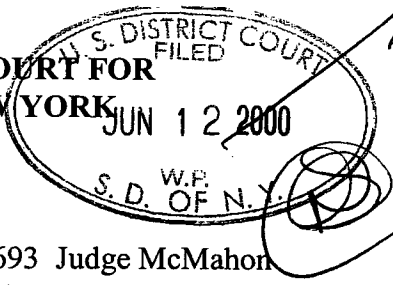


McMahon, J MP

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK  
WHITE PLAINS DIVISION



FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
v.  
  
FIVE STAR AUTO CLUB, INC., et al.,  
  
Defendants.

) CIV-99-1693 Judge McMahon  
) **FINAL JUDGMENT AND ORDER**  
) **FOR A PERMANENT INJUNCTION**  
) **AS TO DEFENDANTS**  
) **FIVE STAR AUTO CLUB, INC.,**  
) **MICHAEL SULLIVAN, AND**  
) **ANGELA SULLIVAN**

00, 0165wp

Plaintiff Federal Trade Commission ("FTC" or "Commission") filed its initial Complaint and *Ex Parte* Application for a Temporary Restraining Order and Other Equitable Relief on March 8, 1999. The Court granted Plaintiff's Application that same day. On April 5, 1999, Defendants Five Star Auto Club, Inc., Michael Sullivan, and Angela Sullivan stipulated to entry of a preliminary injunction. On April 8, 1999, the Federal Trade Commission filed its First Amended Complaint naming Thomas Lee Bewley and Judy E. Bewley as additional Defendants.

The First Amended Complaint charged Defendants Five Star Auto Club, Inc., Michael Sullivan, Angela Sullivan, Thomas Lee Bewley and Judy E. Bewley with violations of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §45. Plaintiff and Defendants Thomas Lee Bewley and Judy E. Bewley reached a settlement agreement and a Final Order was entered pursuant to that agreement on January 3, 2000. On April 24, 2000, through May 2, 2000, a trial was held in this matter. Pursuant to that trial and the Court's May 17, 2000 Findings of Fact and Conclusions of Law, that are hereby incorporated into this Final Order, the Court enters

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THIS DOCUMENT WAS ENTERED  
ON THE DOCKET 6-13-00

the following Final Order against Defendants Michael Sullivan, Angela Sullivan and Five Star Auto Club, Inc.

In accordance with Rule 65(d) of the Federal Rules of Civil Procedure, this Final Order shall be binding on Defendants, their officers, agents, servants, employees, and upon those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

### **DEFINITIONS**

For the purposes of this Final Order, the following definitions apply:

- A. "Defendants" means Michael Sullivan, Angela Sullivan and Five Star.
- B. "Five Star" means Five Star Auto Club, Inc. and its subsidiaries or affiliates, including but not limited to Five Star Automotive Research and Information Consultants, Five Star Auto Club Marketing Offices, Five Star Consulting, Inc., Advance Funding, Inc., Team Five Star, NUCAR4U, and the Alternative Automobile Aquisition Advisory Association or AAAAA.
- C. "Michael Sullivan" means Michael R. Sullivan individually, and d/b/a Five Star Auto Club Marketing Offices, Five Star Automotive Research and Information Consultants, Team Five Star, NUCAR4U, and the Alternative Automobile Aquisition Advisory Association or AAAAA.
- D. "Angela Sullivan" means Angela C. Sullivan individually, and d/b/a Five Star Auto Club Marketing Offices, Five Star Automotive Research and Information Consultants, Team Five Star, NUCAR4U, and the Alternative Automobile Aquisition Advisory Association or AAAAA.

E. "Multi-level marketing program" means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to: (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant's downline, tree, cooperative, income center, or other similar program grouping; (2) sell goods or services; and (3) receive payment or other compensation, in whole or in part, based upon the sales of those in the participant's downline, tree, cooperative, income center or similar program grouping.

F. "Prohibited marketing scheme" means a pyramid sales scheme, Ponzi scheme, chain marketing scheme, or other marketing plan or program in which a person participates under a condition that he or she make a payment, directly or indirectly, to receive the right, license or opportunity to derive income as a participant primarily from: (1) the recruitment of additional recruits by the participant, program promoter or others; or (2) non-retail sales made to or by such recruits.

G. "Retail Sales" means sales of products, services, or Business Ventures by Defendants, their successors, assigns, agents, servants, employees, and those persons in active concert or participation with them to third-party end users. Retail Sales do not include sales made by participants in a prohibited marketing scheme or multi-level marketing program to other participants or recruits in that scheme or program or to such a participants' own accounts.

- H. “Business Venture” means any written or oral business arrangement, however denominated, whether or not covered by 16 C.F.R. Part 436, that consists of the payment of any consideration for: 1) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising or other commercial symbol); and 2) assistance to any person in connection with or incident to the establishment, maintenance, or operation of a new business, or the entry by an existing business into a new line or type of business.
- I. “Assets” means all real and personal property of any Defendant or held for the benefit of any Defendant, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes” (as these items are defined in the Uniform Commercial Code), and all cash, wherever located.
- J. “Receiver” means Peter B. Zlotnick, the receiver appointed by the Court in this matter over Five Star.
- K. “clear and conspicuous” when used with regard to any disclosure means in a manner that would be easily recognizable and understandable to a reasonable consumer, including but not limited to, the following: 1) any disclosure shall be made in the same language as that used principally in any information imparted at or near the time of the disclosure; 2) any disclosure provided through print, television, video or the Internet shall be of a color or shade that readily contrasts with the background of the disclosure; 3) any disclosure given in print shall

appear in type font that is at least 1/3 larger than all other text on the page and be located in a position of prominence on the top 1/3 of the first page; 4) any oral disclosure shall be delivered in a cadence and volume sufficient for an ordinary consumer to understand; and 5) nothing contrary to the disclosure shall be imparted at or near the time of the disclosure.

## **ORDER**

### **I.**

**IT IS THEREFORE ORDERED** that Defendants are permanently restrained and enjoined from:

- A. marketing or attempting to market memberships in any organization that offers or purports to offer or promises to offer a free automobile to any person who pays fees to Defendants and agrees to sign up additional members or to receive and distribute promotional materials promoting membership in any such free automobile program, by whatever name known;
- B. maintaining or causing or permitting to be maintained on their behalf any website, telephone call-in site, or any other advertising medium or vehicle that offers or promotes free automobiles or memberships in any group or organization, by whatever name known, that offers or promises free automobiles in exchange for the payment of fees and the recruitment of new members; and
- C. otherwise marketing or attempting to market memberships in any entity, by whatever name known, that promises or offers to promise free merchandise to persons who pay fees in exchange for the right to recruit new members or to

distribute promotional materials.

**II.**

**IT IS FURTHER ORDERED** that Defendants are permanently restrained and enjoined from engaging, participating or assisting in any manner or capacity whatsoever, directly or indirectly, or in concert with others, individually or through any business entity or other device, in any Multi-level marketing program or Prohibited marketing scheme.

**III.**

**IT IS FURTHER ORDERED** that Defendants, in connection with the advertising, promoting, offering for sale, sale, or distribution of any Business Venture are permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or misrepresentation of material fact, including but not limited to, the following:

- A. Misrepresenting the potential earnings or income derived from such activity;
- B. Misrepresenting the benefits any person participating in such an activity actually can receive from such activity;
- C. Misrepresenting the amount of sales a person actually made or can potentially make through such activity;
- D. Using any hypothetical earnings claims; and
- E. Misrepresenting that any Defendant has received any type of approval or endorsement from the Federal Trade Commission for any such activity.

#### IV.

**IT IS FURTHER ORDERED** that Defendants, in connection with the advertising, promoting, offering for sale, sale, or distribution of any Business Venture are hereby restrained and enjoined from failing to disclose to any participant or prospective participant in any Business Venture to whom either Defendants, or their officers, agents, servants, employees or distributors, and those persons in active concert or participation with them, has made representations concerning earnings, profits or sales volume relating to the Business Venture: (1) the number of persons who have earned, profited or sold at least the amount represented; and (2) the percentage of the total participants or purchasers who have earned, profited or sold at least the amount represented. All such disclosures shall be made prior to the receipt of any payment and in a manner that is both clear and conspicuous.

#### V.

**IT IS FURTHER ORDERED** that Defendants, in connection with the advertising, promoting, offering for sale, sale, or distribution of any Business Venture are hereby restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading representation or omission of material fact.

#### VI.

**IT IS FURTHER ORDERED** that Defendants, in connection with the advertising, promoting, offering for sale, sale, or distribution of any product, service, or Business Venture are permanently enjoined and restrained from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all

Defendants' agents, representatives, employees, or independent contractors comply with Paragraphs I, II, III, IV and V of this Order. Reasonable steps shall include, at a minimum, establishing and maintaining a compliance program which includes random, blind testing of the oral representations made by any agent, representative, employee or independent contractor; spot checking of consumers to ensure that no misrepresentations were made; and ascertaining the number and nature of any consumer complaints. Defendants Michael Sullivan and Angela Sullivan shall, for a period of ten (10) years, submit to the Commission, on an annual basis, no later than fifteen (15) days after the anniversary of the date of entry of this Order, a summary report indicating the efforts of Defendants Michael Sullivan and Angela Sullivan to comply with the requirements of this Paragraph. These annual reports shall be submitted to the Commission's Associate Director for Marketing Practices at the address listed in Paragraph XX.

B. Failing to investigate and resolve promptly any consumer complaint or request for refund received by Defendants Michael Sullivan and Angela Sullivan, their assigns, officers, agents, servants, employees and distributors, and those persons in active concert or participation with them who receive actual notice of this Order regarding any Business Venture, or any aspect thereof, and to notify the consumer of the resolution of the complaint or request and the reason therefore.

## VII.

**IT IS FURTHER ORDERED** that judgment is hereby entered in the amount of \$2,900,000.00 as follows: Defendants Five Star and Michael Sullivan are jointly and severally liable for the entire amount; Defendant Angela Sullivan is jointly and severally liable to the extent of \$536,000.00. All monies paid pursuant to this Paragraph shall be deposited into a fund



administered by the Commission to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury as disgorgement or shall be used to educate consumers affected by the practices described in the Commission's complaint in this action. Defendants shall have no right to contest the manner of distribution chosen by the Commission. The Commission, in its sole discretion, may use a designated agent to administer consumer redress. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, forfeiture or punitive assessment.

### VIII.

**IT IS FURTHER ORDERED** that Peter Zlotnick, Esq. is appointed as permanent Receiver, with the full power of an equity receiver, for Five Star, and of all the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by Five Star, with directions and authority to accomplish the following:

- A. Maintain full control of Five Star;
- B. Maintain custody, control, and possession of all the funds, property, premises, accounts, mail and other assets of, or in the possession or under the control of, Five Star, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to Five Star, with full power to: collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in

banks and other financial institutions, and other papers and documents of Five Star and purchasers of the Five Star program whose interests are now held by or under the direction, possession, custody, or control of Five Star;

- C. Continue performing all acts necessary to preserve the value of those assets, in order to prevent any irreparable loss, damage or injury to purchasers of the Five Star program, and all acts incidental thereto, including the suspension of operations;
- D. Enter into such agreements in connection with administration of the receivership, including, but not limited to: (1) the retention and employment of investigators, attorneys or accountants of the Receiver's choice, including, without limitation, members and employees of the Receiver's firm, to assist, advise, and represent the Receiver; (2) the movement and storage of any equipment, furniture, records, files, or other physical property of Five Star; and (3) the retention of auctioneers or other professionals to assist in the liquidation of Five Star's assets;
- E. Institute, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve or increase the value of the receivership estate, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Final Order, and likewise to defend, compromise, or adjust or otherwise dispose of any or all actions or proceedings instituted against the Receiver or Five Star that the Receiver deems necessary and advisable to preserve the properties of Five Star or that the Receiver deems necessary and

advisable to carry out the Receiver's mandate under this Final Order;

- F. Liquidate assets of Five Star and all assets transferred to the Receiver in accordance with the terms of this Final Order or any prior or subsequent order of this Court; and to transfer receivership property to storage facilities, cancel leases, and breach and enter contracts; and
- G. To execute all bills of sale and deeds to personal and real property belonging to or coming into possession of Five Star. The Receiver shall maintain with the Clerk of this Court a bond in the sum of \$10,000 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

#### IX.

**IT IS FURTHER ORDERED** that the Receiver shall liquidate all Five Star assets, dissolve the corporation(s), and wind up all Five Star subsidiary and affiliated entities. Upon approval of the Court, the Receiver shall transfer to Plaintiff all funds in the Receivership estate, less fees and expenses as allowed by the Court, toward satisfaction of the judgment entered herein.

#### X.

**IT IS FURTHER ORDERED** that the Receiver shall, if he has not already done so, file his final report and request for fees and expenses within 180 days of the execution of this Order, unless good cause is shown to extend the Receivership beyond 180 days. The Receiver's final report and request for fees and expenses shall be served upon the parties through counsel. Any party may object within 15 days of receipt. Upon submission of the Receiver's Final Report or

upon this Court's Order for final payment, whichever is later, the Receivership shall terminate.

**XI.**

**IT IS FURTHER ORDERED** that Defendants Michael Sullivan and Angela Sullivan shall cooperate fully with the Receiver in: (A) pursuing any and all claims by the receivership against third parties; (B) assisting the Receiver in defending any and all actions or claims brought against the Receivership by third parties; and (C) executing any documents necessary to transfer assets or ownership interests to the Receiver pursuant to the terms of this Final Order.

**XII.**

**IT IS FURTHER ORDERED** that, within three (3) days of service of this Order upon them, Defendants Michael Sullivan and Angela Sullivan and any other person or entity served with a copy of this Order, if they have not done so already, deliver to the Receiver: (A) possession and custody of all funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated, of Five Star; (B) all stock, ownership, legal, beneficial, or other interests that they hold in Five Star; (C) possession and custody of all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers of Five Star; (D) possession and custody of all funds and other assets belonging to members of the public now held by Five Star; (E) all keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects of Five Star; (F) all monies in any financial institution deposited to the credit of Five Star, wherever situated; and (G) information identifying the accounts, employees, properties, or other assets or obligations of Five Star.

### XIII.

**IT IS FURTHER ORDERED** that Defendants Michael Sullivan and Angela Sullivan, for a period of ten (10) years from the date of entry of this Order, when acting in an individual capacity, or in connection with any Business Venture in which either has an ownership interest or is a director, officer (or comparable position with a non-corporate entity), or is a person who formulates policies or procedures, are hereby restrained and enjoined from failing to create, maintain and make available to representatives of the Commission, upon reasonable notice:

A. Books, records and accounts which, in reasonable detail, accurately and fairly reflect the income, disbursements, transactions and use of monies;

B. Records accurately reflecting the name, address, and phone number of each employee, or independent contractor of either Defendant, that person's job title or position, the date upon which the person commenced work, and the date and reason for his or her termination, if applicable. Defendants Michael and Angela Sullivan shall retain such records for any terminated person for a period of three (3) years following the date of termination;

C. Records containing the names, addresses, and phone numbers of all consumers to whom either Defendant has sold, invoiced, or shipped any products or services, whether on his/her behalf or that of any third party;

D. Records that, for every consumer complaint or refund request, whether received directly or indirectly or through any third party, reflect:

(1) the consumer's name, address, telephone number and the dollar amount paid by the consumer;

(2) the written complaint, if any, and the date of the complaint or refund request;

- (3) the basis of the complaint or refund request and the nature and the result of any investigation conducted as to the validity of any complaint;
- (4) each response by either Defendant, their agents, servants, employees and distributors, and those persons in active concert or participation and the date of the response;
- (5) any final resolution and the date of the resolution; and
- (6) in the event of a denial of a refund request by either Defendant, their agents, servants, employees and distributors, and those persons in active concert or participation, the reason for such denial, or if cured, the basis for determining that such complaint has been cured; and

E. Records relating to all ventures undertaken by either Defendant, their agents, servants, employees and distributors, and those persons in active concert or participation that involve any type of Business Venture, but not limited to, group or individual meetings, telemarketing, websites, commercial electronic mail, infomercials or other television or radio advertising, or direct mail, including but not limited to copies of all contracts or agreements between either Defendant, their agents, servants, employees and distributors, and those persons in active concert or participation and any sales company, mailhouse, printer, Internet service provider, information provider, telephone company, television or radio station, or other person through whom either Defendant, their agents, servants, employees and distributors, and those persons in active concert or participation advertise or promote products or services, as well as copies of all advertisements, web pages, commercial electronic mail, or promotional materials utilized in such ventures; and

F. Copies of all sales scripts, training materials, advertisements or other marketing materials utilized, provided that copies of all sales scripts, training materials, advertisements or other materials shall be retained by Defendants for ten (10) years after the last date of dissemination or use.

#### XIV.

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date of entry of this Order, for purposes of determining or securing compliance with this Order, Defendants Michael Sullivan and Angela Sullivan and any Business Venture that they now or come to own, operate or control, their successors, assigns, agents, servants, employees, and those persons in active concert or participation with either Defendant who receive actual notice of this Order by personal service or otherwise, shall permit representatives of the Commission upon reasonable written notice:

A. Access during normal office hours to any office or business facility in which documents relating to compliance with the terms of this Order are stored or held, to inspect and copy such documents; and

B. To interview current officers, directors, independent contractors, and employees of any entity directly or indirectly under either Defendant's control or under common control with him/her, relating to compliance with the terms of this Order without restraint or interference from either Defendant at a location reasonably convenient to the Defendant and the person to be interviewed. The person interviewed may have counsel present.

Provided further, that Plaintiff may otherwise monitor each Defendant's compliance with this Order by all lawful means available, including: (1) the use of investigators or other

representatives of the Commission posing as consumers and suppliers of either Defendant, their employees or any entity which either Defendant owns, operates or controls, without the necessity of prior identification or notice; (2) without further leave of Court, the use of discovery as provided by Rules 26-37 of the Federal Rules of Civil Procedure, including the use of compulsory process pursuant to Federal Rule of Civil Procedure 45; and (3) the use of compulsory process pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether either Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

**XV.**

**IT IS FURTHER ORDERED** that Defendants Michael Sullivan and Angela Sullivan, for a period of ten (10) years from entry of this Order, shall give written notice to the Commission of their affiliation or employment with any business entity within twenty-one (21) days of the commencement of such affiliation or employment at the address listed in Paragraph XX. Such notice shall include the new business name and address, a statement of the nature of the business, and a summary of his/her position and responsibilities with the business.

**XVI.**

**IT IS FURTHER ORDERED** that Defendants Michael Sullivan and Angela Sullivan, for a period of ten (10) years from the date of entry of this Order, shall, in order to enable the Commission to monitor compliance with the provisions of this Order, give written notice within twenty-one (21) days to the Commission, at the address listed in Paragraph XX, indicating any change in his/her residential address and providing his/her new residential address.



## XVII.

**IT IS FURTHER ORDERED** that Defendants Michael Sullivan and Angela Sullivan and their assigns, for a period of ten (10) years from the date of entry of this Order, for the purposes of determining or securing compliance with this Order, when acting in an individual capacity, or in connection with any Business Venture in which either Michael Sullivan or Angela Sullivan has an ownership interest or is a director, officer (or comparable position with a non-corporate entity), or is a person who formulates policies or procedures, shall, within ten (10) days of a written request from the Commission:

A. File with the Commission a statement containing the names of the media in or on which he/she, his/her agents, representatives, servants, employees, salespersons, independent contractors or those of any corporations, trusts, or persons or other entities managed or controlled in whole or in part by Michael Sullivan or Angela Sullivan, have placed advertisements, the months during which those advertisements were published or broadcast, telephone numbers utilized in furtherance of the sale of products and services, the URL of all web sites utilized in furtherance of the sale of products and services, and the local carriers and/or telephone service common carriers utilized in furtherance of any telemarketing or teleconferencing activities; and

B. Produce any requested marketing materials used in the advertising, promoting, offering for sale, sale, or distribution of any product or service sold or offered for sale by Michael Sullivan or Angela Sullivan, each of their successors or assigns, agents, representatives, or affiliates.

**XVIII.**

**IT IS FURTHER ORDERED** that:

- A. Within three (3) days after service of this order, Defendants Michael Sullivan and Angela Sullivan shall distribute a copy of this Order to all Defendants' agents, servants, representatives and independent contractors, and those persons in active concert or participation with them, and Defendants shall make their best efforts to obtain a signed and dated acknowledgment of receipt of the same;
- B. For a period of ten (10) years from the date of entry of this Order, Defendants Michael Sullivan and Angela Sullivan shall distribute a copy of this Order to all new officers, directors, managing agents, employees, or independent contractors of any corporation or non-corporate entity, in which either Defendant acts in an individual capacity, or in connection with any entity in which either Defendant has an ownership interest or is a director, officer (or comparable position with a non-corporate entity) or is a person who formulates policies or procedures, and obtain a signed and dated acknowledgment of receipt of the same; and
- C. For a period of ten (10) years from the date of this Order, Defendants Michael Sullivan and Angela Sullivan shall retain, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of receipts required by subparagraphs A and B.

**XIX.**

**IT IS FURTHER ORDERED** that the expiration of any requirement imposed by this Order shall not affect any other obligation arising under this Order. Each party shall bear its own

costs and attorney's fees.

**XX.**

**IT IS FURTHER ORDERED** that Defendant shall submit any information, notifications, or reports required by this Order to: Associate Director for Marketing Practices, Federal Trade Commission, Re: Five Star Auto Club, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or at such future address as the Commission may designate in writing to Defendants.

**XXI.**

**IT IS FURTHER ORDERED** that Defendants shall execute, have notarized and return to the Commission at the address listed in Paragraph XX a signed, dated acknowledgment of receipt of a date-stamped copy of this Order within five (5) days of receipt of the date-stamped copy of this Order.

**XXII.**

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

There being no just cause for delay, this Final Judgment and Order for a Permanent Injunction is hereby entered this 9<sup>th</sup> day of June, 2000, and all previous temporary restraining orders and the preliminary injunction regarding Defendants are lifted.

*Colleen McMahon*  
SO ORDERED.

Colleen McMahon  
United States District Judge

5-29-00