



PROVIDERS; ASSOCIATION HEALTH CARE MANAGEMENT, INC. formerly known as *Alternative Health Care Management, Inc.* formerly known as *PPO Association Managers, Inc.*, and now doing business as *Family Care, First Healthcare* and *Family Select*; A.H.C.M. TRAINING INSTITUTE, INC.; LIBERTY ARC, INC.; INTERNATIONAL BENEFITS SYSTEM, INC.; KRISTOPHER A. RABIE; and MAHMOUD RABIE also known as MICHAEL RABIE also known as MIKE RABIE. The Attorney General would respectfully show the Court as follows:

### **DISCOVERY CONTROL PLAN**

1. Discovery shall be conducted under a LEVEL 2 discovery control plan pursuant to rule 190.3 of the Texas Rules of Civil Procedure.

### **JURISDICTION**

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS under the authority granted to him pursuant to Section 17.47 of the Texas Deceptive Trade Practices Act–Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§17.41 *et seq.* (hereinafter, “DTPA”), upon the grounds that Defendants have engaged in false, misleading, and deceptive acts and practices in the conduct of trade or commerce as defined and declared unlawful by Section 17.46 (a) and (b) of the DTPA. Additionally, Defendants have violated the Texas Telemarketing Disclosure and Privacy Act (hereinafter, “TDPA”) by sending unsolicited facsimile transmissions that do not comply with the notice provisions of the act. TEX. BUS. & COM. CODE ANN. § 44.151 (Vernon 2004). A violation of Section 44.151 of the TDPA is subject to enforcement action by the Attorney General’s Consumer Protection and Public Health Division under Sections 17.47, 17.58, 17.60, and 17.61 of the DTPA. TEX. BUS. & COM. CODE ANN. § 44.153(b) (Vernon 2004).

## DEFENDANTS

3. American Arc Management Corporation (hereinafter, “Family Health”) is a Texas corporation whose principal place of business is 6750 West Loop South, Suite 870, Bellaire, Texas 77401, Harris County, Texas. Family Health may be served with process by serving its registered agent, Kristopher A. Rabie, at 6750 West Loop South, Suite 870, Bellaire, Texas 77401.

4. Family Care, Inc.,<sup>1</sup> is a Texas corporation whose principal place of business is 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564, Harris County, Texas. Family Care, Inc., may be served with process by serving its registered agent, Mike Rabie, at 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564.

5. National Association of Preferred Providers<sup>2</sup> (hereinafter, “NAPP”) is a Texas non-profit corporation whose principal place of business is 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564, Harris County, Texas. NAPP may be served with process by serving its registered agent, Michael Rabie, at 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564.

6. Association Health Care Management, Inc., (hereinafter, “AHCM”) is a Texas corporation whose principal place of business is 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564, Harris County, Texas. AHCM may be served with process by serving its registered agent, Mike Rabie, at 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564.

7. A.H.C.M. Training Institute, Inc., is a Texas corporation whose principal place of business is 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564, Harris County, Texas. A.H.C.M.

---

<sup>1</sup> Upon information and belief, Defendants Family Care, Inc., and National Association of Preferred Providers (hereinafter, “Family Care/NAPP”) operate as the same company. (Exhibits “1 [p. 1, para. 3, fn. 2], 12, 13, 24 [p. 8], 26 [p.1], 28 [p.2], and 32 [p. 1]”).

<sup>2</sup> See Footnote 1.

Training Institute, Inc., may be served with process by serving its registered agent, Mike Rabie, at 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564.

8. Liberty Arc, Inc., is a Texas corporation whose principal place of business is 5510 S. Rice, #1733, Houston, Texas 77081, Harris County, Texas. Liberty Arc, Inc., may be served with process by serving its registered agent, Kristopher A. Rabie, at 6750 West Loop South, Suite 870, Bellaire, Texas 77401.

9. International Benefits System, Inc., is a Texas corporation whose principal place of business is 1723 Parklake Village Dr., Katy, Texas 77450, Harris County, Texas. International Benefits System, Inc., may be served with process by serving its registered agent, Michael M. Rabie, at 1723 Parklake Village Dr., Katy, Texas 77450.

10. Kristopher A. Rabie is an individual residing in Houston, Texas, who may be served with process at 6750 West Loop South, Suite 870, Bellaire, Texas 77401, Harris County, Texas.

11. Mike Rabie is an individual residing in Houston, Texas, who may be served with process at 10333 Harwin Drive, Suite 225, Houston, Texas 77036-1564, Harris County, Texas.

#### **VENUE**

12. Venue of this suit lies in Harris County, Texas, for the following reasons:

- A. Under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(1), venue is proper insofar as all or a substantial part of the events or omissions giving rise to the claims alleged herein occurred in Harris County, Texas;
- B. Venue is also proper in Harris County, Texas, under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(2), because the individual Defendants were residents of Harris County, Texas, at the time the causes of action accrued;

- C. Venue is also proper in Harris County, Texas, under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(3), because Defendants’ principal offices are located in Harris County, Texas; and
- D. Venue is also proper under the DTPA §17.47(b), because the Defendants’ principal places of business are located in Harris County, Texas.

**PUBLIC INTEREST**

13. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff State of Texas has reason to believe Defendants have caused and will cause immediate and irreparable injury, loss, and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

**TRADE AND COMMERCE**

14. Defendants have, at all times described herein, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in §17.45(6) of the DTPA.

**ACTS OF AGENTS**

- 15. Whenever in this petition it is alleged that Defendants did any act it is meant that:
  - A. Defendants performed or participated in the act, or
  - B. Defendants’ officers, agents, trustees, employees, representatives, or successors performed or participated in the act on behalf of and under the authority of the Defendants.

## **NOTICE BEFORE SUIT NOT GIVEN**

16. Pursuant to §17.47(a) of the DTPA and §44.153(b) of the TDPA, contact has not been made with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants would destroy relevant records and secrete assets if prior notice of this suit were given.

## **SPECIFIC FACTUAL ALLEGATIONS**

17. Defendants<sup>3</sup> market, sell, and/or distribute a health discount card plan which falsely purports to offer substantial discounts for health care services and products to consumers in Texas and throughout the United States. (Exhibit “1 [pp. 1-2, para. 3]”).

18. Defendants advertise their “discount” health plans through unsolicited, illegal facsimile transmissions, unsolicited telemarketing calls, and various websites.<sup>4</sup> Defendants advertise “Health Care for the Entire Family,” and falsely claim their plans will save consumers up to 20-80% on a variety of health care services, including but not limited to: doctor visits, hospitalizations, vision care, dental care, maternity care, hearing aids, and prescriptions. (Exhibits “1 [p. 2, para. 4], 2 [p. 3], 12 [pp. 2-4], 14 [p. 2], 15 [p. 3], 16 [p. 2], 17 [pp. 1, 3-5], 18 [p. 3], 26, and 27 [pp. 8 and 10]”).

---

<sup>3</sup> Defendant Family Care/NAPP represents that it sells its benefits wholesale to different companies, including Family Health, that in turn sell their own program under a private label composed in whole or in part of benefits purchased from Family Care/NAPP. (Exhibits “1 [p. 2, para. 3], 15, 16, 17, 18, and 28 [p. 2, para. 4]”). Defendant Family Care/NAPP also operates a website, <imr.nappnet.com>, to enroll independent marketing representatives to sell the Family Care plan. (Exhibits “1 [p. 2, para. 3] and 13”).

<sup>4</sup> Defendant Family Care/NAPP operates at least one website, <www.nappnet.com>, Defendant Family Health operates at least one website, <www.familyhealthadvantage.com>, and resellers appear to operate the following websites: <www.affordablehealthcareinc.com>, <www.familycareusa.com>, <www.aagency.org>, and <www.healthplansus.com>. (Exhibits “1 [p. 2, para. 4], 12, 14, 15, 16, 17 and 18”).

Defendants sell the plans, which purport to provide membership for the entire family, at anywhere from \$49.95 to \$99.95 per month plus a processing or enrollment fee of between \$30.00 and \$90.00. (Exhibits “1 [p. 3, para. 7], 2 [p. 1, para. 2 and p. 3], 3 [p. 1, para. 2 & 4 and p. 4], 4 [p. 1, para. 3 and p. 3], 5 [p. 1, para. 2-3 and p. 3], 6 [p. 1, para. 3 and 6], 7 [p. 1, para.. 2-3], 8 [p. 1, para. 2 and 5], 9 [p. 2, para. 7], 10 [p. 3, para. 15], 11 [p. 1, para. 6], 15 [p. 1], 16 [p. 1], and 18 [p. 1]”). Defendants state in their advertisements that all preexisting conditions are accepted, that there are no limitations on medical usage, that there are no age restrictions, and that consumers cannot be singled out for rate increases or cancellations. (Exhibits “1 [p. 2, para. 5], 2 [p. 3], 3 [p. 4], 4 [p. 3], and 5 [p. 3]”). Defendants use terms of art from the insurance industry, such as coverage, preexisting conditions, and deductible. (Exhibits “1 [p. 2, para. 5] and 2 [p.3]”).

19. Defendants’ unsolicited and illegal fax advertisements do not contain Defendants’ correct and complete name and street address of the location of Defendants’ places of business. (Exhibits “1 [p. 8, para. 26], 2 [p. 3], 3 [p. 4], 4 [p. 3], 5 [p. 3], and 29”). These faxes almost always state that the rate being offered will expire in a short time causing the consumer to feel there is some urgency to sign-up. (Exhibits “1 [p. 2, para. 6], 3 [p. 4] and 5 [p. 1, para. 3 and p. 3]”). Some faxes also advertise a money back guarantee, usually stating that there is a 30-day period in which to cancel and receive a refund. (Exhibits “1 [p. 3, para. 7] and 4 [p. 3]”). No actual terms and conditions are provided on the fax advertisements, including the existence and amount of the enrollment fee. (Exhibits “1 [p. 2, para. 6], 2 [p. 3], 3 [p. 4], 4 [p. 3], and 5 [p. 3]”).

20. Defendants’ websites allow consumers to access and search lists of supposed participating health care providers and facilities. (Exhibits “1 [p. 4, para. 9], 12 [p. 9], 19, 20, 21, and 22”). The Defendants falsely claim that these providers have agreed to provide plan members with health care

services at rates substantially reduced from their usual and customary fees at the time of service. (Exhibits “1 [p. 4, para. 10], 2 [p. 1, para. 5 and p. 2, para. 10], 3 [pp. 2-3, para. 12], 21, 5 [p. 2, para. 6], 9 [p. 1, para. 3-5], 20, and 10 [p. 1, para. 3-6]”). Defendant Family Health falsely claims on its website, <www.familyhealthadvantage.com>, and in its membership guide that it contracts with each doctor individually. (Exhibits “1 [p. 4, para. 10], 14 [p. 5] and 27 [p. 13]”).

21. When complaining consumers call Defendants to inquire about their plans they are told by Defendants that they can obtain specific percentage discounts on various medical services and prescriptions, not just up to a certain percentage. (Exhibits “1 [p. 3, para. 7] and 3 [p. 1, para. 3-4]”). Other consumers are led to believe they are purchasing health insurance. (Exhibits “1 [p. 3, para. 7], 4 [p.1, para. 5], 5 [p. 1, para. 2-3], 6 [p. 1, para. 2 and 4], and 7 [p. 1, para. 2]”). Defendants tell consumers that they will receive a refund if they cancel their membership during the first thirty (30) days. (Exhibits “1 [p. 3, para. 7], 4 [p. 3] and 6 [p. 1, para. 3]”). During this initial call, Defendants obtain consumers’ bank account or credit card information, and charge the consumers an enrollment fee and the first month’s payment before the consumers receive their membership packets, which contain the specific details of Defendants’ plans. (Exhibits “1 [p. 3, para. 7], 2 [p. 1, para. 2-4], 3 [p. 1, para. 4], 4 [p. 1, para. 3-5], 5 [p. 1, para. 3-4], 6 [p. 1, para. 3-4], 7 [p. 1, para. 3-4], 8 [p. 1, para. 4-5], 9 [p. 1, para. 2-3], and 10 [p. 1, para. 2-3]”).

22. It is only when the membership packet is received that all of the terms, conditions, and restrictions are disclosed. (Exhibit “1 [p. 3, para. 8]”). The membership packet usually contains a welcome letter, a membership guide, identification cards, and a partial list of supposed participating doctors. (Exhibits “1 [p. 3, para. 8], 2 [p. 1, para. 3-4], 3 [p. 2, para. 9], 4 [p. 1, para. 5], 5 [p. 1, para. 4], 7 [p. 1, para. 4], 9 [p. 1, para. 3], and 10 [p. 1, para. 3]”). The following are

terms, conditions, and restrictions that are not disclosed until after the consumer has enrolled in and paid for Defendants' plans:

- A. The discount is based on payment at the time of service;
- B. Savings will vary, but are significantly reduced as long as no other discounts are given;
- C. Participating provider information is subject to change without notice;
- D. The enrollment fee is non-refundable;
- E. There is a thirty (30) day waiting period for the Accidental Injury Protection and Accidental Death & Dismemberment benefits;
- F. If you have Medicare, then no further discounts can be obtained;
- G. For non-emergency room inpatient services, a hospital may ask for \$1000 per day deposit prior to admission; and
- H. Cancellations must be in writing as well as the specifics of where and how the cancellations should be sent.

(Exhibits "1 [p. 3, para. 8], 23 [pp. 3-6], 24 [pp. 2, 4-5, and 7], 25 [p. 3], and 27 [pp. 2, 5, 8, and 10]"). Some consumers did not receive their membership packets for weeks or months. (Exhibits "1 [p. 3, para. 8], 2 [p. 1, para. 3-4], 4 [p. 1, para. 5], 5 [p. 1, para. 4], and 8 [p. 1, para. 4]").

23. Defendants Family Care/NAPP and Family Health are organized as separate companies. (Exhibits "1 [p. 5, para. 15], 36, 37, and 38"). However, at least one consumer who signed up with Family Health received Family Care cards and at least one other consumer received correspondence from Family Health that provided Family Care's address, fax number, and member care center's phone number as the contact information for which to send claims for repricing. (Exhibits "1 [p. 5, para. 15], 4 [p. 1, para. 5 and p. 5] and 9 [p. 1, para. 3 and pp. 3-4]"). Also, at least one consumer

who signed up with Family Care had money withdrawn from his bank account by Family Health. (Exhibits “1 [p. 5, para. 15] and 7 [p. 1, para. 3 and p. 4”).

24. Complaining consumers who attempted to use Defendants’ discount health cards were met with disappointment. Some consumers sought emergency care at hospitals listed as participating providers/facilities on Defendants’ website. (Exhibits “1 [p. 4, para. 11], 3 [pp. 2-3, para. 12] and 21”). When these consumers presented Defendants’ cards, hospital personnel did not recognize them and no discounts or savings of any kind were applied to consumers’ bills. (Exhibits “1 [p. 4, para. 11] and 3 [p. 2, para. 6-7, 10, and pp. 2-3, para. 12]”). Other consumers went through the process for scheduling a doctor’s appointment outlined in Defendants’ membership guides only to discover at their appointments that the supposed participating provider had never heard of Defendants and was completely unaware of how Defendants’ plans work. (Exhibits “1 [p. 4, para. 12], 9 [p. 1, para. 3-4] and 10 [p. 1, para. 4-6]”). Some of the supposed participating doctors gave no discount at all while others gave a small discount out of their own compassion. (Exhibits “1 [p. 4, para. 12], 9 [p. 1, para. 4] and 10 [p. 1, para. 6]”). For those consumers who did in fact receive a discount, the discount was much less than what had been represented to them by Defendants when they enrolled. (Exhibits “1 [p. 4, para. 12] and 3 [p. 3, para. 14-15]”).

25. Complaining consumers who attempt to cancel their membership and obtain a refund during the first thirty (30) days face difficulty in doing so. (Exhibits “1 [p. 4, para. 13] and 6 [p. 1, para. 5-6 and pp. 1-2, para. 7]”). Consumers send their written cancellations by certified mail or fax within the first thirty (30) days; despite that, Defendants tell consumers their cancellation notices were not received until sometime after the first (30) days and the consumers are not entitled to a refund. (Exhibits “1 [p. 4, para. 13] and 6 [pp. 1-2, para. 7]”). The Defendants continue to charge consumers the monthly payments. (Exhibits “1 [p. 4, para. 13], 6 [p. 1, para. 5-6], 8 [p. 1, para. 6-7], and 10 [p.

2, para. 13]”). Some consumers attempt to cancel their memberships orally, and are not told by Defendants that only written cancellations will be honored. (Exhibits “1 [p. 4, para. 13] and 4 [p. 1, para. 6 and p. 2, para. 7]”). Even after the first thirty (30) days, many complaining consumers have difficulty communicating with Defendants and cancelling their memberships. (Exhibits “1 [p. 4, para. 13], 4 [p. 1, para. 6 and p. 2, para. 7] and 8 [p. 1, para. 6-7]”).

26. Complaining consumers also indicate that they received unsolicited telemarketing calls and declined enrolling in Defendants’ plans. (Exhibits “1 [p. 5, para. 14] and 11 [p. 1, para. 2]”). Afterwards, shocked consumers discover that their credit card is being charged or that money is being withdrawn from their bank account without their authorization or consent. (Exhibits “1 [p. 5, para. 14] and 11 [p. 1, para. 2 and p. 2, para. 9]”). These victims do not know how Defendants were able to obtain their credit card or bank account information. (Exhibits “1 [p. 5, para. 14] and 11 [p. 2, para. 9-10]”).

### **VIOLATIONS OF THE DTPA**

27. Plaintiff incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

28. Defendants in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA §17.46(a) and (b), by engaging in the following conduct:

- A. Passing off goods or services as those of another in violation of the DTPA § 17.46(b)(1);
- B. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of the DTPA, §17.46(b)(2);

- C. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of the DTPA, §17.46(b)(3);
- D. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of the DTPA, §17.46(b)(5);
- E. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of the DTPA, §17.46(b)(7);
- F. Advertising goods or services with intent not to sell them as advertised, in violation of the DTPA, §17.46(b)(9);
- G. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions in violation of the DTPA, § 17.46(b)(11);
- H. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of the DTPA, §17.46(b)(12); and
- I. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed, in violation of the DTPA, §17.46(b)(24).

**VIOLATIONS OF THE TEXAS TELEMARKETING  
DISCLOSURE AND PRIVACY ACT**

29. Plaintiff incorporates and adopts by reference the allegations contained in each and every

preceding paragraph of this petition.

30. Defendants have violated and continue to violate the TDPA by engaging in the following conduct: By sending unsolicited faxes, which do not contain the correct and complete name of the person making the facsimile solicitation and street address of the location of the person's place of business, in violation of § 44.151(1) of the TDPA.

### **INJURY TO CONSUMERS**

31. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money or property should be restored.

### **DISGORGEMENT**

32. Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Plaintiff asks the Court to order Defendants to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest, and accessions thereto. Plaintiff further asks that such disgorgement be for the benefit of victimized consumers and the STATE OF TEXAS.

### **REPATRIATION OF ASSETS**

33. After due notice and a hearing, Plaintiff asks the Court to order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

### **REQUEST FOR FINDINGS OF ACTUAL FRAUD AND FALSE REPRESENTATION**

34. Plaintiff asks the Court to find at the conclusion of this case that all of the Defendants

engaged in actual fraud and false representation in that Defendants have made repeated and materially false representations to the public concerning the issuance of health discount cards, which were known to be false when made. Such false representations were made with the intention that they be acted upon by the parties to whom the misrepresentations were made. Reliance upon these false representations has resulted in injury to hundreds if not thousands of consumers across the United States as well as in Texas.

**NECESSITY OF IMMEDIATE RELIEF TO  
PRESERVE DEFENDANTS' ASSETS**

35. Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to preserve and protect Defendants' assets from dissipation so that the many victims of Defendants' actions can receive the restitution to which they are entitled. Defendants receive sums of money through their discount health card scheme and use fraudulently solicited funds for personal gain. Defendants' assets are subject to dissipation for the following reasons:

A. Defendants withdraw funds from the individuals' banking accounts and/or credit cards using an "ACH"(Automatic Clearing House) so the money cannot be easily traced and can be put to immediate use by Defendants for their personal gain (Exhibit "1 [para. 28-51]");

B. Defendants debit funds from consumers' bank accounts and/or credit cards without any authorization which is tantamount to theft. Defendants then make it difficult for consumers to obtain a refund after they complain. Defendants are in possession of funds to which they have no justiciable claim. (Exhibit "1 [para. 7, 13-14]").

C. Defendants advertise their "discount" health card programs through unsolicited, illegal facsimile transmissions, unsolicited telemarketing calls, and false representations. Much of the money they receive from consumers is fraudulently obtained and constitutes contraband.

(Exhibit "1" generally).

D. Defendants spend large amounts of monies obtained from consumers through false pretenses on personal items such as luxury cars, expensive vacations, swimming pools, extensive landscaping and outdoor lighting, expensive furniture, investments in stocks, securities and commodities, expensive clothing, out-of-state and out-of-country travel, expensive hotels and limousines, jewelry, expensive electronics, fancy restaurants, cruises, large credit card expenditures, large cash withdrawals from ATMs, and gifts to children and grandchildren. Such expenditures of funds subject all of Defendants' assets to dissipation and possible secretion;

For these reasons, the assets of Defendants are subject to dissipation and secretion, and should therefore be frozen pending final trial so restitution can be made and full and final relief may be awarded at final trial.

**REQUEST TO CONDUCT DISCOVERY PRIOR  
TO TEMPORARY INJUNCTION HEARING**

36. Plaintiff requests leave of this Court to conduct telephonic, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction hearing and prior to Defendants' answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled injunction hearing. Most of these witnesses live outside the State of Texas, and cannot appear at any scheduled Temporary Injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

**TRIAL BY JURY**

37. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

**APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

38. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this petition. Unless immediately restrained by this honorable Court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause immediate and irreparable injury, loss, and damage to the STATE OF TEXAS and to the general public. Therefore, Plaintiff requests an Ex Parte Temporary Restraining Order, Temporary Injunction, and Permanent Injunction as indicated below.

**PRAYER**

39. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining, and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees, and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to the business of Defendants currently or hereafter in the Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause;
- B. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court, any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements,

or other property, real, personal, or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this Court;

- C. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or any of Defendants' assumed names, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;
- D. Charging consumers' credit cards unless Defendants:
  - 1. Disclose to consumers all of the terms, conditions, restrictions, and costs associated with Defendants' plans prior to implementing a charge; and
  - 2. Obtain a signed written consent and authorization from each consumer to have the consumer's credit card charged before it is charged;
- E. Withdrawing money from consumers' bank accounts unless Defendants:
  - 1. Disclose to consumers all of the terms, conditions, restrictions, and costs associated with their plans prior to implementing a draft or charge; and
  - 2. Obtain a signed written consent and authorization from each consumer to have such funds withdrawn in a specific amount and from a specific bank account before such funds are actually withdrawn;
- F. Representing to banks and financial institutions, expressly or by implication, that a particular consumer has authorized or agreed to an ACH withdrawal or debit, when in fact, there is no such authorization or agreement in writing signed and from said consumer;

- G. Failing to fully advise and disclose to consumers in all oral or written communications, and prior to enrollment, the complete terms and conditions of any refund policy, including the fact that a complete refund may not be given if that is the case;
- H. Failing to provide consumers a list of all current participating health care providers located within a reasonable distance of consumers' residence or business address prior to consumers' enrollment in Defendants' plans. A reasonable distance is defined as not more than thirty (30) miles in an urban area and not more than fifty (50) miles in a rural area;
- I. Charging or collecting an enrollment fee from any person or entity unless the following disclosures are made prior to such fee being collected:
  - 1. The amount of the fee;
  - 2. Whether or not the fee is refundable and under what circumstances such fee is or is not refundable;
- J. Charging or collecting an enrollment fee from any person or entity unless the fee bears some relationship to the costs incurred by Defendants in enrolling consumers in its plans;
- K. Representing expressly or by implication to consumers in any oral or written communications that Defendants' plans offer discounts or savings of any kind on health care services, including but not limited to: physician care, hospitalizations, emergency room care, prescriptions, vision care, dental care, and chiropractic care, unless Defendants have a specific factual basis for those representations that is

verifiable through each provider;

- L. Representing expressly or by implication to consumers that they can obtain specific percentage discounts or specific ranges of discounts for any health care related service unless such discounts are verifiable through each provider and consumers can typically expect to obtain such discounts;
- M. Representing expressly or by implication that a health care provider accepts Defendants' discount health card plans unless, within the last twelve months, Defendants have confirmed with said provider, in writing:
  - 1. The provider's current and correct contact information;
  - 2. The provider is accepting new patients;
  - 3. The provider has agreed to bill consumers who are members in Defendants' plans at a discounted rate, which represents a savings as compared to the provider's usual and customary fees; and
  - 4. The provider has agreed to accept such discounted rate as payment in full;
- N. Representing expressly or by implication that hospitals and hospital providers will provide discounted care, including but not limited to, inpatient hospitalizations, outpatient procedures, and emergency care services, unless, within the last twelve months, Defendants have confirmed with the hospitals and hospital providers, in writing:
  - 1. The hospital or hospital providers have agreed to bill consumers who are members in Defendants' plans at a discounted rate, which represents a savings as compared to the hospital's or hospital provider's usual and

- customary fees; and
2. The hospital or hospital providers have agreed to accept such discounted rate as payment in full;
- O. Failing to disclose all terms, conditions, restrictions, and costs associated with any type of hospital benefit prior to consumers' enrollment in Defendants' plans;
- P. Using customer testimonials in either oral or written communications unless:
1. The representations of savings have a factual basis;
  2. The savings are solely the result of using Defendants' discount plans and not the result of combining Defendants' discount plans with any other type of discount plan or insurance;
  3. The full name, address, city and state of the customer is provided; and
  4. Defendants disclose whether or not the customer is also an independent marketing representative that markets Defendants' health discount card plans;
- Q. Representing expressly or by implication that Defendants' plans are offered at a specific rate good for a limited time only unless the rate is in fact only available for the limited time stated and the expiration date of such offer is clearly and conspicuously disclosed in at least 12-point Times New Roman font;
- R. Failing to disclose to consumers in all oral or written communications and on Defendants' websites that cancellations must be submitted in writing to a specifically disclosed address and fax number (and within a certain time) at which written cancellations may be received;
- S. Failing to notify consumers thirty (30) days in advance of any material change in the

services offered;

- T. Charging consumers' credit cards or withdrawing monies from consumers' bank accounts after the effective date of cancellation, which shall be the date of the postmark if sent by mail and the date received if sent by facsimile transmission;
- U. Failing to credit consumers' accounts within five (5) business days if Defendants have charged consumers' credit cards or withdrawn monies from consumers' bank accounts after the effective date of cancellation of their membership;
- V. Failing to include in facsimile solicitations, in at least 12-point Times New Roman font and type:
  - 1. The correct and complete name of the person making the facsimile solicitation and complete street address of the location of the person's place of business; and
  - 2. A toll-free or local exchange accessible telephone number of the person that:
    - A. Is answered in the order in which calls are received by an individual capable of responding to inquiries from recipients of the facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or
    - B. Automatically and immediately deletes the specified telephone number of the recipient;
- W. Failing to disclose to consumers in a clear and conspicuous manner in all oral and written communications and on Defendants' websites that Defendants' plans are not insurance; and

- X. Using any terms of art from the insurance industry in any oral and written communications which describe Defendants' plans, including but not limited to, the terms "preexisting conditions", "benefits", "coverage", "deductible" and "co-pay".
40. In addition, Plaintiff respectfully prays that upon final hearing this Court will:
- A. Adjudge against each Defendant civil penalties in favor of Plaintiff State of Texas in an amount up to \$20,000 per violation as allowed by law pursuant to TEX. BUS. & COM. CODE § 17.47(c)(1) and an additional amount not to exceed more than \$250,000 for acts and practices calculated to acquire or deprive money or other property from a consumer who was sixty-five (65) years of age or older when the act or practice occurred;
  - B. Adjudge against each Defendant civil penalties in favor of Plaintiff State of Texas in an amount up to \$1000 per violation or in an amount up to \$3000 per violation if the Court finds the Defendants wilfully or knowingly committed the violation as allowed by law pursuant to TEX. BUS. & COM. CODE § 44.153(b);
  - C. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative, award judgment for damages in an amount within the jurisdictional limits of this Court to compensate for such losses;
  - D. Order the disgorgement of all sums taken from consumers by means of deceptive trade practices, together with all proceeds, interest, income, profits and accessions thereto;
  - E. Order Defendants' assets be repatriated into the jurisdiction of this Court;

- F. Order Defendants to pay Plaintiff State of Texas attorney's fees and costs of court pursuant to TEX. GOVT. CODE § 402.006(c);
- G. Order Defendants to pay all prejudgment interest on all awards of restitution, damages, or civil penalties as provided by law;
- H. Grant leave to Plaintiff State of Texas to conduct telephonic, oral, and other depositions prior to Defendants' answer date and any Temporary Injunction hearing; and
- I. Grant all other relief to which Plaintiff State of Texas may be justly entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. McBEE  
First Assistant Attorney General

EDWARD BURBACH  
Deputy Attorney General for Litigation

PAUL CARMONA  
Chief, Consumer Protection Division

---

ROBERTA H. NORDSTROM  
State Bar No. 24036801  
John Owens  
State Bar No. 15379200  
Assistant Attorneys General  
Office of the Attorney General  
Consumer Protection and Public  
Health Division  
808 Travis, Suite 300

Houston, Texas 77002  
(713) 223-5886 - Telephone  
(713) 223-5821 - Facsimile

**VERIFICATION**

**STATE OF TEXAS** §

§

**COUNTY OF HARRIS** §

Before me, the undersigned Notary Public, on this day personally appeared Cathryn Haynes, who, after being duly sworn, stated under oath that she is an investigator for Plaintiff in this action, that she has read the above petition, and that every statement contained in the petition is true and correct and within the personal knowledge of her and all of the affiants as indicated in the affidavits attached to Plaintiff's Original Petition.

\_\_\_\_\_  
CATHRYN HAYNES

SUBSCRIBED AND SWORN TO BEFORE ME, on the \_\_\_\_ day of \_\_\_\_\_, 2005,  
to certify which witness my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC  
State of Texas