

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 AUCTION CONSIGNMENT
AGREEMENT WITH RM SOTHEBY'S TO SELL HEALTH BENEFIT
ONE LLC'S RIGHT, TITLE, AND INTEREST IN 2015 ROLLS-ROYCE
WRAITH AND 2013 LAND ROVER RANGE ROVER AUTOMOBILES**

Defendant Steve Dorfman, through undersigned counsel, files this response in opposition to the *Motion for Authority to Enter into Auction Consignment Agreement with RM Sotheby's to Sell Health Benefit One LLC's Right, Title, and Interest in 2015 Rolls-Royce Wraith and 2013 Land Rover Range Rover Automobiles* (the "**Motion**") [DE 412] filed by the Receiver. In support of this response, Mr. Dorfman states:

Through the Motion the Receiver seeks to, among other things, initiate a process to sell certain vehicles (the "**Vehicles**") owned by Defendant Health Benefit One ("**HBO**"). The Motion must be denied because the basis for the Receivership and the Receiver's authority are *ultra vires*.

As Mr. Dorfman discussed extensively in 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. (*See, e.g.* DE 79, 104,

134, 307, 316, 379, 394, and 397.)¹ These issues are currently pending in a fully-briefed and argued proceeding before the U.S. Supreme Court. (*See, AMG Capital Management, LLC v. FTC*, Case No. 19-508, U.S. Supreme Court.) That case 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 Supreme Court agrees with Mr. Dorfman, 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 sell the Vehicles.

WHEREFORE, Mr. Dorfman respectfully requests an Order of the Court denying the Motion and for all further relief the Court deems just and proper.

Dated: March 25, 2021

DLA Piper LLP (US)

/s/ Ryan O’Quinn
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¹ 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.

CERTIFICATE OF SERVICE

The undersigned certifies that he filed this pleading through the court's electronic filing system on March 25, 2021, and that all parties requesting electronic notice of pleadings have been served with the pleading.

/s/ Ryan D. O'Quinn

Ryan D. O'Quinn