

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 14-cv-23109-RNS
)	
v.)	FINAL ORDER FOR PERMANENT
)	INJUNCTION AND MONETARY
PARTNERS IN HEALTH CARE)	JUDGMENT AS TO DEFENDANTS
ASSOCIATION, INC. <i>et al.</i> ,)	PARTNERS IN HEALTH CARE
)	ASSOCIATION, INC., AND
Defendants.)	GARY L. KIEPER
)	

On August 25, 2014, Plaintiff, the Federal Trade Commission (“FTC”) filed its Complaint for Permanent Injunction and Other Equitable Relief (ECF 1, the “Complaint”) 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, against the Defendants in this action.

On October 30, 2015, Plaintiff, the Federal Trade Commission (“FTC”) filed its motion for summary judgment against defendant Gary L. Kieper (ECF 163). On June 2, 2016, the FTC filed its motion for entry of default judgment (ECF 203) against defendant Partners In Health Care Association, Inc. (“PIHC”, and when referred to with defendant Kieper, the “Wisconsin Defendants”). On May 31, 2016, in a separate memorandum opinion (ECF 201), the Court granted the FTC’s motion for summary judgment and on June 27, 2016, granted the motion for entry of default judgment. Accordingly,

IT IS HEREBY ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter
2. Venue is proper as to all parties in the Southern District of Florida

3. The activities of the Wisconsin Defendants are or were in or affecting commerce, as defined the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against the Wisconsin Defendants under Sections 5(a)(1), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), and 57b; and under the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

5. The Wisconsin Defendants have engaged in acts or practices that violate Section 5(a)(1) of the FTC Act, 15 U.S.C. §45(a)(1) and various sections of the TSR. As demonstrated by the consumer declarations and the additional documents filed by the FTC, the Wisconsin Defendants and their marketing partners have made serious misrepresentations leading consumers to believe, among other things, that the medical discount card they offered for sale is health insurance or the equivalent of such insurance. The Wisconsin Defendants also assisted and facilitated their marketing partners' violations of the TSR.

6. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

7. Entry of this Order is in the public interest.

8. This Order is remedial in nature and shall not be construed as payment of a fine, penalty, punitive assessment or forfeiture.

DEFINITIONS

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

1. "**Defendants**" means all of the Defendants in this action: Partners in Health Care Association, Inc., Gary L. Kieper, United Solutions Group, Inc., Walter S. Vargas, and Constanza Gomez Vargas, individually, collectively, or in any combination.

2. "**Healthcare-Related Products**" means any program, membership, card, product, insurance policy, or other good or service, that offers, or purports to offer, insurance, discounts, savings, or benefits on healthcare, or access to insurance, discounts,

savings, or benefits. The insurance policies included in this definition are limited to policies covering healthcare services and products.

3. **“Corporate Defendant”** means Partners In Health Care Association, Inc., and its subsidiaries, affiliates, successors, and assigns, including, but not limited to, TRI Resource Group Ltd., Senior Advantage of Wisconsin Inc., and PIHC Inc.

4. **“Individual Defendant”** means Gary L. Kieper.

5. **“Wisconsin Defendants”** means the Corporate Defendant and the Individual Defendant, individually, collectively, or in any combination.

6. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones and which involves more than one interstate telephone call.

I.

BAN ON SELLING HEALTHCARE-RELATED PRODUCTS

IT IS ORDERED that the Wisconsin Defendants are permanently restrained and enjoined from: advertising, marketing, promoting, offering for sale, or assisting in the advertising, marketing, promoting, or offering for sale of any Healthcare-Related Products.

II.

BAN ON TELEMARKETING

IT IS ORDERED that the Wisconsin Defendants are permanently restrained and enjoined from participating in Telemarketing or assisting others engaged in Telemarketing, whether acting directly or through an intermediary.

III.

PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that the Wisconsin Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation

with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the marketing or offering for sale any goods or services, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

- A. any material aspect of the performance, efficacy, nature, or central characteristics of any good or service;
- B. any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;
- C. any affiliation with, or endorsement or sponsorship by, any person or government entity;
- D. any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies; or
- E. any other information material to consumers concerning any goods or services, such as the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer.

IV.

PROHIBITION AGAINST THE USE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that the Wisconsin Defendants their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

- A. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account – including a credit card, bank account, or other financial account – that any Defendant obtained prior to the entry of this Order in connection with the sale of any Healthcare-Related Products; and

B. failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order.

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

V.

EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Eight Million Seven Hundred Forty-six Thousand Ninety-four Dollars and Eighteen Cents (\$8,746,094.18) is entered in favor of the FTC and against each of the Wisconsin Defendants, jointly and severally, as equitable monetary relief.

B. This monetary judgment shall become immediately due and payable by each of the Wisconsin Defendants upon entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961(a), as amended, shall immediately begin to accrue on the unpaid balance.

C. All payments under this Paragraph shall be made by certified check or other guaranteed funds payable to the Federal Trade Commission, Financial Management Office, or by wire transfer in accordance with directions provided by the Commission. The check(s) or written confirmation of the wire transfer(s) shall be delivered to: Associate Director, Division of Marketing Practices, 600 Pennsylvania Avenue, N.W., Room CC-8528, Washington, D.C. 20580.

D. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the Commission their taxpayer identification number(s) (social security number or employer identification number) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of each Defendant's relationship with the government.

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

F. The Wisconsin Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. The Wisconsin Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

G. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

H. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the FTC, including in a proceeding to enforce its right to any payment or monetary judgment pursuant to this Order, such as a non-dischargeability complaint in any bankruptcy case.

VI.

COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver, including counsel to the Receiver and accountants, are entitled to reasonable

compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Wisconsin Defendants. The Receiver must not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

VII.

RECEIVER'S FINAL REPORT AND DISBURSEMENT OF RECEIVERSHIP ESTATE

IT IS FURTHER ORDERED that:

A. The Receiver shall liquidate the assets of the Wisconsin Defendants in his possession, as well as any assets transferred to the Receiver pursuant to Section V of this Order, as soon as practicable. The Receiver may dispose of any valueless assets as he sees fit. The Receiver shall file his Final Report within one hundred and twenty (120) days after entry of this Order, unless this time is extended by the Court for good cause. The Final Report shall include an accounting of the Receivership Estate's finances and total assets and a description of what other actions, if any, must be taken to wind-down the Receivership. Promptly thereafter, but no later than thirty (30) days after submission of the Final Report, the Receiver shall file an application for payment of compensation and expenses associated with his performance of duties as Receiver under this Order, the Temporary Restraining Order, and the Preliminary Injunctions entered in this proceeding. Owing to the lack of assets in the Receivership Estate, the Receiver shall not be required to send copies of the Final Report to the Wisconsin Defendants' creditors. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the Receivership) are appropriate, the Receiver shall file an additional report or reports ("Supplemental Report") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts.

B. The Court will review the Final Report and any objections to the report and, absent a valid objection, will issue an order directing the Receiver to: (1) pay the reasonable

costs and expenses of administering the Receivership, including the compensation of the Receiver and the Receiver's personnel authorized by Section VI (Compensation of Receiver) of this Order or other orders of this Court, and the actual out-of-pocket costs incurred by the Receiver in carrying-out his duties; and (2) pay all remaining funds to the FTC as partial satisfaction of the judgment.

C. With Court approval, the Receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a Supplemental Report. If the Receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payments of fees and expenses approved by the Court in response to such a supplemental application, all funds remaining in the reserve fund shall be immediately paid to the FTC or its designated agent.

VIII.

RECEIVERSHIP TERMINATION

IT IS FURTHER ORDERED that the Receiver must complete all duties within 120 days after entry of this Order, but any party or the Receiver may request that the Court extend the Receiver's term for good cause.

IX.

COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED that the Wisconsin Defendants and their representatives, officers, agents, employees, and any other person served with a copy of this Order shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the assets that the Wisconsin Defendants are surrendering pursuant to Section V of this Order (Equitable Monetary Relief). This cooperation and assistance shall include, but not be limited to, providing information to the Receiver that the Receiver deems necessary to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer,

electronic file, or telephonic data in any medium; advising all persons who owe money to the Wisconsin Defendants that all debts should be paid directly to the Receiver; and transferring funds or title of assets at the Receiver's direction and producing records related to the assets and sales of the Wisconsin Defendants. The entities obligated to cooperate with the Receiver under this provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, precious metals dealers, credit card processors, payment processors, merchant banks, acquiring banks, independent sales organizations, third party processors, payment gateways, insurance companies and other financial institutions and depositories of any kind, as well as common carriers, telecommunications companies and third-party billing agents.

X.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that the Wisconsin Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. The Wisconsin Defendants must provide truthful and complete information, evidence, and testimony. The Individual Defendant must appear and the Corporate Defendant must cause its officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon five (5) days written notice or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

XI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that the Wisconsin Defendants obtain acknowledgments of receipt of this Order:

A. Each of the Wisconsin Defendants, within seven (7) days of entry of this Order, must submit to the FTC an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, the Individual Defendant for any business that he, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and the Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

XII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that the Wisconsin Defendants make timely submissions to the FTC:

A. One year after entry of this Order, each of the Wisconsin Defendants must submit a compliance report, sworn under penalty of perjury:

1. Each of the Wisconsin Defendants must: (a) identify the primary physical, postal, and email address and telephone number as designated points of contact, which representatives of the Commission may use to communicate with that Defendant; (b) identify all of that Wisconsin Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services

offered, the means of advertising, marketing, and sales, and the involvement of any other Wisconsin Defendant (which the Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Wisconsin Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the FTC; and

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

B. For twenty (20) years after entry of this Order, each Wisconsin Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Each Wisconsin Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that such defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order;

2. Additionally, the Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such defendant performs services whether as an employee or otherwise and any entity in which such

defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity;

C. Each Wisconsin Defendant must submit to the FTC notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such defendant within fourteen (14) days of its filing;

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

E. Unless otherwise directed by an FTC representative in writing, all submissions to the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Partners In Health Care*, X140058.

XIII.

RECORDKEEPING

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

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and

E. a copy of each unique advertisement, marketing email, banner advertisement, pop-up advertisement, mobile advertisement, web page, direct mail piece, Telemarketing script, text advertisement, or other marketing material.

XIV.

COMPLIANCE MONITORING

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

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

B. For matters concerning this Order, the FTC is authorized to communicate directly with each of the Wisconsin Defendants. The Wisconsin Defendants must permit representatives of the FTC to interview any employee or other person affiliated with them who has agreed to such an interview. The person interviewed may have counsel present.

C. The FTC may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to the Wisconsin Defendants or any individual or entity affiliated with them, without the necessity of

identification or prior notice. Nothing in this Order limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the FTC, any consumer reporting agency must furnish consumer reports concerning the Individual Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XV.

RETENTION OF JURISDICTION

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

SO ORDERED, this 27th day of June, 2016.

Robert N. Scola, Jr.
UNITED STATES DISTRICT JUDGE