

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.

<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 would be entitled to relief under the provisions of order Paragraph 2 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.

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 \_\_\_\_\_

## Appendices

85 F.T.C.

**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

## 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

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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