

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 EXPEDITED MOTION AUTHORIZING NOTIFICATION OF
EXISTING CUSTOMERS ABOUT DECEPTIVELY SOLD PLANS AND
OPPORTUNITY TO OBTAIN COMPREHENSIVE HEALTH INSURANCE**

I. Introduction

On May 14, 2019, the Court entered a preliminary injunction against the Defendants,¹ and found that the appointment of a permanent receiver, Michael Goldberg (“Receiver”), over the corporate defendants and continuation of the asset freeze was warranted. (D.E. 139). In its ruling, the Court found that the Federal Trade Commission (“FTC”) was likely to succeed on its claims that Defendants deceptively sold limited indemnity and medical discount plans as comprehensive health insurance or its equivalent in violation of the Federal Trade Commission Act and the Telemarketing Sales Rule. (*Id.*, pp. 19-20). The Court concluded that Defendants engaged in a “classic bait and switch scheme—aided by rigged internet searches, deceptive sales scripts, and predatory practice.” (*Id.*, p.1). Consumers who believed they were purchasing comprehensive health insurance coverage were instead provided with “practically worthless

¹ Individual Defendant Steven Dorfman appeared and contested the preliminary injunction, but the six corporate defendants are unrepresented and have not appeared.

limited indemnity or discount plans,” thereby leaving them with inadequate health coverage and, in some cases, devastating medical bills. (*Id.*, p. 1).

The FTC now asks the Court to authorize a notification process to customers who were subjected to Defendants’ deceptive sales practices and who currently are still making monthly payments for the products they purchased, likely without knowing that they do not actually have comprehensive health insurance. These ongoing monthly charges to Defendants’ victims have caused, and continue to cause, millions of dollars in ongoing consumer harm even after the entry of the Temporary Restraining Order (“TRO”) on October 31, 2018.

Although Defendants deceptively sold the products to consumers, the consumers were billed each month by Health Insurance Innovations, Inc. (“HII”), the third-party administrator for the carriers providing the products. HII, in turn, paid a commission to Defendants for obtaining the sale and also paid the carriers. (D.E. 44, p. 7; D.E. 96, p. 11; D.E. 122, p. 29). As the Court noted in its preliminary injunction ruling, HII has paid approximately \$180 million in commissions to Defendants in the last five years. (D.E. 139, p. 11). After the Court entered the TRO on October 31, 2018 (D.E. 15), HII, which is not a defendant in this case, has continued to collect monthly payments from thousands of active customers who purchased products from Defendants prior to the filing of this case. (D.E. 96, p. 11).

Now that the Court has entered the preliminary injunction and appointed a permanent receiver over the six corporate defendants, the FTC respectfully requests that this Court enter the FTC’s proposed order² authorizing notice to the current customers in order to halt ongoing consumer harm. This proposed order would require notifying the current customer base that they do not have comprehensive health insurance or its equivalent, providing these consumers with information about the actual coverage provided by the products Defendants sold, and allowing

² The FTC’s proposed order is attached as Attachment A.

consumers an opportunity to make an informed decision as to whether they want to continue paying for the products they purchased from Defendants under false pretenses. In addition, the notices would inform consumers that, although the open enrollment period to apply for a qualified health plan under the Affordable Care Act (“ACA”) through the federal marketplace is over, the Department of Health and Human Services (“HHS”) has determined that due to Defendants’ deceptive practices, these consumers qualify for a 60-day Special Enrollment Period during which they can apply for an ACA-compliant health insurance plan.

The Receiver has indicated that he fully supports the FTC’s proposed notice process given his independent determination that Defendants’ entire business model was predicated on fraud. Because the FTC’s proposed order also necessarily would implicate HII, the FTC has notified HII of the motion, served HII with the proposed order, and inquired about its position. HII has indicated that it also fully supports the FTC’s motion and the process laid out in the proposed order, and has indicated that it, too, has an interest in educating consumers about the actual terms of the purchased plans and ensuring that consumers continue to pay only after they know precisely what they are paying for.

The FTC therefore asks the Court to enter the attached proposed order authorizing a two-part notice process to current customers, overseen by the Receiver, to inform these customers about the products they purchased, provide them with an opportunity to opt-in to continue their existing plans, and notify them that they qualify for a Special Enrollment Period to enroll in a comprehensive health insurance plan. The FTC has filed this motion as an “expedited motion” pursuant to Local Rule 7.1(d) due to the ongoing harm to consumers, and respectfully requests an expedited ruling within three weeks, by **June 13, 2019**, in order to prevent current customers from being charged two monthly payments before the conclusion of the notice period.

II. Background

As the Court found in entering the Preliminary Injunction, Defendants used a “bait, switch, and delay” model to sell consumers “practically worthless” limited indemnity or medical discounts plans masked as comprehensive health insurance or the equivalent. (D.E. 139, p. 4). Defendants first used misleading online ads and lead generation websites promising quotes for “Blue Cross Blue Shield,” “Obamacare,” and other types of comprehensive insurance that they did not sell to lure consumers. (*Id.*, p. 5). Then, as a part of their standard sales pitch, Defendants led these consumers to believe that they would receive a health insurance plan that would provide expansive coverage for all of their medical needs and result in low out-of-pocket costs, or no costs at all. (*Id.*, pp. 6-8). In reality, the only insurance product Defendants sold to consumers was a limited indemnity plan that provides only a maximum of several thousand dollars in “a defined financial benefit paid to consumers after medical expenses are incurred,” and under which “the risk of high medical bills falls solely on the consumer.” (*Id.*, p. 4; D.E. 12-10, p. 18-20). The plans did not provide numerous essential benefits under the ACA, such as prescription drug coverage and coverage for preexisting conditions.³ (D.E. 12-10, pp. 18-20). Consumers often do not discover the truth about what they purchased until they try to use their plan, at which point it typically is too late. As the Court found in its Preliminary Injunction ruling, this can result in thousands of dollars in medical bills or the inability to obtain necessary medical care. (D.E. 139, pp. 1, 9-11).

HII served as the third party administrator for nearly all of the products sold by Defendants. (D.E. 96-4, pp. 2-3; D.E. 122, pp. 39-41). After the FTC filed this case, HII immediately terminated its relationship with Defendants, citing the allegations in the FTC’s

³ Defendants also sold consumers various non-insurance products, such as medical discount or wellness plans. (D.E. 139, P. 4).

complaint as the reason for the termination. (D.E. 109, p. 6. n.2). HII processed consumers' initial payments for sales generated by Defendants and then billed consumers every month for these products. (D.E. 96-4, pp. 2-3; (D.E. 96-4, pp. 2-3; D.E. 122, pp. 39-41). HII then paid a portion of the money collected to Defendants as a commission. (D.E. 96-4, pp. 2-3; D.E. 122, pp. 39-41; D.E. 139, p. 11) Since the entry of the TRO, those commission payments have been held by the Receiver. (D.E. 122, pp. 39-41). HII also pays a percentage of consumers' ongoing monthly payments to the "carriers" associated with the various products sold by Defendants to consumers. (D.E. 122, p. 40).

Although entry of the TRO prohibited Defendants from making further sales, existing customers have continued to make regular, ongoing payments to HII, thereby maintaining whatever coverage they have under the limited benefit plans. For example, from December 2018 through February 2019 alone, HII charged consumers 165,798 times, totaling approximately \$14.6 million.⁴ Due to Defendants' misleading sales practices, the vast majority of these active customers likely still believe that they have comprehensive health insurance or the equivalent, rather than limited indemnity or discount plans. These consumers are at significant risk for incurring crippling medical debt due to a serious illness or hospitalization while essentially uninsured, or, at a minimum, for paying hundreds of dollars each month without knowing the true nature of the products purchased. (D.E. 139, pp. 1, 9-11).

The FTC previously raised concerns about these ongoing monthly charges, but has noted that the Receiver's temporary status under the TRO effectively prevented him from taking any

⁴ D.E. 96-4, pp. 2-3; D.E. 122, p. 41. From November 2018 through the end of March 2019, Defendants' have earned approximately \$6.5 million in commissions due to these sales, and HII has forwarded these commission payments to the Receiver. (D.E. 122, p. 41).

action to stop the charges.⁵ Shortly before the preliminary injunction hearing, the Court also recognized the substantial ongoing injury these charges pose, finding that a stay was not justified because “there is actually a great danger of irreparable harm to the public if the Court does not proceed with [the preliminary injunction] hearing.”⁶ In its preliminary injunction ruling, the Court concluded that the appointment of a permanent Receiver was necessary to not only preserve assets and maintain the status quo, but also to “determine the full extent of Defendants’ deceptive practices, identify the victims of Defendants’ scheme, and prevent further fraudulent practices during the pendency of the preliminary injunction.” (D.E. 139, p. 24).

Now that the Court has entered the preliminary injunction and found the record “replete” with evidence of Defendants’ widespread fraudulent sales practices (D.E. 139, p. 9), the consumers who continue to be billed by HII need to be immediately notified of the fraud. In order to protect themselves, these consumers need to know that Defendants did not sell them comprehensive health insurance or its equivalent. They must be provided with accurate information about the products they purchased and the limited coverage offered by such products. Armed with that information, the consumers could then make an informed decision about whether to stop paying and to cancel their plans or to continue. Defendants already caused hundreds of millions of dollars in injury to consumers through their fraud, and the Court should not allow this harm to continue.

In addition, as noted above, the proposed notices would inform consumer victims that even though open enrollment is over, they can still apply for a qualified health insurance plan

⁵ As the FTC argued in opposition to Dorfman’s motion to stay: “The Receiver is still only temporary under the TRO, which limits his ability to effectively carry out his duties, including addressing the situation with HII’s continued billing of consumers who were victims of Defendants’ deceptive sales pitches. The FTC continues to believe, as it argued in opposition to Dorfman’s second attempt to extend the TRO in December 2018 (D.E. 52), that these consumers need to be notified and given an opportunity to cancel.” (D.E. 96, p. 11).

⁶ Transcript of March 20, 2019 Hearing at p.16.

that complies with the ACA through government-sponsored marketplace exchanges during a Special Enrollment Period provided by HHS to victims of Defendants' scam. After the FTC filed this case, the Center for Medicare and Medicaid Services ("CMS"), the arm of HHS that manages health insurance exchanges, offered to assist the victims by providing them a Special Enrollment Period. As CMS recognized, consumers deceived by Defendants who only recently learn that they do not have comprehensive insurance are in a difficult position because open enrollment currently is over and does not begin again for months. Consumers typically can only apply for health insurance through the marketplace during open enrollment, which runs for several weeks in November and December every year, unless they experience certain life events or circumstances defined by federal regulations.⁷ CMS determined that Defendants' current customer base qualified for a Special Enrollment Period due to Defendants' deceptive sales practices and has agreed to provide these customers a Special Enrollment Period of 60 days from the date of notice, during which time these consumers can apply for a marketplace plan.⁸ CMS has provided the FTC with information about this Special Enrollment Period and instructions for how to access the opportunity, and this information has been included in the proposed consumer notices attached to the FTC's proposed order.

⁷ See 45 C.F.R. 155.420(d). In order to get an ACA-compliant marketplace plan after open enrollment ends, consumers either have to qualify for a special enrollment period due to a life event, like losing coverage, getting married, or having a baby, or qualify for Medicaid or the Children's Health Insurance Program. *Id.* The 2020 Open Enrollment Period runs from November 1, 2019 to December 15, 2019 and plans sold during this period start on January 1, 2020. See <https://www.healthcare.gov/quick-guide/dates-and-deadlines/>.

⁸ In addition to the offering consumers a Special Enrollment Period through the federal government marketplace exchange website, [healthcare.gov](https://www.healthcare.gov), CMS also is coordinating with the states that host their own marketplace exchanges so that consumer victims who reside in those states also may be able to access those exchanges during the Special Enrollment Period.

III. Relief Requested

The FTC's proposed relief would stop the ongoing harm to consumers and allow those consumers to make an informed choice about whether to continue to pay for the products that Defendants deceptively sold them. As detailed in the attached proposed order, which HII supports, the FTC proposes that HII be required, at its expense and under a process overseen by the Receiver, to provide to consumers, using the templates attached to the FTC's proposed order:

- 1) notice that the products they purchased from Defendants are not comprehensive health insurance or its equivalent;
- 2) accurate information about the products purchased and the limited coverage offered by such products;
- 3) a simple mechanism to opt-in to continue paying for and receiving the products;
- 4) notice that the consumers are eligible for a Special Enrollment Period offered by CMS, during which they can apply for comprehensive health insurance plans through government-sponsored marketplace exchanges; and
- 5) instructions for how to access the Special Enrollment Period to apply for a plan.

The proposed order would require HII to send the notices to the thousands of consumers who purchased through Defendants and are currently still paying HII for existing products. HII has agreed to bear the costs of this notice process. In addition, the proposed order would authorize the Receiver to oversee and manage all aspects of the notice process.

The proposed order would require that the notices instruct consumers to affirmatively "opt-in" if they would like to continue paying for the products, rather than requiring consumers to "opt-out" if they would like to stop the payments. As the Court found, Defendants systematically deceived their customers regarding the most fundamental aspects of the products they purchased, not only through their online advertisements and lead generation websites "laden with false and misleading information designed to trick consumers," but during the sales calls

and subsequent customer service calls as well. (D.E. 139, pp. 5-11). The Court found a likelihood of success on the merits for all of the FTC's claims against Defendants, and found that the risk of harm to Defendants' victims was substantial. (*Id.*, pp. 1-2, 9-11, 22-24). Based on the Court's findings, the baseline assumption should be that all of Defendants' customers were deceived and therefore should be required to affirmatively opt-in, to acknowledge that they want to continue paying for the limited coverage and discount plans Defendants sold to them, rather than the opposite. Thousands of consumers already have been paying hundreds of dollars every month for products that leave them essentially uninsured. (D.E. 139, p. 1; D.E. 96, p. 11; D.E. 122, pp. 39-41).

Procedurally, the proposed order would require the consumer notices to be carried out in two phases. The first notice would be sent to consumers no later than five days after entry of the proposed order, and the second notice would be sent fourteen days later. The notices would inform consumers that the plans they purchased from Defendants are not comprehensive insurance plans, provide accurate information about the limited benefits offered by the plans, provide consumers with a simple mechanism to "opt-in" to keep their plans, and provide consumers with information about the Special Enrollment Period that they qualify for along with instructions about how to apply for a plan during this period. Both notices would clearly inform consumers that their products would be cancelled by a specific date if an opt-in is not received, and provide information related to the Special Enrollment Period. HII would use the two consumer notice templates attached to the proposed order, or substantially similar templates approved by the Receiver. The notices to consumers would be sent simultaneously by email and U.S. mail.

Finally, the proposed order would require that, during this notice and opt-in process, HII must escrow consumer payments so that they may be returned to consumers who make a payment during the notice process, but do not opt to continue their plans.

As stated above, HII has informed FTC counsel that it supports the notice process described in the FTC's proposed order and the content of the proposed draft notices. In addition, the Receiver also has indicated that he fully supports providing notice to the consumers in the manner provided in the FTC's proposed order.

IV. Conclusion

For the reasons stated above, the FTC respectfully requests that the Court enter the attached proposed order to address ongoing consumer harm by requiring notice and information to consumers who purchased plans from Defendants under false pretenses, an opportunity to keep the plan once informed about its actual coverage, and information regarding the opportunity to apply for an ACA-compliant plan during a Special Enrollment Period offered to them by HHS.

FED. R. CIV. P. 26(C)(1) AND LOCAL RULE 7.1(a)(3) CERTIFICATION

Counsel for Plaintiff certifies that they conferred with all parties affected by the relief sought in this motion in a good faith effort to resolve the issues raised in the motion. The Receiver does not oppose the FTC's motion. Counsel for HII has no opposition to the relief requested by the FTC without any admission or finding of culpability on the part of HII for the conduct underlying the remedial action sought by this Motion. Despite reasonable, good faith efforts, the FTC has been unable to resolve this dispute with Counsel for Defendant Steven Dorfman.

Dated: May 23, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this May 23, 2019, 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/ Joannie Wei
JOANNIE WEI, Special Bar No. A5502492