

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 RESPONSE IN  
OPPOSITION TO RECEIVER'S MOTION FOR AUTHORITY TO  
CANCEL CERTAIN NON-RESIDENTIAL REAL PROPERTY LEASE**

Defendant, Steve Dorfman ("**Dorfman**"), through undersigned counsel, files this response in opposition to the *Motion for Authority (I) to Cancel Certain Non-Residential Real Property Lease at Oakwood Business Center in Hollywood, Florida Effective as of August 1, 2019 or Upon Completion of Auction of Personal Property, Whichever is Later, and (II) to Auction Personal Property and Abandon Remaining Items* (the "**Motion**") [DE 178] filed by the Receiver. In support of this response, Mr. Dorfman states:

Prior to entry of the *ex parte* temporary restraining order [DE 15], Mr. Dorfman and his corporate co-Defendants operated their businesses out of numerous offices which they leased from third parties. Specifically, certain of the Defendants operated out of premises located at, among others, 2 Oakwood Boulevard, Suite 100, Hollywood, Florida (collectively, the "**Lease**").

The Receiver seeks to cancel the Lease because he claims that the Lease is "a burden to the estate" because it causes the estate to incur ongoing, unnecessary rent obligations. *See Motion*, p.

8. The Motion must be denied for at least two independent reasons: (i) the basis for the

Receivership and the Receiver's authority are currently being examined by the Eleventh Circuit Court of Appeals; and (ii) it is premature for the Receiver to cancel the Lease.

As Mr. Dorfman discussed extensively in his *Motion to Strike Temporary Restraining Order* [DE 79], *Memorandum in Opposition to a Preliminary Injunction* [DE 104], *Motion to Dismiss* [DE 134], and at virtually every hearing in this proceeding: (i) the FTC is not authorized to obtain legal monetary relief, including disgorgement and restitution, in this proceeding; and (ii) the FTC may not obtain an asset freeze or receivership to restrain the Defendants' assets for the benefit of the unavailable penal relief it seeks.<sup>1</sup> These issues are currently being considered by the Eleventh Circuit Court of Appeals.<sup>2</sup> In other words, the very foundation of the Receivership and Receiver's authority to take any action in this proceeding is in question. If the appellate court grants Mr. Dorfman's appeal, it will effectively determine that the Receivership and asset freeze in this case should not have been entered. Accordingly, the Receiver should not be authorized to cancel the Lease prior to final resolution of the appeal.

It is also premature for the Receiver to cancel the Lease because, although a Preliminary Injunction [DE 139] has been entered, Mr. Dorfman and his co-Defendants have not been found liable by a jury. Prior to entry of a final judgment against the Defendants and favorable ruling for the FTC in the appeal, the Receiver should merely act to preserve the status quo. Otherwise, should Mr. Dorfman prevail at trial or in the appeal challenging the Preliminary Injunction and associated asset freeze and Receivership, the Receiver's actions to cancel the Lease and liquidate any further assets will unjustifiably permanently prejudice Mr. Dorfman and his co-Defendants. Specifically, if authorized, the Receiver's and FTC's proposed actions will deprive Mr. Dorfman and his co-

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<sup>1</sup> For the sake of brevity and out of respect for the Court, Mr. Dorfman refers the Court and all parties to the identified pleadings for a comprehensive discussion on these points.

<sup>2</sup> See *FTC v. Dorfman*, Case No. 19-11932, 11th Cir.

Defendants of the assets (including the Lease) and infrastructure they may need to restart their operations once judgement is entered in their favor in this proceeding and/or the appellate courts determine that the Receivership, asset freeze, and injunction in this proceeding are inappropriate.

To the extent that the Receiver is concerned about unpaid estate liabilities, he may seek authority from the Court to use funds in the Defendants' bank accounts to satisfy those obligations. However, the Receiver's concern for the cost of maintaining the Receivership estate should not prime the necessity to preserve the integrity of the ecosystem of Lease and assets that the Defendants need to restart to their operations after they prevail in this and/or the appellate proceeding.

**WHEREFORE**, Mr. Dorfman respectfully requests an Order of the Court, substantially in the form annexed hereto, denying the Receiver's *Motion for Authority (I) to Cancel Certain Non-Residential Real Property Lease at Oakwood Business Center in Hollywood, Florida Effective as of August 1, 2019 or Upon Completion of Auction of Personal Property, Whichever is Later, and (II) to Auction Personal Property and Abandon Remaining Items* and for all further relief the Court deems just and proper.

Dated: July 12, 2019

**DLA Piper LLP (US)**

/s/ Ryan D. O'Quinn

Ryan D. O'Quinn (FBN 513857)

*ryan.oquinn@dlapiper.com*

Elan A. Gershoni (FBN 95969)

*elan.gershoni@dlapiper.com*

200 South Biscayne Boulevard

Suite 2500

Miami, Florida 33131

Telephone: 305.423.8553

Facsimile: 305.675.7885

*Counsel for Defendant*

*Steven Dorfman*

**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*

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Ryan D. O'Quinn