

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL

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

Docket C-3440. Complaint, June 15, 1993--Decision, June 15, 1993

This consent order requires, among other things, the Texas corporation to divest, to a Commission-approved acquirer, five funeral homes, and to obtain prior Commission approval, for a period of ten years, before acquiring any additional funeral homes in certain Georgia and Tennessee areas.

Appearances

For the Commission: *Daniel P. Ducore and Katharine B. Alphin.*

For the respondent: *Michael Byowitz, Wachtell, Lipton, Rosen & Katz, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Service Corporation International ("SCI"), a corporation subject to the jurisdiction of the Commission, proposes to acquire substantially all of the common stock of Sentinel Group, Inc. (Sentinel), in violation of the provisions 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 it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

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

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

b. “*Sentinel*” means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents, and representatives.

c. “*Funeral services*” means a group of services that may include, but not be limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

d. “*Funeral establishment*” means the Assets and Businesses of a facility that is devoted to the care or preparation for burial or transportation of deceased human bodies and in which funeral services may be conducted.

II. THE RESPONDENT

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

3. Sentinel is a corporation organized, existing and doing business under the laws of the State of Delaware, with its office and principal place of business located at 1177 Summer Street, Stamford, Connecticut.

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

III. THE ACQUISITION

5. On or about April 5, 1991, SCI entered into an Agreement and Plan of Merger with Sentinel, in which SG Acquisition Corp., a wholly-owned subsidiary of SCI, would be merged into Sentinel. Sentinel would survive as a legal entity, however, Sentinel shareholders would receive SCI common stock, and SCI would become the sole shareholder of Sentinel.

IV. THE RELEVANT MARKET

6. For purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition of Sentinel is the provision of funeral services.

7. For purposes of this complaint, the relevant geographic markets are:

- a. Savannah, Georgia, and its immediate environs.
- b. LaFayette, Georgia, and its immediate environs.
- c. Hamilton County, Tennessee, and Rossville and Fort Oglethorpe, Georgia.

8. In the three relevant geographic markets described in paragraph seven, the funeral service industry is concentrated whether measured by the Herfindahl-Hirschmann Index or by two-firm or four-firm concentration ratios.

9. Entry into the relevant geographic markets is difficult.

10. In each of the relevant geographic markets, both SCI and Sentinel own funeral establishments and are actual competitors in

the provision of funeral services. In the Savannah, Georgia area, Sentinel is the largest firm and SCI one of the leading firms in the provision of funeral services. In the Hamilton County, Tennessee and Rossville and Fort Oglethorpe, Georgia area, Sentinel and SCI are the two largest firms in the provision of funeral services. In the LaFayette, Georgia area, Sentinel and SCI are the only two providers of funeral services.

V. EFFECT OF THE ACQUISITION

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

- a. By eliminating actual competition between SCI and Sentinel in the relevant markets; and
- b. By significantly enhancing the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets or by tending to create a dominant firm in the relevant markets.

VI. VIOLATION CHARGED

12. The acquisition described above violates 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 of certain funeral home acquisitions of Service Corporation International ("SCI"), a corporation, and SCI, having been furnished with a copy of a draft of complaint that the Atlanta Regional Office proposed to present to the Commission for its consideration, and

that, if issued by the Commission, would charge Service Corporation International with violations of the Clayton Act and Federal Trade Commission Act; and

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

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondent had violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having accepted modifications to such agreement and placed the draft order containing the modifications on the public record for thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

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

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

ORDER

I.

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

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

B. “*Sentinel*” means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. “*Funeral establishment*” means the Assets and Businesses of a facility that is devoted to care or preparation for burial or transportation to a cemetery or crematory of deceased human bodies and in which funeral services may be conducted.

D. “*Assets and Businesses*” include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;
3. All right, title and interest in the trade name of each funeral establishment;
4. All right, title and interest in the legal name “Lane Funeral-Homes, Inc.” within Hamilton County, Tennessee, and a portion of Dade, Walker and Catoosa Counties, Georgia, being more particularly described as follows: Beginning at the northwest corner of Dade County, Georgia, turning thence southerly along the western line of Dade County, Georgia, to its intersection with the westerly extension of the northerly line of the Chickamauga & Chattanooga National Military Park (“Park”), thence easterly along the extension

of the northerly line of the Park and the northerly line of the Park to the intersection of the northeastern corner of the Park and the city limits of Ft. Oglethorpe, thence turning northeasterly through the intersection of the centerline of Ross Hollow Road and Doug Road to the north line of Catoosa County, Georgia, hence westerly along the north line of Catoosa, Walker and Dade Counties to the northwest corner of Dade County, Georgia and the point of beginning;

5. All right, title and interest in the legal name, "Wallis & Son Funeral Home" and the trade name "Wallis" in that portion of Walker County, Georgia, being more particularly described as follows: All of Walker County, Georgia lying south of the north line of the Chickamauga & Chattanooga National Military Park and its westward extension; and

6. All books, records and files pertinent to any of the Properties to be Divested:

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

1. Lane Funeral Homes, Inc., South Crest Chapel, Rossville, Georgia.

2. Lane Funeral Homes, Inc., R. J. Coulter Chapel, Chattanooga, Tennessee.

3. Lane Funeral Homes, Inc., Williamson & Sons Funeral Home, Soddy Daisy, Tennessee.

4. Wallis & Son Funeral Home, LaFayette, Georgia.

5. Sipple's Mortuary, Savannah, Georgia.

II.

It is ordered, That, within twelve (12) months after the date this order becomes final, respondent shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The

purpose of the divestitures required by this order is to ensure the continuation of the funeral establishments as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

III.

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

IV.

It is further ordered, That:

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

B. If a trustee is appointed by the Commission or a court pursuant to Section IV.A. of this order, respondent shall consent to

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

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

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

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

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

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Section II of this order; the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out

in Section II; *provided, however*, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

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

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

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of

a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

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

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

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

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

V.

It is further ordered, That respondent shall be bound by the terms and obligations of the Agreement Containing Consent Order between staff of the Commission and Sentinel, dated April 11, 1991, and any order issued by the Commission in Sentinel Group, Inc., File No. 891 0086, pursuant thereto, and shall execute the provisions thereof.

VI.

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

VII.

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

VIII.

It is further ordered, That, for a period of ten (10) years after the date this order became final, respondent shall cease and desist from acquiring, through subsidiaries or otherwise, without the prior approval of the Commission, any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; and (d) Savannah, Georgia; *provided, however,* that this prohibition shall not apply to the construction of new facilities by respondent.

IX.

It is further ordered, That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of Section VIII hereof and of Section VII of the Decision and Order referred to in Section V hereof, respondent may acquire through

default or foreclosure proceedings any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; (d) Savannah, Georgia; (e) Gainesville, Georgia; (f) Rome, Georgia; (g) Summerville, Georgia; (h) Waycross, Georgia; or (i) Ft. Smith, Arkansas; *provided, however*, that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of Sections II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or, if the acquisition is not approved, until the acquisition is divested, respondent shall hold separate, as required by the modified Hold Separate Agreement attached hereto, any funeral establishment in which such an interest is acquired.

X.

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

XI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable

notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

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

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

XII.

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

AGREEMENT TO HOLD SEPARATE

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

Premises

Whereas, on or about April 5, 1991, SCI entered into an agreement and Plan of Merger with Sentinel Group, Inc. ("Sentinel," in which (1) SG Acquisition Corp., a wholly-owned subsidiary of SCI, would be merged into Sentinel; (2) Sentinel shareholders would receive SCI common stock; and (3) SCI would become the sole shareholder of Sentinel (hereinafter the "Acquisition"); and

Whereas, both Sentinel and SCI own funeral establishments that provide funeral services to consumers; and

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

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

Whereas, if the Commission accepts the Agreement Containing Consent Order dated April 11, 1991 between Sentinel and Commission staff ("Sentinel Consent Agreement"), attached hereto as Exhibit B, the Commission must place the Sentinel order on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

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

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

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

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

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

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

1. SCI agrees to execute and be bound by the attached SCI Consent Agreement.
2. SCI agrees that, from the date this Agreement is accepted until the first to occur of (i) ten business days after the Commission withdraws its acceptance of the SCI Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or (ii)

until the date the divestitures required by the SCI order and the Sentinel order are accomplished, SCI shall hold the Hold Separate Assets separate and apart on the following terms and conditions and for the periods set forth in Exhibit C:

- a. SCI shall hold separate and apart the Hold Separate Assets.
- b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.
- c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.
- d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.
- e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.
- f. SCI shall maintain separate financial and operating records and shall prepare separate financial statements for the Hold Separate Assets and shall provide the Commission with quarterly and annual financial statements for each funeral establishment within ten days of their availability.
- g. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.
- h. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell

or otherwise dispose of merchandise in the ordinary course of business, and SCI may sell or otherwise dispose of assets, property or business to accomplish the divestitures required by any order issued against SCI or Sentinel.

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

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

5. In the event the Commission has not finally approved and issued the SCI order within one hundred-twenty (120) days of its publication in the Federal Register, SCI may, at its option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that SCI has entered into in this matter.

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

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

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

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

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition of the voting securities of Sentinel Group, Inc., ("Sentinel") by Service Corporation International, a corporation hereinafter sometimes referred to as "proposed respondent" or "SCI," and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to divest certain assets and cease and desist from certain acts.

It is hereby agreed by and between proposed respondent, its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

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

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the

order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. Counsel for the Federal Trade Commission agree that the Agreement Containing Consent Order in Sentinel Group, Inc., File No. 891 0086, shall be submitted to the Commission for its consideration prior to or contemporaneously with this agreement.

ORDER

I.

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

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

B. “*Sentinel*” means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. “*Funeral establishment*” means the Assets and Businesses of a facility that is devoted to the care or preparation for burial or transportation to a cemetery or crematory of deceased human bodies and in which funeral services may be conducted.

D. “*Assets and Businesses*” include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;
3. All right, title and interest in the trade name of each funeral establishment with the exception that the trade name "Chattanooga Funeral Home" need not be included;
4. All right, title and interest in the legal name "Lane Funeral Homes, Inc." within Hamilton County, Tennessee, and a portion of Dade, Walker and Catoosa Counties, Georgia, being more particularly described as follows: Beginning at the northwest corner of Dade County, Georgia, turning thence southerly along the western line of Dade County, Georgia, to its intersection with the westerly extension of the northerly line of the Chickamauga & Chattanooga National Military Park ("Park"), thence easterly along the extension of the northerly line of the Park and the northerly line of the Park to the intersection of the northeastern corner of the Park and the city limits of Ft. Oglethorpe, thence turn northeasterly through the intersection of the centerline of Ross Hollow Road and Doug Road to the north line of Catoosa County, Georgia, thence westerly along the north line of Catoosa, Walker and Dade Counties to the northwest corner of Dade County, Georgia and the point of beginning;
5. All right, title and interest in the legal name, "Wallis & Son Funeral Home" and the trade name "Wallis" in that portion of Walker County, Georgia, being more particularly described as follows: All of Walker County, Georgia lying south of the north line of the Chickamauga & Chattanooga National Military Park and its westward extension; and
6. All books, records and files pertinent to any of the Properties to be Divested.

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

1. Chattanooga Funeral Home, West Chapel, Chattanooga, Tennessee.
2. Lane Funeral Homes, Inc., R. J. Coulter Chapel, Chattanooga, Tennessee.
3. Lane Funeral Homes, Inc., Valley View Chapel, Chattanooga, Tennessee.
4. Lane Funeral Home, Inc., Williamson & Sons Funeral Home, Soddy Daisy, Tennessee.
5. Wallis & Son Funeral Home, LaFayette, Georgia.
6. Sipple's Mortuary, Savannah, Georgia.

II.

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

III.

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

IV.

It is further ordered, That:

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

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

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

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

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

by the Court for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

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

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

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the

court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

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

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

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

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

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

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

V.

It is further ordered, That respondent shall be bound by the terms and obligations of the Agreement Containing Consent Order between staff of the Commission and Sentinel, dated April 11, 1991, and any order issued by the Commission in Sentinel Group, Inc., File No. 891 0086, pursuant thereto, and shall execute the provisions thereof.

VI.

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

VII.

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

VIII.

It is further ordered, That, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, through subsidiaries or otherwise, without the prior approval of the Commission, any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) La Fayette, Georgia; and (d) Savannah, Georgia; *provided, however,* that this prohibition shall not apply to the construction of new facilities by respondent.

IX.

It is further ordered, That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of Section VIII. hereof and of paragraph VII. of the "Agreement Containing Consent Order" that is referred to in Section V. hereof, respondent may acquire through default or foreclosure proceedings any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; (d) Savannah, Georgia; (e) Gainesville, Georgia; (f) Rome, Georgia; (g) Summerville, Georgia; (h) Waycross, Georgia; or (i) Ft. Smith, Arkansas; *provided, however,* that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of Sections II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or, if the acquisition is not approved, until the interest is divested, respondent shall hold separate, as required by the Hold Separate Agreement attached

hereto, any funeral establishment in which such an interest is acquired.

X.

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

XI.

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

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

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

XII.

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

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Sentinel Group, Inc., a corporation, and it now appearing that Sentinel Group, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing a Consent Order.

It is hereby agreed by and between Sentinel Group, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sentinel Group, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1177 Summer Street, in the City of Stamford, State of Connecticut.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.
3. Proposed respondent waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
 - (d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that, once the order has

been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I.

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

(a) “*Sentinel*” means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns and their respective directors, officers, employees, agents and representatives.

(b) “*Funeral home*” means a facility devoted to the care or preparation for burial or transportation of deceased human bodies, and a facility in which funeral services may be conducted.

(c) “*Properties to be Divested*” means the funeral home properties described in paragraph II.

(d) “*Commission*” means the Federal Trade Commission.

II.

It is ordered, That, within twelve (12) months after the date this order becomes final, Sentinel shall divest, absolutely and in good faith, the following funeral homes: Mincy-Fulford Funeral Home in Waycross, Georgia; Little-Davenport Funeral Home in Gainesville, Georgia; and Erwin-Pettit Funeral Home in Summerville, Georgia. These funeral homes are hereinafter referred to as the “Properties to be Divested.” The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receive the prior approval of the Commission. The purpose of the divestiture required by this order is to insure the continuation of the funeral

homes as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

III.

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

IV.

It is further ordered, That the Properties to be Divested shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of Sentinel.

V.

It is further ordered, That:

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

Trade Commission Act, or any other statute enforced by the Commission, for any failure by Sentinel to comply with this order.

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

1. The Commission shall select the trustee, subject to the consent of Sentinel, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

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

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

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

5. Subject to Sentinel's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as

stated in paragraph II of the order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in paragraph II; *provided, however*, that if the trustee receives *bona fide* offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Sentinel from among those approved by the Commission.

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

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

extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

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

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

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

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

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

VI.

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

randa, reports, and recommendations concerning the required divestiture.

VII.

It is further ordered, That, for a period of ten (10) years after the date this order becomes final, Sentinel shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission, any funeral home located within the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Waycross, Georgia; (b) Summerville, Georgia; (c) Gainesville, Georgia; (d) Rome, Georgia; (e) Savannah, Georgia; and (f) Ft. Smith, Arkansas; *provided, however*, that this prohibition shall not apply to the construction of new facilities by Sentinel.

VIII.

It is further ordered, That, one year after the date this order becomes final and annually thereafter for nine (9) years, Sentinel shall file with the Commission a verified written report of its compliance with paragraph VII of this order. Such reports shall include a listing of all acquisitions made by Sentinel during the 12 months preceding the date of the report.

IX.

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

(A) Access during the office hours of Sentinel, 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 Sentinel relating to compliance with this order;

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

X.

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

EXHIBIT C

HOLD SEPARATE ASSETS AND TIME PERIOD OF HOLD
SEPARATE OBLIGATIONS

1. The following three funeral establishments shall be held separate until the divestiture of Sipple's Mortuary pursuant to the order as is set forth in the SCI Consent Agreement:

FOX & WEEKS FUNERAL DIRECTORS, INC.

d/b/a Fox & Weeks - Hodgson Chapel
7200 Hodgson Memorial Drive
Savannah, Georgia

d/b/a Fox & Weeks - Drayton Street Chapel
700 Drayton Street
Savannah, Georgia

d/b/a Massey Funeral Home
d/b/a Terry C. Massey Funeral Home
Highway 80 West
P.O. Box 7198
Garden City, Georgia

2. The following four funeral establishments shall be held separate until the divestitures of Valley View Chapel, R. J. Coulter Chapel, Williamson & Sons Funeral Home and Chattanooga Funeral Home West Chapel, pursuant to the order as is set forth in the SCI Consent Agreement:

LANE FUNERAL HOME, INC.

d/b/a South Crest Chapel
833 Chickamauga Avenue
Rossville, Georgia

d/b/a Valley View Chapel
7914 Old Lee Highway
Chattanooga, Tennessee

d/b/a R. J. Coulter Chapel
601 Ashland Terrace
Chattanooga, Tennessee

d/b/a Williamson & Sons Funeral Home
8852 Dayton Place
Soddy Daisy, Tennessee

3. The following funeral establishment shall be held separate until the divestiture of Wallis & Son Funeral Home pursuant to the order as is set forth in the SCI Consent Agreement:

LANE FUNERAL HOME, INC.

d/b/a Lafayette Chapel
Highway 27 North
Lafayette, Georgia

4. The following funeral establishment shall be held separate until its divestiture pursuant to the order as is set forth in the Sentinel Consent Agreement:

LANE FUNERAL HOME, INC.

d/b/a Erwin-Petitt Funeral Home
Route 22, Box 76A
Summerville, Georgia

5. The following two funeral establishments shall be held separate until the divestiture of Mincy-Fulford Funeral Home pursuant to the order as is set forth in the Sentinel Consent Agreement:

MILES-ODUM FUNERAL HOME, INC.

d/b/a Miles-Odum Funeral Home
130 Scriven Avenue
Waycross, Georgia

d/b/a Mincy-Fulford Funeral Home
1503 Tebeau Street
Waycross, Georgia

6. The following funeral establishment shall be held separate until its divestiture pursuant to the order as is set forth in the Sentinel Consent Agreement:

WARDS FUNERAL HOME, INC.

d/b/a Wards Funeral Home
758 Main Street
Gainesville, Georgia

MODIFICATION OF AGREEMENT TO HOLD SEPARATE

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

Premises

Whereas, the Parties entered into an Agreement to Hold Separate (“Hold Separate”), attached hereto and by reference made in part hereof, and an Agreement Containing Consent Order (“Consent Agreement”) relating to SCI’s acquisition of the Sentinel Group,

Inc. ("Sentinel"), which were accepted by the Commission on or about July 25, 1991; and

Whereas, SCI's acquisition of Sentinel was consummated on August 30, 1991, and pursuant to the terms of the Hold Separate, SCI has been holding separate the Hold Separate Assets; and

Whereas, the proposed order in the Consent Agreement required that SCI divest among others the Chattanooga Funeral Home, West Chapel ("Chattanooga-West") and the Lane Funeral Homes, Inc., Valley View Chapel ("Valley View") in Chattanooga, Tennessee; and

Whereas, prior to the Commission's issuance of its decision and order in disposition of this proceeding, but following the expiration of the public comment period on the proposed order, SCI notified the Commission by letter dated October 10, 1991, that it desired that the order be changed to require the divestiture of the Lane Funeral Homes, Inc., Southcrest Funeral Home ("Southcrest") in lieu of the divestitures of Chattanooga-West and Valley View; and

Whereas, paragraph five of the Hold Separate provides, among other things, that "in the event that the Commission has not finally approved and issued the SCI order within one hundred twenty (120) days of its publication in the Federal Register, SCI may, at its option terminate this Agreement to Hold Separate" upon certain conditions; and

Whereas, the Parties now desire to amend and modify the Hold Separate to allow the Commission ample opportunity to consider SCI's proposed change in the divestiture requirements of the proposed order.

Now, therefore, the Parties agree that paragraph five of the Hold Separate shall be and hereby is amended and modified to state as follows:

5. In the event that the Commission has not finally approved and issued the SCI order in this matter either:

a. Within one hundred twenty (120) days of the date of this Modification, or

b. If the Commission, determines that any change it may decide to make in the proposed order necessitates a new public comment period, then within sixty (60) days of the expiration of any public comment period following publication in the Federal Register of a revised order in this matter,

SCI, may at its option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that SCI has entered into this matter.

IN THE MATTER OF

NATIONAL MEDIA CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-344l. Complaint, June 24, 1993--Decision, June 24, 1993*

This consent order prohibits, among other things, the Pennsylvania-based corporations from disseminating the infomercials for Cosmetique Francais or for Crystal Power and from making false claims regarding the efficacy or safety of any similar cellulite treatment product, similar crystalline stone or any product. The consent order requires that a disclosure statement be placed in certain video advertisements, and that the respondents pay \$275,000 into a fund for consumer redress to be administered by the Commission.

Appearances

For the Commission: *Patricia A. Hensley and Kathryn C. Nielsen.*

For the respondents: *Steven John Fellman, Galland, Kharasch, Morse & Garfinkle, 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 National Media Corporation and Media Arts International, Ltd., corporations, hereinafter sometimes 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 in that respect as follows:

PARAGRAPH I. A. Respondent National Media Corporation ("National Media"), is a corporation organized, existing and doing