

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SIMPLE HEALTH PLANS LLC, a Florida limited
liability company, et al.,

Defendants.

Case No. 18-cv-62593-DPG

PLAINTIFF FEDERAL TRADE COMMISSION'S MOTION TO LIFT STAY

The Federal Trade Commission ("FTC" or "Commission") hereby moves the Court to lift the temporary stay of proceedings in this case, re-open the matter, rule on other pending motions, and if necessary after the pending motions are resolved, set a new pretrial and trial schedule. In support of this motion, counsel for the FTC states as follows:

1. On May 14, 2019, the Court found that the FTC was likely to succeed on its claims that defendants' bait and switch telemarketing scheme violated the FTC Act and the Telemarketing Sales Rule. The Court entered a preliminary injunction, which enjoined the defendants from continuing their telemarketing operation and also froze their assets and appointed a receiver over the corporate defendants. (DE 139.) On April 22, 2021, defendant Steven Dorfman filed an emergency motion to dissolve the preliminary injunction, arguing that the Supreme Court's decision in *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1344 (2021) made the preliminary injunction unlawful.

2. On September 5, 2021, the Court denied Dorfman's emergency motion, holding that the preliminary injunction and all of the relief therein was authorized pursuant to Section 19 of the FTC Act, 15 U.S.C. § 57b(b) and therefore not impacted by the *AMG* decision. (DE 446.) Dorfman appealed the Court's order to the Eleventh Circuit and this Court stayed the proceedings for 30 days. (DE 453 & 454.) On October 29, 2021, the Court continued the stay of proceedings pending the outcome of Dorfman's appeal. (DE 461.) The Court thereafter administratively closed this matter until the appeal was resolved. (DE 464.)

3. On January 27, 2023, the Eleventh Circuit affirmed the Court's order denying Dorfman's emergency motion. The court held that where "preliminary measures like an asset freeze or a receivership are necessary to preserve funds for a future monetary judgment, they are authorized by § 19(b)" and noted that this Court had found such measures necessary here. *Dorfman v. FTC*, Case No. 21-13116, 2023 WL 465660, at *5 (11th Cir. Jan. 23, 2023). The Eleventh Circuit went on to recognize the "broad scope of relief available under § 19." *Id.* at *6

4. Now that the Eleventh Circuit has affirmed this Court's order, the case should proceed. The Court need not wait for the Eleventh Circuit's mandate to issue because Dorfman's interlocutory appeal of the Court's order denying his motion to dissolve the preliminary injunction did not divest this Court of jurisdiction. A schedule for pretrial filings and a trial date should be set and pending motions should be resolved. The following motions are fully briefed and awaiting decision:

- The FTC's Motion in Limine (ECF No. 438.)
- The FTC's Motion for Judgment on the Pleadings (ECF No. 378.)
- The FTC's Motion for Summary Judgment (ECF No. 374.)
- FTC's Motion to Strike Jury Demand (ECF No 408.)

- Dorfman’s Motion for Summary Judgment (ECF No. 379.)
- Dorfman’s Motion to Strike Evidence (ECF No 402.)

Therefore, the FTC respectfully requests that the Court lift the temporary stay, re-open the matter, resolve the pending motions, and if necessary after the pending motions are resolved, set a pretrial and trial schedule.

LOCAL RULE 7.1(a)(3) CERTIFICATION

Counsel for Plaintiff certifies that they made their best efforts to confer with all parties affected by the relief sought in this motion in a good faith effort to resolve the issues raised in the motion. The Receiver does not oppose the FTC’s motion. Counsel for Plaintiff contacted current counsel of record for Mr. Dorfman, who indicated that they intend to withdraw from representing Mr. Dorfman in this matter, and that they would forward the correspondence to Mr. Dorfman. Mr. Dorfman did not contact counsel for Plaintiff about the relief sought in this motion.

Dated: January 31, 2023

Respectfully submitted,

/s/ Elizabeth C. Scott

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FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this January 31, 2023, 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/ Elizabeth C. Scott
Elizabeth C. Scott (SBA # A5501502)