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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
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19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 FEDERAL TRADE COMMISSION,

22 Plaintiff,

23 v.

24 FORENSIC CASE MANAGEMENT  
25 SERVICES, INC., et al.,

26 Defendants.

27 CASE NO. LACV11-7484-RGK (SSx)

28 **PRELIMINARY REPORT OF  
RECEIVER**

**(FILED UNDER SEAL)**

JUDGE: Hon. R. Gary Klausner  
COURTROOM: 850

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**PRELIMINARY REPORT OF RECEIVER**

**I.**

**Introduction**

On September 13, 2011, this Court entered a Temporary Restraining Order with an Asset Freeze and Appointment of Receiver (“TRO”) which appointed me Receiver for the business activities of Receivership Defendants.

I respectfully submit this Preliminary Report to advise the Court of my initial actions and to document my preliminary observations.

Section XV of the TRO specifically directs that I report to the Court on five specific topics prior to the date set for the hearing to Show Cause re Preliminary Injunction. As to those topics, I can report as follows:

1. Steps taken to implement the TRO. I have indefinitely suspended all operations. The deceptive practices prohibited by the TRO are so ingrained in Defendants’ operations that this is the only feasible vehicle for implementation. *See* further discussion at Section IIE.
- 2-3. Receivership Defendants’ assets and liabilities. Our best estimation based on incomplete information compiled to date is that Receivership Defendants have no meaningful liquid assets other than the funds frozen as set forth in Section IIB. Certain Individual Defendants have real property assets. We estimate liabilities to be approximately \$200,000. *See* further discussion at Section IV.
4. Receiver’s future steps to protect assets of Receivership Defendants, pursue assets from third parties, and adjust liabilities. Implementation of the asset freeze is our primary immediate vehicle to protect assets. Whether or not third parties have assets which can be claimed by the Receivership or Defendants’ liabilities can be adjusted are matters which will require further investigation.

////

1 5. Other matters which the Receiver believes should be brought to the  
2 Court's attention. Such matters are set forth below in this Preliminary  
3 Report.

4 **II.**

5 **Receivership Activities**

6 **A. Defendants' Sites**

7 As directed and authorized by Section XC, page 17, of the TRO, at 10:30 a.m.  
8 on September 15, 2011, we took possession of the business premises of  
9 Receivership Defendants in two commercial buildings in Van Nuys, California. We  
10 coordinated our efforts with attorneys and investigators from Plaintiff Federal Trade  
11 Commission ("FTC") and uniformed police from the Van Nuys Police Department.

12 14509 Sylvan Street, Van Nuys

13 This site does not presently house any of the debt collection business  
14 operations of Defendants. It is an approximately 500 square foot ground-level  
15 commercial space which appears to serve primarily as an exercise/weight room for  
16 Defendant David Hynes. There is minimal office furniture, functioning office  
17 equipment, or files, although there is computer, video camera, and phone  
18 connectivity to the Friar Street offices, described below. No employees were on site  
19 nor were there any active work spaces being used by employees. The primary  
20 "furniture" is an assortment of customized work-out and strength training  
21 equipment. We did learn from the landlord that the space was more fully utilized up  
22 until January, 2011. Appendix, Exhibit 1 is an inventory of the limited furniture and  
23 equipment we did find on site.

24 14532 Friar Street, Van Nuys

25 Defendants operate their debt collection business from a labyrinth of offices  
26 located on two different floors in this office building in Van Nuys. The total  
27 occupied space is approximately 2,500 square feet.

28 ///

1 On the second floor, the space includes: an office for David Hynes, with an  
2 anteroom with desk space for up to two assistants; a sales room (with desks for 13  
3 sellers and a manager); collectors' room (with desks for 14 collectors, including  
4 three senior collectors whose desks face the other 11 desks); three data entry desks;  
5 a small office for HR and payment processing; a server room; a small observation  
6 room off the collectors' room for the work flow manager; and two offices down the  
7 hall which houses customer service (three desks) and "forwarding services" (six  
8 desks), which acted as a virtual middleman transitioning collection cases to  
9 litigation.

10 Downstairs, the space includes a file room, a document printing room, which  
11 doubles as an interview room, a small bookkeeper office, and a tiny interior office  
12 for Randy Chang, on-site attorney for Defendants.

13 While the work area, building, and immediate environs are sub-standard, in  
14 general Defendants maintained a reasonably coherent file system and a dated data  
15 processing software system.

16 All employees (totaling approximately 50) were immediately assembled in a  
17 central place and advised of the nature of the case and the role of the Receiver.  
18 After some initial reluctance, most employees completed a brief questionnaire and  
19 were excused.

20 The premises were secured and locksmiths retained by the Receiver changed  
21 the locks. Forensic computer experts retained by the FTC set about to make mirror  
22 images of the servers and designated computers on site under supervision by  
23 forensic experts hired by the Receiver.

24 Appendix, Exhibit 2 is a rough diagram of the space and an inventory of the  
25 furniture and equipment on site.

26 Mail Drops

27 We identified six "mail drops" used by Defendants. These are not actual  
28 business premises, but private mail drops to which Defendants had their mail

1 directed. We have secured all six locations, such that mail coming to them is under  
 2 the control of the Receivership: FedEx Mailbox Center, 4570 Van Nuys Boulevard,  
 3 Sherman Oaks, CA 91403; UPS Store No. 1151, 17216 Saticoy Street, Van Nuys,  
 4 CA 91406; UPS Store No. 4296, 4607 Lakeview Canyon Road, Westlake Village,  
 5 CA 91361-4028; UPS Store No. 5197, 6311 Van Nuys Boulevard, Van Nuys, CA  
 6 91401; UPS Store No. 938, 2390 Las Posas Road, Suite C, Camarillo, CA 93010;  
 7 and Ventura Business Center, 9452 Telephone Road, Ventura, CA 93004.

8 **B. Bank Accounts**

9 Beginning September 15, 2011, we served the TRO/Asset Freeze on banks  
 10 where Defendants were known to have accounts or credit card merchant accounts.

11 The following accounts have been frozen:

Financial Institution	Accounts Frozen	Account Holder	Amount Frozen
Corporate Entity Assets: Forensic Case Management Services			
Pacific Western Bank	Ending in 2459	Commercial Investigations, Inc.	\$12,141.41
Pacific Western Bank	Ending in 2442	Rumson Bolling & Associates / FCMS	\$32,866.67
Comerica	Ending in 1476	FCMS dba Commercial Investigations, Inc.	\$2,818.65
Comerica	Ending in 1484	Kester-Archwood, LLC	\$942.54
Comerica	Ending in 1468	Rumson Bolling & Associates	\$6,032.25
Bank of America	Ending in 3139	Commercial Receivables Acquisition, Inc. dba The Forwarding Co.	\$601.61
JP Morgan Chase	Ending in 7210	Commercial Receivables Acquisition, Inc. dba The Forwarding Co.	\$40,140.92



1	Financial Institution	Accounts Frozen	Account Holder	Amount Frozen
2			Forensic Case Management Services	
3	JP Morgan Chase	Ending in 9345	Forensic Case Management Services	CLOSED
4	JP Morgan Chase	Ending in 8777	Forensic Case Management Services	CLOSED
5	JP Morgan Chase	Ending in 8181	Forensic Case Management Services	\$298.46
6			Commercial Receivables Acquisition, Inc. dba The Forwarding Co.	
7	JP Morgan Chase	Ending in 5651	Forensic Case Management Services	CLOSED
8	JP Morgan Chase	Ending in 8173	Innsbruck LLC	\$17,602.93
9	JP Morgan Chase	Ending in 7492	Network Forwarder LLC	\$47,544.81
10	JP Morgan Chase	Ending in 7115	Network Forwarder LLC	\$6,780.01
11	JP Morgan Chase	Ending in 7744	Vesper Collins LLC	\$24.96
12	JP Morgan Chase	Ending in 1560	Forensic Case Management Services	\$3,939.53
13	Santa Barbara Bank & Trust/Pacific Capital Bank	Ending in 4014	Forensic Case Management Services	CLOSED
14	Santa Barbara Bank & Trust/Pacific Capital Bank	Ending in 2285	Forensic Case Management Services	CLOSED
15	Santa Barbara Bank & Trust/Pacific Capital Bank	Ending in 9769	Specialized Debt Recovery, Inc.	CLOSED
16	Charles Schwab	Ending in 7417	DMHT Holding LLC	\$232,001.92
17	Charles Schwab	Ending in 9306	Specialized Recovery 401(k)	\$0.00
18	Stamps.com	Ending in 8585	F.C.M.S., Inc.	\$5.24
19	<b>TOTAL:</b>			<b>\$403,741.91</b>
20	<b>Principal Assets:</b>			
21	<b>David M. Hynes, Jr.</b>			
22	Pacific Western Bank	Ending in 7771	David M. Hynes	\$59.02
23	Comerica	Ending in 7712	David M. Hynes Trust	\$16,075.46
24	Comerica	Ending in 6979	David M. Hynes	\$7,267.90



	<b>Financial Institution</b>	<b>Accounts Frozen</b>	<b>Account Holder</b>	<b>Amount Frozen</b>
1				
2	Comerica	Ending in 8068	David M. Hynes	\$1,001.05
3	Charles Schwab	Ending in 0863	David M. Hynes	\$70,758.20
4	Charles Schwab	Ending in 5353	David M. Hynes	\$147,772.31
5	Charles Schwab	Ending in 2808	David M. Hynes	\$164,634.49
6	PayPal	Ending in 0243	David M. Hynes	\$0.00
7	PayPal	Ending in 2297	David M. Hynes	\$0.00
8	PayPal	Ending in 6383	David M. Hynes	\$0.00
9	PayPal	Ending in 8471	David M. Hynes	\$0.00
10	PayPal	Ending in 7767	David M. Hynes	\$0.00
11	PayPal	Ending in 0671	David M. Hynes	\$0.00
12	PayPal	Ending in 8033	David M. Hynes	\$0.00
13	PayPal	Ending in 9085	David M. Hynes	\$0.00
14	PayPal	Ending in 0430	David M. Hynes	\$0.00
15	PayPal	Ending in 6459	David M. Hynes	\$0.00
16	Santa Barbara Bank & Trust / Pacific Capital Bank	Ending in 6618	David M. Hynes	\$100.00
17	First Community Bank of Central Alabama	Ending in 0898	David M. Hynes	CLOSED
18	First Community Bank of Central Alabama	Ending in 8423	David M. Hynes	\$1,622.39
19	ING Direct	Ending in 1048	David M. Hynes	\$203.31
20	Citibank	Ending in 5773	Lorena Q. Hynes ITF David M. Hynes Jr.	CLOSED
21	<b>TOTAL:</b>			<b>\$409,494.13</b>
22	<b>Principal Assets: Lorena Q. Hynes</b>			
23	JP Morgan Chase	Ending in 3741	Lorena Q Hynes	\$786.76
24	JP Morgan Chase	Ending in 1524	Lorena Q Hynes	\$0.01
25	Bank of America	Ending in 1152	Lorena Q Hynes	\$77.75
26	Bank of America	Ending in 6849	Lorena Q Hynes	\$35.08
27	Citibank	Ending in 5705	Lorena Q Hynes	CLOSED
28	PayPal	Ending in 400000	Lorena Q Hynes	\$0.00
	PayPal	Ending in 90000	Lorena Q Hynes	\$0.00
	<b>TOTAL:</b>			<b>\$899.60</b>

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Financial Institution	Accounts Frozen	Account Holder	Amount Frozen
<b>Principal Assets: Frank Lindstrom</b>			
Citibank	Ending in 3613	Frank and Ashley Lindstrom	\$309.68
Citibank	Ending in 4327	Frank and Ashley Lindstrom	\$0.19
Citibank	Ending in 3621	Frank and Ashley Lindstrom	\$2.11
Citibank	Ending in 3148	Frank E. Lindstrom Jr. ACF Brock Edwin Lindstrom	CLOSED
<b>TOTAL:</b>			<b>\$311.98</b>
<b>Principal Assets: Heather True</b>			
Washington Mutual / JP Morgan Chase	Ending in 6346	Heather True	\$269.39
Washington Mutual / JP Morgan Chase	Ending in 9577	Heather True	CLOSED
<b>TOTAL:</b>			<b>\$269.39</b>
<b>Principal Assets: Kevin Medley</b>			
Washington Mutual / JP Morgan Chase	Ending in 1820	Kevin Medley	\$6,907.14
Washington Mutual / JP Morgan Chase	Ending in 5981	Kevin Medley	\$49.83
<b>TOTAL:</b>			<b>\$6,956.97</b>
<b>Principal Assets: James Hynes</b>			
Wells Fargo	Ending in 4637	James Hynes	CLOSED
Wells Fargo	Ending in 2452	James Hynes	CLOSED
PayPal	Ending in 40000	James Hynes	\$0.56
PayPal	Ending in 600000	James Hynes	\$0.00
<b>TOTAL:</b>			<b>\$0.56</b>
<b>GRAND TOTAL:</b>			<b>\$821,674.54</b>

1 Other than the money in these accounts, Receivership Defendants do not  
2 appear to have substantial other liquid assets, but our investigation as to assets is  
3 still in its preliminary stages.

4 **C. Cooperation and Interviews**

5 With some exceptions, the employees cooperated, completed a brief  
6 questionnaire and were excused for the day. Their level of cooperation improved  
7 markedly after Mr. Hynes encouraged such cooperation.

8 On the day we entered the offices, individual Defendants David Hynes, Frank  
9 Lindstrom, Kevin Medley, and Heather True were cooperative from the outset.  
10 They met with us as requested, answered questions, and provided access to the  
11 necessary records. Mr. Hynes walked us through the operation and described each  
12 of its constituent parts. We later interviewed several employees by telephone.  
13 Defendants James Hynes and Lorena Quiroz-Hynes were not on site upon our  
14 arrival and we have, to date, had no contact with either of them, although it does  
15 appear that neither is actively involved in the business at this time.

16 **D. Documents/Information/Electronic Data**

17 Upon taking possession, we confirmed that all hard copy documents were  
18 secure. The Receiver's computer forensic team also secured all available electronic  
19 data relating to Receivership Defendants' operation and supervised the mirror  
20 imaging of servers and computer hard drives. We are reviewing this information in  
21 order to reconstruct the operational and financial picture.

22 **E. Compliance with TRO**

23 After securing the premises and completing a basic review of the business,  
24 our team took steps to insure compliance with the TRO. We suspended all  
25 operations and immediately activated a Receivership website,  
26 www.fcmsreceiver.com, which will serve as a vehicle to communicate with clients  
27 and consumer debtors.

28 ///

1 We then reviewed the current practices of Defendants as applied to the TRO  
2 which prohibits deceptive practices in two categories – as to potential clients and as  
3 to consumer debtors – as follows:

4 Unfair Practices as to Potential Clients. The TRO prohibits unfair or  
5 deceptive practices as to potential clients, specifically including misrepresentations  
6 that:

- 7 • Collected funds will actually be forwarded to the creditor client;
- 8 • Defendants have located assets of the debtor;
- 9 • Defendants will undertake legal action against the debtor;
- 10 • Defendants guarantee some amount of collection if the creditor pays;

11 Unfair Practices as to Consumer Debtors. The TRO prohibits unfair or  
12 deceptive practices as to debtors, specifically including:

- 13 • Communication with third parties other than to acquire location  
14 information about a consumer without proper consents;
- 15 • Threats of violence or obscene language;
- 16 • Repeated calling;
- 17 • False representations that non payment of a debt may result in arrest,  
18 imprisonment or other legal remedies;
- 19 • Threats to take any action that is not legal or Defendants do not intend  
20 to take;
- 21 • False representations to debtors that they will be responsible for  
22 creditor’s legal fees in any litigation;
- 23 • False representations that any payments made by the consumer will in  
24 fact be applied to the debt.

25 Based on our review of Defendants operations, as detailed below, we found  
26 that most of these prohibited practices are ingrained in Defendants’ daily operations.  
27 We could not identify feasible compliance procedures that could be implemented  
28 with current management and staff to permit the business to operate even under my

1 immediate direction as Receiver. Rather, compliance with the TRO would require a  
2 sea change in the culture and all operational aspects of the business, including the  
3 basic business model, training, staffing, and compliance. As such, I have  
4 implemented the only available TRO compliance option – an indefinite suspension  
5 of all operations. *See* Section V below for further discussion of whether this  
6 business could be operated profitably and lawfully going forward.

### 7 III.

#### 8 Summary of Operations

9 Defendants' businesses can be broken down to three basic components –  
10 sales; collections; and forwarding services. Each component deployed a variety of  
11 corporate names and dbas. But, all were driven by a common company culture  
12 which valued aggression and rewarded its personnel for results, irrespective of  
13 tactics.

14 To provide an operational overview, attached are the following documents  
15 found on site: sheet with names, logos, and contact numbers of the entities and dbas  
16 actively involved in the business (Appendix, Exhibit 3); one-page summary of all  
17 phone extensions which breaks the operations into its constituent parts (Appendix,  
18 Exhibit 4); and seating maps indicating the location and pseudonyms of personnel in  
19 the sales room, the collections room, and the forwarding services rooms (Appendix,  
20 Exhibit 5).

#### 21 Sales Room

22 The sales room is comprised of 15 small desks, each equipped with a  
23 computer and a telephone. Each location is assigned a code number for use in data  
24 entry. Two desks are designated for "reloads" and one for the manager.

25 These salespeople engage in pure cold-calling, generally identifying  
26 themselves as representing Commercial Recovery Authority, Inc. ("CRA"). The  
27 cold calls are based on "Yellow Book" listings of various trades and industries,  
28 generally broken down by states and grouped by time zone, which are pulled by



1 staffers from the internet. These Yellow Book listings are internally generated. We  
2 have seen no evidence that the business buys target lists.

3 The primary sales pitch centers on the theme “No Recovery/No Fee.” This  
4 pitch appears in large capital letters on a white board on the front wall:

5 “It’s 25%. If no collection, no commission. We get 60  
6 days to get you paid. If we don’t, you owe us nothing.  
7 Here is my supervisor.”

8 This No Recovery/No Fee pitch is repeated in different forms all around the sales  
9 room and is built in to the standard fax transmittal sent to prospective clients.

10 (Appendix, Exhibit 6.)

11 Sales personnel are provided scripts designed to overcome all predictable  
12 forms of resistance. (Appendix, Exhibits 7 – 15.)

13 These salespeople are generally paid by the hour, or in some cases weekly,  
14 plus participation in a discretionary daily bonus pool with participation based on the  
15 dollar value of debts secured that day. A white board on the front wall keeps a  
16 running tab on each salesperson’s progress each day.

17 A salesperson’s daily goal is to write new “paper” that can be delivered over  
18 to the collections room. The primary component of this new paper is the one-page  
19 Assignment Agreement between the creditor/client and CRA. A sample is attached  
20 at Appendix, Exhibit 16. While Exhibit 16 recites that claims are billed at a rate of  
21 50%, we found templates for this Assignment with collection rates ranging from  
22 18% to 50%. The Assignment document itself belies the No Recovery/No Fee sales  
23 pitch – paragraph 3 subjects a client to various fees if it seeks to withdraw its claim.  
24 Clients who ran afoul of this provision were then subjected to Defendants’  
25 collection machinery aimed at collecting these cancellation fees. (See Appendix,  
26 Exhibit 17.)

27 Two sales personnel were designated to focus on “reloads” – *i.e.*, sell to  
28 clients who had a positive collection episode with Defendants, pitching that they



1 send more cases and/or all their collection matters. Samples of solicitation letters  
2 used by the Reload Department are attached as Appendix, Exhibit 18.

3 We have not had sufficient time to audit all sales procedures, but we found  
4 substantial evidence that in their pursuit of new "paper" from creditor clients, sales  
5 personnel were creatively aggressive, leading to multiple complaints as to multiple  
6 harassment variations, including that prospects were called 15 times in 30 minutes,  
7 that the collection fee charged was higher than agreed upon and that "no thank you"  
8 was an unacceptable response to the sales pitch.

### 9 Collections' Room

10 A separate portion of the room across the hall from sales is the 14-desk  
11 collectors' room (11 collectors and three senior collectors, including Defendant  
12 Frank Lindstrom). At the end of each day, all new paper generated by sales are  
13 presented to Defendant David Hynes. He assigns each collection item to a specific  
14 collector who makes initial efforts to contact the debtor. After the initial push, the  
15 collectors return the paper files to be inputted into the data management system  
16 called "Collect," an industry-specific software package for electronically filing  
17 information on each account, including collectors' notes.

18 Collectors are paid an hourly or weekly base plus participation in a  
19 discretionary daily bonus pool. Various factors influence participation in the bonus  
20 pool, but the biggest factor is dollar value of collections. Collectors were penalized  
21 if they failed to achieve successful collection in each "Quarter" of the day (with the  
22 day broken down into four two-hour quarters) and received extra points for high  
23 percentage recoveries and for forwarding service referrals. The incentives were  
24 clear – collect and you will make more money; sign people up for litigation and you  
25 will make even more money. Attached as Appendix, Exhibit 19 is a Bonus Pool  
26 standings summary for the three days immediately preceding our arrival and an  
27 example of a weekly "conversion" report broken down by Que (collectors), reloads,  
28 and sales.

1 Different entity names were deployed based on the type of debt –Rumson &  
2 Bolling & Associates (“RBA”) for consumer debts; CRA for commercial debts; and  
3 Commercial Investigations, Inc. (“CII”) for debts deemed to require “investigation.”

4 The “Collect” system is an older data management system which includes a  
5 series of form letters which could be customized by debtor/consumer. We printed  
6 off samples of these letters with escalating levels of pressure which collectors could  
7 pull off the system and launch to debtors/consumers. They are attached as  
8 Appendix, Exhibits 20-26. The dunning messages and threats in these letters  
9 included:

- 10 • Threatening “all court costs, process server fees, sheriff fees, and  
11 attorney fees” to be added to amount of debt if matter goes to suit.  
12 (Appendix, Exhibits 20-22.)
- 13 • Threatening “liens and garnishments” pursuant to “outstanding  
14 judgments.” (Appendix, Exhibits 23 and 24.)
- 15 • Threatening “enforcement of judgment obtained” (Appendix, Exhibit  
16 25) and “immediate execution” of “post-judgment proceedings”  
17 (Appendix, Exhibit 26) unless payment was made.

18 We found substantial evidence that abusive collection tactics were the norm,  
19 not the exception, including:

- 20 • Consumers routinely complained about harassing phone calls,  
21 including a single mother with two special needs children who reported  
22 to the Better Business Bureau that she was told she should “sell” her  
23 “retarded children.” (Appendix, Exhibit 27.)
- 24 • One consumer complained that Defendants’ collectors pursued them  
25 just because their name was similar to the name of a debtor.  
26 (Appendix, Exhibit 28.)

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- Defendant Lindstrom, who used the email pseudonyms Bill Harvester, Steve Cauldron, and Bruce Trample, was particularly devious and creative in his harassment techniques, including:
  - Sending dozens and hundreds of emails simultaneously to the same debtor. (*See* Appendix, Exhibit 29, pages 1 and 2.)
  - Sending emails which said in the subject “U R Being Sued” and continued, “Need a payment or we will garnish wages, sell cars – whatever – See you in court.” (*Id.* at page 2.)
  - Calling debtors at 6:00 a.m. (*Id.* at page 3.)
  - Sending dozens of text messages in the hope that it would cause the debtor to pay more to his cell company than the debt was worth. (*Id.* at page 4.)
  - Instructing the debtor to disconnect the cell phone he had had for years. (*Id.* at page 5.)
  - Email – Pay your bill or we will take your car through enforcement. (*Id.* at page 6.)
  - Text message – There is a lawsuit about to be filed against you. (*Id.* at page 7.)
  - Email – 25% wage garnishment – you need to call. (*Id.* at page 8.)
  - Email – I am marking your credit today if I do not hear from you. (*Id.* at page 9.)
  - Asking for the debtor’s commanding officer information. (*Id.* at page 10.)
  - Telling a debtor to call “or your belongings will be taken from you.” (*Id.* at pages 11-13.)

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- Threatening that the debtor will not be able to refinance and asking whether he likes being cited for contempt. (*Id.* at page 14.)
- Sending hundreds of the same email to a consumer and continuing even after asked to stop in writing. (*Id.* at page 15-17.)
- Text message – Let the deceased rest – Jackie Warren Funeral – please call. (*Id.* at page 20.)
- Text message – Payment – Can we run \$100 on Nales funeral? Keep out of court. (*Id.* at page 21.)
- Email – “Jesus paid his bills. Why don’t you? We have had this account for 4 months now. Not even \$1. That is not what Jesus wants. That is why the Muslims are winning.” (*Id.* at page 22.)
- Email – We need to do at least \$100 to keep out of court. Do you have the \$100 today? (*Id.* at page 23.)
- These examples are but a small sampling that capture the unfortunate reality of a culture of harassment among the collectors.

We reviewed audio tapes of collector calls which further evidence rampant harassment of debtors. We have prepared transcripts of selected calls which are included in the Appendix and will lodge the actual recordings.

- Collector called seven times in a morning looking for a debtor and when being informed each time that he was not present by an employee, he made threats of filing suit and called the debtor’s employees names such as “dumb a\*\*” and threatening to “go over to the [debtor’s] store and go ahead and rape you guys in jail for about 3 times the time amount.” In the seventh call, the collector began screaming at the employee: “You know what, lady, PAY YOUR DAMN BILL! That’s what I’m saying. You need to pay your damn

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bill, take your damn check book out and pay it....Guess what, guess what you're going to be hearing [knocking sound] – that's the Sheriff's coming to your damn store to go ahead and serve you guys with a summons and complaint." The female employee felt threatened. (Appendix, Exhibit 30.)

- After an older gentleman hung up on a collector, the collector immediately called back and threatened to screw him over, stating: "Alright make you put your, sign your name right there, sign your name at the bottom, little girl that can't pay his bills. Little girl that can't pay his bills. Hey, why let me, look at your credit report. 709. Damn you got a nice credit report. You know what I'm going to do? Is I'm going to mark it 40 points down for the next 7 years. So if you want that little 7...Hey log onto freecreditreport.com and you can watch it drop. Cause that's the one, I'm going to be the one dropping it." In the same, and in a subsequent third call that day, the collector threatened to "body slam" the debtor and meet him in court, while calling him a variety of names. (Appendix, Exhibit 31.)

- After an older gentleman informed a collector that he filed for bankruptcy, the collector asserted: "So you still owe [the creditor] money. Don't use the bk to offset paying creditors. I am sure you are a standup guy and you have a good head on your shoulders. Don't kick the bucket screwing people over. Ok. Pay your debts before you die. Pay your debts before you pass, man." The gentleman asked in response: "Are you threatening me?" When the collector pressed and the gentlemen continually asked him not to threaten him, the collector stated: "Shut your mouth old man." (Appendix, Exhibit 32.)

- A collector from Rumson, Bolling and Associates called a debtor 38 times in the span of a month, sometimes 9 times in a day, to collect a

1 debt. At one point, the collector stated: "Yeah, know we're serving you  
2 now by the Sheriff's Department and thank you for incriminating  
3 yourself sir. We did try to work out a deal with you, but obviously you  
4 were playing games. So at this point, we're going to contact the  
5 Sheriff's Department and you can deal with it in court. You are going  
6 to be sued for treble damages for the willful attempt to defraud since  
7 you admitted to ripping off my client. Did you still need any help, do  
8 you have any questions?" (Appendix, Exhibit 33.)

9 • After a mother informed a collector that her son who worked for the  
10 debtor had passed away a few months earlier, the collector asked "did  
11 you bury him with good jewelry? ... I'm not being a smart ass I'm just  
12 asking you if you buried him with some gold or silver that's all I'm  
13 asking." After the mother informed the collector that the debtor was in  
14 the phone book, he yelled: "Well why would you even tell me about  
15 your son if I'm asking for [the debtor]. Listen give me a good number  
16 for [the debtor]." (Appendix, Exhibit 34.)

17 Forwarding Services

18 The high margin product in Defendants' businesses is a hybrid between sales  
19 and collection – "forwarding services", an internal euphemism for what could more  
20 accurately be described as the Litigation Upsell. By this upsell, the creditor/client  
21 (originally sold on the No Recovery/No Fee theme) is sold a litigation option for a  
22 "forwarding fee" to send a file to an attorney. This service is provided by  
23 Defendants' dbas Network Forwarder LLC or the Forwarding Company, both  
24 owned by Defendant David Hynes, but presented to clients as separate companies.

25 We found substantial evidence that this litigation upsell was a critical  
26 component of Defendants' businesses and that collectors and sale personnel were  
27 encouraged and incentivized to push clients to this litigation option:

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- A sales piece touted the “Network Forwarder Advantage.” (Appendix, Exhibit 35.)
- A one-page summary promoted Network Forwarder’s “Judgment Enforcement Process.” (Appendix, Exhibit 36.)
- Collectors were provided scripts for the “Forwarding Fee Contract Presentation,” which sought to entice clients to litigation with the representation that “we have determined that the debtor in all probability has sufficient funds available right now. . . .” (Appendix, Exhibit 37.)
- Another script for “Forwarding Fee Contract Re-Approach” offered a RBA client the “premium forwarding fee contract service” which could add “gunpowder” to the collector’s efforts. (Appendix, Exhibit 38.)
- Multiple form letters were available to promote the “Premium Network Forwarding Authorization Agreement (NFAA) Service.” (Appendix, Exhibits 39-42.) The sales pitch in these letters included:
  - The debtor will not pay this letter voluntarily. (Appendix, Exhibit 39.)
  - “Your chance for successful recovery will be maximized by proceeding with collection litigation.” (Appendix, Exhibit 40.)
  - A one-time fee covering the cost of case at hand and additional number of cases over a certain number of years. (Appendix, Exhibit 40.)
  - Applying use of bank account locators to locate debtor assets (Appendix, Exhibit 41) and enforcing judgment through “bank attachments, levy, garnishments” (Appendix, Exhibit 40-42), “safety deposit box seizures and vehicle seizures” (Appendix, Exhibit 42).

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- 1 • Once a client signed up for the service, Defendants took great pains to  
2 portray the Network Forwarders as an entity separate from the  
3 collection agency. (Appendix, Exhibit 43.)
- 4 • Clients were offered the opportunity to sign up for multiple  
5 forwardings in a given year. (Appendix, Exhibit 44.)

6 The standard Network Forwarding Authorization Agreement called for the  
7 client to pay the “forwarding expense” fee to one of Defendants’ entities which was  
8 then obliged to forward the case, or multiple cases, to an attorney for collection and  
9 litigation through The Forwarding Company or Network Forwarding LLC. This  
10 forwarding fee was subject to a “no refund policy.” The authorization agreement  
11 provided that the litigation would be billed at “50% of funds collected.” Appendix,  
12 Exhibit 45 contains three samples of such forwarding agreements.

13 The forwarding company would then transmit the case on to a lawyer in its  
14 network. A sample transmittal form is found at Appendix, Exhibit 46, which shows  
15 that the attorney receives \$250-500 in upfront costs depending on the size of the  
16 claim and 18% contingent fee pre-suit and 25% contingent fee post-suit.

17 The economics of this forwarding component were all positive for  
18 Defendants’ bottom line: Defendants received cash from their client/creditor, but  
19 that fee had no relationship to the per file, up-front, one-time fee some attorneys  
20 charged (which was usually no more than several hundred dollars). Instead, the  
21 forwarding fee was an arbitrary figure which the collector could get the client to pay  
22 – sometimes thousands and thousands of dollars; it was truly whatever the market  
23 would bear.

24 Defendants would have minimal related out-of-pocket costs as the network  
25 attorney would take the case on a contingency (25% if litigation; 18% if pre-  
26 litigation) plus a several hundred dollar per file fee. Since Defendants’ forwarding  
27 services arrangement with the client included a provision which allowed Defendants  
28 to take 50% of any amount recovered (which was split between the collection

1 attorney and Defendants), they could thus pocket another 25% or 32% after paying  
2 the reviewing attorneys' contingent fee.

3 Audio tapes of collector calls highlight the aggressive tactics deployed to sell  
4 creditor clients on the benefits of the litigation forwarding service:

- 5 • An "enforcement officer" called a client who had received a judgment  
6 and informed him: "That bad news is first of all, as you know, without  
7 my help, without my help you got a judgment in '07 and that don't  
8 mean squat." When the client balked at handing over \$2,500, the  
9 employee hung up on him. The following day another "enforcement  
10 officer" called and informed him that the "court's mandated you to, you  
11 have to get what's called a Writ of Execution underneath your money  
12 judgment, in order to be able to enforce your money judgment." When  
13 the client said that he would file that with the Court, the "enforcement  
14 officer" blew up and said: "No, I don't want you to file it! Why would  
15 you file – you haven't – sir this has been owing since 2007. Why  
16 would you do that when you can pay my firm to take care of this old  
17 business so you can focus on new business?" After the client informed  
18 the enforcement officer that he was not going to make another  
19 payment, the employee called back seven times. (Appendix, Exhibit  
20 47.)
- 21 • An employee of Rumson called a female client and informed her that  
22 "if you wanted to enforce against your judgment you do have here,  
23 something like that does run for \$15,000 even to have done." After the  
24 client stated that she doesn't have \$15,000, the employee offered to  
25 cover half of the \$15,000 (or \$7,500). After she restated that she didn't  
26 have the money, the employee offered \$2,000. The client stated that  
27 she didn't feel comfortable, but the caller offered to see what he could  
28 do for her before they hung up. (Appendix, Exhibit 48.)

- 1           •     When the “Director of Research and Intelligence at Commercial  
2           Recovery Authority Incorporated” requested \$4200 from a client to  
3           enforce a judgment, the client responded: “Ok, like I told you guys  
4           before. I am not sending you any more money. When I originally  
5           talked to your company, your company said we will not bill you or  
6           charge you anything until we recover assets and money.” The Director  
7           responded: “You understand I just said that was in collections. Just in  
8           standard collections. No recovery, no fee. That’s what they introduced  
9           to your company. But that free aspect of our company is not going to  
10          suffice cuz he is not going to pay you willingly.” (Appendix, Exhibit  
11          49.)

12           These forwarding fees were the ultimate high margin up-sell opportunity.  
13          The original No Recovery/No Fee client had been converted into a cash up-front,  
14          plus contingency fee client and Defendants had minimal related expenses.

### 15           The Culture

16           We did find “manuals” in both the sales and collectors’ rooms – a “New  
17          Employee Training Manual” binder at each sales desk and a “Collection Scenario  
18          Protocol” binder at each collector’s desk. These binders did contain responsible  
19          descriptions of the process and even excerpts from the FDCPA. We also found an  
20          FDCPA Cheat Sheet on the wall of the collectors’ room.

21           As to training, we learned from several employees that training was virtually  
22          non-existent. We spoke to two new employees who were on the phones within  
23          minutes after being hired. No background checks were run on new employees, who  
24          often had access to sensitive consumer financial information (social security  
25          numbers and credit reports) within days of being hired.

26           Despite the compliance materials found on site, however, the reality within  
27          this business was that minimum wage personnel were thrown into a sell-or-die  
28          environment, incentivized to sell and convert at all costs, and left to their own

1 creative devices to cajole clients to sign up and debtors to pay up. We learned from  
2 several employees that it was not infrequent for new hires to quit during the first  
3 day, sometimes after the first break or before lunch, because the atmosphere was so  
4 aggressive and unprofessional.

5 **IV.**

6 **Financial Information**

7 We have not performed any sort of audit and many of the financial records  
8 are incomplete, but we can generally describe the financials and the flow of funds.

9 We met with the bookkeeper, Candace Williams, and reviewed the financial  
10 records of the company that were maintained using QuickBooks accounting  
11 software. We also talked with Defendants' part-time accountant and outside  
12 accounting and tax firm to get an understanding of their accounting procedures. The  
13 accounting records are maintained on a cash basis and were in average condition.  
14 Appendix, Exhibit 50 sets forth profit and loss statements for the various entities for  
15 2010-2011. The following summarizes the activities by company.

16 Forensic Case Management Services, Inc. ("FCMS")

17 This legal entity includes the operations under the dbas of Commercial  
18 Investigation Inc. and Rumson, Bolling & Associates. This company has been in  
19 operation since 2007. FCMS records all debt collections made on behalf of their  
20 clients and up-front fees charged to their clients as revenue. The revenue is made up  
21 of contingent fees charge on debt collections (which range from 18% to 50% of the  
22 amount collected) and up-front fees charge for forwarding certain cases on to  
23 lawyers for litigation. Based on our review of the accounting records, the amount of  
24 revenue from each source is undeterminable at this time since the different revenue  
25 types are not differentiated in the accounting system, but based on our review of a  
26 sampling of the daily deposits and supporting backup, we would estimate that  
27 between 40% to 70% of their total revenue is generated through forwarding fees.  
28 Total revenue was \$2.2 and \$6.4 million for 2011 and 2010, respectively.



1 Defendants then record all remittances to their clients as current period  
2 expenses along with any fees paid to attorneys where debts have been  
3 referred/forwarded for litigation. Additionally all payroll expenses and other  
4 overhead expenses such as rent, utilities, professional fees, etc. are paid from this  
5 company and CRA. Since CRA is the other main operating company, certain  
6 overhead expenses are allocated between FCMS and CRA, sometimes based on  
7 which company had cash available. Total expenses were \$2.1 million in 2011 and  
8 \$5.6 million in 2010, resulting in a profit of \$175,823 and \$768,384 in 2011 and  
9 2010, respectively.

10 Commercial Receivable Acquisition Inc.

11 This entity functions very similar to FCMS, but seems to concentrate more on  
12 the collection of debts from commercial companies, although the split does not seem  
13 to be firm. This company has been operating since 2009. Their revenues and  
14 expenses are very similar to FCMS. Like FCMS, CRA records all debt collections  
15 made on behalf of their clients and up-front fees charged to their clients as revenue.  
16 The revenue is made up of contingent fees charge on debt collections (which range  
17 from 18% to 50% of the amount collected) and forwarding fees. Based on our  
18 review of the accounting records, the amount of revenue from each source is  
19 undeterminable at this time since the different revenue types are not differentiated in  
20 the accounting system, but based on our review of a sampling of the daily deposits  
21 and supporting backup, we would estimate that between 40% to 70% of their total  
22 revenue is from forwarding fees. Total revenue was \$2.3 and \$0.6 million for 2011  
23 and 2010, respectively.

24 Expenses are also recorded very similarly to FCMS. Since FCMS is the other  
25 main operating company, certain overhead expenses are allocated between FCMS  
26 and CRA, sometimes based on which company has cash available. Total expenses  
27 for CRA were \$1.5 million in 2011 and \$0.6 million in 2010, resulting in a profit of  
28 \$736,765 and \$1,200 in 2011 and 2010, respectively.



1           Specialized Recovery, Inc.

2           Specialized Recovery only had operations in 2010 and prior. We noted no  
3 2011 activity for this entity. 2010 activity was minimal. Their revenues totaled  
4 \$43,539 in 2010, with expenses of \$8,676, resulting in a profit of \$34,863.

5           Network Forwarding LLC

6           Network Forwarding LLC began operations in 2011. It appears that its main  
7 activity was to collect fees for forwarding cases on to attorneys to file collection  
8 lawsuits. Their total revenue for 2011 was \$38,141. 2011 expenses for Network  
9 Forwarding amounted to \$142,883, the majority of which were Professional Fees  
10 paid to attorneys. 2011 operations resulted in a net loss of \$104,742.

11           Assets and Liabilities

12           The only significant assets of the companies, other than the bank accounts that  
13 have been frozen, are detailed below:

14           1.     Fixed assets: The companies carry on their books \$121,998 of  
15 computers & software and \$62,690 of furniture. These items were all  
16 purchased several years ago and have been fully depreciated. Based on our  
17 review of the current condition of these assets, we estimate that their fair  
18 market value is very minimal.

19           2.     Advances to officer: The companies also carry as assets advances paid  
20 to David Hynes totaling \$587,000. There is really no value to these advances  
21 since they probably should have been characterized correctly as "shareholder  
22 distributions" and deducted from each of the company's equity.

23           Since the companies' books are kept on a cash basis, we reviewed their  
24 activity to determine if there were any potential un-recorded liabilities. We  
25 determined that the only material liability that existed related to net collections owed  
26 to clients for their share of collected debts. When they collect debts for their clients,  
27 Defendants generally remit the amount collected less the collection fee at the end of  
28 the following month. Based on our review of remittance activity over the last few

1 months, we estimate that there could be net collections due clients in the range of  
2 \$160,000 to \$200,000. But, this is an estimate which could be verified through  
3 additional investigation through the "Collect" software used to track all collection  
4 cases.

5 Funds Paid to Shareholder David Hynes

6 We also reviewed the accounting records to determine the amount of money  
7 paid to Defendant David Hynes as owner. Appendix, Exhibit 58, includes a  
8 summary of those payments broken down by company for 2010-2011. In summary,  
9 the combined companies distributed a total of \$1.6 million to Mr. Hynes in 2010-  
10 2011.

11 V.

12 **Can the Businesses Be Operated Lawfully and Profitably?**

13 Section XN, at page 20, of the TRO authorizes and directs the Receiver to  
14 "Continue and conduct the business of Receivership Defendants in such manner, to  
15 such extent, and for such duration as the Receiver may in good faith deem to be  
16 necessary or appropriate to operate the business profitably and lawfully, if at all;  
17 provided, however, that the continuation and conduct of the business shall be  
18 conditioned upon the Receiver's good faith determination that the business can be  
19 awfully operated at a profit using the assets of the receivership estate[.]"

20 Based on my investigation to date, my conclusion is that deceptive practices –  
21 as to clients and debtors alike – are so ingrained in this business that it cannot be  
22 operated lawfully, at least in the context of this Receivership.

23 At the threshold, a debt collection business can be a lawful enterprise, even  
24 one that employs some level of aggressive sales and collection tactics. But, the  
25 business model adopted by these Defendants is not one with abuses on the margins  
26 that could be reined in with better training and supervision. This business is not  
27 unlawful because of a few rogue telemarketers. It is unlawful because its raison  
28 d'etre is deception and abuse. Its economic model depends on the high margin

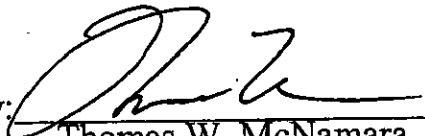
1 revenues derived from the most overt forms of that deception and abuse.

2 These Defendants could not cure their false and deceptive practices without  
3 sea changes in the basic business model, personnel, training, and compliance  
4 protocols. Basic changes in the business model would drastically reduce the highest  
5 margin sales – up-front cash for litigation delegated to a contingency-fee lawyer.  
6 Better personnel and training and a rigid compliance system would increase  
7 operational expenses and, for sure, decrease overall results.

8 In the end, these Defendants chose a business model that depended on  
9 deception and abuse. In the context of this Receivership, that model is not  
10 salvageable as a lawful business going forward.

11  
12 Dated: September 23, 2011

THOMAS W. MCNAMARA

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14 By:   
15 Thomas W. McNamara  
16 Court-Appointed Receiver  
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**PROOF OF SERVICE**

*FTC v. Forensic Case Management Services, Inc., et al.*  
*USDC Central District of California, Case No. LACV11-7484-RGK (SSx)*

I, Jill Jacobs, declare as follows:

I am an employee of a member of the bar of this Court at whose direction was made in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 655 West Broadway, Suite 1600, San Diego, California 92101-8494.

On September 23, 2011, I served the following document(s) described as:

- **PRELIMINARY REPORT OF RECEIVER**

on interested parties in this action by placing  the original  true copy(ies) thereof enclosed in sealed envelopes as follows:

<p><b><u>VIA FEDEX</u></b>                  Christopher T. Koegel                  Federal Trade Commission                  601 New Jersey Avenue, N.W.                  Mail Drop NJ-3158                  Washington, DC 20580                  Tel.: 202-326 2761                  Fax: 202-326-3768                  Email: <a href="mailto:ckoegel@ftc.gov">ckoegel@ftc.gov</a></p>	<p><i>Attorneys for Plaintiff Federal Trade Commission</i></p>
<p><b><u>VIA FEDEX</u></b>                  Raymond E. McKown                  Federal Trade Commission                  10877 Wilshire Boulevard, Ste. 700                  Los Angeles, CA 90024                  Tel.: 310-824-4325                  Fax: 310-824-4380                  Email: <a href="mailto:rmckown@ftc.gov">rmckown@ftc.gov</a></p>	<p><i>Attorneys for Plaintiff Federal Trade Commission</i></p>
<p><b><u>VIA FEDEX</u></b>                  Christopher L. Pitet                  GROBATY &amp; PITET LLP                  100 Bayview Circle, Suite 210                  Newport Beach, California 92660                  Tel.: 949-502-7760                  Fax: 949-502-7762                  Email: <a href="mailto:cpitet@grobatypitet.com">cpitet@grobatypitet.com</a></p>	<p><i>Attorneys for Defendants</i></p>

1  **EMAIL / ECF** by electronically filing the foregoing with the Clerk of the  
2 District Court using its ECF System, which electronically notifies them via email as  
indicated above.

3  **BY EMAIL:** I caused the documents to be sent to the persons at the e-mail  
4 address(es) listed above. I did not receive, within a reasonable time after the  
transmission, any electronic message or other indication that the transmission was  
5 unsuccessful.

6  **MAIL** to non-ECF participants by causing a true copy thereof to be placed in a  
7 sealed envelope with postage thereon fully prepaid to be placed in the United States  
8 mail at San Diego, California addressed as indicated above. I am "readily familiar"  
with this firm's practice of collection and processing correspondence for mailing. It  
is deposited with the U.S. Postal Service on that same day in the ordinary course of  
business.

9  **FACSIMILE** by causing such document to be transmitted by facsimile machine  
10 to the office(s) of the parties indicated herein. The facsimile machine used complied  
with Rule 2003 and no error was reported by the machine.

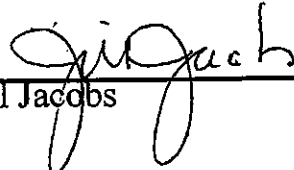
11  **OVERNITE EXPRESS / FEDERAL EXPRESS** by causing a true copy thereof  
12 to be placed in a sealed envelope addressed to the office(s) of the parties indicated  
herein below fully prepaid to be placed in Overnight Express / Federal Express  
13 delivery service box at 401 West "A" Street, San Diego, California. I am "readily  
familiar" with this firm's practice of collection and processing correspondence for  
14 Overnight Express / Federal Express service. It is deposited with Overnight Express /  
Federal Express on that same day in the ordinary course of business.

15  **PERSONAL SERVICE** by causing a true and correct copy of the  
16 aforementioned document(s) to be delivered to the parties on the attached service list  
this date by Nationwide Legal, Inc.

17  (STATE): I declare under penalty of perjury under the laws of the State of  
California that the above is true and correct.

18  (FEDERAL): I declare that I am employed in the office of a member of the bar  
of this court at whose direction the service was made.

19 Executed September 23, 2011, in San Diego, California.

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23 \_\_\_\_\_  
24 Jill Jacobs

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