

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 1:14-cv-23109-SCOLA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PARTNERS IN HEALTH CARE
ASSOCIATION, INC., *et al.*,

Defendants.

**RECEIVER'S MOTION FOR TURNOVER OF RECEIVERSHIP FUNDS
TRANSFERRED TO GRUMER AND MACALUSO, P.A. AND FUNDS WITHDRAWN
FROM THE TRI RESOURCE GROUP, LTD ACCOUNT**

Peter D. Russin, in his capacity as receiver (the "**Receiver**") of Partners in Health Care Association, Inc.; United Solutions Group Inc.; and their subsidiaries, affiliates, successors and assigns (collectively the "**Receivership Entities**"), appointed pursuant to this Court's Temporary Restraining Order dated August 25, 2014 [ECF No. 9] (the "**TRO**"); the Stipulated Preliminary Injunction Against United Solutions Group Inc., Constanza Gomez Vargas, and Walter S. Vargas [ECF No. 31] (the "**USGI Preliminary Injunction**"); and the Corrected Preliminary Injunction Against Partners In Health Care Association, Inc., and Gary L. Kieper [ECF No. 36] (the "**PIHC Preliminary Injunction**") files this Motion for turnover of receivership funds transferred to Grumer and Macaluso, P.A. and funds withdrawn from the Tri Resource Group, Ltd Account (the "**Motion**") and states:

BACKGROUND

1. The United States Federal Trade Commission (the “*FTC*”) initiated this marketing fraud enforcement action (the “*Action*”), seeking to enjoin the sale of medical discount plans, which the FTC asserts were marketed falsely, at least in part, as health insurance.

2. On August 25, 2014, at the request of the Plaintiff and based upon a preliminary showing of marketing fraud, the Court issued the TRO.

3. On August 27, 2014, the Receiver entered the office of Partners In Health Care Association, Inc., determined that PIHC, Inc.; Tri Resource Group, Ltd., and Senior Advantage of Wisconsin, Inc. were affiliates of Partners In Health Care Association, Inc., and assumed control of all four entities (the “*PIHC Companies*”).

4. On August 28, 2014, Tri Resource Group, Ltd. transferred \$20,000.00 (the “*Transfer*”) to the operating account of Grumer & Macaluso, P.A. from Tri Resource Group’s checking account at Associated Bank (the “*Associated Bank Account*”).¹ A copy of a partial statement evidencing the Transfer is attached as **Exhibit A**.

5. Upon information and belief, Gary Kieper initiated the Transfer as a retainer for his defense of this Action. At the time of the Transfer, Gary Kieper knew that the assets of Tri Resource Group, Ltd. (an obvious affiliate of Partners In Health Care Association Inc.) were frozen pursuant to the TRO and such transfers were enjoined.

¹ The Transfer was only possible because the FTC and Receiver had not yet learned of the Associated Bank Account, and had not taken steps to freeze such account as of August 28, 2014.

6. In accepting the funds, Grumer & Macaluso, P.A. had a duty to investigate the source of the funds.² Despite this duty, Grumer & Macaluso, P.A. accepted the funds into its *operating* account.

7. In fact, on August 28, 2014, the day of the Transfer, after having read the TRO, Keith Grumer, principal of Grumer & Macaluso, P.A. spoke with the Receiver, but neglected to mention having accepted \$20,000.00 from Tri Resource Group, Ltd. into its operating account that very day.

8. Additionally, on September 2, 2014, a \$500.00 ATM debit was withdrawn from the Associated Bank Account. Between September 4 and 5, 2014, an additional \$5,000.00 in ATM debits were withdrawn from the Associated Bank Account (collectively the “*Withdrawals*”).³ Upon information and belief, Gary Kieper is the only ATM card holder.

9. At the evidentiary hearing held on September 4, 2014 on this Court’s Order to Show Cause why this Court should not enter a preliminary injunction against Defendants (the “*Hearing*”), the Court found that PIHC, Inc.; Tri Resource Group, Ltd., and Senior Advantage of Wisconsin, Inc. were affiliates, and confirmed that all PIHC Companies were part of the receivership (the “*Receivership Estate*” or just the “*Estate*”), and would be shut down. Neither Mr. Kieper nor Mr. Grumer, despite having argued against the shutdown of Tri Resources Group Ltd., mentioned having made the Transfer or Withdrawals from Tri Resource Group, Ltd.’s account.

² *S.E.C. v. Princeton Econ. Int’l Ltd.*, 84 F. Supp. 2d 443, 446-47 (S.D.N.Y. 2000); *In re Parklex Associates, Inc.*, 435 B.R. 195, 211 (Bankr. S.D.N.Y. 2010); *see also S.E.C. v. Comcoa Ltd.*, 887 F. Supp. 1521, 1526 (S.D. Fla. 1995) *aff’d sub nom. Levine v. Comcoa Ltd.*, 70 F.3d 1191 (11th Cir. 1995)

³ There are other debits of concern to the Receiver, as referenced in the Letter (as defined below). However, because the Receiver did not receive a response to the Letter, and does not know the circumstances of such transfers, this Motion concerns only the Transfer and the Withdrawals, without prejudice to seeking appropriate relief as to the other debits at a later date.

10. The shutdown of the entities was memorialized on September 11, 2014, in the PIHC Injunction (“The Court orders that the Receiver cease operations of Partners In Health Care Association, Inc., and its affiliated entities, including, but not limited to, TRI Resource Group Ltd., Senior Advantage of Wisconsin Inc., and PIHC Inc. and the Court now issues this Preliminary Injunction against the PIHC Defendants”).

11. The Receiver has never authorized the retention of any law firm (other than retention of Receiver’s counsel) on behalf of any of the PIHC Defendants.

12. After learning of the unauthorized Transfer and Withdrawals on Friday, September 12, 2014, on Monday, September 15, 2014, counsel for the Receiver wrote to Grumer & Macaluso, P.A., demanding return of the amounts transferred via wire transfer by September 19, 2014 (the “*Letter*”). The Receiver received no response and no funds were returned.

RELIEF REQUESTED

13. By this motion, the Receiver seeks entry of an Order compelling Grumer & Macaluso, P.A. to turn over the \$20,000.00 subject to the Transfer, and for Gary Kieper to turn over the \$5,500.00 in Withdrawals. Because the Receiver does not yet know the circumstances surrounding the Transfer and the Withdrawals, the Receiver asks that this Court reserve jurisdiction for a determination of contempt and the entry of sanctions, including but not limited to the award of attorney fees for the prosecution and filing of this Motion.

MEMORANDUM OF LAW

14. A court has “complete” jurisdiction over property of the Receivership. 28 U.S.C. § 754. It follows that it is clear that this Court has jurisdiction to determine what is property of the Receivership Estate, and to order turnover of any Estate property to the Receiver. *See S.E.C. v. Stanford Int’l Bank, Ltd.*, 551 F. App’x 766 (5th Cir. 2014).

15. The Receiver believes no detailed analysis of the TRO and PIHC Preliminary Injunction is necessary. It is clear that both the letter and intent of both orders are clear that the Associated Bank Account is Estate property and the Transfer is enjoined. However, even a detailed analysis of the provisions of the orders clearly indicates that the Transfer was improper, and should be turned over to the Receiver.

A. Tri Resource Group, Ltd. is a “Defendant” pursuant to the TRO.

16. The TRO, which was in effect at the time of the Transfer, provided that: “‘Defendants’ means . . . in any combination, all of the Individual Defendants and the Corporate Defendants.” TRO, §(II)(5). “‘Corporate Defendants’ means . . . PIHC,⁴ and [its] subsidiaries, affiliates, successors, and assigns.” *Id.* at (II)(4).

17. It follows that any of Partners in Health Care Association, Inc.’s affiliates were within the scope of the term “Defendant” in the TRO. This Court has already held that Tri Resources Group, Ltd. is an affiliate of Partners in Health Care Association, Inc. Thus, Tri Resources Group was a “Defendant,” pursuant to the TRO.

B. The Associated Bank Account is an “Asset” of a “Defendant” pursuant to the TRO, and is thus property of the Estate.

18. Pursuant to the TRO, “‘Asset’ means any legal or equitable interest in. . . personal [] property . . . accounts. . . or any other accounts associated with any payments processed by, or on behalf of, any Defendant, including such reserve funds held by payment processors, credit card processors, banks or other financial institutions.” *Id.* at II(1). As set forth above, Tri Resource Group, Ltd. is a “Defendant.” Moreover, it is clear that a bank account is personal property and/or an account. Accordingly a bank account in the name of Tri Resource Group, Ltd. is an “Asset” of a “Defendant.”

⁴ PIHC was defined as Partners in Health Care Association, Inc., not PIHC, Inc.

19. Furthermore, the Receiver was authorized and directed to “take exclusive custody, control, and possession of all Assets . . . of the Receivership Defendants⁵. . . .” *Id.* at XV(B). Thus, the Associated Bank Account, which is an Asset of Tri Resource Group, Ltd. (a Defendant and Receivership Defendant), was property of the Receivership Estate.

C. The Transfer and Withdrawals violated the Asset Freeze provisions of the TRO, and the return of such funds was required under the PIHC Injunction.

20. The TRO ordered that “Defendants . . . whether acting directly or through any entity, corporation, . . . affiliate, . . . or other device, are hereby restrained and enjoined from: Transferring . . . or otherwise disposing of any funds. . . or any other Assets, that are owned, controlled or held, in whole or in part, by any Defendant.” *Id.* at VI(A)(1). Thus, the Transfer violated the TRO.

21. Mr. Kieper and Grumer & Macaluso, P.A. neither returned the funds nor responded to the Letter.

22. The return of the funds, however, was required pursuant to the terms of the operative order of the Court as of September 15, 2014, the PIHC Preliminary Injunction. Specifically, section XVI of the PIHC Preliminary Injunction orders that “any other person, with possession, custody or control of property of . . . the Receivership Defendant. . . upon receiving a request from the Receiver, immediately transfer or deliver to the Receiver possession, custody, and control of. . . Assets of the Receivership Defendant.” PIHC Preliminary Injunction, §XVI(A).

23. Thus, not only were the Transfer and Withdrawals enjoined, but the refusal to return the funds violated the Court’s PIHC Preliminary Injunction.

⁵ Receivership Defendants was defined as Corporate Defendants. *Id.* at (II)(12). Thus, the Associated Bank Account was an Asset of a Receivership Defendant.

D. The amounts transferred must be turned over.

24. As set forth above, both the Transfer and the Withdrawals were clearly transfers of Estate property. Not only were they enjoined pursuant to the asset freeze provisions of the TRO, Mr. Kieper and Grumer & Macaluso were required to return the funds pursuant to the PIHC Preliminary Injunction. As such, the Receiver requests this Court enter an order compelling turnover of the \$25,500.00 transferred.

WHEREFORE, the Receiver requests this Court enter an Order (1) compelling the turnover by Grumer & Macaluso, P.A. of the \$20,000.00 transferred to it from the Associated Bank Account; (2) compelling Grumer & Macaluso, P.A. to turn over any other Assets of the Receivership Estate it has received; (3) compelling the turnover by Gary Kieper of the \$5,500.00 in funds withdrawn from the Associated Bank Account; (4) compelling Gary Kieper to turn over any other Assets of the Receivership Estate he has received; (5) reserving jurisdiction as to a determination of contempt and sanctions for violation of the TRO and PIHC Preliminary Injunction, including but not limited to an award of attorney fees and costs; and (6) granting such other and further relief as is just and appropriate.

Respectfully submitted,

/s/ Lawrence E. Pecan

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Attorneys for Peter D. Russin, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the foregoing is being delivered to the following parties via transmission of Notices of Electronic Filing this 22nd day of September 2014.

/s/ Lawrence E. Pecan
Lawrence E. Pecan, Esquire

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Transaction History

Transaction History

Search Criteria					
Customer Name	TRI RESOURCE GROUP LTD 520 S WESTLAND DR APPLETON WI 54914-8867				
Product Name	Business Choice Plus Checking (064)				
Bank	Northeast 001	Account Number	2183060926		
Range Amount	Low	High	DB/CR	All	
Check Number	Start #	End #	Statement Date	08/31/2014 - 00/00/0000	
Range Date	Start Date	End Date	Sort	Date	
	08/25/2014	09/11/2014	Sort Order	Ascending	

Search Results								
Post Date	Effective Date	Check Number	TC	Description	Amount	Debit/Credit	Balance	Reference Number
08/25/2014	08/25/2014		061	DDA PUR SIMPLE SIM APPLETON WI 423400755318	\$ 25.00	Debit	\$ 47,350.56	60
08/25/2014	08/25/2014		061	DDA PUR FESTIVAL F OSHKOSH WI 423400754640	\$ 62.10	Debit	\$ 47,288.46	61
08/25/2014	08/25/2014		061	DDA PUR FESTIVAL F OSHKOSH WI 423503012543	\$ 3.49	Debit	\$ 47,284.97	62
08/25/2014	08/25/2014		061	DDA PUR FESTIVAL F OSHKOSH WI 423503012542	\$ 47.51	Debit	\$ 47,237.46	63
08/25/2014	08/25/2014	3445	080	CHECK	\$ 150.00	Debit	\$ 47,087.46	64
08/26/2014	08/26/2014		010	CUSTOMER DEPOSIT	\$ 9,788.56	Credit	\$ 56,876.02	65
08/26/2014	08/26/2014		331	UHC SEC HOZ UHC 486077 TRI RESOURCE GROUP	\$ 15.20	Credit	\$ 56,891.22	66
08/27/2014	08/27/2014		631	INTUIT PAYROLL S QUICKBOOKS 270542144 TRI RESOURCE GROUP LTD	\$ 1,226.06	Debit	\$ 55,665.16	67
08/27/2014	08/27/2014	3446	080	CHECK	\$ 100.00	Debit	\$ 55,565.16	68
08/28/2014	08/28/2014		591	GRUMER & MACALUSO, P.A. OPERAT	\$ 20,000.00	Debit	\$ 35,565.16	69
08/28/2014	08/28/2014		994	Occ Wire Fee	\$ 28.00	Debit	\$ 35,537.16	70
08/28/2014	08/28/2014		631	WI DEPT REVENUE TAXPAYMNT 609657632 TRI RESOURCE GROUP LTD	\$ 1,119.43	Debit	\$ 34,417.73	71
08/29/2014	08/29/2014		331	SETTLERS LIFE-VA PAYROLL/DD 80383097 TRI RESOURCE GROUP	\$ 288.03	Credit	\$ 34,705.76	72
08/29/2014	08/29/2014		331	SOUTHERN INSURAN CREDITS 270542144 TRI RESOURCE GROUP	\$ 18.00	Credit	\$ 34,723.76	73
09/02/2014	09/02/2014		053	ATM W/D ASSOCIATED 444 N SAWYER OSHKOSH WI 00000008970	\$ 500.00	Debit	\$ 34,223.76	74
09/02/2014	09/02/2014		061	DDA PUR QWW*ORBIZ 888- 658-4546 IL 424100287911	\$ 247.51	Debit	\$ 33,976.25	75
09/02/2014	09/02/2014		061	DDA PUR SWEETWATER OSHKOSH WI 424202895103	\$ 403.00	Debit	\$ 33,573.25	76
09/02/2014	09/02/2014		061	DDA PUR DELTA 0 CHICAGO IL 424102894588	\$ 435.20	Debit	\$ 33,138.05	77
09/02/2014	09/02/2014		066	CHECKING/MMA WD	\$ 1,000.00	Debit	\$ 32,138.05	78
09/03/2014	09/03/2014		331	PYRAMID LIFE COM PYMT 637070 TRI RESOURCE GROUP	\$ 857.15	Credit	\$ 32,995.20	79
09/03/2014	09/03/2014		331	WASHINGTON NATIO COMMISSION CM686 TRI RESOURCE GROUP	\$ 32.56	Credit	\$ 33,027.76	80
09/03/2014	09/03/2014		054	ATM W/D Spats Rest 733 W College Ave Appleton WI 00000000241	\$ 102.50	Debit	\$ 32,925.26	81
09/03/2014	09/03/2014		994	NonAssocBank ATM Fee	\$ 2.50	Debit	\$ 32,922.76	82
09/03/2014	09/03/2014		061	DDA PUR OFFICE DEP APPLETON WI 424500699655 DDA PUR KWIK TRIP	\$ 36.75	Debit	\$ 32,886.01	83

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09/03/2014	09/03/2014	061	OSHKOSH WI 424400710619	\$ 77.97 Debit	\$ 32,808.04	84
09/04/2014	09/04/2014	331	AEGON USA, INC. PAYABLES IEA1248035 SENIOR ADVANTAGE OF WI	\$ 10.40 Credit	\$ 32,818.44	85
09/04/2014	09/04/2014	061	DDA PUR SARPINOS P FORT LAUDERD FL 424600746719	\$ 19.90 Debit	\$ 32,798.54	86
09/04/2014	09/04/2014	061	DDA PUR DELTA 0 MILWAUKEE WI 424600748380	\$ 25.00 Debit	\$ 32,773.54	87
09/04/2014	09/04/2014	061	DDA PUR SPATS APPLETON WI 424500784705	\$ 73.06 Debit	\$ 32,700.48	88
09/04/2014	09/04/2014	054	ATM W/D WELLS FARG FORT- LAUD TFC STR FORT LAUDERDA FL 000000001744	\$ 503.00 Debit	\$ 32,197.48	89
09/04/2014	09/04/2014	994	NonAssocBank ATM Fee	\$ 2.50 Debit	\$ 32,194.98	90
09/05/2014	09/05/2014	331	FORESTERS USA REG. EFT Tri Resource Gr Tri Resource Group	\$ 52.75 Credit	\$ 32,247.73	91
09/05/2014	09/05/2014	161	DDA PUR 7-ELEVEN 460 W BROWARD BLVD FORT LAUDERDA FL 000000935583	\$ 15.75 Debit	\$ 32,231.98	92
09/05/2014	09/05/2014	054	ATM W/D WELLS FARG FORT- LAUD TFC STR FORT LAUDERDA FL 000000001923	\$ 503.00 Debit	\$ 31,728.98	93
09/05/2014	09/05/2014	994	NonAssocBank ATM Fee	\$ 2.50 Debit	\$ 31,726.48	94
09/05/2014	09/05/2014	061	DDA PUR D USINGERS MILWAUKEE WI 424600711375	\$ 9.01 Debit	\$ 31,717.47	95
09/05/2014	09/05/2014	061	DDA PUR CASH WELLS FT LAUDERDAL FL 424700705056	\$ 4,500.00 Debit	\$ 27,217.47	96
09/08/2014	09/08/2014	061	DDA PUR RED MANGO PHILADELPHIA PA 424800747043	\$ 5.03 Debit	\$ 27,212.44	97
09/08/2014	09/08/2014	061	DDA PUR MAGUIRES H FORT LAUDERD FL 424801006958	\$ 33.04 Debit	\$ 27,179.40	98
09/08/2014	09/08/2014	061	DDA PUR PHILLY AIR PHILADELPHIA PA 424802943364	\$ 5.61 Debit	\$ 27,173.79	99
09/08/2014	09/08/2014	061	DDA PUR OTG MANAGE PHILADELPHIA PA 424902946606	\$ 10.24 Debit	\$ 27,163.55	100
09/08/2014	09/08/2014	061	DDA PUR USAIRWAY 0 FORT LAUDERD FL 424802945836	\$ 25.00 Debit	\$ 27,138.55	101
09/08/2014	09/08/2014	061	DDA PUR STREAMRAYC 4087021044 CA 425002948236	\$ 25.00 Debit	\$ 27,113.55	102
09/08/2014	09/08/2014	061	DDA PUR USAIRWAY 0 PHOENIX AZ 424802945837	\$ 31.00 Debit	\$ 27,082.55	103
09/08/2014	09/08/2014	061	DDA PUR OTG MANAGE PHILADELPHIA PA 424902946605	\$ 33.15 Debit	\$ 27,049.40	104
09/08/2014	09/08/2014	061	DDA PUR HAMPTON IN FORT LAUDERD FL 424902948922	\$ 106.47 Debit	\$ 26,942.93	105
09/09/2014	09/09/2014	362	DDA RET RBT PHILLY EASYSAVINGS NY 425200743064	\$ 0.22 Credit	\$ 26,943.15	106
09/09/2014	09/09/2014	061	DDA PUR ENTERPRISE APPLETON WI 425100744132	\$ 226.80 Debit	\$ 26,716.35	107
09/09/2014	09/09/2014	061	DDA PUR CLARION HO MILWAUKEE WI 425000657842	\$ 331.82 Debit	\$ 26,384.53	108
09/10/2014	09/10/2014	061	DDA PUR SPATS APPLETON WI 425100767119	\$ 31.74 Debit	\$ 26,352.79	109
09/10/2014	09/10/2014	061	DDA PUR FIN N FEAT WINNECONNE WI 425000767097	\$ 41.80 Debit	\$ 26,310.99	110
09/10/2014	09/10/2014	061	DDA PUR KWIK TRIP APPLETON WI 425100766602	\$ 66.63 Debit	\$ 26,244.36	111
09/11/2014	09/11/2014	MC	STANDARD LIFE & PAYROLL	\$ 220.33 Credit	\$ 26,464.69	112
09/11/2014	09/11/2014	MC	RBT KWIK T EASYSAVINGS NY	\$ 0.67 Credit	\$ 26,465.36	113