

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SIMPLE HEALTH PLANS LLC, et al.,

Defendants.

Case No.: 18-cv-62593-DPG

DEFENDANT STEVEN DORFMAN'S EMERGENCY<sup>1</sup> MOTION  
TO MODIFY ASSET FREEZE ORDER TO PAY  
REASONABLE LIVING EXPENSES AND ATTORNEYS' FEES

Defendant, Steven Dorfman ("**Dorfman**"), through undersigned counsel, moves the Court for an order modifying the Court's *Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of a Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should not Issue* [DE 15] (the "**Asset Freeze Order**") for the limited purpose of paying his reasonable living expenses and attorneys' fees and states:

INTRODUCTION

Plaintiff, the Federal Trade Commission (the "**FTC**"), acting *ex parte* and contrary to due process, obtained from this Court a facially-overbroad Asset Freeze Order. It imposes immediate liability on Mr. Dorfman by freezing every dollar and asset held individually or in his business entities. The complaint filed in this action demonstrates the FTC's failure to understand the health insurance industry and the relationship of numerous independent businesses before initiating this case. As a result, the FTC abused its power by seeking and obtaining an asset freeze over the Defendants' assets. The broad order deprives Mr. Dorfman of any ability to provide for his family

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<sup>1</sup> Undersigned counsel's certification as to the emergency nature of the requested relief is attached hereto as **Exhibit "A."**

or defend himself against the significant, misguided allegations in the FTC's complaint. Equity, due process, and the law require that Mr. Dorfman be granted, at least, limited relief from the Asset Freeze Order so that he can pay his regular living expenses and expend his attorneys' fees and costs to defend against the FTC's allegations.

### **BACKGROUND**

On October 29, 2018, the FTC filed the complaint (the "**Complaint**") initiating this matter against Mr. Dorfman, the only individual defendant in this action, and his corporate co-defendants (collectively, the "**Defendants**"). [DE 1]. In the Complaint, the FTC alleges that the Defendants violated the FTC Act and Telemarketing Act by making false, misleading, and deceptive statements to consumers dating back to October 2013. *Id.*, ¶ 15.

On October 31, 2018, the Court, upon the FTC's request, entered the Asset Freeze Order *ex parte*. Among other things, the Asset Freeze Order enjoins Mr. Dorfman from accessing or using *any* of his personal funds wherever held. Asset Freeze Order § III. Additionally, in the Asset Freeze Order, the Court appointed a temporary receiver to take control of the corporate Defendants. Asset Freeze Order §§ XI-XVI.

The FTC's entire case is premised on the flawed argument that Mr. Dorfman and the corporate Defendants, businesses in the health insurance industry, mislead consumers about the fact that they: (i) sold comprehensive health insurance; (ii) sold qualified health plans under the Affordable Care Act; (iii) were experts on and sold government-sponsored health insurance policies; and (iv) were affiliated with AARP and the Blue Cross Blue Shield Association. The FTC is wrong and its allegations are unsupported. However, in reality, the FTC failed to identify *any* material misrepresentations made by the Defendants. For instance, (i) the FTC's evidence does not support its allegation that the Defendants ever advertised that they sold comprehensive health insurance to

consumers; (ii) the Defendants lead generation vendors, not the Defendants, advertised the sale of Affordable Care Act-compliant health plans and plans issued by AARP and Blue Cross Blue Shield Association (and in fact sold such plans); and (iii) the Defendants had experience selling government-sponsored health insurance policies. Nonetheless, the FTC decided to shoot first and ask questions later: not considering for a moment the repercussions of shutting down multiple successful businesses, putting hundreds of employees out of work right before the holiday season, leaving hundreds of thousands of insureds without access to customer support for their health insurance, and unjustifiably sully Mr. Dorfman's reputation.

Without access to any of his personal financial resources or an alternate source of income, Mr. Dorfman is unable to (i) meet his daily living expenses such as rent, health insurance, food, and transportation or (ii) pay his attorneys' fees and access. Attached hereto as **Exhibit "B"** is a declaration from Mr. Dorfman regarding his living expenses or attorneys' fees and his lack of any source of income to pay for those expenses.

### **RELIEF REQUESTED**

By this Motion Mr. Dorfman respectfully request that the Court modify the Asset Freeze Order to provide him with fifteen thousand dollars (\$15,000) per month for living expenses and carve out two hundred thousand dollars (\$200,000) from his frozen assets for attorneys' fees and costs through the preliminary injunction hearing.

As this Court has previously noted, the Court has "both the authority to implement an asset freeze and "to release frozen personal assets, or lower the amount frozen." *S.E.C. v. Quiros et al.*, 2016 WL 3032925, \*1 (S.D.Fla. May 27, 2016) (Gayles, D.) (internal citations omitted). In freezing a defendant's assets, the Court must "weigh 'the disadvantages and possible deleterious effect of a freeze . . . against the considerations indicating the need for such relief.'" *Id.* The Court

balances the ability to provide restitution to the victims with the defendants' ability to defend themselves prior to a finding of liability." *Id.*; see also, *S.E.C. v. Asset Recovery & Management Trust, S.A.*, 340 F. Supp. 2d 1305, 1312 (M.D. Ala. 2004) (observing that a district court has the discretion to release funds from an asset freeze so that the defendant may pay for living expenses and attorneys' fees); see also *SEC v. Dowdell*, 175 F.Supp. 2d 850 (W.D. Va. 2001) (holding that courts have the authority in enforcement actions "to release frozen personal assets, or lower the amount frozen" and modifying an asset freeze to permit the defendant funds for personal expenses and for the payment of attorney's fees). In *Dowdell*, the court summarized the legal standard applied in cases that have dealt with requests for living expenses as follows:

Courts which have addressed requests for living expenses look for evidence of the defendant's overall assets or income. See *SEC v. Duclaud Gonzalez de Castilla*, 170 F. Supp. 2d 427 (S.D.N.Y. 2001). Where the courts have denied such requests, the defendants were found to have other sources of income or were requesting funds for luxuries, not necessities. *Id.* (finding that the defendant has voluntarily waived a \$15,000 per month salary and was seeking money for a nanny, housekeeper, handyman and nurse); see also *SEC v. Coates*, 1994 WL 122225 (S.D.N.Y. 1994) (finding defendant failed to tell the court that the receiver was already paying monthly salaries to him and his family totaling almost \$12,000 and that budge included lawn and pool service).

*Id.* Similarly, in *SEC v. Pinez*, 989 F.Supp. 325 (D.Mass. 1997), the court allowed an asset freeze subject to modification to pay attorney's fees and essential household expenses. In *Quiros*, this Court modified its own asset freeze to provide for a defendant's reasonable living expenses and to pay for his attorneys' fees. In overruling the Securities and Exchange Commission's opposition to the defendant's effort to modify the asset freeze, the Court noted that many facts were in dispute, including whether aggrieved investors could trace their funds to assets owned by the defendant and "the amount of potential disgorgement should the SEC prevail." *Id.* at 2.



Like in *Quiros* and the other cases cited above, the Court has not yet ruled on the FTC's entitlement to any disgorgement from the Defendants, let alone the amount of that disgorgement. Indeed, the FTC has not been able to provide an estimate, with any substantiation, as to how many customers were allegedly misled by the Defendants and the total revenue that the Defendants received from that alleged misrepresentation and deception. In other words, the FTC has not, with any reliable substantiation, evidenced that the Defendants' potential total liability exceeds the frozen funds. Additionally, Mr. Dorfman is not seeking to modify the asset freeze so that he can pay for luxury items. Rather, Mr. Dorfman merely seeks funds to pay for his basic living expenses for him and his wife, neither of which has an alternative source of income: housing, food, and health insurance

**WHEREFORE**, Defendant, Steven Dorfman, respectfully requests an Order of the Court, substantially in the form annexed hereto, modifying the Asset Freeze Order so that Mr. Dorfman is entitled to withdraw up to fifteen thousand dollars (\$15,000) per month to pay for his reasonable living expenses and two hundred thousand dollars (\$200,000) for attorneys' costs and fees through the preliminary injunction hearing and for all further relief that the Court deems just and equitable.

**LOCAL RULE 7.1(A)(3) CERTIFICATION**

Pursuant to Local Rule 7.1(a)(3), the undersigned certifies that he conferred with Plaintiff the Federal Trade Commission in a good faith effort to resolve the issues raised in this motion and the Federal Trade Commission does not agree to the relief requested herein.

Dated: December 3, 2018

**DLA Piper LLP (US)**

/s/ Ryan D. O'Quinn

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Facsimile: 305.675.7885

*Counsel for Defendant*

*Steven J. Dorfman*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served on this December 3, 201, by the Notice of Electronic Filing, and was electronically filed with the Court via the CM/ECF system, which generates a notice of filing to all counsel of record.

/s/ Ryan D. O'Quinn

Ryan D. O'Quinn (FBN 0513857)

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**SIMPLE HEALTH PLANS LLC, et al.,**

Defendants.

**Case No.: 18-cv-62593-DPG**

**CERTIFICATION OF EMERGENCY**

I hereby certify that, as a member of the Bar of this Court, I have carefully examined this matter and it is a true emergency.

I further certify that the necessity for this emergency hearing has not been caused by a lack of due diligence on my part, but has been brought about only by the circumstances of this case. The issues presented by this matter have not been submitted to the Judge assigned to this case or any other Judges or Magistrate Judge of the Southern District of Florida prior hereto.

I further certify that I have made a bona fide effort to resolve this matter without the necessity of emergency action.

Dated: December 3, 2018

Signature: /s/ Ryan D. O'Quinn  
Ryan D. O'Quinn, Esq. (FBN: 513857)  
305.423.8500 (t)

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SIMPLE HEALTH PLANS LLC, et al.,

Defendants.

Case No.: 18-cv-62593-DPG

**DECLARATION OF STEVEN DORFMAN**

I, Steven Dorfman, pursuant to 28 U.S.C. § 1746, declare as follows

1. I submit this declaration in support of my request that the Court modify the asset freeze order entered on October 31, 2018 in the above-captioned case (the “**Asset Freeze Order**”).

2. The Asset Freeze Order restrains all of my personal and corporate assets.

3. The Asset Freeze Order, by the appointment of a temporary receiver, has deprived me of my only potential source of employment: as an officer of the corporate defendants in the above-captioned case.

4. As a result of the Asset Freeze Order, I am unable to pay ordinary living expenses for me and my wife, including rent, food, health insurance, and other ordinary expenses, which total approximately fifteen thousand dollars (\$15,000) per month. Redacted copies of my lease and health insurance invoices are attached hereto as **Exhibit “1.”**

5. As a result of the Asset Freeze Order, I am unable to pay my attorneys’ fees and costs in defending me in this case.

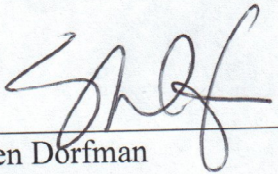
6. Accordingly, I request that the Court modify the Asset Freeze Order so as to provide me with fifteen thousand dollars (\$15,000) per month so that I can pay for my reasonable living



expenses and two hundred thousand dollars (\$200,000) to pay my attorneys' fees and costs through the preliminary injunction hearing scheduled in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: December 3rd, 2018

  
\_\_\_\_\_  
Steven Dorfman

# **EXHIBIT 1**



LEASE EXTENSION ADDENDUM

Resident(s): Steve Dorfman

Address: [REDACTED]

THIS LEASE EXTENSION ADDENDUM was made and entered by and between the above Resident(s) and Richard E. Stacey, hereinafter referred to as "Landlord"; and

WHEREAS, the Landlord and Resident fully intend to be bound by this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the Landlord and Resident agrees as follows:

1. The termination date on the lease agreement shall be extended for additional 3 month(s) basis upon the same terms and conditions as contained in the lease agreement except for those provisions contained in this Addendum. The new termination date shall be Feb 28, 2019.
2. The rental amount for the period beginning 12/01/2018 until the termination date stated in paragraph one hereinabove shall be \$ 6,600.00 per month.

EXECUTED this 28 day of Nov, 2018  
[Signature] [Signature]  
Resident Authorized Agent for Landlord



☒ [Send To Printer](#) [Close Window](#)
**Bill / Payment Information****Current Charges**

Primary Insured: DORFMAN, STEVEN  
 ID Number: XXXXXXXXXX Last Payment Draft Date: 07/02/2018  
 Payment Frequency: Monthly Total Amount Due: \$458.10  
 Payment Type: EFT Paid to Date: 08/12/2018  
 Plan Year: 2018

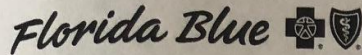
*This premium may include state and federal taxes and fees under the Affordable Care Act.*

**Payment Breakdown**

	<b>Totals</b>
<b>Association Fee:</b>	\$4.00
<b>Insurance Payment:</b>	\$454.10
<b>Totals:</b>	<b>\$458.10</b>

**Account Activity**

Posted Date	Payment For	Premium	Fees	Fund	Dental	Other	Payment Amt
07/02/2018	Jul 2018	\$454.10	\$4.00	\$0.00		\$0.00	\$458.10
06/03/2018	Jun 2018	\$454.10	\$4.00	\$0.00		\$0.00	\$458.10
05/01/2018	May 2018	\$454.10	\$4.00	\$0.00		\$0.00	\$458.10
04/02/2018	Apr 2018	\$454.10	\$4.00	\$0.00		\$0.00	\$458.10
03/01/2018	Mar 2018	\$454.10	\$4.00	\$0.00		\$0.00	\$458.10
02/01/2018	Feb 2018	\$454.10	\$4.00	\$0.00		\$0.00	\$458.10
01/02/2018	Jan 2018	\$454.10	\$4.00	\$0.00		\$0.00	\$458.10
01/02/2018	Jan 2018	\$454.10	\$4.00	\$0.00		\$0.00	\$458.10



Enrollment & Billing Department  
P.O. Box 44236  
Jacksonville, FL 32231-4236

### Billing Statement

Due Date	12/01/2018
Total Amount Due	<b>\$2,332.90</b>

Your account is set up for autopay. This statement is for your records.

Izabela Freitas

Member ID: [REDACTED]

**Alert!** The amount due includes a Past Due Amount. Please pay in full to keep your coverage.

Plan Information	Billing Details	Amount Due
<b>BlueOptions Platinum 1418</b>		
Previous Balance Amount:	\$1,166.45	
Coverage Period: 12/01/2018 – 12/31/2018	\$1,166.45	
Amount Due:		<b>\$2,332.90</b>

### Get Your Info Right on Your Phone

Download the Florida Blue mobile app to access your member account. Pay your bill. Get a list of doctors. View your ID card and benefits. Available on the Apple App Store or Google Play.

Statement created: 11/09/2018

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SIMPLE HEALTH PLANS LLC, et al.,

Defendants.

Case No.: 18-cv-62593-DPG

**ORDER GRANTING EMERGENCY MOTION TO MODIFY ASSET FREEZE TO  
PAY DEFENDANT STEVEN DORFMAN'S REASONABLE LIVING EXPENSES**

This matter came before the Court upon the *Motion to Modify Asset Freeze Order to Pay Defendant Steven Dorfman's Reasonable Living Expenses* (the "**Motion**")<sup>2</sup> [DE \_\_\_\_]. The Court, having considered the Motion and the record before it and finding good cause **ORDERS:**

1. The Motion is **GRANTED**;
2. The Asset Freeze Order is modified so that Mr. Dorfman is entitled to withdraw up to fifteen thousand dollars (\$15,000) per month to pay for his reasonable living expenses;
3. The Asset Freeze Order is modified so that Mr. Dorfman is entitled to withdraw two hundred thousand dollars (\$200,000) for attorneys' fees and costs through the preliminary injunction hearing; and
4. This order is without prejudice to Mr. Dorfman seeking additional modifications to the Asset Freeze Order.

Dated: December \_\_\_\_, 2018

\_\_\_\_\_  
Hon. Darrin P. Gayles  
United States District Court Judge

<sup>2</sup> All undefined capitalized terms shall have the meaning attributed to them in the Motion.