

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MAR 8 1999

FEDERAL TRADE COMMISSION, )

Plaintiff, )

v. )

FIVE STAR AUTO CLUB, INC. )

a corporation, )

MICHAEL R. SULLIVAN, )

individually and as an officer of the )  
corporate defendant, and )

ANGELA C. SULLIVAN, )

individually and as an officer of the )  
corporate defendant, )

Defendants. )

CIV-99-

**Judge McMahon**

**99 CIV 1693**

**PROPOSED TEMPORARY RESTRAINING ORDER  
FREEZING ASSETS, APPOINTING A TEMPORARY  
RECEIVER AND PROVIDING ADDITIONAL EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("Commission") having filed its complaint for a permanent injunction and other equitable relief in this matter pursuant to section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having moved *ex parte* for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court, having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction of all parties hereto;

2. There is good cause to believe that the defendants, Michael R. Sullivan, Angela C. Sullivan and Five Star Auto Club, Inc., have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Plaintiff is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by defendants of their assets or corporate records, or those assets and corporate records unless defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for relieving Plaintiff of the duty to provide defendants with prior notice of the Plaintiff's motion;

4. There is good cause for the Court to appoint a temporary receiver;

5. Weighing the equities and considering Plaintiff's likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest; and

6. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

#### **Definitions**

For the purpose of this temporary restraining order, the following definitions shall apply:

A. "Defendants" means Michael R. Sullivan, Angela C. Sullivan and Five Star Auto Club, Inc., and each of their successors, assigns, officers, agents, servants, employees, subsidiaries or affiliates, including but not limited to Five Star Automotive Research & Information Consultants, Five Star Auto Club Marketing, and Five Star Consulting, Inc.,

and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, unless specified otherwise.

- B. "Five Star" means Five Star Auto Club, Inc. and its subsidiaries or affiliates, including but not limited to Five Star Automotive Research & Information Consultants, Five Star, Auto Club Marketing, and Five Star Consutling, Inc.
- C. "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, credits, receivables and cash, wherever located.
- D. "Marketing Program" means any program where a person, under a condition that he or she make a payment, is granted the right to receive rewards in return for recruiting other people who are also granted the right to receive rewards in return for recruiting others, upon condition of making a payment, and may further perpetuate the chain of persons who are granted a right upon such conditions. A limitation on the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above right to recruit or the receipt of profits therefrom does not change the identity of the program as a Marketing Program.
- E. "Marketing Program Participant" means anyone who, under a condition that he or she make a payment, is granted the right to receive rewards in return for recruiting other

people who are also granted a right to receive rewards in return for recruiting others, upon condition of making a payment, and may further perpetuate the chain of persons who are granted a right upon such conditions.

- F. "VIP Lease" means any automobile lease offered, brokered, arranged or marketed by any of the Defendants to Marketing Program Participants as a benefit, in part or in whole, for recruiting other Marketing Program Participants.

## **CONDUCT PROHIBITIONS**

### **I. INJUNCTION AGAINST MISREPRESENTATIONS**

**IT IS THEREFORE ORDERED** that, in connection with the advertising, promoting, marketing, offering or providing, or assisting others in the advertising, promoting marketing, offering or providing of any Marketing Program, Defendants are hereby temporarily restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to representations that:

- A. Everyone who participates in Defendants' Marketing Program can receive a substantial monthly income; and
- B. That everyone who participates in Defendants' Marketing Program can qualify for a VIP Lease, or something else of value.

**II.**  
**INJUNCTION AGAINST MATERIAL OMISSIONS**

**IT IS FURTHER ORDERED** that, in connection with the advertising, promoting, marketing, offering or providing, or assisting others in the advertising, promoting, marketing, offering or providing of any Marketing Program, Defendants are hereby restrained and enjoined from failing to disclose, clearly and conspicuously, orally or in writing, before any consumer pays to become a Marketing Program Participant, all information material to a consumer's decision to participate in the Marketing Program, including but not limited to:

- A. That the structure of the Marketing Program prevents the vast majority of Marketing Program Participants from profiting from the Marketing Program by earning substantial income, receiving a VIP Lease, or receiving something else of value.

**III.**  
**INJUNCTION AGAINST PROVIDING OTHERS WITH  
THE MEANS AND INSTRUMENTALITIES TO  
VIOLATE SECTION 5 OF THE FTC ACT**

**IT IS FURTHER ORDERED** that in connection with the offering for sale or sale of the right to participate in any Marketing Program, Defendants are hereby temporarily restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to representations that:

- A. Everyone who participates in Defendants' Marketing Program can receive a substantial monthly income; and
- B. Everyone who participates in Defendants' Marketing Program can qualify for a VIP Lease, or something else of value.

## TEMPORARY RECEIVERSHIP PROVISIONS

### IV.

#### APPOINTMENT OF TEMPORARY RECEIVER

✓ IT IS FURTHER ORDERED that Peter Zlotnick, Esq. is

appointed as temporary receiver (the "Temporary Receiver"), with the full power of an equity receiver, for Five Star and of all the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by Five Star, with directions and authority to accomplish the following:

- A. Assume full control of Five Star by removing Defendants Michael R. Sullivan and Angela C. Sullivan and any other officer, independent contractor, employee, or agent of Five Star, from control and management of the affairs of Five Star;
- B. Collect, marshal, and take custody, control and possession of all the funds, property, premises, accounts, mail and other assets of, or in the possession or under the control of Five Star, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to Five Star with full power to: collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of Five Star and business venture purchasers whose interests are now held by or under the direction, possession, custody or control of Five Star;

- C. Perform all acts necessary to conserve, hold, manage, and preserve the value of those assets, in order to prevent any irreparable loss, damage and injury to business venture purchasers, and all acts incidental thereto, including the suspension of operations;
- D. Perform all acts necessary to ensure that Five Star is in compliance with the provisions of this Order, including ceasing all advertising, marketing, offering or providing or assisting others in doing the same which contains any false or misleading statements of material fact or which fail to disclose all information material to a consumer's decision to participate in the Marketing Program;
- E. Make best efforts to notify Five Star's Marketing Program Participants about this Order. Such efforts can include posting this Order on Five Star's world wide web page, and providing information to Participants through Five Star's weekly conference calls and fax on demand service;
- F. Enter into agreements in connection with administration of the receivership, including, but not limited to: (1) the retention and employment of investigators, attorneys or accountants of the Temporary Receiver's choice, including, without limitation, members and employees of the Temporary Receiver's firm, to assist, advise, and represent the receiver, and (2) the movement and storage of any equipment, furniture, records, files or other physical property of Five Star;
- G. Institute, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal or foreign courts that the Temporary Receiver deems necessary and advisable to preserve the value of the properties of Five Star or that the Temporary Receiver deems necessary and advisable to carry out the Temporary

Receiver's mandate under this Order, and likewise to defend, compromise or adjust or otherwise dispose of any or all actions or proceedings instituted against the Temporary Receiver or Five Star that the Temporary Receiver deems necessary and advisable to preserve the properties of Five Star or that the Temporary Receiver deems necessary and advisable to carry out the Temporary Receiver's mandate under this Order;

- H. Prepare and submit a Report to this Court and to the parties, not less than <sup>24 hours</sup> ~~three (3) days~~ prior to the scheduled Preliminary Injunction Hearing, describing <sup>what he has learned about</sup> Five Star's business activities, including, but not limited to, the number of consumers participating in Five Star's Marketing Program (including a breakdown by category of participation: consultants, members and member/consultants), the amount of money received by Five Star from the Marketing Program Participants, the amount of money distributed to Marketing Program Participants by Five Star, the number and percentage of Marketing Program Participants who have made money through their participation in the Marketing Program, and the average amount of money made by such participants, the number and percent of Five Star participants who have qualified for and the number who have received a VIP Lease through participation in the Marketing Program, and the role of Michael R. Sullivan and Angela C. Sullivan and any other officers or directors of Five Star; and
- I. Conduct expedited discovery in order to prepare the Receiver's Report, referenced above, prior to the Preliminary Injunction Hearing. Such expedited discovery can, at the Receiver's sole discretion, include oral depositions on three business days notice to the deponent and expedited interrogatories, requests for admission, or requests for production



of documents requiring responses within 3 business days after service of the discovery requests.

The Temporary Receiver and all personnel hired by the Temporary Receiver as herein authorized, including counsel to the Temporary Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of, or which may be received by, Five Star. The Temporary Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request due prior to sixty days after the date of this Order. The Temporary Receiver shall not increase the Temporary Receiver's fee rate billed to the receivership estate without prior approval of the Court. The Temporary Receiver may withdraw from his/her appointment at any time after the entry of this Order, upon 10 days notice to the parties and the Court, and upon entry of an order by this Court approving such withdrawal. The Temporary Receiver shall be relieved of all responsibilities and liabilities upon entry of such order.

The Temporary Receiver shall file with the Clerk of this Court a bond in the sum of ✓ \$10,000<sup>00</sup> with sureties to be approved by the Court, conditioned that the Temporary Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

**V.**  
**ACCESS TO BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that Defendants shall allow the Temporary Receiver appointed herein and his/her representatives, agents, and assistants, immediate access to Five Star's business premises and any other location where Five Star's property or business records are located. Such locations specifically include, but are not limited to, Five Star's offices at 3 Dodge Street, Poughquag, New York and Five Star's marketing offices at 737 E. Avalon Avenue, Muscle Shoals, Alabama. The Temporary Receiver is authorized to employ the assistance of law enforcement officers as he or she deems necessary, to effect service and to implement peacefully the provisions of this Order. The purpose of access shall be to inspect and inventory all of Five Star's property, assets, and documents and inspect and copy any documents relevant to this action. The Temporary Receiver its agents, and assistants, shall have the right to remove documents from Five Star's premises in order that they may be inspected, inventoried, and copied.

If any business records or property relating to Five Star is located in the personal residence of a Defendant and request to enter such residence is denied, then such Defendant shall, within forty eight (48) hours of service of this Order:

- A. Produce to the Temporary Receiver, at a location designated by the Temporary Receiver, all contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, discs, or other computerized or electronic records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, telephone bills, receipt books, ledgers, membership records and lists, refund records, receipts, ledgers,

bank records (including personal and business monthly statements, canceled checks, records of wire transfers, and check registers) appointment books, copies of federal, state and local business or personal income or property tax returns, 1099 forms, title records and other documents or records of any kind that relate to Defendants' business practices; and

- B. Produce to the Temporary Receiver, at a location designated by the Temporary Receiver, all computers and data in whatever form, used by Defendants, in whole or in part, relating to Defendants' business practices.

**VI.  
TURN OVER TO RECEIVER**

**IT IS FURTHER ORDERED** that, immediately upon service of this Order upon them, Defendants, and any other person or entity served with a copy of this Order, shall forthwith or within such time as permitted by the Temporary Receiver in writing, deliver over to the Temporary Receiver:

- A. Possession and custody of all assets including, but not limited to, funds and property owned beneficially or otherwise, wherever situated, of Five Star;
- B. Possession and custody of all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title document, and other papers of Five Star;
- C. Possession and custody of all funds and other assets belonging to members of the public now held by Five Star;

- D. All keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects, and all monies in any bank deposited to the credit of Five Star, wherever situated;
- E. Information identifying the accounts, employees, properties, or other assets or obligations of Five Star; and
- F. All information and documentation necessary to access and modify the content on Defendants' World Wide Web site(s).

**VII.  
STAY OF OTHER ACTIONS**

**IT IS FURTHER ORDERED** that except by leave of this Court, during the pendency of the receivership ordered herein, Defendants and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right or interest against or on behalf of Five Star, or any of its subsidiaries or affiliates, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees be and are hereby stayed from:

- A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against Five Star, except that such actions may be filed to toll any applicable statute of limitations;
- B. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of Five Star.
- C. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, a property

of Five Star, or any property claimed by any of them or attempting to foreclose, forfeit, alter or terminate any of Five Star's interests in property, including, without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;

- D. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wheresoever located, owned by or in the possession of the Five Star, or the Temporary Receiver appointed pursuant to this Order or any agent appointed by said Temporary Receiver; and
- E. Doing any act or thing whatsoever to interfere with the Temporary Receiver taking control, possession or management of the property subject to this receivership, or to in any way interfere with the temporary receiver, or to harass or interfere with the duties of the Temporary Receiver; or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of Five Star, or its subsidiaries or affiliates, including the filing by the additional defendants of a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as to Five Star.

Provided, however, nothing in this Paragraph shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against Five Star.

**VIII.**  
**PLAINTIFF'S ACCESS TO BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that Defendants and the Temporary Receiver shall allow Plaintiff's representatives, agents, and assistants immediate access to Defendants' business premises to inspect and copy documents so the Commission may prepare for the preliminary injunction hearing. To the extent Defendants or third parties turn over to the Temporary Receiver records relating to Defendant' business, but not kept at Defendants' business premises, Defendants and the Temporary Receiver shall also allow Plaintiff's representatives, agents and assistants access to those additional records.

**ASSET & RECORD RETENTION**

**IX.**  
**ASSET FREEZE**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, other than to make transfers to the Temporary Receiver appointed herein, that are (1) owned or controlled, directly or indirectly, by any Defendant, in whole or in part; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any

Defendant, including but not limited to, any assets held by, for, or under the name of any Defendant at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

- B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any Defendant; and
- C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant.

**X.  
REPATRIATION OF ASSETS AND DOCUMENTS  
LOCATED IN FOREIGN COUNTRIES**

**IT IS FURTHER ORDERED** that Defendants, whether acting through any trust, corporation, subsidiary, division, or other device, shall:

- A. Within three (3) business days following the service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets that are located outside of such territory and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually; and
- B. Within three (3) business days following service of this Order, provide the Plaintiff and Temporary Receiver with a full accounting of all documents and assets that are located outside of the territory of the United States of America and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually; and

- C. Hold and retain all transferred documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds, except for transfers to the Temporary Receiver; and
- D. Provide Plaintiff access to Defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached hereto as Attachment A.

**XI.  
FINANCIAL STATEMENTS**

**IT IS FURTHER ORDERED** that not less than three (3) days prior to the scheduled date and time for the hearing on a preliminary injunction in this matter, but in no event later than ten (10) days after entry of this Order, each Defendant shall provide the Commission and Temporary Receiver with a completed financial statement, on the forms attached to this Order as Attachments B and C, for each Defendant individually and for each corporation of which such Defendant is an officer, as of the date of service of this Order upon such Defendant.

**XII.  
CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any of the Defendants to the Commission.

**XIII.  
PRESERVATION OF RECORDS**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise



disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the Defendants.

**XIV.  
MAINTENANCE OF CURRENT BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

**XV.  
RETENTION OF ASSETS AND RECORDS**

**IT IS FURTHER ORDERED** that, pending determination of the Plaintiff's request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of the Defendants, or has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;
- B. Deny Defendants access to any safe deposit box that is:
  - 1. titled in the name of any Defendant, either individually or jointly; or
  - 2. otherwise subject to access by any Defendant;
- C. Provide the Commission's counsel and the Temporary Receiver appointed herein, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:
  - 1. the identification number of each such account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant, or upon which any Defendant is a signatory;
  - 2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed

or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and

D. Upon the request by the Commission or the Temporary Receiver, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks.

## **NOTIFICATION PROVISIONS**

### **XVI.**

#### **DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and representative of any Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a

sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

**XVII.  
SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served on Defendants by any law enforcement officer, by any agent of Plaintiff or of the Temporary Receiver, or by any agent of any process service retained by Plaintiff or the Temporary Receiver.

**PRELIMINARY INJUNCTION PROCEEDINGS**

**XVIII.  
SERVICE OF PLEADINGS**

**IT IS FURTHER ORDERED** that the parties shall serve all memoranda, affidavits and other evidence on which they intend to rely at the preliminary injunction hearing set in this matter, *no* such that delivery occurs <sup>not</sup> later than 4:00 p.m. (EST) of the second day prior to the hearing date. Service on the Commission shall be performed by delivery to the attention of counsel at the Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room HQ-238, Washington, DC 20580, or by facsimile transmission to (202) 326-3395.

**XIX.**  
**WITNESS IDENTIFICATION**

**IT IS FURTHER ORDERED** that, if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that party shall file with this Court and serve, such that delivery occurs not later than 4:00 p.m. (EST) of the second day prior to the hearing date, on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit revealing the substance of such witness's expected testimony. Service on the Commission shall be performed by personal delivery to the attention of counsel at the Federal Trade Commission, 600 Pennsylvania Ave., NW, Room HQ-238, Washington, DC 20580, or by facsimile transmission to (202) 326-3395.

**XX.**  
**PRELIMINARY INJUNCTION HEARING**

**IT IS FURTHER ORDERED**, pursuant to Fed. R.Civ. P. 65(b), that defendants

Michaél R. Sullivan, Angela C. Sullivan, and Five Star Auto, Inc. shall appear before this Court

on the 12<sup>th</sup> day of March, 1999 at 9:00 o'clock A.m., at the United

States Courthouse, Room 533 to show cause, if there is any, why this Court should not enter a

preliminary injunction, in substantially the form of this order, pending final ruling on the

Complaint against Defendants, enjoining them from further violations of Section 5(a) of the

Federal Trade Commission Act, 15 U.S.C. § 45(a), continuing the freeze of their assets, and the

receivership, and imposing such additional relief as may be appropriate. *No prior application*

*for this relief has been requested.*

XXI.  
RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

✓ SO ORDERED, this 8<sup>th</sup> day of March, 1999, at 12<sup>03</sup> p.m.

SO ORDERED

*Allen M. Miller*

United States District Judge  
Southern District of New York  
White Plains Division

MAR 8 1999

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK, CLERK

By: *Skogan*



officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to the said bank accounts to any attorney of the Federal Trade Commission, and to give evidence relevant thereto, in the matter of the Federal Trade Commission v. Five Star Auto Club, Inc. et al., Case No. \_\_\_\_\_, now pending in the United States District Court for the Southern District of New York, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the bank accounts for which I may be a relevant principal.

Dated: March \_\_, 1999

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FINANCIAL STATEMENT OF CORPORATE DEFENDANT

Instructions: Complete all items. You must make your best effort to obtain any information requested. If you are not sure whether certain facts and information are responsive to an item, include them. Write "NA" if not applicable. Attach additional sheets as needed. Type or print legibly. An officer of the Corporation must sign and date completed form on the last page. If no officer is available because all officers assert their Fifth Amendment privilege against self incrimination, the Corporation's board of directors must designate another person to sign and complete the form. A copy of the corporate resolution designating such person should be attached to this form.

Note: Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

(1) "in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" (18 U.S.C. § 1001);

(2) "in any ... statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true" (18 U.S.C. § 1621); or

(3) "in any (... statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information ... knowing the same to contain any false material declaration. (18 U.S.C. § 1623)

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a Corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

Item 1.

Corporation Name (include d/b/a's) \_\_\_\_\_

Business Address \_\_\_\_\_  
\_\_\_\_\_

Telephone No./Facsimile No. \_\_\_\_\_

Electronic Mail Address(es) \_\_\_\_\_

World Wide Web Site(s) \_\_\_\_\_

Note: Attach a schedule of all business addresses

State of Incorporation \_\_\_\_\_ Date of Incorporation \_\_\_\_\_

Licensed to do business in (include date): \_\_\_\_\_

Item 2.

Registered Agent \_\_\_\_\_

Business Address \_\_\_\_\_

Telephone No./Facsimile No. \_\_\_\_\_

Item 3.

Names and Addresses of Principal Stockholders of Corporation. Identify the owners with at least 5% of the shares of the Corporation

<u>Name</u>	<u>Address</u>	<u>% of Shares</u>	<u># of Shares</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Item 4.

Names and Addresses of the Current Officers of the Corporation and Number of Shares Held by Each Officer

<u>Name/Office Held</u>	<u>Address</u>	<u># of Shares</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Item 5.

Names and Addresses of the Current Members of the Board of Directors of the Corporation and Number of Shares Held by Each Director

<u>Name</u>	<u>Address</u>	<u># of Shares</u>

Item 6.

List all states and municipalities to which taxes have been paid and/or are being paid. Describe the nature of such taxes, state the most recent year of payment thereof and whether taxes are current

<u>Nature of Tax</u>	<u>Date Last Paid</u>	<u>Amount Paid</u>	<u>Amount Due</u>

Item 7.

Has the Corporation filed United States Corporate Income Tax Returns for each of the last three fiscal years? Yes ( ) No ( ) If yes, attach copies.

To What IRS Office? \_\_\_\_\_

Name and Address of person(s) who prepared tax return(s)  
\_\_\_\_\_  
\_\_\_\_\_

What Years? \_\_\_\_\_  
\_\_\_\_\_

Are Federal Taxes Current? Yes ( ) No ( )

Describe Any Federal Tax liabilities or liens

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**Item 8.**

Name and Address of :

(a) Corporation's Independent Certified Public Accountants for the last three years.

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(b) Attorneys Retained by Corporation during the last three years.

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**Item 9.**

Does the Corporation have a Profit and Loss Statement for the last three previous fiscal years and any part of the current fiscal year? Yes ( ) No ( ). If yes, submit one copy of each. Submit audited documents if available.

**Item 10.**

Give names and addresses of Banks, Savings & Loans, and other entities wherever located where the Corporation maintains accounts.

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**Item 11.**

List all commercial paper, negotiable or non-negotiable, in which the Corporation has any interest whatsoever. Describe such paper and the Corporation's interest therein, and state its present location. List all accounts and loans received in excess of \$1000 and specify if due from an officer, stockholder or director.

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**Item 12.**

For the last taxable year, indicate in round figures

(A) Gross Income \_\_\_\_\_

(B) Expenses (Fixed and Current) \_\_\_\_\_

(C) Gross Profit (or Loss) \_\_\_\_\_

(D) Net Profit after Taxes \_\_\_\_\_

(E) List Approximate Totals

Payables: \_\_\_\_\_ Receivables: \_\_\_\_\_

**Item 13.**

Is this Corporation presently:

(A) Active Yes ( ) No ( )

(B) Inactive Yes ( ) No ( )

(C) Void and/or Terminated by State Authority Yes ( ) No ( )

(D) Otherwise Dissolved? Yes ( ) No ( )

1. Date: \_\_\_\_\_

2. By Whom: \_\_\_\_\_

3. Reasons: \_\_\_\_\_

**Item 14.**

A. List all Corporate Salaries and/or draws for all corporate officers and directors.

<u>Position</u>	<u>Name</u>	<u>Current Year</u>	<u>Past Year</u>	<u>Year Before Last</u>

B List the five most highly compensated employees (other than those listed in Item 13 above), describe position and set forth salary and/or bonuses for the current and two previous taxable years.

<u>Position</u>	<u>Name</u>	<u>Current Year</u>	<u>Past Year</u>	<u>Year Before Last</u>

**Item 15.**

Describe the nature of any compensation paid to the persons listed in Item 14 above in the form of stock options, pensions, profit sharing, royalties and/or deferred compensation rights.

<u>Name</u>	<u>Type of Compensation</u>

**Item 16.**

List all fields of activity in which this Corporation is engaged, either directly or through subsidiaries or affiliates, stating the name(s), and state(s) of incorporation of such subsidiaries and affiliates.

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**Item 17.**

Has this Corporation at any time been the subject of any proceedings under the provisions of any State Insolvency Law or the Federal Bankruptcy Code? If so, supply the following information as to each proceeding:

A. Date of Commencement: \_\_\_\_\_ B. Date of Termination: \_\_\_\_\_

C. Discharge or other disposition, if any, and operative effect thereof?

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D. State Court: \_\_\_\_\_ E. Federal Court: \_\_\_\_\_

E. Docket No. \_\_\_\_\_

**Item 18.**

List all Real Estate and tangible property of an estimated value in excess of \$5,000 owned or under contract to be purchased by this Corporation and where located:

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**Item 19.**

List and describe all judgements recorded and unrecorded, against and in favor of the Corporation:

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**Item 20.**

List and Describe all other encumbrances against Real Property listed in Item 18 above, including but not limited to mortgages, recorded or unrecorded:

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**Item 21.**

List and describe all other encumbrances (including, but not limited to security interests, whether perfected or not) against any such personalty owned by the Corporation as is listed in 18 above.

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**Item 22.**

List the landlord(s) to whom rent is paid, if the Corporation occupies and rental space and the address of the rental space in question.

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**Item 23.**

List all life insurance on which the Corporation has an "incurable interest" and/or is paying the premium or part of same. Where applicable indicate the type of policy, the yearly premium, the location of the policy, the beneficiary and the insured.

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**Item 24.**

List the names and titles of all persons authorized to sign corporate checks.

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**Item 25.**

List the names and titles of all persons authorized to use corporate credit card(s).

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**Item 26.**

List all transfers of any or all assets (real or personal) over \$1000 made by the Corporation other than in the ordinary course of business during the last three years, identify the asset(s) and the value of the asset (s) and state to whom the transfer(s) was made.

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Item 27.

Is this Corporation a party in any law suit now pending?

( ) Yes ( ) No

If yes, give details below.

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Item 28.

Additional Remarks (list and describe any assets not listed above):

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Item 29.

ATTACHMENTS

- (A) Are corporate tax returns for the last three years attached? Yes ( ) No ( )
- (B) Are Profit and Loss Statements and/or Balance Sheets for the last three years attached? Yes ( ) No ( )
- (C) Identify other attachments:

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I am submitting this financial statement under court order and with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Corporate Position

FINANCIAL STATEMENT OF INDIVIDUAL DEFENDANT

Instructions: Complete all items. You must make your best effort to obtain any information requested. If you are not sure whether certain facts and information are responsive to an item, include them. Write "NA" if not applicable. Attach additional sheets as needed. Type or print legibly. Sign and date completed form on last page.

Note: Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

(1) "in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" (18 U.S.C. § 1001);

(2) "in any ... statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true" (18 U.S.C. § 1621); or

(3) "in any (... statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information ... knowing the same to contain any false material declaration. (18 U.S.C. § 1623)

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

PERSONAL INFORMATION

Item 1.

Your Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Your address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Electronic Mail Address(es) \_\_\_\_\_

Have you ever used another name or social security number? Yes \_\_\_\_\_ No \_\_\_\_\_ If so, list them.

\_\_\_\_\_  
\_\_\_\_\_

Item 2.

Spouse's Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address (if different) \_\_\_\_\_

Telephone No. \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Claimed as dependent on any tax return by you at any time during the past 5 years?

Yes \_\_\_ No \_\_\_

If so, for what years? \_\_\_\_\_

**Item 3.**

Former Spouse's Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Claimed as dependent on any tax return by you at any time during the past 5 years?

Yes \_\_\_ No \_\_\_

If so, for what years? \_\_\_\_\_

**Item 4.a.**

Child's Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address (if different) \_\_\_\_\_

Telephone No. \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Claimed as dependent on any tax return by you or your spouse (or the child's other parent) at any time during the past 5 years? Yes \_\_\_ No \_\_\_

If so, for what years? \_\_\_\_\_

**b.**

Child's Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address (if different) \_\_\_\_\_

Telephone No. \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Claimed as dependent on any tax return by you or your spouse (or the child's other parent) at any time during the past 5 years? Yes \_\_\_ No \_\_\_

If so, for what years? \_\_\_\_\_

c.  
Child's Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address (if different) \_\_\_\_\_

Telephone No. \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Claimed as dependent on any tax return by you or your spouse (or the child's other parent) at any time during the past 5 years? Yes \_\_\_ No \_\_\_

If so, for what years? \_\_\_\_\_

**Item 5.**

Provide the requested information for each of your primary places of residence for the past five years.

a.  
Current Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Own \_\_\_ Rent \_\_\_ Purchase Price or Mo. Rent \_\_\_\_\_  
Name and Address of  
Landlord \_\_\_\_\_

b.  
Former Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Own \_\_\_ Rent \_\_\_ Selling Price or Mo. Rent \_\_\_\_\_

c.  
Former Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Own \_\_\_ Rent \_\_\_ Selling Price or Mo. Rent \_\_\_\_\_

d.  
Former Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Own \_\_\_ Rent \_\_\_ Selling Price or Mo. Rent \_\_\_\_\_

**Item 6.**

Provide the requested information for each electronic mail (E-mail) address that you have at any point during the last past five years that is not listed in response to Item 1.

a.  
Former E-mail Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Name(s) Used with E-mail Address \_\_\_\_\_

b. Former E-mail Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Name(s) Used with E-mail Address \_\_\_\_\_

c. Former E-mail Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Name(s) Used with E-mail Address \_\_\_\_\_

d. Former E-mail Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Name(s) Used with E-mail Address \_\_\_\_\_

e. Former E-mail Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Name(s) Used with E-mail Address \_\_\_\_\_

f. Former E-mail Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Names Used with E-mail Address \_\_\_\_\_

g. Former E-mail Address \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Name(s) Used with E-mail Address \_\_\_\_\_

EMPLOYMENT

Item 7.

Provide the requested information for each of the previous five years for each company of which you were a director, officer, employee, agent, or consultant at any time during those five years. Income includes any salary, draw, dividends or other benefits received by you, your spouse or your children as a result of your labor or ownership interest.

<u>a. Company Name &amp; Address</u>	<u>Positions Held</u>	<u>Year</u>	<u>Income from Company</u>
_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____

<u>b. Company Name &amp; Address</u>	<u>Positions Held</u>	<u>Year</u>	<u>Income from Company</u>
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_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____

<u>c. Company Name &amp; Address</u>	<u>Positions Held</u>	<u>Year</u>	<u>Income from Company</u>
_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____
_____	_____	19__	_____





Item 10.

List all life insurance policies on you, your spouse or your children:

a. Insurance Company  
Name and Address Insured: \_\_\_\_\_ Face Value: \_\_\_\_\_  
Beneficiary: \_\_\_\_\_  
Surrender Value: \_\_\_\_\_  
Loans On Policy: \_\_\_\_\_

b. Insurance Company  
Name and Address Insured: \_\_\_\_\_ Face Value: \_\_\_\_\_  
Beneficiary: \_\_\_\_\_  
Surrender Value: \_\_\_\_\_  
Loans On Policy: \_\_\_\_\_

c. Insurance Company  
Name and Address Insured: \_\_\_\_\_ Face Value: \_\_\_\_\_  
Beneficiary: \_\_\_\_\_  
Surrender Value: \_\_\_\_\_  
Loans On Policy: \_\_\_\_\_

Item 11.

Provide the requested information about any real estate in which you, your spouse, or your children have an interest (including, but not limited to, land or buildings).

a.  
Location of Property \_\_\_\_\_  
Owner & Interest \_\_\_\_\_

Purchase Price \_\_\_\_\_ Current Market Value \_\_\_\_\_

Name & Address of Holder of Encumbrance \_\_\_\_\_

Account or Loan # \_\_\_\_\_ Original Amount \_\_\_\_\_ Current Payoff \_\_\_\_\_

b.

Location of Property \_\_\_\_\_

Owner & Interest \_\_\_\_\_

Purchase Price \_\_\_\_\_ Current Market Value \_\_\_\_\_

Name & Address of Holder of Encumbrance \_\_\_\_\_

Account or Loan # \_\_\_\_\_ Original Amount \_\_\_\_\_ Current Payoff \_\_\_\_\_

c.

Location of Property \_\_\_\_\_

Owner & Interest \_\_\_\_\_

Purchase Price \_\_\_\_\_ Current Market Value \_\_\_\_\_

Name & Address of Holder of Encumbrance \_\_\_\_\_

Account or Loan # \_\_\_\_\_ Original Amount \_\_\_\_\_ Current Payoff \_\_\_\_\_

d.

Location of Property \_\_\_\_\_

Owner & Interest \_\_\_\_\_

Purchase Price \_\_\_\_\_ Current Market Value \_\_\_\_\_

Name & Address of Holder of Encumbrance \_\_\_\_\_

Account or Loan # \_\_\_\_\_ Original Amount \_\_\_\_\_ Current Payoff \_\_\_\_\_

Item 12.

Provide the requested information about any automobile, motorcycle, boat, or airplane in which you, your spouse, or your children have an interest.

a.

Year, Make & Model \_\_\_\_\_ Owner \_\_\_\_\_

Address where can be found \_\_\_\_\_

Purchase Price \_\_\_\_\_ Current Value \_\_\_\_\_ Who makes payments? \_\_\_\_\_

Name & Address of Holder of Encumbrance \_\_\_\_\_

Account or Loan # \_\_\_\_\_ Original Amount \_\_\_\_\_ Current Payoff \_\_\_\_\_

b.

Year, Make & Model \_\_\_\_\_ Owner \_\_\_\_\_

Address where can be found \_\_\_\_\_

Purchase Price \_\_\_\_\_ Current Value \_\_\_\_\_ Who makes payments? \_\_\_\_\_

Name & Address of Holder of Encumbrance \_\_\_\_\_

Account or Loan # \_\_\_\_\_ Original Amount \_\_\_\_\_ Current Payoff \_\_\_\_\_

c.

Year, Make & Model \_\_\_\_\_ Owner \_\_\_\_\_

Address where can be found \_\_\_\_\_

Purchase Price \_\_\_\_\_ Current Value \_\_\_\_\_ Who makes payments? \_\_\_\_\_

Name & Address of Holder of Encumbrance \_\_\_\_\_

Account or Loan # \_\_\_\_\_ Original Amount \_\_\_\_\_ Current Payoff \_\_\_\_\_





**Item 18.**

Have you, your spouse, and/or your children filed a federal income tax return during the last three years? Yes ( ) No ( ). If answer is yes, attach a copy of the returns and all schedules.

**Item 19.**

Have you, your spouse and/or your children placed any assets in trust, or are you, your spouse and/or your children beneficiaries or potential recipients of any assets or income from any trust? Yes ( ) No ( ). If answer is yes, provide the following information.

Trustees' Names and Addresses	Donor of Trust	Beneficiaries of Trust	Present Value of Trust

I am submitting this financial statement under court order and with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature