

Complaint

IN THE MATTER OF

**RED VENTURES HOLDCO, LP
AND
BANKRATE, INC.****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT**

*Docket No. C-4627; File No. 171 0196
Complaint, November 2, 2017 – Decision, March 1, 2018*

This consent order addresses the \$1.24 billion acquisition by Red Ventures Holdco, LP of certain assets of Bankrate, Inc. The complaint alleges that such transaction, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by significantly reducing competition in the market for third-party paid referral services for senior living facilities. Under the order, Red Ventures will divest Caring.com, a subsidiary of Bankrate.

Participants

For the *Commission*: *Stuart Hirschfeld, Joe Lipinsky, Connor Shively, and Maxine Stansell.*

For the *Respondents*: *Peter Guryan, Simpson Thacher & Bartlett; Damian Didden, Wachtell, Lipton, Rosen & Katz.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Red Ventures Holdco, LP (“Red Ventures”) has entered into a transaction with Respondent Bankrate, Inc. (“Bankrate”), that such transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

Complaint

I. RESPONDENTSRed Ventures

1. Respondent Red Ventures is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of North Carolina, with its principal place of business located at 1101 Red Ventures Drive, Fort Mill, SC 29707.

2. Two private equity shareholders, General Atlantic, LLC and Silver Lake Partners, LP, own approximately 34% of Respondent Red Ventures. These shareholders each have one board seat and approval rights over two other board members of the seven person board of directors for Red Ventures GP, LLC, which is the management company that controls Respondent Red Ventures. These two shareholders must also approve certain significant capital expenditures by Red Ventures.

3. Respondent Red Ventures is a marketing company providing proprietary internet content and customer leads for providers in a variety of industries. Red Ventures' two private equity shareholders operate the following relevant domains: APlaceforMom.com, SeniorAdvisor.com, Caregivers.com, NursingHomes.com, OurParents.com, and SeniorLiving.net, which generate revenue by providing customer leads for senior living facilities.

4. Respondent Red Ventures and the corporate entities under its control are, and at all times relevant herein have been engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. §44.

Bankrate

5. Respondent Bankrate is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its principal place of business located at 1675 Broadway, 22nd Floor, New York, NY 10019.

Complaint

6. Respondent Bankrate is a marketing company providing proprietary internet content and customer leads for providers in a variety of industries. In connection with providing leads for senior living facilities, Bankrate operates the following relevant domains: Caring.com and SeniorHomes.com.

7. Respondent Bankrate and the corporate entities under its control are, and at all times relevant herein have been engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. §44.

II. THE PROPOSED MERGER

8. Respondent Red Ventures and affiliated companies under its control entered into a merger agreement (“Merger Agreement”) with Respondent Bankrate, dated July 2, 2017, pursuant to which Baton Merger Corp., a newly created indirect wholly owned subsidiary of Red Ventures, will merge with and into Bankrate, with Bankrate surviving the merger (the “Merger”). On July 2, 2017, the Merger’s total estimated dollar value was \$1.4 billion.

9. The Merger is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. §18.

III. THE RELEVANT MARKET

10. A relevant product market in which to analyze the effects of the Merger is third-party paid referral services for senior living facilities. Senior living facilities provide a range of specialized long-term residential living options tailored to the needs of senior consumers. Referral services companies generate and collect customer leads for senior living facilities. Many small referral services generate leads through marketing and networking efforts similar to those used by real estate agents. Larger referral services are internet-based; they attract consumers to their websites through both paid search advertising and search engine optimization, which includes, among other things, creating compelling free content to help the websites appear higher in search engine result pages. The referral services companies

Complaint

provide leads of qualified consumers to the senior living facilities. The senior living facilities' sales staff then contacts the consumers and seeks to consummate sales. When a consumer moves into a senior living facility, the senior living facility pays the referral services company a referral fee, typically based on a percentage of the first month's rent and care.

11. The relevant geographic market in which to analyze the effects of the Merger is the United States. Although the individual looking to move into a senior living facility has highly localized interests, large third-party paid referral services companies, like those controlled by the Respondents, compete on a nationwide basis to generate, collect, and refer qualified leads to senior living facilities located throughout the United States.

12. If there were a 5-10 percent post-merger price increase, senior living facilities likely would not switch to other lead sources in sufficient numbers to make the post-merger price increase unprofitable.

IV. MARKET STRUCTURE

13. Respondent Red Ventures' two large private equity shareholders jointly own A Place for Mom.com ("APFM"), which is the largest third-party paid referral service for senior living facilities.

14. Respondent Bankrate's Caring.com is generally recognized as the second largest third-party paid referral service for senior living facilities and its website claims to have the largest volume of traffic for individuals seeking information and support for placement of seniors into senior living facilities.

15. Caring.com is APFM's closest competitor. In addition to being the two largest third-party paid referral services for senior living facility operators, the two companies have similar business models. They both are internet-based referral services providers that compete to attract consumers via websites with national reach. They enter into contracts with senior housing operators both locally and nationally. Due to the popularity of its website, Caring.com represents one of APFM's most serious competitive

Complaint

threats. Besides APFM and Caring.com, there are numerous small third-party paid referral services for senior living facility operators, each with a negligible share of the relevant market.

V. BARRIERS TO ENTRY

16. There are substantial barriers to entering the third-party paid referral service for senior living facilities market. Network and scale effects on both the acquisition of potential leads and the supply of qualified leads to senior living facilities are significant. Achieving minimal viable scale means that entry into the relevant market would not be timely, likely, or sufficient in scope to deter or counteract the anticompetitive effects of the Merger.

VI. EFFECTS OF THE MERGER

17. The effects of the Merger, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant market in 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 by:

- a. increasing the likelihood that Respondent Red Ventures would unilaterally exercise market power in the relevant market; and
- b. increasing the likelihood of or facilitating coordinated interaction between APFM and Caring.com in the relevant market.

VII. VIOLATIONS CHARGED

18. The Merger, if consummated, would violate 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.

19. The Merger Agreement entered into by Respondents Red Ventures and Bankrate constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

Order to Hold Separate

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this second day of November, 2017, issues its complaint against Respondents.

By the Commission.

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
[Public Record Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger of Baton Merger Corp. (“Baton”), a wholly-owned subsidiary of Red Ventures Holdco, L.P., (“Red Ventures”), and Bankrate, Inc. (“Bankrate”), collectively “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue

Order to Hold Separate

stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order 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 issues the following Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Red Ventures Holdco, LP, is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its headquarters and principal place of business located at 1423 Red Ventures Drive, Fort Mill, SC 29707.
2. Respondent Bankrate, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 1675 Broadway, 22nd Floor, New York, NY 10019.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Red Ventures” means Red Ventures Holdco, L.P., its directors, officers, partners, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Red Ventures

Order to Hold Separate

Holdco, L.P., including, but not limited to, Baton Merger Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Red Ventures includes Bankrate, after the Merger Date.

- B. “Bankrate” means Bankrate, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Bankrate, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means Red Ventures and Bankrate, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Caring.com Held Separate Business” means Caring.com, the Caring.com Assets, the Caring.com Business, and the Caring.com Held Separate Employees.
- F. “Caring.com Held Separate Employees” means the Caring.com Employees, including the Caring.com Key Employees.
- G. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of the final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission following the issuance and service of the final Decision and Order by the Commission.
- H. “Hold Separate Period” means the time period beginning as of the date on which Respondents sign

Order to Hold Separate

the Consent Agreement in this matter, and shall terminate pursuant to the provisions of Paragraph IX. of this Hold Separate Order.

- I. “Monitor” means any monitor appointed pursuant to Paragraph V. of this Hold Separate Order or Paragraph V. of the Decision and Order.
- J. “Orders” means the Decision and Order and this Hold Separate Order.

II.

IT IS FURTHER ORDERED that during the Hold Separate Period:

- A. Respondents shall take such actions as necessary to maintain the full economic viability, marketability, and competitiveness of the Caring.com Held Separate Business, and shall prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of the Caring.com Held Separate Business, except for ordinary wear and tear, and shall not sell, transfer, encumber, or otherwise impair the Caring.com Held Separate Business or any assets related thereto.
- B. Until Respondents have fully divested the Caring.com Assets, Respondents shall:
 - 1. Keep and hold the Caring.com Held Separate Business separate, apart, and independent of Respondents’ other businesses and assets as required by this Hold Separate Order and shall vest the Caring.com Held Separate Business with all rights, powers, and authority necessary to conduct its business; and
 - 2. Not exercise direction or control over, or influence directly or indirectly, the Caring.com Held Separate Business or any of its operations, or the

Order to Hold Separate

Monitor, except to the extent that Respondents must exercise direction and control over the Caring.com Held Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws.

- C. Respondents shall maintain the operations of the Caring.com Held Separate Business in the regular and ordinary course of business and in accordance with their past practice (including regular repair and maintenance of the assets of such business) and shall use their best efforts to preserve the existing relationships with the following: customers; suppliers; vendors and distributors; employees; and others having business relationships with the Caring.com Held Separate Business. Respondents' responsibilities pursuant to this Paragraph II.C. shall include, but are not limited to, the following:
1. Respondents shall provide the Caring.com Held Separate Business with sufficient capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Caring.com Held Separate Business;
 2. Respondents shall continue, at least at their scheduled pace, any additional expenditures for the Caring.com Held Separate Business authorized prior to or as of July 2, 2017, including, but not limited to, all research, development, manufacture, distribution, marketing, and sales expenditures;
 3. Respondents shall provide such resources as may be necessary to respond to competition against the Caring.com Held Separate Business and/or prevent any diminution of sales related to Senior Care Paid Referral Services prior to or as of July 2, 2017;

Order to Hold Separate

4. Respondents shall provide such resources as may be necessary to maintain the competitive strength and positioning of Caring.com at major customer accounts;
5. Respondents shall make available for use by the Caring.com Held Separate Business funds sufficient to perform all routine maintenance of the Caring.com Held Separate Business;
6. Respondents shall provide the Caring.com Held Separate Business with such funds necessary to maintain the viability, marketability, and competitiveness of the Caring.com Held Separate Business;
7. Respondents shall provide the same or equivalent support services to the Caring.com Held Separate Business as were being provided to this business by Respondent Bankrate prior to or as of July 2, 2017; and
8. Respondents shall cooperate with the Monitor in the performance of his or her obligations under Paragraph V. of this Hold Separate Order;

provided, however, that: (i) Respondents' personnel providing services to the Caring.com Held Separate Business must maintain all Caring.com Confidential Business Information on a confidential basis, and except as expressly permitted by the Orders, shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise transmitting such information to or with any person whose employment involves Respondents' retained businesses, other than the Caring.com Held Separate Business; and (ii) such personnel shall also execute appropriate confidentiality agreements prohibiting the disclosure of any Caring.com Confidential Business Information in accordance with Paragraph IV.D. of this Hold Separate Order.

Order to Hold Separate

- D. The purpose of this Hold Separate Order is to (1) maintain and preserve the Caring.com Held Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestiture required by the Decision and Order is achieved; (2) assure that no Caring.com Confidential Business Information is exchanged between Respondents and the Caring.com Held Separate Business except in accordance with the provisions of this Hold Separate Order; and (3) prevent interim harm to competition pending the divestiture and other relief.

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

- A. Respondents shall cooperate with, and take no action to interfere with, or impede the ability of: (1) the Monitor, (2) any Caring.com Held Separate Employee, or (3) any of Respondents' employees providing support services to the Caring.com Held Separate Business, to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order.
- B. Respondents shall cooperate with and assist the proposed Acquirer of the Caring.com Held Separate Business to evaluate independently and retain the Caring.com Employees, such cooperation to include at least the following:
1. Not later than forty-five (45) days before the Divestiture Date, Respondents shall, to the extent permitted by applicable law: (i) provide the proposed Acquirer a list of all Caring.com Held Separate Employees, identifying which Persons are Caring.com Key Employees; and (ii) provide Employee Information for each Person on the list;

Order to Hold Separate

2. Not later than thirty (30) days before the Divestiture Date, Respondents shall provide the proposed Acquirer with:
 - a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondents, with any Caring.com Employee;
 - b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and
 - c. to make offers of employment to any Caring.com Employee;
3. Respondents shall: (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Caring.com Employee; (ii) not offer any incentive to any Caring.com Employee to decline employment with a proposed Acquirer; (iii) not make any counteroffer to any Caring.com Employee who receives a written offer of employment from a proposed Acquirer; and (iv) remove any impediments within the control of Respondents that may deter any Caring.com Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed Acquirer;

provided, however, that nothing in this Hold Separate Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

Order to Hold Separate

- C. Respondents shall provide reasonable financial incentives:
1. to the Caring.com Held Separate Employees including the continuation of all employee benefits offered by Respondents (*i.e.*, regularly schedule or merit raises and bonuses, and regularly scheduled vesting of all pension benefits) during the Hold Separate Period, to encourage such employees to continue in his/her position with the Caring.com Business until the Divestiture Date; and
 2. to the Caring.com Key Employees as needed to facilitate the employment of such employees by the proposed Acquirer.

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

- A. During the Hold Separate Period, Respondents shall not:
1. Possess or control any APFM Confidential Business Information; or
 2. Request, solicit, seek, receive, obtain, or otherwise have access to, directly or indirectly, any APFM Confidential Business Information from any Person(s), including the Firewalled Entities; or
 3. Provide any services to or have any business dealings with the Firewalled Entities as related to APFM.
- B. During the Hold Separate Period, Respondents shall not, except as expressly permitted by or as necessary to comply with this Hold Separate Order:
1. Provide, disclose, share, convey, discuss, exchange, circulate, or otherwise grant access to,

Order to Hold Separate

directly or indirectly, any Caring.com Confidential Business Information, including information related to the divestiture of the Caring.com Held Separate Business, to or with any Person(s), including the Firewalled Individuals; or

2. Use, directly or indirectly, the Caring.com Confidential Business Information for any purpose.

C. As of the date Respondents sign the Consent Agreement, Respondents shall: (1) take all actions as are necessary and appropriate to prevent access to, or the disclosure or use of, Caring.com Confidential Business Information by or to any Person(s) not authorized to access, receive, or use such Confidential Business Information pursuant to the terms of this Order; and (2) with the advice and assistance of the Monitor, develop and implement procedures and requirements with respect to such Confidential Business Information to ensure that:

1. The Caring.com Held Separate Business does not provide, disclose, or otherwise make available any Caring.com Confidential Business Information to the Firewalled Entities, and is in compliance with the requirements of the Orders;
2. Employees of Respondents' retained businesses, including the Firewalled Individuals, do not request, solicit, seek, receive, obtain, use or otherwise have access to, directly or indirectly, any Caring.com Confidential Business Information from the Caring.com Held Separate Business;

provided, however, employees of Respondents' retained businesses are not in violation of this Paragraph if: (1) they provide or are involved in the provision of Transition Services under the (i) Hold Separate Order or the Decision and Order, or (ii) any Remedial Agreement; or (2) are complying with financial reporting requirements or environmental,

Order to Hold Separate

health, and safety policies and standards, ensuring the integrity of the financial and operational controls on the Caring.com Held Separate Business, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Caring.com Held Separate Business, or as required by law;

3. The Firewalled Individuals are:

- a. In compliance with the requirements of the Orders;
- b. Prohibited from, directly or indirectly, influencing or attempting to influence or participate in any vote of Respondents' Board pertaining to the Caring.com Held Separate Business; and
- c. Prohibited from participating in any discussions or communications with Respondents and the Firewalled Entities about the Caring.com Held Separate Business.

D. As part of the procedures and requirements described in Paragraph IV.C. of this Hold Separate Order, Respondents shall:

1. Within ten (10) days of the date Respondents sign the Consent Agreement, require all Respondents' employees who have access to Caring.com Confidential Business Information, including the Firewalled Individuals, to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of this Order; *provided, however*, for Respondents' employees with access to Caring.com Confidential Business Information who have clerical positions but no operational or commercial responsibilities, Respondents may send an appropriate notification regarding the prohibitions and confidentiality

Order to Hold Separate

requirements of this Order by email with return receipt requested or other similar transmission, and shall keep a file of such return receipts for one (1) year;

2. Require and enforce compliance with appropriate remedial action in the event of non-compliant access, use, or disclosure of Caring.com Confidential Business Information in violation of this Order;
3. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Order's requirements.

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

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Hold Separate Order and the Remedial Agreements. The Commission hereby appoints Richard A. Shermer as the Monitor and approves the Monitor Agreement between R. Shermer & Company and Respondents.
- B. Not later than one (1) day after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to the Orders, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- C. The Monitor shall serve until the later of (1) twelve (12) months after the Divestiture Date or (2) the

Order to Hold Separate

termination of all Respondents' obligations under all Remedial Agreements; *provided, however*, the Commission may extend or modify this period as may be necessary to accomplish the purposes of the Orders.

- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture, hold separate and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements;
 - b. Monitoring any Transition Services Agreements; and
 - c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirer, except as allowed in the Orders;
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Remedial Agreements;

Order to Hold Separate

4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders and the Remedial Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Remedial Agreements;
5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph V., the term "Monitor" shall include

Order to Hold Separate

all persons retained by the Monitor pursuant to Paragraph V.D.5 of this Hold Separate Order;

7. Respondents shall report to the Monitor in accordance with the requirements of the Orders and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders and the Remedial Agreements;
 8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and as otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents' of their obligations under the Orders and the Remedial Agreements;
 9. Respondents may require the Monitor and each of the Monitor's consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.

Order to Hold Separate

- G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers necessary to permit the substitute Monitor to monitor Respondents' compliance with the terms of this Hold Separate Order, the Decision and Order, and the Remedial Agreements in a manner consistent with the purposes of this Order.
- H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders and the Remedial Agreements.
- I. A Monitor appointed pursuant to this Hold Separate Order may be, but need not be, the same Person(s) appointed, pursuant to the relevant provisions of the Decision and Order, as either the Monitor or the Divestiture Trustee.

VI.

IT IS FURTHER ORDERED that, within thirty (30) days after this Hold Separate Order becomes final, and every thirty (30) days thereafter until this Hold Separate Order terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all

Order to Hold Separate

provisions of this Hold Separate Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Hold Separate Order.

VII.

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

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; or
- C. Any other change in such Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Hold Separate Order, Respondents shall permit any duly authorized representative of the Commission:

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

Order to Hold Separate

- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

IX.

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

- A. Three (3) business 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
- B. The day after Respondents (or a Divestiture Trustee) complete the divestiture of the Caring.com Assets as required by the Decision and Order.

By the Commission.

NON-PUBLIC APPENDIX A**[Monitor Agreement]**

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

Decision and Order

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger of Baton Merger Corp. (“Baton”), a wholly-owned subsidiary of Red Ventures Holdco, L.P., (“Red Ventures”), and Bankrate, Inc. (“Bankrate”), collectively “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of the 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 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 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 Red Ventures Holdco, LP, is a limited partnership organized, existing, and doing business

Decision and Order

under and by virtue of the laws of the State of North Carolina, with its headquarters and principal place of business located at 1423 Red Ventures Drive, Fort Mill, SC 29707.

2. Respondent Bankrate, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 1675 Broadway, 22nd Floor, New York, NY 10019.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, and all other definitions used in the Hold Separate Order, shall apply:

- A. “Red Ventures” means Red Ventures Holdco, L.P., its directors, officers, partners, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Red Ventures Holdco, L.P., including, but not limited to, Baton Merger Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Red Ventures includes Bankrate, after the Acquisition.
- B. “Bankrate” means Bankrate, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, including, but not limited to, Caring.com, partnerships, divisions, groups, and affiliates in each case controlled by Bankrate, Inc., and the respective

Decision and Order

directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “Respondents” means Red Ventures and Bankrate, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer” means the Person approved by the Commission to acquire the Caring.com Assets pursuant to this Decision and Order.
- F. “Acquisition” means the proposed merger of Baton Merger Corp., a wholly-owned subsidiary of Respondent Red Ventures, and Respondent Bankrate as described in the Agreement and Plan of Merger by and among Red Ventures Holdco, LP, Baton Merger Corp., and Bankrate, Inc., dated July 2, 2017, and any amendments, exhibits, or schedules attached thereto.
- G. “Acquisition Date” means the date on which the Acquisition closes.
- H. “APEX” means APEX Super Parent, L.P., a limited partnership organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its headquarters and principal place of business located at Park Avenue Plaza, 55 East 42nd Street, 33rd Floor, New York, NY 10055.
- I. “APFM” means A Place For Mom, Inc., a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Washington, with its headquarters and principal place of business located at 701 5th Avenue, Suite 3200, Seattle, WA 98104.
- J. “APFM Confidential Business Information” means all Confidential Business Information relating to APFM.
- K. “Board” means any board of directors or board of managers of a specified entity.

Decision and Order

- L. “Business Records” means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals, and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional, and marketing materials, including website content; sales materials; research and development data, files, and reports; technical information; data bases; studies; designs, drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind.
- M. “Caring.com” means Caring, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its headquarters and principal place of business located at 2600 South El Camino Real, Suite 300, San Mateo, CA 94403.
- N. “Caring.com Assets” means all of Respondents’ rights, title, and interests in and to all of Caring.com’s tangible and intangible assets and property of any kind, wherever located, used for or related to Caring.com or the Caring.com Business, and all improvements or additions thereto, including, but not limited to:

Decision and Order

1. The Caring.com Corporate and Technical Facility;
2. All Tangible Personal Property;
3. All Caring.com Contracts;
4. All Intellectual Property relating to Caring.com;
5. All intangible rights and property, including goodwill, going concern value, and telephone and email address and listings;
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 relating to Caring.com, and all pending applications therefor or renewals thereof;
7. All Business Records relating to Caring.com; *provided, however*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Caring.com Assets to be divested and Respondents' other products or businesses, and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Caring.com Assets to be divested; or (b) for which Respondents have a legal obligation to retain the original copies, Respondents shall be required to provide only copies or relevant excerpts of the documents and materials containing this information, then Respondents may keep such records and provide copies with appropriate redactions to the Acquirer. In instances where such copies are provided to the Acquirer, Respondents shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.

Decision and Order

- O. “Caring.com Business” means the business of Caring.com related to the provision of paid referral services for senior living facilities, and all other operations and businesses related to Caring.com or the Caring.com Assets, including, but not limited to, any online website providing, among other things: (1) original editorial content related to senior care; (2) any comprehensive online senior living community directory(ies) for the United States; (3) any local directory(ies) covering other senior caregiving services; and (4) access to support and advice from Caring.com Family Advisors.
- P. “Caring.com Confidential Business Information” means all Confidential Business Information relating to Caring.com, the Caring.com Assets, and the Caring.com Business.
- Q. “Caring.com Contracts” means all agreements and contracts with customers (including, but not limited to, Senior Care Paid Referral Services Contracts), suppliers, vendors, representatives, agents, licensees and licensors; and all leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto related to the Caring.com Business.
- R. “Caring.com Corporate and Technical Facility” means the facility located at 2600 South El Camino Real, Suite 300, San Mateo, CA 94403, including, but not limited to, all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Respondents, and all Tangible Personal Property therein, and parts, inventory, and all other assets relating to the Caring.com Business.

Decision and Order

- S. “Caring.com Family Advisor” means any Caring.com Employee who provides individualized support and information to potential clients and their families regarding potential entry into a senior care facility or other senior caregiving services.
- T. “Caring.com Employee(s)” means any Person employed by Caring.com on a full-time, part-time, or contract basis as of, and at any time after July 2, 2017: (1) at the Caring.com Corporate and Technical Facility; (2) as a Caring.com Family Advisor, information technology specialist, or sales and/or marketing support staff; or (3) otherwise identified by agreement between Respondents and an Acquirer and made a part of a Remedial Agreement.
- U. “Caring.com Key Employee(s)” means those Caring.com Employees who are identified in Non-Public Confidential Appendix B attached to this Order.
- V. “Confidential Business Information” means any information that is not in the public domain. The term “Confidential Business Information”:
 - 1. Includes, but is not limited to, all operating, financial or other documents, information, data, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, papers, instruments, and all other materials, whether located, stored, or maintained in paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: bid proposals and all related documents, data, and materials, including initial bid terms, final bid terms, documents that support cost and rate structures underlying the bids; term sheets, responses to requests for proposals or other solicitation for bids; customer files and records; customer contracts; customer lists; customer

Decision and Order

service and support materials; customer approvals and related information; price lists; credit records and information; correspondence; referral sources; vendor and supplier agreements; vendor and supplier files and lists; advertising, promotional and marketing materials, including website content; sales materials; marketing methods, research and developments data, files, and reports; technical information; data bases; studies; drawings, specifications and creative materials; cost information; expansion and other plans and projects; proprietary design and engineering standards; operating guides and manuals; employee personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind; and

2. Excludes the following:

- a. Information that is protected by attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition law; or
- b. Information that Respondents demonstrate to the satisfaction of the Commission, in the Commission's sole discretion:
 - i. was or becomes generally available to the public other than as a result of disclosure by Respondents;
 - ii. is necessary to be included by Respondents' mandatory regulatory filings; *provided, however*, that Respondents shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;

Decision and Order

- iii. was available, or becomes available, to the public other than as a result of disclosure by Respondents;
 - iv. is information the disclosure of which is consented to by the Acquirer;
 - v. is necessary to be exchanged in the course of consummating the Acquisition or the transaction under any Remedial Agreement;
 - vi. is disclosed in complying with this Order;
 - vii. is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities; or
 - viii. is disclosed obtaining legal advice.
- W. “Consents” means all consents, approvals, permissions, waivers, ratifications, or other authorizations that are necessary to effect the complete transfer and divestiture of the Caring.com Assets to an Acquirer and for the Acquirer to operate any aspect of the Caring.com Business.
- X. “Copyrights” means all rights to all original works of authorship of any kind owned or created by or for or related to Caring.com, the Caring.com Assets, or the Caring.com Business, and any registrations and applications for registrations thereof, and all copyrightable works, registered and unregistered copyrights in both published works and unpublished works, and all applications, registrations, and renewals in connection therewith, including, but not limited to, all such rights with respect to promotional materials and educational materials; market research data,

Decision and Order

market intelligence reports, and statistical programs (if any) used for marketing and sales research; customer information, promotional, and marketing materials; sales forecasting models; records, including customer lists, sales forces call activity reports, vendor lists, sales data, reimbursement data, and speaker lists.

- Y. “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.
- Z. “Director” means an individual who is elected, or appointed by, or who is an agent or representative of, a specified Person to serve on a Board of a specified entity.
- AA. “Divestiture Date” means the date on which Respondents (or a Divestiture Trustee) closes on the divestiture of the Caring.com Assets as required by Paragraph II. (or Paragraph VI.) of this Order.
- BB. “Domain Names” means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration.
- CC. “Employee Information” means, for each Caring.com Employee, a profile prepared by Respondents summarizing the employment history of each employee including, but not limited to, the following information:
 - 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;

Decision and Order

4. The most recent bonus paid, aggregate annual compensation for Caring.com Business'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. Copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employee.
- DD. "Firewalled Entity(ies)" means APEX, Silver Lake and General Atlantic individually and collectively, and includes the Firewalled Individuals.
- EE. "Firewalled Individuals" means the following:
1. All Persons appointed by, approved by, or who otherwise represent Silver Lake as Director on any Board of Respondents; and
 2. All Persons appointed by, approved by, or who otherwise represent General Atlantic as Director on any Board of Respondents.
- FF. "General Atlantic" means General Atlantic LLC, a limited liability corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its headquarters and principal place of business located at 55 East 52nd Street, Park Avenue Plaza, 33rd Floor, New York, NY 10055.
- GG. "Geographic Territory" means the United States.
- HH. "Government Entities" means any Federal, state, local or non-U.S. government, or any court, legislature,

Decision and Order

government agency, or government commission, or any judicial or regulatory authority of any government.

- II. “Hold Separate Order” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Consent Agreement.
- JJ. “Hold Separate Period” means the time period beginning as of the date on which Respondents sign the Consent Agreement in this matter, and shall terminate pursuant to the provisions of Paragraph IX. of the Hold Separate Order.
- KK. “Intellectual Property” means, and includes without limitation, all:
 - 1. Patents;
 - 2. Copyrights;
 - 3. Trademarks, trade dress, logos, slogans, service marks, Websites and Domain Names, together with all translations, adaptations, derivations, and combinations thereof, and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith;
 - 4. Marketing Materials;
 - 5. Computer software (including source code, executable code, data, databases, and related documentation);
 - 6. Plans (including proposed and tentative plans, whether or not adopted or commercialized), research and development, specifications, drawings, and other assets (including the right to use Patents, know-how, and other intellectual property relating to such plans);

Decision and Order

7. Trade secrets, technology, know-how, and confidential or proprietary information (including ideas, research and developments, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development, and other information), whether patented, patentable, or otherwise;
 8. Licenses including, but not limited to, third party software, if transferrable, and sublicenses to software modified by Caring.com; and
 9. Any other intellectual property used prior to the Divestiture Date in connection with Caring.com or the Caring.com Business; and
 10. All rights to obtain and file for Patents, Copyrights, Trademarks, and registrations thereof and to bring suit against a third party for the past, present, or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing.
- LL. “Marketing Materials” means all materials used in the marketing or sale of services or products by Caring.com or the Caring.com Business as of the Divestiture Date, including, without limitation, all advertising and display materials, promotional and marketing materials, training materials, educational materials, speaker lists, product data, mailing lists, sales materials, marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs used for marketing and sales research), customer information, sales forecasting models, Website content, and other materials related to the marketing or sale of services or products by Caring.com or the Caring.com Business.
- MM. “Monitor” means any monitor appointed pursuant to Paragraph V. of this Order or Paragraph V of the Hold Separate Order.

Decision and Order

- NN. “Monitor Agreement” means the Monitor Agreement between Respondents and R. Shermer & Company. The Monitor Agreement is attached as Appendix A to this Order.
- OO. “Patents” means pending patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- PP. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity other than Respondents.
- QQ. “Remedial Agreement(s)” means any agreement between Respondents and the Acquirer (or between a Divestiture Trustee and the Acquirer) that have been approved by the Commission to accomplish the requirements of this Order, including any divestiture or assets purchase agreement(s) related to the Caring.com Assets, any Transition Services Agreement(s), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order.
- RR. “Senior Care Paid Referral Service Contracts” means contracts with senior care facilities or other senior caregiving service providers for paid referrals to potential clients seeking entry into a senior care facility or senior caregiving services.

Decision and Order

- SS. “Silver Lake” means Silver Lake Partners LP, a limited partnership organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its headquarters and principal place of business located at 2775 Sand Hill Road, Suite 100, Menlo Park, CA 94025.
- TT. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by the Caring.com Business, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- UU. “Trademarks” means all proprietary names or designations, registered and unregistered trademarks, service marks, trade names, brand names, commercial names, “doing business as” (d/b/a) names, logos, and slogans, together with all translations, adaptations, derivations, and combinations thereof, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof), all common law rights, and all goodwill symbolized thereby and associated therewith.
- VV. “Transition Services” means any transitional services required by the Acquirer for the operation of the Caring.com Business including, but not limited to administrative assistance (including, but not limited to, accounting, and information transitioning services), technical assistance, and supply agreements.
- WW. “Transition Services Agreement(s)” means any agreement entered into between Respondents and an Acquirer (or the Divestiture Trustee and an Acquirer) for the provision of Transition Services.

Decision and Order

- XX. “Website and Domain Names” means the content of the Website(s) located at the Domain Names, the Domain Names, and all Copyrights in such Website(s), to the extent owned by Respondents.

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

- A. No later than six (6) months after the Acquisition Date, Respondents shall divest the Caring.com Assets, absolutely and in good faith and at no minimum price, to the Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- B. At the Acquirer’s option, and subject to the prior approval of the Commission, Respondents shall provide, at no greater than Direct Cost, Transition Services from knowledgeable employees of Respondents to assist the Acquirer in the transfer of the Caring.com Assets from Respondents to the Acquirer in a timely and orderly manner pursuant to a Transition Services Agreement. The Transition Services Agreement:
1. Shall be for a period of one (1) year following the Divestiture Date, with an opportunity to extend for up to one (1) year at the option of the Acquirer;
 2. May be terminated at any time by the Acquirer without cost or penalty to the Acquirer upon commercially reasonable notice to Respondents; and
 3. Must include provisions that:
 - a. comply with the requirements and prohibitions of Paragraph IV. of this Order to ensure that Caring.com Confidential Business Information remains confidential; and

Decision and Order

- b. require Respondents, with the concurrence of the Acquirer, to certify in writing to the Commission as to the completion of all Transition Services provided by the Respondents to the Acquirer pursuant to any Transition Services Agreement approved by the Commission.

C. Prior to the Divestiture Date:

1. Respondents shall secure at their sole expense:

- a. Consents from all Persons that relate to or are necessary to divest the Caring.com Assets to the Acquirer and for the Acquirer to operate any tangible or intangible assets of the Caring.com Business in a manner that will achieve the purposes of this Order; and
- b. Consents from all Persons necessary for the assignment or transfer to the Acquirer of all the Caring.com Contracts;

provided, however, Respondents shall not be required to secure the consent of any Governmental Agency relating to any permit, license, or right that Respondents have no legal right to divest or transfer to the Acquirer; and

provided further, however, the failure of Respondents or the Acquirer to obtain any Consents that relate to or are necessary to divest the Caring.com Assets shall not extend the date by which Respondents must divest the Caring.com Assets.

2. Respondents shall use best efforts to assist the Acquirer to obtain the transfer from Respondents or issuance to the Acquirer of any permit, license, asset, or right that Respondents have no legal right to divest or transfer to the Acquirer.

Decision and Order

- D. Within ten (10) days of the Divestiture Date, Respondents shall submit to the Acquirer, at Respondents' expense, all Business Records of the Caring.com Assets, in good faith, and in a manner that ensures their completeness and accuracy and that fully preserves their usefulness; *provided, however*, pending complete delivery of all such Business Records of the Caring.com Assets to the Acquirer, Respondents shall provide the Acquirer, and the Monitor with access to all such Business Records of the Caring.com Assets and employees who possess or able to locate such information for the purposes of identifying the books, records, and files directly related to the Caring.com Assets and facilitating the delivery in a manner consistent with this Order.
- E. Until Respondents (or the Divestiture Trustee) complete the divestiture and other obligations to transfer the Caring.com Assets as required by this Order, Respondents shall take all actions as are necessary to:
1. Maintain the full economic viability and marketability of the Caring.com Assets and the Caring.com Business;
 2. Minimize any risk of loss of competitive potential for the Caring.com Assets;
 3. Prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Caring.com Business; and
 4. Not sell, transfer, encumber, or otherwise impair the Caring.com Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of Caring.com, the Caring.com Assets, or the Caring.com Business.

Decision and Order

- F. The purpose of this Paragraph II. is to ensure the continued use of the Caring.com Assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents, minimize the loss of competitive potential for the Caring.com Business, minimize the risk of disclosure or unauthorized use of Caring.com Confidential Business Information; to prevent the destruction, removal, wasting, deterioration, or impairment of the Caring.com Business, except for ordinary wear and tear; and to remedy the potential lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

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

- A. Respondents shall cooperate with and assist the proposed Acquirer of the Caring.com Assets to evaluate independently and retain the Caring.com Employees, such cooperation to include at least the following:
1. Not later than forty-five (45) days before the Divestiture Date, Respondents shall, to the extent permitted by applicable law: (i) provide the proposed Acquirer a list of all Caring.com Employees, identifying which Persons are Caring.com Key Employees; and (ii) provide Employee Information for each Person on the list;
 2. Not later than thirty (30) days before the Divestiture Date, Respondents shall provide the proposed Acquirer with:
 - a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondents, with any Caring.com Employee;

Decision and Order

- b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and
 - c. to make offers of employment to any Caring.com Employee;
3. Respondents shall: (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Caring.com Employee; (ii) not offer any incentive to any Caring.com Employee to decline employment with a proposed Acquirer; (iii) not make any counteroffer to any Caring.com Employee who receives a written offer of employment from a proposed Acquirer; and (iv) remove any impediments within the control of Respondents that may deter any Caring.com Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed Acquirer;

provided, however, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

- B. Respondents shall provide reasonable financial incentives:
- 1. to the Caring.com Employees including the continuation of all employee benefits offered by Respondents (*i.e.*, regularly schedule or merit raises and bonuses, and regularly scheduled vesting of all pension benefits) during the Hold Separate Period, to encourage such employees to continue in his/her position with the Caring.com Business until the Divestiture Date; and

Decision and Order

2. to the Caring.com Key Employees as needed to facilitate the employment of such employees by the proposed Acquirer.
- C. For a period of two (2) years after the Divestiture Date, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Caring.com Employee employed by the Acquirer or any Person employed by the Acquirer whose job responsibilities predominantly relate to the Caring.com Business, to terminate his or her employment relationship with the Acquirer;

provided, however, Respondents may: (1) advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Caring.com Employee; and (2) hire employees of the Caring.com Business who apply for employment with Respondents, so long as such individuals were not solicited by Respondents in violation of this paragraph;

provided further, however, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any employee of the Caring.com Business if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by the Acquirer.

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

- A. Beginning on the date the Hold Separate Order is issued until six (6) months after the Divestiture Date, Respondents shall not:

Decision and Order

1. Possess or control any APFM Confidential Business Information;
 2. Request, solicit, seek, receive, obtain, or otherwise have access to, directly or indirectly, any APFM Confidential Business Information from any Person(s), including the Firewalled Entities; or
 3. Provide any services to or have any business dealings with the Firewalled Entities as related to APFM.
- B. Respondents shall not, except as expressly permitted by or as necessary to comply with the Hold Separate Order or this Order:
1. Provide, disclose, share, convey, discuss, exchange, circulate, or otherwise grant access to, directly or indirectly, any Caring.com Confidential Business Information, including information related to the divestiture of the Caring.com Assets, to or with any Person(s), including the Firewalled Individuals; or
 2. Use, directly or indirectly, the Caring.com Confidential Business Information for any purpose.
- C. As of the date Respondents sign the Consent Agreement, Respondents shall: (1) take all actions as are necessary and appropriate to prevent access to, or the disclosure or use of, Caring.com Confidential Business Information by or to any Person(s) not authorized to access, receive, or use such Confidential Business Information pursuant to the terms of this Order; and (2) with the advice and assistance of the Monitor, develop and implement procedures and requirements with respect to such Confidential Business Information to ensure that:
1. Caring.com or the Caring.com Business does not provide, disclose, or otherwise make available any

Decision and Order

Caring.com Confidential Business Information to the Firewalled Entities, and are in compliance with the requirements of this Order;

2. Employees of Respondents' retained businesses, including the Firewalled Individuals, do not request, solicit, seek, receive, obtain, use or otherwise have access to, directly or indirectly, any Caring.com Confidential Business Information from the Caring.com Business;

provided, however, employees of Respondents' retained businesses are not in violation of this Paragraph if: (1) they provide or are involved in the provision of Transition Services under the (i) Hold Separate Order or this Order, or (ii) any Remedial Agreement; or (2) are complying with financial reporting requirements or environmental, health, and safety policies and standards, ensuring the integrity of the financial and operational controls on the Caring.com Assets or the Caring.com Business, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against Caring.com or the Caring.com Business, or as required by law;

3. The Firewalled Individuals are:
 - a. In compliance with the requirements of this Order;
 - b. Prohibited from, directly or indirectly, influencing or attempting to influence or participate in any vote of Respondents' Board pertaining to Caring.com or the Caring.com Business; and
 - c. Prohibited from participating in any discussions or communications with Respondents and the Firewalled Entities about Caring.com or the Caring.com Business.

Decision and Order

- D. As part of the procedures and requirements described in Paragraph IV.C. of this Order, Respondents shall:
1. Within ten (10) days of the date Respondents sign the Consent Agreement, require all Respondents' employees who have access to Caring.com Confidential Business Information, including the Firewalled Individuals, to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of this Order; *provided, however*, for Respondents' employees with access to Caring.com Confidential Business Information who have clerical positions but no operational or commercial responsibilities, Respondents may send an appropriate notification regarding the prohibitions and confidentiality requirements of this Order by email with return receipt requested or other similar transmission, and shall keep a file of such return receipts for one (1) year;
 2. Require and enforce compliance with appropriate remedial action in the event of non-compliant access, use, or disclosure of Caring.com Confidential Business Information in violation of this Order; immediately report any event to the Monitor, if one has been appointed, and to the Commission or its staff; and include detailed information about any event and any remedial action taken by Respondents in Respondents' compliance reports to the Commission; and
 3. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Order's requirements.

Decision and Order

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

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Hold Separate Order and the Remedial Agreements. The Commission hereby appoints Richard A. Shermer as the Monitor and approves the Monitor Agreement between R. Shermer & Company and Respondents.
- B. Not later than one (1) day after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to this Order, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents’ compliance with the relevant requirements of this Order in a manner consistent with the purposes of this Order.
- C. The Monitor shall serve until the later of (1) twelve (12) months after the Divestiture Date or (2) the termination of all Respondents’ obligations under all Remedial Agreements; *provided, however*, the Commission may extend or modify this period as may be necessary to accomplish the purposes of this Order and the Hold Separate Order.
- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture, hold separate and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the

Decision and Order

Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission, including, but not limited to:

- a. Assuring that Respondents expeditiously comply with all of their obligations and performs all of their responsibilities as required by this Order, the Hold Separate Order, and the Remedial Agreements;
 - b. Monitoring any Transition Services Agreements; and
 - c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirer, except as allowed in this Order and in the Hold Separate Order;
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order, the Hold Separate Order, and the Remedial Agreements;
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order, the Hold Separate Order, and the Remedial Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order, the Hold Separate Order, and the Remedial Agreements;

Decision and Order

5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph V.D.6, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph V.D.5 of this Order;
7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under this Order, the Hold Separate Order, and the Remedial Agreements;

Decision and Order

8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order, the Hold Separate Order, and the Remedial Agreements;
 9. Respondents may require the Monitor and each of the Monitor's consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.
- G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject

Decision and Order

to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers necessary to permit the substitute Monitor to monitor Respondents' compliance with the terms of this Order, the Hold Separate Order, and the Remedial Agreements in a manner consistent with the purposes of this Order.

- H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order, the Hold Separate Order, and the Remedial Agreements.
- I. A Monitor appointed pursuant to this Order may be, but need not be, the same Person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

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

- A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Caring.com Assets and otherwise fully complied with the obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Caring.com Assets in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of this Order.
- B. In the event that the Commission or the Attorney General 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, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant

Decision and Order

assets in accordance with the terms of this Order. 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 from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have 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 Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute an 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 relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents 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,

Decision and Order

divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to enter into Transition Services agreements;

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the 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, or in the case of a court-appointed Divestiture Trustee, by the court; *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. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph VI. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

Decision and Order

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' 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*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval;
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents, 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 and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the

Decision and Order

Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents 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. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture;
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission; and

Decision and Order

10. The Commission may require, among other things, the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- F. 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 VI.
 - G. 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. The Remedial Agreements shall not 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 the Respondents under such agreement.
- B. The Remedial Agreements shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all provisions of the Remedial Agreements, and any breach by Respondents of any term of such agreement shall constitute a violation of this Order. If any term of the Remedial Agreements varies from the terms of this Order

Decision and Order

(“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order. Any failure by the Respondents to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

- D. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

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

- A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Respondents shall submit to the Commission and, if appointed, the Monitor, a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:
1. Within thirty (30) days after the date this Order becomes final;
 2. Every thirty (30) days thereafter until Respondents have fully divested, licensed, transferred and/or granted the Caring.com Business to an Acquirer;

Decision and Order

3. Every three (3) months thereafter so long as Respondents have a continuing obligation under this Order and/or the Remedial Agreements to render Transition Services to the Acquirer; and
 4. One (1) year after this Order is issued, annually for the next nine (9) years on the anniversary of that date, setting forth in detail the manner and form in which they have complied and are complying with this Order.
- C. At such other times as the Commission may request, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this Order and any Remedial Agreement.

IX.

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 the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

Decision and Order

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents related to compliance with the Consent Agreement and/or this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on March 1, 2028.

By the Commission.

Decision and Order

PUBLIC APPENDIX A**Redacted Monitor Agreement****MONITOR AGREEMENT**

This Monitor Agreement (this "Agreement"), entered into this 20th day of October, 2017, by and among R. Shermer & Company ("Shermer" or the "Monitor") and Red Ventures Holdco, LP ("Red Ventures") (Shermer and Red Ventures together, the "Parties") provides as follows:

WHEREAS the Federal Trade Commission (the "Commission"), in the Matter of Red Ventures Holdco/Bankrate, File No. 171-0196, has accepted or will shortly accept for public comment an Agreement Containing Consent Orders incorporating a Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Orders"), which, among other things, requires Red Ventures to divest Caring.com and certain related assets (the "Caring.com Assets"), as defined in the Orders, and contemplates the appointment of a Monitor to monitor Red Ventures' compliance with its obligations under the Orders;

WHEREAS, the Commission is expected to accept the Agreement Containing Consent Orders and appoint Monitor pursuant to the Orders to monitor Red Ventures' compliance with the terms of the Orders, and Monitor has consented to such appointment;

WHEREAS, the Orders further provide that Red Ventures shall execute an agreement, subject to the prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and Red Ventures, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Red Ventures or Monitor under the Orders, except for those obligations under the confidentiality provisions herein, until it has been approved by the Commission; and

WHEREAS, the Parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

ARTICLE I

1.1 Powers of the Monitor. Monitor shall have all of the powers and responsibilities conferred upon Monitor by the Orders, including but not limited to monitoring Red Ventures' compliance with the divestiture, asset maintenance obligations, and other related requirements of the Orders.

1.2 Access to Relevant Information and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to Red Ventures' person-

Decision and Order

nel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Red Ventures' compliance with the obligations of Red Ventures under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Red Ventures shall cooperate with any reasonable request of Monitor. Monitor shall give Red Ventures reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Red Ventures' operations. At the request of the Monitor, Red Ventures shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Red Ventures who have knowledge relevant to the proper discharge of its responsibilities under the Orders.

1.3 Compliance Reports. Red Ventures shall provide Monitor with copies of all compliance reports filed with the Commission in a timely manner, but in any event, no later than five (5) business days after the date on which Red Ventures files such report with the Commission.

1.4 Confidentiality. Monitor shall:

(a) maintain the confidentiality of all confidential information provided to the Monitor by Red Ventures, the acquirer of the Caring.com Assets, any supplier or customer of Red Ventures, or the Commission ("Confidential Information"), and shall use such information only for the purpose of discharging its obligations as Monitor and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. Monitor may disclose Confidential Information only to (i) persons employed by or working with Monitor pursuant to the Orders or (ii) persons employed at the Commission;

(b) require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement, which Red Ventures will provide if requested, that requires such third parties to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;

(c) act in a fiduciary capacity for the benefit of the Commission;

(d) maintain a record and inform the Commission of all third parties (other than representatives of the Commission) to whom Confidential Information has been disclosed;

(e) for a period of five (5) years after the termination of this Agreement, maintain the confidentiality of all other aspects of the performance of its duties under this Agreement and not disclose any Confidential Information relating thereto; and

(f) upon the termination of the Monitor's duties under this Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and elec-

Decision and Order

tronic materials (including materials that Red Ventures provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff. In response to a request by Red Ventures to return or destroy materials that Red Ventures provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff do not object, shall comply with Red Ventures' request. Notwithstanding the foregoing, the Monitor shall not be required to return or destroy confidential information contained in an archived computer back-up system for its disaster recovery and/or security purposes, and it may retain a copy of confidential information, subject to the terms of this Agreement, in accordance with its internal record retention procedures for legal or regulatory purposes. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor for ten (10) years after termination of this Agreement. For the avoidance of doubt, the expiration of the ten year period following the termination of this Agreement shall not abrogate the duties under this Section 1.4 which prevent the Monitor's disclosure of any Confidential Information.

For the purpose of this Agreement, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than the Monitor, Red Ventures, or any director, officer, employee, agent, consultant or affiliate of the Monitor or Red Ventures, when such source was not known to recipient after due inquiry to be restricted from making such disclosure to such recipient.

ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of Red Ventures, such attorneys, consultants, accountants, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities pursuant to the Orders. Prior to engaging any such parties and prior to commissioning additional work to be performed by a party who has already been so engaged, Monitor shall notify Red Ventures of its intention to do so, and provide an estimate of the anticipated costs.

2.2 Monitor Compensation. Red Ventures shall pay Monitor in accordance with the fee schedule and procedure attached as Confidential Appendix A for all reasonable time spent in the performance of the Monitor's duties, including all monitoring activities related to the efforts of the acquirer of the Caring.com Assets, all work in connection with the negotiation and preparation of this Agreement, and all reasonable and necessary travel time.

(a) In addition, Red Ventures shall pay: (i) all out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the Orders; and (ii) all reasonable fees of, and disbursements reasonably incurred by, any advisor appointed by Monitor pursuant to the first paragraph in Article II.

Decision and Order

(b) The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

2.3 Workspace and Access. To the extent available, Red Ventures will provide the Monitor with temporary workspace and access to office equipment at sites the Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor Agrees to comply with Red Ventures' safety and security regulations, instructions and procedures while at Red Ventures' sites.

2.4 Monitor's Indemnification; Limitation on Liability. Red Ventures shall indemnify and hold harmless Monitor and its employees and agents against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor'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 Monitor's gross negligence or willful misconduct. Monitor shall not be liable hereunder for any amount in excess of the fees paid to it, except in the event of Monitor's gross negligence, willful misconduct or fraud. Monitor shall not be liable hereunder for any incidental, consequential, special or punitive damages, regardless of whether it has been informed of the possibility thereof.

2.5 Disputes. In the event of a disagreement or dispute between Red Ventures and Monitor concerning Red Ventures' obligations under the Orders, and, in the event that such disagreement or dispute cannot be resolved by the Parties, either party may seek the assistance of the individual in charge of the Commission's Compliance Division.

2.6 Conflicts of Interest. In the event that, during the term of this Agreement, Monitor becomes aware it has or may have a conflict of interest that may affect, or could have the appearance of affecting, performance by Monitor or persons employed by, or working with, Monitor, of any of its duties under this Agreement, Monitor shall promptly inform Red Ventures and the Commission of any such conflict or potential conflict.

ARTICLE III

3.1 Termination. This Agreement shall terminate the earlier of: (a) the expiration or termination of the Orders; (b) Red Ventures' receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Red Ventures and to the Commission, upon resignation of the Monitor; or (d) when the Monitor completes its Final Report pursuant to the Decision and Order; provided, however, that the Commission may require that Red Ventures extend this Agree-

Decision and Order

ment as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force, as will the provisions of Articles 2.2 and 2.3 of this Agreement.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fails to act diligently and consistent with the purpose of the Orders, Red Ventures shall, upon written request of the Commission, terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by the substantive laws of the State of New York, including all matters of construction, validity and performance. The Orders shall govern this Agreement and any provisions herein which conflict or are inconsistent with the Orders may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

3.4 Disclosure of Information. Nothing in this Agreement shall require Red Ventures to disclose any material or information that is subject to a legally recognized privilege or that Red Ventures is prohibited from disclosing by reason of law or an agreement with a third party.

3.5 Assignment. This Agreement may not be assigned or otherwise transferred by Red Ventures or Monitor without the consent of Red Ventures and Monitor and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Orders.

3.6 Modification. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all Parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Orders.

3.7 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the Parties' obligations under the confidentiality provisions herein.

3.8 Entire Agreement. This Agreement, and those portions of the Orders incorporated herein by reference, constitute the entire agreement of the Parties and supersede any and all prior agreements and understandings between the Parties, written or oral, with respect to the subject matter hereof.

3.9 Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

3.10 Section Headings. Any heading of the sections is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

Decision and Order

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed
as of the date first above written.

Decision and Order

MONITOR

R. Shermer & Company

Richard Shermer
President

Respondent

Red Ventures Holdco, LP



Ric Eliás
CEO

Decision and Order

MONITOR

R. Shermer & Company



Richard Shermer
President

Respondent

Red Ventures Holdco, LP

Ric Elias
CEO

Analysis to Aid Public Comment

NON-PUBLIC APPENDIX B

Caring.com Key Employees

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) with Red Ventures Holdco, LP (“Red Ventures”) and Bankrate, Inc. (“Bankrate”). The Consent Agreement is intended to remedy the anticompetitive effects that likely would result from Red Ventures’ proposed acquisition of Bankrate (the “Transaction”). Under the Consent Agreement, Red Ventures will divest Caring.com, a subsidiary of Bankrate.

The Transaction, if consummated, would result in the likely lessening of competition between the two leading providers of third-party paid referral services for senior living facilities. Senior living facility operators use a variety of methods to find residents, including in-house marketing efforts, unpaid referrals from doctors or other professionals working with the elderly, and third-party paid referral services. The evidence shows that third-party paid referral services for senior living facilities represents a relevant product market, and that A Place for Mom (“APFM”) and Caring.com are the two largest third-party paid referral services for senior living facilities and each other’s closest competitors. General Atlantic, LLC (“General Atlantic”) and Silver Lake Partners, LP (“Silver Lake”) jointly own all of

Analysis to Aid Public Comment

APFM, own approximately 34 percent of Red Ventures, and have significant control over certain Red Ventures decisions.

The Proposed Order preserves competition between APFM and Caring.com by accepting a Consent Agreement under which Red Ventures will divest Caring.com.

II. The Parties**A. Red Ventures**

Red Ventures is a marketing company providing proprietary internet content and customer leads in a variety of industries. Two of its largest shareholders are private equity firms General Atlantic and Silver Lake Partners. They control two of the seven positions on the board of Red Ventures GP, LLC, the entity that manages Red Ventures, and they have approval rights for two other positions. They also must approve significant capital expenditures by Red Ventures. General Atlantic and Silver Lake jointly own APFM, which is the largest third-party paid referral service company for senior living facilities.

B. Bankrate

Bankrate is a marketing company providing proprietary internet content and customer leads for providers in a variety of industries. In connection with the market for providing leads for senior living facilities, Bankrate owns and operates Caring.com, the second largest third-party referral service company for senior living facilities after APFM.

III. The Proposed Transaction

Pursuant to an agreement executed on July 2, 2017, Red Ventures agreed to acquire 100 percent of Bankrate.

IV. The Relevant Market

The Commission's Complaint alleges that the relevant product market within which to analyze the Transaction is third-party paid referral services for senior living facility operators.

Analysis to Aid Public Comment

Senior living facilities provide a range of specialized long-term residential living options tailored to the needs of senior consumers. Referral services companies generate and collect customer leads for senior living facilities. While many small referral services companies generate leads through marketing and networking efforts similar to those used by real estate agents, APFM and Caring.com use the internet to generate and collect leads. They attract these leads to their websites through both paid search advertising and search engine optimization, which includes, among other things, creating compelling free content to help the websites appear higher in search engine result pages.

Once the referral services companies qualify the leads, they provide the customer leads to the senior living facilities operators. The senior living facilities' sales staff then contacts the leads and seeks to consummate sales. When a consumer moves into a senior living facility, the senior living facility operator pays the referral services company a referral fee, typically based on a percentage of the first month's rent and care.

The Commission's Complaint alleges that the relevant geographic market in which to analyze the effects of the Merger is the United States. Although each senior's search for a senior living facility is highly localized, APFM and Caring.com operate, compete and contract with senior living facility operators on a national basis.

V. Market Structure

The Commission's Complaint alleges that Caring.com is APFM's closest competitor, they are the two largest third-party paid referral services companies for seniors, and they have similar business models. APFM and Caring.com are internet-based referral services providers that compete to attract consumers via websites with national reach, and they enter into contracts with senior living facility operators both locally and nationally. Other than APFM and Caring.com, there is a fringe of small regional and local companies that act as third-party paid referral services companies.

VI. Effects of the Transaction

The Commission's Complaint alleges that the Transaction, if consummated, may substantially lessen present and future competition between APFM and Caring.com by increasing the likelihood that Red Ventures would unilaterally exercise market power and increasing the likelihood of coordinated interaction between APFM and Caring.com.

General Atlantic and Silver Lake have the ability to influence or control the management of Caring.com. They are both active investors with board representation on, and other substantial rights over, Red Ventures. General Atlantic and Silver Lake's ownership of APFM may create incentives for them to exercise influence or control over Red Ventures in a manner that could substantially reduce competition between APFM and Caring.com.

VII. Entry Conditions

Entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Transaction. The primary barrier to entry is the network and scale needed to acquire and convert qualified leads into actual move-ins at senior living facilities. This requires the ability not only to compete effectively in search engine optimization and marketing, but also to establish contracts with hundreds of senior living facilities nationwide, and have the necessary infrastructure, including experienced senior advisors, to convert leads into paying referrals.

VIII. The Agreement Containing Consent Order

The Proposed Order resolves the anticompetitive concerns raised by the Transaction by eliminating the only overlap between Red Ventures/Bankrate and APFM. The Proposed Order restores current and potential competition by accepting a divestiture of the Caring.com business. Caring.com was independent before it was acquired by Bankrate.com in 2014, and it continues to operate semi-autonomously. The Proposed Order gives the Commission the right to approve a buyer, and prevents General Atlantic and Silver Lake from being involved in the divestiture process.

Analysis to Aid Public Comment

The Proposed Order allows the Commission to appoint a monitor to ensure compliance with the terms of the Proposed Order, including the provision of transition services to an acquirer and firewalls related to Caring.com's confidential business information. The Proposed Order also prevents Red Ventures from possessing or seeking any confidential business information from APFM or providing any services to APFM for six months after the divestiture of Caring.com. The Commission may appoint a trustee if Red Ventures has not divested Caring.com and its related assets within the prescribed time-period.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

**THE J.M. SMUCKER COMPANY
AND
CONAGRA BRANDS, INC.**COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED
VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION
ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. 9381; File No. 171 0182
Complaint, March 5, 2018 – Decision, March 8, 2018*

This case addresses the \$285 million acquisition by The J.M. Smucker Company of certain assets of Conagra Brands, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by significantly reducing competition in the markets for canola and vegetable oils sold in the United States. The Order dismisses the Complaint, on the grounds that the Respondents have terminated their Asset Purchase Agreement, and have withdrawn the Hart-Scott-Rodino Notification and Report Forms that they filed for the proposed acquisition.

Participants

For the *Commission*: Elizabeth Arens, Charles Dickinson, Jamie France, Christopher Harris, Michael Mikawa, David Owyang, Anthony Saunders, and Robert Zuver.

For the *Respondents*: Ilene Gotts and Lori Sherman, Wachtell, Lipton, Rosen & Katz LLP; Douglas Matthews, Vorys, Sater, Seymour and Pease LLP; Kathryn M. Fenton, Jones Day LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents The J.M. Smucker Company (“Smucker”) and Conagra Brands, Inc. (“Conagra”) have executed an asset purchase agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission