

Order

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IN THE MATTER OF  
EXXON CORPORATION, ET AL.\*

*Docket 8934. Order, Mar., 4, 1975*

Denial of complaint counsel's motion for (1) major integrated procedural relief relative to discovery, (2) manual for complex litigation, (3) a second administrative law judge, and (4) a firm schedule for prehearing phase of the case. Also denial of respondents' suggestions for dismissal of the complaint.

ORDER DENYING MOTION FOR MAJOR INTEGRATED PROCEDURAL  
RELIEF

By order of Oct. 23, 1974, the administrative law judge certified to the Commission complaint counsel's "Motion for Major Integrated Procedural Relief" requesting (1) with respect to this matter, substitution with minor modifications of the discovery rules of the Federal Rules of Civil Procedure for the Commission's discovery rules or, in the alternative, liberalization of the latter to facilitate the taking of depositions; (2) adoption of the Manual for Complex Litigation as a guide for this matter; (3) appointment of a second administrative law judge to rule upon all discovery related matters in this proceeding; and (4) adoption of a firm schedule for the prehearing phase of this case. In a joint answer, all respondents except Texaco oppose this motion in all respects. For its part, Texaco also opposes the motion and suggests that this matter be withdrawn from adjudication for further investigation. Finally, in a separate pleading, respondent, Shell Oil Company proposes that this complaint be dismissed and that the Commission confine its future activities in the field of energy to the gathering and analysis of data.

Upon consideration of the voluminous pleadings filed in connection with this matter, the Commission has determined to deny complaint counsel's motion in all respects. As for request (1), as a general principle the Commission does not favor tailoring special rules for individual cases. Complaint counsel have not convinced us that we should depart from this general principle. Furthermore, the Commission presently has under consideration a number of proposed rule changes including revisions of the Commission's discovery rules for adjudicative proceedings. The revisions dealing with discovery rules will be published in the near future in the *Federal Register* as proposals, and public comment will be invited as well as the views of the Commission's operating bureaus and administrative law judges. Respondents in this and any other pending adjudicative matters which

\* For appearances see p. 91 herein.

may be affected by any such rule changes may, of course, also submit their views at that time.

Requests for the adoption of the "Manual for Complex Litigation" as a guide in this proceeding and a firm prehearing schedule and trial-commencement date are also denied. Although the Commission encourages consideration by the administrative law judge of many of the procedural devices included in the Manual, wholesale "adoption" of the Manual by Commission directive is unnecessary and unwarranted. These procedural devices and the question of prehearing schedules are best left to the administrative law judge to rule upon.<sup>1</sup> The question of the need for an additional administrative law judge is one that should be directed in the first instance to the chief administrative law judge who has authority to appoint an additional law judge or judges if he determines there is compelling need for them.

Finally, the Commission concludes that it would be contrary to the public interest to adopt respondents' suggestions that the complaint herein be dismissed and to the extent that such suggestions were intended to be motions, they are denied.

*It is so ordered.*

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IN THE MATTER OF

SOUNDTRACK CHEVELL INDUSTRIES, INC., ET AL.

*Docket 8998. Order, March 4, 1975*

Complaint counsel ordered to show cause, within ten days, why complaint should not be dismissed as to individual respondent Tommie Tubb.

*Appearances*

For the Commission: *Richard H. Gately, Paul W. Turley and John Hemrick.*

For the respondents: *Pro se.*

DISSENTING STATEMENT OF COMMISSIONERS M. ELIZABETH  
HANFORD AND STEPHEN NYE

We dissent from the Commission's decision to require complaint counsel to show cause why this complaint should not be dismissed as to respondent Tommie Tubb.

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<sup>1</sup> In certifying this matter to the Commission, the ALJ recognized his authority to adopt the "Manual for Complex Litigation" as a guide and, of course, fix a prehearing schedule and date for commencement of trial. However, in view of his lack of authority to grant the other relief requested, he certified all of complaint counsel's requests as they were "so closely related as to warrant certification of the motion as an 'integrated package.'" Order of Certification, Oct. 27, 1974.

In *American Chinchilla Corporation, Inc., et al.*, 76 F.T.C. 1016 (1969), the Commission established that it would not countenance entry of an order against an indigent respondent unrepresented by counsel. To guard against a recurrence of the *American Chinchilla* situation, the Commission on Dec. 15, 1970 issued a policy statement setting forth carefully designed procedures for the appointment of counsel for indigent respondents.<sup>1</sup> Thereafter, thanks to the gracious cooperation of the Antitrust Section of the American Bar Association, those procedures have been used to good effect on several occasions. We see no reason why the same procedures should not be followed<sup>2</sup> in this matter.

Indeed, the established procedures have been followed, to a degree. On or about Jan. 10, 1975, Mr. Tubb filed the prescribed "Statement of Financial Status," together with certain documents in support of his application for appointment of counsel. At that point, the appropriate procedure would have been for the administrative law judge to make findings on Mr. Tubb's financial ability to retain counsel, and forward those findings to the Commission.<sup>3</sup> On Feb. 4, however, the administrative law judge certified the question to the Commission, without having made such findings.

Because the majority provides no explanation for its departure from the 1970 policy statement, widespread confusion is likely to ensue. When it issued its complaint in this matter, the Commission ascertained that the public interest would be served thereby. We see no information which casts doubt on that determination, nor is there any occasion to reexamine it at this juncture. All we have learned is that Mr. Tubb may be in financial difficulty at the present time. Unless we are to conclude that indigence as of the time of trial is a defense to a Section 5 charge, we ought not to disturb our determination to include Mr. Tubb in this complaint. We believe the proper course for us now is to return the matter to the law judge to permit him to make findings pertinent to the respondent's financial ability to hire a lawyer.

#### CONCURRING OPINION OF COMMISSIONER THOMPSON

BY THOMPSON, *Commissioner*:

Having no desire to play the role of Hugo's relentless detective Javert and pursue some latter day Jean Valjean across a decade or so of troubles for stealing a loaf of bread-or at least for being on the scene when one was stolen-I support this show cause order. The "villain" we

<sup>1</sup> Statement of Policy: Respondents Unable to Afford Counsel, 35 Fed. Reg. 18998 (Dec. 15, 1970).

<sup>2</sup> See, e.g., *Universe Chemicals, Inc., et al.*, 77 F.T.C. 163 (interlocutory order, 1970).

<sup>3</sup> Such findings have been made in other cases. See, e.g., *Steven Rizzi, et al., dba Freight Liquidators*, Dkt. 8937 (Findings on the Financial Inability of Sam Katz to Retain Counsel, Sept. 28, 1973).

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are now pursuing, a former salesman for these respondents, is now, according to his affidavits, a \$150 a week handyman with no significant assets and hence unable to employ counsel. If he played a substantial role in these alleged deceptions, then I might be prepared to see him brought in with Jean Valjean. If not, I would free them both from the galleys and let the Federal Trade Commission get on with the serious business of trying to help the country's economy.

ORDER TO SHOW CAUSE WHY COMPLAINT SHOULD NOT BE  
DISMISSED AS TO RESPONDENT TUBB

By order of Feb. 6, 1975, the administrative law judge has certified to the Commission the request of respondent Tommie Tubb that the Commission appoint counsel to represent him in this matter. Having considered this request, including Mr. Tubb's present employment and financial situation, the Commission believes that it would be in the public interest to consider further the question of whether this individual respondent is a necessary party to this proceeding. Accordingly,

*It is ordered,* That complaint counsel be, and they hereby are, ordered to show cause, within ten (10) days of this order, why this complaint should not be dismissed as to respondent Tubb.

Commissioners Hanford and Nye dissenting.

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IN THE MATTER OF

BESTLINE CORPORATION, ET AL.

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

*Docket C-1986. Decision, July 22, 1971 - Modified Order, Mar. 4, 1975\**

Order modifying an earlier order dated July 22, 1971, 79 F.T.C. 107, 36 F.R. 17982, issued against a San Jose, Calif., seller and distributor of household, commercial, and industrial cleaners and waxes, and distributorships therefor, by expanding the order, as to corporate respondents only, to include a more precise definition and clarification of "multi-level marketing programs."

*Appearances*

For the Commission: *W. J. Marschalk* and *Robert Galler*.

For the respondents: *Robert N. Humphries, Humphries, Berger,*

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\* Reported as corrected by order of Apr. 22, 1975.

*Pitto & Pearl*, San Jose, Calif., *Joseph N. Cotchett, Hutchinson & Dyer*, San Mateo, Calif.

ORDER REOPENING PROCEEDINGS AND MODIFYING ORDER TO  
CEASE AND DESIST

Respondents Bestline Corporation (incorrectly identified earlier as Bestline Products Corporation) and Bestline Products, Inc., filed a petition on Dec. 6, 1974, requesting that this matter be reopened and the cease and desist order of July 22, 1971, be modified. Following negotiations with the Commission's staff attorneys, respondents filed a supplement to this petition, one that, with a slight further modification, is not opposed by Commission counsel.

Section 3.72(b) of the Commission's Rules of Practice permits a reopening of a final order of this agency only upon a showing of changed conditions of law or fact or that such reopening and modification are otherwise required by the public interest. In the instant matter, these tests are said to be satisfied in that (a) the order in question is uncertain in scope because of a failure to define a key phrase, "multilevel marketing program," and that (b) this infirmity is illustrated by the fact that subsequent Commission orders, *e.g.*, *Ger-Ro-Mar, Inc., et al.*, Docket No. 8872 (Oct. 15, 1974) [84 F.T.C. 95] and *Holiday Magic, Inc., et al.*, Docket No. 8834 (Oct. 15, 1974) [84 F.T.C. 748] employ a substantially different terminology of more precise and different scope. While inconsistencies between consent orders are generally attributable to factual differences between cases and the give-and-take of negotiation rather than order deficiencies that require reopening and clarification, we are persuaded that the public interest requires a modification in the instant case.

The petition before us having been filed only on behalf of the corporate respondents, and a civil penalty action involving an alleged violation of the order by one of the individual respondents being in progress before the United States District Court for the Northern District of California, we will defer any modification of the order in regard to said individuals until such time as an appropriate application therefor might be duly filed. Accordingly,

*It is ordered*, That the proceedings in the above-captioned matter be, and they hereby are, reopened.

*It is further ordered*, That the Commission's order in said matter, issued July 22, 1971 [79 F.T.C. 107], be, and it hereby is, modified to read as follows:

## ORDER

## PART I

*It is ordered,* That respondents William E. Bailey and Robert W. DePew individually and as officers of Bestline Corporation and Bestline Products, Inc., directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of household, industrial or commercial cleaners or waxes or other products or of distributorships or franchises in a multi-level or other marketing program or with the seeking to induce or inducing the participation of persons, firms, or corporations in a multi-level or other marketing program in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Operating or, directly or indirectly, participating in the operation of any multi-level marketing program wherein the financial gains to the participants are dependent upon the continued, successive recruitment of other participants.

2. Offering to pay, paying or authorizing the payment of any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other consideration to any participants in respondent's multi-level marketing program for the solicitation or recruitment of other participants therein.

3. Offering to pay, paying or authorizing payment of any bonus, override, commission, cross-commission, discount, rebate, dividend or other consideration to any person, firm or corporation in connection with the sale of any product or service under respondent's multi-level marketing program unless such person, firm or corporation performs a bona fide and essential supervisory, distributive, selling or soliciting function in the sale and delivery of such products to the ultimate consumer.

4. Requiring prospective participants or participants in respondents' said program to purchase the product or pay any other consideration, other than payment for the actual cost of necessary sales materials, in order to participate in any manner therein; *Provided, however,* That respondents may require or may suggest the purchase of specific and reasonable inventories only, by any distributor, on the express condition that respondents at the same time agree to repurchase any unused and undamaged portion of an initial inventory from any purchaser thereof at full cost less reasonable shipping costs, if any, within 90 days from the delivery of the product at the option of the purchaser; *Provided further, however,* That if inventory costs reach \$500 or more, within said 90 day period, then said obligation to

repurchase shall cease immediately upon participant's tendering a subsequent order to purchase the product.

5. Using any multi-level marketing program, either directly or indirectly:

(a) Wherein any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other compensation or profit inuring to participants therein is dependent on the element of chance dominating over the skill or judgment of the participants; or

(b) Wherein no amount of judgment or skill exercised by the participants has any appreciable effect upon any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other compensation or profits which the participants may receive; or

(c) Wherein the participant is without that degree of control over the operation of such plan as to enable him substantially to affect the amount of any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other compensation or profit which he may receive or be entitled to receive.

6. Using any multi-level marketing program which fails to:

(a) Inform orally all participants in respondents' multi-level marketing programs and to provide in writing in all contracts of participation that the contract may be cancelled for any reason by notification to respondents in writing within three working days from the date of execution of such contract.

(b) Refund immediately all monies to (1) participants who have requested contract cancellation in writing within three working days from the execution thereof, and (2) participants showing that respondents' contract solicitations or performance were attended by or involved violation of any of the provisions of this order.

7. Representing, directly or by implication, that participants in respondents' multi-level marketing programs will earn or receive any stated or gross or net amount; or representing, in any manner, the past earnings of participants unless in fact the past earnings represented are those of a substantial number of participants in the community or geographical area in which such representations are made and accurately reflect the average earnings of these participants under circumstances similar to those of the participant or prospective participant to whom the representation is made.

8. Representing, directly or by implication, that it is not difficult for participants to recruit or retain persons to invest in respondents' multi-level marketing programs as distributors or as sales personnel to work home routes or sell respondents' products door-to-door or any other manner.

9. Representing, directly or by implication, that it is not difficult for

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participants to ascend to a higher level of distribution within the marketing chain.

10. Representing, directly or by implication, that all participants in the respondents' multi-level marketing program or any other sales program will succeed.

11. Representing, directly or by implication, that the supply of available entrants or investors in the respondents' marketing program is inexhaustible; or misrepresenting, in any manner, the availability of such entrants or investors.

12. (a) Failing to disclose, orally and in writing, the terms of this order to cease and desist to all present and future distributors, salesmen or other persons engaged in the sale of respondents' products, services, or merchandising programs, and securing from each such distributor, salesman or other person a signed statement evidencing receipt of said disclosure.

(b) Failing to make available on request a copy of this cease and desist order to any participant or prospective participant.

*It is further ordered,* That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

#### PART II

*It is further ordered,* That respondents Bestline Products, Inc. and Bestline Corporation, corporations, their officers, agents, representatives and employees, directly or indirectly, or through any corporate or other device in connection with the advertising, offering for sale, or sale of products, services, franchises or distributorships, or in connection with seeking to induce or inducing the participation of persons, firms or corporations therefor, or in connection with any marketing program or any other kind of merchandising, marketing or sales promotion program in commerce, or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Operating or directly or indirectly participating in the operation of any marketing or sales program wherein the financial gains to the participants are dependent upon the continued, successive recruitment of other participants; *Provided, however,* That financial gains offered or received in accordance with paragraph 3 hereinbelow shall not be prohibited by this paragraph.

2. Offering to pay, paying, or authorizing the payment of any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or any other form of consideration to any participant



or prospective participant for the solicitation or recruitment of any other participant or participants in any marketing or sales program.

3. Offering to pay, paying, or authorizing payment of any bonus, override, commission, cross-commission, discount, rebate, dividend or any other form of consideration to any person, firm or corporation in connection with the sale of any product or service unless such person, firm or corporation performs a bona fide and essential supervisory, distributive, selling or soliciting function in the sale and delivery of products or services to the ultimate consumer.

4. Requiring prospective participants or participants, in order to participate in any manner in respondents' marketing or sales program, to purchase products or pay any other consideration other than the actual costs to respondents, as determined by generally accepted accounting principles, of reasonably necessary sales materials and training relating to the sale of products or services; *Provided, however*, That respondents may suggest, but not require, that participants or prospective participants purchase specific amounts of product inventory; *Provided*, That such suggested purchases shall not exceed the reasonably necessary inventory requirements of participants of the same level of distribution and status for a period not to exceed one (1) month, based on the actual monthly purchasing experience of at least fifteen percent (15 percent) of the participants who have been engaged in respondents' program at such level and status for at least six (6) months and who have purchased products or services, either directly or indirectly, from respondents within the past six (6) months.

5. Failing to repurchase any unused and undamaged products which were purchased directly or indirectly from respondents by a participant within eighteen (18) months before the voluntary or involuntary termination of such participant at not less than 95 percent of the net cost of such products to such participant upon the return of such products to respondents or their designated nominee for such purpose, freight prepaid.

6. Failing, clearly and conspicuously, to disclose on each product or services order form and other documents utilized by participants or prospective participants to acquire products or services either directly or indirectly from respondents the following: Distributors are not required to purchase any specific amount of products. (*Name of applicable business organization*) guarantees the repurchase, at 95 percent of net cost, of all unused and undamaged products purchased within 18 months before a distributor's termination and returned freight prepaid.

7. Using any marketing or sales program which fails to:

(a) Inform orally all new participants in such program and to provide

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in writing in all contracts of participation relating thereto that the contract may be cancelled for any reasons by notification to respondents or to their sponsoring distributor, in writing, within three (3) working days from the date of execution of such contract.

(b) Refund immediately all monies to (1) participants who have requested contract cancellation in writing within three (3) working days from the execution thereof, and (2) participants showing that respondents' contract solicitation or performance were attended by or involved violation of any of the provisions of this order.

8. Representing, directly or by implication, or by use of hypothetical examples that participants in any marketing program, or any other kind of merchandising, marketing or sales promotion program, will earn or receive, or have the potential or reasonable expectancy of earning or receiving, any stated or gross or net amount, or representing in any manner the past earnings of participants, unless in fact the earnings represented are those of a substantial number of participants in the community or geographic area in which such representations are made, and the representation clearly indicates the amount of time required by said past participants to achieve the earnings represented, and failing to maintain adequate records which disclose the facts upon which any claims of the type discussed in this paragraph are based, and from which the validity of any claim of the type in this paragraph can be determined.

9. Representing, directly or by implication, that it is not difficult for participants to recruit or retain persons to invest in respondents' marketing or sales programs as distributors or as sales personnel to work home routes or sell respondents' products door-to-door or any other manner.

10. Representing, directly or by implication, that it is not difficult for participants to ascend to a higher level of distribution within the marketing chain.

11. Representing, directly or by implication, that all participants in respondents' marketing or sales programs will succeed.

12. Representing, directly or by implication, that the supply of available entrants or investors in the respondents' marketing program is inexhaustible; or misrepresenting, in any manner, the availability of such entrants or investors.

13. (a) Failing to disclose, in writing, the existence of this order to cease and desist and its terms to all present and future distributors, salesmen or other persons engaged in the sale of respondents' products, services or merchandising programs by mailing to the last known address of each present distributor such written disclosures and by securing from each distributor, salesman or other person who becomes

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a participant in respondents' marketing or sales program subsequent to the effective date of this order a signed statement evidencing receipt of such disclosure. ("Present distributors" as used herein shall mean those distributors who have purchased products, directly or indirectly, from respondents within eighteen (18) months of the effective date of this order.)

(b) Failing to make available on request a copy of this cease and desist order to any participant or prospective participant.

*It is further ordered,* That for 120 days subsequent to the effective date of this order or until the existing order forms presently utilized by respondents are exhausted, whichever occurs first, it shall be sufficient to show compliance with Part II, paragraph 6 of this order, to show that each order form which respondents disseminate subsequent to the effective date of this order has attached to it or stamped thereon the disclosure required by said paragraph 6.

*It is further ordered,* That the corporate respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, 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 which may affect compliance obligations arising out of this order.

*It is further ordered,* That the respondent corporations shall forthwith, distribute a copy of this order to each of their operating divisions.

*It is further ordered,* That the corporate respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

FLEETWOOD ENTERPRISES, INC.

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

*Docket C-2641 Complaint, Mar. 4, 1975 - Decision, Mar. 4, 1975*

Consent order requiring a Riverside, Calif., manufacturer of mobile homes, among other things to cease unfair and deceptive warranty practices through the establishment of a prompt and effective system to handle warranty-related problems. The order requires respondent to provide warranty repairs or services on still-unrepaired mobile homes manufactured between 1972 and 1974 and to provide future retail purchasers with relief by establishing and

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maintaining a regular and effective system to handle complaints and service. Under this system, all repairs must be complete within thirty days after notification to the respondent of defects. Where the defects affect safety or habitability of the mobile home, the repairs must be started within three business days and be expeditiously completed.

*Appearances*

For the Commission: *Eric M. Rubin, Robert N. Weinstock, Walter E. Diercks and Pamela B. Stuart.*

For the respondents: *William H. Lear, Riverside, Calif., and Donald Belcher, Gibson, Dunn & Crutcher, Los Angeles, Calif.*

## 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 Fleetwood Enterprises, Inc., a corporation, and certain of its subsidiaries, (hereinafter referred to as respondents) have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint and the order attached hereto the term "mobile home" means a movable or portable dwelling over thirty two feet in body length and over eight feet in width, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence, which may include one or more components which can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit. "Mobile home" as used herein includes the mobile home structure, including the plumbing, heating and electrical systems.

PAR. 2. Respondent Fleetwood Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 3125 Myers St., P.O. Box 7638, Riverside, Calif.

PAR. 3. Respondents are now and have been engaged in the design, manufacture, advertising, offering for sale, sale and distribution of mobile homes to selected mobile home dealers. Manufacturing is accomplished in approximately 32 facilities controlled and operated by respondents, located in approximately 18 states. Respondent Fleetwood Enterprises dominates, controls, condones, approves and derives

pecuniary benefit from the conduct of its subsidiaries engaged along with it in the above described business.

PAR. 4. In the further course and conduct of their aforesaid business respondents are now and have been soliciting persons (individuals, partnerships and corporations) to become "authorized" dealers, and are also solicited by persons who desire to become "authorized" dealers. Respondents select certain of these persons as "authorized" dealers. In the normal course of business respondents sell and distribute the aforesaid homes only to these "authorized" dealers who then resell these products to the public. In the normal course of business the way in which the aforesaid homes are purchased new at retail unused by a first purchaser is through an "authorized" dealer.

PAR. 5. In the further course and conduct of their aforesaid business respondents place primary reliance on their "authorized" dealers to ascertain which of their aforesaid mobile homes contain defects which are subject to the aforesaid warranty, and to notify respondents of defects for which respondents assume responsibility. Respondents also place primary reliance on their "authorized" dealers to effect such repairs and services as are necessary to correct defects covered by the aforesaid warranty and to notify respondents of those defects covered by the aforesaid warranty which said dealers are unable or unwilling to fully correct, so that respondents may repair the aforesaid defects either directly with their own personnel or through the use of an independent service contractor.

PAR. 6. In the further course and conduct of their aforesaid business, respondents now cause and have caused, their mobile homes to be transported to "authorized" dealers located in various States of the United States and to be sold to retail purchasers by such dealers. Respondents therefore maintain and have maintained a substantial course of trade in said mobile homes in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the further course and conduct of their aforesaid business respondents are now, and have been, orally or in writing, directly or through their dealers and others, granting or disseminating certain warranties or certain statements concerning their warranties to each retail purchaser of their aforesaid mobile homes by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

(a) Each written warranty disseminated by respondents since approximately Oct. 1972 represents directly or by implication that respondents warrant their mobile homes to be free from any substantial manufacturing defects in material or workmanship and that respondents shall for all purchasers or their transferees repair or

replace any parts which respondents determine to be defective, or take other appropriate action at the site of the unit for one year after the delivery of the unit to the purchaser. Each written warranty disseminated by respondents prior to approximately Oct. 1972, and for some time previous, represented directly or by implication that respondents' mobile homes were guaranteed to the original purchaser to be free from manufacturing defects in materials and workmanship, except for certain specific components therein enumerated as not being warranted by respondents at all, including but not limited to appliances and furniture.

Both of the aforesaid written warranties further purport to disclaim all other warranty rights which are imposed by force of law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, and represent directly or by implication that the aforesaid written warranties set forth the full extent of respondents' warranty obligations.

PAR. 8. In the further course and conduct of their aforesaid business respondents have engaged in acts and practices which result in, and have resulted in, the failure to maintain an adequate, regular and effective system which assures that every retail purchaser of respondents' mobile homes in fact receives full service and repair of defects covered by the aforesaid warranty within a reasonable time.

Typical, but not inclusive of such acts and practices, are:

(a) The dissemination of a written warranty as described in Paragraph Seven which fails to disclose the true nature and extent of purchasers' warranty rights and those warranty obligations which respondents in fact undertake in the normal course of business, including but not limited to:

(1) The fact that pursuant to respondents' policies it is regarded as the "authorized" dealers' sole and complete responsibility, at least in the first instance, to perform repairs and service for certain classes of defects covered by the aforesaid warranty without compensation or reimbursement by respondents and without regular and effective action by respondents to determine whether such repairs and service are in fact fully performed within a reasonable time.

(2) The representations, made directly or by implication, that the aforesaid warranties are the sole legal warranties, that they legally exclude and disclaim all implied-in-law warranties, and that said warranties state the sole legal remedy available to the purchaser, when in truth and in fact under the applicable law of several states in which respondents' homes are sold at retail such exclusions, disclaimers or limitations are unenforceable.

(3) The representation, made directly or by implication, that as a

condition precedent to securing full performance by respondents of their warranty obligations every party to whom the warranty is offered must complete properly and mail to respondents a certain Warranty Card at the time he or she purchases said mobile home, when in truth and in fact respondents' internal policy is to provide such performance irrespective of whether the card has been returned.

(b) The failure to scrutinize, adequately evaluate and assure that all prospective dealers, prior to their "authorization" as described in Paragraph Four are competent to perform warranty service or have made adequate arrangements for performing warranty service through independent contractors.

(c) The failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, notify respondents of the existence of claims initiated by retail purchasers for warranty service or for repair of defects covered by the aforesaid warranty.

(d) The failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, in fact fully perform and complete within a reasonable time all warranty service and repairs performed on behalf of respondents.

(e) The failure to establish and maintain an effective and regular mechanism for the prompt and fair resolution of mobile home consumer complaints and requests for service and repairs relating to respondents' warranty or warranty policies.

(f) The failure to scrutinize, adequately evaluate and assure that all prospective dealers, prior to their "authorization" as described in Paragraph Four, either directly or by action through independent contractors, are competent to perform a thorough inspection of a mobile home prior to its tender to a retail customer to determine whether a home contains defects covered by the aforesaid warranty.

(g) The failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, actually perform or assure the performance of a thorough inspection of a mobile home prior to its tender to a retail customer to determine whether a home contains defects covered by the aforesaid warranty.

(h) The failure to scrutinize, adequately evaluate and assure that all prospective dealers, prior to their "authorization" as described in Paragraph Four, either directly or by action through independent contractors, are competent to perform the installation or "setup" of the aforesaid mobile homes at the homesite selected by the retail purchaser.

(i) The failure to scrutinize, adequately evaluate and assure that all

“authorized” dealers, either directly or by action through independent contractors, actually and competently perform the installation or “setup” of the aforesaid mobile homes.

(j) The failure to maintain an adequate and expert factory service capability or to make other provisions adequate to assure the full performance within a reasonable time of the repair of defects covered by the aforesaid warranty which respondents’ “authorized” dealers are unwilling or unable to perform.

The aforesaid failure to maintain a regular and effective system which assures the full performance within a reasonable time of service and repair of defects covered by the aforesaid warranty has the capacity or tendency to impede, delay or prevent the performance of said service and repairs for parties to whom the warranty is offered.

PAR. 9. By and through the aforesaid acts and practices respondents have been and are now:

(a) Disseminating a warranty which fails to fully and completely inform purchasers as to the actual protection offered by respondents.

(b) Failing to establish or maintain an effective or adequate system which assures that respondents will fully correct or repair all defects covered by the aforesaid warranty within a reasonable time.

The aforesaid acts and practices are deceptive and are in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. By such failure to maintain a regular and effective system which assures that every party to whom the warranty is provided will receive full performance within a reasonable time of the service and repair of defects covered by the aforesaid warranty respondents have been and now are engaged in unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. Through the individual and cumulative acts and practices set forth in Paragraph 8(a) respondents are now and have been disseminating and causing the dissemination of a written warranty which fails to fully and accurately describe the true nature and extent of the warranty rights of retail purchasers of respondents’ mobile homes and those warranty obligations which in fact respondents undertake in the normal course of business. Thus respondents have failed to disclose material facts which if known to consumers:

(a) Would be likely to affect their decision of whether to purchase one of respondents’ mobile homes, and

(b) Would enable retail purchasers to understand the true nature and extent of their warranty rights and to secure performance of such warranty service.

Therefore, the aforesaid failures to disclose material facts are



deceptive and unfair and are in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 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(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Fleetwood Enterprises, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 3125 Myers St., P.O. Box 7638, Riverside, Calif.

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

1. *It is ordered*, That respondents shall within 90 days from the effective date of this order make a written inquiry of all known retail purchasers of respondents' mobile homes (except those specifically excluded below) built between July 1, 1972 and June 30, 1974, utilizing the form of letter shown in Appendix A attached hereto and made a

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part hereof which shall contain therein a self-addressed postage paid return envelope, and which shall be mailed to such purchasers by first class mail.

Known retail purchasers are defined as those first purchasers at retail of said mobile homes who communicate with respondents no later than 60 days after the effective date of this order and those first retail purchasers whose names and addresses (1) are contained in company "coach" or unit files and tire records (except that with respect to respondents' manufacturing plants which maintained for the period July 1, 1972 to June 30, 1974 separate files for warranty registration cards the names and addresses of known retail purchasers may be established from such separate files rather than by reference to "coach" or unit files); (2) are supplied by the Federal Trade Commission within 60 days of the effective date of this order or; (3) are supplied to respondents by respondents' past and current dealers in response to respondents' letter request for such information sent by first class mail, (which letters shall be sent no later than 30 days after the effective date of this order) utilizing the form of letter shown in Appendix B attached hereto and made a part hereof and which shall contain therein a self-addressed postage paid return envelope.

Notwithstanding the above, known retail purchasers shall not include:

- (a) local, State or Federal Governments or agencies thereof;
- (b) retail purchasers who are now or have been engaged in litigation with respondents involving their mobile home built by respondents during the two year period set forth hereinabove;
- (c) retail purchasers whose homes were sold to them on an "as is, where is" basis;
- (d) retail purchasers who communicated directly with respondents' corporate headquarters or its attorneys concerning a problem or defect in such purchaser's mobile home, where there is a record indicating a resolution of the problem to the purchaser's satisfaction;
- (e) retail purchasers whose names are supplied by past or current dealers in response to respondents' written inquiries set forth hereinabove when such names are received by respondents from a dealer more than sixty days after respondents' inquiry was mailed to that dealer unless the purchaser or purchasers themselves communicate with respondents no later than 60 days after the effective date of this order, or the name or names of such purchaser or purchasers appear elsewhere in respondents' individual unit or coach files, (or where applicable, warranty card files) or were supplied to respondents by the Federal Trade Commission as set forth hereinabove;
- (f) retail purchasers who live outside the United States or who

purchased mobile homes from dealers located outside the United States;

(g) retail purchasers who are known to respondents to no longer own their mobile homes built by respondents.

2. *It is further ordered*, That respondents shall, directly or through their dealers or other third parties, repair or service within a reasonable time at the site of the home (in the normal course not to exceed ninety days from the date on which the letter to a given retail purchaser referred to in order Paragraph 1 is returned and received by respondents) all defects and malfunctions in mobile homes produced by respondents during the two year period referred to hereinabove which become known pursuant to order Paragraph 1 unless it is clear that a given defect or malfunction:

(a) is a result of improper setup of the mobile home;  
(b) is a result of improper use or abuse of the mobile home;  
(c) did not arise or become evident within the term of the warranty;  
(d) was brought to respondents' attention by a retail purchaser more than sixty days after respondents mailed the written inquiry to such purchaser as *provided* hereinabove where the home was purchased by the first retail purchaser more than one year prior to the effective date of this order;

(e) is a minor cosmetic defect in a home purchased by the first retail purchaser more than one year prior to the effective date of this order.

3. *It is further ordered*, That respondents cease and desist from disseminating, or causing the dissemination of, offering or otherwise providing, in commerce, any express warranties to the retail purchasers of respondents' mobile homes unless respondents meet all of their obligations under such warranties within the time period standards set forth hereinbelow in order Paragraph 3(e) and establish and maintain a regular and effective system reasonably designed to assure that every purchaser of the aforesaid mobile homes will receive full performance by respondents, directly or by action through their dealers or other third parties, of all such warranty obligations within the said time period standards. This warranty performance system shall incorporate but not necessarily be limited to the following standards and terms:

(a) Respondents shall disseminate a warranty and associated documents which clearly and fully describe and effectively communicate to the first retail purchaser;

(1) the identity and address of the warrantor;  
(2) the nature and extent of the warranty offered or otherwise provided;  
(3) the remedies available to the purchaser under the warranty;  
(4) the manner in which respondents intend to provide for

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performance of their warranty obligations, including disclosure of any delegation of warranty responsibility to third parties; *Provided, however,* that disclosure of said delegation must be accompanied by additional disclosure that such delegation in no way relieves respondents of the ultimate responsibility to fulfill all of respondents' warranty obligations;

(5) any and all requirements which must in fact be fulfilled by the purchaser as a condition precedent to securing performance by respondents of their warranty obligations;

(6) a uniform procedure to be followed by a purchaser in order to request performance by respondents of their warranty obligations;

(7) a uniform procedure available to the purchaser for a systematic review and disposition of complaints and disputes with respect to the performance of respondents' warranty obligations by respondents' manufacturing plants, subsidiaries, divisions, and other employees, or by respondents' dealers or other third parties.

(b) Respondents shall cease and desist from selling their mobile homes without any express or implied warranty, *i.e.*, "as is, where is," or with any disclaimer of implied warranties or limitations or exclusion of liability under any warranty or disseminating or causing the dissemination of any statement or representation which represents directly or by implication, that respondents have disclaimed and express or implied warranty or limited or excluded any liability under any warranty unless respondents have a reasonable basis in the form of an opinion by legal counsel that said disclaimers, limitations and exclusions are enforceable under governing State law, and clear and conspicuous notice of said "as is, where is" sale or other said disclaimer, limitation or exclusion is given to prospective retail purchasers of their mobile homes prior to the execution of the contract of retail purchase. A clear and conspicuous notice of an "as is, where is" sale shall contain the following language:

#### NOTICE

The manufacturer of this mobile home sells it "as is, where is" and refuses to assume any responsibility for defects. The purchaser of this mobile home must accept it with all defects and take the entire risk, under contract law, as to its condition.

*Provided however,* That with respect to: (a) the "as is, where is" sale of damaged, salvaged, demonstrator or repossessed mobile homes, (b) the sale of mobile homes where respondents disclaim or fail to grant an express warranty on appliances which are covered by a separate written warranty by a supplier or manufacturer other than respondents and (c) the "as is, where is" sale of mobile homes to local, State

and Federal Governments or agencies thereof, the aforesaid opinion by legal counsel shall not be required.

(c) All of respondents' warranty service and repair obligations performed subsequent to the tender of the home to the retail purchaser shall be rendered by respondents, directly or through their dealers or other third parties at the site of the mobile home.

(d) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealers or any other persons not employees of respondents to:

(i) Determine whether any mobile home manufactured by respondents contains defects which are within the scope of a warranty extended by respondents or otherwise requires remedial action pursuant to said warranty;

(ii) notify respondents of the existence of those circumstances enumerated in subparagraph (d)(i) above; or

(iii) perform any repairs or otherwise provide services in satisfaction of any warranty obligations incurred by respondents;

Respondents shall, beginning within 120 days of the effective date of this order, assure that if a dispute or disagreement should arise between respondents and one or more of said dealers or other third persons as to which of them is to incur any such duty, burden or responsibility with respect to warranty repairs and service or is to correct a malfunction related or alleged to relate to setup of the aforesaid mobile homes, any and all necessary repairs or other corrective action will be expeditiously provided (in the normal course of business) in a manner consistent with this order, regardless of whether the said dispute or disagreement has been resolved. The "normal course of business" does not include:

(1) conditions under which abnormal demands are made upon service capabilities as a result of natural disasters, other acts of God or the government (including the effects of remedial action required of respondents as set forth in order Paragraphs 1 and 2, above), or any other event beyond the control of respondents and their dealers which places an unusually large demand upon service facilities;

(2) conditions resulting from disasters, strikes, acts of the government, instances of force majeure or other similar occurrences which are beyond the control of respondents and their dealers and which prevent respondents and their dealers from responding to service requests within the time periods stated hereinbelow;

(3) slight omissions or deviations from the terms of this order which are inadvertent, unintentional, and not due to bad faith of respondents;

(e)(1) Respondents shall, beginning within 120 days of the effective date of this order, directly or through their dealers or other third

parties commence, in the normal course of business as set forth in order Paragraph 3(d) above, all warranty service or repairs of defects giving rise to a condition which affects the safety of a mobile home or renders it substantially uninhabitable, as soon as possible but in no event later than three business days following receipt of notice of such defect by respondents from the retail purchaser, or two business days following notice of the determination made by respondents' dealer pursuant to order Paragraph 3(i)(3)(iii) below, and shall complete such service or repairs expeditiously.

(2) Respondents shall, except as set forth in order Paragraph 3(e)(1) above, beginning within 120 days of the effective date of this order, directly or through their dealers or other third parties, in the normal course of business, as set forth in order Paragraph 3(d) above: (a) respond to notice of the need for warranty service or repairs within a reasonable time not to exceed seven business days of receipt of said notice by respondents or their dealers and (b) complete said service or repairs within a reasonable time not to exceed thirty days following said receipt of notice.

(3) *Provided however;* That in the event of a bona fide dispute between respondents or their dealers and a retail purchaser requiring resolution through the procedure established pursuant to order Paragraph 3(m) below, as to whether the defect(s) complained of by the retail purchaser are or are not covered by respondents' warranty, then: In the event it is determined that warranty service or repair is required, which determination shall be made promptly respondents shall be allowed, in the normal course of business as set forth in order Paragraph 3(d) above, from the date of notification of the dispute as set forth in this subparagraph (e)(3) no more than three business days in the case of defects referred to in subparagraph (e)(1) above, to commence service or repair (such repairs to be completed expeditiously), and no more than thirty days in the case of defects referred to in subparagraph (e)(2) above to complete service or repair.

(f) Respondents shall, except as provided in order Paragraph 3(h) below, in the normal course of business as set forth in order Paragraph 3(d) above, beginning within 120 days of the effective date of this order, inspect at the home site directly or through their dealers or other third parties, each mobile home prior to or at the time of tender of possession to the retail purchaser to assure that the home is being delivered to such purchaser free of all ascertainable defects and is properly setup, except for deficiencies which do not affect the home's safety or habitability, which shall be noted in the owner dealer final delivery checklist (Appendix C), and which shall be then remedied in accordance with subparagraph (e)(2) above.

(g) Respondents shall, except as provided in order Paragraph 3(h) below, in the normal course of business as set forth in order Paragraph 3(d) above, beginning within 120 days of the effective date of this order, reinspect, directly or through their dealers or other third parties each mobile home between twenty-five and forty-five days after tender of possession to the retail purchaser to determine the existence of and to correct or arrange for the correction of any defects covered by respondents' warranty in the mobile home, or improper setup and problems arising therefrom.

Results of each of the inspections required in order Paragraphs 3(f) and 3(g) hereinabove will be documented in a report or reports which shall be required to be signed by respondents' dealer and if possible by the retail purchaser or said purchaser's representative, indicating agreement with the information set forth therein. The reports documenting the results of the aforesaid inspections may be in the formats set forth in Appendices C and D attached hereto, or in formats substantially equivalent thereto.

(h) If the retail purchaser elects to provide for the setup of his mobile home himself, then in such cases the responsibility of respondents and their dealers for transportation, setup, inspection and reinspection, as set forth in subparagraph (f) and (g) above, shall terminate with the delivery or tender of possession to the retail purchaser or his agent or representative.

(i) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealers to perform the duties set forth in order Paragraph 3(d) above, respondents shall enter into written contractual agreements with such dealers which:

1) adequately and accurately describe the scope of those duties, to be borne by said dealers as aforesaid, as well as the responsibility for properly setting up respondents' mobile homes;

2) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i) to provide respondents with the name and address of each retail purchaser and the date of each purchase;

3)(i) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i), to commence all warranty service, or repair of defects, giving rise to a condition which affects the safety of a mobile home or renders it substantially uninhabitable as soon as possible but in no event later than three business days following receipt by the dealer of notice of such defect or condition and to complete such service or repairs expeditiously;

(ii) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i), to complete all other warranty

service or repairs within a reasonable time, not to exceed thirty days following receipt by the dealer of notice of such condition;

(iii) set forth that the requirements of subparagraph (i)(3)(i) and (i)(3)(ii) above shall apply only to those cases in which the dealer responds to and completes the service or repairs himself. In those cases in which the dealer determines to rely upon respondents to perform or to complete service or repairs requested by retail purchasers under:

(a) subparagraph (i)(3)(i) above, such determination shall be made and communicated to respondents as soon as possible but in no event later than two business days after dealer's receipt of notice from the retail purchaser.

(b) subparagraph (i)(3)(ii) above, such determination shall be made and communicated to respondents as soon as possible but in no event later than five business days of receipt of notice from the retail purchaser.

(4) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i) to inspect each mobile home prior to or at the time of tender of possession to the retail purchaser as set forth in order Paragraph 3(f), except as provided in subparagraph (h) above to assure that the home is being delivered to such purchaser free of all ascertainable defects and is properly set up, except for deficiencies which do not affect the home's safety or habitability which shall be noted in the owner dealer final delivery checklist (Appendix C), and which shall then be remedied in accordance with subparagraph (i)(3)(ii) immediately above.

(5) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i), except as provided in subparagraph (h) above to reinspect each mobile home between twenty-five and forty-five days after tender of possession to the retail purchaser to determine the existence of and to correct or arrange for the correction of any defects in the mobile home covered by respondents' warranty or improper setup and problems arising therefrom;

(6) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i) to provide respondents with reports which will document the results of the inspections set forth in (4) and (5) immediately above and which will be signed by respondents' dealer and if possible by the retail purchaser or said retail purchaser's representative indicating agreement with the information set forth therein;

(7) provide for a procedure which assures that if a dispute or disagreement should arise between respondents and one or more of said dealers as to which of them is to incur any such duty, burden or



responsibility or is to correct an improper initial setup or a malfunction arising therefrom, any and all necessary repairs or other corrective action will be expeditiously provided, regardless of whether the said dispute or disagreement has been resolved;

(8) establish the duty of the dealer to maintain or contract for adequate service personnel and facilities;

(9) set forth service responsibilities in the event of termination of a dealer with respect to homes still under warranty or in the possession of the dealer and not yet sold to a retail purchaser at the time of termination;

(10) set forth the right of respondents to withdraw authorization from dealers failing to meet their responsibilities under the agreement.

Existing dealers authorized by respondents as of the effective date of this order shall execute such agreements (which agreements shall be immediately effective) within 180 days of the effective date of this order, or shall be terminated by respondents. Other dealers authorized by respondents later than the effective date of this order shall execute such agreements at the time of their authorization.

Such agreement shall be in the format set forth in Appendix E attached hereto or in a format substantially equivalent hereto.

The "normal course of business" as used in this order Paragraph 3(i) shall not include: (1) conditions under which abnormal demands are made upon service capabilities as a result of natural disasters, other acts of God or the government, or any other event beyond the control of the dealer which places an unusually large demand upon the dealer's service facilities; (2) conditions resulting from disasters, strikes, acts of the government, instances of force majeure or other occurrences which are beyond the control of the dealer which prevent the dealer from responding to service requests within the time periods stated hereinabove; (3) slight omissions or deviations from the terms of this order subparagraph which are inadvertent, unintentional and not due to bad faith of dealer.

(j) Respondents shall send a questionnaire (using the format set forth in Appendix F attached hereto or in a format substantially equivalent thereto) to all persons other than "as is, where is" purchasers who after the effective date of this order purchase at retail respondents' mobile homes which inquires as to:

(1) the existence of any defects in said mobile homes covered by respondents' warranty or improper setup or problems arising therefrom;

(2) whether the retail purchaser notified anyone of such defects or setup problems, and if so who was notified and when did such notification take place;

(3) the identity of any person who sought to service such defects or setup problems;

(4) whether such defects or setup problems were fully repaired, the period of time required to effect such repairs, and the identity of the parties who accomplished such repairs;

(5) whether the retail purchaser is satisfied with the promptness and quality of the repair.

Such questionnaire in the form of a postage paid self-addressed post card or a letter containing a postage paid self-addressed envelope, shall be sent between sixty and ninety days subsequent to the tender of possession of the home to the retail purchaser.

(k) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealer or any other persons not employees of respondents to perform any of the responsibilities or duties set forth in order Paragraph 3(d) hereinabove, respondents shall fully evaluate the level of expertise and physical and personnel resources of such dealers or other persons with respect to the ability to inspect, repair, service and setup all mobile homes manufactured by respondents prior to such delegation or reliance to assure that all said persons are capable of performing said responsibilities or have provided for such performance through a third party having such capability, in accordance with the standards set forth herein.

Respondents shall in addition regularly review and evaluate the manner in which such persons, directly or through another third party, perform the aforesaid responsibilities and maintain their service capabilities and shall withdraw said reliance and authorization from persons failing to meet those responsibilities or the standards set forth herein.

(l) The direct administration of respondents' warranty service program at the corporate level and the responsibility for supervising and assuring implementation of the warranty service program shall, beginning within 120 days of the effective date of this order, be vested in only those corporate officials who have no direct responsibilities on a day-to-day basis for the sale of respondents' mobile homes. The person or persons to whom the responsibility for supervising and assuring the implementation of the program is delegated shall make periodic reports at least on a monthly basis to respondents' responsible officers which shall include current information concerning:

(1) the current cost to respondents of warranty service;

(2) the incidence and nature of frequently recurring defects;

(3) those measures undertaken in response to reports of frequently recurring defects including but not limited to modification in production and design of respondents' mobile homes;

(4) analysis of the manner in which respondents' employees, dealers and other third parties are performing warranty and set up responsibilities.

(m) Respondents shall, beginning within 120 days of the effective date of this Order, establish a uniform procedure for the systematic receipt and analysis and fair disposition of all complaints or disputes which may arise between the aforesaid retail purchasers of respondents' mobile homes and respondents or respondents' dealers or other third parties, regarding any alleged warranty obligations of respondents.

Such procedure shall incorporate but not necessarily be limited to:

(1) prompt evaluation and response by respondents to all complaints within a reasonable time not to exceed five business days after receipt by respondents;

(2) the designation of a single focal point within the corporation for the receipt of said complaints;

(3) an effective mechanism for the fair and impartial resolution of such disputes by corporate level personnel not responsible for sales on a day-to-day basis;

(4) an accurate and complete record keeping system regarding the nature and disposition of all such disputes and complaints received by respondents;

(5) periodic review and evaluation by respondents of the effectiveness of such procedures and correction of such procedures where necessary.

(n) Respondents shall, beginning within 120 days of the effective date of this Order, maintain full and adequate records which disclose.

(1) the date of receipt, disposition and the date of disposition of each request for warranty service (including any refusal to accept a request and the reason for such refusal) received by respondents; and

(2) the results of the evaluation of service capacity provided for in Order Paragraph 3(k) above.

4. *It is further ordered*, That respondents shall forthwith distribute a copy of this order to each of their operating divisions or manufacturing plants engaged in the manufacture, offering for sale, sale, and distribution of mobile homes.

5. *It is further ordered*, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this order.

6. *It is further ordered*, That respondents shall, at intervals of 9, 18,

and 24 months following the effective date of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order. Such reports shall include but not be limited to the periodic reports submitted to respondents' responsible officers described in order Paragraph 3(1) above.

7. *It is further ordered,* That respondents shall furnish to the Commission nine months after the effective date of this order, a report which discloses the dates and manner in which dealers and retail purchasers were contacted pursuant to the procedures described in order Paragraph 1 above, and the dates and manner in which dealers and retail purchasers acted in response thereto and the dates and manner in which respondents acted in response to allegations by retail purchasers which purported to create an obligation on the part of respondents under the terms of order Paragraph 2 above. Respondents shall for a period of two years after the effective date of this order maintain records which are adequate to disclose respondents' compliance with order Paragraphs 1 and 2, in order that such records may be furnished by respondents to the Federal Trade Commission upon request.

8. *It is further ordered,* That respondents shall submit to the Federal Trade Commission for its review copies of any proposed substantial revisions in the questionnaire required pursuant to order Paragraph 3(j), the dealer agreement required pursuant to order Paragraph 3(i), and the warranty documents described in order Paragraph 3(a), at least 60 days prior to the proposed effective date of any such revisions. Such submissions will be required for the three years following the effective date of this order.

## APPENDIX A

*FLEETWOOD ENTERPRISES, INC.*

[Depiction  
of 3125 MYERS STREET — P.O. BOX 7638, CALIFORNIA 92503  
trademark TELEPHONE (714) 785-3500  
symbol]

(Date)

Dear Mobile Home Owner:

Thank you for purchasing one of Fleetwood Enterprises, Inc.'s mobile homes. Our homes are warranted for one year to be free from defects in material and workmanship. Any repairs required by this warranty should have been performed in full by the dealer who sold you your home or, if this was not possible, by the factory which manufactured it.

Through the following questionnaire, we are seeking to determine your experience with regard to service so that we may be sure you have received full performance of warranty obligations. If you have not received such full performance, your response to the following questions will enable us to provide you with the warranty service to which you are entitled. Please respond to the following questions and return this letter to Fleetwood Enterprises, Inc. in the enclosed postage-paid envelope. (If the space provided below is not adequate, please use an additional page.)

- (1) Have you experienced any problems with your mobile home which you feel are covered under our warranty? If so, please describe them and indicate when the problem occurred. \_\_\_\_\_

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

- (2) If you did experience a problem, please advise us of whom you contacted and when the contact was made. \_\_\_\_\_

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

- (3) If you did experience a problem, how long did it take to correct the problem and who provided the service? \_\_\_\_\_

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

- (4) If service was required, were you satisfied with the promptness, quality, and completeness of any required repairs? \_\_\_\_\_

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

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Appendices

(5) Who performed the set-up or installation of your home?

Dealer

\_\_\_\_\_  
(Name)

Independent Contractor

\_\_\_\_\_  
(Location)

Park Operator

(6) Are you satisfied with the manner in which your mobile home was set-up or installed? \_\_\_\_\_

\_\_\_\_\_

(7) Please advise us of any suggestions that you might have that will enable us to increase the quality, utility, and value that we strive to build into our homes. \_\_\_\_\_

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

We thank you for responding to the questions set forth above. Please return this letter to us in the enclosed postage-paid envelope.

Sincerely,

FLEETWOOD ENTERPRISES, INC.

Manager of Consumer Affairs

Enclosure

**APPENDIX B**

(Subsidiary Company Letterhead)

Gentlemen:

Pursuant to an agreement with the Federal Trade Commission, we are securing the name and address of all retail purchasers of our mobile homes built since July 1, 1972. Dealer submission of some of this information is necessary since our records fail to provide the information for a substantial number of homes

According to our records you purchased from us the mobile homes described by the serial numbers set forth below for which we have no record of the retail purchasers. Please fill in the names and addresses of the retail purchasers of these units and date of sale and return this letter in the postage-paid envelope provided within 21 days after receipt, as called for by the above agreement.

Sales Manager

SERIAL NUMBER	DATE OF RETAIL SALE	CUSTOMER'S NAME AND ADDRESS
_____	_____	_____
_____	_____	_____
		_____
		_____
		_____





RETAIL DELIVERY CHECKOUT

APPENDIX C



Manufacturer: \_\_\_\_\_ Dealer: \_\_\_\_\_

Owner: \_\_\_\_\_

(Name) \_\_\_\_\_ Date of Retail Delivery \_\_\_\_\_

(Address) \_\_\_\_\_ (Phone No.) \_\_\_\_\_ Model \_\_\_\_\_

(City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_ Unit Serial No. \_\_\_\_\_

Tire Identifications

No. _____	No. _____	No. _____
No. _____	No. _____	No. _____

If the home was not set-up by the dealer, indicate the name and location of the party performing this service; \_\_\_\_\_

The above dealer acknowledges that he has completed the following procedures and checks and that he has inspected the home with the owner and all items listed below have been found to be in a satisfactory condition.

**System Checks:**

Before connection to the utility source, the unit's fuel piping system was pressure tested with all appliance valves opened. Such test consisted of pressurizing the system for not less than 10 minutes at eight ounces (8 oz.) of pressure with no pressure loss.

The following electrical tests have been performed:  
 \_\_\_\_\_ continuity \_\_\_\_\_ polarity \_\_\_\_\_ high potential

After connection to the electrical source, the following were checked for proper operation (indicate  or N/A - not applicable):

<input type="checkbox"/> all interior lights	<input type="checkbox"/> all receptacles	<input type="checkbox"/> electric dryer
<input type="checkbox"/> all light switches	<input type="checkbox"/> circuit breakers	<input type="checkbox"/> refrigerator
<input type="checkbox"/> all fans	<input type="checkbox"/> range and/or	<input type="checkbox"/> garbage disposal
<input type="checkbox"/> furnace	<input type="checkbox"/> oven	<input type="checkbox"/> electric
<input type="checkbox"/> thermostat	<input type="checkbox"/> dishwasher	<input type="checkbox"/> water heater
<input type="checkbox"/> heat registers	<input type="checkbox"/> clothes washer	<input type="checkbox"/> (Other)
<input type="checkbox"/> smoke detector (s)		

After connection to the utility source, all appliances fueled by L.P., natural gas, or oil have been checked out to determine that they operate properly.

The furnace ducting system has been checked to determine that ducts are connected unobstructed and distribute heat properly.

If an air conditioner is installed, the system has been checked for proper operation, including the thermostat control, and all ducts are connected, unobstructed and distribute cooling properly.

The water system has been pressurized to at least the maximum pressure to be expected from the local water supply system for a period of at least 10 minutes without any loss of pressure. (Maximum pressure to be applied to water system is 100 psi.)

After connection to the water supply and drain sources, all air has been bled from the water system, the water heater has been turned on and the following checks have been made:

- All hot water and cold water lines are connected to the proper fixtures
- No water leaks are evident in any exposed joints, connections, fittings, or fixtures after being under pressure for a least 10 minutes.
- All faucets are functioning properly and no leaks are evident
- All sinks, basins, tubs, shower pans, and toilets have been filled with water and flushed several times and no leaks are evident in their drain lines.

Dealer/Customer Comments: \_\_\_\_\_

**Mobile Home Supports, Tie Downs or Connections of Modules:**

- All pierings and supports have been installed in accordance with the instructions contained in the Installation Manual.
- The mobile home floor has been properly leveled.
- In the case of doublewide units and expandable units, the components have been properly aligned, all moldings and carpet has been applied, and all exterior siding, caps and flashing has been installed in accordance with the instruction contained in the Owner's Manual or Installation Manual.
- All anchors and tie-downs required by local conditions and regulations have been installed.

**Exterior:**

- All exterior doors close properly.
- All windows operate properly.
- All exterior screens and/or storm windows fit properly.
- The roof seams and all windows have been caulked or weatherproofed.
- The exterior siding and trim, including the rodent resistant exterior floor covering, has been inspected and is acceptable.

**Interior:**

The following components have been inspected:

_____ ceiling	_____ curtains & drapes	_____ drawers
_____ paneling	_____ lamps & light	_____ furniture &
_____ molding	_____ fixtures	_____ cabinets
_____ carpet &	_____ interior doors	_____ plumbing
_____ floor	_____ cabinet doors	_____ fixtures
_____ covering		

**Manuals, Warranties, Instructions, Etc.:**

The following items has been delivered to the owner by the dealer or performed by the dealer:

- Warranty covering this mobile home.
- Owner's Manual for this mobile home.
- Installation instructions for this mobile home.
- Separate operational and service manuals, and warranties covering the water heat or furnace, refrigerator, range and oven, and, if applicable, the dishwasher, garbage disposal, washer and dryer.
- All required keys.
- The retail customer has been instructed in the proper use of all of the appliances in the unit.

Fleetwood requires and reimburses its dealers for performing this Delivery Checklist and subsequent inspections between 25 and 45 days after the initial occupancy. The owner should not sign this statement until all of the items indicated above have been performed or explained to his satisfaction. The dealer is not authorized to deliver the mobile home unless the above indicated items have been performed and files from his home properly signed by both the dealer and the owner.

(Signature of Owner) \_\_\_\_\_ (Date) \_\_\_\_\_

(Signature of Dealer's Representative) \_\_\_\_\_ (Date) \_\_\_\_\_



## APPENDIX E

(The Following Shall Be Included As Part Of The Dealer Application Which Every Dealer Will Be Required To Execute)

Attached hereto as Exhibit A and made a part hereof is Fleetwood's Manufacturer-Dealer Service Policy, which sets forth the requirements and obligations of both dealer and manufacturer with respect to warranty service. By signing this Dealership Application, Dealer hereby agrees with the provisions of Exhibit A and agrees that, if appointed as an authorized dealer, Dealer will carry out its obligations in accordance with Exhibit A on all mobile homes which it purchases and resells to a retail customer.

## Exhibit A

*Fleetwood Manufacturer-Dealer Service Policy*

Whereas, Manufacturer is engaged in the manufacture and sale of mobile homes; and  
Whereas, Dealer desires to act as a retail dealer of mobile homes manufactured by Manufacturer and;

Whereas, Manufacturer disseminates to retail purchasers through its retail dealers, a warranty;

Whereas, Manufacturer and Dealer recognize that the satisfaction and good will of retail purchasers are of primary importance and can best be achieved in most circumstances by Manufacturer delegating to Dealer and Dealer performing prompt, efficient, and courteous warranty service and repairs.

Now therefore, in consideration of Manufacturer's sale to Dealer and Dealer's purchase from Manufacturer of mobile homes for resale to retail purchasers, Manufacturer and Dealer mutually agree as follows:

*Dealer's Responsibilities*

(1) Dealer will maintain, or arrange for through an acceptable independent contractor, a capability as to personnel, equipment and physical facilities sufficient to properly set-up all mobile homes which it purchases from Manufacturer and to perform all warranty service on such mobile homes as set forth below. Such capability shall be reviewed prior to acceptance of the dealer application and periodically thereafter. Maintenance of such capability, and the effective performance of the set-up and warranty service obligations as set forth hereunder shall be express conditions of remaining a dealer of Manufacturer's mobile homes. If, in Manufacturer's judgment, such capability of performance is lacking, this shall be grounds for termination of the dealer relationship.

(2) The capability to perform set-up and service shall include the use by Dealer of personnel who are experienced in setting up and servicing any and all types of mobile homes purchased by Dealer from Manufacturer. In the event that Dealer's personnel lack such experience, Dealer must notify the plant and agree to utilize an acceptable independent set-up and service contractor to set-up (or service) all units which its personnel are incapable of properly setting up (or servicing), and to send at least one of its set-up or service personnel to a training course conducted by Manufacturer before setting up any such unit.

(3) Upon receipt of each mobile home, Dealer shall inspect it for obvious defects and shortages, indicating any shortages on a Delivery Receipt provided by Manufacturer. If, when received by Dealer, the mobile home has too many obvious defects to be acceptable for retail sale, after correction of such defects by Dealer, Dealer should reject it and contact the plant immediately to arrange disposition of the unit. If Dealer does not reject the unit, he shall be expected to correct any defects (except as otherwise set forth herein), whether or not such defects were apparent at the time of delivery.

(4) Dealer shall assume full financial responsibility for and shall perform or arrange for the performance of, the set-up of the mobile home on a site designated by the retail consumer (unless such consumer shall have given Dealer a written release from this obligation in a form approved by Manufacturer, a copy of which shall be transmitted to the plant). Set-up of the mobile home shall be performed in accordance with the Set-Up Instructions provided by Manufacturer, and particular attention will be paid to the following items:

- (a) proper leveling of the home.
- (b) a check and, if necessary, adjustment of all interior and exterior doors and windows so that each works freely and catches or locks properly.
- (c) connection of all utilities to the appropriate supply or drain sources, and the testing of utilities and appliances to determine that they function properly.
- (d) installation of all items which cannot be installed in the factory.
- (e) the performance of any other operations, such as installing tie-downs, which may be required by local or state codes.
- (f) as to multiple and expanding units, the proper mating of the mobile home sections and the proper connection of the structure, including the application of roof caps, siding, etc.
- (g) weatherproofing of the roof, especially at joints and at points where any fasteners such as screws have been removed or inserted to connect appliances or accessories.
- (h) weatherproofing of all windows.

(5) Prior to turning the mobile home over to the retail consumer for permanent occupancy Dealer or his representative will inspect the home again to make sure that it is fit for occupancy, and is free of all defects which affect the safety of the mobile home or render it substantially uninhabitable, and will fill out the Retail Delivery Checkout form provided by Manufacturer, listing the retail consumer's name and address, and the date of first occupancy of the mobile home. The customer's signature on this report will be obtained as specified. Copies of the Retail Delivery Checkout form will be forwarded in a timely manner by Dealer to Manufacturer in accordance with the instructions provided.

(6) In addition, Dealer or his representative will reinspect the mobile home between 25 and 45 days after the date of first occupancy to determine if there are any defects or problems concerning the mobile home or its set-up. At, or shortly following this inspection, Dealer will make or arrange for any required repairs, will relevel the home and will file a Reinspection report with Manufacturer on the form provided by Manufacturer. This form will be signed by the customer indicating his agreement with the information contained in the report. Such report will be promptly forwarded to Manufacturer.

(7) Dealer will perform, or arrange for the performance of, and will be financially responsible for, all repairs to each mobile home sold by him which may be required under Manufacturer's warranty which Dealer can perform. This shall include all repairs other than those listed under "Manufacturer's Responsibilities" below.

(8) Repairs, or other appropriate action, to correct any defect which affects the safety of a mobile home or renders it substantially uninhabitable will be commenced in the normal course of business as set forth in Paragraph (13) below by Dealer within three business days following receipt of notice of such defect or condition by Dealer, and such repairs or other action will be completed expeditiously. If the defect is one covered under "Manufacturer's Responsibilities" below, Dealer shall notify the Manufacturer within 2 business days following receipt of notice of such defect by Dealer and the repair shall be handled as set forth below in Paragraph (17).

(9) Dealer will respond in the normal course of business as set forth in Paragraph (13) below to notice of the need for warranty service or repairs other than as set forth in

Paragraph (8) above, within seven business days of receipt of such notice, and shall complete all such service or repairs within a reasonable time, not to exceed thirty days following receipt of such condition. If the defect is one covered under "Manufacturer's Responsibilities" below, Dealer shall notify the Manufacturer within 5 business days following receipt of notice of such defect by Dealer and the repair shall be handled as set forth below in Paragraph (17).

(10) In the event that problems occur with the set-up which Dealer does not correct, or if Dealer does not perform repairs which are his responsibility, in a timely manner as set forth in Paragraph (8) and (9) above, Manufacturer will assume responsibility for such repairs or corrections to the set-up and will bill Dealer for the cost incurred to correct these matters.

(11) Dealer will provide Manufacturer, in a timely manner, with a written report on a form provided by Manufacturer of each repair made by Dealer under the warranty on each mobile home sold by Dealer. Such report will include a description of the nature of the defect, the corrective action taken, and the party performing the repair.

(12) In the event that a retail consumer elects to provide for the set-up of the mobile home himself, then Dealer shall not be required to complete the Retail Delivery Checkout form or Reinspection report referred to above, but shall instead inform Manufacturer of such election by the retail consumer.

(13) The "normal course of business" does not include:

(a) conditions under which abnormal demands are made upon service capabilities as the result of natural disasters, other acts of God or the government, any other event beyond the control of Dealer which places an unusually large demand upon service facilities; and

(b) events such as disasters, strikes, acts of the government, instances of force majeure or other occurrences which are beyond the control of Dealer which prevent Dealer from responding to service requests within the time periods stated hereinabove in Paragraphs (8) and (9).

(c) slight omissions or deviations from the terms of this agreement which are inadvertent, unintentional, and not due to the bad faith of Dealer.

*Manufacturer's responsibilities*

(14) Manufacturer will supply Dealer with all material, which is not readily available, required to repair the mobile homes purchased by Dealer. If the material is required to correct damage or shortages noted on the Delivery Receipt, with which Manufacturer concurs, it will be supplied at no charge to Dealer. All other material will be billed to Dealer. Every effort will be made to ship the required material in accordance with Dealer's shipping instructions within five working days after it is requested. Upon request, any defective material will be returned by Dealer to Manufacturer.

(15) Manufacturer will return to Dealer the sum of \$100, (which shall be added to the purchase price of each mobile home) by return mail not to exceed ten days after the receipt of the properly filled out Retail Delivery Checkout form and the Reinspection Report for each unit sold, provided that:

(a) the reinspection was performed between 25 and 45 days after the first occupancy by the retail customer;

(b) all service and repairs that are the responsibility of Dealer have been performed;

(c) the Reinspection Report bears the signature of the retail customer, and

(d) the Reinspection Report is received by Manufacturer's Consumer Affairs Department 60 days after first occupancy of the mobile home.

(If the retail customer will not sign the Reinspection Report and all required adjustments have been made, a written statement detailing the attempts made to obtain the customer's signature and the reasons for the customer's refusal to sign the

Reinspection Report should be filed with the Consumer Affairs Department. The Consumer Affairs Department's decision on disbursing the \$100 will be final.)

(16) Approximately 90 days after the date of first occupancy of each mobile home, Manufacturer will send a questionnaire to each mobile home owner requesting information as to the satisfaction of the customer and any alleged defects in the mobile home or its set-up. Manufacturer will provide a copy of each returned questionnaire to Dealer and, if corrective action is required, Dealer shall arrange for and bear financial responsibility for such corrective action. (Unless such corrective action involves an item described below in Paragraph (17)).

(17) Manufacturer will, in a timely manner, perform or arrange for the performance of repairs, at its cost, which are beyond the reasonable capability of Dealer to perform. Such items will include the following:

- (a) defective or broken rafters or side wall studs
- (b) leaks in water lines in the floor
- (c) short circuits and open circuits in the walls
- (d) defects in the design of the mobile home
- (e) breaks or defects in the mobile home chassis

(f) major repairs to appliances, which will be the ultimate responsibility of Manufacturer's appliance vendors

- (g) major manufacturing defects resulting in structural failure

(h) other major manufacturing defects which Dealer cannot reasonably be expected to have the capability to repair which require the removal or application of interior or exterior wall, floor, or ceiling covering, or repairs to the chassis, of a character similar to those listed above.

(18) Manufacturer will select appliances for use in its mobile homes which are made by recognized manufacturers who have a service capability sufficient to provide reasonably available and capable service.

(19) Manufacturer will conduct training courses at its facility, at least every six months, to acquaint Dealer's set-up and service personnel (or the personnel of independent contractors utilized by Dealer) with the physical characteristics of mobile homes produced by Manufacturer and the recommended techniques for proper set-up and servicing of the mobile homes. Such training courses will be held at no cost to Dealer except for the cost of transportation and subsistence of the attending personnel of Dealer or his contractor.

*Miscellaneous*

(20) In the event that the manufacturer-dealer relationship is terminated for any reason by either Manufacturer or Dealer and any mobile home purchased by Dealer from Manufacturer and sold to a retail customer are still covered by Manufacturer's warranty, or have not yet been sold by Dealer to a retail customer, the obligations of Dealer and Manufacturer, as set forth above, shall continue with respect to all such mobile homes despite the termination of the manufacturer-dealer relationship.

(21) Failure by either party to fulfill the terms and conditions of this agreement shall be good and sufficient cause for termination by the other party of this agreement and of the manufacturer-dealer relationship.

(22) Manufacturer will not assume financial responsibility for performance of any repairs referred to in Paragraph (17), unless prior authorization for such repairs shall have been given to Dealer.

(23) The retail customer (or Dealer, if the unit has not been sold) is encouraged to make direct contact with the manufacturer of any equipment, appliances, or component parts installed in the mobile home which are not manufactured by Manufacturer when problems develop with such equipment, appliances or component parts. If the matter is

not resolved in a reasonable time, the manufacturer's plant manufacturing the mobile home should be notified.

(24) No cash settlements shall be made by Manufacturer in lieu of repairs.

(25) This agreement supersedes all prior agreements, both written and oral, between the parties hereto with respect to the subject matter of this agreement. This instrument contains the entire agreement between the parties hereto with respect to the subject matter of this agreement, and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. This agreement may not be amended or supplemented orally but only by an agreement in writing which has been signed by the party against whom enforcement of any such amendment or supplement is sought.

(26) Time is of the essence of this agreement, and all provisions of this agreement relating to the time of performance of any obligation under this agreement shall be strictly construed.

## APPENDIX F

**FLEETWOOD ENTERPRISES, INC.**

3125 MYERS STREET - P.O. BOX 7638, RIVERSIDE, CALIFORNIA 92503  
TELEPHONE (714) 785-3500

(Date)

Dear Mobile Home Owner:

For more than 20 years, Fleetwood Enterprises, Inc. and its subsidiary companies have manufactured quality, low cost mobile homes. Our records indicate that you have recently purchased a home manufactured by one of our subsidiaries.

Your home is warranted to be free from defects in material and workmanship for one year from the date of original purchase. If a defect comes to your attention during this time period, the dealer who sold you the home should be contacted. In most cases, he will be able to correct the problem. If the dealer is unable to make the correction, he is required to notify the manufacturer who will then assist in resolving the matter.

In order for us to determine if you have been satisfied with your home, we request that you respond to the following questions (if you need more space, please attach a separate page):

- (1) Have you experienced any problems with your home that you feel are covered by our warranty or arise from the improper setup or installation of your home?
- (2) If so, whom did you notify of these defects or setup problems (if any) and when did notification occur?
- (3) Were these problems satisfactorily resolved?
- (4) Do you have any suggestions that would be useful to us in improving our product for future customers?

It would be greatly appreciated if you would respond to the above questions and return this letter in the enclosed postage paid envelope.

We thank you in advance for your help in this matter.

Sincerely,

FLEETWOOD ENTERPRISES, INC.

Manager of Consumer Affairs

Enclosure





Complaint

85 F.T.C.

IN THE MATTER OF  
SKYLINE CORPORATION

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

*Docket C-2642. Complaint, Mar. 4, 1975 - Decision, Mar. 4, 1975*

Consent order requiring an Elkhart, Ind., manufacturer of mobile homes, among other things to cease unfair and deceptive warranty practices through the establishment of a prompt and effective system to handle warranty-related problems. The order requires respondent to provide warranty repairs or services on still-unrepaired mobile homes manufactured between 1972 and 1974 and to provide future retail purchasers with relief by establishing and maintaining a regular and effective system to handle complaints and service. Under this system, all repairs must be complete within thirty days after notification to the respondent of defects. Where the defects affect safety or habitability of the mobile home, the repairs must be started within three business days and be expeditiously completed.

*Appearances*

For the Commission: *Walter E. Diercks, Pamela B. Stuart, and Robert N. Weinstock.*

For the respondents: *Julius Schelezinger and Charles Smith, Morgan Smith & Bockius, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Skyline Corporation, a corporation, and certain of its subsidiaries, (hereinafter referred to as respondents) have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint and the order attached hereto the term "mobile home" means a movable or portable dwelling over thirty two feet in body length and over eight feet in width, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence, which may include one or more components which can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit. "Mobile home" as used

herein includes the mobile home structure, including the plumbing, heating and electrical systems.

PAR. 2. Respondent Skyline Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 2520 Bypass Rd., Elkhart, Ind.

PAR. 3. Respondents are now and have been engaged in the design, manufacture, advertising, offering for sale, sale and distribution of mobile homes to selected mobile home dealers. Manufacturing is accomplished in approximately 33 facilities controlled and operated by respondents located throughout the continental United States. Respondent Skyline Corporation dominates, controls, condones, approves and derives pecuniary benefit from the conduct of its subsidiaries engaged along with it in the above described business.

PAR. 4. In the further course and conduct of their aforesaid business respondents are now and have been soliciting persons (individuals, partnerships and corporations) to become "authorized" dealers, and are also solicited by persons who desire to become "authorized" dealers. Respondents select certain of these persons as "authorized" dealers. In the normal course of business respondents sell and distribute the aforesaid homes only to these "authorized" dealers who then resell these products to the public. In the normal course of business the way in which the aforesaid homes are purchased new at retail unused by a first purchaser is through an "authorized" dealer.

PAR. 5. In the further course and conduct of their aforesaid business respondents place primary reliance on their "authorized" dealers to ascertain which of their aforesaid mobile homes contain defects which are subject to the aforesaid warranty, and to notify respondents of defects for which respondents assume responsibility. Respondents also place primary reliance on their "authorized" dealers to effect such repairs and services as are necessary to correct defects covered by the aforesaid warranty and to notify respondents of those defects covered by the aforesaid warranty which said dealers are unable or unwilling to fully correct, so that respondents may repair the aforesaid defects either directly with their own personnel or through the use of an independent service contractor.

PAR. 6. In the further course and conduct of their aforesaid business, respondents now cause and have caused, their mobile homes to be transported to "authorized" dealers located in various States of the United States and to be sold to retail purchasers by such dealers. Respondents therefore maintain and have maintained a substantial course of trade in said mobile homes in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the further course and conduct of their aforesaid business respondents are now, and have been, orally or in writing, directly or through their dealers and others, granting or disseminating certain warranties or certain statements concerning their warranties to each retail purchaser of their aforesaid mobile homes by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

(a) Each written warranty disseminated by respondents prior to approximately Oct. 1972 in all States in which they did business, except California and prior to approximately May 1972 in California, represented directly or by implication that respondents would correct all defects in workmanship and materials of their mobile homes during the ninety (90) days subsequent to delivery to the retail purchaser, except for certain components therein enumerated, including but not limited to certain major appliances. Each written warranty disseminated by respondents since approximately October 1972 in all States in which they do business, except California, represents, directly or by implication, that respondents will repair any part of their mobile homes which fails because of a manufacturing defect within one year of delivery to the retail purchaser. Each written warranty disseminated by respondents in California since approximately May 1972 (certain changes not relevant hereto were made in approximately Oct. 1972) represents, directly or by implication that respondents will correct all substantial defects in material or workmanship of their mobile homes during the one year subsequent to delivery to the retail purchaser. Each written warranty disseminated by respondents prior to approximately Oct. 1972 in all states in which they did business, except California, further represented, directly or by implication, that respondents' obligation under said warranty was limited to repairing or replacing parts of their mobile home which were returned to their factory with transportation charges prepaid and which respondents determined to be defective.

Respondents' written warranty disseminated prior to approximately Oct. 1972 in all states in which they did business, except California and prior to approximately May, 1972 in California, and their warranty disseminated in California between approximately May and Oct. 1972 further purported to disclaim all other warranty rights which are imposed by force of law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose and represented directly or by implication that the aforesaid written warranties set forth the full extent of respondents' warranty obligations.

(b) Notwithstanding the foregoing, it is and has been respondents'

uniformly applied warranty policy that the aforesaid service and repair of defects covered by the written warranty will be provided at the mobile home site and that the return of the home, or the defective parts, as the case may be, with transportation charges prepaid is not a condition precedent to such performance.

PAR. 8. In the further course and conduct of their aforesaid business respondents have engaged in acts and practices which result in, and have resulted in, the failure to maintain an adequate, regular and effective system which assures that every retail purchaser of respondents' mobile homes in fact receives full service and repair of defects covered by the aforesaid warranty within a reasonable time.

Typical, but not inclusive of such acts and practices, are:

(a) The dissemination of a written warranty as described in Paragraph Seven which fails to disclose the true nature and extent of purchasers' warranty rights and those warranty obligations which respondents in fact undertake in the normal course of business, including but not limited to:

(1) the fact that pursuant to respondents' policies it is regarded as the "authorized" dealers' sole and complete responsibility, at least in the first instance, to perform repairs and service for certain classes of defects covered by the aforesaid warranty without compensation or reimbursement by respondents and without regular and effective action by respondents to determine whether such repairs and service are in fact fully performed within a reasonable time.

(2) the representations, made directly or by implication in respondents' written warranty disseminated prior to approximately Oct. 1972 in all states in which respondents did business except California and prior to approximately May, 1972 in California, and in respondents' written warranty disseminated in California between approximately May and Oct. 1972, that said warranties were the sole legal warranties, that they legally excluded and disclaimed all implied-in-law warranties, and that said warranties stated the sole legal remedy available to the purchaser, when in truth and in fact under the applicable law of several states in which respondents' homes were sold at retail such exclusions, disclaimers or limitations were unenforceable.

(3) the representation, made directly or by implication in respondents' written warranty disseminated prior to approximately Oct. 1972 in all states in which respondents did business except California and prior to approximately May, 1972 in California, that as a condition precedent to securing full performance by respondents of their warranty obligations every party to whom the warranty was offered must have properly completed and mailed to responder a certain owner's registration card within five days after the initial livery of

the mobile home to him or her, when in truth and in fact respondents' internal policy was to provide such performance irrespective of whether the card had been returned.

(4) the representation made directly or by implication in respondents' written warranty disseminated prior to approximately Oct. 1972 in all states in which respondents did business, except California and prior to approximately May, 1972 in California, that as a condition precedent to securing full performance by respondents of their warranty obligations every party to whom the warranty was offered must transport the defective part or if necessary the entire home to respondents' manufacturing plant, when in truth and in fact it was respondents' policy to provide such performance at the home site.

(b) the failure to scrutinize, adequately evaluate and assure that all prospective dealers, prior to their "authorization" as described in Paragraph Four are competent to perform warranty service or have made adequate arrangements for performing warranty service through independent contractors.

(c) the failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, notify respondents of the existence of claims initiated by retail purchasers for warranty service or for repair of defects covered by the aforesaid warranty.

(d) the failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, in fact fully perform and complete within a reasonable time all warranty service and repairs performed on behalf of respondents.

(e) the failure to establish and maintain an effective and regular mechanism for the prompt and fair resolution of mobile home consumer complaints and requests for service and repairs relating to respondents' warranty or warranty policies.

(f) the failure to scrutinize, adequately evaluate and assure that all prospective dealers, prior to their "authorization" as described in Paragraph Four, either directly or by action through independent contractors, are competent to perform a thorough inspection of a mobile home prior to its tender to a retail customer to determine whether a home contains defects covered by the aforesaid warranty.

(g) the failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, actually perform or assure the performance of a thorough inspection of a mobile home prior to its tender to a retail customer to determine whether a home contains defects covered by the aforesaid warranty.

(h) the failure to scrutinize, adequately evaluate and assure that all

prospective dealers, prior to their "authorization" as described in Paragraph Four, either directly or by action through independent contractors, are competent to perform the installation or "setup" of the aforesaid mobile homes at the homesite selected by the retail purchaser.

(i) the failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, actually and competently perform the installation or "setup" of the aforesaid mobile homes.

(j) the failure to maintain an adequate and expert factory service capability or to make other provisions adequate to assure the full performance within a reasonable time of the repair of defects covered by the aforesaid warranty which respondents' "authorized" dealers are unwilling or unable to perform.

The aforesaid failure to maintain a regular and effective system which assures the full performance within a reasonable time of service and repair of defects covered by the aforesaid warranty has the capacity or tendency to impede, delay or prevent the performance of said service and repairs for parties to whom the warranty is offered.

PAR. 9. By and through the aforesaid acts and practices respondents have been and are now:

(a) Disseminating a warranty which fails to fully and completely inform purchasers as to the actual protection offered by respondents.

(b) Failing to establish or maintain an effective or adequate system which assures that respondents will fully correct or repair all defects covered by the aforesaid warranty within a reasonable time.

The aforesaid acts and practices are deceptive and are in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. By such failure to maintain a regular and effective system which assures that every party to whom the warranty is provided will receive full performance within a reasonable time of the service and repair of defects covered by the aforesaid warranty respondents have been and now are engaged in unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. Through the individual and cumulative acts and practices set forth in Paragraph 8(a) respondents are now and have been disseminating and causing the dissemination of a written warranty which fails to fully and accurately describe the true nature and extent of the warranty rights of retail purchasers of respondents' mobile homes and those warranty obligations which in fact respondents undertake in the normal course of business. Thus respondents have failed to disclose material facts which if known to consumers:

(a) would be likely to affect their decision of whether to purchase one of respondents' mobile homes, and

(b) would enable retail purchasers to understand the true nature and extent of their warranty rights and to secure performance of such warranty service.

Therefore, the aforesaid failures to disclose material facts are deceptive and unfair and are in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 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(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Skyline Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana with its office and principal place of business located at 2520 By-pass Rd., Elkhart, Ind.

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

1. *It is ordered*, That respondents shall within 90 days from the effective date of this order make a written inquiry of all known retail purchasers of respondents' mobile homes (except those specifically excluded below) built between July 1, 1972 and June 30, 1974, utilizing the form of letter shown in Appendix A attached hereto and made a part hereof which shall contain therein a self-addressed postage paid return envelope, and which shall be mailed to such purchasers by first class mail.

Known retail purchasers are defined as those first purchasers at retail of said mobile homes who communicate with respondents no later than 60 days after the effective date of this order and those first retail purchasers whose names and addresses: (1) are contained in company tire records and warranty card files; (2) are supplied by the Federal Trade Commission within 60 days of the effective date of this order or (3) are supplied to respondents by respondents' past and current dealers in response to respondents' letter request for such information sent by first class mail, (which letters shall be sent no later than 30 days after the effective date of this order) utilizing the form of letter shown in Appendix B attached hereto and made a part hereof and which shall contain therein a self-addressed postage paid return envelope.

Notwithstanding the above, known retail purchasers shall not include:

- (a) local, State or Federal Governments or agencies thereof.
- (b) retail purchasers who are now or have been engaged in litigation with respondents involving their mobile homes built by respondents during the two year period set forth hereinabove.
- (c) retail purchasers whose homes were sold to them on an "as is" basis.
- (d) retail purchasers who communicated directly with respondents' corporate headquarters or their attorneys concerning a problem or defect in such purchaser's mobile home, where there is a record indicating a resolution of the problem to the purchaser's satisfaction.
- (e) retail purchasers whose names are supplied by past or current dealers in response to respondents' written inquiries to dealers as required above when such names are received by respondents from a dealer more than sixty days after respondents' inquiry was mailed to that dealer unless the purchaser or purchasers themselves communicate with respondents no later than 60 days after the effective date of this order, or unless the name or names of such purchaser or purchasers appear in respondents' warranty card files, or tire records



or were supplied to respondents by the Federal Trade Commission as set forth hereinabove.

(f) retail purchasers who live outside the United States or who purchased units from dealers located outside the United States.

(g) first retail purchasers who are known to respondents to no longer own their mobile homes built by respondents.

2. *It is further ordered*, That respondents shall, directly or through their dealers or other third parties repair or service within a reasonable time at the site of the home (in the normal course not to exceed ninety days from the date on which the letter to a given retail purchaser referred to in order Paragraph 1 is returned and received by respondents) all defects and malfunctions in mobile homes produced by respondents during the two year period referred to hereinabove which became known pursuant to order Paragraph 1 unless it is clear that a given defect or malfunction:

(a) is a result of improper setup of the mobile home.

(b) is a result of improper use or abuse of the mobile home.

(c) did not arise or become evident within the term of the warranty.

(d) was brought to respondents' attention by a retail purchaser more than sixty days after respondents mailed the written inquiry to such purchaser as provided hereinabove where the home was purchased by the first retail purchaser more than one year prior to the effective date of this order.

(e) is a minor cosmetic defect in a home purchased by the first retail purchaser more than one year prior to the effective date of this order.

3. *It is further ordered*, That respondents cease and desist from disseminating, or causing the dissemination of, offering or otherwise providing, in commerce, any express warranties to the retail purchasers of respondents' mobile homes unless respondents meet all of their obligations under such warranties within the time period standards set forth hereinbelow in order Paragraph 3(f) and establish and maintain a regular and effective system which is reasonably designed to assure that every purchaser of the aforesaid mobile homes will receive full performance by respondents, directly or by action through their dealers or other third parties, of all such warranty obligations within the said time period standards. This warranty performance system shall incorporate but not necessarily be limited to the following standards and terms:

(a) Respondents shall, beginning within 120 days of the effective date of this order, delegate the administration of and supervision over the operation of those aspects of respondents' warranty service program described in order Paragraphs 1, 2, and 3(b), 3(h), 3(k), 3(l) below to the Skyline Director of Consumer Services, who shall have no direct

responsibilities for the sale or marketing of respondents' mobile homes and who shall report to a vice-president of the corporation. The Director of Consumer Services shall be responsible for developing, implementing and supervising warranty service record keeping and followups, and he shall make analyses of service experience including the manner in which respondents' employees, dealers and independent contractors are carrying out warranty and setup responsibilities, and policy recommendations. The Director of Consumer Services shall in addition supervise the operation of the dispute settlement mechanism required under order Paragraph 3(n) below and shall make periodic reports as set forth in order Paragraph 3(m) at least on a monthly basis to respondents' responsible officers.

(b) Respondents shall disseminate a warranty and associated documents which clearly and fully describe and effectively communicate to the first retail purchaser:

(1) the identity and address of the warrantor;

(2) the nature and extent of the warranty offered or otherwise provided;

(3) the remedies available to the purchaser under the warranty;

(4) the manner in which respondents intend to provide for performance of warranty obligations, including disclosure of any delegation of warranty responsibilities to third parties; *Provided, however,* That disclosure of said delegation must be accompanied by additional disclosure that such delegation in no way relieves respondents of the ultimate responsibility to fulfill all warranty obligations;

(5) any and all requirements which must in fact be fulfilled by the purchaser as a condition precedent to securing performance by respondents of their warranty obligations;

(6) a uniform procedure to be followed by purchasers in order to request performance by respondents of their warranty obligations;

(7) a uniform procedure available to the purchaser for the systematic review and disposition of complaints and disputes with respect to the performance of respondents' warranty obligations by respondents' manufacturing plants, subsidiaries, divisions, and employees, or by respondents' dealers or other third parties. This procedure shall consist of a statement that all complaints addressed to the Director of Consumer Services will receive evaluation and response within five business days after receipt, and that in the event of disagreement between the retail purchaser and respondents' manufacturing plants, subsidiaries, divisions, employees or respondents' dealers or other third parties, the Director of Consumer Services will mediate the dispute, or a similar statement to the same effect.

(c) Respondents shall cease and desist from selling their mobile

homes without any express or implied warranty, *i.e.*, "as is," or with any disclaimer of implied warranties or limitations or exclusion of liability under any warranty or disseminating or causing the dissemination of any statement or representation which represents directly or by implication, that respondents have disclaimed any express or implied warranty or limited or excluded any liability under any warranty unless respondents have a reasonable basis, in the form of an opinion by legal counsel that said disclaimers, limitations and exclusions are enforceable under governing state law, and clear and conspicuous notice of said "as is" sale or other said disclaimer, limitation or exclusion is given to prospective retail purchasers of their mobile homes prior to the execution of the contract of retail purchase. A clear and conspicuous notice of an "as is" sale shall contain the following language:

#### NOTICE

The manufacturer of this mobile home sells it "as is" and refuses to assume any responsibility for defects. The purchaser of this mobile home must accept it with all defects and take the entire risk, under contract law, as to its condition.

*Provided, however,* That with respect to: (a) the "as is" sale of damaged, salvaged, demonstrator or repossessed mobile homes, (b) the sale of mobile homes where respondents disclaim or fail to grant an express warranty on appliances which are covered by a separate written warranty by a supplier or manufacturer other than respondents, and (c) the "as is" sale of mobile homes to local, state and federal governments or agencies thereof, the aforesaid opinion by legal counsel shall not be required.

(d) All warranty service and repair obligations performed subsequent to the tender of the home to the retail purchaser shall be rendered by respondents, directly or through their dealers or other third parties at the site of the mobile home.

(e) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealers or any other persons not employees of respondents to:

(i) determine whether any mobile home manufactured by respondents contains defects which are within the scope of a warranty extended by respondents or otherwise requires remedial action pursuant to said warranty;

(ii) notify respondents of the existence of those circumstances enumerated in subparagraph (e)(i) above; or

(iii) perform any repairs or otherwise provide service in satisfaction of any warranty obligations of respondents, respondents, beginning within 120 days of the effective date of this order, shall assure that if a dispute or disagreement should arise

between respondents and one or more of said dealers as to which of them is to incur any such responsibility with respect to warranty repairs and service or is to correct a malfunction related or alleged to relate to improper setup, any repairs or other corrective action will be expeditiously provided (in the normal course of business) in a manner consistent with this order, regardless of whether the said dispute or disagreement has been resolved.

The "normal course of business" does not include:

(1) conditions under which abnormal demands are made upon service capabilities as the result of natural disasters, other acts of God or the government (including the effects of remedial action required of respondents as set forth in order Paragraphs 1 and 2), or any other event beyond the control of respondents and their dealers which places an unusually large demand upon service facilities;

(2) conditions resulting from disasters, strikes, acts of the government, instances of force majeure or other occurrences which are beyond the control of respondents and their dealers which prevent respondents and their dealers from responding to service requests within the time periods stated hereinbelow;

(3) slight omissions or deviations from the terms of this order which are inadvertent, unintentional and not due to the bad faith of respondents.

(f)(1) Respondents shall, beginning within 120 days of the effective date of this order, directly or through their dealers or other third parties commence, in the normal course of business, as set forth in order Paragraph 3(e) above, all warranty services or repairs of defects giving rise to a condition which affects the safety of a mobile home or renders it substantially uninhabitable, as soon as possible but in no event later than three business days following receipt of notice of such defect by respondents from the retail purchaser, or within two business days following receipt of notice of the determination made by respondents' dealer pursuant to Paragraph 3(j)(3)(iii)(a) below, and shall complete such service or repairs expeditiously.

(2) Respondents shall, except as set forth in subparagraph (f)(1) above, beginning within 120 days of the effective date of this order, directly or through their dealers or other third parties, in the normal course of business, as set forth in order Paragraph 3(e) above: (a) respond to notice of the need for warranty service or repairs within a reasonable time not to exceed seven business days of receipt of said notice by respondents or their dealers and (b) complete said service or repairs within a reasonable time not to exceed thirty days following said receipt of notice.

(3) *Provided, however,* That in the event of a bona fide dispute

between respondents or their dealers and a retail purchaser requiring a determination of the Director of Consumer Services whether or not the defect(s) complained of by the retail purchaser are or are not covered by respondents' warranty, then: In the event it is determined that warranty service or repair is required, which determination shall be made promptly, respondents shall be given, from the date on which the notice of the dispute is received by the Director of Consumer Services, no more than three business days in the case of defects covered by subparagraph (f)(1) above to commence service or repair (such repairs to be completed expeditiously), and no more than thirty days in the case of defects covered by subparagraph (f) (2) above to complete service or repair.

(g) Respondents shall, except as provided in Paragraph 3(i) of this order, in the normal course of business as set forth in order Paragraph 3(e) above, beginning within 120 days of the effective date of this order, inspect at the home site, directly or through their dealers or other third parties, each mobile home prior to or at the time of tender of possession to the retail purchaser to assure that the home is being delivered to such retail purchaser free of all ascertainable defects and is properly set up, except for deficiencies which do not affect the home's safety or habitability, which shall be noted in the owner-dealer final delivery checklist (Appendix C), and which shall then be remedied in accordance with subparagraph (f)(2) above.

(h) Respondents shall, except as provided in Paragraph 3(i) of this order, in the normal course of business as set forth in order Paragraph 3(e) above, beginning within 120 days of the effective date of this order, reinspect, directly or by action through their dealers or other third parties, each mobile home between thirty and ninety days after tender of possession to the retail purchaser to determine the existence of and to correct or arrange for the correction of any defects covered by respondents' warranty in the mobile home, or improper setup and problems arising therefrom.

Results of each of the inspections required in order Paragraphs 3(g) and 3(h) hereinabove will be documented in a report or reports which shall be signed by respondents' dealer and, if possible, by the retail purchaser or said purchaser's representative, indicating agreement with the information set forth therein. The reports documenting the results of the aforesaid inspections may be in the formats set out in Appendices C and D attached hereto or in formats substantially equivalent thereto.

(i) If the retail purchaser elects to provide for the setup of his mobile home himself, then in such cases the responsibility of respondents and their dealers for transportation, setup, inspection and reinspection, as

set forth in subparagraphs (g) and (h) above, shall terminate with the delivery or tender of possession to the retail purchaser or his agent or representative.

(j) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealers to perform the obligations set forth in order Paragraph 3(e) above, respondents shall enter into written contractual agreements with such dealers which:

(1) adequately and accurately describe the scope of those duties, burdens and responsibilities to be borne by said dealers as aforesaid, as well as the responsibility for properly setting up respondents' mobile homes;

(2) establish the duty of the dealer to provide respondents in the normal course of business as set forth in this order Paragraph 3(j) with the name and address of each retail purchaser of respondents' mobile homes and the date of each such purchase;

(3)(i) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(j) to commence all warranty service, or repair of defects, giving rise to a condition which affects the safety of a mobile home or renders it substantially uninhabitable as soon as possible but in no event later than three business days following receipt of notice of such defect or condition by such dealer and to complete such service or repairs expeditiously;

(ii) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(j) to complete all other warranty service or repairs within a reasonable time, not to exceed thirty days following receipt of notice of such condition by such dealer;

(iii) *provided*, That the requirements of subparagraphs (j)(3)(i) and (j)(3)(ii) above shall apply only to those cases in which the dealer responds to and completes the service or repairs himself. In those cases in which the dealer determines to rely upon respondents to perform or to complete service or repairs requested by retail purchasers, such determination shall be made and communicated to respondents as soon as possible but in no event later than:

(a) two business days in the case of service or repairs provided for in subparagraph (j)(3)(i) above, or

(b) five business days in the case of service or repairs provided for in subparagraph (j)(3)(ii) above, after receipt of notice by the dealer from the retail purchaser.

(4) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(j) to inspect each mobile home prior to or at the time of tender of possession to the retail purchaser as set forth in Order Paragraph 3(g) to assure that the home is being delivered to such purchaser or his agent or representative free of

defects and is properly setup (except as provided in Paragraph 3(i) above), except for deficiencies which do not affect the home's safety or habitability, which shall be noted in the owner-dealer final delivery checklist (Appendix C) and which shall then be remedied in accordance with subparagraph (j)(3)(ii) above;

(5) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(j) to reinspect each mobile home between thirty and ninety days after tender of possession to the retail purchaser as set forth in order Paragraph 3(h) to determine the existence of and to correct or arrange for the correction of any defects covered by respondents' warranty in the mobile home, or improper setup and problems arising therefrom (except as provided in Paragraph 3(i) above);

(6) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(j) to provide respondents with reports which will document the results of the inspections set forth in (4) and (5) immediately above and which will be signed by respondents' dealer and, if possible, by the retail purchaser or said retail purchaser's representative indicating agreement with the information set forth therein;

(7) provide for a procedure which assures that if a dispute or disagreement should arise between respondents and one or more of said dealers as to which of them is to perform warranty service or repairs or is to correct an improper setup or a malfunction resulting therefrom, any and all repairs or other corrective action required thereby will be expeditiously provided, regardless of whether the said dispute or disagreement has been resolved;

(8) establish the duty of the dealer to maintain or contract for adequate service personnel and facilities;

(9) set forth service responsibilities in the event of termination of a dealer with respect to homes still under warranty or in the possession of the dealer and not yet sold to a retail purchaser at the time of termination;

(10) set forth the right of respondents to withdraw authorization from dealers failing to meet their responsibilities under such agreement.

The normal course of business for purposes of this order Paragraph 3(j) does not include:

(a) conditions under which abnormal demands are made upon service capabilities as the result of natural disasters, other acts of God or the government, or any other event beyond the control of the dealer which places an unusually large demand upon service facilities;

(b) conditions resulting from disasters, strikes, acts of the govern-

ment, instances of force majeure or other occurrences which are beyond the control of the dealer which prevent the dealer from responding to service requests within the time periods stated hereinbelow;

(c) slight omissions or deviations from the terms of this order which are inadvertent, unintentional and not due to the bad faith of the dealer.

Existing dealers authorized by respondents as of the effective date of this order shall execute such agreements (which agreements shall be immediately effective) within 180 days of the effective date of this order, or shall be terminated by respondents. Other dealers authorized by respondents later than the effective date of this order shall execute such agreements at the time of their authorization.

Such agreement shall be in the format set forth in Appendix E attached hereto or in a format substantially equivalent thereto.

(k) Respondents shall send a questionnaire (using the format set forth in Appendix F attached hereto or in a format substantially equivalent thereto) to all persons other than "as is" purchasers who after the effective date of this order purchase at retail respondents' mobile homes which inquires as to

(1) the existence of any defects in said mobile homes covered by respondents' warranty or of an improper setup or problems resulting therefrom;

(2) whether the retail purchaser notified anyone of such defects or setup problems and if so, who and when;

(3) the identity of any person who sought to service such defects or setup problems;

(4) whether such defects or setup problems were fully repaired, the period of time required to effect such repairs, and the identity of the parties who accomplished such repairs;

(5) whether the retail purchaser is satisfied with the promptness and quality of the repair.

Such questionnaire in the form of a postage paid self-addressed card or letter containing a postage paid self-addressed envelope, shall be sent between one hundred and one hundred and twenty days subsequent to the tender of possession of the home to the retail purchaser.

(l) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealer or any other persons not employees of respondents to perform any of the responsibilities or duties set forth in Paragraph 3(e) hereinabove, respondents shall fully evaluate the level of expertise and physical and personnel resources of such dealers or other persons with respect to the ability to inspect, repair, service or



set up mobile homes manufactured by respondents prior to such delegation or reliance to assure that all said persons are capable of performing said responsibilities, or have provided for such performance through a third party having such capability, in accordance with the standards set forth herein.

Respondents shall in addition regularly review and evaluate the manner in which such persons, directly or through another third party, perform the aforesaid responsibilities and maintain their service capabilities and shall withdraw said reliance and authorization from persons failing directly or through a third party to meet those responsibilities or the standards set forth herein.

(m) The Director of Consumer Services shall, beginning within 120 days of the effective date of this order, make periodic reports at least on a monthly basis to respondents' responsible officers which shall include current information concerning:

- (1) the current cost to respondents of warranty service
- (2) the incidence and nature of frequently recurring defects
- (3) those measures undertaken in response to reports of frequently recurring defects including but not limited to modification in production and design of respondents' mobile homes
- (4) the manner in which respondents' employees, and dealers and other third parties are performing warranty and setup responsibilities.

(n) Respondents shall, beginning within 120 days of the effective date of this order, establish a uniform procedure for the systematic receipt and analysis and fair disposition of all complaints or disputes which may arise between the aforesaid retail purchasers of respondents' mobile homes and respondents or respondents' dealers or other third parties regarding any alleged warranty obligation of respondents.

Such procedure, which shall be supervised by the Director of Consumer Services, shall incorporate but not necessarily be limited to:

- (1) prompt evaluation and response by respondents to all complaints within a reasonable time not to exceed five business days after receipt by respondents;
- (2) the designation of a single focal point, such as the Director of Consumer Services, within the Corporation for the receipt of consumer complaints regarding warranty repairs and setup problems;
- (3) fair and impartial mediation of such disputes by corporate level personnel not responsible for sales, such as the Director of Consumer Services;
- (4) an accurate and complete record keeping system regarding the nature and disposition of all such disputes and complaints received by respondents;
- (5) periodic review and evaluation by respondents of the effective-

ness of such procedures and correction of such procedures where necessary.

(o) Respondents shall, beginning within 120 days of the effective date of this order, maintain full and adequate records which disclose:

(1) the date of receipt, disposition and the date of disposition of each request for warranty service (including any refusal to accept a request and the reason for such refusal) received by respondents, and

(2) the results of evaluations of service capacity provided for in Paragraph 3(l) of this order.

4. *It is further ordered*, That respondents shall forthwith distribute a copy of this order to each of their operating divisions engaged in the manufacture, offering for sale, sale and distribution of mobile homes.

5. *It is further ordered*, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this order.

6. *It is further ordered*, That respondents shall, at intervals of 9, 18, and 24 months following the effective date of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order. Such reports shall include but not be limited to the periodic reports submitted to respondents' responsible officers described in this order Paragraph 3(l) above.

7. *It is further ordered*, That respondents shall furnish to the Commission nine months after the effective date of this order a report which discloses the dates and manner in which dealers and retail purchasers were contacted pursuant to the procedures described in order Paragraph 1 above, and the dates and manner in which dealers and retail purchasers acted in response thereto and the dates and manner in which respondents acted in response to allegations by retail purchasers which purported to create an obligation on the part of respondents under the terms of order Paragraph 2 above. Respondents shall for a period of two years after the effective date of this order, maintain records which are adequate to disclose respondents' compliance with order Paragraphs 1 and 2, in order that such records may be furnished by respondents to the Federal Trade Commission upon request.

8. *It is further ordered*, That respondents shall submit to the Federal Trade Commission for its review copies of any proposed substantial revisions in the questionnaire required pursuant to order Paragraph 3(k), the dealer agreement required pursuant to order

Paragraph 3(j), and the warranty documents described in order Paragraph 3(b) above, at least 60 days prior to the proposed effective date of any such revisions. Such submissions will be required for the three years following the effective date of this order.

## APPENDIX A

(Date)

Dear Mobile Home Owner:

Thank you for purchasing one of Skyline Corporation's family of mobile homes. Our homes are warranted to be free from defects in material and workmanship. Any repairs required by your warranty should have been performed in full by the dealer who sold you your home or, if this was not possible, by the factory which manufactured it. Through the following questionnaire, we are seeking to determine your experience with regard to service so that we may be sure you have received full performance of warranty obligations. If you have not received such full performance, your response to the following questions will enable us to provide you with the warranty service to which you are entitled.

Please respond to the following questions and return this letter in the enclosed postage-paid envelope.

(1)(a) Have you experienced problems with your mobile home that you feel are covered by our warranty described above (check one) \_\_\_\_\_ yes \_\_\_\_\_ no

(1)(b) If the answer to (1)(a) is yes, please tell us *when* the problems occurred and *describe* them:

(2) If you have experienced problems that you feel are covered by our warranty, please advise us of *whom* you contacted and *when* the contact was made.

(3)(a) If you contacted someone regarding a warranty problem, was the problem corrected (check one): \_\_\_\_\_ yes \_\_\_\_\_ no

(3)(b) If the answer to 3(a) was yes, please indicate *how long* it took to correct the problem and *who* performed the repair: \_\_\_\_\_

3(c) If the answer to 3(a) was No, does the problem still exist (check one) \_\_\_\_\_ yes \_\_\_\_\_ no

3(d) If the answer to 3(c) was Yes, please describe the current condition of the problem and any attempts at correction you have made: \_\_\_\_\_

4(a) If warranty service was provided, were satisfied with: (1) the promptness of repairs (check one) \_\_\_\_\_ yes \_\_\_\_\_ no (2) the quality and completeness of repairs (check one) \_\_\_\_\_ yes \_\_\_\_\_ no

4(b) If your answer to 4(a)(2) was No, does the problem which was the subject of warranty service still exist (check one) \_\_\_\_\_ yes \_\_\_\_\_ no

4(c) If your answer to 4(b) was yes, please explain and describe the current condition of the problem and any attempts at correction you have made: \_\_\_\_\_

5(a) Who performed the set-up or installation of your mobile home? (*Name*) (*relationship, dealer, park operator, independent contractor, etc.*) (*location*)

5(b) Has there been any doubt or dispute: as to whether a problem you have experienced with your mobile home was a problem covered by your warranty or due to improper set-up or installation (check one) \_\_\_\_\_ yes \_\_\_\_\_ no

5(c) If the answer to 5(b) was Yes, does the problem still exist (check one): \_\_\_\_\_ yes \_\_\_\_\_ no

5(d) If the answer to 5(c) was Yes, please describe the current condition of the problem and any attempts you have made to get the problem corrected: \_\_\_\_\_

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5(e) Are you satisfied with the manner in which your mobile home was set-up or installed (check one) \_\_\_\_\_ yes \_\_\_\_\_ no

(6) Please advise us of any suggestions that you might have that will enable us to increase the quality, utility, and value that we strive to build into our homes.

Note: This questionnaire was mailed to you as your name and address appear in our records. If there is need for a correction, please make it in the space provided. Also we ask that you supply us with your telephone number in the space provided as it will facilitate our reaching you to discuss any problems with our product or service that you have pointed out:

(Name of Customer) \_\_\_\_\_

(Street address) \_\_\_\_\_

(City, State, Zip) \_\_\_\_\_

Telephone Number (including area code) \_\_\_\_\_

We thank you for responding to the questions set forth above. Please return this letter to us in the enclosed postage paid envelope.

Sincerely,



APPENDIX C

Owner-Dealer Final Delivery Checklist

Owner:

Dealer:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address) (Phone No.)

\_\_\_\_\_  
(Address) (Phone No.)

\_\_\_\_\_  
(City) (State) (Zip)

\_\_\_\_\_  
(City) (State) (Zip)

Model and Serial Number \_\_\_\_\_

The dealer has completed inspection of the home with the owner. The following items have been checked in accordance with the manufacturer's Field Installation Manual and found satisfactory:

**Setup**

Blocked and leveled. \_\_\_\_\_

(Doublewides only) Halves aligned and exterior and floor covering installation completed. \_\_\_\_\_

Anchors and tie-downs installed in accordance with local requirements. \_\_\_\_\_

**Utilities**

The following have been connected:

Fuel (gas or oil) \_\_\_\_\_

Water supply \_\_\_\_\_

Sewage \_\_\_\_\_

Electric power supply \_\_\_\_\_

**Exterior**

Proper operation of doors and windows, including screens or storms. \_\_\_\_\_

Roof seams \_\_\_\_\_

Siding and trim \_\_\_\_\_

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**Interior**

- Ceilings \_\_\_\_\_
- Paneling \_\_\_\_\_
- Holdings \_\_\_\_\_
- Floor coverings \_\_\_\_\_
- Curtains and drapes \_\_\_\_\_
- Lamps and light fixtures \_\_\_\_\_
- Electrical receptacles, circuit breakers and light switches \_\_\_\_\_
- Interior doors \_\_\_\_\_
- Cabinets and drawers \_\_\_\_\_
- All plumbing fixtures \_\_\_\_\_
- Furniture \_\_\_\_\_
- Appliances**
- Furnace \_\_\_\_\_
- Water heater \_\_\_\_\_
- Range and oven \_\_\_\_\_
- Refrigerator \_\_\_\_\_
- Washer and dryer \_\_\_\_\_
- Garbage disposer \_\_\_\_\_
- Air conditioner \_\_\_\_\_

The Manufacturer's Warranty, Owner's Manual, Field Installation Manual, all appliance manuals and all required keys have been delivered and explained to the owner.

Any adjustments or repairs remaining to be done (describe briefly) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The above inspection has been completed to my satisfaction, except for the adjustments or repairs remaining to be done as noted above.

\_\_\_\_\_  
Owner's signature

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of dealer's representative

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APPENDIX D

Reinspection Report

Owner:

Dealer:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone No.)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone No.)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip)

Model and Serial Number \_\_\_\_\_

The dealer has reinspected the above home within 30 to 90 days after original delivery. The following items were checked and any necessary repairs or corrections made:

- Supporting piers \_\_\_\_\_
- Leveling \_\_\_\_\_
- Roof \_\_\_\_\_
- Doors and windows \_\_\_\_\_
- Plumbing \_\_\_\_\_
- Heating and Air Conditioning \_\_\_\_\_
- Electrical System \_\_\_\_\_
- Appliances \_\_\_\_\_

Any adjustments or repairs remaining to be done \_\_\_\_\_

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

The above reinspection and any necessary adjustments or repairs (except as otherwise noted above) have been completed to my satisfaction.

\_\_\_\_\_  
Owner's signature

\_\_\_\_\_  
Date



## APPENDIX E

("Dealer")

("Manufacturer")

## SERVICE AGREEMENT

THIS AGREEMENT is entered into between Dealer and Manufacturer on the date set forth below. Dealer wishes to act or continue to act as a retail dealer of mobile homes produced by Manufacturer ("Homes"), and Manufacturer wishes Dealer to perform service including service under Manufacturer's written warranty. Recognizing that satisfaction and good will of homeowners are of primary importance and can be best achieved by Dealer and Manufacturer providing prompt, efficient and courteous service, and in consideration of Manufacturer's sales to Dealer, Dealer's purchases from Manufacturer, and their agreements herein, the parties mutually agree:

1. *Manufacturer Inspection and Correction.* Before shipment to Dealer, Manufacturer shall inspect every Home and correct discovered manufacturing defects.

2. *Dealer Inspection.* Dealer shall thoroughly inspect each Home and promptly initiate repair of any discovered defect. "Dealer Inspection" shall consist of inspection of each Home at the following times:

- a. immediately upon receipt from Manufacturer
- b. immediately before delivery by Dealer to any retail purchaser of a Home ("Homeowner")
- c. immediately after setup, utility connection and site servicing, and
- d. between 30 and 90 days after setup, in conjunction with any necessary releveling.

3. *Dealer Setup and Service.*

a. Dealer shall employ or contract for setup and service personnel who, in Manufacturer's reasonable judgment, are competent to set up Homes, and to provide both Reimbursable Service and Non-Reimbursable Service as defined and specified below. Dealer shall promptly respond to all Homeowner requests for such service, and shall promptly complete all such service within Dealer's ability, subject to Manufacturer's authorization to perform any Reimbursable Service.

b. Dealer agrees that setup of each Home shall be performed according to instructions contained in Manufacturer's Field Installation Manual, and any applicable federal, state or local statutes, ordinances, codes or regulations. Setup of each Home (including releveling and resolution of any problem resulting from improper setup) is Dealer's responsibility regardless of who does the setup.

c. Dealer shall perform Non-Reimbursable Service at Dealer's sole cost and expense, which shall include the examples of minor repairs and adjustments listed on the Attachment to this Agreement.

4. *Manufacturer Reimbursement.*

a. If Dealer reasonably believes that a Homeowner service request requires Reimbursable Service, Dealer shall request approval of and reimbursement by Manufacturer in accordance with Manufacturer's Homeowner Service Program Manual. Absent such authorization, Dealer shall not be entitled to reimbursement for service. Dealer will be entitled to reimbursement only for the amount authorized by Manufacturer.

b. "Reimbursable Service" means service to correct a defect existing at the time a Home is delivered by Manufacturer to Dealer. Reimbursable Service includes the examples listed in the Attachment to this Agreement. Service to correct any other defect, including any related to or resulting from delivery to the Homesite, setup, and any service necessary to correct any reasonably discoverable defect not noted in writing on a

Check Out Sheet to be signed by Dealer when the Home is delivered to Dealer, is Non-Reimbursable Service.

5. *Completion of Service.* Except as provided in paragraphs 6 and 7 below, Dealer shall in the normal course of business begin and complete all Reimbursable and Non-Reimbursable Service within a reasonable time but not later than thirty days after Dealer receives notice of the need for such service. But if Dealer or Manufacturer determines that a defect affects the safety of a Home or renders it substantially uninhabitable, Dealer shall in the normal course of business begin Non-Reimbursable and/or Reimbursable Service within three business days after receipt of notice of the need for such service, and shall quickly complete such service. "In the normal course of business" does not include (a) a condition under which abnormal demands are made upon service capabilities as a result of a natural disaster, other Act of God, or the government or any other event beyond the control of Dealer that places an unusually large demand upon service facilities or (b) an event such as a disaster, strike, act of government, or any other occurrence beyond the control of Dealer that prevents Dealer from responding to a service request within the times stated above.

6. *Manufacturer Service.* If any request appears to require Reimbursable or Non-Reimbursable Service beyond Dealer's ability, Dealer shall immediately examine the Home and inform Manufacturer by telephone no later than five business days after receipt of the service request. Manufacturer shall, if it agrees with Dealer's determination, promptly process such service request as if received directly from the Homeowner, and shall arrange for service to be performed within the time periods set forth in paragraph 5 above. However, if Dealer believes that a defect effects the safety of a Home or renders it substantially uninhabitable, and that repairs are beyond Dealer's ability, Dealer shall tell Manufacturer within two business days after receipt of the Homeowner request, and Manufacturer shall begin any such service within two business days after being informed by the Dealer.

7. *Service in Event of Dispute.* If Manufacturer and Dealer disagree as to whether Reimbursable or Non-Reimbursable Service is required, and if Dealer fails or refuses to correct a problem within a reasonable time but not longer than the time stated in paragraph 5 above, Manufacturer shall do so. Manufacturer shall disclose with Dealer which type of service was required, and Dealer shall promptly pay Manufacturer its reasonable cost of performing any Non-Reimbursable Service.

8. *Dealer/Homeowner Inspections.* Manufacturer shall provide Dealer with forms to be used by Dealer in performing the inspections required by paragraph 2 above. Dealer agrees:

- a. diligently and timely
  - (i) to make such inspections,
  - (ii) to complete such forms, and
  - (iii) to note in writing on such forms any discovered manufacturing defect or remaining dealer responsibility item which shall be remedied as if Homeowner had notified Dealer of such defect or item;
- b. promptly to send the originals of such forms to Manufacturer and to provide each Homeowner with copies of those required by paragraphs 2.c. and 2.d. above; and
- c. whenever possible, to obtain the Homeowner's signature on such forms.

*Dealer shall not knowingly deliver possession of a Home with any defect that affects the safety of a Home or renders it substantially uninhabitable.*

9. *Retail Contract and Records.* Before execution of the retail sales contract, Dealer agrees to show to each Homeowner a copy of Manufacturer's warranty to be furnished with the Home. The Homeowner's copy of such warranty and any owner's manuals (including the Field Installation Manual), instructions and other materials that Manufacturer may furnish to Dealer for delivery to Homeowner shall be delivered to

Homeowner with possession of the Home. Dealer agrees to keep such records concerning Homeowners as Manufacturer may reasonably require and to furnish Manufacturer with information from such records. Dealer further agrees to provide to Manufacturer such information as Manufacturer may reasonably request concerning: (a) service requests from, complaints by, and other communications with Homeowners and (b) service activities with respect to Homes.

10. *Factory Training and Consultation.* Manufacturer agrees to provide training programs for Dealer service and setup personnel at such locations as Manufacturer may determine, without charge by Manufacturer. Manufacturer further agrees to consult with Dealer and to provide technical advice to Dealer concerning Home service and setup, if requested by Dealer.

11. *Termination.* If the Dealer/Manufacturer relationship is terminated, their obligations under this Agreement to inspect and service sold and unsold Homes shall continue and be unaffected by such termination. Dealer's obligations under this Agreement to furnish information, records and forms shall survive any such termination.

12. *Effect and Formalities.* Failure by either party to perform its obligations under this Agreement shall be good and sufficient cause for the other to terminate this Agreement and the Dealer/Manufacturer relationship. If any Agreement provision is declared legally invalid or unenforceable, the remaining provisions shall continue to be enforceable. More than one copy of this Agreement may be executed, each of which shall be deemed an original for all purposes. The paragraph headings herein are for convenience only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement, except capitalized and quoted words defined for purposes of this Agreement. This Agreement supersedes any prior agreement, either written or oral, between the parties as to service. It shall be binding upon and benefit the parties and their heirs, legal representatives, successors and assigns; but it may be assigned or otherwise amended or supplemented only in writing. *Time is of the essence of this Agreement*, and provisions relating to time of performance may be strictly construed.

IN WITNESS WHEREOF, Manufacturer and Dealer have executed this Agreement effective \_\_\_\_\_, 19 \_\_\_\_\_ Address of Dealer for notices:

\_\_\_\_\_  
Address of Manufacturer for notices:

\_\_\_\_\_  
(Type or print name of signer)

By: \_\_\_\_\_  
for the Dealer (Title)

\_\_\_\_\_  
(Type or print name of signer)

By: for the Manufacturer (Title)

#### ATTACHMENT TO SERVICE AGREEMENT

##### *Examples of Non-Reimbursable Service*

- A. Setting up all unassembled furniture, including but not limited to dinettes and bed frames.
- B. Installing all light shades shipped loose.
- C. Mounting or assembling all parts of the mobile home that are shipped loose as Manufacturer's normal procedure.
- D. Making minor repairs to plumbing, electrical and gas systems.
- E. Recaulking and resealing any roof seam or opening if necessitated by Dealer transportation or setup.
- F. Recaulking all windows and doors if necessary to reduce leaks or drafts.
- G. Making minor appliance adjustments and repairs.

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- H. Adjusting all doors, windows and drawers for proper operation.
- I. Retacking any moldings that have come loose in transit or during setup.
- J. Tightening wheel lug bolts before unit is delivered.
- K. Making all repairs necessitated by delivery to Homeowner or improper setup.
- L. Making routine cosmetic and other minor repairs.
- M. Adjusting or replacing door locks and window cranks.
- N. Fixing gas and water line leaks.
- O. Tightening loose fittings.

*Examples of Reimbursable Service*

- A. Making repairs necessary to correct manufacturing code deviations existing at the time of delivery to the Dealer.
- B. Replacing defective materials; e.g., delaminated or discolored wall paneling or ceiling panels, if due to factory defect.
- C. Making major interior repairs due to leaks if caused by faulty manufacture.
- D. Repairing damages caused by frame failure if due to improper manufacture and not road damage or other causes for which Manufacturer is not responsible.
- E. Replacing defective equipment (e.g., light switches, tires, kitchen sinks) existing at the time of delivery to Dealer.
- F. Making repairs to exterior metal damaged prior to delivery to Dealer.
- G. Replacing paneling and floor coverings damaged by water leaks if caused by faulty manufacture and not improper setup or other causes.
- H. Replacing and rehangng excessively warped doors, if due to factory defect.
- I. Repairing and replacing floor covering damaged at the factory.

APPENDIX F

Follow-up Questionnaire to Retail Purchaser

Dear Homeowner:

We appreciate your purchase of a mobile home built by Skyline. We sincerely believe you have chosen one of the very best values available in housing today.

Nothing is more important to us than your total satisfaction with your home, including the setup and services provided by your dealer. Would you kindly take a few minutes to complete and return this questionnaire? It will help us and your dealer to serve you better.

Dealer's Name: \_\_\_\_\_

City: \_\_\_\_\_

Approximate Date of Delivery: \_\_\_\_\_

Was your home delivered in good condition and set up in a satisfactory manner? [ ]  
 Yes [ ] No

Did you receive your Homeowner's Manual, Field Installation Manual, and manufacturer's warranty? [ ] Yes [ ] No

Did your dealer go through your home with you after setup and make sure everything was in good order? [ ] Yes [ ] No

Complaint

85 F.T.C.

IN THE MATTER OF

THE COMMODORE CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-2643 Complaint, Mar. 4, 1975 - Decision, Mar. 4, 1975\**

Consent order requiring an Omaha, Neb., manufacturer of mobile homes, among other things to cease unfair and deceptive warranty practices through the establishment of a prompt and effective system to handle warranty-related problems. The order requires respondent to provide warranty repairs or services on still-unrepaired mobile homes manufactured between 1972 and 1974 and to provide future retail purchasers with relief by establishing and maintaining a regular and effective system to handle complaints and service. Under this system, all repairs must be complete within thirty days after notification to the respondent of defects. Where the defects affect safety or habitability of the mobile home, the repairs must be started within three business days and be expeditiously completed.

*Appearances*

For the Commission: *Eric M. Rubin, Robert N. Weinstock, Walter E. Diercks and Pamela B. Stuart.*

For the respondents: *Howard Kaslow, Abraham, Kaslow & Cassman, Omaha, Neb.*

## 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 The Commodore Corporation, a corporation, and certain of its subsidiaries, (hereinafter referred to as respondents) have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint and the order attached hereto the term "mobile home" means a movable or portable dwelling over thirty two feet in body length and over eight feet in width, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence, which may include one or more components which can be retracted for towing purposes and subsequently expanded for additional capacity; or two or more units separately towable but

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\* Reported as amended by order issued Apr. 22, 1975.

designed to be joined into one integral unit. "Mobile home" as used herein includes the mobile home structure, including the plumbing, heating and electrical systems.

PAR. 2. Respondent The Commodore Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 8712 W. Dodge Rd., Omaha, Neb.

PAR. 3. Respondents are now and have been engaged in the design, manufacture, advertising, offering for sale, sale and distribution of mobile homes to selected mobile home dealers. Manufacturing is accomplished in approximately five facilities controlled and operated by respondents, located in approximately four states. Respondent Commodore Corporation dominates, controls, condones, approves and derives pecuniary benefit from the conduct of its subsidiaries engaged along with it in the above described business.

PAR. 4. In the further course and conduct of their aforesaid business respondents are now and have been soliciting persons (individuals, partnerships and corporations) to become "authorized" dealers, and are also solicited by persons who desire to become "authorized" dealers. Respondents select certain of these persons as "authorized" dealers. In the normal course of business respondents sell and distribute the aforesaid homes only to these "authorized" dealers who then resell these products to the public. In the normal course of business the way in which the aforesaid homes are purchased new at retail unused by a first purchaser is through an "authorized" dealer.

PAR. 5. In the further course and conduct of their aforesaid business respondents place primary reliance on their "authorized" dealers to ascertain which of their aforesaid mobile homes contain defects which are subject to the aforesaid warranty, and to notify respondents of defects for which respondents assume responsibility. Respondents also place primary reliance on their "authorized" dealers to effect such repairs and services as are necessary to correct defects covered by the aforesaid warranty and to notify respondents of those defects covered by the aforesaid warranty which said dealers are unable or unwilling to fully correct, so that respondents may repair the aforesaid defects either directly with their own personnel or through the use of an independent service contractor.

PAR. 6. In the further course and conduct of their aforesaid business, respondents now cause and have caused, their mobile homes to be transported to "authorized" dealers located in various states of the United States and to be sold to retail purchasers by such dealers. Respondents therefore maintain and have maintained a substantial

course of trade in said mobile homes in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the further course and conduct of their aforesaid business respondents are now, and have been, orally or in writing, directly or through their dealers and others, granting or disseminating certain warranties or certain statements concerning their warranties to each retail purchaser of their aforesaid mobile homes by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

(a) Each written warranty disseminated by respondents in all states in which they do business except California represents, directly or by implication that respondents will correct for the original retail purchaser and any subsequent owner all defects in the workmanship or materials of each of the aforesaid new mobile homes during the twelve months subsequent to its purchase at retail except for certain specific components therein enumerated including but not limited to appliances. Said written warranty further represents that the aforesaid obligation is limited to repairing or replacing parts of their mobile homes which are returned to one of their factories and which respondents shall determine to have been defective. Each written warranty disseminated by respondents in California represents, directly or by implication that for each buyer of a new mobile home manufactured by respondents and sold to such buyers by a dealer licensed by the California Department of Motor Vehicles, respondents will correct at the site of the mobile home any substantial defect in the workmanship or materials of the aforesaid mobile homes during the one year and ten days subsequent to its delivery to the original buyer.

Respondents' written warranty disseminated in all States in which respondents do business except California further purports to disclaim all other warranty rights which are imposed by force of law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, and represents directly or by implication that the aforesaid warranty sets forth the full extent of respondents' warranty obligations.

(b) Notwithstanding the foregoing, it is respondents' uniformly applied warranty policy that the aforesaid service and repair of defects covered by the written warranty will be provided at the mobile home site and that the return of the home, or the defective parts, as the case may be, with transportation charges prepaid is not a condition precedent to such performance.

PAR. 8. In the further course and conduct of their aforesaid business respondents have engaged in acts and practices which result in, and have resulted in, the failure to maintain an adequate, regular and

effective system which assures that every retail purchaser of respondents' mobile homes in fact receives full service and repair of defects covered by the aforesaid warranty within a reasonable time.

Typical, but not inclusive of such acts and practices, are:

(a) The dissemination of a written warranty as described in Paragraph Seven which fails to disclose the true nature and extent of purchasers' warranty rights and those warranty obligations which respondents in fact undertake in the normal course of business, including but not limited to:

(1) the fact that pursuant to respondents' policies it is regarded as the "authorized" dealers' sole and complete responsibility, at least in the first instance, to perform repairs and service for certain classes of defects covered by the aforesaid warranty without compensation or reimbursement by respondents and without regular and effective action by respondents to determine whether such repairs and service are in fact fully performed within a reasonable time.

(2) the representation, made directly or by implication in respondents' written warranty disseminated in all states in which respondents do business except California, that said warranty is the sole legal warranty, that it legally excludes and disclaims all implied-in-law warranties, and that said warranty states the sole legal remedy available to the purchaser, when in truth and in fact under the applicable law of several states in which respondents' homes are sold at retail such exclusions, disclaimers or limitations are unenforceable.

(3) the representation, made directly or by implication in respondents' written warranty disseminated in all states in which respondents do business except California, that as a condition precedent to securing full performance by respondents of their warranty obligations every party to whom the warranty is offered must complete properly and mail to respondents a certain owner's registration card at the time he or she purchases said mobile home, when in truth and in fact respondents' internal policy is to provide such performance irrespective of whether the card has been returned.

(4) the representation, made directly or by implication in respondents' written warranty disseminated in all states in which respondents do business except California, that as a condition precedent to securing full performance by respondents of their warranty obligations every party to whom the warranty is offered must transport the defective part or if necessary the entire home to respondents' manufacturing plant, when in truth and in fact it is respondents' policy to provide such performance at the home site.

(b) the failure to scrutinize, adequately evaluate and assure that all prospective dealers, prior to their "authorization" as described in



Paragraph Four are competent to perform warranty service or have made adequate arrangements for performing warranty service through independent contractors.

(c) the failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, notify respondents of the existence of claims initiated by retail purchasers for warranty service or for repair of defects covered by the aforesaid warranty.

(d) the failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, in fact fully perform and complete within a reasonable time all warranty service and repairs performed on behalf of respondents.

(e) the failure to establish and maintain an effective and regular mechanism for the prompt and fair resolution of mobile home consumer complaints and requests for service and repairs relating to respondents' warranty or warranty policies.

(f) the failure to scrutinize, adequately evaluate and assure that all prospective dealers, prior to their "authorization" as described in Paragraph Four, either directly or by action through independent contractors, are competent to perform a thorough inspection of a mobile home prior to its tender to a retail customer to determine whether a home contains defects covered by the aforesaid warranty.

(g) the failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, actually perform or assure the performance of a thorough inspection of a mobile home prior to its tender to a retail customer to determine whether a home contains defects covered by the aforesaid warranty.

(h) the failure to scrutinize, adequately evaluate and assure that all prospective dealers, prior to their "authorization" as described in Paragraph Four, either directly or by action through independent contractors, are competent to perform the installation or "setup" of the aforesaid mobile homes at the homesite selected by the retail purchaser.

(i) the failure to scrutinize, adequately evaluate and assure that all "authorized" dealers, either directly or by action through independent contractors, actually and competently perform the installation or "setup" of the aforesaid mobile homes.

(j) the failure to maintain an adequate and expert factory service capability or to make other provisions adequate to assure the full performance within a reasonable time of the repair of defects covered by the aforesaid warranty which respondents' "authorized" dealers are unwilling or unable to perform.

The aforesaid failure to maintain a regular and effective system which assures the full performance within a reasonable time of service and repair of defects covered by the aforesaid warranty has the capacity or tendency to impede, delay or prevent the performance of said service and repairs for parties to whom the warranty is offered.

PAR. 9. By and through the aforesaid acts and practices respondents have been and are now:

(a) Disseminating a warranty which fails to fully and completely inform purchasers as to the actual protection offered by respondents.

(b) Failing to establish or maintain an effective or adequate system which assures that respondents will fully correct or repair all defects covered by the aforesaid warranty within a reasonable time.

The aforesaid acts and practices are deceptive and are in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. By such failure to maintain a regular and effective system which assures that every party to whom the warranty is provided will receive full performance within a reasonable time of the service and repair of defects covered by the aforesaid warranty respondents have been and now are engaged in unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. Through the individual and cumulative acts and practices set forth in Paragraph 8(a) respondents are now and have been disseminating and causing the dissemination of a written warranty which fails to fully and accurately describe the true nature and extent of the warranty rights of retail purchasers of respondents' mobile homes and those warranty obligations which in fact respondents undertake in the normal course of business. Thus respondents have failed to disclose material facts which if known to consumers:

(a) would be likely to affect their decision of whether to purchase one of respondents' mobile homes, and

(b) would enable retail purchasers to understand the true nature and extent of their warranty rights and to secure performance of such warranty service.

Therefore, the aforesaid failures to disclose material facts are deceptive and unfair and are in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 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(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Commodore Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 8712 W. Dodge Rd., Omaha, Neb.

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

1. *It is ordered*, That respondents shall within 90 days from the effective date of this order make a written inquiry of all known retail purchasers of respondents' mobile homes (except those specifically excluded below) built between July 1, 1972 and June 30, 1974, utilizing the form of letter shown in Appendix A attached hereto and made a part hereof which shall contain therein a self-addressed postage paid return envelope, and which shall be mailed to such purchasers by first class mail.

Known retail purchasers are defined as those first purchasers at retail of said mobile homes who communicate with respondents no later than 60 days after the effective date of this order and those first retail purchasers whose names and addresses (1) are contained in company "coach" or unit files and tire records (except that with respect to respondents' manufacturing plants which maintained for the period July 1, 1972 to June 30, 1974 separate files for warranty registration

cards the names and addresses of known retail purchasers may be established from such separate files rather than by reference to "coach" or unit files); (2) are supplied by the Federal Trade Commission within 60 days of the effective date of this order or; (3) are supplied to respondents by respondents' past and current dealers in response to respondents' letter request for such information sent by first class mail, (which letters shall be sent no later than 30 days after the effective date of this order) utilizing the form of letter shown in Appendix B<sup>1</sup> attached hereto and made a part hereof and which shall contain therein a self-addressed postage paid return envelope.

Notwithstanding the above, known retail purchasers shall not include:

- (a) local, State or Federal Government or agencies thereof;
- (b) retail purchasers who are now or have been engaged in litigation with respondents involving their mobile home built by respondents during the two year period set forth hereinabove;
- (c) retail purchasers whose homes were sold to them on an "as is" basis;
- (d) retail purchasers who communicated directly with respondents' corporate headquarters or its attorneys concerning a problem or defect in such purchaser's mobile home, where there is a record indicating a resolution of the problem to the purchaser's satisfaction;
- (e) retail purchasers whose names are supplied by past or current dealers in response to respondents' written inquiries required hereinabove when such names are received by respondents from a dealer more than sixty days after respondents' inquiry was mailed to that dealer unless the purchaser or purchasers themselves communicate with respondents no later than 60 days after the effective date of this order, or the name or names of such purchaser or purchasers appear elsewhere in respondents' individual unit or coach files, (or where applicable, warranty card files) or were supplied to respondents by the Federal Trade Commission as set forth hereinabove;
- (f) retail purchasers who live outside the United States or who purchased mobile homes from dealers located outside the United States;
- (g) retail purchasers who are known to respondents to no longer own their mobile homes built by respondents.

<sup>2</sup> Notwithstanding the foregoing provisions of this order Paragraph 1, respondent shall not be required to review its "coach" or unit files or, in the alternative, its separate files (if any) for warranty registration cards for the purpose of attempting to obtain names and addresses of

<sup>1</sup> Order issued Apr. 22, 1975, substituted Exhibit 1 p.492, herein, for Appendix B.

<sup>2</sup> This paragraph was added by order issued Apr. 22, 1975.

the first retail purchasers of respondent's mobile homes insofar as such files relate to respondent's manufacturing plants which have been closed and are not now in operation, but respondent shall be required to undertake such review of such files at respondent's remaining three manufacturing plants at Haleyville, Ala., Lebanon, Oregon, and Danville, Va.

2. *It is further ordered*, That respondents shall, directly or through their dealers or other third parties, repair or service within a reasonable time at the site of the home all defects and malfunctions in mobile homes owned as of the effective date of this order by known retail purchasers, which were produced by respondents during the two year period referred to hereinabove and which become known to respondents in response to the written inquiries required pursuant to Order Paragraph 1 unless it is clear that a given defect or malfunction:

- (a) is a result of improper set up of the mobile home;
- (b) is a result of improper use or abuse of the mobile home;
- (c) did not arise or become evident within the term of the warranty;
- (d) was brought to respondents' attention by a retail purchaser more than sixty days after respondents mailed the written inquiry to such purchaser as provided hereinabove where the mobile home was purchased by the first retail purchaser more than one year prior to the effective date of this order;

- (e) is a minor cosmetic defect in a home purchased by the first retail purchaser more than one year prior to the effective date of this order.

A reasonable time for accomplishing said repairs or service shall consist of repairs or service:

- (a) on no less than fifty mobile homes manufactured by each of respondents' plants per month or;

- (b) on a number of mobile homes per plant per month equal to no less than ten percent of the mobile homes owned by known retail purchasers, as the term is used in order Paragraph 1;

whichever is greater, until all said repairs and service are completed.

3. *It is further ordered*, That respondents cease and desist from disseminating, or causing the dissemination of, offering or otherwise providing, in commerce, any express warranties to the retail purchasers of mobile homes manufactured by respondents unless respondents meet all of their obligations under such warranties within the time period standards set forth hereinbelow in Order Paragraph 3(e) and establish and maintain a regular and effective system reasonably designed to assure that every purchaser of the aforesaid mobile homes will receive full performance by respondents, directly or by action through their dealers or other third parties, of all such warranty obligations within the said time period standards. This warranty

performance system shall incorporate but not necessarily be limited to the following standards and terms:

(a) Respondents shall disseminate a warranty and associated documents which clearly and fully describe and effectively communicate to the first retail purchaser;

(1) the identity and address of the warrantor;

(2) the nature and extent of the warranty offered or otherwise provided;

(3) the remedies available to the purchaser under the warranty;

(4) the manner in which respondents intend to provide for performance of their warranty obligations, including disclosure of any delegation of warranty responsibility to third parties; *Provided however*, That disclosure of said delegation must be accompanied by additional disclosure that such delegation in no way relieves respondents of the ultimate responsibility to fulfill all of respondents' warranty obligations;

(5) any and all requirements which must in fact be fulfilled by the retail purchaser as a condition precedent to securing performance by respondents of their warranty obligations;

(6) a uniform procedure to be followed by a retail purchaser in order to request performance by respondents of their warranty obligations;

(7) a uniform procedure available to the retail purchaser for a systematic review and disposition of complaints and disputes with respect to the performance of respondents' warranty obligations by respondents' manufacturing plants, subsidiaries, divisions, and other employees, or by respondents' dealers or other third parties.

(b) Respondents shall cease and desist from selling their mobile homes without any express or implied warranty, *i.e.*, "as is," or with any disclaimer of implied warranties or limitations or exclusion of liability under any warranty or disseminating or causing the dissemination of any statement or representation which represents directly or by implication, that respondents have disclaimed any express or implied warranty or limited or excluded any liability under any warranty unless respondents have a reasonable basis in the form of an opinion by legal counsel that said disclaimers, limitations and exclusions are enforceable under governing State law, and clear and conspicuous notice of said "as is" sale or other said disclaimer, limitation or exclusion is given to prospective retail purchasers of their mobile homes prior to the execution of the contract of retail purchase. A clear and conspicuous notice of an "as is" sale shall contain at a minimum the following language:

## NOTICE

The manufacturer of this mobile home sells it "as is" and refuses to assume any responsibility for defects. The purchaser of this mobile home must accept it with all defects and take the entire risk, under contract law, as to its condition.

*Provided, however,* That with respect to: (a) the "as is" sale of damaged, salvaged, demonstrator or repossessed mobile homes; (b) the sale of mobile homes where respondents disclaim or fail to grant an express warranty on appliances which are covered by a separate written warranty by a supplier or manufacturer other than respondents and (c) the "as is" sale of mobile homes to local, State and Federal Governments or agencies thereof, the aforesaid opinion by legal counsel shall not be required.

(c) All of respondents' warranty service and repair obligations performed subsequent to the tender of the home to the retail purchaser shall be rendered by respondents, directly or through their dealers or other third parties at the site of the mobile home.

(d) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealers or any other persons not employees of respondents to:

(i) determine whether any mobile home manufactured by respondents contains defects which are within the scope of a warranty extended by respondents or otherwise requires remedial action pursuant to said warranty;

(ii) notify respondents of the existence of those circumstances enumerated in subparagraph (d)(i) above; or

(iii) perform any repairs or otherwise provide services in satisfaction of any warranty obligations incurred by respondents;

respondents shall, beginning within 120 days of the effective date of this order, assure that if a dispute or disagreement should arise between respondents and one or more of said dealers or other third persons as to which of them is to incur any such responsibility with respect to warranty repairs and service or is to correct a malfunction related or alleged to relate to setup of the aforesaid mobile homes, any and all necessary repairs or other corrective action will be expeditiously provided (in the normal course of business) in a manner consistent with this order, regardless of whether the said dispute or disagreement has been resolved. The "normal course of business" does not include:

(1) conditions under which abnormal demands are made upon service capabilities as a result of natural disasters, other acts of God or the government (including the effects of remedial action required of respondents as set forth in order Paragraphs 1 and 2, above), or any other event beyond the control of respondents and their dealers which places an unusually large demand upon service facilities;

(2) conditions resulting from disasters, strikes, acts of the government, instances of force majeure or other similar occurrences which are beyond the control of respondents and their dealers and which prevent respondents and their dealers from responding to service requests within the time periods stated hereinbelow;

(3) slight omissions or deviations from the terms of this order which are inadvertent, unintentional, and not due to bad faith of respondents;

(e)(1) Respondents shall, beginning within 120 days of the effective date of this order, directly or through their dealers or other third parties commence, in the normal course of business as set forth in order Paragraph 3(d) above, all warranty service or repairs of defects giving rise to a condition which affects the safety of a mobile home or renders it substantially uninhabitable, as soon as possible but in no event later than three business days following receipt of notice of such defect by respondents from the retail purchaser, or two business days following notice of the determination made by respondents' dealer pursuant to order Paragraph 3(i)(3)(iii) below, and shall complete such service or repairs expeditiously.

(2) Respondents shall, except as set forth in order Paragraph 3(e)(1) above, beginning within 120 days of the effective date of this order, directly or through their dealers or other third parties, in the normal course of business, as set forth in order Paragraph 3(d) above: (a) respond to notice of the need for warranty service or repairs within a reasonable time not to exceed seven business days of receipt of said notice by respondents or their dealers and (b) complete said service or repairs within a reasonable time not to exceed thirty days following said receipt of notice.

(3) *Provided, however,* That in the event of a bona fide dispute between respondents or their dealers and a retail purchaser requiring resolution through the procedure established pursuant to order Paragraph 3(m) below, as to whether the defect(s) complained of by the retail purchaser are or are not covered by respondents' warranty, then: In the event it is determined that warranty service or repair is required, which determination shall be made promptly respondents shall be allowed, in the normal course of business as set forth in order Paragraph 3(d) above, from the date of notification of the dispute as set forth in this subparagraph (e)(3) no more than three business days in the case of defects referred to in subparagraph (e)(1) above to commence service or repair (such repairs to be completed expeditiously), and no more than thirty days in the case of defects referred to in subparagraph (e)(2) above to complete service or repair.

(f) Respondents shall, except as provided in order Paragraph 3(h) below, in the normal course of business as set forth in order Paragraph



3(d) above, beginning within 120 days of the effective date of this order, inspect at the home site directly or through their dealers or other third parties, each mobile home prior to or at the time of tender of possession to the retail purchaser to assure that the mobile home is being delivered to such purchaser free of all ascertainable defects and is properly set up, except for deficiencies which do not affect the home's safety or habitability, which shall be noted in the owner dealer final delivery checklist (Appendix C), and which shall be then remedied in accordance with subparagraph (e)(2) above.

(g) Respondents shall, in the normal course of business as set forth in order Paragraph 3(d) above, beginning within 120 days of the effective date of this order, reinspect, directly or through their dealers or other third parties each mobile home between forty-five and ninety days after tender of possession to the retail purchaser to determine the existence of and to correct or arrange for the correction of any defects covered by respondents' warranty in the mobile home, or improper set up and problems arising therefrom.

Results of each of the inspections required in order Paragraphs 3(f) and 3(g) hereinabove will be documented in a report or reports which shall be required to be signed by respondents' dealer and if possible by the retail purchaser or said purchaser's representative, indicating agreement with the information set forth therein. The reports documenting the results of the aforesaid inspections may be in the formats set forth in Appendices C and D attached hereto, or in formats substantially equivalent thereto.

(h) If the retail purchaser elects to provide for the set up of his mobile home himself, then in such cases the responsibility of respondents and their dealers for transportation, set up, inspection and reinspection, as set forth in subparagraph (f) and (g) above, shall terminate with the delivery or tender of possession to the retail purchaser or his agent or representative.

(i) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealers to perform the obligations set forth in order Paragraph 3(d) above, respondents shall enter into written contractual agreements with such dealers which:

(1) adequately and accurately describe the scope of those responsibilities, to be borne by said dealers as aforesaid, as well as the responsibility for properly setting up respondents' mobile homes;

(2) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i) to provide respondents with the name and address of each retail purchaser and the date of each purchase;

(3)(i) establish the duty of the dealer in the normal course of business

as set forth in this order Paragraph 3(i), to commence all warranty service, or repair of defects, giving rise to a condition which affects the safety of a mobile home or renders it substantially uninhabitable as soon as possible but in no event later than three business days following receipt by the dealer of notice of such defect or condition and to complete such service or repairs expeditiously;

(ii) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i), to complete all other warranty service or repairs within a reasonable time, not to exceed thirty days following receipt by the dealer of notice of such condition;

(iii) set forth that the requirements of subparagraph (i)(3)(i) and (i)(3)(ii) above shall apply only to those cases in which the dealer responds to and completes the service or repairs himself. In those cases in which the dealer determines to rely upon respondents to perform or to complete service or repairs requested by retail purchasers under: (a) subparagraph (i)(3)(i) above, such determination shall be made and communicated to respondents as soon as possible but in no event later than two business days after dealer's receipt of notice from the retail purchaser. (b) subparagraph (i)(3)(ii) above, such determination shall be made and communicated to respondents as soon as possible but in no event later than five business days of receipt of notice from the retail purchaser.

(4) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i) to inspect each mobile home prior to or at the time of tender of possession to the retail purchaser as set forth in order Paragraph 3(f), except as provided in subparagraph (h) above to assure that the home is being delivered to such purchaser free of all ascertainable defects and is properly set up, except for deficiencies which do not affect the home's safety or habitability which shall be noted in the owner dealer final delivery checklist (Appendix C), and which shall then be remedied in accordance with subparagraph (i)(3)(ii) immediately above.

(5) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i), except as provided in subparagraph (h) above, to reinspect each mobile home between forty-five and ninety days after tender of possession to the retail purchaser to determine the existence of and to correct or arrange for the correction of any defects in the mobile home covered by respondents' warranty or improper set up and problems arising therefrom;

(6) establish the duty of the dealer in the normal course of business as set forth in this order Paragraph 3(i) to provide respondents with reports which will document the results of the inspections set forth in (4) and (5) immediately above and which will be signed by respondents

dealer and if possible by the retail purchaser or said retail purchaser's representative indicating agreement with the information set forth therein;

(7) provide for a procedure which assures that if a dispute or disagreement should arise between respondents and one or more of said dealers as to which of them is to incur any such responsibility or is to correct an improper initial set up or a malfunction arising therefrom, any and all necessary repairs or other corrective action will be expeditiously provided, regardless of whether the said dispute or disagreement has been resolved;

(8) establish the duty of the dealer to maintain or contract for adequate service personnel and facilities;

(9) set forth service responsibilities in the event that a dealer ceases to be one of respondents' authorized dealers with respect to homes still under respondents' warranty or in the possession of the dealer and not yet sold to a retail purchaser at the time of cessation of the authorization;

(10) set forth the right of respondents to withdraw authorization from dealers failing to meet their responsibilities under the agreement.

Respondents shall cause their authorized dealers as of the effective date of this order to execute such agreements (which agreements shall be immediately effective) within 180 days of the effective date of this order, or shall thereafter accept no further orders from such dealers until they have executed such agreements. Respondents shall cause dealers initially authorized after the effective date of this order to execute such agreements at the time of their authorization.

Such agreement shall be in the format set forth in Appendix E attached hereto or in a format substantially equivalent hereto.

The "normal course of business" as used in this order Paragraph 3(i) shall not include:

(1) conditions under which abnormal demands are made upon service capabilities as a result of natural disasters, other acts of God or the government, or any other event beyond the control of the dealer which places an unusually large demand upon the dealer's service facilities;

(2) conditions resulting from disasters, strikes, acts of the government, instances of force majeure or other occurrences which are beyond the control of the dealer which prevent the dealer from responding to service requests within the time periods stated hereinabove;

(3) slight omissions or deviations from the terms of this order subparagraph which are inadvertent, unintentional and not due to bad faith of the dealer.

(j) Respondents shall send a questionnaire (using the format set forth

in Appendix F attached hereto or in a format substantially equivalent thereto) to all persons other than "as is" purchasers who after the effective date of this order purchase at retail respondents' mobile homes which inquires as to:

(1) the existence of any defects in said mobile homes covered by respondents' warranty or improper setup or problems arising therefrom;

(2) whether the retail purchaser notified anyone of such defects or setup problems, and if so who was notified and when did such notification take place;

(3) the identity of any person who sought to service such defects or setup problems;

(4) whether such defects or setup problems were fully repaired, the period of time required to effect such repairs, and the identity of the parties who accomplished such repairs;

(5) whether the retail purchaser is satisfied with the promptness and quality of the repair.

Such questionnaire in the form of a postage paid self addressed post card or a letter containing a postage paid self-addressed envelope, shall be sent between ninety and one hundred twenty days subsequent to the tender of possession of the home to the retail purchaser.

(k) Where respondents delegate, assign, contract or otherwise rely on a continuing basis upon any dealer or any other persons not employees of respondents to perform any of the responsibilities set forth in order Paragraph 3(d) hereinabove, respondents shall fully evaluate the level of expertise and physical and personnel resources of such dealers or other persons with respect to the ability to inspect, repair, service and setup all mobile homes manufactured by respondents prior to such delegation or reliance to assure that all said persons are capable of performing said responsibilities or have provided for such performance through a third party having such capability, in accordance with the standards set forth herein.

Respondents shall in addition regularly review and evaluate the manner in which such persons, directly or through another third party, perform the aforesaid responsibilities and maintain their service capabilities and shall withdraw said reliance and authorization from persons failing to meet those responsibilities or the standards set forth herein.

<sup>3</sup>(l) The person or persons to whom the responsibility for supervising and assuring the implementation of respondent's warranty service program is delegated shall make periodic reports at least on a monthly

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<sup>3</sup> Reported as modified by order issued Apr. 22, 1975.

basis to respondent's responsible officers which shall include current information concerning:

- 1) the current cost to respondent of warranty service;
- 2) the incidence and nature of frequently recurring defects;
- 3) those measures undertaken in response to reports of frequently recurring defects including but not limited to modification in production and design of respondent's mobile homes;
- 4) analysis of the manner in which respondent's employees, dealers and other third parties are performing warranty and setup responsibilities.

The direct administration of respondent's warranty service program at the corporate level and the responsibility for supervising and assuring implementation of the warranty service program shall, in any fiscal year following a fiscal year during which respondents and their subsidiaries produce more than 5,000 mobile homes, be vested in only those corporate officials who have no direct responsibilities on a day-to-day basis for the sale of respondent's mobile homes.

(m) Respondent shall, beginning within 120 days of the effective date of this Order, establish a uniform procedure for the systematic receipt and analysis and fair disposition of all complaints or disputes which may arise between the aforesaid retail purchasers of respondent's mobile homes and respondent or respondent's dealers or other third parties, regarding any alleged warranty obligations of respondent.

Such procedure shall incorporate but not necessarily be limited to:

- 1) prompt evaluation and response by respondent to all complaints within a reasonable time not to exceed five business days after receipt by respondent;
- <sup>4</sup> 2) In any fiscal year following a fiscal year during which respondent and its subsidiaries produce more than 5,000 mobile homes, the designation of a single responsible department within respondent's corporate organization for the receipt of said complaints;
- <sup>4</sup> 3) an effective mechanism for the fair and impartial resolution of such disputes. In any fiscal year during which respondents and their subsidiaries produce more than 5,000 mobile homes, the responsibility for resolving disputes through said mechanism shall be vested in only those personnel who are not responsible for sales on a day-to-day basis;
- 4) an accurate and complete record keeping system regarding the nature and disposition of all such disputes and complaints received by respondent;
- 5) periodic review and evaluation by respondent of the effectiveness of such procedures and correction of such procedures where necessary.

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<sup>4</sup> Paragraphs 3(m)(2) and 3(m)(3) reported as modified by order issued Apr. 22, 1975.

(n) Respondents shall, beginning within 120 days of the effective date of this order, maintain full and adequate records which disclose.

(1) the date of receipt, disposition and the date of disposition of each request for warranty service (including any refusal to accept a request and the reason for such refusal) received by respondents; and

(2) the results of the evaluation of service capacity provided for in order Paragraph 3(k) above.

4. *It is further ordered*, That respondents shall forthwith distribute a copy of this order to each of their operating divisions or manufacturing plants engaged in the manufacture, offering for sale, sale, and distribution of mobile homes.

5. *It is further ordered*, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this order.

6. *It is further ordered*, That respondents shall, at intervals of 9, 18, and 24 months following the effective date of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order. Such reports shall include but not be limited to the periodic reports submitted to respondents' responsible officers described in order Paragraph 3(l) above.

7. *It is further ordered*, That respondents shall furnish to the Commission nine months after the effective date of this order, a report which discloses the dates and manner in which dealers and retail purchasers were contacted pursuant to the procedures described in order Paragraph 1 above, and the dates and manner in which dealers and retail purchasers acted in response thereto and the dates and manner in which respondents acted in response to allegations by retail purchasers which purported to create an obligation on the part of respondents under the terms of order Paragraph 2 above. Respondents shall for a period of two years after the effective date of this order maintain records which are adequate to disclose respondents' compliance with order Paragraphs 1 and 2, in order that such records may be furnished by respondents to the Federal Trade Commission upon request.

8. *It is further ordered*, That respondents shall submit to the Federal Trade Commission for its review copies of any proposed substantial revisions in the questionnaire required pursuant to order Paragraph 3(j), the dealer agreement required pursuant to order Paragraph 3(i), and the warranty documents described in order

## Appendices

Paragraph 3(a), at least 60 days prior to the proposed effective date of any such revisions. Such submissions will be required for the three years following the effective date of this order.

9. At the time of their execution of this agreement, proposed respondents are debtors-in-possession in proceedings under Chapter XI of the Federal Bankruptcy Act which are pending in the United States District Court for the District of Nebraska. Proposed respondents have filed in such proceedings a proposed plan of arrangement in which provision is made for the payment of obligations of proposed respondents to their unsecured creditors; and proposed respondents presently contemplate that said plan, or an amended version thereof, will be confirmed in due course by said Court. Accordingly, it is further ordered, That notwithstanding the provisions of order Paragraph 2, if at the time this order becomes effective, the retail purchasers who have by virtue of an appropriate order of said Court or said plan of arrangement or as a matter of law at least 180 days to file claims in said Chapter XI proceedings in respect of the matters as to which repairs or service is required pursuant to order Paragraph 2, then within 120 days after the effective date of this order proposed respondents shall give written notice to each such retail purchaser of his right to file such a claim in said Chapter XI proceedings, and the timely giving of such notices by proposed respondents shall be deemed for all purposes to have satisfied the requirements of order Paragraph 2; *Provided*, That the form and content of such notice shall be subject to prior approval by the Bureau of Consumer Protection of the Commission and, if required, by the Court having jurisdiction over said Chapter XI proceedings. If at the time this order becomes effective, such retail purchasers do not have said 180-day period to file claims as aforesaid, then the provisions of this paragraph shall not supersede the provisions of order Paragraph 2 and the provisions of order Paragraph 2 shall remain in full force and effect.

## APPENDIX A

(DATE)

DEAR MOBILE HOME OWNER:

Thank you for purchasing one of the Commodore Corporation's family of mobile homes. Our homes are warranted to be free from defects in material and workmanship. Any repairs required by your warranty should have been performed in full by the dealer who sold you your home or, if this was not possible, by the factory which manufactured it. Through the following questionnaire, we are seeking to determine your experience with regard to service so that we may be sure you have received full performance of warranty obligations. If you have not received such full performance, your response to the following questions will enable us to provide you with the warranty service to which you are entitled.

## Appendices

Please respond to the following questions and return this letter in the enclosed postage-paid envelope.

(1)(a) Have you experienced problems with your mobile home that you feel are covered by our warranty described above (check one)  yes  no

(1)(b) If the answer to (1)(a) is yes, please tell us *when* the problems occurred and *describe* them. \_\_\_\_\_

(2) If you have experienced problems that you feel are covered by our warranty, please advise us of *whom* you contacted and *when* the contact was made.

\_\_\_\_\_  
(3)(a) If you contacted someone regarding a warranty problem, was the problem corrected (check one):  yes  no

(3)(b) If the answer to 3(a) was yes, please indicate *how long* it took to correct the problem, and *who* performed the repair: \_\_\_\_\_

3(c) If the answer to 3(a) was No, does the problem still exist (check one):  yes  no

3(d) If the answer to 3(c) was Yes, please describe the current condition of the problem and any attempts at correction you have made: \_\_\_\_\_

4(a) If warranty service was provided, were you satisfied with:

(1) the promptness of repairs (check one):  yes  no

(2) the quality and completeness of repairs (check one)  yes  no

4(b) If your answer to 4(a)(2) was No, does the problem which was the subject of warranty service still exist (check one):  yes  no

4(c) If your answer to 4(b) was yes, please explain and describe the current condition of the problem and any attempts at correction you have made: \_\_\_\_\_

5(a) Who performed the set-up or installation of your mobile home? (*Name*) (*relationship, dealer, park operator, independent contractor, etc.*) (*location*)

5(b) Has there been any doubt or dispute as to whether a problem you have experienced with your mobile home was a problem covered by your warranty or due to improper set-up or installation (check one):  yes  no

5(c) If the answer to 5(b) was Yes, does the problem still exist (check one):  yes  no

5(d) If the answer to 5(c) was Yes, please describe the current condition of the problem and any attempts you have made to get the problem corrected: \_\_\_\_\_

5(e) Are you satisfied with the manner in which your mobile home was set-up or installed (check one):  yes  no

5(f) Please advise us of any suggestions that you might have that will enable us to increase the quality, utility, and value that we strive to build into our homes.

\_\_\_\_\_  
Note: This questionnaire was mailed to you as your name and address appear in our records. If there is need for a correction, please make it in the space provided. Also we ask that you supply us with your telephone number in the space provided as it will facilitate our reaching you to discuss any problems with our product or service that you have pointed out.

(Name of Customer) \_\_\_\_\_

(Street address) \_\_\_\_\_

(City, State, Zip) \_\_\_\_\_

Telephone Number (including area code) \_\_\_\_\_

We thank you for responding to the questions set forth above. Please return this letter to us in the enclosed postage paid envelope.

Sincerely,



APPENDIX B \*

[Exhibit 1]

THE COMMODORE CORPORATION

TO: All Present and Former Dealers of The Commodore Corporation and its Subsidiaries

As you may know, The Commodore Corporation has entered into an agreement with the Federal Trade Commission which will entitle certain retail purchasers of mobile homes manufactured by Commodore or its subsidiaries to file claims in Commodore's Chapter XI proceedings under the Federal Bankruptcy Act with respect to alleged unrepaired warranty service problems. Such purchasers may then be able to receive cash payments in accordance with the terms of the bankruptcy proceeding.

Because Commodore's unit files and warranty registration records do not provide the necessary information for a number of mobile homes, Commodore is required by the Federal Trade Commission agreement to seek your assistance in obtaining such information.

We wish to obtain the names and addresses of the initial retail purchasers of all mobile homes which may have been manufactured by The Commodore Corporation and its subsidiaries during the period from July 1, 1972, through June 30, 1974. Since you purchased mobile homes from Commodore or its subsidiaries during such period, we believe that you will have records containing all or some of the required names and addresses.

Please list below the names and addresses of the initial retail purchaser of each mobile home which may have been manufactured by Commodore or its subsidiaries during the period from July 1, 1972, to June 30, 1974, and purchased by you, together with the serial numbers of such mobile homes. If your records do not show the date on which any given home was manufactured please supply the information for units for which agreements of retail sale were signed during the period May 1, 1972 to August 1, 1974.

You should return this letter to us in the enclosed postage-paid envelope not later than \_\_\_\_\_ 1975.

We hope you appreciate that supplying this information might be of substantial assistance to your past retail purchasers.

Very truly yours,  
THE COMMODORE CORPORATION  
By: Orvil C. Bachman, Vice Pres.

Dealer's Name and Address: \_\_\_\_\_

Serial Numbers	Name and Addresses
_____	_____
_____	_____
_____	_____

\* This form of letter is the one replaced by order issued Apr. 22, 1975.

APPENDIX C

Owner-Dealer Final Delivery Checklist

Owner:

Dealer:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)                      (Phone No.)

\_\_\_\_\_  
(Address)                      (Phone No.)

\_\_\_\_\_  
(City)            (State)            (Zip)

\_\_\_\_\_  
(City)            (State)            (Zip)

Model and Serial Number \_\_\_\_\_

The dealer has completed inspection of the home with the owner. The following items have been checked in accordance with the manufacturer's Field Installation Manual and found satisfactory:

**Setup**

Blocked and leveled. \_\_\_\_\_

(Doublewides only) Halves aligned and exterior and floor covering installation completed. \_\_\_\_\_

Anchors and tie-downs installed in accordance with local requirements. \_\_\_\_\_

**Utilities**

The following have been connected:

Fuel (gas or oil) \_\_\_\_\_

Water supply \_\_\_\_\_

Sewage \_\_\_\_\_

Electric power supply \_\_\_\_\_

**Exterior**

Proper operation of doors and windows, including screens or storms. \_\_\_\_\_

Roof seams \_\_\_\_\_

Siding and trim \_\_\_\_\_

**Interior**

- Ceilings \_\_\_\_\_
- Paneling \_\_\_\_\_
- Holdings \_\_\_\_\_
- Floor coverings \_\_\_\_\_
- Curtains and drapes \_\_\_\_\_
- Lamps and light fixtures \_\_\_\_\_
- Electrical receptacles, circuit breakers and light switches \_\_\_\_\_
- Interior doors \_\_\_\_\_
- Cabinets and drawers \_\_\_\_\_
- All plumbing fixtures \_\_\_\_\_
- Furniture \_\_\_\_\_
- Appliances**
- Furnace \_\_\_\_\_
- Water heater \_\_\_\_\_
- Range and oven \_\_\_\_\_
- Refrigerator \_\_\_\_\_
- Washer and dryer \_\_\_\_\_
- Garbage disposer \_\_\_\_\_
- Air conditioner \_\_\_\_\_

The Manufacturer's Warranty, Owner's Manual, Field Installation Manual, all appliance manuals and all required keys have been delivered and explained to the owner.

Any adjustments or repairs remaining to be done (describe briefly) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The above inspection has been completed to my satisfaction, except for the adjustments or repairs remaining to be done as noted above.

\_\_\_\_\_  
Owner's signature

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of dealer's representative

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Appendices

APPENDIX D

Reinspection Report

Owner:

Dealer:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address) (Phone No.)

\_\_\_\_\_  
(Address) (Phone No.)

\_\_\_\_\_  
(City) (State) (Zip)

\_\_\_\_\_  
(City) (State) (Zip)

Model and Serial Number \_\_\_\_\_

The dealer has reinspected the above home within 30 to 90 days after original delivery. The following items were checked and any necessary repairs or corrections made:

- Supporting piers \_\_\_\_\_
- Leveling \_\_\_\_\_
- Roof \_\_\_\_\_
- Doors and windows \_\_\_\_\_
- Plumbing \_\_\_\_\_
- Heating and Air Conditioning \_\_\_\_\_
- Electrical System \_\_\_\_\_
- Appliances \_\_\_\_\_

Any adjustments or repairs remaining to be done \_\_\_\_\_

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

The above reinspection and any necessary adjustments or repairs (except as otherwise noted above) have been completed to my satisfaction.

\_\_\_\_\_  
Owner's signature

\_\_\_\_\_  
Date

## APPENDIX E

("Dealer")

("Manufacturer")

## SERVICE AGREEMENT

THIS AGREEMENT is entered into between Dealer and Manufacturer on the date set forth below. Dealer wishes to act or continue to act as a retail dealer of mobile homes produced by Manufacturer ("Homes"), and Manufacturer wishes Dealer to perform service including service under Manufacturer's written warranty. Recognizing that satisfaction and good will of homeowners are of primary importance and can be best achieved by Dealer and Manufacturer providing prompt, efficient and courteous service, and in consideration of Manufacturer's sales to Dealer, Dealer's purchases from Manufacturer, and their agreements herein, the parties mutually agree:

1. *Manufacturer Inspection and Correction.* Before shipment to Dealer, Manufacturer shall inspect every Home and correct discovered manufacturing defects.

2. *Dealer Inspection.* Dealer shall thoroughly inspect each Home and promptly initiate repair of any discovered defect. "Dealer Inspection" shall consist of inspection of each Home at the following times:

- a. immediately upon receipt from Manufacturer
- b. immediately before delivery by Dealer to any retail purchaser of a Home ("Homeowner")
- c. immediately after setup, utility connection and site servicing, and
- d. between 30 and 90 days after setup, in conjunction with any necessary releveling.

3. *Dealer Setup and Service.*

a. Dealer shall employ or contract for setup and service personnel who, in Manufacturer's reasonable judgment, are competent to set up Homes, and to provide both Reimbursable Service and Non-Reimbursable Service as defined and specified below. Dealer shall promptly respond to all Homeowner requests for such service, and shall promptly complete all such service within Dealer's ability, subject to Manufacturer's authorization to perform any Reimbursable Service.

b. Dealer agrees that setup of each Home shall be performed according to instructions contained in Manufacturer's Field Installation Manual, and any applicable federal, state or local statutes, ordinances, codes or regulations. Setup of each Home (including releveling and resolution of any problem resulting from improper setup) is Dealer's responsibility regardless of who does the setup.

c. Dealer shall perform Non-Reimbursable Service at Dealer's sole cost and expense, which shall include the examples of minor repairs and adjustments listed on the Attachment to this Agreement.

4. *Manufacturer Reimbursement.*

a. If Dealer reasonably believes that a Homeowner service request requires Reimbursable Service, Dealer shall request approval of and reimbursement by Manufacturer in accordance with Manufacturer's Homeowner Service Program Manual. Absent such authorization, Dealer shall not be entitled to reimbursement for service. Dealer will be entitled to reimbursement only for the amount authorized by Manufacturer.

b. "Reimbursable Service" means service to correct a defect existing at the time a Home is delivered by Manufacturer to Dealer. Reimbursable Service includes the examples listed in the Attachment to this Agreement. Service to correct any other defect, including any related to or resulting from delivery to the Homesite, setup, and any service necessary to correct any reasonably discoverable defect not noted in writing on a

Check Out Sheet to be signed by Dealer when the Home is delivered to Dealer, is Non-Reimbursable Service.

5. *Completion of Service.* Except as provided in paragraphs 6 and 7 below, Dealer shall in the normal course of business begin and complete all Reimbursable and Non-Reimbursable Service within a reasonable time but not later than thirty days after Dealer receives notice of the need for such service. But if Dealer or Manufacturer determines that a defect affects the safety of a Home or renders it substantially uninhabitable, Dealer shall in the normal course of business begin Non-Reimbursable and/or Reimbursable Service within three business days after receipt of notice of the need for such service, and shall quickly complete such service. "In the normal course of business" does not include (a) a condition under which abnormal demands are made upon service capabilities as a result of a natural disaster, other Act of God, or the government or any other event beyond the control of Dealer that places an unusually large demand 7. *Service facilities or (b) an event such as a disaster, strike, act of government, or any other occurrence beyond the control of Dealer that prevents Dealer from responding to a service request within the times stated above.*

6. *Manufacturer Service.* If any request appears to require Reimbursable or Non-Reimbursable Service beyond Dealer's ability, Dealer shall immediately examine the Home and inform Manufacturer by telephone no later than five business days after receipt of the service request. Manufacturer shall, if it agrees with Dealer's determination, promptly process such service request as if received directly from the Homeowner, and shall arrange for service to be performed within the time periods set forth in paragraph 5 above. However, if Dealer believes that a defect affects the safety of a Home or renders it substantially uninhabitable, and that repairs are beyond Dealer's ability, Dealer shall tell Manufacturer within two business days after receipt of the Homeowner request, and Manufacturer shall begin any such service within two business days after being informed by the Dealer.

7. *Service in Event of Dispute.* If Manufacturer and Dealer disagree as to whether Reimbursable or Non-Reimbursable Service is required, and if Dealer fails or refuses to correct a problem within a reasonable time but not longer than the times stated in paragraph 5 above, Manufacturer shall do so. Manufacturer shall discuss with Dealer which type of service was required, and Dealer shall promptly pay Manufacturer its reasonable cost of performing any Non-Reimbursable Service.

8. *Dealer/Homeowner Inspections.* Manufacturer shall provide Dealer with forms to be used by Dealer in performing the inspections required by paragraph 2 above. Dealer agrees:

- a. diligently and timely
  - (i) to make such inspections,
  - (ii) to complete such forms, and
  - (iii) to note in writing on such forms any discovered manufacturing defect or remaining dealer responsibility item which shall be remedied as if Homeowner had notified Dealer of such defect or item;
- b. promptly to send the originals of such forms to Manufacturer and to provide each Homeowner with copies of those required by paragraphs 2.c. and 2.d. above; and
- c. whenever possible, to obtain the Homeowner's signature on such forms.

*Dealer shall not knowingly deliver possession of a Home with any defect that affects the safety of a Home or renders it substantially uninhabitable.*

9. *Retail Contract and Records.* Before execution of the retail sales contract, Dealer agrees to show to each Homeowner a copy of Manufacturer's warranty to be furnished with the Home. The Homeowner's copy of such warranty and any owner's manuals (including the Field Installation Manual), instructions and other materials that Manufacturer may furnish to Dealer for delivery to Homeowner shall be delivered to

Homeowner with possession of the Home. Dealer agrees to keep such records concerning Homeowners as Manufacturer may reasonably require and to furnish Manufacturer with information from such records. Dealer further agrees to provide to Manufacturer such information as Manufacturer may reasonably request concerning: (a) service requests from, complaints by, and other communications with Homeowners and (b) service activities with respect to Homes.

10. *Factory Training and Consultation.* Manufacturer agrees to provide training programs for Dealer service and setup personnel at such locations as Manufacturer may determine, without charge by Manufacturer. Manufacturer further agrees to consult with Dealer and to provide technical advice to Dealer concerning Home service and setup, if requested by Dealer.

11. *Termination.* If the Dealer/Manufacturer relationship is terminated, their obligations under this Agreement to inspect and service sold and unsold Homes shall continue and be unaffected by such termination. Dealer's obligations under this Agreement to furnish information, records and forms shall survive any such termination.

12. *Effect and Formalities.* Failure by either party to perform its obligations under this Agreement shall be good and sufficient cause for the other to terminate this Agreement and the Dealer/Manufacturer relationship. If any Agreement provision is declared legally invalid or unenforceable, the remaining provisions shall continue to be enforceable. More than one copy of this Agreement may be executed, each of which shall be deemed an original for all purposes. The paragraph headings herein are for convenience only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement, except capitalized and quoted words defined for purposes of this Agreement. This Agreement supersedes any prior agreement, either written or oral, between the parties as to service. It shall be binding upon and benefit the parties and their heirs, legal representatives, successors and assigns; but it may be assigned or otherwise amended or supplemented only in writing. *Time is of the essence of this Agreement*, and provisions relating to time of performance may be strictly construed.

IN WITNESS WHEREOF, Manufacturer and Dealer have executed this Agreement effective \_\_\_\_\_, 19 \_\_\_\_ . Address of Dealer for notices:

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

\_\_\_\_\_  
 (Type or print name of signer)

\_\_\_\_\_  
 By: for the Dealer (Title)

Address of Manufacturer for notices:

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

\_\_\_\_\_  
 (Type or print name of signer)

\_\_\_\_\_  
 By: for the Manufacturer (Title)

#### Attachment to Service Agreement

##### *Examples of Non-Reimbursable Service*

- A. Setting up all unassembled furniture, including but not limited to dinettes and bed frames.
- B. Installing all light shades shipped loose.
- C. Mounting or assembling all parts of the mobile home that are shipped loose as Manufacturer's normal procedure.
- D. Making minor repairs to plumbing, electrical and gas systems.
- E. Recaulking and resealing any roof seam or opening if necessitated by Dealer transportation or setup.

- F. Recaulking all windows and doors if necessary to reduce leaks or drafts.
- G. Making minor appliance adjustments and repairs.
- H. Adjusting all doors, windows and drawers for proper operation.
- I. Retacking any moldings that have come loose in transit or during setup.
- J. Tightening wheel lug bolts before unit is delivered.
- K. Making all repairs necessitated by delivery to Homeowner or improper setup.
- L. Making routine cosmetic and other minor repairs.
- M. Adjusting or replacing door locks and window cranks.
- N. Fixing gas and water line leaks.
- O. Tightening loose fittings.

*Examples of Reimbursable Service*

- A. Making repairs necessary to correct manufacturing code deviations existing at the time of delivery to the Dealer.
- B. Replacing defective materials; e.g., delaminated or discolored wall paneling or ceiling panels, if due to factory defect.
- C. Making major interior repairs due to leaks if caused by faulty manufacture.
- D. Repairing damages caused by frame failure if due to improper manufacture and not road damage or other causes for which Manufacturer is not responsible.
- E. Replacing defective equipment (e.g., light switches, tires, kitchen sinks) existing at the time of delivery to Dealer.
- F. Making repairs to exterior metal damaged prior to delivery to Dealer.
- G. Replacing paneling and floor coverings damaged by water leaks if caused by faulty manufacture and not improper setup or other causes.
- H. Replacing and rehanging excessively warped doors, if due to factory defect.
- I. Repairing and replacing floor covering damaged at the factory.

APPENDIX F

Dear Homeowner:

We appreciate your purchase of a mobile home built by Skyline. We sincerely believe you have chosen one of the very best values available in housing today.

Nothing is more important to us than your total satisfaction with your home, including the setup and services provided by your dealer. Would you kindly take a few minutes to complete and return this questionnaire? It will help up and your dealer to serve you better.

Dealer's Name \_\_\_\_\_

City \_\_\_\_\_

Approximate Date of Delivery \_\_\_\_\_

Was your home delivered in good condition and set up in a satisfactory move? Yes  
 No

Did you receive your Homeowner's Manual, Field Installation Manual, and manufacturer's warranty? Yes  No

Did your dealer go through your home with you after setup and make sure everything was in good order? Yes  No

If any adjustment, repairs or corrections were needed, were they completed satisfactorily and within a reasonable time? Yes  No

Who did the work (if you know)? Dealer  Contractor  Factory

If you answered "no" to any of the above questions, please explain

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



IN THE MATTER OF  
ALBERTSON'S, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-2644. Complaint, Mar. 4, 1975 - Decision, Mar. 4, 1975*

Consent order requiring a Boise, Idaho, chain of retail food stores, among other things to cease advertising merchandise at sale prices and having insufficient quantities available to meet demand. The order further requires respondent to include in advertisements statements as to the availability of advertised products, to mark advertised products with the advertised price, to make "rain checks" available and post notices to that effect, and to maintain surveillance on their stores to insure compliance with the provisions of the order.

*Appearances*

For the Commission: *W. Lee Buck.*

For the respondent: *Robert W. Graham, Bogel, Gates, Dobrin, Wakefield & Long, Seattle, Wash.*

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 Albertson's, Inc., 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Albertson's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1623 Washington St., Boise, Idaho.

PAR. 2. Respondent is engaged in the operation of a chain of retail food stores, operating in the States of Washington, Oregon, Colorado, Idaho, California, and other states in the United States. Its volume of business is substantial. In the operation of its retail food stores, respondent offers and sells to its customers an extensive line of products, including food, as that term is defined in the Federal Trade Commission Act, groceries and other merchandise, all of which are sometimes referred to hereafter as "items." Some of said items are manufactured or processed by respondent at its manufacturing and processing plants located in various states. However, many of said

items are purchased from numerous independent suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, directly or indirectly, the aforesaid items to be shipped and distributed from its manufacturing and processing plants or from its other sources of supply to its warehouses, distribution centers, or retail food stores located in various states other than the state of origination, distribution or storage of said items. Respondent maintains, and at all times mentioned herein has maintained a substantial course of trade in the distribution, advertising, offering for sale and sale of the aforesaid items in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, and for some time last past respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the aforesaid items by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said items from respondent; and respondent has been and is now disseminating, and causing the dissemination of, advertisements concerning said items by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase from respondent of the said items in commerce, as "commerce" is defined in the Federal Trade Commission Act. Many of the said advertisements list or depict the aforesaid items and also contain statements and representations concerning the price or terms at which said items would be offered for sale. Many of the aforesaid advertisements contain further direct and express statements and representations concerning the time periods during which the offers would be in effect and the locations of respondent's food stores at which the offers would be made.

PAR. 5. Through the use of such advertisements disseminated and now being disseminated in various areas of the United States served by respondent's retail food stores, respondent has represented and is now representing directly or by implication that in those stores covered by such advertisements, during the effective periods of the advertised offers, the items listed or depicted in such advertisements would be or are:

- A. Readily available for sale to customers;

B. Conspicuously available for sale at or below the advertised prices; and

C. Sold to consumers at or below the advertised price.

PAR. 6. In truth and in fact, in a number of respondent's retail food stores located in the Portland, Oreg.; Seattle, Wash.; and Denver, Colo., metropolitan areas in which the aforesaid advertisements were disseminated, in stores covered by such advertisements, during the effective periods of the advertised offers, a substantial number of items listed or depicted in the said advertisements were or are:

A. Not readily available for sale;

B. Not conspicuously available for sale at or below the advertised prices; or

C. Sold to customers at a price higher than the advertised price. Therefore, the statements and representations as referred to herein, were and are false, misleading and deceptive, and each of such advertisements was and is misleading in material respects and constituted, and now constitutes a "false advertisement," as that term is defined in the Federal Trade Commission Act.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale items as aforesaid, and by failing to have in each of its stores covered by such advertisements, during the effective periods of the advertised offers, in quantities sufficient to meet reasonably anticipated demands, the advertised items:

A. Readily available for sale to customers; or

B. Conspicuously available for sale at or below the advertised prices;

respondent has been and now is engaged in unfair acts and practices.

PAR. 8. By disseminating or causing the dissemination of advertisements which offer or present for sale items at specific prices, as aforesaid, and during the effective periods of such advertised offers at certain stores covered by said advertisements, by selling said items or other merchandise to customers at prices higher than the advertised prices, respondent has been and now is engaged in unfair acts and practices.

PAR. 9. In the course and conduct of its business, and at all times referred to herein, respondent has been and now is in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail food and grocery business.

PAR. 10. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices, including the dissemination of the aforesaid "false advertisements," has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken

belief that the said statements and representations were and are true, and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices and substantial quantities of items other than the advertised items.

PAR. 11. The acts and practices as aforesaid, and the dissemination by respondent of the false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

#### 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 Seattle Regional Office 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 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 days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Albertson's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware with its office and principal place of business located at 1623 Washington St., Boise, Idaho.

B. 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 Albertson's, Inc., a corporation, its successors or assigns, its officers, 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 food or grocery products or other merchandise, hereafter sometimes referred to as items, offered or sold in its retail stores, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing the dissemination of any advertisement by any means which offers any items for sale at a stated price, unless during the effective period of the advertised offer at each retail store covered by the advertisement:

1. Each advertised item is readily available for sale to customers in the public area of the store, or if not readily available there, a clear and conspicuous notice is posted where the item is regularly displayed which states that the item is in stock and may be obtained upon request, and said item is furnished on request;

2. There is a sign or other conspicuous marking at the place where an item advertised below regular shelf price is displayed for sale clearly disclosing that the item is "as advertised" or "on sale" or words of similar import as appropriate, and disclosing on such sign or marking, the advertised price;

3. Each advertised item, which is usually and customarily individually marked with a price, is individually, clearly, and conspicuously marked with the advertised price;

4. Each advertised item is sold to customers at or below the advertised price;

The Commission recognizes that technical per se violations of Section I of this order are inevitable despite the honest best efforts of respondent to ensure availability and proper pricing of advertised items. Therefore, in determining compliance with Section I of this order, the Commission will consider (a) all circumstances surrounding nondelivery of advertised products which were actually ordered in quantities sufficient to meet reasonably anticipated demands but were not delivered due to circumstances beyond respondent's control, and (b)

all circumstances surrounding failure to make advertised items conspicuously and readily available for sale at or below the advertised prices due to circumstances beyond respondent's control.

*Provided*, It shall constitute a defense to a charge of unavailability under subparagraph I.A.1. if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records and affidavits as will show that (a) the advertised items were delivered to its stores in quantities sufficient to meet reasonably anticipated demand, or (b) the advertised items were ordered but not delivered due to circumstances beyond respondent's control, and that respondent, upon notice or knowledge of such nondelivery acted immediately to contact the media to correct the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item, and (c) respondent immediately offered to customers on inquiry a "rain check" for each unavailable item which entitled the holder to purchase the item in the near future at or below the advertised price.

*Provided*, Further, that it shall not be deemed a violation of subparagraphs I.A.1., I.A.2., I.A.3., or I.A.4., if respondent is complying with a specific exemption, limitation or restriction with respect to store, item or price which is clearly and conspicuously disclosed in all advertisements for the product in question.

## II.

*It is further ordered*, That respondent Albertson's, Inc., a corporation, its successors or assigns, its officers, 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 food or drugs, as those terms are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated, by United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains any of the offers prohibited by Section I of this order;

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the offers prohibited by Section I of this order.

## III.

*It is further ordered,* That throughout each advertised sale period in each of its retail stores covered by an advertisement, respondent shall post conspicuously (1) at or near each doorway affording entrance to the public, and (2) at or near the place where customers pay for merchandise, notices which contain the following:

A. A copy of the advertisement.

B. A statement that: "All items advertised are readily available for sale at or below advertised price except the following items:

"Rain checks will be gladly issued for these items, that will enable you to purchase these items at or below the advertised price in the near future. If you have any questions, the store director will be glad to assist you."

## IV.

*It is further ordered,* That respondent shall cause the following statement to be clearly and conspicuously set forth in each advertisement which represents that items are available for sale at a stated price at any of its stores: "Each of these advertised items is required to be readily available for sale at or below the advertised price in each Albertson's store, except as specifically noted in this ad."

## V.

*It is further ordered,* That:

A. Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organization down to the level of and including assistant store directors who, directly or indirectly, have any supervisory responsibilities as to individual retail stores of respondent, or who are engaged in any aspect of preparation, creation, or placing of advertising, and that respondent shall secure a signed statement acknowledging receipt of said order from each such person;

B. Respondent shall institute and maintain a program of continuing surveillance adequate to reveal whether the business practices of each of its retail stores conform to this order, and shall confer with any duly authorized representative of the Commission pertaining to such program when requested to do so by a duly authorized representative of the Commission;

C. Respondent shall, for a period of three (3) years subsequent to the date of this order:

1. Maintain business records which show the efforts taken to insure continuing compliance with the terms and provisions of this order;

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Complaint

2. Grant any duly authorized representative of the Federal Trade Commission access to all such business records;

3. Furnish to the Federal Trade Commission copies of such records which are requested by any of its duly authorized representatives;

D. Respondent shall, all other provisions of this order notwithstanding, on or before each of the first three (3) anniversary dates of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order in the preceding year.

*It is further ordered,* That respondent shall notify the Commission at least thirty days prior to any proposed change in the corporate respondent, 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 respondent which may affect compliance obligations arising out of this order.

*It is further ordered,* That respondent shall, within sixty days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

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IN THE MATTER OF

HUGH MOONEY T/A ORGANIC MASQUE CO.

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

*Docket C-2645. Complaint, Mar. 6, 1975 - Decision, Mar. 6, 1975*

Consent order requiring a Greenwich, Conn., seller and distributor of a skin preparation known as Organic Masque, among other things to cease making false performance and effectiveness claims and misrepresenting the extent to which the product has been tested or the results of its use demonstrated.

*Appearances*

For the Commission: *Jean F. Greene* and *Mark A. Heller*.

For the respondent: *Charles B. Chernofsky*, Pearl River, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Hugh Mooney, individually and doing business as Organic Masque Co., hereinafter