

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ADVOCARE INTERNATIONAL, L.P., a limited
partnership,

BRIAN CONNOLLY,

DANNY McDANIEL,

DIANE McDANIEL,

CARLTON HARDMAN, and

LISA HARDMAN,

Defendants.

Case No. 4:19-cv-715-SDJ

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission (“Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Individual Defendants Carlton Hardman and Lisa Hardman stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices

in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, by operating a pyramid scheme; making false or misleading income representations; and providing participants in Defendants' scheme with the means and instrumentalities to engage in deceptive acts and practices.

3. Settling Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling Defendants admit the facts necessary to establish jurisdiction.

4. Settling Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

5. Settling Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **"Business Venture"** means any written or oral business arrangement, however denominated, whether or not covered by 16 C.F.R. Part 437, that consists of providing payment or other consideration for the right or means to offer, sell, or distribute a product or service.

B. **"Defendants"** means all of the Individual Defendants and the Corporate Defendant, individually, collectively, or in any combination.

1. **"Corporate Defendant"** means AdvoCare International, L.P., and its successors and assigns.

2. **"Individual Defendants"** means Brian Connolly, Danny McDaniel, Diane McDaniel, Carlton Hardman, and Lisa Hardman.

3. “**Settling Defendants**” means Carlton Hardman and Lisa Hardman, individually, collectively, or in any combination.

C. “**Multi-Level Marketing Program**” means any plan or program in which a participant has the right to (1) recruit others into the program or have others placed in the participant’s downline and (2) receive payment or other compensation that is based, in whole or in part, upon purchases, sales, or any other activities of the participant’s downline. Downline refers to the collection of participants whom a participant has personally recruited (first level), any participants and customers recruited by first level participants (second level), any participants and customers recruited by second level participants (third level), and so forth, however denominated.

ORDER

I. BAN ON MULTI-LEVEL MARKETING

IT IS ORDERED that Settling Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from engaging, participating, or assisting others in the advertising, marketing, promoting, or operating of any Multi-Level Marketing Program, including any product- or service-based pyramid scheme.

II. PROHIBITED MARKETING SCHEMES

IT IS FURTHER ORDERED that Settling Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from engaging, participating, or assisting others in the advertising, marketing, promoting, or operating of any Ponzi scheme or chain referral scheme.

III. PROHIBITED COMPENSATION

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or operating of any Business Venture, are permanently restrained and enjoined from providing payment or other compensation to any Business Venture participant unless: (A) the compensation is based solely on the purchase of product directly from the company operating the Business Venture by a customer; (B) only one participant is compensated for the customer's purchase; and (C) the customer whose purchase generates the compensation has not been a participant in the Business Venture within 6 months of the purchase.

IV. PROHIBITION AGAINST MISREPRESENTATIONS OR UNSUBSTANTIATED CLAIMS

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or operating of any Business Venture, are permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, including by providing others with the means and instrumentalities with which to misrepresent, expressly or by implication, including through discussion of lifestyle changes tied to compensation from the Business Venture:

1. That participants will or are likely to achieve substantial sales, income, or profit;

2. The amount of sales, income, or profit that participants have actually earned;
3. The amount of time or effort required to earn an amount of compensation or to advance in a Business Venture;
4. The reason participants do not earn substantial compensation, including representations that participants fail because they do not devote substantial or sufficient effort or are not active; or
5. Any other fact material to consumers concerning the Business Venture, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

B. Making any representation, expressly or by implication, regarding the amount of sales, income, or profits that a participant can expect to earn unless the representation is non-misleading and, at the time such representation is made, Settling Defendants possess and rely upon competent and reliable evidence sufficient to substantiate that the representation is true. Implied representations regarding the amount of sales, income, or profits that a participant can expect to earn include using lifestyle representations or images.

V. MONITORING BY SETTLING DEFENDANTS

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or offering of any Business Venture, are permanently restrained and enjoined from:

A. Failing to monitor and take all reasonable steps necessary to ensure that Settling Defendants' officers, agents, employees, and all other persons in active concert or participation with any of them act in compliance with the requirements of Sections I–IV of this Order.

B. Failing to promptly and thoroughly investigate any complaint received by Settling Defendants relating to compliance with this Order.

VI. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Four Million Dollars (\$4,000,000) is entered in favor of the Commission against Settling Defendants Carlton Hardman and Lisa Hardman as equitable monetary relief.

B. Settling Defendants Carlton Hardman and Lisa Hardman are ordered to pay to the Commission One-Hundred Thousand Dollars (\$100,000), which, as Settling Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions to be provided by a representative of the Commission. Upon such payment and all other asset transfers, specified Subsections C and D of this Section, the remainder of the judgment is suspended, subject to the Subsections below.

C. Settling Defendants Carlton Hardman and Lisa Hardman are ordered to take the following steps to sell all interest in the property located at 141 Jordan Lane, Rockford, Alabama, County of Coosa Parcel Number 22-14-09-31-0-000-001.045 ("141 Jordan Lane"), identified in the Financial Statement of Settling Defendants Carlton Hardman and Lisa Hardman executed on May 20, 2019:

1. Settling Defendants are ordered to attempt to sell 141 Jordan Lane at fair

market value by listing the property for sale with a reputable real estate agent. Settling Defendants are ordered to promptly comply with all reasonable requests from the Commission related to that sale, including, but not limited to, signing a listing contract with a real estate agent, keeping the property in good repair and in a condition suitable for showing to prospective purchasers, signing sales contracts and other documents necessary for the sale and transfer of title to the property purchaser(s), and are ordered to provide the Commission a copy all closing documents at least 48 hours before such sale;

2. If, after six (6) months from the date of the entry of this Order, all interests in 141 Jordan Lane have not been sold, Settling Defendants are ordered to immediately retain an auction company and direct it to sell the property at auction using customary procedures designed to maximize the sale price, with a reserve price sufficient to pay off the existing mortgage on the property and other customary charges to the seller for transfer of real property as described in Subsection 4 below;

3. Settling Defendants are ordered to timely pay all taxes, fees, association dues, assessments, and all expenses related to the maintenance and ownership of 141 Jordan Lane until such time as the property is sold or auctioned. Settling Defendants further are ordered to continue and to maintain in full force insurance coverage on the property;

4. All net proceeds from the sale or auction of 141 Jordan Lane, after payment of obligations due and owing to any valid mortgage holders and other priority lien holders, any property taxes owed, title insurance premiums and other customary charges on the seller, any adjustments in favor of the buyer(s) required to sell the property, and any reasonable and customary real estate agent commissions and closing costs incurred in

connection with such sale or auction, are ordered to be paid to the Commission by electronic fund transfer in accordance with instructions to be provided by a representative of the Commission. Any sheriff, title company, escrow company or other person involved in such a sale or auction may rely on this Order as the authority to deliver the net proceeds to the Commission;

5. To secure their performance under this Subsection, Settling Defendants hereby grant to the Commission a lien on and security interest in 141 Jordan Lane. Settling Defendants represent and acknowledge that the Commission is relying on the material representations that they are the owners of 141 Jordan Lane; that title to 141 Jordan Lane is marketable; and that 141 Jordan Lane is not encumbered by any lien, mortgage, deed of trust, assignment, pledge, security interest, or other interest except for the lien, mortgage, or security interest identified in the Financial Statement of Settling Defendants executed on May 20, 2019 and the lien in favor of the Commission described in Subsection 7 below;

6. Settling Defendants expressly agree that 141 Jordan Lane is not a homestead property; and

7. Settling Defendants are ordered to cooperate fully with the Commission and prepare, execute, and record the necessary documents and take all other actions necessary to perfect the Commission's voluntary lien on and security interest in 141 Jordan Lane. Settling Defendants are ordered to pay all costs relating to the preparation, execution, delivery, filing, recording, and termination of the voluntary lien on and security interest in 141 Jordan Lane. Settling Defendants are ordered to deliver to the Commission copies of all recording documents used to perfect the Commission's voluntary lien on and

security interest in 141 Jordan Lane within 7 days from the date of entry of this Order and before filing such recording documents to ensure that such documents are acceptable to the Commission.

D. In the event Settling Defendants fail to timely satisfy any obligation under Subsection C of this Section, the entire amount of the judgment shall become due and owing.

E. The Commission's agreement to the suspension of part of the judgment against Settling Defendants, as set forth in Subsection B, is expressly premised upon the Settling Defendants' compliance with Subsection C of this Section and the truthfulness, accuracy, and completeness of their sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely the:

1. Financial Statement of Settling Defendants Carlton Hardman and Lisa Hardman signed on May 20, 2019, including attachments for Items 13, 14, 18, and 24, relating to life insurance, 401(k), real estate holdings, and tax returns;

2. Additional documentation and information submitted by email dated May 22, 2019, from Settling Defendants' counsel Marvin Ruth to Commission counsel Aaron Haberman, including attached trust agreement and other documents relating to the trusts identified in Item 22 of the Financial Statement;

3. Additional documentation and information submitted by email dated May 29, 2019, from Settling Defendants' counsel Marvin Ruth to Commission counsel Aaron Haberman, including a property appraisal for the Jordan Lane property and a Realtor.com listing for the Bluff Road lake house in response to Item 24 of the Financial Statement, and information regarding real estate held by the Childrens' Trust identified in Item 22 of the Financial Statement; and

4. Additional documentation and information submitted by email dated June 2, 2019, from Settling Defendants' counsel Keith Beauchamp to Commission counsel Aaron Haberman, attaching the partnership agreement for Marie Investment Co. LLP, listed in Item 11 of the Financial Statement, "Non-Public Business and Financial Interests," and answering follow-up questions about Settling Defendants' financial disclosures.

F. The suspension of the judgment as to any Settling Defendants will be lifted if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above or failed to comply with any portion of Subsection C of this Section.

G. If the suspension of the judgment against a Settling Defendant is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which parties stipulate only for purposes of this Section represents that Defendant's unjust enrichment alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

H. Settling Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

I. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission against Settling Defendants, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

J. The facts alleged in the Complaint establish all elements necessary to sustain an

action by the Commission against Settling Defendants pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

K. Settling Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Settling Defendants must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

L. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Settling Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VII. COOPERATION

IT IS FURTHER ORDERED that Settling Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Such Defendants must provide truthful and complete information, evidence, and testimony. Such Defendants must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission

representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Settling Defendants obtain acknowledgments of receipt of this Order:

A. Each Settling Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, each Settling Defendant for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Settling Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Settling Defendants make timely submissions to the Commission:

A. One-hundred and eighty (180) days after entry of this Order, each Settling

Defendant must submit a compliance report, sworn under penalty of perjury in which each Settling Defendant must: (1) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (2) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; (3) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership; (4) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with that Defendant; (5) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (6) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Settling Defendants must describe if they know or should know due to their own involvement); (7) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (8) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 15 years after entry of this Order, each Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in: (1) name, including aliases or fictitious name, or residence address; (2) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity; (3) any designated point of contact; or (4) the structure of any entity that Defendant has any ownership interest in or

controls directly or indirectly that may affect compliance obligations arising under this Order, including creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Each Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Settling Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. AdvoCare International, L.P., Carlton Hardman, and Lisa Hardman et al.*, Matter No. 1623109.

X. RECORDKEEPING

IT IS FURTHER ORDERED that Settling Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, each Settling Defendant, for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly must create and retain the following records:

- A. Accounting records showing the revenues from all products or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. A copy of each unique advertisement or other marketing or training material, including videos and calls, used or disseminated by that Defendant relating to AdvoCare International, L.P., or any other Business Venture; and
- F. Copies of all contracts, agreements, and payment records between that Defendant and any participant in AdvoCare International, L.P. or any other Business Venture.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Settling Defendants' compliance with this Order and any failure to transfer any assets as required by this Order:


- A. Within 14 days of receipt of a written request from a representative of the Commission, each Settling Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate

directly with each Settling Defendant. Settling Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities to Settling Defendants or any individual or entity affiliated with Settling Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Settling Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

So ORDERED and SIGNED this 9th day of October, 2019.

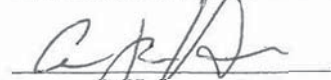


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION



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FOR DEFENDANTS CARLTON HARDMAN AND LISA HARDMAN:

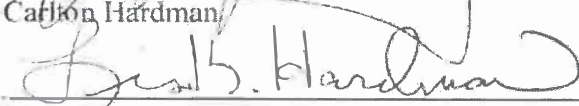
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DEFENDANT **CARLTON HARDMAN AND LISA HARDMAN**

 Date: 8-16-19

 Date: 8-16-19

Lisa Hardman