

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF FLORIDA

FILED by _____ D.C.
DKTG
SEP 16 2005
CLARENCE MAIDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

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4 FEDERAL TRADE COMMISSION,

5 Plaintiff,

Case No.

6 v.

05-22465

7 PLATINUM HEALTH PLUS, LLC; FIESTA
8 MARKETING, LLC; TELEMEDIA, LLC;
9 MICHAEL P. GARCIA; and ALEXANDER
R. GARCIA,

10 Defendants.

11
12 **CONSENT DECREE**

MAGISTRATE JUDGE
O'SULLIVAN

13
14 Plaintiff, the Federal Trade Commission ("Commission"), has filed its Complaint pursuant to
15 Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging
16 defendants Platinum Health Plus, LLC, Fiesta Marketing, LLC, Telemedia, LLC, Michael P. Garcia,
17 and Alexander R. Garcia ("defendants") with violating Section 5 of the FTC Act, contemporaneously
18 with this Consent Decree ("Order"). Defendants and the Commission have agreed to entry of this
19 Consent Decree by this Court in order to resolve all matters in dispute between them in this action
20 relating to defendants' medical discount program. Defendants have consented to the entry of this
21 Order without trial or adjudication of any issue of law or fact herein, and this Order shall not constitute
22 an admission of liability by defendants nor constitute evidence of liability against defendants in any
23 matter relating to the facts alleged in the Commission's Complaint. **NOW, THEREFORE**, these
24 defendants and the Commission having requested the Court to enter this Order, **IT IS HEREBY**
25 **ORDERED, ADJUDGED, AND DECREED** as follows:

26
27 **FINDINGS**

- 28 1. This Court has jurisdiction over the subject matter of this case and over all the parties.

ORIGINAL

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2. Venue is proper in the Southern District of Florida.

3. The activities of defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against defendants under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

5. Defendants have waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waive and release any claim defendants may have against the Commission, its employees, and agents, including any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

6. The parties shall each bear their own costs and attorneys' fees incurred in this action.

DEFINITION

For purposes of this Order the following definition shall apply:

"Medical Services Program" shall mean any product or service that is represented to or does in fact assist consumers in obtaining access to or paying for any medical products or services.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that defendants, and their successors and assigns, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the marketing of any medical discount program or other medical services program, are hereby permanently restrained and enjoined from:

- A. Representing, expressly or by implication, that the program marketed by defendants is an insurance plan, unless such representation is true;
- B. Misrepresenting, expressly or by implication, the terms of any refund policy offered by defendants;
- C. Failing to clearly disclose the terms and conditions of any refund policy offered by defendants; and

1 D. Misrepresenting, expressly or by implication, any other material fact.

2
3 **II. MONETARY JUDGMENT/CONSUMER RELIEF**

4 **IT IS FURTHER ORDERED** that:

5 A. Within ten (10) days of entry of this Order, defendants shall pay to the Commission
6 \$294,113.85 for restitution to the consumers affected by the practices alleged in the Complaint.

7 B. All funds paid pursuant to this Section shall be deposited into a fund administered by
8 the Commission or its designated agent to be used for equitable relief, including, but not limited to,
9 consumer restitution and any attendant expenses for the administration of any redress fund. In the
10 event that direct restitution for consumers is wholly or partially impracticable or funds remain after
11 redress is completed, the Commission may apply any remaining funds for such other equitable relief
12 (including consumer information remedies) as it determines to be reasonably related to the defendants'
13 practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into
14 the U.S. Treasury as disgorgement. Defendants shall have no right to challenge the Commission's
15 choice of remedies under this Section.

16 C. The Commission shall send consumers eligible for restitution a check and release of
17 claim related to the purchase of the medical discount program offered by defendants. Upon the
18 consumer's cashing of such check, defendants shall not have any further obligation to the consumer for
19 the purchase of the Platinum Health Plus program.

20 D. In the event of any default in the payment by defendants of the amount required by
21 Section II. A of this Order, which has not been cured within thirty (30) days, the amount of
22 \$294,113.85, less the sum of any payments made pursuant to Section II.A, shall become immediately
23 due and payable by defendants to the Commission, and any interest computed pursuant to 28 U.S.C.
24 § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

25 E. The Commission and defendants acknowledge and agree that no portion of this
26 judgment for equitable monetary relief shall be deemed a fine, penalty, punitive assessment, or
27 forfeiture; and

28 F. For the purposes of any subsequent proceedings to enforce payments required by this

1 Section of the Order including, but not limited to, a non-dischargeability complaint filed in a
2 bankruptcy proceeding, defendants waive any right to contest any allegations in the Commission's
3 complaint.
4

5 **III. TRAINING, MONITORING, AND VERIFICATION**

6 **IT IS FURTHER ORDERED** that defendants, their successors and assigns, agents, servants,
7 employees, and those persons in active concert or participation with them who receive actual notice of
8 this Order by personal service or otherwise, in connection with any business where (1) any defendant is
9 the majority owner of the business or directly or indirectly manages or controls the business, and (2)
10 the business is engaged in the marketing of any medical discount program or other medical services
11 program, are hereby permanently restrained and enjoined from:

12 A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and
13 independent contractors engaged in sales or other customer service functions comply with Paragraph I
14 of this Order. These steps shall include adequate monitoring of sales presentations or other calls with
15 consumers, and shall also include, at a minimum, the following: (1) listening to a representative sample
16 of the oral representations made by persons engaged in sales or other customer service functions; (2)
17 establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the
18 number and nature of consumer complaints regarding transactions in which each employee or
19 independent contractor is involved;

20 B. Failing to investigate fully any consumer complaint received by any business to which
21 this section applies; and

22 C. Failing to take adequate corrective action with respect to any employee or
23 independent contractor who defendant determines is not complying with this Order. This corrective
24 action may include training, disciplining, and/or terminating such employee or independent contractor.
25

26 **IV. RECORD KEEPING**

27 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this
28 Order, defendants, in connection with any business where (1) any defendant is the majority owner of

1 the business or directly or indirectly controls the business and (2) the business is engaged in the
2 marketing of any medical discount program or other medical services program, are hereby permanently
3 restrained and enjoined from failing to create and retain the following records:

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

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

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

13 D. Complaints and refund requests, whether received directly, indirectly, or through a third
14 party, and any responses to those complaints or requests;

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

17 F. All records and documents necessary to demonstrate full compliance with each
18 provision of this Order including but not limited to, copies of acknowledgments of receipt of this
19 Order, required by Section VII, and all reports submitted to the Commission pursuant to Section VI.
20

21 V. COMPLIANCE REPORTING BY DEFENDANTS

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

24 A. For a period of three (3) years from the date of entry of this Order,

25 1. Each individual defendant shall notify the Commission of the following:

26 a. Any change in residence, mailing addresses, or telephone numbers, within ten
27 (10) days of the date of such change;

28 b. Any change in employment status (including self-employment), and any change

1 in the ownership of the individual defendant in any business entity, within ten
2 (10) days of the date of such change. Such notice shall include the name and
3 address of each business that the defendant is affiliated with, employed by,
4 creates or forms, or performs services for; a statement of the nature of the
5 business; and a statement of the defendant's duties and responsibilities in
6 connection with the business or employment; and

7 c. Any changes in the defendant's name or use of any aliases or fictitious names.

8 2. Each defendant shall notify the Commission of any changes in corporate structure of a
9 corporate defendant or any business entity that an individual defendant directly or
10 indirectly controls, or has an ownership interest in, that may affect compliance
11 obligations arising under this Order, including but not limited to a dissolution,
12 assignment, sale, merger, or other action that would result in the emergence of a
13 successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that
14 engages in the marketing of any medical discount program or other medical services
15 program; the filing of a bankruptcy petition; or a change in the corporate name or
16 address, at least thirty (30) days prior to such change, *provided* that, with respect to any
17 proposed change in the corporation about which the defendants learn less than thirty
18 (30) days prior to the date such action is to take place, defendants shall notify the
19 Commission as soon as is practicable after obtaining such knowledge.

20 B. One hundred eighty (180) days after the date of entry of this Order, defendants shall
21 provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail
22 the manner and form in which they have complied and are complying with this Order. This report shall
23 include, but not be limited to:

24 1. For each individual defendant:

25 a. The then-current residence address, mailing addresses, and telephone numbers of
26 the defendant;

27 b. The then-current employment and business addresses and telephone numbers of
28 the defendant, a description of the business activities of each such employer or

1 business, and the title and responsibilities of the defendant, for each such
2 employer or business; and

3 c. Any other changes required to be reported under subparagraph A of this Section.

4 2. For all defendants:

5 a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to
6 Paragraph VII; and

7 b. Any other changes required to be reported under subparagraph A of this Section.

8 C. For the purposes of this Order, defendants shall, unless otherwise directed by the
9 Commission's authorized representatives, mail all written notifications to the Commission to:

10 Charles A. Harwood, Director, Northwest Region
11 Federal Trade Commission
12 915 2nd Avenue, Suite 2896
13 Seattle, WA 98174

14 D. For purposes of the compliance reporting required by this Section, the Commission is
15 authorized to communicate directly with defendants.

16 VI. COMPLIANCE MONITORING

17 **IT IS FURTHER ORDERED** that, for a period of three (3) years following entry of
18 this Order, and for the purpose of monitoring and investigating compliance with any provision of this
19 Order:

20 A. Within ten (10) days of receipt of written notice from a representative of the
21 Commission, each defendant shall submit additional written reports, sworn to under penalty of perjury;
22 produce documents for inspection and copying; appear for deposition; and/or provide entry during
23 normal business hours to any business location engaged in the marketing of any medical discount
24 program or other medical services program that is in such defendant's possession or direct or indirect
25 control to inspect the business operation.

26 B. In addition, the Commission is authorized to monitor compliance with this Order by all
27 other lawful means, including but not limited to the following:

28 1. Obtaining discovery from any person, without further leave of court, using the

1 procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

- 2 2. Posing as customers and suppliers to defendants, or any other entity engaged in the
3 marketing of any medical discount program or other medical service program that is
4 managed or controlled in whole or in part by defendants, without the necessity of
5 identification or prior notice.

6 C. Defendants shall permit representatives of the Commission to interview any employer,
7 consultant, independent contractor, representative, agent, or employee who has agreed to such an
8 interview, relating in any way to the marketing of any medical discount program or other medical
9 services program. The person interviewed may have counsel present.

10 *Provided* that nothing in this Order shall limit the Commission's lawful use of compulsory
11 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any
12 documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or
13 practices in or affecting commerce within the meaning of 15 U.S.C. § 45(a)(1).

14 15 **VII. DISTRIBUTION OF ORDER BY DEFENDANTS**

16 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this
17 Order, defendants shall deliver a copies of the Order as directed below:

18 A. Each corporate defendant must deliver a copy of this Order to all of its principals,
19 officers, directors, and managers, and to all of its employees, agents, and representatives who engage in
20 the marketing of any medical discount program or other medical services program. For current
21 personnel, delivery shall be within five (5) days of service of this Order upon the corporate defendant.
22 For new personnel, delivery shall occur prior to them assuming their responsibilities.

23 B. For any business engaged in the marketing of any medical discount program or other
24 medical services program that an individual defendant controls, directly or indirectly, or in which the
25 individual defendant has a majority ownership interest, the individual defendant must deliver a copy of
26 this Order to all principals, officers, directors, and managers of the business. The individual defendant
27 must also deliver copies of this Order to employees, agents, and representatives of that business who
28 engage in the marketing of any medical discount program or other medical services program. For

1 current personnel, delivery shall be within five (5) days of service of this Order upon the individual
2 defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

3 C. For any business where an individual defendant is not a controlling person but otherwise
4 engages in the marketing of any medical discount program or other medical services program, the
5 individual defendant must deliver a copy of this Order to all principals and managers of such business
6 before engaging in such conduct.

7 D. Defendants must secure a signed and dated statement acknowledging receipt of the
8 Order within thirty (30) days of delivery, from all persons receiving a copy of this Order.

9
10 **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

11 **IT IS FURTHER ORDERED** that each defendant, within five (5) business days of receipt of
12 this Order as entered by the Court, must submit to the Commission a truthful sworn statement
13 acknowledging receipt of this Order.

14
15 **IX. RETENTION OF JURISDICTION**

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

18
19 DATED this 15 day of Sept., 2005.


UNITED STATES DISTRICT JUDGE

20
21 Presented by:
22 DEFENDANTS

Michael P. Garcia

Michael P. Garcia, individually,
and as a member/manager or officer of
Platinum Health Plus, LLC
Fiesta Marketing, LLC, and Telemedia, LLC

Alexander R. Garcia

Alexander R. Garcia, individually,
and as a member/manager or officer of
Platinum Health Plus, LLC
Fiesta Marketing, LLC, and Telemedia, LLC

James H. Sneed

James H. Sneed
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For Defendants Platinum Health Plus, LLC
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PLAINTIFF

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