THOMAS W. MCNAMARA (SBN 127280)
Email: tmcnamara@labellamcnamara.com
401 West "A" Street, Suite 1150
San Diego, California 92101
Telephone: (619) 696–9200
Facsimile: (619) 696–9269

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

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.

PRELIMINARY REPORT OF TEMPORARY RECEIVER

I.

Introduction

On August 3, 2009, this court entered a Temporary Restraining Order ("TRO") appointing me as Temporary Receiver for Defendants Health Care One, LLC ("HCO"), Americans4Healthcare, Inc, Elite Business Solutions, Inc. ("Elite"), and their related dbas.

I respectfully submit this Preliminary Report to advise the Court of my initial actions and preliminary observations. In the short time since my appointment, I, together with attorneys and accountants, have located and reviewed documents, have begun tracing financial transactions, and interviewed a number of key employees. As a result, I can now provide the following preliminary snapshot of the structure of the business, its operation, and the flow of monies:

1. HCO and its sub-marketers have 15,000 plus active customers who may have been sold discount programs through deceptive trade practices catalogued in the FTC's filing. As these residual customers continue to make monthly payments, HCO continues to profit. Any go-forward strategy would have to include a plan to equitably deal with any residual accounts secured with the deception described by the FTC.
2. Despite the moniker which implies that it is a health care provider, HCO is simply a phone sales operation re-selling healthcare discount programs of others. Some level of confusion and deception, overt and subliminal, has been a component of these sales efforts – hence the viability of such an enterprise, free of all deception, would be unpredictable.
3. One key deception – the availability of prompt refunds – could not be cured without immediate capital infusion to cover approved but unfunded refunds, now totaling $206,000.00 and pay refunds promptly going forward.

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

II.

Receivership Activities

A. Facilities

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

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

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

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

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

B. Bank Accounts

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

	BANK	ACCOUNT NAME	BALANCE IN ACCOUNT AS OF
1	BOA*	MICHAEL ELLMAN, GERI ELLMAN	$966.01
2	BOA*	MAGNUM FINANCIAL MANAGEMENT, INC	$147.93
3	BOA*	MICHAEL ELLMAN	$201,557.25
4	BOA*	THE AMERICAN MINT, LTD. [***5096]	$126,281.00
5	BOA*	RED CARPET SKINCARE, INC.	$1,467.26
6	BOA*	HCO MARKETING INC.	$205.75
7	BOA*	THE AMERICAN MINT, LTD. [***9387]	$218,184.33

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

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

E. Forensic Accountants

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

F. Compliance With TRO

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

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

G. Cooperation of Defendants

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

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

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

III.

Summary of Business Operations

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

A. Health Care One, LLC

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

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

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

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

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

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

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

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

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

B. Elite Business Solutions

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

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

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

C. Other Sub-Marketers

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

D. Financial

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

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

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

IV.

Receivership Defendants

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

Health Care One, LLC which uses the trade name "HealthCareOne".

American4Healthcare, Inc.

Elite Business Solutions, Inc. which sub-markets HCO products under its own private label names "Elite Healthcare", "Easy Life Healthcare", and "Republic Healthcare".

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

A number of Mr. Ellman's other ventures which operate out of HCO's Tempe offices and share HCO management and employees also fall within the definition of a Receivership Defendant, including Red Carpet Skincare, Quad 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