IN THE MATTER OF

THOMAS A. DARDAS

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

Docket C-3144. Complaint, Oct. 1, 1984—Decision, Oct. 1, 1984

This consent order requires Thomas A. Dardas, individually and as an officer of Acu-Form Weight Control Centers, Inc., to cease representing that any weight control or weight loss product or service can perform in any way or has any benefit, unless such representations are substantiated by reliable and competent evidence. Mr. Dardas is also prohibited from misrepresenting the terms and conditions of guarantees offered in connection with any weight control or weight loss product or service; representing that any such product or service is guaranteed without prominently disclosing the identity of the guarantor and the conditions and limitations of the guarantee; and the manner in which the guarantor will perform guaranteed obligations. Additionally, Mr. Dardas is required, for a period of three years, to maintain records substantiating claims covered by this order; retain records detailing refund requests; and notify the Commission of any change in his employment.

Appearances

For the Commission: *Elaine Kolish.*

For the respondent: *Mark Miller, Gunn, Lee & Jackson,* San Antonio, Texas.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Thomas A. Dardas, hereinafter referred to as respondent, individually and as an officer of Acu-Form Weight Control Centers, Inc., has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Acu-Form Weight Control Centers, Inc., hereinafter referred to as the corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4151 Southwest Freeway, Suite 410, Houston, Texas. The corporation filed

a bankruptcy petition pursuant to Chapter 7 of Title 11 of the United States Code on August 2, 1983.

PAR. 2. Thomas A. Dardas is an individual and is an officer of the corporation. He formulates, directs, and controls the acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is 11211 Valley Spring, Houston, Texas.

PAR. 3. Respondent, through the corporation, has engaged in the distribution, advertising, and sale of weight loss or weight control products and services sold under the name Acu-Form ear mold and has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, through the corporation, has disseminated and caused the dissemination of certain advertisements for the Acu-Form ear mold.

PAR. 5. Respondent, through the corporation and by means of the advertisements referred to in Paragraph Four, examples of which are attached hereto as Exhibits A-E, has made the following and other statements concerning the characteristics, performance and efficacy of ACU-FORM ear molds:

a. Now, with the ACU-FORM ear mold, you can lose weight—quickly, safely, effortlessly! No drugs, needles or discomfort. No restrictions on your lifestyle. The Acu-Form ear mold simply suppresses your appetite. You eat less and lose weight.

b. THE REDUCING AID YOU WEAR IN YOUR EAR (headline) The ACU-FORM ear mold is different from any other weight loss program. . . . The ACU-FORM ear mold actually decreases your appetite and lets you lose weight—quickly, safely and with no limits on your lifestyle!

c. An ACU-FORM ear mold, custom fitted to your ear, puts you in control of your appetite and weight for life. . . .

d. The ACU-FORM ear mold uses the body's own reflex mechanism to give you control of your appetite and weight. There are more than 200 clusters of invisible nerve endings in the shell of your ear which are specific acupuncture receptor points that can affect your habits. The specific points to modify your appetite and eating habits are stimulated by the ACU-FORM ear mold which remains in your ear and is virtually undetectable.

e. BEFORE YOU READ THIS ADD PRESS LIGHTLY ON YOUR RIGHT EAR. (headline) Sound easy enough? That's all you do to help yourself lose weight—when you wear the unique Acu-Form ear unit.

f. Granted U.S. Patent number 4,073,296, the clinically tested ACU-FORM ear mold is fast and effective.

PAR. 6. Through the advertisements referred to in Paragraph Four, including the statements set forth in Paragraph Five (a)-(e) and others, respondent, through the corporation, has represented, directly or by implication, that:

a. The Acu-Form ear mold is an effective means of weight loss.

b. The Acu-Form ear mold physiologically decreases or suppresses the wearer's appetite.

c. The Acu-Form ear mold gives the wearer permanent, life-time control over his or her weight.

PAR. 7. By the means of the advertisements referred to in Paragraph Four, respondent, through the corporation, has represented, directly or by implication, that at the time of making such representation, the corporation possessed and relied upon a reasonable basis for the representations set forth in Paragraph Six.

PAR. 8. In truth and in fact, the corporation did not possess and rely upon a reasonable basis for making such representations. Therefore, the representation set forth in Paragraph Seven was false and deceptive.

PAR. 9. By means of the statements set forth in Paragraph Five (f) and others, respondent, through the corporation, has represented that the Acu-Form ear mold's ability to suppress or decrease the wearer's appetite has been proven through clinical tests.

PAR. 10. In truth and in fact, the Acu-Form ear mold's ability to suppress or decrease the wearer's appetite has not been proven through clinical tests. Therefore, the representation set forth in Paragraph Nine was false and deceptive.

PAR. 11. Respondent through the corporation and by means of the advertisements referred to in Paragraph Four has made the following and other statements concerning a money-back guarantee for Acu-Form ear molds:

> a. If you want to lose weight, remember Acu-Form Weight Control Centers offer a 100% money back guarantee. You must lose weight or your money will be refunded in full.
>
> b. Money Back Guarantee.

PAR. 12. Through the use of the statements set forth in Paragraph Eleven and others, respondent, through the corporation, has represented, directly or by implication, that the money-back guarantee was unconditional.

PAR. 13. In truth and in fact, there were significant conditions attached to the money-back guarantee, including, but not necessarily limited to the following, consumers must have (a) followed the Acu-Form Diet Handbook and (b) returned to the location of their purchase during its normal business hours to be weighed and counseled for six consecutive weeks following delivery of their device. Therefore, the representation set forth in Paragraph Twelve was false and deceptive.

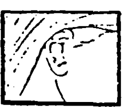
PAR. 14. Respondent's use of the aforesaid unfair and deceptive acts

and practices has had the capacity and tendency to mislead consumers and to induce consumers to purchase Acu-Form ear molds.

PAR. 15. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

EXHIBIT A

Money Back Guarantee



Now, with the ACU-FORM™ ear mold, you can lose weight — quickly, safely, effortlessly! No drugs, needles or discomfort. No restrictions on your lifestyle. The ACU-FORM™ ear mold simply suppresses your appetite. You eat less and lose weight.

You've probably lost weight with other methods and then gained it back, right? With the ACU-FORM™ ear mold, you'll have control over your weight for the rest of your life! Choose to lose weight now. The ACU-FORM™ ear mold makes it easy!

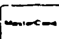
ACU-FORM™

Weight Control Centers

for the Thin of it

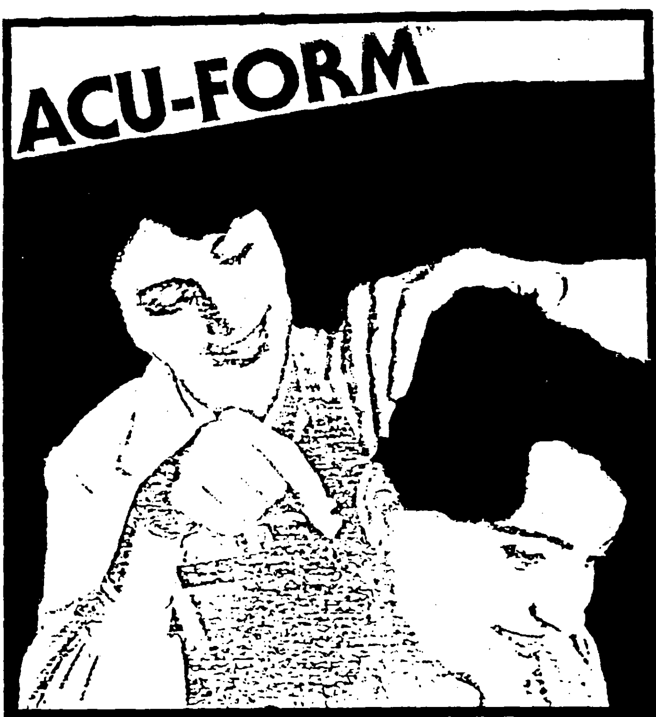
Katy Freeway 468-3114	Meyerland 667-5511	Clear Lake [illegible]	FM 1960/I-45 440-5511
Gulf Freeway 643-0041	S.W. Frwy at Gessner 776-9501	[illegible]	[illegible]/I-10 E 451-0141

Call now for free consultation [illegible] Certificates available



VISA

EXHIBIT B



THE REDUCING AID YOU WEAR IN YOUR EAR.

The ACU-FORM™ ear mold is different from any other weight [illegible] program. It applies the science of acupuncture to weight control, without the discomfort of piercing the skin. The ACU-FORM™ ear mold actually decreases your appetite and lets you lose weight... quickly, safely and with no limits on your lifestyle!

The ACU-FORM™ ear mold is patented by a doctor. It's so comfortable, you'll hardly know you're wearing it, and neither will anybody else! Now you can get thin and stay thin.

Money Back Guarantee

Call now for free consultation. Gift Certificates available.

[illegible] Mesa Dr. [illegible] Austin [illegible]-6660

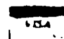
Centers in Florida, Georgia, Missouri, Tennessee, Texas and Virginia

ACU-FORM™

Weight Control Centers

for the Thin of it

[illegible] information call [illegible] 442-8255



Copyright 1982 by Acu-Form Weight Control Centers, Inc. U.S. Patent No. [illegible]

EXHIBIT C

NEVER BE FAT AGAIN

AN ACU-FORM™ EAR MOLD, CUSTOM-FITTED TO YOUR EAR, PUTS YOU IN CONTROL OF YOUR APPETITE AND WEIGHT FOR LIFE...WITHOUT SHOTS, DRUGS, NEEDLES OR CRASH DIETS.

The ACU-FORM™ method uses a patented weight control device based upon the ancient science of acupuncture but without the discomfort of piercing the skin.

Either manually or automatically the ACU-FORM™ or ELECTRO ACU-FORM™ ear mold gently stimulates precise acupressure points on your ear to help you overcome your desire to eat. You must lose weight with an ACU-FORM™ ear mold, or your money will be refunded in full — 100% guaranteed.

Call today for your free consultation. And bring along a friend who smokes. The ACU-FORM™ method can help smokers too.

Call for free consultation. Gift Certificates available.

Katy Freeway
468-3114

Gulf Freeway
643-0041

Meyerland
Galleria
667-5511

S.W. Frwy.
at Gessner
776-9501

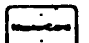
I-10 W.
Mason Rd.
578-1835

Jones Rd.
FM 1960
890-8435

FM 1960 I-45
440-5511

Uvalde I-10 E.
451-0144

Clear Lake
338-1586



VISA

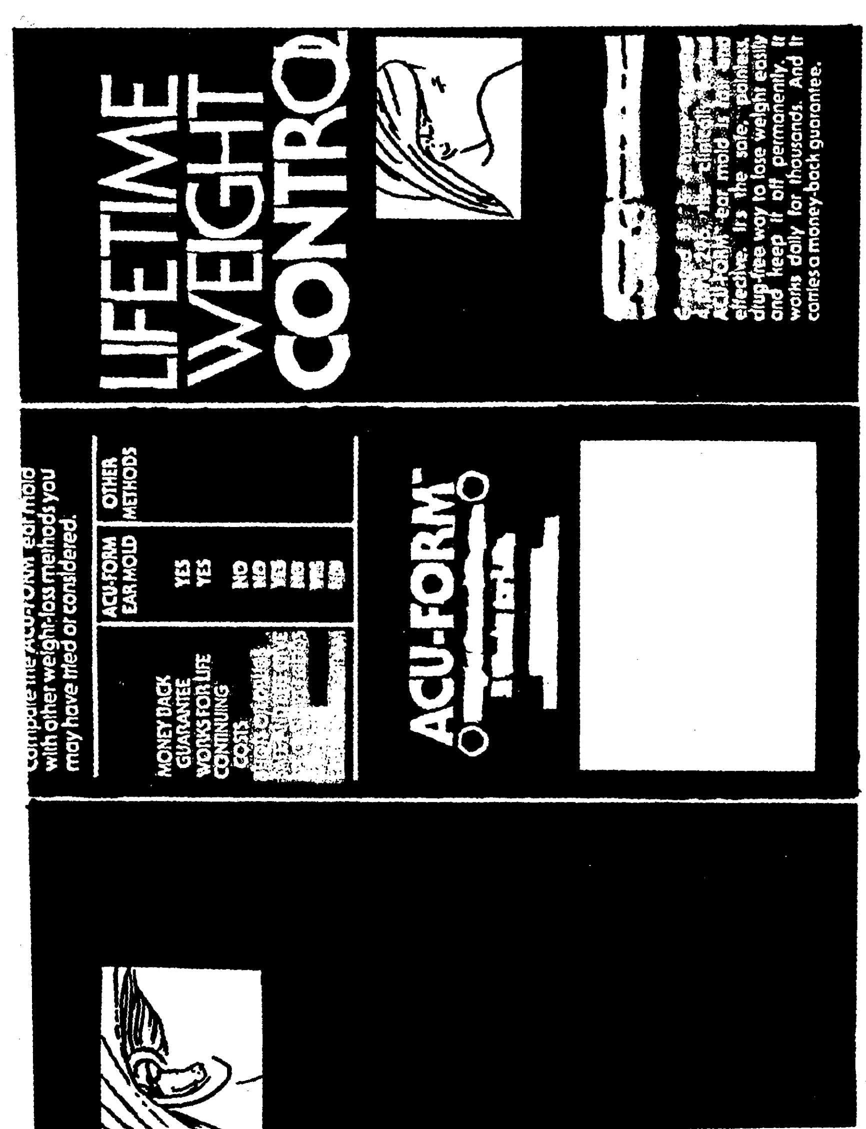
Now available!
ACU-FORM™ Derma Patch
Only $49.95

Weight Control Centers
for the Thin of it℠

For franchise information, call 1-800-442-8255

U.S. Patent No. [illegible]

EXHIBIT D



SAY "GOODBYE" TO FAT FOR LIFE

The **ACU-FORM**™ ear mold was invented and patented by Dr. F. J. McCall. It applies the centuries-old science of acupuncture to weight control, but without the discomfort of piercing the skin.

The **ACU-FORM**™ ear mold uses the body's own reflex mechanism to give you control of your appetite and weight. There are more than 200 clusters of invisible nerve endings in the shell of your ear which are specific acupuncture receptor points that can affect your habits. The specific points to modify your appetite and eating habits are stimulated by the **ACU-FORM**™ ear mold which remains in your ear and is virtually undetectable.

After an extensive training program, our technicians are certified to make the impression required to produce the **ACU-FORM**™ ear mold that fits your ear precisely. A unique plastic material is used to make an impression of your outer ear. This safe, painless process takes just 10 minutes.

The technician will examine the impression to be certain that it conforms to your ear. It will then be sent to the laboratory where a translucent ACUFORM™ ear mold is made. Surgical grade stainless steel stimulators are imbedded in the mold at the precise acupuncture points for your ear.

When the completed mold is returned from the laboratory, the technician will check it for fit and comfort and enroll you in our Weight Control Program.

That's all there is to it. But it means you are on your way to a more fulfilling life with control of your appetite and weight.

As you begin to reduce to your most desirable weight, you will feel an increased sense of physical well-being with improved self-assurance and the happiness that goes with them.

We hope that you will share your knowledge of the **ACU-FORM**™ ear mold with your friends and relatives who may need help in controlling their weight.

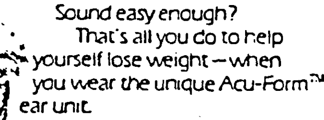
Dr. McCall is President of McCall Research Developn Laboratories, Ltd. and an author and lecturer who h many patents on prosthetics. He has a Ph.D. In Diet and Nutritional Physiology, as well as Naturopathy. holds a degree of Doctor of Medicine and is a Staff M ber and Instructor at The Chinese Acupuncture Hosp Taiwan, President of the American Chapter of the Chi Acupuncture Society, holder of the Certificate of Merit medal First Class Acupuncture, conferred Taipei City I Taiwan, 1973

"ACU-FORM" and ACU-MOLD" are registered trademarks of ACU-FORM" Weight Control Centers, Inc."

Copyright [illegible] by Acu Form Weight Control Centers, Inc.

EXHIBIT E

BEFORE YOU READ THIS AD, PRESS LIGHTLY ON YOUR RIGHT EAR.



Sound easy enough?

That's all you do to help yourself lose weight—when you wear the unique Acu-Form™ ear unit.

Acu-Form is a comfortable, inconspicuous clear acrylic form custom-fitted to you, and easily taken out at the end of each day. Patented by a doctor, it helps thousands reduce every day, using the principles of acupressure to help you decrease your appetite.

Without pills. Without shots. Without exercise. Without hypnosis. And without crash or fad dieting.

Best of all, you have a life-long program with just one reasonable initial cost.

For a free, no obligation consultation, call the Acu-Form Center nearest you. Now.

ACU-FORM™
WEIGHT CONTROL CENTERS

642-0610 Springfield | **984-6255** Rockville | **448-8890** Tysons Corner

© 1982 Acu-Form Weight Control Centers U.S. Patent No. 4 073.296

MONEY BACK GUARANTEE: You must lose weight with Acu-Form the first week or money's refunded in full.

Visa and MasterCard

Decision and Order

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of the complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

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

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

1. Respondent Thomas A. Dardas is an officer of Acu-Form Weight Control Centers, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its principal office and place of business located at 4151 Southwest Freeway, Suite 410, Houston, Texas. On August 2, 1983, Acu-Form Weight Control Centers, Inc., filed a bankruptcy petition pursuant to Chapter 7 of Title 11 of the United States Code. Respondent directed, formulated and controlled the policies, acts and practices of Acu-Form Weight Control Centers, Inc. Respondent's address is 11211 Valley Spring, Houston, Texas.

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

Order

I.

It is ordered, That respondent Thomas A. Dardas, individually and as an officer of Acu-Form Weight Control Centers, Inc., and his agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product or service marketed for weight loss or weight control in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that any weight loss or weight control product or service is effective, is able to perform in any respect, or has any characteristic, feature, attribute, or benefit unless at the time that such representation is made respondent possesses and relies upon reliable and competent evidence that substantiates the representation; *provided, however,* that to the extent the evidence of a reasonable basis consists of tests, analyses, research, studies or any other materials based on the expertise of professionals in the relevant area, such evidence shall be "reliable and competent" for the purposes of this order only if those tests, analyses, research, studies, or other materials are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondent Thomas A. Dardas, individually and as an officer of Acu-Form Weight Control Centers, Inc., and his agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from:

a. misrepresenting, directly or by implication, in connection with the advertising, offering for sale, sale or distribution of any product or service marketed for weight loss or weight control in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, the terms of any guarantee;

b. representing, directly or by implication, in connection with the advertising, offering for sale, sale or distribution of any product or service marketed for weight loss or weight control in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that any such product or service is guaranteed unless:

(1) the identity of the guarantor, the nature, extent, and material conditions of the guarantee, and the manner in which the guarantor will perform thereunder are clearly and prominently disclosed; and

(2) the guarantor does in fact perform all of the obligations under the terms of the guarantee as represented.

III.

It is further ordered, That respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that for a period of three (3) years from the date of service of this order respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with each new business or employment.

IV.

It is further ordered, That for three (3) years after receiving any request for a refund in connection with the sale of any weight control or weight loss product or service, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying the following records:

a. the name and address of each customer requesting the refund;

b. the date that respondent received the request for the refund;

c. if a refund was granted, a copy of the request (if written), the amount of the refund and date that it was sent to the customer;

d. if a refund was denied, a copy of the request (if written) and a copy of the written explanation of the denial sent to the customer.

V.

It is further ordered, That respondent shall maintain for three (3) years after the date of the last dissemination and upon request make available to the Federal Trade Commission for inspection and copying all materials relied upon in disseminating any representation covered by this order.

VI.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

THE SPERRY & HUTCHINSON COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8671. Final Order, Sept. 18, 1973—Modifying Order, Oct. 3, 1984

After reviewing the "Request To Reopen And Modify Order" filed by The Sperry & Hutchinson Company ("S&H"), the Commission concluded that it was in the public interest to set aside Section I of a Consent Order issued on September 18, 1973, 83 F.T.C. 478, which required the company to redeem its trading stamps for cash as well as merchandise. The company demonstrated that due to changed conditions, consumers can now readily avoid both S&H stamps and trading stamps in general in virtually all markets, and thus avoid any injury that might result from a merchandise-only redemption policy. S&H further demonstrated that the cash redemption requirement is also injuring its ability to compete against other suppliers of promotional services that are not subject to comparable restraints. Finding that the cash redemption provision no longer served any legitimate remedial purpose, the Commission reopened the matter and set aside Section I of the 1973 Consent Order.

ORDER MODIFYING DECISION AND ORDER ISSUED SEPTEMBER 18, 1973

On July 6, 1984, respondent The Sperry & Hutchinson Company ("S&H") filed a "Request To Reopen And Modify Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen and modify the consent order issued on September 18, 1973 ("the order") by setting aside Section I. Section I of the order requires S&H to redeem its trading stamps for cash at the option of the stamp saver, at a fixed cash redemption value, if the stamps are presented in minimum quantities of 300.

After reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening and modification of the order by setting aside Section I.

At the time of the original proceeding in this matter trading stamps were so pervasive in the marketplace that many consumers found them difficult if not impossible to avoid. In such a context, the cash redemption requirement of the order afforded stamp-savers an alternative to respondent's traditional policy of redeeming its stamps only for merchandise. S&H has demonstrated that conditions have now changed to the extent that consumers can readily avoid both S&H stamps and trading stamps in general in virtually all markets and, as

a consequence, can avoid any injury that might otherwise arguably result from a merchandise-only redemption policy. S&H has also shown that the continued existence of the cash redemption requirement is injuring its ability to compete against other suppliers of promotional services both inside and outside the trading stamp industry, which are not subject to comparable restraints. In view of these circumstances the cash redemption provision no longer serves any legitimate remedial purpose.

Accordingly, *it is ordered* that this matter be, and it hereby is, reopened, and that Section I of the Commission's order issued on September 18, 1973, shall be of no further force and effect as of the effective date of this order.

IN THE MATTER OF

SUN REFINING AND MARKETING COMPANY

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

Docket C-3145. Complaint, Oct. 11, 1984—Decision, Oct. 11, 1984

This consent order requires a Philadelphia, Pa. corporation, among other things, to honor the lifetime warranty on its "True Blue Lifetime Battery" ("TBLT"). The company is required to notify consumers who received a replacement battery without a lifetime warranty, that their original lifetime warranty rights would be reinstated. Further, when fulfilling warranty obligations, the company is required to provide replacement batteries that have the same technical and performance characteristics as the TBLT battery. The order also requires the firm to notify its dealers and distributors that it is reinstating the TBLT lifetime warranty and provide them with instructions for honoring the warranty.

Appearance

For the Commission: *Lemuel W. Dowdy* and *Rosemary Rosso.*

For the respondent: *E. Henneberry, Howrey & Simon,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sun Refining and Marketing Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sun Refining and Marketing Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 1801 Market Street, Philadelphia, Pennsylvania

PAR. 2. Respondent is and has been engaged in the advertising, offering for sale, sale and distribution of automotive batteries as well as other consumer products.

PAR. 3. In the course and conduct of its business, respondent causes and has caused its automotive batteries and other consumer products

to be shipped to various states for sale to the public. For the purpose of inducing the purchase of its automotive batteries by the consuming public, and in a manner likely to induce the purchase of said products in commerce, respondent has disseminated and has caused the dissemination of certain advertisements and promotional materials through various means, including magazines and newspapers of national circulation, television broadcasts transmitted by television stations located in various states and having sufficient power to carry such broadcasts across state lines, and has distributed promotional materials through the use of the U.S. mail. Respondent, at all times mentioned herein, has maintained a substantial course of business, including the acts and practices hereinafter set forth which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent sold or distributed approximately 281,000 automotive batteries with the brand name True Blue Lifetime Battery during the years 1975 through 1979. Each True Blue Lifetime Battery which respondent sold or distributed was accompanied by a written warranty.

PAR. 5. The warranties granted and disseminated to purchasers of respondent's True Blue Lifetime Battery were designated as a "Full Lifetime Warranty" or a "Lifetime Battery Warranty." Typical and illustrative of said warranties is Exhibit A attached hereto.

PAR. 6. In the further course and conduct of its aforesaid business and for the purpose of inducing the public to purchase respondent's True Blue Lifetime Battery, respondent has distributed advertising brochures and aired television advertisements which describe the True Blue Lifetime Battery as a battery that is sold with a full lifetime warranty. Typical and illustrative of said advertisements is Exhibit B attached hereto.

PAR. 7. By and through the acts, practices, statements and representations alleged in Paragraphs Two through Six above, respondent has represented, expressly or by implication, that the "Full Lifetime Warranty" and the "Lifetime Battery Warranty" obligate respondent to provide continuous free replacements for any battery that fails to accept and hold a charge as long as the purchaser owns the automobile in which the original True Blue Lifetime Battery was installed.

PAR. 8. In truth and in fact, respondent has not fully performed its obligations under the "Full Lifetime Warranty" and the "Lifetime Battery Warranty" as described in Paragraph Seven above. Beginning no later than July 15, 1980 respondent has implemented and is implementing a policy of refusing to provide continuous free replacements for any battery that fails to accept and hold a charge as long as the purchaser owns the automobile in which the original True Blue

Lifetime Battery was installed. Pursuant to this policy, respondent has offered and is offering the following options to purchasers of True Blue Lifetime Batteries when they seek warranty service:

1. Replacement with a battery of like grade and size but with warranty coverage limited to approximately fifty (50) months from the time of replacement; or
2. Refund of the original purchase price of the True Blue Lifetime Battery as indicated on the proof of purchase.

If these two options were or are unacceptable, purchasers are told to contact the Manager of Customer Relations for respondent. Pursuant to this policy, consumers were not and are not given the option of retaining the warranty rights described in Paragraph Seven above. Thus, a substantial number of purchasers of the True Blue Lifetime Battery have received or are receiving less warranty coverage than that which respondent was obligated to provide under the terms of the written warranty which was provided to purchasers at the time of purchase.

PAR. 9. Respondent's actions described above have thus caused substantial and ongoing injury to respondent's customers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

PAR. 10. The acts and practices of respondent as alleged herein were and are all to the prejudice and injury of the public and constitute unfair acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

TRUE BLUE

MAINTENANCE FREE NEVER NEEDS WATER

MAIL THIS CARD
IN AN ENVELOPE

TO:

TRUE BLUE BATTERY HEADQUARTERS
1608 Walnut Street
Philadelphia, PA 19103

ATTENTION MR CARL J JENSEN

SER. NO 47413

Please return to:

C. B. Chace
22/1845

TRUE BLUE
MAINTENANCE FREE

SER. NO. 47413

MARKETED BY
SUNMARK INDUSTRIES
PHILADELPHIA PA 19101

LIFETIME BATTERY WARRANTY CERTIFICATE

In the event the TRUE BLUE Lifetime Warranteed battery described on the reverse side of this Certificate becomes unserviceable in NON commercial passenger car use the battery will be REPLACED AT NO CHARGE subject to the following conditions

1 This Lifetime Warranty is not transferable and applies only so long as the original battery purchaser owns the specific automobile in which the subject battery was installed and provided the battery remains in that car)

2 Free replacement will be made only if the subject battery cannot accept and hold a charge

3 This certificate MUST BE PRESENTED at the time a free replacement battery is applied for

The replacement battery will be of the same grade and group size

4 When TRUE BLUE Lifetime batteries are used in commercial type service the standard BATTERY WARRANTY AND ADJUSTMENT PROCEDURE will apply

5 The above Lifetime Warranty will be honored by all participating Sunoco/DX dealers

LIMITATIONS

Failure in service due to fire wreckage explosion, freezing abuse or neglect or the use of a battery of a group size smaller than that of the battery installed by the manufacturer as original equipment is not covered by the Lifetime Warranty

VOID IF NOT MAILED WITHIN 10 DAYS

VALID ONLY IN U.S.A.

EXHIBIT B

OUR NEW TRUE BLUE. SUNOCO WILL STAND BEHIND IT FOR AS LONG AS YOU OWN YOUR CAR.

To help you hold onto your car, we give you a battery you can hold onto: our True Blue with the Full Lifetime Warranty.*

This battery is so good, Sunoco stands behind it for as long as you own your car. If it ever fails to hold a charge for you in your present car, Sunoco will replace it free with proof of purchase. Just make sure it hasn't been damaged by accident or abuse.

As long as you sit behind your wheel, we'll stand behind our battery.

*Commercial and marine use excluded.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sun Refining and Marketing Company and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sun Refining and Marketing Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 1801 Market Street, in the City of Philadelphia, State of Pennsylvania.

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

ORDER

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

A. *Lifetime Warranty*—A warranty which obligates respondent to provide continuous free replacements for any battery that fails to accept and hold a charge as long as the purchaser owns the vehicle in which the original battery was installed.

B. *TBLT battery*—A battery sold under the brand name "True Blue

Lifetime Battery" and which carried a warranty entitled "Lifetime Battery Warranty" or "Full Lifetime Warranty."

I

It is ordered, That respondent Sun Refining and Marketing Company, a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any automotive battery in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to perform any written warranty obligation under the "Lifetime Battery Warranty" or the "Full Lifetime Warranty" or any other warranty offering continuous replacements for a failed battery and from failing to replace any such battery under any such warranty if it has failed while the purchaser owns the car in which the original battery was installed;

Provided, that nothing in this order, including Part II shall prevent respondent from requesting purchasers of batteries carrying a "Lifetime Battery Warranty" or a "Full Lifetime Warranty" or any other warranty offering continuous replacements for failed batteries to agree to a modification of the warranty so long as: (1) the purchasers are notified in writing that a modification of the written warranty terms is being sought; (2) the purchasers are notified that they have the option of not agreeing to the modification and may continue with existing warranty coverage if they desire (such option shall be stated clearly and conspicuously in the same notification that informs the purchasers that a modification is being sought); (3) the purchasers are notified of all changes in warranty coverage that would occur should the modification be accepted, including, but not limited to, changes in warranty duration, changes in what respondent as warrantor will do in the event of a defect in or failure of the warranted product, and changes in what items or services the purchasers must pay for or provide or which the warrantor will not pay for or provide. No modification of the terms of any such warranty shall take effect unless and until the purchaser agrees in writing to such modification.

II

It is further ordered, That:

A. Respondent, its successors and assigns, shall ascertain the name

and address of each consumer who, according to the company's warranty files:

1. purchased a TBLT battery; and
2. replaced said battery (when the battery failed to accept and hold charges) with a battery of respondent that did not carry a lifetime warranty.

B. Within thirty (30) days after the date of service of this order, respondent, its successors and assigns, shall mail, by first class mail, address correction requested, to each consumer identified in Part II. A. of this order:

1. a notice (Attachment A of this order) that respondent, its successors and assigns, is reinstating the original lifetime warranty for consumers who still own the vehicle in which the original TBLT battery was installed; and
2. a self-addressed stamped post card (Attachment B of this order) which requests that the consumer provide information which will be used to determine whether he or she still owns the vehicle in which the original TBLT battery was installed.

The front of the envelope used for each such mailing shall clearly and conspicuously state: "IMPORTANT WARRANTY INFORMATION ENCLOSED."

C. Within thirty (30) days after receiving each such post card as described in Part II. B. 2 of this order indicating that the consumer still owns the vehicle in which the original TBLT battery was installed and that the model year of the vehicle is 1980 or earlier, respondent, its successors and assigns, shall mail, by first class mail, with a cover letter (Attachment C of this order), a lifetime warranty certificate that, as long as the consumer owns the vehicle in which the original battery was installed, may be used to obtain a free battery to replace any battery that fails to accept and hold a charge. The front of the envelope used for each such mailing shall clearly and conspicuously state: "IMPORTANT WARRANTY INFORMATION ENCLOSED."

D. For each consumer who was sent a notice and a post card pursuant to Part II. B. above, but whose notice was returned by the U.S. Postal Service for any reason, respondent, its successors and assigns, shall within sixty (60) days after the mailing pursuant to Part II. B:

1. search its credit card files and other records to obtain a current address for such consumer; and
2. re-mail to such current address, by first class mail, that notice and post card.

The front of the envelope used for each such mailing shall clearly and conspicuously state: "IMPORTANT WARRANTY INFORMATION ENCLOSED."

E. Within thirty (30) days after receiving any post card mailed pursuant to Part II. D. 2 indicating that the consumer still owns the vehicle in which the original TBLT battery was installed and that the model year of the vehicle is 1980 or earlier, respondent, its successors and assigns, shall mail, by first class mail, with a cover letter (Attachment C of this order), a lifetime warranty certificate that, as long as the consumer owns the vehicle in which the original battery was installed, may be used to obtain a free battery to replace any battery that fails to accept and hold a charge. The front of the envelope used for each such mailing shall clearly and conspicuously state: "IMPORTANT WARRANTY INFORMATION ENCLOSED."

F. For each consumer who presents evidence that:

1. he or she purchased a TBLT battery;
2. when that TBLT battery failed, it was replaced with one of respondent's batteries that did not carry a lifetime warranty; and
3. he or she still owns the vehicle in which the original TBLT battery was installed,

respondent, its successors and assigns, within thirty (30) days after receiving such evidence, shall mail by first class mail to that consumer:

1. a notice that respondent (or its successors and assigns) is reinstating the original lifetime warranty (such notification shall be stated in clear and conspicuous language); and
2. a lifetime warranty certificate that as long as the consumer owns the vehicle in which the original battery was installed may be used to obtain a free battery to replace any battery that fails to accept and hold a charge.

The front of the envelope used for such mailing shall clearly and conspicuously state: "IMPORTANT WARRANTY INFORMATION ENCLOSED."

III

It is further ordered, That:

A. If respondent, its successors and assigns replaces any failed battery as required by Parts I and II of this order, the replacement battery shall be at least of the same grade and group size as the

original battery, meaning a battery having at least the same technical and performance characteristics as the original battery.

B. Within thirty (30) days after the date of service of this order, respondent shall provide written notice to every dealer and distributor who sells respondent's automotive batteries, stating that the lifetime warranty has been reinstated for purchasers of TBLT batteries and shall apply to replacement batteries installed after date of service of this order and giving a copy of the notices sent to consumers pursuant to Part II of this order and a set of instructions and procedures to be observed by respondent's dealers and distributors who are called upon to replace batteries having a lifetime warranty.

IV

It is further ordered, That:

A. Respondent shall notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the dissolution of Sunmark Industries, or any change in the corporation which may affect compliance obligations arising out of the order.

B. Respondent, for a period of three (3) years from the date of service of this order, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all records reflecting respondent's compliance with this order, including the following:

1. copies of the notices required by Paragraphs B, C and D of Part II of this order, and all responses to such notices; and
2. copies of the notices required by Paragraph B of Part III of this order; and
3. records concerning the disposition of request from consumers for service, repair or money adjustments covered by this order pursuant to any lifetime warranty.

C. Within one-hundred and twenty (120) days after the date of service of this order, respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

ATTACHMENT A

NOTICE TO FORMER TRUE BLUE LIFETIME BATTERY OWNERS

As part of an agreement with the Federal Trade Commission, Sun Refining and

Marketing Company (Sunoco) is offering lifetime warranty certificates to eligible purchasers of True Blue Lifetime (TBLT) batteries. If you qualify for a certificate, you will be able to get continuous free replacements for your battery whenever it fails to accept and hold a charge. You will be able to get free replacement batteries as long as you own the car in which the TBLT battery was first installed.

To qualify for the lifetime warranty certificate, you must have purchased a TBLT battery that failed and was replaced by a Sunoco battery that did not have a lifetime warranty. Our records indicate that this happened to you. In addition, you must still own the car in which the TBLT battery was first installed.

If you meet these qualifications, please complete the attached postage-paid card and return it. Please allow 45 days for delivery of your certificate. Remember, *the only way* to receive a certificate is to complete and return the attached card.

If you have any questions, please contact ______________________.

ATTACHMENT B

APPLICATION FOR LIFETIME WARRANTY CERTIFICATE

Name ____

Street Address _______________________________________

City ____________ State ____________ Zip ________________

Date of original TBLT purchase* ___________________________

Date battery was replaced* ________________________________

Make, model, year, and license plate number of car in which TBLT was installed:

____

Signature ____

* If you do not know the exact date, an approximate date is acceptable.
(Allow approximately 45 days for delivery.)

ATTACHMENT C

Dear ______________________:

Here is your lifetime warranty certificate. This certificate is good only for the car in which the original TBLT battery was installed. If, at any time in the future, your battery fails to accept and hold a charge, you can use this certificate to get a new battery, free, from participating Sunoco/DX dealers or distributors. All you have to do is give the Sunoco/DX dealer or distributor the lifetime warranty certificate. Sunoco then will send you a new warranty certificate which you can use to obtain additional free replacement batteries for the car in which the original TBLT battery was installed.

If you have any questions, please contact ______________________.

IN THE MATTER OF

HOSPITAL AND HEALTH SERVICES CREDIT UNION

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND THE FAIR CREDIT REPORTING ACT

Docket C-3146. Complaint, Oct. 17, 1984—Decision, Oct. 17, 1984

This consent order requires an Ann Arbor, Michigan credit union, among other things, to cease failing to disclose, when rejecting a credit application or increasing the cost of credit, that the action is based partially or wholly on information contained in a consumer credit report; and provide the rejected applicant with the name and address of the reporting agency together with the specific principal reason(s) for the adverse action based on this information. The Order also requires the credit union to send to consumers who were denied credit between January 1, 1983 and the effective date of the Order, a letter containing required disclosures.

Appearances

For the Commission: *George T. O'Brien.*

For the respondent: *Thomas J. O'Connor, Zweig & Harkness,* Southfield, Mich.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act 15 U.S.C. 1681, *et seq.* and the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.* and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hospital and Health Services Credit Union, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint and the accompanying order the following definitions are applicable:

A. The terms *consumer, consumer report, consumer reporting agency* and *person* shall be defined as provided in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating

that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied by respondent.

C. The term *derogatory information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, or suits or judgments.

D. The term *non-derogatory information* shall be defined as information in a consumer report, furnished to respondent by a consumer reporting agency, consisting of an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit or insufficient positive information to meet such criteria.

PAR. 2. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its principal office and place of business located at 959 Maiden Lane, Ann Arbor, Michigan. Respondent is a state chartered, federally insured credit union.

PAR. 3. Respondent, in the ordinary course and conduct of its business, uses information in consumer reports obtained from consumer reporting agencies in the evaluation of applications for credit to be used for personal, family or household purposes. In a substantial number of instances respondent denies credit applications from consumers applying for credit that they intend to use for personal, family or household purposes. The Commission has jurisdiction of the subject matter of this proceeding and of respondent, as provided by section 621 of the Fair Credit Reporting Act, 15 U.S.C. 1681s, and the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*

PAR. 4. Respondent, in the ordinary course and conduct of its business, obtains consumer reports from consumer reporting agencies. In a substantial number of instances subsequent to April 25, 1971, respondent has denied consumers credit for personal, family or household purposes based wholly or partly on derogatory or non-derogatory information contained in consumer reports, including an absence of sufficient favorable information contained in a consumer report or a "no file" response from the consumer reporting agency. In such instances, respondent has failed to disclose to the consumer at the time when such adverse action was communicated that the credit denial was based wholly or partly on information in a consumer report from a consumer reporting agency and to supply to the consumer the name and address of the consumer reporting agency making the report.

PAR. 5. By and through the use of the practices described in Paragraph Four, during the period from April 25, 1971 to the present respondent has violated and is violating the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 6. Respondent, in the ordinary course and conduct of its business, obtains information from persons other than consumer reporting agencies. Such persons include, but are not limited to, creditors listed as references on an application for consumer credit, as well as the landlord and the employer of the applicant. The information so obtained bears upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living. In a substantial number of instances subsequent to April 25, 1971, respondent has denied consumers credit for personal, family or household purposes based wholly or partly on such information obtained from such persons other than consumer reporting agencies. In these instances respondent has failed to disclose to the consumers at the time when adverse action was communicated, the fact that the credit was denied based wholly or partly on information obtained from a person other than a consumer reporting agency, and that they have the right to disclosure of the nature of such information upon written request.

PAR. 7. By and through the use of the practices described in Paragraph Six, during the period from April 25, 1971 to the present, respondent has violated and is violating section 615(b) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(b).

PAR. 8. Pursuant to section 621(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a), the acts and practices set forth in this complaint as violations of the Fair Credit Reporting Act constitute unfair and deceptive acts and practices in or affecting commerce in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Fair Credit Reporting Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said

agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Hospital and Health Services Credit Union is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 959 Maiden Lane, Ann Arbor, Michigan. Respondent is a state chartered, federally insured credit union.

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

Order

For the purposes of this Order, the following definitions are applicable:

A. The terms *consumer, consumer report, consumer reporting agency* and *person* shall be defined as provided in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied by respondent.

C. The term *derogatory information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, or suits or judgments.

D. The term *non-derogatory information* shall be defined as information in a consumer report, furnished to respondent by a consumer reporting agency, consisting of an insufficient number of accounts

reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit or insufficient positive information to meet such criteria.

It is ordered, That respondent Hospital and Health Services Credit Union, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application by a consumer for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever credit for personal, family or household purposes involving a consumer is denied wholly or partly or the charge for such credit is increased wholly or partly because of any derogatory or non-derogatory information contained in a consumer report from a consumer reporting agency (including insufficient positive information or a "no-file response"), to disclose to the applicant at the time the adverse action is communicated to the applicant, a) that the adverse action was based wholly or partly on information contained in such a consumer report and b) the name and address of the consumer reporting agency that made the report.

2. Failing, whenever credit for personal, family, or household purposes involving a consumer is denied wholly or partly or the charge for such credit is increased wholly or partly because of information obtained from a third person other than a consumer reporting agency bearing upon the applicant's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, to disclose to the applicant at the time the adverse action is communicated to the applicant a) that the adverse action was based wholly or partly on information obtained from a third person other than a consumer reporting agency and b) either the nature of such information or the fact that the applicant has a right to learn the nature of such information, upon written request, in accordance with the provisions of Section 615(b) of the FCRA.

3. Failing to review each application for consumer credit for which it took adverse action between January 1, 1983, and the date of issuance of this Order, to identify each of those applications for which such adverse action was taken based wholly or partly upon information obtained from a consumer reporting agency or information obtained from a third person other than a consumer reporting agency bearing upon the applicant's credit-worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

4. Failing, within sixty (60) days of the date of issuance herein of

this Order, for each application identified according to paragraph 3 above, to send the applicant, as specified herein, a copy of the letter and notice attached hereto as appendices A and B and described herein. The letter shall bear the name and address of the applicant as shown on application, the date of mailing, and the name Hospital and Health Services Credit Union. No information other than that required by this paragraph shall be included in the letter or in the notice, nor shall any other material be sent to the applicant with the letter and notice. The letter and notice shall disclose:

(a) If the application that is the subject of the letter was denied wholly or partly because of information obtained from a consumer reporting agency, the name and address of that consumer reporting agency, together with the specific, principal reason(s) for the adverse action based on this information; and,

(b) if the application that is the subject of the letter was denied wholly or partly because of information obtained from any third party sources(s), the type of the sources(s) (*e.g.,* employer, bank, landlord), together with the specific, principal reason(s) for the adverse action based on this information from each source.

A letter and notice need not be sent to any applicant whose application was identified pursuant to paragraph 3 above, if the application file clearly shows that respondent Hospital and Health Services Credit Union has previously sent the applicant an adverse action notification in response to the application that complied in all respects with the provisions of paragraphs 1 and 2 of this Order.

It is further ordered, That respondent shall maintain for at least three (3) years and upon request make available to the Federal Trade Commission for inspection and copying documents that will demonstrate compliance with the requirements of this Order. Such documents shall include, but are not limited to, all credit evaluation criteria instructions given to employees regarding compliance with the provisions of this Order, any notices provided to consumers pursuant to any provisions of this Order and the complete application file to which they relate.

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

It is further ordered, That respondent shall deliver a copy of this Order to cease and desist to all present and future employees engaged in reviewing or evaluating consumer reports or other third party

information in connection with applications for credit to be used for personal, family or household purposes, or engaged in preparing or furnishing notices to consumers as required by this Order.

It is further ordered, That respondent shall, within ninety (90) days after service upon it of this Order file with the Commission a report, in writing, setting forth in detail a full and complete description of how it has complied and is complying with the requirements of paragraphs 1, 2, 3 and 4 of this Order. Such report shall include, but is not limited to, a copy of each document used to instruct employees or agents of respondent regarding the requirements of these paragraphs, as well as a copy of each form letter used by respondent to comply with the requirements of these paragraphs and the number of applicants to whom the letter and notice required by paragraph 4 were mailed.

APPENDIX A

Dear ________:

According to our records, Hospital and Health Services Credit Union denied a credit application you submitted sometime after January 1, 1983. When we denied your application, we may not have told you the sources of information we relied upon, as federal law requires.[1]

Under a Consent Order with the Federal Trade Commission, we have agreed to review your application file and give you this information now. Our review shows that we obtained information relating to your creditworthiness from a consumer reporting agency or from one or more third party sources. Each source we relied upon is noted on the attached notice, along with our principal reason(s) for declining your application based on the information each one provided.

Sincerely,

Hospital and Health Services Credit Union

[1] Whenever a creditor rejects a credit application, the Equal Credit Opportunity Act requires the creditor to tell the applicant the specific, principal reasons for its decision. The Fair Credit Reporting Act requires the creditor to tell the applicant whenever the reasons for its decision are based on information obtained from a credit reporting agency (such as a credit bureau) or from another third party (such as an employer). The Fair Credit Reporting Act also entitles the applicant to learn from the credit bureau what information is contained in his or her credit file and to learn from the creditor the nature of other third party information that the creditor relied on in rejecting the application.

APPENDIX B

NOTICE

I. If, in declining your application, we relied upon information obtained from a consumer reporting agency, the consumer reporting agency is identified below:

____

Name

____

Address

____

You have the right to contact the agency listed above to obtain complete information concerning your credit bureau file.

Based on the information obtained from this agency, we declined your application for the following reason(s):

____

____

II. If, in declining your application, we relied upon information obtained from some third party source(s) other than a consumer reporting agency, we indicate below the source(s) of the information and the reason(s) it provided:

Source(s)	Reason(s) for Denial
[ ] Your employer	______________________
	______________________
[ ] Your bank	______________________
	______________________
[ ] Your landlord	______________________
[ ] Other________	______________________
	______________________

IN THE MATTER OF

CHEVRON CORPORATION

and

GULF CORPORATION

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

Docket C-3147. Complaint, Oct. 24, 1984—Decision, Oct. 24, 1984

This consent order requires Chevron Corporation (formerly the Standard Oil Company of California) to divest within six months to a Commission-approved buyer(s) all of the Gulf Corporation assets listed in Schedule A, as well as any additional assets and businesses that the company wishes to include as part of the assets to be divested, or which the Commission determines is necessary to ensure that the divested properties remain ongoing, viable business enterprises. Chevron is also required to provide petroleum product exchanges or crude oil supply arrangements to prospective acquirers, if necessary to maintain the properties as ongoing viable enterprises engaged in the same businesses in which they are presently employed; and to maintain all of Gulf's oil and gas assets as a separate, viable business in accordance with the terms of the attached Agreement To Hold Separate, until required divestiture has been completed. The companies are additionally prohibited from acquiring, without prior Commission approval, any interest in certain types of business enterprises located in specified geographic areas for a period of ten years.

Appearances

For the Commission: *Robert B. Greenbaum, Robert W. Doyle, Jr., Daniel P. Ducore, James M. Giffin* and *Joan L. Heim.*

For the respondents: *Charles B. Renfrew,* in-house counsel, San Francisco, Cal. for respondent Chevron Corp. and *Samuel W. Murphy, Jr.,* in-house counsel, Pittsburgh, Pa. for respondent Gulf Corp.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Chevron Corporation, a corporation subject to the jurisdiction of the Federal Trade Commission, has acquired the stock or assets of respondent Gulf Corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and

Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. Definitions

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

a. *Chevron* means Chevron Corporation, its predecessors, including Standard Oil Company of California, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Chevron is a participant. The words *subsidiary, affiliate* and *joint venture* refer to any partial (10 percent or more) as well as total ownership or control.

b. *Gulf* means Gulf Corporation, its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Gulf is a participant. The words *subsidiary, affiliate* and *joint venture* refer to any partial (10 percent or more) as well as total ownership or control.

c. *The acquisition* means the transaction described, in whole or in part, in paragraph 14 of this Complaint.

d. *Gasoline* means motor gasoline as defined in connection with Department of Energy Form EIA-810, Monthly Refinery Report, product codes 132 and 133.

e. *Kerosene jet fuel* means kerosene-type jet aircraft fuel, as defined in connection with Form EIA-810, Monthly Refinery Report, product code 213.

f. *Fuel oil* means the products commonly known as number two fuel oil (home heating, diesel), as defined in connection with Department of Energy Form EIA-810, Monthly Refinery Report, product code 411.

g. *Terminal* means a facility used for receipt, storage, and distribution of gasoline, fuel oil, or kerosene jet fuel, and which receives product directly via pipeline, navigable waterway or from an adjacent refinery.

h. *Refined light products* means gasoline, fuel oil, kerosene jet fuel, and aviation gasoline.

i. *PADD* means Petroleum Administration for Defense District.

II. Respondents

A. *Chevron*

2. Respondent Chevron is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 225 Bush Street, San Francisco, California.

3. Respondent Chevron is a fully integrated petroleum company, engaged in the exploration for and production of crude oil and natural gas, refining, the transportation of crude oil, natural gas and refined products, and the distribution and marketing of refined products and natural gas.

4. In 1982, respondent Chevron had revenues of about $34 billion and assets of about $23 billion.

5. In 1982, respondent Chevron ranked seventh in the United States in crude oil production, seventh in domestic crude oil reserves, first in refining capacity, and seventh in gasoline sales.

6. Respondent Chevron has refineries located at Pascagoula, Mississippi; Perth Amboy, New Jersey; Baltimore, Maryland; El Paso, Texas; Salt Lake City, Utah; Richmond, California; El Segundo, California; Kenai, Alaska; Bakersfield, California; Honolulu, Hawaii; Willbridge, Oregon; and Seattle, Washington, with a combined refining capacity of 1381 thousand barrels per day.

7. At all times relevant herein, respondent Chevron has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. *Gulf*

8. Respondent Gulf is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at Pittsburgh, Pennsylvania.

9. Respondent Gulf is a fully integrated petroleum company, engaged in the exploration for and production of crude oil and natural gas, refining, the transportation of crude oil, natural gas and refined products, and the distribution and marketing of refined products and natural gas.

10. In 1982, respondent Gulf had revenues of about $28 billion and assets of about $20 billion.

11. In 1982, respondent Gulf ranked eighth nationally in crude oil production, tenth in United States crude oil reserves, seventh in Unit-

ed States refining capacity, and sixth in United States motor gasoline sales.

12. Respondent Gulf has refineries located at Port Arthur, Texas; Alliance, Louisiana; Philadelphia, Pennsylvania; and Cincinnati, Ohio, with a combined refining capacity of about 829 thousand barrels per day.

13. At all times relevant herein, respondent Gulf has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. The Acquisition

14. On or about March 7, 1984, Chevron, whose corporate name was Standard Oil Company of California ("Socal") prior to July 1, 1984, commenced a cash tender offer for up to 100 percent of the outstanding shares of Gulf common stock at a price of $80 per share with the intent of effecting a merger of Socal Acquisition Corporation, a Delaware corporation wholly-owned by Chevron, into Gulf, pursuant to which Gulf would become a wholly-owned subsidiary of Chevron, all as contemplated in that certain merger Agreement entered into among Chevron, its subsidiary, and Gulf, on March 5, 1984. Gulf's Board of Directors approved the tender offer and recommended its acceptance by Gulf shareholders. On April 26, 1984, Chevron began purchasing Gulf shares pursuant to the tender offer. On May 4, the tender offer expired. By such date, Chevron had purchased approximately 82 percent of Gulf's outstanding shares. Subsequently, Chevron contributed the Gulf shares purchased by it to Socal Acquisition Corporation and on June 15 that corporation was merged into Gulf Corporation. In the course of such merger, all outstanding Gulf shares were canceled, with the shares not held by Socal Acquisition Corporation being converted into a right to receive $80 cash per share. The total value of the transaction is about $13.2 billion, resulting in the second largest petroleum company and the second largest industrial corporation in the United States in terms of assets.

IV. Trade and Commerce

A. *Kerosene Jet Fuel*

15. One relevant line of commerce in which to evaluate the effects

of the acquisition is the manufacture and distribution of kerosene jet fuel.

16. One relevant section of the country is PADDs I and III combined (excluding New Mexico and the following counties in the state of Texas: Hansford, Hutchinson, Carson, Armstrong, Briscoe, Floyd, Crosby, Carza, Borden, Howard, Glassock, Reagan, Crockett, Terrell, and all counties west thereof) and the West Indies and Caribbean Islands.

17. The kerosene jet fuel markets described in paragraphs 15 and 16 are concentrated.

18. Conditions of entry into the manufacture of jet fuel in the relevant section of the country are difficult.

19. Chevron and Gulf are direct and substantial competitors in the manufacture and sale of jet fuel in the relevant sections of the country. Chevron makes kerosene jet fuel at its refinery at Pascagoula, Mississippi. Gulf makes kerosene jet fuel at its refineries at Port Arthur, Texas; Alliance, Louisiana; and Philadelphia, Pennsylvania.

B. *Transportation of Refined Light Products*

20. One relevant line of commerce in which to evaluate the effects of the acquisition is the business of transporting refined light petroleum products from refineries into consuming regions. Within this market, petroleum product pipelines represent another relevant line of commerce.

21. One relevant section of the country is the inland Southeast region composed of portions of Mississippi, Alabama, Georgia, Tennessee, South Carolina, North Carolina and of Virginia.

22. Transportation of refined light petroleum products into the inland Southeast is highly concentrated.

23. Conditions of entry into the business of the transporting refined light products by pipeline into the inland Southeast are difficult.

24. Colonial and Plantation are direct competitors in the business of transporting refined light products by pipeline into the inland Southeast.

25. Gulf owns the largest ownership share of Colonial (16.78 percent).

26. Chevron owns the second largest ownership share of Plantation (27.13 percent).

27. Because Gulf owns a share of Colonial and Chevron owns a share of Plantation, Chevron and Gulf are direct and substantial competitors in the business of transporting refined light product by pipeline into the inland Southeast.

C. *Marketing of Gasoline and Middle Distillate*

28. Another relevant line of commerce in which to evaluate the effects of the acquisition is the wholesale distribution of gasoline and middle distillate and submarkets thereof.

29. The relevant sections of the country are the areas served by terminal clusters in or near the following cities and areas:

a. Louisville, Kentucky;
b. Huntington, West Virginia; Ashland, Kentucky (combined);
c. Paducah, Kentucky;
d. Knoxville, Tennessee;
e. Chattanooga, Tennessee;
f. Meridian, Mississippi;
g. Collins, Mississippi;
h. Mobile, Alabama; Biloxi, Gulfport, Pascagoula, Moss Point, Mississippi; Pensacola, Florida (combined);
i. Montgomery, Alabama;
j. Birmingham, Gadsden, Anniston, Tuscaloosa, Alabama (combined);
k. Atlanta, Georgia;
l. Athens, Georgia
m. Macon, Georgia;
n. Greenville, Spartanburg, South Carolina (combined);
o. Jacksonville, Gainesville, Florida (combined);
p. Tampa, St. Petersburg, Bradenton, Sarasota, Ft. Meyers, Lakeland, Winterhaven, Florida (combined);
q. Miami, Ft. Lauderdale, West Palm Beach, Florida (combined).

30. The wholesale gasoline and fuel oil markets described in paragraphs 28 and 29 are concentrated.

31. Conditions of entry into the wholesale distribution of gasoline and fuel oil are difficult.

32. Respondents Chevron and Gulf are direct and substantial competitors in the wholesale distribution of gasoline and fuel oil in the relevant sections of the country.

D. *Transportation of Crude Oil*

33. One relevant line of commerce in which to evaluate the effects of the acquisition is the transportation of crude oil from producing fields to refineries.

34. One relevant section of the country is the West Texas/New Mexico region, composed of "producing districts 8, 8A and 7C" as defined by the Texas Railroad Commission and "New Mexico-East" as defined by the U.S. Department of Energy.

35. Refinery capacity in the West Texas/New Mexico region is substantially below production in the area, with the result that much production in the area is transported over long distances to refineries on the Gulf Coast and in the midcontinent area.

36. The business of transporting crude oil by pipeline out of West Texas/New Mexico is concentrated.

37. Conditions of entry into the business of the transportation of crude oil by pipeline out of the West Texas/New Mexico region are difficult.

38. Chevron is the sole owner of a 20 inch diameter pipeline that runs from the West Texas/New Mexico producing area to El Paso, Texas and supplies crude oil to the Chevron refinery and the Texaco refinery at El Paso.

39. Gulf is the largest owner of stock in the West Texas Gulf Pipeline Company and therefore controls the West Texas Gulf Pipeline, a 26 inch and 20 inch diameter pipeline that connects the West Texas/New Mexico producing area with both the Gulf Coast and the Mid-Valley Pipeline at Longview, Texas.

40. Respondents Chevron and Gulf are direct and substantial competitors in the business of transporting crude oil by pipeline out of the West Texas/New Mexico region.

V. Effects

41. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in each of the relevant lines of commerce and relevant sections of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. actual competition between respondents Chevron and Gulf in the relevant lines of commerce and relevant sections of the country will be eliminated;

b. actual competition between competitors generally in the relevant lines of commerce and relevant sections of the country will be lessened;

c. concentrations in the relevant lines of commerce and relevant sections of the country will be increased, therefore increasing the likelihood of collusion; and

d. coordination between existing competitors in the relevant lines of commerce and relevant sections of the country will be increased, therefore increasing the likelihood of collusion.

VI. Violation Charged

42. The proposed acquisition of the stock and assets of Gulf by Chevron, as set forth in paragraph 14 herein, 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.

Decision and Order

The FTC having initiated an investigation of the proposed acquisition of shares of Gulf Corporation ("Gulf") by Standard Oil of California ("Chevron") and Chevron and Gulf ("respondents") having been furnished with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

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

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules and the recommendation of its staff, and having concluded that the consent agreement should be accepted with modifications, including Chevron's July 1, 1984 change in its corporate name to "Chevron Corporation"; and

Respondents having thereafter agreed by letter to these modifications in the consent agreement; and

Now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Chevron Corporation is a corporation organized, existing and doing business under and by the virtue of the laws of Delaware with its executive office located at 225 Bush Street, San Francisco, California.

Respondent Gulf Corporation, a wholly owned subsidiary of Chevron, is a corporation organized and doing business under and by virtue of the laws of Delaware, with its executive office located at the Gulf Building, Pittsburgh, Pennsylvania.

2. 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.

As used in this order the following definitions shall apply:

(a) *Acquisition* means Chevron's acquisition of shares of the Common Stock of Gulf.

(b) *Oil and gas assets and businesses* means all Gulf's domestic crude oil and gas, and assets and operations relating to oil and gas exploration, production and transportation, as well as petroleum and petrochemical processing, refining, transportation and marketing activities, and any similar foreign activities to the extent involved in imports into the United States.

(c) *Schedule A Properties* means the assets and businesses listed in Schedule A of this agreement.

(d) *Gulf* means Gulf Corporation, as it was constituted prior to the acquisition, including its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by Gulf and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(e) *Chevron* means Chevron Corporation, its predecessors, including Standard Oil Company of California, subsidiaries, divisions, groups and affiliates controlled by Chevron and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(f) *Wholesale distribution of gasolines and middle distillates* includes but is not limited to terminals, bulk plants, warehouses, and package plants.

(g) *Marketing* includes but is not limited to the properties described in paragraph (f) above, together with tank trucks, service station properties, and product inventories.

II.

It is ordered, That:

(A) Chevron shall divest, absolutely and in good faith, within six months from the date this order becomes final, the Schedule A Properties, as well as any additional oil and gas assets and businesses relating to oil and gas transportation, and petroleum and petrochemical processing, refining, transportation, and marketing that (i) Chevron may at its discretion include as a part of the assets to be divested and are acceptable to the acquirer, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties as ongoing, viable enterprises, engaged in the businesses in which the Properties are presently employed.

(B) Chevron shall provide prospective acquirers of the Schedule A Properties petroleum product exchanges, crude oil supply arrangements, or equity crude oil arrangements if necessary to ensure divestiture of the Properties as ongoing viable enterprises engaged in the same businesses in which the Properties are presently employed.

(C) The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as the Schedule A Properties have been divested, and Chevron and Gulf shall comply with all terms of said Agreement.

(D) Divestiture of the Schedule A Properties shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture of the Schedule A Properties is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(E) Chevron and Gulf shall maintain the viability and marketability of the Schedule A Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That, within sixty days after the date of service of this order, and every sixty days thereafter until Chevron has fully complied with the provisions of paragraph II of this order, Chevron shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. Chevron shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of properties specified in paragraph II of this order, includ-

ing the identity of all parties contacted. Chevron also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV.

It is further ordered, That for a period commencing on the date of service of this order and continuing for ten years from and after the date of service of this order, Chevron shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or any interest in, or the whole or any part of the stock or share capital of, any company that is engaged in refining, the wholesale distribution of gasolines or middle distillates, or pipeline transportation, in Tennessee, Kentucky, PAD Districts I or III, or the West Indies, including the Bahamas and the Caribbean Islands; *provided, however,* that, except for the Borco refinery, these prohibitions shall not relate to the construction of new facilities or participation in joint ventures in which Chevron is a participant on the date of service of the order.

One year from the date of service of this order and annually thereafter Chevron shall file with the Commission a verified written report of its compliance with this paragraph.

V.

For the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Chevron or Gulf made to its principal office, Chevron and Gulf shall permit any duly authorized representatives of the Commission:

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

2. Upon five days' notice to Chevron or Gulf and without restraint or interference from them, to interview officers or employees of Chevron or Gulf, who may have counsel present, regarding such matters.

VI.

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

SCHEDULE A

Assets to be divested as provided above are the following:

1. All of Gulf's marketing assets, including the Gulf brand name and trademark, located in the States of Kentucky, Tennessee, Alabama, Mississippi, Georgia and Florida, and the area of South Carolina served by Gulf's Spartanburg, South Carolina terminal and either the Port Arthur or Alliance refinery, including all associated on-site facilities and dedicated pipelines and terminals. (Chevron may elect to divest either refinery, provided that the divestiture of that particular refinery is approved by the Commission).

2. Gulf's stock interest in Colonial pipeline.

3. a. If Chevron divests the Port Arthur refinery, then along with the paragraph 1 assets of this Schedule, 51 percent of Gulf's interest in (i) the West Texas Gulf Pipeline Company, (ii) the Mesa Pipeline, and (iii) any other pipeline attached to the West Texas Gulf or Mesa pipelines.

b. If Chevron divests the Alliance refinery, then 51 percent of Gulf's interest in the West Texas Gulf Pipeline Company.

ATTACHMENT I

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of STANDARD OIL COMPANY OF CALIFORNIA, a corporation, and GULF CORPORATION, a corporation.	File No. 841-0109

AGREEMENT TO HOLD SEPARATE

Agreement dated as of April 26, 1984 (the "Agreement"), by and between Standard Oil Company of California ("Socal"), a corporation organized and existing under the laws of Delaware, whose executive offices are located at 225 Bush Street, San Francisco, California 94104, Gulf Corporation ("Gulf"), a corporation organized and existing

under the laws of Delaware, whose executive offices are located at the Gulf Building, Pittsburgh, Pennsylvania 15320, and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. section 41, et seq. (collectively, the "Parties").

PREMISES

Whereas, Social commenced on March 7, 1984, a tender offer for all of the outstanding shares of Common Stock of Gulf Corporation, a Delaware corporation ("Gulf"), with the intent of effecting a merger of Socal Acquisition Corporation, a Delaware corporation wholly owned by Socal ("Subsidiary"), into Gulf, pursuant to which Gulf would become a wholly owned subsidiary of Socal, all as contemplated and provided for in that certain Merger Agreement entered into among Socal, Subsidiary and Gulf on March 5, 1984 (the "Merger Agreement"); and

Whereas, simultaneously with the execution of the Merger Agreement, on March 5, 1984, Socal and Gulf also entered into a Stock Option Agreement (the "Stock Option Agreement") pursuant to which Gulf granted Socal an option to purchase 30,500,000 authorized but unissued shares of Gulf's Common Stock, constituting approximately 15.6 percent of the shares of Gulf's Common Stock that would be outstanding after such issuance; and

Whereas, the Commission is now investigating the transactions contemplated by the Merger Agreement and the Stock Option Agreement (which transactions are hereinafter referred to as the "Acquisition") to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order") the Commission must place it on the public record for a period of at least sixty days and may subsequently withdraw such acceptance pursuant to the provisions of section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status quo ante of Gulf's oil and gas assets and businesses during the period prior to the divestiture of the properties described on Schedule A of the Consent Order ("Schedule A Properties") along with such other assets as may be required under paragraph II of the Consent Order, or the Acquisition is not preliminarily enjoined, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be a less than effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in paragraph II of the Consent Order in addition to the Schedule A Properties, and the Commission's rights to seek to restore Gulf as a viable competitor.

Whereas, the purpose of this Agreement and the Consent Order is to preserve Gulf as a viable, integrated petroleum company pending the divestiture of the Schedule A Properties as viable, ongoing enterprises, in order to remedy any anticompetitive effects of the Acquisition and to preserve Gulf as a viable, integrated petroleum company in the event that divestiture is not achieved; and

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

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

Now, therefore, the Parties agree, upon the understanding that the Commission has

not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Socal with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of all Gulf's oil and gas assets and businesses held separate pursuant to this Agreement, as follows:

1. Socal and Gulf agree to execute and be bound by the attached Consent Order.

2. Socal agrees that, until (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of section 2.34 of the Commission's Rules; or (ii) if the Commission within 120 days after publication in the *Federal Register* of the Consent Order finally accepts such order, until all of the divestitures required by Schedule A of the Consent Order are approved by the Commission, Socal will hold Gulf's oil and gas assets and businesses, as defined in 2(a), separate and apart on the following terms and conditions:

a. All Gulf's domestic crude oil and gas assets and operations relating to domestic crude oil and gas exploration and production, and transportation as well as petroleum and petrochemical processing, refining, transportation and marketing activities, and any similar foreign activities to the extent involved in imports into the United States ("oil and gas assets and businesses") shall be operated independently of Socal.

b. Socal shall not exercise direction or control over, or influence directly or indirectly, any of Gulf's oil and gas assets and businesses; *provided, however,* that Socal may exercise only such direction and control over Gulf as is necessary to assure compliance with this Agreement.

c. Except as required by law and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending litigation, or negotiating agreements to dispose of assets, Socal shall not receive or have access to, or the use of, any "material confidential information" relating to Gulf's oil and gas assets and businesses not in the public domain, except as such information would be available to Socal in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information" as used herein means competitively sensitive or proprietary information not independently known to Socal from sources other than Gulf and includes, but is not limited to, customer lists, price lists, marketing methods, geological and geophysical data, patents, technologies, processes or other trade secrets.)

d. Socal shall not change the composition of the management of Gulf's oil and gas assets and businesses except that the current Gulf directors serving on the "New Board" (as defined in paragraph f) shall have the power to remove employees for cause; Socal shall maintain the viability and marketability of Gulf's oil and gas assets and businesses and shall not sell, transfer, encumber, or otherwise impair their marketability or viability (other than in the normal course of business or pursuant to paragraph h).

e. All material transactions, out of the ordinary course of business and not precluded by paragraph 2(a)-(d), shall be subject to a majority vote of the New Board (as defined in paragraph f).

f. Socal may adopt new articles of incorporation and by-laws (provided that they are not inconsistent with other provisions of this Agreement) and may elect a new Board of Directors of Gulf ("New Board") once it is a majority shareholder of Gulf. Socal may elect any number of directors to the Board; *provided, however,* that such Board shall consist of at least six current Gulf directors and no more than two Socal directors, officers, employees, or agents. Except as permitted by this agreement, the directors of

Gulf who are also Socal directors, officers, employees or agents, shall not receive in their capacity as directors of Gulf material confidential information relating to Gulf's oil and gas assets and businesses and shall not disclose any such information they may receive under this agreement to Socal or use it to obtain any advantage for Socal. Said Directors of Gulf who are also Socal directors, officers, employees, or agents, shall enter a confidentiality agreement prohibiting disclosures of confidential information. Such directors shall participate in matters which come before the New Board only for the limited purpose of considering a capital investment or other transactions exceeding $50,000,000 and carrying out Socal's and Gulf's responsibility to assure that the Schedule A Properties and such other properties as the Commission may elect to add under paragraph II of the Consent Order are maintained in such manner as will permit their divestiture as ongoing, viable assets. Except as permitted by this agreement, such directors shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters that would involve a conflict of interest if Socal and Gulf were separate independent entities. Meetings of the board during the term of this Agreement shall be stenographically transcribed and the transcripts retained until two years after the termination of this Agreement.

g. The New Board may transfer the properties described in Schedule A of the Consent Order ("Schedule A Properties") into a wholly owned Gulf subsidiary or division.

h. Nothing herein shall prevent the current Gulf Board or the New Board from negotiating or entering into agreements to dispose of Gulf's assets, provided that any such agreements with respect to oil and gas related assets and businesses are conditioned on and not consummated prior to final approval by the Commission.

i. Nothing contained in this Agreement shall be construed to limit the sale of Gulf's nonpetroleum related assets by majority vote of the full current Gulf Board or New Board. Socal shall have the right to borrow all proceeds from any such sale in exchange for an interest bearing note (calculated at the General Motors Acceptance Corporation short term thirty day rate) made payable to Gulf and falling due fourteen days after any denial of final approval of the Consent Order by the Commission.

j. A majority of the New Board may declare a dividend and payment no greater than the amount paid in the same quarter in 1983. Except for such dividend payment, all earnings and profits of Gulf shall be retained separately in Gulf. Socal shall have the right to borrow monies from Gulf upon approval by the majority of the New Board on the same terms and conditions as described in paragraph (i); *provided, however,* Socal shall not borrow funds if the result would be to impair Gulf's ability to operate its oil and gas assets and businesses at its 1983 levels of expenditure on an annualized basis.

k. Should the Federal Trade Commission seek in any proceeding to compel Socal to divest itself of the shares of Gulf Common Stock it shall acquire, or to compel Socal or Gulf to divest themselves of any oil and gas assets that may be held by either company, or to seek any other injunctive or equitable relief, neither Socal nor Gulf shall raise an objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting periods or the fact that the Commission has permitted the Gulf Common Stock to be acquired and a formal merger concluded pursuant to the terms of this Agreement. Socal and Gulf also waive all rights to contest the validity of this Agreement.

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

a. Access during the office hours of Socal or Gulf, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records

and documents in the possession or under the control of Socal or Gulf relating to compliance with this agreement.

b. Upon five days notice to Socal or Gulf and without restraint or interference from them, to interview officers or employees of Socal or Gulf, who may have counsel present, regarding any such matters.

No information or documents obtained by the Commission shall be divulged by any representative of the Commission, except in the case of legal proceedings to which the Commission is a party, or for the purposes of securing compliance with this Consent Order, or as otherwise required by law.

If, at any time information or documents are furnished by Socal and Gulf and Socal or Gulf identify same as "Confidential," then the Commission shall provide to Socal and Gulf ten days notice or, if ten days is not possible, as many days notice as possible prior to divulging such material in any legal proceeding to which that entity is not a party.

4. This Agreement shall not be binding until approved by the Commission.

/s/John H. Carley
General Counsel
Federal Trade Commission
Washington, D.C. 20580

/s/Charles B. Renfrew
Director and Vice President, Legal
Standard Oil Company of California
225 Bush Street
San Francisco, California 94104

/s/Samuel W. Murphy, Jr.
Senior Vice President and General Counsel
Gulf Corporation

DISSENTING STATEMENT OF COMMISSIONER MICHAEL PERTSCHUK

I find the decision on this consent agreement to be a far closer question than the *Texaco-Getty* consent agreement or the failure of the Commission to pursue an adequate remedy in the *Mobil-Marathon* case, primarily because the staff has negotiated an agreement which gives some hope that the divested Gulf properties will emerge in an economically viable and competitive posture. For this, credit must be given to the skill and determination of key staff members as well as to the healthy expressions of concerns about past Commission actions by those outside the Commission. Yet I find myself compelled to vote against the agreement and in favor of seeking to enjoin the merger for a number of reasons.

First, it has become increasingly obvious that there are major weaknesses in our procedures for addressing the antitrust problems of

huge mergers in a limited period of time and for negotiating massive and complex divestitures. Under the terms of the Hart-Scott-Rodino Act, we have as little as ten days before the Commission must decide whether to challenge a merger after requested information is received from the merging companies. In this case, the largest merger in history, the staff analysis of the consent agreement—the principal document describing the consent agreement and its rationale—was provided to the Commission at about 2:00 P.M yesterday, Bureau of Economic analyses on key points arrived at 6:00 P.M., and the Bureau Director's memo was furnished at 6:30 P.M. These memos deal with exceedingly complex issues of restructuring Gulf assets and attempting to solve major horizontal overlaps in a series of markets. I do not believe that a responsible evaluation of these issues can be done, including resolving the competing claims of various staff and interested private groups, in the few hours available.

Second, although the consent agreement represents a major improvement over our approach in *Texaco-Getty,* I am still concerned that the divestitures we have in mind risk the selling off and eventual demise of assets which have up till now been viable. A major advantage of this agreement is that it provides for holding Gulf separate until the divestitures are approved and, more importantly, for providing the Commission authority to order *additional* divestitures, including crude oil, to insure the divested assets are continued as "ongoing, viable enterprises." This provision, as well as the staff analysis, recognize the crucial importance of access to crude oil in maintaining viability for refiners and marketers. It is a principle we could have put to better use in the *Texaco-Getty* and *Mobil-Marathon* matters.

However, this hold separate agreement is not the ordinary hold separate procedure employed to preserve the Commission's opportunity to enjoin a merger entirely after a period of investigation or litigation. This hold separate provision is a lever to encourage Socal to divest properties as well as a way of facilitating sale of assets in viable "packages," but it is not a guarantee to the Commission that it can conclude later that the only way the assets can be viable is that the merger itself be rescinded.

The staff candidly admits that "despite the strong guarantees in the consent a refinery-marketing divestiture is not without risks." These risks arise because of the importance of regular access to crude and refined products as well as the powerful incentive Socal has to sell off or close down the least desirable properties it acquires from Gulf. In order to insure that the divested properties remain viable, the Commission will have to oversee complex negotiations between Socal and potential buyers, to make predictions about what the buyers intend to do with purchased assets, and to determine what additional assets,

particularly crude supply contracts, are necessary for "viability." As far as I know, the Commission has never assumed responsibility for overseeing such a major restructuring of assets, and it remains to be seen how effective and vigorous it will be in carrying out this difficult job over the coming months.

At the very least, we can expect temporary supply contracts of one sort or another to be negotiated as a part of these sales. Are Socal temporary supply agreements sufficient to get a refinery or marketing assets permanently over some survival threshold, or will they be temporary lifelines only? Further, will such supply contracts in reality be agreed to by potential buyers because they are able to get crude oil at a bargain price, not because they actually intend to operate assets for the long term? Moreover, if this complex divestiture plan begins to fall apart some months from now, what are the Commission's options? As I interpret the agreement, we do have a fair amount of discretion in requiring Socal to put additional assets in divestiture package, but we do *not* have the discretion to throw up our hands and say the only solution is preserving an independent Gulf. By accepting this agreement we are committed to a course in which most of Gulf is absorbed by Socal and some of its least desirable assets are parceled out. There will be no turning back from that basic decision.

I realize that there are limits to how certain we can be about the success of divestitures, but I do not believe the law requires us to take any significant risks once a merger has been recognized as a likely violation of the law. All the Commissioners agree that this merger is likely to harm competition and violate the antitrust laws; otherwise there would be no need for a consent agreement. The question is what degree of risk that our remedies are insufficient are we to assume. In answering that question, it is reasonable to ask: what are the social benefits of this merger? It is fairly clear that there are no significant "efficiencies" in any ordinary use of the word. While Socal argues that acquiring Gulf will give Socal access to Gulf's technology, few specifics are offered, and Socal's president conceded that Socal can acquire industry technology in other ways. In a survey of possible acquisitions, Socal could not identify synergies with Gulf's upstream assets. Socal's principal basis for any future cost savings appears to be closing down facilities. Based on this and other evidence, the staff concludes that "this acquisition does not present the efficiencies which might have flowed from several earlier mergers in this industry, notwithstanding Socal's statements that it does." In short, I believe the Commission is accepting substantial risks in relying on a complex, uncertain remedy in a case where a merger clearly appears to be unlawful, and offers few, if any, benefits other than to the private parties.

Other Provisions

I am also troubled by a number of other provisions and omissions in the agreement. For example, the agreement provides an option to Socal to divest one of Gulf's two refineries in the Gulf Coast area. Depending on which refinery Socal chooses, the Herfindahl index would still increase about 100 points in kerojet production (less in the case of a divestiture of Port Arthur, more if Alliance is sold). Second, the staff identified an overlap in the sale of aviation gasoline in the Gulf and East coast regions that would exceed the Justice guidelines in increasing the Herfindahl index, but did not address it in the agreement. Each of these issues alone would not justify rejecting the entire agreement but, taken together with the considerations mentioned above, they strengthen the argument against it.

Non-Antitrust Issues

However close the antitrust issues are here, and I believe they are closer than in some previous cases on which I disagreed with the majority, we should keep in mind that issues we cannot address under the antitrust laws remain of major, perhaps overriding, importance. This merger is driven by Socal's desire for crude oil. Despite protestations to the contrary by company officials, I find it very difficult to conclude that this merger will not diminish exploration for crude oil. One major company, which has needed additional crude reserves, has now disappeared. A second major competitor, which has had strong incentives to drill, has now won control of 2 billion barrels of crude oil reserves along with a huge debt burden. We may not understand precisely how much this acquisition will reduce exploration but to assume it will affect it little or none at all flies in the face of common sense.

Conclusion

Even though I believe staff has done a commendable job in negotiating this agreement under severe time constraints, in particular, by giving the Commission a greater ability to insure the divestitures achieve their stated purpose, I cannot help but conclude that there are too many unanswered questions and too many risks to endorse this agreement. The law does not require that we go out of our way to restructure acquisitions that violate the antitrust laws, particularly when there is a cloud of uncertainty as to whether our restructuring will or will not work and when the merger, which we are struggling so hard to preserve, offers no significant efficiencies. While the public comment period on this case can be particularly useful, because of the scope and significance of the acquisition and divestitures, I must vote

against the agreement based on what has been presented to the Commission.

STATEMENT OF COMMISSIONER PATRICIA P. BAILEY

The hold separate and consent agreements tentatively accepted by the Commission in this matter to my mind propose solutions to the measurable, or even reasonably foreseeable anticompetitive consequences of this merger. Substantial divestitures have been ordered, and even additional divestiture and contract relief is also available under these agreements, if necessary to facilitate sale of these assets and insure their continuation as competitively viable entities.

Any calculated risk that the relief proposed will not result in the creation of viable new competitive forces in refining and marketing is reduced by a novel requirement that SoCal keep Gulf's domestic petroleum assets as an independent entity until all divestitures acceptable to the Commission have been actually achieved. This means that the Commission maintains substantial legal leverage to insure SoCal's incentive to divest, in accord with the procompetitive intentions implicit in the Commission's order. I believe that this feature of the relief in this matter will ensure that the Commission can continue to act in the best interests of the public during the divestiture phase of this difficult case.