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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 FEDERAL TRADE COMMISSION,
12 Plaintiff,

Case no. SACV10-1161-JVS-RNBx

13 v.

AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF

14 HEALTH CARE ONE LLC, an Arizona
15 limited liability company, also d/b/a
16 "HealthcareOne," "Americans4
17 Healthcare," "Citizens4Healthcare,"
"American Eagle Healthcare,"
"EasyLife Healthcare," "Elite
Healthcare," "Global Healthcare," and
"Republic Healthcare";

18 AMERICANS4HEALTHCARE INC., a
19 Delaware corporation;

20 MICHAEL JAY ELLMAN, an
21 individual;

22 ELITE BUSINESS SOLUTIONS, INC.,
23 a Nevada corporation, also d/b/a
"EasyLife Healthcare," "Elite
Healthcare" and "Republic Healthcare";

24 ROBERT DANIEL FREEMAN, a/k/a
25 Dan Freeman, an individual;

26 MILE HIGH ENTERPRISE INC., a
27 Nevada corporation; and

28 BRYAN MATTHEW LOVING, an
individual;
Defendants.

ORIGINAL BY FAX

1 Plaintiff, the Federal Trade Commission (“FTC”), for its complaint alleges:

2 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
3 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the
4 Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing
5 Act”), 15 U.S.C. §§ 6101-6108, to obtain preliminary and permanent injunctive
6 relief, rescission or reformation of contracts, restitution, the refund of monies paid,
7 disgorgement of ill-gotten monies, the appointment of a receiver, and other equitable
8 relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15
9 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part
10 310.

11 **JURISDICTION AND VENUE**

12 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
13 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and
14 6105(b).

15 3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and
16 15 U.S.C. § 53(b).

17 **PLAINTIFF**

18 4. The FTC is an independent agency of the United States Government
19 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
20 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
21 affecting commerce. The FTC also enforces the TSR, 16 C.F.R. Part 310, which
22 prohibits deceptive and abusive telemarketing acts or practices.

23 5. The FTC is authorized to initiate federal district court proceedings, by
24 its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure
25 such equitable relief as may be appropriate in each case, including rescission or
26 reformation of contracts, restitution, the refund of monies paid, and the disgorgement
27 of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), and
28 6105(b).

DEFENDANTS

1
2 6. Defendant **Health Care One LLC** (“Health Care One”), also doing
3 business as “HealthcareOne,” “Americans4 Healthcare,” “Citizens4Healthcare,”
4 “American Eagle Healthcare,” “EasyLife Healthcare,” “Elite Healthcare,” “Global
5 Healthcare,” and “Republic Healthcare,” is an Arizona limited liability company
6 with its principal place of business at 3220 S. Fair Lane, Suite 12, Tempe, Arizona
7 85282. Health Care One transacts or has transacted business in this district and
8 throughout the United States. At all times material to this Complaint, acting alone or
9 in concert with others, Health Care One has advertised, marketed, distributed or sold
10 a healthcare discount program to consumers throughout the United States.

11 7. Defendant **Americans4Healthcare Inc.** (“Americans4Healthcare”) is a
12 Delaware corporation with its principal place of business in Newport Beach,
13 California. Americans4Healthcare transacts or has transacted business in this district
14 and throughout the United States. At all times material to this Complaint, acting
15 alone or in concert with others, Americans4Healthcare has advertised, marketed,
16 distributed or sold a healthcare discount program to consumers throughout the
17 United States.

18 8. Defendant **Michael Jay Ellman** (“Ellman”) is the managing member of
19 Health Care One and the sole director of Americans4Healthcare. At all times
20 material to this Complaint, acting alone or in concert with others, he has formulated,
21 directed, controlled, had the authority to control, or participated in the acts and
22 practices of Health Care One and Americans4Healthcare, including the acts and
23 practices set forth in this Complaint. Ellman resides in this district and, in
24 connection with the matters alleged herein, transacts or has transacted business in
25 this district and throughout the United States.

26 9. Defendant **Elite Business Solutions, Inc.** (“Elite Business Solutions”),
27 also doing business as “Elite Healthcare,” “Easy Life Healthcare,” and “Republic
28 Healthcare,” is a Nevada corporation with its principal places of business consisting

1 of a private mail box located at Pacific Mail, 17595 Harvard Avenue, Suite C2150,
2 Irvine, California 92614 and office suites located at 23297 South Pointe Drive,
3 Suites 100 and 130, Laguna Hills, California 92653. Elite Business Solutions
4 transacts or has transacted business in this district and throughout the United States.
5 At all times material to this Complaint, acting alone or in concert with others, Elite
6 Business Solutions has advertised, marketed, distributed or sold a healthcare
7 discount program to consumers throughout the United States.

8 10. Defendant **Robert Daniel Freeman**, also known as Dan Freeman
9 (“Freeman”), is the president, secretary, treasurer, and owner of Elite Business
10 Solutions. At all times material to this Complaint, acting alone or in concert with
11 others, he has formulated, directed, controlled, had the authority to control, or
12 participated in the acts and practices of Elite Business Solutions, including the acts
13 and practices set forth in this Complaint. Freeman resides in this district and, in
14 connection with the matters alleged herein, transacts or has transacted business in
15 this district and throughout the United States.

16 11. Defendant **Mile High Enterprise Inc.** (“Mile High Enterprise”) is a
17 Nevada corporation with its principal place of business consisting of a private mail
18 box located at Pacific Mail, 17595 Harvard Avenue, Suite C2450, Irvine, California
19 92614 and office suites located at 23297 South Pointe Drive, Suites 100 and 130,
20 Laguna Hills, California 92653. Mile High Enterprise transacts or has transacted
21 business in this district and throughout the United States. At all times material to
22 this Complaint, acting alone or in concert with others, Mile High Enterprise has
23 advertised, marketed, distributed or sold a healthcare discount program to consumers
24 throughout the United States.

25 12. Defendant **Bryan Matthew Loving** (“Loving”) is the president,
26 secretary, treasurer, and owner of Mile High Enterprise. At all times material to this
27 Complaint, acting alone or in concert with others, he has formulated, directed,
28 controlled, had the authority to control, or participated in the acts and practices of

1 Mile High Enterprise and Elite Business Solutions, including the acts and practices
2 set forth in this Complaint. Loving resides in this district and, in connection with the
3 matters alleged herein, transacts or has transacted business in this district and
4 throughout the United States.

5 **COMMON ENTERPRISE**

6 13. Health Care One and Americans4Healthcare have operated together as a
7 common enterprise in conducting the business practices described in this Complaint.
8 Health Care One and Americans4Healthcare are interrelated companies that have
9 common ownership, officers, managers, and business functions. Ellman has
10 formulated, directed, and/or controlled or had authority to control, or participated in
11 the acts and practices of Health Care One and Americans4Healthcare that comprise
12 the common enterprise.

13 **COMMERCE**

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

17 **DEFENDANTS’ UNLAWFUL BUSINESS PRACTICES**

18 15. Since 2006, Health Care One has been a seller and marketer of a
19 “national healthcare discount program” which masquerades as health insurance and
20 promises to save consumers money on their healthcare costs. Enrollment is offered
21 at various price points, ranging from \$79.95 to \$99.95 per month, with a one-time
22 enrollment fee typically around \$100.

23 16. Health Care One markets this program through television and radio
24 commercials, through Internet websites, through telemarketing, and through
25 submarketers, operating under trade names which include “American Eagle
26 Healthcare,” “EasyLife Healthcare,” “Elite Healthcare,” “Global Healthcare,” and
27 “Republic Healthcare.”

28 17. Since 2007, Elite Business Solutions has been a submarketer of Health

1 Care One's national healthcare discount program. With Mile High Enterprise's
2 assistance, Elite Business Solutions markets Health Care One's program under the
3 names "Elite Healthcare," "Republic Healthcare," and "Easy Life Healthcare"
4 through telemarketing and Internet websites.

5 18. Since 2009, Americans4Healthcare has served as a sales lead generator,
6 soliciting uninsured consumers to enroll in Health Care One's program through
7 television commercials, Internet websites, and telemarketing.

8 19. Defendants have made numerous material misrepresentations to
9 consumers in the course of marketing and selling Health Care One's program. These
10 misrepresentations can be grouped into five categories:

- 11 a. that the program offered is health insurance;
- 12 b. that the program is affiliated with, or endorsed or sponsored by, the
13 federal government;
- 14 c. that enrollment in the program will result in substantial healthcare
15 savings to the consumer;
- 16 d. that the consumer will be able to obtain program benefits from the
17 consumer's current healthcare providers and from other healthcare
18 providers in the consumer's local community; and
- 19 e. that Health Care One and Elite Business Solutions will refund the
20 money the consumer has paid to enroll in the program if the consumer
21 submits a cancellation request before the thirty-day trial period expires.
22

23 **Representations that Health Care One's program is health insurance**

24 20. In their television commercials, radio commercials, and inbound and
25 outbound telemarketing campaigns, Health Care One, Americans4Healthcare, and
26 Elite Business Solutions represent that Health Care One's program is health
27 insurance.
28

1 21. Health Care One's, Americans4Healthcare's, and Elite Business
2 Solutions' telemarketers represent that Health Care One's program is health
3 insurance. In some cases, the telemarketers make the representation explicitly, using
4 the term "insurance" to describe the program. In other cases, the telemarketers use
5 terms typically associated with health insurance, such as "premiums," "co-pays,"
6 "deductibles," and "coverage."

7 22. Health Care One's and Americans4Healthcare's advertisements also
8 lead consumers to believe that Health Care One's program is health insurance by
9 referring extensively to health insurance and President Obama's national healthcare
10 reform agenda.

11 a. Health Care One's and Americans4Healthcare's television commercials,
12 for example, are styled to appear as an "emergency broadcast" which
13 "interrupts" regularly-scheduled television programming to announce
14 the latest developments in President Obama's healthcare reform agenda
15 to provide nationwide universal health insurance. These commercials
16 are expressly addressed to "*uninsured Americans.*" They highlight the
17 documented harm that consumers will suffer if they do not have access
18 to health insurance.

19 b. In one of its typical television commercials, Health Care One states as
20 follows:

21 *The New York Times* reported that having no insurance leads to
22 poor health and lack of early detection of potentially fatal
23 conditions. Stop putting your health at risk. Start protecting
24 yourself and your family today.

25 c. One of the television commercials for Americans4Healthcare and
26 Health Care One (identifying itself in the commercials as "Citizens 4
27 Healthcare") begins with the following announcement: "*We interrupt*
28 *this program with an important health care bulletin.*" It then shows a

1 video of a portion of President Obama's September 9, 2009 remarks on
2 healthcare to a joint session of Congress, in which the President states:
3 ". . . and show the American people that we can still do what we were
4 sent here to do. Now's the time to deliver on health care." An
5 unidentified announcer then states that there is "immediate availability"
6 of a healthcare plan "for all uninsured Americans."

7 23. Health Care One's radio commercials also convey the impression that
8 Health Care One's program is health insurance. One radio commercial describes
9 Health Care One's program as a "national family health care plan." The radio
10 commercial begins by announcing: "Good news for uninsured Americans – now a
11 national family health care plan for under three dollars a day." Both the television
12 and radio commercials lead consumers to reasonably believe that the program being
13 offered is health insurance.

14 24. Health insurance generally involves an arrangement between an
15 insurance company and a consumer in which the insurance company agrees to pay a
16 substantial portion of the healthcare expenses that the consumer might incur in
17 exchange for payment from the consumer. Under Health Care One's program, in
18 contrast, the consumer pays Defendants for access to purportedly pre-negotiated
19 discounts on healthcare services and products. Health Care One does not pay the
20 healthcare providers any portion of the consumer's healthcare expenses. The
21 consumer is responsible for paying the healthcare providers the entire discounted fee.

22 25. Healthcare One's program is not health insurance, a fact that many
23 consumers do not realize until after they pay the enrollment fees, receive written
24 program materials in the form of a pamphlet and "membership cards" in the mail,
25 and review those materials. The pamphlet includes the following disclosure: "THIS
26 PLAN IS NOT HEALTH INSURANCE."
27
28

1
2 **Representations that Health Care One's program is**
3 **affiliated with, or endorsed or sponsored by, the federal government**

4 26. Health Care One and Americans4Healthcare (holding themselves out as
5 "Health Care One," "Americans4Healthcare," and "Citizens 4 Healthcare") represent
6 that Health Care One's program is affiliated with, or endorsed or sponsored by, the
7 federal government through their television commercials, their telemarketing, and
8 the websites www.americans4healthcare.com, www.a4hrx.com, and
9 www.citizens4healthcare.com.

10 27. Many consumers are first introduced to the idea that Health Care One's
11 program is a government program by Health Care One's and
12 Americans4Healthcare's television commercials. Health Care One's and
13 Americans4Healthcare's television commercials are styled as an "emergency
14 broadcast" which "interrupts" regularly-scheduled television programming to
15 announce the latest developments in President Obama's healthcare reform agenda.
16 One of Health Care One's television commercials describes its program as a
17 "*national healthcare discount program*" with "*daily registration limits.*" A similar
18 theme is incorporated into an Americans4Healthcare's commercial, which begins by
19 announcing: "*We interrupt this program with an important health care bulletin.*" It
20 then shows an excerpt of President Obama's September 9, 2009 remarks on
21 healthcare to a joint session of Congress, in which the President states: "*. . . and*
22 *show the American people that we can still do what we were sent here to do. Now's*
23 *the time to deliver on healthcare.*" An announcer then breaks in to offer limited but
24 "*immediate availability of an affordable healthcare discount plan for all uninsured*
25 *Americans.*" This narration is accompanied by images of President Obama, the
26 American bald eagle, and the Capitol Building.

27 28. Citizens 4 Healthcare's television commercial goes even further, by
28 implying that it has been authorized by the federal government to offer Health Care

1 One's program. The commercial begins with the announcement: "*Breaking*
2 *Healthcare News - This is a Healthcare Alert for all uninsured Americans.*" It then
3 features a different excerpt of President Obama's September 9, 2009 remarks to
4 Congress, in which the President states: "*No American should be without healthcare.*
5 *... No one should go broke because they get sick. That is heartbreaking, it is wrong*
6 *and no one should be treated that way in the United States of America.*" A
7 spokesperson then breaks in, to announce that Citizens 4 Healthcare "*is now*
8 *authorized to offer*" the program. Like Americans4Healthcare's commercial, this
9 commercial is also accompanied by images of President Obama, the American bald
10 eagle, and the Capitol Building.

11 29. Health Care One's, Americans4Healthcare's, and Elite Business
12 Solutions' telemarketers also represent that Health Care One's program is affiliated
13 with, or endorsed or sponsored by, the federal government. The specific
14 representations that Defendants' telemarketers make vary but include describing the
15 program as part of the "Obama/Biden healthcare package."

16 30. Health Care One's and Americans4Healthcare's websites similarly
17 imply that Health Care One's program is affiliated with, or endorsed or sponsored
18 by, the federal government. Like their television commercials, these websites are
19 designed to resemble an "official" news bulletin. The website
20 www.americans4healthcare.com prominently displays images of the White House,
21 the American bald eagle, and the American flag, and reads as follows:

22 *HEALTHCARE BULLETIN! AMERICANS4HEALTHCARE ANNOUNCES*
23 *IMMEDIATE AVAILABILITY OF AN AFFORDABLE HEALTHCARE*
24 *DISCOUNT PLAN FOR ALL UNINSURED AMERICANS.*" *Over 500,000*
25 *Healthcare Providers nationwide – Doctors, Hospitals, Dentists &*
26 *Pharmacies – are now joined with Americans 4 Healthcare to bring you*
27 *quality Healthcare Protection at 20 to 60% savings for UNDER \$3 A DAY.*
28 *CLICK TO CALL NOW. ENTER YOUR PHONE NUMBER BELOW ... We will*

1 *call you in 15 Seconds or less.*

2 31. The website www.citizens4healthcare.com includes the same
3 “Healthcare Bulletin!” and prominently displays images of President Obama with the
4 quote: “*No one should go broke if they get sick,*” the American flag, and the Statue
5 of Liberty.

6 32. Defendants’ advertisements lead consumers to reasonably believe that
7 Health Care One’s program is affiliated with, or endorsed or sponsored by, the
8 federal government. It is not.

9 **Savings claims**

10 33. A central theme of Defendants’ marketing campaign is that Health Care
11 One’s program will save consumers significant amounts of money.

12 34. Health Care One’s and Americans4Healthcare’s television commercials,
13 for example, are addressed to the millions of “uninsured Americans” and represent
14 their program as “an affordable national healthcare discount program that can save
15 you 20-60% on doctors, hospitals, labs, prescription drugs, and more.” Citizens 4
16 Healthcare’s television commercial couples this savings claim with a video featuring
17 President Obama’s September 9, 2009 remarks on healthcare to Congress, where he
18 asserts:

19 *No American should be without healthcare. . . . No one should go broke*
20 *because they get sick. That is heartbreaking, it is wrong and no one*
21 *should be treated that way in the United States of America.*

22 35. Health Care One’s radio commercial and the websites,
23 www.americans4healthcare.com and www.citizens4healthcare.com, all claim that
24 Health Care One’s program will save consumers “up to 60% on doctors, hospitals,
25 dental, RX and more.” Other websites (www.healthcareone.com,
26 www.elitehealthcareinc.com, www.republichealthcare.com, and
27 www.easylifehealthcare.com) operated by Health Care One, and Elite Business
28 Solutions also contain material representations about the savings which consumers

1 will achieve through the program. These websites claim savings of up to 50%.
2 Similarly, the website www.a4hrx.com represents that its free “national Rx discount
3 card” will provide savings of “20-60%” at “[o]ver 60,000 Retail Pharmacies.”

4 36. Health Care One’s and Elite Business Solutions’ telemarketers go even
5 further, claiming that Health Care One’s program will provide consumers with
6 savings of “at least 60%” and even 80%-90%.

7 37. In fact, consumers are unable to realize the purported savings touted by
8 Defendants. After enrolling in Health Care One’s program, consumers receive lists
9 of local participating providers from the Defendants. Defendants’ lists of local
10 participating providers include doctors who cannot be located because the contact
11 information is incorrect and doctors who do not participate in Health Care One’s
12 program and will not honor its purported discounts. Additionally, consumers who
13 attempt to use Health Care One’s program at pharmacies find that the pharmacies
14 also do not honor the purported discounts.

15
16 **Representation that**
17 **Health Care One’s network includes consumers’**
18 **current healthcare providers and other**
19 **healthcare providers in consumers’ local communities**

20 38. During the telemarketing calls, Defendants’ telemarketers specifically
21 assure consumers that their current doctors are in Health Care One’s network. These
22 representations lead consumers to reasonably believe that they will be able to obtain
23 discounted healthcare services from their current doctors through Health Care One’s
24 program.

25 39. Defendants’ telemarketers also represent to consumers that the
26 program’s network includes physicians practicing in the consumers’ local
27 communities, and that any doctor in Blue Cross/Blue Shield’s network is also
28 available through Health Care One’s network. These representations lead consumers
to reasonably believe that Health Care One’s program will enable them to obtain
discounted healthcare services from a local doctor.

1 40. Defendants make similar representations about the broad availability of
2 healthcare providers in their television commercials, radio advertisements, and
3 websites. There, Defendants represent that the size of their network of healthcare
4 providers ranges from 500,000 to “over 900,000 healthcare provider locations.”
5 These representations contribute to the impression formed by consumers that Health
6 Care One’s program is usable in the consumers’ local communities.

7 41. These representations are false. After enrolling in Health Care One’s
8 program, consumers learn that their doctors are not part of the network and will not
9 honor the purportedly pre-negotiated discounts. Consumers also learn that
10 Defendants’ lists of participating providers include doctors who cannot be located
11 because the contact information is incorrect and doctors who do not participate in
12 Health Care One’s program and will not honor its purported discounts. Finally,
13 Health Care One’s purported network of healthcare providers is not the Blue
14 Cross/Blue Shield network of healthcare providers.

15
16 **Representations regarding
cancellation and refund practices**

17 42. Health Care One and Elite Business Solutions offer consumers a 100%
18 satisfaction money-back guarantee. This guarantee is published on their websites, at
19 www.healthcareone.com, www.elitehealthcareinc.com,
20 www.republichealthcare.com, and www.easylife.com. The Health Care One
21 website, as of February 2010, states its “Guarantee” as follows:

22 100% Satisfaction or Your Money Back! HealthcareOne™ is so
23 confident you will see significant savings with our program, we offer an
24 unconditional 30-day money-back guarantee on your entire first
25 month’s payment.*

26 The bottom of the webpage includes additional fine print language relating, *inter*
27 *alia*, to Health Care One’s and Elite Business Solutions’ cancellation and refund
28 policy:

1 * . . . You have the right to cancel within the first 30 days after receipt of
2 membership materials and receive a full refund, less a nominal
3 processing fee.

4 Their other websites, www.elitehealthcareinc.com, www.republichealthcare.com,
5 and www.easylife.com, contain the same or similarly-worded guarantees.

6 43. Health Care One's and Elite Business Solutions' telemarketers make
7 similar representations regarding their cancellation and refund policy. Some of the
8 telemarketers represent that consumers may cancel for a "full refund" within 30 days
9 of receiving the program materials. These telemarketers do not disclose that the
10 refund would be reduced by a nominal processing fee.

11 44. When consumers realize that Health Care One's program is not as
12 advertised, they find that Health Care One and Elite Business Solutions make it very
13 difficult to obtain refunds. Calls to cancel their enrollments and obtain refunds are
14 directed to Health Care One's customer service representatives, who handle the
15 customer service functions for both Health Care One and Elite Business Solutions.
16 Health Care One and Elite Business Solutions delay the processing of refunds for
17 months and require consumers to satisfy unreasonable conditions. Even after such
18 delays, typically consumers are either not able to obtain any refund whatsoever or
19 only obtain a refund from which a substantial processing fee (approximately \$100)
20 has been retained.

21 **Ellman's Role**

22 45. Ellman is the managing member of Health Care One. He holds himself
23 out as Health Care One's president and chief executive officer. He has entered into
24 contracts on Health Care One's behalf. Ellman controls Health Care One's bank
25 accounts. He is also Health Care One's contact person for responding to consumer
26 complaints filed with the Better Business Bureau.

27 46. Ellman arranged for the incorporation of Americans4Healthcare and is
28 the company's sole director.

1 47. Ellman controls the television advertising, radio advertising, and
2 telemarketing operations of Health Care One, Americans4Healthcare, and Citizens 4
3 Healthcare. Through a partnership under his control, Ellman is the registration
4 contact for many of the Internet domain names used by Defendants, including
5 www.healthcareone.com, www.americans4healthcare.com, www.a4hrx.com,
6 www.citizens4healthcare.com, and www.republichealthcare.com.

7 48. Ellman is jointly and severally liable for the conduct of Health Care One
8 and Americans4Healthcare because he has the authority to control and direct the
9 companies' activities; has participated in those activities; and has had knowledge of
10 the companies' misrepresentations and other misconduct.

11 **Freeman's Role**

12 49. Freeman is the owner and sole officer and director of Elite Business
13 Solutions. He has entered into contracts on Elite Business Solutions' behalf. He
14 controls financial accounts in the name of Elite Business Solutions doing business as
15 "Easy Life Healthcare," "Elite Healthcare," and "Republic Healthcare." He, along
16 with co-Defendant Loving, controls Elite Business Solutions' telemarketing
17 operations. Freeman serves as the contact person for the telephone service provider
18 of Elite Business Solutions' telephone lines. He has recorded fictitious business
19 name statements in Orange County, California, for Elite Business Solutions to do
20 business as "Elite Healthcare Group" and "Republic Healthcare." Freeman is also
21 the registration contact for Elite Business Solutions' various Internet domain names.

22 50. Freeman is jointly and severally liable for the conduct of Elite Business
23 Solutions because he has the authority to control and direct the company's activities;
24 has participated in those activities; and has had knowledge of the company's
25 misrepresentations and other misconduct.

26 **Loving's Role**

27 51. Loving is the owner and sole officer and director of Mile High
28 Enterprise. Through Mile High Enterprise, Loving, along with co-Defendant

1 Freeman, controls Elite Business Solutions' telemarketing operation. Through an
2 operating agreement entered into between Mile High Enterprise and Elite Business
3 Solutions, Loving, through Mile High Enterprise, is entitled to one-half of Elite
4 Business Solutions' profits. Loving is responsible for training and supervising Elite
5 Business Solutions' telemarketers. On Elite Business Solutions' behalf, Loving has
6 handled complaints submitted by Elite Business Solutions' customers. Loving is
7 also a co-signer on Elite Business Solutions' bank accounts.

8 52. Loving is jointly and severally liable for the conduct of Mile High
9 Enterprise and of Elite Business Solutions because he has the authority to control and
10 direct these companies activities; has participated in those activities; and has had
11 knowledge of the company's misrepresentations and other misconduct.

12 **VIOLATIONS OF THE FTC ACT**

13 53. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
14 deceptive acts or practices in or affecting commerce."

15 54. Misrepresentations or deceptive omissions of material fact constitute
16 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

17 **Count 1: Misrepresentations**

18 55. In numerous instances in connection with the advertising, marketing,
19 promotion, offering for sale, or sale of Health Care One's national healthcare
20 discount program, Defendants have represented, directly or indirectly, expressly or
21 by implication, that:

- 22 a. the program is health insurance;
- 23 b. the program is affiliated with or endorsed or sponsored by the federal
24 government;
- 25 c. enrollment in the program will result in substantial healthcare savings to
26 the consumers;
- 27 d. consumers will be able to obtain program benefits from consumers'
28 current healthcare providers and from other healthcare providers in the

1 consumers' local communities; and/or

2 e. Defendants will provide a full refund, subject to no or only a nominal
3 processing fee, if the consumer submits a cancellation request before the
4 thirty-day trial period expires.

5 56. In truth and in fact:

6 a. the program is not health insurance;

7 b. the program is not affiliated with or endorsed or sponsored by the
8 federal government;

9 c. enrollment in the program does not result in substantial healthcare
10 savings to the consumers;

11 d. consumers are not able to obtain program benefits from consumers'
12 current healthcare providers and from other healthcare providers in the
13 consumers' local communities; and

14 e. Defendants do not provide a full refund and retain a substantial
15 processing fee if the consumer submits a cancellation request before the
16 thirty-day trial period expires.

17 57. Therefore, Defendants' representations as set forth in Paragraph 55 are
18 false and misleading and constitute deceptive acts or practices in violation of Section
19 5(a) of the FTC Act, 15 U.S.C. § 45(a).

20 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

21 58. The FTC promulgated the Telemarketing Sales Rule, 16 C.F.R. Part
22 310, pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a).
23 The Rule became effective on December 31, 1995, and was amended in 2003.

24 59. Section 310.3(a) of the Telemarketing Sales Rule prohibits
25 telemarketers and sellers from, *inter alia*, misrepresenting, directly or by implication,
26 in the sale of goods or services:

27 a. any material aspect of the performance, efficacy, nature, or central
28 characteristics of goods or services that are the subject of a sales offer

1 (16 C.F.R. § 310.3(a)(2)(iii)); and

2 b. any material aspect of the nature or terms of the seller's refund or
3 cancellation policies (16 C.F.R. § 310.3(a)(2)(iv)).

4 60. Defendants are "sellers" or "telemarketers" engaged in "telemarketing,"
5 as those terms are defined in the amended Telemarketing Sales Rule (16 C.F.R.
6 §§ 310.2(z), (bb), and (cc)).

7 61. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c)
8 and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR
9 constitutes an unfair or deceptive act or practice in or affecting commerce, in
10 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 **Count 2: Misrepresentations relating to material aspects of**
12 **Health Care One's national healthcare discount program**

13 62. In numerous instances, in connection with the telemarketing of Health
14 Care One's national healthcare discount program, Defendants have misrepresented,
15 directly or by implication, material aspects of the performance, efficacy, nature, or
16 central characteristics of the program, including that:

- 17 a. the program is health insurance;
18 b. enrollment in the program will result in substantial healthcare savings to
19 the consumer; or
20 c. consumers will be able to obtain program benefits from consumers'
21 current healthcare providers and from other healthcare providers in the
22 consumers' local communities,

23 thereby violating Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

24 **Count 3: Misrepresentations regarding**
25 **refund or cancellation policies**

26 63. In numerous instances, in connection with the telemarketing of Health
27 Care One's national healthcare discount program, Defendants have misrepresented,
28 directly or by implication, material aspects of the nature or terms of the seller's

1 refund or cancellation policies, including that Defendants will provide a full refund,
2 subject to no or only a nominal processing fee, if the consumer submits a
3 cancellation request before the thirty-day trial period expires, thereby violating
4 Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

5 **CONSUMER INJURY**

6 64. Consumers have suffered and will continue to suffer substantial injury
7 as a result of Defendants' violations of the FTC Act and the TSR. In addition,
8 Defendants have been unjustly enriched as a result of their unlawful acts or practices.
9 Absent injunctive relief by this Court, Defendants are likely to continue to injure
10 consumers, reap unjust enrichment, and harm the public interest.

11 **THIS COURT'S POWER TO GRANT RELIEF**

12 65. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
13 to grant injunctive and such other relief as the Court may deem appropriate to halt
14 and redress violations of any provision of law enforced by the FTC. The Court, in
15 the exercise of its equitable jurisdiction, may award ancillary relief, including
16 rescission or reformation of contracts, restitution, the refund of monies paid, and the
17 disgorgement of ill-gotten monies, to prevent and remedy any violation of any
18 provision of law enforced by the FTC.

19 66. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
20 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as
21 the Court finds necessary to redress injury to consumers resulting from Defendants'
22 violations of the Telemarketing Sales Rule, including rescission or reformation of
23 contracts, and the refund of money.

24 **PRAYER FOR RELIEF**

25 67. Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC
26 Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C.
27 § 6105(b), and the Court's own equitable powers, requests that the Court:

28 a. Award Plaintiff such preliminary injunctive and ancillary relief as may

1 be necessary to avert the likelihood of consumer injury during the
2 pendency of this action and to preserve the possibility of effective final
3 relief, including but not limited to a preliminary injunction, an order
4 freezing assets, and appointment of a receiver;

5 b. Enter a permanent injunction to prevent future violations of the FTC
6 Act and the TSR by Defendants;

7 c. Award such relief as the Court finds necessary to redress injury to
8 consumers resulting from Defendants' violations of the FTC Act and the
9 TSR, including, but not limited to, rescission or reformation of
10 contracts, restitution, the refund of monies paid, and the disgorgement
11 of ill-gotten monies; and

12 d. Award Plaintiff the costs of bringing this action, as well as such other
13 and additional equitable relief as the Court may determine to be just and
14 proper.

15
16 Dated: April 21, 2011

Respectfully submitted,

17
18 WILLARD K. TOM
General Counsel

19  (72)
20 FAYE CHEN BARNOUW
21 BARBARA CHUN
MARICELA SEGURA

22 Attorneys for Plaintiff
23 Federal Trade Commission
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am over the age of 18 and that I caused a copy of this First Amended Complaint for Permanent Injunctive and Other Equitable Relief, Summons and Initial Order Following Filing of Complaint Assigned to Judge Selna to be served on the following via electronic mail, per agreement by the parties:

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A copy of the foregoing was served by U.S. Mail on:

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 21, 2011

/s/ Maricela Segura
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