

Complaint

IN THE MATTER OF

**SERVICE CORPORATION INTERNATIONAL
AND
KEYSTONE NORTH AMERICA, INC.**

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

*Docket No. C-4284; File No. 101 0013
Filed, March 24, 2010 — Decision, April 30, 2010*

This consent order addresses the acquisition by Service Corporation International of Keystone North America Inc. The relevant funeral and cemetery services markets are highly concentrated, and the acquisition would significantly increase market concentration and eliminate substantial, direct competition between two significant funeral and cemetery services providers. The acquisition also will result in SCI controlling between 52 percent and 93 percent market share in each of the affected funeral services markets. With respect to the cemetery services markets, the acquisition will reduce the number of cemetery services providers from five to four in the Columbia, South Carolina and Macon, Georgia areas, and from three to two in Yuma, Arizona. The proposed Consent Agreement requires the divestiture of 22 funeral services facilities and four cemetery services facilities, as well as related equipment, customer and supply contracts, commercial trade names, and real property in the 19 funeral and cemetery services markets at issue in this transaction. Each funeral and cemetery services facility to be divested is a stand-alone business, and includes all of the assets necessary for a Commission-approved buyer to independently and effectively operate each facility.

Participants

For the *Commission*: Susan Huber, Kaj Rozga, Andrea Ryan, Jennifer Stiefvater, and Michelle Yost.

For the *Respondents*: Brian McCalmon and James Weiss, K&L Gates LLP; and Howard Fogt, Jr. and Alan Rutenberg, Foley & Lardner LLP.

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COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Service Corporation International ("SCI"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Keystone North America Inc. ("KNA"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS AND JURISDICTION

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, Houston, Texas 77019. SCI, among other things, is engaged in the sale and provision of: (a) funeral services and associated products, and (b) cemetery services and associated products and property.

2. SCI owns and operates 1,266 funeral service locations and 372 cemetery service locations worldwide, including 1,073 funeral service locations in 43 states and the District of Columbia, and 357 cemetery service locations in 31 states. SCI's 2009 revenue from all operations totaled approximately \$2.05 billion.

c. SCI is, and at all relevant times has been, engaged in "commerce" as defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

4. Respondent KNA is a corporation organized, existing, and doing business under and by virtue of the laws of Canada, with its

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registered and head office at Suite 2400, 250 Yonge Street, Toronto, Ontario, M5B 2M6. KNA conducts business in the United States through its headquarters located at 400 North Ashley Drive, Suite 1900, Tampa, Florida 33602. KNA, among other things, is engaged in the sale and provision of: (a) funeral services and associated products, and (b) cemetery services and associated products and property.

5. KNA owns and operates 199 funeral service locations and 15 cemetery service locations in the United States and Canada, including 196 funeral service locations in 31 states, and 15 cemetery service locations in seven states. KNA's revenue for the 12 months ending June 30, 2009 totaled approximately \$124 million.

6. KNA is, and at all relevant times has been, engaged in "commerce" as defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE ACQUISITION

7. On October 14, 2009, SCI and KNA executed a definitive support agreement pursuant to which SCI agreed to acquire all of the outstanding voting securities of KNA (the "Acquisition").

8. The Acquisition would combine the largest and fifth largest funeral and cemetery service providers in North America. SCI and KNA offer competing funeral and cemetery services in 19 local geographic markets, including 16 funeral services markets and three cemetery services markets where the Acquisition, if consummated, likely would substantially lessen competition.

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III. THE RELEVANT PRODUCT MARKETS**A. Funeral Services and Associated Products**

9. One relevant product market in which to analyze the competitive effects of the Acquisition is the provision and sale of funeral services and associated products (“funeral services”). Funeral services includes all activities relating to the promotion, marketing, sale, and provision of funeral services and goods, including, but not limited to, goods and services used to remove, care for, and prepare bodies for burial, cremation or other final disposition; and goods and services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.

10. There are no products or services that are reasonably interchangeable with or viable substitutes for funeral services.

B. Cemetery Services and Associated Products and Property

11. The provision and sale of cemetery services and associated products and property (“cemetery services”) constitutes a relevant product market in which to analyze the competitive effects of the Acquisition. Cemetery services includes all activities relating to the promotion, marketing, sale and provision of property, goods and services to provide for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, disposition in a niche, or scattering of cremated remains on the cemetery grounds.

12. There are no products or services that are reasonably interchangeable with or viable substitutes for cemetery services.

13. In some local markets, certain funeral and cemetery service locations cater to specific populations by focusing on the customs and rituals associated with one or more religious, ethnic, or cultural heritage groups. In such situations, the provision of funeral services or cemetery services targeted to such populations

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may constitute distinct relevant product markets. Thus, in Denver, Colorado, the provision of funeral services to the Latino community constitutes a relevant product market in which to analyze the competitive effects of the acquisition.

IV. THE RELEVANT GEOGRAPHIC MARKETS

14. The 16 geographic markets in which to analyze the effects of the Acquisition with respect to funeral services are: Yuma, Arizona; Monterey Area, California; Denver, Colorado; Auburndale/Winter Haven, Florida; Vidalia, Georgia; Bossier City Area, Louisiana; Lansing, Michigan; East Aurora, New York; Northern Rockland County, New York; Charlotte Area, North Carolina; Greensboro Area, North Carolina; Columbia, South Carolina; West Columbia/Lexington, South Carolina; New Tazewell, Tennessee; Lynchburg Area, Virginia; and Yakima, Washington.

15. The three geographic markets in which to analyze the effects of the Acquisition with respect to cemetery services are: Yuma, Arizona; Macon Area, Georgia; and Columbia Area, South Carolina.

V. MARKET STRUCTURE AND MARKET CONCENTRATION

16. Under the 1992 Department of Justice and Federal Trade Commission Merger Guidelines ("Merger Guidelines") and relevant case law, SCI's acquisition of KNA is presumptively unlawful in the markets for funeral services and cemetery services in a total of 19 geographic markets. Under the Herfindahl-Hirschman Index ("HHI"), which is the standard measure of market concentration under the Merger Guidelines, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 100 points and results in a post-acquisition HHI that exceeds 1,800 points. The

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Acquisition creates market concentration levels well in excess of these thresholds.

A. Funeral Services

17. For funeral services, the post-acquisition HHIs range from 3730 to 8632, and HHI levels will increase by 295 to 4130 points over pre-acquisition levels. The Acquisition also will result in SCI controlling between 52 percent and 93 percent market share in each of the affected funeral services markets.

- a. Yuma, Arizona. Post-acquisition, SCI will have a market share of 69 percent. The Acquisition will increase the HHI by 2055 points, from 3277 to 5332. In addition, the Acquisition will reduce from four to three the number of funeral services providers in the relevant market.
- b. Monterey Area, California. Post-acquisition, SCI will have a market share of 93 percent. The Acquisition will increase the HHI by 4001 points, from 4631 to 8632, and eliminate one of only three funeral services providers in the relevant market.
- c. Denver, Colorado. Post-acquisition, SCI will have a market share of 71 percent of the market for funeral services targeted to the Latino community. The Acquisition will increase the HHI by 2445 points, from 3433 to 5878, and create a duopoly for such services in the Denver market.
- d. Auburndale/Winter Haven, Florida. Post-acquisition, SCI will have a market share of 59 percent. The Acquisition will increase the HHI by 1303 points, from 2737 to 4040.
- e. Vidalia, Georgia. Post-acquisition, SCI will have a market share of 81 percent. The Acquisition will

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increase the HHI by 3243 points, from 3647 to 6890, and eliminate one of only three competitors, creating a duopoly in the market.

- f. Bossier City Area, Louisiana. Post-acquisition, SCI will have a market share of 68 percent. The Acquisition will increase the HHI by 1726 points, from 3896 to 5622, and eliminate one of only three competitors, creating a duopoly in the market.
- g. Lansing, Michigan. Post-acquisition, SCI will have a market share of 52 percent. The Acquisition will increase the HHI by 1067 points, from 2470 to 3537. In addition, the Acquisition will reduce from five to four the number of funeral services providers in the relevant market.
- h. East Aurora, New York. SCI will have a post-acquisition market share of 91 percent. In addition, the Acquisition will increase the HHI by 4130 points, from 4288 to 8418, leave only two competitors, and eliminate the first or second choice of funeral services providers for a substantial number of consumers.
- i. Northern Rockland County, New York. Post-acquisition, SCI will have a market share of 69 percent. The Acquisition will increase the HHI by 2196 points, from 3019 to 5215, and reduce the number of competitors from five to four.
- j. Charlotte Area, North Carolina. SCI will have a post-acquisition market share of 63 percent. The Acquisition will increase the HHI by 1046 points, from 3156 to 4202.
- k. Greensboro Area, North Carolina. SCI will have a post-acquisition market share of 55 percent. The

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Acquisition will increase the HHI by 1201 points, from 3254 to 4455. In addition, the Acquisition will reduce from four to three the number of funeral services providers in the relevant market.

- l. Columbia, South Carolina. SCI will have a post-acquisition market share of 62 percent. The Acquisition will increase the HHI by 1716 points, from 3291 to 5007, and reduce the number of competitors from four to three.
- m. West Columbia/Lexington, South Carolina. SCI will have a post-acquisition market share of 56 percent. The Acquisition will increase the HHI by 295 points, from 3688 to 3983, and reduce the number of competitors from five to four.
- n. New Tazewell, Tennessee. Post-acquisition, SCI will have a market share of 83 percent. The Acquisition will increase the HHI by 3120 points, from 4062 to 7182, and create a duopoly in the market.
- o. Lynchburg Area, Virginia. SCI will have a post-acquisition market share of 61 percent. The Acquisition will increase the HHI by 1762 points, from 2870 to 4632, and reduce the number of competitors from four to three.
- p. Yakima, Washington. SCI will have a post-acquisition market share of 81 percent. The Acquisition will increase the HHI by 2341 points, from 4603 to 6944, eliminate the first or second choice of funeral services providers for a substantial number of consumers, and create a duopoly in the market.

B. Cemetery Services and Associated Products and Property

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18. The Acquisition will reduce the number of cemetery services providers from five to four in the Columbia, South Carolina and Macon, Georgia areas, and from three to two in Yuma, Arizona. Moreover, for a substantial number of customers in all three relevant markets, the Acquisition will eliminate one of two competitors that are their first and second choices.

- a. Columbia Area, South Carolina. The Acquisition will reduce the number of competing cemetery services providers from four to three, and eliminate the first or second choice of cemetery services providers for a substantial number of consumers.
- b. Macon Area, Georgia. Post-acquisition, SCI will have a market share of 59 percent. The Acquisition will increase the HHI by 1456 points, from 2590 to 4046, and reduce the number of competitors from five to four.
- c. Yuma, Arizona. The Acquisition will eliminate one of only three competing cemetery services providers, creating a duopoly in the market.

VI. ANTICOMPETITIVE EFFECTS

19. The Acquisition may substantially lessen competition in the relevant markets by, among other things:

- a. eliminating actual, direct, and substantial competition between SCI and KNA;
- b. increasing the likelihood that SCI will exercise market power unilaterally; and
- c. increasing the likelihood of collusion or coordinated interaction between SCI and other funeral or cemetery service providers.

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VII. ENTRY CONDITIONS

20. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or defeat the likely anticompetitive effects of the Acquisition.

21. Among other entry barriers, both heritage (the consumer's tendency to use the same funeral services provider for multiple generations) and reputation pose substantial barriers to entrants attempting to establish new funeral service locations, and the availability of suitable land, and local zoning, health and environmental regulations impact significantly the ability of firms to enter with new cemetery service locations.

VII. VIOLATIONS

22. The allegations of Paragraphs 1 through 21 are repeated and realleged as though fully set forth here.

23. The Agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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

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IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twenty-fourth day of March 2010.

By the Commission.

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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement") containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

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The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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

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ORDER**I.**

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

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

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- G. “Acquisition Agreement” means the Support Agreement between and among Service Corporation International, SCI Alliance Acquisition Corporation, and Keystone North America Inc., dated October 14, 2009.
- H. “Acquisition Effective Date” means the date on which Respondent SCI, directly or indirectly, acquires a controlling interest in Respondent KNA.
- I. “Business Assets” means Respondents’ rights, title, and interest in all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, including but not limited to:
1. All real property interests (including fee simple interests and real property lease-hold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. All Tangible Personal Property, including without limitation, Tangible Personal Property removed (and not replaced) from a Facility at any time after October 14, 2009, if such Tangible Personal Property is necessary to operate a Facility as a going concern, unless such Tangible Personal Property was removed in the ordinary course of business and has a replacement cost of less than \$1,000;
 3. All commercial names, trade names, “doing business as” (d/b/a) names, registered and

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unregistered trademarks and service marks used in a Facility other than Corporate Trade Names;

4. All inventories;
5. All accounts receivable;
6. All consents, licenses, certificates, registrations, or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
7. All Business Intellectual Property;
8. Intangible rights and property other than Business Intellectual Property, including going concern value, goodwill, internet, telephone, telecopy, e-mail, telephone numbers, addresses, domain names, listings, and websites, provided that Business Assets need not include portions of website content or domain names that contain Corporate Trade Names;
9. All Business Records;
10. All agreements, contracts, and leases; including without limitation, all Pre-Need Arrangements;
11. All insurance benefits, rights, and proceeds, including those arising from any Pre-Need Arrangements; and
12. Rights to all bank, trust, or other accounts, and all deposits therein, related to Pre-Need Arrangements and endowment or perpetual care funds, and all

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claims for refunds, and rights to offset in respect thereof.

- J. “Business Intellectual Property” means intellectual property owned or licensed by Respondents (as licensor or licensee) or in which Respondents have a proprietary interest, including: (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications, inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all know-how, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints; and (v) all rights in websites and internet domain names presently owned or used by Respondents.
- K. “Business Records” means all information, documents and records, including all electronic records wherever stored, that are related to or used by Respondents, including without limitation, client and customer lists, referral sources, research and development reports, service records, marketing and operational guides and manuals, financial and accounting documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salaries and benefits information, and, subject to legal requirements, copies of all personnel files.

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- L. "Cemetery Services" means all activities relating to the promotion, marketing, sale, and provision of property, goods and services, to provide for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, disposition in a niche, or scattering of cremated remains on the cemetery grounds.
- M. "Confidential Divestiture Business Information" means all information not in the public domain related to any Divestiture Business, including without limitation, all Business Intellectual Property and Business Records,
- provided, however, that Confidential Divestiture Business Information shall not include: i) information exclusively regarding National programs, activities or assets unless specifically required to be divested pursuant to this Order; ii) information that was, or becomes, generally available to the public other than as a result of a disclosure by the Respondents; and iii) information that was available, or becomes available, to Respondents on a non-confidential basis if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.*
- N. "Corporate Trade Names" means the following commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks and service marks: "Alderwoods," "Keystone," "Key Memories," "Service Corporation International," "SCI," "Dignity" (including "Dignidad," "Dignite," and other translations of Dignity into languages other than English), and "Dignity Memorial."

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

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

1. assets located at facilities or offices other than those of the Facility if such assets are not exclusively or primarily used in the operation of the Facility;
2. motor vehicles used by the Divestiture Business if the Acquirer of such Business does not need the vehicles and the Commission approves the divestiture without them;
3. rights in any lease of Tangible Personal Property that pertains to generally available property such as office furniture, office equipment, or computers;
4. rights to any National license(s), National supply or service agreement(s), National proprietary or licensed advertising program(s), or other National proprietary product(s), including without limitation

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Respondent SCI's Dignity Memorial program and
Respondent KNA's Key Memories program;

5. licenses to non-proprietary software available to the general public;
 6. records and documents (or portions thereof) exclusively discussing any National license(s), National supply or service agreement(s), National proprietary or licensed advertising program(s), or other National proprietary product(s), including without limitation Respondent SCI's Dignity Memorial program, unless such records or documents relate to the specific rights or benefits of customers whose Pre-Need Arrangements are being transferred to an Acquirer;
 7. rights to Corporate Trade Names, and records and documents (or portions thereof) exclusively concerning such Corporate Trade Names; or
 8. any other assets, rights, or agreements not needed by the Acquirer of the Divestiture Business if the Commission approves a Divestiture Agreement that does not divest, grant or transfer such assets, rights, or agreements.
- R. "Divestiture Business Employee(s)" means any and all full-time, part-time, or contract employees of Respondents whose duties, at any time on or after October 14, 2009, related primarily to one or more Divestiture Business(es).
- S. "Divestiture Closing Date" means the date on which Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer,

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deliver, or otherwise convey to an Acquirer one or more Divestiture Businesses.

- T. “Facility” means a location that provides Funeral Services and/or Cemetery Services.
- U. “Funeral Services” means all activities relating to the promotion, marketing, sale, and provision of funeral services and funeral goods, including, but not limited to, goods and services used to remove, care for and prepare bodies for burial, cremation, or other final disposition; and goods and services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.
- V. “National” in reference to an asset, license, program or activity means that such asset, license, program or activity is used by a Respondent in the operation of both (i) one or more Divestiture Businesses; and (ii) one or more other Facilities.
- W. “Orders” means the Decision and Order and Order to Hold Separate and Maintain Assets entered in this matter.
- X. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.
- Y. “Pre-Need Arrangement” means any type of contract or other agreement entered into by a person for the purchase of Funeral Services or Cemetery Services at a future time, regardless of whether such agreement is revocable or how payment for such services is arranged.

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- Z. “Support Services” means (i) human resources and administrative services such as payroll processing, labor relations support, pension administration, and procurement and administration of employee benefits, including health benefits; (ii) federal and state regulatory compliance and policy development services; (iii) environmental health and safety services; (iv) financial accounting services; (v) preparation of tax returns; (vi) audit services; (vii) information technology support services; (viii) processing of accounts payable and accounts receivable; (ix) technical support; (x) procurement of supplies; (xi) maintenance and repair of facilities; (xii) legal services or (xiii) other services (excluding pricing, marketing, strategic planning or other services related to engaging or responding to competition) that either Respondent, in the ordinary course of business, provides to one or more Divestiture Businesses through third party contracts or employees who provide such services generally to Facilities owned and operated by such Respondent.
- AA. “Support Services Employee” means an employee or contractor of either Respondent whose duties primarily relate to providing Support Services and do not involve assisting Facilities with pricing, marketing, strategic planning or other services related to engaging or responding to competition.
- BB. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or leased by a Respondent, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all

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maintenance records and other documents relating thereto.

CC. "Third Party" means any Person other than a Respondent or Acquirer.

DD. "Transitional Services" means assistance with respect to providing Funeral Services or Cemetery Services, including assistance relating to administrative and support services.

II.**IT IS FURTHER ORDERED** that:

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

provided that, with respect to Business Intellectual Property and Business Records used by either Respondent in the operation of one or more Facilities other than those identified on the Appendices attached to this Decision and Order, Respondents may satisfy their divestiture obligations by conveying worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sub-licensable, non-exclusive license(s) to such Business Intellectual Property and Business Records and exact duplicates of all tangible assets associated with such Business Intellectual Property and Business Records.

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- B. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof. Further, nothing in any Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of Respondents under a Divestiture Agreement. Respondents shall comply with the terms of each Divestiture Agreement, and a breach by Respondents of any term of a Divestiture Agreement shall constitute a violation of this Order. To the extent that any term of a Divestiture Agreement conflicts with a term of this Order such that Respondents cannot fully comply with both, Respondents shall comply with the term of this Order. It shall be a violation of this Order to, without notification to the Commission; (i) modify a Divestiture Agreement prior to the Divestiture Closing Date applicable to such Agreement; or (ii) fail to meet any material condition precedent to closing (whether waived or not) in such Divestiture Agreement. Further, notwithstanding any paragraph, section, or other provision of a Divestiture Agreement, for a period of one (1) year after the last Divestiture Closing Date, it shall be a violation of this Order to make any material modification to a Divestiture Agreement without the approval of the Commission.
- C. Respondents shall take all actions necessary to maintain the full economic viability, marketability, and competitiveness of each Divestiture Business until such Business is fully and finally transferred to an Acquirer, and to prevent the destruction, removal, wasting, deterioration, or impairment of each such Business (except for ordinary wear and tear). Further, Respondents shall not sell, transfer, encumber, or

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otherwise impair a Divestiture Business other than in the manner prescribed in the Decision and Order.

- D. Prior to divesting a Divestiture Business, Respondents shall secure all consents and waivers from all Third Parties that are necessary to allow Respondents to divest such Divestiture Business and to permit the relevant Acquirer to operate such Divestiture Business, *provided, however,* Respondent may satisfy this requirement as to a particular Third Party by certifying that the relevant Acquirer has executed the necessary agreements directly with such Third Party.
- E. Prior to divesting a Divestiture Business, Respondent shall take all actions necessary to ensure that such Divestiture Business meets federal, state, local, and municipal requirements necessary to transfer such Business to the relevant Acquirer.
- F. Respondent shall not enforce any agreement against a Third Party or Acquirer to the extent that such agreement may limit or otherwise impair the ability of an Acquirer to acquire, operate, or use a Divestiture Business.
- G. Within ten (10) days of a request by the Commission or by an Acquirer or proposed Acquirer (as applicable), Respondents shall, to the extent permitted by law, provide to such Acquirer or proposed Acquirer, the following information regarding each Divestiture Business Employee whose duties relate to a Divestiture Business that Respondents propose to divest, or have divested, to such Acquirer:
 - 1. name, job title or position, date of hire, and effective service date;

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2. a specific description of the employee's responsibilities;
 3. the base salary or current wages;
 4. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, and current target or guaranteed bonus, if any;
 5. employment status (i.e., active or on leave or disability; full-time or part-time);
 6. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. at the option of the proposed Acquirer or Acquirer (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- H. Respondents shall not interfere with the employment by an Acquirer of any Divestiture Business Employee; shall not offer any incentive to such Employee to decline employment with an Acquirer or to accept other employment with Respondents; and shall eliminate any contractual impediments that may deter such Employee from accepting employment with an Acquirer including, but not limited to, removing any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such Employee to be employed by an Acquirer, and paying, or transferring to the account of

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the Employee, all current and accrued bonuses, pensions, and other current and accrued benefits.

- I. For a period of two (2) years after the last Divestiture Closing Date, Respondent SCI shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Divestiture Business Employee(s) who have accepted offers of employment with an Acquirer, or who are employed by an Acquirer, to terminate their employment relationship with such Acquirer,

provided, however, a violation of this provision will not occur if: (1) the Employee's employment has been terminated by an Acquirer; (2) Respondent SCI advertises for employees in newspapers, trade publications, or other media not targeted specifically at such Employees; or (3) Respondent SCI hires Employees who independently apply for employment with Respondent, so long as such Employees were not solicited by Respondent SCI in violation of this paragraph.

- J. At the request of an Acquirer, Respondent SCI shall use its best efforts to assist the Acquirer in the fulfillment of any Pre-Need Arrangement relating to the sale of a Dignity Memorial Funeral Plan or Key Memories Plan entered into by a Respondent prior to the date of divestiture of the applicable Divestiture Business; *provided, however*, that this Paragraph requires Respondent SCI to assist only with such goods and services that the Acquirer cannot reasonably provide on its own.
- K. For a period not to exceed six (6) months after the date all required assets and rights associated with a Divestiture Business have been fully and finally transferred to an Acquirer, Respondent SCI shall

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provide Transitional Services as needed to assist the Acquirer in using and operating such Divestiture Business as a viable and ongoing business(es) able to provide Funeral Services and Cemetery Services at least equivalent to those provided by Respondent SCI or Respondent KNA, as applicable, prior to the Acquisition Effective Date. In providing such Transitional Services, Respondent SCI shall not: (i) require an Acquirer to pay compensation that exceeds the Direct Cost of providing such goods and services; or (ii) terminate their obligation to provide Transitional Services because of a material breach by an Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction.

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

III.**IT IS FURTHER ORDERED** that:

- A. After the Acquisition Effective Date, Respondents shall not use or disclose Confidential Divestiture Business Information to any Person except as follows:
 - 1. Respondents may disclose Confidential Divestiture Business Information regarding a particular Divestiture Business to the Acquirer or proposed Acquirer (as the case may be) of such Business or other Persons specifically authorized by such

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Acquirer or proposed Acquirer to receive such information; and

2. Respondents may use and disclose Confidential Divestiture Business Information as necessary to comply with the requirements of the Orders, Respondents' obligations to an Acquirer under a Divestiture Agreement(s), or applicable laws; and
3. Respondents may use and disclose Confidential Divestiture Business Information as necessary to enforce the terms of any Divestiture Agreement or defend against any dispute or legal proceeding, so long as Confidential Divestiture Business Information is only disclosed to a Third Party as required by a court or pursuant to an appropriate confidentiality order, agreement, or arrangement with the Acquirer (if any) of the relevant Divestiture Business (but Respondent shall not be deemed to have violated this requirement if the relevant Acquirer withholds such agreement unreasonably); and Respondents use their best efforts to obtain a protective order to protect the confidentiality of such Confidential Divestiture Business Information during any adjudication or other court proceedings;

provided, that in no case shall KNA Confidential Business Information be disclosed to any employee or contractor of Respondents other than a KNA Hold Separate Employee or a Support Services Employee unless such disclosure is necessary to comply with applicable laws;

provided further, that in no case shall SCI Confidential Business Information be disclosed to any employee of Respondents other than a SCI Divestiture Employee or

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

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

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- E. On or before the Acquisition Effective Date, Respondents shall provide written notification of the restrictions on the use of Confidential Divestiture Business Information that are contained in the Orders to all Divestiture Business Employees and other Respondent Employees who may otherwise have access to Confidential Divestiture Business Information and shall require that all such employees acknowledge their acceptance and understanding of such restrictions.

IV.**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in Funeral Services or Cemetery Services as applicable to each area that is identified in Appendix A of this Order.
- B. The prior notification required by this Order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of the Respondent and not

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of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), the Respondent shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Order may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.**IT IS FURTHER ORDERED** that:

- A. The Commission appoints Shaun M. Martin as Interim Monitor and approves the Interim Monitor Agreement between Shaun M. Martin and Respondent SCI, attached as Confidential Appendix A to the Order to Hold Separate and Maintain Assets entered in this matter.
- B. Respondents shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order, and shall take no action that interferes with or hinders the Interim Monitor’s authority, rights, or responsibilities as set forth herein or in any agreement between the Interim Monitor and Respondent SCI.

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- C. The Interim Monitor's duties and responsibilities shall include the following:
1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 2. the Interim Monitor shall have the power and authority to monitor Respondents' compliance with this Order and shall exercise the power and authority needed to carry out his or her duties and responsibilities in a manner consistent with the purposes of this Order and in consultation with the Commission;
 3. the Interim Monitor may, in his or her sole discretion, consult with Acquirers, proposed Acquirers and Third Parties in the exercise of the Interim Monitor's duties under this Order or under any agreement between the Interim Monitor and Respondents;
 4. the Interim Monitor shall evaluate all reports submitted by Respondents pursuant to this Order during the term of the Interim Monitor's appointment. Further, within thirty (30) days from the date the Interim Monitor receives such report, he or she shall report in writing to the Commission concerning the performance by Respondents of their obligations under this Order.
- D. Respondent SCI shall, pursuant to the Interim Monitor Agreement, transfer to and confer upon the Interim Monitor all rights, powers, and authority necessary to permit the Interim Monitor to perform his duties and responsibilities pursuant to this Order and in consultation with Commission staff, and shall include

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in the Interim Monitor Agreement all provisions necessary to effectuate this requirement, including without limitation provisions that provide the following:

1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
2. the Interim Monitor shall have the responsibility for monitoring Respondents' compliance with their obligations pursuant to this Order;
3. the Interim Monitor may, in his or her sole discretion, consult with Acquirers, proposed Acquirers and Third Party in the exercise of his or her duties under this Order, or under any agreement between Interim Monitor and Respondent;
4. Subject to all applicable laws, regulations, and any legally recognized privileges of Respondents, the Interim Monitor shall have full and complete access to all personnel, books, records, documents, and facilities of the Divestiture Businesses and to any other relevant information as the Interim Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Divestiture Businesses. Respondents shall develop such financial or other information as the Interim Monitor may reasonably request and shall cooperate with the Interim Monitor;
5. the Interim Monitor shall have the authority to employ, at the cost and expense of Respondent SCI, such consultants, accountants, attorneys, and other representatives and assistants as are

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reasonably necessary to carry out the Interim Monitor's duties and responsibilities;

6. the Interim Monitor shall serve, without bond or other security, at the expense of Respondent SCI, on such reasonable and customary terms and conditions to which the Monitor and Respondent SCI agree and that the Commission approves;
 7. Respondent SCI shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, malfeasance, or bad faith by the Interim Monitor; and
 8. at the option of Respondent SCI, the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants may be required to sign an appropriate confidentiality agreement; provided, however, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission

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materials and information received in connection with the performance of the Interim Monitor's duties.

- F. The Interim Monitor shall serve until Respondent SCI has fully and finally complied with its obligations in Paragraphs II.A and II.K of this Order.
- G. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor whose rights and duties shall be the same as those of the Interim Monitor. The following procedure shall be used to select a substitute Interim Monitor:
 - 1. The Commission shall select the substitute Interim Monitor, subject to the consent of Respondent SCI, whose consent shall not be unreasonably withheld. If Respondent SCI has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent SCI of the identity of the proposed Interim Monitor, Respondent SCI shall be deemed to have consented to the selection of the Interim Monitor.
 - 2. Not later than ten (10) days after the appointment of a substitute Interim Monitor, Respondent SCI shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Interim Monitor all the rights and powers necessary to permit the substitute Interim Monitor to monitor Respondent SCI's compliance with the relevant requirements of this Order in a manner consistent with the purposes of the Order and pursuant to the procedures contained in this Paragraph.

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- H. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- I. The Interim Monitor appointed pursuant to this Order may be the same person appointed as an Interim Monitor under the Order to Hold Separate and Maintain Assets or the Divestiture Trustee(s) pursuant to this Order.

VI.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Businesses as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General of the United States brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey such assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General of the United States from seeking civil penalties or any other available relief, including a

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court appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent SCI, whose consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent SCI has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent SCI of the identity of any proposed Divestiture Trustee, Respondent SCI shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent SCI shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent SCI shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be

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

2. The Divestiture Trustee shall have twelve (12) months after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; provided, however, that the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent SCI shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent SCI shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent SCI shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court appointed Divestiture Trustee, by the court.

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4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent SCI's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; provided, however, that if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent SCI from among those approved by the Commission; provided further, however, that Respondent SCI shall select such Person within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent SCI, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent SCI, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the

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

6. Respondent SCI shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; provided, however, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order and the Order to Hold Separate and Maintain Assets in this matter.
8. The Divestiture Trustee shall report in writing to Respondent SCI and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

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9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VII.**IT IS FURTHER ORDERED** that:

- A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order;
 1. Within thirty (30) days after this Order becomes final; and

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

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approved by the Commission and shall include the date the divestiture was accomplished.

VIII.

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

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

IX.

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

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

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- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on April 30, 2020.

By the Commission, Commissioner Ramirez and Commissioner Brill not participating.

Decision and Order

APPENDIX A

Appendix A

KNA Divestiture Businesses

Area	Facility	Owner prior to Acquisition Effective Date
Cemetery Services Facilities and Funeral Services Facilities located within a 20 mile radius of Johnson Mortuary & Desert Lawn Memorial Park, 1415 South First Avenue, Yuma, Arizona	Sunset Vista Cemetery, Sunset Vista Funeral Home and Crematory 11357 East 40th Street, Yuma AZ 85367	KNA
Cemetery Services Facilities located within a 20 mile radius of Saints Rest Cemetery, 826 Eisenhower Parkway, Macon, Georgia	Glen Haven Memorial Gardens 7070 Houston Road, Macon, GA 31216	KNA
Funeral Services Facilities located north of Route 60 in Polk County, Florida	Kersey Funeral Home 108 East Lake Stella Drive, Auburndale, FL 33823	KNA
Funeral Services Facilities located within a 15 mile radius of Murchison Funeral Home, 207 Second Street East, Vidalia, Georgia	Stewart Funeral Home 1722 Mount Vernon Road, Vidalia, GA 30474 Jones-Stewart Funeral Home 211 West Liberty Avenue, Lyons, GA 30436 Ronnie L. Stewart Funeral Home 200 South Second Street, Glenwood, GA 30428	KNA

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APPENDIX A (continued)

Area	Facility	Owner prior to Acquisition Effective Date
Funeral Services Facilities located within a 15 mile radius of Boone Funeral Home, 2156 Airline Drive, Bossier City, Louisiana	Boone Funeral Home 2156 Airline Drive, Bossier City, LA 71111	KNA
Funeral Services Facilities located within a 17 mile radius of Gorsline Runciman Funeral Home, 900 East Michigan Avenue, Lansing, Michigan	Tiffany Funeral Home 3232 West Saginaw Street, Lansing, MI 48917	KNA
Funeral Services Facilities located in Guilford County, North Carolina	Lambeth Troxler Funeral and Cremation Services 300 West Wendover Avenue, Greensboro, NC 27408	KNA
Funeral Services Facilities located in Mecklenburg County, North Carolina, or located north of Highway 75 (Waxhaw Highway) and west of Highway 601 (Concord Highway) in Union County, North Carolina	Hankins and Whittington Funeral Service 1111 East Boulevard, Charlotte, NC 28203	KNA
Funeral Services Facilities that are located in Rockland County, New York and are within a 10 mile radius of Michael J. Higgins Funeral Service, 73 North Liberty Drive, Stony Point, New York	T.J. McGowan Sons Funeral Home 71 North Central Highway, Garnerville, NY 10923 T.J. McGowan Sons Funeral Home 133 Broadway, Haverstraw, NY 10927	KNA
Funeral Services Facilities located in Claiborne County, Tennessee	Claiborne Funeral Home 1106 Highway 33 South, New Tazewell, TN 37825	KNA

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APPENDIX A (continued)

Area	Facility	Owner prior to Acquisition Effective Date
Funeral Services Facilities located within a 15 mile radius of Whitten Funeral Home/Park Avenue, 1336 Park Avenue, Lynchburg, Virginia	Diuguid Funeral Service and Crematory 811 Wiggington Road, Lynchburg, VA 24502 Diuguid Funeral Service and Crematory – Waterlick Chapel 21914 Timberlake Road, Lynchburg, VA 24502	KNA
Funeral Services Facilities located within a 12 mile radius of Langevin-Musser Funeral Home, 1010 West Yakima Avenue, Yakima, Washington	Shaw and Sons Funeral Directors 201 North Second Street, Yakima, WA 98901	KNA
Funeral Services Facilities located within a 12 mile radius of Bayside Community Mortuary, 1610 Noche Buena Street, Seaside, California	Mission Memorial Park and Seaside Funeral Home 1915 Ord Grove Avenue, Seaside, CA 93955 Mission Mortuary 450 Camino El Estero, Monterey, CA 93940	SCI
Funeral Services Facilities catering primarily to Latino communities located within a 20 mile radius of Trevino Mortuary, 300 South Logan Street, Denver, Colorado	Funeraria Latina-East 6601 East Colfax Avenue, Denver, CO 80220	SCI
Funeral Services Facilities in Erie County, New York that are located south Interstate 90 and east of Interstate 90 or U.S. Route 219 (whichever is the most easterly road at the latitude of the relevant Funeral Services Facility).	Kenneth Howe Funeral Home 64 Maple Street, East Aurora, New York, 14052 Froehley-Dengler Funeral Home 64 Maple Street, East Aurora, New York, 14052	SCI

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APPENDIX A (continued)

Area	Facility	Owner prior to Acquisition Effective Date
Funeral Services Facilities located within a 20 mile radius of Shives Funeral Home, 5202 Colonial Drive, Columbia, South Carolina	Greenlawn Memorial Park and Funeral Home 845 Leesburg Road, Columbia SC 29209	SCI
Cemetery Services Facilities located within a 25 mile radius of Elmwood Cemetery, 501 Elmwood Avenue, Columbia, South Carolina	Woodridge Memorial Park and Funeral Home 138 Corley Mill Road, Lexington, SC 29072	SCI
Funeral Services Facilities located within a 15 mile radius of Woodridge Memorial Park and Funeral Home, 138 Corley Mill Road, Lexington, South Carolina		SCI

Order to Maintain Assets

**ORDER TO HOLD SEPARATE
AND MAINTAIN ASSETS**

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

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

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Hold Separate and Maintain Assets ("Hold Separate Order"):

Order to Maintain Assets

1. Respondent Service Corporation International (“SCI”) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its corporate head office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019.
2. Respondent Keystone North America Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its registered and head office at Suite 2400, 250 Yonge Street, Toronto, Ontario, M5B 2M6. Respondent KNA does business in the United States through its headquarters, which is located at 400 North Ashley Drive, Suite 1900, Tampa, Florida 33602.
3. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that in addition to definitions in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, the following definitions shall apply:

- A. “SCI” means Service Corporation International, its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, groups, and affiliates controlled by Service Corporation International (including, after the Acquisition Effective Date, KNA) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

Order to Maintain Assets

- B. “KNA” means Keystone North America Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, groups, and affiliates controlled by Keystone North America Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means, collectively, SCI and KNA, provided however, that, after the Acquisition Effective Date, Respondents shall mean SCI.
- D. “Commission” means the Federal Trade Commission.
- E. “Consent Agreement” means the Agreement Containing Consent Orders in this matter.
- F. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission, and
 - 2. Final Decision and Order issued by the Commission in this matter.
- G. “Hold Separate Business” means a business that includes each KNA Divestiture Business until the day after such KNA Divestiture Business is fully and finally divested to an Acquirer.
- H. “Hold Separate Manager” means any Hold Separate Manager appointed pursuant to this Order.
- I. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.

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- J. “Hold Separate Period” means the time period starting on the Acquisition Effective Date and continuing so long as the Hold Separate Business includes at least one Divestiture Business.
- K. “Interim Monitor” means any monitor appointed pursuant to this Hold Separate Order or the Decision and Order.
- L. “KNA Confidential Business Information” means Confidential Divestiture Business Information that relates to one or more KNA Divestiture Businesses.
- M. “KNA Divestiture Business” means a Divestiture Business that was owned or operated by KNA prior to the Acquisition Effective Date.
- N. “KNA Hold Separate Employees” means any and all full-time, part-time, or contract employees of Respondent KNA whose duties relate primarily to operation of one or more KNA Divestiture Businesses included in the Hold Separate Business and such other employees of Respondent KNA, other than Support Service Employees, as are necessary to maintain the economic viability, marketability, and competitiveness of the Hold Separate Business and operate the Hold Separate Business, and each KNA Divestiture Business included in the Hold Separate Business, in the regular and ordinary course and in accordance with past practice.
- O. “Orders” means the Decision and Order and Hold Separate Order.
- P. “SCI Confidential Business Information” means Confidential Divestiture Business Information that relates to one or more SCI Divestiture Businesses.

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- Q. “SCI Divestiture Business” means a Divestiture Business that was owned or operated by Respondent SCI prior to Acquisition Effective Date.
- R. “SCI Divestiture Employees” means any and all full-time, part-time, or contract employees of Respondent SCI whose duties relate primarily to operations of one or more SCI Divestiture Business(es) and such other SCI employees, other than Support Service Employees, as are necessary to maintain the economic viability, marketability, and competitiveness of the SCI Divestiture Businesses, and operate them in the regular and ordinary course and in accordance with past practice.
- S. “Support Services” means (i) human resources and administrative services such as payroll processing, labor relations support, pension administration, and procurement and administration of employee benefits, including health benefits; (ii) federal and state regulatory compliance and policy development services; (iii) environmental health and safety services; (iv) financial accounting services; (v) preparation of tax returns; (vi) audit services; (vii) information technology support services; (viii) processing of accounts payable and accounts receivable; (ix) technical support; (x) procurement of supplies; (xi) maintenance and repair of facilities; (xii) legal services or (xiii) other services (excluding pricing, marketing, strategic planning or other services related to engaging or responding to competition) that either Respondent, in the ordinary course of business, provides to one or more Divestiture Businesses through third party contracts, or employees who provide such services generally to Facilities owned and operated by such Respondent.

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- T. “Support Services Employee” means an employee or contractor of either Respondent whose duties primarily relate to providing Support Services and do not involve assisting Facilities with pricing, marketing, strategic planning or other services related to engaging or responding to competition.

II.**IT IS FURTHER ORDERED** that

- A. From the date Respondents execute the Consent Agreement until the date the Hold Separate Order terminates, Respondents shall take all actions necessary to maintain the full economic viability, marketability, and competitiveness of each Divestiture Business until and unless such Business is fully and finally transferred to an Acquirer, and to prevent the destruction, removal, wasting, deterioration, or impairment of each such Business (except for ordinary wear and tear). Further, Respondents shall not sell, transfer, encumber, or otherwise impair a Divestiture Business other than in the manner prescribed in the Decision and Order.
- B. Respondent SCI shall maintain the operations of each SCI Divestiture Business in the regular and ordinary course of the Business and in accordance with past practice (including regular repair and maintenance of the assets of such business) from the date Respondent SCI executes the Consent Agreement until the day after full and final transfer of the Business to an Acquirer.
- C. In operating and maintaining each SCI Divestiture Business, Respondent SCI shall:

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1. provide each SCI Divestiture Business with sufficient working capital to operate at least at current rates of operation and to carry on, at least at their scheduled pace, all planned capital projects, business plans, and promotional activities;
2. continue, at least at their scheduled pace, any additional expenditures for each SCI Divestiture Business that were authorized prior to the date the Consent Agreement was signed by Respondent SCI, including, but not limited to, promotional, marketing, and sales expenditures;
3. use best efforts, consistent with past practice, to maintain and increase sales of each SCI Divestiture Business and provide such resources as may be necessary to respond to competition against each SCI Divestiture Business;
4. provide such Support Services to each SCI Divestiture Business as were being provided as of the date the Consent Agreement was signed by Respondent SCI;
5. use best efforts to preserve and maintain existing relationships with the customers, suppliers, vendors, private and governmental entities, and others having business relations with each SCI Divestiture Business;
6. provide the SCI Divestiture Employees with the authority and resources necessary to maintain and operate the SCI Divestiture Business(es) in a manner consistent with past practice and this Hold Separate Order;

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7. ensure that no SCI Divestiture Employee has responsibilities or duties related to the operation or management of a SCI Divestiture Business and a Facility acquired through the Acquisition if the SCI Divestiture Business and the Facility are located in the same geographic or product market, as such markets are alleged in the Complaint;
 8. continue all financial and other benefits of the SCI Divestiture Employees and provide financial incentives to such employees to continue in their positions and to operate and maintain the SCI Divestiture Business(es) in a manner consistent with past practice and this Hold Separate Order; and
 9. replace any SCI Divestiture Employee who leaves the employ of Respondent with an employee of similar skill, training and expertise, and treat such employee as a SCI Divestiture Employee under the terms of this Hold Separate Order.
- D. From the date Respondent KNA executes the Consent Agreement until the Acquisition Effective Date, Respondent KNA shall maintain the operations of each KNA Divestiture Business in the regular and ordinary course of the Business and in accordance with past practice (including regular repair and maintenance of the assets of such business). In operating and maintaining each KNA Divestiture Business, Respondent KNA shall:
1. provide each KNA Divestiture Business with sufficient working capital to operate at least at current rates of operation and to carry on, at least at their scheduled pace, all planned capital projects, business plans, and promotional activities;

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2. continue, at least at their scheduled pace, any additional expenditures for each KNA Divestiture Business that were authorized prior to the date the Consent Agreement was signed by Respondent KNA, including, but not limited to, promotional, marketing, and sales expenditures;
3. use best efforts, consistent with past practice, to maintain and increase sales of each KNA Divestiture Business and provide such resources as may be necessary to respond to competition against each KNA Divestiture Business;
4. provide such Support Services to each KNA Divestiture Business as were being provided as of the date the Consent Agreement was signed by Respondent KNA;
5. use best efforts to preserve and maintain existing relationships with the customers, suppliers, vendors, private and governmental entities, and others having business relations with each KNA Divestiture Business;
6. continue all financial and other benefits of the KNA Hold Separate Employees and provide financial incentives to such employees to continue in their positions and to operate and maintain the KNA Divestiture Business(es) in a manner consistent with past practice and this Hold Separate Order; and
7. replace any KNA Hold Separate Employee who leaves the employ of Respondent with an employee of similar skill, training and expertise, and treat such employee as a KNA Hold Separate Employee under the terms of this Hold Separate Order.

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- E. During the Hold Separate Period, Respondent SCI shall
1. maintain the Hold Separate Business separate, apart, and independent from Respondent's other businesses and assets as required by this Hold Separate Order; vest the Interim Monitor and the Hold Separate Manager with all rights, powers, and authority necessary to conduct the business of the Hold Separate Business;
 2. not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, except to the extent necessary to fulfill Respondents' obligations under the Orders and applicable laws; and
 3. provide Support Services to the Hold Separate Businesses as may be requested by the Interim Monitor and/or Hold Separate Manager.
- F. Within ten (10) days of a request by the Commission or by an Acquirer or proposed Acquirer (as applicable), Respondents shall, to the extent permitted by law, provide to such Acquirer or proposed Acquirer, the following information regarding each Divestiture Business Employee whose duties relate to a Divestiture Business that Respondents propose to or have divested to such Acquirer:
1. name, job title or position, date of hire, and effective service date;
 2. a specific description of the employee's responsibilities;
 3. the base salary or current wages;

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4. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, and current target or guaranteed bonus, if any;
 5. employment status (i.e., active or on leave or disability; full-time or part-time);
 6. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. at the option of the proposed Acquirer or Acquirer (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- G. Respondents shall not interfere with the employment by an Acquirer of any Divestiture Business Employee; shall not offer any incentive to such Employee to decline employment with an Acquirer or to accept other employment with Respondents; and shall eliminate any contractual impediments that may deter such Employee from accepting employment with an Acquirer including, but not limited to, removing any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such Employee to be employed by an Acquirer, and paying, or transferring to the account of the Employee, all current and accrued bonuses, pensions and other current and accrued benefits.
- H. For a period of two (2) years after the last Divestiture Closing Date, Respondent SCI shall not, directly or indirectly, solicit, induce, or attempt to solicit or

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induce any Divestiture Business Employee(s) who have accepted offers of employment with an Acquirer, or who are employed by an Acquirer, to terminate their employment relationship with such Acquirer;

provided, however, a violation of this provision will not occur if: (1) the Employee's employment has been terminated by an Acquirer; (2) Respondent SCI advertises for employees in newspapers, trade publications, or other media not targeted specifically at such Employees; or (3) Respondent SCI hires Employees who independently apply for employment with Respondent, so long as such Employees were not solicited by Respondent SCI in violation of this paragraph.

III.**IT IS FURTHER ORDERED** that

- A. After the Acquisition Effective Date, Respondents shall not use or disclose Confidential Divestiture Business Information to any Person except as follows:
1. Respondents may disclose Confidential Divestiture Business Information regarding a particular Divestiture Business to the Acquirer or proposed Acquirer (as the case may be) of such Business or other Persons specifically authorized by such Acquirer or proposed Acquirer to receive such information;
 2. Respondents may use and disclose Confidential Divestiture Business Information as necessary to comply with the requirements of the Orders, Respondents' obligations to an Acquirer under a Divestiture Agreement(s), or applicable laws; and

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3. Respondents may use and disclose Confidential Divestiture Business Information as necessary to enforce the terms of any Divestiture Agreement or defend against any dispute or legal proceeding, so long as Confidential Divestiture Business Information is only disclosed to a Third Party as required by a court or pursuant to an appropriate confidentiality order, agreement, or arrangement with the Acquirer (if any) of the relevant Divestiture Business (but Respondent shall not be deemed to have violated this requirement if the relevant Acquirer withholds such agreement unreasonably); and Respondents use their best efforts to obtain a protective order to protect the confidentiality of such Confidential Divestiture Business Information during any adjudication or other court proceedings;

provided, that in no case shall KNA Confidential Business Information be disclosed to any employee or contractor of Respondents other than a KNA Hold Separate Employee or a Support Services Employee unless such disclosure is necessary to comply with applicable laws;

provided further, that in no case shall SCI Confidential Business Information be disclosed to any employee of Respondents other than a SCI Divestiture Employee or a Support Services Employee unless such disclosure is necessary to comply with applicable laws.

- B. Respondent SCI shall require, as a condition of continued employment, that each SCI Divestiture Employee agree not to disclose any SCI Confidential Business Information to any Person other than a SCI Divestiture Employee except as authorized to do so by Respondent SCI.

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

IV.

Order to Maintain Assets

IT IS FURTHER ORDERED that

- A. The Commission appoints Shaun M. Martin as Interim Monitor and approves the Interim Monitor Agreement between Shaun M. Martin and Respondents, attached as Confidential Appendix A to the Hold Separate Order entered in this matter.
- B. The Interim Monitor's duties and responsibilities shall include the following:
 - 1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 - 2. the Interim Monitor shall have the power and authority to monitor Respondents' compliance with this Hold Separate Order and shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes this Hold Separate Order and in consultation with the Commission; and
 - 3. the Interim Monitor may, in his or her sole discretion, consult with third parties in the exercise of his or her duties under this Hold Separate Order, or under any agreement between the Interim Monitor and Respondent;
 - 4. thirty (30) days after the Acquisition Effective Date, and every thirty (30) days thereafter until this Hold Separate Order terminates, the Interim Monitor shall report in writing to the Commission concerning efforts to accomplish the purposes of this Hold Separate Order. Included within that report shall be the Interim Monitor's assessment of the extent to which the Divestiture Businesses are,

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or prior to divestiture were, meeting (or exceeding) their projected goals and budgets as reflected in operating plans, budgets, projections, or any other regularly prepared financial statements; and

5. the Interim Monitor shall be permitted, in consultation with the Commission staff, to remove the Hold Separate Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondent SCI shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in this Hold Separate Order.
- C. Respondent SCI shall, pursuant to the Interim Monitor Agreement, transfer to and confer upon the Interim Monitor all rights, powers, and authority necessary to permit the Interim Monitor to perform his duties and responsibilities pursuant to this Hold Separate Order, in a manner consistent with the purposes of the Decision and Order and in consultation with Commission staff, and shall include in the Interim Monitor Agreement all provisions necessary to effectuate this requirement, including without limitation provisions that provide the following:
1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 2. the Interim Monitor shall have the responsibility for monitoring Respondents' compliance with their obligations pursuant to the Orders, including without limitation, maintaining the viability, marketability, and competitiveness of each Divestiture Business prior to its divestiture;
 3. the Interim Monitor shall have responsibility for supervising the Hold Separate Business, including

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without limitation, monitoring its organization and independence from Respondents and its management by the Hold Separate Manager appointed pursuant to this Hold Separate Order;

4. Subject to all applicable laws, regulations and legally recognized privileges of Respondents, the Interim Monitor shall have full and complete access to all personnel, books, records, documents, and facilities of the Divestiture Businesses and to any other relevant information as the Interim Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Divestiture Businesses. Respondents shall develop such financial or other information as the Interim Monitor may reasonably request and shall cooperate with the Interim Monitor;
5. the Interim Monitor shall have the authority to employ, at the cost and expense of Respondent SCI, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities;
6. the Interim Monitor shall serve, without bond or other security, at the expense of Respondent SCI, on such reasonable and customary terms and conditions to which the Monitor and Respondent SCI agree and that the Commission approves;
7. Respondent SCI shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties,

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

8. at the option of Respondent SCI, the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants will be required to sign an appropriate confidentiality agreement; provided, however, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- D. No later than one (1) day after the Acquisition Effective Date, Respondent SCI shall transfer all rights, powers, and authority necessary to manage and maintain the Hold Separate Business, to James R. Stark, who shall serve as Hold Separate Manager pursuant to the Hold Separate Manager Agreement attached hereto as Confidential Exhibit B.
- E. Respondent SCI shall ensure that the management agreement between Respondent SCI and the Hold Separate Manager provides the following:
1. Respondent SCI shall provide reasonable financial incentives to the Hold Separate Manager for performing his or her duties under this Hold Separate Order and the management agreement. Such incentives shall include a continuation of all employee benefits the Manager currently receives from Respondents, including regularly scheduled raises, bonuses, vesting of pension benefits (as

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permitted by law), and additional incentives as may be necessary to incentivize an individual acceptable to the Commission to accept the position of Hold Separate Manager.

2. The Hold Separate Manager shall report directly and exclusively to the Interim Monitor and shall manage the Hold Separate Business independently of the management of Respondents. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate Order.
3. The Hold Separate Manager shall make no material changes in the ongoing operations of the Hold Separate Business except with the approval of the Interim Monitor, in consultation with the Commission staff.
4. The Hold Separate Manager shall have the authority, with the approval of the Interim Monitor, to remove Hold Separate Business employees and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Manager, in consultation with the Interim Monitor, may request Respondent SCI to, and Respondent SCI shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
5. In addition to KNA Hold Separate Employees, the Manager may, with the approval of the Interim Monitor, employ such Persons as are reasonably necessary to assist the Manager in managing the Hold Separate Business.

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6. Respondents shall facilitate the ability of the Interim Monitor and the Hold Separate Manager to comply with the duties and obligations set forth in this Hold Separate Order, and shall take no action that interferes with or hinders the authority, rights, or responsibilities of either as set forth herein or any agreement between the Interim Monitor and Respondents or the Hold Separate Manager and Respondents.
 7. The Commission may require the Hold Separate Manager, the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Interim Monitor's duties.
- F. If the Interim Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Interim Monitor consistent with the terms of this Hold Separate Order, subject to the consent of Respondent SCI, whose consent shall not be unreasonably withheld. If Respondent SCI has not opposed, in writing, including the reasons for opposing, the selection of the substitute Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent SCI of the identity of any substitute Interim Monitor, Respondent SCI shall be deemed to have consented to the selection of the proposed substitute Interim Monitor. Respondent SCI and the substitute Interim Monitor shall execute an Interim Monitor Agreement, subject to the approval of the Commission, consistent with this Order.

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- G. The Interim Monitor and the Hold Separate Manager shall serve until termination of this Hold Separate Order.
- H. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- I. The Interim Monitor appointed pursuant to this Hold Separate Order may be the same person appointed as an Interim Monitor or Divestiture Trustee(s) pursuant to the relevant provisions of the Decision and Order.

V.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Hold Separate Order becomes final, and every thirty (30) days thereafter until Respondent has fully complied with its obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets as required by the Decision and Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Hold Separate Order.

VI.

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

- A. any proposed dissolution of Respondents;
- B. any proposed acquisition, merger, or consolidation of Respondents; or

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

VII.

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

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

VIII.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

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- B. The later of:
1. The day after all Divestiture Businesses have been divested as required by and described in the Decision and Order, or
 2. The day the Decision and Order becomes final.

By the Commission.

Analysis to Aid Public Comment

**ANALYSIS OF AGREEMENT CONTAINING CONSENT
ORDERS TO AID PUBLIC COMMENT****I. INTRODUCTION**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Service Corporation International (“SCI”) and Keystone North America Inc. (“KNA”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from SCI’s acquisition of KNA. Under the terms of the proposed Consent Agreement, SCI and KNA are required to divest 22 funeral homes in 16 local funeral services markets and four cemeteries in three local cemetery services markets to acquirers who receive the approval of the Commission. The proposed Consent Agreement also requires SCI and KNA to divest all related assets and real property necessary to ensure the buyer(s) of the divested facilities will be able to quickly and fully replicate the competition that would have been eliminated by the acquisition. Finally, the Commission, SCI, and KNA have agreed to an Order to Hold Separate and Maintain Assets (“Hold Separate Order”) that requires SCI and KNA to maintain and hold separate the facilities to be divested pending their final divestiture pursuant to the Consent Agreement.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement or make it final.

On October 14, 2009, SCI and KNA executed a definitive support agreement pursuant to which SCI agreed to acquire all of the outstanding voting securities of KNA. The Commission’s complaint alleges that the proposed acquisition, if consummated,

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would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial competitor from 16 funeral services markets, and three cemetery services markets. The proposed Consent Agreement would remedy the alleged violations by requiring divestitures that will replace the competition that otherwise would be lost in these markets as a result of the acquisition.

II. THE PARTIES

SCI is the largest funeral and cemetery services provider in North America. SCI owns and operates 1,266 funeral homes and 372 cemetery locations worldwide, including 1,073 funeral homes in 43 states and the District of Columbia, and 357 cemeteries in 31 states. SCI's 2009 revenue from all operations totaled approximately \$2.05 billion.

KNA is the fifth largest funeral and cemetery services provider in North America. KNA owns and operates 199 funeral homes and 15 cemeteries in the United States and Canada, including 196 funeral homes in 31 states, and 15 cemeteries in seven states. KNA's revenue for the 12 months ending June 30, 2009 totaled approximately \$124 million.

III. FUNERAL AND CEMETERY SERVICES

SCI's proposed acquisition of KNA presents substantial antitrust concerns in two relevant product markets: funeral services and cemetery services. Funeral services include all activities relating to the promotion, marketing, sale, and provision of funeral services and goods, including, but not limited to, goods and services used to remove, care for, and prepare bodies for burial, cremation or other final disposition; and goods and services used to arrange, supervise, or conduct funeral ceremonies or final disposition of human remains. Cemetery services include all activities relating to the promotion, marketing, sale, and

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provision of property, goods and services to provide for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, disposition in a niche, or scattering of cremated remains on the cemetery grounds.

The 16 funeral services markets and three cemetery services markets at issue in this transaction are relatively local in nature. Indeed, data analysis and evidence gathered from market participants indicate that pre-need purchasers of funeral services and cemetery plots, and families making at-need purchases, typically choose a local funeral home or cemetery to make the memorial service, burial, and subsequent visitation more convenient. The 16 funeral services markets are: Yuma, Arizona; Monterey, California; Denver, Colorado; Auburndale/Winter Haven, Florida; Vidalia, Georgia; Bossier City, Louisiana; Lansing, Michigan; East Aurora, New York; Northern Rockland County, New York; Charlotte, North Carolina; Greensboro, North Carolina; Columbia, South Carolina; West Columbia/Lexington, South Carolina; New Tazewell, Tennessee; Lynchburg, Virginia; and Yakima, Washington. The three cemetery services markets are: Yuma, Arizona; Macon, Georgia; and Columbia, South Carolina.

Each of the relevant funeral and cemetery services markets is highly concentrated, and the proposed acquisition would significantly increase market concentration and eliminate substantial, direct competition between two significant funeral and cemetery services providers. Under the Herfindahl-Hirschman Index ("HHI"), which is the standard measure of market concentration under the 1992 Department of Justice and Federal Trade Commission Merger

Guidelines, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 100 points and results in a post-acquisition HHI that exceeds 1,800 points. SCI's proposed acquisition of KNA creates market concentration levels well in excess of these thresholds. For funeral services, the post-acquisition HHIs range from 3730 to 8632, and HHI levels will increase by 295 to 4130 points above

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pre-acquisition levels. The proposed acquisition also will result in SCI controlling between 52 percent and 93 percent market share in each of the affected funeral services markets. With respect to the cemetery services markets, the proposed acquisition will reduce the number of cemetery services providers from five to four in the Columbia, South Carolina and Macon, Georgia areas, and from three to two in Yuma, Arizona.

The anticompetitive implications of such dramatic increases in concentration are buttressed by evidence of intense head-to-head competition that would be eliminated by the proposed acquisition. Consumers have benefitted from the rivalry between SCI and KNA in the form of lower prices, improved products, and better service. Left unremedied, the proposed acquisition likely would cause anticompetitive harm by enabling SCI to profit by unilaterally raising the prices of funeral and cemetery services, as well as reducing its incentive to improve quality and provide better service.

The high levels of concentration also increase the likelihood of competitive harm through coordinated interaction. Transparency in the pricing of funeral services and consumers' selection of funeral homes and cemeteries facilitate the ability of providers to reach and monitor terms of coordination, or alternatively promote tacit forms of collusion. In several funeral and cemetery services markets, coordinated interaction or tacit collusion is likely due to the transparency of important competitive information, high concentration, and few market participants.

New entry is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition. Among other entry barriers, both heritage (the consumer's tendency to use the same funeral services provider for multiple generations) and reputation pose substantial barriers to entrants attempting to establish new funeral service locations, and the availability of suitable land, and local zoning, health, and environmental

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regulations impact significantly the ability of firms to enter with new cemetery service locations. As a result, new entry sufficient to achieve a significant market impact is unlikely to occur in a timely manner.

IV. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement remedies completely the anticompetitive effects of the acquisition by requiring the divestiture of all of the SCI or KNA assets in each relevant geographic market to a Commission-approved buyer (or buyers) within 90 days of SCI acquiring KNA. Specifically, the proposed Consent Agreement requires the divestiture of 22 funeral services facilities and four cemetery services facilities, as well as related equipment, customer and supply contracts, commercial trade names, and real property in the 19 funeral and cemetery services markets at issue in this transaction. See Appendix A for a complete list of the divestiture assets. Each funeral and cemetery services facility to be divested is a stand-alone business, and includes all of the assets necessary for a Commission-approved buyer to independently and effectively operate each facility.

The proposed Consent Agreement contains several provisions designed to ensure that the divestitures are successful. First, the Commission will evaluate the suitability of possible purchasers of the divested assets to ensure that the competitive environment that would have existed but for the transaction is replicated by the required divestitures. If SCI fails to divest the assets within the 90-day time period to a Commission-approved buyer, the Consent Agreement permits the Commission to appoint a trustee to divest the assets. Second, SCI is required to provide transitional services to the Commission-approved buyer. These transitional services will facilitate a smooth transition of the assets to the acquirer, and ensure continued and uninterrupted operation of the assets during the transition. Third, the Consent Agreement requires SCI to remove any contractual impediments that may deter the current managers of the facilities to be divested from accepting offers of employment from any Commission-approved acquirer and to

Analysis to Aid Public Comment

obtain all consents necessary to transfer the required assets. The Agreement also appoints an Interim Monitor, Shaun Martin, to monitor SCI's compliance with the terms of the Agreement. Mr. Martin is well-qualified for this role, having extensive experience managing businesses on a short-term basis. Finally, to ensure that the Commission will have an opportunity to review any attempt by SCI to acquire any funeral or cemetery services asset in any of the 19 geographic markets at issue, the proposed Consent Agreement contains a ten-year prior notice provision.

The Hold Separate Order requires the parties to maintain the viability of the divestiture assets as competitive operations until each facility is transferred to a Commission-approved buyer. Specifically, the parties must maintain the confidentiality of sensitive business information, and take all actions required to prevent the destruction or wasting of the divestiture assets. After SCI acquires KNA, the Hold Separate Order requires that SCI separately hold and maintain the KNA divestiture assets and appoints a Hold Separate Manager to operate these assets pending their divestiture. SCI is also required to separately operate the SCI divestiture assets and the KNA assets that SCI acquires in the same geographic market. Finally, the Hold Separate Order appoints an Interim Monitor to monitor the operation of the separately-held KNA assets and the parties' compliance with the terms of the Hold Separate Order and the Consent Agreement.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.

Complaint

IN THE MATTER OF

INDOOR TANNING ASSOCIATIONCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4290; File No. 082 3159
Filed, May 13, 2010 — Decision, May 13, 2010

This consent order addresses Indoor Tanning Association's advertising and promotion of indoor tanning products and facilities. Indoor Tanning Association falsely represented that: tanning, including indoor tanning, poses no danger; does not increase the risk of skin cancer; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because, in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. Additionally, Indoor Tanning Association falsely represented that research shows that vitamin D supplements may harm the body's ability to fight disease; and that a recent study in the prestigious Proceedings of the National Academy of Sciences determined that the risks of not getting enough ultraviolet light far outweigh the hypothetical risk of skin cancer, that getting a healthy tan produces vitamin D, and that increased vitamin D has been linked to significantly decreasing your risk of contracting internal cancers, such as lung, kidney, or liver cancer. ITA also represented that tanning causes the skin to generate vitamin D and has health benefits, but failed to disclose that consumers can increase their vitamin D levels through ultraviolet levels lower than the amount needed to get a tan, and that ultraviolet radiation can injure the eyes and increases the risk of skin cancer. The order prohibits Indoor Tanning Association from representing that tanning, including indoor tanning, does not increase the risk of skin cancer; is safe or poses no danger; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. Furthermore, Indoor Tanning Association is prohibited from misrepresenting (1) that research shows that vitamin D supplements may harm the body's ability to fight disease and (2) that a study in the Proceedings of the National Academy of Sciences determined: (a) that sun exposure does not cause skin cancer or melanoma, or that the risk of such cancer is only hypothetical; (b) that getting a tan is healthy; (c) that the risks of not getting enough ultraviolet light far outweigh the risk of skin cancer; or (d) that vitamin D has been linked to significantly decreasing the risk of contracting lung, kidney, or liver cancer.