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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 MDK MEDIA INC., et al.,

19 Defendants.
20

CASE NO. 2:14-cv-05099 JFW (SHx)

**PRELIMINARY REPORT OF
TEMPORARY RECEIVER**

JUDGE: Hon. John F. Walter
CTRM: 16

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PRELIMINARY REPORT OF TEMPORARY RECEIVER

I.

Introduction

On July 7, 2014, this Court entered a Temporary Restraining Order with Asset Freeze, Appointment of Temporary Receiver, and Other Equitable Relief (“TRO”) that appointed me Temporary Receiver (“Receiver”) for the six Receivership Defendants, defined as the Corporate Defendants (i.e., MDK Media, Inc., also d/b/a SE Ventures, GMK Communications, and EMG (“MDK”); Tendenci Media, LLC (“Tendenci”); MindKontrol Industries, LLC (“MKI”); Anacapa Media, LLC (“Anacapa”); Bear Communications, LLC (“Bear”); and Network One Commerce, Inc. (“Network One”)), “as well as any successors, assigns, affiliates, and subsidiaries that conduct any business related to Defendants’ placement of third party charges on mobile phone bills and which the Temporary Receiver has reasons to believe are owned or controlled in whole or in part by any of the Defendants.” (TRO, page 5.)

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

(1) **Steps taken by the Temporary Receiver to implement the TRO.** I did not find active business operations for Receivership Defendants. While Receivership Defendants were active in the premium SMS business, it appears that active enlistment of new U.S. customers ended in or about November, 2013 when the major U.S. cellular carriers withdrew from the premium SMS market.¹ As

¹ We did locate small invoices to MDK, Anacapa, and MKI from Australia and New Zealand affiliates of Mobile Messenger, the aggregator for all Receivership Defendants, for short codes in 2014. Two of these invoices were sent on May 15, 2014. We also have reviewed documents demonstrating MDK, Anacapa and MKI all had the ability (and apparently did) use short codes in Australia, New Zealand and the U.S., while GMK had short codes in Australia and the U.S. This suggests possible international operations into 2014, but we have no confirmation of that and the Individual Defendants have represented to us that they are unaware of any overseas activities and, to their knowledge, all operations are terminated.

1 such, no steps were required to implement the TRO's prohibition against
2 unauthorized charges on mobile phones for premium SMS services.

3 **(2)-(3) Receivership Defendants' assets and liabilities.** We have
4 identified nominal liquid assets in bank accounts of the Receivership Defendants
5 which are now frozen. It appears that these entities functioned primarily as flow-
6 throughs –any funds received were promptly disbursed out to pay vendors or
7 disburse profits, principally to non-defendants who were either Mobile Messenger
8 executives, or entities controlled by them, with financial interests in Receivership
9 Defendants. (*See* Mobile Messenger Executive Connection, below). We do not
10 yet have a calculation for overall liabilities, but fixed liabilities are likely nominal.

11 **(4) Steps the Temporary Receiver intends to take to prevent any**
12 **diminution of assets, pursue assets from third parties, and adjust liabilities.**

13 The bank accounts of Receivership Defendants and Individual Defendants have
14 been frozen pursuant to the Court's TRO. Should a preliminary injunction be
15 entered, we will investigate all possible claims to recover funds, including possible
16 clawback claims against those who received disbursements from Receivership
17 Defendants, which include the Individual Defendants as well as non-defendant
18 Mobile Messenger executives, or entities controlled by them, who ultimately
19 received most of the consumer funds generated by the premium SMS business.
20 The receivership may also have a claim for recovery of substantial funds still held
21 by Mobile Messenger and funds held as a retainer for legal services by a former
22 Receivership Defendant attorney. Indeed, going forward, the primary focus of this
23 receivership would be the recovery of funds from third parties.

24 **(5) The Temporary Receiver's assessment of whether the business**
25 **can be operated in compliance with the TRO.** This topic is essentially moot as
26 the Receivership Defendants are not currently operating a premium SMS business.

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1 (6) Any other matters which the Temporary Receiver believes should
2 be brought to the Court's attention. These matters are set forth below in this
3 Preliminary Report.

4 II.

5 Receivership Activities

6 A. Receivership Defendants' Business Premises

7 As directed and authorized by Section XIII(C) of the TRO, at approximately
8 9:00 a.m. on Tuesday, July 8, 2014, we commenced our efforts to identify and
9 secure immediate access at business premises of the six Receivership Defendants,
10 starting with the site specifically identified in the TRO (879 West 190th Street,
11 Suites 400, 402, 417, Gardena, California). Those efforts are broken down below
12 by entity.

13 MDK Media, Inc. ("MDK")

14 At the Gardena address, we found a one-room office, Suite 402, at the Regus
15 Business Center occupied by MDK. We were told by the on-site manager that
16 MDK had previously rented another office (Suite 417), but we confirmed that this
17 suite was no longer being used.

18 Suite 402 was sparsely equipped and did not appear to be the site of an
19 active business. It contained a desktop computer with triple monitors, two empty
20 filing cabinets, five pieces of mail (including bank statements addressed to MDK),
21 and a few office supplies. The front desk receptionist reported she had not seen
22 MDK's principal, Individual Defendant Makonnen Kebede ("Kebede"), for two or
23 three months.

24 After removing the desktop computer and completing arrangements to
25 secure Suite 402, we located Kebede at his home in nearby Carson. After
26 consulting with his counsel, Kebede provided us two manila folders of documents
27 and a laptop computer, which he represented were the only MDK-related materials
28 at his home. We took possession of these materials and changed the passwords for

1 the MDK and SE Ventures Gmail accounts.² A review of the traffic on those
2 Gmail accounts reveals that MDK/SE Ventures may not have had a big office, but
3 its Gmail accounts were a true place of business with substantial email traffic with
4 Mobile Messenger, the other five Receivership Defendants, Mobile Messenger
5 executive Erdolo Eromo (“Eromo”) (who also had full access to view and send
6 messages on these Gmail accounts) and others regarding this business.

7 Kebede was cordial and cooperative throughout this process.

8 Anacapa Media, LLC (“Anacapa”)

9 We found no active office for Anacapa, but did locate its identified
10 principal, Individual Defendant Wayne Byrd (“Byrd”), at his residence in West
11 Los Angeles. Byrd was polite and cooperative, but declined any substantive
12 conversation until he could speak with counsel. We saw no evidence of active
13 business operations or business records at this residence. We did confirm that
14 Anacapa had maintained a mailbox at Mailboxes & More 24/7, which is a block
15 away from Byrd’s residence. We later secured data, records, and Gmail account
16 access from Defendants’ counsel.

17 Tendenci Media, LLC (“Tendenci”)

18 We also found no active office for Tendenci. We did locate a mailbox
19 previously maintained at a nearby US 24/7 Postal Center by its identified principal,
20 Individual Defendant Sarah Brekke (“Brekke”), but it had been terminated for
21 several months. We learned later that Brekke is married to Byrd and she lives at
22 the same apartment as Byrd. She was not present during our meeting with Byrd
23 and we have not yet had an opportunity to meet with her, due to her emergency
24 appendectomy on July 22, 2014. We later secured data, records, and Gmail
25

26 ² Since Kebede reported that the laptop was also used for his other
27 businesses, we agreed to image the laptop and return it to Kebede by Federal
28 Express the next day. After imaging the Gmail accounts, we restored the previous
passwords. Thus, almost immediately Kebede and his counsel had complete access
to the data on the laptop and emails.

1 account access from Defendants’ counsel. Like MDK, the Gmail accounts of
2 Tendenci and Anacapa were laden with business communications.

3 MindKontrol Industries, LLC (“MKI”)

4 Based on cost considerations and our initial intelligence that MKI did not
5 have an active office site, we did not travel to the last known residence address of
6 its principal, Individual Defendant Christopher DeNovellis (“DeNovellis”), in
7 Atherton, California. We were able to reach DeNovellis by phone and confirmed
8 the lack of current operations or active office site for MKI. We later secured data,
9 records, and Gmail account access from Defendants’ counsel. Like the others,
10 Gmail served as the *de facto* office.

11 Network One Commerce, Inc. (“Network One”)

12 We found no active office for Network One and initially were unable to
13 confirm a local residence address for its principal, Individual Defendant Casey
14 Adkisson (“Adkisson”), but later met with him and his counsel. We later secured
15 from Defendants’ counsel data, records, and email traffic selected by counsel as
16 relating to this business.

17 Bear Communications, LLC (“Bear”)

18 Bear also did not have an active office. We were able to confirm a residence
19 address in Hollywood for its principal, Individual Defendant Matt Dawson
20 (“Dawson”), but he was not at the residence. We did later meet with Dawson and
21 his counsel and secured data and records through counsel, and email traffic
22 selected by counsel as relating to this business.

23 **B. Financial Accounts of Receivership Defendants**

24 Beginning July 8, 2014, the TRO was served on banks where Defendants
25 were known to have accounts. The following accounts, for Individual and
26 Receivership Defendants, with positive balances have been frozen:

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Account Holder	Financial Institution	Acct. Ending	Balance Frozen
MDK Media Inc. d/b/a SE Ventures	Bank of America	2311	\$54.35
MDK Media Inc. d/b/a SE Ventures	Bank of America	3034	\$107.73
MDK Media Inc.	Bank of America	8229	\$248.03
MDK Media Inc.	Bank of America	0596	\$25.00
d/b/a EMG, Makonnen D. Kebede Sole Proprietor	Bank of America	7442	\$69,274.37
d/b/a EMG, Makonnen D. Kebede Sole Proprietor	Bank of America	9938	\$300.47
MDK Media Inc. d/b/a SE Ventures d/b/a GMK Communications	JP Morgan Chase	0230	\$43.00
MDK Media Inc. d/b/a SE Ventures d/b/a GMK Communications	JP Morgan Chase	6654	\$282.37
MDK Media Inc. d/b/a SE Ventures d/b/a GMK Communications	JP Morgan Chase	6688	\$257.41
MDK Media Inc. d/b/a SE Ventures d/b/a GMK Communications	JP Morgan Chase	7593	\$25.90
Tendenci Media LLC	Opus Bank	7607	\$1,232.94
Tendenci Media LLC	Wells Fargo	6985	\$0.01
MindKontrol Industries LLC	Bank of America	6755	\$946.51
Anacapa Media LLC	Opus Bank	0841	\$1,609.74
Bear Communications LLC	Bank of America	2402	\$1,276.83
Makonnen D. Kebede Banchirga Getachew Kebede	Bank of America	9718	\$26.29
Makonnen Kebede	JP Morgan Chase	9721	\$2,022.49
Makonnen Kebede	JP Morgan Chase	2998	\$6,679.47
Makonnen Kebede	JP Morgan Chase	8126	\$29,800.00
Sarah Brekke	JP Morgan Chase	5310	\$1,895.01
Sarah Brekke	JP Morgan Chase	4144	\$10,013.86
Sarah Brekke	Opus Bank	1294	\$1.00
Christopher T. DeNovellis	Bank of America	0727	\$64,847.82
Wayne C. Byrd d/b/a Midnight Buzz	Opus Bank	4595	\$326.80

Account Holder	Financial Institution	Acct. Ending	Balance Frozen
Wayne C. Byrd	Opus Bank	1146	\$5.00
Matt Dawson	Bank of America	0092	\$11,739.14
Casey Lee Adkisson	Bank of America	7089	\$7,402.82
Casey L. Adkisson	Bank of America	8758	\$492.04
Casey L. Adkisson	Bank of America	1411	\$94,134.93
Casey Lee Adkisson Gregory H. Adkisson Kathryn Adkisson	Wells Fargo	7823	\$2,531.70
Casey Lee Adkisson Gregory H. Adkisson Kathryn Adkisson	Wells Fargo	7823	\$168,921.57
Revitalize Farms Inc.	Opus Bank	4926	\$264.14

Other than limited funds in their accounts above, the Receivership Defendants do not appear to have any other material assets. In addition to the above accounts, substantial funds paid to a former attorney as a retainer for legal services for Receivership Defendants have been frozen with consent of the attorney.

C. Documents/Information/Electronic Data

With assistance of Defendants' counsel, we have now secured records – electronic and paper – from the six Receivership Defendants. As to the six Individual Defendants (who are the respective principals and sole owners of the six Receivership Defendants), we interviewed all of them except Brekke at the offices of their counsel on July 23, 2014. Defendant DeNovellis, who resides in Atherton, California, participated by telephone.

To date, the Individual Defendants have been cooperative and, through counsel, have provided information and data.

D. The Business of Receivership Defendants

Based on interviews with the Individual Defendants (except Sarah Brekke) and a preliminary review of available records and documents, we have been able to roughly reconstruct the basic operational/financial structure and history of the

1 premium SMS businesses of Receivership Defendants. I should caution that this
2 summary is preliminary and based on an initial and incomplete review of currently
3 available records and documents.

4 These businesses operated quite differently than it appeared to the industry
5 and the outside world. Receivership Defendants appeared to be six independent
6 SMS ventures, each operated and owned by one of the six Individual Defendants
7 (*see* “Big Picture,” below). But, in reality, the Individual Defendants, all premium
8 SMS novices, established their respective Receivership Defendant entities only at
9 the request of then senior executives of Mobile Messenger (principally Eromo)
10 who appeared to have made all the decisions and reaped nearly all the profits (*see*
11 “Mobile Messenger Executive Connection,” below). By establishing the
12 Receivership Defendants in this manner, the Individual Defendants and Eromo
13 were able to hide Eromo’s and the other senior Mobile Messenger executives’
14 involvement, misleading Mobile Messenger, the carriers, and the public about who
15 owned and operated the Receivership Defendants.

16 1. Big Picture – Operations and Ostensible Ownership

17 The Receivership Defendants participated in the premium SMS business at
18 various times from 2009 until at least the end of 2013. They can best be described
19 as flow-through entities. MDK was the only one that ever had an actual office, and
20 it was a simple room in a business center. The others maintained only a mailbox or
21 “virtual office” on a month-to-month basis from small commercial vendors,
22 augmented by Gmail accounts. Of course, one of the attractions of internet and
23 cellular businesses to entrepreneurs, legitimate and otherwise, is that these
24 businesses can be scaled up with minimal employees and little or no office space.

25 While each Receivership Defendant is a separate legal entity, their
26 operations followed the same basic playbook, with variations noted below, and
27 they can, therefore, be described as a group. All were premised on the same basic
28 model dictated by Eromo. Each entity secured, usually with Mobile Messenger’s

1 assistance, the rights to one or more “short codes” which provided the technical
2 capacity to send premium SMS texts. In industry parlance, Receivership
3 Defendants were labeled “content providers,” but could be labeled here simply as
4 holders of short codes. The Receivership Defendants, as directed by Eromo,
5 contracted out all functions – to advertising networks to generate leads (consumers
6 signed up for a monthly subscription to a text message of some sort) and to Mobile
7 Messenger to coordinate short codes, manage relationships with the carriers,
8 interface with consumers (including confirmation of their consent), provide the
9 content sent to consumers, and provide customer service (principally process
10 refunds).³

11 While Eromo was the decision maker and all substantive functions were
12 subcontracted out, these Receivership Defendants, each owned by the respective
13 Individual Defendants, were nonetheless in the business. They applied to CTIA in
14 order to hold short codes. They signed contracts with Mobile Messenger. Their
15 names were attached to the premium SMS programs pitched to consumers and
16 billed by the carriers. Their Gmail accounts were the destination for myriad
17 communications from Mobile Messenger (which often related to carrier
18 compliance issues) and for complaints from those consumers who followed the
19 trail to find their respective one-page websites and the email address listed there.
20 And approximately \$65 million flowed into their bank accounts from Mobile
21 Messenger, at least initially, before Eromo directed payments and transfers that
22 zeroed them out.

23 With the infrastructure in place, Receivership Defendants began operations.
24 Mobile Messenger employees communicated with the Receivership Defendants
25 daily – and sometimes multiple times a day – via email providing updates
26

27 ³ Refund processing was an important element of Mobile Messenger’s
28 service as Receivership Defendants had nominal websites that lacked consumer
interactivity and no computer systems by which to access customer information.

1 regarding subscribers, customer churn, carrier audits and sanctions, revenues and
2 refunds. These updates were sent to the email addresses provided by the
3 Individual Defendants. Despite receiving these communiqués, Individual
4 Defendants reported to us that they paid little attention to them, taking comfort that
5 Eromo was copied on most emails from Mobile Messenger. Instead, they claimed
6 that they ceded all operational authority to Eromo and relied on him to handle
7 everything.

8 Based upon the Individual Defendants' descriptions, the Receivership
9 Defendants' primary functions were to serve as the titular holder of short codes,
10 receive funds from Mobile Messenger generated by those short codes as managed
11 by Eromo, and disburse those funds to vendors and others as directed by Eromo.
12 Consumers were charged by the carrier (usually \$9.99 per month) which deducted
13 its share (usually 30-40%) and transmitted the remainder to Mobile Messenger as
14 the aggregator. Mobile Messenger withheld its share (usually 10-15% with
15 variations based on level of service, plus holdbacks, reserves, and fees), and
16 disbursed the rest to the Receivership Defendant attached to the short code that
17 generated the revenue. Anacapa, Tendenci, Network One, MKI, and Bear
18 immediately wired their Mobile Messenger funds, less their "split," to MDK.
19 MDK then made disbursements out to vendors and profit participants as directed
20 by Eromo.

21 This informal "network" of Receivership Defendants, acting as content
22 providers, enrolled an enormous number of consumers and generated substantial
23 revenues. We do not have a reliable basis to estimate the number of consumers
24 enrolled in programs attached to short codes controlled by Receivership
25 Defendants. The financial disclosures submitted by Receivership Defendants and
26 Individual Defendants indicate that the aggregate gross revenues received by
27 Receivership Defendants from Mobile Messenger were roughly \$65 million.
28 Those funds were either paid by Mobile Messenger directly to MDK or to the other

1 five Receivership Defendants who then immediately disbursed them to MDK, less
2 their split. The financial disclosures also indicate large disbursements by MDK for
3 advertising and other services and for payouts to Eromo and entities for the benefit
4 of the other three Mobile Messenger executives with as yet undefined financial
5 interests in Receivership Defendants. (See “Mobile Messenger Executive
6 Connection,” below.)

7 The FTC’s Complaint, and consumer Declarations submitted in support of
8 the TRO, allege that consumers were improperly enrolled in premium SMS
9 programs of Receivership Defendants in two ways: (1) where the consumer did
10 not have any contact with the Receivership Defendants and did not provide consent
11 for the charges; and (2) where the consumer did provide consent, but was deceived
12 by the underlying offer.

13 Defendants’ counsel report that consumers could not be enrolled without
14 consent because Receivership Defendants had delegated customer service
15 functions to Mobile Messenger which processed consumer authorizations through
16 its “MEP” platform programmed to compel a double opt-in consent procedure.
17 Representatives of the four Mobile Messenger executives with financial interests in
18 Receivership Defendants have also reported their view that Receivership
19 Defendants were “full service” customers of Mobile Messenger which included
20 consent processing through the MEP platform. We do not have the capacity to
21 independently confirm the extent to which these consent procedures were
22 operational and implemented as to consumers’ enrollments generated by short
23 codes held by Receivership Defendants.

24 We also do not at present have adequate information upon which to square
25 the consumer claims of no contact with the Defendants pre-enrollment and the
26 Defendants’ claims of a proprietary system to insure consent. However, discovery
27 received this week in response to a third party subpoena we served on Mobile
28 Messenger does call into question the Defendant’s argument on the double opt-in

1 safeguard. That discovery included formal arbitration claims filed by Mobile
2 Messenger in November, 2013. Respondents in those arbitrations are all
3 Defendants in this case, except Adkisson and Network One. *See, e.g.*, Claimant’s
4 Arbitration Claims and Relief Sought against MDK and Kebede, Exhibit 1.
5 Mobile Messenger alleges that the defendants used Eromo’s inside information to
6 circumvent Mobile Messenger’s consumer protection system and thereby
7 “crammed” consumers. Specifically, Mobile Messenger alleges in this regard:

- 8 • “Eromo used his unique access and authority at Mobile Messenger to
9 generate revenues for his own companies by secretly circumventing
10 Mobile Messenger’s safeguards designed to protect consumers and
11 instead bill such consumers for his own and his companies’ private
12 gain. The officers and directors of each of these companies colluded
13 together with him to conceal his involvement from Mobile Messenger
14 and to establish these companies, operate them, and circumvent those
15 consumer protection measures.” Exhibit 1, Introductory Para. at pp.
16 1-2.
- 17 • “Eromo exercised his discretion over Mobile Messenger’s sales and
18 account management teams and had authorized access to Carrier
19 refund data, suspensions, and terminations.” Exhibit 1, Para. 10.
- 20 • “Eromo also had knowledge about Mobile Messenger’s consumer
21 protection protocols that were designed to prevent unauthorized
22 charges by content providers on consumer cell phone bills.” Exhibit
23 1, Para. 11.
- 24 • “To be sure, neither Mobile Messenger, nor the CTIA, nor any
25 Carrier, would approve an enterprise as a mobile content provider if
26 they knew that Eromo, or any aggregator senior employee with unique
27 access to consumer protection systems, owned the company for his
28 own private gain.” Exhibit 1, Para. 21.

- 1 • “Moreover, at least one Carrier has exercised its right to demand that
- 2 Mobile Messenger pay back all monies the Carrier had previously
- 3 paid the Mobile Messenger group programs controlled by the Eromo
- 4 Content providers. In the case of that Carrier only, that amount is
- 5 approximately \$7.1 million.” Exhibit 1, Para. 40.
- 6 • “MDK’s and Kebede’s intentional acts of cramming violate numerous
- 7 state and federal laws” Exhibit 1, Para. 67.
- 8 • “MDK and Kebede breached the duty of care owed to Mobile
- 9 Messenger in the operation of MDK’s business by placing
- 10 unauthorized, misleading and deceptive PSMS charges on consumers’
- 11 mobile phone bills and using deceptive advertisements and other
- 12 deceptive practices in order to induce consumers to sign up for their
- 13 services, in violation of state and federal laws” Exhibit 1, Para.
- 14 74.
- 15 • “MDK’s and Kebede’s wrongful conduct in furtherance of the
- 16 conspiracy includes, . . . engaging in cramming” Exhibit 1, Para.
- 17 92.⁴

18 As to the alleged second method of improper enrollment – deceptive

19 advertising – we do not yet have access to the materials produced by ad network

20 subcontractors for Receivership Defendants. We have located in recent discovery

21 produced by a non-party some examples of advertising flagged by the carriers as

22 misleading. *See, e.g.*, Exhibit 2, Verizon Termination Notice dated January 17,

23 2012, attaching deceptive MDK Walmart advertisement.

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27 ⁴ The Mobile Messenger claims are, of course, merely allegations.

28 Nevertheless, given the significance of the issue we thought the Court would want to be aware of the claims as another data point as it considers the parties’ positions.

1 MDK Media, Inc.

2 MDK was incorporated by Individual Defendant Kebede in 2009 as a one-
3 shareholder corporation, for the specific purpose of entering the premium SMS
4 business. Kebede was a bookkeeper and real estate/mortgage broker with no SMS
5 experience. Between 2009 and 2012, MDK accessed multiple short codes through
6 Mobile Messenger. MDK was barred from Verizon, the largest carrier, in January,
7 2012 for compliance violations (*see* Exhibit 2), but thereafter deployed the d/b/a's
8 GMK and SE Ventures to continue in the business.

9 MDK received regular wires from Mobile Messenger and promptly
10 disbursed those funds out to vendors and/or Eromo or for the benefit of the other
11 Mobile Messenger executives with a financial interest in MDK. Kebede himself
12 was compensated at the outset as a bookkeeper, but later received a percentage (1-
13 3%) of the funds delivered by Mobile Messenger. MDK also served as a hub for
14 the other five Receivership Defendants, all of which remitted 95-97% of the
15 revenues they received from Mobile Messenger to MDK. As to Anacapa and
16 Tendenci, Kebede also had complete access to and control of their bank accounts
17 and initiated outgoing wire transfers to MDK unilaterally.

18 Based on Defendants' financial disclosures, estimated revenues into MDK,
19 2011-2012, were roughly \$65 million, all paid directly by Mobile Messenger or
20 indirectly when the other five Receivership Defendants disbursed their Mobile
21 Messenger funds to MDK. MDK, in turn, disbursed out the bulk of those funds to
22 Eromo or his entities (approximately \$33 million), Movil Wave (a Mundo Media
23 company) for leads (approximately \$13 million), Clickgen for leads
24 (approximately \$6.5 million), Concise Consulting and another entity controlled by
25 Mobile Messenger executive Mike Pajaczkowski (approximately \$10.6 million),
26 and approximately \$384,000 to Kebede.

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1 Anacapa Media LLC/Tendenci Media LLC

2 Anacapa and Tendenci were both incorporated simultaneously by Individual
3 Defendant Byrd in January, 2012, specifically for this business, with Byrd as 100%
4 owner of Anacapa and Individual Defendant Brekke as 100% owner of Tendenci.
5 According to Byrd, Brekke had no involvement in the business except to sign
6 documents.⁵ Neither Byrd nor Brekke had any background in SMS – Byrd has an
7 eclectic background as a screenwriter, life coach, teacher, and sustainability expert;
8 Brekke is an administrator with a financial firm. Anacapa and Tendenci disbursed
9 97% of funds received from Mobile Messenger to MDK as a “consulting fee” with
10 the remaining 2-3% disbursed to Byrd. The actual calculation and mechanics of
11 the transfers were handled by Kebede as directed by Eromo.

12 Both Anacapa and Tendenci were frequent targets of carrier inquiries and
13 short code suspensions and termination for compliance violations, as were the
14 other Receivership Defendants. *See, e.g.*, Exhibit 3 (Mobile Messenger internal
15 reports of Verizon refund forecast dated March 30, 2013), Exhibit 4 (Mobile
16 Messenger internal AT&T refund forecast dated March 26, 2013), Exhibit 5 (email
17 chain regarding AT&T termination of Anacapa dated October 15-16, 2013), and
18 Exhibit 6 (email chain between Verizon and Mobile Messenger concerning
19 Tendenci dated June 7-13, 2012).

20 Based on Defendants’ financial disclosures, estimated revenues from Mobile
21 Messenger to Anacapa/Tendenci were approximately \$28 million, all disbursed to
22 MDK, except 1-3% to Byrd.

23 ///

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25 _____
26 ⁵ There is some indication in recently received discovery that Brekke had
27 more involvement in the Tendenci operations than described by Byrd. *See* Exhibit
28 6 (email chain between Mobile Messenger and carrier in which Mobile Messenger
executive Mike Pajaczkowski claims he had been in contact with Tendenci CEO
Brekke to discuss carrier issues).

1 Network One Commerce, Inc.

2 Network One was an existing corporation set up in 2012 by Individual
3 Defendant Adkisson for what was described as future ventures, which had not yet
4 come to be. Like the others, Adkisson had no background in premium SMS.
5 Network One contracted with Mobile Messenger for its first short code in mid-
6 2012. It also disbursed all funds received from Mobile Messenger to MDK, less a
7 split of 2-3% for Adkisson.

8 Based on Defendants’ financial disclosures, estimated revenues from Mobile
9 Messenger to Network One were approximately \$1 million, all disbursed to MDK,
10 except for approximately \$45,000 to Adkisson.

11 MindKontrol Industries LLC

12 MKI was also a pre-existing entity, formed by Individual Defendant
13 DeNovellis in early 2011 as part of a move to be an entrepreneur, but it was never
14 active and had no bank account until entering the premium SMS business. MKI
15 entered that business in June, 2012. DeNovellis was an SMS novice who at the
16 time was between jobs after eight years with two technology companies.
17 Whenever MKI received funds from Mobile Messenger, it would also
18 simultaneously receive an invoice from SE Ventures for 95% of the total, leaving
19 5% to DeNovellis for what he described as 1-2 hours of work per week and
20 sometimes less. He told us he made a decision, for personal reasons, to “transition
21 out” of the business in the Spring/Summer of 2013.⁶

22 Based on Defendants’ financial disclosures, estimated revenues from Mobile
23 Messenger to MKI were approximately \$11 million, all disbursed to MDK, except
24 for approximately \$572,000 to DeNovellis.

25
26 ⁶ When probed on why he would want to “transition out” of a business in
27 which he received 5% for minimal work, DeNovellis said it was based upon his
28 “perceived risk.” He mentioned that he could be sued by greedy class action
counsel. While DeNovellis reported that MKI did not think what he was doing
was “remotely illegal,” he was concerned about greedy lawyers.

1 Bear Communications LLC

2 Bear was formed specifically for this business by Individual Defendant
3 Dawson in July, 2012. Dawson was also an SMS neophyte who was a business
4 school graduate who had worked in investment banking, with disappointing
5 financial results, for eight years. Dawson reported that funds arrived into Bear's
6 account from Mobile Messenger every other Tuesday, followed shortly by an
7 invoice from MDK/SE Ventures for 97%, with 3% for Bear/Dawson.

8 Based on Defendants' financial disclosures, estimated revenues from Mobile
9 Messenger to Bear were approximately \$4.4 million, all disbursed to MDK, except
10 for approximately \$130,000 to Dawson.

11 2. The Mobile Messenger Executive Connection

12 Although they remained as 100% owners of their respective entities, the
13 Individual Defendants report minimal involvement with operational details and no
14 profit participation – instead of an owner's share of profits, they were compensated
15 with a percentage of revenues as set by Eromo. De facto ownership and actual
16 control were held principally by Eromo, but also to some extent by three other
17 executives of Mobile Messenger (Darcy Wedd, Fraser Thompson, and Mike
18 Pajaczkowski), operating through other entities, who aligned with Eromo at least
19 by mid-2012.

20 Beginning with MDK, Eromo appears to have had a specific agenda –
21 emulate the big SMS profits being made by Mobile Messenger customers by
22 becoming a customer himself, but without the knowledge of Mobile Messenger or
23 the carriers. When MDK was being terminated by Verizon, Eromo reached out
24 first to Byrd, then later Adkisson, and still later Dawson who, like Kebede, were
25 long-time friends or social acquaintances with no premium SMS experience.
26 Mobile Messenger executive Fraser Thompson recruited DeNovellis, his high
27 school classmate. All were offered the same “opportunity” that had been presented
28 to Kebede years earlier.

1 With minor variations, the opportunity presented to the Individual
2 Defendants was as follows: form an entity in your name, or use a current entity,
3 set up a virtual office, launch a one-page website, open a bank account and become
4 a client of Mobile Messenger (where the real owners were senior executives). The
5 Individual Defendants were coached on what to say if they were contacted by
6 CTIA, the cellular trade association, during the initial vetting process. In return,
7 the Individual Defendants got a piece of the action. Eromo would “handle
8 everything,” including management of the relationships with Mobile Messenger as
9 aggregator, the advertising network, and the bank accounts.

10 Verizon’s decision in late 2011 to boot MDK (effective January 17, 2012)
11 coincides with Eromo’s recruitment of Byrd to establish Anacapa and Tendenci.
12 Byrd told us he was on a ferry in Costa Rica in December 2011, when he received
13 a call from Eromo who told him he could make some money without doing
14 anything except answer a few emails, although it could end any time. Eromo told
15 Byrd that he would get a fee to allow Eromo to have a company not in his name.
16 He also told him that the more companies the better, but only one person per
17 company; hence Brekke was assigned to the second company. Byrd said Eromo
18 was in a “hurry,” so he coordinated with Kebede by telephone from Costa Rica to
19 set up the companies through Legal Zoom. The incorporation of Anacapa and
20 Tendenci was completed in January 2012 and they were activated with short codes
21 by March 2012. By mid-2012, MKI, Network One, and Bear were added to the
22 inventory of companies. The obvious advantage of multiple companies holding
23 short codes is that if one company is terminated by the carriers for compliance
24 violations, then traffic can be directed to the short codes held by the other
25 companies.

26 According to the Individual Defendants, Eromo was clear about the need to
27 conceal his involvement from Mobile Messenger, but he explained to Byrd that
28 many other executives had side deals, that such deals were part of the culture.

1 Byrd said he was relieved when he learned that Mobile Messenger executives
2 Darcy Wedd, Fraser Thompson, and Mike Pajaczkowski had teamed with Eromo
3 because Byrd would no longer have to dodge them at social events as he did when
4 he believed Eromo's side businesses were concealed from them.

5 When Mobile Messenger funds arrived at MDK, either directly from Mobile
6 Messenger, or indirectly from the other five Receivership Defendants, Eromo
7 would give Kebede instructions on where to wire the funds out to pay vendors or to
8 distribute profits to him and others he designated. When the other five
9 Receivership Defendants came on line, they immediately wired funds received
10 from Mobile Messenger to MDK/SE Ventures based on invoices for "consulting."
11 Each entity was permitted to withhold a slightly different percentage, ranging from
12 1-5%. As to any "net profits" remaining at MDK, Kebede reported they were
13 distributed to Eromo and others as designated by Eromo.⁷

14 None of the Individual Defendants recruited by Eromo/Fraser were experts
15 or even well informed about the premium SMS business. They did not contribute
16 any capital to the business. They claim little direct involvement in the actual
17 operations or decisions of the Receivership Defendants. Instead, these articulate
18 people (all of whom have at least a college degree and some have advanced
19 degrees) report they agreed, at the request of senior officers of Mobile Messenger,
20 to (1) establish the Receivership Defendant entities; (2) conceal the true ownership
21 of those entities from the carriers, the rest of Mobile Messenger and consumers;

22

23

24

25 ⁷ Kebede reported to us that beginning in mid to late 2012, "profits" were
26 disbursed from MDK by a formula set by Eromo – 25% to Eromo; 25% to Erdi
27 Development, believed to be an Eromo company; and 50% to Concise Consulting
28 (believed to be owned by Mobile Messenger executive Michael Pajaczkowski).
Prior to that, profits went to Eromo or Erdi Development. The amount and
mechanics of profit distributions to Darcy Wedd and Fraser Thompson have not
been confirmed.

1 and (3) abdicate all responsibility for operating these businesses to the Eromo, a
2 senior Mobile Messenger executive.⁸ All this for a percentage of revenue.

3 Each Individual Defendant (except Brekke who we have not interviewed)
4 acknowledged that they spent minimal time on the business, felt no compunction to
5 learn more about the business or ask questions, simply did as instructed by Eromo,
6 and that the appeal of the opportunity was the chance to make some money with
7 little effort, even though Eromo cautioned that it “could end any time.” A telling
8 confirmation of Eromo’s ultimate control is that all Individual Defendants
9 provided the same answer when asked who they first called when they learned they
10 had been named in this case – Eromo.

11 **III.**

12 **Conclusion**

13 Based upon the information presently known, an ongoing receivership’s
14 mission will be focused on securing whatever records remain, assembling any
15 available assets, and identifying and pursuing all viable claims against third parties
16 to whom Receivership Defendants disbursed significant funds from their premium
17 SMS operations.

18 Dated: August 14, 2014

THOMAS W. MCNAMARA

19 By: /S/ Thomas W. McNamara
20 Thomas W. McNamara
21 Temporary Receiver

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23
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27 ⁸ DeNovellis’ explanation deviated slightly in this regard. He saw himself
28 as a Mobile Messenger customer – though he admitted he suspected that Eromo
was getting some share of the MKI revenues forwarded to MDK.

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2014, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in the case who are registered CM/ECF users.

/s/ Thomas W. McNamara