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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION, Plaintiff, v. BAM FINANCIAL, LLC, et al., Defendants.	Case No. SACV15-01672 JVS (DFMx) **PRELIMINARY REPORT OF RECEIVER** JUDGE: Hon. James V. Selna CTRM: 10C

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PRELIMINARY REPORT OF RECEIVER

I.

INTRODUCTION

On October 21, 2015, this Court entered a Temporary Restraining Order with an Asset Freeze ("TRO") that appointed me as the Receiver for the business activities of Receivership Defendants[1]. I submit this Preliminary Report in compliance with Section XIV of the TRO which directs that I report on the following topics prior to the Preliminary Injunction hearing:

1. Steps taken to implement the TRO: I have indefinitely suspended all of Receivership Defendants' debt collection operations as the practices prohibited by the TRO are ingrained in their operations. *See* Section II(F) *infra*.

2-3. Receivership Defendants' assets and liabilities: Receivership Defendants appear to have no meaningful assets other than the limited funds frozen as described in Section II(B). We cannot yet estimate liabilities. *See* Section IV *infra*.

4. Steps Receiver intends to take to protect assets of Receivership Defendants, pursue assets from third parties, and adjust liabilities: The asset freeze is the primary immediate vehicle to protect assets. Whether third parties have assets that can be claimed by the Receivership and whether liabilities can be adjusted are matters that will require further investigation, but it does appear at this stage that assets are very limited.

5. Whether the business of the Receivership Defendants can be operated lawfully and profitably: I have concluded that these businesses cannot be "lawfully operated at a profit using the assets of the receivership estate." (TRO, Section IX(N), page 23.) *See* Section V *infra*.

[1] Receivership Defendants are defined in the TRO as "BAM Financial, LLC, Everton Financial, LLC, Legal Financial Consulting, LLC, as well as any successors, assigns, affiliates, and subsidiaries that conduct any business related to the Defendants' debt collection business and which the Receiver has reason to believe are owned or controlled in whole or in part by any of the Defendants."

6. Any other matters which the Receiver believes should be brought to the Court's attention: These matters are set forth below.

II.

RECEIVERSHIP ACTIVITIES

A. Defendants' Sites

Pursuant to Section X of the TRO, at approximately 11:00 a.m. on October 22, 2015, we took possession of the business premises of Receivership Defendants at 2101 Business Center Drive, Suite 215, Irvine, California. We coordinated our efforts with attorneys and investigators from Plaintiff Federal Trade Commission ("FTC") and uniformed police from the Irvine Police Department.

2101 Business Center Drive, Suite 215, Irvine, California

Receivership Defendants have operated debt collection businesses from this 2,500 square foot space since November, 2013. BAM Financial, LLC ("BAM") is the name on the door and is identified as the tenant in the lease. Defendant Roberto Llaury ("Llaury"), the principal of Receivership Defendant Legal Financial Consulting, LLC ("LFC"), has also operated from this site and some LFC employees have been stationed there. This was also the office location for Receivership Defendant Everton Financial, LLC ("Everton") during a few months in 2015, but it has no current operations. Upon our arrival, Defendant Luis Carrera ("Carrera"), BAM's principal, was present with four employees and we learned shortly after arriving that Defendant Llaury was operating from another location on Hughes Street. Appendix, Exhibit 1 is an inventory of the furniture and equipment we found onsite.

10 Hughes Street, Suite A207, Irvine, California

LFC opened its own office at this 1,700 square foot site as of October 3, 2015. Upon our arrival, Llaury was present with just one consultant and one employee. Appendix, Exhibit 2 is an inventory of the furniture and equipment we found onsite.

Mail Drops

We identified and secured two mail drops used by Receivership Defendants – Mailboxes Irvine, 4521 Campus Drive, Irvine and Xpress Mailboxes, Inc., 2967 Michelson Dr., Suite G, Irvine. The mail being delivered to each location is now under the control of the Receivership.

B. Bank Accounts

Beginning October 22, 2015, we served the TRO/Asset Freeze on banks and other financial institutions where Defendants were known to have accounts or credit card merchant accounts. The following accounts have been frozen:

Account Name	Financial Institution	Balance Frozen
BAM Financial, LLC, dba Chelsea Financial	Bank of America	$271.95
Everton Financial, LLC	JP Morgan Chase	$22.44
Legal Financial Consulting, LLC	Bank of America	$14,002.47
TOTAL		$14,296.86

Other than the money in these accounts, the Receivership Defendants do not appear to have any substantial assets.

C. Cooperation and Interviews

At the BAM site, two of the four employees present were cooperative and completed questionnaires. The other two refused to speak to us and departed. One of those (later identified as John Mills) immediately texted Carrera, "Don't tell them s***." Carrera was cooperative and submitted to an interview with the Receiver and his counsel. Carrera generally answered questions openly and credibly, though we did find materials onsite after our interview which led us to conclude Carrera minimized some of BAM's unlawful practices during his conversation with us.

At the LFC site, the one consultant and the one employee onsite refused to identify themselves, but the consultant did speak with us. We later identified the consultant as Wayne Brown, a veteran debt collector who had previously managed

the BAM collection "room." Nearly everything he told us – all in his capacity as Mr. X (because he refused to identify himself) – was untruthful, including the claim that he barely knew Carrera when in fact he had managed the BAM collection room for years. The one employee present was a cousin of Llaury – he appeared to play a minor administrative role.

Llaury did meet with us, but, in my opinion, was not credible. He was not open or forthright and the conversation was more like fencing than an interview. For example, he denied being Carrera's "partner" and attempted to distance himself as just a third-party client who sent debt to Carrera/BAM for collection. This claim was contradicted immediately when we spoke to Carrera and by mountains of documents and records at the sites.

Carrera and Llaury subsequently met with my counsel on Tuesday, October 27, 2015. Both were cooperative at that time and assisted in running reports from the Collect One program used at both sites and in providing a description of the current debt portfolios.

D. Documents/Information/Electronic Data

Upon taking possession, we confirmed that hard copy documents, which were minimal, were secure. The Receiver's computer forensic team also secured the electronic data and supervised the mirror imaging of servers and computer hard drives by FTC personnel.

E. Website

We have activated a receivership website, www.BAMFinancialReceiver.com. It will serve as a vehicle to communicate with consumer debtors.

F. Compliance with TRO

After securing the premises and completing a basic review of the business, we addressed the issue of TRO compliance. We found that most of the practices prohibited by the TRO, particularly the efforts to present themselves as a legal

firm, have been ingrained in Defendants' daily operations, although we did see some efforts by BAM to improve after Llaury and Wayne Brown departed. Everton has no current operations. We could not identify feasible compliance procedures to permit operations even under my immediate direction. As such, I indefinitely suspended operations. *See* Section V *infra* as to whether this business could be operated profitably and lawfully going forward.

III.

SUMMARY OF OPERATIONS

At the time of our entry, operations at both sites were limited – Carrera/BAM with four employees at the Business Center Drive location appeared to be regrouping after the departure of Llaury. Llaury/LFC with just two people at the Hughes location, appeared to be in start-up mode. Everton has no current operations.

Nonetheless, through interviews and records review we were able to reconstruct the rough history of these enterprises and their collection practices. At the threshold, from 2011 to October, 2015, Carrera and Llaury were clearly in business together. While there may be no formal partnership agreement, they were partners for all intents and purposes. Llaury was the veteran of the two, having started in the business in 2005, at first as sole proprietor using dbas Legal Financial Consultants and Chelsea Financial. He established LFC as an LLC in June, 2013 using the address of the BAM office at 2101 Business Center Drive. At various times before the move to Hughes in October, 2015, Llaury shared an office with Carrera at the BAM office at 2101 Business Center Drive.

BAM was incorporated in early 2011 with Carrera designated as CEO. When BAM moved to the Business Center Drive site in October, 2013, Carrera signed the lease as President and Llaury signed as Vice President and as the guarantor. Llaury frequently paid BAM's rent.

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Receivership Defendants adopted dbas to promote the fiction that they were legal firms, not just collectors, particularly Chelsea and Associates and West and Associates. BAM was the formal registrant of two Chelsea dbas – Chelsea Financial in 2012 and Chelsea and Associates in 2013. The dba West and Associates was registered at various times by all three Receivership Defendants – BAM in March, 2014, Everton in April, 2015, and LFC in July, 2015.

The rough division of labor between Carrera and Llaury was that Llaury acquired the debt and oversaw collections and Carrera was the administrator. The onsite manager of the collection room for several years up to October, 2014.was Wayne Brown, a Llaury confidant who was the only collector for LFC when we arrived at the new LFC office on Hughes. (*See* below for examples of Mr. Brown's egregious collection tactics.) Collections at BAM were also aided by the use of auto-dialer programs initiated in early 2015.

As debt was acquired, usually in increments of $15,000-$30,000, each portfolio was assigned a number – from BAM 1 to BAM 40 with BAM 40 representing the most recent portfolio purchased. The basic arrangement was that BAM and LFC shared a 50/50 split after Carrera deducted his administrative fees from the gross collection fee.

In early 2015, Carrera and Llaury incorporated Everton Financial with the goal of formalizing their partnership. It was to operate as a joint business deploying the West and Associates dba. But that venture floundered and, by the Fall of 2015, they had agreed to "split." As grounds for the split, Carrera cited concerns about failure of Llaury to manage the collection practices and Carrera's perception he was working harder than his partner. Llaury said it was all the result of a worker's compensation judgment against Everton.

As part of the split, Carrera and Llaury divided the 40 BAM debt portfolios on a pro rata basis, so that each ended up with roughly the same number of accounts and principal value from each portfolio. Llaury opened up at Hughes on

October 3, 2015 with assistance from Carrera in setting up computers and the Collect One software.

We have not attempted to substantiate all of the myriad allegations asserted by the FTC. However, we certainly found evidence at both sites that prohibited debt collection practices were part of the culture:

- These businesses were all based on a core prohibited practice – misrepresentation that the debt collectors were attorneys, employees of a law firm or process servers about to serve a formal complaint. Dbas, including Chelsea and Associates and West and Associates, were selected and deployed specifically to create the aura of a legal firm. Consistent with the FTC's evidence, we recovered at the sites notices to consumers that promoted the law firm fiction, including "Litigation Notices," signed by a so-called "Legal Administrator" or "Legal Department." *See* Appendix, Exhibit 3 for three examples.
- At BAM's office, we found scripts providing collectors specific language which clearly violate the Fair Debt Collection Practices Act. For examples, *see* Appendix, Exhibits 4-11.
- The fact that Llaury had moved LFC to a new location on Hughes did not reflect any commitment to compliant practices. His entire portfolio was composed of debts that were retreads from BAM that had been allocated to him as part of the split with Carrera. He brought in Wayne Brown as the chief collector. He planned to use the LFC name with consumers, but that again promoted the illusion of a legal firm. (*See* Appendix, Exhibit 12). The West and Associates dba was also registered by LFC in July, 2015, in part, Llaury explained, to enable him to deposit consumer checks payable to West in connection with long-term payment plans. We found stacks of pre-printed consumer checks payable to West & Associates in Llaury's office (for

examples, *see* Appendix, Exhibit 13). Although the office was still in a start-up mode, and Llaury was still pursuing a credit card processor, we did find offending scripts and talking points onsite that reflected the same prohibited practices from BAM. For example, *see* Appendix, Exhibit 14.

- Collection calls at the Hughes site were recorded. The Receiver personally listened to one recorded call from the morning of October 22, 2015 prior to our entry in which Wayne Brown provided ample evidence that LFC was not moving toward better compliance. In that call, Mr. Brown posed as a process server supervisor from Jacksonville and claimed he had an officer on the way to serve a summons on a school administrator at a private school in Florida. Mr. Brown spoke to several school employees, including an assistant principal and principal, about his demand to serve the employee on school premises. Of course, Mr. Brown was not a process server supervisor (he was sitting in a call room in Irvine), there was no process server on the way, and no lawsuit had been filed against the unfortunate employee-debtor. However, as a result of Mr. Brown's call, the employee's supervisors and colleagues believed she had been sued.

IV.
FINANCIAL INFORMATION

We have conferred with Receivership Defendants' accountant and reviewed the limited available financial records. Appendix, Exhibit 15 is the financial summary prepared by the Receiver's forensic accountant. It shows gross revenues for BAM for 2011-2015 to be $4,102,180, revenues for Everton in 2015 of $115,442, and revenues for LFC, the LLC, for 2013-2014 to be $585,024. The BAM financials also report total payments made to LFC (as a dba and as an LLC),

2011-2015, are $946,526. The only identified Receivership Defendant assets other than frozen bank accounts are office furniture, computer equipment and software, all with nominal market value.[2]

The uncollected debt in the BAM and LFC portfolios could, in theory, be identified as an asset. The two portfolios combined represent roughly 20,000 consumer accounts with roughly an aggregate original principal amount of $80 million. We have not conducted a detailed audit of this portfolio, but can report that, in general, the quality (i.e., collectability) of the debt is low as Receivership Defendants generally bought the "cheapest" debt available from debt brokers (often at $0.01 or less per dollar of debt), much of which had already been sold several times before. The debt in the earlier BAM portfolios (BAM 1-BAM 11) is also very old.

Any attempt to market such a debt portfolio would first require a complete scrubbing to remove out-of-statute and other collection-prohibited debt and to confirm the availability of all the underlying documents for each debt. In the end, however, these portfolios are not marketable as all the debt has been subjected to some level of collection efforts by the Receivership Defendants which taints the entire portfolio, as we cannot rule out that these consumers were subjected to prohibited collection practices.

The only material liabilities we have identified relate to net collections owed to clients for their share of collected debts. As debts are collected, fees are deducted and the remainder remitted to clients at the end of the following month. We do not yet have an estimate of the potential aggregate amount of such net collections.

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[2] The Individual Defendants do have funds in brokerage accounts and equity in cars and houses.

V.

CAN THE BUSINESS BE OPERATED LAWFULLY AND PROFITABLY?

Section IX(N), at page 23, of the TRO authorizes the Receiver to continue the business of the Receivership Defendants, but with a significant proviso – "provided, however, that the continuation and conduct of the business shall be conditioned upon the Receiver's good faith determination that the businesses can be lawfully operated at a profit using the assets of the receivership estate[.]"

The lawful portion of this proviso is nearly moot given that the Receivership Defendants have nearly no assets. But, the debt collection businesses of Receivership Defendants are not per se illegal. The basic model – buy bank debt at deep discounts and then collect directly from consumers – is not uncommon and is deployed by legitimate debt collectors. But, these Receivership Defendants adopted a variant model - acquire old debt on the cheap and collect using prohibited tactics – that is an unlawful business.

To bring these businesses into compliance with the TRO would require wholesale changes, including an upgrade to the quality of the debt acquired at the outset and a transformation of the personnel, training, and compliance protocols. Such changes would increase operational expenses and decrease overall results. They would also require new capital, which is not available to the receivership. This capital requirement is made more critical by the fact that even the limited assets available in the receivership are derived from prohibited collection activities.

In the context of this Receivership, the businesses of Receivership Defendants are not salvageable as lawful and profitable businesses going forward.

Dated: November 6, 2015

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

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2015, 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/ Andrew W. Robertson
Andrew W. Robertson