

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NHS SYSTEMS, INC.,

a Pennsylvania corporation, also d/b/a
National Healthcare Solutions and
National Health Net Online, and

PLUS HEALTH SAVINGS, INC.,

a Pennsylvania corporation, and

PHYSICIANS HEALTH SYSTEMS, INC.,

a Delaware corporation, also d/b/a American
Health Benefits On Line,
and

HARRY F. BELL, JR.,

individually and as an officer or principal
of NHS Systems, Inc., Plus Health Savings,
Inc., and Physicians Health Systems, Inc.,
and,

PHYSICIAN HEALTH SERVICE, LLC,

a Missouri limited liability company, also
d/b/a American Health Benefits On Line,
and

HEALTH MANAGEMENT, LLC,

a Missouri limited liability company, and

DONNA NEWMAN,

individually and as an officer or principal
of Physician Health Service, LLC, and
Health Management, LLC, and

6676529 CANADA, INC.,

a Canadian corporation, and

Civ. Action No. 08-cv-2215

NICOLE BERTRAND,

individually and as an officer or principal of
6676529 Canada, Inc., and

BARRY KIRSTEIN,

individually, and

“DANNIE BOIE,”

a person whose true identity is unknown,
individually, and

PHS ENTERPRISES, INC.,

a Nevada corporation, and

FIRST STEP MANAGEMENT, INC.,

a St. Lucia company, and

GOLD DOT, INC.,

a St. Lucia company, and

LINKE JN PAUL,

individually and as an officer or principal of
First Step Management, Inc., and Gold Dot,
Inc., and

TASHA JN PAUL,

individually and as an officer or principal of
Gold Dot, Inc., and

NEVADA BUSINESS SOLUTIONS, INC.,

a Nevada corporation, and

INTERFACE MANAGEMENT, INC.,

a Florida corporation, also d/b/a Galaxy
Member Benefits, and

BEGINNING AGAIN, INC.,

a Florida corporation, and

JOHN E. BARTHOLOMEW,

individually and as an officer or principal of
Interface Management, Inc., and Beginning
Again, Inc.,

Defendants.

PRELIMINARY INJUNCTION WITH AN ASSET FREEZE AND ACCOUNTING

On July 6, 2009, Plaintiff Federal Trade Commission (“FTC” or the “Commission”) filed its Amended Complaint for a permanent injunction and other relief in this matter pursuant to 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 Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108 and moved for a temporary restraining order (“TRO”) against certain defendants pursuant to Rule 65 of the Federal Rules of Civil Procedure. On July 9, 2009, after a hearing, this Court granted the FTC’s motion for a Temporary Restraining Order with an Asset Freeze and accounting and Order to Show Cause Why a Preliminary Injunction Should Not Issue against certain of the Defendants added by the Amended Complaint. This Court held a preliminary injunction hearing on July 23, 2009. This Court having considered the Amended Complaint, Plaintiff’s brief, exhibits and other materials filed in support thereof, and now being advised in the premises, finds as follows:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto. The Complaint states a claim upon which relief may be granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b) and under the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108.

2. Good cause exists to believe that the Commission ultimately will succeed in establishing that the above-named Defendants have engaged in, and are likely to engage in, acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, and that the Commission is likely to prevail on the merits.

3. Good cause exists to believe that immediate and irreparable damage will occur to the Court's ability to grant effective final relief for consumers in the form of monetary redress from the sale, transfer, destruction, concealment or other disposition of Defendants' assets or records unless Defendants are restrained and enjoined.

4. Weighing the equities and considering the FTC's likelihood of ultimate success, a preliminary injunction with an asset freeze and accounting and other equitable relief is in the public interest.

5. The FTC has notified Defendants of this action, the Amended Complaint, its motion for a Temporary Restraining Order, and the preliminary injunction hearing. It is in the interest of justice that the order issue.

6. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

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

1. **"Order Defendants"** means PHS Enterprises, Inc.; 6676529 Canada, Inc.; Nicole Bertrand; Barry Kirstein; "Dannie Boie"; First Step Management, Inc.; Gold Dot, Inc.; Linke Jn Paul; Tasha Jn Paul; and Nevada Business Solutions, Inc., and each of them, by whatever names each may be known, as well as their successors, assigns, officers, directors, agents, servants, employees, salespersons, attorneys and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, e-mail, publication, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.

2. **“Previously Identified Defendants”** means NHS Systems, Inc., also d/b/a National Healthcare Solutions and National Health Net Online; Harry F. Bell, Jr.; Physician Health Service, LLC, also d/b/a American Health Benefits On Line; Donna Newman; Health Management, LLC; Physicians Health Systems, Inc.; Plus Health Savings, Inc.; John E. Bartholomew; Interface Management, Inc.; and Beginning Again, Inc., and each of them, by whatever names each may be known, as well as their successors, assigns, officers, directors, agents, servants, employees, salespersons, attorneys and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, e-mail, publication, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.

3. **“Individual Order Defendants”** means Nicole Bertrand; Barry Kirstein; “Dannie Boie”; Linke Jn Paul; and Tasha Jn Paul.

4. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

5. **“Consumer”** means any person any Order Defendant or Previously Identified Defendant has contacted, intended to contact, or intends to contact concerning Order Defendants’ or Previously Identified Defendants’ products or services, whether or not a sale or contract is actually consummated. It includes the term “customer” as used in the TSR.

6. “**Document**” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes electronically stored information, writings, drawings, graphs, charts, sound recordings, images and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. “**Material**” means likely to affect a person’s choice of, or conduct regarding, goods or services.

8. “**Person**” means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

9. “**Plaintiff**” means the Federal Trade Commission.

10. “**Telemarketing**” means the advertising, offering for sale, or sale of any good or service to any person by means of telephone sales presentations, either exclusively or in conjunction with the use of other advertising.

11. The terms “**and**” and “**or**” shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

I. BAN ON TELEMARKETING

IT IS THEREFORE ORDERED THAT Order Defendants are hereby restrained and enjoined, until further order of this Court, from engaging in, participating in, or assisting in the Telemarketing, in any manner, of any product or service to any person.

II. BAN ON CHARGING CONSUMERS' BANK ACCOUNTS

IT IS FURTHER ORDERED THAT Order Defendants are hereby restrained and enjoined, until further order of this court, from causing billing information to be submitted for payment using a payment method other than a credit card subject to the protections of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205.

III. FURTHER PROHIBITED CONDUCT

IT IS FURTHER ORDERED that, Order Defendants and their successors, assigns, officers, agents, servants, employees, attorneys and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby restrained and enjoined, until further order of this court, from:

A. Making, expressly or by implication, any representation that is false or misleading, including but not limited to misrepresenting in any manner that Order Defendants represent or are affiliated with United States government agencies;

B. Violating any provision of the TSR, 16 C.F.R. Part 310, including, but not limited to, the following violations:

1. Misrepresenting, directly or by implication, the total cost that will be charged to consumers who provide Order Defendants with their account information;

2. Misrepresenting, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the goods or services they sell; and

3. Misrepresenting, directly or by implication, that they are calling from, on behalf of, or are otherwise affiliated with one or more United States government entities.

IV. ASSET FREEZE

IT IS FURTHER ORDERED that Order Defendants, their agents, employees, officers, independent contractors, attorneys, successors and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and persons or entities directly or indirectly under the control of any Order Defendant or under common control with any Order Defendant, are hereby restrained and enjoined, until further order of this Court, from:

A. Transferring, encumbering, concealing, removing, selling, or otherwise disposing of any funds, property, contracts, shares of stock or other assets of any kind, wherever located, that are:

1. Owned or controlled, in whole or in part, by any Order Defendant;
2. In the actual or constructive possession of any Order Defendant;
3. Held by an agent of any Order Defendant as a retainer for the agent's provision of services to any Order Defendant; or
4. Owned by, controlled by or in the actual or constructive possession of, or otherwise held for the benefit of, any entity or business directly or indirectly owned, managed or controlled by any Order Defendant; these assets shall also include, but are not limited to, any assets held by, for or under the name of any Order Defendant at any bank, broker, dealer, escrow agent, title company, ACH Network or other payment processor, commodity trading company, precious metal dealer, or other financial institution of any kind;

B. Incurring charges or cash advances to any credit or debit card issued in the name, individually or jointly, of any Order Defendant; and

C. Incurring liens or other encumbrances on real property, personal property, or any other asset held in the name, individually or jointly, of any Order Defendant.

IT IS FURTHER ORDERED, that this Section shall be construed to apply to assets of the Order Defendants as of July 9, 2009 and assets that Order Defendants acquired or acquire after that date, if such after-acquired assets are derived from telemarketing or from any activity prohibited by this Order.

PROVIDED, HOWEVER, that nothing in this Order shall prohibit any ACH Network reversals of bank charges that occur in the ordinary course of business as required by any applicable banking laws or regulations.

PROVIDED FURTHER that this **Section IV** shall not apply to any personal financial accounts that are owned or controlled, in the actual or constructive possession, or held by any Individual Order Defendant jointly with his or her spouse as long as he or she shared joint ownership of the account with his or her spouse prior to the date of this Order, except that this proviso shall not apply to any Individual Order Defendant whose spouse is also a defendant in this matter.

V. RESTRICTIONS ON TRANSFERS

IT IS FURTHER ORDERED that without the prior approval of the Court, no person may make any extraordinary transfer or series of transfers, nor transfer any assets from within the territory of the United States to any place outside the territory of the United States, from any personal financial accounts that are owned or controlled, in the actual or constructive possession,

or held by any Individual Order Defendant jointly with his or her non-defendant spouse as of the date of this Order; and

PROVIDED FURTHER that the assets and funds affected by this **Section V** shall include both existing assets and assets acquired after issuance of this Order.

VI. ASSET RESTRICTIONS

IT IS FURTHER ORDERED that Order Defendants, their agents, employees, officers, independent contractors, attorneys, successors and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and persons or entities directly or indirectly under the control of any Order Defendant or under common control with any Order Defendant, are hereby restrained and enjoined, until further order of this Court, from:

A. Opening or causing to be opened any new or existing safe deposit boxes, post office box or commercial mail box titled in the name of any Order Defendant or subject to access by any Order Defendant without providing Plaintiff prior notice and opportunity to inspect the contents in order to determine that they contain no assets covered by **Section IV**; and

B. Obtaining a personal or secured loan.

VII. FINANCIAL INSTITUTIONS AND DUTIES OF THIRD PARTIES

IT IS FURTHER ORDERED that:

A. Any financial or brokerage institution, escrow agent, title company, storage facility, fulfillment house, ACH Network or other payment processor, commodity trading company, or person (including any business entity) having possession, custody or control of any asset that is subject to the provisions of **Section IV**, above (and noting the exclusions from that

Section IV), including, but not limited to, any records of any Order Defendant, or of any account, safe deposit box or other asset titled in the name of, or subject to withdrawal or access by, any Order Defendant or any Order Defendant's d/b/a either individually or jointly, of record or beneficially, including accounts or other assets that any of the Order Defendants may control by virtue of being signatories on said accounts, and including accounts or other assets held in the name of any ACH Network or other payment processor that provides or provided services to any Order Defendant, or that has maintained any such record, account, safe deposit box, or other asset at any time since May 1, 2006, shall:

1. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale or other disposal of any such account or other asset, except for transfers or withdrawals directed by further order of this Court; and

2. Deny access to anyone other than the Commission or its representatives to any safe deposit box titled individually or jointly in the name of any Order Defendant or otherwise held for the benefit of or subject to access by any Order Defendant, except that the Receiver or his representatives shall be granted full access to any safe deposit box titled individually or jointly in the name of, or otherwise held for the benefit of or subject to access by, any Order Defendant subject to the control of the Receiver;

B. Without regard to the exclusions from **Section IV**, any financial or brokerage institution, escrow agent, title company, storage facility, fulfillment house, commodity trading company, or person (including any business entity) having possession, custody or control of any records of any Order Defendant, or of any account, safe deposit box or other asset titled in the name of, or subject to withdrawal or access by, any Order Defendant or any Order Defendant's

d/b/a, either individually or jointly, of record or beneficially, including accounts or other assets that any of the Order Defendants may control by virtue of being signatories on said accounts, and including accounts or other assets held in the name of any person that provides or provided services to any Order Defendant, or that has maintained any such record, account, safe deposit box, or other asset at any time since May 1, 2006, shall:

1. Provide to counsel for the FTC, within five (5) calendar days of notice of this Order, a sworn statement setting forth:

a. The identification of each account, asset or record covered by this subsection including the identity or identities and address(es) of the owner(s) of each such account;

b. The balance of each account or a description of the nature and value of each asset as of the close of business on the day this Order is served, and, if the account or asset has been closed or moved, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;

c. The identification of any safe deposit box or storage facility that is either titled in the name of or subject to access by the Order Defendant; and

2. Allow representatives of Plaintiff immediate access to inspect and copy or, upon the Plaintiff's request, within five (5) calendar days of said request, provide Plaintiff's representatives with copies of any records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, corporate resolutions, account statements, signature cards, checks, drafts, deposit tickets,

transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

C. In addition to the other requirements of this **Section VII**, and without regard to the exclusions from **Section IV**, any ACH Network or other payment processor having possession, custody or control of any asset or any records of any Order Defendant, or of any account or other asset titled in the name of, or subject to withdrawal or access by, any Order Defendant or any Order Defendant's d/b/a, either individually or jointly, of record or beneficially, directly or indirectly, including accounts or other assets that any of the Order Defendants may control by virtue of being signatories on said accounts, and including accounts or other assets held in the name of any person that provides or provided services to any Order Defendant, or that has maintained any such record, account, or other asset at any time since May 1, 2006, shall:

1. Within 24 hours of receipt of a copy of this Order provide the FTC with the identification of each account, asset or record covered by this subsection, as well as any account (other than a consumer account) into which the processor has directly or indirectly caused deposits or transfers on behalf of, or at the direct or indirect instructions of, any Order Defendant, including the identity or identities and address(es) of the owner(s) of each such account; and

2. Within five (5) calendar days of receipt of a copy of this Order provide the FTC with the balance of each account or a description of the nature and value of each asset, identified in subparagraph C.1, as of the close of business on the day this Order is served, and, if the account or asset has been closed or moved, the date closed or removed, the total funds

removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted.

PROVIDED, HOWEVER, that nothing in this Order shall prohibit any ACH Network reversals of bank charges that occur in the ordinary course of business as required by any applicable banking laws or regulations.

VIII. RECORD KEEPING/MAINTAINING BUSINESS RECORDS

IT IS FURTHER ORDERED that:

A. Order Defendants are hereby restrained and enjoined from failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately, fairly and completely reflect their incomes, disbursements, transactions, and dispositions of the assets of the Order Defendants; and

B. Order Defendants, their agents, employees, officers, independent contractors, attorneys, successors and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and persons or entities directly or indirectly under the control of any Order Defendant or under common control with any Order Defendant, are hereby restrained and enjoined from destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including

information stored in computer-maintained form, in their possession, custody, or control that relate to the business practices or business or personal finances of any Order Defendant from May 1, 2006, to the present.

IX. CREDIT REPORTS

IT IS FURTHER ORDERED, that the Commission may obtain credit reports concerning Individual Order Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that upon written request, any credit reporting agency from which such report is requested shall provide it to the Commission.

X. RECEIVERSHIP

IT IS FURTHER ORDERED that to the extent the Receiver has not already identified PHS Enterprises, Inc., and Nevada Business Solutions, Inc., as affiliates of NHS Systems, Inc., and Physician Health Service, LLC, they are hereby so identified for purposes of the definition of Receivership Defendants under the Stipulated Preliminary Injunction with Appointment of a Receiver, Asset Freeze and Accounting entered in this case on June 10, 2008 (Doc. #15), and are subject to the full control of the Receiver and subject to all the provisions of that Order of June 10, 2008 that apply to Receivership Defendants.

IT IS FURTHER ORDERED that Order Defendants and any other person or entity served with a copy of this Order shall comply with **Sections VIII and X-XII** of the Stipulated Preliminary Injunction with Appointment of a Receiver, Asset Freeze and Accounting entered in this case on June 10, 2008 (Doc. #15), as it relates to the newly added Receivership Defendants or any of the other Receivership Defendants immediately upon receipt of this Order.

IT IS FURTHER ORDERED THAT the Receiver shall have the same rights as to Order Defendants as he was granted in **Section XIII** of the Stipulated Preliminary Injunction with Appointment of a Receiver, Asset Freeze and Accounting entered in this case on June 10, 2008 (Doc. #15).

XI. MONITORING

IT IS FURTHER ORDERED that agents or representatives of the FTC may contact Order Defendants or their agents or representatives directly and anonymously for the purpose of monitoring compliance with **Section I, II, and III** of this Order, and may tape record any oral communications that occur in the course of such contacts.

XII. CORRESPONDENCE

For the purposes of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to:

HARRIS A. SENTURIA, Esq.
Federal Trade Commission
East Central Region
Eaton Center, Suite 200
1111 Superior Avenue
Cleveland, Ohio 44114-2507
Phone (216) 263-3420 / Fax (216) 263-3426

XIII. DISTRIBUTION OF ORDER BY ORDER DEFENDANTS

IT IS FURTHER ORDERED that Order Defendants shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assignee, officer, director, employee, independent contractor, spouse, Internet web host or master, agent, attorney, and/or representative of Order Defendants and shall, within ten (10) calendar days from the date of entry of this Order, serve upon counsel for the FTC a sworn statement that the Order Defendants have

complied with this provision of this Order, which statement shall include the names and addresses of each such person or entity who has received a copy of the Order.

XIV. SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that this Order, the Amended Complaint and other related papers and filings in this matter may be distributed and served by U.S. first class mail, overnight delivery, facsimile, electronic mail, or personally, by agents or employees of the FTC, by agents or employees of the Receiver, by any law enforcement agency, and by agents of any process servers retained by the FTC or the Receiver, upon any Order Defendant, upon the business premises of any Order Defendant, and upon any financial institution or any person or entity that may be in possession or control of any assets, records, documents, property or property rights of any Order Defendant, or that may be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire institution or entity.

XV. PROHIBITIONS AGAINST DISTRIBUTION OF CONSUMER LISTS

IT IS FURTHER ORDERED that Order Defendants are hereby restrained and enjoined, until further order of this court, from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who is or may be a consumer (as that term is defined) of the Order Defendants or Previously Identified Defendants;

PROVIDED, HOWEVER, that Order Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order, and may disclose such identifying information to the Plaintiff.

XVI. PROHIBITION ON TRANSFERRING BUSINESS INFORMATION

IT IS FURTHER ORDERED that Order Defendants are hereby restrained and enjoined, until further order of this Court, from transferring or in any other way providing to any person (other than Plaintiff, a law enforcement agency, or as required by any law, regulation, or court order), directly or indirectly, any trade secrets or knowledge, whether recorded or otherwise, or any books, records, tapes, disks, accounting data, manuals, electronically stored data, banking records, invoices, telephone records, ledgers, payroll records, or other Documents of any kind, including information stored in computer-maintained form, in the possession, custody, or control of an Order Defendant that are in any way related to the Order Defendants.

XVII. OUTSTANDING OBLIGATIONS UNDER THIS COURT'S TEMPORARY RESTRAINING ORDER OF JULY 9, 2009

IT IS FURTHER ORDERED that Order Defendants are not relieved of, and shall immediately meet, the following requirements of this Court's Temporary Restraining Order entered on July 9, 2009: Section IX thereof ("Financial Reports," including references to Attachments A and B to the Temporary Restraining Order of July 9, 2009); Sections XII and XIII thereof ("Foreign Assets" and "Interference with Repatriation," including reference to Attachment C to the Temporary Restraining Order of July 9, 2009); and XVI thereof (Distribution of Order by Order Defendants).

XVIII. JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, this 24 day of July, 2009, at 2:20 o'clock p.m.

Louis H. Pollak
Louis H. Pollak
United States District Judge