

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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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 SOLUTIONS, LLC, and as
the Vice President and Treasurer of CONSUMER
HEALTH BENEFITS ASSOCIATION,

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

**FIRST AMENDED
COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its First Amended Complaint alleges:

1. The FTC brings this action under 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

discount plan, and provided space at 4875 Coconut Creek Parkway, Coconut Creek, Florida 33063-3944 where Defendants' medical discount plan was telemarketed. At times material to this First Amended Complaint, acting alone or in concert with others, Defendant Century has marketed, distributed, or sold Defendants' medical discount plan to consumers in this district and throughout the United States.

12. Defendant Louis Leo is a Managing Member of Defendant NBS, as well as Vice President and Treasurer of Defendant CHBA. His principal place of business is 4875 Coconut Creek Parkway, Coconut Creek, Florida 33063-3944. At times material to this First Amended Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this First Amended Complaint. Defendant Louis Leo, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

13. Defendant Ron Werner is a Managing Member of Defendants NBC and NBS, as well as President and Managing Partner of Defendant CHBA. His principal place of business was formerly 4875 Coconut Creek Parkway, Coconut Creek, Florida 33063-3944. At times material to this First Amended Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this First Amended Complaint. Defendant Ron Werner, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

14. Defendant Rita Werner is Senior Vice President and Director of Operations of Defendant CHBA. Her principal place of business was formerly 4875 Coconut Creek Parkway, Coconut Creek, Florida 33063-3944. At times material to this First Amended Complaint, acting

alone or in concert with others, she has formulated, directed, controlled, had the authority to

practices set forth in this First Amended Complaint. Defendant Jeffrey Burman, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

18. Defendant Barbara Taube is a Vice President of Defendant GTLI. Her principal place of business is 1275 Milwaukee Avenue, Glenview, Illinois 60025. At times material to this First Amended Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this First Amended Complaint. Defendant Barbara Taube, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

19. Defendant Richard Holson, III, is President of Defendant GTLI. His principal place of business is 1275 Milwaukee Avenue, Glenview, Illinois 60025. At times material to this First Amended Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this First Amended Complaint. Defendant Richard Holson, III, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

20. At all times material to this First Amended Complaint, Defendants have maintained a substantial course of trade or business in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

COMMON ENTERPRISE

21. Defendants CHBA, NAFA, NBC, NBS, GTLI, Vantage, and Century (collectively, “Corporate Defendants”) have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, office locations, and commingled funds. Because Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendants Louis Leo, Ron Werner, Rita Werner, Wendi Tow, John Schwartz, Jeffrey Burman, Barbara Taube, and Richard Holson, III, have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Corporate Defendants that constitute the common enterprise. Accordingly, Individual Defendants Louis Leo, Ron Werner, Rita Werner, Wendi Tow, John Schwartz, Jeffrey Burman, Barbara Taube, and Richard Holson, III, are each jointly and severally liable for the acts and practices alleged below.

DEFENDANTS’ BUSINESS ACTIVITIES

Defendants Solicited Consumers by Telemarketing

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21.

more telephones and that involves more than one interstate telephone call. Since approximately 2009, Defendant NBS engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.

Defendants Solicited Consumers Seeking Major Medical Health Insurance

25. Since approximately 2003, Defendants, acting alone or in concert with others, marketed and sold a medical discount plan in various states throughout the country to consumers seeking major medical health insurance. Major medical health insurance generally involves an arrangement between an insurance company and a consumer in which the insurance company agrees to pay a substantial portion of the healthcare expenses that the consumer might incur in exchange for payment from the consumer. Defendants' plan, in contrast, purported to provide consumers with access to various discounts on healthcare and healthcare-related services and products.

26. Defendants' representatives called consumers whose contact information Defendants had obtained from websites to which the consumers submitted requests for information on major medical health insurance plans. Consumers generally provided their contact information to this website with the expectation of obtaining information on major medical health insurance plans.

27. Defendants' representatives often did not identify the company they were representing when they contacted consumers. When consumers asked Defendants' representatives for the name of the company they were calling from, Defendants' representatives typically either refused to answer or provided a convoluted answer to the question.

28. Many of the consumers were uninsured because of pre-existing medical

conditions that excluded them from major medical health insurance coverage. Others had lost their coverage as a result of becoming unemployed. Some consumers or their family members required surgery or suffered from chronic diseases. Many consumers were uninsured or under insured simply because they could not afford comprehensive major medical health insurance.

29. At times, Defendants represented, either expressly or by implication, that their medical discount plan was major medical health insurance, when, in fact, it was not. Defendants often described the plan as “health insurance” or the equivalent of major medical health insurance to consumers. Defendants also used terms of art common in the major medical health insurance industry such as “PPO,” “deductibles,” “co-pay,” and “network.” Defendants typically failed to promptly disclose the nature of the goods or services they were selling.

30. Even in instances where consumers were told that Defendants’ plan was a medical discount plan and not actual major medical health insurance, Defendants misrepresented that the medical discount plan would provide similar coverage to major medical health insurance and therefore was the equivalent of major medical health insurance. Defendants often claimed that they worked closely with Blue Cross Blue Shield, Aetna, and United Healthcare, and that there was virtually no difference between Defendants’ plan and major medical health insurance plans.

31. Numerous consumers purchased Defendants’ plan under the impression that it was major medical health insurance or the equivalent of major medical health insurance based on the representations made by Defendants during the initial sales calls.

32. Defendants used high pressure tactics during these calls to convince consumers to purchase the plan. Defendants told some consumers that the offer was limited to a certain number of consumers in their state and that they must purchase the plan quickly, or that the offer

would only be available that day and that the price would increase thereafter. Numerous consumers asked to see written materials regarding the plan prior to enrolling in it, but the sales representatives told them that they would not mail any written materials until after the consumers purchased the plan.

33. During the initial sales call, after consumers agreed to enroll in the medical discount plan, the sales representatives told consumers that a portion of the call had to be recorded. Consumers were then coached on how to respond to the representatives' questions, and consumers were specifically instructed not to interrupt or ask questions because the representatives would be forced to start the taping process over from the beginning. Consumers who interrupted or asked questions were admonished and told that the process would be very time-consuming if they continued to do so.

34. After enrollment, when consumers received and reviewed the written medical discount plan information, many discovered that Defendants sold them a medical discount plan, not major medical health insurance. The discounts provided by the plan purportedly applied to doctor's office visits, vision exams, prescription eye wear, dental cleaning and exams, and prescription drugs, through a network of providers with whom Defendants had supposedly contracted. The written information consumers received contained multiple disclaimers stating that the plan was not health insurance. Consumers did not receive insurance policies or insurance cards indicating that they had purchased health insurance of any kind.

35. Defendants charged consumers an enrollment fee ranging from \$29 to \$279.85, plus monthly service fees ranging from \$65 to \$259, to purchase the plan. Defendants charged consumers the enrollment fee and the fee for the first month of service at the time of enrollment, which generally occurred over the telephone and before consumers ever received any written

information regarding the plan.

Defendants Falsely Represented Plan Discounts and Participating Providers

36. During initial sales calls, Defendants misrepresented that consumers would achieve significant savings on health care costs by purchasing Defendants' medical discount plan. Defendants told some consumers that the plan would enable them to save up to 85% on medical expenses and that the average savings was 68% on all medical costs. In fact, few, if any, consumers saved money through enrollment in Defendants' plan.

37. Defendants further misrepresented that their medical discount plan was widely accepted by doctors, pharmacies, and other health care facilities throughout the United States, including consumers' personal physicians. During initial telephone calls with consumers, sales representatives represented that the plan was accepted wherever Blue Cross Blue Shield insurance plans were accepted, and that consumers could use their medical discount card with any doctor that accepts insurance.

38. On multiple occasions, consumers were unable to use the medical discount plan like major medical health insurance to pay for their medical expenses or receive significant discounts or savings on goods or services. For example, one of Defendants' representatives told a New York City consumer that there were a number of "participating providers" in her area; when the consumer contacted the "participating providers" listed on CHBA's website, however, she was told that many of them did not accept the plan. When another consumer tried to use the medical discount plan to obtain discounted prescription medicine for her daughter, the consumer

Defendants Falsely Represented Their Cancellation and Refund Policy

39. During initial sales calls, Defendants typically misrepresented to consumers that they would be able to cancel their participation in Defendants' plan at any time. Many consumers experienced difficulty in canceling their memberships, however, because they often could not reach a live representative. Many consumers were forced to call multiple times until they reached a representative. When consumers did contact a live representative, Defendants' representatives often refused to let consumers cancel, pressuring them to think about their decision and to call back at another time. In some instances, Defendants told consumers that enrollment had been cancelled, but Defendants continued charging or debiting the monthly fee from consumers' credit cards and bank accounts.

40. Moreover, during sales calls, Defendants made various omissions regarding their "no refund" policy. Defendants' written policy was that all fees paid by consumers are non-refundable. However, during the initial sales call, Defendants were silent as to the "no refund" policy. When consumers called to cancel and were able to speak with Defendants' representatives, they were then orally informed that there was a "no refund" policy. Typically, consumers received refunds only after they complained or threatened to complain to the Better Business Bureau, State Attorney General's office, or another consumer protection agency regarding Defendants' deceptive sales practices.

Defendant CHBA's Role

41. Defendant CHBA was instrumental in creating and operating Defendants' medical discount plan, by providing a "not-for-profit" front through which sales of the plan were offered. In actuality, CHBA had no employees or funds of its own. Its directors and officers conducted minimal to no business on behalf of the organization. Instead, other defendants

created and assembled the plan and collected consumers' enrollment fees, in CHBA's name.

Defendant NAFA's Role

42. Defendant NAFA was instrumental in operating Defendants' medical discount plan. NAFA was created in 2009, as an attempt to "rebrand" Defendants' medical discount plan and distance it from numerous consumer complaints available on the Internet. NAFA was intended to inherit CHBA's role in Defendants' common enterprise. Like Defendant CHBA, Defendant NAFA was created to provide a "not-for-profit" front through which sales of the plan were offered. Like CHBA, NAFA had no employees or funds of its own. Its directors and officers similarly conducted minimal to no business on behalf of the organization. Instead, other defendants created and assembled the plan and collected consumers' enrollment fees, in NAFA's name.

Defendant NBC's Role

43. Defendant NBC was instrumental in creating and operating Defendants' medical discount plan. NBC was advertised as the exclusive marketing company for CHBA. NBC worked with Vantage to select plan components and create marketing materials. In certain agreements with Century, NBC and CHBA are jointly referred to as one entity. Two of Defendant NBC's executives sat on the *de facto* board of directors of CHBA, in which the board discussed sales strategies and membership goals, as well as litigation brought by the Illinois Attorney General regarding deceptive sales practices. The same two NBC executives were also part of what Defendants internally referred to as "Team CHBA."

Defendant NBS's Role

44. Defendant NBS was instrumental in operating Defendants' medical discount plan. NBS was created in 2009, as an attempt to "rebrand" Defendants' medical

discount plan and distance it from numerous consumer complaints available on the Internet. Specifically, Defendants intended for NBS to inherit NBC's role in their common enterprise. Like Defendant NBC, Defendant NBS was to be the

CHBA, in which the board discussed sales strategies and membership goals, as well as litigation brought by the Illinois Attorney General regarding deceptive sales practices. The same three GTLI executives were also part of what Defendants internally referred to as “Team CHBA.”

48. Defendant GTLI deposited consumers’ enrollment fees and monthly fees into an account maintained by Defendant GTLI, and commingled these fees with funds unrelated to Defendants’ medical discount plan. Payments to various Defendants were reflected as debits from this commingled account.

Defendant Vantage’s Role

49. Defendant Vantage was instrumental in creating and operating Defendants’ medical discount plan, and provided substantial assistance to Defendants in the initial stages of the scheme. Together with GTLI, Vantage prepared the founding corporate documents for CHBA and NBC; named the official directors; created NAFA and NBS; reviewed sales materials; and selected plan components. Vantage also contracted with vendors to provide purported plan benefits.

50. Defendant Vantage continued its involvement and substantial assistance throughout the existence of Defendants’ medical discount plan by, among other duties: continuing to review marketing materials; assisting with responding to consumer complaints regarding deceptive marketing of Defendants’ medical discount plan; and acting as the Discount Medical Plan Organization (“DMPO”) that provided Defendants’ medical discount plan. As the DMPO that provided the plan, Defendant Vantage entered into a consent order with the Florida Office of Insurance Regulation regarding nearly a dozen violations of the Florida Insurance and Administrative Codes arising from Vantage’s involvement in Defendants’ scheme, including violations based on the failure to properly advise consumers of the no-refund policy, not

providing required refunds, and making it difficult for consumers to cancel.

51. Defendant Vantage's President sat on the *de facto* board of directors of CHBA, in which the board discussed sales strategies and membership goals, as well as litigation brought by the Illinois Attorney General regarding deceptive sales practices. Defendant Vantage's President was also part of what Defendants internally referred to as "Team CHBA."

Defendant Century's Role

52. Defendant Century contracted with CHBA and NBC to administer Defendants' medical discount plan and to otherwise provide substantial assistance to Defendants by, among other duties: providing office space to CHBA and NBC at 4875 Coconut Creek Parkway, Coconut Creek, Florida 33063-3944; paying rent and utilities for the office space; sharing expenses with CHBA and NBC; providing funding to hire employees and contractors for NBC; operating a call center to manage customer service calls; maintaining bank accounts; and distributing materials to new members of Defendants' medical discount plan.

Defendant Louis Leo's Role

53. Defendant Louis Leo was a Managing Member of Defendant NBS and Vice President and Treasurer of Defendant CHBA. Defendant Louis Leo orchestrated much of Corporate Defendants' business activities, including: establishing telemarketing campaigns; designing the medical discount plan; and overseeing

55. Defendant Louis Leo is jointly and severally liable for the conduct of Corporate Defendants because he had the authority to control and direct Corporate Defendants' activities;

least one bank account held in the name of Defendant NBC.

60. Defendant Rita Werner is jointly and severally liable for the conduct of Corporate Defendants because she had the authority to control and direct the complained of activities; had participated in those activities; and had knowledge of Corporate Defendants' misrepresentations and other misconduct.

Defendant Wendi Tow's Role

61. Defendant Wendi Tow was Senior Vice President in charge of member services of Defendant CHBA and a Managing Member of Defendant NBC. Defendant Wendi Tow orchestrated much of CHBA and NBC's business activities, including participating in reviewing consumer complaints and overseeing cancellation and refund practices.

62. Defendant Wendi Tow is jointly and severally liable for the conduct of Corporate Defendants because she had the authority to control and direct the complained of activities, had participated in those activities, and had knowledge of Corporate Defendants' misrepresentations and other misconduct.

Defendant John Schwartz's Role

63. Defendant John Schwartz is a Managing Member of Defendant NBC. Defendant John Schwartz orchestrated much of NBC's business activities, including training and managing NBC's sales agents who telemarketed Corporate Defendants' medical discount plan.

64. Defendant John Schwartz is jointly and severally liable for the conduct of Corporate Defendants because he had the authority to control and direct the complained of activities, participated in those activities, and had knowledge of Corporate Defendants' misrepresentations and other misconduct.

Defendant Jeffrey Burman's Role

65. Defendant Jeffrey Burman is President of Vantage and a Vice President of GTLI. Defendant Jeffrey Burman orchestrated much of Corporate Defendants' business activities, including designing the medical discount plan and reviewing the sales scripts and marketing materials used by Defendants NBC and NBS.

66. Defendant Jeffrey Burman sat on the *de facto* board of directors of CHBA, in which the board discussed sales strategies and membership goals, as well as litigation brought by the Illinois Attorney General regarding deceptive sales practices. Defendant Jeffrey Burman was also part of what Defendants internally referred to as "Team CHBA."

67. Defendant Jeffrey Burman is jointly and severally liable for the conduct of Corporate Defendants because he had the authority to control and direct Corporate Defendants' activities, participated in those activities, and had knowledge of Corporate Defendants' misrepresentations and other misconduct.

Defendant Barbara Taube's Role

68. Defendant Barbara Taube is a Vice President and Chief Financial Officer of GTLI. Defendant Barbara Taube orchestrated much of Corporate Defendants' business activities, including collecting consumers' payments for the medical discount plan, determining how to distribute the funds among Defendants, and determining whether to refund consumers who requested cancellations and refunds as a result of Defendants' misrepresentations regarding their medical discount plan.

69. Defendant Barbara Taube sat on the *de facto* board of directors of CHBA, in which the board discussed sales strategies and membership goals, as well as litigation brought by the Illinois Attorney General regarding deceptive sales practices. Defendant Barbara Taube was

also part of what Defendants internally referred to as “Team CHBA.”

70. Defendant Barbara Taube is jointly and severally liable for the conduct of Corporate Defendants because she had the authority to control and direct Corporate Defendants’ activities, participated in those activities, and had knowledge of Corporate Defendants’ misrepresentations and other misconduct.

Defendant Richard Holson, III’s, Role

71. Defendant Richard Holson, III, is President of GTLI. Defendant Richard Holson, III, orchestrated much of Corporate Defendants’ business activities, including overseeing the sale and administration of the medical discount plan.

72. Defendant Richard Holson, III, sat on the *de facto* board of directors of CHBA, in which the board discussed sales strategies and membership goals, as well as litigation brought by the Illinois Attorney General regarding deceptive sales practices. Defendant Richard Holson, III, was also part of what Defendants internally referred to as “Team CHBA.”

73. Defendant Richard Holson, III, is jointly and severally liable for the conduct of Corporate Defendants because he had the authority to control and direct Corporate Defendants’ activities, participated in those activities, and had knowledge of Corporate Defendants’ misrepresentations and other misconduct.

COUNT I

Making Misrepresentations of Material Fact

76. In numerous instances, in connection with the marketing of Defendants' medical discount plan, Defendants represented, directly or indirectly, expressly or by implication, that:

- a. Defendants' plan is a major medical health insurance plan or is the equivalent of a major medical health insurance plan;
- b. Defendants' plan enables consumers to achieve significant savings on health care costs;
- c. Defendants' plan is widely accepted by doctors and other medical providers throughout the United States; and
- d. Consumers may readily cancel their participation in Defendants' plan at any time.

77. In truth and in fact:

- a. Defendants' plan was not a major medical health insurance plan or the equivalent of a major medical health insurance plan;
- b. Defendants' plan did not enable consumers to achieve significant savings on health care costs;
- c. Defendants' plan was not widely accepted by doctors and other medical providers throughout the United States; and
- d. In numerous instances, consumers were unable to readily cancel their participation in Defendants' plan.

78. Therefore, the representations set forth in Paragraph 76 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. §

45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

79. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter.

16 C.F.R. Part 310.

80. The TSR prohibits sellers and telemarketers from failing to disclose truthfully, in a clear and conspicuous manner before a customer pays for goods or services.

COUNT III

Misrepresenting Material Information Regarding the Cancellation Policy

89. In numerous instances, in the course of telemarketing a medical discount plan, Defendants misrepresented, directly or by implication, that consumers could readily cancel their participation in Defendants' plan at any time.

90. Defendants' acts and practices, as described in Paragraph 89 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

COUNT IV

Failing to Disclose the "No Refund" Policy

91. In numerous instances, in the course of telemarketing a medical discount plan, Defendants failed to disclose truthfully, in a clear and conspicuous manner before consumers paid for the medical discount plan offered, a statement informing consumers of Defendants' policy of not making refunds.

92. Defendants' acts and practices, as described in Paragraph 91 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(1)(iii).

COUNT V

Failing to Make Required Oral Disclosures

93. In numerous instances, in the course of telemarketing a medical discount plan, Defendants made, or caused a telemarketer to make, outbound telephone calls in which the telemarketer failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call:

- a. The identity of the seller; or
- b. The nature of the goods or services.

E. Award Plaintiff FTC the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

WILLARD K. TOM
General Counsel

LEONARD L. GORDON
Regional Director
Northeast Region

Dated: October 13, 2011

_____/s/_____
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