

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ADVOCARE INTERNATIONAL, L.P., a limited  
partnership,

BRIAN CONNOLLY,

DANNY McDANIEL,

DIANE McDANIEL,

CARLTON HARDMAN, and

LISA HARDMAN,

Defendants.

Case No. 4:19-cv-715-SDJ

**STIPULATED ORDER FOR  
PERMANENT INJUNCTION AND  
MONETARY JUDGMENT AGAINST  
DEFENDANTS ADVOCARE  
INTERNATIONAL, L.P. AND BRIAN  
CONNOLLY**

Plaintiff, the Federal Trade Commission (“Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendants AdvoCare International, L.P., and Brian Connolly stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“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 Complaint charges that Defendants participated in deceptive acts or practices

in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, by operating a pyramid scheme; making false or misleading income representations; and providing participants in Defendants' scheme with the means and instrumentalities to engage in deceptive acts and practices.

3. Settling Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling Defendants admit the facts necessary to establish jurisdiction.

4. Settling Defendants waive any claim that they 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 agree to bear their own costs and attorney fees.

5. Settling Defendants waive 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. **"Business Venture"** means any written or oral business arrangement, however denominated, whether or not covered by 16 C.F.R. Part 437, that consists of providing payment or other consideration for the right or means to offer, sell, or distribute a product or service.

B. **"Defendants"** means all of the Individual Defendants and the Corporate Defendant, individually, collectively, or in any combination.

1. **"Corporate Defendant"** means AdvoCare International, L.P., and its successors and assigns.

2. **"Individual Defendants"** means Brian Connolly, Danny McDaniel, Diane McDaniel, Carlton Hardman, and Lisa Hardman.

3. “**Settling Defendants**” means AdvoCare International, L.P., and Brian Connolly, individually, collectively, or in any combination.

C. “**Multi-Level Marketing Program**” means any plan or program in which a participant has the right to (1) recruit others into the program or have others placed in the participant’s downline and (2) receive payment or other compensation that is based, in whole or in part, upon purchases, sales, or any other activities of the participant’s downline. Downline refers to the collection of participants whom a participant has personally recruited (first level), any participants and customers recruited by first level participants (second level), any participants and customers recruited by second level participants (third level), and so forth, however denominated.

## **ORDER**

### **I. BAN ON MULTI-LEVEL MARKETING**

**IT IS ORDERED** that Settling Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from engaging, participating, or assisting others in the advertising, marketing, promoting, or operating of any Multi-Level Marketing Program, including any product- or service-based pyramid scheme.

### **II. PROHIBITED MARKETING SCHEMES**

**IT IS FURTHER ORDERED** that Settling Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from engaging, participating, or assisting others in the advertising, marketing, promoting, or operating of any Ponzi scheme or chain referral scheme.

### **III. PROHIBITED COMPENSATION**

**IT IS FURTHER ORDERED** that Settling Defendants, Settling Defendants' 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 the advertising, marketing, promoting, or operating of any Business Venture, are permanently restrained and enjoined from providing payment or other compensation to any Business Venture participant unless: (A) the compensation is based solely on the purchase of product directly from the company operating the Business Venture by a customer; (B) only one participant is compensated for the customer's purchase; and (C) the customer whose purchase generates the compensation has not been a participant in the Business Venture within 3 months of the purchase.

### **IV. PROHIBITION AGAINST MISREPRESENTATIONS OR UNSUBSTANTIATED CLAIMS**

**IT IS FURTHER ORDERED** that Settling Defendants, Settling Defendants' 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 the advertising, marketing, promoting, or operating of any Business Venture, are permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, including by providing others with the means and instrumentalities with which to misrepresent, expressly or by implication, including through discussion of lifestyle changes tied to compensation from the Business Venture:

1. That participants will or are likely to achieve substantial sales, income, or profit;
2. The amount of sales, income, or profit that participants have actually earned;
3. The amount of time or effort required to earn an amount of compensation or to advance in a Business Venture;
4. The reason participants do not earn substantial compensation, including representations that participants fail because they do not devote substantial or sufficient effort or are not active; or
5. Any other fact material to consumers concerning the Business Venture, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

B. Making any representation, expressly or by implication, regarding the amount of sales, income, or profits that a participant can expect to earn unless the representation is non-misleading and, at the time such representation is made, Settling Defendants possess and rely upon competent and reliable evidence sufficient to substantiate that the representation is true. Implied representations regarding the amount of sales, income, or profits that a participant can expect to earn include using lifestyle representations or images.

#### **V. MONITORING BY SETTLING DEFENDANTS**

**IT IS FURTHER ORDERED** that

Settling Defendants, Settling Defendants' 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 the advertising, marketing, promoting, or offering of any Business Venture, are permanently restrained and enjoined from:

A. Failing to monitor and take all reasonable steps necessary to ensure that that Settling Defendant's officers, agents, employees, and all other persons in active concert or participation with any of them act in compliance with the requirements of Sections I–IV of this Order.

B. Failing to promptly and thoroughly investigate any complaint received by that Settling Defendant relating to compliance with this Order.

## **VI. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of One Hundred Fifty Million Dollars (\$150,000,000) is entered in favor of the Commission against Defendants AdvoCare International, L.P., and Brian Connolly, jointly and severally, as equitable monetary relief.

B. Defendants AdvoCare International, L.P., and Brian Connolly are ordered to pay to the Commission One Hundred Fifty Million Dollars (\$150,000,000) within 7 days of entry of this Order. All payments required by this Subsection must be made by electronic fund transfer in accordance with instructions to be provided by a representative of the Commission.

C. Settling Defendants relinquish 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.

D. 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 against Settling Defendants, 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.

E. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission against Settling Defendants 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.

F. Settling Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Settling Defendants must submit 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.

G. 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 equitable relief, including 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 equitable 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 equitable relief is to be deposited to the U.S. Treasury as disgorgement. Settling Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

## **VII. CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Corporate Defendant, its 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, are permanently restrained and enjoined from directly or indirectly failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Corporate Defendant represents that it has provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Corporate Defendant must provide it, in the form prescribed by the Commission, within 14 days.

### **VIII. NOTICE TO DISTRIBUTORS**

**IT IS FURTHER ORDERED** that, within 7 days of entry of this Order, Corporate Defendant shall email notice in the form shown in Attachment A to all persons who were AdvoCare International, L.P., distributors any time between January 1, 2014, and the date of the entry of this Order with the subject line “What the FTC Settlement Means for AdvoCare Distributors Like You.” Within 15 days of entry of this Order, Corporate Defendant shall mail the form shown in Attachment A via first-class mail, postage prepaid with address forwarding requested, to the last known mailing address of any intended email recipient whose emailed message delivery fails. No information other than that contained in Attachment A shall be included in or added to the notice required by this Section, nor shall any other materials be transmitted with the notice.

### **IX. COOPERATION**

**IT IS FURTHER ORDERED** that Settling Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Such Defendants must provide truthful and complete information, evidence, and testimony. Such Individual



Defendant must appear and such Corporate Defendant must cause its officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 10 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

#### **X. ORDER ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that Settling Defendants obtain acknowledgments of receipt of this Order:

A. Each Settling Defendant, 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 5 years after entry of this Order, Individual Defendant Brian Connolly for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and Corporate Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the 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 a Settling Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## XI. COMPLIANCE REPORTING

**IT IS FURTHER ORDERED** that Settling Defendants make timely submissions to the Commission:

A. One-hundred and eighty (180) days after entry of this Order, each Settling Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Settling Defendant must: (a) 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 that Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendant Brian Connolly must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Individual Defendant Brian Connolly must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation,

authority, control, and any ownership.

B. For 10 years after entry of this Order, Individual Defendant Brian Connolly must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Individual Defendant Brian Connolly must report any change in: (a) any designated point of contact; or (b) the structure of any entity that Defendant Connolly 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.

2. Additionally, Individual Defendant Brian Connolly must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has direct or indirect control, and identify the name, physical address, and any Internet address of the business or entity.

C. For 15 years after entry of this Order, Corporate Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following, Corporate Defendant must report any change in: (a) any designated point of contact or (b) the structure of Corporate Defendant or any entity that Corporate Defendant 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.

D. Each Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

E. 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.

F. 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. AdvoCare International, L.P., et al.*, Matter No. 1623109.

## **XII. RECORDKEEPING**

**IT IS FURTHER ORDERED** that Defendant Brian Connolly must create certain records for 10 years after entry of the Order and Defendant AdvoCare International, L.P., must create certain records for 15 years after entry of the Order, and Settling Defendants shall retain each such record for 5 years. Specifically, Corporate Defendant and Individual Defendant Brian Connolly, for any business such Defendant, 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 products 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;
- E. A copy of each unique advertisement or other marketing or training material used or disseminated by Corporate Defendant relating to AdvoCare International, L.P., including videos and calls; and
- F. Copies of all contracts, agreements, and payment records between Corporate Defendant and any participant in AdvoCare International, L.P. or any other Business Venture.

### **XIII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Settling Defendants' compliance with this Order 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, each Settling Defendant 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.

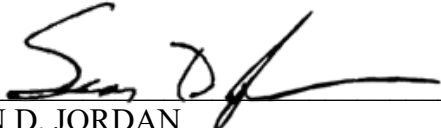
B. For matters concerning this Order, the Commission is authorized to communicate directly with each Settling Defendant. Such Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person 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 Settling Defendants or any individual or entity affiliated with Settling Defendants, 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 Individual Defendant Brian Connolly, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

#### **XIV. RETENTION OF JURISDICTION**

**So ORDERED and SIGNED this 9th day of October, 2019.**

  
\_\_\_\_\_  
SEAN D. JORDAN  
UNITED STATES DISTRICT JUDGE

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The undersigned attorneys for the Plaintiff, Federal Trade Commission, hereby stipulate and agree to the following terms of settlement:

1. The Plaintiff agrees to dismiss the complaint with prejudice.

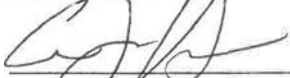
2. The Plaintiff agrees to pay the Defendant's reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs for the Defendant's motion for summary judgment.

3. The Plaintiff agrees to pay the Defendant's reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs for the Defendant's motion for summary judgment.

**SO STIPULATED AND AGREED:**

**FOR PLAINTIFF:**

**FEDERAL TRADE COMMISSION**



Aaron J. Haberman, Texas Bar No. 24092468  
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**FOR DEFENDANT ADVOCARE INTERNATIONAL, L.P.:**



Date: 7/18/19

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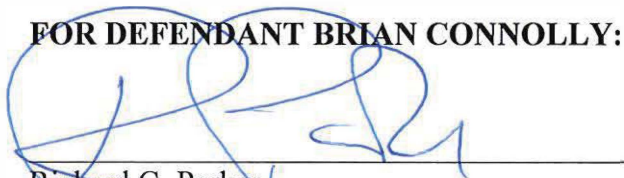
**DEFENDANT ADVOCARE INTERNATIONAL, L.P.**



Date: 7/19/19

PATRICK W. ROBERT, Corporate Representative  
AdvoCare International, L.P.

**FOR DEFENDANT BRIAN CONNOLLY:**



Date: 7/16/19

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COUNSEL for Brian Connolly

**DEFENDANT BRIAN CONNOLLY**



Date: 7/17/19



Attachment A

[Minimum 12 point Times New Roman font]

[AdvoCare International, L.P. Letterhead]

[Date]

[Name]

[Address]

[City/State/Zip]

RE: What the FTC Settlement Means for AdvoCare Distributors Like You

Dear AdvoCare Distributor:

The Federal Trade Commission (FTC), the nation's consumer protection agency, has filed a lawsuit against AdvoCare and several AdvoCare distributors alleging that AdvoCare was operating as a pyramid scheme. AdvoCare does not admit to or deny these allegations but has agreed to a court order that will change how we do business.

Here are some key parts of the order:

1. **AdvoCare is banned from multi-level marketing.** We are prohibited from compensating distributors based on activity in their downline. (That doesn't include purchases by customers directly beneath them who aren't eligible for compensation from AdvoCare—for example, retail customers and preferred customers.)
2. **AdvoCare cannot make misrepresentations.** AdvoCare and its officers, agents, employees, and distributors, are prohibited from making false, deceptive, or unsubstantiated claims about the amount of sales, income, or profits a participant can expect to earn.
3. **AdvoCare must pay \$150 million.** The FTC will use the money to provide refunds.

This order affects you in these ways:

- You cannot earn compensation based on the activity of distributors you recruit or based on the activity of customers recruited by another distributor, including those in your downline.
- You can continue to buy products at a discount for personal use or for sale to retail customers.
- If you had significant losses in pursuing an AdvoCare business, you may get some of your money back from the FTC. The FTC will contact eligible distributors.

- If you decide the AdvoCare business opportunity is not for you, we offer a 100% refund on unused products. To ask for a refund, visit [insert URL to AdvoCare's refunds page.]

For more information about our settlement with the FTC, visit [insert ftc.gov URL]. Before you spend money on a business opportunity, read [insert links to the FTC's MLM guidance for consumers]. To learn more about your consumer rights, visit [consumer.ftc.gov](http://consumer.ftc.gov) or call 1-877-FTC-HELP (1-877-382-4357), or TTY at 1-866-653-4261.

Respectfully,

AdvoCare International, L.P.