IN THE MATTER OF

THE CITY OF NEW ORLEANS

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

Docket 9179. Complaint, May 10, 1984—Order, Jan. 3, 1985

This Order withdraws the Commission Complaint alleging that the City of New Orleans violated Sec. 5 of the FTCA by conspiring with taxicab operators to increase fares and limit the number of taxicab licenses, with the effect of eliminating competition. Following enactment of legislation by the State of Louisiana which provided that "[T]he policy of this state is to require that municipalities . . . regulate [taxicabs] and not to subject municipalities or municipal officers to liability under federal antitrust laws" and which specifically empowers cities to regulate entry and control fares for taxicabs, the Commission determined that continuing this matter would not presently serve the public interest.

COMPLAINT

The Federal Trade Commission, having reason to believe that The City of New Orleans, a municipal corporation subject to the jurisdiction of the Commission, hereinafter sometimes referred to as Respondent or the City, has violated the provisions 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 stating its charges as follows:

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

(A) *Taxicab* means a motor vehicle that is duly licensed to be operated as a taxicab by the City, that has a normal seating capacity of less than ten (10) passengers, and that is used for the transportation of passengers for hire primarily over streets of New Orleans by a route or to a destination controlled by the passenger(s).

(B) *CPNC* means a certificate of public necessity and convenience issued by the Director of the Department of Utilities of the City pursuant to the requirements of Section 12–4 of Chapter 12 of the

Code of the City of New Orleans permitting an individual or company to operate a taxicab in New Orleans.

(C) *Taxicab company* means any business organization, corporation, partnership, cooperative or person that as of the date of this complaint has a trade name and color scheme registered with the Taxicab and For Hire Vehicle Bureau as specified by Section 12–162 of Chapter 12 of the Code of the City of New Orleans for the purpose of operating taxicabs or providing services related to the business of owning, operating and/or driving taxicabs to taxicab owners, operators and/or drivers authorized to do business by the City.

PARAGRAPH 1. Respondent is a municipal corporation organized under the laws of the State of Louisiana and is a person or corporation within the meaning of the Federal Trade Commission Act, as amended (15 U.S.C. 45). The City has passed and enforces certain ordinances that regulate the taxicab business in New Orleans.

PAR. 2. At all times relevant herein, Respondent's acts and practices have affected the businesses of taxicab companies and taxicab owners, operators and/or drivers that maintain, and have maintained, substantial courses of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, and Respondent is subject to the jurisdiction of the Federal Trade Commission. The acts and practices alleged herein are in or affect commerce by affecting at least the following activities that are in or affect commerce:

(A) Taxicabs and taxicab companies provide a primary method of transportation for interstate travelers between New Orleans International Airport and destinations in New Orleans.

(B) Taxicabs and taxicab companies provide transportation for interstate travelers between New Orleans and nearby cities in Mississippi.

(C) Taxicabs and taxicab companies provide transportation to interstate travelers between train stations, bus terminals and ports and other destinations in New Orleans.

(D) Taxicabs and taxicab companies provide transportation to interstate travelers between hotels, motels, convention centers, and tourist attractions and other destinations in New Orleans.

(E) Taxicabs are manufactured in other states and are transported into and sold in Louisiana.

(F) Items and services purchased in substantial quantities such as gasoline, tires, taximeters, two-way radios and various replacement parts for taxicabs originate in other states and are sold for use in and

(G) Employment opportunities as a New Orleans taxicab driver have attracted persons from other states.

PAR. 3. For many years and continuing up to and including the date of the issuance of this complaint, the City has combined, contracted or agreed with taxicab companies, to pursue the following policies and do the following acts, among others:

(A) To encourage taxicab companies to combine and to agree upon proposals to increase fares for taxicabs in New Orleans.

(B) To adopt uniform fares applicable to all taxicabs upon request by taxicab companies.

(C) To limit the number of CPNC's in New Orleans and to prohibit by other means, new entry of taxicab drivers, owners and operators into New Orleans.

(D) To raise unreasonable barriers to entry to new taxicab companies in New Orleans.

(E) To prohibit competition from vehicles-for-hire licensed outside New Orleans.

PAR. 4. The acts and practices of respondent, as alleged in Paragraph Three, have been and are now having the effects, among others, of:

(A) eliminating and preventing substantial competition between competitors and potential competitors in the operation of taxicabs in New Orleans;

(B) strengthening the market power of currently authorized taxicab companies operating in New Orleans taxicab market;

(C) raising, fixing, stabilizing, maintaining, or otherwise interfering or tampering with the rates charged for taxicab service in and from New Orleans; and

(D) depriving interstate and intrastate consumers of taxicab services in and from New Orleans of the benefits of free and open competition in taxicab services.

PAR. 5. The acts and practices of Respondent, as alleged herein, were and are to the prejudice and injury of the public and constituted and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

STATEMENT OF CHAIRMAN JAMES C. MILLER III

After extensive consideration of the issue, I have voted today to

issue complaints in accordance with my statutory responsibility to act when there is reason to believe that the law has been violated.

The action taken by the Commission today is based upon allegations of monopoly power and alleged violations of the U.S. antitrust laws in the taxi markets of Minneapolis [105 F.T.C. 304] and New Orleans. As a technical matter, the way a case is brought most effectively in such situations is to address regulations enacted by the city governments. I wish to stress that our concern is with allegations of monopoly power in taxi markets, and is not driven by any interest in limiting the lawfully-exercised powers of the cities themselves.

I also wish to stress that our concern is solely with restraints on *competition;* we have no concerns with rules affecting safety, insurance, and other related service standards.

The Commission's decision today comes after a 10-year staff study of taxi markets, after extensive inquires and discussions with city officials and taxi operators, and after thorough briefing of the Commission by the agency's career staff.

STATEMENT OF COMMISSIONER MICHAEL PERTSCHUK* DISSENTING FROM THE ISSUANCE OF COMPLAINTS AGAINST THE CITIES OF MINNEAPOLIS AND NEW ORLEANS

I dissent from the Commission's decision to issue complaints against the cities of Minneapolis [105 F.T.C. 304] and New Orleans charging each city with an illegal combination or conspiracy in violation of the Sherman and FTC Acts. The complaints allege that each city conspired with taxicab owners and drivers to restrain trade in the provision of taxicab services through the enactment of municipal regulations that establish fixed taxi fares and create barriers to entry into the market.

For the Commission to succeed under the theories alleged in these complaints, it must first prove that the challenged regulations were the result of an illegal combination or conspiracy rather than lawful actions taken by the cities in the interest of their citizens. I am troubled by the idea that a city's adoption of taxi regulations after consultation with the industry—when consultation is a necessary element of responsible government—transforms the city's regulations into an illegal conspiracy.

Second, when the federal antitrust laws come in apparent conflict with regulations enacted by a governmental entity such as a municipality, the Commission must be especially confident that federal intervention is warranted. Here it is at the very least unclear whether the economic theory of these complaints fits the facts as we know them. Studies commissioned by the Department of Transportation

and others of cities where taxi service was deregulated do not demonstrate that the public benefited. Fares often rose and there is considerable doubt whether service improved. Finally, Congress is currently considering legislation which would exempt most municipal regulations from antitrust scrutiny. I note that the Assistant Attorney General in charge of the Antitrust Division has recently testified in support of that legislation. While the Commission need not consider pending legislation when deciding whether to act, the unpredictable effects of the Commission's action on the taxi market and the legitimate regulatory interests of the cities counsel restraint in these cases.

Order

Complaint counsel have moved for withdrawal of the complaint in this matter, on the ground that state legislation enacted after the complaint was issued makes effective relief impossible. The Administrative Law Judge has certified that motion to the Commission. The complaint alleges that the City of New Orleans has combined, contracted or agreed with taxicab companies in a number of respects relating to fare increases, fare uniformity, limitations on the number of certificates of public necessity and convenience issued, and barriers to entry, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

After the complaint was issued, the State of Louisiana enacted a statute that provides:

> [T]he policy of this state is to require that municipalities . . . regulate [taxicabs] and not to subject municipalities or municipal officers to liability under federal antitrust laws.[1]

The statute also specifically empowers cities to regulate entry and control fares for taxicabs.[2] After careful consideration, the Commission has determined that continuing this matter would not presently serve the public interest.[3] We have therefore concluded that the complaint in this matter should be withdrawn. In taking this action, we express no opinion as to whether the liability of the City of New Orleans could have been established at trial, or whether an independent judicial proceeding might establish that federal statutes embodying the national policy of competition preëmpt the new Louisiana

[1] Act of June 6, 1984, NO. 518 (to be codified at LA. REV. STAT. ANN. Section 33:4792 A(e)).

[2] *Id.* Sections B(1), (2).

[3] *See Community Communications Co.* v. *City of Boulder,* 455 U.S. 40, 55–56 (1982); *California Retail Liquor Dealers Association* v. *Midcal Aluminum, Inc.,* 445 U.S. 97, 105 (1980); *New Motor Vehicle Board of California* v. *Orrin W. Fox Co.,* 439 U.S. 96, 109 (1978); *City of Lafayette* v. *Louisiana Power & Light Co.,* 435 U.S. 389, 410 (1978).

statute. We also express no opinion as to the merits of the complaint issued against the City of Minneapolis in Docket No. 9180.

Accordingly, *it is ordered,* that the complaint issued against the City of New Orleans in Docket No. 9179 be, and it hereby is, withdrawn.

IN THE MATTER OF

SOUTHWEST SUNSITES, INC., ET AL.

FINAL ORDER, OPINION, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9134. Complaint, April 29, 1980—Final Order, Jan. 15, 1985

This order requires four companies and three individuals engaged in the advertising and sale of undeveloped land, among other things, to cease representing misleadingly or without proper substantiation that the purchase of any land is a sound financial investment; involves little or no monetary risk; and will benefit the purchaser economically as a result of profitable resale, mineral rights, exploration or extraction. The firms are prohibited from representing that any land is currently usable as a homesite, farm or ranch, unless that land can be used immediately for the represented purpose without any substantial improvement or development by the purchaser; and barred from misrepresenting the availability or cost of obtaining electric power, potable water, telephone service or sewage disposal. The order further requires that the firms prepare and furnish consumers with a fact sheet containing detailed information regarding the availability and cost of water, electric power, sewer disposal and telephone service, unless a federal property report accompanying sale transactions includes such information. The companies must also insert in advertisements, promotional material and sales presentations specified statements warning that investment in land is risky and prospective purchasers should consult a qualified professional before buying. Such warnings must also be included in contracts, as well as a clause giving purchasers seven days in which to cancel their transactions. Additionally, the firms are required to provide consumers with cancellation forms; honor all valid cancellation requests; and send prescribed notices to past purchasers advising them of the Commission's order; explaining the land's actual value and suitability for use, and outlining the alternative options available to these consumers. The order further requires that the companies provide their sales representatives with a copy of the order; institute a surveillance program designed to reveal those that fail to comply with the terms of the order; and maintain certain records for a specified period of time.

Appearances

For the Commission: *Gary D. Kennedy.*

For the respondent: *Glenn A. Mitchell* and *David U. Fierst, Stein, Mitchell & Mezines,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Southwest Sunsites, Inc., Green Valley Acres, Inc., and Green Valley Acres,

Inc. II, corporations; Sydney Gross and Edwin Kritzler, individually and as officers or former officers of said corporations; Porter Realty, Inc., a corporation; and Irvin Porter, individually and as an officer or former officer of said corporation, hereinafter sometimes collectively referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Southwest Sunsites, Inc., Green Valley Acres, Inc., and Green Valley Acres, Inc. II, hereinafter sometimes referred to as "corporate subdivider respondents," are corporations organized, existing and doing business under and by virtue of the laws of the State of Texas, with their offices and principal places of business located at 16000 Ventura Boulevard, Encino, California.

Respondents Sydney Gross and Edwin Kritzler are officers or former officers of some or all of the corporate subdivider respondents. They formulate, direct and control, and for some time last past have formulated, directed and controlled, [2] the acts and practices of the corporate subdivider respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate subdivider respondents. Corporate subdivider respondents and respondents Gross and Kritzler are sometimes hereinafter referred to collectively as "subdivider respondents."

PAR. 2. Respondent Porter Realty, Inc., hereinafter sometimes referred to as "corporate broker respondent," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 717 Ponce de Leon Boulevard, Coral Gables, Florida.

Respondent Irvin Porter is an officer or former officer of the corporate broker respondent. He formulates, directs, and controls, and for some time last past has formulated, directed and controlled, the acts and practices of the corporate broker respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate broker respondent. Corporate broker respondent and respondent Irvin Porter are sometimes hereinafter referred to collectively as "broker respondents."

PAR. 3. All respondents mentioned herein cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 4. Subdivider respondents are now, and for some times last past have been, engaged in the business of acquiring undeveloped land, subdividing said land into five acre, ten acre and forty acre lots and advertising, offering for sale and selling said lots to the public, directly and through the use of agents, brokers and others. Among the

properties offered for sale and sold are Sunsites Ranch Unit I and Sunsites Ranch Unit II of Southwest Sunsites, Green Valley Acres and Green Valley Acres II, all located in Culberson or Jeff Davis Counties, Texas. The acreage of these properties, hereinafter sometimes referred to as "the subdivisions," is approximately forty thousand (40,000) acres.

PAR. 5. Subdivider respondents sell lots in the subdivisions to purchasers by use of standard form contracts whereby the purchaser agrees to pay monthly installments over terms ranging up to ten years. According to the provisions of the contract, title to the lots is retained by the subdivider respondents until the final payment is made. The contract specifies that title is to pass to the purchaser within a reasonable time after the final payment is made. Purchasers pay interest to subdivider [3] respondents during the contract term on the unpaid balance owing on the contract.

PAR. 6. Broker respondents are now, and for some time last past have been, engaged in the business of selling lots in the subdivisions to the public through telephone solicitations and direct mailings. Broker respondents have sent and are now sending through the mail brochures, fact sheets, contracts and other sales literature to potential purchasers. Signed contracts and downpayments are sent directly by purchasers to the subdivider respondents for acceptance. Broker respondents are paid by subdivider respondents a predetermined fee or commission over the course of the contract.

PAR. 7. In the course and conduct of their aforesaid businesses, respondents now cause, and for some time past have caused, their advertisements, promotional materials, contracts and various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from their various places of business to agents, representatives, employees, customers and prospective customers in various other States of the United States and in foreign countries. Subdivider respondents have maintained and operated places of business in the various States of the United States and both subdivider and broker respondents have made and are now making substantial sales to purchasers in various States of the United States and in foreign countries. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in undeveloped land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 8. In the further course and conduct of their aforesaid businesses, subdivider respondents disseminate and have disseminated commercials through television and radio broadcasts and, both prior and subsequent to sales, subdivider respondents and broker respondents disseminate and have disseminated promotional materia

through the U.S. mail and in person to members of the public, and make and have made oral sales presentations by means of telephone calls, in-home solicitations, on-site presentations and free dinner parties.

I

PAR. 9. By and through the means described in Paragraph Eight, respondents have represented and are representing, directly or by implication, that the lots which respondents are offering for sale are a good investment [4] at the price respondents are offering them for sale, and that there is little or no financial risk involved in the purchase of said lots at said prices.

PAR. 10. In truth and in fact, lots which respondents have offered and are offering for sale, at the prices respondents have offered and are offering them for sale, have not been and are not good investments involving little or no financial risk to purchasers. Therefore, the acts and practices alleged in Paragraph Nine are unfair or deceptive.

PAR. 11. In the further course and conduct of their aforesaid businesses, respondents have offered and are offering lots for sale to prospective purchasers who have beliefs, regarding the potential investment and lack of financial risk, contrary to material facts not disclosed. Such facts are that said lots, at the price respondents are offering them, are a risky investment in that, *inter alia,* the future value of the lots is uncertain and the purchaser probably will be unable to sell his lot, or his interest in the lot under the contract, at or above the purchase price. Such facts, if known by certain purchasers, would be likely to affect materially their consideration of whether to purchase a lot from respondents. The failure to disclose such facts clearly and conspicuously is an unfair or deceptive act or practice.

II

PAR. 12. In the further course and conduct of their aforesaid businesses, by and through the means described in Paragraph Eight, respondents have represented and are representing, directly or by implication, that the lots in the subdivisions are suitable for use by purchasers as homesites, farms and ranches.

PAR. 13. In truth and in fact, all or most of the lots in the subdivisions, in the size parcels in which they are sold, are not suitable for use by purchasers as homesites, farms or ranches because of, *inter alia,*

(a) the unavailability of, or high cost of obtaining, utilities, water, financing, equipment, improvements and other amenities;

(b) the failure of subdivider respondents to install promised improvements to the subdivisions; and [5]

(c) certain practices of subdivider respondents which substantially impair the ability of purchasers to live on or use their lots.

Therefore, the acts and practices alleged in Paragraph Twelve are unfair or deceptive.

PAR. 14. In the further course and conduct of their aforesaid businesses, respondents have offered and are offering lots for sale to prospective purchasers who have beliefs, regarding the suitability for use of said lots as a homesite, farm or ranch, contrary to material facts not disclosed. Such facts, if known by certain purchasers, would be likely to affect materially their consideration of whether to purchase a lot from respondents. The failure to disclose such facts clearly and conspicuously is an unfair or deceptive act or practice.

III

PAR. 15. In the further course and conduct of their aforesaid businesses, respondents have induced and are continuing to induce purchasers of lots in the subdivisions to make payments due on their contracts, as well as additional payments substantially in advance of their due dates as provided for in said contracts. Respondents induce such due payments and such advanced payments on subdivision lots which are of little or no value to purchasers as an investment, homesite, farm, or for any other reasonable use as described in Paragraphs Nine through Fourteen above. Such purchasers have made and are making such payments toward the purchase of lots in reliance upon the aforementioned oral and written unfair and deceptive statements, representations and practices, and pursuant to continuing efforts by respondents to induce further payments by means of collection letters, prepayment discount offers, and numerous representations, including deceptive representations, concerning or relating to the subdivisions. Pursuant to respondents' continuing inducements as set forth herein, respondents have received and are receiving substantial sums of money and have failed to offer to refund or refused to refund such money to purchasers.

PAR. 16. The use by respondents of the practices described in Paragraph Fifteen and their continued retention of the monies collected, as aforesaid, are unfair acts or practices.

PAR. 17. The use by respondents of the aforementioned false, misleading, unfair and deceptive statements, representations, acts and practices, directly or by implication, and the failure of respondents to

disclose [6] the aforementioned material facts, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of respondents' lots by reason of said erroneous and mistaken belief.

PAR. 18. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

INITIAL DECISION BY

THOMAS F. HOWDER, ADMINISTRATIVE LAW JUDGE

JULY 29, 1982

PRELIMINARY STATEMENT

The Commission's complaint in this matter was issued on April 29, 1980, alleging three counts of unfair or deceptive acts or practices in the sale to the public of undeveloped parcels of land in far West Texas. [2]

Three corporations and two individuals were named as "subdivider" respondents, *viz.*, Southwest Sunsites, Inc., Green Valley Acres, Inc., and Green Valley Acres, Inc. II, together with Messrs. Sidney Gross and Edwin Kritzler who were alleged to "direct and control" these corporations.

The complaint also named Mr. Irvin Porter and Porter Realty, Inc. as "broker" respondents. Prior to the hearings, the "broker" respondents and complaint counsel entered into a consent agreement, and the charges as to these respondents were not litigated.[1]

Count I charged respondents with falsely representing the land to be a good investment at the offered price, having little or no financial risk (pars. 9–10). Secondly, it alleged that respondents failed to disclose certain material facts concerning the risky nature of investing in the land by purchasers holding contrary beliefs. The undisclosed facts were identified as "*inter alia,* the future value of the lots is uncertain and the purchaser probably will be unable to sell his lot or

[1] Accordingly, the use of the word "respondents" in this decision will normally refer only to the subdivider respondents.

his interest in the lot under the contract, at or above the purchase price" (par. 11).

Count II charged respondents with falsely representing the subdivided lots as suitable for use as homesites, farms and ranches. Factors listed as precluding such use were: (1) the unavailability or high cost of obtaining utilities, water, financing, equipment, improvements and other amenities; (2) the failure of respondents to install promised improvements; and (3) certain practices of respondents which substantially impair the ability of purchasers to live on or use their lots. Count II alleges further that respondents failed to "clearly and conspicuously" disclose material facts concerning their lots (pars. 12–14).

Count III charged respondents with unlawfully inducing purchasers to make payments on their lots, which allegedly "are of little or no value to purchasers as an investment, homesite, farm, or for any other reasonable use . . ." Such payments are alleged to be made in reliance upon the representations and practices previously described, and "pursuant to continuing efforts by respondents to induce further payments by means of collection letters, prepayment discount offers, and numerous representations, including deceptive representations, concerning [3] or relating to the subdivisions." Respondents were also charged with receiving substantial sums of money, and with failing to offer to refund or refusing to refund this money (par. 15).

The acts and practices of respondents, as set forth in the three counts of the complaint were alleged to violate Section 5 of the Federal Trade Commission Act (par. 18).

Respondents answered, admitting the nature of their business and certain corporate data, but essentially denying all charges.

Prehearing conferences were held in Washington, D.C. on July 7, 1980, August 8, 1980 and January 16, 1981. Adjudicative hearings commenced in Dallas, Texas on April 13, 1981 and continued from time to time in that city and in Van Horn, Texas and in Albuquerque, New Mexico until completion of the case-in-chief and the defense in November, 1981. A brief rebuttle hearing was held in Washington, D.C. in January, 1982.

The record was closed for the reception of evidence on February 9, 1982, following the various record-correction activities of the parties. Extensive proposed findings were submitted, the final submission occurring on March 26, 1982.

Any motions not previously specifically ruled upon, either directly or by the necessary effect of the conclusions in this decision, are hereby denied.

This proceeding is before me upon the complaint, answer, testimony and other evidence, and the proposed findings of fact and conclusions of law filed by counsel. The proposed findings of fact, conclusions

and arguments of the parties have been considered, and those findings not adopted either in the form proposed or in substance are rejected as not supported by the evidence or as involving immaterial issues not necessary for this decision.

Certain abbreviations, such as the following, are used in this decision:

CX – Commission's exhibit.
CPF – Complaint counsel's proposed finding.
RX – Respondent's exhibit.
RPF – Respondent's proposed finding.

The transcript of testimony is usually referred to with the last name of the witness and the page number or numbers upon which the testimony appears. [4]

Having heard and observed the witnesses, and after having reviewed the entire record in this proceeding, I make the following findings:

Findings of Fact

I. THE RESPONDENTS

1. Respondent Southwest Sunsites, Inc. ("SWS") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Its office and principal place of business is located at 16000 Ventura Boulevard, Encino, California. (complaint par. 1; answer, par. 1).

2. SWS was incorporated on February 26, 1973 under the name Southwest Land Sites, Inc. The name was changed to SWS on November 5, 1973, by amendment to the articles of incorporation (CX 1B, D).

3. Respondents Green Valley Acres, Inc. ("GVA") and Green Valley Acres, Inc. II ("GVA II") are likewise Texas corporations, with their offices located at 16000 Ventura Boulevard, Encino, California. GVA was incorporated on March 11, 1976 and GVA II was incorporated on May 9, 1977 (complaint, par. 1; answer, par. 1; CX 14B; CX 23B).

4. The business engaged in by SWS, GVA and GVA II is that of acquiring undeveloped land, subdividing this into smaller parcels of 5, 10, 20 or 40 acres, and selling these lots to the public (complaint, par. 4; answer, par. 4; Gross 296–98).

5. Individual respondents Sydney Gross and Edwin Kritzler, of the same business address, are alleged to formulate, direct and control the activities of the above corporate respondent (complaint, par. 1; answer, par. 1).