

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA *ex rel.*
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,

Plaintiff,

v.

AMERICARE INC.,
a Nevada corporation,
dba Americare Health, and
americarenow.com; *et al.*,

Defendants.

EQUITY No. EQCE 076814

**SUPPLEMENTAL
CONSENT JUDGMENT**

The Court, having been presented by Assistant Attorney General Steve St. Clair with this Consent Judgment, finds and orders as follows:

1. On July 17, 2014, Plaintiff State of Iowa *ex rel.* Thomas J. Miller, Iowa Attorney General, filed a Petition in Equity against the above-captioned defendants pursuant to Iowa Code § 714.16, the Iowa Consumer Fraud Act (CFA), and Iowa Code § 714.16A, the Older Iowans Act (OIA), and a Consent Judgment (“previous Consent Judgment”), approved by all defendants, was entered by the Court on July 17, 2014.

2. The previous Consent Judgment provided *inter alia* that the Court retained jurisdiction to enforce the Consent Judgment.

3. The Attorney General now alleges that Defendants Americare, Inc. (“Americare”) and Mario S. Gonzalez, as CEO of Americare, are responsible for violations of the injunctive provisions in the previous Consent Judgment, through two (and possibly more) telemarketing calls that were directed to elderly Iowa consumers by an Americare representative in or about

March of 2016, and through the subsequent transfer of the names of those Iowans to another telemarketer for use by that other telemarketer. The Attorney General further alleges that such conduct also violated the CFA and OIA.

4. The affected parties have agreed to resolve the Attorney General's concerns through this Supplemental Consent Judgment, which imposes additional terms and requirements upon the affected defendants (Americare and Mr. Gonzalez only). Nothing herein affects the other two defendants named in the previous Consent Judgment (Phillip Baker and Nancy Carol Thompson), and nothing herein limits, eliminates, or modifies any term, provision, or requirement of the previous Consent Judgment, except to the extent that this Supplemental Consent Judgment modifies the previous Consent Judgment by imposing the additional terms and requirements on Americare and Mr. Gonzalez expressly set forth herein.

IT IS THEREFORE ORDERED pursuant to Iowa R. Civ. P. 1.1501 *et seq.* and the Iowa Consumer Fraud Act, Iowa Code § 714.16, that Defendants Americare, Inc. and Mario S. Gonzalez (hereinafter "Defendants") shall immediately take all steps necessary to ensure that any person engaged in telemarketing as an authorized representative of Americare or any other business entity under the control of either or both Defendants does not, when so engaged, use leads that result in telemarketing calls being made to Iowa residents.

IT IS FURTHER ORDERED that, in addition to any other requirement of this Supplemental Consent Judgment, Defendants Americare, Inc. and Mario S. Gonzalez pay the sum of \$5,000.00 to the Attorney General, before or within five (5) days after entry of this Supplemental Consent Judgment, which sum shall be deposited into the consumer fraud enforcement fund referred to in Iowa Code § 714.16A.

IT IS FURTHER ORDERED that, in addition to any other requirement of this Supplemental Consent Judgment, in the event Americare fails to comply with all material requirements of this Supplemental Consent Judgment and the previous Consent Judgment, the Attorney General may apply to the Court for a supplementary order entering judgment against Americare for a sum of up to \$100,000.00, the exact amount to be set by the Court, guided (among other things) by the nature of the violation(s) and the need to deter the conduct at issue; any payment so ordered shall be divided in the Attorney General's discretion between distribution as restitution to consumers with losses attributable to the failure(s) of compliance, and deposit into the consumer fraud enforcement fund referred to in Iowa Code § 714.16A. In a proceeding to rule upon such an application, the Attorney General shall have the burden of proving such failure of compliance by a preponderance of the evidence, and Americare may avoid payment by establishing by a preponderance that each violation at issue was isolated, inadvertent, and occurred despite measures reasonably designed to prevent such violations. Nothing in this paragraph diminishes or otherwise affects other remedies available to the Attorney General for violations of this Supplemental Consent Judgment, the previous Consent Judgment, or applicable law.

IT IS FURTHER ORDERED that, in addition to any other requirement of this Supplemental Consent Judgment, in the event Defendant Gonzalez fails to comply with all material requirements of this Supplemental Consent Judgment and the previous Consent Judgment, the Attorney General may apply to the Court for a supplementary order entering judgment against Mr. Gonzalez for a sum of up to \$100,000.00, the exact amount to be set by the Court, guided (among other things) by the nature of the violation(s) and the need to deter the conduct at issue; any payment so ordered shall be divided in the Attorney General's discretion between distribution as restitution to

consumers with losses attributable to the failure(s) of compliance, and deposit into the consumer fraud enforcement fund referred to in Iowa Code § 714.16A. In a proceeding to rule upon such an application, the Attorney General shall have the burden of proving such failure of compliance by a preponderance of the evidence, and Mr. Gonzalez may avoid payment by establishing by a preponderance that each violation at issue was isolated, inadvertent, and occurred despite measures reasonably designed to prevent such violations. Nothing in this paragraph diminishes or otherwise affects other remedies available to the Attorney General for violations of this Supplemental Consent Judgment, the previous Consent Judgment, or applicable law.

IT IS FURTHER ORDERED that the Court retain jurisdiction to enforce this Supplemental Consent Judgment, as well as the previous Consent Judgment.

IT IS FURTHER ORDERED that the Defendants Americare, Inc. and Mario S. Gonzalez are jointly and severally responsible for payment of court costs, if any.

SO ORDERED.

Approved:

Date: 7/28/16


Americare, Inc.
By: Mario S. Gonzalez

Date: 7/28/16


Mario S. Gonzalez

Date: 8-19-16


Assistant Attorney General Steve St. Clair



State of Iowa Courts

Type: ORDER FOR CONSENT DECREE

Case Number **Case Title**
EQCE076814 STATE OF IOWA EX REL MILLER VS AMERICARE INC, ET AL

So Ordered

A handwritten signature in black ink, appearing to read "Brad McCall". The signature is written in a cursive style with a horizontal line underneath it.

Brad McCall, District Court Judge,
Fifth Judicial District of Iowa