

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

SIMPLE HEALTH PLANS LLC, a Florida limited
liability company, et al.,

Defendants.

Case No.: 18-cv-62593-DPG

**PLAINTIFF'S OPPOSITION TO DEFENDANT
STEVEN DORFMAN'S EMERGENCY MOTION TO MODIFY ASSET
FREEZE TO PAY REASONABLE LIVING EXPENSES AND ATTORNEYS' FEES**

I. INTRODUCTION

Defendant Steven Dorfman seeks, on an emergency basis, to use funds frozen for potential consumer redress in this matter to pay \$15,000 a month for living expenses and \$200,000 for attorneys' fees. (Dkt. 41, "Motion"). Dorfman's Motion does not identify an emergency or begin to justify his request to use hundreds of thousands of dollars of frozen assets rather than funds from other sources. The assets currently frozen are dwarfed by the amount of consumer injury in this matter, and should not be diminished to fund Dorfman's extravagant lifestyle or to pay his attorneys. Importantly, Dorfman failed to disclose critical facts to the Court: that he already has paid his attorneys a \$75,000 retainer,¹ and that his wife currently holds over \$125,000 in unfrozen funds that are available to pay their living expenses. These telling omissions from Dorfman's Motion make clear that it should be denied.

¹ The retainer was paid prior to the filing of this action, however it is unclear whether any balance remains available for use in this matter.

II. BACKGROUND

A. Facts

Defendant Steven Dorfman founded and controlled a sprawling, multinational operation that extracted tens of millions of dollars from consumers in need of health insurance and left them uninsured and financially vulnerable. Dorfman's companies (collectively "Simple Health") targeted consumers seeking comprehensive health insurance through their deceptive lead generation websites, many of which were owned and operated by Simple Health. Once consumers had submitted their personal information to these lead generation websites, they were contacted by Simple Health. Dorfman's telemarketers recited a deceptive sales pitch from scripts that he wrote, reviewed, and approved. By design, these scripts confused and misled consumers into purchasing limited benefit and medical discount plans. In contrast to comprehensive health insurance, these plans, at most, provided meager reimbursements and possible discounts for an extremely limited class of medical services. In addition to the hundreds of dollars paid each month in "premiums," many consumers victimized by Dorfman and Simple Health now carry thousands of dollars in debt due to uncovered medical expenses. Dorfman used the proceeds of the fraud to fund his extravagant lifestyle, including by transferring money directly from the corporate bank accounts to casinos and using corporate credit cards to pay for luxury goods and private jet travel.

B. Procedural History

1. The Complaint and TRO

The FTC filed this action on October 29, 2018, and simultaneously moved *ex parte* for a TRO with an asset freeze and appointment of a receiver. (Dkt. 1, 3, and 12). The Complaint names six corporate defendants and Dorfman, and alleges that defendants engaged in deceptive

trade practices in violation of the FTC Act, 15 U.S.C. § 45(a) and the Telemarketing Sales Rule, 16 C.F.R. Part 310. In support of the motion for TRO, the FTC submitted four volumes of exhibits, including transcripts of recorded undercover sales calls and the declarations of injured consumers showing that Simple Health consistently peddled the same misrepresentations. On October 31, 2018, after considering the FTC's evidence, the Court found that the FTC was likely to succeed on the merits of its claims against Dorfman and the corporate defendants. The Court entered the TRO with an asset freeze and appointed Michael Goldberg as Temporary Receiver over the corporate defendants. (Dkt. 15). The TRO has been extended until such time as the Court rules on the FTC's motion for a preliminary injunction, which is scheduled for a hearing before the Court on January 29, 2018. (Dkt. 27).

2. Living Expenses

As required by the TRO, Dorfman submitted to the FTC and the Temporary Receiver a sworn financial statement indicating that in addition to the frozen funds in financial institutions described in subparagraph 4 below, he has cash and personal property totaling approximately \$60,325.² The statement further disclosed a multimillion-dollar Las Vegas property held in a revocable trust of which Dorfman is the only trustee.³ In an addendum to that sworn statement, Dorfman indicated that his wife Izabela individually has assets totaling \$140,799.20, including \$85,100 in cash and \$43,199.20 in a bank account. The statement also lists jewelry worth \$10,000. Ms. Dorfman's individually held assets are not currently frozen.

In his sworn statement, Dorfman indicated that his monthly living expenses are \$15,000, including:

- \$6,600 for rent on his oceanfront condo

² Exhibit 1, Declaration of Nathaniel Al-Najjar at ¶ b.

³ *Id.* at ¶ e.

- \$2,000 for food for him and his wife
- \$1,500 for healthcare related expenses, including his wife's insurance
- \$4,000 for "other expenses," which he does not describe
- \$750 for transportation expenses
- \$276 for utilities

After initially proposing a motion to release these living expenses from the receivership estate, to which the FTC objected, Dorfman sought the FTC's agreement to the release of monthly living expenses from Dorfman's frozen personal assets.⁴ The FTC asked for further information about the expenses, including the \$4,000 in "other expenses," but no additional detail was provided. Once informed of Ms. Dorfman's considerable unfrozen assets, the FTC declined to agree to any such release, but made clear it would consider any compelling reasons why those unfrozen funds could not be used to pay the couple's living expenses. The FTC also offered to consider any emergency expenses that would warrant a release of frozen funds. Almost a week passed with no response until the service of Dorfman's Motion.

3. Attorneys' Fees

Contrary to what is represented in the Local Rule 7.1(a)(3) Certification and the Certification of Emergency filed with the Motion (Dkt. 41-1), counsel for Dorfman never sought the FTC's agreement to the release of any frozen funds for attorneys' fees. The FTC was not aware that Dorfman would be seeking the release of frozen funds for attorneys' fees until the Motion was filed. Bank statements produced to the FTC by Wells Fargo Bank show that Dorfman paid a \$75,000 retainer to DLA Piper on or around August 2, 2018.⁵

Upon receiving the Motion, pursuant to the TRO's expedited discovery provision, counsel for the FTC issued a subpoena to Dorfman's counsel seeking nonprivileged information about any additional payments made to the firm to fund its representation of Dorfman, including

⁴ Exhibits 2-3, Email correspondence between counsel for Dorfman and counsel for FTC.

⁵ Exhibit 1, Declaration of Nathaniel Al-Najjar at ¶ 4.c.

the amounts of such payments and from whom they were received. Such information is necessary to evaluate requests or motions to use frozen funds to pay attorneys' fees. Dorfman's counsel objected to the subpoena, stating—without detail—that it is outside the scope of the expedited discovery provided by the TRO. Rather than comply with the subpoena or engage the FTC in substantive discussions about it, counsel demanded that the FTC withdraw the subpoena, and then filed a motion for a protective order.⁶ (Dkt. 43. "Protective Order Motion"). The Protective Order Motion incorrectly states that the FTC refused to agree to a release of frozen funds for Dorfman's attorneys' fees, but Dorfman never raised the issue of releasing funds for attorneys' fees before filing this Motion. The Protective Order Motion also attacks the legitimacy of the FTC's request for information regarding payments made to Dorfman's counsel. But the TRO allows for expedited discovery into defendants' assets (which Dorfman has put at issue by filing the Motion) and—although omitted from Dorfman's recitation of the expedited discovery provision of the TRO—compliance with the TRO. (Dkt. 15, Sec. XXII.) The FTC has an obligation to determine whether funds subject to the asset freeze have been used to pay Dorfman's attorneys' fees, and it is unremarkable to inquire into the source of Dorfman's prior fee payments when he is seeking hundreds of thousands of dollars from frozen funds.

4. The Asset Freeze

Since entry of the TRO, the FTC and the Temporary Receiver have received confirmation from several financial institutions that certain assets have been frozen. In total, the frozen corporate funds are \$3,087,940.57 and the frozen personal funds are \$804,165.71.⁷ The

⁶ See Exhibits 4-5, December 3 and 4, 2018 email correspondence between counsel for Dorfman and counsel for the FTC.

⁷ Exhibit 1, Declaration of Nathaniel Al-Najjar at ¶ 4.a.

Temporary Receiver also has possession of property purchased with corporate funds, including three vehicles and several pieces of jewelry.⁸

III. Argument

Dorfman's request for a modification of the asset freeze is unreasonable, unnecessary, and certainly not an emergency. He has no urgent need for a release of frozen funds, and cannot meet the legal standard allowing for such release. The funds in the receivership estate, in conjunction with Dorfman's personal assets, are merely a small fraction of the amount required for consumer redress. Dorfman also has not made any showing that his request for living expenses is reasonable or necessary, and in fact failed to disclose to the Court that he has access to over \$125,000 in unfrozen funds and has already paid his attorneys a \$75,000 retainer. Moreover, Dorfman did not comply with the Local Rules in bringing his Motion. Under the applicable law, Dorfman's Motion should be denied.

A. Dorfman Is Not Entitled to Use the Frozen Funds for Attorneys' Fees or Living Expenses

1. Consumer Harm is Far Greater Than the Frozen Funds

Courts have discretion to refuse to unfreeze assets to pay for living expenses or attorneys' fees. *FTC v. IAB Mktg. Assocs.*, 972 F. Supp. 2d 1307, 1313 (S.D. Fla. 2013). One purpose of the asset freeze is to ensure that funds are available to provide consumers redress and deprive wrongdoers of their ill-gotten gains. *Id.* When frozen assets amount to substantially less than the potential monetary liability, it is appropriate to maintain the asset freeze to preserve the assets for consumer redress. *See id.* at 1314; *FTC v. World Patent Mktg.*, No. 17-cv-20848, 2017 WL 3508639, at *16 (S.D. Fla. Aug. 16, 2017) (Gayles, D.) ("The vast disparity

⁸ *Id.* at ¶ 4.d.

between Defendants' substantial ill-gotten gains and the meager value of the frozen assets supports maintaining the asset freeze.”); *FTC v. Lanier Law, LLC*, No. 3:14-cv-786, 2015 WL 9302786, at *3 (M.D. Fla. Dec. 22, 2015) (denying release of funds to obtain legal counsel because frozen funds fell far short of potential liability).

Dorfman argues in his Motion that the FTC has not provided an estimate of the number of consumers harmed by his conduct and their total loss. To the contrary, the FTC introduced evidence with its initial motion that in just three years, Simple Health collected more than \$150 million in commissions.⁹ This alone would satisfy the FTC’s obligation at this stage in the litigation to support an asset freeze with “a reasonable approximation of a defendant’s ill-gotten gains.” *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004). Since entry of the TRO, the FTC has requested information from Health Insurance Innovations (“HII”), the administrator for the vast majority of products sold by Simple Health. In response to the FTC’s request, HII produced information showing that nearly 37,000 consumers who were subjected to Simple Health’s deceptive sales pitches are currently enrolled in limited benefit and discount plans, and that the total billing for those consumers exceeds \$6 million per month.¹⁰ Of course, these numbers represent current enrollees only, and substantially more consumers have been enrolled and canceled over time. In any event, the amount paid by current enrollees in just two months’ time exceeds the amount currently frozen.

By any reasonable calculation, the funds currently frozen are dwarfed by consumer injury attributable to defendants’ misrepresentations. The asset freeze should be maintained.

⁹ Dkt. 12, Memorandum in Support of Plaintiff’s *Ex Parte* Motion for a Temporary Restraining Order, at p. 31 (\$150 million in revenue). The FTC also presented substantial evidence that Dorfman’s role as CEO of the companies and his day-to-day involvement with the companies would make him jointly and severally liable for the entirety of any judgment against defendants. *Id.* at pp. 43-44.

¹⁰ Exhibit 1, Declaration of Nathaniel Al-Najjar, at ¶ 5.

2. Dorman is Not Entitled to Frozen Funds to Pay for Civil Attorneys' Fees¹¹

A civil defendant is not entitled to attorneys' fees as a matter of right, which factors into a district court's discretion "to forbid or limit payment of attorney fees out of frozen assets." *FTC v. Williams, Scott & Assocs. LLC*, No. 1:14-cv-1599-HLM, 2015 WL 7351993, at *2 (N.D. Ga. Sept. 22, 2015) (quoting *CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 775 (9th Cir. 1995)). The decision to deny funds for legal fees is particularly appropriate where consumer injury exceeds the frozen assets. *Id.*; *Lanier Law*, 2015 WL 9302786 at *3. As described above, that is the case here.¹²

Moreover, Dorfman's counsel assumed the risk of non-payment when they agreed to represent Dorfman while knowing that his assets were subject to an asset freeze. Courts in the Eleventh Circuit have held that parties "may not use their victims' assets to hire counsel to help them retain the fruits of their violation." *RCA Credit Servs., LLC*, No. 8:08-cv-2062, 2008 WL 5428039, at *4 (M.D. Fla. Dec. 31, 2008) (citing *S.E.C. v. Quinn*, 997 F.2d 287, 289 (7th Cir.1993)); see also *FTC v. IAB Mktg. Assocs.*, No. 12-cv-61830, 2013 WL 2433214, at *2 (S.D. Fla. June 4, 2013) ("equity favors preserving the meager frozen assets to protect consumers rather than allowing the [defendants] to pay for additional attorney fees using funds which were likely ill-gotten"); *FTC v. Williams, Scott & Associates*, 2015 WL 7351993, at *3 ("Given the important consumer interests at stake in this case ... the fairest course of action is to require

¹¹ Dorfman does not have a Constitutional right to counsel in a civil lawsuit, as the Sixth Amendment only applies in criminal cases. U.S. Const. amend. VI ("In all *criminal prosecutions*, the accused shall enjoy the right ... to have the assistance of counsel for his defense." (emphasis added)); see *FTC v. Williams, Scott & Assocs. LLC*, No. 1:14-CV-1599-HLM, 2015 WL 7351993, at *2 (N.D. Ga. Sept. 22, 2015) (collecting cases).

¹² In support of his request for \$200,000 in attorneys' fees, Dorfman submitted a sworn statement that he is unable to pay his attorneys without relief from the asset freeze. (Dkt. 41-2 at ¶ 5). This assertion is undermined by the undisclosed retainer and the availability of his wife's substantial assets. Dorfman also has not informed the Court whether there are alternative sources of funding available, or funds that have already been provided.

counsel to bear the risks of nonpayment.”); *FTC v. Sharp*, No. 89-cv-870, 1991 U.S. Dist. LEXIS 19295, at *3 (D. Nev. July 22, 1991) (denying defense counsel’s application for legal fees, finding that the claims of the alleged consumer victims to the frozen assets outweighed that of defense counsel). Defense counsel, not victims of Dorfman’s scheme, should bear the risk of nonpayment.

3. Dorfman Has Made No Showing That His Request for Living Expenses is Necessary and Reasonable

If a court releases frozen funds for living expenses, the expenses must be limited to amounts that are both reasonable *and* necessary. *CFTC v. Noble Metals*, 67 F.3d 766, 775, n.8 (9th Cir. 1995); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111-12 (9th Cir. 1982); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 570 (7th Cir. 1989).¹³ In his sworn statement submitted in support of the Motion, Dorfman claims that he is “unable to pay” his living expenses without relief from the asset freeze. (Dkt. 41-2 at ¶ 4). Dorfman failed to disclose to the Court that his wife has over \$125,000 in unfrozen assets available to pay their living expenses. The availability of these funds is the primary basis FTC counsel identified for not stipulating to a release of frozen assets for Dorfman’s living expenses.¹⁴

In addition to the existing funds available to pay his expenses, the TRO allows Dorfman to obtain lawful employment, provided that he obeys the conduct provisions of the TRO. In fact, Section III.D of the TRO exempts post-TRO earnings from the asset freeze. Dorfman has not

¹³ See also, e.g., *SEC v. Forte*, 598 F. Supp. 2d 689, 694 (E.D. Pa. 2009) (premium television services, cellular telephones, home phone, high-speed internet, and credit card debt are not “necessary” living expenses); *SEC v. Dobbins*, No. 3:04-cv-0605-H, 2004 WL 957715 at * 3 (N.D. Tex. April 14, 2004) (request for payment of cable television and automobile financing denied); *SEC v. Dowdell*, 175 F. Supp. 2d 850, 854 (W.D. Va. 2001) (court denied release of frozen funds to pay defendant’s credit card bill); *SEC v. Coates*, No. 94 Civ. 5361 (KMW), 1994 WL 455558, *2 (S.D.N.Y. Aug. 23, 1994) (cable television is a luxury).

¹⁴ See Exhibits 2-3, Email correspondence between counsel for Dorfman and counsel for FTC.

indicated that he has taken any steps to earn income since the Court entered the TRO.

Dorfman's failure to show that he has sought lawful employment or attempted to use the funds at his wife's disposal entirely undercuts his request to unfreeze funds. *See, e.g., IAB*, 972 F. Supp. 2d at 1314 ("Absent persuasive evidence to the contrary, the Court can conclude only that [Defendants] are capable of working to support their basic necessities.").

Even if the Court were inclined to release some money for the requested living expenses, Dorfman has not shown that \$15,000 per month is a reasonable or necessary amount. First, Dorfman seeks \$4,000 a month for a nonspecific category of "other expenses" beyond those delineated in the sworn financial statement. Second, according to the documents filed in support of the Motion, rather than seeking to minimize his expenses, just days ago Dorfman extended the \$6,600 per month lease on his luxury oceanfront condominium rather than seeking a less expensive place to live. (Dkt. 41-2, Exhibit 1). Third, Dorfman seeks the entirety of both his and his wife's monthly expenses, including the premium for her Blue Cross Blue Shield health insurance plan. Yet, Mrs. Dorfman has over \$125,000 in unfrozen funds available to pay at least her share of the expenses.

B. The Motion Fails To Comply With Local Rule 7.1

Local Rule 7.1(a)(3) requires that counsel "make a reasonable effort to confer" with opposing counsel in a "good faith effort to resolve by agreement the issues to be raised in the motion." Although Dorfman's counsel certified that this rule had been complied with, at no time did counsel seek agreement from the FTC regarding the release of frozen funds for attorneys' fees. Moreover, Local Rule 7.1(d)(1) requires that the filer "set forth in detail the nature of the emergency, the date by which a ruling is necessary, and the reason the ruling is needed by the

stated date.” Although the Motion is styled as an emergency, nowhere in the Motion or the Certification is any support provided for this characterization.

IV. CONCLUSION

In entering the TRO, the Court found that the FTC is likely to succeed on the merits of its claims against Dorfman and his companies. Those claims involve consistent material misrepresentations made to induce consumers shopping for comprehensive health insurance to instead purchase Simple Health’s limited benefit and discount plans, which provide none of the promised benefits. Dorfman now complains that, even though he has more than \$125,000 at his disposal, he should also have access to the funds this Court froze to preserve them for possible restitution to victimized consumers. As the court held in *IAB*, “Equity favors the injured consumers over the Defendants who did the injuring and are now suffering the consequences of their conduct. *IAB Mktg. Assocs.*, 972 F. Supp. 2d 1307, 1315. The Motion should be denied.

Dated: December 4, 2018

Respectfully submitted,
ALDEN F. ABBOTT
General Counsel

/s/Elizabeth C. Scott
ELIZABETH C. SCOTT, Special Bar No. A5501502
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Facsimile: (312) 960-5600
Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this December 4, 2018, 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/ Elizabeth C. Scott
Elizabeth C. Scott (SBA # A5501502)

EXHIBIT 1

**DECLARATION OF NATHANIEL AL-NAJJAR
PURSUANT TO 28 U.S.C. § 1746**

I, Nathaniel Al-Najjar, hereby declare as follows:

1. My name is Nathaniel Al-Najjar. I am a United States citizen and over eighteen years of age. I am employed as a paralegal with the Federal Trade Commission (“FTC” or “Commission”), a position that I have held for approximately 2 years. My office address is 230 South Dearborn Street, Room 3030, Chicago, IL 60604. I have personal knowledge of the facts stated in this declaration, and if called as a witness, I would testify to the same.

2. In the course of my employment, I have participated in the FTC’s investigation of and litigation against Simple Health Plans LLC, Health Benefits One LLC, Health Center Management LLC, Innovative Customer Care LLC, Simple Insurance Leads LLC, Senior Benefits One LLC, (“Corporate Defendants”) and Steven J. Dorfman (“Individual Defenddant”) (collectively, “Defendants”), currently on file in the U.S. District Court for the Southern District of Florida as *FTC v. Simple Health Plans LLC*, No. 0:18-cv-62593-DPG (S.D. Fla.).

3. After the Court entered its Temporary Restraining Order (“TRO”) with asset freeze, the Commission served the TRO on multiple financial institutions and other third parties who the FTC had reason to believe held assets for the benefit of Defendants, or had information regarding Defendants’ assets.

4. I have been asked to provide the following summary of assets frozen pursuant to the TRO:

- a. Based on information produced by financial institutions in response to the FTC’s asset freeze letters, the Commission has frozen approximately \$3,087,940.57 in funds attributable to the Corporate Defendants, and \$804,165.71 in funds attributable to Mr. Dorfman;
- b. In financial statements submitted in compliance with Section IV of the TRO, Mr. Dorfman has disclosed \$60,325 in cash and personal property. Mr. Dorfman’s wife has disclosed \$128,299 in cash as well as jewelry with an estimated value of \$10,000;

- c. In response to a request from the FTC pursuant to Section IV.D of the TRO, Wells Fargo Bank produced documents related to Mr. Dorfman's personal checking account. These documents include a check image dated August 2, 2018 showing a draft in the amount of \$75,000 made out to "DLA Piper—Client Trust." The check appears to be endorsed by Mr. Dorfman; and
- d. It is my understanding that Mr. Dorfman, in compliance with Section XII.B of the TRO, has turned over jewelry and vehicles to the Court-appointed Receiver worth several hundred thousand dollars;
- e. On May 11, 2018, Mr. Dorfman, as the Trustee of the Steven Dorfman Revocable Trust, purchased a property in Las Vegas, NV. Although Mr. Dorfman did not provide a property value in his financial statement, documentation from the Clark County Assessor's Office, in which the property is located, lists the May sales price as \$2.9 million.

5. In response to an asset freeze letter, the FTC has received information from Health Insurance Innovations, Inc. ("HII"), the third party through which Defendants sold many of their products. Based on information produced by HII, there are nearly 37,000 current consumers making \$6.3 million in monthly payments to HII for products sold by Defendants.

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

Executed on December 4, 2018.

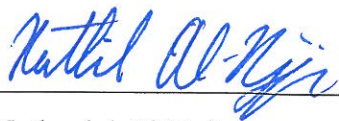

Nathaniel Al-Najjar

EXHIBIT 2

From: [Scott, Elizabeth C.](#)
To: ["Gershoni, Elan"; O'Quinn, Ryan](#)
Cc: [Davis, James](#); [Wei, Joannie](#); michael.goldberg@akerman.com; naim.surgeon@akerman.com
Subject: RE: FCT v. Simple Health Plans; Steven Dorfman Financial Disclosures
Date: Tuesday, November 27, 2018 1:19:00 PM

Dear Elan,

We have reviewed Mr. Dorfman's financial statements, including the updated information regarding his wife's assets. The release of frozen funds for living expenses must be limited to amounts that are both reasonable and necessary. Given that Mrs. Dorfman has over \$125,000 in unfrozen assets available to use for the couple's living expenses, we will not agree to a release of any of Mr. Dorfman's assets to pay their living expenses. If there is some reason why Mrs. Dorfman's unfrozen funds cannot be used, please let us know and we can take that into consideration. Additionally, if at some point there is an urgent or extraordinary need for a release of funds, we will consider any such request.

We also note that contrary to what is represented in the financial statements, the other records produced indicate that Mrs. Dorfman began receiving weekly payroll deposits from the corporate defendants at least as early as August 2017.

Thanks,
Libby

Elizabeth C. Scott
Staff Attorney
Federal Trade Commission, Midwest Region
230 South Dearborn Street, Suite 3030
Chicago, Illinois 60604
escott@ftc.gov
phone: (312) 960-5609
fax: (312) 960-5600

From: Gershoni, Elan <Elan.Gershoni@dlapiper.com>
Sent: Monday, November 26, 2018 2:59 PM
To: Scott, Elizabeth C. <escott@ftc.gov>; O'Quinn, Ryan <Ryan.OQuinn@dlapiper.com>
Cc: Davis, James <JDAVIS@ftc.gov>; Wei, Joannie <JWEI@ftc.gov>;
michael.goldberg@akerman.com; naim.surgeon@akerman.com
Subject: RE: FCT v. Simple Health Plans; Steven Dorfman Financial Disclosures

Libby, attached please find copies of Steven and Izabella Dorfman's health insurance bills. As you will see, Steven's monthly premium is \$458.10 and Izabella's monthly premium is \$1,166.45, for a total of \$1,624.55/month.

As for the \$4,000 "other expenses," that sum represents unexpected additional expenses that arise in the ordinary course that cannot be anticipated.

Please confirm that the FTC consents to the requested carve out of \$15,000 per month for Mr. and Mrs. Dorfman's living expenses.

Elan A. Gershoni

T +1 305.423.8567

E elan.gershoni@dlapiper.com



From: Scott, Elizabeth C. <escott@ftc.gov>

Sent: Wednesday, November 14, 2018 6:48 PM

To: Gershoni, Elan <Elan.Gershoni@dlapiper.com>; O'Quinn, Ryan <Ryan.OQuinn@dlapiper.com>

Cc: Davis, James <JDAVIS@ftc.gov>; Wei, Joannie <JWEI@ftc.gov>;

michael.goldberg@akerman.com; naim.surgeon@akerman.com

Subject: RE: FCT v. Simple Health Plans; Steven Dorfman Financial Disclosures

[EXTERNAL]

Dear Elan and Ryan,

Thank you for forwarding Mr. Dorfman's financial statement. We understand from the Receiver that you have drafted a proposed unopposed motion for his signature seeking the release of \$15,000 from Mr. Dorfman's personal assets for his living expenses. At the outset, it is unclear to us why such a motion would come from the Receiver, given that Mr. Dorfman's personal assets are not currently part of the Receivership Estate. Moreover, Section IV.D. of the TRO allows the FTC to agree in writing to a release of assets from frozen funds.

To consider a release of funds from frozen personal assets, we need additional information about Mr. Dorfman's living expenses as described in his financial statement. Most importantly, please provide details about the \$4,000 of estimated "other expenses." Please also provide documentation regarding the requested \$1500 for medical expenses, i.e. provide an invoice for the monthly health insurance premiums.

Please confirm that the financial statement includes any assets held individually by Izabela Dorfman, given that the statement indicates she had a \$182,000 salary from the company.

We note that there is no lien or mortgage associated with the Las Vegas property. Was the company's UBS line of credit used to purchase the property?

Lastly, do you still intend to seek a 30-day extension of the TRO, and if so, when do you expect we will meet and confer about the extension?

Thanks,
Libby

Elizabeth C. Scott
Staff Attorney
Federal Trade Commission, Midwest Region
230 South Dearborn Street, Suite 3030
Chicago, Illinois 60604
escott@ftc.gov
phone: (312) 960-5609
fax: (312) 960-5600

From: Gershoni, Elan <Elan.Gershoni@dlapiper.com>
Sent: Tuesday, November 13, 2018 3:49 PM
To: Scott, Elizabeth C. <escott@ftc.gov>; Davis, James <JDAVIS@ftc.gov>;
michael.goldberg@akerman.com
Cc: O'Quinn, Ryan <Ryan.OQuinn@dlapiper.com>
Subject: FCT v. Simple Health Plans; Steven Dorfman Financial Disclosures

All,

Pursuant to Section V(A) of the Court's Temporary Restraining Order, please find Steven Dorfman's financial statement attached hereto.

Elan A. Gershoni

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E elan.gershoni@dlapiper.com



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EXHIBIT 3

From: [Scott, Elizabeth C.](#)
To: [O'Quinn, Ryan](#)
Cc: [Gershoni, Elan](#); [Davis, James](#); [Wei, Joannie](#); michael.goldberg@akerman.com; naim.surgeon@akerman.com
Subject: RE: FCT v. Simple Health Plans; Steven Dorfman Financial Disclosures
Date: Thursday, November 15, 2018 11:33:57 AM

Dear Ryan,

The Personal Financial Statement requires the disclosure of "ALL assets and liabilities, located within the United States or in any foreign territory or institution, whether held individually or jointly, and whether held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents." This clearly includes Mrs. Dorfman's individually held assets. Without full compliance, we are not in a position to make an assessment of any request for a release of frozen assets for the payment of living expenses. We also would need answers to the questions in our email from yesterday regarding the amounts requested.

With respect to the jewelry that was turned over to the Receiver, the Court's Order specifically required the turnover of items purchased by the Corporate Defendants in the enumerated transactions. It is our position that anything purchased using the Corporate Defendants' funds is property of the Corporate Defendants and within the Receivership Estate. The items referenced in the Court's Order are by no means a comprehensive accounting of such property.

Thanks,
Libby

Elizabeth C. Scott
Staff Attorney
Federal Trade Commission, Midwest Region
230 South Dearborn Street, Suite 3030
Chicago, Illinois 60604
escott@ftc.gov
phone: (312) 960-5609
fax: (312) 960-5600

From: O'Quinn, Ryan <Ryan.OQuinn@dlapiper.com>
Sent: Wednesday, November 14, 2018 7:38 PM
To: Scott, Elizabeth C. <escott@ftc.gov>
Cc: Gershoni, Elan <Elan.Gershoni@dlapiper.com>; Davis, James <JDAVIS@ftc.gov>; Wei, Joannie <JWEI@ftc.gov>; michael.goldberg@akerman.com; naim.surgeon@akerman.com
Subject: Re: FCT v. Simple Health Plans; Steven Dorfman Financial Disclosures

Libby:

We have drafted a proposed motion seeking authority to lift the stay. It is consistent with the discussion I initiated with you and Jim yesterday, and I hope to hear back from you soon about the issues I proposed. It is a normal practice to have motions of that type, if agreed, filed by the Receiver. We chose the proposed form, in part, because a similar motion was filed by this Receiver

and granted (I believe) by this judge in a recent federal case. Of course we intend to confer with you about the motion too. We just did not want to forward a draft motion to you that was contemplated to be filed by the Receiver without first confirming that he was ok with the form and process.

As we discussed yesterday, we also intend to seek a continuance of the PI hearing date and related briefing schedule. Of course, an extension of the PI hearing date would contemplate an extension of the TRO, reserving Mr Dorfman's right to challenge that relief at the PI hearing. We began the meet and confer process on that /and other issues yesterday, when we spoke by phone. We look forward to continuing that process soon, once you have had the opportunity to discuss our various proposals with the necessary supervisors at the FTC.

Mr. Dorfman has, in fact, tendered assets that are not corporate assets to the Receiver, so I am confused by the assertion otherwise. Certainly an engagement ring is not a corporate asset.

Mr Dorfman's financial statement includes Mrs Dorfman's assets where the PFS expressly required that information. Some of the assets listed would likely be marital assets, where they share joint interests. It does not purport to include all of Mrs Dorfman's personal assets, where those assets are individually owned (non-marital). She is not a defendant in your action or a subject of the TRO.

I look forward to continuing our good faith discussions to reach a consensus on personal expenses and briefing deadlines. I am available tomorrow, with some notice. Please let me know when you are available to continue our discussion.

Thank you,

Ryan O'Quinn

Sent from my iPhone

On Nov 14, 2018, at 6:48 PM, Scott, Elizabeth C. <escott@ftc.gov> wrote:

[EXTERNAL]

Dear Elan and Ryan,

Thank you for forwarding Mr. Dorfman's financial statement. We understand from the Receiver that you have drafted a proposed unopposed motion for his signature seeking the release of \$15,000 from Mr. Dorfman's personal assets for his living expenses. At the outset, it is unclear to us why such a motion would come from the Receiver, given that Mr. Dorfman's personal assets are not currently part of the Receivership Estate. Moreover, Section IV.D. of the TRO allows the FTC to agree in writing to a release of assets from frozen funds.

To consider a release of funds from frozen personal assets, we need additional information about Mr. Dorfman's living expenses as described in his financial statement. Most importantly, please provide details about the \$4,000 of estimated

"other expenses." Please also provide documentation regarding the requested \$1500 for medical expenses, i.e. provide an invoice for the monthly health insurance premiums.

Please confirm that the financial statement includes any assets held individually by Izabela Dorfman, given that the statement indicates she had a \$182,000 salary from the company.

We note that there is no lien or mortgage associated with the Las Vegas property. Was the company's UBS line of credit used to purchase the property?

Lastly, do you still intend to seek a 30-day extension of the TRO, and if so, when do you expect we will meet and confer about the extension?

Thanks,
Libby

Elizabeth C. Scott
Staff Attorney
Federal Trade Commission, Midwest Region
230 South Dearborn Street, Suite 3030
Chicago, Illinois 60604
escott@ftc.gov
phone: (312) 960-5609
fax: (312) 960-5600

From: Gershoni, Elan <Elan.Gershoni@dlapiper.com>
Sent: Tuesday, November 13, 2018 3:49 PM
To: Scott, Elizabeth C. <escott@ftc.gov>; Davis, James <JDAVIS@ftc.gov>;
michael.goldberg@akerman.com
Cc: O'Quinn, Ryan <Ryan.OQuinn@dlapiper.com>
Subject: FCT v. Simple Health Plans; Steven Dorfman Financial Disclosures

All,

Pursuant to Section V(A) of the Court's Temporary Restraining Order, please find Steven Dorfman's financial statement attached hereto.

Elan A. Gershoni

T +1 305.423.8567
F +1 305.675.0527
E elan.gershoni@dlapiper.com

<image001.gif>

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EXHIBIT 4

From: [O'Quinn, Ryan](#)
To: [Davis, James](#)
Cc: [Gershoni, Elan](#); [Scott, Elizabeth C.](#); [Wei, Joannie](#); michael.goldberg@akerman.com; naim.surgeon@akerman.com
Subject: Re: FTC v. Simple Health Plans LLC - Subpoena for Documents
Date: Tuesday, December 04, 2018 8:13:07 AM

I am currently in Texas, and am about to attend a hearing in federal court. I disagree with your assessment, and will respond in due course following the hearing.

Ryan

Sent from my iPhone

On Dec 4, 2018, at 7:56 AM, Davis, James <JDAVIS@ftc.gov> wrote:

[EXTERNAL]

Ryan,

Good morning. Your objection is noted although its basis is unclear. Do you need more time to respond? Would you prefer to disclose this information informally rather in response to legal process? Would you like authority supporting the proposition that the information sought by the subpoena is not privileged? If this or some other reason is the case, please just say so rather than leveling accusations. As I think you know, our subpoena is not an intimidation tactic but a good faith attempt to obtain information that is squarely within the scope of the TRO's expedited discovery provision (albeit on an admittedly quicker deadline) that we need in order to respond to your emergency motion for \$200,000 in attorneys' fees -- a request that you brought to the Court without first raising with us and which is set for a hearing this Thursday. We intend to respond to your motion today and believe that the source of any fees received to date is certainly relevant to your request for additional fees. As added context, we are aware that your firm was paid a \$75,000 retainer by Mr. Dorfman in August 2018 and we were previously informed that third parties would be funding his defense in this matter. Given these facts, as well as the accelerated briefing and hearing schedule, we believe our subpoena is appropriate. Please let us know if there are any reasonable accommodations we can make to facilitate production of the requested information.

Best regards,

Jim

From: O'Quinn, Ryan <Ryan.OQuinn@dlapiper.com>
Sent: Monday, December 03, 2018 7:52 PM
To: Davis, James <JDAVIS@ftc.gov>
Cc: Gershoni, Elan <Elan.Gershoni@dlapiper.com>; Scott, Elizabeth C. <escott@ftc.gov>; Wei, Joannie <JWEI@ftc.gov>; michael.goldberg@akerman.com;

naim.surgeon@akerman.com

Subject: Re: FTC v. Simple Health Plans LLC - Subpoena for Documents

Please note our formal objection to your abusive forthwith subpoena.

Ryan O'Quinn

Sent from my iPhone

On Dec 3, 2018, at 4:24 PM, Davis, James <JDAVIS@ftc.gov> wrote:

[EXTERNAL]

Dear Ryan and Elan,

Attached please find a subpoena for documents relating to fees that your firm has received in connection with its representation of Mr. Dorfman as well as the identity of the persons or entities who have paid these fees. The FTC is issuing this subpoena pursuant to the expedited discovery provision of the TRO. Please note that while the time frame for production of documents in the expedited provision is either three or five days, depending on how responsive documents are stored, we have set a deadline in the attached subpoena of tomorrow at 5:00pm. We believe this is reasonable given that the number of documents is likely small and readily available. Moreover, we did not anticipate the need for this information given your prior representation that Mr. Dorfman's fees are being paid by family and by friends in the insurance industry. Please let us know if there is some practical reason why you cannot make the requested documents available by close of business tomorrow so that we can evaluate them in order to respond adequately your emergency motion.

Please send responsive documents to FTC Investigator Robert Menjivar at RMENJIVAR@ftc.gov.

Best,

Jim

James Davis, Attorney
Federal Trade Commission, Midwest Region
230 South Dearborn Street, Suite 3030
Chicago, IL 60604
jdavis@ftc.gov
voice: (312) 960-5611
fax: (312) 960-5600

<DLA Piper Subpoena and Rider.pdf>

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EXHIBIT 5

From: [Gershoni, Elan](#)
To: [Davis, James](#); [O'Quinn, Ryan](#)
Cc: [Scott, Elizabeth C.](#); [Wei, Joannie](#); michael.goldberg@akerman.com; naim.surgeon@akerman.com; [Crespo, Janelly](#)
Subject: RE: FTC v. Simple Health Plans LLC - Subpoena for Documents
Date: Tuesday, December 04, 2018 1:04:33 PM

Jim,

The subpoena is objectionable for multiple, independent reasons: (i) it exceeds the scope of the limited discovery that the FTC is entitled to pursuant to the TRO; (ii) it is oppressive, unduly burdensome, and meant to harass Mr. Dorfman and third parties; and (iii) the requested information is not relevant to the FTC's claims or Mr. Dorfman's potential defenses. Accordingly, Mr. Dorfman objects to the subpoena.

Please confirm by 5:00 PM EST today that the FTC will withdraw its subpoena. If we do not hear from you by then we will assume that the FTC is not withdrawing its subpoena and respond accordingly.

Thank you.

Elan A. Gershoni

T +1 305.423.8567

E elan.gershoni@dlapiper.com



From: Davis, James <JDAVIS@ftc.gov>
Sent: Monday, December 03, 2018 5:21 PM
To: O'Quinn, Ryan <Ryan.OQuinn@dlapiper.com>; Gershoni, Elan <Elan.Gershoni@dlapiper.com>
Cc: Scott, Elizabeth C. <escott@ftc.gov>; Wei, Joannie <JWEI@ftc.gov>; michael.goldberg@akerman.com; naim.surgeon@akerman.com
Subject: FTC v. Simple Health Plans LLC - Subpoena for Documents

[EXTERNAL]

Dear Ryan and Elan,

Attached please find a subpoena for documents relating to fees that your firm has received in connection with its representation of Mr. Dorfman as well as the identity of the persons or entities who have paid these fees. The FTC is issuing this subpoena pursuant to the expedited discovery provision of the TRO. Please note that while the time frame for production of documents in the expedited provision is either three or five days, depending on how responsive documents are stored, we have set a deadline in the attached subpoena of tomorrow at 5:00pm. We believe this is reasonable given that the number of documents is likely small and readily available. Moreover, we did not anticipate the need for this information given your prior representation that Mr. Dorfman's

fees are being paid by family and by friends in the insurance industry. Please let us know if there is some practical reason why you cannot make the requested documents available by close of business tomorrow so that we can evaluate them in order to respond adequately your emergency motion.

Please send responsive documents to FTC Investigator Robert Menjivar at RMENJIVAR@ftc.gov.

Best,

Jim

James Davis, Attorney
Federal Trade Commission, Midwest Region
230 South Dearborn Street, Suite 3030
Chicago, IL 60604
jdavis@ftc.gov
voice: (312) 960-5611
fax: (312) 960-5600

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