

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

CASE NO.: 18-cv-62593-DPG

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

SIMPLE HEALTH PLANS, LLC, et al.,

Defendants.

**MOTION FOR ORDER DIRECTING HOMER BONNER JACOBS, P.A.,
TO TURN OVER SETTLEMENT FUNDS TO RECEIVER**

Michael I. Goldberg, as court-appointed receiver (the “Receiver”) over defendants Simple Health Plans LLC, Health Benefits One LLC, Health Center Management LLC, Innovative Customer Care LLC, Simple Insurance Leads LLC, Senior Benefits One LLC, and their subsidiaries, affiliates, successors and assigns (collectively, the “Receivership Entities”) hereby moves this Court to enter an Order directing the law firm of Homer Bonner Jacobs, P.A., which served as pre-receivership counsel for Simple Health Plans, LLC (“Simple Health”), to turn over \$55,000.00 in settlement funds to the Receiver. In support of this motion, the Receiver states as follows:

THE RECEIVERSHIP

1. On October 29, 2018, the Federal Trade Commission (the “FTC”) filed a Complaint in the United States District Court for the Southern District of Florida against the Receivership Entities and Steven Dorfman (“Dorfman”) (Dorfman and the Receivership Entities are collectively referred to as, the “Defendants”), under Section 13(b) of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. § 53(b) and the Telemarketing and Consumer Fraud

and Abuse Act, 15 U.S.C. §§ 6101-6108, alleging the Defendants violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a) and the FTC's Telemarketing Sales Rule, 16 C.F.R Part 310, as amended. [ECF No. 1].

2. On the same date, the FTC filed an *Ex Parte* Motion for a 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 ("Motion for TRO"), along with a Memorandum in Support of the Motion for TRO. [ECF Nos. 3 and 13].

3. On October 31, 2018, this Court entered an *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 (the "TRO") [ECF No. 15], which, among other things, appointed the Receiver over the Receivership Entities with full powers of an equity receiver.

4. Prior to the appointment of the Receiver, Amanda Hicks ("Hicks") filed a separate suit against Simple Health under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("the TCPA") for an alleged robocall violation.

5. Simple Health, represented by Homer Bonner Jacobs, P.A. ("Homer Bonner"), agreed to pay Hicks \$55,000.00 as a part of a settlement agreement (the "Hicks Settlement Agreement"), and forwarded the settlement funds to its counsel. A true and correct copy of the executed Hicks Settlement Agreement is attached as "Composite Exhibit A."

6. Homer Bonner held the settlement funds in trust on behalf Simple Health. However, before the settlement was finalized, this Court issued the TRO appointing the Receiver.

7. The Receiver is authorized and required to "[t]ake exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or control of any

Receivership Entity, wherever situated . . .” . TRO § XII. To aid the Receiver’s efforts, the TRO also enjoins the Defendant and any individual or entity in possession or control of property belonging to the Receivership Entities from conducting business of any kind with property that rightfully belongs to the Receivership Entities. *Id* § III. Rather, the Defendant and any individual or entity in possession or control of property belonging to the Receivership Entities must “fully cooperate and assist the Receiver” with obtaining control over such property wherever that property is held. *Id.* § XIII.

8. Upon notice of the TRO, Homer Bonner contacted the Receiver to advise him of the \$55,000.00 in settlement funds it was holding in trust for Simple Health.

9. Hicks, now a creditor of Simple Health pursuant to the Hicks Settlement Agreement, has demanded the \$55,000.00 in settlement funds.

MEMORANDUM OF LAW

I. The Court Should Order Homer Bonner Jacobs, P.A. to Turn Over the Settlement Funds Being Held in its Trust Account for Simple Health to the Receiver

The TRO authorizes the Receiver to investigate the affairs of the Receivership Entities, to marshal and safeguard the entities’ assets, and to initiate legal proceedings for the benefit and on behalf of the Receivership Entities’ investors and other creditors. TRO § XI. The Receiver has a fiduciary responsibility to protect the receivership estate. *See, e.g., Citibank, N.A. v. Nyland*, 839 F.2d 93, 98 (2d Cir. 1988) (A receiver acts “as an officer of the court and has the duty to preserve and protect the property pending the outcome of the litigation.”); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Col. 1995) (The receiver “must collect and preserve corporate property from imminent danger of loss, waste or dissipation and administer the receivership, free from outside interference with estate property”). Once appointed, the Receiver

retains the sole right to administer the receivership, and creditors and other claimants lose their right to unilaterally settle past debts. *U.S. v. Ariz. Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984).

Federal district courts have broad equitable powers that enable them to fashion remedies to grant full relief in receivership cases. *S.E.C. v. Elliott*, 953 F.2d 1560, 1570 (11th Cir. 1992) (holding that the district court acted within its discretion in equity receivership when it refused to permit defrauded investors from tracing their securities and rescinding their transfer agreements which would have allowed the defrauded investors to elevate their position over other similarly victimized investors) (citations omitted).

A. The Settlement Funds Are Property of the Receivership Estate

Given that the settlement funds were not paid over before the entry of the TRO, those funds are, rightfully, property of the receivership estate.

In a bankruptcy case of similar impression, the Bankruptcy Court for the Southern District of Florida held that royalty payments that were being held in a debtor's attorney's trust account constituted property of the debtor's estate. *In re B&B Plastics, Inc.*, No. 04-26039-BKC-PGH, 2005 WL 3198656, at *10 (Bankr. S.D. Fla. Aug. 10, 2005). In that case, the debtor filed a petition for Chapter 7 Bankruptcy. *Id.* at *1. Before the bankruptcy petition was filed, the debtor entered into a licensing agreement with a third party, which provided that the debtor would pay royalties to the third party in exchange for exclusive rights to make and sell the third party's patent. *Id.* The debtor made royalty payments to the third party until that third party rejected the payments, alleging the debtor breached the parties' licensing agreement. *Id.* The debtor, however, attempted to continue making the royalty payments to affirm the licensing agreement by depositing the payments into the debtor's attorney's trust account. *Id.* At issue were the royalty payments that

the debtor continued to deposit into his attorney's trust account pursuant to the licensing agreement. *Id.*

The third party sued the debtor for patent infringement. *Id.* During the pendency of the litigation, the debtor moved for leave to deposit the royalty payments into the court's registry and requested that the court direct the final disposition of the payments. *Id.* No court order ever issued determining the custody of the payments, which, as a result, remained in the debtor's attorney's trust account. *Id.* At a subsequent hearing on a separate matter, the court directed the debtor's attorney to place the payments into an escrow account bearing interest; however, the payments were never placed into escrow and instead remained in the debtor's attorney's trust account. *Id.* at *2. The case proceeded to trial and the jury entered a verdict for the third party, but the court's final judgment did not address the payments that remained in the debtor's attorney's trust account. *Id.* The third party subsequently filed a motion to clarify the status of the payments held in the debtor's attorney's trust account. *Id.* at *3. Following commencement of the bankruptcy case, the Trustee demanded a turnover of the payments to the Trustee, and the debtor's attorney complied. *Id.*

The third party, relying primarily on *In re Scanlon*, 239 F.3d 1195 (11th Cir. 2001), *Baxter v. United Forest Products, Co.*, 406 F.2d 1120 (8th Cir. 1969), and *Branch v. United States*, 100 U.S. 673 (1879), filed an adversary complaint and subsequently a motion for summary judgment, arguing that: (i) the payments held in trust by the court were not property of the debtor's estate and, therefore, the debtor's attorney's turnover of the payments to the Trustee was unlawful; (ii) since the debtor had placed the payments into its attorney's trust account, it could no longer claim ownership over those payments; and (iii) the payments had been placed in an effective surrogate escrow account pursuant to the court's aforementioned order. *Id.* at *4.

The Bankruptcy Court ultimately held that the royalty payments were not held in escrow because there was *neither an escrow agreement nor a court order delineating the terms of an escrow agreement*. *Id.* (emphasis added). The court also distinguished the cases relied upon by the plaintiff noting that the royalty payments in the debtor's attorney's *trust account had been voluntarily deposited there*, unlike funds deposited *into a temporary escrow account pursuant to court order* in *In re Scanlon*. *Id.* at *9 (emphasis added). The court further distinguished *In re Scanlon* noting that in the debtor's case, the royalty payments were not clearly the third party's property, as the plaintiff was never given ownership over the royalty payments pursuant to a court order of some sort. *Id.* Moreover, there was no evidence of a memorialized agreement regarding the conditions for release of the payments. *Id.* at 10. The Bankruptcy court ultimately found that all of the cases cited by the plaintiff were distinguishable because in each of those cases, the funds were deposited either pursuant to court order or under clearly defined escrow agreement terms, whereas in the debtor's case, the court never determined who had custody over the funds or how they would be distributed. *Id.* Hence, the Court held that the royalty payments in the debtor's attorney's trust account were not being held in escrow and the debtor, therefore, retained legal interest in the payments. *Id.* (citing *T & B Scottsdale Contractors, Inc. v. United States*, 866 F.2d 1372, 1376 (11th Cir. 1989)). The Court further held that since an escrow account was never officially established, the royalty payments were estate property. *Id.* (citing *In re Missionary Baptist Found. of Am. Inc.*, 792 F.2d 502, 506 (5th Cir. 1986)).

The instant case closely parallels the *In re B&B Plastics, Inc.* case. The settlement funds being held in Homer Bonner's trust account should be turned over to the Receiver. Here, Hicks filed suit against Simple Health for a TCPA violation. Simple Health agreed to pay Hicks \$55,000.00 as a part of a settlement agreement, and thereby forwarded the settlement funds to its

attorney, Homer Bonner's trust account. Similar to the debtor in the *In re B&B Plastics, Inc.* case, Simple Health subsequently went into receivership. Unlike funds being held in an escrow account pursuant to an escrow agreement or a court order, the settlement funds have been deposited and held in Simple Health's attorney's trust account at Simple Health's volition and, therefore, constitute property of the receivership estate. *See id.* at *10. *But cf. In re Scanlon*, 239 F.3d at 1198-99 (holding that funds were not considered property of the debtor's estate where they had been placed into a temporary escrow account by debtor's mother pursuant to court order).¹

The instant matter is also distinguishable from the *In re Scanlon*. To start, the Hicks Settlement Agreement does not clearly outline how, where, or when the settlement funds are to be transferred. Moreover, unlike the settlement proceeds in the *In re Scanlon* case, the settlement funds here were never transferred over to a temporary escrow account, but merely to Homer Bonner's trust account, the firm representing and standing in the shoes of Simple Health. Simple Health retained control over the distribution of the funds, which were being held at Simple Health's request, until the settlement was finalized. In *In re Scanlon*, the debtor explicitly agreed to a transfer of the funds to a temporary escrow account maintained by its counsel, and subsequently to an independent escrow agency, thereby losing ownership and/or control over the distribution of the settlement funds. No such condition exists in Simple Health's agreement with Hicks.

Absent an explicit condition in the settlement agreement or a court order specifically outlining the terms of a transfer of the settlement proceeds to an escrow account, the settlement funds remain property of the Receivership estate. *See, e.g., In re B&B Plastics, Inc.* at *10; *T & B*

¹ The *In Re Scanlon* court determined that "funds deposited into an escrow account by a debtor, for the benefit of others, cannot be characterized as property of the estate." (quoting *In re S.E.L. Maduro*, 205 B.R. 987, 990-91 (Bankr. S.D. Fla. 1997)) (internal citations omitted).

Scottsdale Contractors, Inc. v. United States, 866 F.2d 1372, 1376 (11th Cir. 1989); *In re Missionary Baptist Found. of Am. Inc.*, 792 F.2d 502, 506 (5th Cir. 1986).

After the receivership commenced on October 31, 2018, Ms. Hicks, as a legitimate creditor of Simple Health, lost her ability to directly collect the settlement funds from Simple Health's counsel. Pursuant to the Court's appointment of the undersigned as Receiver over the Receivership Entities, any and all administration, collection, and equitable distribution of the receivership estate's assets must be orchestrated by the Receiver. Section XIII of the TRO broadly outlines the process for the transfer of receivership property to the Receiver. This transfer of property includes "A. All Assets held by or for the benefit of the Receivership Entities" and "D. All Assets and Documents belonging to other persons or entities whose interests are under the direction, possession, custody, or control of the Receivership Entities." *Id.* The TRO defines an "Asset" as any "legal or equitable interest in, right to, or claim to, any property, wherever located and by whomever held, and all proceeds, products, offspring, rents, or profit of or from that property." TRO at 3. There is no credible dispute that the \$55,000.00 being held in trust by Homer Bonner on behalf of Simple Health, is not an Asset of the Receivership estate under the terms of the TRO. *See In re B&B Plastics, Inc.* at *10.

As it pertains to third parties such as Homer Bonner, appointed receivers are entitled to orders directing the turnover of assets and property to the Receiver. Equitable relief from indirect related parties is appropriate regardless of whether a party committed any wrongdoing, simply by showing that the third party has possession of assets of a receivership entity and that there is no legitimate claim to the assets. Furthermore, as the TRO mandates, the Receiver must prevent the inequitable distribution of assets by determining, adjusting, and protecting the interests of consumers who have transacted business with the Receivership Entities.

Pursuant to the TRO, the \$55,000.00 in settlement funds being held by Homer Bonner must be turned over to the Receiver because the proceeds are clearly property of the Receivership Entities.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with counsel for the FTC, who has no objection to the relief requested in this Motion. Homer Bonner has no objection and has indicated to counsel that upon entry of an Order from this Court directing it to do so, it will turn over the \$55,000.00 in settlement funds to the Receiver. Plaintiff Hicks objects to the relief requested herein.²

WHEREFORE, the Receiver requests entry of an Order directing Homer Bonner to turn over the total sum of \$55,000.00 being held in trust on behalf of Defendant, Simple Health Plans, LLC.

Dated: March 8, 2019

Respectfully submitted,

/s/ Naim S. Surgeon
Naim S. Surgeon, Esq.
Florida Bar No. 101682
Email: naim.surgeon@akerman.com
Royce B. Badger Jr., Esq.
Florida Bar Number: 115394
Email: royce.badger@akerman.com
Counsel for the Receiver

AKERMAN LLP
Las Olas Centre II, Suite 1600
350 East Las Olas Boulevard
Fort Lauderdale, FL 33301-2999
Phone: (954) 463-2700
Fax: (954) 463-2224

² Under the circumstances, as a putative creditor of the receivership estate, Plaintiff Hicks is entitled to participate in any claims process established by the Receiver.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this March 8, 2019 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Naim S. Surgeon
Naim S. Surgeon

COMPOSITE EXHIBIT A

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into as of this ____ day of October 2018, between Simple Health Plans, LLC ("Simple Health") and all its parents, subsidiaries, affiliates, and any persons or entities associated with, related to, or employed by Simple Health (collectively, the "Company"), and Amanda Hicks ("Hicks").

WHEREAS, on January 25, 2018, Hicks filed a lawsuit against Health Insurance Innovations, Inc. ("HII") in the Middle District of Florida, alleging violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, and seeking money damages (the "Action");

WHEREAS, Hicks subsequently threatened to assert claims in the Action against Simple Health for purported violations of the TCPA and seeking money damages;

WHEREAS, with Simple Health expressly denying each and every one of the allegations against it, but with Ms. Hicks and Simple Health desiring to avoid the costs, uncertainty, and length of further legal proceedings, the parties hereto desire to finally and conclusively resolve all their differences, including any and all causes of action and claims each may have against the other.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Dismissal with Prejudice of the Action. Within five (5) days after this Agreement is fully executed by all parties, Ms. Hicks shall file a joint stipulation of dismissal with prejudice in the Action in a manner agreeable to HII and Ms. Hicks.
2. Settlement Sum and Other Terms. For and in consideration of the releases described in Paragraph 3, and the performance of other obligations provided herein, Simple Health shall cause to be paid a total of fifty-five thousand dollars (\$55,000) to Ms. Hicks (the "Settlement Funds") to be paid within twenty (20) days after the joint stipulation of dismissal with prejudice described in Paragraph 1 is filed and this Agreement is executed by Ms. Hicks and delivered by electronic mail to Simple Health's attorneys at the e-mail addresses below and receipt of the W-9 form from Lemberg Law LLC. Payment shall be made by delivery of a check payable to Lemberg Law Client Trust Account.
3. Releases. This Agreement operates as a release as follows:
 - 3.1. Ms. Hicks hereby fully and finally releases, waives, and forever discharges any and all manner of action, lawsuits, complaints, claims and demands whatsoever, in law or in equity, known or unknown, accrued or not accrued, which they ever had or now have against HII, Innovative Customer Care, LLC, Simple Insurance Leads, LLC, Senior Benefits One, LLC, Health Benefits One, LLC, HBC Direct, LLC, Health Center Management, LLC, Health Center Management Corporation, Senior Benefits One, Inc., Venture Vocational Institute, Inc., Simple Health, and those entities' past and present

officers, members, shareholders, directors, insurers, employees, agents, attorneys, representatives, predecessors, successors, assigns, partners, parents, subsidiaries, vendors, independent agents, and other affiliates (collectively referred to as the "Released Parties") by reason of any matter, cause or thing whatsoever, occurring prior to the signing of this Agreement. This includes a waiver of all rights under any state or federal statute that are legally permitted to be waived.

- 3.2. Notwithstanding Subparagraph 3.1 of this Agreement, this Release does not release any party from any part of this Agreement or from any duty under this Agreement.
- 3.3. Ms. Hicks expressly acknowledges that: (a) this Release was signed knowingly and voluntarily and only after due consideration and consultation or the opportunity to consider and consult with an attorney; (b) Ms. Hicks was not coerced, intimidated or fraudulently or negligently induced to sign this Release; (c) this Release is the result of a compromise of disputed claims; and (d) in signing this Release, Ms. Hicks has not relied upon any oral or written statements or acts made by any other party, or its representatives other than as expressly stated in writing in this Release.
4. Confidentiality; Non-Disclosure. Excepting matters already part of the public record, the subject matter of Ms. Hicks's allegations, Ms. Hicks's demands and allegations, and everything else related to the Ms. Hicks-specific allegations, and the existence and terms of this Agreement are, and shall be deemed at all times, confidential. Ms. Hicks agrees that she shall maintain the existence and terms of this Agreement in strict confidence and shall not disclose or discuss the terms of this settlement with anyone apart from her spouse, counsel, accountants, or tax advisors. Any spouse, accountant, or tax advisor who is advised of the terms of this settlement or of this Agreement shall also be advised of the confidentiality of both and shall be instructed of their obligation to retain in strictest confidence the terms of the settlement and this Agreement. Ms. Hicks (and anyone acting for or on her behalf) and her counsel (and anyone acting for or on said counsel's behalf) shall not originate or cause to be originated any written or oral statement, news release or other announcement, or any publication whatsoever to any person or entity relating to this settlement or Agreement, the subject matter or resolution of the allegations, or any related matter. If asked by the press, any governmental agency, any attorney, existing, prospective or graduated student, or any other person any questions about the allegations, this settlement, or the Agreement, Ms. Hicks and her representatives may state only: "THIS DISPUTE WAS RESOLVED." They may not comment further. Neither Ms. Hicks nor her representatives may make any statement to the press, any governmental agency, or any other person, direct or implied, that suggests that Ms. Hicks received or will receive any money in settlement. However, nothing in this Agreement prohibits or places any conditions on communications between any governmental agency and Ms. Hicks regarding the allegations that underlie her dispute with HII and Simple Health. Finally, all parties recognize and agree that the existence or terms of this Agreement may be disclosed to the extent required by applicable law, including final orders of a court of competent jurisdiction. In the event Ms. Hicks receives a subpoena or other legal process calling for the production of this Agreement, or disclosure of the terms of this settlement or of this Agreement, or in any way related to the subject matter of the claims set forth in the Demand Letter, notice shall immediately be given to Simple Health to give Simple Health an opportunity to object to such production or disclosure. Ms. Hicks shall then cooperate to the extent legally permissible with Simple Health's efforts, if any, to

oppose the subpoena or legal process. Ms. Hicks and any person or entity acting on her behalf, recognize and agree that the provisions of this paragraph are a material inducement to this Agreement and the breach (or threatened breach) of any provision of this paragraph will be presumed to cause irreparable injury that can be remedied by injunctive relief, and all other remedies available at law, without showing the absence of a legal remedy or requiring the posting of bond.

5. Non-Disparagement; Non-Contact. Ms. Hicks shall not make any written or oral statement or take any action, directly or indirectly, which she knows or reasonably should know to be disparaging or negative concerning the Released Parties. Ms. Hicks also shall not urge or influence any person to make any written or oral statements which she knows or reasonably should know to be disparaging or negative concerning the Released Parties. However, nothing in this Agreement prohibits or places any conditions on communications between any governmental agency and Ms. Hicks regarding the allegations that underlie her dispute with dispute with HII and Simple Health. Ms. Hicks recognizes and agrees that the terms of this paragraph are a material inducement to this Agreement and the breach (or threatened breach) of any of these terms will be presumed to cause irreparable injury that can be remedied by injunctive relief without showing the absence of a legal remedy or requiring the posting of bond. Ms. Hicks agrees not to contact the Released Parties, except in writing. Ms. Hicks further agrees not to seek employment from the Released Parties.
6. Covenant Not To Sue. Ms. Hicks hereby warrants and represents that, as of the execution and delivery of this Agreement, neither her nor anyone acting on her behalf has made or filed any charge, complaint or suit against any of the Released Parties with any federal, state, or local court agency or authority, or any other regulatory authority or business complaint entity, apart from the Action. Ms. Hicks further acknowledges that the Settlement Funds are being paid to Ms. Hicks in return for the promise not to initiate any regulatory, administrative, court, judicial-type, or arbitration or business complaint proceeding against the Released Parties.
7. No Admission; No Collateral Estoppel; Ms. Hicks Not Prevailing Party. It is expressly acknowledged and agreed by the parties hereto that nothing in this Agreement constitutes an admission or other evidence of the rights or liabilities of any person or entity, except with respect to the contractual duties and stipulations provided in this Agreement itself. Neither this Agreement nor any action or document taken to carry out this Agreement: (a) shall be construed as evidence or an acknowledgment of any presumption, inference, concession or admission on any point of fact or law, or any liability, omission or other wrongful act whatsoever; (b) shall be offered or received as evidence in any proceeding whatsoever of any presumption, inference, concession or admission of any liability, fault, omission or other wrongful act whatsoever; or (c) shall be offered or received as evidence in any action or proceeding whatsoever between the parties other than such proceeding by the parties hereto as may be necessary to enforce the provisions of this Agreement, and in such an event only under seal. Ms. Hicks further acknowledges and agrees that she is not, and shall not be deemed to be, a "prevailing party" for any purpose whatsoever, and that she shall bear her attorney's fees, costs, and expenses incurred in connection with the dispute.
8. Entire Agreement. This Agreement constitutes a single, fully integrated contract expressing the entire agreement and understanding of the parties as of the date of execution hereof with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and

written agreements, negotiations, discussions, understandings, representations, statements, and writings between the parties relating thereto and with respect to the subject matter hereof. There are no other agreements, written or oral, express or implied, between the parties hereto concerning the subject matter of this Agreement. Each party further acknowledges that if it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true with respect to the matters encompassed by this Agreement, it is the intention of each party to, and each party does, hereby fully, finally, and forever settle the matters provided by this Agreement, notwithstanding the discovery or existence of any such additional facts.

9. Construction. Any controversy regarding the construction of this Agreement shall be decided neutrally, in light of its conciliatory purpose, and without regard to the events of authorship or negotiation. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by, and participation of, all parties hereto after thorough consultation with or opportunity to consult with their legal counsel.
10. Time. Time is of the essence with respect to all provisions within this Agreement.
11. Severability. If any part of this Agreement is held unenforceable or deemed to be in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of this Agreement shall remain binding upon the parties.
12. Taxes. Ms. Hicks shall be solely responsible for the reporting and payment of any federal, state and/or local income or employment tax or any other withholdings, if any, on the Settlement Funds. Unless it is advised or concludes otherwise, Simple Health or its affiliates may, in its sole discretion, issue a 1099 form at the appropriate time regarding the payments. In the event any governmental agency asserts that Ms. Hicks is liable for taxes on account of the sums of money to be received pursuant to this Agreement then the Released Parties shall not be liable for any portion of any such taxes, interest, or penalties. Ms. Hicks further agrees that she shall indemnify, defend, and hold the Released Parties harmless from and for any and all claims, obligations and/or liability on account of any and all taxes, interest or penalties due on account of the payment to Ms. Hicks of the sums of money specified in this Agreement.
13. Communications. Whenever this Agreement requires or contemplates that one party shall or may give notice or communicate with another party, notice or communication shall be provided by facsimile, electronic mail, or U.S. Mail as follows:

If to Simple Health, then to:

Simple Health Plans, LLC
c/o Managing Member
2 Oakwood Boulevard
Suite 100
Hollywood, Florida 33020

With a copy to:

Yaniv Adar
Homer Bonner Jacobs
1200 Four Seasons Tower
1441 Brickell Avenue
Miami, FL 33131
yadar@homerbonner.com

If to Amanda Hicks, then to:

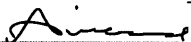
Stephen Taylor, Esq.
Lemberg Law LLC
43 Danbury Road, 3rd Floor
Wilton, CT 06897
staylor@lemborglaw.com

14. Choice of Law. This Agreement shall be enforceable and construed according to the laws of the State of Florida, without giving effect to any rule or conflict of laws that would apply a different law.
15. **WAIVER OF JURY TRIAL; LAWSUIT.** The parties hereto knowingly, voluntarily and intentionally waive any right which they may have to trial by jury in respect to any litigation based hereon (including but not limited to any claims, counterclaims, cross-claims and third-party claims), or arising out of, under or in connection with this Agreement, any matters contemplated by this Agreement, or the parties' performance of this Agreement. Further, any dispute related to this Agreement shall be submitted to arbitration before the American Arbitration Association and shall proceed individually under the American Arbitration Association's Expedited Procedures applicable to Consumer-Related disputes. The parties agree that the Optional Rules for Emergency Measures of Protection shall be applicable to any such dispute. The arbitration will take place in Hillsborough County, Florida. The arbitrator shall determine the "prevailing party" for purposes of the attorney's fee award and the arbitrator's award may be entered as a judgment in any court of competent jurisdiction.

IN WITNESS WHEREOF, this Agreement is made and entered into effective _____, 2018.

Amanda Hicks, individually
and on behalf of all her representatives

Dated: _____


C. Girouard (Oct 26, 2018)

Simple Health Plans, LLC

By: C. Girouard _____

Title: Authorized Signer _____

Dated: 10/26/2018 _____

Approved and Agreed on this ____ day of _____ 2018.

COMMERCIAL SETTLEMENT AGREEMENT AND RELEASE

THIS COMMERCIAL SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into by and between the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, on the terms and conditions set forth herein.

WHEREAS, on or about 10/26/2018, the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, entered into a settlement agreement with the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, on the terms and conditions set forth herein.

WHEREAS, the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, entered into a settlement agreement with the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, on the terms and conditions set forth herein.

WHEREAS, the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, entered into a settlement agreement with the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, on the terms and conditions set forth herein.

WHEREAS, the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, entered into a settlement agreement with the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, on the terms and conditions set forth herein.

WHEREAS, the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, entered into a settlement agreement with the undersigned parties, the undersigned parties, and all persons, successors, assigns, heirs, and assigns, jointly and severally, on the terms and conditions set forth herein.

Hicks Settlement Agreement - Final (00129536) (002)

Adobe Sign Document History

10/26/2018

Created:	10/26/2018
By:	John Sand (contracts@hbcinsure.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAYorrArLolmgbqd8VCYK_tzyLRmLzeiLL

"Hicks Settlement Agreement - Final (00129536) (002)" History



Document created by John Sand (contracts@hbcinsure.com)

10/26/2018 - 10:54:18 AM EDT- IP address: 96.80.106.193



Document emailed to C. Girouard (cgirouard@simplehealthplans.com) for signature

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Document viewed by C. Girouard (cgirouard@simplehealthplans.com)

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Document e-signed by C. Girouard (cgirouard@simplehealthplans.com)

Signature Date: 10/26/2018 - 11:03:38 AM EDT - Time Source: server- IP address: 174.227.141.178



Signed document emailed to C. Girouard (cgirouard@simplehealthplans.com) and John Sand (contracts@hbcinsure.com)

10/26/2018 - 11:03:38 AM EDT



Adobe Sign

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CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE (the “Agreement”) is made and entered into as of this ____ day of October 2018, between Simple Health Plans, LLC (“Simple Health”) and all its parents, subsidiaries, affiliates, and any persons or entities associated with, related to, or employed by Simple Health (collectively, the “Company”), and Amanda Hicks (“Hicks”).

WHEREAS, on January 25, 2018, Hicks filed a lawsuit against Health Insurance Innovations, Inc. (“HII”) in the Middle District of Florida, alleging violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, and seeking money damages (the “Action”);

WHEREAS, Hicks subsequently threatened to assert claims in the Action against Simple Health for purported violations of the TCPA and seeking money damages;

WHEREAS, with Simple Health expressly denying each and every one of the allegations against it, but with Ms. Hicks and Simple Health desiring to avoid the costs, uncertainty, and length of further legal proceedings, the parties hereto desire to finally and conclusively resolve all their differences, including any and all causes of action and claims each may have against the other.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Dismissal with Prejudice of the Action. Within five (5) days after this Agreement is fully executed by all parties, Ms. Hicks shall file a joint stipulation of dismissal with prejudice in the Action in a manner agreeable to HII and Ms. Hicks.
2. Settlement Sum and Other Terms. For and in consideration of the releases described in Paragraph 3, and the performance of other obligations provided herein, Simple Health shall cause to be paid a total of fifty-five thousand dollars (\$55,000) to Ms. Hicks (the “Settlement Funds”) to be paid within twenty (20) days after the joint stipulation of dismissal with prejudice described in Paragraph 1 is filed and this Agreement is executed by Ms. Hicks and delivered by electronic mail to Simple Health’s attorneys at the e-mail addresses below and receipt of the W-9 form from Lemberg Law LLC. Payment shall be made by delivery of a check payable to Lemberg Law Client Trust Account.
3. Releases. This Agreement operates as a release as follows:
 - 3.1. Ms. Hicks hereby fully and finally releases, waives, and forever discharges any and all manner of action, lawsuits, complaints, claims and demands whatsoever, in law or in equity, known or unknown, accrued or not accrued, which they ever had or now have against HII, Innovative Customer Care, LLC, Simple Insurance Leads, LLC, Senior Benefits One, LLC, Health Benefits One, LLC, HBC Direct, LLC, Health Center Management, LLC, Health Center Management Corporation, Senior Benefits One, Inc., Venture Vocational Institute, Inc., Simple Health, and those entities’ past and present

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officers, members, shareholders, directors, insurers, employees, agents, attorneys, representatives, predecessors, successors, assigns, partners, parents, subsidiaries, vendors, independent agents, and other affiliates (collectively referred to as the “Released Parties”) by reason of any matter, cause or thing whatsoever, occurring prior to the signing of this Agreement. This includes a waiver of all rights under any state or federal statute that are legally permitted to be waived.

- 3.2. Notwithstanding Subparagraph 3.1 of this Agreement, this Release does not release any party from any part of this Agreement or from any duty under this Agreement.
- 3.3. Ms. Hicks expressly acknowledges that: (a) this Release was signed knowingly and voluntarily and only after due consideration and consultation or the opportunity to consider and consult with an attorney; (b) Ms. Hicks was not coerced, intimidated or fraudulently or negligently induced to sign this Release; (c) this Release is the result of a compromise of disputed claims; and (d) in signing this Release, Ms. Hicks has not relied upon any oral or written statements or acts made by any other party, or its representatives other than as expressly stated in writing in this Release.
4. Confidentiality; Non-Disclosure. Excepting matters already part of the public record, the subject matter of Ms. Hicks’s allegations, Ms. Hicks’s demands and allegations, and everything else related to the Ms. Hicks-specific allegations, and the existence and terms of this Agreement are, and shall be deemed at all times, confidential. Ms. Hicks agrees that she shall maintain the existence and terms of this Agreement in strict confidence and shall not disclose or discuss the terms of this settlement with anyone apart from her spouse, counsel, accountants, or tax advisors. Any spouse, accountant, or tax advisor who is advised of the terms of this settlement or of this Agreement shall also be advised of the confidentiality of both and shall be instructed of their obligation to retain in strictest confidence the terms of the settlement and this Agreement. Ms. Hicks (and anyone acting for or on her behalf) and her counsel (and anyone acting for or on said counsel’s behalf) shall not originate or cause to be originated any written or oral statement, news release or other announcement, or any publication whatsoever to any person or entity relating to this settlement or Agreement, the subject matter or resolution of the allegations, or any related matter. If asked by the press, any governmental agency, any attorney, existing, prospective or graduated student, or any other person any questions about the allegations, this settlement, or the Agreement, Ms. Hicks and her representatives may state only: “THIS DISPUTE WAS RESOLVED.” They may not comment further. Neither Ms. Hicks nor her representatives may make any statement to the press, any governmental agency, or any other person, direct or implied, that suggests that Ms. Hicks received or will receive any money in settlement. However, nothing in this Agreement prohibits or places any conditions on communications between any governmental agency and Ms. Hicks regarding the allegations that underlie her dispute with HII and Simple Health. Finally, all parties recognize and agree that the existence or terms of this Agreement may be disclosed to the extent required by applicable law, including final orders of a court of competent jurisdiction. In the event Ms. Hicks receives a subpoena or other legal process calling for the production of this Agreement, or disclosure of the terms of this settlement or of this Agreement, or in any way related to the subject matter of the claims set forth in the Demand Letter, notice shall immediately be given to Simple Health to give Simple Health an opportunity to object to such production or disclosure. Ms. Hicks shall then cooperate to the extent legally permissible with Simple Health’s efforts, if any, to

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oppose the subpoena or legal process. Ms. Hicks and any person or entity acting on her behalf, recognize and agree that the provisions of this paragraph are a material inducement to this Agreement and the breach (or threatened breach) of any provision of this paragraph will be presumed to cause irreparable injury that can be remedied by injunctive relief, and all other remedies available at law, without showing the absence of a legal remedy or requiring the posting of bond.

5. Non-Disparagement; Non-Contact. Ms. Hicks shall not make any written or oral statement or take any action, directly or indirectly, which she knows or reasonably should know to be disparaging or negative concerning the Released Parties. Ms. Hicks also shall not urge or influence any person to make any written or oral statements which she knows or reasonably should know to be disparaging or negative concerning the Released Parties. However, nothing in this Agreement prohibits or places any conditions on communications between any governmental agency and Ms. Hicks regarding the allegations that underlie her dispute with dispute with HII and Simple Health. Ms. Hicks recognizes and agrees that the terms of this paragraph are a material inducement to this Agreement and the breach (or threatened breach) of any of these terms will be presumed to cause irreparable injury that can be remedied by injunctive relief without showing the absence of a legal remedy or requiring the posting of bond. Ms. Hicks agrees not to contact the Released Parties, except in writing. Ms. Hicks further agrees not to seek employment from the Released Parties.
6. Covenant Not To Sue. Ms. Hicks hereby warrants and represents that, as of the execution and delivery of this Agreement, neither her nor anyone acting on her behalf has made or filed any charge, complaint or suit against any of the Released Parties with any federal, state, or local court agency or authority, or any other regulatory authority or business complaint entity, apart from the Action. Ms. Hicks further acknowledges that the Settlement Funds are being paid to Ms. Hicks in return for the promise not to initiate any regulatory, administrative, court, judicial-type, or arbitration or business complaint proceeding against the Released Parties.
7. No Admission; No Collateral Estoppel; Ms. Hicks Not Prevailing Party. It is expressly acknowledged and agreed by the parties hereto that nothing in this Agreement constitutes an admission or other evidence of the rights or liabilities of any person or entity, except with respect to the contractual duties and stipulations provided in this Agreement itself. Neither this Agreement nor any action or document taken to carry out this Agreement: (a) shall be construed as evidence or an acknowledgment of any presumption, inference, concession or admission on any point of fact or law, or any liability, omission or other wrongful act whatsoever; (b) shall be offered or received as evidence in any proceeding whatsoever of any presumption, inference, concession or admission of any liability, fault, omission or other wrongful act whatsoever; or (c) shall be offered or received as evidence in any action or proceeding whatsoever between the parties other than such proceeding by the parties hereto as may be necessary to enforce the provisions of this Agreement, and in such an event only under seal. Ms. Hicks further acknowledges and agrees that she is not, and shall not be deemed to be, a “prevailing party” for any purpose whatsoever, and that she shall bear her attorney’s fees, costs, and expenses incurred in connection with the dispute.
8. Entire Agreement. This Agreement constitutes a single, fully integrated contract expressing the entire agreement and understanding of the parties as of the date of execution hereof with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and

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written agreements, negotiations, discussions, understandings, representations, statements, and writings between the parties relating thereto and with respect to the subject matter hereof. There are no other agreements, written or oral, express or implied, between the parties hereto concerning the subject matter of this Agreement. Each party further acknowledges that if it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true with respect to the matters encompassed by this Agreement, it is the intention of each party to, and each party does, hereby fully, finally, and forever settle the matters provided by this Agreement, notwithstanding the discovery or existence of any such additional facts.

9. Construction. Any controversy regarding the construction of this Agreement shall be decided neutrally, in light of its conciliatory purpose, and without regard to the events of authorship or negotiation. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by, and participation of, all parties hereto after thorough consultation with or opportunity to consult with their legal counsel.
10. Time. Time is of the essence with respect to all provisions within this Agreement.
11. Severability. If any part of this Agreement is held unenforceable or deemed to be in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of this Agreement shall remain binding upon the parties.
12. Taxes. Ms. Hicks shall be solely responsible for the reporting and payment of any federal, state and/or local income or employment tax or any other withholdings, if any, on the Settlement Funds. Unless it is advised or concludes otherwise, Simple Health or its affiliates may, in its sole discretion, issue a 1099 form at the appropriate time regarding the payments. In the event any governmental agency asserts that Ms. Hicks is liable for taxes on account of the sums of money to be received pursuant to this Agreement then the Released Parties shall not be liable for any portion of any such taxes, interest, or penalties. Ms. Hicks further agrees that she shall indemnify, defend, and hold the Released Parties harmless from and for any and all claims, obligations and/or liability on account of any and all taxes, interest or penalties due on account of the payment to Ms. Hicks of the sums of money specified in this Agreement.
13. Communications. Whenever this Agreement requires or contemplates that one party shall or may give notice or communicate with another party, notice or communication shall be provided by facsimile, electronic mail, or U.S. Mail as follows:

If to Simple Health, then to:

Simple Health Plans, LLC
c/o Managing Member
2 Oakwood Boulevard
Suite 100
Hollywood, Florida 33020

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With a copy to:

Yaniv Adar
Homer Bonner Jacobs
1200 Four Seasons Tower
1441 Brickell Avenue
Miami, FL 33131
yadar@homerbonner.com

If to Amanda Hicks, then to:

Stephen Taylor, Esq.
Lemberg Law LLC
43 Danbury Road, 3rd Floor
Wilton, CT 06897
staylor@lemborglaw.com

14. Choice of Law. This Agreement shall be enforceable and construed according to the laws of the State of Florida, without giving effect to any rule or conflict of laws that would apply a different law.
15. WAIVER OF JURY TRIAL; LAWSUIT. The parties hereto knowingly, voluntarily and intentionally waive any right which they may have to trial by jury in respect to any litigation based hereon (including but not limited to any claims, counterclaims, cross-claims and third-party claims), or arising out of, under or in connection with this Agreement, any matters contemplated by this Agreement, or the parties' performance of this Agreement. Further, any dispute related to this Agreement shall be submitted to arbitration before the American Arbitration Association and shall proceed individually under the American Arbitration Association's Expedited Procedures applicable to Consumer-Related disputes. The parties agree that the Optional Rules for Emergency Measures of Protection shall be applicable to any such dispute. The arbitration will take place in Hillsborough County, Florida. The arbitrator shall determine the "prevailing party" for purposes of the attorney's fee award and the arbitrator's award may be entered as a judgment in any court of competent jurisdiction.

IN WITNESS WHEREOF, this Agreement is made and entered into effective Oct 26 2018.

Amanda Hicks, individually
and on behalf of all her representatives

Dated: 10/26/18

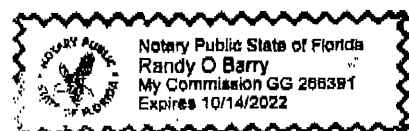
Simple Health Plans, LLC

By: Randy O. Barry

Title: Notary

Dated: 10/26/18

Approved and Agreed on this 26 day of Oct 2018.



Randy O. Barry

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

CASE NO. 18-CV-62593-GAYLES

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

SIMPLE HEALTH PLANS LLC, et al,

Defendants.

**ORDER DIRECTING HOMER BONNER JACOBS, P.A. TO TURN OVER
SETTLEMENT FUNDS TO COURT-APPOINTED RECEIVER**

THIS MATTER came before the Court upon Michael I. Goldberg, the Court-appointed receiver's (the "Receiver") Motion For Order Directing Homer Bonner Jacobs, P.A., to Turn Over Settlement Funds to Receiver. ("Motion") [ECF No. ____]. The Court, having reviewed the Motion, and being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED as follows:

1. The Motion is **GRANTED**.
2. Homer Bonner Jacobs, P.A. is hereby directed to turn over the settlement funds being held in its trust account to the Receiver.

DONE AND ORDERED in Chambers at Miami, Florida this ____ day of March, 2019.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE