

**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.

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**MOTION FOR AUTHORITY TO CANCEL CERTAIN  
NON-RESIDENTIAL REAL PROPERTY LEASES**

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 (each, a “Receivership Entity” and collectively, the “Receivership Entities”) hereby moves this Court to enter an Order authorizing the Receiver to cancel the non-residential real property leases for office space in Dallas, Texas, Miami, Florida and the warehouse lease for Pompano Beach, Florida. 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, along with a Memorandum in Support of the Motion for TRO [ECF No. 3].

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"), which, among other things, appointed the Receiver over the Receivership Entities with full powers of an equity receiver [ECF No. 15].

4. The TRO was continued on multiple occasions by the Court until after the Court held an evidentiary show cause hearing on the FTC's request for preliminary injunctive relief. On May 14, 2019, the Court entered a Preliminary Injunction [ECF No. 139], extended the asset freeze and appointed Mr. Goldberg as permanent receiver over the Receivership Entities.<sup>1</sup>

5. Pursuant to the Receivership Order, the Receiver is directed and authorized to assume full control of the Receivership Entities; take exclusive custody, control and possession of all assets and documents of or in the possession, custody or under the control of any Receivership Entity, including assets the Receiver has a reasonable basis to believe were

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<sup>1</sup> In the Preliminary Injunction, the court defines the Receivership Entities as "the Corporate Defendants as well as any other entity that has conducted any business related to Defendants' advertising, marketing, promoting, offering for sale, or sale of limited benefit plans and medical discount memberships, including by transferring, commingling, or receiving Assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant." *See* ECF No. 139 at fn. 17.

purchased using funds from any Receivership Entity's corporate accounts. See Receivership Order at page 33.

6. Moreover, the Receivership Order authorizes the Receiver to enter into and cancel contracts and purchase insurance as advisable or necessary. See Receivership Order at page 36.

7. As of the date of the Receiver's appointment, one or more the Receivership Entities were parties to commercial real property leases located in Texas and Florida (collectively, the "Leases"). The Receiver has shut down the business operations of the Receivership Entities and has no use for the leased premises.<sup>2</sup>

### **THE LEASEHOLDS**

#### **I. The Texas Leases**

8. The Receivership Entities are currently tenants under two sub-leases for office space in Dallas, Texas. The Receivership Entities were not using either office as of the date of this case. They abandoned their first leasehold in September 2018 and their second leasehold in October 2018. As the Receivership Entities have no use for either leasehold, the leases should be cancelled and the offices returned to the sub-landlords.

##### **A. 5720 LBJ Freeway, Suite 610, Dallas, Texas**

9. On July 26, 2017, Senior Benefits One, LLC, a Receivership Entity, agreed to sublease 4,933 square feet of office space on the sixth floor of the Midtown Office Center, located at 5720 LBJ Freeway in Dallas (the "LBJ Freeway office"). The sub-landlord is American First Finance, Inc. ("AFFI"). The lease term ends on March 31, 2021. The rent is currently \$6,577 per month; although it will rise to \$6,988 at the end of February 2019. The rent does not include electricity and other expenses.

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<sup>2</sup> This motion does not include the lease for the headquarters and call center located in Hollywood, Florida. The Receiver is in the process of negotiating the turnover of the Hollywood office, and will file a separate motion with regard to the Hollywood office.

10. The Receivership Entities abandoned the LBJ Freeway office prior to the date of the Receivership. When the Receiver executed this Court's immediate access order, the Receiver's counsel discovered that the office was vacant. There was no signage outside the office, the lights were out and no one was present. There were no computers, records or other items indicating that the office was in use. There was, however, a white board indicating that the Receivership Entities were no longer using the LBJ Freeway office but had moved to another location (12005 Ford Road) as of the end of September. Receiver's counsel confirmed that the Receivership Entities had moved out of the LBJ Freeway office with the building's management and a representative of the sub-lessor.

11. AFFI is currently willing to terminate the sublease on the LBJ Freeway office at no cost to the estate. If, however, the estate is unwilling or unable to terminate the sublease, AFFI has requested payment of its monthly rent. The Receivership Entities had no use for this space prior to the Receivership. The Receiver has no use for the office space either. Paying rent for nearly 5,000 square feet of office space in Dallas would be a waste of assets.

**B. 12005 Ford Road, Suite 800, Dallas, Texas**

12. On July 1, 2018, Health Benefits One, LLC, a Receivership Entity, entered into a sublease for two suites, Nos. 800 and 810, of the Northpointe Center, located at 12005 Ford Road (the "Ford Road office"). The sub-landlord is Credit Protection Association, LP ("CPA"). The lease term ends on January 20, 2020. The rent is \$18,000 per month plus electricity and other expenses.

13. The Receivership Entities abandoned the Ford Road office on or about October 12, 2018. As with the LBJ Freeway office, Suites 800 and 810 were unoccupied. It appeared that the Receivership Entities were in the process of packing the office up to ship the equipment back to Florida. Receiver's counsel found a number of sealed and partially filled moving boxes as well

as receipts for moving supplies. The administrative offices were largely cleaned out but still contained furniture and computers. None of the desks contained records and there were numerous empty filing cabinets. According to the records found onsite, the last business day in the Ford Road office was October 12, 2018. Employees of Northpointe Center confirmed that the Receivership Entities moved out in mid-October.

14. CPA is currently willing to terminate the sublease on the Ford Road office. If, however, the estate is unwilling or unable to terminate the sublease, CPA has requested payment of its monthly rent. The Receivership Entities had no use for this space prior to the Receivership. The Receiver has no use for the office space either. Paying rent for nearly 15,000 square feet of office space in Dallas would, thus, be a waste of assets.

## **II. THE FLORIDA LEASEHOLDS**

15. The Receivership Entities are currently tenants under two leases for office space in Florida, the headquarters and call center located in Hollywood and another call center located in Miami, as well as a warehouse located in Pompano Beach. Upon his appointment, the Receiver shut down the operations at the Florida locations and dismissed the employees. The Receivership Entities are no longer using the Miami office. The Receiver is in the process of negotiating the turnover of the Hollywood office, and will file a separate motion with regard to the Hollywood office. In the interim, as the Receivership Entities have no use for the Miami leasehold and the Pompano Beach warehouse. Those leases should be cancelled and premises returned to the landlords.

### **A. 8400 N.W. 36<sup>th</sup> Street, Miami, Florida**

16. On September 3, 2015, Receivership Entity Health Benefits One LLC entered into a lease agreement with G&I VIII Doral Concourse LLC (“G&I”) for use of 7,366 square feet of office space located at 8400 N.W. 36<sup>th</sup> Street, Miami, Florida (the “Miami office”). The lease

term for the Miami office is for 89 calendar months, commencing on June 21, 2016. The base rent is currently \$20,698.46 per month. Marc Spiewak and Mary-Ellen Spiewak executed a Guaranty of Health Benefits One LLC's full performance under the lease.

17. There remains numerous office furnishings, computers, monitors, and servers at the Miami office. The Receiver has commissioned an appraisal of the office furnishings. Based on the results of the appraisal, and considering the costs of an auction of the office furnishings, the Receiver believes the office furnishings have *di minimis* value to the receivership estate. The Receiver intends to abandon the office furnishings.

18. Prior to filing this Motion, the Receiver learned that counsel for G&I recently filed a Complaint in the County Court for Miami-Dade County, Florida seeking possession of the Miami office. The Receiver's counsel immediately filed a Suggestion of Receivership and further reached out to G&I's counsel to discuss the Receiver's plan to file this Motion. The Receiver's counsel inquired whether G&I would agree to waive its claims against Health Benefits One LLC, however G&I has reserved its right to file a claim in the event funds are available at a future date. Moreover, G&I's cooperation with the Receiver does not impact its right to pursue any claims against Marc Spiewak and Mary-Ellen Spiewak as guarantors of the obligations set forth in the lease.

19. The Receiver has no use for the Miami office. Paying rent for the Miami office would be a waste of receivership assets.

**B. 1769 Blount Road, Unit 109, Pompano Beach, Florida**

20. On July 2, 2018, Joel Soodeen, as Lessor ("Soodeen") entered into a Business Lease with Receivership Entity Simple Health Plans LLC and Mathew Spiewak, as Lessees for a warehouse located at 1769 Blount Road, Unit 109, Pompano Beach, Florida (the "Pompano

warehouse”) for a term of one year commencing July 7, 2018. The base rent is \$1,350.00 per month. The Receiver has no use for the Pompano warehouse. Paying rent for the Pompano warehouse would be a waste of receivership assets.

21. The Receiver’s staff has met with Dorfman and his counsel at the Pompano warehouse. The Receivership Entities stored miscellaneous tools, equipment and furnishings from previously closed office at the Pompano Warehouse. The items have no value to the Receiver. Dorfman has informed the Receiver that he has no interest in the items stored in the warehouse. In addition, Dorfman, allowed his former facilities supervisor to store a significant amount of his personal belongings at the Pompano warehouse. The former employee has removed his belongings from the warehouse.

22. The Receiver has no use for the empty warehouse and seeks to turn over the premises to the landlord.

23. The Court should allow the Receiver to terminate the Leases.

#### **MEMORANDUM OF LAW**

The scope of a receiver’s authority is established by the granting court. *See SEC v. Manor Nursing Centers Inc.*, 458 F.2d 1082, 1105 (2nd Cir. 1973) Federal courts have specific powers, known as “equitable” authority, to order relief to advance the purposes of the federal laws, to preserve investor funds, and to ensure that wrongdoers do not profit from their unlawful conduct. *SEC v. Elliott*, 953 F.2d 1560, 1569–70 (11th Cir. 1992) (A district court has broad powers and wide discretion to determine relief in an equity receivership.) The “district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad...” *SEC v. Hardy*, 803 F.2d 1034, 1037-38 (9th Cir. 1986). Courts typically grant broad powers to receivers, including the authority to sue

on behalf of the receivership and to gather, manage and liquidate receivership assets on behalf of potential creditors and harmed investors. Here, the Court has also given the Receiver the power to enter into and cancel contracts ... as advisable or necessary. *See* Receivership Order. The Receiver believes it is in the best interest of the Receivership Entities to cancel the Leases.

“The basis for broad deference to the district court’s supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions,” and the fact that “a primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of the creditors.” *Hardy*, 803 F.2d at 1037-38. A “receiver is not bound to adopt the contracts, accept the leases, or otherwise step into the shoes of his assignor, if, in his opinion, it would be unprofitable or undesirable to do so; and he is entitled to a reasonable time to elect whether to adopt or repudiate such contracts.” *Wiand v. Wells Fargo Bank, N.A.*, 8:12-CV-557-T-27EAJ, 2015 WL 12839237, at \*6 (M.D. Fla. June 10, 2015), *report and recommendation adopted*, 8:12-CV-557-T-27EAJ, 2016 WL 355490 (M.D. Fla. Jan. 29, 2016) *citing* *U.S. Trust Co. v. Wabash W. Ry. Co.*, 150 U.S. 287, 299–300 (1893) (An assignee or receiver is not bound to adopt the contracts, accept the leases, or otherwise step into the shoes of the assignor, if in his opinion it would be unprofitable or undesirable to do so; and he is entitled to a reasonable time to elect whether to adopt or repudiate such contract.)

The Leases are merely a burden to the estate. The Receivership Entities moved out of both Dallas offices prior to the commencement of this case. Based on their abandonment of both Dallas offices, the Receivership Entities had no business use for the offices. Moreover, the Receiver has been in contact with the landlord for the Dallas office located at LBJ Freeway who has already executed a Letter of Intent to lease the space to new tenant thereby reducing any



claims against the receivership estate. The Receiver has also closed all operations at the Miami office. Continuing to pay rent on offices that were not in use as of the time of the receivership or are no longer being used is simply a waste of money.

**WHEREFORE**, the Receiver respectfully requests the Court to enter an Order in the form attached hereto as **Exhibit "A"**, approving the relief requested in this motion and to grant such further relief as is just and proper.

**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 Federal Trade Commission, who has no objection to the Motion. The Receiver has also attempted to confer with counsel for Mr. Dorfman over the past several days. Mr. Dorfman's counsel has not indicated their position on the relief sought herein as of the date of this filing.

Dated: May 22, 2019

Respectfully submitted,

/s/ Joan Levit  
Joan Levit, Esq.  
Florida Bar Number: 987530  
Email: [joan.levit@akerman.com](mailto:joan.levit@akerman.com)  
*Counsel for Receiver*

Michael I. Goldberg, Esq.  
Florida Bar Number: 886602  
Email: [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)  
*Court-appointed 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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this May 22, 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 and by e-mail to Stephen M. Pave, Esq., Counsel for VA Leasing Corp.

By: /s/ Joan M. Levit  
Joan M. Levit, Esq.

**SERVICE LIST**

**Counsel for Plaintiff Federal Trade Commission**

**Elizabeth C. Scott**

US Federal Trade Commission  
Midwest Region  
230 S. Dearborn St., Ste 3030  
Chicago, IL 60604  
Email: [escott@ftc.gov](mailto:escott@ftc.gov)

**James Davis**

Federal Trade Commission  
55 West Monroe Street, Suite 1825  
Chicago, IL 60603  
312-960-5611  
Email: [jdavis@ftc.gov](mailto:jdavis@ftc.gov)

**Joannie Wei**

Federal Trade Commission  
230 South Dearborn Street, Suite 3030  
Chicago, IL 60603  
(312) 960-5607  
Email: [jwei@ftc.gov](mailto:jwei@ftc.gov)

**Counsel for Court Appointed Receiver**

**Naim Surgeon**

Akerman LLP  
Three Brickell City Centre  
98 Southeast Seventh Street, Suite 1100  
Miami, FL 33131  
305-982-5679  
305-374-5095 (fax)  
[naim.surgeon@akerman.com](mailto:naim.surgeon@akerman.com)

**Gera R. Peoples**

Akerman LLP  
350 East Las Olas Blvd, Suite 1600  
Fort Lauderdale, FL 33301  
954-331-4125  
[gera.peoples@akerman.com](mailto:gera.peoples@akerman.com)

**Counsel for Defendant Steven J. Dorfman**

**Ryan Dwight O'Quinn**

DLA Piper LLP (US)  
200 South Biscayne Boulevard  
Suite 2500  
Miami, FL 33131  
305-423-8553  
Fax: 305-675-0807  
Email: [ryan.oquinn@dlapiper.com](mailto:ryan.oquinn@dlapiper.com)

**Elan Abraham Gershoni**

DLA Piper LLP (US)  
200 S. Biscayne Boulevard  
Suite 2500  
Miami, FL 33131  
305.423.8500  
Fax: 305.675.0527  
Email: [Elan.Gershoni@dlapiper.com](mailto:Elan.Gershoni@dlapiper.com)

**Court Appointed Receiver**

**Michael Ira Goldberg**

Akerman LLP  
Las Olas Centre  
350 E Las Olas Boulevard, Suite 1600  
Fort Lauderdale, FL 33301-0006  
954-463-2700  
463-2224 (fax)  
[michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)



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**CASE NO.: 18-cv-62593-DPG**

FEDERAL TRADE COMMISSION,

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**[PROPOSED] ORDER GRANTING RECEIVER'S MOTION FOR AUTHORITY TO  
CANCEL CERTAIN NON-RESIDENTIAL REAL PROPERTY LEASES**

THIS cause comes before the Court on the Receiver's Motion for Authority to Cancel Certain Non-Residential Real Property Leases ("Motion") ECF No. \_\_\_\_\_. The Court having reviewed the Motion and responses thereto, if any, and being otherwise fully advised in the premises, it is hereby

**ORDERED and ADJUDGED** as follows:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to cancel the lease agreement entered into by receivership entity Senior Benefits One, LLC, dated July 26, 2017, for the premises located on the sixth floor of the Midtown Office Center at 5720 LBJ Freeway, Dallas, Texas 75240.
3. The Receiver is authorized to cancel the lease agreement entered into by receivership entity Health Benefits One, LLC, dated July 1, 2018, for Suites 800 and 810 of the Northpointe Center located at 12005 Ford Road, Dallas, Texas 75234.

4. The Receiver is authorized to cancel the lease agreement entered into by receivership entity Health Benefits One, LLC, dated September 3, 2015, located at 8400 N.W. 36<sup>th</sup> St., Miami, Florida 33166.
5. The Receiver is authorized to cancel the lease agreement entered into by receivership entity Simple Health Plans, LLC and non-party Matthew Spiewak, dated July 2, 2018, for Unit 109 of the warehouse located at 1769 Blount Road, Pompano Beach, Florida 33069.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_\_ day of May, 2019

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DARRIN P. GAYLES  
UNITED STATES DISTRICT JUDGE