



5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

7. Proposed respondent neither admits nor denies the allegations in the draft complaint, other than jurisdictional facts, merely by entering into this agreement.

## **ORDER**

### **DEFINITIONS**

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

1. Unless otherwise specified, "respondent" shall mean ABCSP, Inc., its successors and assigns, and its officers, agents, representatives, and employees.
2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. "Covered service" shall mean any service involving placements in an assisted living facility.
4. "Assisted living facility," or "ALF" shall mean any congregate residential setting, which provides housing for persons 60 years or older, as well as assistance in activities of daily living (e.g., bathing and dressing) and medication administration. The definition includes residential care facilities for the elderly ("RCFEs"), as well as any other facilities which perform the functions of ALFs or RCFEs, but excludes facilities which a state has licensed as skilled nursing facilities.

## **I. Prohibited Misrepresentations; Substantiation**

A. IT IS ORDERED that respondent or other persons who are in active concert or participation with them, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered service in or affecting commerce, shall not represent in any manner, directly or indirectly, expressly or by implication, that its personnel or agents personally view, inspect, or monitor assisted living facilities, including representations regarding the viewing, inspecting, or monitoring of any number, portion, or percentage of assisted living facilities in a geographic region, unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that, when considered in light of the entire body of relevant evidence, substantiates that the representation is true.

B. IT IS FURTHER ORDERED that respondent, or other persons who are in active concert or participation with them, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered service in or affecting commerce, shall not make any representation about its placement services in any manner, directly or indirectly, expressly or by implication, unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that, when considered in light of the entire body of relevant evidence, substantiates that the representation is true.

## **II. Records**

IT IS FURTHER ORDERED that respondent ABCSP, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

## **III. Acknowledgments**

IT IS FURTHER ORDERED that respondent ABCSP, Inc., and its successors and

assigns, shall deliver a copy of this order to all current and future principals, members, officers, directors, and managers, and to all current and future employees, agents, and representatives having decision-making authority with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent ABCSP, Inc., and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

#### **IV. Notices**

IT IS FURTHER ORDERED that respondent ABCSP, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation or any business entity that it directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this order, including the formation of a new business entity; a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to [Debrief@ftc.gov](mailto: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: "ABCSP, Inc., File No. 1123168."

#### **V. Reports**

IT IS FURTHER ORDERED that respondent ABCSP, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

#### **VI. Sunset**

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a

complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

So signed:

**ABCSP, INC.**

By: \_\_\_\_\_  
MICHAEL NEWMAN  
Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
CARL ZWISLER  
Gray Plant Mooty  
Counsel for ABCSP, Inc.

\_\_\_\_\_  
Date

**FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
DAVID R. SPIEGEL  
Counsel for  
Federal Trade Commission

\_\_\_\_\_  
Date

**APPROVED:**

\_\_\_\_\_  
FRANK GORMAN  
Assistant Director  
Division of Enforcement

\_\_\_\_\_  
JAMES A. KOHM  
Associate Director  
Division of Enforcement

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DAVID C. VLADECK  
Director  
Bureau of Consumer Protection