

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION	:	CIVIL ACTION
	:	
v.	:	No. 08-2215
	:	
NHS SYSTEMS, INC., et al.	:	

PERMANENT INJUNCTION ORDER

DEFINITIONS

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

1. **“Non-Settling NHS/PHS Defendants”** means NHS Systems, Inc., also d/b/a National Healthcare Solutions and National Health Net Online (NHS Systems); Plus Health Savings, Inc. (PHS-2); Physicians Health Systems, Inc.; Physician Health Service, LLC, also d/b/a American Health Benefits On Line (PHS-4); Health Management, LLC (NHS-2); 6676529 Canada, Inc.; Nicole Bertrand; Barry Kirstein; David James Greer, also known as “Dannie Boie”; PHS Enterprises, Inc. (PHS-1); First Step Management, Inc. (FSMI), Gold Dot, Inc. (Gold Dot); Linke Jn Paul; Tasha Jn Paul; and Nevada Business Solutions, Inc. (NBS), and each of them, by whatever names each may be known, as well as their successors, assigns, officers, directors, agents, servants, employees, salespersons, attorneys and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, e-mail, publication, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.

2. “**Individual Non-Settling NHS/PHS Defendants**” means Nicole Bertrand; Barry Kirstein; David James Greer, known as “Dannie Boie;” Linke Jn Paul; and Tasha Jn Paul.

3. “**Assets**” means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

4. “**Consumer**” means any person any Non-Settling NHS/PHS Defendant has contacted, intended to contact, or intends to contact concerning Non-Settling NHS/PHS Defendants’ products or services, whether or not a sale or contract is actually consummated. It includes the term “customer” as used in the TSR.

5. “**Document**” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes electronically stored information, writings, drawings, graphs, charts, sound recordings, images and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

6. “**Material**” means likely to affect a person’s choice of, or conduct regarding, goods or services.

7. “**Person**” means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

8. “**Plaintiff**” means the Federal Trade Commission.

9. “**Telemarketing**” means the advertising, offering for sale, or sale of any good or service to any person by means of telephone sales presentations, either exclusively or in conjunction with the use of other advertising.

10. The terms “**and**” and “**or**” shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

I. BAN ON TELEMARKETING

IT IS THEREFORE ORDERED that the Non-Settling NHS/PHS Defendants are hereby permanently restrained and enjoined from engaging in, participating in, or assisting in the Telemarketing, in any manner, of any product or service to any person.

II. BAN ON CHARGING CONSUMERS’ BANK ACCOUNTS

IT IS FURTHER ORDERED that the Non-Settling NHS/PHS Defendants are hereby permanently restrained and enjoined from causing billing information to be submitted for payment using a payment method other than a credit card subject to the protections of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205.

III. FURTHER PROHIBITED CONDUCT

IT IS FURTHER ORDERED that the Non-Settling NHS/PHS Defendants and their successors, assigns, officers, agents, servants, employees, attorneys and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal

service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from:

A. Making, expressly or by implication, any representation that is false or misleading, including but not limited to misrepresenting in any manner that Non-Settling NHS/PHS Defendants represent or are affiliated with United States government agencies;

B. Violating any provision of the TSR, 16 C.F.R. Part 310, including, but not limited to, the following violations:

1. Misrepresenting, directly or by implication, the total cost that will be charged to consumers who provide Non-Settling NHS/PHS Defendants with their account information;

2. Misrepresenting, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the goods or services they sell; and

3. Misrepresenting, directly or by implication, that they are calling from, on behalf of, or are otherwise affiliated with one or more United States government entities.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED that,

A. Judgment is hereby entered in favor of the FTC and against the Non-Settling NHS/PHS Defendants in the amount of \$6,879,162.22; liability for the judgment is joint and several.

B. Within ten (10) days of receipt of notice of entry of this Order, Non-Settling NHS/PHS Defendants shall transfer payment in the form of a certified check made payable to

and delivered to the FTC or by wire transfer in accordance with directions provided by the FTC to be deposited into an account maintained by the FTC or its agent. Such funds shall be (1) distributed as redress to consumers, and/or (2) paid to the U.S. Treasury as equitable disgorgement, if the FTC deems such distribution impractical.

C. In accordance with 31 U.S.C. § 7701, each Non-Settling NHS/PHS Defendant is hereby required, unless that Non-Settling NHS/PHS Defendant has done so already, to furnish the FTC the Non-Settling NHS/PHS Defendant's taxpayer identifying number (social security numbers or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of that NHS/PHS Defendant's relationship with the government.

V. PROHIBITION ON DISCLOSING CUSTOMER LISTS

IT IS FURTHER ORDERED that Non-Settling NHS/PHS Defendants, and their officers, agents, servants, employees, and corporations, and all other Persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

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), of any Person which was obtained by any Non-Settling NHS/PHS Defendant prior to entry of this Order in connection with the Telemarketing of consumer benefits programs, long distance programs, or buying club programs; and

B. failing to dispose of such customer information in all forms in their possession,

custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

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. *Provided, further,* that the Non-Settling NHS/PHS Defendants shall turn over any electronic customer lists in their possession, custody, or control to the Commission for purposes of effectuating redress of consumer injury.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Non-Settling NHS/PHS Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce Documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Non-Settling NHS/PHS Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any Person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69; and

2. having its representatives pose as consumers and suppliers to the Non-Settling NHS/PHS Defendants, their employees, or any other entity managed or controlled in whole or in part by any Non-Settling NHS/PHS Defendant, without the necessity of identification or prior notice.

C. The Non-Settling NHS/PHS Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The Person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit 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, to obtain any Documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order,

1. Each Individual Non-Settling NHS/PHS Defendant shall notify the Commission of the following:

a. Any changes in his or her residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in his or her employment status (including self-

employment), and any change in his or her ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he or she is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his or her duties and responsibilities in connection with the business or employment; and

c. Any changes in his or her name or use of any aliases or fictitious names within ten (10) days of the date of such change.

2. Non-Settling NHS/PHS Defendants shall notify the Commission of any changes in structure of any corporate Non-Settling NHS/PHS Defendant or any business entity that any Non-Settling NHS/PHS Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which a Non-Settling NHS/PHS Defendant learns less than thirty (30) days prior to the date such action is to take place, such Non-Settling NHS/PHS Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Non-Settling NHS/PHS Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury,

setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For the Individual Non-Settling NHS/PHS Defendants:
 - a. his or her then-current residence address, mailing addresses, and telephone numbers;
 - b. his or her then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he or she is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his or her duties and responsibilities in connection with the business or employment; and
 - c. Any other changes required to be reported under Subsection A of this Section.
2. For all Non-Settling NHS/PHS Defendants:
 - d. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
 - e. Any other changes required to be reported under Subsection A of this Section.

C. Each Non-Settling NHS/PHS Defendant shall notify the Commission of the filing of a bankruptcy petition by such Non-Settling NHS/PHS Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, the Non-Settling NHS/PHS Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight

courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
RE: FTC v. NHS Systems, Inc. et. al (Matter No. X080043)
(Case No. 08-CV-2215, E. D. Pa.)

Provided that, in lieu of overnight courier, the Non-Settling NHS/PHS Defendants may send such reports or notifications by first-class mail, but only if the Non-Settling NHS/PHS Defendants contemporaneously send an electronic version of such report or notification to the Commission at *DEBrief@ftc.gov*.

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Non-Settling NHS/PHS Defendant.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, corporate Non-Settling NHS/PHS Defendants, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service or services, and each Individual Non-Settling NHS/PHS Defendant for any business for which he or she is the majority owner or directly or indirectly controls, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each Person employed in any capacity by such business, including as an independent contractor; that Person's job title or position; the date upon which the Person commenced work; and the date and reason for the Person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and Documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

IX. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Non-Settling NHS/PHS Defendants shall deliver copies of the Order as directed below:

A. Corporate Non-Settling NHS/PHS Defendants: Each corporate Non-Settling NHS/PHS Defendant must deliver a copy of this Order to (1) all of its principals, officers,

directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such corporate Non-Settling NHS/PHS Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. Individual Non-Settling NHS/PHS Defendant as Control Person: For any business that any Individual Non-Settling NHS/PHS Defendant controls, directly or indirectly, or in which he or she has a majority ownership interest, he or she must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon the Individual Non-Settling NHS/PHS Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

C. Individual Non-Settling NHS/PHS Defendant as employee or non-control person: For any business where the Individual Non-Settling NHS/PHS Defendant is not a controlling

person of a business but otherwise engages in conduct related to the subject matter of this Order, he or she must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Non-Settling NHS/PHS Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all Persons receiving a copy of the Order pursuant to this Section.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Non-Settling NHS/PHS Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI. DISSOLUTION OF PRELIMINARY INJUNCTIONS

IT IS FURTHER ORDERED that upon entry of this Order, the Stipulated Preliminary Injunctions entered on June 10, 2008, and July 24, 2009, are dissolved, except as to those provisions of each order related to the Receivership. Any entity who froze Assets of any Individual Non-Settling NHS/PHS Defendant under those Orders and still holds assets of the Individual Non-Settling NHS/PHS Defendant shall, within 10 days of the entry of this Order, transfer those assets to the FTC in the form of a certified check made payable to and delivered to the FTC or by wire transfer in accordance with directions provided by the FTC to be deposited into an account maintained by the FTC or its agent.

The Receivership as created by the Preliminary Injunction of June 10, 2008 and expanded by the Preliminary Injunction of July 24, 2009, shall remain in full force and effect until such

time as the dispute between the Receiver and Teledraft, Inc., is resolved and this Court issues an Order dissolving the Receivership.

IT IS FURTHER ORDERED that the Non-Settling NHS/PHS Defendants and any other person or entity served with a copy of this Order shall comply with **Sections VIII and X-XII** of the Stipulated Preliminary Injunction with Appointment of a Receiver, Asset Freeze and Accounting entered in this case on June 10, 2008 (Doc. #15).

IT IS FURTHER ORDERED THAT the Receiver shall have retain the same rights as to the Non-Settling NHS/PHS Defendants as he was granted in **Section XIII** of the Stipulated Preliminary Injunction with Appointment of a Receiver, Asset Freeze and Accounting entered in this case on June 10, 2008 (Doc. #15).

XII. RETENTION OF JURISDICTION

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

SO ORDERED, this 28th day of March, 2013.

/s/ Juan R. Sánchez
Juan R. Sánchez
United States District Judge