

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SIMPLE HEALTH PLANS LLC, et al.,

Defendants.

Case No.: 18-cv-62593-DPG

DEFENDANT STEVEN DORFMAN'S EXPEDITED MOTION TO CLARIFY MR. DORFMAN'S ENTITLEMENT TO MONTHLY ALLOWANCE AND RECEIVER'S OBLIGATION TO INSTRUCT WELLS FARGO BANK TO RELEASE MONTHLY ALLOWANCE TO MR. DORFMAN

Basis for Request for Expedited Relief

The Court's order modifying the asset freeze [DE 51] authorized Mr. Dorfman to access \$5,000 per month to help satisfy his living expenses. That allowance was to first be satisfied using Mr. Dorfman's cash-on-hand. Thereafter, when those funds were depleted, the order directed the Receiver to write a letter instructing Wells Fargo to release \$5,000 per month to Mr. Dorfman from financial accounts in Mr. Dorfman's name held at Wells Fargo. Mr. Dorfman has depleted his cash-on-hand and now seeks that his \$5,000 monthly payment be received from the Wells Fargo Bank accounts starting on July 1, 2019. The Receiver asserts that the Preliminary Injunction eliminated Mr. Dorfman's entitlement to the allowance or the Receiver's obligation to instruct Wells Fargo to release those funds.

Mr. Dorfman respectfully requests that the Court rule on this motion by **June 27, 2019**, so that the parties have sufficient time to coordinate release of the funds from Wells Fargo Bank by July 1, 2019.

Defendant, Steven Dorfman ("**Dorfman**"), through undersigned counsel, files this expedited motion seeking to clarify the Receiver's obligations under the *Amended Order on Defendant Steven Dorfman's Emergency Motion to Modify Asset Freeze to Pay Reasonable Living Expenses and Attorneys' Fees* (the "**Modified Asset Freeze Order**") [DE 51] and states:

On October 31, 2018, the Court, upon the FTC's request, entered the *Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of a Temporary Receiver, and Other Equitable Relief* (the "**Asset Freeze Order**") [DE 15]. Among other things, the Asset Freeze Order enjoined Mr. Dorfman from accessing or using *any* of his personal funds wherever held. Asset Freeze Order § III.

On December 3, 2018, Mr. Dorfman filed a motion to modify the Asset Freeze Order to pay his reasonable living expenses [DE 41]. In connection therewith, Mr. Dorfman filed a declaration reflecting that without access to any of his personal financial resources or an alternate source of income, Mr. Dorfman is unable to meet his daily living expenses such as rent, health insurance, food, and transportation. The FTC opposed Mr. Dorfman's request for an allowance for living expenses [DE 44]. However, following a hearing on the motion [DE 45], the Court entered the Modified Asset Freeze Order.

The Modified Asset Freeze Order authorizes Mr. Dorfman to access \$5,000 per month for living expenses (the "**Allowance**") from his frozen personal assets. Modified Asset Freeze Order, ¶ 3. Mr. Dorfman was instructed to first satisfy the Allowance using his cash-on-hand and then from his personal bank account held at Wells Fargo Bank. *Id.* To facilitate the release of the monthly Allowance from Wells Fargo Bank, the Court instructed the Receiver to provide written instructions to the bank directing it to release \$5,000 to Mr. Dorfman on a monthly basis (the "**Release Instructions**"). *Id.*

Mr. Dorfman's monthly draw of his Allowance from his cash-on-hand has now completely depleted his cash reserves. Accordingly, recently, Mr. Dorfman requested that the Receiver provide written instructions to Wells Fargo Bank to release the Allowance to Mr. Dorfman starting on July 1, 2019, as directed by the Court in the Modified Asset Freeze Order. In response, the

Receiver asserts that the Preliminary Injunction [DE 139] terminated the Receiver's obligation to request that Wells Fargo Bank release the Allowance to Mr. Dorfman. Specifically, the Receiver relies on Section V of the Preliminary Injunction, which provides, in pertinent part that:

Dorfman's request to unfreeze additional assets to pay for legal fees and living expenses constitutes a dissipation of assets, as these expenditures would deplete the assets available for consumer redress.

Based on that provision, the Receiver refuses to provide the Release Instructions to Wells Fargo Bank.

Contrary to the Receiver's assertion, however, the cited provision of the Preliminary Injunction *does not* terminate the Receiver's obligation to issue the Written Instructions. Rather, the provision merely recognizes that payment of the Allowance "means that less money will be available for consumer redress." *Id.* However, that has always been the case, even at the inception of the case when the FTC obtained the *ex parte* Asset Freeze Order. Simply put, there is no new justification for depriving Mr. Dorfman of his sole source of sustenance at this junction. This is especially so since the FTC has not yet obtained a final judgment, let alone a permanent injunction, in this proceeding. Therefore, it is premature to determine that (i) consumers are entitled to any redress, let alone (ii) that that redress should come from Mr. Dorfman's personal assets. Moreover, Mr. Dorfman's need for the Allowance is as critical now, if not more so, as it was when the Court entered the Modified Asset Freeze Order. Indeed, Mr. Dorfman still needs the Allowance to help defray his basic living expenses including rent, health insurance, food, and transportation.

WHEREFORE, Defendant, Steven Dorfman, respectfully requests an Order of the Court, substantially in the form annexed hereto: (i) confirming that he is entitled to a monthly allowance of \$5,000; (ii) directing the Receiver to issue written instructions to Wells Fargo Bank to release

\$5,000 per month to Mr. Dorfman; and (iii) for all further relief that the Court deems just and proper.

Local Rule 7.1(a)(3) Certificate

The undersigned certifies that he has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so.

Dated: June 19, 2019

DLA Piper LLP (US)

/s/ Ryan D. O'Quinn
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CERTIFICATE OF SERVICE

The undersigned certifies that he filed this pleading through the court's electronic filing system and that all parties requesting electronic notice of pleadings have been served with the pleading.

/s/ Ryan D. O'Quinn
Ryan D. O'Quinn