

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CONSUMER HEALTH BENEFITS
ASSOCIATION, organized as a Missouri
not-for-profit, also doing business as CHBA,

NATIONAL ASSOCIATION FOR AMERICANS,
organized as a Missouri not-for-profit, also doing
business as NAFA,

NATIONAL BENEFITS CONSULTANTS, LLC, a
Florida limited liability company, also doing
business as NBC,

NATIONAL BENEFITS SOLUTIONS, LLC, a
Florida limited liability company, also doing
business as NBS,

LOUIS LEO, individually, as a Managing Member
of NATIONAL BENEFITS CONSULTANTS,
LCC, as a Managing Member of NATIONAL
BENEFITS SOLUTIONS, LLC, and as the Vice
President and Treasurer of CONSUMER HEALTH
BENEFITS ASSOCIATION,

RON WERNER, individually, as a Managing
Member of NATIONAL BENEFITS
CONSULTANTS, LLC, as a Managing Member of
NATIONAL BENEFITS SOLUTIONS, LLC, and
as President and Managing Partner of CONSUMER
HEALTH BENEFITS ASSOCIATION,

RITA WERNER, individually, and as Senior Vice
President and Director of Operations of
CONSUMER HEALTH BENEFITS
ASSOCIATION,

Case No. CV-10-3551 (ILG)(RLM)

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO
DEFENDANT WENDI TOW**

WENDI TOW, individually, as a Managing Member of NATIONAL BENEFITS CONSULTANTS, LLC, and as a Managing Member of NATIONAL BENEFITS SOLUTIONS, LLC,

JOHN SCHWARTZ, individually, as a Managing Member of NATIONAL BENEFITS CONSULTANTS, LLC, and as a Managing Member of NATIONAL BENEFITS SOLUTIONS, LLC,

GUARANTEE TRUST LIFE INSURANCE COMPANY, an Illinois corporation,

VANTAGE AMERICA SOLUTIONS, INC., an Illinois corporation,

CENTURY SENIOR SERVICES, a Florida corporation,

JEFFREY BURMAN, individually, as President of VANTAGE AMERICA SOLUTIONS, INC., and as Vice President of GUARANTEE TRUST LIFE INSURANCE COMPANY,

BARBARA TAUBE, individually, and as Vice President of GUARANTEE TRUST LIFE INSURANCE COMPANY, and

RICHARD HOLSON, III, individually, and as President of GUARANTEE TRUST LIFE INSURANCE COMPANY,

Defendants.

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Relief, subsequently amended as First Amended Complaint for Permanent Injunction and Other Relief (“First Amended Complaint”), pursuant to Sections

13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b. The Commission and Defendant Wendi Tow (“Defendant Tow”) stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendant Wendi Tow (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The First Amended Complaint charges that Defendant Tow participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, in connection with the marketing and sale of medical discount plans.
3. Defendant Tow neither admits nor denies any of the allegations in the First Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant Tow admits the facts necessary to establish jurisdiction.
4. Defendant Tow waives any claim that she may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear her own costs and attorney fees.
5. Defendant Tow waives all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

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

A. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. “**Defendants**” means Consumer Health Benefits Association; National Association for Americans; National Benefits Consultants, LLC; National Benefits Solutions, LLC; Guarantee Trust Life Insurance Company; Vantage America Solutions, Inc.; Century Senior Services; their successors and assigns; Louis Leo; Ron Werner; Rita Werner; Wendi Tow; John Schwartz; Jeffrey Burman; Barbara Taube; and Richard Holson, III, individually, collectively, or in any combination.

C. “**Escrow Agent**” means Steven E. Ostrow, the Court-appointed successor escrow agent in this case.

D. “**Healthcare-Related Benefits or Discount Programs**” includes any program, membership, card, product, or other good or service, which is not insurance, that purports to offer discounts, savings, or benefits on healthcare, or access to such discounts, savings, or benefits.

E. “**Insurance**” means any good or service that (a) has the effect of transferring or spreading risk; (b) is an integral part of the policy relationship between the insurer and the insured; and (c) is limited to entities within the insurance industry.

F. “**Seller**” means any person who, in connection with a Telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Commission.

G. **“Telemarketer”** means any person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor, whether or not such person is under the jurisdiction of the Commission.

H. **“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. **“Defendant Tow”** means Wendi Tow.

ORDER

I. BAN ON SELLING HEALTHCARE-RELATED BENEFITS OR DISCOUNT PROGRAMS

IT IS ORDERED that Defendant Tow is permanently restrained and enjoined from advertising, marketing, promoting, offering for sale, or selling, or assisting in the advertising, marketing, promoting, offering for sale, or selling, of any Healthcare-Related Benefits or Discount Programs.

II. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant Tow, her 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 promoting or offering for sale any good or service (other than Healthcare-Related Benefits or Discount Programs) are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. That consumers will save a substantial sum of money;

B. Any material aspect of the nature or terms of the Seller's refund, cancellation, exchange, or repurchase policies; and

C. Any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

III. PROHIBITION AGAINST VIOLATING THE TSR

IT IS FURTHER ORDERED that Defendant Tow, her 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, are permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Attachment A, including:

A. Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R. § 310.3(a)(1)(iii), by failing to disclose truthfully, in a Clear and Conspicuous manner, before a customer consents to pay for goods or services offered in connection with Telemarketing: (1) if the Seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the Seller's policy; or (2) if the Seller or Telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

B. Section 310.3(a)(2) of the TSR, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, in the sale of goods or services any of the following material information: (1) the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer; (2) any material restriction, limitation, or condition to purchase, receive,

or use goods or services that are the subject of a sales offer; (3) any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer; or (4) any material aspect of the nature or terms of the Seller's refund, cancellation, exchange or repurchase policies; and

C. Section 310.4(d) of the TSR, 16 C.F.R. § 310.4(d), by failing to disclose truthfully, promptly, and in a Clear and Conspicuous manner to the person receiving a call in connection with Telemarketing: (1) the identity of the Seller; (2) that the purpose of the call is to sell goods or services; or (3) the nature of the goods or services.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Five Million Dollars (\$5,000,000) is entered in favor of the Commission against Defendant Tow as monetary relief.
- B. The judgment is suspended subject to the Subsections below.
- C. Defendant Tow shall relinquish any and all right, title, and interest she may possess in any funds held by the Escrow Agent, including funds held on behalf of any Defendant, in favor of the FTC.
- D. The Commission's agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Tow's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely the Financial Statement of Individual Defendant Wendi Tow signed on June 22, 2021, including the attachments.
- E. The suspension of the judgment will be lifted as to Defendant Tow if, upon motion by the

Commission, the Court finds that Defendant Tow failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Defendant Tow in the amount specified in Subsection A. above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the First Amended Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

G. Defendant Tow relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

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

I. The facts alleged in the First Amended Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

J. Defendant Tow acknowledges that her Taxpayer Identification Number (Social Security Number), which Defendant Tow previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

K. All money paid to the Commission pursuant to this Order may be deposited into a fund

administered by the Commission or its designee to be used for consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the First Amended Complaint. Any money not used for such relief is to be deposited to the U.S. Treasury. Defendant Tow has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

L. If Defendant Tow fails to pay fully the amount due at the time specified, Defendant Tow must cooperate fully with the Commission and their representatives in all attempts to collect the judgment. In such an event, Defendant Tow agrees to provide federal and state tax returns for the preceding 2 years, and to complete a new financial disclosure form fully and accurately within 10 business days of receiving a request from the Commission. Defendant Tow further authorizes the Commission to verify all information provided on her financial disclosure form with all appropriate third parties, including financial institutions.

M. The Commission may request any tax-related information, including amended tax returns and any other filings, that Defendant Tow has the authority to release. Within 14 days of receipt of a written request from a representative of the Commission, Defendant Tow must take all necessary steps (such as filing a completed IRS Form 4506 or 8821) to cause the Internal Revenue Service or other tax authority to provide the information directly to the Commission.

V. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Tow, her 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, 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, sensitive health 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 entry of this Order in connection with the sale of medical discount plans; and
- B. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after entry of a stipulated final order against the last remaining Defendant or receipt of written direction to do so from a representative of the Commission.

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 law, regulation, or court order.

VI. COOPERATION

IT IS FURTHER ORDERED that Defendant Tow 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 First Amended Complaint. Defendant Tow must provide truthful and complete information, evidence, and testimony. Defendant Tow must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 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.

VII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Tow obtain acknowledgments of receipt of this Order:

- A. Defendant Tow, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after entry of this Order, Defendant Tow for any business that she, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives with managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the 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 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 Defendant Tow delivered a copy of this Order, Defendant Tow must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Tow make timely submissions to the Commission:

- A. One year after entry of this Order, Defendant Tow must submit a compliance report,

sworn under penalty of perjury, to:

1. identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;
 2. identify all business activities, including any business for which Defendant Tow performs services whether as an employee or otherwise and any entity in which Defendant Tow has any ownership interest;
 3. describe in detail Defendant Tow's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;
 4. 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 Defendant Tow;
 5. identify all of Defendant Tow's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 6. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Tow must describe if she knows or should know due to her own involvement);
 7. describe in detail whether and how Defendant Tow is in compliance with each Section of this Order; and
 8. provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 5 years after entry of this Order, Defendant Tow must submit a compliance notice,

sworn under penalty of perjury, within 14 days of any change in the following:

1. name, including aliases or fictitious name, or residence address;
2. title or role in any business activity, including any business for which Defendant Tow performs services whether as an employee or otherwise and any entity in which Defendant Tow has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity;
3. any designated point of contact; or
4. the structure of any entity that Defendant Tow 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.

C. Defendant Tow must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against her within 14 days of its filing.

D. Any submission to the Commission 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.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission 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. Tow, X100042.

IX. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant Tow must create certain records for 5 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant Tow for any business that she, individually or collectively with any other Defendants, 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; 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 Commission; and
- E. a copy of each unique advertisement or other marketing material.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Tow's 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 14 days of receipt of a written request from a representative of the Commission, Defendant Tow 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 Commission 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 Commission is authorized to communicate directly with Defendant Tow. Defendant Tow must permit representatives of the Commission to interview any employee or other person affiliated with her who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant Tow or any individual or entity affiliated with Defendant Tow, without the necessity of identification or prior notice. Nothing in this Order limits the Commission'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 Commission, any consumer reporting agency must furnish consumer reports concerning Defendant Tow, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XI. 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 ____ day of _____, 2021.

I. LEO GLASSER
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

/s/ Karen Dahlberg O'Connell
Karen Dahlberg O'Connell, Attorney
Federal Trade Commission
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1 Bowling Green, Suite 318
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SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

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FOR DEFENDANT TOW:



Date: 8/6/21

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DEFENDANT TOW:



Date: 8/6/21

WENDI TOW, INDIVIDUALLY