

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 For its part, Texaco also opposes the motion and suggests that this matter be withdrawn from adjudication for further investigation.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;

