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CLARENCE MADDOX  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

05-22465

Case No. CIV-UNRAID-BENAGES

MAGISTRATE JUDGE  
SULLIVAN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the Southern District of Florida is proper under 28 U.S.C §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

**PLAINTIFF**

4. Plaintiff is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each

COPY

FEDERAL TRADE COMMISSION  
915 Second Ave., Su. 2896  
Seattle, Washington 98174  
(206) 220-6350

1 **COMMERCE**

2 10. At all times relevant to this Complaint, defendants have maintained a substantial course  
3 of trade or business in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act,  
4 15 U.S.C. § 44.

5 **DEFENDANTS' BUSINESS PRACTICES**

6 11. Since at least February 2003, defendants, acting alone or in concert with others, have  
7 solicited Spanish-speaking consumers throughout the country to purchase the Platinum Health Plus  
8 medical discount program. Consumers who purchase the program can obtain discounted medical  
9 services through national networks of providers. As part of the program, defendants also provide  
10 insurance policies that cover accidental death and dismemberment, and hospitalization due to accident.  
11 To purchase the program, defendants have charged consumers an initial fee of between \$100 and \$125  
12 plus monthly service fees of between \$39.95 and \$59.95. The fee for the first month of service is billed  
13 at the time of enrollment.

14 12. Defendants have placed advertisements on Spanish language television stations  
15 throughout the country for the Platinum Health Plus program. One television advertisement featuring a  
16 popular Latino entertainer, Javier Romero, that ran nationwide through at least July 2004, stated (in  
17 Spanish):

18 Javier Romero: If you don't have health insurance, pay  
19 attention to this important message.

20 Text appears on bottom of screen throughout ad:  
21 PLATINUM HEALTH PLUS 1-800-213-4391

22 Javier Romero: For less than \$2.00 a day, your whole  
23 family can have access to doctors, dentists, hospitals,  
24 prescription medicine, 24-hour nurse hotline and more.

25 Text appears prominently down left side of screen while  
26 Romero speaking:

27 Doctors  
28 Dentists  
Hospitals  
Medicine  
24-Hour Nurse Hotline  
No Limits On Use  
No Deductibles

1 Javier Romero: Also \$25,000 for accidental death and up  
2 to \$5000 of medical attention due to accident

3 Text appears on left side of screen while Romero  
4 speaking (footnote\* is in small font):

5 \$25,000\* Accidental death;  
6 \$5,000\* Medical attention due to accident

7 \*Additional benefits are at no cost.  
8 PHP is not health insurance.

9 Young couple: Thank You Platinum Health Plus!

10 Javier Romero: As a member, I, Javier Romero,  
11 recommend this to you.

12 Older couple: Thank you Platinum Health Plus!

13 Young family: What a good decision.

14 Javier Romero: Don't wait any longer. Call now!

15 Text appears on screen: 650,000 providers

16 13. Another advertisement that aired beginning in June 2004, stated (in Spanish):

17 Woman Doctor: Being without medical care in this  
18 country is very dangerous. Pay attention to this important  
19 message from Platinum Health Plus.

20 Text appears on bottom of screen throughout ad:  
21 PLATINUM HEALTH PLUS 1-800-635-0932

22 Woman Doctor: For less than \$2.00 a day, your whole  
23 family can have discounts with doctors, dentists,  
24 hospitals, and medicine, with access to a 24-hour nurse  
25 hotline. There are no limits on usage and everyone  
26 qualifies.

27 Text appears prominently down left side of screen while  
28 Doctor speaking:

Doctors  
Dentists  
Hospitals  
Medicine  
24-Hour Nurse Hotline  
No Limits On Use.

EVERYONE QUALIFIES!

Young Couple with children: The 24-hour nurse hotline is  
an excellent benefit. Thank You Platinum Health Plus!

1 Woman Doctor: Also, you'll receive up to \$25,000 for  
2 accidental death and up to \$5,000 of medical attention per  
3 accident All for less than \$2 per day.

4 Text appears prominently on left side of screen while  
5 Doctor speaking (footnote\* is in small font):

6 \$25,000\* Accidental death;  
7 \$5,000\* Medical attention due to accident

8 \*Additional benefits are at no cost.  
9 PHP is not health insurance.

10 Man: The \$5,000 I received after my accident covered all  
11 my medical expenses. I don't know what I would have  
12 done without Platinum Health Plus.

13 14. The claims made in Platinum advertisements created the impression for many  
14 consumers that Platinum was an insurance plan. The disclosures that "PHP is not health insurance,"  
15 appear in small font as a footnote that appears on the screen for 8 seconds, below the text describing  
16 the insurance benefits that Romero and the Doctor are simultaneously describing orally. In the Romero  
17 ad the disclosure is in a light gray color on a white background, it appears in black on white in the  
18 Doctor ad. The disclosures use the term "PHP," which appears nowhere else in the ad, and are  
19 preceded by a sentence referencing the insurance policies. These disclosures, if seen by the consumers,  
20 are not adequate to disclaim the strong implied claims made elsewhere in the ad that Platinum Health  
21 Plus is an insurance plan.

22 15. When consumers called in response to Platinum television advertisements, defendants'  
23 sales representatives repeated the claims made in the television advertisements. The script in use until  
24 at least September 2004 stated (in Spanish):

25 Platinum Health Plus is a health plan that is designed to  
26 combat the high costs of health insurance by offering  
27 incredible discounts, without having to deal with the  
28 exigencies of health insurance. With this plan you do not  
need to worry about pre-existing health conditions, age,  
deductibles or limits on use. You only need to present  
your membership card at one of our 650,000 providers  
and you will receive your benefits immediately.

16. Many consumers who were reluctant to enroll without knowing more about how the  
Platinum program worked were told by the sales representative that if they were dissatisfied with the  
program or wanted their money back for any reason, there was an unconditional 30-day money back

1 guarantee. Platinum, however, did not provide an unconditional money back guarantee. The Platinum  
2 money back guarantee required the consumer to use the program once within the first thirty days to  
3 qualify for a refund.

4 17. Advertisements that ran through April 2004 did not reference the Platinum refund  
5 policy. In May 2004, however, some Platinum television advertisements began touting the Platinum  
6 “exclusive guarantee.” For example, one advertisement that ran nationwide beginning in May 2004,  
7 stated (in Spanish), “With the exclusive Platinum Health Plus guarantee, you can become a member  
8 today without any risk.” Appearing at the same time as the audio statement of “no risk,” is text  
9 disclosing the actual refund policy in small font sandwiched between two prominent statements,  
10 “EXCLUSIVE GUARANTEE,” and “Sign up Today Without Any Risk!” “Exclusive Guarantee,” and  
11 “Sign Up Today Without Any Risk” appear in much larger font than the rest of the refund policy  
12 disclosure, and the “no risk” statement is in a bright highly visible color. The “no risk” text remains on  
13 the screen after the rest of the disclosure is off screen. The “no risk” claims are reasonably understood  
14 as express claims of an unconditional money back guarantee. Such express claims are not disclaimed  
15 by the much less prominent disclosure of the actual refund policy.

16 18. Until at least September 2004, the actual Platinum refund policy was not mentioned at  
17 all during the telephone sales presentation. After the consumer had agreed to pay and had given  
18 Platinum credit account or checking account information, the refund policy was hastily disclosed as  
19 part of a lengthy presentation read during the verification portion of the sales presentation, wherein the  
20 consumer’s address, account information, and payment authorization were confirmed. Many  
21 consumers either did not hear or did not understand the refund policy disclosed during the verification  
22 portion of the sales call. This disclosure also did not prevent consumers from being misled by express  
23 misrepresentations in the advertisements and sales presentations about the Platinum refund policy.

## 24 VIOLETIONS OF SECTION 5 OF THE FTC ACT

### 25 **COUNT ONE**

26 19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or  
27 practices in or affecting commerce. Misrepresentations or omissions of material fact constitute  
28 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

1 20. In numerous instances, in connection with the marketing of the Platinum program,  
2 defendants have represented, expressly or by implication, that:

- 3 a. Platinum is an insurance plan;
- 4 b. Platinum has an unconditional 30-day money back guarantee.

5 21. In truth and in fact:

- 6 a. Platinum is not an insurance plan;
- 7 b. Platinum did not have an unconditional 30-day money back guarantee.

8 22. Therefore, the representations set forth in Paragraph 20 are false and misleading and  
9 constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### 10 **COUNT TWO**

11 23. In numerous instances, in connection with the marketing of the Platinum program,  
12 defendants failed adequately to disclose that in order to obtain a refund consumers must pay a  
13 participating provider for services rendered under the Platinum program within the first 30 days of  
14 activating their memberships.

15 24. In light of the misrepresentation set forth in Paragraph 20.b, the failure to disclose the  
16 condition set forth in Paragraph 23 is a material omission and constitutes a deceptive act or practice in  
17 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### 18 **COMMON ENTERPRISE**

19 25. Defendants have operated as a common business enterprise while engaging in the  
20 deceptive acts and practices alleged above.

### 21 **CONSUMER INJURY**

22 26. Consumers throughout the United States have suffered substantial monetary loss as a  
23 result of defendants' unlawful acts and practices. In addition, defendants have been unjustly enriched  
24 as a result of their unlawful practices. Absent injunctive relief there is a reasonable likelihood that  
25 defendants will cause future injury to consumers.

### 26 **THIS COURT'S POWER TO GRANT RELIEF**

27 27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a  
28 permanent injunction against defendants' violations of the FTC Act and, in the exercise of its equitable

1 jurisdiction, to order such ancillary relief as rescission, restitution, and disgorgement of profits  
2 resulting from defendants' unlawful acts or practices.

3 28. This Court, in the exercise of its equitable jurisdiction may award other ancillary relief  
4 to remedy injury caused by defendants' law violations.

5 **PRAYER FOR RELIEF**

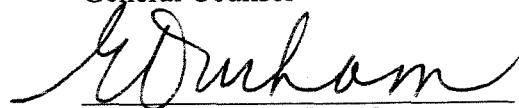
6 WHEREFORE, plaintiff pursuant to Sections 13(b) of the FTC Act, 15 U.S.C. § 53(b) and the  
7 Court's own equitable powers, requests that the Court:

- 8 a. Permanently enjoin the defendants from violating the FTC Act, as alleged  
9 herein;
- 10 b. Award such relief as the Court finds necessary to redress injury to consumers  
11 resulting from defendants' violations of the FTC Act including, but not limited  
12 to refund of monies paid; and
- 13 c. Award plaintiff the costs of bringing this action, as well as such other and  
14 additional relief as the Court may determine to be just and proper.

15  
16 Dated: 9/8, 2005

17 Respectfully Submitted,

18 WILLIAM BLUMENTHAL  
19 General Counsel

20 

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