

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 ENTER INTO  
INFORMATION TECHNOLOGY ASSET DISPOSITION  
SERVICES AGREEMENT WITH GREEN OWL TECH RECYCLING, INC.**

Defendant, Steve Dorfman ("**Dorfman**"), through undersigned counsel, files this response in opposition to the *Motion for Authority to Enter into Information Technology Asset Disposition Services Agreement with Green Owl Tech Recycling, Inc.* (the "**Motion**") [DE 203] filed by the Receiver. In support of this response, Mr. Dorfman states:

Through the Motion the Receiver seeks to, among other things, liquidate the information technology hardware (the "**IT Hardware**") that Defendant Health Benefit One ("**HBO**") used to operate its business before it was shut down by entry of the *ex parte* temporary restraining order [DE 15]. The Motion must be denied because the basis for the Receivership and the Receiver's authority are currently being examined by the Eleventh Circuit Court of Appeals and have been determined to be *ultra vires* by the Seventh Circuit Court of Appeals.

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 pending in a fully-briefed appeal pending before the Eleventh Circuit Court of Appeals.<sup>2</sup> Supporting Mr. Dorfman's pending appellate arguments, the Seventh Circuit Court of Appeals recently determined that the FTC is *not* authorized to obtain monetary relief or the ancillary relief, including an asset freeze or receivership to restrain assets for the benefit of that unavailable monetary relief, in Section 13(b) proceedings, such as this one. *FTC v. Credit Bureau Center*, --- F.3d ----, 2019 WL 3940917, \*18 (7th Cir. Aug. 21, 2019). The ruling directly impacts "ancillary" relief that is dependent on the FTC's authority to seek final monetary relief, including the asset freeze and receivership imposed to restrain the Defendants' assets to satisfy potential future monetary awards. 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 liquidate the IT Hardware.

It is also premature for the Receiver to liquidate the IT Hardware 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 liquidate the IT Hardware and any further assets will unjustifiably permanently prejudice 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. Specifically, if authorized, the Receiver's and FTC's proposed actions will deprive Mr. Dorfman and his co-Defendants of the assets (including the IT Hardware) 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.

**WHEREFORE**, Mr. Dorfman respectfully requests an Order of the Court, substantially in the form annexed hereto, denying the Receiver's *Motion for Authority to Enter into Information Technology Asset Disposition Services Agreement with Green Owl Tech Recycling, Inc.* and for all further relief the Court deems just and proper.

Dated: September 9, 2019

**DLA Piper LLP (US)**

/s/ Elan A. Gershoni

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: 305.423.8554

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/ Elan A. Gershoni

Elan A. Gershoni