

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 OPPOSITION TO DEFENDANT STEVEN DORFMAN'S
RENEWED MOTION TO EXTEND MONTHLY ALLOWANCE**

I. Introduction

Defendant Steve Dorfman ("Dorfman") ran a massive telemarketing scam that preyed on vulnerable consumers searching for health insurance. Dorfman defrauded consumers out of over \$180 million and left his victims with virtually worthless products and devastating medical bills, and unable to obtain needed healthcare for themselves and their families. In its Preliminary Injunction, the Court froze Dorfman's assets to safeguard a limited pool of assets for the benefit of Dorfman's victims, assets the Court recognized were dwarfed by the consumer harm. Since the filing of this case a little over a year ago, in addition to his wife's \$125,000 cash left unfrozen, Dorfman has received \$55,000 for his living expenses without working a single day. After being directed by the Court to look for a job last October, Dorfman spent one day applying online to 14 positions, using a resume that warned prospective employers that he is an FTC defendant and may require accommodations to his work schedule. Dorfman applied for jobs in Florida, but then *moved to Nevada*, rendering his already perfunctory job search completely pointless and irrelevant. Without mentioning this directly relevant information to the Court in

his Motion, Dorfman asks the Court to release indefinite monthly payments of \$5,000 to him from the frozen funds.

Dorfman cannot deplete frozen funds without showing that doing so is both reasonable and necessary, and his motion falls far short of this standard. Despite multiple requests by the FTC, Dorfman continues to refuse to disclose basic information about his current financial status, including his current monthly expenses and the other assets available to pay them. The FTC only discovered his move to Nevada on its own after Dorfman ignored the FTC's request for information. Moreover, although Dorfman has finally acknowledged that he has foreign bank accounts that he failed to disclose on his sworn financial statement, he has ignored the FTC's repeated requests that he update his financial disclosure to reflect these and any other assets he left off his statement. He also has not repatriated foreign funds as required by the Court's temporary restraining order and preliminary injunction against him. The Court should deny Dorfman's unsubstantiated request and preserve the remaining funds for his consumer victims.

II. The Court Should Deny Dorfman's Motion

A. Dorfman is Not Entitled to Use the Frozen Funds for Living Expenses

1. Consumer Harm is Far Greater Than the Frozen Funds

Courts can, and commonly do, refuse to unfreeze assets preserved for potential consumer redress to pay a defendant's expenses. *See, e.g., FTC v. IAB Mktg. Assocs.*, 972 F. Supp. 2d 1307, 1313 (S.D. Fla. 2013); *FTC v. USA Fin., LLC*, No. 8:08-cv-899-T-17MAP, 2008 U.S. Dist. LEXIS 59980 *8 (M.D. Fla. July 21, 2008), *aff'd* No. 10-12152, 2011 U.S. App. LEXIS 3774 (11th Cir. Feb. 25, 2011). When frozen assets amount to substantially less than the potential monetary liability, it is appropriate to maintain the asset freeze to preserve the assets for

consumer redress. *See IAB Mktg.* at 1314. As the Court found in its Preliminary Injunction ruling, “[t]he vast disparity between Defendants’ substantial ill-gotten gains and the value of the frozen assets supports maintaining the asset freeze.” DE 139 at 23. Defendants received over \$180 million in commissions alone from their unlawful practices (DE 139 at 22-23), while actual consumer harm is substantially higher.¹ Currently, there is only approximately \$800,000 frozen from Dorfman’s individual assets,² from which any living expenses release should come, and the Receivership Estate contained only approximately \$10 million as of June 2019. *See* 6/20/19 Hearing Tr., Attachment 1 at 8: 1-2. This extreme disparity alone strongly supports a denial of Dorfman’s request because, as the Court has recognized, any further release “means less money will be available for consumer redress.” DE 139 at 23.

2. Dorfman Has Made No Showing That His Request for Living Expenses is Necessary and Reasonable

If a court releases frozen funds for living expenses, the expenses must be limited to amounts that are both reasonable *and* necessary. *See IAB Mktg.*, 972 F. Supp. 2d at 1314 (denying release of frozen funds for living expenses that are “unreasonable and include money for expenses that are unnecessary”); *CFTC v. Noble Metals*, 67 F.3d 766, 775, n.8 (9th Cir. 1995); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111-12 (9th Cir. 1982).³ Dorfman’s bare

¹ The \$180 million in commissions that Defendants earned is only a small fraction of consumer injury as it does not include the full amount of consumers’ premiums, nor does it include the astronomical medical bills consumers were left with after discovering that they did not have comprehensive health insurance.

² As documented by the FTC, Dorfman siphoned millions of dollars of proceeds from this scam to pay for his wedding, jewelry, private jet travel, luxury sports cars, including a Rolls-Royce and Lamborghini, gambling sprees, and his ocean-front condominium, where he resided until only recently. DE 12 at 37.

³ *See also, e.g., SEC v. Forte*, 598 F. Supp. 2d 689, 694 (E.D. Pa. 2009) (premium television services, cellular telephones, home phone, high-speed internet, and credit card debt are not “necessary” living expenses); *SEC v. Dobbins*, No. 3:04-cv-0605-H, 2004 WL 957715, at * 3

assertion that his expenses have “not changed” since he requested a release three months ago, DE 265 at 3, his failure to disclose his and his wife’s current assets, and his superficial effort to follow this Court’s directive that he seek employment all sink his motion. Courts routinely deny requests to release funds for unspecified expenses when defendants fail to explain why frozen funds—rather than other assets or sources of income—are needed to pay them. *See IAB*, 972 F. Supp. 2d at 1314 (“Absent persuasive evidence to the contrary, the Court can conclude only that [Defendants] are capable of working to support their basic necessities.”).

To warrant a release of frozen funds, defendants must at minimum identify specific expenses and show that their current assets are insufficient to pay them. In attempting to meet and confer about Dorfman’s motion, the FTC asked Dorfman what remains of his wife’s \$125,000 and whether she currently is employed,⁴ but Dorfman refused to provide any information. The FTC also asked what sources of support Dorfman has been using to meet his monthly expenses, but he again refused to say more than “others’ generosity.”⁵ Although counsel indicated that Dorfman has finally moved from his luxury oceanfront apartment, counsel did not provide any other information and the FTC only learned that Dorfman had moved to Nevada after conducting its own research of public records.

(N.D. Tex. April 14, 2004) (request for payment of cable television and automobile financing denied); *SEC v. Dowdell*, 175 F. Supp. 2d 850, 854 (W.D. Va. 2001) (court denied release of frozen funds to pay defendant’s credit card bill); *SEC v. Coates*, No. 94 Civ. 5361 (KMW), 1994 WL 455558, *2 (S.D.N.Y. Aug. 23, 1994) (cable television is a luxury).

⁴ Mr. Dorfman’s wife previously earned six figures as an executive assistant at Simple Health.

⁵ The FTC’s requests were reasonable, and in fact during the June 2019 hearing on Dorfman’s second request for a release, the Court contemplated that Dorfman would provide the FTC such information in evaluating future living expenses requests. *See* 6/20/19 Hearing Tr., Attachment 1 at 11:1–3.

Even if Dorfman had identified specific expenses and disclosed his assets, this Court has consistently made it clear to Dorfman that he needs to do what he can to support himself, including getting a job:

- During the December 6, 2018 hearing on Dorfman's first request for living expenses, the Court inquired as to why Dorfman could not get a job, and also noted that Dorfman's wife was being left with assets and should contribute to the couple's living expenses. 12/6/18 Hearing Transcript, Attachment 2 at 35-37.
- In June 2019, Dorfman filed another motion for the release of frozen funds and the Court again asked whether he had attempted to seek employment. Counsel had no answer for the Court. *See* 6/20/19 Hearing Tr., Attachment 1 at 4:18-21. The Court noted again that Dorfman's wife has assets and could contribute to his living expenses. *See id.* at 10:2-8. The Court ultimately allowed the release of frozen funds through October 31, 2019, but made clear to Dorfman that no further releases would be made absent a "sufficient showing" regarding his attempt to obtain employment. *See id.* at 11:1-2; *see also id.* at 10:4-8 ("Despite any notoriety that may have come to Mr. Dorfman because of the case, there are assets available to him in part through his wife and there is no reason that he can't work.... [T]here are people actually convicted of serious crimes here in the Southern District and they seem to find employment. I don't think there is any reason that Mr. Dorfman can't as well.").
- In October 2019, Dorfman again requested that the Court continue releasing frozen funds. Contrary to the Court's directive that he make a "sufficient showing" before requesting more frozen funds, Dorfman filed a barebones motion that did not mention any efforts by Dorfman to find a job (DE 214 at 2), which prompted the Court to

order Dorfman to file a detailed statement regarding his efforts to obtain employment. DE 224. Dorfman filed a statement, but once again ignored the Court's directive and failed to mention a single attempt by Dorfman to find a job. DE. 226-1. The Court denied Dorfman's request for living expenses (DE 214) and found not credible Dorfman's claim that he was unemployable.

Now Dorfman has returned with another request for the indefinite release of frozen funds, this time attaching some token evidence that he went through the motions of a "job search," which in fact shows that he *still* does not take the Court's directive seriously. Dorfman's evidence consists of documents showing he looked for a job on one day, over two months ago, in a state in which he no longer resides. This does not come close to complying with the Court's explicit requirement that he make "a sufficient showing" in support of any further requests to unfreeze assets. On November 18, 2019, Dorfman submitted 14 online applications for mostly supervisory sales positions in Florida. He has not submitted any evidence of any other efforts to obtain a job, either before or after that single day, and certainly not for the other 12 months since this case was filed. Despite calling the FTC's litigation against him a "scarlet letter," Dorfman deliberately branded his resume with a statement that he is an FTC defendant and, among other things, will need work schedule accommodations to attend court hearings (he has not attended a single hearing). This, along with the obvious fact that one should search for employment in the state in which they live, undermines any claim that he is interested gainful employment.⁶

⁶ Counsel also keeps insisting that the asset freeze will make it difficult for Dorfman to get paid if he finds a job and Dorfman makes a statement to this effect on his resume. As the FTC has repeatedly assured counsel, the FTC routinely works with banks to unfreeze accounts for defendants who obtain employment. At counsel's request, the FTC even provided a copy of a sample letter to a bank used in a prior case. Counsel has not articulated why this is a roadblock to Dorfman's ability to get a job.

B. Dorman Has Not Repatriated Foreign Assets in Violation of the Preliminary Injunction

In addition to his failure to make a sufficient showing to support his Motion, Dorfman continues to flout this Court's order and the FTC's requests with respect to his foreign assets. This, too, should foreclose any further release of frozen assets.

The Preliminary Injunction requires Dorfman to identify and account for all of his assets and business interests, including those held in foreign countries, and to repatriate all foreign assets.⁷ He has not done either. This issue has been raised by the FTC and the Receiver countless times⁸ and yet it is undisputed that Dorfman's current financial statement still does not list his foreign assets⁹ and none of his foreign assets, including \$24,000 in his bank account in the Dominican Republic, have been repatriated.¹⁰ Dorfman is the signatory on and controls his foreign bank accounts. Indeed, Dorfman routinely transferred thousands to and from these accounts, including just weeks before the FTC filed this case. *See, e.g.*, D.E. 116-6 at 17 (directing the transfer of over \$400,000 from one account) and 80 (corresponding with another bank about how to receive wire transfers). He cannot now credibly claim that he is unable to access or repatriate funds in his foreign accounts. Until Dorfman complies with the Preliminary Injunction, he should not be entitled to access the frozen funds.

⁷ DE 139 at 29 – 31 (Sections V (Financial Disclosures) and VI (Foreign Asset Repatriation)).

⁸ *See, e.g.*, 6/20/19 Hearing Tr., Attachment 1 at 6; DE 220 at 5-7 and Att. 3; DE 221 at 4-6.

⁹ Dorfman specifically disclaimed any interest in foreign bank accounts in his sworn declaration submitted in opposition to the Preliminary Injunction, DE 104-1 at 19, but subsequently told the FTC that he had simply "forgotten" about his foreign accounts.

¹⁰ This is not the FTC's obligation, and in fact the FTC has no authority to repatriate Dorfman's funds.

III. Conclusion

In entering the Preliminary Injunction, the Court found that Dorfman and his companies engaged in deceptive business practices and that the FTC is likely to succeed on the merits of its claims against them. The victims of Dorfman's deception suffered significant economic and other losses that in many cases continue to reverberate through their lives. The Court should reject Dorfman's request for a release from frozen funds given his failure to conduct a credible job search and to comply with the Preliminary Injunction. As the court held in *IAB*, "Equity favors the injured consumers over the Defendants who did the injuring and are now suffering the consequences of their conduct." *IAB Mktg. Assocs.*, 972 F. Supp. 2d 1307, 1315. The Motion should be denied.

Dated: January 24, 2020

Respectfully submitted,
ALDEN F. ABBOTT
General Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this January 24, 2020, 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 (SBA # A5502492)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 18-CV-62593

FEDERAL TRADE COMMISSION,

Miami, Florida

Plaintiff,

June 20, 2019

vs.

11:29 a.m. to 11:40 a.m.

SIMPLE HEALTH PLANS, LLC, et al

Pages 1 to 14

Defendant.

TELEPHONIC HEARING
BEFORE THE HONORABLE DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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1 (Call to the Order of the Court.)

2 COURTROOM DEPUTY: All rise.

3 THE COURT: Please be seated.

4 COURTROOM DEPUTY: Calling Federal Trade Commission

5 versus Simple Health Plans, LLC, case number 18-CV-62593.

6 Counsel, please make your appearance.

7 MS. SCOTT: Elizabeth Scott for the Federal Trade

8 Commission. Also here with me are Joanni Wei and James Davis.

9 THE COURT: All right. For Mr. Dorfman?

10 MR. GERSHONI: Good morning, Your Honor, Elan Gershoni
11 on behalf of Stephen Dorfman.

12 THE COURT: Okay. For the receiver?

13 MR. SURGEON: Good morning, Your Honor, this is Naim
14 Surgeon on behalf of Mr. Goldberg.

15 THE COURT: All right. I received the defendant's
16 expedited motion regarding the monthly allowance and the
17 receiver's response, and I guess, essentially, the chore was
18 simply for me to define what I meant in my order.

19 The receiver's response did raise the issue -- I mean,
20 now that this case has been pending, why is there a continued
21 need for this allowance, Mr. Gershoni?

22 MR. GERSHONI: Your Honor, the reason is simple. When
23 the FTC obtained the TRO back in October of 2018, that set off
24 a plethora of media coverage, not just here in South Florida
25 and local papers but the New York Times and various blog pieces

1 across the country.

2 To say the least, Mr. Dorfman's name has been
3 completely dragged through the mud, despite the fact there is
4 no final judgment or permanent injunction entered in this
5 proceeding at this point. Mr. Dorfman is not only unemployable
6 in the only industry that he spent any significant time working
7 in for his entire adult life, which is the health insurance
8 industry, but he is essentially unemployable anywhere.

9 If you Google Stephen Dorfman's name at this point, you
10 will see dozens, if not more, articles and blog pieces and
11 complaints claiming that Mr. Dorfman is a fraudster, that he's
12 a crook, that he's a criminal and all sorts of terrible things
13 despite the fact that there is no final judgment in this case.

14 It would be -- you'd be hard pressed to find an
15 employer even at a local diner that would be willing to employ
16 an individual when such a simple background check would pop up
17 all this information.

18 THE COURT: Counsel, has he attempted to seek
19 employment?

20 MR. GERSHONI: Your Honor, I am not in a position to
21 address whether he has or he has not.

22 THE COURT: The other issue raised by the receiver in
23 his response is the assets held by the defendant's wife,
24 presumably for the benefit of both of them, why could he not
25 rely on that income or those assets?

1 MR. GERSHONI: Well, while those assets are certainly
2 contributing to help pay and defray the cost of Mr. Dorfman's
3 personal living expenses, they are simply not sufficient. They
4 have separate assets titled in their names individually and not
5 jointly, including the bank accounts from which Your Honor
6 originally directed the receiver to allow Mr. Dorfman to access
7 his allowance from, so the assets were separately titled.

8 The wife's assets are certainly contributing to cover
9 his essential living expenses but it's unfair to require an
10 individual whose assets are separately titled and have been
11 separately titled to continue to fund someone else's living
12 expenses completely when there are assets available to satisfy
13 those.

14 We are not asking that the assets be completely
15 unfrozen, just that the allowance that this Court has
16 previously found sufficient continue to go on. Mr. Dorfman is
17 unable -- you know, I can ask Mr. Dorfman now if you would like
18 to get him on the phone about his efforts to procure employment
19 but needless to say his reputation has been damaged through the
20 mud and it would be hard for us to find an employer to bring
21 him on to do any job.

22 THE COURT: All right. Is there any position from the
23 FTC, Ms. Scott?

24 MS. SCOTT: Your Honor, I think that we would echo the
25 concerns that were raised in the receiver's response and also

1 sort of re-up the concerns that we raised when the request was
2 initially made and also indicate that we have some additional
3 concerns as of late about the veracity of Mr. Dorfman's
4 disclosures with respect to assets that have been made in this
5 case. Specifically, we have concerns about foreign accounts
6 which he has disclaimed that any exist but we have recently, in
7 the course of reviewing documents pending litigation, found
8 filings that were made to the Treasury Department as late as
9 early 2018 disclosing that he has control over five foreign
10 bank accounts.

11 We have attempted to get information from the banks
12 regarding those accounts but have been unsuccessful and
13 actually have been in the process of developing a plan to
14 address those with counsel.

15 There was no meet and confer with us with respect to
16 this motion. We were not contacted by counsel about it so we
17 did not have an opportunity to raise this issue with counsel
18 ahead of today's ruling, unfortunately. So, I guess I would
19 say that our concerns are actually magnified over what they
20 were back in December and we also agreed that if there is no
21 evidence or if Mr. Dorfman can't make a showing that he or his
22 wife have attempted to find employment that that is
23 problematic.

24 Ms. Dorfman's wife was previously employed by the
25 corporation at the rate of \$184,000 a year as an administrative

1 role so she currently has marketable skills that she could put
2 into use in the marketplace.

3 Just narrowly speaking, we would oppose the ongoing
4 release of living expenses or at the very least would
5 appreciate the opportunity to request updated information from
6 Mr. Dorfman and his counsel for the FTC and for the Court to
7 review before any further release is made.

8 MR. GERSHONI: Your Honor, if I may, this is Elan
9 Gershoni. I just want to address something that was
10 particularly offensive. The FTC attorney just indicated that
11 we never disclosed the fact there were foreign bank accounts.

12 From the very inception of this case in the Court
13 filings and financial statements we provided to the FTC, we
14 indicated that there were companies that Mr. Dorfman had an
15 interest in in Panama and the Dominican Republic that did
16 business with the corporate defendants in this case that
17 maintained a financial account. So to bring this up in this
18 manner without having addressed this with us before to give us
19 an opportunity to clarify their understanding is particularly
20 offensive, and I ask that that statement be disregarded.

21 THE COURT: Well, I guess perhaps if you had consulted
22 with the FTC before you filed the motion then perhaps all of
23 that wouldn't have been necessary, but in any event,
24 Mr. Surgeon, how much is -- how much do you have available in
25 the receivership estate?

1 MR. SURGEON: Your Honor, there is approximately
2 10 million in the estate at this moment.

3 You know, the only thing I would add, which is
4 consistent with what Ms. Scott just mentioned, is that despite
5 that number, the reality is that from our perspective that
6 probably is not even close to enough to satisfy any claims that
7 are potentially going to be made into the estate. So while it
8 seems like there is sufficient capital in the estate, the
9 reality is that when that's depleted against the potential
10 claims against these policyholders that is probably not close
11 enough to satisfy that.

12 The other point that I would make, if the Court would
13 indulge me, is, you know, there is a case out of the Second
14 Circuit. It's Smith versus SEC. It's 432 Federal Appendix 10.
15 That case specifically deals with circumstances like this where
16 you have assets that are subject to an asset freeze and then
17 you have assets that are not subject to an asset freeze.

18 What the Court says in that case is that when you are
19 considering the payment of living expenses out of assets that
20 have been frozen, that has to be weighed against the assets
21 that are unfrozen.

22 In this case, I understand that it appears that
23 Ms. Dorfman's position is that her money is her own money, but
24 the reality is, as Ms. Scott discussed, she is Mr. Dorfman's
25 wife. They share the same apartment, eat the same food. They

1 drive the same vehicles, so on and so forth. So in that
2 context it's a little hard to hear the defendant's counsel
3 argue that Mrs. Dorfman should not be responsible for carrying
4 any of those costs, particularly in light of the fact that she
5 was actually employed by the company at a significant salary
6 previously.

7 THE COURT: Okay. Is there an issue regarding, I
8 guess, the account -- from which account those funds were being
9 paid?

10 MR. SURGEON: No, Your Honor. The Court's instructions
11 were that there was cash on hand that needed to be exhausted
12 and that thereafter that we would authorize a Wells Fargo
13 account to be utilized to pay the living expenses.

14 I think the only issue that I would perceive is there
15 seems to be a request for some written instruction that the
16 bank would send the release funds to Mr. Dorfman on an intimate
17 basis pursuant to the order. I think it would be our
18 preference that the receiver simply remit that rather than
19 authorize that the bank release the funds where we don't really
20 have control over that release.

21 THE COURT: All right. I think under the circumstances
22 the alternative suggestion from the receiver on page four is
23 the appropriate one. I will allow the receiver to continue
24 making the payments which should come directly from the
25 receiver and not through authorization from any bank account

1 and it will continue the payments through October 31st, 2019.

2 Despite any notoriety that may have come to Mr. Dorfman
3 because of the case, there are assets available to him in part
4 through his wife and there is no reason that he can't work. I
5 mean, there are people actually convicted of serious crimes
6 here in the Southern District and they seem to find employment.
7 I don't think there is any reason that Mr. Dorfman can't as
8 well.

9 So, Mr. Surgeon, I will ask you --

10 MR. GERSHONI: Your Honor.

11 THE COURT: Yes, sir.

12 MR. GERSHONI: I'm sorry to interrupt you. I can't
13 tell from the phone whether you were wrapping up or about to
14 say something. I would just request and I will advise my
15 client to expeditiously and aggressively search for gainful
16 employment to the extent he has not done so already. But to
17 the extent that he is unable to find employment by the end of
18 October, I simply request that we be given the opportunity to
19 come back with Mr. Dorfman here in person or throughout a
20 declaration outlining his efforts and to the extent that there
21 is no success from those efforts that he be permitted to seek
22 to extend that October 31st payment date.

23 THE COURT: I am not going to prohibit you from filing
24 whatever motion you think is appropriate but I would -- I mean,
25 obviously, if he is going to seek some relief from my order

1 today, I mean, he is going to have to make a sufficient
2 showing. And it may involve, of course, the FTC having and the
3 receiver having more access to some financial information. So,
4 you should keep that in mind as well.

5 So, Mr. Surgeon, I am going to ask that you submit a
6 proposed order and just share it with counsel to see if they
7 are in agreement with the language and I will enter it once I
8 have it.

9 All right. We will be in recess.

10 MR. GERSHONI: Thank you, Your Honor.

11 MS. SCOTT: Thank you, Your Honor.

12 (Proceedings were concluded at 11:40 a.m.)
13
14

15 C E R T I F I C A T E

16
17 I hereby certify that the foregoing is an
18 accurate transcription of the proceedings in the
19 above-entitled matter.
20

21 July 9, 2019
22 DATE

/s/Patricia Diaz
PATRICIA DIAZ, FCRR, RPR, FPR
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 18-CV-62593

FEDERAL TRADE COMMISSION,

Miami, Florida

Plaintiff,

December 6, 2018

vs.

11:30 a.m. to 12:30 p.m.

SIMPLE HEALTH PLANS, LLC

Pages 1 to 45

Defendant.

MOTION HEARING
BEFORE THE HONORABLE DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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1 (Call to the Order of the Court.)

2 COURTROOM DEPUTY: Calling Federal Trade Commission
3 versus Simple Health Plans, and all, case number 18-CV-62593.

4 Counsel, please make your appearance.

5 MS. SCOTT: Good morning, Elizabeth Scott for the
6 Federal Trade Commission.

7 MR. SURGEON: Good morning, Your Honor, Naim Surgeon on
8 behalf of Michael Goldberg, Receiver.

9 THE COURT: Okay.

10 MR. O'QUINN: Ryan O'Quinn on behalf of Steve Dorfman.
11 I am joined here with associates who are working with me, Elan
12 Gershoni and Janelly Crespo. I think it's for both of them the
13 first time appearing before Your Honor.

14 THE COURT: All right. Good morning everyone. So,
15 obviously, I issued a temporary restraining order and I set
16 this hearing down for today.

17 Well, I was going to start with counsel for the FTC.

18 MR. O'QUINN: Oh, I'm sorry, Your Honor, we are the
19 movant on this motion, so I assumed --

20 THE COURT: There was something filed yesterday as
21 well. Oh, yes, we are here for the motion --

22 MR. O'QUINN: To lift the stay.

23 THE COURT: Yes, please proceed.

24 MR. O'QUINN: Good morning, Your Honor. This is
25 Mr. Quinn. As you well know, there is an existing TRO, asset

1 freeze, and receivership in this matter.

2 What you may know or may not know, my client has moved
3 in what I think is an unusually compliant position for people
4 in this circumstance. I know Your Honor has experience in
5 these matters, I do as well. Within hours of receiving the
6 order and asset freeze, my client voluntarily went and rounded
7 up specific assets that were specifically identified in the
8 order, and I accompanied him over to Akerman's office where
9 hundreds and hundreds of thousands of dollars worth of jewelry
10 and other items were handed over to the receiver in a very
11 clear demonstration of compliance with this Court's order.

12 Our compliance with that order does not mean that we
13 don't intend to challenge the basis for which the order was
14 entered, but my hope is that the conduct that we have
15 undertaken at the beginning of this will build some credibility
16 with this Court, and I want to raise to Your Honor, I know you
17 have heard arguments related to this before but the landscape
18 is fast changing.

19 This case does involve a very significant justiciable
20 issue of law that I think will become very important in this
21 litigation and its dynamic, in fact, having changed materially
22 just a few days ago. I brought a copy of a case with me. The
23 case is Federal Trade Commission versus AMG. I have a copy for
24 counsel and a copy for the Court. I made this copy. It's not
25 a Westlaw copy. I know many times we prefer to use those, but

1 there is an attachments to this order. When we print from West
2 Law it double prints over a page and it's difficult to read.
3 If I may approach, Your Honor.

4 The reason I want to lead with this very recent case
5 is, it presents the lay of the land on the issue of whether or
6 not the FTC has the authority to seek the relief that it is
7 attempting to seek in this case. I am sure Your Honor has
8 already heard argument in other cases related to the Supreme
9 Court's decision in Kokesch. Kokesch is an opinion that related
10 to the statute of limitations associated with Security and
11 Exchange Commission's disgorgement orders. Historically, the
12 SEC had sought disgorgement without a five-year statute of
13 limitations, and in connection with Kokesch, the Supreme Court
14 found that a money damages judgment, even if called
15 disgorgement, is a penalty and, therefore, subject to the
16 five-year statute of limitations for penalties.

17 And the Supreme Court dropped a very interesting
18 footnote that caught the eye of all of the people that practice
19 in my space, and that was a footnote related to a limitation on
20 the order's application. It did not take a position one way or
21 the other as to whether or not the Securities and Exchange
22 Commission even had the statutory authority to seek that
23 penalty, and the reason that the Court dropped that footnote is
24 because the SEC and other administrative agencies have
25 historically, since the 1970s, been engaged in a process by

1 which they seek and obtain massive money judgments against
2 people and they claim that it carries the title of equitable
3 relief and their statutory authority that they rely on to do
4 that allows them to seek equitable relief.

5 When the Supreme Court --

6 THE COURT: But you are talking about disgorgement as
7 the case is winding up.

8 MR. O'QUINN: I am, Your Honor, and the case that I
9 just handed you is an FTC case which deals with restitution
10 and, therefore, deals with the same equitable concept that the
11 FTC has engaged in this particular lawsuit as a basis for this
12 vast relief that they are seeking that includes asset
13 forfeiture -- excuse me, well, it is an asset forfeiture under
14 SEC v. Graham, but a restitution order, and, preliminary, a
15 restriction on assets in anticipation of that equitable relief.

16 This is a matter that is dynamic, and the Ninth Circuit
17 just the other day issued an opinion affirming a district court
18 order which found that the FTC could, in fact, get over a
19 billion dollar judgment against an individual. While it's an
20 affirming opinion, the same judge writing for the Ninth Circuit
21 wrote a concurring opinion to his own opinion, and I handed a
22 copy up to Your Honor, because you'll see what he does is he
23 identifies the fact that in his view and in the view of many
24 people in the community who have read Kokesch and are familiar
25 with these affirmative type of actions, that in his opinion,

1 post Kokesch, that the status of the law in the Ninth Circuit
2 and in other circuits is no longer tenable. And he actually
3 asks for an en banc opinion, an en banc hearing of that
4 particular proceeding so that the Ninth Circuit can review and
5 overturn its precedent allowing the FTC to seek those kinds of
6 judgments.

7 That same type of movement, and I will let Your Honor
8 read the judge's own words, which are crystal clear in his
9 view, and his explanation as to why they affirmed and yet go to
10 this. It has to do with that footnote and the question as to
11 whether or not the limitation on application of Kokesch
12 according to that footnote prevents a three-judge panel from
13 coming to the conclusion that there is irreconcilability
14 between the Kokesch opinion and precedent related to the FTC.

15 So, what he says in that opinion is at this time he is
16 bound by that precedent and, therefore, affirmed but he
17 believes that their precedent is wrong and needs to be reviewed
18 en banc.

19 In this district, we have a different lay of the land
20 when it comes to the law that's applicable to this because we
21 have a case, an Eleventh Circuit case, SEC v Graham. In SEC v
22 Graham the Eleventh Circuit held that these type of money
23 judgments under the title of an equitable relief are asset
24 forfeiture and a penalty and, therefore, we have Eleventh
25 Circuit law that predates Kokesch in this district that says

1 that the type of relief that's being sought by the SEC in this
2 case is beyond their statutory authority.

3 It is well briefed in that case, and I won't take up
4 your time. I think it's important, though, to start this
5 hearing with an expression of the fact that we intend to comply
6 with every bit of this Court's order. We have disclosed where
7 assets are. I am personally familiar with Michael Goldberg,
8 have been personally in contact with him. I think if the Court
9 were to inquire of the receiver, you would have a favorable
10 report as to our compliance in this case and our demonstration
11 that we don't need these kinds of extraordinary restrictions in
12 order to follow the Court's instruction and to have a
13 responsible defense of this matter.

14 Assets are not flying off to international locations,
15 and we believe there is a defense on the facts in this case.
16 We believe facts presented to you have been taken out of
17 context, have been put into a prism that gives them a nefarious
18 nature that they do not have, and we also believe there is a
19 legal problem with this case that you will be able to see
20 through the FTC v AMG case that I just handed up to you.
21 Between those two, I hope that the Court can understand we have
22 a good faith academic defense to offer in this case.

23 What has happened with this TRO, asset freeze and
24 receivership, is my client has been deprived of his ability
25 that almost every other defendant in a civil case has in this

1 country, to defend their actions in a court of law and that's
2 because all of their resources have been limited. In a case
3 like this you have seen more legal bills than I have but you
4 know an appropriate defense of a complex case like this is
5 expensive and difficult. It involves experts.

6 We are up against a United States agency. At risk is
7 that agency's authority to even bring the action and,
8 therefore, I believe that the restrictions that they have
9 sought have not just a preservation nature but also a strategic
10 aim to them, and that is to dampen our ability to challenge the
11 case that they have brought.

12 What we are asking with this order is two things that I
13 think are fairly modest in a case where vast resources have
14 been frozen for potential relief at the end of this case, and
15 if we are right under the law, maybe far greater resources are
16 frozen than are even available to the FTC as a matter of law.

17 THE COURT: Of course, I will ask the receiver in a
18 moment but how much has been seized?

19 MR. O'QUINN: I believe, Your Honor, that they have
20 frozen approximately -- I would defer to them -- I want to say
21 between 500,000 and a million, personally, in cash, in
22 accounts, over 3 million in corporate accounts in cash, assets
23 in excess of that that are entitlements that the company has on
24 residuals on policies.

25 We have offered and given assistance whenever asked.

1 For instance, the receiver contacted me and asked about assets
2 that are abroad. In the materials that were presented to Your
3 Honor there is the very overt suggestion that assets were
4 transferred abroad for nefarious purpose.

5 This business had external call centers and transfers
6 would be made outside the United States to pay salaries and
7 taxes associated with the operation of those call centers but
8 there is not a vast trove of assets that said, we have
9 committed to Mr. Goldberg to help him understand what is there
10 and do whatever we can to assist them with any repatriation
11 that's necessary. They just sent us a letter about that
12 related to the Dominican Republic, and I hope to have a
13 conversation with them after this hearing, to find out how we
14 can help them to get those assets in a manner that's consistent
15 with the Court's order that we not transact in funds that may
16 be restricted by order but not actually by function of the
17 institution because it's beyond the reach of the United States.

18 So, it is -- what we are asking for here today is a
19 very simple thing. The first is \$15,000. That is
20 approximately \$12,000 of his fixed expenses and a small amount
21 of money because I think it's unreasonable to expect that a
22 person who is living, as long as these cases can go on, would
23 not have other experiences that are not necessarily fixed
24 expenses throughout the month that he will need to be able to
25 afford.

1 This defendant is married. He has been married for a
2 short period of time. In fact, one of the assets to
3 demonstrate the level of compliance, Your Honor, that was
4 handed over hours after this court order was tendered to us was
5 the engagement ring off her finger, something that is an asset
6 that has a very different character than other assets. It's a
7 premarital gift. It's a conditional gift. It is, in fact, not
8 a transfer without value and maybe the subjective litigation
9 later, but rather than taking this diamond ring and hiding it
10 somewhere or do something that I am sure you have heard or seen
11 people do in this district, we marched over hours -- and this
12 is a half million dollar or more ring, Your Honor -- and handed
13 it over to the receiver.

14 So, we are merely trying to get living expenses for
15 this gentleman, and the FTC's position is because his wife had
16 premarital assets, her life savings, because she has those
17 assets, that she is required to support her husband and all of
18 their fixed expenses which were in place and often predate her
19 marriage to this gentleman.

20 I certainly would expect her to support herself but I
21 think that it's unreasonable to ask a newly married young woman
22 to take her life savings and to use that to support herself so
23 that the FTC can have pretrial restraint on assets when all we
24 are asking for -- and there is a significant amount of assets.
25 All we are asking for is a reasonable sum to pay things like

1 their rent, car cost and the like. So, that's the \$15,000 a
2 month that we ask for. That amount also is consistent with an
3 amount that this Court has granted in the past.

4 Before I circulated the order and had this discussion,
5 I spoke with Michael Goldberg, who as this Court well knows,
6 was the receiver in the Quiros litigation. In that matter,
7 Your Honor did grant a lift of the stay to allow for expenses.
8 I believe the amount was consistent with the 15,000.

9 THE COURT: There were a lot more in assets than that
10 case.

11 MR. O'QUINN: I understand, Your Honor, but that would
12 not necessarily change what's a reasonable amount for a person
13 to be allotted to support themselves during the pendency of the
14 litigation. I would argue, Your Honor, that while that case
15 had greater assets, it also had greater evidence. So, there
16 has to be some level of balancing here where we have
17 demonstrated a compliance with this Court and a respect for
18 this Court. We intend to conduct ourselves with respect for
19 this Court and the receiver, but we do ask that the Court make
20 a reasonable accommodation lifting assets that would come out
21 of his personally held funds so that he can support his family.

22 The second thing we have asked for is we have asked for
23 \$200,000 be lifted and be able to be used for legal fees. The
24 FTC has challenged that, identifying a \$75,000 transfer that my
25 law firm received in August, long before this matter was even

1 filed and noticed. That's because my firm was already involved
2 in a representation for this individual defendant -- we have
3 never represented any of the corporate defendants -- in a state
4 litigation in Broward. That matter has -- the billing has
5 exceeded the amount that we were paid by the defendant, and I
6 can assure the Court that we have not accepted any funds from
7 this defendant or derived from the operation of the companies
8 that are the subject of your freeze and receivership.

9 As you might imagine, I have been around the block a
10 few times and I know enough not to do that. We have received
11 several additional payments from people that are supportive of
12 our cause.

13 I am more than happy to explain to Your Honor the
14 circumstances and condition of each and every one of our
15 payments, our sources, our limitations and the considerations
16 that we have. I do not want to respond to the forthwith
17 subpoena that I received from the FTC immediately after
18 challenging them on this expenses motion which demanded that I
19 provide them with my fees and who is paying me in an effort
20 that I interpreted as never to intimidate both myself and those
21 who might support my client.

22 And I would ask that -- I make those disclosures to the
23 Court in an ex parte fashion because I believe the people who
24 are supporting us and the extent of our resources is an issue
25 of strategy from within the defense camp, and I think it's

1 inappropriate to require us to lay that bear to them under the
2 guise that they are challenging this motion.

3 Needless to say, Your Honor, our current billings
4 exceed all the payments that we have received by a significant
5 amount. I was this morning on the phone with the head of my
6 practice group and we will be working hard to try to identify
7 other appropriate and lawful funds to fund our defense. I
8 think it's in the interest of a lot of people that this defense
9 actually go forward.

10 I am sure you have seen a number of these actions where
11 under the weight of a TRO asset freeze and receivership a
12 defense is not available, and I think it would be a real
13 miscarriage of justice if under the situation that we now have
14 with Kokesh as an issue, the truly justiciable question as to
15 whether or not the FTC has the authority to seek this relief
16 that no one with the sophistication and resources able to at
17 least put that argument forward would be able to do so, and I
18 think it would allow a potential improper circumstance to
19 continue further into the future than it should.

20 So, the \$200,000 amount that we have asked for is
21 certainly not the amount that I think would cover a defense of
22 this significance but it would merely be what we would need in
23 the foreseeable future to try to persist with the level of
24 activity necessary to meet the current briefing schedule that
25 we have and be ready for a preliminary injunction hearing at

1 the end of January, something we may need to come to the Court
2 and extend given the volume of information that we need.

3 I think it's important to also let you know that Your
4 Honor ordered that we have some discovery rights in connection
5 with the preliminary injunction hearing.

6 I am not casting fault with this but just so you
7 understand the amount of effort and time that we are going to
8 have in a compressed time period, we have not yet received any
9 production from the FTC and we have not yet received any
10 production from HII, the company that we have contacted and
11 subpoenaed. And we have not yet received any production from
12 the receiver who we know is working diligently to try to get
13 things to us.

14 It takes a lot of time. It is very difficult and we
15 understand that. We are just asking to have a fraction of the
16 resources that they have available to them so that we can
17 articulate to the Court a justiciable defense, both on the
18 facts and the law, that I think if you even just focus, without
19 getting into the facts, me telling you, my client is a saint
20 and they are wrong and they have misled you, as I am sure you
21 have heard a million times, we do believe the facts are not as
22 presented.

23 If there are violations, they are minor compared to the
24 claims of this case. This company has been irreparably harmed
25 already. All of the contracts that are sources of ongoing

1 revenue for this company have already been cancelled. Even if
2 you were to walk back from your receivership and hand us back
3 the company, we would not be an operating company.

4 There is no threat of ongoing violations. There is no
5 concern about that. All we are talking about, Your Honor, is a
6 slight loosening of the lid to allow my client due process of
7 law in a process by which the Government has engaged in a
8 massive taking and where we have suggested that they have no
9 statutory authority and, therefore, there may be an
10 unconstitutional taking subject to future litigation.

11 So, again, Your Honor, I am more than happy to be open
12 with the Court, of course, preserving privilege, but to the
13 extent that the Court has any discomfort to have you understand
14 our billing, what we intend to do or what we have done thus
15 far, and as we go forward, to talk to you to make sure our fees
16 are reasonable fees prior to funding.

17 So, I am not asking you just to give us \$200,000 and
18 let me walk out and do as I please. I am more than happy to
19 submit redacted bills or something that would give the Court
20 comfort to understand that we are merely trying and to give you
21 comfort. And I would ask the Court to understand that we may
22 have to come back in the future and explain a request for
23 additional fees if other funding sources don't work out, but we
24 are hoping to be able to get through this interim phase and get
25 to a much more stable place where we can defend this in a more

1 traditional historical manner, not under the pressure of, you
2 know, a bet that everything litigation with 30 days notice
3 after they have had a year and a half to investigate.

4 THE COURT: Okay.

5 MR. O'QUINN: Thank you, Your Honor.

6 THE COURT: All right. Counsel.

7 MS. SCOTT: Good morning, Your Honor. I just don't
8 want to forget to mention this. The reason that the FTC has
9 not produced anything to the defendant is that we submitted to
10 them a proposed protective order before the holiday, before the
11 Thanksgiving holiday that we would need to be in place before
12 we can produce information because it would include such things
13 as consumers' personal identifying information and,
14 potentially, the undercover identities that were used in our
15 purchases, and that's highly sensitive information because we
16 have a limited number of those in our agency. They continue to
17 be used in ongoing investigations and we cannot afford to allow
18 that information to be disclosed beyond, essentially, the legal
19 counsel, outside of counsel because of concerns about the
20 confidentiality of that information.

21 THE COURT: Before we move on from that --

22 MR. O'QUINN: Yes, Your Honor. The specific issue, as
23 I understand it, is that a -- it must be a limited number of
24 the documents. It would certainly not be all of the documents
25 that they are going to present to us. A limited number of

1 documents may reveal the false identification used by an
2 investigative personnel in the conduct of a civil regulatory
3 investigation. On one hand, as a former law enforcement person
4 both in civil and criminal, I am certainly sensitive to the
5 idea that to the extent that somebody is in danger or some
6 undercover operation is subject to disclosure that would
7 endanger somebody, I certainly would accommodate that. That's
8 not what we have here.

9 What we have here is those limited documents that might
10 have information that identify how a person held themselves out
11 when they called my client and other businesses would either be
12 restricted for me or restricted from my client and I would say,
13 and certainly restricted from third parties.

14 As you might imagine, in a defense where part of what I
15 believe has happened is they have taken my client's companies
16 and other unrelated businesses in the industry and crammed them
17 together to try to have a larger mass to impute conduct and
18 knowledge from, my interest is to go to those other independent
19 businesses through discovery and be able to identify what
20 recordings they may have, what that person said on the phone.

21 If a person is coming into this court and saying the
22 reason that that Mr. Dorfman and his businesses should be shut
23 down and subject to a massive money judgment is because when I
24 called them on the phone, I said X, Y and Z, and those calls
25 are recorded, I should be able to go to any place that that is

1 those recordings and get them so that I can hear what they
2 actually said because these are the kind of cases where words
3 matter.

4 I have investigated cases like this. I have seen them
5 investigated, and I am sure Your Honor is aware, the way they
6 are investigated, and I am not suggesting it's improper, is
7 that an investigative attorney or investigative person contacts
8 potential witnesses, has conversations with them. The agency
9 then types up a proposed declaration and then let's that person
10 comment on it and change it.

11 And whether or not the witness actually used the word
12 guaranteed in a securities case may be very important, and it
13 may be in a declaration and be fundamental. In this instance,
14 to the extent that, say, comprehensive insurance is a word of
15 importance that a person claims that they said on a phone call,
16 these phone calls are recorded. We can go find them.

17 So, if I have to go to HII, if I have to go to a sales
18 and marketing company and get them, I shouldn't be limited to
19 say to them I want this name that the person used when they
20 called you because that person, that name is a false name used
21 by the FTC. Again, I am empathetic -- I ran one of the largest
22 undercover securities investigations as an AUSA. I am
23 empathetic to undercover concerns. I do not believe that the
24 government's interest in not having to make up a new identity
25 for other cases or their failure to make up different

1 identities for different companies should restrict my client's
2 due process rights which are constitutional rights to go out
3 and to find this information and defend themselves. In the
4 weighing of these things, a false identity of a government
5 investigator does not carry the same weight as, say, the real
6 identity of an FBI agent whose life is at risk or whose massive
7 investigation is at risk.

8 To me it is no, A, not a real balancing and, B, it's, I
9 think, a little disingenuous to say they couldn't have turned
10 over a single page to us because of this one issue. This issue
11 clearly only relates to those persons whose identity is at
12 issue.

13 I can't image why another person's documents, another
14 declarant or investigative file that has nothing to do with
15 that identity couldn't have been produced to us while we
16 negotiate this good faith issue between the two of us.

17 I will tell you, I do object to the proposed agreement,
18 and I think that our pushing back on that agreement and our
19 pushing back on their determination and expense is why we are
20 here today and why I received that subpoena related to my fees.
21 And I reacted in a more frustrated fashion than I usually do in
22 interacting with government personnel because I interpreted as
23 a retribution, and I did not find that to be appropriate in the
24 dialogue back and forth where I'm contesting their point of
25 view.

1 THE COURT: Okay. The short answer is you don't agree
2 with the language they are proposing.

3 MR. O'QUINN: That would be the short answer.

4 THE COURT: All right.

5 MS. SCOTT: And just to be clear, Your Honor, within
6 the order it does allow for disclosure to the third parties
7 that they have described for limited purposes of locating those
8 recordings. Additionally, what we would be producing would be
9 the entirety of the recordings that our investigators made,
10 from start to finish for those purposes. So, I mean, unless
11 they want to suggest that we are somehow altering them, they
12 are going to be getting the full recording our investigator
13 made.

14 Now, with respect to the other documents that have been
15 requested, consumer PII needs to be protected with a protective
16 order, and we indicated in our correspondence to them that we
17 could not produce that absent the protective order. We sent
18 the protective order weeks ago and there has been no response.
19 So, this is the first time I'm hearing some of these things
20 from counsel is right here today.

21 THE COURT: Have the two of you had any dialogue about
22 the proposed order or did you just submit it and did not
23 receive a response?

24 MS. SCOTT: That's correct, we had dialogue about the
25 central issue of our need for protection and some of these

1 objections as to why we made -- their position or opinion that
2 we don't need the protection, I will tell you, getting these
3 undercover identities isn't so simple. It involves giving
4 mailing addresses, telephone numbers, bank accounts, credit
5 cards. It's not a simple task. We are a small agency. We
6 have limited resources, frankly, and I have colleagues who have
7 used these identities in other investigations that are ongoing.

8 I can't compromise their investigations by handing this
9 material over such that it could be made available to others.

10 So, in any event, onto the central issue and the reason that we
11 are here today -- you know, I also take offense at the notion
12 that we were trying to be abusive or that this was some kind of
13 retribution when we issued the subpoena.

14 This is information we typically ask for under these
15 circumstances. We cannot -- our management will not allow us
16 to evaluate any request for attorneys' fees for a release of
17 funds for attorneys' fees without the relevant information, and
18 from where we sit, funds that have already been received is
19 relevant information. Who those funds come from is relevant
20 information, particularly where we are aware of, for example, a
21 \$500,000 payment out of corporate funds to the defendant's
22 brother, not after the asset freeze, I'm not suggesting that.
23 But for the defendant's brother, who is one of the people
24 paying, we would be concerned because that money may have
25 originated from the corporate accounts.

1 There was funding of new business ventures, money that
2 was going out to others. If that money is just coming back to
3 pay the legal fees, we would be concerned that that was a
4 dissipation of assets that should be frozen.

5 THE COURT: I mean, there was -- prior to this action,
6 there was pending investigations and litigation which might
7 necessitate the need for a retainer fee.

8 MS. SCOTT: Yes. Our main point was, what if some of
9 that retainer was still in play.

10 You know, I didn't know how much they may have spent on
11 the limited defense that they already prepared in that matter.
12 Seventy five thousand dollars is a pretty decent amount of
13 money. So, if some of that was still sitting and had been used
14 or maybe should have been frozen, we would want to know about
15 that as well.

16 So, from where we sit, contrary to it being, you know,
17 beneath our position as an agency, it's actually really
18 necessary and typical for us to ask for that kind of
19 information.

20 Honestly, without that information we would not -- I
21 would not be in a position -- I would not be given any
22 authority to agree to a release.

23 Obviously, Your Honor, you will order what you order
24 but from where I sit and where I stand, I would not be in a
25 position to agree to a release, but also we were never asked to

1 agree to a release. There was no request made to us to for
2 attorneys' fees. There was a request for living expenses, and
3 based on the information available to us, we really felt it was
4 an unreasonable request and not a necessary request.

5 Mr. Dorfman's wife has a significant amount of money
6 that can be used to pay their expenses, I mean, I would think
7 at least half of their expenses if not all of their expenses,
8 and we also offered to further the discussion. If there is a
9 reason that money can't be used, if she has other obligations
10 it has to be used for, let us know. If there is an urgent or
11 emergency need, let us know, and we heard nothing until the
12 motion was filed.

13 I'd also like to point out that the assets that were
14 turned over to the receiver were specifically identified in the
15 TRO precisely because they were paid for out of court corporate
16 assets. Mr. Dorfman spent over a million dollars on jewelry
17 directly with corporate assets. So, those were corporate
18 assets, which the receiver had every right to take possession
19 of. They were not paid for with Mr. Dorfman's personal funds.

20 So, I find it a little bit disingenuous to rely on
21 turning over corporate assets as a reason to seek relief from
22 the asset freeze.

23 I do agree, we appreciated the compliance. I think
24 that that's true, and we are not arguing, nor have we said that
25 we are concerned about Mr. Dorfman's compliance with what we

1 know, but I think that there is information related to the
2 payments that could show or signal noncompliance with the order
3 based on payments from third parties. And I am not suggesting
4 that Mr. O'Quinn or his colleagues would intentionally take
5 money that was subject to the freeze, so I don't mean to
6 suggest that at all.

7 But the ecosystem of payments in this industry and with
8 these companies is complicated, and from what we have seen
9 there was a lot of money going out and a lot of cash going out
10 that we don't know where it went, and if that was just coming
11 in to cover the legal fees, then that would be a concern.

12 THE COURT: So you have represented the FTC in a number
13 of these actions. Have you seen -- I am sure you have some
14 sense of what the cost of the defense might be. They have
15 asked for \$200,000.

16 Based on your experience, what is a reasonable amount
17 to put forth a defense?

18 MS. SCOTT: To be clear, I don't have any authority to
19 agree to a release.

20 THE COURT: I understand that.

21 MS. SCOTT: I would look to your opinion in World
22 Patent Marketing, Your Honor. I believe that in that matter
23 you released less than \$100,000, and that covered two
24 evidentiary hearings and that included living expenses. I
25 mean, I would say, at the outside, that's a reasonable number,

1 and it should depend on how much money they have already
2 received. If they had been funded up to this point, then
3 that's part of the -- should be part of the consideration.

4 I truly --

5 THE COURT: I'm trying to recall. I know the moneys
6 from the amounts in Quiros. On World Patent Marketing, how
7 much did I release?

8 MS. SCOTT: There were two releases that I am aware of,
9 Your Honor. Let me pull up the -- so, I think you initially
10 released \$70,000 and then you released a second \$30,000. The
11 second one was just for attorneys' fees, and you indicated that
12 for any further releases you wanted full information about who
13 else -- what other money is available, who else can pay and you
14 indicated that the defendant should get a job, which would be
15 another point that -- we don't see any evidence that
16 Mr. Dorfman has mitigated his need for these expenses. He
17 re-ups his --

18 THE COURT: In World Patent Marketing, I am sure
19 counsel you looked at this too. You agreed those are the
20 figures?

21 MR. O'QUINN: Your Honor, I do not have those figures
22 available to me, but if I could just add a few quick details
23 that might be helpful.

24 First of all, we are in a creditor position, not a
25 debtor position, something which I immediately discussed with

1 Michael Goldberg so that he understood. I actually told him
2 about the \$75,000 trust deposit in my first conversation with
3 him and explained to him that I believed, although at the time
4 we had not done our billing, there was none left or we were
5 over it.

6 I can tell you now, we are well over it enough that I'm
7 getting calls from my people in my firm wondering what my
8 thought process is.

9 So, you know, the idea that even \$100,000 or \$200,000
10 is sufficient to have a defense, I think misapprehends the way
11 that these cases need to be litigated to be successful.

12 I would also note that most of these cases don't have
13 an opportunity to defend, which may be why we continue to have
14 this Kokesch issue.

15 I can tell you, you know, in our good faith discussions
16 with counsel, at the end of our discussion via expenses, at the
17 time we didn't ask for attorneys' fees because that was
18 probably two weeks ago now when we had that conversation, and
19 it was clear that they were reticent on his personal expenses.
20 In my experience you get your personal expenses long before
21 they will give you defense cost.

22 So, when they rejected outright and said his wife
23 should have to pay for his personal expenses, I think it was
24 our reasonable understanding that would carry forward to our
25 attorneys' fees which they had in that phone call asked me if I

1 was seeking and there was a friendly discussion of it that I
2 think reasonably would give the listener the understanding that
3 those would be less likely be granted than what they already
4 rejected.

5 So, certainly there is no bad faith. We just -- if we
6 were going to file an emergency motion and take up your time,
7 we figured we would put both issues before Your Honor so that
8 you can see what they are.

9 Again, I am more than happy to come in an ex parte
10 disclosure and explain to you the financial condition of the
11 defense camp and how we are and what we hope to achieve, and
12 there are a lot of contingencies that I don't know about. And
13 I have briefing due at the beginning of January. I am not
14 suggesting that you give me \$200,000 and I run out and use it.

15 I would say if somehow you are going to give me a
16 lesser amount, that you give me what it is that we are owed up
17 to now plus the amount that you are giving me for future funds
18 so that you don't fund work that has already been done and
19 leave us in the same spot we are in on a go-forward basis.

20 The goal here is at least have reasonable funds to be
21 able to put a presentation together in a case as complex as
22 this as the preliminary injunction hearing.

23 THE COURT: We are not in our regular courtroom, so we
24 don't have the computers. We are trying to pull it up on our
25 phones.

1 MS. SCOTT: I have the transcript from the second
2 hearing, if that would help you at all.

3 THE COURT: Sure. Do you have the date of the hearing?

4 MS. SCOTT: The date of the hearing is September 29th,
5 2017.

6 THE COURT: What's the case number?

7 MS. SCOTT: Oh, the case number is 17-CV-20848.

8 You ordered on that date the release of the additional
9 \$30,000.

10 I feel like I am also duty bound, Your Honor, to say,
11 of course, our primary concern -- it's not strategic. It's
12 about protecting the funds for consumers who were injured. As
13 strong as we believe and our evidence was at the TRO stage,
14 it's multiplied. The number of consumers being harmed here is
15 in the tens of thousands. Billing every month is \$6 million
16 and we are talking with the parties who are in control of that
17 billing to try to figure out how to stop the ongoing consumer
18 harm. That's the topic of discussion but the historical loss
19 of consumers over the last three to five years is really
20 astronomical and far exceeds the assets available currently.

21 THE COURT: Counsel, I want her to finish her
22 presentation. Was there anything else?

23 MS. SCOTT: No, thank you, Your Honor.

24 THE COURT: Mr. Surgeon, can you give me an accounting
25 of how much money we are talking about?

1 MR. SURGEON: So, at the moment in the corporate
2 accounts there is about 5 million, roughly, and approximately
3 2.8 million of that money is already pledged, so that would
4 mean that the available balance is roughly about 2.2 million.

5 Then outside of that there is about another \$700,000 in
6 cash.

7 THE COURT: \$700,000 in cash in the personal -- from
8 the personal assets?

9 MR. SURGEON: Exactly.

10 THE COURT: So, when you say that there is that balance
11 of the 5 million that's pledged, what do you mean?

12 MR. SURGEON: 2.8 million of that was pledged for
13 another type of transaction that the company had undertaken,
14 so, therefore, that money would not be able to be drawn out of
15 that account. It's, essentially, in the account and identified
16 but it's frozen in terms of making any withdrawals against it.

17 THE COURT: All right. Anything else? I'm sorry, was
18 there anything else you wanted to add?

19 MR. SURGEON: There was nothing else.

20 MR. O'QUINN: I would just add, to the extent that it's
21 helpful, if he might describe the cooperation that my client
22 has demonstrated and the speed with which we tendered the
23 identified jewelry and that we have tendered financial
24 documents that provide disclosure of things including cash
25 holdings. I want also the Court to understand something about

1 cash holdings because they can have a nefarious feel.

2 My client's wife is Brazilian. She comes from a
3 culture that does not trust financial institutions, so her life
4 savings which she brought into this marriage is a cash holding
5 that she has, having been through a bad marriage before, and
6 while she is extremely supportive of her husband and was
7 extremely willing to hand over the jewelry and to identify the
8 cash holdings, she is certainly passionate about her belief
9 that that's her life savings and that it is not appropriate for
10 the FTC to use her life savings as their sole source of support
11 during the pendency of this litigation.

12 THE COURT: Okay.

13 MS. SCOTT: Your Honor, if I may just say one
14 additional thing.

15 With respect to the 2.8 or 2.9 million dollars, we have
16 asked multiple times if those funds were the funds used to
17 purchase this Las Vegas property, which, essentially, the
18 purchase price was exactly that same amount and we have not
19 gotten an answer to that. So, our concern, again, is that this
20 piece of property that's being held out as being owned by a
21 trust, Mr. Dorfman's revocable trust, should actually be a
22 corporate asset because it was likely purchased or possibly
23 purchased with corporate funds.

24 I'd also add that the 300,000 plus wedding that they
25 had in March was funded with corporate funds, so I am just not

1 that sympathetic about her life savings that was sitting and
2 could have been used for those purposes but instead they used
3 corporate funds.

4 THE COURT: Could you pass that transcript that you
5 have?

6 MS. SCOTT: I sure can. It does have my notes and
7 underlines on it.

8 MR. O'QUINN: Your Honor, if I'm moving too quick --

9 THE COURT: Well, let me just ask you, does that
10 portion of the transcript discuss how many -- how much in
11 assets were available?

12 MS. SCOTT: Yes. Here are -- let's see. This is also
13 \$1.76 million in personal assets frozen, and I think that the
14 corporate assets were mostly taken up with receiver's fees, and
15 the estimate of consumer loss was \$26 million.

16 MR. O'QUINN: Your Honor, I'd just like to point. She
17 keeps using the term corporate assets. This is a common
18 bugaboo of mine, but when you have a private nonpublic company,
19 the question as to whether or not money funded directly from a
20 corporate account or from a personal account is used to
21 purchase an item is merely a tax question and really would be a
22 question that would go to whether his tax adviser classified
23 that as income or as a business expense.

24 I don't know the answer to it, but it may be subject to
25 a question the tax advisor who may have been in charge of that

1 and was well aware of what was happening. I believe their tax
2 partner at the firm attended the wedding.

3 So, I think that it is a bit misleading to suggest that
4 somehow just because jewelry is purchased directly from a small
5 business's or a closely held business is probably a better way
6 to describe it, account, is, in fact, a corporate asset or an
7 individual asset. We didn't articulate those arguments prior
8 to handing them over. I would argue that that engagement ring
9 is likely to be held under the law under the State of Florida,
10 which would govern to be an individually held asset, premarital
11 asset, that is not a marital asset of the spouse given as a
12 conditional gift and often given just disparate treatment from
13 other gifts. There is a great body of law related to
14 bankruptcy, as you might imagine.

15 The other point that I'd like to make is,
16 notwithstanding the description of the number of victims and
17 the type of payments, the \$6 million fails to make it into any
18 of these filings in an appropriate manner is the fact that my
19 client was merely a broker who brought insurance products and
20 insurance-related products that were issued by other companies.
21 HII, the company she is referring to, is a platform that are
22 supplied these products. They are the recipients of these
23 billings, not my client. I just want to make sure that it's
24 clear that they continue in that presentation to assign
25 characteristics of other independent businesses, even those

1 outside of my litigation, to my client's business.

2 THE COURT: Okay. Do you have a problem with stating
3 in open court the amount of fees you have incurred so far for
4 this litigation?

5 MR. O'QUINN: No, Your Honor, I was going to scramble
6 before I came here to get an actual number, but there was
7 confusion in my billing department. I work at a large firm
8 that is somewhat like working at the government, and we
9 recently, right around the time that this action was going on,
10 changed whether my secretary did my billing versus someone
11 probably in Baltimore. So, there was running around as I was
12 trying to get the actual number, and I don't have it. But I
13 can tell you that we received, I believe, one payment -- by the
14 way, these are payments from my client, not my business. One
15 payment of a retainer and then a subsequent payment of an
16 invoice related to the first investigation.

17 We had an outstanding invoice or two that had not yet
18 been paid when my client's assets were frozen, and that was
19 right around the end of October. So that matter sort of ends
20 at the end of October nicely from the billing standpoint. This
21 matter begins November 1st. We have received \$100,000 in
22 connection with that. We have bills, I believe, in excess of
23 170.

24 THE COURT: From other sources?

25 MR. O'QUINN: From other sources. From sources -- and

1 I am not someone who just says, great, it came from your
2 brother, terrific. No, we do a little better than that in
3 making sure we have independent non-traceable sources. I have
4 friends that would look down on me if I were to be so lazy in
5 my analysis. They are independent sources. I am happy to
6 explain it to you at sidebar but, again, I don't think that
7 getting into that, at this time, makes sense.

8 Perhaps I was misplaced in my feeling -- it was
9 retribution, but I am not used to getting forthwith subpoenas
10 or subpoenas with less than a 24-hour turnaround from an
11 investigative agency in response to a motion.

12 THE COURT: Okay. Of the approximate \$700,000 in
13 personal assets, how much of that is cash as opposed to things
14 that might have to be liquidated?

15 MR. SURGEON: I believe it's a little over 300,000.

16 THE COURT: Okay.

17 MR. O'QUINN: Your Honor, we have a financial
18 disclosure document that we have tendered that might be
19 illustrative of this. I believe the funds held in financial
20 institutions just in cash is over \$548,000, and I believe that
21 the 800 number that you have, I don't believe that that
22 includes the jewelry that's been handed over because that's not
23 in his possession anymore. That's not on here, is it, the
24 rings and watches and things that were handed over?

25 So, when you are talking about things that would be

1 liquidated, I believe -- for instance, the engagement ring I
2 believe is worth more than \$600,000, in and of itself. It's in
3 the possession of the receiver. That would have to be
4 liquidated, but liquidating a diamond is at least easier than,
5 say, liquidating a depreciating asset.

6 It is true that there aren't many people out there in
7 the world buying diamonds of that sort but there certainly is a
8 ready market that one could go and access when they wanted to
9 liquidate that. So, I just want to make sure you understand
10 that there is over \$500,000 in cash that was his personal bank
11 deposits.

12 I think there is more than that, like 50,000 in cash
13 also. So, the amount of assets is greater than I'm hearing
14 presented to you. I am not suggesting anybody is saying
15 anything inaccurate intentionally. It just depends on how you
16 look at it. We gave close to a million dollars in assets over
17 the morning or the afternoon that we went over to Akerman to
18 hand this stuff over.

19 In addition to that, there is over 500,000 in banks and
20 some cash holdings that are, obviously, not being touched.

21 THE COURT: So, Mr. Dorfman, as I ask in previous
22 cases, any reason why he can't get a job other than this
23 company?

24 MR. O'QUINN: Other than the fact that he has been on
25 the cover of the New York Times painted as a horrific person

1 where people are accepting allegations that may not be accurate
2 which does influence some hiring personnel in their decisions,
3 and other than the fact that he is currently subject to a broad
4 asset freeze where any job interview that he would have to go
5 to before he could accept it would have to inform the employer,
6 A, of the situation, and, B, that we have to get leave of the
7 court for him to even take his salary, because as far as I
8 understand, future payments would also be subject to his broad
9 asset freeze unless there was a specific ruling that they were
10 apart from it. So, academically speaking, I don't believe that
11 there is any reason he can't go get a job. Practically
12 speaking, I think it's a lot harder to get a job when this has
13 happened to you than that question really encompasses.

14 THE COURT: I guess it depends on the job.

15 All right. So, regarding the motion to modify the
16 asset freeze order or pay reasonable living expenses and
17 attorneys' fees, I will grant the motion in part. I will
18 direct the receiver to release \$75,000 directly to defense
19 counsel for payment of the attorneys' fees. Any additional
20 request will require a detailed accounting of the fees -- well,
21 the time sheets, the hourly rates and how the money was spent,
22 and I will also direct the receiver to pay Mr. Dorfman \$5,000
23 per month, both to come out of his seized personal assets until
24 further order of the court.

25 There are assets, that seems undisputed, being held by

1 Mr. Dorfman's wife. There is no reason that he should bear the
2 total amount of those costs. She can contribute as well.

3 Regarding the motion for protective order, I will
4 grant -- I don't think the subpoena is necessary, not at this
5 juncture.

6 Anything else for today?

7 MS. SCOTT: No, Your Honor.

8 THE COURT: All right. Anything else, Counsel?

9 MR. O'QUINN: No, Your Honor, thank you.

10 THE COURT: All right. Thank you very much.

11 MR. O'QUINN: Your Honor, may I approach just to
12 introduce my associates to you?

13 THE COURT: Yes, sure.

14 (Proceedings were concluded at 12:30 p.m.)
15

16
17 C E R T I F I C A T E

18 I hereby certify that the foregoing is an
19 accurate transcription of the proceedings in the
20 above-entitled matter.
21

22 December 14, 2018 /s/Patricia Diaz
23 DATE PATRICIA DIAZ, RPR, FPR
24 Official Court Reporter
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