

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch

In the Matter of)	
)	
SERVICE CORPORATION INTERNATIONAL,)	Docket No. C-
a corporation,)	
)	
and)	
)	
KEYSTONE NORTH AMERICA INC.)	
a corporation.)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Service Corporation International (“SCI”) of the outstanding voting securities of Respondent Keystone North America Inc. (“KNA”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”) containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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 Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the

receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Service Corporation International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its corporate head office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019.
2. Respondent Keystone North America Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its registered and head office at Suite 2400, 250 Yonge Street, Toronto, Ontario, M5B 2M6. Respondent KNA does business in the United States through its headquarters, which is located at 400 North Ashley Drive, Suite 1900, Tampa, Florida 33602.
3. The 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 the Order, the following definitions shall apply:

- A. “SCI” means Service Corporation International, its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, groups, and affiliates controlled by Service Corporation International (including, after the Acquisition Effective Date, KNA) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “KNA” means Keystone North America Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, groups, and affiliates controlled by Keystone North America Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means, collectively, SCI and KNA, *provided however*, that, after the Acquisition Effective Date, Respondents shall mean SCI.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer(s)” means any Person(s) that receives the prior approval of the Commission to acquire one or more Divestiture Businesses pursuant to this Order.
- F. “Acquisition” means the proposed acquisition described in and contemplated by the Acquisition Agreement.

- G. “Acquisition Agreement” means the Support Agreement between and among Service Corporation International, SCI Alliance Acquisition Corporation, and Keystone North America Inc., dated October 14, 2009.
- H. “Acquisition Effective Date” means the date on which Respondent SCI, directly or indirectly, acquires a controlling interest in Respondent KNA.
- I. “Business Assets” means Respondents’ rights, title, and interest in all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, including but not limited to:
1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. All Tangible Personal Property, including without limitation, Tangible Personal Property removed (and not replaced) from a Facility at any time after October 14, 2009, if such Tangible Personal Property is necessary to operate a Facility as a going concern, unless such Tangible Personal Property was removed in the ordinary course of business and has a replacement cost of less than \$1,000;
 3. All commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks and service marks used in a Facility other than Corporate Trade Names;
 4. All inventories;
 5. All accounts receivable;
 6. All consents, licenses, certificates, registrations, or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
 7. All Business Intellectual Property;
 8. Intangible rights and property other than Business Intellectual Property, including going concern value, goodwill, internet, telephone, telecopy, e-mail, telephone numbers, addresses, domain names, listings, and websites, provided that Business Assets need not include portions of website content or domain names that contain Corporate Trade Names;
 9. All Business Records;
 10. All agreements, contracts, and leases; including without limitation, all Pre-Need Arrangements;
 11. All insurance benefits, rights, and proceeds, including those arising from any Pre-Need Arrangements; and

12. Rights to all bank, trust, or other accounts, and all deposits therein, related to Pre-Need Arrangements and endowment or perpetual care funds, and all claims for refunds, and rights to offset in respect thereof.
- J. “Business Intellectual Property” means intellectual property owned or licensed by Respondents (as licensor or licensee) or in which Respondents have a proprietary interest, including: (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications, inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all know-how, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints; and (v) all rights in websites and internet domain names presently owned or used by Respondents.
- K. “Business Records” means all information, documents and records, including all electronic records wherever stored, that are related to or used by Respondents, including without limitation, client and customer lists, referral sources, research and development reports, service records, marketing and operational guides and manuals, financial and accounting documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salaries and benefits information, and, subject to legal requirements, copies of all personnel files.
- L. “Cemetery Services” means all activities relating to the promotion, marketing, sale, and provision of property, goods and services, to provide for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, disposition in a niche, or scattering of cremated remains on the cemetery grounds.
- M. “Confidential Divestiture Business Information” means all information not in the public domain related to any Divestiture Business, including without limitation, all Business Intellectual Property and Business Records,
- provided, however,* that Confidential Divestiture Business Information shall not include: i) information exclusively regarding National programs, activities or assets unless specifically required to be divested pursuant to this Order; ii) information that was, or becomes, generally available to the public other than as a result of a disclosure by the Respondents; and iii) information that was available, or becomes available, to Respondents on a non-confidential basis if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- N. “Corporate Trade Names” means the following commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks and service marks: “Alderwoods,” “Keystone,” “Key Memories,” “Service Corporation International,”

“SCI,” “Dignity” (including “Dignidad,” “Dignite,” and other translations of Dignity into languages other than English), and “Dignity Memorial.”

- O. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to an Acquirer for the labor associated with any employee of Respondents shall not exceed the average hourly wage rate for such employee.
- P. “Divestiture Agreement” means an agreement approved by the Commission that divests and conveys one or more Divestiture Businesses to an Acquirer.
- Q. “Divestiture Business” means a Facility identified on Appendix A of the Order and the Business Assets used in the operation of such Facility,

provided, however, that a Divestiture Business need not include the following rights and assets:

- a) assets located at facilities or offices other than those of the Facility if such assets are not exclusively or primarily used in the operation of the Facility;
- b) motor vehicles used by the Divestiture Business if the Acquirer of such Business does not need the vehicles and the Commission approves the divestiture without them;
- c) rights in any lease of Tangible Personal Property that pertains to generally available property such as office furniture, office equipment, or computers;
- d) rights to any National license(s), National supply or service agreement(s), National proprietary or licensed advertising program(s), or other National proprietary product(s), including without limitation Respondent SCI’s Dignity Memorial program and Respondent KNA’s Key Memories program;
- e) licenses to non-proprietary software available to the general public;
- f) records and documents (or portions thereof) exclusively discussing any National license(s), National supply or service agreement(s), National proprietary or licensed advertising program(s), or other National proprietary product(s), including without limitation Respondent SCI’s Dignity Memorial program, unless such records or documents relate to the specific rights or benefits of customers whose Pre-Need Arrangements are being transferred to an Acquirer;
- g) rights to Corporate Trade Names, and records and documents (or portions thereof) exclusively concerning such Corporate Trade Names; or
- h) any other assets, rights, or agreements not needed by the Acquirer of the Divestiture Business if the Commission approves a Divestiture Agreement that does not divest, grant or transfer such assets, rights, or agreements.

- R. “Divestiture Business Employee(s)” means any and all full-time, part-time, or contract employees of Respondents whose duties, at any time on or after October 14, 2009, related primarily to one or more Divestiture Business(es).
- S. “Divestiture Closing Date” means the date on which Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey to an Acquirer one or more Divestiture Businesses.
- T. “Facility” means a location that provides Funeral Services and/or Cemetery Services.
- U. “Funeral Services” means all activities relating to the promotion, marketing, sale, and provision of funeral services and funeral goods, including, but not limited to, goods and services used to remove, care for and prepare bodies for burial, cremation, or other final disposition; and goods and services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.
- V. “National” in reference to an asset, license, program or activity means that such asset, license, program or activity is used by a Respondent in the operation of both (i) one or more Divestiture Businesses; and (ii) one or more other Facilities.
- W. “Orders” means the Decision and Order and Order to Hold Separate and Maintain Assets entered in this matter.
- X. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.
- Y. “Pre-Need Arrangement” means any type of contract or other agreement entered into by a person for the purchase of Funeral Services or Cemetery Services at a future time, regardless of whether such agreement is revocable or how payment for such services is arranged.
- Z. “Support Services” means (i) human resources and administrative services such as payroll processing, labor relations support, pension administration, and procurement and administration of employee benefits, including health benefits; (ii) federal and state regulatory compliance and policy development services; (iii) environmental health and safety services; (iv) financial accounting services; (v) preparation of tax returns; (vi) audit services; (vii) information technology support services; (viii) processing of accounts payable and accounts receivable; (ix) technical support; (x) procurement of supplies; (xi) maintenance and repair of facilities; (xii) legal services or (xiii) other services (excluding pricing, marketing, strategic planning or other services related to engaging or responding to competition) that either Respondent, in the ordinary course of business, provides to one or more Divestiture Businesses through third party contracts or employees who provide such services generally to Facilities owned and operated by such Respondent.
- AA. “Support Services Employee” means an employee or contractor of either Respondent whose duties primarily relate to providing Support Services and do not involve assisting

Facilities with pricing, marketing, strategic planning or other services related to engaging or responding to competition.

- BB. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or leased by a Respondent, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- CC. “Third Party” means any Person other than a Respondent or Acquirer.
- DD. “Transitional Services” means assistance with respect to providing Funeral Services or Cemetery Services, including assistance relating to administrative and support services.

II.

IT IS FURTHER ORDERED that:

- A. No later than ninety (90) days after the Acquisition Effective Date, Respondents shall, pursuant to one or more Divestiture Agreements divest all of the Divestiture Businesses identified on Appendix A of the Order, absolutely and in good faith, at no minimum price, as on-going businesses, to an Acquirer or Acquirers, and in a manner, that receives the prior approval of the Commission,

provided that, with respect to Business Intellectual Property and Business Records used by either Respondent in the operation of one or more Facilities other than those identified on the Appendices attached to this Decision and Order, Respondents may satisfy their divestiture obligations by conveying worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sub-licensable, non-exclusive license(s) to such Business Intellectual Property and Business Records and exact duplicates of all tangible assets associated with such Business Intellectual Property and Business Records.
- B. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof. Further, nothing in any Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of Respondents under a Divestiture Agreement. Respondents shall comply with the terms of each Divestiture Agreement, and a breach by Respondents of any term of a Divestiture Agreement shall constitute a violation of this Order. To the extent that any term of a Divestiture Agreement conflicts with a term of this Order such that Respondents cannot fully comply with both, Respondents shall comply with the term of this Order. It shall be a violation of this Order to, without notification to the Commission; (i) modify a Divestiture Agreement prior to the Divestiture Closing Date applicable to such Agreement; or (ii) fail to meet any material condition precedent to

closing (whether waived or not) in such Divestiture Agreement. Further, notwithstanding any paragraph, section, or other provision of a Divestiture Agreement, for a period of one (1) year after the last Divestiture Closing Date, it shall be a violation of this Order to make any material modification to a Divestiture Agreement without the approval of the Commission.

- C. Respondents shall take all actions necessary to maintain the full economic viability, marketability, and competitiveness of each Divestiture Business until such Business is fully and finally transferred to an Acquirer, and to prevent the destruction, removal, wasting, deterioration, or impairment of each such Business (except for ordinary wear and tear). Further, Respondents shall not sell, transfer, encumber, or otherwise impair a Divestiture Business other than in the manner prescribed in the Decision and Order.
- D. Prior to divesting a Divestiture Business, Respondents shall secure all consents and waivers from all Third Parties that are necessary to allow Respondents to divest such Divestiture Business and to permit the relevant Acquirer to operate such Divestiture Business,

provided, however, Respondent may satisfy this requirement as to a particular Third Party by certifying that the relevant Acquirer has executed the necessary agreements directly with such Third Party.

- E. Prior to divesting a Divestiture Business, Respondent shall take all actions necessary to ensure that such Divestiture Business meets federal, state, local, and municipal requirements necessary to transfer such Business to the relevant Acquirer.
- F. Respondent shall not enforce any agreement against a Third Party or Acquirer to the extent that such agreement may limit or otherwise impair the ability of an Acquirer to acquire, operate, or use a Divestiture Business.
- G. Within ten (10) days of a request by the Commission or by an Acquirer or proposed Acquirer (as applicable), Respondents shall, to the extent permitted by law, provide to such Acquirer or proposed Acquirer, the following information regarding each Divestiture Business Employee whose duties relate to a Divestiture Business that Respondents propose to divest, or have divested, to such Acquirer:
 - 1. name, job title or position, date of hire, and effective service date;
 - 2. a specific description of the employee's responsibilities;
 - 3. the base salary or current wages;
 - 4. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, and current target or guaranteed bonus, if any;
 - 5. employment status (i.e., active or on leave or disability; full-time or part-time);

6. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. at the option of the proposed Acquirer or Acquirer (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- H. Respondents shall not interfere with the employment by an Acquirer of any Divestiture Business Employee; shall not offer any incentive to such Employee to decline employment with an Acquirer or to accept other employment with Respondents; and shall eliminate any contractual impediments that may deter such Employee from accepting employment with an Acquirer including, but not limited to, removing any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such Employee to be employed by an Acquirer, and paying, or transferring to the account of the Employee, all current and accrued bonuses, pensions, and other current and accrued benefits.
- I. For a period of two (2) years after the last Divestiture Closing Date, Respondent SCI shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Divestiture Business Employee(s) who have accepted offers of employment with an Acquirer, or who are employed by an Acquirer, to terminate their employment relationship with such Acquirer,
- provided, however*, a violation of this provision will not occur if: (1) the Employee's employment has been terminated by an Acquirer; (2) Respondent SCI advertises for employees in newspapers, trade publications, or other media not targeted specifically at such Employees; or (3) Respondent SCI hires Employees who independently apply for employment with Respondent, so long as such Employees were not solicited by Respondent SCI in violation of this paragraph.
- J. At the request of an Acquirer, Respondent SCI shall use its best efforts to assist the Acquirer in the fulfillment of any Pre-Need Arrangement relating to the sale of a Dignity Memorial Funeral Plan or Key Memories Plan entered into by a Respondent prior to the date of divestiture of the applicable Divestiture Business; provided, however, that this Paragraph requires Respondent SCI to assist only with such goods and services that the Acquirer cannot reasonably provide on its own.
- K. For a period not to exceed six (6) months after the date all required assets and rights associated with a Divestiture Business have been fully and finally transferred to an Acquirer, Respondent SCI shall provide Transitional Services as needed to assist the Acquirer in using and operating such Divestiture Business as a viable and ongoing business(es) able to provide Funeral Services and Cemetery Services at least equivalent to those provided by Respondent SCI or Respondent KNA, as applicable, prior to the Acquisition Effective Date. In providing such Transitional Services, Respondent SCI shall not: (i) require an Acquirer to pay compensation that exceeds the Direct Cost of

providing such goods and services; or (ii) terminate their obligation to provide Transitional Services because of a material breach by an Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction.

- L. The purpose of this Order is to ensure that the Divestiture Businesses remain competitive and viable providers of Funeral Services and Cemetery Services independent of Respondents and to remedy in a timely manner the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. After the Acquisition Effective Date, Respondents shall not use or disclose Confidential Divestiture Business Information to any Person except as follows:
1. Respondents may disclose Confidential Divestiture Business Information regarding a particular Divestiture Business to the Acquirer or proposed Acquirer (as the case may be) of such Business or other Persons specifically authorized by such Acquirer or proposed Acquirer to receive such information; and
 2. Respondents may use and disclose Confidential Divestiture Business Information as necessary to comply with the requirements of the Orders, Respondents' obligations to an Acquirer under a Divestiture Agreement(s), or applicable laws; and
 3. Respondents may use and disclose Confidential Divestiture Business Information as necessary to enforce the terms of any Divestiture Agreement or defend against any dispute or legal proceeding, *so long as* Confidential Divestiture Business Information is only disclosed to a Third Party as required by a court or pursuant to an appropriate confidentiality order, agreement, or arrangement with the Acquirer (if any) of the relevant Divestiture Business (but Respondent shall not be deemed to have violated this requirement if the relevant Acquirer withholds such agreement unreasonably); and Respondents use their best efforts to obtain a protective order to protect the confidentiality of such Confidential Divestiture Business Information during any adjudication or other court proceedings;
provided, that in no case shall KNA Confidential Business Information be disclosed to any employee or contractor of Respondents other than a KNA Hold Separate Employee or a Support Services Employee unless such disclosure is necessary to comply with applicable laws;
provided further, that in no case shall SCI Confidential Business Information be disclosed to any employee of Respondents other than a SCI Divestiture Employee or a

Support Services Employee unless such disclosure is necessary to comply with applicable laws.

- B. Respondent SCI shall require, as a condition of continued employment, that each SCI Divestiture Employee agree not to disclose any SCI Confidential Business Information to any Person other than a SCI Divestiture Employee except as authorized to do so by Respondent SCI.
- C. During the Hold Separate Period, which period shall begin on the Acquisition Effective Date, Respondent SCI shall require, as a condition of continued employment, that each KNA Hold Separate Employee agree not to disclose any KNA Confidential Business Information to anyone other than a fellow KNA Hold Separate Employee, except as authorized to do so by the Interim Monitor, the Interim Manager or the Divestiture Trustee.
- D. Respondent SCI shall take such steps as are necessary to reasonably ensure that all employees and contractors, other than SCI Divestiture Employees and KNA Hold Separate Employees, who possess or obtain Confidential Divestiture Business Information,
 - 1. use and disclose such Confidential Divestiture Business Information only for purposes specifically authorized by the Orders, and
 - 2. do not disclose any Confidential Divestiture Business Information to any employee other than a Support Services Employee, a KNA Hold Separate Employee or a SCI Divestiture Employee, unless authorized to do so by Respondent SCI.
- E. On or before the Acquisition Effective Date, Respondents shall provide written notification of the restrictions on the use of Confidential Divestiture Business Information that are contained in the Orders to all Divestiture Business Employees and other Respondent Employees who may otherwise have access to Confidential Divestiture Business Information and shall require that all such employees acknowledge their acceptance and understanding of such restrictions.

IV.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in Funeral Services or Cemetery Services as applicable to each area that is identified in Appendix A of this Order.

- B. The prior notification required by this Order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of the Respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), the Respondent shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Order may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

IT IS FURTHER ORDERED that:

- A. The Commission appoints Shaun M. Martin as Interim Monitor and approves the Interim Monitor Agreement between Shaun M. Martin and Respondent SCI, attached as Confidential Appendix A to the Order to Hold Separate and Maintain Assets entered in this matter.
- B. Respondents shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order, and shall take no action that interferes with or hinders the Interim Monitor’s authority, rights, or responsibilities as set forth herein or in any agreement between the Interim Monitor and Respondent SCI.
- C. The Interim Monitor’s duties and responsibilities shall include the following:
1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 2. the Interim Monitor shall have the power and authority to monitor Respondents’ compliance with this Order and shall exercise the power and authority needed to carry out his or her duties and responsibilities in a manner consistent with the purposes of this Order and in consultation with the Commission;
 3. the Interim Monitor may, in his or her sole discretion, consult with Acquirers, proposed Acquirers and Third Parties in the exercise of the Interim Monitor’s

duties under this Order or under any agreement between the Interim Monitor and Respondents;

4. the Interim Monitor shall evaluate all reports submitted by Respondents pursuant to this Order during the term of the Interim Monitor's appointment. Further, within thirty (30) days from the date the Interim Monitor receives such report, he or she shall report in writing to the Commission concerning the performance by Respondents of their obligations under this Order.

D. Respondent SCI shall, pursuant to the Interim Monitor Agreement, transfer to and confer upon the Interim Monitor all rights, powers, and authority necessary to permit the Interim Monitor to perform his duties and responsibilities pursuant to this Order and in consultation with Commission staff, and shall include in the Interim Monitor Agreement all provisions necessary to effectuate this requirement, including without limitation provisions that provide the following:

1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
2. the Interim Monitor shall have the responsibility for monitoring Respondents' compliance with their obligations pursuant to this Order;
3. the Interim Monitor may, in his or her sole discretion, consult with Acquirers, proposed Acquirers and Third Party in the exercise of his or her duties under this Order, or under any agreement between Interim Monitor and Respondent;
4. Subject to all applicable laws, regulations, and any legally recognized privileges of Respondents, the Interim Monitor shall have full and complete access to all personnel, books, records, documents, and facilities of the Divestiture Businesses and to any other relevant information as the Interim Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Divestiture Businesses. Respondents shall develop such financial or other information as the Interim Monitor may reasonably request and shall cooperate with the Interim Monitor;
5. the Interim Monitor shall have the authority to employ, at the cost and expense of Respondent SCI, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities;
6. the Interim Monitor shall serve, without bond or other security, at the expense of Respondent SCI, on such reasonable and customary terms and conditions to which the Monitor and Respondent SCI agree and that the Commission approves;
7. Respondent SCI shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses

incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, malfeasance, or bad faith by the Interim Monitor; and

8. at the option of Respondent SCI, the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants may be required to sign an appropriate confidentiality agreement; *provided, however*, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. The Interim Monitor shall serve until Respondent SCI has fully and finally complied with its obligations in Paragraphs II.A and II.K of this Order.
- G. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor whose rights and duties shall be the same as those of the Interim Monitor. The following procedure shall be used to select a substitute Interim Monitor:
1. The Commission shall select the substitute Interim Monitor, subject to the consent of Respondent SCI, whose consent shall not be unreasonably withheld. If Respondent SCI has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent SCI of the identity of the proposed Interim Monitor, Respondent SCI shall be deemed to have consented to the selection of the Interim Monitor.
 2. Not later than ten (10) days after the appointment of a substitute Interim Monitor, Respondent SCI shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Interim Monitor all the rights and powers necessary to permit the substitute Interim Monitor to monitor Respondent SCI's compliance with the relevant requirements of this Order in a manner consistent with the purposes of the Order and pursuant to the procedures contained in this Paragraph.
- H. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

- I. The Interim Monitor appointed pursuant to this Order may be the same person appointed as an Interim Monitor under the Order to Hold Separate and Maintain Assets or the Divestiture Trustee(s) pursuant to this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Businesses as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General of the United States brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey such assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General of the United States from seeking civil penalties or any other available relief, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent SCI, whose consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent SCI has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent SCI of the identity of any proposed Divestiture Trustee, Respondent SCI shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent SCI shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent SCI shall consent to the following terms and conditions regarding the Divestiture Trustee’s powers, duties, authority, and responsibilities:
 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be

assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.

2. The Divestiture Trustee shall have twelve (12) months after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; provided, however, that the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent SCI shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent SCI shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent SCI 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 Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent SCI's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, that if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent SCI from among those approved by the Commission; *provided further*, however, that Respondent SCI shall select such Person within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent SCI, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent SCI, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be

paid at the direction of Respondent SCI, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets required to be divested by this Order.

6. Respondent SCI shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; provided, however, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order and the Order to Hold Separate and Maintain Assets in this matter.
 8. The Divestiture Trustee shall report in writing to Respondent SCI and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VII.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

- B. Respondents 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 this Order;
1. Within thirty (30) days after this Order becomes final; and
 2. Every (90) days thereafter until the termination of Respondent SCI's obligations under Paragraph II.K. of this Order.
- C. One (1) year after this Order becomes final, annually for the next nine (9) years, on the anniversary of the date the Order becomes final, and at such other times as the Commission may require, Respondent SCI 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 the Order.
- D. Respondents shall submit a copy of their reports concerning compliance with this Order to the Interim Monitor, unless the term of such Monitor has expired. Respondents shall include in their reports, among other things that are required from time to time, a full description of all efforts to comply with the Order, including: (i) the status of the divestiture and transfer of the Divestiture Businesses; (ii) a description of all Transitional Services provided to each Acquirer; (iii) a description of all substantive contacts with each Acquirer, the Interim Monitor (if one has been appointed), the Divestiture Trustee (if one has been appointed) and any other Persons related to compliance with the terms of this Order and/or the Divestiture Agreement(s), and any correspondence with proposed Acquirer, Acquirer, Interim Monitor, or other Third Party related to such contacts that is dated after the Divestiture Closing Date; and (iv) any other actions taken by Respondents relating to compliance with the terms of this Order and/or the Divestiture Agreements. The compliance report immediately following divestiture of the Divestiture Businesses shall include a statement that the divestitures required by the Order have been accomplished in the manner approved by the Commission and shall include the date the divestiture was accomplished.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondents;
- B. any proposed acquisition, merger, or consolidation of Respondents; or
- C. any other change in Respondents, including without limitation, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to a Respondent, made to its principal office, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date it becomes final.

By the Commission.

Donald S. Clark

Secretary

SEAL