalem Artichoke which has been shown to prolong carbohydrate metabolism and thus "stretch the meal."
- B. **Cruciferous Vegetables** — These nutrients, which are built right into the formula of Future Perfect, were reported in the June 1988 issue of a leading medical journal, the Journal Of Clinical Nutrition, to have a direct relationship between their intake and the potential for reducing cancer risk.
- C. **Micro-Encapsulated Fiber** — Future Perfect contains four grams of micro-encapsulated soluble fiber, a technical "plus" which assists the body in lowering cholesterol.
- D. **Amino Acid Mix** — Future Perfect contains a full spectrum of amino acids—including the essential ones—making it a complete meal.
- E. **Krebs Cycle Chromium** — This ingredient serves the same function as in the Right Choice PM formula, which is to capitalize on study findings that it can increase lean body mass while lowering body fat, total cholesterol and LDL cholesterol.

Cardio Wise®

Cardio Wise® is one of the miracles in nutrition offered by Body Wise for a cholesterol conscious America. It focuses on the use of Niacin, L-Carnitine, Co-Enzyme Q¹⁰, Krebs Cycle Chromium, Silymarin, Grapefruit Pectin and Guar Gum to attack several risk factors associated with premature aging:

- A. **Niacin** — Functions to produce energy from sugars, fats and protein. It's also said to maintain healthy skin, nerves and digestive systems. More importantly, because it expands the blood capillaries, allowing more throughput and literally not allowing fat to stick to the veins' walls, it has been found effective in improving circulation and lowering the level of cholesterol in the blood.
- B. **L-Carnitine** — This is a miracle nutrient in its own right, in that it has been demonstrated through research to control weight, prevent heart disease and increase athletic performance.
- C. **Krebs Cycle Chromium** — The above two nutrients, when used in conjunction with our friend Krebs Cycle Chromium, have a collateral function in cholesterol and fat reduction in the body.
- D. **Silymarin** — A botanical of European origin (milk thistle), Silymarin is reported to have ten times more anti-oxidant effectiveness than Vitamin E. In addition to being a free radical¹ scavenger, Silymarin creates anti-toxin activity in the liver and causes the body to use oxygen more effectively. In short it prevents premature aging.
- E. **Grapefruit Pectin Cellulose** — Which has been demonstrated clinically to be the preferred form of fiber for cholesterol reduction. In general, all fiber reduces cholesterol. Grapefruit Pectin Cellulose is among the most effective forms to accomplish this desired effect.
- F. **Co-Enzyme B-12** — To build muscle, particularly the heart muscle.

¹Free radicals harm body cells and may even begin the transformation of normal cells into cancer cells. Free radicals are easily generated from food, water and air; tobacco smoke is filled with them. G-Forces: The 34 Global Forces Restructuring Our Future; P-56, Frank Feather; William Morrow & Co.; 1980

Complaint

EXHIBIT D

CARDIO WISE

- Cholesterol Concern
- Fat Reduction
- Heart Health



Formulated for a cholesterol conscious America, Cardio Wise offers a rich nutritional insurance where additional lipid management is highlighted ingredients:

• Natural cholesterol ingredients has been clinically demonstrated to lower serum cholesterol. Ask your physician.

• L-Carnitine

• L-Carnitine assists in transforming fat into energy.

• Valeriate

This new super nutrient also has special properties for detoxification. It's Nature's Gift to human life.

WEIGHT MANAGEMENT SYSTEM

Love The Fat,
Hate The Lean!



Task System Contains:

- 1 month of Future Perfect Diet Chocolate & French Vanilla
- 1 month of Future Perfect Diet Raspberry Cheesecake
- The Recipe Formula*
- Personal Information Cassette
- Personalized Management System Video
- 1 month of Future Perfect Diet Raspberry Cheesecake
- 1 month of Future Perfect Diet Raspberry Cheesecake
- 1 month of Future Perfect Diet Raspberry Cheesecake

*Recipe Formula refers to the Weight Management System, as previously known as the Future Perfect Diet System.

DIETS DON'T WORK

BODY WISE DOES!



"The last 30 pounds I had in 42 pounds and reduced my body fat by 14%. This is amazing! Body Wise is a quality nutrition management program."

Dr. Stephen Averis, M.D.
Huntington Beach, CA



"The results are fantastic! In 30 days I lost 34 pounds from my body fat. I lost 11% of my body fat. With all this extra energy, I can't help share the excitement about Body Wise."

Debbie Padgett
San Diego, CA



"I reduced my cholesterol over 100 points! I began taking Cardio Wise shortly after major surgery. My cholesterol dropped 111 points in six weeks. My doctor could not believe it. I feel fantastic!"

Nancy Clark
Hayward, CA



"In one month with Body Wise, I lost 25 pounds and dropped 1% body fat. I lowered my cholesterol 50 points, kept my strength and maintained the intensity of my workouts. I'll use Body Wise the rest of my life."

Craig Oberlin, Co-owner
Health & Fitness Club
Kansas City, MO

YOUR BODY WISE CONSULTANT IS:

Body Wise International, Inc. is a leading manufacturer of nutritional supplements. Body Wise International, Inc. has a wide variety of products available for purchase. If you have a special order, we will be happy to accommodate you. For more information, please contact us at 1-800-850-8500.

RESHAPE YOUR FUTURE



"...independence of diet calls influence your health more than any other...
...inhibits your ability to...
...U.S. Supreme Court...
...C. F. Brown"

Body Wise
1-800-850-8500

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EXHIBIT E

"I am pleased to offer my patients this quality nutrition management program for treatment of hypertension, hypercholesterolemia, post-partum weight gain, high school sports nutrition and obesity. Patients strive for self-improvement. It is exciting to advise them toward achieving true preventative medicine for a life of wellness with longevity while feeling better than ever with renewed enthusiasm for living."

R. Stephen Jennings, M.D.
Huntington Beach, CA

"As a Family Physician, I have taken on the responsibility for the health of my patients. My patients are doing exceptionally well on this program. My staff and I marvel at their lab results, weight loss and improved overall well-being. Personally, I have lost 15 pounds and lowered my cholesterol 45%. I feel great and must admit the changes in my appearance have been a source of encouragement for my patients."

Robert W. Struck, M.D.
Lee's Virgin, VA

"After just six weeks on the Body Wise products, my cholesterol level dropped from 234 to 151, my body fat percentage dropped from 29.6% to 23% and my scale weight went from 212 pounds to 180 pounds. I am now at a cholesterol level of 127 and my body fat is 16%. My energy level has never been as high and I require 1-2 hours less sleep per night and feel great! Body Wise products are tops for one reason: They Work!"

Theodore H. Mortenson, Ph.D.
Santa Ana, CA

"Many of my patients complain of weight gain during their recovery from injury. I am extremely confident in recommending the Body Wise program for fat loss, cholesterol control, improved athletic function and optimal healing. These products have such serious results that patients continue on the program after their full recovery and return to athletics. The solid science behind the products and the education the system provides makes it a pleasure to share with other health professionals. I suggest that they take a serious look at this program for the future health and well-being of their patients."

Paul H. Hoesenpiper,
Physical Therapist
Huntington Beach, CA

Testimonials presented are based on personal experience and the results, if any, will vary from individual to individual.

Your Body Wise International Independent Consultant is:

© 1992 & 1993 Future Perfect, Right Choice AM & PM, Multi Formula, Capless, and The Reshape Formula are all trademarks of Body Wise International, Inc. All Rights Reserved. CODE 8291

**PERFORMANCE NUTRITION
FOR THE 22ND CENTURY**

**Body Wise
Wins Again!**



Bruce Mathison

Former NFL Quarterback

"Thanks to Body Wise, I lowered my body fat, cholesterol and lost inches. My NFL buddies are noticing the difference. I tell them, 'It's Body Wise.'"

Body Wise
INTERNATIONAL, INC.

EXHIBIT F

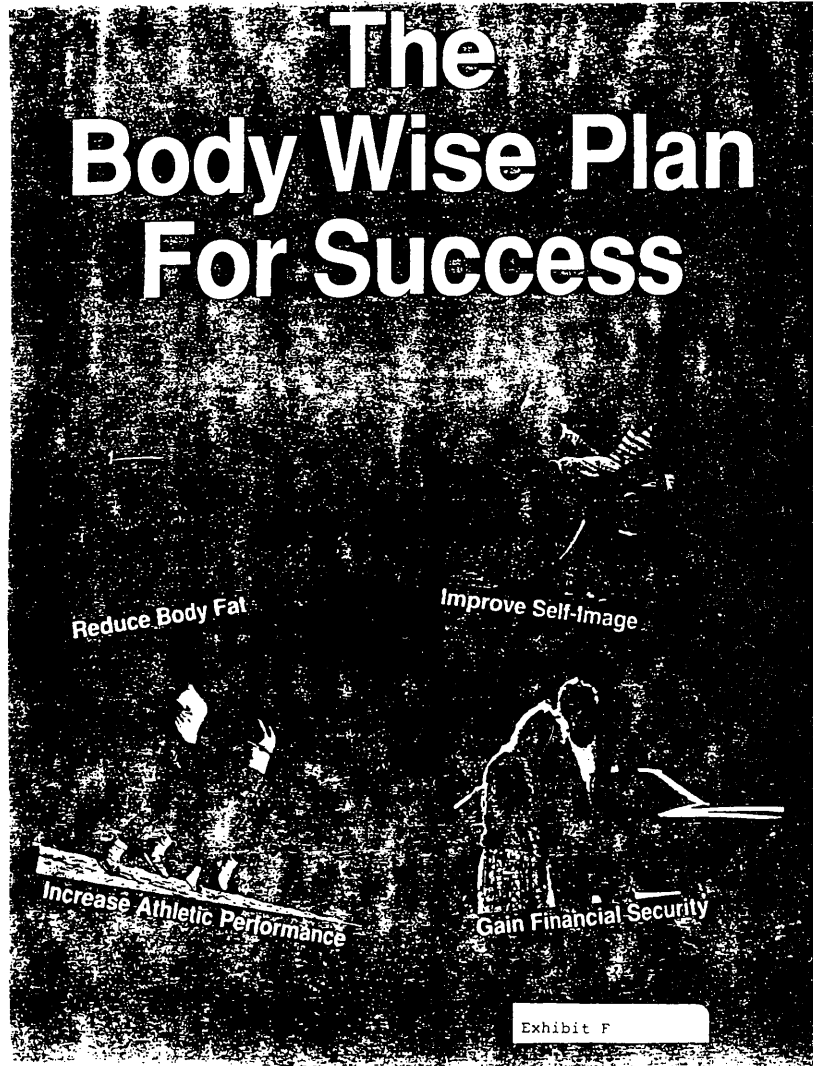


EXHIBIT F-2

SHARE THE DREAM OF SUCCESS

R. Stephen Jennings, M.D.
Huntington Beach, California
"I've lost 39 pounds, lowered my cholesterol 42 points and reduced my body fat by 14 percent. I am pleased to offer my patients this quality nutrition management program to achieve true preventive medicine goals."



Dan McCormick
Trabuco Canyon, California
"Body Wise has paid me \$50,000 over the past 90 days. I now have an income potential that I know will create massive financial abundance."



Susan Louder
Irvine, California
"What an incredible opportunity! Body Wise paid me \$34,000 for one year's part-time effort. This company has started a revolution in preventive health care, and I'm proud and excited to be on its leading edge."



Mary Nealon
Dallas, Texas
"The Body Wise Business Opportunity has proven to be extremely lucrative for me. I've earned over \$26,000 in 90 days! Body Wise has answered my concerns for a healthier life and happier lifestyle."



Bruce Mathison
Scottsdale, Arizona
"As a professional athlete using Body Wise, I experienced better concentration and recovery time, as well as increased energy and stamina. I was paid very well in an entertainment business, but my Body Wise checks continue to flow. I believe I will attain and pass the finances I earned my football."



Jeff Gordon
Renderson, Nevada
"I lowered my cholesterol level 104 points and lost 58 pounds in scale weight! My waist went from an extended 40 inches to a comfortable 34. I have never felt so strong and vibrant in my life!"



Christine Peddock
San Diego, California
"My body fat dropped 11 percent while my cholesterol level was lowered 36 points! I lost 3 1/2 inches from my waist and four inches from my hips! The results are so fantastic, I can't help but share the excitement about Body Wise!"

Results are not guaranteed. Body Wise International's Consultants are results of their individual effort and do not reflect performance by Body Wise International, Inc. and its management or staff. Any success you achieve will vary according to your own effort and your particular business. All statements regarding individual health and financial status are reflections of individual statements and opinions of the Body Wise International's Consultants and do not constitute Health Wise International, Inc. If you have a medical condition, we recommend you see a health professional. Future Profit, Cash Flow, The Network Formula, On-Go and Bonus are all trademarks of Body Wise International, Inc. All rights reserved. © 1992 Body Wise International, Inc.

CONTACT YOUR LOCAL CONSULTANT

The Networking Company that is Reshaping America!

Body Wise INDEPENDENT CONSULTANT

Exhibit F-2


EXHIBIT G

Congratulations!

You have taken the first easy steps for a **Healthier Future!**




Body Wise
International Inc.




"I am pleased to offer my patients this quality nutrition management program for treatment of hypertension, hypercholesterolemia, post-partum weight gain, high school sports nutrition and obesity. Patients strive for self-improvement. It's exciting to advise them toward achieving true preventative medicine goals and wellness longevity while feeling better than ever with renewed enthusiasm for living."

R. Stephen Jennings, M.D.
Huntington Beach, CA




"As a Family Physician I have taken on the responsibility for the health of my patients. My patients are doing exceptionally well on this program. My staff and I marvel at their lab results, weight loss and improved overall being. Personally, I have lost 15 pounds and lowered my cholesterol 45 points. I feel great and must admit the changes in my appearance have been a source of encouragement for my patients."

Robert W. Shreck, M.D.
Las Vegas, NV



"After just six weeks on the Body Wise products, my cholesterol level dropped from 234 to 151; my body fat percentage dropped from 29.6 percent to 23 percent and my scale weight went from 212 pounds to 180 pounds. I am now at a cholesterol level of 127 and my body fat is 16 percent. My energy level has never been as high and I require one to two hours less sleep per night and feel great! Body Wise products are tops for one reason: They Work!"

Frederick H. Mortensen, Ph.D.
Sarasota, FL



"Body Wise has changed my whole life! In seven weeks, I lost 27 pounds, 24 inches of body fat and lowered my cholesterol 43 points! My energy level has soared and I feel great!"

Jay Korman
Lompoc, CA

Testimonials presented are based on personal experience and the results, if any, will vary from individual to individual. If you have a medical condition, we recommend you consult with a physician.

Your Body Wise Consultant is:

Complaint

120 F.T.C.

EXHIBIT H



FOR OPTIMUM HEALTH...

The Advanced Nutrition System is designed to provide nutritional compliance through client education and access to Body Wise International chemical solvent-free nutritional supplements. Special emphasis is on nutrients for ATP production and cholesterol management through use of niacin, L-Carnitine, and Krebs Cycle minerals. The daily Future Perfect™ carbohydrate and protein drink is excellent as a low-fat alternative meal when used with an appropriate total daily caloric uptake and the Right Choice nutritional supplements.

FOR WEIGHT MANAGEMENT...

The Weight Management System is used to support your clinical assessment of client nutrient and caloric needs. Electrolyte uptake (especially potassium) fiber, and lipotropic ingredients are emphasized in formula design. The exclusive Reshape Formula™ contains ammonia scavengers as well as L-Carnitine and exclusive Krebs Cycle Chromium to optimize beneficial results and establish hunger control. The emphasis on fat reduction rather than weight loss enhances patient compliance.

All statements regarding health, nutrition, or performance of individual supplements and systems of Body Wise International are based on the information provided in the product literature, or otherwise, for the products, systems, and/or supplements. The information is not intended to be a substitute for medical advice. For information, please see the product literature.

DIETS DON'T WORK

The Body Wise International Weight Management System & Advanced Nutrition System



Michael F. Neenan, Ph.D., Body Wise Scientific & Medical Advisory Board

The Body Wise Advanced Nutrition and Weight Management Systems have been designed to assist your patients to develop and maintain healthy eating habits, lose fat and promote lean body mass -- without drugs, dietary deprivation or denial which results in cyclic weight "bounce," so often experienced with conventional "diet" programs. Your patients will have the opportunity to experience controlled "fat loss" and increased vitality with the use of the Body Wise nutritional supplements. Most importantly, these Body Wise nutrition systems include the most powerful educational video on nutrition ever produced!

For further information about the Body Wise Advanced Nutrition System™ or Weight Management System™ contact:

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NUTRITIONAL TECHNOLOGY

FOR THE 22ND CENTURY

The Professional Choice...



Exhibit H



EXHIBIT H-2

...To Better Health For Your Patients

Body Wise nutritional systems are designed to sensibly reduce body fat and excess cholesterol while helping to:

- BUILD LEAN BODY MASS
- ENHANCE ENERGY POTENTIAL
- INCREASE NUTRITIONAL COMPLIANCE
- PROMOTE IMPROVED HEALTH HABITS

Poor dietary habits have been shown to be one of the leading causes of diseases affecting all organ systems including the heart, the peripheral vascular system, stomach and digestive system, kidney's, skin, endocrine and central nervous system.

U.S. government surveys show that very few Americans receive the full RDA's of essential vitamins and minerals in their daily diets.

- Most Americans eat very little fiber.
- Most Americans eat too much fatty food.
- Most Americans do not eat enough complex carbohydrates.

Body Wise nutritional systems promote good eating habits, provide excellent nutritional supplementation and help lower cholesterol when used with a balanced low-fat diet.

I. Choccol, Alessandra P., and Helen A. Oshin, "Eating Behavior and associated arterial quality of diet," *Nutrition Systems Research Corporation*, New York, New York, 1987.

THE DIET HABIT THE HEALTH HABIT

- The Diet and Health Industries comprise one of the largest segments of our economy today.
- Many physicians have worked diligently with patients to lose weight by counting calories daily, frequently with dismal results.
- Quick weight loss diet programs rarely produce lasting results and can pose a serious health hazard to patients.



Robert W. Shreck, M.D.
Las Vegas, Nevada
Law Vegas, Nevada

"My patients are doing extremely well on the Body Wise program, especially my Type II Diabetics. I personally dropped 15 pounds and 40 points off my total cholesterol."

ROBERT W. SHERCK, M.D.
LAS VEGAS, NEVADA

"I have lost 39 pounds, 4 inches in the waist, lowered my cholesterol 42 points, and reduced my body fat by 4%. This is exciting! Professionally, I am very pleased to offer my patients this quality nutrition management program."

R. STEPHEN JENNINGS, M.D.
HUNTINGTON BEACH, CALIFORNIA

"I strongly endorse the Body Wise International products. I have seen and heard many testimonials from patients who feel new vigor, strength and sense of well-being, having shed pound after pound of unnecessary and potentially harmful body fat."

DENNIS S. MANN, D.O.
SEATTLE, WASHINGTON

THE MARKETING PROGRAM

The Body Wise International Business Opportunity is based on a method of marketing called Networking or person-to-person marketing. In other words, getting other people involved in the powerful Body Wise nutritional systems. Fellow professionals, associates, friends and even your patients will want to participate in the Body Wise Vision of creating a healthier, more vital America.

Income...

The opportunity for retail sales can assist in building your professional practice. The benefits of this program are enhanced patient compliance and patient referrals.



Exhibit H-2

Group Development...

The Body Wise International Consultants that you sponsor become part of your personal organization and you earn monthly rebates and commissions based on their sales efforts and your own.

DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the 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, 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 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 a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Body Wise International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office, principal place of business and mailing address at 6350 Palomar Oaks Court, Suite A, Carlsbad, California.

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

DEFINITIONS

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

A. "*Distributor*" means any person, other than direct employees of Body Wise, who has sold nutritional supplements on behalf of Body Wise or who has received any compensation in connection with the sale of nutritional supplements on behalf of Body Wise, whether such person is characterized as a consultant, associate, distributor or otherwise.

B. "*Competent and reliable scientific evidence*" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have 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.

I.

It is ordered, That Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting or assisting others in misrepresenting, in any manner, directly or by implication, that the nutritional supplement, food or drug:

a. Can cause, aid, facilitate or contribute to achieving or maintaining weight loss without a reduction in total caloric intake or an increase in exercise; or

b. Contains any ingredient that, individually or in connection with other ingredients, can cause, aid, facilitate or contribute to achieving

or maintaining weight loss without a reduction in total caloric intake or an increase in exercise.

II.

It is further ordered, That Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing or assisting others in representing, in any manner, directly or by implication, that the nutritional supplement, food or drug:

- a. Can cause, aid, facilitate or contribute to achieving or maintaining weight loss;
- b. Contains any ingredient that, individually or in connection with other ingredients, can cause, aid, facilitate or contribute to achieving or maintaining weight loss;
- c. Reduces, can reduce or helps reduce serum cholesterol levels;
- d. Contains any ingredient that, individually or in connection with other ingredients, reduces, can reduce or helps reduce serum cholesterol levels; or
- e. Provides, can provide, or helps provide any other health benefit;

unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with

the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV.

It is further ordered, That Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing or assisting others in representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of such nutritional supplement, food or drug represents the typical or ordinary experience of members of the public who use the nutritional supplement, food or drug, unless such representation is true and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation.

Provided, however, respondent may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondent discloses clearly, prominently, and in close proximity to the endorsement:

- a. What the generally expected performance would be in the depicted circumstances; or
- b. The limited applicability of the endorser's experience to what consumers may generally expect to achieve; *i.e.*, that consumers should not expect to experience similar results.

V.

It is further ordered, That Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, a material connection, when one exists, between a person providing an endorsement for any such product, as "endorsement" is defined in 16 CFR 255.0(b), and respondent or any other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product. For purposes of this order, "material connection" shall mean any relationship that might materially affect the weight or credibility of the endorsement and would not reasonably be expected by consumers.

VI.

It is further ordered, That Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating or assisting others in disseminating any advertisement which contains any reference to physicians or other health care professionals unless respondent discloses clearly and conspicuously that physicians and other health care professionals who endorse Body Wise products may be Body Wise distributors and have a financial interest in promoting the sale of Body Wise products.

VII.

Nothing in this order shall prohibit respondent from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VIII.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IX.

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

X.

It is further ordered, That for three (3) years following the dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, copies of:

A. All materials that were relied upon in disseminating such advertisement; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call

into question such representation, including complaints from consumers.

XI.

It is further ordered, That respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, and employees engaged in the preparation or placement of advertisements or other materials covered by this order.

XII.

It is further ordered, respondent shall distribute a copy of this order to each of its current distributors; provided that respondent may satisfy the requirements of this section with respect to current distributors by publishing the full text of this order clearly and prominently in any periodical which is published by respondent and which is distributed to all of its distributors.

XIII.

It is further ordered, That this order will terminate on September 25, 2015, or twenty 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 paragraph in this order that terminates in less than twenty 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 paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent 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 paragraph as though the complaint was never 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.

XIV.

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

Complaint

120 F.T.C.

IN THE MATTER OF

LOCAL HEALTH SYSTEM, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT*Docket C-3618. Complaint, Oct. 3, 1995--Decision, Oct. 3, 1995*

This consent order, among other things, prohibits the merger of the two largest hospitals in St. Clair County, Michigan, and requires the respondents, for three years, to notify the Commission or obtain Commission approval before acquiring certain hospital assets in the Port Huron area.

Appearances

For the Commission: *Phillip L. Broyles and William Baer.*

For the respondents: *David Ettinger, Honigman, Miller, Schwartz & Cohn, Detroit, MI.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Local Health System, Inc. (hereinafter sometimes referred to as "Local Health"), has entered into an agreement to acquire the assets of Mercy Hospital-Port Huron and Port Huron Hospital; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, stating its charges as follows:

I. DEFINITION

1. For purposes of this complaint, "*acute care inpatient hospital services*" means 24-hour inpatient health care, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities.

II. THE PARTIES

2. Respondent Local Health is a non-profit corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1001 Kearney Street, Port Huron, Michigan. Local Health was created by St. John Health System and Mercy Health Services for the purpose of acquiring the assets of Port Huron Hospital and Mercy Hospital-Port Huron and operating the acquired entity. Mercy Health and St. John Health jointly exercise ultimate control over the activities of Local Health. St. John Health is responsible for paying the chief executive officer of Local Health.

3. Respondent Mercy Health Services ("Mercy Health") is a non-profit corporation organized and existing under the laws of the State of Michigan with its principal place of business at 34605 Twelve Mile Road, Farmington Hills, Michigan. Mercy Health owns and operates a substantial number of hospitals and other health care providers in Michigan, including Mercy Hospital-Port Huron.

4. Respondent Blue Water Health Services Corp. ("Blue Water Health") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1001 Kearney Street, Port Huron, Michigan. Blue Water Health owns and operates Port Huron Hospital.

5. St. John Health System, Inc. ("St. John Health") is a non-profit corporation organized and existing under the laws of the State of Michigan with its principal place of business at 22101 Moross Road, Detroit, Michigan. St. John Health owns and operates a substantial number of hospitals and other health care providers in Michigan, including River District Hospital in St. Clair County.

III. JURISDICTION

6. Local Health, Mercy Health and Blue Water Health are, and at all times relevant herein have been, engaged in or affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12.

7. Local Health, Mercy Health and Blue Water Health are each persons subject to the jurisdiction of the Federal Trade Commission, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21.

IV. THE PROPOSED ACQUISITION

8. On or about January 19, 1994, Local Health, Mercy Health and Blue Water Health entered into an agreement pursuant to which Local Health would acquire Mercy Hospital-Port Huron and Port Huron Hospital and affiliate with Mercy Health and St. John Health. The total value of assets and other interests to be acquired by Local Health is in excess of \$110 million.

V. NATURE OF TRADE AND COMMERCE

9. For purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition is the production and sale of acute care inpatient hospital services and/or any narrower group of services contained therein.

10. For purposes of this complaint, the relevant section of the country is Greater Port Huron, Michigan, consisting of the cities of Port Huron, Marysville, Kimball Township, Port Huron Township and Fort Gratiot, Michigan.

VI. MARKET STRUCTURE

11. The relevant market -- *i.e.*, the relevant line of commerce in the relevant section of the country -- is highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm concentration ratios.

VII. ENTRY CONDITIONS

12. Entry into the relevant market is difficult due to, among other things, certificate-of-need regulation of hospital entry by the State of Michigan and substantial entry lead times.

VIII. COMPETITION

13. Port Huron Hospital and Mercy Hospital-Port Huron are actual and potential competitors in the relevant market.

IX. EFFECTS

14. The effects of the aforesaid acquisition, if consummated, may be substantially to lessen competition in the relevant market in the following ways, among others:

- (a) By eliminating actual and potential competition between Port Huron Hospital and Mercy Hospital-Port Huron, and others; and
- (b) By significantly increasing the already high levels of concentration.

X. VIOLATIONS CHARGED

15. The acquisition described in paragraph eight, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

Commissioner Azcuenaga dissenting.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent Local Health System, Inc. ("Local Health") of certain assets and businesses of respondent Blue Water Health Services Corp. ("Blue Water Health") and respondent Mercy Health Services ("Mercy Health"), and the respondents having been furnished thereafter with a copy of a draft of complaint that the Cleveland Regional Office presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order; an admission, for the purposes only of that agreement and any proceedings arising out of, or to enforce that agreement and this order, by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint; a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 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. Respondent Local Health 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 1001 Kearney Street, Port Huron, Michigan.

2. Respondent Mercy Health is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 34605 Twelve Mile Road, Farmington Hills, Michigan.

3. Respondent Blue Water Health is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1001 Kearney Street, Port Huron, Michigan.

4. 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. "*Local Health*" means Local Health System, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Local Health System, Inc.; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. "*Mercy Health*" means Mercy Health Services, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Mercy Health Services; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "*Blue Water Health*" means Blue Water Health Services Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Blue Water Health Services Corporation; their directors, officers, employees, agents, and representatives; and their successors and assigns.

D. "*Respondents*" means Local Health, Mercy Health and Blue Water Health, collectively and individually.

E. The "*Acquisition*" means the proposed acquisition of Port Huron Hospital and Mercy Hospital Port Huron by Local Health pursuant to the Memorandum of Understanding dated January 19, 1994.

F. "*Acute care hospital*" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

G. To "*operate an acute care hospital*" means to own, lease, manage or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

H. "*Affiliate*" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

I. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

J. "*Greater Port Huron*" means the area consisting of the cities of Port Huron, Marysville, Kimball Township, Port Huron Township and Fort Gratiot, Michigan.

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

II.

It is further ordered, That, unless they have already done so, respondents shall, no later than seven (7) days after the date this order becomes final: (1) terminate any agreement that provides for or contemplates the Acquisition; (2) return or destroy all documents containing or recording confidential information provided to respondents by any other person in connection with negotiations or agreements relating to the Acquisition; and (3) recover from any other person or have such other person destroy all documents containing or recording confidential information provided by respondents to such other person in connection with negotiations or agreements relating to the Acquisition.

III.

It is further ordered, That, for a period of three (3) years from the date this order becomes final, no respondent shall, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships or otherwise:

A. Acquire any majority or other controlling stock, share capital, equity or other interest in any other respondent that operates any acute care hospital facility in Greater Port Huron;

B. Acquire a majority of the assets of any acute care hospital facility operated by any other respondent in Greater Port Huron;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management or control of any acute care hospital facility operated by any other respondent in Greater Port Huron, including but not limited to, a lease of or management contract for any such acute care hospital facility, or an agreement to replace an acute care hospital facility operated by another person with an acute care hospital facility to be operated by any respondent;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, a majority of the directors or trustees of any acute care hospital facility operated by any other respondent in Greater Port Huron; or

E. Permit any acute care hospital it operates in Greater Port Huron to be acquired (by stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right

to designate directors or trustees or otherwise) by any other respondent that operates, or will operate immediately following such acquisition, any other acute care hospital in Greater Port Huron.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, no respondent shall, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any person who operates any acute care hospital facility in Greater Port Huron;

B. Acquire any assets of any acute care hospital facility in Greater Port Huron;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management or control of any acute care hospital facility or any part thereof in Greater Port Huron, including but not limited to, a lease of or management contract for any such acute care hospital facility, or an agreement to replace an acute care hospital facility operated by another person with an acute care hospital facility to be operated by any respondent;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital facility in Greater Port Huron; or

E. Permit any acute care hospital it operates in Greater Port Huron to be acquired (in whole or in part, by stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees, or otherwise) by any person who operates, or will operate immediately following such acquisition, any other acute care hospital in Greater Port Huron.

Said notification 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 need not be made to

the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (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, respondents shall not consummate the acquisition until twenty 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 in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Provided, however, that prior notification shall not be required by this paragraph IV of this order for:

1. The establishment by a respondent of a new acute care hospital facility that is a replacement for that respondent's existing acute care hospital facility;
2. The establishment by a respondent of a new acute care hospital that is not a replacement for any other acute care hospital facility in Greater Port Huron;
3. Any transaction otherwise subject to this paragraph IV of this order if the fair market value of (or, in the case of a purchase acquisition, the consideration paid for) the acute care hospital facility or part thereof to be acquired does not exceed one million dollars (\$1,000,000);
4. Any transaction otherwise subject to this paragraph IV of this order if the acquisition is pursuant to a joint venture which is to engage in no activities other than the provision of the following services: laundry; data processing; joint ownership and management of inventory; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; support services for charitable foundations; or personnel education, testing or training; or
5. Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, or prior approval by the Commission is required, and has been granted pursuant to paragraph III of this order.

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not permit all or any substantial part of any acute care hospital they operate in Greater Port Huron to be acquired (in whole or in part, by stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees or otherwise) by any other person unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondents shall require as a condition precedent to the acquisition.

VI.

It is further ordered, That:

A. Within sixty (60) days of the date this order becomes final, each 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 II of this order; and

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 such other times as the Commission may require, each 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 paragraphs III, IV and V of this order.

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 that may affect compliance obligations arising out of the order, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon reasonable notice to respondents, respondents shall permit, for a period of ten (10) years from the date this order becomes final, any duly authorized representative of the Commission:

A. Reasonable 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 them, to interview officers, directors, or employees of respondents, who may have counsel present.

Commissioner Azcuenaga dissenting.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

Not having found reason to believe that the proposed merger of Port Huron Hospital and Mercy Hospital would be unlawful, I do not support the complaint and consent order.

IN THE MATTER OF

COLUMBIA/HCA HEALTHCARE 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-3619. Complaint, Oct. 3, 1995--Decision, Oct. 3, 1995

This consent order, among other things, permits Columbia/HCA and Healthtrust, Inc. to merge, provided that Columbia/HCA divests seven hospitals within twelve months (nine months for the divestiture of three hospitals in the Salt Lake City area), and requires the respondent to terminate its participation in a joint venture with the Orlando Regional Health System. In a modification of the consent agreement, this consent order replaces a prior-approval requirement with a prior-notice provision that requires the respondent, for ten years, to notify the Commission before acquiring another acute care hospital in any of the six market areas at issue, and before transferring an acute care hospital in any of the areas to another entity that already operates one in that area.

Appearances

For the Commission: *Oscar M. Voss.*

For the respondent: *Ky Ewing, Vinson & Elkins, Washington, D.C.*

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 respondent Columbia/HCA Healthcare Corporation ("Columbia/HCA"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby Columbia/HCA will acquire Healthtrust, Inc. - The Hospital Company ("Healthtrust"); that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and 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(b) of the Clayton Act, 15 U.S.C. 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

DEFINITIONS

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

(a) "*Acute care hospital*" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

(b) "*Acute care inpatient hospital services*" means 24-hour inpatient health care at an acute care hospital, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short term or episodic health problems or infirmities.

THE PARTIES

PAR. 2. Columbia/HCA is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee. Columbia/HCA, and/or its subsidiaries or affiliates, owns and/or operates the following acute care hospitals in the relevant sections of the country described in paragraph seven below:

- (a) Central Florida Regional Hospital, Sanford, Florida;
- (b) Columbia Park Medical Center, Orlando, Florida;
- (c) Osecola Regional Hospital, Kissimmee, Florida;
- (d) Winter Park Memorial Hospital, Winter Park, Florida;
- (e) West Florida Regional Medical Center, Pensacola, Florida;
- (f) Twin Cities Hospital, Niceville, Florida;

- (g) Fort Walton Beach Medical Center, Ft. Walton Beach, Florida;
- (h) Destin Community Hospital, Destin, Florida;
- (i) Denton Community Hospital, Denton, Texas;
- (k) Ville Platte Medical Center, Ville Platte, Louisiana;
- (j) Davis Hospital and Medical Center, Layton, Utah; and
- (l) St. Mark's Hospital, Salt Lake City, Utah.

PAR. 3. Healthtrust is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 4525 Harding Road, Nashville, Tennessee. Healthtrust, and/or its subsidiaries or affiliates, owns and/or operates the following acute care hospitals in the relevant sections of the country described in paragraph seven below:

- (a) South Seminole Hospital, Longwood, Florida (South Seminole is owned and operated by a partnership of Healthtrust and Orlando Regional Healthcare System, Inc. ("ORHS"). ORHS operates four hospitals in the Orlando area in addition to its partnership interest in South Seminole Hospital);
- (b) Santa Rosa Medical Center, Milton, Florida;
- (c) North Okaloosa Medical Center, Crestview, Florida;
- (d) Savoy Medical Center, Savoy, Louisiana;
- (e) Doctors Hospital of Opelousas, Opelousas, Louisiana;
- (f) Denton Regional Medical Center, Denton, Texas;
- (g) Pioneer Valley Hospital, West Valley City, Utah;
- (h) Jordan Valley Hospital, West Jordan, Utah;
- (i) Lakeview Hospital, Bountiful, Utah; and
- (j) Odgen Regional Medical Center, Odgen, Utah.

JURISDICTION

PAR. 4. Columbia/HCA and Healthtrust 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. The businesses of Columbia/HCA and Healthtrust are, and at all times relevant herein have been, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE PROPOSED ACQUISITION

PAR. 5. On or about October 4, 1994, Columbia/HCA and Healthtrust entered into an agreement whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia/HCA. The total value of the Healthtrust stock to be acquired by Columbia/HCA is approximately \$3 billion.

NATURE OF TRADE AND COMMERCE

PAR. 6. For the purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition is the production and sale of acute care inpatient hospital services and/or any narrower group of services contained therein.

PAR. 7. For the purposes of this complaint, the relevant sections of the country are the following areas, and any narrower areas contained therein:

(a) The Salt Lake City - Ogden Metropolitan Statistical Area, encompassing three contiguous counties in northern Utah: Weber County, Davis County, and Salt Lake County; and the following areas contained therein:

(i) The Salt Lake City area, encompassing Salt Lake County and southern Davis County in Utah;

(ii) The Ogden area, encompassing Weber County and northern Davis County in Utah;

(b) The Pensacola area, encompassing the Florida counties of Escambia and Santa Rosa;

(c) The Okaloosa area, encompassing the Florida county of Okaloosa;

(d) The Denton area, encompassing the Texas counties of Cooke and Denton (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas highway number 121);

(e) The Ville Platte-Mamou-Opelousas area, encompassing the Louisiana parishes of Evangeline and St. Landry; and

(f) The Orlando area, encompassing the Florida counties of Seminole, Orange, and Osceola.

MARKET STRUCTURE

PAR. 8. The relevant markets -- *i.e.*, the relevant line of commerce in the relevant sections of the country -- are highly concentrated, whether measured by Herfindahl-Hirschman Indices ("HHI") or by four-firm concentration ratios.

ENTRY CONDITIONS

PAR. 9. Entry into the relevant markets is difficult, due to state certificate of need regulation of entry into the Florida markets, substantial lead times required to establish a new acute care hospital in all of the relevant markets, and other factors.

COMPETITION

PAR. 10. In the relevant markets, Columbia/HCA and Healthtrust are actual and potential competitors.

EFFECTS

PAR. 11. The effects of the aforesaid acquisition may be substantially to lessen competition in each of the relevant markets (except the Orlando area) in the following ways, among others:

(a) It would eliminate actual and potential competition between Columbia/HCA's and Healthtrust's acute care hospitals;

(b) It would significantly increase the already high level of concentration;

(c) It would eliminate Healthtrust's acute care hospitals as substantial, independent competitive forces;

(d) It may increase the likelihood of collusion or interdependent coordination by the remaining firms; and

(e) It may deny patients, physicians, third-party payers, and other consumers of acute care inpatient hospital services the benefits of free and open competition based on price, quality, and service.

PAR. 12. The effects of the aforesaid acquisition may be substantially to lessen competition in the Orlando area in the following ways, among others:

(a) It may increase the likelihood of collusion or interdependent coordination by the remaining firms, because the South Seminole Hospital would be jointly owned by Columbia/HCA and ORHS; and

(b) It may deny patients, physicians, third-party payers, and other consumers of acute care inpatient hospital services the benefits of free and open competition based on price, quality, and service.

VIOLATIONS CHARGED

PAR. 13. The acquisition agreement described in paragraph five above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 14. The acquisition described in paragraph five, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation into the proposed acquisition by Columbia/HCA Healthcare Corporation of Healthtrust, Inc. - The Hospital Company, 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 respondent with 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; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all 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 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 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 Columbia/HCA Healthcare 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 at One Park Plaza, Nashville, Tennessee.

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. "*Columbia/HCA*" or "*respondent*" means Columbia/HCA Healthcare Corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Columbia/HCA; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. "*Healthtrust*" means Healthtrust, Inc. - The Hospital Company, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Healthtrust; their directors, officers, employees, agents, and representatives; and their successors and assigns.

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

D. The "*Acquisition*" means the transaction contemplated by the October 4, 1994, agreement between Columbia/HCA and Healthtrust,

whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia/HCA.

E. "*Acute care hospital*" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

F. To "*operate*" an acute care hospital means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. To "*acquire*" an acute care hospital means, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. To acquire the whole or any part of the assets used or previously used within the last two years (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;

2. To acquire the whole or any part of the stock, share capital, equity, or other interest in any person engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;

3. To acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of an acute care hospital; or

4. To enter into any other arrangement to obtain direct or indirect ownership, management, or control of an acute care hospital or any part thereof, including, but not limited to, a lease of or management contract for an acute care hospital.

H. "*Affiliate*" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

I. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

J. "*Relevant area(s)*" means:

1. The Salt Lake City - Ogden Metropolitan Statistical Area, encompassing three contiguous counties in northern Utah: Weber County, Davis County, and Salt Lake County;

2. The Pensacola area, encompassing the Florida counties of Escambia and Santa Rosa;

3. The Okaloosa area, encompassing the Florida county of Okaloosa;

4. The Denton area, encompassing the Texas counties of Cooke and Denton (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas highway number 121);

5. The Ville Platte-Mamou-Opelousas area, encompassing the Louisiana parishes of Evangeline and St. Landry; and

6. The Orlando area, encompassing the Florida counties of Seminole, Orange, and Osceola.

K. "*CLHS*" means Central Louisiana Healthcare System Limited Partnership, a Louisiana partnership *in commendam* in which Columbia/HCA currently holds a partnership interest, its partnerships, joint ventures, companies including the Ville Platte Medical Center, subsidiaries, divisions, and groups and affiliates controlled by CLHS; their directors, officers, employees, agents, and representatives; and their successors and assigns.

L. "*ORHS*" means Orlando Regional Healthcare System, Inc., a Florida corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by ORHS; their directors, officers, employees, agents, and representatives; and their successors and assigns.

M. The "*SSH Joint Venture*" means the Florida partnership, in which Healthtrust (through a wholly-owned subsidiary) and ORHS (through a wholly-owned subsidiary) hold partnership interests, which owns and operates the South Seminole Hospital in Longwood, Florida.

N. The "*SSH Joint Venture Interest*" means Healthtrust's interest in the SSH Joint Venture.

O. The "*Schedule A Assets*" means the assets listed on the attached Schedule A.

P. The "*Schedule B Assets*" means the assets listed on the attached Schedule B.

Q. The "*Utah Healthtrust Assets*" means the assets listed on the attached Schedule C.

R. "*Assets and Businesses*" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. All real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");

2. All contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consigners, and consignees (collectively, the "Contracts");

3. All machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Columbia/HCA owns the assets) (collectively, the "Personal Property");

4. All research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");

5. All books, records, and files, excluding, however, the corporate minute books and tax records of Columbia/HCA and its affiliates; and

6. All prepaid expenses.

II.

It is further ordered, That:

A. Respondent shall divest (or in the case of the Ville Platte Medical Center shall cause CLHS to divest), absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Schedule A Assets.

B. Respondent shall also divest absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Assets and Business of, including all improvements, additions, and enhancements made to such facilities prior to divestiture, either of the following:

1. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas, including the following (collectively "DRMC"):

- a. DRMC Office Building, 4401 North I-35, Denton, Texas;
- b. The medical office building and vacant land at 3353 I-35E South, Denton, Texas;
- c. The satellite offices operated at Denton Regional Medical Center, 1207A North Grand Avenue, Gainesville, Texas;
- d. Flow Rehabilitation Hospital, 1310 Scripture, Denton, Texas;
- e. Denton Regional Medical Center - Little Elm, 420 FM720 West, Suite 9, Little Elm, Texas;
- f. Professional Health Care Services, 621 Londonderry Lane, Denton, Texas; or

2. Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas, and the Medical Office Building at Scripture/Bonnie Brae (collectively "Denton Community Hospital").

C. Respondent shall also divest such additional Assets and Businesses ancillary to the Schedule A Assets and to either DRMC or Denton Community Hospital, and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Schedule A Assets, DRMC and Denton Community Hospital.

D. Respondent shall divest the Schedule A Assets, and either DRMC or Denton Community Hospital, 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. If respondent proposes to divest Denton Community Hospital, it must provide the Commission with the written consent of the landlord of such facilities to the proposed assignment and divestiture at the time that Commission approval of the divestiture is sought. The purpose of the divestitures of the Schedule A Assets and of either DRMC or Denton Community Hospital, is to ensure the continuation of the Schedule A Assets and of either DRMC or Denton Community Hospital, as ongoing, viable acute care hospitals and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

E. With respect to the Schedule A Assets and DRMC, respondent shall comply with all terms of the Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as said Hold Separate provides.

F. Pending divestiture of the Schedule A Assets and DRMC or Denton Community Hospital, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Schedule A Assets, DRMC, and Denton Community Hospital, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule A Assets, DRMC, and Denton Community Hospital, except for ordinary wear and tear.

G. A condition of approval by the Commission of each divestiture shall be a written agreement by the acquirer(s) of the Schedule A Assets and of either DRMC or Denton Community Hospital, that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by paragraph VI of this order, any Schedule A Asset, DRMC, or Denton Community Hospital to any person who operates, or will operate immediately following the sale, any other acute care hospital in the same relevant area where the divested acute care hospital is located. Provided, however, that the acquirer is not required to provide prior notification to the Commission for the sale of any of the assets identified in any Part II of Schedule A.

III.

It is further ordered, That:

A. Within six (6) months of the date this order becomes final, respondent shall terminate, absolutely and in good faith, the SSH Joint Venture, by either acquiring ORHS's interest in the SSH Joint Venture or by divesting the SSH Joint Venture Interest. The purpose of the termination of the SSH Joint Venture is to ensure the continuation of the South Seminole Hospital as an ongoing, viable acute care hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

B. If respondent terminates the SSH Joint Venture by acquiring ORHS's interest in the SSH Joint Venture, such acquisition shall occur only in such a manner that receives the prior approval of the Commission. If respondent terminates the Joint Venture by divesting the SSH Joint Venture Interest, such divestiture shall be made 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.

C. With respect to the SSH Joint Venture Interest, respondent shall comply with all terms of the Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as said Hold Separate provides.

D. Pending the divestiture of the SSH Joint Venture Interest, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the South Seminole Hospital, and to prevent the destruction, removal, wasting, deterioration, or impairment of the South Seminole Hospital, except for ordinary wear and tear.

E. A condition of approval by the Commission of the divestiture of the SSH Joint Venture Interest, to any acquirer except ORHS, shall be a written agreement by the acquirer of the SSH Joint Venture Interest that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the

Commission in the manner prescribed by paragraph VI of this order, any interest in South Seminole Hospital to any person who operates, or will operate immediately following the sale, any other acute care hospital in the Orlando area.

IV.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date the Commission approves the Acquisition pursuant to paragraph IV.E. of the order in Docket No. C-3538, the Schedule B Assets.

B. Respondent shall also divest such additional Assets and Businesses ancillary to the Schedule B Assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Schedule B Assets.

C. Respondent shall divest the Schedule B 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 divestitures of the Schedule B Assets is to ensure the continuation of the Schedule B Assets as ongoing, viable acute care hospitals and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint and as described in the Commission's letter approving the Acquisition.

D. Respondent shall comply with all terms of the Agreement to Hold Separate regarding the Utah Healthtrust Assets listed on Schedule C, and as described in Appendix II which is attached hereto and made a part hereof ("Utah Hold Separate"). Said Utah Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of paragraph IV of this order, or until such other time as the Utah Hold Separate provides.

E. Pending divestiture of the Schedule B Assets, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Schedule B Assets and of the Utah Healthtrust Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule B Assets and any of the Utah Healthtrust Assets, except for ordinary wear and tear.

F. A condition of approval by the Commission of each divestiture shall be a written agreement by the acquirer(s) of each Schedule B Asset that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by paragraph VI of this order, any Schedule B Asset to any person who operates, or will operate immediately following the sale, any other acute care hospital in the same relevant area where the divested acute care hospital is located. Provided, however, that the acquirer is not required to provide prior notification to the Commission for the sale of any of the assets identified in any Part II of Schedule B.

V.

It is further ordered, That:

A. If the respondent has not divested (or in the case of the Ville Platte Medical Center has not caused CLHS to divest), absolutely and in good faith and with the Commission's prior approval, each Schedule A Asset and either DRMC or Denton Community Hospital, in accordance with this order, within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the undivested Schedule A Assets and either DRMC or Denton Community Hospital.

B. If the respondent has not terminated absolutely and in good faith and with the Commission's prior approval, the SSH Joint Venture, in accordance with this order, within six (6) months of the date this order becomes final, the Commission may appoint a trustee to divest the SSH Joint Venture Interest.

C. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, each Schedule B Asset, in accordance with this order, within nine (9) months of the date the Commission approves the Acquisition pursuant to the order in Docket No. C-3538, the Commission may appoint a trustee to divest the Utah Healthtrust Assets.

D. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to Section 5(1) of the

Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, the respondent 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 paragraph V.A, V.B, or V.C shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by the respondent to comply with this order, or the order in Docket No. C-3538.

E. If a trustee is appointed by the Commission or a court pursuant to paragraph V.A, V.B, or V.C of this order, the 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 the 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 divest any undivested Schedule A Asset, DRMC or Denton Community Hospital, the SSH Joint Venture Interest, or Utah Healthtrust Asset.

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 effect the divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph V.E.3 to accomplish the divestiture(s), 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 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 Schedule A Assets, DRMC, Denton Community Hospital, the SSH Joint Venture Interest, the Schedule B Assets, the Utah Healthtrust Assets, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by respondent shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, 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 the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to an acquirer(s) as set forth in paragraph II for the Schedule A Assets and DRMC or Denton Community Hospital; paragraph III for the SSH Joint Venture Interest; and paragraph IV and paragraph V.C for the Utah Healthtrust Assets; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity for any one facility or asset, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity 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 the 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 sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for

his or her services, all remaining monies shall be paid at the direction of 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 divesting the undivested Schedule A Assets, either DRMC or Denton Community Hospital, the SSH Joint Venture Interest, or the Utah Healthtrust Assets.

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 V.A, V.B, or V.C 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(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Schedule A Assets, DRMC, Denton Community Hospital, the SSH Joint Venture Interest, or the Utah Healthtrust Assets.

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

VI.

It is further ordered, That, 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:

A. Acquire any stock, share capital, equity, or other interest in any person presently engaged in, or within the two years preceding

such acquisition engaged in, operating an acute care hospital in any relevant area;

B. Acquire any assets used, or previously used, in any relevant area (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in any relevant area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any acute care hospital, or any part thereof, in any relevant area, including but not limited to, a lease of or management contract for any such acute care hospital;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital in any relevant area;

E. Permit any acute care hospital it operates in any relevant area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the same relevant area.

Said notification 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 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 CFR 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information and documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and

provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Provided, however, that such prior notification pursuant to this paragraph VI, or pursuant to paragraphs II.G, III.E, or IV.F of this order, shall not be required for:

1. The establishment by respondent of a new acute care hospital facility in a relevant area: (a) that is a replacement for an existing acute care hospital facility operated by respondent, and not required to be divested by respondent pursuant to this order, in the same relevant area; or (b) that is not a replacement for any acute care hospital facility in any relevant area;

2. Any transaction otherwise subject to this paragraph VI of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000);

3. The acquisition of products or services in the ordinary course of business; or

4. Any 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.

VII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any acute care hospital it operates in any relevant area to be acquired by any other person (except pursuant to the divestitures required by paragraphs II, III, and IV of this order), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VIII.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully

complied with paragraphs II, III, and IV 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, III, and IV 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, III, and IV of the order, including a description of all substantive contacts or negotiations for the divestitures or the termination of the SSH joint venture, 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 the divestitures.

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

IX.

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.

X.

It is further ordered, That, for the purpose of determining or securing compliance with this order, the 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 the 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, who may have counsel present regarding such matters.

SCHEDULE A

The assets to be divested pursuant to paragraph II ("Schedule A Assets") shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of the following:

A. The Pensacola area Schedule A Assets are:

PART I

1. Medical Center of Santa Rosa, Inc.
d.b.a. Santa Rosa Medical Center
1450 Berryhill Road
Milton, Florida

PART II

2. MRI (Magnetic Resonance Imaging) - free-standing modular building attached to hospital by walkway, leased 60 months - originated in 1993.
3. EMS (Emergency Medical Services)
4930 Glover Lane
Milton, Florida
4. Berryhill Medical Park - including undeveloped land Milton, Florida
Master Leased 10 years:
Building 1 - 1540 Berryhill Medical Park
(7,612 sq. ft.)
Building 2 - 1550 Berryhill Medical Park
(5,943 sq. ft.)
Building 3 - 1560 Berryhill Medical Park
(4,427 sq. ft.)

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5. Santa Rosa Primary Care Center
Leased Building at 4928 Highway 90
Pace, Florida
6. Office Space Leases (as Tenant):
3,250 sq. ft. from Pace Medical Center Partnership
2874 Highway 90, Building A
Pace, Florida

1,360 sq. ft. from Pace Medical Center Partnership
2874 Highway 90, Building B
Pace, Florida
25,200 sq. ft. from Dave Gilbert
5950 Berryhill Road, Building 1.3
Santa Rosa, Florida

B. The Okaloosa area Schedule A Assets are:

PART I

1. North Okaloosa Medical Center - Hospital
151 Redstone Avenue
Crestview, Florida
(with approximately 34 acres of land)

PART II

2. Crestview Professional Condominium Association
Professional Office Buildings
131 Redstone Avenue
Crestview, Florida
(Suites 101, 103, 104, 105, 107, 108, 109)
3. Lease of North Okaloosa Medical Office Building
131 Redstone Avenue
Crestview, Florida
(Suites 125, 127 and 129)
4. Lease of Medical Office Building
127 Redstone Avenue
Crestview, Florida

5. Rural Health Clinic
LaGrange Medical Clinic Building
Rt. 3, Box 16
Highway 331 North
Freeport, Florida
6. Bluewater Bay Clinic
Market Place Professional Center
1507 Merchants Way
Niceville, Florida
7. Rural Health Clinic
Lease of Access Medical Clinic Building
130 Redstone Avenue
Crestview, Florida

C. The Ville Platte-Mamou-Opelousas area Schedule A Assets are:

PART I

1. Ville Platte Medical Center
800 East Main Street
Ville Platte, Louisiana

PART II

2. Lease (expires October 1995) of the Ardwin Physicians Office Building, Ville Platte, Louisiana

SCHEDULE B

The assets to be divested pursuant to paragraph IV ("Schedule B Assets") shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of the following:

A. The Pioneer Valley Assets are:

PART I

1. Pioneer Valley Hospital
3460 South Pioneer Park
West Valley City, Utah

PART II

2. Three (3) Medical Office Buildings (on hospital campus)
3. Lease of 69,382 sq. ft. (on hospital campus)
4. Land (empty lot)
40th West Street
West Jordan, Utah
5. Lease of 11,750 sq. ft.
(corner of 90th South Street and 27th West Street)
West Jordan, Utah
6. Lease of 7,134 sq. ft.
150 Wright Bros. Drive
Suite 540
Salt Lake City, Utah
7. Salt Lake Industrial Clinic
441 S. Redwood Road
Salt Lake City, Utah

B. The Jordan Valley Assets are:

PART I

1. Jordan Valley Hospital
3580 West 9000 South
West Jordan, Utah

PART II

2. Three (3) leases of office space
(on hospital campus)
(12,000 sq. ft.; 3,374 sq. ft; and 4,620 sq. ft)
3. 12% limited liability partnership in South Ridge
Professional Plaza (on campus)
4. Lease of Medical Office Building (Perry Realty)
South Valley Medical Plaza
3590 West 9000 South
West Jordan, Utah

C. The Davis Hospital Assets are:

PART I

1. Davis Hospital and Medical Center
1600 West Antelope Drive
Layton, Utah

PART II

2. Medical Office Building
1660 West Antelope Drive
Layton, Utah
3. Medical Office Building
2132 North 1700 West
Layton, Utah

SCHEDULE C

UTAH HEALTHTRUST ASSETS

The Utah Healthtrust Assets shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of Healthtrust in the State of Utah at the time of the Acquisition, including, without limitation, the following:

1. The following facilities:

- a. Pioneer Valley Hospital, 3460 South Pioneer Park, West Valley City, Utah; three (3) medical office buildings on the campus of the hospital; the lease of 69,382 sq. feet on the hospital campus; land (empty lot) at 40th West Street, West Jordan, Utah; lease of 11,750 sq. ft. (corner of 90th South Street and 27th West Street), West Jordan, Utah 84088; and lease of 7,134 sq. ft., 150 Wright Bros. Drive, Suite 540, Salt Lake City, Utah;

- b. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah; three (3) leases of office space on the campus of the hospital (12,000 sq. ft., 3,374 sq. ft., and 4,620 sq. ft.); a 12 percent limited liability partnership in South Ridge Professional Plaza, and the lease of Medical Office Building (Perry Realty), South Valley Medical Plaza; 3590 West 9000 South, West Jordan, Utah;

- c. Lakeview Hospital, 630 East Medical Drive, Bountiful, Utah;

- d. Brigham City Community Hospital, 950 South 500 West, Brigham City, Utah;
- e. Ogden Regional Medical Center, 5475 South 500 East, Ogden, Utah;
- f. Castleview Hospital, 300 North Hospital Drive, Price, Utah;
- g. Springville Medical Center, 730 East 300 South, Springville, Utah; and
- h. Ashley Valley Medical Center, 151 West 200 North, Vernal, Utah; and

2. HTI of Utah, Inc., its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by HTI of Utah or Healthtrust in Utah; their directors, officers, employees, agents, and representatives; and their successors and assigns; and the following corporations and their successors and assigns:

- a. Brigham City Community Hospital, Inc.;
- b. Castleview Hospital, Inc.;
- c. HTI HomeMed of Utah, Inc.;
- d. HTI-Managed Care of Utah, Inc.;
- e. HTI Physician Services of Utah, Inc.;
- f. HTI Utah Data Corporation;
- g. Hospital Corporation of Utah;
- h. Intergroup Healthcare Corporation of Utah;
- i. Medical Services of Salt Lake City, Inc.;
- j. MHHE Corporation;
- k. Mountain View Hospital, Inc.;
- l. Ogden Medical Center, Inc.;
- m. Pioneer Valley Hospital, Inc.; and
- n. West Jordan Hospital Corporation.

APPENDIX I

AGREEMENT TO HOLD SEPARATE REGARDING THE
FLORIDA, TEXAS, AND LOUISIANA ASSETS

This Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, on October 4, 1994, Columbia/HCA and Healthtrust Inc. - The Hospital Company ("Healthtrust") entered into an agreement whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia (the "Acquisition"); and

Whereas, Columbia/HCA, with its principal place of business at One Park Plaza, Nashville, Tennessee, owns and operates, among other things, acute care hospitals; 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 Agreement Containing Consent Order ("consent order"), which would require the divestiture of certain assets listed in paragraph II of the consent order ("Schedule A Assets and DRMC or Denton Community Hospital") and termination of certain interests described in paragraph III of the consent order ("SSI Joint Venture"), the Commission must place the consent order 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 *status quo ante* of the Schedule A Assets, DRMC and the SSI Joint Venture Interest (collectively the

"Hold Separate Assets"), during the period prior to the final acceptance and issuance of the consent order by the Commission (after the 60-day public comment period), divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestitures of the Schedule A Assets, DRMC or Denton Community Hospital, and the SSI Joint Venture Interest, and the Commission's right to have the Hold Separate Assets continue as viable acute care hospitals independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the consent order are to:

(i) Preserve the Hold Separate Assets as viable, competitive, and ongoing acute care hospitals, independent of Columbia/HCA, pending the divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture as required under the terms of the consent order;

(ii) Prevent interim harm to competition from the operation of the Hold Separate Assets pending the divestitures as required under the terms of the consent order;

(iii) Remedy any anticompetitive effects of the Acquisition;

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

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

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the consent order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all

rights to enforce this Agreement and the consent order to which it is annexed and made a part thereof, and in the event the required divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture are not accomplished, to appoint a trustee to seek divestitures of said assets pursuant to the consent order, to seek civil penalties, to seek a court appointed trustee, and/or to seek other equitable relief, as follows:

1. Respondent agrees to execute the agreement containing consent order and be bound by the consent order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph three of this Agreement:

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

b. The day after the last of the divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture, as required by the consent order, is completed.

3. To ensure the complete independence and viability of the Hold Separate Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the Hold Separate Assets, respondent shall hold the Schedule A Assets, DRMC and the SSI Joint Venture Interest, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Hold Separate Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the Hold Separate Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the consent order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall organize a distinct and separate legal entity, either a

corporation, limited liability company, or general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the consent order. Respondent shall transfer (or in the case of the Ville Platte Medical Center, cause the Central Louisiana Healthcare System Limited Partnership ("CLHS") to transfer) all ownership and control of all Hold Separate Assets to the New Company.

c. The board of directors of the New Company, or, in the event respondent organizes an entity other than a corporation, the governing body of the entity ("New Board"), shall have three members. Respondent shall elect the members of the New Board. The New Board shall consist of the following three persons: Winfield C. Dunn, Samuel H. Howard, and David C. Colby, provided they agree, or comparable, knowledgeable persons. The Chairman of the New Board shall be: Winfield C. Dunn (provided he agrees), or a comparable, knowledgeable person, who shall remain independent of Columbia/HCA and competent to assure the continued viability and competitiveness of the Hold Separate Assets and the South Seminole Hospital in Longwood, Florida. The New Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be David C. Colby, provided he agrees, or a comparable knowledgeable person ("the respondent's New Board member"). The New Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the New Board during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or South Seminole Hospital, the independent Chairman of the Board of the New Company, the New Board, or the New Company or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over the New Company as is necessary to assure compliance with this Agreement or the consent order, or with all applicable laws. In addition, as to the SSH Joint Venture and South Seminole Hospital, only the following individuals within Columbia/HCA and Healthtrust shall have access to or involvement with termination of the SSI Joint Venture or efforts to divest the SSI Joint Venture Interest: Richard L. Scott, Stephen T.

Braun, Donald P. Fay, Ashby Q. Burks, Joseph D. Moore, Phillip D. Wheeler, and George M. Garrett.

e. Respondent shall maintain the viability, competitiveness, and marketability of the Hold Separate Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Hold Separate Assets.

f. Except for the respondent's New Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the New Company.

g. The New Company shall be staffed with sufficient employees to maintain the viability and competitiveness of the Hold Separate Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's New Board Member, respondent shall not change the composition of the New Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the New Board for cause and to require respondent to appoint replacement members to the New Board as provided in paragraph 3.c. Respondent shall not change the composition of the management of the New Company except that the New Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the consent order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about the New Company or the activities of the hospitals operated by the New Board. Access to Material Confidential Information relating to South Seminole Hospital or the SSH Joint Venture, for these limited, stated purposes shall be restricted within Columbia/HCA and

Healthtrust to those individuals named in paragraph 3.d, above. Nor shall the New Company or the New Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the New Company necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's New Board member shall not, in his or her capacity as a New Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's New Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's New Board member shall participate in matters that come before the New Board only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the consent order. Except as permitted by this Agreement, the respondent's New Board member shall not participate in any matter, or attempt to influence the votes of the other members of the New Board with respect to matters, that would involve a conflict of interest if respondent and the New Company were separate and independent entities.

l. Any material transaction of the New Company that is out of the ordinary course of business must be approved by a majority vote of the New Board; provided that the New Company shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide the New Company with sufficient working capital to operate the Hold Separate Assets at their respective current rates of operation, to meet any capital calls anticipated in respect of the SSH Joint Venture, and to carry out any capital improvement plans for the Schedule A Assets, DRMC and the South Seminole Hospital that have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the Hold Separate Assets as are being provided to such assets by Columbia/HCA or Healthtrust as of the date this Agreement is signed. Columbia/HCA may charge the Hold Separate Assets the same fees, if any, charged by Columbia/HCA or Healthtrust for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all Material Confidential Information of the Hold Separate Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Hold Separate Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the consent order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by the New Company funds sufficient to perform all necessary routine maintenance to, and replacements of, the Hold Separate Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the New Company with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of acute care hospitals in any of the relevant areas defined in the consent order in this matter, a notice of this Hold Separate and consent order in the form attached as Attachment A.

q. The New Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the New Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such

losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the New Board directors.

r. The New Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any Hold Separate Asset.

s. Within thirty days (30) after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the New Board shall report in writing to the Commission concerning the New Board's efforts to accomplish the purposes of this Hold Separate. In addition, within thirty days (30) after the date this Agreement is accepted by the Commission and every thirty (30) thereafter until this Agreement terminates, respondent shall file with the Commission a verified written report, setting forth, among other things that may be required from time to time, a detailed memorialization of all communications, both intra-company and with third parties, relating to the termination of the SSH Joint Venture.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the Hold Separate Assets, as provided in the consent order, or to seek any other injunctive or equitable relief for any failure to comply with the consent order or this Agreement, or in any way relating to the Acquisition, as defined in the draft of complaint, respondent 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. Respondent also waives all rights to contest the validity of this Agreement.

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

6. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

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

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

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

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Columbia/HCA Healthcare Corporation and Healthtrust Inc. - The Hospital Company have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain Healthtrust and Columbia/HCA acute care hospitals and the termination of a joint venture agreement ("Assets"). The hospitals to be divested include:

1. Santa Rosa Medical Center, 1450 Berryhill Road, Milton, Florida.
2. North Okaloosa Medical Center, 151 Redstone Avenue Southeast, Crestview, Florida.
3. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas or the Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas.
4. Ville Platte Medical Center, 800 East Main Street, Ville Platte, Louisiana.
5. Davis Hospital and Medical Center, 1600 West Antelope Drive, Layton, Utah.
6. Pioneer Valley Hospital, 3460 South Pioneer Parkway, West Valley City, Utah, including the Salt Lake Industrial Clinic, 441 S. Redwood Road, Salt Lake City, Utah.
7. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah.

The joint venture agreement that must be terminated involves a joint venture that owns South Seminole Hospital in Longwood, Florida. Columbia/HCA and Healthtrust must terminate the joint venture either by selling Healthtrust's interest in the joint venture or by acquiring the other joint venture partner's interest.

Until after the FTC's order becomes final and the Assets are divested, the Assets must be managed and maintained as separate, ongoing businesses, independent of all other Columbia/HCA businesses. All competitive information relating to the Assets must be retained and maintained by the persons involved in the operation of the Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Assets.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

APPENDIX II

AGREEMENT TO HOLD SEPARATE REGARDING
THE UTAH HEALTHTRUST ASSETS

This Agreement to Hold Separate Regarding the Utah Healthtrust Assets ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, on October 4, 1994, Columbia/HCA and Healthtrust Inc. - The Hospital Company ("Healthtrust") entered into an agreement whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia (the "Acquisition"); and

Whereas, on October 20, 1994, the Commission, with the consent of Healthtrust, issued its complaint and made final its order to settle charges that the acquisition by Healthtrust of certain assets of Holy Cross Health System Corporation violated 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 (In the Matter of Healthtrust, Inc. - The Hospital Company, Docket No. C-3538); and

Whereas, the order in Docket No. C-3538 provides that for a period of ten (10) years, Healthtrust shall not permit any acute care hospital it operates in the Three-County Area of Utah, as defined in paragraph I.G. of the order in Docket No. C-3538, to be acquired, without the prior approval of the Commission, by any person that operates any other acute care hospital in the Three-County Area; and

Whereas, on February 15, 1995, Healthtrust petitioned the Commission to approve the sale of four Healthtrust acute care hospitals (the "Utah Healthtrust Hospitals") to Columbia/HCA; and

Whereas, Columbia/HCA, with its principal place of business at One Park Plaza, Nashville, Tennessee, owns and operates, among

other things, acute care hospitals in the Three-County Area of Utah, and elsewhere; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission and whether the Commission should approve the Acquisition pursuant to the order In the Matter of Healthtrust, Inc. - The Hospital Company, Docket No. C-3538); and

Whereas, the Commission has determined to grant Healthtrust the prior approval required for its sale of the Utah Healthtrust Hospitals to Columbia/HCA, conditioned, however, upon Columbia/HCA divesting, as required by the agreement containing consent order ("consent agreement" or "consent order"), to which this Hold Separate is attached and made a part thereof as Appendix II, three Utah hospitals and related assets (the "Schedule B Assets" as defined in paragraph I of the consent order); and

Whereas, if the Commission accepts the consent order, which would require the divestiture of the Schedule B Assets pursuant to paragraph IV of the consent order, the Commission must place the consent order 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 *status quo ante* of the Utah Healthtrust Assets, as identified in Schedule C to the consent order, during the period prior to the final acceptance and issuance of the consent order by the Commission (after the 60-day public comment period), divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, if the Commission accepts the consent order, and Columbia/HCA has not divested with the Commission's prior approval, each Schedule B Asset, in accordance with the consent order, within nine (9) months of the date the Commission conditionally approves the Acquisition pursuant to the order in Docket No. C-3538, the Commission may appoint a trustee to divest the Utah Healthtrust Assets, as identified in Schedule C to the consent order; 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 divestitures of the Utah Healthtrust Assets and

the Commission's right to have the Utah Healthtrust Assets continue as viable acute care hospitals independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the consent order are to:

(i) Preserve the Utah Healthtrust Assets as viable, competitive, and ongoing acute care hospitals, independent of Columbia/HCA, pending the divestitures of the Schedule B Assets or the Utah Healthtrust Assets as required under the terms of the consent order;

(ii) Prevent interim harm to competition from the operation of the Utah Healthtrust Assets pending divestitures of the Schedule B Assets or the Utah Healthtrust Assets as required under the terms of the consent order; and

(iii) Remedy any anticompetitive effects of the Acquisition;

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

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

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's conditional approval of the Acquisition and its agreement that, at the time it accepts the consent order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the consent order to which it is annexed and made a part thereof, and the order in Docket No. C-3538, and in the event the required divestitures of the Schedule B Assets are not accomplished, to appoint a trustee to seek divestitures of the Utah Healthtrust Assets pursuant to the consent order, to seek civil penalties, to seek a court appointed trustee, and/or to seek other equitable relief, as follows:

1. Respondent agrees to execute the agreement containing consent order and be bound by the attached consent order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph three of this Agreement:

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

b. The day after the last of the divestitures of the Schedule B Assets or the Utah Healthtrust Assets, as required by the consent order, is completed.

3. To ensure the complete independence and viability of the Utah Healthtrust Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the Utah Healthtrust Assets, respondent shall hold the Utah Healthtrust Assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Utah Healthtrust Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the Utah Healthtrust Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the consent order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall transfer all ownership and control of all Utah Healthtrust Assets to HTI of Utah, Inc.

c. The board of directors of HTI of Utah, Inc. ("HTI Board"), shall have three members. Respondent shall elect the members of the HTI Board. The HTI Board shall consist of the following three persons: (i) Kent H. Wallace; (ii) Kenneth W. Perry; and (iii) David C. Colby, provided they agree, or comparable, knowledgeable persons. The Chairman of the HTI Board shall be Kent H. Wallace, provided he agrees, or a comparable, knowledgeable person, who shall remain independent of Columbia/HCA and competent to assure the continued viability and competitiveness of the Healthtrust Utah Assets. The HTI Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be

David C. Colby, provided he agrees, or a comparable, knowledgeable person ("the respondent's HTI Board member"). The HTI Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the HTI Board during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Utah Healthtrust Assets, the independent Chairman of the Board of the HTI of Utah Inc., HTI of Utah Inc., or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over HTI of Utah Inc. as is necessary to assure compliance with this Agreement or the consent order, or with all applicable laws.

e. Respondent shall maintain the viability, competitiveness, and marketability of the Utah Healthtrust Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Assets.

f. Except for the respondent's HTI Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of HTI of Utah Inc.

g. HTI of Utah Inc. shall be staffed with sufficient employees to maintain the viability and competitiveness of the Utah Healthtrust Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's HTI Board Member, respondent shall not change the composition of the HTI Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the HTI Board for cause and to require respondent to appoint replacement members to the New Board as provided in paragraph 3.c. Respondent shall not change the composition of the management of HTI of Utah Inc., except that the HTI Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the consent order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about HTI of Utah Inc., or the activities of or the hospitals operated by the HTI Board. Nor shall HTI of Utah Inc. or the HTI Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to HTI of Utah Inc. necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's HTI Board member shall not, in his or her capacity as an HTI Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's HTI Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's HTI Board member shall participate in matters that come before the HTI Board only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the consent order. Except as permitted by this Agreement, the respondent's HTI Board member shall not participate in any matter, or attempt to influence the votes of the other members of the HTI Board with respect to matters, that would involve a

conflict of interest if respondent and HTI of Utah Inc. were separate and independent entities.

l. Any material transaction of HTI of Utah Inc. that is out of the ordinary course of business must be approved by a majority vote of the HTI Board; provided that HTI of Utah Inc. shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide HTI of Utah Inc. with sufficient working capital to operate the Utah Healthtrust Assets at their respective current rates of operation and to carry out any capital improvement plans for the Utah Healthtrust Assets that have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the Utah Healthtrust Assets, as are being provided to such Assets by Healthtrust as of the date this Agreement is signed. Columbia/HCA may charge the HTI of Utah Inc. the same fees, if any, charged by Healthtrust for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all material confidential information of the Utah Healthtrust Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Utah Healthtrust Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the consent order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by HTI of Utah Inc. funds sufficient to perform all necessary routine maintenance to, and replacements of, the Utah Healthtrust Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide HTI of Utah Inc. with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of acute care hospitals in any of the relevant areas defined in the consent order in this matter, a notice of

this Hold Separate and consent order in the form attached as Attachment A.

q. The HTI Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the HTI Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the HTI Board directors.

r. The HTI Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any Schedule B Assets or the Utah Healthtrust Assets.

s. Within thirty (30) days after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the HTI Board shall report in writing to the Commission concerning the HTI Board's efforts to accomplish the purposes of this Hold Separate.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the Schedule B Assets or the Utah Healthtrust Assets, as provided in the consent order, or to seek any other injunctive or equitable relief for any failure to comply with the consent order or this Agreement, or in any way relating to the Acquisition, as defined in the draft of complaint, respondent 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. Respondent also waives all rights to contest the validity of this Agreement.

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

6. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

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

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

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

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Columbia/HCA Healthcare Corporation and Healthtrust Inc. - The Hospital Company have entered into a consent agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain Healthtrust and Columbia/HCA acute care hospitals and the termination of a joint venture agreement ("Assets"). The hospitals to be divested include:

1. Santa Rosa Medical Center, 1450 Berryhill Road, Milton, Florida.
2. North Okaloosa Medical Center, 151 Redstone Avenue Southeast, Crestview, Florida.
3. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas or the Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas.
4. Ville Platte Medical Center, 800 East Main Street, Ville Platte, Louisiana.
5. Davis Hospital and Medical Center, 1600 West Antelope Drive, Layton, Utah.
6. Pioneer Valley Hospital, 3460 South Pioneer Parkway, West Valley City, Utah, including the Salt Lake Industrial Clinic, 441 S. Redwood Road, Salt Lake City, Utah.
7. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah.

The joint venture agreement that must be terminated involves a joint venture that owns South Seminole Hospital in Longwood, Florida. Columbia/HCA and Healthtrust must terminate the joint venture either by selling Healthtrust's interest in the joint venture or by acquiring the other joint venture partner's interest.

Until after the FTC's order becomes final and the Assets are divested, the Assets must be managed and maintained as separate, ongoing businesses, independent of all other Columbia/HCA businesses. All competitive information relating to the Assets must be retained and maintained by the persons involved in the operation of the Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Assets.

Any violation of the consent agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

Set Aside Order

120 F.T.C.

IN THE MATTER OF

WEST POINT-PEPPERELL, INC.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC.7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3244. Consent Order, Dec. 14, 1988--Set Aside Order, Oct. 4, 1995*

This order reopens a 1988 consent order--which required West Point to divest certain towel and sheet manufacturing facilities and prohibited West Point, for 10 years, from making certain acquisitions in the sheet and towel industries without prior Commission approval--and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement, under which the Commission presumes that the public interest requires setting aside the prior approval requirements in outstanding merger orders and making them consistent with the policy.

ORDER SETTING ASIDE ORDER

On June 28, 1995, WestPoint Stevens, Inc. ("WestPoint"), the successor to West Point-Pepperell, Inc., filed its Petition To Reopen and Vacate or Modify Consent Order ("Petition") in this matter. WestPoint asks that the Commission reopen and modify the 1988 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement").¹ WestPoint in its Petition requests that the Commission reopen and set aside the order in Docket No. C-3244 or, in the alternative, reopen and modify the order by deleting the requirement in paragraph IX that WestPoint seek prior Commission approval for certain acquisition. The Petition was on the public record for thirty days; no comments were received.

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 Section 7A of the Clayton Act,

¹ 60 Fed. Reg. 39,745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241, at 20,991 (June 21, 1995).

commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, 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.*

Narrow prior approval or prior notification provisions may be necessary to protect the public interest in some 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 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.

The Commission in its Prior Approval Policy Statement announced its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited 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 in paragraph IX of the order in Docket No. C-3244 is in the public interest. Nothing to overcome the presumption has been presented, and nothing in the record, including the original complaint and order, suggests that exceptions described in the Prior Approval

Policy Statement are warranted. The Commission has determined to reopen the proceeding in Docket No. C-3244 and set aside the order.²

Accordingly, *It is hereby ordered*, That this matter be, and it hereby is, reopened, and that the Commission's order issued on December 14, 1988, be, and it hereby is, set aside as of the effective date of this order.

² WestPoint completed the divestiture required by the order in 1991, and the only remaining obligation under the order is the prior approval requirement in paragraph IX and the attendant reporting obligations.

IN THE MATTER OF

LIVE-LEE PRODUCTIONS, INC., ET AL.

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

Docket C-3620. Complaint, Oct. 10, 1995--Decision, Oct. 10, 1995

This consent order prohibits, among other things, a California-based corporation and its officer from making any claim that a food, dietary supplement or drug has any effect on the user's health, or on the structure or function of the body, and from making any claim of performance, benefit, efficacy or safety of any smoking cessation product, service or program unless they have competent and reliable scientific evidence to support the claims.

Appearances

For the Commission: *Lisa B. Kopchik.*

For the respondents: *Timothy Kevene, Thorpe & Thorpe, Los Angeles, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Live-Lee Productions, Inc., a corporation, and Ruta Lee, individually and as an officer and director of said corporation, hereinafter sometimes referred to as 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:

PARAGRAPH 1. Respondent Live-Lee Productions, Inc. ("Live-Lee") is a Texas corporation, with its offices and principal place of business at 2761 Laurel Canyon Blvd., Los Angeles, California. Live-Lee is engaged in the business of providing the services of Ruta Lee in connection with the marketing, advertising, sale and distribution of consumer products.

Respondent Ruta Lee ("Lee") is an officer, director, and sole shareholder of Live-Lee, and her address is 2436 Shirley Avenue, Fort Worth, Texas. Lee has served as the on-air host of "Spotlight on Ruta Lee" ("Spotlight"), an advertisement promoting the sale of

consumer products. Spotlight has appeared on the Home Shopping Club, which consists of advertising in the form of television programming that is disseminated through cable channels, company-owned broadcast stations, and satellite dish receivers. Through this programming, Home Shopping Club, Inc. ("HSC"), a subsidiary of Home Shopping Network, Inc., sells products via direct marketing to viewers.

PAR. 2. The products marketed on Spotlight have included spray vitamin and smoking cessation products sold by HSN Lifeway Health Products, Inc. ("Lifeway"), a wholly-owned second-tier subsidiary of Home Shopping Network, Inc. These products are foods and/or drugs, as the terms "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act. Lee performed the functions of an advertising agency by creating and disseminating the representations alleged in this complaint for said products on Spotlight. She received a royalty for each unit of Lifeway's products that was purchased for HSC's inventory.

PAR. 3. 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.

PAR. 4. Respondents have created and disseminated advertisements for Lifeway's spray vitamin and smoking cessation products, including but not necessarily limited to the attached Exhibit A, a transcription of a television advertisement entitled "Spotlight on Ruta Lee" that appeared on the Home Shopping Club. This advertisement contains the following statements:

(a) Ruta Lee: "And you know how much of that vitamin pill I am absorbing? If I'm exceedingly lucky, five percent. The rest of that vitamin pill gets squashed through me and gets flushed down the toilet the first time I go piddle. So, 95% of my money is wasted going down the toilet. 95% of my vitamin is not even getting into my body. . . .

. . . .

. . . Now, let me tell you about the three different two-packs that we have at \$19.95 Instead of flushing that down the toilet, you are getting it into your body. Now, I think that is remarkable. That just by spraying. [She sprays into her mouth.] There I am. I've taken my vitamins . . . I've got my vitamins. Now you do this four times a day. And you have a month's supply in every tube." [Exhibit A, page ii-iii]

(b) Ruta Lee: "Vitamin C and Zinc. Just spray directly on your throat. Spray in your mouth. Kills rhinovirus on contact. You can avoid colds forever. . . . So,

Vitamin C and Zinc. You can avoid colds for the rest of your life." [Exhibit A, pages iii-iv]

(c) Ruta Lee: "I get calls from dentists who say 'tell everybody that's listening, Ruta, if they have a mouth lesion or something' -- Christie, our makeup lady, just had her big molars pulled back here [pointing to the back of her mouth].

....

I gave her some Vitamin C and Zinc to spray directly on the lesion, the whole inner mouth. Zinc is a healer, and we forget how good it is.

....

You get cold sores, spray it directly on. You get cracks in the corners of your mouth, spray it directly on. It's delicious." [Exhibit A, page iv]

(d) Ruta Lee: "But, you know every once in a while--"

Show host: "You need a boost."

Ruta Lee: "Sure. Your butt starts to drag and you say Oh, God, I need a cup of coffee, or, Gee, I think I need a candy bar or I need a coke. You don't need any of that which goes to nothing but stuff on your big, lard butt."

Show host: "Plus you end up with the highs and lows when you're getting your fixes -- "

Ruta Lee: "Yeah. A sugar high is a phony high. It raises you up and then it drops you like a ton of bricks."

Show host: "Right, right."

Ruta Lee: "Vitamin B-12. All you do is spray, and honey, it's like two martinis. Hits you, oh -- happy time. Its absolutely phenomenal." [Exhibit A, pages iv-v]

(e) Ruta Lee: "Alcohol, by the way, depletes B-12 just like that [she snaps her fingers]. If you're going to be sipping during the holidays, and we all are, and I'm not saying you should deny yourself a cocktail or a little Christmas grog, take your Vitamin B-12. Great for hangovers on New Year's Eve.

....

It's the greatest thing for a hangover. It's absolutely fabulous." [Exhibit A, page v]

(f) Ruta Lee: "We've got the magic one of them all. The one you've been hearing about and reading about in every newspaper, in every health periodical, in every beauty periodical. You have been reading about the antioxidants. They are the buzz-words of the 90s when it comes to health and beauty. And believe me, I don't care how much makeup you put on, your beauty starts from inside. The antioxidants are the things that keep your immune system working well. It is firmly believed by most medical authorities, and everybody in research, that Vitamins A, C and E are the key to keeping your immune system working. Why does your immune system have to work? I'll tell you why. Because whether it is a cold or whether it is any of the life-threatening diseases that are all around us -- that's what happens. You pick them up if your immune system isn't working for you. A, C and E are the vitamins that have been shown, and are now widely believed to be the things that keep your immune system working. . . . You want to stay young and gorgeous without 52 facelifts? God promises us in the bible 120 years. Honey, I intend to go into my coffin looking damn good. Why? Because I'm going to spray my fabulous A, C and E. It's going to keep me young. I'm not going to get the lines. I'm going to keep the sparkle in my eyes." [Exhibit A, page vi]

(h) Ruta Lee: "Dear ones, let me tell you about this smoke-less spray. The same process works. All you do is open wide, spray. And it satisfies your need for a cigarette. Somehow a message goes from the brain to the body that says 'stop quivering. You've satisfied a need.' And you haven't done it with a drug. You've done it with vitamins, minerals, herbs and spices that tickle your tongue and tickle your fancy. . . . Now, if you're a smoker, you know here in your mind and in your soul that you should quit smoking. And its very hard to do. I promise you this works. You get our money-back guarantee. It works with just the natural vitamin and mineral and herb and spice ingredients." [Exhibit A, page x]

(i) Ruta Lee: "I've had smokers call to tell me they have been smoking for 20, 30, 40 years and that they are able to quit smoking in five days, able to quit cold-turkey. . . . And you can do it. In an easy, simple way. Let's take a call.

....

... Hi, Sally. . . . Are you a smoker?"

Caller: "No. I quit three years ago with your sprays."

Ruta Lee: "Oh! Hallelujah, Sally! Well, Sally, you obviously have been with me right since the beginning, haven't you honey?"

Caller: "Yeah --"

Ruta Lee: "Three years --"

Caller: "I know if you sell anything, it's bound to work."

Ruta Lee: "Oh, bless you. You know -- you're bringing up a good point. You prove a point. I am starting my fifth year on the air with my products. The diet sprays, the vitamin sprays, and the smoke-less spray. Sally can attest to this. I wouldn't have lasted for five minutes, five weeks, if it didn't work. Because we guarantee you your money back. Sally, how much did you smoke?"

Caller: "Three packs a day."

Ruta Lee: "Whoo!"

Caller: "For thirty years."

Ruta Lee: "Thirty years, three packs a day. And, I don't remember now, how long did it take you to quit?"

Caller: "A month."

Ruta Lee: "A month. Like I said, thirty days. Make a habit, thirty days to break one. And Sally, it was fairly easy, wasn't it?"

Caller: "Yeah -- very easy."

....

Ruta Lee: "Hallelujah! Are you hearing this, ladies and gentlemen? Sally, who three years ago quit smoking in about a month's time, and she had smoked for thirty years, three packs a day." [Exhibit A, pp. xi-xii]

(j) Ruta Lee: "Because you're [the caller is] a source of inspiration to an awful lot of people out there who are sitting back on their rusty-dusty saying 'Oh, I don't know. I tried to quit smoking, but I gained weight.' I've had so many callers tell me that they don't gain weight when they use this spray.

Caller: "Oh, I lost weight when I used yours."

Ruta Lee: "Hooray! You lost weight." [Exhibit A, page xiii]

(k) Ruta Lee: "It's guaranteed to work. It doesn't put chemicals into your body. All natural given, vitamins, minerals, herbs and spices. You won't be shaky with anxiety. Just spray every time you want a cigarette. But, most of all, get to the phone. Call now. Think about this as a Christmas gift for somebody that you want

to stop smoking. . . . Don't wait. Don't wait until the doctor says you're gonna die if you don't stop smoking. Use your brains that God gave you. God gave you one body to last you a lifetime. Don't spit in His eye by smoking. Dear ones, what can I do but say hallelujah for this product. It works. But it won't work unless you get up off your duff, get to the telephone, use your finger to dial, and then use your finger to spray before you put that cigarette in your mouth." [Exhibit A, page xiv]

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that:

- (a) The vitamins in Life Way Spray Vitamins are more fully absorbed by the human body than vitamins taken in pill form;
- (b) Life Way Vitamin C and Zinc Spray, sprayed directly in the mouth at the dosages recommended, heals lesions in the mouth, cold sores on the mouth and cracking of the corners of the lips for users generally;
- (c) Life Way Vitamin C and Zinc Spray, sprayed directly in the mouth at the dosages recommended, prevents common colds;
- (d) Life Way Vitamin B-12 Spray, at the dosages recommended, effectively treats symptoms related to hangovers;
- (e) Life Way B-12 Vitamin Spray, at the dosages recommended, increases energy for users generally;
- (f) Life Way Anti-oxidant Spray, at the dosages recommended, ensures the proper functioning of the immune system;
- (g) Life Way Anti-Oxidant Spray, at the dosages recommended, reduces the risk of contracting infectious diseases;
- (h) Life Way Anti-Oxidant Spray, at the dosages recommended, prevents facial lines;
- (i) Life Way Smoke-Less Nutrient Spray enables smokers, regardless of how long they have smoked or how much they smoke, to stop smoking easily; and
- (j) Life Way Smoke-Less Nutrient Spray satisfies the physiological urge to smoke a cigarette and eliminates the quivering, anxiety and weight gain attendant with quitting smoking.

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that at the

time they made the representations set forth in paragraph five, they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Respondents knew or should have known that the representation set forth in paragraph six was, and is, false and misleading.

PAR. 9. 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.

EXHIBIT A

TRANSCRIPT OF SPOTLIGHT ON RUTA LEE

Show host: How are you?
Ruta Lee: Ho Ho Ho!
Show host: That was so original, wasn't it?
Ruta Lee: That was so original, and honey, the whole point is that the Christmas season is here. We've already done ourselves in on Halloween by eating everything that the kids brought home.
Show host: I know.
Ruta Lee: And now we've got the -- whole Christmas season coming up.
Show host: And Thanksgiving.
Ruta Lee: And you know it is such a tension-ridden season.
Show host: Right, right.
Ruta Lee: It's suppose to be jolly and warm and wonderful and mellow.
Show host: Hum hum.
Ruta Lee: And instead it's ahhh! [shaking both hands in the air] It's because you haven't got it put together.
Show host: That's right. We all do this too. And you think you've got a year -- but you know, you still, something --
Ruta Lee: Right. Well, I start shopping. I mean I shop on Home Shopping Network all the time. And when I see the real bargains, I get like twelve of something, or six of something, and then just put them aside, and then whenever a birthday or a holiday comes along, I've got something that I can give.
Show host: You're prepared that way.

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Ruta Lee: Generic gifts. Not very thoughtful, but smart on the pocketbooks.

Show host: That's right.

Ruta Lee: And that's the thing to do here. Now listen. We're talking about stress, dear ones. I live a very stressful life. Lord knows, you live a very stressful life. And you know what, we're not rare. Everybody out there is in stress. Just getting out of your driveway into the traffic is stressful. I've got the answer to your prayers, dear ones. Stress does one thing beyond anything else. And that is it depletes your body of every vitamin and mineral that you've got in it. And you know what you've got in it? Not very much. Because if you really stop and think about how we live such hectic lives, we depend on convenience foods, we depend a lot on fast foods. Even if we're good homemakers, you know that the grains are stored in silos in preservatives so that they shouldn't rot. Then they put them in the grounds that are also filled with chemicals. The little vegetable sticks its little plant root up out of the ground and ssshhh, you hit it with spray to get the bugs off of it. Right? Then you take it to the marketplace, you put it in a preservative. You keep it on a shelf in a preservative and then you get it home and you zap it in the microwave oven, right? What kind of minerals and vitamins are we getting. Absolutely nothing. So, I know a lot of us are smart enough to take our vitamin pills. And if you are taking some that are great, more power to you. I can't swallow pills. I don't know about you, but --

Show host: No, I can't either.

Ruta Lee: I think you're very sensitive about swallowing. And if I get it down, it sort of chokes half way down. And then it gunks and I'm coughing and gagging. If it finally makes it down to my stomach, then it sits there and it stews for a while. And I'm burping that awful taste.

Show host: Right, right.

Ruta Lee: And it repeats on me all day long. It feels like its burning a hole in my stomach. And you know how much of that vitamin pill I am absorbing? If I'm exceedingly lucky, five percent. The rest of that vitamin pill gets squashed through me and gets flushed down the toilet the first time I go piddle. So, 95% of my money is wasted going down the toilet. 95% of my vitamin is not even getting into my body. Sweeties, I've got the greatest vitamin product this world has ever seen. Regis Philbin says it's the only civilized way to take vitamins. Look, all I do is open wide. [She sprays vitamins into her mouth from a tube.] That's it. I've taken my vitamins. Now you're probably thinking, oh, that must taste pukey. It's fabulous. It's mouth-refreshing. It's pleasant. And look what's happened. I've got my vitamins. Now you do this four times a day. And you have a month's supply in every tube. We're bringing them to you in two-packs because that's the way

- you asked for them. And they're \$18.95 which really throws me because they used to me (sic) \$19.95.
- Show host: Exactly.
- Ruta Lee: I think we're being very nice because it's the holiday season coming up or something.
- Show host: Right.
- Ruta Lee: Grab them while you can. This is my last visit for this month. Please, dear ones, think about these for your children and for yourself. Now, let me tell you about the three different two-packs that we have at \$19.95. And just think, instead of flushing \$19.00 -- well, let's see. What would 95% of \$19.95 be? Ahh -- \$17.00 or something or other. Instead of flushing that down the toilet, you are getting it into your body. Now, I think that that is remarkable. That just by spraying. [She sprays into her mouth.] There I am. I've taken my vitamins. Four times a day. You've got a month's supply in every tube. Let me tell you first about the Vitamin C and Zinc. As you're probably noticing, I am a little nasal. I've got a sinus condition. That could very easily develop into a nasty throat infection.
- Show host: Right, the draining. Ah -- it's such a horrible feeling.
- Ruta Lee: You know. When you're dripping the stuff down your throat. The drainage camps there. It creates a beautiful bed of mucous for all the bacteria to sit in. Vitamin C and Zinc. Just spray directly on your throat. Spray in your mouth. Kills rhinovirus on contact. You can avoid colds forever. If you feel one coming on, you'd have to take two bottles of Vitamin C and Zinc and it would burn a hole in your stomach. Especially if have a sensitive stomach. And if you're on any other medication, you don't want to swallow more stuff. This way, it doesn't interfere with any other medication you're taking. So, Vitamin C and Zinc. You can avoid colds for the rest of your life. I get calls from dentists who say "tell everybody that's listening, Ruta, if they have a mouth lesion or something" -- Christie, our makeup lady, just had her big molars pulled back here [pointing to the back of her mouth] --
- Show host: Right, yes.
- Ruta Lee: I gave her some Vitamin C and Zinc to spray directly on the lesion, the whole inner mouth. Zinc is a healer, and we forget how good it is.
- Show host: A healer, right. That is so important.
- Ruta Lee: You get cold sores, spray it directly on. You get cracks in the corners of your mouth, spray it directly on. It's delicious.
- Show host: And immediately it dissolves. It's different from some of the product creams.
- Ruta Lee: That's it. That's it. Its right there and its doing its magic. So, that is enough about Vitamin C and Zinc except that we live in closed-in environments. You know? You can't open a hotel room window. Through the office, you can't open a window. If

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anybody's got a cold, it gets passed around through the ventilation system.

Show host:

Right.

Ruta Lee:

Have this on hand all the time. [Holding up a tube of Vitamin C and Zinc.] Carry it with you and spray.

Ruta Lee:

Now, Vitamin B-12. That, to me, is my mother's milk. Its the source of life for me. I'm a high-energy lady. This sweet lady, Bobbi, is even more energetic than I am, if that is possible.

Show host:

No, no, no, no.

Ruta Lee:

But, you know every once in a while --

Show host:

You need a boost.

Ruta Lee:

Sure. Your butt starts to drag and you say Oh, God, I need a cup of coffee, or, Gee, I think I need a candy bar or I need a coke. You don't need any of that which goes to nothing but stuff on your big, lard butt.

Show host:

Plus you end up with the highs and lows when you're getting your fixes --

Ruta Lee:

Yeah. A sugar high is a phony high. It raises you up and then it drops you like a ton of bricks.

Show host:

Right, right.

Ruta Lee:

Vitamin B-12. All you do is spray, and honey, it's like two martinis. Hits you, oh -- happy time. Its absolutely phenomenal. And you're not doing yourself in with alcohol and sugars and the sat-fat that are phoney and had for you. Alcohol, by the way, depletes B-12 just like that [she snaps her fingers]. If you're going to be sipping during the holidays, and we all are, and I'm not saying you should deny yourself a cocktail or a little Christmas grog, take your Vitamin B-12. Great for hangovers on New Year's Eve.

Show host:

I never thought of that.

Ruta Lee:

It's the greatest thing for a hangover. It's absolutely fabulous. Now look, this is also a great way to get vitamins into your kids. Our -- Terri Toner, our --

Show host:

Jonelle loves them too.

Ruta Lee:

You know, I know she does. Terri Toner's pediatrician said this is the greatest thing that came down the pike for kids because we are a pill-popping society. We take pills for vitamins. We have a headache, we take a pill. We're feeling blue, we take a pill. We're feeling too up and we can't sleep, we take a pill. And we get our kids so used to taking pills, especially with vitamins, that when someone comes along in the school yard and says 'Hey, kid. You want a blue? Hey, kid. You want a yellow?' He says that this is a great way to get vitamins into your kids and get them out of the pill-popping mode.

Show host:

Away from the pills. Exactly. A terrific way.

Ruta Lee:

Exactly. Now, last but not least, and girls you can listen while you are on the phone. We are going to be running out of time so shortly. It's my last visit until next month. Do not kick yourself

in your behind for the rest of the month saying 'why didn't I listen? Why didn't I do it?' We've got the magic one of them all. The one you've been hearing about and reading about in every newspaper, in every health periodical, in every beauty periodical. You have been reading about the antioxidants. They are the buzz-words of the 90s when it comes to health and beauty. And believe me, I don't care how much makeup you put on, your beauty starts from inside. The antioxidants are the things that keep your immune system working well. It is firmly believed by most medical authorities, and everybody in research, that Vitamins A, C and E are the key to keeping your immune system working. Why does your immune system have to work? I'll tell you why. Because whether it is a cold or whether it is any of the life-threatening diseases that are all around us -- that's what happens. You pick them up if your immune system isn't working for you. A, C and E are the vitamins that have been shown, and are now widely believed to be the things that keep your immune system working. What happens with oxidants is that they attack the oxygen-free radicals that our own bodies create because of the air we breath, because of the pollutants we take in, like tobacco and alcohol and etc. They naturally metabolize and they are nasty little things like termites that romp through your body randomly and attack healthy, live cells that keep you young and keep you healthy. And when they bite into one cell, it attacks another one like a domino theory. The oxygen-free radicals are put out of your body by the oxygenators. The A, C and E are just like a fire hose coming in and putting out the fire. Its a miracle. You want to stay young and gorgeous without 52 facelifts? God promises us in the bible 120 years. Honey, I intend to go into my coffin looking damn good. Why? Because I'm going to spray my fabulous A, C and E. It's going to keep me young. I'm not going to get the lines. I'm going to keep the sparkle in my eyes. Let's take a call.

Show host: Get to the phone calls, ladies and gentlemen, We have only a very short period of time. Hi, you're on the air, with Ruta. And what is your name please?

Caller: Sally.

Ruta Lee: Valerie, did you say?

Caller: Sally.

Show host: Sally.

Ruta Lee: Oh. Sally. I'm sorry. I've got to turn up my speaker back here. I'm reaching back here. I'm not scratching. I'm turning you up. Sally, where are you calling from?

Caller: I'm calling from Noridge, New York. I used the Vitamin C last year, and I worked all winter long and I didn't have a cold.

Ruta Lee: Whoo! [clapping loudly] You hear that? Isn't it a miracle? You know, I think our body tells us when we are starting to feel a little puny. And if we will just pay attention to it and give it

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what it needs. And a blast of Vitamin C and Zinc can surely prevent a lot of troubles. And you used it all winter?

Caller: Yes. And I didn't have any colds at all. I've started using it again this winter.

Ruta Lee: Good for you, sweetheart. I hope you're trying these marvelous antioxidants as well.

Caller: Yeah. I have them too.

Ruta Lee: Now, I want you to tell everybody how these vitamins taste?

Caller: Tastes almost like mint.

Ruta Lee: They are nice, aren't they?

Caller: Very nice.

Ruta Lee: 'Cause I'm sure people think, 'Ooh'. I know how nasty vitamins taste when you swallow them, and how they repeat on you. And these are like a mouth freshener, aren't they?

Caller: Um hum.

Ruta Lee: Well, Sally, honey, I'm so glad that you're going into this cold and flu season taking good care of yourself.

Caller: Yes, and that's another thing. My doctor knows that I have an awful reaction to the flu shots.

Ruta Lee: Oh, yes.

Caller: And she lets me use Vitamin C and Zinc all winter instead.

Ruta Lee: That's fabulous. So, you showed this to your doctor and she said 'spray away,' didn't she?

Caller: Yeah.

Ruta Lee: You know, that's another thing you brought up, Sally, that I want to mention. You can't overdose. We suggest -- the label says spray four times for the daily requirements. I think that sometimes our bodies need more than the daily requirement, so I spray more. Now, I don't want this to get into my throat, so I'm spraying all the time directly onto my throat. And, it's going to do the job. Thank you for calling, sweetheart. Have a wonderful Thanksgiving.

Caller: You too.

Ruta Lee: And I urge everybody out there to listen to our darling sister Sally. Get on the phone. Order now. If you're a new buyer, hang on. Don't get discouraged because you have to hold on. The lines are so busy. This is the time. Now look, I also want to mention something else. I have gotten calls from the nursing staff and professions and the people who work in the medical service industry. And the nurses in the nursing homes for the aged say, Ruta, you don't know what a boom this is for our senior citizens. Because as they get older, they seem to lose their appetite. Nothing tastes as good, and if they are not feeling well or if they are on medication of some kind, all I do is say 'Open wide' and spray this. It tastes good and it gives them a pickup. It puts a sparkle back in their life. The nurses down at HMS Anderson that take care of the little babies who have leukemia and who are on radiation and chemotherapy called to say 'you

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don't know how -- when you are on radiation and chemotherapy' -- and we have so many people out there who are, thank God, getting rid of cancer. But they have to go through the process. You get nauseous and pukey and puny and you don't want to eat. But you have got to keep your strength up. This is the way to do it. Just spray this in. Get it into your system and not flush 95% of it down the toilet.

Show host: So, please. Just stay on the phone lines, ladies and gentlemen. We are going to continue to take the calls coming through on the vitamins. But, we have to offer you the chance to have, yes, your holder. But more important than that, as we talk about the impact of the holidays, a lot of people are going to be grabbing the cigarette and smoking more than they normally do due to stress. So, for people out there -- and this is Ruta's last day here. I mean this is the time to make the call. If you were with us yesterday, or the day before and you've heard about it, make the call today. Let's take a look right now, in a two-pack, which allows you the chance to either have two for yourself or use one for a friend, the smoke-less spray. Two packs today at only \$18.95. And the holder. I can't believe we have any left. A few hundred left of this incredible holder.

Ruta Lee: Very --

Show host: A constant reminder of the importance of using these products.

Ruta Lee: And you know its also such a beautiful gift.

Show host: That's a great idea.

Ruta Lee: You know it comes in this wonderful, little velvet pouch. And, come over here so I can show you. Can you see -- oops -- here is -- there it is --

Show host: There you go.

Ruta Lee: It comes in a beautiful little drawstring velvet pouch. The point is, don't keep it in the pouch. Put it around your neck like this. And one of the girls called me -- I've got to share this with you. She said 'Ruta, you've changed my life. Not only am I happy and healthy. But I was spraying my vitamins as I was going down in the elevator one day because my butt was dragging and I thought, gee, I'm tired. I need some of my vitamins.' And she said a cute guy was standing next to me and he said 'what are you doing?' And she said, 'well, I'm spraying my vitamins.' And they got to talking and, to cut a long story short, he took her out for drinks and they are now married. So you see, it's a great conversation starter as well. Dear ones, let me tell you about this smoke-less spray. The same process works. All you do is open wide, spray. And it satisfies your need for a cigarette. Somehow a message goes from the brain to the body that says 'stop quivering. You've satisfied a need.' And you haven't done it with a drug. You've done it with vitamins, minerals, herbs and spices that tickle your tongue and tickle your fancy. Now, I promise you, these things used to be available in a fancy

catalogue for about \$28.00, \$29.00 a piece. I'm not talking about the holder. I'm talking about just the spray itself. We bring you two of them, because I made a pledge that I would never bring you anything that I didn't believe it, down to the tips of my toes and what is the best available at the very lowest price. Sweeties, there they are. Two for \$18.95 and the holder for \$14.95. What a treat. Either for yourself or maybe a smoker in your family. Now, listen to me. You know you've got to quit smoking. But this is a very stressful season and you're going to be reaching for a cigarette all the time. Somehow smoking and drinking seem to go together. Its cocktail time. Its Christmas party time. Its celebration time. And they seem to go together. It would be quite wonderful if you could carry this with you the way I do with this beautiful piece of jewelry and spray every time you think you want a cigarette. Now, if you're a smoker, you know here in your mind and in your soul that you should quit smoking. And its very hard to do. I promise you this works. You get our money-back guarantee. It works with just the natural vitamin and mineral and herb and spice ingredients. Money-back guarantee. Does any other product promise you a money-back guarantee? Does the patch, which just feeds you more nicotine? Does the nicorette gum, which feeds just more nicotine? Do you know that all of the products out there on the marketplace that you might go to out of panic all say if you are on heart medication do not use. If you are pregnant, do not use. If you are on high blood pressure medicine, do not use. If you overdose, go to your nearest poison center. I don't want you to put that crap in your body. I want you to spray natural, God-given vitamins and minerals. And you know what happens? A message goes to your body that says quit shaking. You can make it for another ten minutes without a cigarette. You can make it for another ½ hour without a cigarette.

I've had smokers call to tell me they have been smoking for 20, 30, 40 years and that they are able to quit smoking in five days, able to quit cold-turkey. I always say it takes a month to make a habit, it takes a month to break one. So, think about doing this as a Christmas gift to your family. Open this up in front of your family and say 'Family, as a Christmas gift to all of you because you love me, I'm going to quit smoking. I promise you.' And you can do it. In an easy, simple way. Let's take a call.

Show host: Hi, you're on the air with Ruta. And what is your name, please?
Caller: Sally.
Ruta Lee: Sally?
Caller: Yes. She just talked to me.
Ruta Lee: Yes. Hi, Sally. Are you back again? Are you a smoker?
Caller: No. I quit three years ago with your sprays.
Ruta Lee: Oh! Hallelujah, Sally! Well, Sally, you obviously have been with me right since the beginning, haven't you honey?

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Caller: Yeah --
Ruta Lee: Three years --
Caller: I know if you sell anything, it's bound to work.
Ruta Lee: Oh, bless you. You know -- you're bringing up a good point. You prove a point. I am starting my fifth year on the air with my products. The diet sprays, the vitamin sprays, and the smokeless spray. Sally can attest to this. I wouldn't have lasted for five minutes, five weeks, if it didn't work. Because we guarantee you your money back. Sally, how much did you smoke?
Caller: Three packs a day.
Ruta Lee: Whoo!
Caller: For thirty years.
Ruta Lee: Thirty years, three packs a day. And, I don't remember now, how long did it take you to quit?
Caller: A month.
Ruta Lee: A month. Like I said, thirty days. Make a habit, thirty days to break one. And Sally, it was fairly easy, wasn't it?
Caller: Yeah -- very easy.
Ruta Lee: It didn't kill you.
Caller: Yeah. You just had to put that with your cigarettes. And instead of using your cigarettes, you --
Ruta Lee: When you got it, we didn't even have the holder then. You know how easy it is now to have this thing because every time it hits you between your boobies, it reminds you. But I always say if you don't get the holder, it doesn't matter. Take the spray, put it in your car -- pack of cigarettes, wrap a rubber band around it, and then just before you reach for a cigarette, spray. Course, I like having a holder because then I can say, put your cigarettes upstairs, and when you're downstairs you don't want to run up the stairs. And, Sally, you know better than anybody that \$18.95 is about what a carton of cigarettes cost. And --
Caller: I don't know what they are now.
Ruta Lee: Well now with Mr. Clinton's sin tax --
Caller: I just go by the counter and look down at them and say 'I'm so glad I don't have to buy them.'
Ruta Lee: Hallelujah! Are you hearing this, ladies and gentlemen? Sally, who three years ago quit smoking in about a month's time, and she had smoked for thirty years, three packs a day. Do you know, Sally, that in thirty years -- how much money did you burn up? I mean, we're talking probably about \$50,000. That you burned up. And now, you are saving -- if -- if two pack a day is -- what is it honey, we figured it out. Three packs a day. You've got to do it. Two packs is \$150.00 a month. Three packs would be about \$2 -- a little more -- \$225.00 a month. That you're saving.
Caller: Yeah.

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Complaint

Ruta Lee: Think about that. And not only are you saving that. But, you know what? You're not gonna have to spend money on a fancy funeral because you're gonna outlive everybody.

Caller: But I feel a lot better than I have in years.

Ruta Lee: God bless you for being my friend, Sally. I once again wish you a very, very, happy, happy Thanksgiving Day. A very blessed Christmas. Call me during the Christmas holidays. You know? When I get back here in the middle of December, and let me know how you're doing, okay?

Caller: Okay.

Ruta Lee: Because you're a source of inspiration to an awful lot of people out there who are sitting back on their rusty-dusty saying 'Oh, I don't know. I tried to quit smoking, but I gained weight.' I've had so many callers tell me that they don't gain weight when they use this spray.

Caller: Oh, I lost weight when I used yours.

Ruta Lee: Hooray! You lost weight.

Caller: And I got my girlfriend started on it this summer, so I'm hoping she's stopped. She's in Florida, so I haven't heard yet.

Ruta Lee: Well, God love you. And let me know what she says, okay?

Caller: Okay.

Ruta Lee: A great big hug and kiss, Sally. Bye, bye, angel.

Caller: Bye, bye.

Show host: Now, we have only one minute and 42 seconds left. This is the time to make the call. As Ruta has said, this is her last time here --

Ruta Lee: That's right.

Show host: And the next time will be after Thanksgiving.

Ruta Lee: Now look. This is for you. If you're not a smoker, isn't there somebody in your life that you love dearly who smokes? And if you are the smoker, remember this, that you're not just killing yourself. You're killing everybody around you with your secondary smoke. You're killing your children, your grandchildren, You're killing your pets, dear ones. It makes me crazy when I see young families out in restaurants. And the mother and father are smoking and they're saying 'eat your broccoli, dear, it's good for you. Eat your carrots, dear, it's good for you.' Children, you're killing your children. Not only are you killing them, you smell like a compost heap on fire. You know the grand kids come in and say 'I don't want to kiss grandma. She stinks.' It's guaranteed to work. It doesn't put chemicals into your body. All natural given, vitamins, minerals, herbs and spices. You won't be shaky with anxiety. Just spray every time you want a cigarette. But, most of all, get to the phone. Call now. Think about this as a Christmas gift for somebody that you want to stop smoking. Maybe young college people. Maybe someone that has suddenly starting smoking because they think it is chic. I got a call from a lady last month. And she said

'Ruta,' and she had called me a year or two ago and she said 'Ruta, we worked so hard, my husband and I, to save our money, put our kids through school. We thought we would go into our golden retirement years traveling and enjoying the money that we earned.' Do you know what she said? 'Do you know where I'm traveling? To the nursing home where my husband is strapped to a machine that does his breathing for him.' She called me last month to say 'Darling Ruta. I wish this had been around five years ago and ten years ago when it would have made a difference in his lungs. My husband died.' She said 'Thank God, I have stopped. But, I could have had a lovely, long life with my husband thanks to your product. If it had just been around a few years before.' Don't wait. Don't wait until the doctor says you're gonna die if you don't stop smoking. Use your brains that God gave you. God gave you one body to last you a lifetime. Don't spit in His eye by smoking. Dear ones, what can I do but say hallelujah for this product. It works. But it won't work unless you get up off your duff, get to the telephone, use your finger to dial, and then use your finger to spray before you put that cigarette in your mouth. Just promise me that you'll do it. Try it. You have nothing to lose but a rotten, crappy habit that is not just killing you, but everybody around you. And, if you're not the smoker, get it for somebody you love who does smoke.

Show host: Ruta, thank you so much for being here.
Ruta Lee: You're an angel.
Show host: It's always great. Wonderful health.
Ruta Lee: Thank you for sharing your time.
Ruta Lee: Dear ones, hang on the phone. We'll take the call, but hang on the phone. Get in there and do it now.
Show host: So, do not hang up. Stay there. We'll continue to take all the calls coming through.

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 respondents of all the jurisdictional facts set forth in the

aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Live-Lee Productions, Inc. ("Live-Lee") is a corporation organized, existing and doing business under and by virtue of the laws of the state of Texas, with its offices and principal place of business at 2761 Laurel Canyon Blvd., Los Angeles, California.

2. Ruta Lee is an officer and director of Live-Lee. She formulates, directs, and controls the policies, acts, and practices of said corporation, and her principal office and place of business is located at the above stated address. She resides at 2436 Shirley Avenue, Fort Worth, Texas.

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 respondents Live-Lee Productions, Inc., a corporation, its successors and assigns, and its officers; and Ruta Lee, individually and as an officer and director of said corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Life Way

Vitamin C and Zinc Spray, Life Way Antioxidant Spray, Life Way Vitamin B-12 Spray, or any other food, food or dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

A. That such product:

1. Is more fully absorbed by the human body than any other product;
2. Heals lesions in the mouth, cold sores on the mouth, or cracking of the corners of the lips;
3. Prevents common colds;
4. Effectively treats symptoms related to hangovers;
5. Increases energy;
6. Ensures the proper functioning of the immune system;
7. Reduces the risk of contracting infectious diseases;
8. Prevents facial lines; or

B. That use of the product can or will have any effect on the user's health, or on the structure or function of the human body,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For the purposes of this order, "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 have 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;

Provided, that it shall be a defense hereunder that the respondents neither knew nor had reason to know of the inadequacy of substantiation for the representation.

II.

It is further ordered, That respondents Live-Lee Productions, Inc., a corporation, its successors and assigns, and its officers; and Ruta Lee, individually and as an officer and director of said corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Life Way Smoke-Less Nutrient Spray or any other smoking cessation product, program, or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

A. That such product, program, or service enables smokers, regardless of how long they have smoked or how much they smoke, to stop smoking easily;

B. That such product, program, or service satisfies the physiological urge to smoke a cigarette, or eliminates the quivering, anxiety and weight gain attendant with quitting smoking; or

C. Regarding the performance, benefits, efficacy or safety of any such product, program, or service,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation;

Provided, that it shall be a defense hereunder that the respondents neither knew nor had reason to know of the inadequacy of substantiation for the representation.

III.

It is further ordered, That, for five (5) years after the last date of dissemination of any representation covered by this order, respondents Live-Lee Productions, Inc., a corporation, its successors and assigns, and its officers; and Ruta Lee, individually and as an officer and director of said corporation, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

It is further ordered, That respondent Live-Lee Productions, Inc. shall, within thirty (30) days after service of this order, provide a copy of this order to each of respondent's current principals, officers, directors and managers, and to all personnel, agents and representatives having sales, advertising or policy responsibility with respect to the subject matter of this order.

V.

It is further ordered, That respondent Live-Lee Productions, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

VI.

It is further ordered, That respondent Ruta Lee shall, for a period of five (5) years from the date of issuance of this order, notify the Commission within thirty (30) days of the discontinuance of her present business or employment and of her affiliation with any new business or employment which involves the sale of consumer products. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and her duties and responsibilities.

VII.

It is further ordered, That respondents Live-Lee Productions, Inc., a corporation, its successors and assigns, and its officers; and Ruta Lee, individually and as an officer and director of said corporation, shall, within sixty (60) days after 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.