

STATE OF TEXAS,
Plaintiff,

 \mathbf{V}_+

AMERICAN ARC MANAGEMENT CORPORATION D/B/A FAMILY HEALTH SECURE CARE AND SECURE HEALTH; FAMILY CARE, INC.; NATIONAL ASSOCIATION OF PREFERRED PROVIDERS; ASSOCIATION HEALTH CARE MANAGEMENT, INC. F/K/A ALTERNATIVE HEALTH CARE MANAGEMENT, INC. F/K/A PPO ASSOCIATION MANAGERS, INC., AND NOW D/B/A FAMILY CARE, FIRST HEALTHCARE AND FAMILY SELECT; A.H.C.M. TRAINING INSTITUTE, INC.; LIBERTY ARC, INC.; INTERNATIONAL BENEFITS SYSTEM, INC.; KRISTOPHER A. RABIE; MAHMOUD RABIE A/K/A MICHAEL RABIE A/K/A MIKE RABIE;
Defendants.

[illegible]

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

189th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this day came on to be considered the above-entitled and numbered cause in which the State of Texas is Plaintiff and American Arc Management Corporation d/b/a *Family Health, Secure Care and Secure Health*; Family Care, Inc.; National Association of Preferred Providers; Association Health Care Management, Inc., f/k/a *Alternative Health Care Management, Inc* f/k/a *PPO Association Managers, Inc.*, and now d/b/a *Family Care, First Healthcare and Family Select*; A.H.C.M. Training Institute, Inc.; Liberty Arc, Inc., International Benefits System, Inc.; Kristopher A. Rabie; and Mahmoud Rabie a/k/a Michael Rabie a/k/a Mike Rabie are Defendants. All parties, appearing herein, and through their attorneys of

record, wish to make the following stipulations and agree to and do not contest the entry of this Agreed Final Judgment.

It is stipulated that the parties have compromised and settled all claims stated by Plaintiff in this cause. Defendants deny the allegations made in Plaintiff's Original Petition and enter into this agreed judgment solely for the purpose to buy peace and end this litigation.

The Court then proceeded to read the pleadings and stipulations of the parties, and it appears to the Court that the parties agree to the entry of this judgment and that they have approved entry of this judgment.

1. **IT IS THEREFORE ORDERED** that Defendants, American Arc Management Corporation, Family Care, Inc., National Association of Preferred Providers, Association Health Care Management, Inc., A.H.C.M. Training Institute, Inc., Liberty Arc, Inc., International Benefits System, Inc., Kristopher A. Rabie, and Mahmoud Rabie, their officers, agents, servants, employees, and any other persons in active concert or participation with them who receive actual notice of this Agreed Final Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or devise, shall be restrained from engaging in the following acts or practices:

A. Accepting payments from consumers during the enrollment process unless at least one of the Defendants in cause no. 2005-29464:

1. Obtains a signed written or orally recorded consent or authorization¹ from each consumer to have the consumer's credit card charged or to

¹ Defendants or their authorized representatives shall tape record that portion of the sales verification verifying the payment authorization and the mandated disclosures required in paragraph 1.A.2 for each new member enrolled after the date of this agreement and maintain same for a period of three years.

have funds withdrawn in a specific amount and from a specific bank account before such funds are actually withdrawn; and

2. Discloses to consumers clearly and conspicuously the following terms and conditions associated with Defendants' health discount card plans prior to implementing a charge or withdrawing funds:
 - a. The plan is not insurance;
 - b. The existence and amount of an enrollment fee and whether or not it is refundable;
 - c. The amount of the monthly payment;
 - d. Consumers are responsible for the entire payment of their medical or health care bill after the discount is applied;
 - e. Hospitals may require a monetary deposit prior to admission for non-emergency inpatient services;
 - f. If the consumer is a Medicare/Medicaid recipient, he or she is only eligible for certain benefits associated with the plan and should inquire further as to the available benefits;
 - g. Any applicable waiting period for the Accidental Injury Protection and Accidental Death & Dismemberment plans to take effect, as well as any time limits for seeking medical treatment under these plans; and
 - h. Any other waiting periods and time limits for seeking medical treatment that may be associated with benefits sold as part of Defendants' health discount card plans;

- B. Representing to banks and financial institutions, expressly or by implication, that a particular consumer has authorized or agreed to an ACH withdrawal or debit, when in fact, none of the Defendants in Cause No. 2005-29464 have such authorization or agreement in their, or their authorized representative's, possession from said consumer;
- C. Advertising a money-back guarantee covering a specific period of time unless all money will be returned to the member and all of the terms and conditions of such guarantee, including specific cancellation procedures, are disclosed to the consumer during the enrollment process;
- D. Representing expressly or by implication to consumers that a Defendant's health discount card plan offers ranges of discounts or savings on health care services or access to ranges of discounts or savings on health care services, unless that Defendant has a factual basis for those representations and the discounts or savings represented are in fact realized by at least ten percent of that Defendant's or Family Care's members over a six month or greater time period within the preceding three years²;
- E. Representing expressly or by implication that a health care provider or health care facility accepts Defendants' health discount card plans unless, within the last twelve months, at least one of the Defendants in cause number 2005-29464 has confirmed with said provider or facility or with the network to which said provider or facility is contracted:
 - 1. The provider's or facility's current and correct contact information, including address;

² Defendants are not prohibited from referencing specific examples of customer savings when such examples are based in fact and do not imply that such savings are typical.

2. The provider or facility has agreed to accept payment from or bill consumers who are members in Defendants' plans at a discounted rate; and
 3. The provider or facility has agreed to accept a discounted amount as payment in full;
- F. Using customer testimonials unless:
1. The representations of savings have a factual basis;
 2. The savings are solely the result of using Defendants' health discount card plans and not the result of combining Defendants' plans with any other type of discount plan or insurance;
 3. The full name, address, city and state of the member is made available to the consumer upon request; and
 4. Any Defendant using customer testimonials must disclose if the member is or has been an employee, independent marketing representative or private label reseller that markets or sells Defendant's plans;
- G. Using the following terms of art from the insurance industry in any written communications and on Defendants' Websites which describe Defendants' health discount card plans: "preexisting conditions", "benefits", "coverage", "deductible", and "co-pay", unless the advertisement (including Membership Guides and Websites) states on the same page in the same or larger font, "This is not insurance."
- H. Allowing other persons or entities to sell or market any portion of any Defendant's health discount card plans without such Defendant contractually

requiring such other persons or entities to completely comply with the terms of this Agreed Final Judgment and contractually requiring such other persons or entities to present to the Defendant allowing such sales or marketing a copy of any Membership Guide or advertising materials for such Defendant's review in advance of dissemination to any members or prospective members;

- I. Stating on Defendants' Websites or in Defendants' Membership Guides or advertising materials that any payment to the provider at the time of service will necessarily completely satisfy the member's financial responsibility to the provider.

2. **IT IS FURTHER ORDERED** that Defendants, American Arc Management Corporation, Family Care, Inc., National Association of Preferred Providers, Association Health Care Management, Inc., A.H.C.M. Training Institute, Inc., Liberty Arc, Inc., International Benefits System, Inc., Kristopher A. Rabie, and. Mahmoud Rabie, their officers, agents, servants, employees and any other persons in active concert or participation with them who receive actual notice of this Agreed Final Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or devise, shall do the following:

- A. Clearly and conspicuously disclose to consumers prior to enrollment the complete terms and conditions of any refund policy, including but not limited to, the fact that a complete refund may not be given if that is the case;
- B. Disclose to consumers prior to enrollment or at any time when requested by a consumer and on Defendants' Websites that cancellation must be submitted in writing to a specifically disclosed address or fax number at which written

cancellations may be received as well as when such cancellations will be deemed effective³;

- C. Advise consumers of when any trial period begins to run if entitlement to a full or partial refund is applicable to such trial period⁴;
- D. Process a member's refund within ten (10) business days of the effective date of cancellation if Defendants have charged a member's credit card or withdrawn monies from a member's bank account after the effective date of cancellation of their membership and have actually received the member's funds;
- E.. Notify members thirty (30) days in advance of any elimination of category of service planned in advance by Defendants;
- F. Provide a phone number on the back of each new discount health card for providers and members to call in order to learn information regarding current network affiliates;
- G. Provide members information on whom to contact when and if Defendants' Websites are not operating;
- H. Include in facsimile solicitations, in at least 12 point font and type;
 - 1. The correct and complete name of the person making the facsimile solicitation and complete street address of the location of the person's place of business; and
 - 2. A toll-free or local exchange accessible telephone number of the person that is answered in the order in which calls are received by an individual capable of responding to inquiries from recipients of the

³ The effective date of cancellation shall be the date of the postmark plus three business days if sent by mail and the business day after receipt if sent by facsimile transmission.

⁴ Any trial period shall begin to run from the date of the postmark on the membership kit if sent by mail and from the date of delivery if sent by private carrier.

facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday or automatically and immediately deletes the specified telephone number of the recipient;

- I. Disclose to consumers in a clear and conspicuous manner in all oral and written communications prior to enrollment and on Defendants' Websites that Defendants' health discount card plans are not insurance;
- J. Disclose in bold, capital letters in 10 point font "**THIS IS NOT INSURANCE**" underneath Defendants' company name on the front of each membership identification card;
- K. Update Defendants' Websites within thirty (30) days from the date when Defendants become aware that provider information has changed or that benefits have been removed.

3. **IT IS FURTHER ORDERED** that Defendants, American Arc Management Corporation, Family Care, Inc., National Association of Preferred Providers, Association Health Care Management, Inc., A.H.C.M. Training Institute, Inc., Liberty Arc, Inc., International Benefits System, Inc., Kristopher A. Rabie, and Mahmoud Rabie, their officers, agents, servants, employees and any other persons in active concert or participation with them who receive actual notice of this Agreed Final Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or devise, shall utilize the following standards for reference pricing:

- A. A Defendant's reference prices shall be Defendant's regular prices or bona-fide prices of the type that Defendant represents them to be;

- B. Unless the reference price is a Defendant's own regular price for identical goods or services, Defendant's reference price advertising shall clearly and conspicuously state the basis for the reference price: that is, whether the reference price advertised is Defendant's regular price for comparable goods or services, Defendant's future price, Defendant's competitors' prices, or some other specified type of reference price;
- C. If a Defendant represents that the reference price is a Defendant's former price for the identical good or service or if a Defendant does not make any representation about the source of the reference price, the reference price shall be Defendant's regular price for that item;
- D. If a Defendant represents that the reference price is Defendant's price for an item that is comparable to the offered item, the price shall be Defendant's regular price for the comparable item and the comparable item shall be specifically identified, be of a grade and quality equivalent to the offered item, and not otherwise materially differ from the offered item;
- E. Any general claim by any Defendant of price reductions, sales, special pricing, promotional rates, promotions, or discounts shall refer to a meaningful reduction from the claiming Defendant's own regular price. If an advertisement directly or indirectly implies a price reduction, and it does not contain a reference price or representation of percentage savings, then, to be meaningful, the reduction shall be at least five percent less than the claiming Defendant's regular price if the claiming Defendant's regular price is more than one hundred dollars, and at least ten percent less than the claiming Defendant's

regular price if the claiming Defendant's regular price is one hundred dollars or less;

- F. A Defendant shall not advertise any price comparison or savings claim (including "Lowest Price" ads) unless the advertising Defendant can substantiate such claim according to the standards established in this Agreed Final Judgment and are in possession of such substantiation at the time the price comparison or savings claim is made. Any Defendant advertising such comparison or claim shall maintain sufficient documentation to demonstrate compliance with the standards set forth in this Agreed Final Judgment for a period of two years from the date of each claim or representation of any discount or savings;
- G. A beginning and ending date shall be conspicuously disclosed in writing in any of Defendant's sales, special pricing, discount, or similar type advertisements indicating a reduction from Defendant's regular price, as set forth herein;
- H. A Defendant's advertisements shall not contain language that falsely suggests, implicitly or explicitly, that to take advantage of an offer, consumers must act within a limited period of time when in fact, the merchandise will continue to be available at the advertised price beyond that period of time or will be available repeatedly at short intervals (more than once a month) at the advertised price. Likewise, a Defendant shall not falsely represent, implicitly or explicitly, that to take advantage of an offer, the consumer must act within a limited period of time, when in fact, the merchandise will continue to be available at the advertised price

beyond that period of time represented or will be available repeatedly at the advertised price at short intervals (more than once a month).

4. **IT IS FURTHER ORDERED** that, as used in this Agreed Final Judgment, the following terms are defined as follows:

- A. **"ACH" or "automated clearing house"** means any debiting of monies from a person's credit card or bank account by electronic means.
- B. **"Advertisement, advertise, advertising, and advertised"** refer to, but are not limited to, representations made by any Defendant in cause number 2005-29464 to consumers in the print or broadcast media, online, in brochures, flyers, direct mails, signs, or tags, whether outside of or on store-controlled premises and includes any method or means of disseminating information about Defendants' products and services.
- C. **"Bona Fide Price"** means a genuine price at which goods or services are offered and sold in the regular course of business. A price used for the purpose of establishing a fictitious higher price upon which a deceptive price comparison may be based is not a bona-fide price.
- D. **"Consumer"** means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state, who seeks or acquires, by purchase or lease, any goods or services.
- E. **"Defendants"** means American Arc Management Corporation *d/b/a Family Health, Secure Care and Secure Health*; Family Care, Inc.; National Association of Preferred Providers; Association Health Care Management, Inc. *f/k/a Alternative Health Care Management, Inc. f/k/a PPO Association Managers, Inc.*,

and now *d/b/a Family Care, First Healthcare and Family Select*; A.H.C.M. Training Institute, Inc.; Liberty Arc, Inc., International Benefits System, Inc.; Kristopher A. Rabie; and Mahmoud Rabie *a/k/a Michael Rabie a/k/a Mike Rabie*, their officers, agents, servants, employees, private label resellers, independent marketing representatives, marketing companies, advertising companies, and any other persons in active concert or participation with them whether acting directly or through any trust, corporation, subsidiary, division, or other devise.

- F. **“Discount”** means the difference between what a consumer would pay if paying the provider’s regular price without regard to insurance or discounts versus what the consumer would pay as a member of Defendants’ health discount card plans.
- G. **“Health discount card plan”** means a plan which purports to provide savings on health care related services of any kind or character, and any other ancillary products of any type or character associated with Defendants’ plans.
- H. **“Health care facility”** means any facility which provides health care related services of any type or character.
- I. **“Health care provider”** means doctors, dentists, chiropractors, nurses, nurse’s aides, physical therapists, lab technicians, and any other individual or entity which provides health care related services of any type or character.
- J. **“Health care services/Health care related services”** means physician care, hospitalizations, emergency care, prescription services, vision care, dental care, hearing care, chiropractic care, physical therapy, nursing home or assisted living

care, or any other services provided by a licensed, certified, credentialed, or recognized health care practitioner of any type or character.

- K. **"Members"** means an individual, partnership, corporation, or entity of any kind, who acquires by purchase any of Defendants' goods, services or products.
- L. **"Person"** means an individual, sole proprietorship, firm, partnership, corporation, association, political subdivision, joint venture or other group, or business entity, however organized.
- M. **"Private Label Reseller"** means any person who markets or sells all or part of Defendants' health discount card plans under their own corporate or assumed name.
- N. **"Reference Price"** means a price that a retailer, directly or by implication, compares to the price at which the retailer is currently offering or selling a good or service.
- O. **"Regular Price"** (or any phrase connoting regularity of pricing, including but not limited to, "original", "former", "normally", "was", "was/now", "ordinarily", "showroom", "retail", "list", "manufacturer's list", "manufacturer's suggested retail") means the actual bona-fide price at which Defendants offered the advertised good or service to the general public for over sixty percent of the time that Defendants offered the advertised good or service for sale within the twelve-month period immediately preceding the date of the advertisement.

P. **"Sell" or "market"** means any type of contact with a person or entity for the purpose of requesting, persuading, or seeking any type of contribution, sponsorship, compensation, or anything of value from said person or entity for any reason whatsoever.

Q. **"Verification"** means any means of memorializing the actual oral or written consent or authorization of a member or consumer relating to any product sold or leased by Defendants.

K **"Written Communication"** means any written material, including but not limited to, Defendants' sale brochures, Membership Guides, Websites, facsimile solicitations, letters, or electronic mail.

5. **IT IS FURTHER ORDERED** that the State of Texas have judgment and recover from Defendant, American Arc Management Corporation, the sum of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500) for reimbursement of the State's attorney fees, investigative costs, and court costs incurred in this case, which sum is for the benefit of the State of Texas, a governmental unit, and which is not compensation for any actual or pecuniary loss. Defendant American Arc Management Corporation shall tender to the State of Texas the sum of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500) after September 1, 2005 and before September 30, 2005. Defendant American Arc Management Corporation is ordered to deposit and retain the sum of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500) in a money market fund account at J.P. MorganChase Bank branch in Houston, Texas in Account No. 86606050835 to secure payment of these attorneys' fees, investigative costs and court costs pending tender of such payment to the State of Texas.

6. **IT IS FURTHER ORDERED** that Defendant, American Arc Management Corporation, is ordered to deposit and retain the sum of \$100,000 in a money market fund account at a J.P. MorganChase Bank branch in Houston, Texas, in Account No. 86606050843, for a period of 210 days subsequent to the signing of this Agreed Final Judgment by this court for the purpose of providing an available source of restitution to persons who seek a refund⁵ of monies they paid to Defendants, provided such refund has been sought or is sought within 180 days subsequent to the signing of this Agreed Final Judgment by the court. American Arc Management Corporation may agree that certain refunds should be paid from the \$100,000 retained in said money market account. If American Arc Management Corporation and the Office of the Attorney General of the State of Texas are unable to agree to either the amount or propriety of certain requested refunds, then in that event, this court shall hold a hearing (prior to the expiration of 210 days subsequent to the signing of this Agreed Final Judgment) so that the appropriateness of certain refund requests may be determined. All money retained in Account No. 86606050843, pursuant to this Agreed Final Judgment which is not refunded to persons requesting such by agreement of the parties or order of this court within 210 days of the signing of this Agreed Final Judgment, shall revert to and be released to Defendant American Arc Management Corporation for its full use and benefit. All other sums of money held by Defendants pursuant to the terms of the Agreed Interim Order in this case shall be released to Defendants for their use and benefit.

⁵ Persons may seek a refund of monies paid to any Defendant in this case for health discount card plans by (1) asking for a refund directly with the Defendants in writing in accordance with the refund policies in the Membership Guides, (2) by filing a written complaint with the Office of the Texas Attorney General, (3) by filing a written complaint with other State Attorneys' General which is forwarded timely to the Office of the Texas Attorney General, and (4) by filing a written complaint with the Better Business Bureau, Federal Trade Commission, Texas Department of Insurance, or any other governmental or quasi-governmental entity, provided such complaint is timely forwarded to, or received by, the Texas Attorney General's Office. If a Defendant receives an oral request for cancellation and the member indicates a desire for information with regard to where to send the written request for cancellation, that Defendant will provide the correct address for forwarding a written request for cancellation. Any Defendant to this case receiving a request for refund is ordered to forward notice of refund requests to the Texas Attorney General's Office within ten days of receipt thereof by Defendants. The Texas Attorney General's

7. Defendants Family Care, Inc., National Association of Preferred Providers, and Association Health Care Management, Inc. ("Family Care") market their discount health care plans through private label resellers and independent marketing representatives. These Family Care companies agree and are ORDERED to include in their contracts with their private label resellers and independent marketing representatives requirements that they comply with all applicable terms of this Agreed Final Judgment. Based upon these agreements by Family Care, Plaintiff agrees to notify Family Care of any perceived violations of this Agreed Final Judgment committed by its private label resellers or independent marketing representatives at least thirty (30) days before it seeks any relief from this Court against Family Care relating to any such perceived violation so as to give Family Care an opportunity to cure any such violation of this Agreed Final Judgment by its agents, to terminate said agency with such reseller or marketer, or to convince Plaintiff that no such violation of this Agreed Final Judgment exists. If Family Care complies with one or more of the three alternatives mentioned in the preceding sentence during the 30-day notice period, Plaintiff will not seek any relief from this Court against Family Care relating to any such perceived violation.

8. The clerk of the court is hereby directed to issue a Writ of Permanent Injunction to each Defendant and to issue such writs of execution or other process necessary to enforce this Agreed Final Judgment.

9. **IT IS FURTHER ORDERED** that all other costs of court expended or incurred in this cause be borne by the party incurring the same.

10. All relief not expressly granted herein is denied.

Office is ordered to forward notice of refund requests to American Arc Management Corporation and Association Health Care Management, Inc. within ten days of receipt thereof by the Texas Attorney General's Office.

SIGNED this _____ day of _____, 2005.

JUDGE PRESIDING

AGREED:

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Attorney General of Texas

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**Attorney for Defendants, Kristopher A. Rabie,
American Arc Management Corporation, and
Liberty Arc, Inc.**

**Mahmond (Michael) Rabie, Individually
and on behalf of Family Care, Inc., National
Association of Preferred Providers, Association
Health Care Management, Inc., A.H.C.M.
Training Institute, Inc. and International
Benefits System, Inc.**

**Kristopher A. Rabie, Individually and on behalf
of American Arc Management Corporation, and
Liberty Arc, Inc.**

