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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case 14-23109-CV-SCOLA

FEDERAL TRADE COMMISSION,  
Plaintiff,

vs.

PARTNERS IN HEALTH CARE ASSOCIATION, INC.,  
doing business as Partners in Health Care,  
INC., GARY L. KIEPER, UNITED SOLUTIONS GROUP,  
INC., WALTER S. VARGAS, CONSTANZA GOMEZ VARGAS,

Defendants.

COURTROOM 12-3

MIAMI, FLORIDA

SEPTEMBER 4, 2014

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PRELIMINARY INJUNCTION HEARING  
BEFORE THE HONORABLE ROBERT N. SCOLA, JR.  
UNITED STATES DISTRICT JUDGE

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FOR THE PLAINTIFF:

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09:12:41 1 THE COURT: Good morning everyone. Welcome. Please be  
09:12:44 2 seated.

09:13:12 3 All right. Our first matter this morning is the  
09:13:16 4 Federal Trade Commission v. Partners in Health Care Association,  
09:13:22 5 Inc., et al.

09:13:23 6 Who is here on behalf of the Federal Trade Commission?

09:13:27 7 MR. IVENS: Gary Ivens for the Federal Trade  
09:13:29 8 Commission.

09:13:30 9 THE COURT: You need to speak into the microphone. Is  
09:13:32 10 there a microphone there?

09:13:33 11 MR. IVENS: Gary Ivens for the Federal Trade  
09:13:35 12 Commission.

09:13:37 13 MR. BROWN: Good morning, Your Honor. Christopher  
09:13:39 14 Brown also for the Federal Trade Commission.

09:13:40 15 THE COURT: Good morning. Who is here on behalf of  
09:13:42 16 Partners in Health Care Association, Inc.?

09:13:44 17 MR. GRUMER: Keith Grumer and Madeline Macaluso on  
09:13:48 18 behalf of Partners in Health Care and also on behalf of Gary L.  
09:13:52 19 Kieper.

09:13:55 20 THE COURT: All right. Good morning. Who is here on  
09:13:56 21 behalf of United Solutions Group, Inc.?

09:14:00 22 MR. ROGOW: Bruce Rogow and Tara Campion for United  
09:14:04 23 Solutions and for the Vargas defendants.

09:14:08 24 THE COURT: Walter S. Vargas and Constanza Gomez  
09:14:15 25 Vargas?

09:14:17 1 MR. ROGOW: Yes.

09:14:17 2 THE COURT: Are there any other defendants or any other  
09:14:18 3 appearances?

09:14:18 4 MR. ROGOW: There are not. Also with me, Your Honor,  
09:14:19 5 is Resa Vargas who is a paralegal with us, who is the daughter  
09:14:26 6 of Constanza Vargas.

09:14:28 7 THE COURT: All right. And who is here on behalf of  
09:14:32 8 the receiver?

09:14:34 9 MR. PECAN: Good morning, Your Honor. Larry Pecan on  
09:14:37 10 behalf of the receiver, Peter Russin.

09:14:39 11 THE COURT: All right. Good morning. This is set for  
09:14:41 12 a preliminary injunction hearing. Is everybody ready to go  
09:14:45 13 forward with the hearing?

09:14:46 14 MR. IVENS: Yes, Your Honor.

09:14:50 15 MR. GRUMER: We are, Your Honor.

09:14:50 16 THE COURT: Okay. So go ahead.

09:14:59 17 MR. IVENS: Your Honor, the Federal Trade Commission --  
09:15:05 18 it seems a bit loud -- as you know, obtained a temporary  
09:15:09 19 restraining order on August 25th. We served the order on August  
09:15:13 20 27th and went into the premises of the corporate defendants  
09:15:17 21 after the receiver was appointed.

09:15:20 22 We have brought with us, if the Court deems it  
09:15:22 23 necessary to have live testimony, two Federal Trade Commission  
09:15:26 24 investigators, John Aiken who was present at the Wisconsin site  
09:15:30 25 and Manuela Esparza who was present at the Miami site.

09:15:35 1 We have contacted consumers who recently purchased the  
09:15:39 2 medical discount card that is at issue in the case. Although we  
09:15:42 3 haven't been able to give notice to the Court or to the other  
09:15:45 4 side, some consumers are available by telephone, again if the  
09:15:48 5 Court decides that it wants to hear live testimony about the  
09:15:51 6 ongoing misrepresentations that were being made with respect to  
09:15:54 7 health insurance and the actual delivery of the medical discount  
09:15:58 8 card.

09:15:59 9 But to make a long story short --

09:16:01 10 THE COURT: You are asking if the Court wants to hear  
09:16:03 11 it. It is your burden. Obviously, I was allowed to rely on the  
09:16:11 12 affidavits and information in issuing the original order. At a  
09:16:13 13 hearing am I allowed to just rely on all the affidavits and  
09:16:17 14 information without live testimony?

09:16:19 15 MR. IVENS: You certainly can, Your Honor. You can  
09:16:21 16 certainly take it by argument. You can also rely on  
09:16:27 17 receivership testimony if that is what you prefer. The way the  
09:16:31 18 temporary restraining order was structured, this was to be --

09:16:33 19 THE COURT: I prefer that all my cases are settled and  
09:16:35 20 I can play golf and tennis all day long. Once we are in a  
09:16:40 21 contested hearing, it is your case. You tell me what you want  
09:16:43 22 to put on. I don't have any preference for anything. Whatever  
09:16:46 23 the legal standing you think you need to meet is, you go forward  
09:16:50 24 and put on whatever evidence you want to present.

09:16:52 25 I don't tell you. If I am in a trial, I don't say,

09:16:55 1 "Look, I would like the Government to put on this witness," even  
09:16:59 2 if it is a nonjury trial. It is your case, so whatever you  
09:17:02 3 think you need to prove it.

09:17:04 4 If you are telling me legally I can rely on all these  
09:17:07 5 things and you are not going to put on any live witnesses, then  
09:17:11 6 fine. If you want to put on anything else that you think you  
09:17:14 7 need to prove whatever you need to prove, then do that. I don't  
09:17:17 8 have any preferences.

09:17:18 9 MR. IVENS: Then, Your Honor, we would put on very  
09:17:20 10 limited live testimony to show what was discovered since the  
09:17:22 11 issuance of the temporary restraining order further to support  
09:17:27 12 our show cause motion for the preliminary injunction.

09:17:30 13 THE COURT: Okay. So who is the first witness you want  
09:17:32 14 to call?

09:17:32 15 MR. IVENS: We call John Aiken to the stand.

09:17:35 16 THE COURT: All right. Please come forward.

09:17:42 17 MR. ROGOW: Your Honor, may I be heard because I think  
09:17:45 18 we can shorten some of this, and I think there is really just  
09:17:48 19 one issue in the case.

09:17:49 20 THE COURT: Okay.

09:17:55 21 MR. ROGOW: Mr. Ivens and I have spoken. There really  
09:17:59 22 is no factual dispute in terms of the restraining order. In  
09:18:04 23 fact, my company, United Solutions, is not going to do business  
09:18:08 24 any more, so there is no real need to do anything with them  
09:18:13 25 other than we can agree -- we don't agree with all of the

09:18:17 1 characterizations, but we can agree they are not going to do  
09:18:20 2 business any more.

09:18:21 3 THE COURT: Okay.

09:18:22 4 MR. ROGOW: The only issue for United Solutions and the  
09:18:25 5 Vargases -- and I can't speak for Partners in Health Care  
09:18:28 6 obviously -- is whether or not Banestral, a company that shares  
09:18:32 7 space with them and has Walter Vargas on both sides, Banestral  
09:18:38 8 and United Solutions, whether or not Banestral can be carved out  
09:18:43 9 of this restraining order.

09:18:44 10 When the FTC came in -- and this TRO which was very  
09:18:49 11 broadly phrased in term of affiliates -- they swooped up  
09:18:55 12 Banestral. Banestral is a company that sells vacations. They  
09:18:59 13 are on the 9th Floor of 28 West Flagler.

09:19:03 14 The company is owned by Walter Vargas, Banestral. He  
09:19:12 15 is a director of Banestral and an officer, and he also happens  
09:19:17 16 to be an officer of United Solutions, and that is what has  
09:19:21 17 caused the Government some problems.

09:19:22 18 They think the two are affiliated, and I need to carve  
09:19:26 19 out Banestral. My discussion with Mr. Ivens has been: Can we  
09:19:30 20 carve out Banestral? He seems not to be convinced yet that  
09:19:34 21 Banestral is a separate entity.

09:19:36 22 Now, Mr. and Mrs. Vargas were divorced in 2010, but  
09:19:40 23 nicely they share space on the 9th Floor of this building.  
09:19:45 24 United Solutions is a separate company, and Banestral is  
09:19:49 25 separate from United Solutions.



09:19:52 1 The overlap seems to be the son, Walter Vargas, who is  
09:19:56 2 22 years old, who is a much better English speaker, and so he  
09:20:00 3 has done some things for United Solutions, but that doesn't make  
09:20:04 4 Banestral an affiliate of United Solutions.

09:20:08 5 So for me the only evidence I want to put on is  
09:20:11 6 evidence that would carve out Banestral. I don't want to have  
09:20:14 7 to cross-examine any of this other evidence. I need Banestral  
09:20:18 8 to be separated. If Banestral is separated, they can afford to  
09:20:22 9 pay counsel for United Solutions and the fact that the Vargases  
09:20:27 10 are together, even though they are divorced, I think is a very  
09:20:30 11 nice and commendable thing.

09:20:32 12 But the fact that they are working on the same floor,  
09:20:35 13 that the offices are on the same floor, the fact that there is,  
09:20:38 14 because of Walter Vargas, some commonalty has led the FTC to be  
09:20:43 15 concerned about letting go of Banestral, but that's what this  
09:20:49 16 case is all about as far as we are concerned: Can Banestral be  
09:20:52 17 carved out?

09:20:53 18 I am ready to put on testimony and have it be subject  
09:20:57 19 to cross-examination about why Banestral is a separate company.  
09:21:01 20 So that is the only issue for us in this case.

09:21:04 21 THE COURT: Okay. All right. Mr. Grumer, let me hear  
09:21:09 22 your position on this morning's proceedings.

09:21:15 23 MR. GRUMER: Thank you, sir. We, too, have a similar  
09:21:21 24 situation inasmuch as we're prepared and we extended to the  
09:21:27 25 Federal Trade Commission, Mr. Ivens, a willingness to stipulate

09:21:33 1 as to not to violate FTC telemarketing restrictions in the  
09:21:39 2 future and to immediately enter into such injunction; however,  
09:21:49 3 my client, Mr. Kieper, believes that this is a legitimate  
09:21:55 4 business and wishes to operate it and has proposed reopening,  
09:22:04 5 not the telemarketing aspect of this business, but servicing the  
09:22:08 6 customers and the subscribers that are currently in place.

09:22:14 7 We are in a situation where, because the receiver has  
09:22:20 8 locked out Mr. Kieper from his Wisconsin facilities and has  
09:22:26 9 seized all of the records, we are incredibly handcuffed and  
09:22:32 10 blindfolded.

09:22:34 11 1. We cannot complete the court-ordered forms without  
09:22:37 12 access to our own records which the receiver announced yesterday  
09:22:43 13 in his filing that he has already duplicated.

09:22:47 14 So why do those restrictions remain in place? We have  
09:22:51 15 attempted to reach the receiver and have asked for access, but  
09:22:55 16 as of yesterday, even before the filing of that report, those  
09:22:58 17 calls went unresponded to.

09:23:01 18 2. We proposed a business plan going forward, but the  
09:23:07 19 receiver wants that business plan in writing but without access  
09:23:13 20 to not only the records, but there is a computer software called  
09:23:18 21 Enrollment 1-2-3, those items have been frozen and we have no  
09:23:24 22 access to them and we cannot complete the additional requirement  
09:23:28 23 imposed upon us, not in your order, but by the receiver to  
09:23:33 24 submit a written business plan.

09:23:35 25 THE COURT: But I thought that that software was to

09:23:37 1 sign up new clients. If your business plan going forward is  
09:23:40 2 just to service existing customers, why would you need that?

09:23:44 3 MR. GRUMER: Once they are enrolled, all of their  
09:23:46 4 information is in that.

09:23:48 5 THE COURT: You need that software to find out who is  
09:23:50 6 already in the program so you can service them?

09:23:53 7 MR. GRUMER: Yes.

09:23:54 8 THE COURT: Okay.

09:23:55 9 MR. GRUMER: As well as we have health care providers.  
09:23:59 10 For example, the Tri-Resource Group is the branch of this  
09:24:04 11 business that does customer service.

09:24:06 12 THE COURT: Okay.

09:24:07 13 MR. GRUMER: Tri-Resource Group, not a named defendant,  
09:24:11 14 that has been frozen. We are locked out. The phones were  
09:24:17 15 receiving 40 to 50 calls sometimes per hour, not from  
09:24:22 16 solicitations but from existing enrollees, and they cannot be  
09:24:27 17 serviced, so we would propose two steps.

09:24:30 18 The first step would be to allow Tri-Resource to  
09:24:36 19 service the existing enrollees, of course under receivership  
09:24:43 20 supervision, but we have also gone out and have engaged a  
09:24:46 21 specialized telemarketing compliance firm and I believe the FTC  
09:24:55 22 counsel is already familiar with Dean and Andrew Garfinkle who  
09:25:02 23 have written several of the manuals and are used by other courts  
09:25:05 24 in these types of situations, so they have already been vetted.  
09:25:10 25 They are preapproved in a number of proceedings.

09:25:13 1 We would seek, obviously, the Court's approval. We  
09:25:15 2 need to be able to retain them as well as specialized counsel  
09:25:20 3 focusing on getting the proper authorization, Mitch Roth out of  
09:25:27 4 Washington, D.C., and once we have -- then we would consider,  
09:25:32 5 with the Court's permission, opening up the other phase of this  
09:25:36 6 business.

09:25:36 7 The disagreement that we currently have with the  
09:25:39 8 receiver is we believe the receiver is advocating that this is  
09:25:45 9 not a legitimate business. It is our position it is a  
09:25:48 10 legitimate business. It is not an insurance business and if it  
09:25:53 11 has been misrepresented in those calls, that's prohibited and we  
09:25:59 12 consent to that aspect of the injunction.

09:26:02 13 Mr. Kieper was in the process of terminating  
09:26:07 14 independent phone solicitors and was in the process of opening  
09:26:11 15 his own call center under his direct supervision and had  
09:26:16 16 actually terminated several of these independent companies prior  
09:26:21 17 to the FTC coming in, and had there been any sort of advance  
09:26:26 18 notice there could have been some discussion, but be that as it  
09:26:28 19 may, we are prepared to work with the FTC and come into  
09:26:33 20 compliance before reopening that aspect of the business.

09:26:38 21 But we believe that we should be able to and we won't  
09:26:42 22 stipulate to the freezing of the current servicing of those  
09:26:45 23 enrolled parties.

09:26:48 24 THE COURT: Let me ask you a question: Of the people  
09:26:50 25 who are enrolled, is there an ongoing monthly payment that they

09:26:55 1 have to make to continue to be enrolled?

09:26:57 2 MR. GRUMER: Yes.

09:26:58 3 THE COURT: So if those people were -- at least some of  
09:27:02 4 them defrauded into getting into it, then by just like  
09:27:05 5 continuing to service the customer, they are paying money into  
09:27:11 6 something on a continuing basis that they should never pay  
09:27:16 7 anything for.

09:27:17 8 MR. GRUMER: We understand that there were excessive  
09:27:22 9 misrepresentations done by the independent phone solicitors. We  
09:27:27 10 don't believe that there have been those misrepresentations made  
09:27:32 11 by the in-house group and we have made it clear -- there are  
09:27:37 12 several places where it is put out that this is not insurance.

09:27:41 13 We understand the high burden and the skepticism with  
09:27:46 14 which we appear before the Court, but Mr. Kieper has been in the  
09:27:51 15 business in excess of 40 years. A fair amount of his experience  
09:27:57 16 was in selling insurance products to senior citizens and, yes,  
09:28:01 17 there were agents that sold and stole money from these people.  
09:28:06 18 Yes, there was bad behavior, but he immediately terminated any  
09:28:11 19 such prior incident and was in the process of addressing this  
09:28:16 20 business.

09:28:16 21 Perhaps he grew it too fast. Perhaps he lost controls.  
09:28:22 22 We are prepared to engage the professionals to place those  
09:28:26 23 proper controls in there.

09:28:28 24 So from an evidentiary standpoint, we stipulate that  
09:28:35 25 violations occurred and further stipulate that we will not

09:28:39 1 violate in the future. What we request is more in the lines of  
09:28:44 2 the scope and breadth of the injunction and we were unable to  
09:28:53 3 resolve that with the FTC or the receiver yesterday.

09:28:55 4 THE COURT: Okay. All right. Thank you.

09:28:57 5 Now that we have that understanding, it seems -- yes.

09:29:04 6 MR. PECAN: Would you like to hear from --

09:29:06 7 THE COURT: Not yet.

09:29:07 8 MR. PECAN: Thank you.

09:29:08 9 THE COURT: It seems to me that the issues relating to  
09:29:09 10 the Partners in Health Associations and the United Solutions  
09:29:13 11 Group are kind of different, so let's start with -- Mr. Rogow  
09:29:21 12 brought it up first. Let's start with his issue relating to the  
09:29:24 13 connection or lack of connection between Banestral and United  
09:29:27 14 Solutions.

09:29:27 15 Do you want to put on -- would it be the same witness  
09:29:29 16 you would be calling on that issue or is there somebody else you  
09:29:32 17 want to call?

09:29:33 18 MR. IVENS: We would call a different witness for that  
09:29:36 19 aspect of the case, Your Honor.

09:29:37 20 THE COURT: Okay. Who is that witness?

09:29:39 21 MR. IVENS: We call --

09:29:42 22 MR. BROWN: Manuela Esparza, Your Honor.

09:29:45 23 THE COURT: You almost made it on the stand.

24 MANUELA ESPARZA, PLAINTIFF'S WITNESS, SWORN.

09:30:17 25 THE WITNESS: Manuela Esparza, E-s-p-a-r-z-a.

DIRECT EXAMINATION

09:30:24 2 [Beginning at 9:30 a.m., 9/4/14.]

09:30:25 3 BY MR. BROWN:

09:30:25 4 Q. Good morning, Ms. Esparza.

09:30:28 5 A. Good morning.

09:30:28 6 Q. Could you state for the Court where it is that you are  
09:30:30 7 employed?

09:30:31 8 A. I work for the Federal Trade Commission.

09:30:32 9 Q. What do you do for the Federal Trade Commission?

09:30:35 10 A. I am an investigator.

09:30:36 11 Q. And are you solely an English investigator or do you speak  
09:30:41 12 other languages?

09:30:42 13 A. No, I'm sorry. I am a bilingual investigator. I speak  
09:30:45 14 Spanish as well.

09:30:45 15 Q. What are your responsibilities at the Federal Trade  
09:30:47 16 Commission as an investigator?

09:30:48 17 A. Some of my responsibilities are -- we receive customer  
09:30:51 18 complaints and we investigate them. I look into the complaint,  
09:30:56 19 look into companies and see if they are following the rules that  
09:30:59 20 we have in place and if not, then we seek a certain, I guess,  
09:31:07 21 law to make them obey, but anyways, we -- so in this case, we go  
09:31:11 22 to immediate access which is basically where we enter the  
09:31:15 23 premises and gather additional evidence in support of our --  
09:31:18 24 already our previous claims.

09:31:21 25 Q. Are you familiar with the case at issue before us today?

09:31:24 1 A. Yes, I am.

09:31:24 2 Q. And what was the nature of your involvement in this case?

09:31:28 3 A. I was one of the assigned investigators. I also did the  
09:31:31 4 undercover -- some of the undercover work and I was assigned to  
09:31:35 5 come down to Miami to do the immediate access.

09:31:37 6 Q. You mentioned this term "immediate access." Could you  
09:31:39 7 describe for the Court what that is?

09:31:41 8 A. Yes. Immediate access is when the Court grants us  
09:31:44 9 permission to have access to the business premises and gather  
09:31:48 10 additional information that we need to support our claims.

09:31:51 11 Q. And where did the immediate access occur that you were  
09:31:54 12 involved in?

09:31:55 13 A. It was here in Miami, 28 West Flagler Street in Suite 900.

09:32:02 14 Q. Could you describe when that immediate access occurred?

09:32:06 15 A. Yes. It was the 27th, I believe, yes, last Wednesday.

09:32:10 16 Q. And can you describe how that immediate access progressed?

09:32:13 17 A. Yes. We entered the premises along -- well, first the  
09:32:17 18 receiver and law enforcement enter the premises. Then, after  
09:32:20 19 they secured the location, then the FTC was allowed to enter and  
09:32:26 20 just basically begin searching for our evidence.

09:32:29 21 Q. Upon entering the 28 West Flagler Street, Suite 900 business  
09:32:34 22 premises, what did you see?

09:32:35 23 A. There was -- initially when you enter there were one, two --  
09:32:38 24 there were four offices there. On the left there was Mr. Jaime  
09:32:43 25 Vargas, then Ivan González, Ms. Constanza Gomez and Walter



09:32:48 1 Vargas and then on the right side there were two boiler rooms.

09:32:51 2 THE COURT: I'm sorry. You said Jaime Vargas?

09:32:54 3 THE WITNESS: Jaime Vargas, Ivan González, Constanza

09:32:59 4 Gomez and Walter Vargas.

09:33:04 5 BY MR. BROWN:

09:33:04 6 Q. What else did you see in addition to those four offices?

09:33:06 7 A. There were two boiler rooms or customer service rooms where  
09:33:12 8 telemarketers sit and make or receive calls.

09:33:17 9 Q. Based on your entry and your examination of the premises,  
09:33:22 10 who did you understand to be located there at the premises?

09:33:26 11 A. Well, when we initially started obviously we thought it was  
09:33:28 12 just United Solutions, but then after looking around we realized  
09:33:32 13 that there were more companies. There was Mega Vacaciones, or  
09:33:38 14 Mega Vacations in English, and then there was -- we saw some  
09:33:42 15 other information for Banestral Group and World Parcel Express  
09:33:48 16 Services, WPES.

09:33:51 17 THE COURT: Say that again.

09:33:52 18 THE WITNESS: World Parcel Express Services, also known  
09:33:55 19 as WPES.

09:33:59 20 BY MR. BROWN:

09:33:59 21 Q. So what did you first do upon entering the premises?

09:34:03 22 A. Well, I started gathering evidence in the customer service  
09:34:07 23 area for United Solutions and, you know, just gathered what we  
09:34:11 24 needed to support our claim, scripts, anything that we could  
09:34:14 25 find, and then I moved to the offices.

09:34:18 1 One of them was Walter Vargas' and started looking  
09:34:22 2 through his paperwork and just -- like I said, we are trying to  
09:34:24 3 find evidence to support our claim so that's what I was looking  
09:34:27 4 for.

09:34:27 5 Q. Okay. Let me take you back to -- you mentioned the first  
09:34:30 6 rooms that you began to enter, the customer service or the  
09:34:32 7 boiler rooms?

09:34:33 8 A. Right.

09:34:33 9 Q. What kind of documentation did you discover there?

09:34:37 10 A. We -- I found customer complaints. There was scripts,  
09:34:44 11 customer complaints at both locations, for United Solutions and  
09:34:47 12 for Mega Vacaciones and that is basically -- not in the customer  
09:34:54 13 service area, but in the receptionist area there was employee  
09:34:59 14 lists.

09:35:01 15 Q. So can you describe the scripts that you found in the  
09:35:03 16 customer service area for the Court?

09:35:05 17 A. Yeah, some of the scripts were when somebody calls in, what  
09:35:08 18 do you tell them, and then if somebody complains, hey, this is  
09:35:11 19 not insurance, what do you tell them. So rebuttals to customers  
09:35:16 20 either after they receive the card or any kind of rebuttal.  
09:35:19 21 There were several rebuttals there pointed out in scripts.

09:35:25 22 Q. After you gathered documentation from the customer service  
09:35:28 23 rooms, then where did you proceed? Did you proceed anywhere  
09:35:31 24 else?

09:35:31 25 A. Yes. I went to the offices.

09:35:34 1 THE COURT: Getting back to the boiler rooms, were the  
09:35:37 2 documents in one boiler-room different, like do they have --  
09:35:42 3 different from the documents in the other boiler-room?

09:35:45 4 THE WITNESS: Yes, Your Honor, they were.

09:35:46 5 THE COURT: And how were they different?

09:35:48 6 THE WITNESS: Well, the United Solutions part focused  
09:35:51 7 mainly on the health aspect and the Mega Vacations boiler room  
09:35:56 8 had scripts and rebuttals also for customers, just on the  
09:36:00 9 vacation aspect of it.

09:36:02 10 THE COURT: It would appear that one of the rooms was  
09:36:04 11 used for United Solutions and the other room was used for Mega  
09:36:08 12 Vacations?

09:36:09 13 THE WITNESS: Correct, yes.

09:36:10 14 THE COURT: Okay.

09:36:11 15 BY MR. BROWN:

09:36:11 16 Q. So what room did you enter into next after the boiler room?

09:36:15 17 A. I went into the office of, I believe it was Walter Vargas.

09:36:19 18 Q. Okay. What documentation, if any, did you discover there?

09:36:23 19 A. I found it was a check, a check that was paid to, I believe,  
09:36:30 20 the renter or -- it appeared to be -- from World Parcel Express  
09:36:35 21 Services to maybe the leasing -- maybe for leasing or something  
09:36:39 22 like that, for rent for the premises, for the Suite 900  
09:36:43 23 premises.

09:36:45 24 Q. Based on your investigation during the immediate access,  
09:36:49 25 what is your understanding of who Mr. Walter Vargas is?

09:36:53 1 A. The CEO of both companies actually based on his business  
09:36:57 2 card. That is what his business card says.

09:36:59 3 Q. When you say both companies, which companies are you  
09:37:02 4 referring to?

09:37:03 5 A. Actually not both, let me take that back. Based on his  
09:37:06 6 business card, it is Banestral Group, World Parcel Express  
09:37:11 7 Services and United Solutions.

09:37:21 8 MR. BROWN: Your Honor, if I may, I would like to hand  
09:37:22 9 up what has been previously marked as Plaintiff's Exhibit  
09:37:27 10 Number 40.

09:37:28 11 THE COURT: All right. Do you have any objection to  
09:37:30 12 that?

09:37:33 13 MR. ROGOW: I haven't seen it, Your Honor. No  
09:37:44 14 objection.

15 [Plaintiff Exhibit 40 received in evidence at 9:44 a.m.]

09:37:44 16 THE COURT: You can show it on the ELMO.

09:38:05 17 BY MR. BROWN:

09:38:05 18 Q. Ms. Esparza, do you recognize this document?

09:38:09 19 A. Yes, I do.

09:38:09 20 Q. How do you recognize this document?

09:38:11 21 A. It was one of the business cards obtained from Mr. Vargas'  
09:38:19 22 office.

09:38:19 23 THE COURT: You were telling us it was Walter Vargas'  
09:38:21 24 office. Who is Steven Vargas?

09:38:22 25 THE WITNESS: I don't know if that is his middle name

09:38:25 1 or how -- Walter Steven Vargas, but he goes by both so I don't  
09:38:29 2 know how that works.

09:38:31 3 THE COURT: Okay.

09:38:32 4 BY MR. BROWN:

09:38:32 5 Q. Could you describe the business card for the Court? When  
09:38:35 6 you obtained this, what did you notice about the business card,  
09:38:38 7 if anything?

09:38:38 8 A. Well, I noticed that he was first the CEO for both  
09:38:42 9 companies, United Solutions and WPES International and that is  
09:38:46 10 on the front of the card and on the back of the card I noticed  
09:38:49 11 that he represented -- there was four businesses on the back of  
09:38:51 12 his card which is, like I said before, Banestral Group, United  
09:38:58 13 Solutions, WPES and Mega Vacations.

09:38:59 14 Q. Who is WPES International? What is your understanding of  
09:39:04 15 what that entity is?

09:39:05 16 A. Based on some of the payment information that I saw, it  
09:39:08 17 appears that they are either processing payments for Banestral  
09:39:11 18 Group or Mega Vacations so that is what I -- based on the  
09:39:16 19 payment sources that we saw.

09:39:17 20 Q. And could you describe -- based on your investigation of the  
09:39:20 21 premises, can you describe the entity known as Mega Vacations?

09:39:27 22 A. Mega Vacations, based on what I saw, is a company that  
09:39:32 23 advertises vacation packages to South America, specifically  
09:39:35 24 Colombia, Perú and Mexico, and they offer very inexpensive  
09:39:42 25 packages for people to come and, you know, take a vacation here

09:39:47 1 or Dominican Republic, Cancún, other places.

09:39:51 2 Q. Where does Mega Vacations market its travel packages?

09:39:55 3 A. What I saw was Colombia, was the main one, Perú and Mexico.

09:40:01 4 Q. And do you know if Mega Vacations has a presence in any of

09:40:06 5 those countries?

09:40:07 6 A. I do. I do based on some of the research I did and they do

09:40:13 7 have a presence in all three.

09:40:16 8 Q. During your investigation pursuant to the immediate access,

09:40:21 9 did you discover any other business cards at the premises?

09:40:23 10 A. Yes. I also saw Mr. Jaime Vargas' card and Ms. Constanza

09:40:27 11 Gomez's card.

09:40:28 12 Q. Who is Mr. Jaime Vargas?

09:40:31 13 A. He is an officer for Mega Vacaciones. Well, based on his

09:40:36 14 business card, on the back of the business card is exactly like

09:40:40 15 Mr. Steven Vargas. It has the four companies, which are

09:40:43 16 Banestral, United Solutions, Mega Vacations and WPES and he is

09:40:48 17 an officer for Mega Vacations.

09:40:51 18 Q. You said you also found a business card for Constanza Gomez?

09:40:56 19 A. Correct.

09:40:56 20 Q. Could you describe her business card for the Court?

09:40:59 21 A. Yes. Her business card is exactly like Mr. Vargas' except

09:41:03 22 that her job title is different, but on the back of the card it

09:41:06 23 also represents WPES, Banestral Group, Mega Vacations and United

09:41:12 24 Solutions and she is also listed as an officer for the

09:41:14 25 company -- one of the companies.

09:41:20 1 MR. BROWN: Your Honor, I would like to show the  
09:41:22 2 witness what has been marked as Plaintiff's Exhibit Number 41 if  
09:41:24 3 I may.

09:41:25 4 THE COURT: All right. Show it to opposing counsel.

09:41:31 5 MR. ROGOW: No objection.

09:41:35 6 THE COURT: All right. So that will be received in  
09:41:37 7 evidence for this hearing.

8 [Plaintiff Exhibit 41 received in evidence at 9:44 a.m.]

09:41:46 9 BY MR. BROWN:

09:41:46 10 Q. Ms. Esparza, I am showing you what has been previously  
09:41:56 11 marked as Plaintiff's Exhibit 41. Do you recognize this  
09:41:58 12 document?

09:41:59 13 A. Yes, but can you move it -- can you move it a little bit  
09:42:03 14 down on my screen, it is not showing the top, please. There.  
09:42:08 15 Thank you.

09:42:22 16 Q. How do you recognize -- do you recognize this document?

09:42:24 17 A. Yes. It was a document that was obtained during the  
09:42:28 18 immediate access from the receptionist area.

09:42:33 19 Q. And can you describe this document for the Court?

09:42:36 20 A. Yes. The document is Banestral Group USA and it lists -- it  
09:42:41 21 has all the employees that work under Banestral Group and it has  
09:42:48 22 their name, it has their position and it has their department  
09:42:50 23 for which they work for under Banestral Group.

09:42:54 24 Q. Okay. Based on this document, what is your understanding of  
09:42:58 25 the departments that make up Banestral Group?

09:43:00 1 A. Based on it, they have a salud department, which is health,  
09:43:09 2 customer service and reservations -- I can read it in English or  
09:43:14 3 Spanish.

09:43:14 4 THE COURT: Do it in English.

09:43:16 5 THE WITNESS: Okay. Reservations, health, sales and  
09:43:23 6 verifications.

09:43:35 7 MR. BROWN: Your Honor, I request that this document be  
09:43:38 8 moved in evidence.

09:43:39 9 THE COURT: It is in.

09:43:41 10 MR. ROGOW: No objection.

09:43:43 11 MR. BROWN: Your Honor, I would also like to show  
09:43:44 12 Ms. Esparza what is labeled as Plaintiff's Exhibit 42.

09:44:03 13 MR. ROGOW: No objection, Your Honor.

09:44:04 14 THE COURT: All right. 42 will be received for this  
09:44:06 15 hearing.

09:44:07 16 [Plaintiff Exhibit 42 received in evidence at 9:44 a.m.]

09:44:17 17 THE COURT: Is there a heading on that that we can't  
09:44:19 18 see? That is the top? Okay.

09:44:26 19 BY MR. BROWN:

09:44:26 20 Q. Ms. Esparza, do you recognize this document?

09:44:29 21 A. Yes, I do.

09:44:29 22 Q. And how do you recognize this document?

09:44:31 23 A. It was also obtained during the immediate access and it was  
09:44:36 24 also around the receptionist area.

09:44:38 25 MR. ROGOW: I couldn't hear the last answer, please,



09:44:40 1 Your Honor.

09:44:41 2 THE WITNESS: It was obtained during the immediate  
09:44:42 3 access. It was found in the receptionist area.

09:44:46 4 BY MR. BROWN:

09:44:46 5 Q. So was this kept in the same location as Plaintiff's Exhibit  
09:44:50 6 41?

09:44:50 7 A. Yes.

09:44:51 8 Q. The employee list for Banestral Group?

09:44:53 9 A. Correct.

09:44:54 10 Q. Okay. What is your understanding of what this exhibit is,  
09:44:57 11 Plaintiff's Exhibit 42?

09:44:59 12 A. This shows the name of the employees, which department or  
09:45:04 13 which company they work for and the address.

09:45:09 14 Q. And you said it shows the names of the employees. Which  
09:45:12 15 companies are represented here in this list?

09:45:14 16 A. Mega Vacations and United Solutions.

09:45:24 17 Q. Who are the employees that are listed under the company  
09:45:29 18 United Solutions?

09:45:30 19 A. The employees that are listed under United Solutions are the  
09:45:34 20 same employees that are listed on Banestral Group's health  
09:45:39 21 department.

09:45:42 22 THE COURT: Is that referring back to the other  
09:45:44 23 exhibit?

09:45:44 24 THE WITNESS: Yes, I am sorry. Yes, it is.

09:45:57 25 THE COURT: And where they are listed in 41, does it

09:46:02 1 list them on the right in the department as health?

09:46:04 2 THE WITNESS: Yes, on the Banestral Group USA Corp.

09:46:07 3 employee list it says the employee name and then the department

09:46:10 4 says salud, and if you find the name on Banestral Group and you

09:46:14 5 go to the other, Exhibit 42 I believe, you go to United

09:46:20 6 Solutions, under United Solutions their name appears on there,

09:46:23 7 too.

09:46:23 8 THE COURT: Okay.

09:46:25 9 BY MR. BROWN:

09:46:25 10 Q. So is everybody listed under United Solutions in Plaintiff's

09:46:30 11 Exhibit 42 also listed as an employee under the Banestral Group

09:46:33 12 employee list?

09:46:34 13 A. There is one person that was listed under the Banestral

09:46:36 14 Group employee list, but not listed under United Solutions and I

09:46:40 15 believe her name was -- Lucia Silva was not listed under the

09:46:48 16 United Solutions.

09:46:48 17 Q. Other than Lucia Silva, every employee listed as an employee

09:46:53 18 of United Solutions is also listed under Banestral Group?

09:46:57 19 A. Correct.

09:47:04 20 MR. BROWN: Your Honor, I would like to move in

09:47:07 21 evidence Plaintiff's Exhibit 43.

09:47:13 22 MR. ROGOW: No objection.

09:47:16 23 THE COURT: All right. That will be received in

09:47:17 24 evidence.

09:47:26 25 [Plaintiff Exhibit 43 received in evidence at 9:47 a.m.]

09:47:28 1 BY MR. BROWN:

09:47:28 2 Q. Ms. Esparza, I am showing you what has been marked as

09:47:34 3 Plaintiff's Exhibit 43. Do you recognize this document?

09:47:37 4 A. Yes. It is one of the checks I found in Mr. Walter or

09:47:43 5 Steven Vargas' office.

09:47:46 6 Q. And what is your understanding of what this document is?

09:47:49 7 A. It's -- it appears to be for the lease that they pay for at

09:47:54 8 28 West Flagler, Suite 900.

09:47:56 9 Q. And you say they. To whom are you referring when you say

09:48:00 10 "they" pay the lease?

09:48:01 11 A. World Parcel Express Services, Inc.

09:48:07 12 Q. And where did you say you found this document?

09:48:09 13 A. Mr. Steven Vargas.

09:48:15 14 Q. Maybe it is difficult to see, but are you able to determine

09:48:17 15 who it was that signed this check?

09:48:19 16 A. Just by looking at the check, no, but by looking at other

09:48:23 17 documents that we found, it appears that it is Mr. Steven

09:48:27 18 Vargas' signature.

09:48:29 19 MR. BROWN: Your Honor, I would like to move this

09:48:31 20 exhibit into evidence.

09:48:32 21 MR. ROGOW: No objection.

09:48:33 22 THE COURT: All right. It is in evidence.

09:48:35 23 MR. BROWN: Your Honor, no further questions for

09:48:37 24 Ms. Esparza.

09:48:38 25 THE COURT: All right. Any cross-examination,

09:48:40 1 Mr. Rogow?

2 CROSS-EXAMINATION

09:48:42 3 [Beginning at 9:48 a.m., 9/4/14.]

09:48:43 4 BY MR. ROGOW:

09:48:43 5 Q. Did you have occasion, Ms. Esparza, to speak to Walter  
09:48:55 6 Steven Vargas?

09:48:56 7 A. No, sir, I did not.

09:48:57 8 Q. Did you speak to Constanza Vargas?

09:48:59 9 A. No, I did not.

09:49:01 10 Q. Did you speak to Jaime Vargas?

09:49:04 11 A. No, I did not.

09:49:04 12 Q. And so these are the documents from which you determined  
09:49:08 13 that Banestral was somehow related to United Solutions?

09:49:12 14 A. Some of the documents, yes.

09:49:16 15 MR. ROGOW: Okay. I don't have anything further.

09:49:18 16 THE COURT: Thank you. Do you have any questions?

17 CROSS-EXAMINATION

09:49:22 18 [Beginning at 9:49 a.m., 9/4/14.]

09:49:23 19 BY MR. GRUMER:

09:49:23 20 Q. Good morning, Ms. Esparza. My name is Keith Grumer. I  
09:49:32 21 represent Partners in Health Care and Mr. Kieper.

09:49:35 22 In your review of the scripts and in your review of the  
09:49:42 23 documentation found at the boiler room and those offices, did  
09:49:46 24 you see any communications from either Mr. Kieper or Partners in  
09:49:52 25 Health Care approving the scripts or having the opportunity to

09:49:57 1 review those scripts?

09:49:59 2 MR. BROWN: Your Honor, I am going to object. That is  
09:50:01 3 beyond the scope of the direct examination.

09:50:02 4 THE COURT: Overruled.

09:50:03 5 THE WITNESS: I did not.

09:50:06 6 MR. GRUMER: Thank you very much. No further  
09:50:07 7 questions.

09:50:08 8 THE COURT: All right. Thank you.

09:50:10 9 Thank you. You can step down.

09:50:11 10 [The witness leaves the stand at 9:50 a.m.]

09:50:12 11 THE COURT: Who is the next witness?

09:50:15 12 MR. IVENS: Your Honor, we have no further witnesses.

09:50:17 13 THE COURT: Okay. Any witnesses you want to put on or  
09:50:19 14 any evidence?

09:50:21 15 MR. ROGOW: I do, Your Honor. We will call Walter  
09:50:23 16 Steven Vargas.

17 WALTER STEVEN VARGAS, DEFENDANTS' WITNESS, SWORN.

09:50:52 18 THE WITNESS: Walter Steven Vargas, V-a-r-g-a-s.

19 DIRECT EXAMINATION

09:50:58 20 [Beginning at 9:50 a.m., 9/4/14.]

09:50:58 21 BY MR. ROGOW:

09:50:58 22 Q. Mr. Vargas, sometimes you are called Walter, sometimes you  
09:51:01 23 are called Steven. Would you explain to the Court how that  
09:51:04 24 distinction is made?

09:51:06 25 A. My legal name is Walter Steven Vargas, but since I was

09:51:09 1 little my parents and my whole family have always called me  
09:51:12 2 Steven and I just always liked that name better, so I just  
09:51:15 3 decided, once I am able to kind of associate myself with other  
09:51:18 4 people, I would always go by Steven.  
09:51:21 5 Q. And are you employed, Mr. Vargas?  
09:51:22 6 A. I am.  
09:51:24 7 Q. Where are you employed?  
09:51:25 8 A. Banestral Group.  
09:51:26 9 Q. And where is their office?  
09:51:28 10 A. 28 West Flagler Street.  
09:51:31 11 Q. How long have you been employed by Banestral Group?  
09:51:33 12 A. About three years.  
09:51:35 13 Q. What does Banestral Group do?  
09:51:37 14 A. We sell vacation packages to Colombia, Perú and Mexico.  
09:51:42 15 Q. Tell us how that works, please.  
09:51:43 16 A. Okay. Well, we make a commercial. The commercial is  
09:51:46 17 usually made on-site or by a production team that we have in  
09:51:50 18 Colombia. We take care of the editing and pretty much all the  
09:51:55 19 information that goes into that commercial. We then release  
09:52:00 20 that commercial, approved by the channels in Colombia, Perú and  
21 Mexico.  
09:52:04 22 Then we have a call center here and in Colombia and  
09:52:05 23 Peru that will answer the calls once the commercial comes in,  
09:52:09 24 citing the promotion. The promotion is usually for that day.  
09:52:13 25 They would call in and we would obviously give them the

09:52:15 1 information on the destination. Depending on the commercial, it  
09:52:18 2 is a different destination and the client would then go ahead  
09:52:22 3 and purchase the package.

09:52:23 4 They have a year to use the package and then we will  
09:52:26 5 send them the information and when they are ready, all they have  
09:52:30 6 to do is call two to three months before they want to actually  
09:52:32 7 vacation and they would call our reservation department and we  
09:52:34 8 would make the reservation. Our reservation department will get  
09:52:37 9 in contact with the hotels.

09:52:39 10 Q. Speak a little more slowly, please. The court reporter has  
09:52:43 11 to take this down.

09:52:44 12 A. Sorry. So our reservations department, once the info is  
09:52:48 13 sent to the client, will make the reservation with the client  
09:52:50 14 once that client determines when he or she wants to actually  
09:52:54 15 vacation. Once that is made, we send that information, the  
09:53:00 16 confirmation, to the hotel based on what the hotel gives us and  
09:53:05 17 the contract that we have with the hotel and then, that is it.  
09:53:08 18 It is input into their system and we send them the itinerary and  
09:53:12 19 they travel.

09:53:13 20 Q. Since August 27, when the FTC came into your offices, what  
09:53:20 21 effect has that had on the operation of Banestral?

09:53:24 22 A. Well, it's been a detriment to Banestral because Banestral  
09:53:27 23 is a day-to-day operation where we have to have direct contact  
09:53:31 24 with the clients and the hotels at all times. What is happening  
09:53:35 25 now is we -- last month we more or less had about 300 and

09:53:41 1 something families traveling. So every day the confirmations  
09:53:43 2 aren't being met, the hotels aren't being called, the invoices  
09:53:46 3 to the hotels aren't being paid. So when clients get to the  
09:53:49 4 hotels, they can't -- they can't be accepted.

09:53:53 5 If they have any issues with their confirmation when  
09:53:59 6 they're at the hotel or when they're renting their car they  
09:54:02 7 usually call us and we are able to resolve that issue to them,  
09:54:05 8 but since we have no contact, then we can't get in contact with  
09:54:08 9 the client. Clients have come to our office here in Miami  
09:54:12 10 because we do sell the packages to Colombia, Perú and Mexico,  
09:54:15 11 but most of the destinations are here to Orlando and to parts of  
09:54:20 12 the United States.

09:54:20 13 So, when clients do come here and they don't get in  
09:54:23 14 contact with us, obviously to them it looks a little skeptical  
09:54:27 15 and they come and check our offices out and we are not able to  
09:54:30 16 answer them at all. So it has just been a detriment to them and  
09:54:35 17 we haven't really been able to -- we have lost contracts with  
09:54:38 18 hotels because of this and a lot of clients.

09:54:44 19 Q. If this continues and Banestral is not able to operate, what  
09:54:48 20 will be the effect upon Banestral as a company?

09:54:53 21 A. Well, it will cease to exist. It is pretty much solely  
09:54:58 22 dependent on the people that work there and the service that we  
09:55:00 23 provide to those clients and the contact we have with the  
09:55:04 24 clients and the hotel and all the information that we have with  
09:55:07 25 the client based on what we have on our system, the documents



09:55:10 1 that we have and on our server, which we have access to none of  
09:55:14 2 those three, so if this continues, I am not too sure we can  
09:55:18 3 continue with the business for much longer.

09:55:20 4 Q. Is Banestral an affiliate of United Solutions?

09:55:25 5 A. It is not. It has nothing to do with United Solutions.

09:55:27 6 Q. I don't think you have seen the exhibit that has your card,  
09:55:31 7 your business card.

09:55:33 8 A. Right.

09:55:33 9 Q. But you are familiar with your business card, are you not?

09:55:36 10 A. I am.

09:55:36 11 Q. And does your business card reflect that you are -- let me  
09:55:43 12 put it up for you so you can see it. This is Government Exhibit  
09:55:51 13 40. Do you see that on your screen?

09:55:55 14 A. Yes, I do.

09:56:00 15 Q. Explain to us the fact that your business card has these  
09:56:03 16 various businesses listed.

09:56:05 17 A. Of course. Well, WPES International was the name of  
09:56:09 18 Banestral --

09:56:11 19 THE COURT: Can you leave it up there?

09:56:12 20 THE WITNESS: WPES was the name of Banestral. About a  
09:56:15 21 couple of months ago, or I believe about a year ago we decided  
09:56:17 22 to change the name to Banestral Group, so WPES is essentially  
09:56:24 23 Banestral, it's just a name change.

09:56:27 24 Mega Vacations is a d/b/a of Banestral. So that  
09:56:31 25 explains the three businesses. It is not three different

09:56:32 1 businesses; it is really just one, but because we went by WPES  
09:56:36 2 we decided to leave that name. Banestral is the company that  
09:56:40 3 owns Mega Vacations and we decided to put Mega Vacations on  
09:56:46 4 there.

09:56:47 5 Since there is obviously a different company in that  
09:56:48 6 same vicinity, in that office, we decided to put United  
09:56:52 7 Solutions to not make different business cards and that is the  
09:56:56 8 reason why all four businesses are on that card.

09:57:00 9 BY MR. ROGOW:

09:57:00 10 Q. This also says you are the CEO of United Solutions?

09:57:05 11 A. Right.

12 Q. Are you?

09:57:05 13 A. I signed -- I am president of United Solutions.

09:57:08 14 Q. Pardon me?

09:57:09 15 A. I am CEO of United Solutions, correct.

09:57:13 16 Q. Is there an affiliation between United Solutions and the  
09:57:16 17 Banestral Group other than the fact that you show as a CEO of  
09:57:20 18 both?

09:57:21 19 A. There is not.

09:57:22 20 Q. Are the employees of Banestral Group employees of United  
09:57:27 21 Solutions?

09:57:28 22 A. They are not.

09:57:29 23 Q. Do you do -- what do you do for United Solutions?

09:57:34 24 A. Well, I do the payroll. Since we have -- we share the same  
09:57:38 25 accountant for both Banestral and United Solutions, my

09:57:42 1 accountant set me up with a Quick Books access so I can run the  
09:57:47 2 payroll.

09:57:48 3 THE COURT: Did you say you share the same accountant  
09:57:50 4 or the same accounts?

09:57:52 5 THE WITNESS: No, accountant, I'm sorry.

09:57:53 6 THE COURT: You have different bank accounts?

09:57:55 7 THE WITNESS: Different bank accounts, correct.

09:57:57 8 So we share the same accountant and when he set us up  
09:58:00 9 with the payroll system, he set up two different payroll  
09:58:04 10 systems, one for Banestral and one for United Solutions. But  
09:58:08 11 since United Solutions has about only three or four employees, I  
09:58:11 12 just decided to do the payroll because, since I do the payroll  
09:58:16 13 for Banestral Group and I know the system already and he  
09:58:19 14 explained it to me, he trained me on the system, it takes me  
09:58:22 15 about two minutes to input four different commission checks into  
09:58:25 16 the system and I just print them out and sign them. That is  
09:58:29 17 pretty much all I do with United Solutions.

09:58:31 18 Q. And who does operate United Solutions?

09:58:34 19 A. Constanza Gomez.

09:58:35 20 Q. Who is Constanza Gomez in terms of her relation to you?

09:58:41 21 A. She is my mother.

09:58:41 22 Q. Do you do anything else to help Constanza Gomez and United  
09:58:47 23 Solutions?

09:58:48 24 A. No.

09:58:48 25 Q. Is there ever an occasion when you would talk to a vendor or

09:58:53 1 someone on behalf of United Solutions, on behalf of your mother?

09:58:56 2 A. Yes. Since both my mother and my father, their first

09:59:01 3 language is Spanish, sometimes when she is doing business with

09:59:05 4 other companies, they usually only speak English so I kind of

09:59:09 5 translate for her and sometimes I explain to her what it is that

09:59:13 6 is going on, but that is pretty much my limits to that.

09:59:19 7 Q. I'm sorry. Pretty much?

09:59:20 8 A. That is pretty much the limitation that I have there. I

09:59:23 9 just translate the information. When she is talking to -- to a

09:59:28 10 new company that she wants to do business with and when they sit

09:59:32 11 down and speak with my mom, sometimes they get lost in

09:59:35 12 translation, so I am just kind of there to kind of mediate both

09:59:39 13 sides.

09:59:39 14 Q. Do you make any decisions for United Solutions?

09:59:42 15 A. No, I do not.

09:59:43 16 Q. Do you have any say over the telemarketing work that United

09:59:47 17 Solutions does?

09:59:48 18 A. I do not.

09:59:49 19 Q. Do you have any authority to hire or fire people for your

09:59:54 20 United Solutions?

09:59:56 21 A. I do not.

09:59:56 22 Q. Has there ever been an occasion when you have -- when you

10:00:02 23 have told someone at United Solutions that they are fired?

10:00:06 24 A. There is. There has been with the authorization of my mom,

10:00:12 25 Constanza Gomez.

10:00:12 1 Q. Why would that come about? How would that happen that you  
10:00:16 2 would be the one?

10:00:18 3 A. The only employee that I have ever terminated, she speaks  
10:00:21 4 primarily English and she was in United Solutions for the rare  
10:00:27 5 cases that we did have an English client, so I was the one that  
10:00:31 6 terminated her because obviously it would be a little more  
10:00:34 7 difficult for my mom to do it in English.

10:00:37 8 Q. Do you have any signing authority for checks for United  
10:00:39 9 Solutions?

10:00:40 10 A. I do.

10:00:40 11 Q. And why is that?

10:00:46 12 A. I became on the account because when my mom first started  
10:00:50 13 the account she had bad credit, so she decided -- we decided to  
10:00:55 14 put my name on the account because -- in case we were to ever  
10:00:59 15 run credit on doing a new business deal, then obviously my  
10:01:04 16 credit would be more favorable than hers.

10:01:07 17 Q. How old are you?

10:01:08 18 A. I am 23 years old.

10:01:09 19 Q. Are you willing to take your name off of the signing  
10:01:13 20 authority account for United Solutions?

10:01:15 21 A. I am.

10:01:18 22 Q. Now, let me show you another exhibit that the Government has  
10:01:21 23 put up.

10:01:23 24 A. Okay.

10:01:38 25 Q. This is Exhibit 41. Have you seen this document before?

10:01:44 1 A. Until it was presented to me, I have never seen that  
10:01:47 2 document before.  
10:01:53 3 Q. When did you see it?  
10:01:55 4 A. I first saw it yesterday.  
10:01:57 5 Q. And did I show it to you?  
10:01:59 6 A. Yes, you did.  
10:02:02 7 Q. All right. Did you take a look at the right side of that  
10:02:07 8 document and see the departments listed?  
10:02:12 9 A. Yes, I did.  
10:02:12 10 Q. And the word salud in Spanish means what?  
10:02:16 11 A. Health.  
10:02:17 12 Q. And the employees who have the word salud after their name,  
10:02:25 13 by whom are those employees employed?  
10:02:27 14 A. They are by United Solutions, but since United Solutions and  
10:02:31 15 our office, such a long word, we just go by salud. It is just  
10:02:35 16 an easier way of saying it.  
10:02:36 17 Q. Did you learn yesterday what this document was?  
10:02:38 18 A. I did. To us, from my understanding, somebody came in to do  
10:02:45 19 workers comp, to sell us workers comp, and this is the quote  
10:02:50 20 that that person pulled up and basically, for whatever reason, I  
10:02:53 21 have no idea why, they put all the employees and their  
10:02:58 22 departments in one list, but this is basically a quote that the  
10:03:02 23 workers comp person was trying to sell us, but we never  
10:03:04 24 purchased it.  
10:03:05 25 Q. And was this list authorized by you to show all of these

10:03:09 1 employees or anyone, to your knowledge, in Banestral? Was this  
10:03:14 2 list authorized to show all of these employees in one list?

10:03:18 3 A. To my knowledge, no.

10:03:25 4 Q. Let me also show you Government Exhibit 42. Have you seen  
10:03:40 5 that list before?

10:03:40 6 A. I have.

10:03:41 7 Q. And what is that list?

10:03:44 8 A. I believe around -- I don't recall, about a year ago we had  
10:03:49 9 a secretary. We decided to make a list of the employees that  
10:03:54 10 fall within the office and as you can see, it separates it  
10:03:58 11 between Mega Vacations, which is Banestral, that's just a d/b/a,  
10:04:02 12 and United Solutions, so you can see the separation between two  
10:04:04 13 companies. The reason why she made this list was to have  
10:04:07 14 everybody's name and address and eventually phone number on  
10:04:10 15 record in case of an emergency and she did it on one list  
10:04:14 16 instead of doing it on two, but there is a clear separation  
10:04:17 17 between both companies.

10:04:17 18 Q. And you say this was a receptionist who made up this list?

10:04:22 19 A. Right, exactly.

10:04:23 20 Q. Explain to us what the physical arrangement is on the 9th  
10:04:26 21 Floor at 28 West Flagler in relation to Banestral and United  
10:04:33 22 Solutions.

10:04:34 23 A. Okay. Well, as Ms. Esparza pointed out, when you enter the  
10:04:38 24 office -- well, pretty much to start off, the 9th Floor consists  
10:04:43 25 of four offices. When we first started Banestral Group we

10:04:48 1 rented out the first office, and as we expanded, we rented out  
10:04:52 2 the two adjacent offices next to us and we just kind of opened  
10:04:56 3 the doors and tore down a wall in between so we can have access  
10:05:01 4 to all three.

10:05:02 5 Basically, the way that it is laid out is as soon as  
10:05:05 6 you walk into the first office you have four offices. That  
10:05:08 7 would be our -- the administrative offices, which would be Jaime  
10:05:11 8 Vargas, Evon González, which is my uncle, Constanza Gomez, which  
10:05:16 9 is my mom, and my office.

10:05:18 10 THE COURT: Who is Jaime?

10:05:21 11 THE WITNESS: Jaime Vargas is my dad. I'm sorry.

10:05:23 12 THE WITNESS: Okay.

10:05:23 13 THE WITNESS: Once you go to the next office --

10:05:25 14 THE COURT: Before you get into your office, if you get  
10:05:27 15 off the elevator on the 9th Floor and you look towards wherever  
10:05:31 16 the entrance is, are there any signs on the wall or the door  
10:05:35 17 that say what company is inside 900?

10:05:38 18 THE WITNESS: No. There are no signs on the door. We  
10:05:41 19 were actually having a bit of an issue with that because the  
10:05:45 20 owner of the building has to put up the sign and for whatever  
10:05:47 21 reason he did not. He did not put up the sign and we are still  
10:05:52 22 trying to figure out why.

10:05:53 23 THE COURT: When you walk in, is there a reception  
10:05:56 24 desk?

10:05:56 25 THE WITNESS: When you get out of the elevator you will



10:05:59 1 see four doors and three of those doors belong to one whole  
10:06:03 2 office. So you would walk down the end of the wall, you would  
10:06:06 3 make a right to the first door on your right. You would open  
10:06:08 4 the door and there is a secretary or receptionist desk and she  
10:06:12 5 would open the door for you.

10:06:13 6 THE COURT: Are there any signs there that say what  
10:06:16 7 businesses might be in that office suite?

10:06:19 8 THE WITNESS: I don't believe so, no. There is none.

10:06:21 9 THE COURT: Okay.

10:06:23 10 BY MR. ROGOW:

10:06:23 11 Q. Are there any signs downstairs in the lobby of the building  
10:06:26 12 that reflect the offices?

10:06:28 13 A. No, there is not.

10:06:29 14 Q. Go ahead. So explain to us what the offices are.

10:06:31 15 A. So the first office, like I explained, it is the four  
10:06:37 16 administrative offices and as soon as you go to the next office  
10:06:41 17 which is connected by a door, you have a small sales  
10:06:45 18 department/customer service department of United Solutions. It  
10:06:48 19 is about seven to eight seats and at the moment we only have  
10:06:53 20 four to five employees.

10:06:54 21 It is completely separated because as soon as you go to  
10:06:57 22 the next office, which is another hallway and another door, that  
10:07:02 23 is all Mega Vacations which is separated by different rooms, by  
10:07:09 24 drywall, and it is the sales department, my verifications  
10:07:12 25 department, my reservations department and my customer service

10:07:16 1 department.

10:07:16 2 Q. When your say "your customer service department," et cetera,  
10:07:20 3 that is Banestral's customer service department?

10:07:23 4 A. Exactly, that's correct.

10:07:25 5 Q. Has Banestral paid the rent for -- or I think there is a  
10:07:31 6 check from World Express. Have they paid the rent and that rent  
10:07:36 7 includes the space for United Solutions, correct?

10:07:38 8 A. That's correct.

10:07:40 9 Q. So why doesn't United Solutions pay the rent separately?

10:07:46 10 A. I believe they don't pay rent separately because our family  
10:07:49 11 is pretty close. Even though my mom and dad are separated, we  
10:07:53 12 still remain pretty close as a family. They have been together  
10:07:56 13 since they were 18 years old so -- they came from Colombia  
10:08:00 14 together. So I believe as a favor, as a good gesture -- and  
10:08:04 15 obviously my dad still loves our family -- when my mom needed  
10:08:08 16 that space, when she was going through a divorce, he obviously  
10:08:15 17 let her, obviously gave her the space.

10:08:19 18 MR. ROGOW: I don't have anything further, Your Honor.

10:08:20 19 THE COURT: What company does your dad work for?

10:08:23 20 THE WITNESS: Banestral Group.

10:08:25 21 THE COURT: What is his position there?

10:08:26 22 THE WITNESS: He is the director of marketing there.

10:08:29 23 THE COURT: Are you his boss or he is your boss?

10:08:31 24 THE WITNESS: Well, technically, on paper I am his  
10:08:33 25 boss, but in the office it is kind of equal parts.

10:08:37 1 THE COURT: Okay. All right. Mr. Grumer, do you have  
10:08:43 2 any questions?

10:08:44 3 MR. GRUMER: No, sir, thank you.

10:08:45 4 THE COURT: All right. Mr. Brown or Mr. Ivens, any  
10:08:47 5 questions?

10:08:48 6 MR. BROWN: Yes, Your Honor, just a couple of  
10:08:50 7 questions.

8 CROSS-EXAMINATION

10:08:50 9 [Beginning at 10:08 a.m., 9/4/14.]

10:08:51 10 BY MR. BROWN:

10:08:51 11 Q. Mr. Vargas, you are the sole shareholder of United Solutions  
10:09:00 12 Group, correct?

10:09:00 13 A. That is correct.

10:09:03 14 Q. You were describing the offices there at West Flagler, the  
10:09:08 15 28 West Flagler address. There's only one receptionist on the  
10:09:14 16 premises, correct?

10:09:14 17 A. At the moment we don't have a receptionist.

10:09:18 18 Q. When you say "we don't have a receptionist" --

10:09:19 19 A. Banestral Group does not have a receptionist.

10:09:21 20 Q. Who is the first point of contact, then, when someone comes  
10:09:24 21 to speak with Banestral Group?

10:09:25 22 A. That would be Carolina. She works for our social media  
10:09:33 23 department.

10:09:34 24 Q. So you have signed at least one contract on behalf of United  
10:09:36 25 Solutions, correct?

10:09:37 1 A. To my recollection, I don't know.

10:09:42 2 Q. I couldn't hear you.

10:09:43 3 A. To my recollection, I can't recall.

10:09:44 4 Q. You have never signed any contracts on behalf of United

10:09:46 5 Solutions?

10:09:47 6 A. I can't recall if I have.

10:09:47 7 Q. You have terminated at least one employee on behalf of

10:09:50 8 United Solutions?

10:09:50 9 A. That is correct.

10:09:51 10 Q. And what was the name of that employee?

10:09:55 11 A. Yasnary Negron.

10:10:01 12 THE COURT: How do you spell that?

10:10:01 13 THE WITNESS: Y-a-s-n-a-r-y, N-e-g-r-o-n.

10:10:03 14 BY MR. BROWN:

10:10:04 15 Q. Yasnary Negro only speaks English?

10:10:07 16 A. She speaks Spanish as well, but her primary language is

10:10:10 17 English. She has hard time speaking Spanish.

10:10:13 18 Q. WPES or Mega Vacations has done marketing in -- marketing

10:10:18 19 its vacation travel packages in Colombia, correct?

10:10:21 20 A. That's correct.

10:10:21 21 Q. They are not presently marketing in Colombia, correct?

10:10:24 22 A. We are presently marketing in Colombia.

10:10:26 23 Q. Isn't it true that your ability -- WPES' ability to market

10:10:31 24 in Colombia was suspended?

10:10:33 25 A. No, it is not true.

10:10:35 1 Q. Isn't it also true that WPES, their registration with the  
10:10:41 2 National Tourism Registry was suspended in Colombia?

10:10:45 3 A. That is not true.

10:10:46 4 MR. BROWN: No further questions, Your Honor.

10:10:47 5 THE COURT: I know that when I read your application  
10:10:50 6 there was something relating to a suspension. Did you get some  
10:10:54 7 notice that you might be suspended?

10:10:56 8 THE WITNESS: I could elaborate on that. Pretty much  
10:11:00 9 what happened is in Colombia the laws are a little bit different  
10:11:04 10 and we had a disclaimer on our packages. The way our packages  
10:11:08 11 work, some of them, basically states that everything is included  
10:11:11 12 and what we mean by that is the stay, the food, the drinks, and  
10:11:16 13 on the end of the commercial in the print it would say "air fare  
10:11:21 14 is not included."

10:11:21 15 Even when the client would call, the sales rep would  
10:11:24 16 tell them that air fare is not included and we have a  
10:11:27 17 verifications department that is completely separated from the  
10:11:31 18 sales team that would verify that the air fare was not included.  
10:11:34 19 But the agency there stated that we would have to put it in  
10:11:36 20 bigger letters throughout the commercial. This is a 30-minute  
10:11:41 21 commercial spot.

10:11:41 22 Basically, what happened was for one week we had to  
10:11:43 23 edit that commercial, so we couldn't come out on that channel  
10:11:47 24 for one week because they said until you edit the commercial and  
10:11:50 25 put the disclaimer on it in bigger letters, we cannot release it

10:11:54 1 until it is cleared up, but we still had advertising and  
10:11:58 2 different commercial spots in different TV stations that would  
10:12:02 3 allow us to do so.

10:12:03 4 So that is why when they asked me if we were ever  
10:12:07 5 suspended, that is not true because we continued to work. We  
10:12:10 6 still have a National Tourism number that is still active and  
10:12:14 7 that was the only thing -- they said that if we didn't put the  
10:12:18 8 disclaimer then there would be a penalty.

10:12:20 9 THE COURT: Do you have any other questions based upon  
10:12:21 10 that answer, Mr. Brown?

10:12:22 11 MR. BROWN: No, Your Honor.

10:12:23 12 THE COURT: All right. Mr. Rogow, anything else?

10:12:25 13 MR. ROGOW: No redirect. I call Constanza Gomez  
10:12:28 14 Vargas, please. You can step down.

10:12:35 15 THE COURT: Does she need an interpreter?

10:12:37 16 MR. ROGOW: No.

17 CONSTANZA GOMEZ, DEFENDANTS' WITNESS, SWORN.

10:13:04 18 THE WITNESS: Constanza Gomez, my last name is  
10:13:08 19 G-o-m-e-z.

20 DIRECT EXAMINATION

10:13:11 21 [Beginning at 10:13 a.m., 9/4/14.]

10:13:11 22 BY MR. ROGOW:

10:13:11 23 Q. Ms. Gomez, before you were divorced your name was Constanza  
10:13:15 24 Gomez-Vargas; is that correct?

10:13:16 25 A. Before I divorced I was Constanza Vargas. Then I came back

10:13:21 1 to Constanza Gomez, but because everybody knows me as Vargas,  
10:13:24 2 now we became Constanza Gomez-Vargas.

10:13:27 3 Q. And by whom are you employed?

10:13:30 4 A. I am employed by United Solutions.

10:13:33 5 Q. How long have you been employed by United Solutions?

10:13:37 6 A. Since 2009. I, myself, opened the corporation.

10:13:43 7 Q. Is it your intention that United Solutions should continue  
10:13:48 8 doing the business that it has been doing?

10:13:51 9 A. No, it is not.

10:13:52 10 Q. And why are you no longer going to do that business?

10:13:55 11 A. Because this is the first time that something happened to me  
10:13:58 12 like this. I don't want problems. I didn't know that this  
10:14:04 13 going to cause these problems. As a mother, I put my child in a  
10:14:09 14 company that I thought it would be great for him and I never  
10:14:14 15 expect to have all these problems, bring my son in this. I  
10:14:20 16 don't have -- I never had a problem.

10:14:22 17 The only time I went to court for it was in my divorce.  
10:14:26 18 That's it so -- sorry. So I don't want to do business like  
10:14:36 19 that.

10:14:36 20 Q. And is Banestral a separate company from United Solutions?

10:14:41 21 A. Yes, it is. That idea was my brother-in-law, my ex-husband  
10:14:47 22 and my son and I never worked with them or for them and we have  
10:14:53 23 separate companies.

10:14:55 24 Q. Why is your son, Steven, the sole shareholder of United  
10:15:01 25 Solutions and the person who signs checks for United Solutions?

10:15:06 1 A. Okay. As I told you, I went through the divorce so I opened  
10:15:12 2 this company, but because I went through a divorce, we went  
10:15:19 3 bankrupt. I am in foreclosure right now. I am losing my house  
10:15:23 4 so I have no credit.

10:15:24 5 So when you want to sign a contract with a company,  
10:15:27 6 they always check your credit so I asked Steven, do you have  
10:15:32 7 good credit? Would you? And he said, yeah, mom. You never  
10:15:37 8 expect that things like this happen. So he told me as my boy,  
10:15:43 9 of course, mom, I can help you and he is in this mess because of  
10:15:48 10 me, because he wants to help me, because this is my only income  
10:15:52 11 and my only source to survive. That's it.

10:15:56 12 Q. Does Steven -- or did Steven make decisions for United  
10:16:01 13 Solutions?

10:16:03 14 A. No. Steven speak more English so I -- I am the only one who  
10:16:10 15 does the training, who does everything for United Solutions  
10:16:12 16 because he barely talks Spanish so he does everything for  
10:16:18 17 Banestral. The only thing he does for me is sometimes when I  
10:16:23 18 used to work with American people that I do business with, he is  
10:16:28 19 faster explaining what I want. I don't want somebody on the  
10:16:33 20 phone waiting for my English to come out to do business, so I  
10:16:37 21 ask Steven, could you tell him this and that, explain this to  
10:16:41 22 him? He explain to me what are they saying, so that is why he  
10:16:45 23 is helping me with that.

10:16:47 24 The other thing is because he does the payroll for  
10:16:51 25 Jaime so I asked him can you do four checks for my company and



10:16:56 1 that's -- that's the only thing he does for me.

10:17:00 2 Q. Do you do anything -- as the person who runs United  
10:17:04 3 Solutions, do you do anything for Banestral?

10:17:07 4 A. No, I don't. I never done anything for Banestral.

10:17:12 5 Q. The fact that the Banestral offices are in the same offices  
10:17:17 6 of United Solutions, have you kept the two operations separate  
10:17:23 7 in your mind?

10:17:24 8 A. Yes, because remember one thing. We are divorced and my  
10:17:30 9 ex-husband is married so they have their own business, I have my  
10:17:34 10 own business, nothing to do in common because I am a stranger  
10:17:39 11 now. So I have my own business with my people, with my things  
10:17:44 12 separate. The only thing, we share office as a favor that he  
10:17:47 13 does for me because after 30 years that we have known each  
10:17:51 14 other, we love each other so he helps me with that.

10:17:55 15 MR. ROGOW: Nothing further, Your Honor.

10:17:57 16 THE COURT: All right. Mr. Grumer, do you have any  
10:18:04 17 questions?

10:18:04 18 MR. GRUMER: If I may have one moment, Your Honor. No  
10:18:17 19 questions at this time, Your Honor.

10:18:20 20 THE COURT: All right. Mr. Ivens or Mr. Brown?

21 CROSS-EXAMINATION

10:18:27 22 [Beginning at 10:18 a.m., 9/4/14.]

10:18:28 23 BY MR. IVENS:

10:18:28 24 Q. Ms. Gomez, you frequently send emails to Gary Kieper, don't  
10:18:42 25 you?

10:18:42 1 A. Frequently, no, but we sent emails, yes.

10:18:45 2 Q. Did you ask him to keep the consumers who had bought the  
10:18:51 3 medical discount card from talking to an employee that he has  
10:18:55 4 named Graciela?

10:18:57 5 A. I asked him sometimes because Graciela has not a good  
10:19:03 6 attitude with the customers and she was very mean, so the  
10:19:06 7 customers call us because we sell the plan for him. They ask us  
10:19:12 8 why she speaking so bad to us when we ask for the service and I  
10:19:18 9 asked Mr. Kieper to see if we can talk to the customers because  
10:19:24 10 she has a bad attitude, not because she does a bad job or she  
10:19:29 11 does something that is not good, but she has a bad attitude.  
10:19:32 12 She has no patience with the customers as we can see.

10:19:37 13 Q. So in other words, you wanted Mr. Kieper to keep customers  
10:19:42 14 away from Graciela because the refund rate was going up; isn't  
10:19:47 15 that true?

10:19:47 16 A. Yes. We try to be the medium people with our people, but  
10:19:51 17 our people only speak Spanish so because I speak Spanish, I try  
10:19:55 18 to -- if they need a service from Mr. Kieper, as a doctor list  
10:20:00 19 or anything, I try to be the middleman -- it would be middle  
10:20:06 20 woman between those. Like that I can spend to Mr. Kieper  
10:20:11 21 whatever they want and so like that they don't treat the people  
10:20:17 22 bad.

10:20:18 23 MR. IVENS: I have no further questions, Your Honor.

10:20:19 24 THE COURT: Okay.

10:20:22 25 MR. ROGOW: No redirect, Your Honor.

10:20:23 1 THE COURT: All right. Any other witnesses?

10:20:24 2 MR. ROGOW: No, sir.

10:20:29 3 THE COURT: Okay. Let's take up the issue -- any

10:20:31 4 evidence you want to put on concerning Mr. Grumer's issue

10:20:35 5 relating to the -- allowing Partners in Health to continue in

10:20:46 6 the manner that he suggested?

10:20:49 7 MR. IVENS: Yes, Your Honor. We would call John Aiken.

10:20:53 8 THE COURT: Okay.

9 JOHN AIKEN PLAINTIFF'S WITNESS, SWORN.

10:21:14 10 THE WITNESS: John Aiken, A-i-k-e-n.

11 DIRECT EXAMINATION

10:21:18 12 [Beginning at 10:21 a.m., 9/4/14.]

10:21:23 13 BY MR. IVENS:

10:21:23 14 Q. Good morning, Mr. Aiken. How are you employed?

10:21:25 15 A. I am employed as an investigator with the U.S. Federal Trade

10:21:29 16 Commission.

10:21:29 17 Q. And what do you do as an investigator for the Federal Trade

10:21:32 18 Commission?

10:21:32 19 A. As an investigator, I investigate deceptive and unfair trade

10:21:36 20 practices. I review consumer complaints. I assist in immediate

10:21:40 21 accesses in reviewing digital and electronic evidence.

10:21:43 22 Q. And we have heard what an immediate access is from

10:21:46 23 Ms. Esparza. Did you participate in the immediate access at

10:21:49 24 Partners in Health Care premises?

10:21:51 25 A. Yes, I did.

10:21:52 1 Q. What did you see when you went there?

10:21:54 2 A. Upon entering the facility in Wisconsin, I saw an office  
10:22:00 3 that could accommodate about 30 or so employees. About 20 or so  
10:22:04 4 employees looked directly involved in sales, so it was sort of a  
10:22:09 5 call center off to the right-hand area.

10:22:11 6 Off to the left there appeared to be about seven or  
10:22:13 7 eight workspaces that could accommodate the administrative  
10:22:18 8 staff. One of those suites was Mr. Kieper's office, one was  
10:22:22 9 Mr. Francik's workspace and also another area for other  
10:22:26 10 administrative staff.

10:22:27 11 THE COURT: What was the second name?

10:22:29 12 THE WITNESS: Christopher Francik.

10:22:31 13 THE COURT: How do you spell that?

10:22:32 14 THE WITNESS: F-r-a-n-z-i-k, I believe, no, c-i-k. I'm  
10:22:38 15 sorry.

10:22:42 16 BY MR. IVENS:

10:22:42 17 Q. When you were at the immediate access, describe what you  
10:22:45 18 did.

10:22:46 19 A. Once the law enforcement and the receiver went in and sort  
10:22:53 20 of took control of the situation, they escorted -- they took a  
10:22:58 21 lot of the -- well, once they came on and escorted the employees  
10:23:02 22 out, most of the employees out, I began reviewing the documents,  
10:23:07 23 mapping out the area and taking pictures of the sites. I  
10:23:12 24 reviewed digital and electronic evidence and preserved it.

10:23:16 25 MR. IVENS: Your Honor, may I publish Plaintiff's

10:23:18 1 Exhibit 33?

10:23:22 2 THE COURT: Is there any objection to it coming in?

10:23:27 3 MR. GRUMER: We haven't seen it yet.

10:23:37 4 MR. ROGOW: Your Honor, this does not pertain to my  
10:23:39 5 client so I have no position.

10:23:44 6 THE COURT: Okay. And are the exhibits numbers that  
10:23:49 7 you are using today the same exhibits as they were -- as  
10:23:55 8 attachments to the original requests?

10:23:58 9 MR. IVENS: Yes, Your Honor.

10:24:02 10 THE COURT: Okay. Any objection, Mr. Grumer?

10:24:09 11 MR. GRUMER: As to its authenticity, no objection.

10:24:14 12 THE COURT: All right. Exhibit 33 will be received  
10:24:16 13 into evidence for this hearing.

10:24:18 14 [Plaintiff Exhibit 33 received in evidence at 10:24 a.m.]

10:24:19 15 BY MR. IVENS:

10:24:19 16 Q. Do you recognize Exhibit 33, Mr. Aiken?

10:24:23 17 A. Yes, I do.

10:24:23 18 Q. What is it?

10:24:24 19 A. This is an email from authorize.net, a processor for the  
10:24:28 20 defendants' Partners in Health Care, to Kasina Reganiter, the  
10:24:32 21 office manager, dated Thursday, April 24, 2014. The email  
10:24:37 22 essentially says that they are placing the merchant processing  
10:24:41 23 account on hold, funding hold, due to excessive chargebacks.

10:24:45 24 Q. And do you know who Kasina Reganiter is?

10:24:48 25 A. Yes. She was the office manager for Partners in Health

10:24:52 1 Care, I believe.

10:25:00 2 MR. IVENS: I would like to admit Exhibit 35.

10:25:21 3 THE COURT: Any objection?

10:25:43 4 MR. GRUMER: One more moment, Your Honor.

10:25:45 5 THE COURT: Okay.

10:26:32 6 MR. GRUMER: My client can't identify this so we cannot  
10:26:37 7 stipulate to its authenticity.

10:26:38 8 THE COURT: Where did this come from?

10:26:40 9 BY MR. IVENS:

10:26:40 10 Q. Do you recognize the document, Mr. Aiken?

10:26:42 11 A. Yes, I do.

10:26:43 12 Q. What is it?

10:26:44 13 A. This appears to be part of the script package that was  
10:26:47 14 handed out to new employees engaged in sales. I found it in  
10:26:52 15 multiple cubicles on site in Wisconsin, I believe I did. Also,  
10:26:57 16 I found it as part of the HR package handed out by Deanna Moore,  
10:27:03 17 the accountant and HR manager.

10:27:07 18 THE COURT: Hold on. You are talking too quickly. You  
10:27:08 19 found it in Wisconsin, in the offices, and also where?

10:27:12 20 THE WITNESS: In the cubicle workspace of Deanna Moore.  
10:27:15 21 She performed human resource services for the defendants.

10:27:19 22 THE COURT: I will overrule the objection and  
10:27:20 23 Exhibit 35 will be received in evidence for this hearing.

10:27:23 24 [Plaintiff Exhibit 35 received in evidence at 10:27 a.m.]

10:27:24 25 BY MR. IVENS:

10:27:24 1 Q. Could you read the second paragraph of Plaintiff's Exhibit  
10:27:29 2 35, please?

10:27:30 3 A. "Now, blank, the thing that people really have a question  
10:27:33 4 about in verification is when they talk about major medical.  
10:27:37 5 Usually people think that this means something major in the  
10:27:40 6 hospital and that's not what that means. Because you have no  
10:27:44 7 set co-pays and no deductibles in the hospital, and no annual or  
10:27:51 8 lifetime caps, it is classified as a medical savings plan, not  
10:27:56 9 major medical."

10:27:57 10 Q. Do you see in that paragraph anywhere where it says this is  
10:28:00 11 quote, not insurance, end quote?

10:28:03 12 A. No.

10:28:03 13 Q. Do you see anywhere in the document where the medical  
10:28:05 14 discount card is described as, quote, not insurance?

10:28:11 15 A. No.

10:28:11 16 Q. Going back to the chargeback document which we just saw, did  
10:28:16 17 you see other evidence of high chargebacks while you were in  
10:28:20 18 Wisconsin?

10:28:21 19 A. I did, yes.

10:28:23 20 Q. What did you see?

10:28:25 21 A. While reviewing the workspace in the defendant's -- Partner  
10:28:30 22 in Health Care area, I saw a file cabinet drawer containing --  
10:28:36 23 about this big or so containing chargeback notices and  
10:28:42 24 chargeback dispute letters.

10:28:43 25 Q. In your experience as a Federal Trade Commission

10:28:47 1 investigator, what does it mean when you find evidence of a lot  
10:28:48 2 of chargebacks?

10:28:49 3 A. Generally, a consumer will initiate a chargeback when he is  
10:28:52 4 trying to seek through his bank some type of refund when he is  
10:28:56 5 either unsatisfied with the product or he believes it is  
10:28:59 6 fraudulent.

10:29:03 7 MR. IVENS: We would like to admit Plaintiff's Exhibit  
10:29:07 8 37.

10:29:41 9 THE COURT: Any objection?

10:29:58 10 MR. GRUMER: None.

10:29:59 11 THE COURT: All right. Exhibit 37 will be received in  
10:30:01 12 evidence.

10:30:01 13 [Plaintiff Exhibit 37 received in evidence at 10:30 a.m.]

10:30:02 14 BY MR. IVENS:

10:30:02 15 Q. Do you recognize Plaintiff's Exhibit 37, Mr. Aiken?

10:30:06 16 A. Yes, I do.

10:30:07 17 Q. What is it?

10:30:07 18 A. This is a report from the customer relationship management  
10:30:12 19 system, Enrollment 1-2-3, detailing all sales for the period  
10:30:15 20 from January 1, 2011 until September 3, 2014.

10:30:21 21 Q. And looking at the first column, the one that says  
10:30:25 22 "created," what does that represent?

10:30:27 23 A. I believe these are records that were created in the systems  
10:30:30 24 accounting for sales based on the plans off to the left.

10:30:33 25 Q. Sales of what?



10:30:34 1 A. Sales of the medical discount cards and plans offered by the  
10:30:39 2 defendants Partner in Health Care.

10:30:40 3 Q. And if you go to the fourth column, what does that  
10:30:43 4 represent?

10:30:44 5 A. I believe this represents sales that were canceled by the  
10:30:50 6 defendants Partners in Health Care.

10:30:51 7 Q. And did you have an opportunity to work out the ratio of the  
10:30:56 8 number of canceled plans versus the number of created plans?

10:30:59 9 A. Yes, sir.

10:30:59 10 Q. And what was that percentage?

10:31:02 11 A. Approximately 84.8 percent.

10:31:12 12 MR. IVENS: I have no further questions, Your Honor.

13 THE COURT: All right. Mr. Grumer.

14 MR. GRUMER: Thank you, Your Honor.

15 CROSS-EXAMINATION

10:31:23 16 [Beginning at 10:31 a.m., 9/4/14.]

10:31:31 17 BY MR. GRUMER:

10:31:31 18 Q. Mr. Aiken, my name is Keith Grumer. We have not met before.

10:31:35 19 How are you today?

10:31:36 20 A. Very well, sir.

10:31:39 21 Q. Let's begin with the Exhibit 35, the post close script. Did  
10:31:58 22 you find this script anywhere in the call room?

10:32:04 23 A. Yes, I did.

10:32:05 24 Q. Where did you find it?

10:32:07 25 A. I can't exactly remember what cubes, but I believe they were

10:32:11 1 in multiple cubes.

10:32:14 2 Q. Was your testimony earlier that you had found this at

10:32:17 3 Deanna's desk?

10:32:19 4 A. That's true as well. This was also part of the employment

10:32:25 5 packet.

10:32:25 6 Q. Did you interview any employees while you were present?

10:32:29 7 A. Yes, I did.

10:32:31 8 Q. You found the employees to be cooperative?

10:32:37 9 A. Yes, I did.

10:32:39 10 Q. Did you ask any of the employees if they use this script?

10:32:46 11 A. No, I did not.

10:32:48 12 Q. Did you ask any of the supervisors if this script was

10:32:53 13 current?

10:32:54 14 A. No, I did not.

10:32:55 15 Q. Do you know, based upon -- well, let me ask this, the

10:33:00 16 predicate. Did you review any of the recorded conversations

10:33:07 17 either done by the Federal Trade Commission, its investigators,

10:33:12 18 or by any of the consumers? Did you see this script read?

10:33:19 19 A. I did not see it.

10:33:23 20 Q. Are you aware whether this script was ever used by

10:33:31 21 Tri-Resources?

10:33:35 22 A. No. I'm sure of that.

10:33:52 23 Q. Now, in terms of Exhibit 37, is this a report that you were

10:34:08 24 able to print out from the enrollment package?

10:34:13 25 A. Yes, it was.

10:34:15 1 Q. In your processing of this report, did you look at the date  
10:34:20 2 of cancellation?

10:34:23 3 A. I didn't have time to do that.

10:34:25 4 Q. In processing this report, did you look at the source of  
10:34:31 5 each of these customers?

10:34:33 6 A. I'm unclear as to what you mean by source.

10:34:37 7 Q. Do you have an understanding of how Partners in Health Care  
10:34:41 8 operates?

10:34:43 9 A. Beyond what I saw at the immediate access, not specifically.

10:34:48 10 Q. Based upon your presence here today, did you have an  
10:34:54 11 understanding that Partners in Health Care engaged several  
10:35:00 12 independent agencies to participate in phone solicitations?

10:35:07 13 A. Based on reports I ran, I saw that there were entities known  
10:35:11 14 as enrollment agents within the system.

10:35:15 15 Q. Do you know how many of the cancellations can be attributed  
10:35:20 16 to the third-party enrollment agencies?

10:35:25 17 A. I can't speak to that number right now.

10:35:27 18 Q. Do you know how many cancellations were incurred or occurred  
10:35:36 19 as a result of the direct solicitations from the Wisconsin phone  
10:35:41 20 room?

10:35:42 21 A. I do not know.

10:35:44 22 Q. Do you know when the Wisconsin phone room commenced its  
10:35:49 23 operations?

10:35:50 24 A. No, I do not.

10:35:53 25 Q. If I told you that it commenced in January 2014, could you

10:36:01 1 run a report showing cancellations after the Wisconsin phone  
10:36:06 2 room began its own solicitations?

10:36:10 3 A. I could if I had access to the system.

10:36:16 4 Q. Do you have other reports that can be broken down by time  
10:36:22 5 periods that you have printed out?

10:36:25 6 A. I do.

10:36:27 7 Q. And where are they?

10:36:30 8 A. Back at the office.

10:36:34 9 MR. GRUMER: Excuse me one moment, please.

10:37:05 10 BY MR. GRUMER:

10:37:05 11 Q. Turning to Exhibit 33, first, let's start with your presence  
10:37:12 12 there. Did the employees give you full access to their emails  
10:37:17 13 and their resources?

10:37:20 14 A. I obtained access through asking for permission to access  
10:37:24 15 them through the receiver.

10:37:28 16 Q. Did Kasina Reganiter consent to your reviewing her email  
10:37:37 17 account?

10:37:38 18 A. I accessed it through asking through the receiver.

10:37:41 19 Q. Do you know if the receiver obtained permission from Kasina  
10:37:45 20 or Jeff or Melissa?

10:37:50 21 A. I can't speak to that.

10:37:53 22 Q. Now, do you know whether this merchant risk AMF email  
10:38:04 23 related to chargebacks that were originated by the Wisconsin  
10:38:09 24 call center?

10:38:12 25 A. I specifically don't know which merchant billing descriptors

10:38:17 1 it related to other than it related to a processor that had been  
10:38:22 2 identified that was used by the defendants Partners in Health  
10:38:25 3 Care.

10:38:26 4 Q. Do you know whether this call back -- I'm sorry, this  
10:38:31 5 chargeback concern arose from any of the independent agencies?

10:38:39 6 A. I can't speak to that.

10:38:45 7 Q. Are any of these hold backs attributable to Tri-Resource's  
10:38:51 8 failure to provide service?

10:38:55 9 A. Once again, I can only speak to the merchant account listed  
10:38:59 10 on the email itself.

10:39:00 11 Q. Do you know whose merchant account this relates to?

10:39:05 12 A. It appears, based on the notice, Partners in Health Care is  
10:39:09 13 listed at the top, but beyond that I can only --

10:39:13 14 Q. Well, do you know who GID is?

10:39:17 15 A. I don't know if that is a group ID or what that is.

10:39:20 16 Q. Do you know whether that was one of the independent phone  
10:39:24 17 solicitors?

10:39:26 18 A. I do not.

10:39:36 19 MR. GRUMER: One moment, please, Your Honor.

10:40:03 20 BY MR. GRUMER:

10:40:04 21 Q. One last group of questions, Mr. Aiken. So when you were  
10:40:08 22 present in the Wisconsin offices, you described a segregation of  
10:40:14 23 workstations?

10:40:16 24 A. That's correct.

10:40:16 25 Q. And those were -- there was a phone solicitation group as

10:40:19 1 well as a service group?

10:40:22 2 A. That's correct, to my understanding.

10:40:24 3 Q. Did you come to an understanding that the phone solicitation  
10:40:29 4 group were the Partners in Health Care?

10:40:33 5 A. I was under the impression that the entire entity was  
10:40:39 6 subdivided between Partners in Health Care and Tri-Resource  
10:40:44 7 Group, but certain areas of the office appeared to be  
10:40:46 8 segregated, yes.

10:40:47 9 Q. So there was a separate entity present called Tri-Resource  
10:40:53 10 Group?

10:40:55 11 A. I believe some employees identified with Tri-Resource Group  
10:40:58 12 and some employees identified with Health Center or Partners in  
10:41:02 13 Health Care but --

10:41:05 14 Q. Did any of those employees identify themselves as being part  
10:41:13 15 of both groups?

10:41:15 16 A. I can't recall the exact relationship.

10:41:21 17 Q. The phone solicitation area was Partners in Health Care for  
10:41:27 18 sure?

10:41:27 19 A. I believe that was actually the Health Center, is what they  
10:41:29 20 referred to themselves as.

10:41:34 21 Q. The service area, the service desks, was that Tri-Resource  
10:41:40 22 Group?

10:41:41 23 A. I can't recall exactly the split, where it was.

10:41:49 24 Q. Jeff, do you recall his full name?

10:41:54 25 A. No.

10:41:54 1 Q. He is identified here with an email address as Tri-Resource  
10:42:01 2 Group. Do you know if -- let me ask this: In your  
10:42:04 3 investigation, did you inquire as to why Tri-Resource Group and  
10:42:14 4 Partners in Health Care have different domain names?

10:42:19 5 A. I did not.

10:42:19 6 Q. Do you know whether they shared the same server?

10:42:23 7 A. I do not know.

10:42:26 8 Q. Do you know whether members of the Partners in Health Care  
10:42:30 9 domain can access Tri-Resource Group's domain?

10:42:35 10 A. I am uncertain of who can access who's systems.

10:42:44 11 MR. GRUMER: Thank you, Mr. Aiken. I have no further  
10:42:48 12 questions.

10:42:48 13 MR. IVENS: No redirect, Your Honor.

10:42:49 14 THE COURT: Any other witnesses?

10:42:49 15 MR. IVENS: No, Your Honor.

10:42:50 16 THE COURT: All right. Mr. Grumer, do you have any  
10:42:52 17 witnesses on that issue or the issues that you are contesting?

10:42:56 18 MR. GRUMER: Yes, Mr. Kieper, please.

10:43:06 19 THE COURT: All right. Come on up.

20 GARY KIEPER, DEFENDANTS' WITNESS, SWORN.

10:43:30 21 THE WITNESS: Gary Kieper, K-i-e-p-e-r.

10:43:35 22 THE COURT: P, as in Peter?

10:43:37 23 THE WITNESS: Pardon me, sir?

10:43:38 24 THE COURT: P, as in Peter?

10:43:41 25 THE WITNESS: Yes, sir.

DIRECT EXAMINATION

10:43:41 2 [Beginning at 10:43 a.m., 9/4/14.]

10:43:44 3 BY MR. GRUMER:

10:43:44 4 Q. Good morning, Mr. Kieper. Introduce yourself to the Court,  
10:43:46 5 please.

10:43:46 6 A. I am Gary Kieper. I am the president and owner of Partners  
10:43:50 7 in Health Care.

10:43:50 8 Q. Could you give us a brief description of your background,  
10:43:54 9 military service?

10:43:56 10 A. I served in the United States Marine Corps. from 1968 to  
10:44:00 11 1972. I had meritorious promotions in the Marine Corps. I got  
10:44:04 12 out as an E-5. Prior to becoming an NCO, noncommissioned  
10:44:13 13 officer, they issue pro and con marks rather than fitness  
10:44:16 14 reports and I had 5, 0 pro and con marks.

10:44:20 15 When I returned from the Marine Corps, I went into -- I  
10:44:24 16 worked in a factory and then got into sales, sold insurance from  
10:44:28 17 1973 until I sold my agency in 1999. We marketed to the senior  
10:44:35 18 market, which is Medicare supplements and life insurance. I  
10:44:39 19 marketed 36 states. I had about 5,000 brokers and anywhere from  
10:44:46 20 3 to 500 captive agents.

10:44:49 21 In that 28 years that I was in Rockland, Illinois my  
10:44:54 22 agency, which is very well scrutinized by insurance departments  
10:44:59 23 and every politician, never had one justifiable insurance  
10:45:01 24 department complaint. Did I have agents that misrepresented the  
10:45:04 25 product? Yes. But we adjusted it, we took care of it, we



10:45:09 1 terminated the agent. We always made sure that the client was  
10:45:12 2 whole.

10:45:13 3 We also ran a telemarketing room out of Rockland which  
10:45:19 4 created leads for our sales representatives. Again, we never  
10:45:23 5 had a problem with any of the FTC people, state or local  
10:45:29 6 insurance departments.

10:45:30 7 I got out of that and came back to Wisconsin and  
10:45:32 8 started helping people save money by purchasing medications from  
10:45:36 9 Canada and India. In 2005, when the Federal Government came out  
10:45:41 10 with the Part D plan, that was a better program for the majority  
10:45:44 11 of my members than what I could do, so I encouraged them to  
10:45:48 12 enroll in the Medicare Part D.

10:45:51 13 Then I developed Partners in Health Care where we  
10:45:53 14 started to try to find different services that were -- could be  
10:45:58 15 made available to people to reduce health care costs. Our motto  
10:46:07 16 at Partners in Health Care is reduce health care costs through  
10:46:08 17 trust and education, and that takes me to today.

10:46:11 18 Q. Does Partners in Care operate by itself or are there other  
10:46:14 19 entities that are currently operating once customers enroll?

10:46:20 20 A. It operates by itself. Customer service -- because Partners  
10:46:26 21 in Health Care has no employees, I'm the only person, I had to  
10:46:31 22 employ people through Tri-Resource Group to do my customer  
10:46:34 23 service.

10:46:35 24 Q. And what does Tri-Resource Group do?

10:46:38 25 A. Tri-Resource Group has some insurance agents that are

10:46:42 1 attached to it, but the majority of its activity and  
10:46:47 2 responsibility is to supply our members with customer service.

10:46:54 3 Q. Is there a --

10:46:56 4 THE COURT: Can I interrupt? I want to make sure I  
10:46:59 5 understand. You are saying that the only person and employee of  
10:47:05 6 Partners in Health Care is you?

10:47:07 7 THE WITNESS: Yes, sir, and I am actually not an  
10:47:09 8 employee. The only thing I get is a very small commission from  
10:47:12 9 the company. It does not pay me a salary. Tri-Resource Group  
10:47:16 10 does as part of my management of Tri-Resource Group and the  
10:47:22 11 customer service people.

10:47:35 12 BY MR. GRUMER:

10:47:35 13 Q. And what are the products that are offered to -- through  
10:47:41 14 Tri-Resource Group?

10:47:42 15 A. Tri-Resource Group does not offer products. Tri-Resource  
10:47:45 16 Group offers service only.

10:47:46 17 Q. And what are the services that Tri-Resource Group offers?

10:47:49 18 A. They supply our members -- after a person is enrolled and  
10:47:56 19 the enrollment package is mailed out, their responsibility is to  
10:48:00 20 call each member and it is a welcome call and that welcome call  
10:48:06 21 is designed to go through our entire handbook with that  
10:48:10 22 individual. So we call them and the first thing our customer  
10:48:13 23 service representative asks is have you received your handbook.  
10:48:17 24 If they have not, we ask them that they should get it in the  
10:48:21 25 next couple of days and please call us back. We would like to

10:48:24 1 complete a welcome call.

10:48:25 2 If they have received it, our customer service people  
10:48:28 3 go through that book page-by-page and goes through every one of  
10:48:32 4 the services that are available to them. When we get to our  
10:48:36 5 telemedicine, which telemedicine is a product of the future,  
10:48:41 6 especially with the plans out there today with the high  
10:48:44 7 deductibles, we enroll them in a telemedicine program  
10:48:49 8 immediately so that they have access to those benefits  
10:48:52 9 immediately.

10:48:53 10 THE COURT: I am just -- maybe I'm not understanding.

10:48:55 11 If you are the only employee of Partners in Health --

10:48:59 12 THE WITNESS: Yes, sir.

10:49:00 13 THE COURT: -- and the only thing Tri-Resource does is  
10:49:02 14 once somebody is enrolled, they service it, so that means you  
10:49:05 15 are the person who is enrolling the people in Partners in  
10:49:08 16 Health?

10:49:09 17 THE WITNESS: No, sir. Partners in Health Care has  
10:49:12 18 contracts with third parties.

10:49:14 19 THE COURT: Okay.

10:49:14 20 THE WITNESS: Including some insurance agencies, some  
10:49:17 21 associations that are not telemarketing, but have direct access  
10:49:22 22 to members that enroll people as well.

10:49:25 23 THE COURT: Okay.

10:49:27 24 BY MR. GRUMER:

10:49:27 25 Q. Mr. Kieper, attached to the FTC complaint and the exhibits

10:49:35 1 is an Exhibit 8 and that is a member handbook. Is this the  
10:49:42 2 materials that are prepared for members of Partners in Health  
10:49:47 3 Care?  
10:49:48 4 A. Yes, and that is what is mailed to them.  
10:49:51 5 Q. Okay. And is this the material that is described in the  
10:49:56 6 welcome call?  
10:49:59 7 A. Yes.  
10:49:59 8 Q. And are these discount services provided to all members?  
10:50:06 9 A. Yes, they are.  
10:50:10 10 Q. Are you currently able to provide those services with --  
10:50:17 11 A. No, I am not.  
10:50:20 12 Q. What is happening with the phones today?  
10:50:23 13 A. The receiver has shut them off.  
10:50:28 14 Q. Has there been -- well, prior to the receiver shutting them  
10:50:34 15 off, can you will describe the membership participation on a  
10:50:37 16 daily basis?  
10:50:38 17 A. When we look at averages, we average about 159 calls a day  
10:50:43 18 from our members and the majority of them are for prescription  
10:50:48 19 drug services and/or telemedicine or our mediation. I have had  
10:50:55 20 some of my employees or past employees receive emails from  
10:51:00 21 people because they email back and forth, and they even give out  
10:51:04 22 their private cell phones numbers because we service the people  
10:51:08 23 24/7, and they are calling them wondering why they can't get  
10:51:12 24 their patient assistant program medications and why we haven't  
10:51:14 25 responded and we haven't been able to give them an answer

10:51:17 1 because the receiver has not allowed us access to our records.

10:51:26 2 Q. At the present time are you -- well, let's start with this.

10:51:32 3 How was Partners in Health Care marketing its service?

10:51:41 4 A. When I originally started, we went out to third parties.

10:51:45 5 Because of my 40 years in the insurance business I knew a lot of

10:51:49 6 people, licensed agents that my product -- the services fit,

10:51:54 7 where they could use it for the benefit of their insureds. So

10:51:59 8 it was marketed through health insurance agents and then I

10:52:02 9 started contacting some third-party call centers and grew from

10:52:09 10 there and had contracts.

10:52:10 11 I have terminated some because obviously they have

10:52:13 12 misrepresented my product. I had a person down in this county,

10:52:17 13 in fact -- I'm sorry, not this county, in Fort Lauderdale, that

10:52:20 14 I even went to the Attorney General and the Broward County

10:52:25 15 District Attorney to try and have him prosecuted and nobody did

10:52:28 16 anything about it and the guy was not an honest person.

10:52:32 17 So that's where we go with it.

10:52:36 18 Q. As you experience the operation of these independent

10:52:42 19 parties, did you have high cancellations?

10:52:48 20 A. Some we did. When you look at those numbers, that's over a

10:52:52 21 three-year period of time. A lot of people will enroll in our

10:52:58 22 plan because they may be in between jobs and we do help them.

10:53:01 23 They use our telemedicine. We do use our medication services.

10:53:06 24 We went back with people that have bills three years old and we

10:53:11 25 are very successful in getting those bills taken off their

10:53:16 1 plate. We try to keep them before they go to collection and we  
10:53:20 2 are very successful doing that. So we went back even where  
10:53:23 3 people had bills that were not even created at the time they  
10:53:26 4 were enrolled.

10:53:29 5 Our persistency of our block of business, which is  
10:53:31 6 always a concern of any business, our survival rate is based off  
10:53:35 7 of longevity and we work very diligently and continue to add new  
10:53:41 8 services to our program to continue to increase that longevity  
10:53:45 9 because it is important to us, but you have people that are in  
10:53:49 10 between jobs. They get a job, or the husband and wife gets a  
10:53:51 11 job and, of course, they cancel our plan because they have group  
10:53:54 12 insurance and they don't need it.

10:53:57 13 There are people, and I don't doubt that we have had  
10:54:03 14 people that were misled and that is part of my cancellation  
10:54:07 15 rate, obviously, but in some of the declarations that I have  
10:54:12 16 seen people claim that our services don't work. Well, I have  
10:54:18 17 documentation to show you that we have letters -- when we send  
10:54:20 18 out a provider network list to anybody, there is a letter that  
10:54:24 19 goes along with it and in that letter it says, please call us,  
10:54:30 20 find a provider and call us. We will call the providers and  
10:54:33 21 make sure they are taking new members and that they understand  
10:54:36 22 our program. In the declarations that I have seen people just  
10:54:41 23 went to their provider. It is not ever presented that way. Our  
10:54:43 24 welcome call does not tell them to do it that way.

10:54:47 25 Our welcome call explains we will send you the

10:54:50 1 providers. You tell us who you want to see and we will call  
10:54:53 2 those and make sure that they are available to you.

10:54:55 3 THE COURT: In your 40 years of experience in the  
10:54:57 4 insurance industry, what is the average rate of cancellations?

10:55:01 5 THE WITNESS: Sir, in the senior market, it varied  
10:55:05 6 based off of different Government changes. My persistency in my  
10:55:10 7 Medicare supplement business was 79 percent.

10:55:14 8 THE COURT: Cancellations?

10:55:15 9 THE WITNESS: No, of persistency. My cancellation rate  
10:55:18 10 was --

10:55:19 11 THE COURT: 21 percent?

10:55:20 12 THE WITNESS: -- very little.

10:55:21 13 THE COURT: Okay.

10:55:23 14 THE WITNESS: When I say persistency, I'm talking about  
10:55:25 15 a 13-month persistency rate which the insurance industry uses.

10:55:30 16 BY MR. GRUMER:

10:55:30 17 Q. Looking at your cancellation rate as shown over a  
10:55:33 18 three-and-a-half-year period in the Partners in Health Care  
10:55:38 19 business -- well, first let's start with this: Does Partners in  
10:55:42 20 Health Care use an enrollment software?

10:55:46 21 A. Yes, they do, sir.

10:55:47 22 Q. And is this report out of the Enrollment 1-2-3 software?

10:55:54 23 A. Yes, sir, I would say it is.

10:55:55 24 Q. Have you been able to access this software since the  
10:56:01 25 receiver took over?

10:56:02 1 A. No, I have not. I have requested, but have been denied.

10:56:08 2 Q. All right. Now, in terms of the cancellation rates, can you  
10:56:11 3 determine from this report how many cancellations are as a  
10:56:17 4 result of the independent phone solicitors?

10:56:20 5 A. No, I cannot.

10:56:21 6 Q. What is your impression of your Wisconsin solicitation  
10:56:29 7 retention rate?

10:56:30 8 A. I believe that you will see that there is a big change,  
10:56:33 9 obviously, because we have total control and we do training on a  
10:56:39 10 daily basis. Our cancellation rate of what I -- again --

10:56:43 11 THE COURT: How do you have more control in Wisconsin?  
10:56:46 12 I thought you used only third-party contracts to do the  
10:56:49 13 solicitations.

10:56:50 14 THE WITNESS: We did, sir, up until the time that we  
10:56:51 15 opened our call center in Appleton, which has been since January  
10:56:56 16 which my attorney had mentioned earlier.

10:56:59 17 THE COURT: So your call center is staffed by employees  
10:57:03 18 of Partners in Health Care?

10:57:04 19 THE WITNESS: No, sir, the Health Center and they are  
10:57:07 20 employees of the Health Center, which is a totally different  
10:57:11 21 company.

10:57:11 22 THE COURT: It is a different company, but that you own  
10:57:13 23 and control?

10:57:14 24 THE WITNESS: Yes, sir.

10:57:14 25 THE COURT: Okay.



10:57:15 1 BY MR. GRUMER:

10:57:15 2 Q. And when did the call center go into effect?

10:57:19 3 A. Sometime in January. We probably started with two or three  
10:57:23 4 people and then built from there.

10:57:25 5 Q. And what was, until the receiver came in, the number of  
10:57:30 6 employees for the call center in Wisconsin?

10:57:33 7 A. The number of what, sir?

10:57:34 8 Q. Of employees.

10:57:38 9 A. I happened to be in California that week. Our numbers would  
10:57:42 10 go from 14 to 18 to 20 people. Obviously people that didn't  
10:57:49 11 follow our scripts were let go and we constantly looked to  
10:57:53 12 upgrade our employee status and so that was always going to  
10:58:01 13 fluctuate.

10:58:02 14 Q. Let me draw your attention, then to a post close script that  
10:58:06 15 came into evidence as Exhibit 35. Is this a current script?

10:58:12 16 A. I have not seen that. I am not saying it hasn't been  
10:58:16 17 something that happened years ago. The phone number on there  
10:58:19 18 doesn't even make sense to me, the 888-866-2670. I am not  
10:58:24 19 saying it wasn't mine at one time, but I don't recognize it.

10:58:30 20 I mean, obviously we have forms laying around the  
10:58:36 21 office that have been there since 2005, when I started the  
10:58:38 22 organization. Are they still in practice? No. Am I kind of a  
10:58:43 23 hoarder of everything? Yes, I am. I keep everything and when  
10:58:48 24 you go through my laptop you will find I have emails on there  
10:58:53 25 from many years back and, again, I kept them there to build and

10:58:58 1 document things that we do.

10:58:59 2 Q. If allowed to service the customers, would you put into  
10:59:06 3 effect other remediation practices?

10:59:11 4 A. Oh, absolutely. I mean, I have no problem having every one  
10:59:14 5 of my customer service calls recorded from start to finish. I  
10:59:20 6 mean, my -- my customer service people -- if any of the  
10:59:26 7 investigators would have interviewed them, they would have said  
10:59:30 8 if anybody calls and says is this insurance, they were to  
10:59:33 9 immediately tell them no. They do not play games with it. They  
10:59:36 10 don't hem and haw around.

10:59:38 11 If you go through that booklet, which has been approved  
10:59:40 12 by other DMPPOs, which is discount medical plan organizations, I  
10:59:45 13 am not a licensed discount medical plan organization and I don't  
10:59:48 14 need to be because I don't own any of those discount medical  
10:59:52 15 plan benefits which is dental, vision, hearing, chiropractic or  
10:59:57 16 doctor. Those are not under my roof. The DMPPO has also listed  
11:00:02 17 it in the handbooks if there is one in there.

11:00:05 18 Q. Have you made arrangements to engage a telemarketing  
11:00:11 19 compliance program?

11:00:13 20 A. Yes, we have. We had a conversation with them for probably  
11:00:20 21 an hour yesterday on what our plans are, what we need. Dean and  
11:00:23 22 his wife, Angela, are very familiar with the industry, 20-plus  
11:00:29 23 years in it. They belong to Pace so this is not a -- this is  
11:00:33 24 not a fly-by-night organization. That is not what we look for.  
11:00:36 25 We look for quality and they are two very quality people.

11:00:41 1 They have sent us a business proposal, which I believe  
11:00:44 2 you have copies of, and with my ability to pay the retainer,  
11:00:51 3 they will come in and do the right thing and have no problem  
11:00:54 4 submitting our plan to the Court for approval for continuous  
11:00:58 5 business.

11:00:59 6 Q. And is this the proposal that you received yesterday from  
11:01:04 7 Quality Contact Solutions?

11:01:07 8 A. Yes, sir.

11:01:08 9 Q. And they supervise a telemarketing call room?

11:01:15 10 A. Yes, sir. In fact, they supervise some of the larger  
11:01:18 11 insurance companies that have also been employed by them.

11:01:22 12 Q. And did they also recommend an administrative compliance  
11:01:25 13 counsel?

11:01:25 14 A. Yes, they did, sir.

11:01:26 15 Q. And did you speak with him as well?

11:01:29 16 A. Yes, we did and he is willing to also come on board with us  
11:01:32 17 based off the information we shared with him and his association  
11:01:37 18 with Dean and Angela.

11:01:41 19 Q. And is this Mr. Roth from the Roth, Donner, Jackson firm in  
11:01:47 20 Washington?

11:01:48 21 A. Yes, sir.

11:01:49 22 Q. And your ability to retain these people requires funds. Do  
11:01:54 23 you have access to any funds at this time?

11:01:58 24 A. No, sir.

11:01:58 25 Q. What bank accounts are frozen?

11:02:00 1 A. All of the Associated Bank and Northshore accounts, which  
11:02:05 2 are Partners in Health Care, Senior Advantage of Wisconsin,  
11:02:10 3 which is actually an insurance agency, but we have a d/b/a which  
11:02:13 4 is a health center doing business under Senior Advantage of  
11:02:19 5 Wisconsin that is also froze.

11:02:20 6 Q. Does Tri-Resource have an account?

11:02:22 7 A. Yes, they do and that is not frozen.

11:02:24 8 Q. But its phones have been turned off?

11:02:26 9 A. Yes.

11:02:26 10 Q. Has internet --

11:02:27 11 A. Internet has been turned off as well, right. So now what  
11:02:31 12 happens, when my clients call, members call in, it is just dead  
11:02:35 13 and obviously, should the Court grant me the permission to  
11:02:39 14 service my people, I have some problems to overcome because I  
11:02:44 15 have got -- since the 25th, I believe, is when the receiver shut  
11:02:48 16 it off until today, I have got people that obviously are upset  
11:02:52 17 because they can't get ahold of us.

11:02:54 18 We have got people -- their medication -- their life is  
11:02:59 19 determined by us providing them the medications. The receiver  
11:03:03 20 has got copies of testimonies. We just had a lady send us  
11:03:09 21 unsolicited testimony. We saved her \$29,000 her first year.  
11:03:14 22 She was unable to take all the medications that she needed  
11:03:17 23 because she couldn't afford them. We perform a valuable service  
11:03:20 24 regardless of the declarations and some of the statements saying  
11:03:25 25 that it is a useless card.

11:03:27 1 We have testimonies from people saying you are a  
11:03:30 2 lifesaver to us, so that is how we do our business. We help  
11:03:34 3 people that need help.

11:03:37 4 Q. Mr. Kieper, could you describe, please, for the Court the  
11:03:41 5 telemed service?

11:03:44 6 A. Well, that is one of our strongest advocates obviously  
11:03:49 7 because we are creatures of habit and we always look for  
11:03:52 8 conveniences. The telemedicine industry, I have been using it  
11:03:58 9 or engaged in it and encouraged people to use it since 2005. I  
11:04:02 10 started out with a company called Consult a Doc. At that time  
11:04:07 11 there was -- Consult a Doc and Tell a Doc were the two largest  
11:04:11 12 organizations that were in the industry. I have had a great  
11:04:14 13 relationship with Consult a Doc up until about six months ago.  
11:04:18 14 They and Tell a Doc merged so our contract went from Consult a  
11:04:22 15 Doc to Tell a Doc.

11:04:25 16 Q. What does Tell a Doc do?

11:04:26 17 A. What happens is it gives people access to a physician 24  
11:04:29 18 hours a day, seven days a week from the comfort of their home,  
11:04:33 19 an iPhone or a computer. If they went on the Internet and  
11:04:37 20 enrolled or joined one of these companies by themselves, they  
11:04:41 21 would pay anywhere from \$35 to \$65, depending on the Tell a Doc  
11:04:48 22 service they enrolled in for each and every phone call that they  
11:04:52 23 would make to that physician.

11:04:55 24 In our program they have unlimited use and access to  
11:05:00 25 doctors 24 hours a day, seven days a week and if they have to

11:05:03 1 call five times a day, they will get to talk to a board  
11:05:07 2 certified physician five times a day and they are not charged a  
11:05:10 3 penny.  
11:05:10 4 Q. And is that service available to your enrollees today?  
11:05:18 5 A. No, today it is not. Nothing is available to any of them  
11:05:21 6 that they have been paying for all this time. So when you look  
11:05:26 7 at the loss of business, it is going to be tremendous because  
11:05:29 8 these people -- you know, it is like an insurance policy in  
11:05:33 9 respect because that is what everybody wants to compare me with.  
11:05:37 10 If I pay a premium for ten years and all of a sudden the  
11:05:40 11 insurance company goes out of business, that doesn't do me any  
11:05:44 12 good. As long as that insurance company stays in business  
11:05:47 13 obviously my chances -- as time goes on, the usage of that plan  
11:05:51 14 or policy is a lot greater.

11:05:54 15 My members are the same way, but the retention of our  
11:05:57 16 people is we do have value. People would not continue to pay a  
11:06:03 17 fee to us and continue to call us if we had zero value to them.  
11:06:09 18 Our phones wouldn't ring. We would be like the Maytag  
11:06:16 19 repairman.

11:06:17 20 MR. GRUMER: I have no further questions. Thank you,  
11:06:18 21 Mr. Kieper.

11:06:19 22 THE COURT: All right. Mr. Ivens.

23 CROSS-EXAMINATION

11:06:31 24 [Beginning at 11:06 a.m., 9/4/14.]

11:06:32 25 BY MR. IVENS:

11:06:32 1 Q. Good morning, Mr. Kieper.

2 A. Good morning.

11:06:33 3 Q. You don't monitor what is actually said in the sales calls  
11:06:36 4 that your third-party representatives use, do you?

11:06:40 5 A. Well, all the scripts should be approved through us. No, I  
11:06:45 6 can't monitor what each independent operation does. We do  
11:06:50 7 require them to do a verification and I know the receiver and  
11:06:59 8 the FTC currently has some problems with what they feel our  
11:07:06 9 verification does and what we feel it does.

11:07:08 10 We started the verification as a process for us to  
11:07:11 11 give -- to give us an opportunity to have some access to that  
11:07:17 12 sales call. In the verification script it does say what you are  
11:07:21 13 enrolling in is an advantage health savings discount program.  
11:07:26 14 This is not a major medical nor is it intended to replace a  
11:07:30 15 major medical. It also will give them the fees they will pay  
11:07:34 16 and also gives our cancellation policy.

11:07:37 17 Q. Well, that is substantially what we just saw in that post  
11:07:40 18 close script, isn't it? You say it is not major medical --

11:07:43 19 A. That is not the script that is used.

11:07:45 20 Q. You could require each and every one of your outside vendors  
11:07:50 21 to record the actual sales calls, couldn't you?

11:07:52 22 A. And I am going to do that, sir, yes. If I retain any of  
11:07:57 23 them and the Court allows me to be in business they all will be  
11:08:01 24 recorded, you are absolutely right, sir.

11:08:02 25 Q. But you could have done it before and you never did it,

11:08:05 1 right?

11:08:05 2 A. Yes, I could have. I didn't realize the need for it. I  
11:08:08 3 didn't -- as a business person and somebody that has ethics, I  
11:08:12 4 did not see anybody being unethical and represent a product for  
11:08:16 5 something that it is not because it has great value for the  
11:08:19 6 market that we serve.

11:08:20 7 Q. The Federal Trade Commission served on you the temporary  
11:08:25 8 restraining order that had a financial form for individuals to  
11:08:29 9 fill out. You haven't filled that out, have you?

11:08:31 10 A. I have not been able to because I do not have access to my  
11:08:33 11 office where my records are at. I do not have access to any of  
11:08:37 12 the files. I don't have access to any of my bank accounts. I  
11:08:42 13 am locked out of them. I have requested that and not received  
11:08:44 14 it.

11:08:44 15 Q. You have access to your own personal computer, don't you,  
11:08:47 16 Mr. Kieper?

11:08:48 17 A. Yes, I do, sir.

11:08:49 18 Q. The person who imaged your computer gave it back to you the  
11:08:57 19 same day; isn't that correct?

11:08:58 20 A. Yes, sir.

11:08:59 21 Q. And you said that you have a lot of stuff on your computer.  
11:09:02 22 You don't have any of your own financial information on your own  
11:09:06 23 computer?

11:09:06 24 A. No.

11:09:06 25 Q. Did your ask the receiver whether you could go back into the



11:09:09 1 premises to --

11:09:10 2 A. Yes, I did and I also asked to have access to 1, 2, 3 and my

11:09:14 3 records so that I could at least give an answer to the

11:09:18 4 declarations that I was furnished with. Yes, I have asked.

11:09:23 5 Q. Did you attempt to log into 1, 2, 3 --

11:09:25 6 A. I have not. I was told explicitly not to try to access any

11:09:30 7 bank records or try to access 1, 2, 3 because I was not allowed

11:09:36 8 to and abided by what I was told by the receiver.

11:09:39 9 Q. You mentioned a company call Senior Advantage of Wisconsin?

11:09:43 10 A. Yes.

11:09:43 11 Q. That is actually doing business as the Health Center, right?

11:09:46 12 A. No, sir. This is a corporation with -- as a d/b/a the

11:09:50 13 Health Center, so the Health Center is underneath Senior

11:09:55 14 Advantage of Wisconsin as a d/b/a.

11:09:59 15 Q. So who owns Health Center?

11:10:01 16 A. I do.

11:10:01 17 Q. Where is it incorporated?

11:10:04 18 A. Pardon?

11:10:04 19 Q. Where --

11:10:04 20 A. It is not incorporated. It is a d/b/a under Senior

11:10:08 21 Advantage of Wisconsin.

11:10:09 22 Q. Where is Senior Advantage of Wisconsin incorporated?

11:10:11 23 A. Wisconsin.

11:10:13 24 Q. And you are the sole owner?

11:10:14 25 A. Yes, sir.

11:10:15 1 Q. And it operates in the same premises as Tri-Resource Group  
11:10:17 2 and Partners in Health Care, correct?

11:10:19 3 A. If you are talking about the same physical location, yes,  
11:10:22 4 sir.

11:10:22 5 Q. And every person who you say is getting the prescription  
11:10:27 6 drug benefit or the medical mediation benefit, each and every  
11:10:31 7 one of those consumers came through the door by getting sold the  
11:10:35 8 medical discount card program; isn't that correct?

11:10:37 9 A. No, it was not sold as a medical discount card. We don't  
11:10:41 10 sell medical discount cards. If you all -- the medical -- we  
11:10:45 11 sell an advantage health savings program. Our presentation is  
11:10:49 12 based off of a lot of benefits or services, if you will, not a  
11:10:54 13 medical discount card.

11:10:55 14 Q. The point much my question really is: Anybody who is taking  
11:10:59 15 advantage of these price mediations either for prescription  
11:11:02 16 drugs or medical care, they got through the door by getting that  
11:11:05 17 package that you just mentioned?

11:11:07 18 A. No, that is not a true statement.

11:11:08 19 Q. Then where did they come from?

11:11:09 20 A. Because when we do our marketing, we will buy opt-in data of  
11:11:16 21 people taking two or more medications a day and we solicit --  
11:11:22 22 and you will see in those numbers it says the premium RX plan,  
11:11:27 23 those are people that only bought prescription drug services.  
11:11:31 24 That was what they needed and that is what they were sold.

11:11:33 25 You will see in there we also do the telemedicine

11:11:36 1 prescription drug services by themselves. That is what they  
11:11:40 2 needed and that is what they were enrolled in, not a discount  
11:11:43 3 card plan, sir.

11:11:44 4 Q. But who sold that program to those consumers?

11:11:46 5 A. We did.

11:11:48 6 Q. Which entity?

11:11:49 7 A. I can't tell you unless you let me into 1, 2, 3. I can  
11:11:52 8 identify every one of them. I can give you by name what each  
11:11:56 9 individual enrolled in.

11:11:57 10 Q. Does Tri-Resources Group sell anything?

11:12:00 11 A. No, it does not, sir.

11:12:00 12 Q. Does Partners in Health Care sell anything?

11:12:05 13 A. No, it does not, sir.

11:12:05 14 Q. Therefore there is only one entity that you control that  
11:12:07 15 sells these plans; isn't that correct?

11:12:08 16 A. No, sir. Well, that I personally control, yes, which is the  
11:12:10 17 Health Center.

11:12:11 18 MR. IVENS: I have no further questions, Your Honor.

11:12:13 19 THE COURT: All right. Anything further from this  
11:12:13 20 witness. All right. Mr. Kieper, you can step down.

11:12:18 21 THE WITNESS: Thank you, sir.

11:12:19 22 THE COURT: Any other witnesses?

11:12:25 23 MR. GRUMER: No, sir.

11:12:26 24 MR. ROGOW: No, sir.

11:12:27 25 THE COURT: All right. We have been here for two

11:12:28 1 hours. Let's take a 10-minute break. We will come back and  
11:12:33 2 hear arguments. Okay.

11:12:36 3 [There was a short recess taken at 11:12 a.m.]

11:23:49 4 THE COURT: Welcome back everyone and please be seated.  
11:23:49 5 Let's start with Mr. Rogow's issue with his clients and  
11:23:53 6 what is the FTC's position concerning how, if at all, we can  
11:23:58 7 segregate Banestral after hearing from the witnesses?

11:24:02 8 MR. IVENS: I think after hearing from the witnesses,  
11:24:04 9 Your Honor, the Federal Trade Commission cannot agree that  
11:24:08 10 Banestral is not unaffiliated with United Solutions Group.  
11:24:15 11 There is still the common ownership. Clearly Banestral pays the  
11:24:20 12 rent.

11:24:21 13 THE COURT: Yes. It is clear there is some  
11:24:23 14 affiliation, but the question is: Should they be shut down?

11:24:29 15 MR. IVENS: I think that is an issue for the  
11:24:31 16 receivership. I think the receiver should try to decide  
11:24:35 17 whether, just like any other entity that is affiliated with  
11:24:38 18 United Solutions Group, it can be carved out and can operate at  
11:24:43 19 a profit legally.

11:24:45 20 We have evidence, and some of that came out during the  
11:24:50 21 examination of Ms. Gomez, that this business operates with a  
11:24:56 22 similar model of calling people, making misrepresentations with  
11:25:00 23 respect to a travel business instead. It has clearly been  
11:25:06 24 sanctioned by the government of Colombia, although Walter Vargas  
11:25:10 25 couldn't testify to what exactly that sanction meant.

11:25:11 1 THE COURT: He did testify. He testified exactly what  
11:25:13 2 it meant. Nobody else testified to something different from  
11:25:17 3 that.

11:25:20 4 MR. IVENS: To me, Your Honor, again I don't know that  
11:25:22 5 it can be operated properly and legally and I think it is  
11:25:26 6 affiliated.

11:25:27 7 THE COURT: Mr. Russin, do you have a position on that?

11:25:29 8 MR. RUSSIN: Your Honor, just so you understand the  
11:25:31 9 background of --

11:25:31 10 THE COURT: You need to move the microphone closer.

11:25:35 11 MR. RUSSIN: I will just come to the podium, Your  
11:25:41 12 Honor.

11:25:43 13 In exercising our duty or authority under the TRO, our  
11:25:49 14 view was very simply that the plain language of the TRO included  
11:25:55 15 affiliates. When we entered the premises it was clear that, at  
11:25:58 16 a minimum, these entities were run out of the same location with  
11:26:01 17 a tremendous amount of overlap. So our view was that to the  
11:26:07 18 extent that this Court intended that all entities affiliated  
11:26:12 19 with United Solutions Group not continue with FTC violations  
11:26:18 20 that had been found that supported the TRO, our view was that  
11:26:23 21 we, as receiver, could not continue or allow it to continue.

11:26:27 22 THE COURT: And I think that was a correct view in  
11:26:29 23 light of the information that you had and the language in the --  
11:26:32 24 but now we have heard more explanation of what the son's  
11:26:35 25 involvement was and why he was doing it and their agreement to

11:26:38 1 shut down the company that was the subject of the TRO.

11:26:43 2 MR. RUSSIN: Yes, and let me be direct. During that  
11:26:47 3 entire communication, or during the last week -- it has only  
11:26:49 4 been a week. It has really been less than a week in terms of  
11:26:53 5 business days. We did have concerns about the fact that they  
11:26:56 6 sold vacation plans and not health plans or health memberships,  
11:27:00 7 so there was clearly a difference.

11:27:01 8 So what we suggested to Mr. Rogow -- who, by the way,  
11:27:05 9 came in later last week as opposed to prior counsel and we  
11:27:14 10 weren't getting a lot of information because they were concerned  
11:27:16 11 about Fifth Amendment issues, I don't know why, but they were  
11:27:18 12 concerned about that. So what I simply suggested was give me a  
11:27:22 13 plan of remediation. Tell me what it is you are going to do  
11:27:25 14 that will make sure that I, as a receiver, don't look foolish;  
11:27:29 15 that you don't continue -- or we can monitor that you don't  
11:27:34 16 continue to violate FTC regulations and I am happy to consider  
11:27:38 17 it.

11:27:38 18 So I suppose that if they were to provide some plan,  
11:27:43 19 some oversight, recording of sales conversations, whatever it is  
11:27:49 20 that would be appropriate to ensure that no FTC violations are  
11:27:54 21 occurring, I don't see any reason why they should not continue  
11:27:58 22 in business. The problem is that there is no way of knowing  
11:28:04 23 precisely what it is their sale process is. There is no way of  
11:28:10 24 knowing what they are representing.

11:28:11 25 THE COURT: But they weren't the subject of the TRO.

11:28:13 1 MR. RUSSIN: You are right.

11:28:15 2 THE COURT: Even if they are a legitimate business and  
11:28:17 3 doing everything legitimately, but United is funnelling all  
11:28:21 4 their money that they make to them, now there is a question,  
11:28:24 5 okay, how are we going to recover money, we may need to go after  
11:28:28 6 Banestral to get the money. I didn't really when that that is  
11:28:32 7 what happened.

11:28:33 8 You are talking about a company that is doing business  
11:28:36 9 in the same physical location and one of those principals of  
11:28:39 10 that business was also involved in the other one, but I just  
11:28:43 11 don't -- I don't know.

11:28:45 12 MR. RUSSIN: Your Honor, it is really Your Honor that  
11:28:47 13 needs to determine whether you want a broader scope or not. I  
11:28:50 14 understand the difference between travel plans, et cetera. Of  
11:28:53 15 course, to the extent that they are not representing that air  
11:28:56 16 fare is not included just as an example, that is a concern, but  
11:29:00 17 again this TRO was directed at health plans. It wasn't directed  
11:29:05 18 at travel. So again, I am at the discretion of the Court. I  
11:29:08 19 would do anything Your Honor wishes or nothing with regard to  
11:29:12 20 Banestral.

11:29:13 21 THE COURT: Is there any evidence that you have  
11:29:15 22 uncovered that shows that any of the assets, the monies from  
11:29:20 23 United, are being held by Banestral?

11:29:23 24 MR. RUSSIN: We have been unable, actually, to discern  
11:29:28 25 that because we have not been told or given cooperation one way

11:29:32 1 or the other with regard to how the accounts are held. However,  
11:29:36 2 if Mr. Rogow wishes to sit down with me, we open up the office  
11:29:41 3 and we can see whether there is any due to from the two  
11:29:47 4 companies, whether there is any funding of USG or by USG of  
11:29:53 5 Banestral, whether money is owed one way or the other, I'm happy  
11:29:56 6 to consider those issues.

11:29:57 7 Of course, it has only been a few business days so  
11:30:00 8 whatever mirroring has occurred we haven't been able to analyze  
11:30:05 9 to this point to determine whether there is -- I am sure there  
11:30:07 10 are separate accounts, most likely, but that is not the  
11:30:09 11 question. The question is whether there are funds flowing back  
11:30:13 12 and forth and I don't know the answer to that.

11:30:14 13 THE COURT: Where is your suggestion, Mr. Rogow?

11:30:16 14 MR. ROGOW: My suggestion is that Banestral is not an  
11:30:19 15 affiliate. The evidence is clear Banestral is not an affiliate.  
11:30:23 16 Mr. Russin is right. When I came in, we gave them the  
11:30:27 17 information. We told them we were shutting down United. I  
11:30:30 18 don't think there is any need for a restraining order with  
11:30:33 19 regard to United. I think this is a matter --

11:30:36 20 THE COURT: You mean with regard to Banestral?

11:30:38 21 MR. ROGOW: I want to say United. This is a hearing on  
11:30:41 22 preliminary injunction with regard to United.

11:30:45 23 THE COURT: Right.

11:30:45 24 MR. ROGOW: So I am saying with regard to that, given  
11:30:48 25 the fact that we are not operating the company any more, that



11:30:52 1 issue is moot, although we do need the receiver to wind it down  
11:30:56 2 because that is all that is going to happen. It will be wound  
11:30:58 3 down. Whatever the monies are in the accounts they will take a  
11:31:01 4 look at and that is all.

11:31:02 5 Banestral needs -- it needs to be made clear that  
11:31:06 6 Banestral is not an affiliate and that Banestral is free to  
11:31:12 7 operate and be able to go back, get access to its servers.  
11:31:18 8 There is no problem about sharing with them what the accounts  
11:31:18 9 are. There has never been any secret about that. There is very  
11:31:20 10 little money in the accounts, but that's fine.

11:31:23 11 So I just -- what I would like is the Court to deny the  
11:31:28 12 preliminary injunction against United. There actually has been  
11:31:33 13 no evidence about United in terms of its operation or --

11:31:38 14 THE COURT: Because you stipulated.

11:31:40 15 MR. ROGOW: I stipulated that we are shutting down and  
11:31:42 16 there is no need to do anything, so I agree. Basically I am  
11:31:46 17 saying that the case against United --

11:31:49 18 THE COURT: If she leaves court today and says, thank  
11:31:51 19 you, Mr. Rogow, and then tomorrow starts the business, there is  
11:31:55 20 no order that is in effect that she is violating. Basically,  
11:32:00 21 you are -- you are basically agreeing to the injunction by  
11:32:03 22 saying she is going to stop operating the business.

11:32:06 23 MR. ROGOW: That's right. I am agreeing to the  
11:32:07 24 injunction. Without any of all these findings that they need to  
11:32:10 25 make, we are in agreement that United shall be enjoined, that

11:32:15 1 the receiver --

11:32:16 2 THE COURT: I am sure you and Ms. Ivens and Mr. Brown  
11:32:24 3 can come up with some language that enters an injunction without  
11:32:25 4 agreeing to any of the underlying reasons, just saying we agree  
11:32:26 5 to the relief that the FTC is seeking without agreeing to any of  
11:32:31 6 the factual assertions. That takes care of United.

11:32:34 7 MR. ROGOW: Exactly. Okay.

11:32:35 8 THE COURT: But as to Banestral --

11:32:37 9 MR. ROGOW: And a finding from the Court that Banestral  
11:32:40 10 is not an affiliate of United and that Banestral is free to  
11:32:44 11 operate. This discussion about Banestral's marketing in  
11:32:48 12 Colombia is completely irrelevant to anything here. This  
11:32:52 13 lawsuit was not against Banestral. Banestral just happens to  
11:32:55 14 be --

11:32:56 15 THE COURT: To me it is an affiliate. The question is  
11:32:58 16 whether it is an affiliate that needs to have some Court  
11:33:01 17 intervention.

11:33:02 18 MR. ROGOW: And the answer is no. The answer is no.

11:33:05 19 THE COURT: Okay.

11:33:05 20 MR. ROGOW: And so the order should make it clear that  
11:33:07 21 Banestral is not precluded from conducting its business, should  
11:33:12 22 have access to its business operations and --

11:33:16 23 THE COURT: How can we address Mr. Russin's concerns  
11:33:20 24 about getting the bank records to see that there is no money  
11:33:22 25 that --

11:33:23 1 MR. ROGOW: The court order can say that the bank  
11:33:26 2 records shall be provided so the receiver shall have full  
11:33:28 3 knowledge of what the assets are of Banestral and then the  
11:33:32 4 receiver at some point, I am sure, when he sees these will  
11:33:35 5 inform the Court that there has been no money sent from United  
11:33:39 6 to Banestral.

11:33:40 7 THE COURT: How quickly can we do that? It is you  
11:33:42 8 11:30 on Thursday. Is that something that can be done today and  
11:33:46 9 tomorrow?

11:33:47 10 MR. ROGOW: I hope today and tomorrow. My thought  
11:33:49 11 about this was I needed to get it resolved soon because I am  
11:33:53 12 about to go to Africa so I want to get it done.

11:33:55 13 THE COURT: When are you leaving?

11:33:57 14 MR. ROGOW: I leave on the 10th, but I have an argument  
11:34:00 15 here so the next two days I am kind of tied up, but we can get  
11:34:04 16 it done. I have a paralegal to work with. Ms. Vargas is a  
11:34:08 17 graduate --

11:34:09 18 THE COURT: What argument do you have here?

11:34:12 19 MR. ROGOW: I have the Wachovia, Wells Fargo argument  
11:34:16 20 on the bank overdraft case in the Court of Appeals on Tuesday  
11:34:18 21 and then I fly right after that.

11:34:19 22 THE COURT: Here is what I am going to do. On this  
11:34:22 23 case, on this part of the case involving you -- your clients, I  
11:34:25 24 am going to set a hearing at nine o'clock on Monday, the 8th,  
11:34:31 25 with the hope that there won't be a hearing. So today and

11:34:34 1 tomorrow you and Mr. Russin can get together and if you can  
11:34:38 2 agree, okay, to -- if you can satisfy him that there was no  
11:34:45 3 money going from United to Banestral, we can just enter an  
11:34:50 4 agreed order -- as to United, you and Mr. Ivens and Mr. Brown  
11:34:54 5 can enter an agreed order today and come up with language that  
11:34:58 6 is satisfactory to both of you, with Mr. Russin and you. If you  
11:35:03 7 can get me an order by sometime tomorrow then we can cancel the  
11:35:05 8 hearing Monday.

11:35:06 9 MR. ROGOW: Can we get Banestral in operation in the  
11:35:09 10 meantime? If the only issue with Mr. Russin is the issue of  
11:35:13 11 monies, the question of shutting Banestral down for another day  
11:35:17 12 or two is --

11:35:17 13 THE COURT: I am saying if you want to go with him this  
11:35:20 14 afternoon and he tells me this afternoon that he has looked at  
11:35:23 15 the bank records and it is okay to let them go back in business,  
11:35:27 16 give me an order and I will sign it as soon as I get it.

11:35:30 17 MR. RUSSIN: Your Honor, two clarifications I just want  
11:35:33 18 to make sure of.

11:35:35 19 THE COURT: Okay.

11:35:36 20 MR. RUSSIN: One is that whatever order we would enter  
11:35:40 21 into, or the Court would enter would clearly state that  
11:35:43 22 Banestral is an affiliate of USG --

11:35:46 23 THE COURT: I just said that.

11:35:47 24 MR. RUSSIN: -- but that Banestral would not be  
11:35:50 25 included in the TRO or the preliminary injunction and the other

11:35:52 1 is a matter of cost. Obviously the efforts of the receiver and  
11:35:58 2 I am assuming the FTC were not inexpensive. We spent a  
11:36:03 3 considerable amount of time over the last week and because  
11:36:06 4 Banestral was under the TRO, I just want to make it clear that  
11:36:11 5 there has to be some review by this Court as to who should pay  
11:36:15 6 the associated expenses associated with this effort that  
11:36:18 7 Banestral was drawn into because it was an affiliate of United  
11:36:21 8 Solutions Group. I just want to hold that issue open.

11:36:24 9 THE COURT: Just reserve jurisdiction to determine  
11:36:30 10 what, if any, part of the fee should be assessed against them?

11:36:33 11 MR. RUSSIN: Sure.

11:36:34 12 THE COURT: A finding that they would have to pay  
11:36:38 13 anything, just reserve jurisdiction in case that is an issue.

11:36:40 14 MR. RUSSIN: Exactly, Your Honor. That is my main two  
11:36:41 15 concerns at this point, but I am happy to work as quickly as  
11:36:45 16 Mr. Rogow's group can work to try to get Banestral back in  
11:36:49 17 operation, assuming that the FTC doesn't have more to say about  
11:36:52 18 this in front of Your Honor. Thank you.

11:36:55 19 MR. ROGOW: I think we have an understanding, Your  
11:37:02 20 Honor.

11:37:02 21 THE COURT: Okay. Let's take up the issue involving  
11:37:04 22 Mr. Kieper and Partners in Health. Just looking at my notes  
11:37:14 23 from the very beginning this morning, there are several things  
11:37:15 24 that you wanted. One of them was access to copies of the  
11:37:21 25 records of the company. You said they have made duplicates.

11:37:25 1 What about that, Mr. Ivens and Mr. Brown?

11:37:31 2 MR. IVENS: Your Honor, Paragraph 23 of the TRO gives  
11:37:34 3 the receiver the opportunity to let anybody -- not anybody,  
11:37:38 4 parties into the premises to review records. By my  
11:37:42 5 understanding, the receiver has not allowed the defendants to go  
11:37:45 6 back into the premises because he doesn't want them to continue  
11:37:49 7 to perpetrate a fraud. In the Federal Trade Commission's eyes  
11:37:53 8 every consumer who was given a representation that they were  
11:37:56 9 buying health insurance and did not get health insurance was  
11:37:59 10 defrauded.

11:38:00 11 THE COURT: The issue is just getting copies. That is  
11:38:01 12 a finite issue. Any problem with Mr. Kieper or his company  
11:38:06 13 getting copies of records that he wants?

11:38:07 14 MR. IVENS: The Federal Trade Commission has no  
11:38:09 15 objection to that whatsoever, Your Honor.

11:38:11 16 THE COURT: Okay. Mr. Russin, what is your position?

11:38:12 17 MR. RUSSIN: Absolutely no objection to allowing them  
11:38:15 18 back in to get copies of documents, not a problem.

11:38:19 19 THE COURT: How is it going to be done though?

11:38:22 20 MR. RUSSIN: We have local counsel in Wisconsin who we  
11:38:26 21 can have oversee entry into the premises. We would need to,  
11:38:31 22 obviously, reinvigorate the computers so that they may enter  
11:38:36 23 back into the computer system.

11:38:39 24 THE COURT: Mr. Grumer, are you talking about making  
11:38:41 25 copies of computer records so you can just bring in thumb drives

11:38:44 1 or disks or external hard drives to make copies or papers also?

11:38:48 2 MR. GRUMER: I don't know enough about the Enrollment

11:38:50 3 1-2-3 program to determine whether it can be thumb driven or

11:38:57 4 duplicated. I don't know enough about the proprietary nature,

11:39:03 5 for example, a crude example perhaps, but Quick Books -- if you

11:39:07 6 are given a Quick Books data file without the program which is

11:39:11 7 itself proprietary, having the data is insufficient. So I

11:39:18 8 suspect the Enrollment program must operate in order to access

11:39:22 9 the data.

11:39:23 10 THE COURT: Let's put that issue aside because if I am

11:39:26 11 going to allow him to run the business, then maybe he needs to

11:39:30 12 have access to that program. If I am not going to allow him to

11:39:33 13 run the business he may not need it. In terms of the other

11:39:36 14 documents or other computer information, I am going to allow you

11:39:41 15 to make arrangements through the receiver and the receiver's

11:39:44 16 local counsel in Wisconsin to enter the premises upon reasonable

11:39:47 17 notice and make copies.

11:39:49 18 MR. GRUMER: Thank you, sir.

11:39:50 19 MR. RUSSIN: Just so Your Honor knows, we do have

11:39:54 20 information that has already been copied and we can transmit

11:39:59 21 that information, which I just got today actually, to Mr. Grumer

11:40:03 22 and his client of everything that we copied so that they have it

11:40:06 23 and that includes general ledgers of each of the three entities

11:40:11 24 that were operating out of the Wisconsin location.

11:40:14 25 THE COURT: Okay. Then the second issue is your claim,

11:40:16 1 Mr. Grumer, that this is a legitimate business and you want to  
11:40:19 2 service existing customers. Let me hear your argument about  
11:40:23 3 that.

11:40:23 4 MR. GRUMER: Exhibit 37 which plaintiff moved into  
11:40:28 5 evidence demonstrates a certain reality and that is that  
11:40:35 6 regardless of their date of enrollment, regardless of who  
11:40:39 7 enrolled them, there are currently active 1,746 members. The  
11:40:49 8 testimony, unrebutted, by Mr. Kieper was that they were fielding  
11:40:54 9 150 calls per week. That is 600 calls per month.

11:41:00 10 THE COURT: I thought it was 150 calls a day.

11:41:02 11 MR. GRUMER: A day. All the better. Okay.

11:41:06 12 THE COURT: Yeah. Go ahead.

11:41:07 13 MR. GRUMER: You are right, Your Honor. You have a  
11:41:09 14 better recollection than we put it together. So the people that  
11:41:16 15 enrolled and are still active obviously are active  
11:41:20 16 participants --

11:41:21 17 THE COURT: Right.

11:41:21 18 MR. GRUMER: -- and they need to be serviced.

11:41:25 19 THE COURT: Okay. My question to you is: Why do you  
11:41:28 20 believe this is a legitimate business in spite of all the other  
11:41:34 21 documents that I have reviewed?

11:41:35 22 MR. GRUMER: There is nothing that says Mr. Kieper's  
11:41:41 23 plan is illegal. There is nothing that prohibits the enrollment  
11:41:48 24 in telemed, Tell a Doc, the obtaining of mediation for disputes  
11:41:55 25 over medical bills, the direction of patients to low cost



11:42:02 1 clinics. There is nothing that is prohibited.

11:42:05 2 What is prohibited is the selling of insurance without  
11:42:12 3 license and proper registration. This is not insurance by  
11:42:17 4 definition. It is not the pooling of money and so -- but what  
11:42:24 5 we acknowledge is wrong is the representation by anybody that  
11:42:30 6 this is insurance, so that's why we started out with this is a  
11:42:35 7 two-step phase. Phase number 1 should be the people that are  
11:42:39 8 active and the people that are calling and are participating  
11:42:44 9 need to be serviced. That's their obligation.

11:42:48 10 Otherwise, another 1,700 people will withdraw and you  
11:42:51 11 will have demand for refunds and the limited resources of the  
11:42:55 12 funds that have been frozen will be exhausted just in refunding  
11:42:59 13 these people because the receiver has prohibited the operation  
11:43:03 14 of a business that was not named in this lawsuit, Tri-Resource,  
11:43:08 15 and not a single allegation of Tri-Resource's activities was --

11:43:16 16 THE COURT: Isn't it named as an affiliate?

11:43:18 17 MR. GRUMER: It would be identified as an affiliate,  
11:43:22 18 however there is not a single complaint on the service side. As  
11:43:26 19 we reviewed the affidavits, even the live testimony of the  
11:43:30 20 witnesses here today, there is no indication that, A,  
11:43:34 21 Tri-Resource Group solicits, and we have already consented to  
11:43:38 22 know further solicitation; and, B, there is no indicia that  
11:43:44 23 Tri-Resource Group is doing anything improper. There is not  
11:43:48 24 even a single factual statement that -- yes, it is an affiliate  
11:43:53 25 in the sense that it provides -- it is the service arm.

11:43:57 1 THE COURT: Okay.

11:43:58 2 MR. GRUMER: Now, at some point we are going to come  
11:44:03 3 back in and say to the Court we now have in place an FTC  
11:44:10 4 approved supervisor, supervised process, supervised scripts. We  
11:44:17 5 have run it all the by the receiver and we also have full  
11:44:22 6 compliance so that in the event of any violation, you are going  
11:44:29 7 to have a recording of it. You can shut us down. You can come  
11:44:32 8 back down -- I am sure it will be a zero tolerance policy from  
11:44:37 9 the Court if the Wisconsin call room violates any such item, but  
11:44:41 10 in terms of today, we wish to have Tri-Resource back and  
11:44:49 11 functioning.

11:44:50 12 We wish to have access to, of course with full  
11:44:55 13 disclosure, however it may work, the funds that have been frozen  
11:44:59 14 so that we can retain the professionals necessary to put  
11:45:05 15 together the appropriate plan with appropriate controls, but  
11:45:10 16 other than that, there will be no solicitation until approved by  
11:45:17 17 the Court. Mr. Kieper, the receiver in his -- and Mr. Russin  
11:45:23 18 and I know each other for a long time. The receiver, for  
11:45:27 19 example, took his ex-wife's Mercedes title and he has to go get  
11:45:33 20 the car serviced for his ex-wife or face other issues in his  
11:45:37 21 divorce. We need the title back. We need --

11:45:40 22 THE COURT: Why do you need title to a car to get  
11:45:43 23 repairs? I have never had anybody ask me for a title.

11:45:46 24 MR. GRUMER: We will return it upon -- he doesn't -- he  
11:45:48 25 has to show he is entitled. That is literally the explanation I

11:45:54 1 have been given, but this is minutia for you and I, Judge, and  
11:46:00 2 for this Court but --

11:46:01 3 THE COURT: You still haven't answered my question.  
11:46:03 4 That makes no sense. I have never seen a repair place -- I take  
11:46:06 5 my car to Jiffy Lube. I've never had them say, look, we can't  
11:46:11 6 change your oil unless I see the title to your car.

11:46:13 7 MR. KIEPER: Your Honor, because I am not the owner of  
11:46:15 8 the car, they have to show that I have the title to have the car  
11:46:17 9 serviced. My ex-wife is the owner. She lives in Florida now.

11:46:22 10 THE COURT: What company requires you to show title?

11 11 MR. KIEPER: Ferguson Mercedes-Benz in Appleton,  
11:46:31 12 Wisconsin. You can call them, but that's what is required of  
11:46:32 13 me. I have no problem --

11:46:34 14 THE COURT: I am sure Mr. Russin can fax them over a  
11:46:36 15 scan and send a copy of the title to them so they will do the  
11:46:41 16 repairs.

11:46:41 17 MR. KIEPER: They won't take a fax.

11:46:44 18 MR. RUSSIN: Just so Your Honor knows, all of these  
11:46:45 19 items are in the safekeeping of our local counsel in Wisconsin.  
11:46:48 20 We have access to them but, you know --

11:46:51 21 THE COURT: Okay. That makes no sense.

11:46:53 22 MR. GRUMER: I understand that.

11:46:55 23 THE COURT: You have a copy of the title to your car  
11:46:58 24 and they are not going to fix your car unless you give them the  
11:47:01 25 original title?

11:47:03 1 MR. KIEPER: That is what they told me when I took it  
11:47:05 2 three weeks ago, sir.

11:47:06 3 THE COURT: Okay. What is the next thing?

11:47:10 4 MR. GRUMER: So we agree to comply with all FTC  
11:47:14 5 requirements. We will not renew solicitations until a plan is  
11:47:21 6 approved and in place and the plan will, of course, have to be  
11:47:26 7 reviewed by the receiver, but this is where the fork in the road  
11:47:35 8 occurs.

11:47:36 9 We believe that the Tri-Resource Group services are  
11:47:43 10 legal and FTC and Mr. Russin believe that the services are being  
11:47:51 11 provided, for want of a better analogy, as fruit of a poisonous  
11:47:55 12 tree, that these people were improperly solicited into the plan.

11:48:00 13 So we would suggest, A, that if any of these people  
11:48:05 14 request a refund, that we immediately process it and notify the  
11:48:11 15 Court as to how many of the 1,746 active participants seek a  
11:48:18 16 refund and request permission to access the money that is frozen  
11:48:26 17 of Partners in Health Care's money to provide these refunds and  
11:48:30 18 will set up whatever controls over the telephone bank if they  
11:48:35 19 want, every call recorded of Tri-Resource Group, they can  
11:48:38 20 certainly have that.

11:48:40 21 So the two-step phase that we would request is allow  
11:48:44 22 Tri-Resource Group to reopen Monday and allow much like -- as  
11:48:53 23 Mr. Russin is a Bankruptcy Court practitioner, much like a  
11:48:59 24 Bankruptcy Court, we would go in with an operating plan and come  
11:49:03 25 to him with here is what we need some money for since he has

11:49:08 1 control over Partners in Health Care's bank account.

11:49:12 2 And then, once these people are being serviced, I think  
11:49:17 3 we can have -- and I am speaking for third-party professionals  
11:49:23 4 that I don't know -- but I would imagine that we could have a  
11:49:27 5 plan to the receiver within ten days that would -- if  
11:49:31 6 solicitation will be permitted in the future, it will be  
11:49:36 7 submitted and approved by the Court. It will not occur in the  
11:49:40 8 absence of Court approval.

11:49:41 9 THE COURT: Okay.

11:49:44 10 MR. GRUMER: That is the division as we envision it  
11:49:48 11 and, frankly, Mr. Kieper was already well on his way to doing it  
11:49:57 12 himself and it is unfortunate that this has come down this way,  
11:50:02 13 but it is going to happen much faster.

11:50:04 14 THE COURT: Okay. Let me say now, having heard all the  
11:50:09 15 evidence today and reviewing all the submissions of the FTC, I  
11:50:13 16 find that Partners in Health Care was not operating legitimately  
11:50:18 17 and that the vast number of the customers were fraudulently led  
11:50:26 18 to buy the product.

11:50:28 19 So, Mr. Ivens and Mr. Brown, whoever wants to answer  
11:50:31 20 first on behalf of the FTC, there are two distinct issues here  
11:50:35 21 yet to be resolved and that is, number one, what about  
11:50:41 22 Mr. Grumer's suggestion that some type of compliance remediation  
11:50:48 23 program be set up to allow them to solicit clients in the  
11:50:53 24 future; and, secondly, what do we do about the existing  
11:50:59 25 customers irrespective of that first issue.

11:51:00 1 Let's start with the first issue. Do you agree that if  
11:51:03 2 they do some remediations, they can go back in business or do  
11:51:09 3 you want them to be shut down?

11:51:11 4 MR. IVENS: Your Honor, we want them to be shut down.  
11:51:13 5 There is not enough money to compensate all the consumers that  
11:51:18 6 have already been defrauded. As I mentioned earlier, even the  
11:51:23 7 people who do continue to pay, we haven't had time to ascertain  
11:51:26 8 why there are 1,700 --

11:51:27 9 THE COURT: That is a separate issue.

11:51:29 10 MR. IVENS: Yes. We don't believe that this company  
11:51:32 11 should continue to exist and we will be seeking, when we file  
11:51:35 12 our summary judgment papers, to have Mr. Kieper banned from this  
11:51:40 13 industry. I don't think he can do it legitimately, so that is  
11:51:42 14 the first issue.

11:51:43 15 THE COURT: Okay. And what about the existing  
11:51:45 16 customers? Is that an accurate number, the 1,700 or so existing  
11:51:51 17 customers?

11:51:51 18 MR. IVENS: From the initial reports that we have been  
11:51:54 19 able to run, it seems overstated but, again, we haven't done --

11:51:58 20 THE COURT: Let's assume it's -- whether it is ten  
11:52:00 21 people or 1,000 people --

11:52:01 22 MR. IVENS: Your Honor --

11:52:03 23 THE COURT: -- what is going to happen with them?

11:52:05 24 MR. IVENS: We believe they were defrauded in the first  
11:52:08 25 instance. They have done whatever they can to try to get some

11:52:10 1 benefit out of the program. They should be given the  
11:52:12 2 opportunity to cancel.

11:52:13 3 THE COURT: How is that going to be done? Is somebody  
11:52:17 4 going to affirmatively reach out to each one of them and say,  
11:52:21 5 here is what happened in court; there has been a finding by the  
11:52:24 6 judge you can continue to pay the enrollment fee each month and  
11:52:28 7 get the service if you want, but if you want to withdraw or  
11:52:31 8 cancel you are allowed to do that, too?

11:52:34 9 MR. IVENS: I wouldn't want to -- the Federal Trade  
11:52:37 10 Commission's view is that they were defrauded in the first  
11:52:40 11 instance. I think every one of those contracts should be  
11:52:42 12 canceled. They shouldn't be billed any further and they should  
11:52:46 13 be given a notice as to what happened in this case. That is  
11:52:48 14 what the Federal Trade Commission -- how we view the situation,  
11:52:51 15 Your Honor.

11:52:53 16 If they are getting remediation services --

11:52:56 17 THE COURT: If I go to buy a car and I am told by the  
11:52:58 18 seller this car -- it is a 1999 car, but it was driven by a  
11:53:04 19 little old lady and only has 5,000 miles on it, and then I later  
11:53:08 20 found out it had 50,000 miles, but I love the car, and somebody  
11:53:14 21 comes to me and says, look, you were ripped off and we are  
11:53:16 22 taking the car back from you, I might say no. I understand  
11:53:19 23 that, but I still want to keep the car.

11:53:22 24 So even if these people were fraudulently induced into  
11:53:27 25 getting this program, if they are in the program and they like

11:53:31 1 it and want to keep it, we are depriving them of that  
11:53:33 2 opportunity.

11:53:34 3 MR. IVENS: Your Honor, I don't believe it is a  
11:53:36 4 sustainable model. The only reason that Partners in Health Care  
11:53:41 5 was actually even able to pay for the employees that were doing  
11:53:44 6 the prescription drug mediation and the medical benefit  
11:53:46 7 mediation for all of those -- if there are 1,700, let's assume  
11:53:50 8 there are -- was because they were getting so much money from  
11:53:52 9 the other consumers who were being ripped off. It was almost  
11:53:57 10 like a Ponzi scheme in that respect.

11:54:00 11 I don't know that is a sustainable business model. If  
11:54:03 12 they were advertising medical mediation services and  
11:54:05 13 prescription drug mediation services and they could actually  
11:54:07 14 make a go of it, maybe I would --

11:54:08 15 THE COURT: It is not like the money is going to Blue  
11:54:12 16 Cross and Blue Shield or something each month, so if we shut  
11:54:14 17 down this company, they will just go on their merry way. The  
11:54:17 18 company has to get the money to continue to do what they are  
11:54:21 19 doing to service them?

11:54:23 20 MR. IVENS: I think those consumers will probably find  
11:54:25 21 a better or a legitimate source to get prescription drug  
11:54:31 22 mediation, for example from Warner Lambert or from Pfizer or  
11:54:36 23 whatever else, self-help or legitimate business they can find to  
11:54:40 24 replace the one that they were fraudulently induced into.

11:54:43 25 THE COURT: What is the receiver's position on those



11:54:45 1 two issues?

11:54:49 2 MR. RUSSIN: Your Honor, first -- thank you, Your  
11:54:52 3 Honor. Let me comment on who we are talking about here so it is  
11:54:55 4 very clear what entities we found operating in the premises.

11:54:59 5 There is Health Center. Health Center is, as you  
11:55:02 6 heard, a d/b/a of Senior Advantage. That is the call center  
11:55:07 7 that Mr. Kieper was building up since January to sell the plans.

11:55:13 8 Then there is PIHC, Partners in Health Care, or PIHC,  
11:55:19 9 Inc., which is a seemingly separate entity that Tri-Resource is  
11:55:26 10 clearly associated with. Tri-Resource seems to be the umbrella  
11:55:29 11 entity that is doing the administration, verification or  
11:55:34 12 whatever of the plans that are sold.

11:55:36 13 Our view is that Tri-Resource, Senior Advantage and  
11:55:43 14 PIHC, all of those entities are at stake within this temporary  
11:55:50 15 restraining order operating together, essentially as one to run  
11:55:55 16 this business.

11:55:56 17 Having said that, I do not see how it is possible from  
11:55:59 18 a business perspective to service whatever customers exist  
11:56:07 19 without an administrative operation going on of several people  
11:56:12 20 and how that would be paid for. I don't know what the revenue  
11:56:15 21 source would be for that to the extent that there are customers  
11:56:19 22 remaining that are still willing to pay. I don't know that that  
11:56:22 23 would be sufficient to cover the overhead.

11:56:26 24 There is a lease. We have to pay, I think, \$1,000 a  
11:56:31 25 week for the lease. There are administrative assistants, Deanna

11:56:35 1 Moore and Kasina Reganiter who are not selling anything and not  
11:56:42 2 servicing customers that need their salary paid who, by the way,  
11:56:46 3 were quite cooperative, and there are other folks that need to  
11:56:51 4 be paid. So I don't see where that revenue would come from.

11:56:56 5 If Mr. Kieper could convince me or the Court that there  
11:57:00 6 is a budget and they could have sufficient revenue to operate a  
11:57:04 7 business, I guess we could see that, but I don't see that  
11:57:06 8 because I believe, based on what we have seen, that again the  
11:57:10 9 revenue source were the sales for the new customers for as long  
11:57:15 10 as they remained, a month, two months, three months, until they  
11:57:20 11 either sought a chargeback, a refund, or et cetera.

11:57:24 12 Just Chris' forensic job, just so Your Honor  
11:57:28 13 understands as he explained it to me, was to fight the  
11:57:32 14 chargebacks so as to preserve as much money as possible that  
11:57:35 15 might otherwise be taken away from the company.

11:57:38 16 So when you combine all of these facts, I don't see it.  
11:57:42 17 I am happy to be open and consider any plan they submit, but I  
11:57:46 18 don't see it as being possible.

11:57:48 19 The other alternative would be that we basically have a  
11:57:52 20 claims process. Let me go back for a moment. The current  
11:58:01 21 members have a choice if they are not getting their phone calls  
11:58:04 22 answered. They either can move on and file a claim, we can have  
11:58:07 23 a claims process put in place for this receivership, or I  
11:58:12 24 suppose if a notice is sent to everybody, they can call me and  
11:58:16 25 they can tell us that they still want the services.

11:58:20 1 I am skeptical, it is not fact, it is not evidence, but  
11:58:23 2 I am skeptical that anyone would do so if they had a clear  
11:58:29 3 understanding of what they bought. So I think, in my view, what  
11:58:34 4 I have seen -- and again this is somewhat speculative and based  
11:58:39 5 on limited information after a week, but our view is that I  
11:58:41 6 don't see how this business can operate without continuing to  
11:58:46 7 sell new memberships to service -- or to fund the operations.

11:58:52 8 THE COURT: Okay.

11:58:53 9 MR. RUSSIN: Was there another issue Your Honor wanted  
11:58:55 10 me to address?

11:58:56 11 THE COURT: No.

11:58:57 12 MR. RUSSIN: Okay. Thank you, Your Honor.

11:58:58 13 THE COURT: All right. So after considering -- do you  
11:59:00 14 want to have the last word?

11:59:03 15 MR. GRUMER: Just an observation, Your Honor, and that  
11:59:05 16 is that the receiver's role has now become a business judgment  
11:59:11 17 role and obviously Mr. Kieper is the one who has taken this risk  
11:59:18 18 and Mr. Russin has now substituted his business judgment for  
11:59:24 19 that of the entrepreneur who has funded and is backing this and  
11:59:30 20 is financially the guarantor in this litigation of its  
11:59:36 21 performance and operation.

11:59:38 22 So if he is going to shut down these 1,700 people, his  
11:59:45 23 bond sure better reflect what is at stake here for everybody,  
11:59:49 24 but we really think that the receiver's role is to operate the  
11:59:56 25 enterprise, report to the Court, allow Mr. Kieper to operate and

12:00:02 1 report to him, some sort of liaison as between the Court and the  
12:00:08 2 entity, but it is his business judgment. He is the entrepreneur  
12:00:14 3 who set up this business. He has been in the entry for 40  
12:00:19 4 years. He thought he had a working plan. He has learned and  
12:00:23 5 will immediately -- he has learned that using third parties was  
12:00:26 6 a disaster.

12:00:28 7 THE COURT: Let me ask you a question. I am not saying  
12:00:30 8 this exists in this case, but every single Ponzi scheme that is  
12:00:34 9 in existence, when a receiver comes in, doesn't that person make  
12:00:38 10 a judgment that, hey, this is a Ponzi scheme, it can only  
12:00:42 11 continue to stay in business by continuing to rip-off new  
12:00:47 12 people? Doesn't the person who was the Ponzi person to begin  
12:00:52 13 with always say, hey, receiver, my business would have made it  
12:00:59 14 except the receiver shut me down?

12:01:01 15 First of all, the receiver is not shutting anybody  
12:01:03 16 down. I am going to shut somebody down. Okay. I listened to  
12:01:04 17 everybody, but if you think I am going to do something because  
12:01:07 18 somebody else told me to do it, you haven't been paying  
12:01:10 19 attention to me for the last 20 years as a judge. Any decision  
12:01:14 20 I make is my decision after considering everybody's input, one  
12:01:18 21 of which is the receiver. He is not shutting anybody down.

12:01:20 22 MR. GRUMER: Well, by denying us access, even though  
12:01:24 23 the FTC in its own injunction -- and this was part of the  
12:01:30 24 tension that we experienced yesterday. I have the FTC telling  
12:01:36 25 me we can have access and I have the receiver telling me we

12:01:41 1 cannot.

12:01:41 2           So part of that access and our ability to even comply  
12:01:45 3 with the Court's order was frustrated by this dichotomy. I  
12:01:54 4 understand the receiver's position, but the 1,700 people that  
12:02:00 5 are still active believe that they are getting a product, a  
12:02:06 6 product that is not illegal, a product that whether -- there may  
12:02:09 7 be better ways of doing it. Sure, they can call the insurance  
12:02:13 8 companies or drug companies directly. Yeah, that may be a  
12:02:17 9 better solution. Maybe they want somebody to do it for them.  
12:02:20 10 Either way, they are prepared to pay that monthly premium.

12:02:25 11           Tri-Resource is not engaged, no one has come in and  
12:02:29 12 said this activity is illegal by Tri-Resource. It is the sale  
12:02:36 13 purporting to be insurance that is the illegal activity and we  
12:02:40 14 have immediately agreed. We are not fighting that issue. It is  
12:02:44 15 improper. We are going to correct it. We will not engage in  
12:02:48 16 that activity until we have proper stop gaps in place.

12:02:51 17           THE COURT: All right. Thank you.

12:02:52 18           After considering all the testimony and submissions, I  
12:02:55 19 am going to grant the FTC's request for preliminary injunction  
12:02:59 20 as to Mr. Kieper and all of the entities, the Partners in Health  
12:03:04 21 and all the other affiliate entities. This is a preliminary  
12:03:10 22 injunction. You have time, if you want to talk to the FTC and  
12:03:13 23 Mr. Russin and give them some other suggestions, before any  
12:03:20 24 permanent decision is made.

12:03:21 25           So I am finding that Partners in Health Care and all

12:03:30 1 the affiliates will be shut down. As to the existing customers,  
12:03:33 2 I think that the receiver should make an effort to -- if there  
12:03:36 3 is a way to identify them and notify them either by phone, email  
12:03:40 4 or letter of the pending order of the Court, because that might  
12:03:45 5 take time to get that information and notify them, if there is a  
12:03:51 6 way to have like a -- when people call the number, to have like  
12:03:55 7 a recorded message just telling them, look, there has been an  
12:04:00 8 order from a judge shutting this down. If you have any  
12:04:04 9 questions, or whatever the options are to keep going or cancel  
12:04:08 10 it, to contact the receiver.

12:04:11 11 That way, starting right away at least people who are  
12:04:13 12 calling in will know they better start making other arrangements  
12:04:17 13 if they want to do so.

12:04:21 14 I don't believe any additional bond to be posted by the  
12:04:26 15 receiver is necessary.

12:04:29 16 Anything else we can do this morning?

12:04:33 17 MR. ROGOW: No, sir.

12:04:34 18 THE COURT: Or now this afternoon?

12:04:36 19 MR. IVENS: Your Honor, we don't have a stipulated  
12:04:38 20 preliminary injunction with United Solutions Group yet, so if  
12:04:41 21 they agree on the record to extend the temporary restraining  
12:04:46 22 order until a stipulated preliminary injunction can be filed,  
12:04:49 23 then they won't have an issue of the temporary --

12:04:51 24 THE COURT: I think he did stipulate to that. I think  
12:04:53 25 he said he is stipulating to the injunction without agreeing to

12:04:56 1 any of the findings or the accusations.

12:04:59 2 MR. IVENS: Your Honor, I only need to put something on

12:05:02 3 the record so the temporary restraining order doesn't expire.

12:05:05 4 That's all.

12:05:05 5 MR. ROGOW: It does not expire. I understand it is

12:05:07 6 still in operation.

12:05:08 7 THE COURT: All right. Thank you all for your

12:05:09 8 presentations. You are going to get me both of those orders or

12:05:14 9 one order?

12:05:16 10 MR. ROGOW: I am going to work on an order.

12:05:17 11 THE COURT: Your order, and then Mr. Ivens and

12:05:22 12 Mr. Russin, get me the preliminary injunction order as to the

12:05:25 13 other entities.

12:05:25 14 MR. IVENS: Yes. I will have to email that to the

12:05:27 15 Court.


12:05:28 16 THE COURT: Okay. Thank you.

12:05:29 17 [The proceedings conclude at 12:05 p.m., 9/4/14.]

18 C E R T I F I C A T E

19 I hereby certify that the foregoing is an accurate  
20 transcription of proceedings in the above-entitled matter.

21  
22 \_\_\_\_\_  
23 09.06.14  
24 DATE

  
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