UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CONSUMER FINANCIAL PROTECTION BUREAU, Plaintiff, v. RICHARD F. MOSELEY, SR.; RICHARD F. MOSELEY, JR.; CHRISTOPHER J. RANDAZZO; SSM GROUP, LLC; CMG GROUP, LLC; DJR GROUP, LLC; BCD GROUP, LLC; HYDRA FINANCIAL LIMITED FUND I; HYDRA FINANCIAL LIMITED FUND II; HYDRA FINANCIAL LIMITED FUND III; HYDRA FINANCIAL LIMITED FUND IV; PCMO SERVICES, LLC; PCKS SERVICES, LLC; PIGGYCASH ONLINE HOLDINGS, LLC; CLS SERVICES, INC.; FSR SERVICES, INC.; SJ PARTNERS, LLC; RIVER ELK SERVICES, LLC; OSL MARKETING, INC., a/k/a OSL GROUP, INC.; ROCKY OAK SERVICES, LLC; RM PARTNERS, LLC; PDC VENTURES, LLC; and CORVUS COMPANY, LLC, Defendants.	CASE NO. 14-00789-CV-W-DW **PRELIMINARY REPORT OF TEMPORARY RECEIVER** **JUDGE: Hon. Dean Whipple** **CTRM: 8-B**

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PRELIMINARY REPORT OF TEMPORARY RECEIVER

I.

Introduction

On September 9, 2014, this Court entered a Temporary Restraining Order ("TRO") which appointed me, Thomas W. McNamara, Temporary Receiver ("Receiver"), for the business activities of the Receivership Defendants.

Receivership Defendants are defined in the TRO (pages 5-6) as the entities named as Corporate Defendants[1] and any successors, assigns, affiliates, or subsidiaries which the Temporary Receiver has reason to believe are owned or controlled by any Defendant and conduct any business related to the Corporate Defendants' consumer loan operations.

I submit this Preliminary Report to advise the Court of my initial actions and to document my preliminary observations. Section XX of the TRO directs that I report to the Court on six topics on or before the Show Cause hearing regarding the Preliminary Injunction. As to those topics, I can report as follows:

(1) **Steps taken by the Temporary Receiver to implement the TRO.** Beginning September 10, 2014, operations which were ongoing at Receivership Defendants' business premises were suspended. Those operations were minimal, with a couple of employees and one consultant experimenting with variants of an on-line consumer loan business using the dba piggycash.net. We learned that Receivership Defendants had conducted a booming payday loan business from this location, but that business had been terminated in late 2013. At the time we entered the business, the Receiver's team and CFPB counsel also served the TRO on all banks where Receivership Defendants were known to have accounts.

[1] SSM Group, LLC ("SSM"); CMG Group, LLC ("CMG"); DJR Group, LLC ("DJR"); BCD Group, LLC ("BCD"); Hydra Financial Limited Funds I, II, III, and IV ("Hydra I," "Hydra II," "Hydra III," "Hydra IV"); PCMO Services, LLC ("PCMO"); PCKS Services, LLC ("PCKS"); Piggycash Online Holdings, LLC ("Piggycash Holdings"); CLS Services, Inc. ("CLS"); FSR Services, Inc. ("FSR"); SJ Partners, LLC ("SJ Partners"); River Elk Services, LLC ("River Elk"); OSL Marketing, Inc., a/k/a OSL Group, Inc. ("OSL"); Rocky Oak Services, LLC ("Rocky Oak"); RM Partners, LLC ("RM Partners"); PDC Ventures, LLC ("PDC"); and Corvus Company LLC ("Corvus").

(2)-(3) **The value of Receivership Defendants' assets and the sum of their liabilities.** Based on financial records located to date, we have been able to construct a rough picture of the Receivership Defendants' financials. *See* the Preliminary Financial Report at Exhibit A, prepared by the receivership's forensic accountant. In the aggregate, $10.8 million has been frozen in the bank accounts of the Receivership Defendant entities. As to liabilities, we do not yet have a complete picture, but no significant liabilities have been identified thus far.

(4) **Future steps to prevent any diminution in assets, pursue assets from third parties, and adjust liabilities.** Implementation of the asset freeze and immediate collection of two high-end automobiles owned by Receivership Defendants have been the immediate steps for the protection of assets. Given the absence of any active operations, the primary function of this receivership going forward will be to identify and pursue claims against non-party entities and individuals, including for the return of funds they received from Receivership Defendants' payday loan business.

(5) **Assessment of whether the business can be operated in compliance with the TRO.** The large-scale payday loan operations detailed in the CFPB's Complaint appear to have ended in 2013 as a result of Receivership Defendants losing access to ACH payment processing. A more limited loan business was in operation under the dba piggycash.net name when we entered the business location. That business is not profitable, rendering moot the issue of whether it could be operated lawfully.

(6) **Other matters the Temporary Receiver believes should be brought to the Court's attention.** These matters are set forth below in this Preliminary Report.

II.

Receivership Activities

A. Receivership Defendants' Sites

We secured the business premises identified in the TRO – 2 E. Gregory Boulevard, Kansas City, Missouri – commencing at 10:00 a.m. on Wednesday, September 10, 2104. We coordinated our initial efforts with Kansas City Police officers who provided security support.

Counsel and investigators for the CFPB were provided immediate access pursuant to the TRO. The locks on the entry doors were changed. We also visited other potential sites identified in documents on-site[2] and confirmed they were not active.

The operation we encountered was a business operating under the dba piggycash.net. The only employee present was the longtime Operations Manager for Receivership Defendants. Also present was consultant Tim Algie, a former senior executive of eData, who was acting as a consultant (described below at pages 9-10, 12-13). A part-time employee was not present. Individual Defendant Richard F. Moseley, Sr. ("Moseley, Sr.") has an office at this site, but he was not present and we were told he had been at his Colorado vacation home all summer. The only identifiable signage is a small "Piggycash.net Loans – Money in a Hurry" sign on the wall of the interior landing at the front door.

The overall premises were expansive (8,000 square feet on two floors) with in-place infrastructure (cubicles, computers, installed software programs, and phone system). That infrastructure had supported the payday loan business of Receivership Defendants and more than 50 telephone sales representatives. It appears that operation was essentially mothballed in late 2013 when the Receivership Defendants lost their ACH processor and were forced to lay off employees. Under a month-to-month arrangement with the landlord, Moseley, Sr. has retained access to his office, the accounting office, and cubicles for piggycash.net's employees and consultant. The current rent is $1,300 a month with the understanding that if the landlord finds a new tenant, the premises would be promptly vacated.

An inventory of furniture and equipment on site and a rough schematic of the premises are at Exhibit B.

B. Financial Accounts of Receivership Defendants

The following bank and merchant accounts of Receivership Defendants with positive balances have been frozen:

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[2] 438 W. 56th Street, Kansas City, Missouri; 3901 W. 56th Street, Fairway, Kansas.

Account Name	Financial Institution	Account Ending	Balance Frozen
CLS Services, Inc.	US Bank	1030	$1,513,472.94
Corvus Company, LLC	Missouri Bank	0025	$1,743.26
FSR Services, Inc.	US Bank	0603	$1,732,746.72
PCKS Services, LLC	Payment Data Systems	6060	$23,000.00
PCKS Services, LLC	US Bank	5522	$8,978.15
PCMO Services, LLC	Payment Data Systems	6062	$23,000.00
PCMO Services, LLC	US Bank	5530	$23,816.82
PDC Ventures, LLC	Missouri Bank	1662	$17,543.43
Piggycash Online Holdings, LLC	US Bank	5548	$1,064.00
River Elk Services, LLC	Missouri Bank	2928	$3,335.75
RM Partners, LLC	Lead Bank	2780	$50,446.80
RM Partners, LLC	Missouri Bank	6120	$799.83
RM Partners, LLC	US Bank	5159	$331,652.64
Rocky Oak Services, LLC	US Bank	5555	$7,370.46
SJ Partners, LLC	Missouri Bank	3029	$66,067.43
SJ Partners, LLC	US Bank	1473	$6,982,612.76
SJ Partners, LLC	US Bank	5324	$24,794.78
	TOTAL		**$10,812,445.77**

In addition, multiple accounts of Individual Defendants, Moseley, Sr. and Moseley, Jr., were frozen at the direction of the CFPB.

C. Cooperation and Interviews

The Operations Manager, Carmen Hernandez, and one consultant, Tom Algie, were on site upon our arrival and were generally cooperative. They responded to our questions for several hours and returned the next day, in person or by phone, for follow-up inquiries.

Moseley, Sr. was not present. The Receiver spoke with him briefly by phone on the morning of September 10, 2014 and my counsel interviewed him briefly by telephone with his counsel present on October 1, 2014 concerning a discrete issue about the Cash Reports.

Individual Defendant Richard F. Moseley, Jr. ("Moseley, Jr.") came to the office at approximately noon on September 10, 2014 after being served by the CFPB and also returned the next day. He was cooperative, reported that he had little knowledge or involvement in the business, and assisted us in taking possession of the two high-end automobiles owned by Receivership Defendants.

Individual Defendant Christopher J. Randazzo ("Randazzo"), the former Controller who left the employment of Receivership Defendants in April, 2014, followed by sporadic consulting, came to the office at our request on September 10 and 11, 2014 and was generally cooperative. Randazzo responded to our inquiries, although many of his answers were not credible as he appeared to minimize his role in, and knowledge of, business operations.

At Section III(D) below, we provide summaries of what we have learned so far about the roles of the Individual Defendants and other key players and the business activities of the Receivership Defendants. I should note that we are still in the preliminary stages of this receivership and it is not the province of the Receiver to make any ultimate fact decisions on the relative knowledge or complicity of the various Defendants – rather, these summaries are provided as a means to report to the Court what we learned upon entering the business.

D. Documents/Information/Electronic Data

Upon taking possession, my team confirmed that any hard copy documents located at the East Gregory site were secure and that all access to computers and electronic data was terminated. We have seen no evidence that any documents are stored off-site and did see evidence that 141 boxes of documents had been shredded in June, 2014. I retained a forensic computer firm – Midwest Cyber Associates– which supervised the CFPB-retained forensic firm in making mirror images of the server and computers on site. We also provided notice of the TRO to all identified hosts of websites and electronic data.

E. Forensic Accountants

I retained Thad Meyer, a CPA and principal of Alliance Turnaround Management, Inc., to review the financial activity of Receivership Defendants. The results of his preliminary analysis are presented in Exhibit A.

F. Compliance with TRO

We secured the operating phones and computers, changed the locks, and instructed the employee and the consultant on-site to cease their activities on behalf of piggycash.net.

III.

Summary of Business Operations

Although the piggycash.net operation we found onsite was small, Receivership Defendants had clearly operated a substantial payday loan business from the same location under various monikers, 2008-2013, and prior to that from a different office in the same neighborhood, 2003-2008.

This payday loan business appeared to have been built on a simple concept – pursue the potentially huge returns available to payday loan lenders with a business model inextricably linked to the lead generation magic, technology firepower, and expertise of eData Solutions, LLC ("eData"), a company founded and headed by Joel Tucker ("Tucker").

As documented in the CFPB Complaint and TRO papers, payday loans are simultaneously attractive to desperate consumers (fast money with nominal credit review to get to the next payday), lenders (high fees of $12-$30 per $100 translate to high annualized returns), and even fraudsters who have developed vehicles to pull bank and credit card data from online payday loan applications ("leads") and make them fodder for multiple deceptive schemes, including the entry of debits and credits without authorization. Given high regulation, both federal and state, operating a lawful payday loan business is challenging as it requires licenses, sophisticated systems and vigilant compliance staff. Defendants sought to avoid regulatory oversight by operating through offshore entities. Initially, four Nevis entities (the "Nevis Lenders") were used until replaced by four New Zealand entities (the "Hydra Lenders").

Beyond the offshore face of the business, another primary reality was apparent – the Defendants operated through a labyrinth of entities, domestic and offshore, which seemed designed primarily to divert, confuse, and conceal.

A. The eData Connection

Our start point for a description of Receivership Defendants' payday loan business is the connection to Joel Tucker and eData. Tucker, a high school classmate of Moseley, Jr., was a big player in the payday loan world in Kansas City. His company, eData, offered a full suite of "turnkey" services to payday lenders. The payday loan business Moseley, Sr. started in 2003 was at the suggestion of Tucker. It was Tucker who provided Moseley, Sr. his first employee, who was working for Tucker at the time, and then the expertise and services of eData (known then as BMG). In the words of one employee, Moseley, Sr. became a "customer" of eData, it was "all about eData:"

- Each Nevis and Hydra Lender had a "Processing Services Agreement" with eData to provide turnkey services in three key categories:
    - Computer processing services to match and verify loan leads through its proprietary lead filtering system;
    - Loan processing services using its proprietary loan processing system (initially called Cash Line and later eFunds) to process all loan transactions, including loan advances, loan balances, loan payments, and principal and interest account maintenance; and
    - Business consulting services regarding matching and verification and loan transaction processing.

- The eData processing agreements provided that eData had sole discretion to allocate and deliver leads among its clients, including clients in direct competition with the Nevis or Hydra Lenders;
- The eData agreements include provisions that the ultimate decision to accept a lead is up to the client and that the client will contact a lead prior to a final lending decision, but with a critical exception – eData would provide an "auto-funding" program for some, or all, of the portfolio. Such auto-funding, where Receivership Defendants as lender had no contact with the consumer, became an important element of the business with Receivership Defendants often seeking to increase their allocation for auto-funds.
- Fees to eData were high – $1 per lead and a percentage (usually 7.5%) of the "active open advances" in the portfolio at the end of each month. From 2008-2013, Receivership Defendants' internal QuickBooks system reports that eData received a total of $40 million from the Nevis and Hydra Lenders and that those payments were categorized as "Operation Fees" and "Verification Fees."
- The Nevis and Hydra Lenders also had collection agreements with eData, whereby delinquent accounts were automatically transferred through eData's loan management system back to eData (operating as iCollect, and later FTPIC, LLC). As compensation, eData paid the Receivership Defendants just 5% of the principal amount of the delinquent loans transferred to eData.

Through its agreements with the Receivership Defendants, eData controlled both the front end (regular leads or auto-fund loans) and the back end (collection of delinquent accounts) of the Receivership Defendants' operations.

B. Individual Defendants and Other Key Players

Based on our interviews and available documents, we were able to confirm some details as to the roles played by the principals.

Richard F. Moseley, Sr.

Based on the documents we have reviewed, and input from the Operations Manager and Defendant Randazzo, but without an opportunity to interview him in detail directly, we can report that Moseley, Sr. was the day-to-day chief executive of the payday loan business of Receivership Defendants. He was very hands on and appeared to be involved in every facet of the business. He received daily reports on operations and appeared to vigilantly oversee the business.

Richard F. Moseley, Jr.

By all accounts, Moseley Jr. was not active in, or very knowledgeable about, the business. His primary occupation over the last twenty years has been general contractor. His substantial distributions from the payday loan operations were not the fruits of his efforts in the business, but of his father's largesse. He did not have an office at the business location and was seldom seen at the office – according to one employee, he visited the office only a couple of times a year. When he met with us on the second day of the receivership, he appeared earnest when he reported that he had learned more about the business from the CFPB pleadings than he knew during the Receivership Defendants' operations.

Christopher J. Randazzo

Randazzo has a varied background in bookkeeping and accounting. He joined the business in June, 2010 and ultimately played the role of a controller and facilities manager. We saw no evidence that he was a decision maker in the business, but a salaried employee who operated at the direction of Moseley, Sr. While he is listed as the "Senior Manager" of the four Hydra entities in New Zealand, it appears that he agreed to such designation upon the request of Moseley, Sr., who professed that he did not want to be on "both sides" of agreements between Hydra and the other Moseley entities.

Piggycash Employees and Consultant

The employee on site was the Operations Manager, who had worked with Moseley, Sr. from "the beginning" in 2003. She professed little detailed knowledge of the inner workings of the payday loan business, although she acted as the Operations Manager for more than a decade. Consultant Tom Algie was hired by Moseley, Sr. in late 2013 to work up an alternative business plan after Moseley, Sr. decided to part ways with eData. Based upon emails we have reviewed, Algie appeared to have been a senior executive at eData who had worked closely with Tucker and interacted frequently with Receivership Defendants.[3]

C. Receivership Defendant Entities

For his entry into this new business of payday loans, Moseley, Sr. did not simply incorporate one domestic entity. Rather, he constructed a byzantine web with many moving parts – multiple offshore entities to be identified to consumers as the "lenders," starting with four Nevis entities which morphed to four Hydra (New Zealand) entities. Each lender, in turn, had separate agreements with eData for turnkey services and with two different Moseley, Sr.-owned "servicing" companies which provided customer service, leased the office space, and paid the employees. The cash generated by the business flowed freely between all these entities and other Moseley, Sr. holding companies.

Several organizational flow charts we located on site attest to the complex structure. (*See* Exhibit C.)

1. <u>The Nevis Lenders – CMG, SSM, DJR, and BCD</u>

The four Nevis entities were formed between May, 2006 and August, 2008. Loan activity for each entity was tracked separately in eData's account management system on site at Receivership Defendants' office and financial results were tracked separately in QuickBooks.

Each entity had a Processing Services Agreement with eData for the turnkey services, described at pages 7-8 of this report, and Master Services Agreements with OSL for customer service, described at page 13 of this report.

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[3] While Algie appeared cooperative, we were baffled by his failure to mention his eData employment during an extensive interview on September 10, 2014. We learned this only after the interview ended and we reviewed emails reflecting his executive role at eData. When we spoke to him about this on September 11, 2014, his response was that we did not ask him about his eData employment and he did not feel compelled to reveal it.

2. <u>The Hydra Lenders – Hydra I-IV</u>

Sometime in 2011, Moseley, Sr. began investigating New Zealand as an alternative situs. We found no consistent rationale for this, but the Operations Manager told us that Moseley, Sr. felt the loan agreements for the Hydra entities, prepared by Hydra counsel, were superior to the agreements used by Nevis Lenders sourced from eData.

All four Hydra entities were formed in New Zealand in May, 2011. The "transition" of these Hydra entities into the business was convoluted:

- The Hydra entities all entered into new processing agreements with eData so Hydra became the theoretical lender to which eData's leads were driven.
- Hydra did not, however, actually fund any loans. Rather, each "loan" was "purchased" at the time of funding by one of the Nevis Lenders,[4] but Hydra remained responsible for customer service and was the name seen by the consumer. Other than funding the loans, each Nevis Lender paid their corresponding Hydra Lender a $22,000 annual fee.
- River Elk was shelved and a new servicing company – Rocky Oak – was created and became the servicing company for the Hydra Lenders, providing the same exact services River Elk provided the Nevis Lenders.
- The Hydra Lenders also signed service agreements, identical to the agreements they had with Rocky Oak, with the Nevis Lenders that were supposedly "buying" their loans.
- This so-called "New Zealand Business Model" was summarized in an internal document. (Exhibit D.)

In June 2013, the business was disrupted when the merchant account ACH processor terminated all eData's approximately 50 clients. After being down for nearly a week, eData secured a new merchant account processor for its clients, but that processor pulled the plug in

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4 Each Hydra Lender was linked to one of the prior Nevis Lenders – Hydra I with CMG; Hydra II with SSM; Hydra III with DJR; and Hydra IV with BCD.

August 2013. From there, Moseley, Sr. appears to have considered various options and scrambled to find a payment processor, but ultimately was unsuccessful and decided against a re-start. In October 2013, he sent the entire remaining payday loan portfolios of $10 million out to third-party collection agencies. Most employees were laid off in October and others in December.

3. Consolidated Results – Nevis and Hydra Lenders

Hydra financial activity was never recorded in separate Hydra accounts in the internal QuickBooks, but was rolled into the accounts of their corresponding Nevis Lender. Up to January 1, 2012, Hydra loan activity was recorded in the loan administration system under the accounts of their corresponding Nevis Lender, but were all re-titled Hydra I-IV as of January 1, 2012.

As such, financial results and loan activity for the Nevis Lenders and the Hydra Lenders have been merged together – the consolidated financial results are in the QuickBooks accounts of the four Nevis Lenders; and the consolidated loan activity is recorded in the loan administration system under the Hydra names. This merging of accounts has limited our ability to separately evaluate activity of the Nevis Lenders and the Hydra Lenders. We can, however, estimate that activity on a consolidated basis.

While the individual payday loans were small in amount ($300-$500), this business was built on a combination of high volume and high finance fees that more than offset defaults. For the period January 1, 2008 through August, 2014, the Cash Reports generated by eData's loan administration software report total loans at $154 million to 620,000 consumers. *See also*, the Financial Summary at Section E, page 16 of this report.

4. Piggycash – PCMO, PCKS, and Piggycash Holdings

By late 2013, Moseley, Sr. appears to have made the call to pursue payday and consumer loan options beyond the eData model and without eData's help. He worked a deal with the landlord to stay in the same space (with the new services company, Rocky Oak, the identified tenant) and retained a consultant (Algie) to develop a business plan for a state licensed loan company under the dba piggycash.net. While the proposed business was a departure from the eData model, its author, Algie, was a former senior eData employee who had worked directly with Moseley, Sr. on the payday loan business.

Algie's work product and correspondence with Moseley, Sr. indicate that piggycash.net was a distinct business with new vendors, modest initial goals, and a professed interest in compliance. Nonetheless, the Piggycash structure had its roots in the old business model with the exception that no offshore entities were deployed. Multiple entities, all owned by Moseley, Sr., were formed in October-November, 2013 – a holding company (Piggycash Holdings); two separate operating companies using the same piggycash.net dba (PCMO and PCKS); and a new services company (Rocky Oak). PCMO secured a license from Missouri in November to offer loans in two categories – small loans of $500 and less and small loans above $500. Effective July 1, 2014, the license was renewed for just small loans above $500. PCKS secured a license from the State of Kansas in February, 2014. By the day of our arrival, both entities had done only nominal business.

5. The Servicing Companies – OSL, River Elk, and Rocky Oak

The three service providers provided the same basic customer service (OSL to the Nevis Lenders, River Elk to Hydra I-IV, and Rocky Oak to piggycash.net) at the same basic rate. Those services were identified as consulting, logistics, customer service, ACH processing, and collection processing. The fee was simply reimbursement of 100% of the service companies' expenses. All employees were paid by the service provider during the various time periods.

According to the internal QuickBooks records, OSL and River Elk received, in aggregate, approximately $12 million from the Nevis and Hydra Lenders, categorized on the internal financials as "Marketing Fees."

6. The Moseley Entities/Holding Companies – CLS, FSR, SJ Partners, RM Partners, Corvus, and PDC

Our preliminary financial review indicates that a primary function of these holding companies, except PDC Ventures, was to receive and transmit funds from the payday loan operations of Receivership Defendants. The primary beneficiary among these holding companies was SJ Partners. It appears to have been capitalized with approximately $11 million from the payday loan business. $7 million has now been frozen in the bank accounts of SJ Partners. PDC Ventures is the entity through which Moseley, Sr., Moseley, Jr., Tucker, and a third-party purchased a $1.2 million condominium together in Cancun, Mexico.

D. Evidence Found at Kansas City Site

The CFPB Complaint and evidence in support of the TRO allege that Defendants' payday loan operations violated the Consumer Financial Protection Act of 2010 (CFPA) and multiple other federal regulations. The exact nature of their practices is not directly a receivership matter. While we have not sought to evaluate each of the CFPB's allegations specifically, my review did identify practices consistent with the CFPB's allegations. For example:

- Consumers were required to notify the lender by phone, email, or fax to pay down or pay off their loan or the loan would <u>automatically</u> be refinanced on their pay date. (Exhibit E.)
- The Operations Manager and Moseley, Sr. labeled it "good news" when eData reported they were ready to send up to 50 auto-fund loans per day per lender. (Exhibit F.)
- eData pushed Hydra to hit or exceed its "goals" and identified the "ideal" number of regular and auto-fund loans the Hydra Lenders should receive each day. (Exhibit G.)
- Simply calling a consumer's work number and being told the consumer was not available was sufficient to verify employment. (Exhibit H.)
- Loan activity was tracked very carefully. Daily, weekly and monthly reports were generated. eData provided monthly performance/guidance reports detailing the amount of active funds, delinquent funds, target amounts, number of applications sent by eData, number funded, average new loan amount, and average new loans per day. (Exhibit I.)

- Moseley, Sr. and staff reviewed loan activity by processor to determine optimum staff levels to "make goal" with processors generally averaging 24-27 loans per day. (Exhibit J.)
- As explained by the Operations Manager, auto-fund loans would be "approved" and funded automatically with no contact with the consumer based on eData's representation that these auto-fund leads were underwritten differently and could be automatically funded.
- In responding to consumer complaints, the Hydra Lenders promoted the fiction that they were a New Zealand company with offices only in New Zealand and the Nevis Lenders advised consumers that its "internet business model" was not subject to state regulation. (Exhibit K.)
- In frustration over the termination by ACH processors, Moseley, Sr. was reviewing the option of moving the payday loan business to a tribal location protected by sovereign immunity. (Exhibit L.)
- Even when they agreed to a refund, the servicing companies forced the consumer to jump through hoops to actually receive it, including the delivery of an agreement signed by the consumer before a notary. (Exhibit M.)
- eData provided Moseley, Sr. with comparisons of his payday loan business versus the other 41 companies serviced by eData. (Exhibit N.)
- Moseley, Sr. was well aware that auto-fund meant – "we send them the same approval email whether we talk to them or not." (Exhibit O.)
- Management was well aware that some loan deposits were made to consumer bank accounts without their knowledge or consent – in fact, in an email to Moseley, Sr. on January 12, 2012, the Operations Manager noted that, "A good portion of our better default [sic] includes customers that don't realize they even received the deposit." (Exhibit P.)

E. Financial

The Preliminary Financial Report prepared by the receivership's forensic accountant is Exhibit A to this Preliminary Report. It sets forth an operational and financial summary based on available records. Given the complex structure of multiple entities and some non-traditional accounting methods, such a summary is by no means precise. It is submitted here to give the Court a general sense for the scope of the business and the rough flow of funds.

Based on the Preliminary Financial Report, the internal, unaudited QuickBooks financial records, and the internal Cash Reports from eData's loan management software, we can provide the Court a rough summary of estimated overall financial activity within the Moseley payday loan business in the following categories: total payday loans to consumers ($154 million); total consumers receiving payday loans (620,000); total "leads" from eData accepted by Nevis and Hydra Lenders (2 million); Marketing Fees paid to servicing companies ($12 million); fees paid to eData ($40 million); distributions to Moseley, Sr. and Moseley, Jr. ($27 million); aggregate "profits" of Nevis Lenders and Hydra Lenders ($31 million); and the aggregate "profits" of the three servicing companies (OSL, River Elk, and Rocky Oak) ($11 million).

As noted above, these numbers are all based on Receivership Defendants' own internal records which have not, however, been audited or reconciled and should be viewed with caution at this early stage.

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F. Can the Business be Conducted Profitably and Lawfully?

Section XV(N) of the TRO directs me to continue and conduct the business of the Receivership Defendants only to the extent that I determine in good faith that "the businesses can be lawfully operated at a profit using the Assets of the receivership estate[.]" (Emphasis added.)

My evaluation of lawfulness going forward is moot, however, given that the piggycash.net operations were minimal and unprofitable.

Dated: October 2, 2014

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Court-Appointed Temporary Receiver