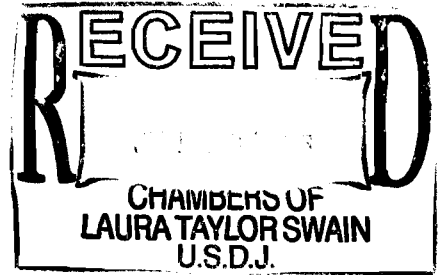


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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

v.

MALVERN MARKETING, LLC, also d/b/a  
PHASE ONE MARKETING, a Delaware limited  
liability company, and

PEOPLES BENEFIT SERVICES, INC., a  
Pennsylvania corporation.

Case No. 06 CV 4612

**STIPULATED JUDGMENT AND  
ORDER FOR PERMANENT  
INJUNCTION AGAINST  
DEFENDANT PEOPLES BENEFIT  
SERVICES, INC.**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has commenced this action by filing the Complaint herein, and Defendant Peoples Benefit Services, Inc. ("PBS"), has waived service of the Summons and the Complaint. Plaintiff and Defendant PBS, represented by the attorneys whose names appear hereafter, have agreed to settlement of this action without adjudication of any issue of fact or law, and without Defendant PBS admitting liability for any of the violations alleged in the Complaint.

THEREFORE, on the joint motion of Plaintiff and Defendant PBS, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).

2. Venue is proper as to all parties in this District.
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendant PBS, under Sections 5(a), 5(m)(1)(A), and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), and 53(b).
5. Defendant PBS has entered into this Stipulated Judgment and Order for Permanent Injunction (“Order”) freely and without coercion. Defendant PBS further acknowledges that it has read the provisions of this Order and is prepared to abide by them.
6. Plaintiff and Defendant PBS hereby waive all rights to appeal or otherwise challenge or contest the validity of this Order.
7. Defendant PBS has agreed that this Order does not entitle Defendant PBS to seek or to obtain attorneys’ fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendant PBS further waives any rights to attorneys’ fees that may arise under said provision of law.
8. By entering into this Order, Defendant PBS does not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts. Defendant PBS expressly denies all other allegations in the Complaint.
9. Entry of this Order is in the public interest.

#### **DEFINITIONS**

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

1. “Asset” means any legal or equitable interest in, or right or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures,

general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. “Customer” means any person who is or may be required to pay for goods or services offered through telemarketing.

3. “Settling Defendant” means Defendant PBS. PBS is a Pennsylvania corporation.

4. “Established business relationship” means a relationship between the seller and a person based on: (a) the person’s purchase, rental, or lease of the seller’s goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person’s inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

5. “National Do Not Call Registry” means the National Do Not Call Registry, which is the “do-not-call” registry maintained by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

6. “Representatives” means the Settling Defendant’s successors, assigns, members, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

7. “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.

8. “Telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

9. “Telemarketing Sales Rule” or “Rule” means the FTC Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. § 310, attached hereto as Appendix A or as may be hereafter amended.

10. “Telemarketing” means a 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. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

11. “Outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

12. “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, limited liability company, or other business entity.

## **ORDER**

### **I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

IT IS ORDERED that, in connection with telemarketing, Defendant PBS and its Representatives are hereby permanently restrained and enjoined from engaging in, causing other

persons to engage in, or assisting other persons to engage in, violations of the Telemarketing Sales Rule, including but not limited to:

A. Initiating any outbound telephone call to a person's telephone number on the National Do Not Call Registry of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller proves:

(1) the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or

(2) the seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telephone calls made by or on behalf of the seller; or

B. Initiating any outbound telephone call to a person when that person has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited; or

C. Initiating any outbound telephone call to a telephone number within a given area code without the seller first having paid the required annual fee for access to the telephone numbers within that area code that are in the National Do Not Call Registry; and

D. Abandoning any outbound telephone call to a person by failing to connect the call to a representative within two seconds of the person's completed greeting, unless the following four conditions are met:

1. Defendant PBS and its Representatives, employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured per day per calling campaign;

2. Defendant PBS and its Representatives, for each telemarketing call placed, allow the telephone to ring for at least fifteen seconds or four rings before disconnecting an unanswered call;

3. Whenever a live operator is not available to speak with the person answering the call within two seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed; and

4. Defendant PBS and its Representatives, retain records, in accordance with 16 C.F.R. § 310.5 (b)-(d), establishing compliance with the preceding three conditions;

*Provided, however,* that if the Commission promulgates rules that modify or supersede the Telemarketing Sales Rule, in whole or part, Defendant PBS shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such rules.

## II. CIVIL PENALTY

**IT IS FURTHER ORDERED** that judgment in the amount of Three Hundred Thousand Dollars (\$300,000.00) is hereby entered against Defendant PBS as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A).

A. Prior to or concurrently with their execution of this Order, Defendant PBS shall turn over the full amount of the civil penalty to its attorney, who shall hold the entire sum for no purpose other than payment to the Treasurer of the United States after entry of this Order by the

Court. Within five (5) days of receipt of notice of the entry of this Order, Defendant's attorney shall transfer the civil penalty payment in the form of a wire transfer or certified or cashier's check made payable to the Treasurer of the United States. The check or written confirmation of the wire transfer shall be delivered to: Director, Office of Consumer Litigation, U.S. Department of Justice Civil Division, P.O. Box 386, Washington, DC 20044. The cover letter accompanying the check shall include the title of this litigation and a reference to DJ# 102-3353.

B. In the event of default on the payment required to be made by this Paragraph, the entire unpaid civil penalty, together with interest computed under 28 U.S.C. § 1961 -- accrued from the date of default until the date of payment -- shall be immediately due and payable by the Settling Defendant. The Settling Defendant agrees that, in such event, the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by Plaintiff or the Commission to enforce their rights pursuant to this Order, including but not limited to a nondischargeability complaint in any subsequent bankruptcy proceeding.

C. The Settling Defendant shall cooperate fully with Plaintiff and the Commission and their agents in all attempts to collect the amount due pursuant to this Paragraph if the Settling Defendant fails to pay fully the amount due at the time specified herein. In such an event, the Settling Defendant agrees to provide Plaintiff and the Commission with its federal and state tax returns for the preceding two years, and to complete new standard-form financial disclosure forms fully and accurately within ten (10) business days of receiving a request from Plaintiff or the Commission to do so. The Settling Defendant further authorizes Plaintiff and the Commission to verify all information provided on its financial disclosure forms with all appropriate third parties, including but not limited to financial institutions.

D. In accordance with 31 U.S.C. § 7701, the Settling Defendant is hereby required,

unless it has done so already, to furnish to Plaintiff and the FTC its taxpayer identifying number(s) (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Settling Defendant's relationship with the government.

### **III. ACCURACY OF FINANCIAL INFORMATION**

**IT IS FURTHER ORDERED** that Plaintiff's and the Commission's agreement to and the Court's approval of this Order are expressly premised upon the truthfulness, accuracy, and completeness of the revenue data and other information provided by the Settling Defendant to the Plaintiff or the Commission on November 23, 2005 ("Revenue Data"). If, upon motion by the Plaintiff, this Court finds that the Settling Defendant's Revenue Data contained any material misrepresentations or omissions, then the Plaintiff may request that this Order be reopened for the purpose of requiring additional civil penalties from the Settling Defendant; *provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by this Court; and *provided further*, that proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies available by law. Solely for the purposes of reopening or enforcing this Paragraph, the Settling Defendant waives any right to contest any of the allegations set forth in the Complaint filed in this matter.

### **IV. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that for a period of five (5) years from the date of entry of this Order, Defendant PBS and its successors and assigns, shall maintain and make available to the Plaintiff or Commission, within thirty (30) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Order.



## **V. DISTRIBUTION OF ORDER BY DEFENDANT AND ACKNOWLEDGMENTS OF RECEIPT**

**IT IS FURTHER ORDERED** that Defendant PBS and its successors and assigns, shall within thirty (30) days of the entry of this Order, provide a copy of this Order including Appendix A to all of its owners, principals, members, officers, and directors, as well as managers, agents, servants, employees, and attorneys having decision-making authority with respect to the subject matter of this Order; secure from each such person a signed statement acknowledging receipt of a copy of this Order; and shall, within ten (10) days of complying with this Paragraph, file an affidavit with the Court and serve the Commission, by mailing a copy thereof, to the Associate Director of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, setting forth the fact and manner of their compliance, including the name and title of each person to whom a copy of the Order has been provided.

## **VI. NOTIFICATION OF BUSINESS CHANGES**

**IT IS FURTHER ORDERED** that Defendant PBS and its successors and assigns, shall notify the Associate Director of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, at least thirty (30) days prior to any change in such Defendant's business, including, but not limited to, merger, incorporation, dissolution, assignment, and sale, which results in the emergence of a successor corporation or limited liability company, the creation or dissolution of a subsidiary or immediate parent (currently, Veterans Life Insurance Company), or any other such change, which may affect such Defendant's obligations under this Order.

## **VII. COMMUNICATION WITH DEFENDANT**

**IT IS FURTHER ORDERED** that for the purposes of compliance reporting, if

undersigned counsel no longer represents the Settling Defendant, Plaintiff and the Commission are authorized to communicate directly with such Defendant.

#### **VIII. FEES AND COSTS**

**IT IS FURTHER ORDERED** that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

#### **IX. SEVERABILITY**

**IT IS FURTHER ORDERED** that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

#### **X. RETENTION OF JURISDICTION**

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

#### **XI. COMPLETE SETTLEMENT**

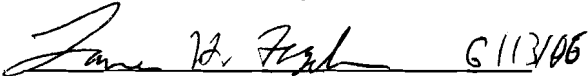
The Plaintiff and the Settling Defendant, by their respective counsel, hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter as to the Settling Defendant. The Plaintiff and the Settling Defendant further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action as to the Settling Defendant.

**JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and against Defendant Peoples Benefit Services, Inc., pursuant to all the terms and conditions recited above.

FOR THE PLAINTIFF:  
FOR THE UNITED STATES OF AMERICA

PETER D. KEISLER  
Assistant Attorney General, Civil Division  
U.S. DEPARTMENT OF JUSTICE

MICHAEL J. GARCIA  
United States Attorney

 6/13/06


LAWRENCE H. FOGELMAN  
Assistant U.S. Attorney  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007

EUGENE M. THIROLF  
Director, Office of Consumer Litigation



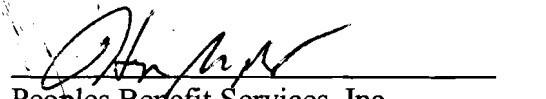
ALLAN GORDUS  
Trial Attorney  
Office of Consumer Litigation  
U.S. Department of Justice  
P.O. Box 386  
Washington, D.C. 20044

FOR THE FEDERAL TRADE COMMISSION:


  
BARBARA ANTHONY  
Director  
Northeast Region

MICHELE STOLLS  
THOMAS COHN  
Attorneys  
Federal Trade Commission  
Northeast Region  
One Bowling Green, Suite 318  
New York, NY 10004

FOR DEFENDANT  
PEOPLES BENEFIT SERVICES, INC.:

  
Peoples Benefit Services, Inc.  
by HUGH MCADOREY, SECRETARY

  
ANTHONY V. LUPO

 3/10/06  
JAMES A. KAMINSKI  
Attorneys for Defendant Peoples Benefit Services, Inc.  
Arent Fox, PLLC  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5339

SO ORDERED this 19<sup>th</sup> day of June, 2006.

  
UNITED STATES DISTRICT JUDGE