

No. D-1-GV-08-000669

STATE OF TEXAS,  
Plaintiff,

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IN THE DISTRICT COURT OF

v.  
BRIAN JAMES MCDONALD; AARON  
CHRISTOPHER BOUREN; AHCO  
DIRECT, LLC; AHCO  
AGENT, LTD.; and AHCO CONTRACT  
SERVICING, LTD., D/BA/ MATERNITY  
CARD and AFFORDABLE  
HEALTHCARE OPTIONS,  
Defendants

TRAVIS COUNTY, T E X

250<sup>th</sup> JUDICIAL DISTRICT

Filed in The District Court  
of Travis County, Texas  
BP APR 14 2008  
At Amalia Rodriguez-Mendoza, Clerk

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of BRIAN JAMES MCDONALD; AARON CHRISTOPHER BOUREN; AHCO DIRECT, LLC; AHCO AGENT, LTD.; and AHCO CONTRACT SERVICING, LTD., D/B/A MATERNITY CARD and AFFORDABLE HEALTHCARE OPTIONS, Defendants, or "AHCO," and for cause of action would respectfully show as follows:

**DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3); 190.3(a).

**JURISDICTION**

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer

Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002) (“DTPA”) upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

### NATURE OF DEFENDANTS’ OPERATIONS

3. AHCO uses various methods to direct women who are pregnant but lacking maternity insurance to AHCO and its product, “Maternity Card.” For example, AHCO has contracted with Google to appear as a search result when consumers search for “pregnancy insurance” with the Google search engine. Maternitycard.com appears as a link for “pregnancy insurance alternatives” on [www.pregnancyinsurance.org](http://www.pregnancyinsurance.org). However, AHCO, with its “Maternity Card” product, does not offer pregnancy insurance, or any cost-covering or cost-sharing mechanism whatsoever. Although the website for the Maternity Card product represents that the Maternity Card offers “maternity services” such as doctor visits, hospital stays, lab work, sonograms, prescriptions, etc., in truth and in fact the Maternity Card offers none of these services. The website represents that the Maternity Card “slashes” maternity costs by 0% to 60%, but consumer complaints filed with the Texas Office of the Attorney General and the Better Business Bureau allege that the consumers pay AHCO large fees for the Maternity Card, and receive no benefits in return. Furthermore, AHCO represents that it has an “ironclad guarantee” ensuring that pregnant women will save more by using the Maternity Card than they will pay in fees to AHCO, or AHCO will refund their money. However, when consumers make a claim for a refund because AHCO and the Maternity Card have not covered any of their costs or provided any savings, AHCO routinely refuses to honor the “ironclad guarantee.” At best, AHCO will agree to “waive” a \$250.00 “cancellation fee” which was not disclosed to

consumers at the time they enrolled in the Maternity Card program. Some AHCO sales representatives are licensed insurance agents even though the Maternity Card is not an insurance product.

#### DEFENDANTS

4. Together with Defendant Aaron Christopher Bouren, Defendant Brian James McDonald formed the limited partnerships AHCO Contract Servicing, Ltd. and AHCO Agent, Ltd. Through various limited liability companies and partnerships, Defendant Brian James McDonald does business as AHCO, Affordable Healthcare Options, Maternity Card, and [www.maternitycard.com](http://www.maternitycard.com), as well as various other D/B/A's. Defendant Brian James McDonald can be served with process at his residence at 8000 Cheno Cortina Trail, Austin, Texas 78749-2720.

5. Together with Defendant Brian James McDonald, Defendant Aaron Christopher Bouren formed the limited partnerships AHCO Contract Servicing, Ltd. and AHCO Agent, Ltd. Through various limited liability companies and partnerships, Defendant Aaron Christopher Bouren does business as AHCO, Affordable Healthcare Options, Maternity Card, and [www.maternitycard.com](http://www.maternitycard.com), as well as various other D/B/A's. Aaron Christopher Bouren may be served with process at his residence at 12513 Gun Metal Drive, Austin, Texas 78739-4827, or at his place of business, 500 North Capital of Texas Highway, Building 3, Suite 200, Austin, Texas 78746.

6. Defendant AHCO Direct, LLC is a Texas limited liability company. Defendant AHCO Direct, LLC does business in Texas and throughout the United States under various D/B/As, including but not limited to: AHCO, Maternity Card and [www.maternitycard.com](http://www.maternitycard.com). Defendant AHCO Direct, LLC can be served with process by serving its registered agent, Frank A. Frye IV, 3006 Longhorn Boulevard, Suite 103, Austin, Texas 78758.

7. Defendant AHCO Agent, Ltd., is a Texas limited partnership. Defendant AHCO Agent, Ltd. does business in Texas and throughout the United States under various D/B/As, including but not limited to: AHCO, Maternity Card and [www.maternitycard.com](http://www.maternitycard.com). Defendant AHCO Agent, Ltd. can be served with process by serving its registered agent, Aaron Bouren, 500 North Capital of Texas Highway, Building 3, Suite 200, Austin, Texas 78746.

8. Defendant AHCO Contract Servicing, Ltd. is a Texas limited partnership. Defendant AHCO Contract Servicing, Ltd. does business in Texas and throughout the United States under various D/B/As, including but not limited to: AHCO, Maternity Card and [www.maternitycard.com](http://www.maternitycard.com). Defendant AHCO Contract Servicing, Ltd. can be served with process by serving its registered agent, Aaron Bouren, 500 North Capital of Texas Highway, Building 3, Suite 200, Austin, Texas 78746.

### VENUE

9. Venue of this suit lies in Travis County, Texas for the following reasons:
- A. Under TEX. CIV. PRAC. & REM. CODE §15.001, venue is proper because all or a substantial part of the events or omissions giving rise to the causes of action alleged herein occurred in Travis County, Texas; and
  - B. Under the DTPA §17.47(b), venue is proper because Defendants have done business in Travis County, Texas.

### PUBLIC INTEREST

10. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendants have caused, and will cause adverse effects to

legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest and at least seven days prior to instituting this action contacted Defendants to inform them in general of the alleged unlawful conduct.

### **TRADE AND COMMERCE**

11. Defendants are engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA.

### **ACTS OF AGENTS**

12. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:
- A. Defendants performed or participated in the act; or
  - B. Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

### **STATEMENT OF FACTS**

13. Based on the complaints from consumers and the response from Affordable Healthcare Options ("AHCO") to those complaints, it appears that AHCO sells the "Maternity Card" to uninsured pregnant women through a game of serial bait and switch.

14. First, the sales staff at AHCO, some of whom are licensed insurance agents, represent to consumers that the Maternity Card will save the consumer 60% of the costs of pregnancy and delivery. Consumers who go to AHCO's own website promoting the Maternity Card, [www.maternitycard.com](http://www.maternitycard.com), find these representations of savings are repeated: the website states the Maternity Card offers the following services to uninsured pregnant women: Doctors visits, hospital

stays, lab work, sonograms, prescription drugs, etc. Consumers thus sign up for the card - and pay \$199 enrollment fee plus \$99 a month.

15. Second, according to consumer complaints, pregnant consumers present the card at their doctors, but are told that the doctors do not accept the card. When these consumers contact AHCO, they complain that AHCO represents to the consumers that doctor's visits are a "complimentary benefit" and that the real savings are realized in the discounts she will receive on lab work, delivery costs and the hospital stay.

16. Third, consumers complain that when they find that they can obtain a better price on lab work paying by themselves, instead of using the AHCO card and its promised "network pricing", AHCO baits these consumers into staying on as paying customers by telling them not to worry, and not to cancel, because the real savings are realized in the deep discounts off delivery costs and hospital stays.

17. For those consumers who are at this point skeptical, AHCO assures them that AHCO has an "ironclad" Certificate of Guarantee, under which AHCO will pay the consumer the difference between the fees paid to AHCO and the amount saved, *plus \$200 dollars*.

18. For those consumers who are persistent enough to continue with the program and who then, they complain, find that they can again receive a better price from the doctor and hospital paying by themselves than AHCO can "negotiate" in savings, and who try and collect on the "ironclad guarantee" AHCO fails to honor the guarantee.

19. In response to complaints regarding these failures that culminate with the failure to honor the guarantee, AHCO provides a number of excuses. In some instances, AHCO will not pay the money it owes the consumer because it claims it has not received all of the bills. Consumers

complain they repeatedly provide bills, but somehow it is never enough. In other instances, AHCO claims that since the consumer received a discount as a self-pay (a discount the consumer receives regardless, and in fact, in spite of, AHCO membership), the consumer saved more than she paid to AHCO in membership fees, and therefore does not qualify for the Certificate of Guarantee. In other words, because the Maternity Card offered nothing of value to the consumer, and the consumer had to pay for her total costs of pregnancy herself, and therefore the doctor and hospital extended to her a discount, she is not entitled to a refund of the monies paid to AHCO for its worthless product. Furthermore, AHCO routinely refuses to refund fees paid by pregnant consumers who were misled by AHCO sales staff about the benefits of the AHCO Maternity Card. At best, AHCO offers to “waive” the \$250 “cancellation fee,” a fee, which AHCO routinely fails to disclose to consumers prior to their signing up for the product.

#### **VIOLATIONS OF DTPA**

20. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

21. AHCO, as alleged and detailed above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in § 17.46(a) and (b) of the DTPA. Such acts include:

- A. Engaging in false, misleading or deceptive acts or practices in violation of § 17.46(a) of the DTPA;
- B. Passing off goods or services as those of another in violation of § 17.46(b) (1) of the DTPA;

- C. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of § 17.46(b)(2) of the DTPA;
- D. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another in violation of § 17.46(b)(3) of the DTPA;
- E. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not in violation of § 17.46(b)(5) of the DTPA;
- F. Advertising goods or services with intent not to sell them as advertised in violation of § 17.46(b)(9);
- G. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions in violation of § 17.46(b)(11) of the DTPA;
- H. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12) of the DTPA; and
- I. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the

consumer would not have entered into had the information been disclosed in violation of § 17.46(b)(24) of the DTPA.

### **PRAYER**

22. By reason of the acts and practices described herein above, DEFENDANTS have violated and will continue to violate the laws as herein alleged unless enjoined by this Honorable Court.

23. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that DEFENDANTS be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued; and that upon final hearing a permanent injunction be issued, restraining and enjoining DEFENDANTS, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with DEFENDANTS, from engaging in the following acts or practices:

- A. Failing to disclose in a clear and conspicuous manner in all oral and written communications to consumers that Defendants' Maternity Card is not insurance.
- B. Using terms of art from insurance in oral and written communications to consumers regarding Defendants' Maternity Card, including but not limited to, the following terms:
  - i. Co-pay;
  - ii. Benefit(s);
  - iii. Pre-existing conditions;
  - iv. Coverage;

v. Premium(s); and

vi. Deductible(s).

C. Representing to consumers that Defendants and/or their Maternity Card product offer the following product or services to consumers:

I. Doctor Visits;

ii. Hospital Stays;

iii. Lab Work;

iv. Sonograms;

v. Anesthesiologist;

vi. Pre-Natal Vitamins;

vii. Newborn Tests and Checkups;

viii. Immunizations;

ix. Prescriptions; or

x. Any other product or service related to maternity care, unless Defendants do in fact cover the cost of the product or service.

D. Representing to consumers in any oral or written communications that the Maternity Card offers discount maternity care, access to discount maternity care, ranges of discounts or savings on maternity care, or access to ranges of discounts or savings on maternity care, unless Defendants have a factual basis for those representations.

i. For purposes of compliance with this provision, the factual basis shall be the difference between the amount paid by a consumer who has no

contractual relationship with a third-party payor and pays in cash or its equivalent at the time of service, and the amount paid by a consumer who presents the Maternity Card at the time of service and pays for the service in cash or its equivalent.

- E. Representing that maternity care providers will accept Defendants' Maternity Card unless Defendants have, at some point in the prior three months, confirmed in writing with the maternity care provider the following information:
- i. The provider's current name, address, and telephone number;
  - ii. That the provider is accepting new patients; and
  - iii. That the provider has agreed to accept Defendants' members and bill those members for maternity care services according to a fee schedule that has been disclosed to Defendants' members.
- F. Representing to consumers that there are maternity care providers who participate in the program in the consumer's local area unless Defendants have made a list of all providers, whom Defendants have confirmed will participate as set forth in "E" above, reasonably available for inspection by consumers prior to any purchase.
- G. Representing to consumers that members of Defendants' program can access hospital providers except under the following conditions:
- i. Each time an oral or written representation regarding access to hospital providers is made, Defendants clearly and conspicuously

disclose all material conditions, restrictions, and costs associated with access to the hospital providers, including but not limited to:

- a. Waiting periods;
  - b. Pre-certification and/or pre-qualification requirements; and
  - c. Deposit or pre-payment requirements.
- ii. There are no conditions, restrictions, or costs associated with accessing hospital providers that would prevent Defendants' average member from accessing hospital providers.

H. Assessing or collecting payment of any kind from consumers unless and until Defendants are in receipt of a signed and dated contract to purchase Defendants' Maternity Card from the consumer.

- i. In order to be in compliance with this term, the signed and dated contract to purchase Defendants' Maternity Card must include:
  - a. Clear and conspicuous disclosures of the costs to the consumer of the Maternity Card;
  - b. Clear and conspicuous disclosures of the products or services available to the consumer with the Maternity Card;
  - c. A current list of providers and hospitals in the consumer's area that accept Maternity Card members and collect payment from Maternity Card members according to the contracted fee schedule; and

- d. Clear and conspicuous disclosures of any material terms, conditions, and/or restrictions regarding the Maternity Card.
- I. Assessing a “one-time,” “enrollment,” “administrative,” or “sign-up” fee unless and until the following conditions are met:
- i. Any such fee, and its material terms and conditions, are clearly and conspicuously disclosed to consumers before assessing the fee. Such disclosures shall include, but not be limited to, the following:
    - a. The amount of the fee;
    - b. The purpose of the fee;
    - c. Whether or not the fee is refundable; and
    - d. If refundable, a clear description of the steps consumers must take to receive the refund.
  - ii. Any such fee must be a nominal amount, related to costs incurred by Defendants in enrolling consumers in their program.
- J. Representing that Defendants offer a “money-back” or “satisfaction” guarantee unless all monies paid by consumers to Defendants, including but not limited to, enrollment fees and monthly fees, are refundable under the guarantee.
- K. Failing to honor the guarantee.
- L. Assessing a cancellation fee.
- M. Requiring consumers to cancel the program in writing unless Defendants clearly and conspicuously disclose in all written and oral communications to

consumers, that written cancellations are required. Such disclosures shall include:

- i. The address to which written cancellations should be sent; and
- ii. The fax number to which written cancellations should be sent, if facsimile notification is an accepted means of cancellation.

N. Failing to cancel the program for a consumer if the consumer has manifested an intent to cancel.

- i. If the consumer was sold the plan prior to clear notice of cancellation requirements being given, failing to cancel the plan for the consumer if the consumer has communicated, either orally or in writing, that he or she wishes to cancel.

O. Charging a consumer's credit card, drafting or debiting a consumer's bank account, or billing the consumer after the effective date of cancellation, unless:

- i. Stopping a scheduled charge, draft, debit, or bill is not practicable; and
- ii. Defendants remove the charge, credit back the bank account, or send a revised bill within 3 days of the effective date of cancellation as defined in "iii" below.
- iii. The effective date of cancellation shall be the date Defendants, or any entity marketing or selling the Maternity Card, receive the cancellation in the case of oral or facsimile cancellations, and the date

the cancellation is postmarked in the case of cancellations sent by mail.

- P. Failing to disclose to a consumer who has attempted to cancel Defendants' program that the consumer's method of cancellation was not effective.
  - i. It is a violation of this provision to fail to give specific correct instructions for proper cancellation if a consumer cancels orally and Defendants require cancellations to be submitted in writing.
- Q. Representing that Defendants are offering the Maternity Card at a special price for a limited time unless:
  - i. The "special price" represents a price which is lower than the customary fee for the program;
  - ii. The "special price" is available for a limited time;
  - iii. The expiration date of the "special price" offer is clearly and conspicuously disclosed; and
  - iv. All material terms, conditions, and restrictions regarding the offer are clearly and conspicuously disclosed in all communications of the offer to consumers.
- R. Using customer testimonials, unless:
  - i. All representations regarding Defendants' Maternity Card have a factual basis;
  - ii. The full name of the person making the testimonial is included in all communications of the testimonial to consumers;

- iii. All material relationships, whether current or past, between Defendants and the person making the testimonial are clearly and conspicuously disclosed in all oral and written communications of the testimonial to consumers; and
  - iv. All representations in the testimonial regarding price reductions, savings, and/or discounts received on maternity services are in reference to price reductions, savings, and/or discounts received solely through the use of Defendants' Maternity Card, and not the result of combining Defendants' program with a high deductible health insurance program, or any other program.
- S. Failing to obtain a commitment to comply with the terms of this injunction from any person or entity marketing Defendants' Maternity Card.
  - T. Failing to make a full and complete refund of all enrollment and monthly fees to a consumer who complains in writing to the Attorney General's Office, the Better Business Bureau, or any other government or regulatory agency, that Defendants' Maternity Card was misrepresented as health insurance by the Defendants, or an agent or representative of Defendants.
  - U. Failing to take appropriate remedial and disciplinary action when Defendants become aware that an employee, agent or representative of Defendants is representing Maternity Card as health insurance to consumers.
  - V. Failing to make a full and complete refund of all enrollment and monthly fees to a consumer who complains in writing to the Attorney General's Office, the

Better Business Bureau, or any other government or regulatory agency, that the discounts available with Defendants' Maternity Card were misrepresented by Defendants, or any agent or representative of Defendants.

- W. Failing to take appropriate remedial and disciplinary action when Defendants become aware that an employee, agent, or representative of Defendants is misrepresenting the discounts available with Defendants' Maternity Card.
- X. Failing to make a full and complete refund of all enrollment and monthly fees to a consumer who complains in writing to the Attorney General's Office, the Better Business Bureau, or any other government or regulatory agency, that the providers who are contractually obligated to accept Defendants' Maternity Card were misrepresented by Defendants, or an agent or representative of Defendants.
- Y. Failing to take appropriate remedial and disciplinary action when Defendants become aware that an employee, agent, or representative of Defendants is misrepresenting the providers who are contractually obligated to accept Defendants' Maternity Card to consumers.
- Z. Failing to make a full and complete refund of all fees of any kind collected from a consumer who has manifested an intent to cancel Defendants' Maternity Card at any time within 30 days from the date the Defendants ship, via private mail for which the date of shipment is verifiable, written materials from Defendants which fully and completely disclose all material information regarding Defendants' Maternity Card.

- AA. Failing to implement procedures to adequately train sales representatives, independent marketing representatives, and customer service representatives on how to fully and completely inform consumers about Defendants' Maternity Card.
- BB. Failing to disclose to the terms of this injunction to any person or entity marketing Defendants' plan.

24. Plaintiff further requests that upon final hearing this Court award such relief as the Court finds necessary to redress injury to consumers including, but not limited to, restitution of monies paid by consumers; and further order each Defendant to pay to the State of Texas:

- A. Restitution of monies paid by consumers;
- B. Disgorgement of any ill-gotten gains;
- C. Civil penalties of up to \$20,000.00 per violation of the DTPA;
- D. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and
- E. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

25. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

### **JURY DEMAND**

26. Plaintiff asserts its right to a trial by jury, under Texas Constitution article 1, section 15, and makes this demand for a jury trial at least 30 days before the date this case

is set for trial, in accordance with Texas Rule of Civil Procedure 216. Prepayment of jury fee by the State is waived by statute.

Respectfully submitted,

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