

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

12-cv-80597-KAM

FEDERAL TRADE COMMISSION ,

Plaintiff,

v.

STERLING PRECIOUS METALS, LLC , a
Florida Limited Liability Corporation,

KERRY MARSHALL ,

MATTHEW MEYER , and

FRANCIS RYAN ZOFAY ,

Defendants.

Respectfully submitted,

Dated: June 8, 2012

 /s/ Dama J. Brown
DAMA J. BROWN
Special Florida Bar No. A5501135
Email: dbrown1@ftc.gov
Telephone: (404) 656-1361

GIDEON E. SINASOHN
Special Florida Bar No. A55001392
Email: gsinasohn@ftc.gov
Telephone: (404) 656-1361

225 Peachtree Street, N.E., Suite 1500
Atlanta, Georgia 30303
(404) 656-1379 (Facsimile)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2012, a true and correct copy of the Notice of Filing Stipulated Preliminary Injunction Against Defendant Kerry Marshall was sent via United States Postal Service first class mail, with adequate postage prepaid, to:

Sterling Precious Metals, LLC
5301 North Federal Highway, Suite 295
Boca Raton, FL 33487

Kerry Marshall
731 W. Camino Real
Boca Raton, FL 33486

Francis Ryan Zofay
2030 Alta Meadows Lane
Apt. 1209
Delray Beach, FL 33444

Matthew Meyer

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

12-cv-80597

FEDERAL TRADE COMMISSION,

Plaintiff,

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**STERLING PRECIOUS METALS, LLC, a
Florida Limited Liability Corporation,**

KERRY MARSHALL,

MATTHEW MEYER, and

FRANCIS RYAN ZOFAY,

Defendants.

(PROPOSED)

PRELIMINARY INJUNCTION AGAINST DEFENDANT KERRY MARSHALL

Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, filed a Complaint for Injunctive and Other Relief.

FINDINGS

1. The Court has jurisdiction over the subject matter of this case and jurisdiction over all parties.

2. Venue in the United States District Court, Southern District of Florida, West Palm Beach Division, is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

3. There is good cause to believe that Defendant Kerry Marshall has

likely to continue to engage, in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as well as various provisions of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and that the FTC is likely to prevail on the merits of this action.

4. There is good cause to believe that consumers will suffer continuing harm unless Defendant Kerry Marshall is immediately restrained by an order of this Court. The FTC's

DEFINITIONS

For the purposes of this Preliminary Injunction, the following definitions apply:

1. **“Asset” or “assets”** means any legal or equitable interest in, right to, or claim to any item of economic value in whole or in part, whether tangible or intangible, and, including, but not limited to, accounts, accounts receivables, cash, certificates of deposit, chattels, checks, contracts, credits, currency, fixtures, funds, equipment, income, inventory, instruments, investments, leaseholds, lines of credit, mail, notes, personal property, real property, revenues, securities, shares of stock, trusts, or any interest therein, whether located within or outside the United States.
2. **“Corporate Defendant”** means Sterling Precious Metals, LLC, its wholly-owned affiliates, subsidiaries, successors, and assigns, by whatever names known.
3. **“Defendants”** means the “Individual Defendants” and “Corporate Defendant.”
4. **“Document”** is synonymous in meaning and equal in scope to the terms “document” and “electronically stored information,” as described and used in Federal Rule of Civil Procedure 34(a)(1)(A).
5. **“Financial Institution”** means any insured bank, commercial bank or trust

company, currency exchange, issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments, operator of a credit card system, insurance company, dealer in precious metals, stones, or jewels, pawnbroker, loan or finance company, licensed sender of money or other person who engages as a business in the transmission of funds, telegraph company, persons involved in real estate closings and settlements, casino, gambling casino, or gaming establishment.

Francis Zofay, and their successors and assigns, by whatever names known.

7. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

8. "Person" means an individual, organization, or other legal entity, including, but

**II. PRESERVATION OF RECORDS AND REPORTING NEW BUSINESS
ACTIVITY**

IT IS FURTHER ORDERED that Defendant Kerry Marshall, his officers, agents,
servants, employees, attorneys, and independent contractors, _____

or participation with him who receive actual notice of this Order by personal service or
otherwise, whether acting directly or through _____

3. The names of the business entity's officers, directors, principals, managers, members, and employees; and
4. A detailed description of the business entity's intended activities.

III. PROHIBITING RELEASE OF CUSTOMER INFORMATION OR LISTS

IT IS FURTHER ORDERED THAT

[REDACTED]

completed and accurate copies of his

Order, disclosing all of his assets and all corporations, partnerships, trusts or other entities that he owns, controls, or is associated with in any capacity, jointly or individually;

B. Within ten (10) business days after service of this Order, prepare and provide to Plaintiff complete and accurate copies of his federal and state income tax forms, including all

or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice.

VII. PROOF OF DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that Defendant Kerry Marshall shall immediately provide a copy of this Order to his officers, agents, servants, employees, attorneys, and independent contractors, and any affiliated businesses, and other persons and entities subject in any part to his direct or indirect control. Within ten (10) business days of receipt of this Order, Defendant

Kerry Marshall

[REDACTED]

Email: gsinasohn@ftc.gov; dbrown1@ftc.gov;

X. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Order shall remain in effect until further Order of the Court and that the Court shall continue to retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this _____ day of _____, 2012, at _____ o'clock
a.m./p.m.

HON. KENNETH MARRA
United States District Judge

STIPULATED AND AGREED TO BY:

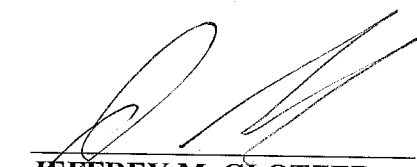
Dated: June 8, 2012

/s/ Dama J. Brown
DAMA J. BROWN
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Atlanta, Georgia 30303
Facsimile: (404) 656-1366

Dated: June 8, 2012



JEFFREY M. GLOTZER
2421 N. University Drive, 3rd Floor
Coral Springs, FL 33065
Telephone:
Email: jeff@jeffglotzerlaw.com

Attorney for Defendant
KERRY MARSHALL

Dated: June 8, 2012



KERRY MARSHALL
Defendant

FEDERAL TRADE COMMISSION

FINANCIAL STATEMENT OF CORPORATION DEFENDANT

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why.
2. In completing this financial statement, "the corporation" refers not only to this corporation but also to each of its predecessors that are not named defendants in this action.
3. When an Item asks for information about assets or liabilities "held by the corporation," include ALL such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation.
4. Attach continuation pages as needed. On the financial statement state next to the Item number that the Item is

Attachment A.

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____

Primary Business Address _____

From (Date)

Telephone No. _____ Fax No. _____

E-Mail Address _____ Internet Home Page _____

Attachment A.

Item 4. Principal Stockholders

List all persons and entities that own at least 5% of the corporation's stock.

<u>Name & Address</u>	<u>% Owned</u>
---------------------------	----------------

Item 5. Board Members

List all members of the corporation's Board of Directors.

<u>Name & Address</u>	<u>% Owned</u>	<u>Term (From/Until)</u>
---------------------------	----------------	--------------------------

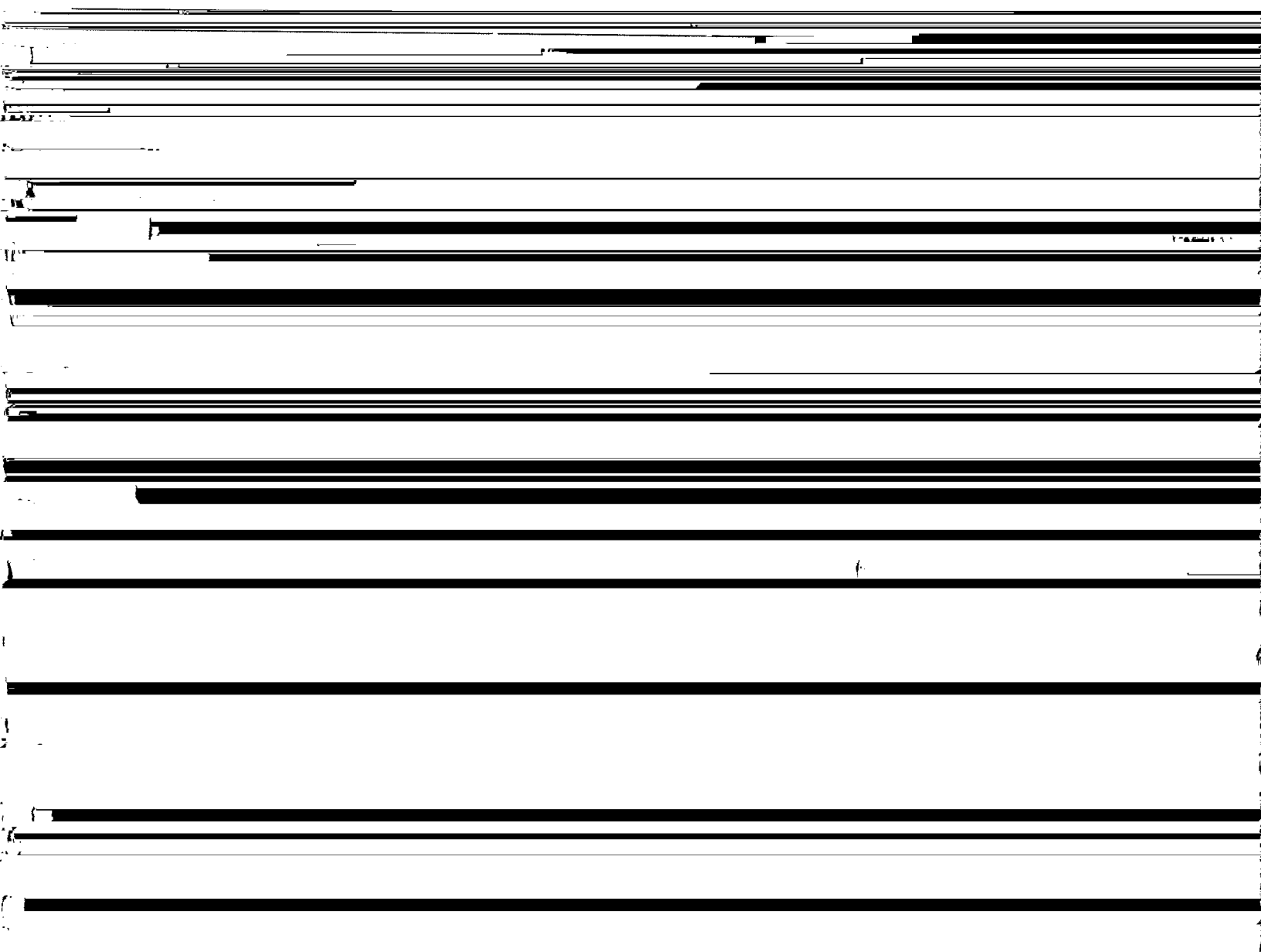
Item 6. Officers

Attachment A.

Item 7. **Businesses Related to the Corporation**

List all corporations, partnerships, and other business entities in which this corporation has an ownership interest.

<u>Name & Address</u>	<u>Business Activities</u>	<u>% Owned</u>
---------------------------	----------------------------	----------------



Attachment A.

List all outside accountants retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>	<u>CPA/PA?</u>
-------------	------------------	----------------	----------------

Item 11. Corporation's Recordkeeping

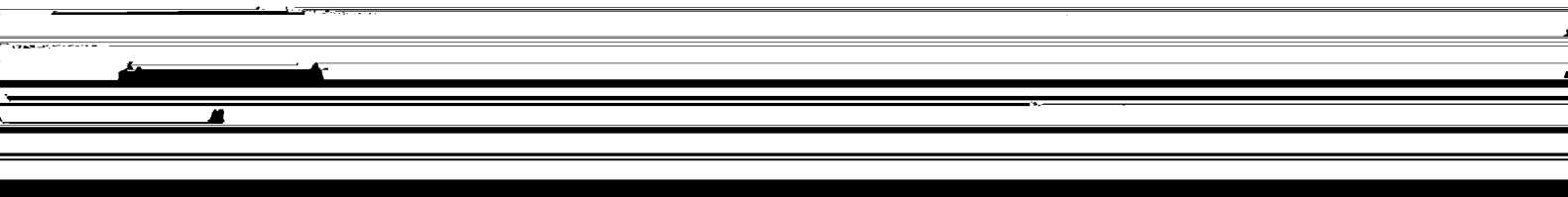
List all individuals within the corporation with responsibility for keeping the corporation's financial books and records for the last three years.

<u>Name, Address & Telephone Number</u>	<u>Position (if any)</u>
---	--------------------------

Attachment A.

Item 13. Pending Lawsuits Filed by the Corporation

List all pending lawsuits that have been filed by the corporation in court or before an administrative agency. (List



Attachment A.

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Item 14. Current Lawsuits Filed Against the Corporation

List all pending lawsuits that have been filed against the corporation in court or before an administrative agency.

Attachment A.

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

~~On-going Party's Name & Address~~

Court's Name & Address

_____ Status _____

Attachment A.

List all federal and state corporate tax returns filed for the last three complete fiscal years. *Attach copies of all returns.*

<u>Federal/ State/Both</u>	<u>Tax Year</u>	<u>Tax Due Federal</u>	<u>Tax Paid Federal</u>	<u>Tax Due State</u>	<u>Tax Paid State</u>	<u>Preparer's Name</u>
		\$	\$	\$	\$	
		\$	\$	\$	\$	
		\$	\$	\$	\$	

Item 18. Financial Statements

List all financial statements that were prepared for the corporation's last three complete fiscal years and for the current fiscal year-to-date. *Attach copies of all statements, providing audited statements if available.*

<u>Year</u>	<u>Balance Sheet</u>	<u>Profit & Loss Statement</u>	<u>Cash Flow Statement</u>	<u>Changes in Owner's Equity</u>	<u>Audited?</u>

Item 19. Financial Summary

For each of the last three complete fiscal years and for the current fiscal year-to-date for which the corporation has not provided a profit and loss statement in accordance with Item 17 above, provide the following summary financial:

Attachment A.

Cash on Hand \$ _____ Cash Held for the Corporation's Benefit \$ _____

<u>Name & Address of Financial Institution</u>	<u>Signator(s) on Account</u>	<u>Account No.</u>	<u>Current</u>
			<u>Balance</u>
			\$ _____
			\$ _____
			\$ _____
			\$ _____

Item 21. Government Obligations and Publicly Traded Securities

List all U.S. Government obligations, including but not limited to, savings bonds, treasury bills, or treasury notes, held by the corporation. Also list all publicly traded securities held by the corporation.

[REDACTED]

Attachment A.

Type of Property _____ Property's Location _____

Name(s) on Title and Ownership Percentages _____

Current Value \$ _____ Loan or Account No. _____

Current Balance On First Mortgage \$ _____ Monthly Payment \$ _____

Other Loan(s) (describe) _____

Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Item 23. Other Assets

List all other property, by category, with an estimated value of \$2,500 or more, held by the corporation, including but not limited to inventory, machinery, equipment, etc.

Attachment A.

Nature of Lawsuit

Date of Judgment

Amount \$

Opposing Party's Name & Address

Court's Name & Address

Docket No.

Nature of Lawsuit

Date of Judgment

Amount \$

Opposing Party's Name & Address

Court's Name & Address

Docket No.

Nature of Lawsuit

Date of Judgment

Amount \$

Opposing Party's Name & Address

Court's Name & Address

Docket No.

Nature of Lawsuit

Date of Judgment

Amount \$

Attachment A.

Item 29. Compensation of Employees

List all compensation and other benefits received from the corporation by the five most highly compensated employees, independent contractors, and consultants (other than directors) during the period from 12/31/2011 to 12/31/2012.

Attachment A.

Item 31 Transfers of Assets Including Cash and Deposits

List all transfers of assets over \$2,500 made by the corporation, other than in the ordinary course of business, during the previous three years, by loan, gift, sale, or other transfer.

<u>Transferee's Name, Address, & Relationship</u>	<u>Property Transferred</u>	<u>Aggregate Value</u>	<u>Transfer Date</u>	<u>Type of Transfer (e.g., Loan, Gift)</u>
		\$		
		\$		
		\$		
		\$		
		\$		

Item 32

Attachment A.

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

Executed on:

(Date)

Signature

Corporate Position

FEDERAL TRADE COMMISSION

Instructions:

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully complete

Attachment B.

Attachment B.

BACKGROUND INFORMATION

Item 1. Information About You

Your Full Name _____

SSN _____

Place of Birth _____ Date of Birth _____ Drivers License No. _____

Current Address _____ From (Date) _____

Rent or Own? _____ Telephone No. _____ Facsimile No. _____

E-Mail Address _____ Internet Home Page _____

Previous Addresses for past five years:

Address _____ Rent or Own? _____ From/Until _____

Address _____ Rent or Own? _____ From/Until _____

Identify any other names (and aliases) used in the past five years: _____

Attachment B.

Item 4. Contact Information

Name & Address of Nearest Living Relative or Friend _____

Telephone No. _____

[Redacted content]

Attachment B.

Item 7. continued

Income Received: This year-to-date: \$ _____ : \$ _____
20____ : \$ _____ : \$ _____
_____ : \$ _____ : \$ _____

►Company Name & Address _____

Dates Employed: From (Month/Year) _____ To (Month/Year) _____

Positions Held with Beginning and Ending Dates _____

Income Received: This year-to-date: \$ _____ : \$ _____
20____ : \$ _____ : \$ _____
_____ : \$ _____ : \$ _____

Dates Employed: From (Month/Year) _____ To (Month/Year) _____

Positions Held with Beginning and Ending Dates _____

Attachment B.

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____
_____ Status _____

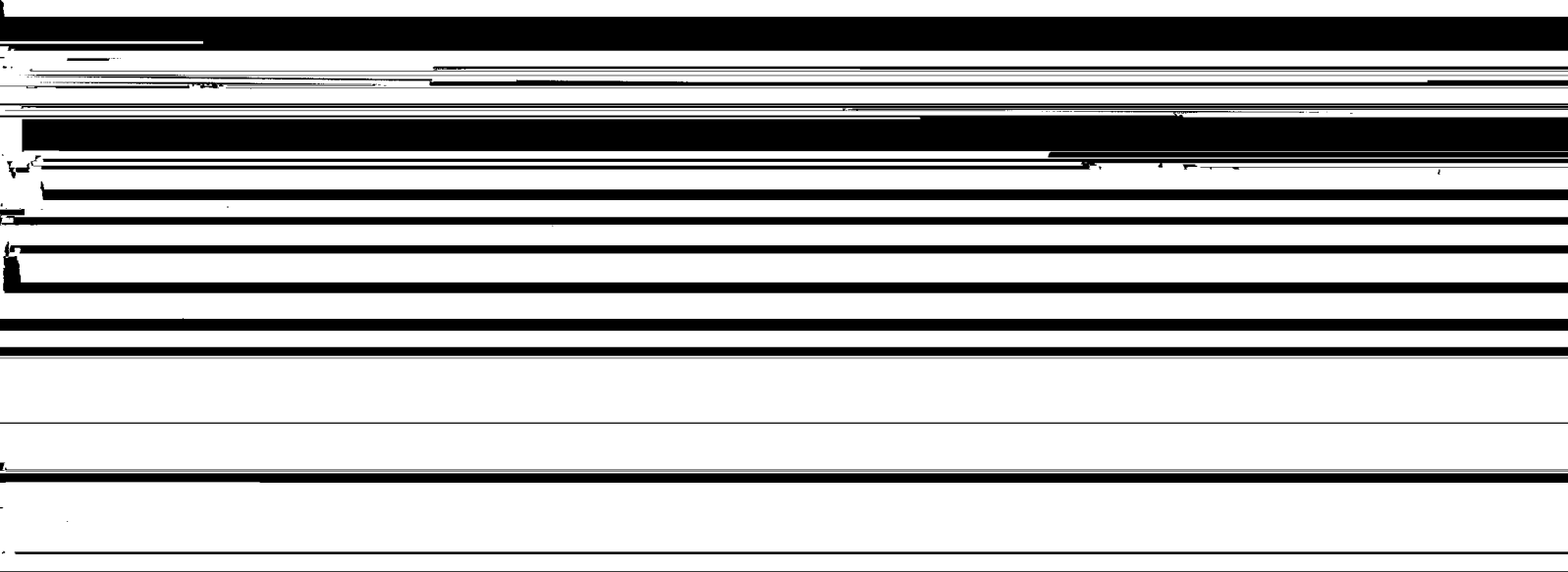
Item 9. Pending Lawsuits Filed Against You or Your Spouse

List all pending lawsuits that have been filed against you or your spouse in court or before an administrative agency. (List lawsuits that resulted in final judgments or settlements in Items 16 and 25).

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____



List all safe deposit boxes, located within the United States or elsewhere, held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents. *On a separate page, describe the contents of each box.*

Owner's Name

Name & Address of Depository Institution

Box No.



44-100-10

Business Format (e.g., corporation)

Description of Business

Position(s) Held and By Whom

Attachment B.

FINANCIAL INFORMATION: ASSETS AND LIABILITIES

elsewhere, whether held individually or jointly.

Item 12. Cash, Bank, and Money Market Accounts

Attachment B.

Item 14. Publicly Traded Securities and Loans Secured by Them

List all publicly traded securities, including but not limited to, stocks, stock options, registered and bearer bonds, state and municipal bonds, and mutual funds, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

► Issuer _____ Type of Security _____ No. of Units Owned _____
Name on Security _____ Current Fair Market Value \$ _____ Loan(s) Against Security \$ _____
Broker House, Address _____ Broker Account No. _____

Name on Security _____ Current Fair Market Value \$ _____ Loan(s) Against Security \$ _____
Broker House, Address _____ Broker Account No. _____

Item 15. Other Business Interests

List all other business interests, including but not limited to, partnerships, limited liability companies, and trusts.

Attachment B.

Court's Name & Address _____

Docket No. _____

List all other amounts owed to you, your spouse, or your dependents.

Debtor's Name, Address, & Telephone No. _____

Attachment B.

Account No. _____ Surrender Value \$ _____

Item 20. Personal Property

List all personal property by date of acquisition, description, and value.

[Redacted content]

Attachment B.

Purchase Price \$ _____ Current Value \$ _____ Account/Loan No. _____

Lender's Name and Address _____

Original Loan Amount \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Item 21. Continued

Vehicle Type _____

Address of Vehicle's Location _____

Purchase Price \$ _____ Current Value \$ _____ Account/Loan No. _____

Lender's Name and Address _____

Original Loan Amount \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Item 22. Real Property

List all real estate held by _____

Attachment B.

Lender's Name and Address

[REDACTED]

Other Loan(s) (describe) _____ Current Balance \$ _____

Monthly Payment \$ _____
[REDACTED]

Attachment B.

Court's Name & Address

[REDACTED]

Nature of Lawsuit

Date

Amount \$

[REDACTED]

Attachment B.

Item 26. Other Loans and Liabilities

List all other loans or liabilities in your name, your spouse's name, or your child's name.

▶Name & Address of Lender/Creditor _____

Nature of Liability _____ Name(s) on Liability _____

Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____

Payment Amount \$ _____ Frequency of Payment _____

▶Name & Address of Lender/Creditor _____

Nature of Liability _____ Name(s) on Liability _____

Attachment B.

List all funds or other assets that are being held in trust or escrow by any person or entity for you, your spouse, or your dependents. Also list all funds or other assets that are being held in trust or escrow by you, your spouse, or your dependents, for any person or entity. *Provide copies of all executed trust documents.*

<u>Trustee or Escrow Agent's</u>	<u>Date</u>	<u>Grantor</u>	<u>Beneficiaries</u>	<u>Present Market</u>
<u>Name & Address</u>	<u>Established</u>			<u>Value of Assets</u>
				\$ _____
				\$ _____
				\$ _____
				\$ _____
				\$ _____

Item 30. Transfers of Assets

List each person to whom you have transferred, in the aggregate, more than \$2,500 in funds or other assets during the previous three years by loan, gift, sale, or other transfer. For each such person, state the total amount transferred during that period.

<u>Transferee's Name, Address, & Relationship</u>	<u>Property</u>	<u>Aggregate</u>	<u>Transfer</u>	<u>Type of Transfer</u>
	<u>Transferred</u>	<u>Value</u>	<u>Date</u>	<u>(e.g., Loan, Gift)</u>
		\$ _____		

Attachment B.

\$

Attachment B.

SUMMARY FINANCIAL SCHEDULES

Item 31. Combined Balance Sheet for You, Your Spouse, and Your Dependents

ASSETS

LIABILITIES

Cash on Hand
(Item 12) \$ _____

Cash in Financial Institutions
(Item 12) \$ _____

U.S. Government Securities
(Item 13) \$ _____

Credit Cards
(Item 23) \$ _____

Motor Vehicles - Liens
(Item 21) \$ _____

Real Property - Encumbrances
(Item 22) \$ _____

Other Business Interests
(Item 15) \$ _____

Taxes Payable
(Item 24) \$ _____

Attachment B.

Total Assets \$

Total Liabilities \$

Attachment B.

Item 32. Combined Average Monthly Income and Expenses for You, Your Spouse, and Your Dependents for the Last 6 Months.

Provide the average monthly income and expenses for you, your spouse, and your dependents for the last 6 months. Do

[REDACTED]

I, _____, do hereby direct all persons and entities that hold financial information about me, including but not limited to, any financial institution, bank, trust company, brokerage, saving and loan, thrift, or credit union, together with any of their officers, employees, and agents, to disclose all such information and deliver copies of all documents of every nature in their

possession or control that relate to any such financial information, to any attorney