Thomas W. McNamara
mcnamarat@ballardspahr.com
655 West Broadway, Suite 1600
San Diego, California 92101-8494
Telephone: 619-696-9200
Facsimile: 619-696-9269

*Temporary Receiver*

Edward Chang (NV 11783)
change@ballardspahr.com
**BALLARD SPAHR LLP**
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
Tel.: 702-471-7000
Fax: 702-471-7070

*Attorneys for Temporary Receiver*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

IDEAL FINANCIAL SOLUTIONS, INC., a corporation; ASCOT CROSSING, LLC, a limited liability company; BRACKNELL SHORE, LTD., a limited liability company; CHANDON GROUP, INC., a corporation; AVANIX, LLC, a limited liability company; FISCAL FITNESS, LLC, a limited liability company; STEVEN SUNYICH, individually and as an officer and director of the corporate defendants; MICHAEL SUNYICH, individually and as an officer and director of the corporate defendants; CHRISTOPHER SUNYICH, individually and as an officer and director of the corporate defendants; SHAWN SUNYICH, individually and as an officer and director of the corporate defendants; MELISSA SUNYICH GARDNER, individually and as an officer and director of the corporate defendants; and KENT BROWN, individually and as an officer and director of the corporate defendants.

Defendants.

2:13-CV-0143-MMD-GWF

**PRELIMINARY REPORT OF TEMPORARY RECEIVER**

JUDGE: Hon. Miranda Du
CTRM: 4A

# TABLE OF CONTENTS

**Page**

**PRELIMINARY REPORT OF TEMPORARY RECEIVER**

**I.**

**Introduction**

On January 30, 2013, this Court entered a Temporary Restraining Order ("TRO") which appointed me, Thomas W. McNamara, Temporary Receiver ("Receiver"), for the business activities of the Receivership Entities.

Receivership Entities are defined in the TRO (Paragraph II, page 6) as the entities named as Corporate Defendants (Ideal Financial Solutions, Inc.; Ascot Crossing, LLC; Chandon Group, Inc.; Bracknell Shore, Ltd.; Fiscal Fitness, LLC; Avanix, LLC), plus additional "entities that are part of Defendants' common enterprise," including, but not limited to, Debt Elimination Systems, LLC; US Debt Relief, LLC; Money Mastery, LLC; US Debt Assistance Corp.; IWB Services (St. Kitts); Financial Fitness, LLC; Debt to Wealth, LLC (St. Kitts); Debt to Wealth, LLC (Nevada); Ideal Goodness, LLC; Dollars West, LLC; Fluidity, LLC; Newport Sails, LLC; Shaw Shank, LLC; Bunker Hillside, LLC; Funding Guarantee, LLC; Newline Cash, LLC; Wealth Fitness, LLC; and Zeal Funding, LLC.

I submit this Preliminary Report to advise the Court of my initial actions and document my preliminary observations. In particular, Section XIV 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 regarding the Preliminary Injunction. As to those topics, I can report as follows:

(1) **Steps taken by the Temporary Receiver to implement the terms of this Order.** I have indefinitely suspended all operations. This was not difficult as we found only five employees on site at the St. George, Utah offices and minimal current business operations. Beginning February 1, 2013, the Receiver's team and FTC counsel served the TRO on all banks and merchant account providers where Receivership Entities were known to have accounts.

(2)-(3) **The value of all Receivership Entities' liquidated and unliquidated assets.** Based on financial records we have located to date, we have been able to construct a rough picture of the Receivership Entities' financials. *See* the Report of Forensic Accountant, David Birdsell, at

///

Appendix, Exhibit A. It appears that the Receivership Entities have only nominal assets with the possible exception of positive balances in merchant account reserves.

(4) **Steps Temporary Receiver intends to take in the future to prevent any diminution in Receivership Entities' assets, pursue receivership assets from third parties, and adjust Receivership Entities liabilities.** Implementation of the asset freeze is my primary immediate vehicle to protect assets. Whether or not third parties have assets which can be claimed by the receivership, or Receivership Entities' liabilities can be adjusted, are matters which will require further investigation. Some Receivership Entities do carry substantial accounts receivables on their books, but their collectability is not yet clear, and it appears that some of those receivables may be artificially inflated.

(5) **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. <u>Receivership Entities' Sites</u>

My team secured the business premises identified in the TRO – 908 N. 1400 West Street in St. George, Utah – commencing at 11:00 a.m. on Friday, February 1, 2013. We coordinated our initial efforts with IRS agents who provided security support. Once we secured the premises, we provided access to the FTC pursuant to the TRO. The locks on the entry doors were changed. We also asserted control over mail drops and virtual offices, which various Receivership Entities have used for mail delivery and to feed the mirage that these various entities are unrelated.

The operation we encountered in St. George was moribund, at best. Four customer service representatives, all on the payroll of Defendant Bracknell Shore, were on site at telephone-equipped cubicles. A fifth employee arrived at noon. These employees acknowledged, however, that the phones seldom rang and that they mostly surfed the internet. The employees described the business as being "between campaigns."

The only identifiable signage is an "Ideal Merchant Solutions" sign on the entry door to suite 908 and a "Dollars West" sign on the vacated suite 906 next door. The premises comprised

2,400 square feet and were equipped with 30 cubicles and 5 exterior offices. All but two of those offices had been vacated – they contained only sparse furniture and were not in active use. The two active offices housed Ideal CEO Steve Sunyich and Ideal President Chris Sunyich, neither of whom was present when we arrived. It appeared that the business had recently vacated the adjoining suite 906.

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

**B. Financial Accounts of Receivership Entities**

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

| Account Holder | Financial Institution | Account No. Ending | Amount Frozen |
|---|---|---|---|
| Ideal Financial Solutions, Inc. | Wells Fargo | 0611 | $479.19 |
| Ideal Financial Solutions, Inc. | Wells Fargo | 1438 | $790.30 |
| Ascot Crossing, LLC | Wells Fargo | 9852 | $248.25 |
| Ascot Crossing, LLC | Wells Fargo | 1396 | $603.72 |
| Bracknell Shore, Ltd. | Wells Fargo | 0637 | $83.65 |
| Bracknell Shore, Ltd. | Wells Fargo | 1420 | $1,544.37 |
| Bracknell Shore, Ltd. | Wells Fargo | 3544 | $85.00 |
| Newport Sails, LLC dba Cash Club System | Trust One Payment Services | 1207 | $10,000.00 |
| Shaw Shank, LLC | Bank of Kentucky | 9185 | $985.00 |
| Shaw Shank, LLC | JP Morgan Chase | 8462 | $339.15 |
| Shaw Shank, LLC dba Payment Assistance | Payliance (ACH) | N/A | $17,143.50 |
| Shaw Shank, LLC | Wells Fargo | 5284 | $74.00 |
| Zeal Funding Services, LLC | JP Morgan Chase | 0317 | $1,312.02 |
| Zeal Funding Services, LLC | JP Morgan Chase | 1901 | $830.03 |
| Zeal Funding Services, LLC | JP Morgan Chase | 9919 | $48.27 |
| AFAB Corp. | Wells Fargo | 0835 | $244.01 |
| AFAB Corp. | Wells Fargo | 1297 | $1,730.28 |
| Ideal Merchant Services LLC | Wells Fargo | 0827 | $300.02 |
| Ideal Merchant Services LLC | Wells Fargo | 1289 | $4,791.92 |
| Money Online Saver | Wells Fargo | 3577 | 1.00 |
| Pathfinder Enterprises | US Bank | 4998 | $3,656.88 |
| | **TOTAL** | | **$45,290.56** |

We have been advised by Payment Data Systems that it terminated its merchant account with Receivership Entity, Zeal Funding, on December 31, 2012 and that National Bank of California holds a reserve account of $881,995.00 (as of January 1, 2013) to cover returns, refunds, and losses created by Zeal Funding. We do not know the current balance and what percentage of those funds relates to Zeal.

**C. <u>Cooperation and Interviews</u>**

The four employees on site upon our arrival and the one employee who arrived at noon were cooperative. They completed questionnaires, responded to our questions, and departed.

All but one of the named Individual Defendants (Steve Sunyich, Chris Sunyich, Michael Sunyich, Shawn Sunyich, and Kent Brown) met with us and responded to our questions. The one exception was Melissa Sunyich Gardner, who advised us she was unable to meet with us while we were in St. George due to schedule problems. She has made no attempts to meet with us since.

Our interviews of the Defendants were not, however, completely enlightening; each Defendant had a somewhat different – and self-serving – version of business operations and roles. I found much of what they reported to lack credibility. In general, each Defendant pointed the finger of blame for consumer deception to another Defendant or third party. We also interviewed Jared Mosher, who was President of Defendant Ascot Crossing from 2011 through May of 2012, and, who, by all accounts other than his own, was one of the three leaders of the operation during this time.

At Section III(D) below, we provide summaries of what we have learned so far about the role of each Defendant and other key players, based in part on these interviews. 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 ultimate fact decisions on the relative knowledge and complicity of each Individual Defendant. These summaries are provided as a means to report to the Court what we learned upon entering the business.

**D. <u>Documents/Information/Electronic Data</u>**

Upon taking possession, my team confirmed that all hard copy documents were secure and terminated all access to computers and electronic data. I retained a forensic computer firm –

Dataclues – which supervised the FTC-retained forensic firm in making mirror images of the computers on site. We also provided notice of the TRO to all identified hosts of websites and electronic data.

**E. Forensic Accountants**

I retained David Birdsell, a CPA and experienced Bankruptcy trustee, to review the financial activity of Receivership Entities. The results of his preliminary analysis are presented in Appendix, Exhibit A.

**F. Compliance with TRO**

Securing compliance with the TRO was a relatively simple task – send home the five employees on site, secure the phones and computers, and change the locks so the principals could not deploy the infrastructure for a new fraudulent campaign.

I have activated a receivership website, www.idealreceiver.com which will serve as a vehicle to communicate with clients and consumers and have taken steps to have Receivership Entities' websites roll over to this website.

**III.**

**Summary of Business Operations**

Although the operations we found onsite in St. George was essentially dormant, the primary "business" conducted by the Defendants and Mr. Mosher in recent years was remarkably simple – run unauthorized charges (usually $30) against the bank accounts and credit cards of consumers. As one employee described it to us, the business model was a "numbers game" – most consumers would not notice the charge or not bother to challenge it; for those consumers who actually called in, "customer service" was trained to deflect, misdirect, "upsell," or if all else failed, process a refund. The source for consumers' account information was also simple – payday loan "leads" readily available from online payday loan brokers and middlemen who were in possession of high volumes of consumer payday loan applications. While the Defendants employed variants of this model, and did engage in some related business,[1] it was principally in

[1] The most recent campaign was an indirect version of the same model, where it did contract with a third party. Ideal had a "white label" customer service contract to "scrub" payday loan

the business of running unauthorized charges against consumers' accounts. On those charges that stuck, it did not keep the whole $30, but paid fees and a revenue share to its lead source.

Notably, unlike most call center operations, there was no sales department and no call room pitching products. There was just customer service to respond to consumers contesting charges and seeking refunds. This fact strongly suggests consumers were not contacted by the Defendants in any manner before initiating charges. Ideal used its repertoire of simplistic cash management products to give it a thin patina of credibility in trying to defuse consumers' ire and to "upsell" them these products at no extra charge.

As to business structures, one basic reality was also apparent – Ideal, with Steve Sunyich at the helm, was an opaque enterprise. Ideal deployed multiple artifices to divert and confuse consumers and feed the illusion that the various entities were not related, including: a labyrinth of shell companies with family members and employees installed as incorporators and/or officers; multiple revolving merchant accounts in the names of the shell companies; multiple billing descriptors to keep consumers confused and misled that they had purchased a financial planning product; multiple mail drops and virtual offices to feed the illusion of separateness and actual offices; hundreds of domain names; and manipulation of financial activity to improve the apparent results of Ideal, the public company. As to the most current campaigns, these various artifices are described in the Report of Forensic Accountant at Appendix, Exhibit A.

**A. <u>Background on Ideal</u>**

Our start point for a description of Defendants' business is Ideal's own SEC filings. In its Form 10-K Annual Report for the year ended December 31, 2010, it reported that it "provides a suite of online, subscription-based software solutions for debt elimination, cash management, bill payment and wealth creation." Its principal product was identified as a Cashflow Management Tool with two components – iDebtManager and iBillManager. According to this 10-K, marketing and distribution were implemented "through partnerships with online marketing companies that drive traffic through Google adwords, email marketing and other cost-per-acquisition campaigns

---

leads provided by the customer and then run charges on the "good" leads to that customer's merchant account.

that provide leads and customers." We found some limited inventory of these financial products on site, including Ideal Wealth Builder CD, i Cash Secrets 5-CD package, and The Ideal Dream Builder package.

In late 2010/early 2011, Ideal changed its focus when Jared Mosher combined his call room operations with that of Ideal and began to focus on the payday loan play. In a Quarterly Form 10-Q for the quarter ending September 30, 2011, the company reported this shift in its "core marketing" such that its principal business was now defined as "providing customer service, fulfillment, marketing, web design, on line, market activity, bookkeeping, and other consulting services to third-parties who wish to outsource their online marketing functions." This shift was not just strategic, but necessitated by the loss of the company's ability to process credit card charges when the company's primary processor terminated the account due to excessive consumer chargebacks.

The September 30, 2011 10-Q also presaged the future by noting that the company had begun a new marketing plan to bring its services to the clients of companies that specialize in offering micro-loans, including payday loan companies, and that its subsidiary, Dollars West, had applied to be a licensed payday lender in Utah. The "business" we found in St. George reflected parts of this move into the payday loan universe.

Ideal has made no SEC filings since the Q3 2011 report, so we do not have the benefit of further descriptions of its evolving business plan.

**B. <u>The Payday Loan Angle</u>**

Beginning in late 2010, Ideal began to participate in the online payday loan business. But, Ideal was not a licensed lender or even a formal broker or middleman. Rather, the Defendants operated a bottom feeder operation. They created a weak illusion that Ideal sold its services as a vendor ("white label customer service") to third party operatives. In fact, the third parties were primarily shell companies created and controlled by the Defendants to exploit payday loan applicants by purchasing "leads" – consumer applicant information – and charging these unwitting consumers a $30 fee.

///

To comprehend Defendants' business, some basics on the payday loan industry are helpful. Payday loans are short-term (typically two weeks to coincide with the consumer's pay period) and modest in amount ($300-$500). They are attractive to cash-starved, but employed, consumers. It is a big industry with annual national payday loan volume exceeding $50 billion. As part of the application process, the consumer provides the lender authorization to debit his or her checking account for the amount of the loan, plus fees – the lender will typically process this charge on the next payday when the loan is due. For legitimate lenders, the returns can be attractive as fees per loan (typically $12-$20 per $100) translate to high annualized returns (often 300% or higher) given the short term duration of the loans.

The industry is highly regulated. Federal laws, for example, require payday lenders to: give a customer a "notice of adverse action" after denying a loan application (Equal Credit Opportunity Act (ECOA) and Regulation B (12 C.F.R. 202)); obtain written consent from a borrower prior to initiating electronic fund transfers (such as debits) from a borrower's account to collect fees or payments (Electronic Fund Transfer Act (EFTA) and Regulation E (12 C.F.R. Part 205)); obtain consent to send federal- and state-required disclosures electronically instead of in paper form (if the lender makes the loan over the Internet) (Electronic Signatures in Global and National Commerce Act (E-Sign)); limit the interest rate charged to active duty service members and their dependents (John Warner National Defense Authorization Act). The Consumer Financial Protection Bureau (the "CFPB"), created by the Dodd-Frank Act in 2010, has published a lengthy Examination Manual which requires that lenders adopt comprehensive written compliance policies and procedures.

State laws also include consumer protection provisions, such as restrictions on: fees charged for origination, late payments, and insufficient funds; length of the loan term; number of times a borrower can refinance or "rollover" the loan; number of outstanding loans a borrower can have at any time from a single lender and/or from all lenders within a state; number of consecutive payday loans a consumer can borrow in one year; number of times a lender can attempt to deposit a check or debit an account after it bounces due to insufficient funds; and usury laws which put a lid on fees and interest that can be charged. Some states outlaw payday loans entirely.

Given this regulatory environment, operating a lawful payday loan business is extremely challenging. It requires licenses, sophisticated systems, and vigilant compliance staff.

Despite these obstacles, the online payday loan business has flourished. It is a simple process to apply for a payday loan online, and consumers will apply to multiple sites in search of quick loans. Fraudsters have developed vehicles to make these online applications, and the bank and credit card data in them, fodder for myriad schemes which share a common goal – run charges against these consumer's credit cards and bank accounts.

**C. Recent "Campaigns"**

We located financial and other records – either physical records onsite or maintained on a "cloud" server – for the recent campaigns and operations of the named Corporate Defendants (Ideal Financial Solutions, Ascot Crossing, LLC; Bracknell Shore, Ltd.; Chandon Group, Inc.; Avanix, LLC; and Fiscal Fitness, LLC) and two common enterprise entities (Newport Sails and Shaw Shank). With this information, we have been able to construct a rough summary of their recent operational and financial activity. *See* Report of Forensic Accountant, Appendix, Exhibit A.

As to the other common enterprise entities, we have not located any meaningful records and we have not seen evidence of current activity.

**D. 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. Again, at many levels, these principals contradicted each other and were not completely credible, but taken together with employee interviews and documents we reviewed, a roughly coherent story emerges.

Steven Sunyich

Steve Sunyich was cooperative and polite during our interview. Although he feigned ignorance of many details, he is clearly the leader of Ideal. Four of his five children have also been in the business with him, off and on, in various roles since 2000.

He described the current business as an online white label financial service business providing customer service and fulfillment. There are no current live contracts. Most of the staff was laid off in mid-2012. A possible new campaign was in preparation. He did acknowledge that "blind billing" from payday loan data had taken place.[2] He claimed, however, that this "scam" was all attributable to Jared Mosher, the former President of Defendant Ascot Crossing. Steve Sunyich's version of events was that Ideal (through its Bracknell Shore subsidiary) was just providing customer service and fulfillment to the Ascot Crossing (and later Avanix) program and that he severed the relationship when the blind billing became obvious, as evidenced by high chargebacks and blogger activity on the complaint boards.

This characterization of Ideal as an abused vendor is belied by other available information that Ascot was formed by Steve Sunyich in 2008, that Steve Sunyich was listed as its Managing Member in filings made in January, 2013, that Ascot's offices were in the same building as Ideal's offices, and that all staffers reported that while Mosher was at Ascot, he, Steve Sunyich, and Chris Sunyich jointly ran the business. Mr. Mosher's view was, not surprisingly, contrary – he told us he left Ideal because Steve Sunyich was a scammer.

Steve Sunyich told us the most recent white label contract was with Pinnacle Processing, but that he had pulled the plug on that program because it was "bogus," and that he had notified the bank that the program was fraudulent. We were told, however, by a Pinnacle Processing representative that Pinnacle had entered into a customer service deal with Ideal, but fired Ideal because it was not properly scrubbing leads and performing other contracted services.

Steve Sunyich maintained a calm – almost serene – demeanor while downplaying his knowledge of business details and the relationship of the various entities to Ideal. Despite his placid appearance, I did not find him credible.

<u>Christopher Sunyich</u>

Chris Sunyich is the youngest child of the Sunyich family and the long-time President of Ideal. Chris and his father have been the primary decision makers at Ideal. He described the long evolution of the Ideal business from a multi-level marketing model ("MLM") to resell automated cash flow systems, to sales directed to mortgage and insurance brokers who could offer the

[2] We understand "blind billing" to mean universally billing every payday loan application lead the Defendants purchased.

product as an upsell, to a do-it-yourself "continuity model" where Ideal products were bundled with other online vendors, and finally to white label financial services to businesses (after Ideal lost its merchant account due to excessive chargebacks).

He said that the Ideal move into payday loans coincided with the arrival of Jared Mosher in early 2011. Jared Mosher became the President of Ascot Crossing for which Bracknell Shore would provide customer service. He said that Mosher took the Ideal product into a new space – payday loans. He felt that the campaigns run by Mosher "crossed the line" of aggressive marketing and led to big chargebacks. He was concerned with the legality of these operations. He understood that Mosher was "buying lead lists" which seemed to be "very ugly" because they were not making calls to those lead lists and signing up customers, but instead were charging the names on the list. He also knew that many customers were calling in and they did not fill out a payday loan application or authorize any charge. He also admitted that the company's participation in micro-billing was a "red flag."[3]

When asked about high chargeback rates and merchant account terminations, long before Mosher joined Ideal, his only explanation was that high chargebacks occur when you shift away from a continuity model to a high volume of customers. Unlike Steve Sunyich and Jared Mosher, Chris Sunyich did not recall any specific event that led to Mr. Mosher's departure. According to Chris Sunyich, Mr. Mosher just starting doing other things. He recalled no "firing" or any disputes among the three due to chargebacks.

<u>Michael Sunyich</u>

Michael Sunyich is the second oldest child of the Sunyich family. Although he was assigned various titles (including President of Bracknell Shore), he did not appear to have a significant role in decision making. He had worked at Ideal in the early years when it was operating as an MLM to assist people to get out of debt. He left in 2006, when he moved to Arizona, but returned in 2008-2009.

///

[3] We learned that microbilling – debiting and crediting consumers' accounts very small amounts – was a strategy to increase transactions and thereby reduce chargeback percentages.

He worked on an MLM health food (Xango) platform that would also send food to Third World countries. The Ideal Goodness LLC was formed as part of that effort, but the program fizzled out after a year. He also helped set up the “EDU” program which was an upsell offered to consumers who might want to further their education; he later became involved with a group outside Ideal which pursued the EDU concept.

He did not appear to be directly involved in management of payday loan activities at Ideal, except to manage the customer service phone operations. He did recall that: when Jared came in, he was running the show along with Steve and Chris; there were many calls from angry consumers looking for refunds; at one point there were so many calls that they just cut off the phones and started over with new company names and new phone numbers; that he had concerns about consumers being billed without authorization and all the chargebacks, but was assured that everything was legitimate; and that he placed a call to the FTC to report “suspicious” activities, but received no call back.

<u>Shawn Sunyich</u>

Shawn is the oldest Sunyich child. He commenced our meeting by offering an unapologetic opinion that his father was a scammer. He had been involved with the company in earlier years, but left because he did not like the atmosphere and had had a good business as a mortgage broker. He returned in 2010-2011 and pitched ideas to launch Ideal Merchant Services which would educate people about merchant accounts and the EDU program to push people to go back to school, but those never really took off.

He said that his father solicited his help to form Chandon Group as an entity to run data through. He never received any compensation. He later learned that Chandon secured a merchant account in the name of Paul Currie, the Ideal “stock guy,” but that in late 2011 Chandon was “burned” (i.e., terminated by its processor for excessive chargebacks). He hated being tied to Chandon and eventually had his name removed.

He also believed that the company was buying its lead lists illegally and running a “credit card scam.” He doubted there was ever any website with a “terms and conditions” section by

///

which consumers would consent to a charge. He opined that Chandon was formed to conduct micro-billing on consumer bank accounts.

He identified Steve Sunyich as the source of the idea to create shell companies for the purpose of opening merchant accounts, so that any negative chargeback history would not reflect badly on Ideal. To do so, Steve offered family members, friends, and others a monthly payment to be the registered officer of the shell company. Steve also sought out credit worthy people to be signers for merchant accounts. He recalled that it was this type of activity that caused the auditors to quit. In 2011, Shawn was so troubled by activities at Ideal, he met with an FBI agent who belonged to his church.

<u>Melissa Sunyich Gardner</u>

Melissa Gardner Sunyich is the fourth of Steve Sunyich's five children and the only daughter. Melissa did not make herself available for an interview. Shawn reported that Steve Sunyich paid her a monthly fee for being the identified owner of Ascot Crossing. Although we never met with her, her husband, Rich Gardner, did come to the office to meet with us, but departed before we could meet with him.

<u>Kent Brown</u>

Kent Brown is an MBA with a background in bookkeeping, accounting, and consulting services to small companies. He started working for Ideal as a part-time consultant on accounting matters and that evolved into a full-time position in 2009-2010. He was the Chief Operating Officer and Controller of Ideal. He depicted himself as an operations person not involved in strategic planning or decision-making. At least while Jared Mosher was there, he recalled that decisions were made by Jared, Chris and Steve. He called them the "3-headed monster, or flower, depending on who was listening."

Kent's role at Ideal was accountant and controller. He was involved in the management of the multiple merchant accounts and the logistics of forming new companies as directed by Steve Sunyich. He acknowledged some concerns about the combination of high chargeback levels, multiple entities, multiple merchant accounts, and terminations by merchant accounts. He was aware that private companies were being formed and multiple dbas adopted in order to secure access to merchant accounts. He told us that whenever he raised this issue, he was told by management that it was just due to bad data and that the problem could be solved.

Jared Mosher

Mr. Mosher telephoned my counsel on the day of our access to Ideal's office and volunteered to meet with us. He had heard from employees that his name had been invoked and he wanted to clarify his role. He advised that he thought Ideal could be successful in the payday loan space as it brought value added through its financial management products. He said he worked hard to get Ideal "to do it right." He was knowledgeable about the payday loan universe and professed to have ideas to change a "black eye" industry. He said he joined Ideal in late 2010, early 2011, and left in May, 2012.

From 2008-2011, he operated at a call room doing customer service. He had a long-time family connection to the Sunyich family. When Ideal got into the payday loan business toward the end of 2010, he became interested in Ideal and started working for Ideal as a consultant, and later came over full-time and brought three members of his call room team. He started working on a new "platform" he said that would have revolutionized the payday loan industry, but claimed that it never got off the ground because Steve Sunyich was pre-disposed to go the " bogus route" which included: cooking the books to make the public company look good; running consumer charges through private shell companies (particularly, Shaw Shank and Newport Sails), so the high chargebacks would not prejudice the public company; stock trading in the names of his children; and putting all available cash into the public company.

Mr. Mosher told us that Ideal recruited an employee's wife – Kaysha Sandberg – and paid her $1,000 a month to be the officer of Avanix. Mr. Mosher also claims that Ideal could never prove that clients actually went to the payday loan website and agreed to the terms and conditions prior to the $30 charge. These so-called clients were just individuals who appeared on the lead lists that Steve Sunyich purchased from publishers. In exchange for lead lists, the various straw companies would pay the publishers $0.50 per name, and also share in the gross revenues made by the $30 charge.

///

Mr. Mosher claims he voluntarily left the company because Steve Sunyich was blaming him for merchant accounts closing. While Mr. Mosher appeared candid about Ideal's true activities, he abdicated any responsibility for these activities, claiming that straw companies such as Newport were doing the payday loan operations before he started at Ideal, and that all his efforts to do the business right were thwarted by Steve Sunyich.

We found email traffic on Mr. Mosher's email account at Ideal indicating that he was involved in setting up a new operation called Zeal Funding in May-June, 2012.

In short, Mr. Mosher and Steve Sunyich each blamed the other for Ideal's high payday loan chargebacks and troubles. Their recollection of events is starkly at odds. For purposes of this Preliminary Report, I cannot resolve that conflict, except to report that by all accounts Mr. Mosher was a member of senior management during his time at Ideal and his claim otherwise is simply not credible.[4]

<u>Customer Service Employees</u>

Several of the employees knew or suspected that Ideal's payday loan operations were unlawful. One employee called the payday loan operations a "numbers game," alluding that they charged $30 or less to individuals hoping that a majority of them will not notice the charge, or take the time to contest the charge.

Another employee represented that Jared, Chris and Steve told the employees that the campaigns were owned by independent third party companies, but it was pretty obvious that these companies were owned and operated by Ideal. In fact, at least two of the employees were involved in filling out incorporation documents for several of the "third-party" companies. Another employee said she was told to cut signatures off of company applications and to paste them onto new applications, including merchant account applications.

Any time an employee expressed concerns to managers about customer complaints, the managers would tell them that the payday loan websites contained the terms and conditions provisions authorizing the charge. Employees darkly joked among themselves about this

---

[4] Although Jared Mosher played a leadership role in the business from early 2011 to mid-2012, he does not appear on any of the various public business filings or merchant accounts.

"imaginary box" of terms and conditions. Many employees believed Jared brought the payday loan operations to Ideal. Although Jared, Chris and Steve shared responsibility, some employees saw Jared as the primary decision maker on the payday loan business.

**E. <u>Evidence Found at St. George Site</u>**

The FTC Complaint and evidence in support of the TRO allege multiple violations of the FTC Act, including: obtaining consumer's bank and credit card information without authorization; charging consumer's credit cards and bank accounts without authorization; failing to disclose that a consumer will be charged for products or services; misrepresentation about using a consumer's authorization to further a payday loan. We have seen evidence of these specific practices, but we have not sought to evaluate and audit each of the FTC's allegations specifically. My review leaves no question, however, that deceptive practices were taking place. We certainly did not find any evidence that the charges were authorized. Scripts and other materials on-site confirmed that this was not a sales company. It was a customer service company with the only real "service" being to save the $30 unauthorized charge:

- Defendants carefully tracked the status of the multiple entities and merchant accounts. *See* Appendix, Exhibit C.
- Defendants prepared detailed customer service scripts addressing consumers' concerns that they did not provide authorization. Many of the scripts encouraged employees to try to persuade the consumer not to obtain a refund. *See* Appendix, Exhibit D.
- Defendants were inundated by consumer complaints and had a full-time employee assigned to "reputation management."
- Defendants identified angry consumers calling about refunds as upsell prospects and incentivized personnel to pitch financial products. These upsells were principally designed to create the impression that the consumer had bought something for the $30 charge. *See* Appendix, Exhibit E.

The original FTC submissions include multiple additional examples.

**F. Merchant Account Manipulation**

Defendants' business model required the adept manipulation of merchant accounts. ACH charges for Ideal campaigns were run through various straw companies, primarily Shaw Shank and Newport Sails, so that Ideal, the public company, would not be prejudiced by the high chargeback volume to follow. The funds were later transferred to Ideal. On some accounts, thousands of micro charges of $0.01-$0.04 would be run against consumer accounts in order to deceptively increase the overall transaction volume and hence improve the rates of chargebacks to transactions.[5] As merchant accounts were terminated, new entities were created and new accounts activated in their names. These practices were components of the overall consumer deception.

**G. Can the Business be Conducted Profitably and Lawfully?**

Section XI.O of the TRO directs me to "continue and conduct the business of the Receivership Entities in such manner, to such extent, and for such duration as the Temporary Receiver may in good faith deem to be necessary or appropriate to <u>operate the business profitably and lawfully if at all, using solely the assets of the receivership estate</u>." (Emphasis added.)

The Defendants' most recent payday loan ventures were clearly illegal as they incorporated many of the specific deceptions alleged by the FTC, primarily the processing of unauthorized charges.

My evaluation of lawfulness going forward is somewhat moot, however, given that the most recent campaigns are over and Defendants have not yet launched their next campaign. The "business" before me is nothing but a nearly vacant office with nominal infrastructure for telephone customer service representatives. In theory, that infrastructure could be deployed for a legitimate business, but this would require fresh capital and a new and legitimate campaign. I see no evidence of either.

///

///

///

[5] We saw email evidence that Voltage Pay, a merchant processor, supported this micro-charge approach to Mr. Mosher on at least one occasion.

**H.** **Financial**

The financial summary prepared by the receivership's forensic accountant is at Appendix, Exhibit A. It sets forth an operational and financial summary of recent activity based on available records.

Dated: February 13, 2013

THOMAS W. MCNAMARA

By: /S/ Thomas W. McNamara
Thomas W. McNamara
Temporary Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of February, 2013, pursuant to Fed. R. Civ. P. 5(b), I served via CM/ECF and/or deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **PRELIMINARY REPORT OF TEMPORARY RECEIVER**, postage prepaid and addressed to the following:

**VIA CM/ECF**
Blaine T Welsh
U.S. Attorney's Office
333 Las Vegas Blvd South, Suite 5000
Las Vegas, NV 89101
Email: Blaine.Welsh@usdoj.gov

**VIA CM/ECF**
David Shonka
Megan E. Gray
Richard M. Waller
Federal Trade Commission
600 Pennsylvania Ave. NW, M-8102B
Washington, DC 20580
Tel.: 202-326-3408 (M. Gray)
Tel.: 202-326-2902 (R. Waller)
Fax: 202-326-2558
Email: mgray@ftc.gov
Email: rwaller@ftc.gov

JILL JACOBS, an employee of Ballard Spahr LLP