

Clerk's Office
File Date:
12/9/2021
U.S. DISTRICT
COURT-EDNY
BROOKLYN
OFFICE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CONSUMER HEALTH BENEFITS
ASSOCIATION, organized as a Missouri
not-for-profit, also doing business as CHBA,

NATIONAL ASSOCIATION FOR AMERICANS,
organized as a Missouri not-for-profit, also doing
business as NAFA,

NATIONAL BENEFITS CONSULTANTS, LLC, a
Florida limited liability company, also doing
business as NBC,

NATIONAL BENEFITS SOLUTIONS, LLC, a
Florida limited liability company, also doing
business as NBS,

LOUIS LEO, individually, as a Managing Member
of NATIONAL BENEFITS CONSULTANTS,
LCC, as a Managing Member of NATIONAL
BENEFITS SOLUTIONS, LLC, and as the Vice
President and Treasurer of CONSUMER HEALTH
BENEFITS ASSOCIATION,

RON WERNER, individually, as a Managing
Member of NATIONAL BENEFITS
CONSULTANTS, LLC, as a Managing Member of
NATIONAL BENEFITS SOLUTIONS, LLC, and
as President and Managing Partner of CONSUMER
HEALTH BENEFITS ASSOCIATION,

RITA WERNER, individually, and as Senior Vice
President and Director of Operations of
CONSUMER HEALTH BENEFITS
ASSOCIATION,

Case No. CV-10-3551 (ILG)(RLM)

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO
DEFENDANT LOUIS LEO**

WENDI TOW, individually, as a Managing Member of NATIONAL BENEFITS CONSULTANTS, LLC, and as a Managing Member of NATIONAL BENEFITS SOLUTIONS, LLC,

JOHN SCHWARTZ, individually, as a Managing Member of NATIONAL BENEFITS CONSULTANTS, LLC, and as a Managing Member of NATIONAL BENEFITS SOLUTIONS, LLC,

GUARANTEE TRUST LIFE INSURANCE COMPANY, an Illinois corporation,

VANTAGE AMERICA SOLUTIONS, INC., an Illinois corporation,

CENTURY SENIOR SERVICES, a Florida corporation,

JEFFREY BURMAN, individually, as President of VANTAGE AMERICA SOLUTIONS, INC., and as Vice President of GUARANTEE TRUST LIFE INSURANCE COMPANY,

BARBARA TAUBE, individually, and as Vice President of GUARANTEE TRUST LIFE INSURANCE COMPANY, and

RICHARD HOLSON, III, individually, and as President of GUARANTEE TRUST LIFE INSURANCE COMPANY,

Defendants.

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Relief, subsequently amended as First Amended Complaint

for Permanent Injunction and Other Relief (“First Amended Complaint”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b. The Commission and Defendant Louis Leo (“Defendant Leo”) stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendant Louis Leo (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The First Amended Complaint charges that Defendant Leo participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, in connection with the marketing and sale of medical discount plans.
3. Defendant Leo neither admits nor denies any of the allegations in the First Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant Leo admits the facts necessary to establish jurisdiction.
4. Defendant Leo waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees.
5. Defendant Leo waives all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. “**Defendants**” means Consumer Health Benefits Association; National Association for Americans; National Benefits Consultants, LLC; National Benefits Solutions, LLC; Guarantee Trust Life Insurance Company; Vantage America Solutions, Inc.; Century Senior Services; their successors and assigns; Louis Leo; Ron Werner; Rita Werner; Wendi Tow; John Schwartz; Jeffrey Burman; Barbara Taube; and Richard Holson, III, individually, collectively, or in any combination.

C. “**Escrow Agent**” means Steven E. Ostrow, the Court-appointed successor escrow agent in this case.

D. “**Healthcare-Related Benefits or Discount Programs**” includes any program, membership, card, product, or other good or service, which is not insurance, that purports to offer discounts, savings, or benefits on healthcare, or access to such discounts, savings, or benefits.

This shall not include any non-insurance discounts, savings, or benefits that are incidental to, and sold in combination with, insurance products or services filed with and/or approved by any state department of insurance or federal regulatory body.

E. **“Insurance”** means any good or service that (a) has the effect of transferring or spreading risk; (b) is an integral part of the policy relationship between the insurer and the insured; and (c) is limited to entities within the insurance industry.

F. **“Seller”** means any person who, in connection with a Telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Commission.

G. **“Telemarketer”** means any person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor, whether or not such person is under the jurisdiction of the Commission.

H. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones and which involves more than one interstate telephone call.

I. **“Defendant Leo”** means Louis Leo.

ORDER

I. BAN ON SELLING HEALTHCARE-RELATED BENEFITS OR DISCOUNT PROGRAMS

IT IS ORDERED that Defendant Leo is permanently restrained and enjoined from advertising, marketing, promoting, offering for sale, or selling, or assisting in the advertising, marketing, promoting, offering for sale, or selling, of any Healthcare-Related Benefits or

Discount Programs.

II. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant Leo, his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service (other than Healthcare-Related Benefits or Discount Programs) are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. That consumers will save a substantial sum of money;
- B. Any material aspect of the nature or terms of the Seller's refund, cancellation, exchange, or repurchase policies; and
- C. Any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

III. PROHIBITION AGAINST VIOLATING THE TSR

IT IS FURTHER ORDERED that Defendant Leo, his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Attachment A, including:

- A. Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R. § 310.3(a)(1)(iii), by failing to disclose

truthfully, in a Clear and Conspicuous manner, before a customer consents to pay for goods or services offered in connection with Telemarketing: (1) if the Seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the Seller's policy; or (2) if the Seller or Telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

B. Section 310.3(a)(2) of the TSR, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, in the sale of goods or services any of the following material information: (1) the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer; (2) any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer; (3) any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer; or (4) any material aspect of the nature or terms of the Seller's refund, cancellation, exchange or repurchase policies; and

C. Section 310.4(d) of the TSR, 16 C.F.R. § 310.4(d), by failing to disclose truthfully, promptly, and in a Clear and Conspicuous manner to the person receiving a call in connection with Telemarketing: (1) the identity of the Seller; (2) that the purpose of the call is to sell goods or services; or (3) the nature of the goods or services.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Four Million Dollars (\$4,000,000) is entered in favor of the

Commission against Defendant Leo as monetary relief.

B. In partial satisfaction of the judgment against Defendant Leo:

1. Defendant Leo shall relinquish any and all right, title, and interest he possesses in any funds held by the Escrow Agent in favor of the FTC, including funds held on behalf of: any Defendant; Tele-Health Inc.; Instant Health in America LLC; and Louron Insurance Group, Inc., in favor of the FTC.

2. The Escrow Agent shall, within 10 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission, transfer to the Commission:

a. Thirteen thousand five hundred ninety-four dollars and fifty-eight cents (\$13,594.58) from the account held by the Escrow Agent in the name of Tele-Health Inc.;

b. One thousand three hundred eighty dollars and thirty-one cents (\$1,380.31) from the account held by the Escrow Agent in the name of Instant Health in America LLC; and

c. Eight hundred four dollars and twenty-six cents (\$804.26) from the account held by the Escrow Agent in the name of Louron Insurance Group, Inc.

C. Upon such transfers identified in Subsection B. above, the remainder of the judgment is suspended, subject to the Subsections below.

D. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Leo's sworn financial statements and related documents (collectively, "financial representations") submitted to the

Commission, namely the Financial Statement of Individual Defendant Louis Leo signed on June 3, 2021 and corrected on August 4, 2021, including the attachments.

E. The suspension of the judgment will be lifted as to Defendant Leo if, upon motion by the Commission, the Court finds that Defendant Leo failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Defendant Leo in the amount specified in Subsection A. above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

G. Defendant Leo relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

H. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

I. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

J. Defendant Leo acknowledges that his Taxpayer Identification Number (Social Security

Number), which Defendant Leo previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

K. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such relief is to be deposited to the U.S. Treasury. Defendant Leo has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

L. The asset freeze portion of the Stipulated Order of Preliminary Injunction as to Defendant Louis Leo [Dkt. No. 33] is modified to permit the transfers identified in the Monetary Judgment Section. Upon completion of those transfers, the asset freeze is dissolved as to Defendant Leo.

M. If Defendant Leo fails to pay fully the amount due at the time specified, Defendant Leo must cooperate fully with the Commission and their representatives in all attempts to collect the judgment. In such an event, Defendant Leo agrees to provide federal and state tax returns for the preceding 2 years, and to complete a new financial disclosure form fully and accurately within 10 business days of receiving a request from the Commission. Defendant Leo further authorizes the Commission to verify all information provided on his financial disclosure form with all

appropriate third parties, including financial institutions.

N. The Commission may request any tax-related information, including amended tax returns and any other filings, that Defendant Leo has the authority to release. Within 14 days of receipt of a written request from a representative of the Commission, Defendant Leo must take all necessary steps (such as filing a completed IRS Form 4506 or 8821) to cause the Internal Revenue Service or other tax authority to provide the information directly to the Commission.

V. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Leo, his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, sensitive health information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the sale of medical discount plans; and

B. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after entry of a stipulated final order against the last remaining Defendant or receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court

order.

VI. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Leo obtain acknowledgments of receipt of this Order:

A. Defendant Leo, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 3 years after entry of this Order, Defendant Leo for any business that he, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives with managerial responsibilities for Telemarketing related to the subject matter of this Order and all agents and representatives who participate in Telemarketing related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant Leo delivered a copy of this Order, Defendant Leo must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Leo make timely submissions to the Commission:

A. One year after entry of this Order, Defendant Leo must submit a compliance report, sworn under penalty of perjury, to:

1. identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;
2. identify all business activities, including any business for which Defendant Leo performs services whether as an employee or otherwise and any entity in which Defendant Leo has any ownership interest;
3. describe in detail Defendant Leo's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;
4. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant Leo;
5. identify all of Defendant Leo's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
6. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Leo must describe if he or she knows or should know due to his or her own involvement);
7. describe in detail whether and how Defendant Leo is in compliance with each Section of this Order; and
8. provide a copy of each Order Acknowledgment obtained pursuant to this Order,

unless previously submitted to the Commission.

B. For 5 years after entry of this Order, Defendant Leo must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. name, including aliases or fictitious name, or residence address;
2. title or role in any business activity, including any business for which Defendant Leo performs services whether as an employee or otherwise and any entity in which Defendant Leo has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity;
3. any designated point of contact; or
4. the structure of any entity that Defendant Leo has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant Leo must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against him within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Leo, X100042.

VIII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant Leo must create certain records for 5 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant Leo for any business that he, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Leo's

compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, Defendant Leo must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant Leo. Defendant Leo must permit representatives of the Commission to interview any employee or other person affiliated with him who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant Leo or any individual or entity affiliated with Defendant Leo, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Defendant Leo, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

X. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this _____ day of _____, 2021.

I. LEO GLASSER
UNITED STATES DISTRICT JUDGE

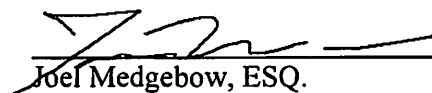
SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

/s/ Karen Dahlberg O'Connell
Karen Dahlberg O'Connell, Attorney
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Date: 8/5/2021

DEFENDANT LEO:


LOUIS LEO, INDIVIDUALLY Louis F. Leo Date: 8-5-21