

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-CV-62593-GAYLES

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

SIMPLE HEALTH PLANS LLC, et al,

Defendants.

RECEIVER’S REPLY IN SUPPORT OF MOTION FOR AUTHORITY TO ENTER INTO AUCTION CONSIGNMENT AGREEMENT WITH RM SOTHEBY’S TO SELL HEALTH BENEFITS ONE LLC’S RIGHT, TITLE, AND INTEREST IN 2015 ROLLS-ROYCE WRAITH AND 2013 LAND ROVER RANGE ROVER AUTOMOBILES

Michael I. Goldberg, as court-appointed receiver (the “Receiver”) over defendants Simple Health Plans LLC, Health Benefits One LLC, Health Center Management LLC, Innovative Customer Care LLC, Simple Insurance Leads LLC, Senior Benefits One LLC, and their subsidiaries, affiliates, successors and assigns (collectively, “Simple Health” or the “Receivership Entities”) hereby files this reply (“Reply”) in support of the *Receiver’s Motion for Authority to Enter into Auction Consignment Agreement with RM Sotheby’s to Sell Health Benefits One LLC’s Right, Title, and Interest in 2015 Rolls-Royce Wraith and 2013 Land Rover Range Rover Automobiles and Incorporated Memorandum of Law* (the “Motion”) [ECF No. 412] and in response to defendant Steven Dorfman’s (“Defendant”) Response in Opposition to the Motion (the “Opposition”) [ECF No. 413]. In support, the Receiver states as follows:

The Opposition argues that the Receivership Entities should continue to incur the carrying costs of insuring, maintaining and storing 2015 Rolls-Royce Wraith (VIN No. SCA665C54FUX85225) (the “Rolls-Royce”) and 2013 Land Rover Range Rover (VIN No.

SALGV2EF1DA100321) (the “Range Rover” and together with the Rolls-Royce, the “Automobiles”) on the basis that (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. Opposition at 2-3 [citing ECF Nos. 79, 104, 134, 307, 316, 379, 394, and 397]. The Opposition relies upon the appeal pending before the Supreme Court, *AMG Capital Management LLC v. Federal Trade Commission*, Case No. 19-508, arguing that the Supreme Court's decision in *AMG Capital* may ultimately alter the landscape of this case. Opposition at 3.

Notwithstanding the forgoing, as of the date of this Reply, as noted in the Preliminary Injunction entered by this Court (“PI”) [ECF No. 139] “neither the Supreme Court nor the Eleventh Circuit [have] held that disgorgement and restitution are legal monetary remedies not available to the ... FTC.” P.I. at 14. The Opposition also completely ignores the extensive findings set forth in the PI including, among other things, that the Defendant relied on deceptive tactics to bait unwitting consumers into purchasing what they believed to be traditional health insurance policies although they were not. *Id.* at 5-11. Similarly, but perhaps more importantly, the Opposition overlooks this Court’s findings that Simple Health’s operations victimized the general public to such an extent that it is “unlikely Simple Health can be run lawfully and/or profitably” under its current business model. *Id.* at 9-11, 24.¹ And the Court has already rejected Defendant’s prior requests to constrain the Receiver’s ability to make decisions that are in the best interest of the victims of the Defendant’s fraud. *Id.* at 24.

The Receiver has taken considerable efforts to avoid waste by marshaling and conserving the assets of the receivership estate. The Automobiles—titled in Simple Health's name and not

¹ Before the entry of the PI, the Receiver and his professionals independently determined that Simple Health could not be operate lawfully. [ECF No. 122].

the Defendant's name—have cost the receivership estate over \$20,000 in storage and insurance expenses to date. The Automobiles, all though expensive, are not considered collector's items or anything else that cannot be replaced. Rather, they are depreciating assets with significant carrying costs. The creditors of Simple Health have a demonstrably greater interest in preserving the assets than the Defendant because Simple Health is insolvent. Finally, the proceeds from the sale of the Automobiles will be placed in the Receiver's bank account pending the outcome of the case. Therefore, even though the Automobiles are being sold, the current value of the Automobiles are being preserved. In sum, the Receivership Estate should not be forced to continue to cover the carrying costs of fungible depreciating assets, pending the outcome of this case, when such assets can be liquidated and the present value of the assets can be preserved. The Motion should be granted.

WHEREFORE, the Receiver respectfully requests the entry of an Order granting the Motion.

Dated: March 31, 2021

Respectfully submitted,

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Court-appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on March 31, 2021 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Catherine D. Kretschmar
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