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7 Temporary Receiver for Health Care One LLC,
8 Americans4Healthcare, Inc. and Elite Business Solutions, Inc.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

HEALTH CARE ONE LLC, an
Arizona limited liability company, also
d/b/a/ "HealthcareOne," "Americans4
Healthcare," "Citizens4Healthcare,"
"American Eagle Healthcare,"
"EasyLife Healthcare," "Elite
Healthcare," "Global Healthcare," and
"Republic Healthcare";

AMERICANS4HEALTHCARE INC.,
a Delaware corporation;

MICHAEL JAY ELLMAN, an
individual;

ELITE BUSINESS SOLUTIONS,
INC., a Nevada Corporation, also d/b/a/
"EasyLife Healthcare," "Elite
Healthcare" and "Republic Healthcare";

ROBERT DANIEL FREEMAN, an
individual;

Defendants.

Case No.: SACV 10-1161 JVS(RNBx)

**PRELIMINARY REPORT OF
TEMPORARY RECEIVER**

**JUDGE: Honorable James V. Selna
DEPT: 10C**

**Hearing Date: Aug. 11, 2010
Hearing Time: 11:00 a.m.**

- 1 4. HCO has no working capital and runs very tight on cash, in large part
2 because Mr. Ellman directs much of the positive cash flow to himself.
3 Payroll and accounts payable management are a constant nightmare to staff
4 in Tempe because there is inadequate cash. Absent a significant capital
5 infusion, this business could not be operated at all, profitably or otherwise.
6 Until we receive complete disclosures from Mr. Ellman about the internal
7 accounting and cash flow maneuvers orchestrated by him alone, it will be
8 difficult to fully understand HCO's financials.
- 9 5. As to defendant Elite, we have not yet had an opportunity to fully evaluate
10 its go-forward viability.

11 **II.**

12 **Receivership Activities**

13 **A. Facilities**

14 On August 5, 2010, I took possession of the offices of HCO in Tempe,
15 Arizona and the offices of Elite in Laguna Hills, California. Elite also maintains
16 an off-site mail box at Pacific Mail in Irvine, California which we now control.
17 Defendant Americans4Healthcare has no known office other than the HCO site in
18 Tempe.

19 HCO leases a total of approximately 10,000 square feet in three separate
20 suites in a one-story office complex in Tempe, Arizona, near the Phoenix airport.
21 HCO was a bustling telemarketing enterprise with more than 50 employees at
22 work. The office space is well-equipped as a modern call center operation. There
23 are three separate areas with groups of cubicles, each equipped with computers,
24 monitors, phones and headsets—a main room in the front with 50 cubicles for
25 sales personnel; 30 cubicles for Member Services (Customer Service) in Suite 18
26 down the hall; and another 30 cubicles in a back room, which were not in use, but
27 were designated for future expansion. Specific offices are set aside for the
28 operations manager, compliance, refunds, finance and marketing.

1 All employees cooperated, completed a brief questionnaire and were
2 excused for the day. The two key managers on site - Vice President of Operations
3 Lance Harris and Vice President of Finance Shari Leyva -were very cooperative
4 throughout.

5 Defendant Ellman was not on site - as of this report, we have not seen nor
6 spoken to Mr. Ellman, despite several requests.

7 The Elite offices in Laguna Hills, California, were occupied by only three
8 personnel, plus several contractors working on an expansion of the office. Elite's
9 CEO, Mr. Freeman, was on vacation in Hawaii, and the majority of Elite's staff
10 had been sent home earlier in the day about the time Elite management learned of
11 the TRO. Typically, Elite's office houses a call center occupied by its
12 approximately 20 to 25 employees, the bulk of whom are salespeople reselling
13 HCO-branded products as telemarketers.

14 **B. Bank Accounts**

15 Immediately after receiving the TRO, the FTC served various banks in
16 order to freeze assets. The following chart summarizes the accounts frozen to
17 date:

	BANK	ACCOUNT NAME	BALANCE IN ACCOUNT AS OF
18			
19			
20			
21	1	BOA* MICHAEL ELLMAN, GERI ELLMAN	\$966.01
22	2	BOA* MAGNUM FINANCIAL MANAGEMENT, INC	\$147.93
23	3	BOA* MICHAEL ELLMAN	\$201,557.25
24	4	BOA* THE AMERICAN MINT, LTD. [***5096]	\$126,281.00
25	5	BOA* RED CARPET SKINCARE, INC.	\$1,467.26
26	6	BOA* HCO MARKETING INC.	\$205.75
27	7	BOA* THE AMERICAN MINT, LTD. [***9387]	\$218,184.33
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8	BOA*	SECURE HEALTHPLAN CORPORATION	\$4,848.85
9	BOA*	AMERICANS4HEALTHCARE INC	\$99.25
10	BOA*	HEALTHCAREONE, LLC	\$46.12
11	BOA*	AUTOPLANONE INC	\$166.00
12	BOA*	HEALTHCAREONE TELEMEDICINE CORP	\$54.48
13	BOA*	UNITED LIVECARE INC	\$75.10
14	Citizens*	ELITE BUSINESS SOLUTIONS INC [***7505]	\$746.85
15	Citizens*	DBA EASY LIFE HEALTHCARE	\$4,370.56
16	Citizens*	ELITE BUSINESS SOLUTIONS INC [***0100]	\$38,598.95
17	Citizens*	DBA ELITE HEALTHCARE GROUP	\$163,852.80
18	Citizens*	ELITE BUSINESS SOLUTIONS INC [***7513]	\$1,251.92
19	Citizens*	DBA REPUBLIC HEALTHCARE	\$4,142.78
		TOTAL:	\$767,063.19

** indicates that the amount is frozen*

As Temporary Receiver, I have also given notice of the asset freeze to Litle, Inc. and Echo/Intuit, which maintain credit card processing merchant accounts for Defendants. We have confirmed that the HCO Reserve Account at Litle has a current balance of \$245,000.00.

C. Interviews

We have conducted a number of interviews. These include interviews of key employees in Tempe, especially Lance Harris and Shari Leyva, the employees on site at Elite’s office in California, Mr. Freeman, and several of HCO’s sub-marketers.

D. Documents/Information/Electronic Data

Upon taking possession, we confirmed that all hard copy documents were secure. The FTC retained a forensic computer firm to make images of the servers

1 and certain identified desk top computers on site. The business operates as a
2 modern “paperless” business with very limited paper files.

3 **E. Forensic Accountants**

4 We have retained the firm of Brad De Roma & Associates to review the
5 financial activity of Defendants.

6 **F. Compliance With TRO**

7 Once we secured the premises and completed a basic review of the
8 business, I took immediate steps to insure compliance with the TRO as follows:

- 9 1. We activated a Receiver’s website, at www.hcoreceiver.com, as a
10 tool to communicate with consumers.
- 11 2. We suspended all sales activities – “in-take” – by excusing all sales
12 personnel in Tempe, who previously handled approximately 400
13 incoming calls per day in staggered shifts from 6:00 a.m. to 4:30 p.m.
14 We placed a voicemail message on the sales line alerting consumers
15 to the suspension and directed them to the Receiver’s website or to
16 the 800 # for the benefit program in which they were enrolled.
- 17 3. We pulled all existing commitments for outbound marketing via TV,
18 radio, on-line, print and mobile. By coincidence, there was little
19 media to pull because HCO was in the midst of converting over to a
20 new provider which required new marketing.
- 21 4. We de-activated all of Defendants’ operative websites and later had
22 them linked to the Receiver’s website so that any consumer seeking
23 to open a Defendant website would be directed to the Receiver’s
24 website instead.

25 **G. Cooperation of Defendants**

26 The HCO staff in Arizona and the Elite personnel in California were
27 generally very cooperative. They met with us as requested, answered all
28 questions, and provided access to the necessary records.

1 Defendant Dan Freeman, the principal of Elite, contacted us by telephone in
2 Tempe on Friday August 6, 2010 – he was then on vacation and agreed to confer
3 with us upon his return Monday, August 9. We have since held a conference call
4 with him and his counsel.

5 Defendant Michael Ellman, the principal of HCO, made no effort of any
6 kind to contact or communicate with us, even after we had spent two days at the
7 HCO offices in Tempe. Finally, on August 9, we spoke with his counsel and once
8 again reiterated our desire to speak with Mr. Ellman, but to date Mr Ellman has
9 not made himself available to the Receiver in person or by phone.

10 III.

11 Summary of Business Operations

12 An initial challenge for this receivership has been to clarify the business
13 activities of the named Defendants and their relationships with each other and
14 other entities doing business with them.

15 A. Health Care One, LLC

16 HCO is an Arizona LLC which conducts business under the name
17 “HealthCareOne”. It is owned by Defendant Ellman. Despite the moniker which
18 suggests it is a health care provider, HCO is really just a direct marketing and
19 telephone sales organization operating out of the Tempe, Arizona, office. Over
20 the years, HCO has sold various products - ranging from debt relief to auto
21 assistance plans - offered by other Ellman ventures through the Tempe
22 infrastructure, but the primary product has been health discount cards.

23 HCO’s core business model is very familiar: target a ripe market and a
24 product with high margins; deploy sophisticated marketing - in this case primarily
25 television commercials - to drive the target consumers to an 800# where
26 commission-hungry “sellers” are standing by with scripts designed to “close” the
27 sale; offer hassle-free payment procedures via credit/debit card or electronic
28 check; and the final hook – offer a “guaranteed” return/refund if the consumer is

1 not happy; even if these returns/refunds are very large, the selling margins are so
2 high on the sales that stick, that profits are very healthy.

3 HCO's target market is the 40 million Americans who cannot afford or just
4 do not have health insurance, many of whom are unsophisticated, confused, and
5 low income. Even in their purest form, the healthcare discount programs HCO
6 sells can be confusing and misinterpreted as insurance. Since the program results
7 in a monthly fee, HCO does not receive just one payment, but recurring monthly
8 payments, often via automatic deductions from the consumer's credit card. While
9 HCO touts its guaranteed 30 day refund, there is no refund of the up-front
10 "processing fee" (as high as \$95 on some programs), and the refund process
11 includes multiple hurdles. Even when those hurdles are cleared and a refund
12 approved, the ultimate payment of refunds is slow.

13 Two key statistics are very revealing: (1) approximately 40% of HCO
14 customers cancel and seek a refund within the first 30 days; (2) the average
15 healthcare discount card consumer lasts about four months. As such, HCO is just
16 cycling consumers through its telemarketing universe and clipping off non-
17 refundable processing fees and a high margin spread on the monthly charges in
18 the short period these consumers are in the program.

19 HCO offers consumers a generic menu of services. The actual source of
20 these services are third-party providers who wholesale their services to HCO,
21 which in turn, re-sells them to the public, at a substantial markup, under the HCO
22 brand. For most of its history, HCO's primary provider was Careington, Inc.
23 based in Frisco, Texas.

24 There is a certain level of consumer confusion inherent in this business
25 model. The consumer sees or hears an ad for HCO, calls into an HCO sales
26 person, makes payment to HCO, and receives a New Member Kit under HCO's
27 name. But, the underlying menu of programs/networks is provided by Careington.

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1 In May, 2010, Careington terminated all new sales by HCO due to material
2 breaches of the underlying Marketing Agreement. In particular, Careington has
3 indicated to us that the HCO commercials featuring President Obama (described
4 in the FTC's initial filing) were the cause of the termination. Careington
5 explained that these ads, which had not been approved by Careington, were the
6 last straw in what was a rocky business relationship. HCO then scrambled to find
7 a replacement for Careington. It ultimately contracted with First Patriot in early
8 June. At the time of my appointment, the majority of the consumers remained
9 with Careington, but all new consumers after May 8 went to First Patriot.

10 We have seen strong evidence that HCO purposely delayed refund
11 payments, and that refund payments were directly linked to available cash flow
12 which, in turn, was dictated by Mr. Ellman. Consumers constantly had to badger
13 HCO to receive refunds and even then they were delayed weeks and weeks. On
14 the first day of the receivership we had a refund employee run an internal refunds
15 report. The report reflected that 1,329 customers had been approved for refunds,
16 totaling \$206,000, but those refunds had not yet been paid.

17 **B. Elite Business Solutions**

18 Elite operated as a sub-marketer of the HCO product to sell the discount
19 card under the Elite name. Elite entered into a "Healthcare Non-Exclusive Sub-
20 Marketer Agreement" with HCO. Once the Elite telemarketing team makes a
21 sale, HCO takes over order processing, payment processing, and communication
22 with the network providers (Careington and First Patriot). Careington/First Patriot
23 print and mail out the discount card to the consumer in Elite Healthcare's name
24 and thereafter provide customer service on questions about the underlying
25 networks. For its part, HCO provides customer service on payment issues and
26 refunds. HCO administers consumer payments, but the funds are directed to
27 Elite's own credit card merchant account. HCO provides sales scripts and other
28 sales support to Elite. HCO bills Elite twice per month for the customer service

1 and payment processing services. The amount of the fee is dependent on the
2 specific program purchased by the consumer. For example, on a \$99 consumer
3 program, Elite pays HCO \$21 and other sub-marketers pay HCO \$29.

4 These sub-marketer arrangements create a second revenue stream for HCO
5 beyond direct sales to consumers.

6 **C. Other Sub-Marketers**

7 In addition to Elite, HCO also had sub-marketing arrangements with three
8 other entities which sold the discount cards under their own names (Global
9 Healthcare, American Eagle Healthcare, and Easy Life Healthcare). The
10 arrangements with these groups roughly tracked the relationship with Elite as
11 described above. Because Elite introduced some of these other sub-marketers to
12 HCO, HCO also paid Elite an override on sales made by these sub-marketers.

13 **D. Financial**

14 Our preliminary review indicates that the margins were quite high and
15 various components of this business generated healthy sales revenue, but related
16 marketing costs are high. Our brief review of available financial records
17 indicates that HCO generated revenues of \$500,000 to \$600,000 per month. It is
18 far too early to reach any solid conclusions about overall historical financial
19 results. For starters, it has been very difficult for staff in Tempe to prepare a
20 reliable Profit & Loss Statement because so many accounts and some revenue
21 streams are controlled by Ellman.

22 Ellman operated the accounting in an extremely byzantine manner. The
23 company has been perpetually on the verge of being unable to make payroll,
24 primarily it appears because Ellman has much of the company revenues directed
25 to bank accounts he controls. HCO's Vice President of Finance did not have
26 control over – and in some cases visibility to – many of those accounts. Ellman
27 used funds in these accounts to pay marketing expenses, but it seems beyond
28 doubt that substantial amounts of money were retained by Ellman for his personal

1 use. Until we have the time and access to these account records, we cannot even
2 guess how much of the HCO funds ended up in Ellman’s personal accounts or in
3 accounts of other businesses he controlled.

4 **IV.**

5 **Receivership Defendants**

6 We can now confirm that the following entities fall within the definition of
7 “Receivership Defendants” as defined in the TRO at page 4:

8 Health Care One, LLC which uses the trade name “HealthCareOne”.

9 American4Healthcare, Inc.

10 Elite Business Solutions, Inc. which sub-markets HCO products under its
11 own private label names “Elite Healthcare”, “Easy Life Healthcare”, and
12 “Republic Healthcare”.

13 None of the HCO sub-marketers, other than Elite, are named Defendants in
14 the FTC Action. Nor can they be categorized as “affiliates” such that they could
15 be categorized as Receivership Defendants. As such, as Receiver, I have not
16 taken any steps to assert control over these other sub-marketer entities, their
17 accounts or their assets.

18 A number of Mr. Ellman’s other ventures which operate out of HCO’s
19 Tempe offices and share HCO management and employees also fall within the
20 definition of a Receivership Defendant, including Red Carpet Skincare, Quad
21 Digital Corp., AutoplaneOne Inc., and Magnum Financial Management Inc.

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V.

Can This Business Be Operated Lawfully and Profitably?

Paragraph XII(D) tasks me to determine if this business can be operated lawfully and profitably. My very preliminary conclusion is that this would be a challenge.

A. Lawfully

To become a lawful going concern, this business faces significant hurdles. The over-promise, under-deliver phenomenon and deceptive practices documented in the Plaintiffs' presentation to the court and confirmed by our on-site experience, could, *in theory*, be corrected. The infrastructure is in place to operate a legitimate business. It would, however, take a paradigm shift in the sales culture of the business and the recruiting, training and supervision of the sales and operations staff. Such shifts would take time and reduce profitability, but would be possible.

B. Profitability

If the business were run lawfully, profitability would be severely challenged as follows:

1. Given that the residual accounts sold pre-TRO may be tainted by deceptive trade practices, some resolution would have to be reached as to these accounts which could put a major dent in on-going cash revenues.
2. As to future sales, if sales personnel faithfully sold the service, with absolutely no hyperbole, hype, or misinformation, we expect that alone would slow sales dramatically and would increase expenses for hiring, training, supervision and compliance.

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- 3. Given the historically high level of refunds within the 30 day window, the business would have to be operated and/or capitalized so that cash was available to promptly fund refunds. At this point, an immediate \$206,000 is needed to bring refunds current.
- 4. The same preliminary observations would apply to Elite as an HCO sub-marketer.

Dated: August 10, 2010

/s/ Thomas W. McNamara
Thomas W. McNamara,
Court Appointed Temporary Receiver for
Health Care One LLC