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10 FEDERAL TRADE COMMISSION

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL TRADE COMMISSION,

Case no. SACV10-1161-JVS-RNBx

14 Plaintiff,

15 v.

16 HEALTH CARE ONE LLC, an Arizona
17 limited liability company, also d/b/a
18 "HealthcareOne," "Americans4
19 Healthcare," "Citizens4Healthcare,"
20 "American Eagle Healthcare,"
21 "EasyLife Healthcare," "Elite
22 Healthcare," "Global Healthcare," and
23 "Republic Healthcare";

24 AMERICANS4HEALTHCARE INC., a
25 Delaware corporation;

26 MICHAEL JAY ELLMAN, an
27 individual;

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

ROBERT DANIEL FREEMAN, an
individual;

MILE HIGH ENTERPRISE INC., a
Nevada corporation; and

BRYAN MATTHEW LOVING, an
individual;

Defendants.

STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST
DEFENDANTS HEALTH CARE ONE
LLC, AMERICANS4HEALTHCARE
INC., AND MICHAEL JAY ELLMAN

1 Plaintiff Federal Trade Commission (“FTC” or “Commission”) commenced
2 this civil action on August 3, 2010, pursuant to Sections 13(b) and 19 of the FTC
3 Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Consumer Fraud and Abuse
4 Prevention Act, 15 U.S.C. §§ 6101-6108, to obtain preliminary and permanent
5 injunctive and other equitable relief for violations of Section 5 of the FTC Act, 15
6 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310,
7 in connection with the marketing and sale of non-insurance healthcare discount
8 programs. The Court entered a temporary restraining order against Defendants
9 Health Care One LLC, Americans4Healthcare Inc., and Michael Jay Ellman
10 (“Defendants”) on August 3, 2010. The Court entered a preliminary injunction
11 against Defendants on September 1, 2010.

12 The FTC and Defendants have agreed to entry of this “Stipulated Final
13 Judgment and Order for Permanent Injunction and Other Equitable Relief Against
14 Defendants Health Care One LLC, Americans4Healthcare Inc., and Michael Jay
15 Ellman” (“Order”), to resolve all matters in dispute in this action between them.

16 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

17 **FINDINGS OF FACT**

18 1. This Court has jurisdiction over the subject matter of this case pursuant
19 to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331,
20 1337(a), and 1345.

21 2. This Court has personal jurisdiction over each of the Defendants.

22 3. Venue in this District is proper under 15 U.S.C. §§ 53(b), and 28 U.S.C.
23 §§ 1391(b) and (c).

24 4. The activities of Defendants, as alleged in the Complaint, are in or
25 affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

26 5. The Complaint states a claim upon which relief may be granted under
27 Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and
28 the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310.

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

4 3. **“Corporate Defendants”** means Defendants Health Care One LLC,
5 Americans4Healthcare Inc., and their successors and assigns.

6 4. **“Defendants”** means the Individual Defendant and the Corporate
7 Defendants, individually, collectively, or in any combination.

8 5. The term **“document”** is equal in scope and synonymous in meaning to
9 the terms “document” and “electronically stored information,” as described and used
10 in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs,
11 charts, photographs, audio and video recordings, computer records, and any other
12 data compilations from which information can be obtained. A draft or non-identical
13 copy is a separate document within the meaning of the term.

14 6. The term **“healthcare-related good or service”** includes any program,
15 membership, card, product, or other good or service, which is not insurance, that
16 purports to offer discounts, savings, or benefits on healthcare, or access to such
17 discounts, savings, or benefits.

18 7. **“Individual Defendant”** means Defendant Michael Jay Ellman.

19 8. The term **“insurance”** means any good or service that (1) has the effect
20 of transferring or spreading risk; (2) is an integral part of the policy relationship
21 between the insurer and the insured; and (3) is limited to entities within the insurance
22 industry.

23 9. **“Material fact”** means any fact that is likely to affect a person’s choice
24 of, or conduct regarding, goods or services.

25 10. **“Person”** means a natural person, organization, or other legal entity,
26 including a corporation, partnership, proprietorship, association, cooperative, limited
27 liability company, or any other group or combination acting as an entity.

28 11. **“Plaintiff”** means the Federal Trade Commission.

- 1 A. That the program offered is insurance;
- 2 B. That the good or service is affiliated with or endorsed or sponsored by
- 3 the federal government;
- 4 C. That any person or entity is an agency of or affiliated with, endorsed or
- 5 approved by, or otherwise connected to the Federal government or a
- 6 state government;
- 7 D. That purchase of the good or service will result in substantial savings to
- 8 the consumers;
- 9 E. Any material aspect of the performance, efficacy, nature, or
- 10 characteristics of the good or service;
- 11 F. The total costs to purchase, receive, or use, and the quantity of, the good
- 12 or service;
- 13 G. Any material restriction, limitation, or condition to purchase, receive, or
- 14 use the good or service; and
- 15 H. Any material aspect of the nature or terms of any refund, cancellation,
- 16 exchange, or repurchase policy, including, but not limited to, the
- 17 likelihood of a consumer obtaining a full or partial refund, or the
- 18 circumstances in which a full or partial refund will be granted to the
- 19 consumer.

20 **III.**

21 **PROHIBITION AGAINST VIOLATING**
22 **THE TELEMARKETING SALES RULE**

23 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
24 servants, employees, and attorneys, and those persons or entities in active concert or
25 participation with any of them who receive actual notice of this Order by personal
26 service or otherwise, whether acting directly or through any corporation, subsidiary,
27 division, or other device, in connection with the telemarketing of any good or
28 service, other than a healthcare-related good or service, are hereby permanently

1 restrained and enjoined from violating any provision of the Telemarketing Sales
2 Rule, 16 C.F.R. Part 310, including, but not limited to:

3 A. Violating Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R.
4 § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, any material aspect
5 of the performance, efficacy, nature, or central characteristics of the good or service,
6 including:

- 7 1. That the program offered is insurance;
- 8 2. That enrollment in the good or service will result in substantial
9 savings to the consumer;
- 10 3. That consumers who purchase the good or service will be able to
11 use the good or service as represented; or
- 12 4. Any other fact material to a consumer's decision to purchase any
13 good or service from Defendants; and

14 B. Violating Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R.
15 § 310.3(a)(2)(iv), by misrepresenting, directly or by implication, any material aspect
16 of the nature or terms of the seller's refund or cancellation policies.

17 C. Violating Section 310.4(b)(1)(v) of the TSR, 16 C.F.R.
18 § 310.4(b)(1)(v), governing the telephonic delivery of prerecorded messages.

19 IV.

20 MONETARY RELIEF

21 **IT IS FURTHER ORDERED** that:

22 A. Judgment is hereby entered in favor of the Commission and against
23 Defendants, jointly and severally, in the amount of \$21,119,064 (twenty-one million,
24 one hundred nineteen thousand, sixty-four dollars), as equitable monetary relief for
25 consumer injury; provided, however, that subject to the provisions of the Section
26 titled "Right to Reopen," below, this judgment shall be suspended upon Defendants'
27 completion of the requirements stated in subparagraphs IV.B and IV.C.

28 B. Defendants shall take all necessary steps to cause Bank of America to

1 remit the entire amount held in the Bank of America account #xxxxx6637 (individual
2 account) to the Commission.

3 C. Defendants hereby grant to the FTC all right and claim they currently
4 have to their frozen assets currently in the possession, custody, or control of the
5 Permanent Receiver.

6 D. In the event of default on any obligation to make payment under this
7 Order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date
8 of default to the date of payment. In the event such default continues for ten (10)
9 calendar days beyond the date the payment is due, the entire amount of the judgment,
10 less any amounts previously paid pursuant to this order, together with interest, shall
11 immediately become due and payable. Defendants shall be jointly and severally
12 liable for all payments required by this Order and any interest on such payments.

13 E. All funds paid pursuant to this Order shall be deposited into a fund
14 administered by the Commission or its agents to be used for equitable relief,
15 including, but not limited to, redress to consumers, and any attendant expenses for
16 the administration of such equitable relief. In the event that direct redress to
17 consumers is wholly or partially impracticable or funds remain after the redress is
18 completed, the Commission may apply any remaining funds for such other equitable
19 relief (including consumer information remedies) as it determines to be reasonably
20 related to Defendants' practices alleged in the Complaint. Any funds not used for
21 such equitable relief shall be deposited to the United States Treasury as
22 disgorgement. Defendants shall have no right to challenge the Commission's choice
23 of remedies under this Paragraph. Defendants shall have no right to contest the
24 manner of distribution chosen by the Commission.

25 F. No portion of any payment under the Judgment herein shall be deemed
26 a payment of any fine, penalty, or punitive assessment.

27 G. Defendants relinquish all dominion, control, and title to the funds paid
28 to the fullest extent permitted by law. Defendants shall make no claim to or demand

1 for return of the funds, directly or indirectly, through counsel or otherwise.

2 H. Defendants agree that the facts as alleged in the Complaint filed in this
3 action shall be taken as true without further proof in any bankruptcy case or
4 subsequent civil litigation pursued by the Commission to enforce its rights to any
5 payment or money judgment pursuant to this Order, including but not limited to a
6 nondischargeability complaint in any bankruptcy case. Defendants further stipulate
7 and agree that the facts alleged in the Complaint establish all elements necessary to
8 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
9 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral
10 estoppel effect for such purposes.

11 I. In accordance with 31 U.S.C. § 7701, Defendants are hereby required,
12 unless they have done so already, to furnish to the Commission their taxpayer
13 identifying numbers and/or social security numbers, which shall be used for the
14 purposes of collecting and reporting on any delinquent amount arising out of
15 Defendants' relationship with the government.

16 J. Defendants agree that they will not, whether acting directly or through
17 any corporation, partnership, subsidiary, division, trade name, device, or other entity,
18 submit to any federal or state tax authority any return, amended return, or other
19 official document that takes a deduction for, or seeks a tax refund or other favorable
20 treatment for, any payment by Defendants pursuant to this Order.

21 **V.**

22 **RIGHT TO REOPEN**

23 **IT IS FURTHER ORDERED** that:

24 A. The Commission's agreement to, and the Court's approval of, this
25 Order, including, but not limited to, the suspension of the monetary judgment against
26 Defendants, is expressly premised upon the truthfulness, accuracy, and completeness
27 of Defendants' financial condition, as represented in the following financial
28 statements, including all attachments and supplemental materials, copies of tax

1 returns for Defendants (collectively, “Financial Statements”), and deposition
2 testimony, all of which the Commission relied upon in negotiating and agreeing to
3 the terms of this Order:

- 4 1. Financial Statement of Michael Jay Ellman, dated September 13,
5 2010;
- 6 2. the deposition testimony of Michael Jay Ellman, including
7 testimony given under penalty of perjury on April 27, 2011,
8 August 18, 2011, and September 6, 2011;
- 9 3. Financial Statement of Health Care One LLC, submitted by
10 Michael Jay Ellman on September 13, 2010;
- 11 4. Health Care One LLC’s federal tax returns for the years 2006,
12 2007, and 2008;
- 13 5. Health Care One LLC’s profit and loss statements for 2006, 2007,
14 2009, and 2010;
- 15 6. HCO Marketing Inc.’s federal tax returns for the years 2008 and
16 2009;
- 17 7. HCO Marketing Inc.’s profit and loss statements for 2008, 2009,
18 and 2010;
- 19 8. Financial Statement of Secure Healthplan Corporation, submitted
20 by Michael Jay Ellman on September 24, 2010;
- 21 9. Financial Statement of The American Mint, Ltd., submitted by
22 Michael Jay Ellman on September 13, 2010;
- 23 10. Financial Statement of Red Carpet Skincare Inc., submitted by
24 Michael Jay Ellman on September 13, 2010;
- 25 11. Financial Statement of Quad Digital Corporation, submitted by
26 Michael Jay Ellman on September 13, 2010;
- 27 12. Financial Statement of AutoPlanOne Inc., submitted by Michael
28 Jay Ellman on September 13, 2010; and

1 B. failing to dispose of such customer information in all forms in their
2 possession, custody, or control within thirty (30) days after entry of this Order.
3 Disposal shall be by means that protect against unauthorized access to the customer
4 information, such as by burning, pulverizing, or shredding any papers, and by
5 erasing or destroying any electronic media, to ensure that the customer information
6 cannot practicably be read or reconstructed.

7 *Provided, however,* that customer information need not be disposed of, and
8 may be disclosed, to the extent requested by a government agency or required by a
9 law, regulation, or court order.

10 **VII.**

11 **COOPERATION WITH FTC COUNSEL**

12 IT IS FURTHER ORDERED that Defendants shall, in connection with this
13 action or any subsequent investigations related to or associated with the transactions
14 or the occurrences that are the subject of the FTC's Complaint, cooperate in good
15 faith with the FTC and appear (or in the case of Corporate Defendant, cause its
16 officers, employees, representatives, or agents to appear) at such places and times as
17 the FTC shall reasonably request, after written notice, for interviews, conferences,
18 pretrial discovery, review of documents, and for such other matters as may be
19 reasonably requested by the FTC. If requested in writing by the FTC, Defendants
20 shall appear (or in the case of Corporate Defendant, cause its officers, employees,
21 representatives, or agents to appear) and provide truthful testimony in any trial,
22 deposition, or other proceeding related to or associated with the transactions or the
23 occurrences that are the subject of the Complaint, or provide a written declaration or
24 affidavit made under penalty of perjury, without the service of a subpoena.

25 **VIII.**

26 **LIFTING OF ASSET FREEZE**

27 **IT IS FURTHER ORDERED** that the freeze of Defendants' assets set forth
28 in the Preliminary Injunction, filed by this Court on September 1, 2010, shall be

1 lifted to the extent necessary to turn over Defendants' assets as required by Section
2 IV ("Monetary Relief") of this Order, and upon completion of the turn-over, shall be
3 lifted permanently.

4 **IX.**

5 **TURNOVER OF ASSETS HELD BY THIRD PARTIES**

6 **IT IS FURTHER ORDERED that**, to partially satisfy the monetary
7 judgment set forth in Section IV ("Monetary Relief"), any law firm, financial or
8 brokerage institution, escrow agent, title company, commodity trading company,
9 automated clearing house, payment processor, business entity, or Person served with
10 a copy of this Order, that holds, controls or maintains custody of any account or asset
11 of, on behalf of, or for the benefit of Defendants, or has held, controlled, or
12 maintained custody of any account or asset of, on behalf of, or for the benefit of
13 Defendants, shall turn over such asset or funds to the Commission, in accordance
14 with instructions provided by a representative of the Commission, within ten (10)
15 business days of receiving notice of this Order by any means, including but not
16 limited to by facsimile.

17 **X.**

18 **ORDER ACKNOWLEDGMENTS**

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

21 A. Each Defendant, within seven (7) days of entry of this Order, must
22 submit to the Commission an acknowledgment of receipt of this Order sworn under
23 penalty of perjury.

24 B. For five (5) years after entry of this Order, each Individual Defendant
25 for any business that such Defendant, individually or collectively with any other
26 Defendant, is the majority owner or directly or indirectly controls, and each
27 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
28 officers, directors, and managers; (2) all employees, agents, and representatives who

1 participate in conduct related to the subject matter of the Order; and (3) any business
2 entity resulting from any change in structure as set forth in the Section titled
3 Compliance Reporting. Delivery must occur within seven (7) days of entry of this
4 Order for current personnel. To all others, delivery must occur before they assume
5 their responsibilities.

6 C. From each individual or entity to which a Defendant delivered a copy of
7 this Order, that Defendant must obtain, within thirty (30) days, a signed and dated
8 acknowledgment of receipt of this Order.

9 **XI.**

10 **COMPLIANCE REPORTING**

11 IT IS FURTHER ORDERED that Defendants make timely submissions to the
12 Commission:

13 A. One (1) year after entry of this Order, each Defendant must submit a
14 compliance report, sworn under penalty of perjury.

- 15 1. Each Defendant must: (a) designate at least one telephone
16 number and an email, physical, and postal address as points of
17 contact, which representatives of the Commission may use to
18 communicate with Defendant; (b) identify all of that Defendant's
19 businesses by all of their names, telephone numbers, and
20 physical, postal, email, and Internet addresses; (c) describe the
21 activities of each business, including the products and services
22 offered, the means of advertising, marketing, and sales, and the
23 involvement of any other Defendant (which Individual
24 Defendants must describe if they know or should know due to
25 their own involvement); (d) describe in detail whether and how
26 that Defendant is in compliance with each Section of this Order;
27 and (e) provide a copy of each Order Acknowledgment obtained
28 pursuant to this Order, unless previously submitted to the

1 Commission;

- 2 2. Additionally, each Individual Defendant must: (a) identify all
3 telephone numbers and all e-mail, Internet, physical, and postal
4 addresses, including all residences; (b) identify all titles and roles
5 in all business activities, including any business for which such
6 Defendant performs services whether as an employee or
7 otherwise and any entity in which such Defendant has any
8 ownership interest; and (c) describe in detail such Defendant's
9 involvement in each such business, including title, role,
10 responsibilities, participation, authority, control, and any
11 ownership.

12 B. For five (5) years following entry of this Order, each Defendant must
13 submit a compliance notice, sworn under penalty of perjury, within fourteen (14)
14 days of any change in the following:

- 15 1. Each Defendant must report any change in: (a) any designated
16 point of contact; (b) the structure of the Corporate Defendant or
17 any entity that Defendant has any ownership interest in or directly
18 or indirectly controls that may affect compliance obligations
19 arising under this Order, including: creation, merger, sale, or
20 dissolution of the entity or any subsidiary, parent, or affiliate that
21 engages in any acts or practices subject to this Order.
- 22 2. Additionally, each Individual Defendant must report any change
23 in: (a) name, including aliases or fictitious name, or residence
24 address; or (b) title or role in any business activity, including any
25 business for which such Defendant performs services whether as
26 an employee or otherwise and any entity in which such Defendant
27 has any ownership interest, and identify its name, physical
28 address, and Internet address, if any.

1 C. Each Defendant must submit to the Commission notice of the filing of
2 any bankruptcy petition, insolvency proceeding, or any similar proceeding by or
3 against such Defendant within fourteen (14) days of its filing.

4 D. Any submission to the Commission required by this Order to be sworn
5 under penalty of perjury must be true and accurate and comply with 28 U.S.C.
6 § 1746, such as by concluding: “I declare under penalty of perjury under the laws of
7 the United States of America that the foregoing is true and correct. Executed
8 on:_____” and supplying the date, signatory’s full name, title (if applicable), and
9 signature.

10 E. Unless otherwise directed by a Commission representative in writing,
11 all submissions to the Commission pursuant to this Order must be emailed to
12 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
13 Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade
14 Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject
15 line must begin: FTC v. Health Care One LLC, Americans4Healthcare Inc., and
16 Michael Jay Ellman, #X100045.

17 **XII.**

18 **RECORD KEEPING**

19 IT IS FURTHER ORDERED that Defendants must create certain records for
20 five (5) years after entry of the Order, and retain each such record for five (5) years.
21 Specifically, Corporate Defendant and each Individual Defendant for any business in
22 which that Defendant, individually or collectively with any other Defendants, is a
23 majority owner or directly or indirectly controls, must maintain the following
24 records:

25 A. Accounting records showing the revenues from all goods or services
26 sold, all costs incurred in generating those revenues, and the resulting net profit or
27 loss;

28 B. Personnel records showing, for each person providing services, whether

1 as an employee or otherwise, that person's: name, addresses, and telephone
2 numbers; job title or position; dates of service; and, if applicable, the reason for
3 termination;

4 C. Customer files showing the names, addresses, telephone numbers, dollar
5 amounts paid, and the quantity and description of goods or services purchased;

6 D. Complaints and refund requests, whether received directly or indirectly,
7 such as through a third party, and any response;

8 E. All records necessary to demonstrate full compliance with each
9 provision of this Order, including all submissions to the Commission;

10 F. A copy of all contracts with suppliers, payment processors, and list
11 brokers; and

12 G. A copy of each advertisement or other marketing material.

13 **XIII.**

14 **COMPLIANCE MONITORING**

15 IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants'
16 compliance with this Order, including the financial representations upon which the
17 judgment was suspended and any failure to transfer any assets as required by this
18 Order:

19 A. Within fourteen (14) days of receipt of a written request from a
20 representative of the Commission, each Defendant must: submit additional
21 compliance reports or other requested information, which must be sworn under
22 penalty of perjury; appear for depositions; and produce documents, for inspection
23 and copying. The Commission is also authorized to obtain discovery, without
24 further leave of court, using any of the procedures prescribed by Federal Rules of
25 Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

26 B. For matters concerning this Order, the Commission is authorized to
27 communicate directly with each Defendant. Defendant must permit representatives
28 of the Commission to interview any employee or other person affiliated with any

1 Defendant who has agreed to such an interview. The person interviewed may have
2 counsel present.

3 C. The Commission may use all other lawful means, including posing,
4 through its representatives, as consumers, suppliers, or other individuals or entities,
5 to Defendants or any individual or entity affiliated with Defendants, without the
6 necessity of identification or prior notice. Nothing in this Order limits the
7 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
8 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

9 **XIV.**

10 **RETENTION OF JURISDICTION**

11 IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter
12 for purposes of construction, modification, and enforcement of this Order.

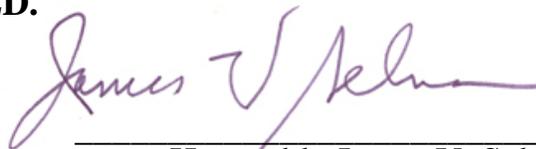
13 **XV.**

14 **ENTRY OF ORDER**

15 IT IS FURTHER ORDERED that there is no just reason for delay, and the
16 Clerk of the Court is hereby directed to enter this Order immediately.

17 **IT IS SO ORDERED.**

18
19 Dated: December 5, 2011



20 _____
21 Honorable James V. Selna
22 United States District Judge
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