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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 TRIANGLE MEDIA CORPORATION, a  
Delaware corporation, also doing business  
15 as Triangle CRM, Phenom Health, Beauty  
and Truth, and E-Cigs; JASPER RAIN  
16 MARKETING LLC, a California limited  
liability company, also doing business as  
17 Cranium Power and Phenom Health;  
HARDWIRE INTERACTIVE INC., a  
18 British Virgin Islands corporation, also  
doing business as Phenom Health, Beauty  
19 and Truth, and E-Cigs; and BRIAN  
PHILLIPS, individually and as an officer  
20 of Triangle Media Corporation,

21 Defendants.

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Case No. 3:18-cv-01388-MMA-NLS

**PRELIMINARY REPORT OF  
TEMPORARY RECEIVER**

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1                   **PRELIMINARY REPORT OF TEMPORARY RECEIVER**

2           By the Temporary Restraining Order entered June 29, 2018 (“TRO”), the  
3 Court appointed me Temporary Receiver (“Receiver”) of the Receivership Entities.  
4 Section XVI(V) of the TRO directs the Receiver to report on five specific topics  
5 prior to the hearing to show cause. Although the show cause hearing has been  
6 extended to August 9, 2018, we submit this Preliminary Report to provide the court  
7 a real time summary of our review and conclusions to date.

8                                   **I.**

9                                   **INTRODUCTION**

10           At the outset, we can report the determination that these businesses cannot  
11 operate legally and profitably within the constraints of the TRO and operations  
12 have, therefore, been suspended pending the outcome of the show cause hearing.<sup>1</sup>  
13 The factual predicates of this determination tell the story of a rampant and  
14 insidious fraudulent enterprise:

- 15           • Defendants’ fraud is simple in concept – bait consumers with internet  
16 ads offering risk free product trials for only the cost of shipping, but  
17 then use the consumers’ billing information to charge for the product  
18 and impose a monthly continuity charge. The twist is that  
19 Defendants’ have deployed complex modern internet marketplace  
20 tools to execute, disguise, and scale up the scheme. *See infra* Section  
21 III.B(1).
- 22           • Defendant Brian Phillips and his partner and friend Devin Keer are  
23 experts at this scheme and have been executing variants of it since  
24 2008. Their common ownership of, and the myriad interrelationships  
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26           <sup>1</sup> As discussed below, there are three components of Defendant Triangle  
27 Media Corporation’s business, which could be operated lawfully, but Defendant  
28 Brian Phillips has indicated they are not profitable. As to Hardwire Interactive  
Inc., there is a small amount of Amazon.com sales which appear to be lawful. *See  
infra* Section III.A.

1 between, Receivership Entities render the scheme a common  
2 enterprise among the Receivership Entities. *See infra* Section  
3 III.B(4).

- 4 • The lifeblood of Defendants’ scheme is access to merchant accounts  
5 through which consumer charges can be processed. Since banks will  
6 not approve merchant accounts for negative option sales, Defendants  
7 have built a network of merchant accounts by forming shell  
8 companies and convincing ordinary people, for a minimum of \$500  
9 per month, to act as the “front” (aka “signer” or “nominee”) for the  
10 shell company and a merchant account in its name. Defendants do all  
11 the work to form the entity and secure the merchant account,  
12 including the phony “straight sale” website page submitted to the  
13 banks – the nominees need only sign their name where directed.  
14 Defendants were incredibly successful in obtaining nominee merchant  
15 accounts with more than 300 active accounts in 2017 alone. This  
16 proliferation of merchant accounts exponentially multiplied the  
17 opportunities to charge consumers. *See infra* Section III.B(2).
- 18 • With sufficient merchant accounts in hand, Defendants’ attention  
19 turned to Hardwire Interactive Inc. to develop the “offers” to be  
20 presented to consumers. Hardwire could not, and did not, rely on the  
21 “straight sale” website pages submitted to the bank, but instead it  
22 created “trial offer” ads and then contracted with internet advertising  
23 experts and affiliates to distribute the ads and drive consumers to one  
24 of a myriad of websites, each connected to a different merchant  
25 account and each equipped with the negative option feature. These  
26 ads were remarkably successful – by virtue of the risk free trial  
27 continuity scheme, Defendants may have pulled in more than  
28 \$80 million from 2013 to 2018. *See infra* Section IV.

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**II.**

**IMPLEMENTATION OF TRO**

**A. Receivership Entities**

Receivership Entities subject to the receivership are expressly defined to include Corporate Defendants Triangle Media Corporation (“Triangle”), Hardwire Interactive Inc. (“Hardwire”), and Jasper Rain Marketing LLC (“Jasper Rain”), and their respective dbas (TRO, Definition N, page 8).

The TRO also extends this definition to “any other entity that has conducted any business related to Defendants’ marketing of negative option offers, including receipt of Assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant.” The Receiver has determined that additional entities fall within this definition: (1) Global Northern Trading Ltd. (“Global Northern”), a Canadian corporation as to which Triangle transferred more than \$44 million during the period 2013-2018; (2) Flat6 Development LLC (“Flat6”), a California limited liability company controlled by Phillips which has held title to two office condominium properties in San Diego funded by proceeds from Defendants’ negative option sales;<sup>2</sup> (3) Squad6 Services LLC; and (4) Bizway, Inc. (“Bizway”), which both appear to be controlled by Phillips and which appear to be in receipt of transferred assets; and (5) the hundreds of nominee entities formed and controlled by Defendants, but in the name of nominees, to open merchant accounts for the processing of consumer payments.

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<sup>2</sup> Flat6 owned the condos located at 1350 Columbia Street, Suites 303 and 302. The proceeds from the sale of Suite 303 are being held in the IOLTA accounts of Defendant Phillips and Mrs. Phillips’ divorce attorneys. The sale of Suite 302 is scheduled to close in the near future. The proceeds from the sale of Suite 302 will be frozen.

1           **B. Business Locations**

2           As directed by Sections XVI(G) and XXIV, we secured the physical location  
3 identified in the TRO – Triangle’s office located at 4519 George Road, Suite 170,  
4 Tampa, Florida – at approximately 11:00 a.m. Eastern time on Monday, July 2,  
5 2018. At our arrival, only two employees were onsite. Of the three other current  
6 employees, two were operating remotely from their homes in Tampa (an  
7 accountant and a software developer) and the South Carolina-based sales manager  
8 was in Fairbanks, Alaska setting up a new call center. We retained a local  
9 locksmith and changed the locks so that only the Receiver and his staff have had  
10 unsupervised access to the premises.

11           The space is approximately 3,700 square feet with nine individual offices  
12 (only five of which appeared to be in active use) and several conference rooms.  
13 We were told that the business was in the process of vacating and transitioning to a  
14 virtual operation. *See* Appendix, Exhibit 1 for inventory of furniture and  
15 equipment onsite.

16           The two onsite employees were cooperative and submitted to interviews.  
17 Both described themselves as doing customer service work for Triangle’s call  
18 center management clients, principally Hardwire. At our request, the accountant  
19 came to the office later in the day and agreed to an interview. We spoke to the  
20 South Carolina-based sales manager briefly. The current software developer failed  
21 to respond to our inquiries. We also spoke with a former software  
22 developer/administrator who had left the company on June 15, 2018.

23           We learned that Triangle was no longer occupying its longtime San Diego  
24 office (1350 Columbia Street, Suites 303 and 302). Therefore, the Receiver and  
25 his counsel, traveled to Phillips’ residence in San Diego at approximately 8:00 a.m.  
26 Pacific time on July 2, 2018, presented a copy of the TRO and had a short  
27 conversation with him.

28 ///

1           **C. Documents/Information/Electronic Data**

2           Upon taking possession of Triangle’s Tampa office, we secured the very  
3 limited quantity of hard copy documents onsite. Computer forensics professionals  
4 for Plaintiff Federal Trade Commission (“FTC”) imaged the hard drives of selected  
5 computers onsite.

6           We have also secured access to Triangle’s electronic data and cloud-stored  
7 documents, specifically, Google for Work accounts and Triangle’s online  
8 accounting software and collaboration tools. Our access to this material was  
9 hampered by the delay, noted below, in providing administrative user names and  
10 passwords. Given the large quantity of electronic data, our review is in the  
11 preliminary stage.

12           As to Hardwire, due to the pervasive lack of cooperation described below,  
13 we have to date secured only access to 26 U.S. email accounts.

14           We have served the TRO/Asset Freeze on the domain registrars for the  
15 operative websites. Defendants have not provided administrative access to the  
16 websites or identified the company hosting these websites. Without additional  
17 information or cooperation from the Defendants, we cannot begin the process of  
18 pulling down the sites.

19           **D. Receiver’s Website**

20           We have activated a receivership website to ultimately serve as a vehicle to  
21 communicate with consumers.<sup>3</sup>

22           **E. Cooperation**

23           Despite the clear TRO provisions requiring cooperation (e.g., Sections XVII,  
24 XVIII, XIX), we have received essentially no cooperation or information from  
25 Hardwire. As reflected in the Receiver’s Affidavit of Noncompliance (ECF  
26 No. 21), Hardwire demanded the release of telephone numbers provided by

27 \_\_\_\_\_  
28           <sup>3</sup> <http://regulatoryresolutions.com/case/federal-trade-commission-v-triangle-media-corporation-et-al/>.

1 Triangle. This is now before the Court via Hardwire’s Motion to Modify the TRO  
2 (ECF No. 26).

3 On July 10, more than a week after Hardwire became aware of the TRO, we  
4 were provided a list of 26 email accounts apparently used by Hardwire for its U.S.  
5 operations. This is all that Hardwire has provided in two weeks. While I do not  
6 believe the TRO limits the Receiver’s responsibilities to U.S. operations, I agreed,  
7 on July 10, to limit my immediate requests to Hardwire’s U.S. assets and U.S.  
8 operations pending the Court’s ruling on Hardwire’s motion. It took three days for  
9 Hardwire’s counsel to respond; they refused to provide *any* additional materials.  
10 See Appendix, Exhibit 2, emails between Receiver and counsel for Hardwire.  
11 Hardwire’s position is unprincipled and flaunts the TRO.

12 As to Triangle and Defendant Phillips, we have had modest and intermittent  
13 cooperation. Brian Phillips did speak with the Receiver on July 2 when he was  
14 presented with the TRO and then by phone later in the day. We interviewed or  
15 spoke by phone with six current and former Triangle employees during the  
16 immediate access of the Tampa office on July 2. We received a list of Triangle  
17 administrative passwords late in the evening of July 3. On July 4, when Phillips  
18 delivered his laptop computer to our office, he spoke with us, responding to  
19 preliminary questions. Sierra Owen, a former Triangle employee, a present  
20 Hardwire employee, and the principal of Defendant Jasper Rain, accompanied  
21 Phillips at that time and she also responded to questions. On July 11, 2018, former  
22 San Diego Triangle employee, Brittany Wise, came to our offices for an interview,  
23 accompanied by counsel for Triangle, Phillips, and Jasper Rain.

24 We await responses to a number of requests and questions presented to  
25 counsel for Triangle, Phillips, and Jasper Rain.

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1 **III.**

2 **CAN OPERATIONS BE CONTINUED**  
3 **LEGALLY AND PROFITABLY?**

4 The TRO includes two provisions which require the Receiver to make a  
5 judgment as to whether operations can be continued legally and profitably:

- 6 • Section XVI(S) authorizes the Receiver to suspend business  
7 operations of the Receivership Entities if, in the judgment of the  
8 Receiver, such operations cannot be continued legally and profitably.
- 9 • If the Receiver determines that operations cannot be continued legally  
10 and profitably, Section XVI(U) directs that he take all steps necessary  
11 to ensure that (i) web pages or websites relating to the activities  
12 alleged in the Complaint cannot be accessed by the public or are  
13 modified for consumer education and/or informational purposes, and  
14 (ii) any phone numbers associated with Receivership Entities cannot  
15 be accessed by the public or are answered solely to provide consumer  
16 education or information regarding the status of operations.

17 The TRO seeks primarily to protect consumers from Defendants' risk free  
18 trial continuity trickery by prohibiting misrepresentations and requiring clear and  
19 conspicuous affirmative disclosures as to any sales with a negative option feature.  
20 TRO Sections I-VI, pages 8-12.

21 While Hardwire has refused to cooperate, based on our review of documents  
22 currently available, it appears that Hardwire makes some straight sales via  
23 Amazon, which do not involve a free trial or the negative option feature. While  
24 revenues are not significant, such sales directly to consumers for full price is a  
25 lawful business that could be profitable.

26 Triangle claims to be an e-commerce customer service business which offers  
27 CRM (customer relations management database), call center, and payment  
28 processing services (i.e., nominee merchant accounts and payment gateway for

1 merchant account processing). Except as to Hardwire and other clients deploying  
2 the negative option feature, these individual components could, in theory, be  
3 lawful and profitable businesses. However, Phillips stated that the CRM cost  
4 \$50,000 per month to maintain, making it cost prohibitive when customers can  
5 obtain a CRM license for \$800 per month from other providers.<sup>4</sup> Phillips has tried  
6 to sell the payment gateway, but has been unable to find a buyer. Triangle's call  
7 center services (i.e., reselling call center services to various clients and developing  
8 its own call center) may be lawful and profitable, but Phillips indicated that he  
9 planned to shut down Triangle entirely, suggesting the call center services are not  
10 sufficient to sustain the company.

11 **A. Suspension of Operations**

12 Except as to the limited operations noted above, the businesses of  
13 Receivership Entities cannot operate lawfully and profitably under the terms of the  
14 TRO. In short, these businesses were premised on, and could not continue without,  
15 misrepresentations about the risk free trial which are prohibited by the TRO.

16 Given this determination, the Receiver has suspended operations pending the  
17 outcome of the show cause hearing. As to Triangle, that translates into shuttering  
18 the Tampa office and suspending ongoing services. This includes asking call  
19 centers to stand down, suspending the telephone numbers Triangle obtained from  
20 San Diego telecom provider NobelBiz, informing domain registrars of the action,  
21 notifying various asset holders of the action and the asset freeze, and disabling  
22 Triangle's payment gateway.

23 As to Hardwire, we have received no cooperation or information. As this  
24 Court is aware, Hardwire wishes to continue to use the telephone numbers acquired  
25 by Triangle and provided to Hardwire. Hardwire claims it is entitled to use certain  
26 of these numbers by virtue of a contract between Triangle and Hardwire.

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28 <sup>4</sup> Phillips also reported that he transferred the CRM to Hardwire.

1 We have also delivered the TRO/Asset Freeze to merchant processors,  
2 banks, fulfillment centers, a product supplier, and an advertising company.

3 The other Receivership Entities have served only as pass-throughs for funds  
4 and did not, therefore, have any operations to suspend with the possible exception  
5 of Bizway. To the extent possible, their bank accounts have been frozen.

6 **B. Defendants' Unlawful Operations**

7 Our determination on the lawful/profitable issue is based on our review thus  
8 far of the various components of the businesses as detailed below. Every  
9 component represents an overt fraud.

10 1. The Risk Free Trial Continuity "Sale"

11 The first maneuver in this fraud was to lure consumers with the shiny  
12 promise of a risk free trial of a product (e.g., face cream, nutritional supplements,  
13 and e-cigarettes). Hidden in inconspicuous text was the truth about the offer: if  
14 not cancelled within 15 days, then the consumer would be charged in full for the  
15 product and automatically enrolled in a monthly continuity program. This trick  
16 was facilitated by the negative option feature by which the consumer's silence or  
17 failure to affirmatively reject or cancel was deemed as acceptance and was further  
18 enabled by call centers instructed to make returns and cancellations difficult.

19 Triangle used Confluence, an online collaboration tool, to instruct call room  
20 personnel on the deceitful details of the risk free trial continuity sale presentation.  
21 Appendix, Exhibit 3 are samples of customer complaints that flowed into Triangle.

22 2. Defendants' Proliferation and Manipulation of Nominee  
23 Merchant Accounts

24 a. *Opening Nominee Accounts*

25 The continued viability of any internet sales operation is dependent on the  
26 ability to utilize merchant accounts to process consumer payments by credit card.  
27 Defendants' risk free trial continuity offers were so successful they needed the  
28 capacity to process a huge volume of consumer charges. This need was heightened

1 by the practice of most processors to impose monthly dollar volume caps,  
2 particularly on new accounts.

3 The need for multiple accounts was acutely sensitive for the Defendants  
4 because the risk free trial scheme they operated resulted in high levels of refunds  
5 and chargebacks. Once chargebacks reach a certain level (supposedly 3% for the  
6 “high risk” merchant account universe in which Defendants operated), the  
7 merchant accounts are at risk of being closed by the acquiring bank. The constant  
8 closing of the Defendants’ nominee merchant accounts created a voracious and  
9 incessant need for new merchant accounts.

10 Defendants overcame the merchant account challenge by recruiting people  
11 to act as merchant facades. At Defendant Phillips direction, Defendants built a  
12 stable of merchant accounts by enticing individuals to act as nominees for  
13 merchant accounts which required no effort and for which they would be paid  
14 \$500-\$1,000 or 1% of the gross per month. *See* Appendix, Exhibit 4. Defendants  
15 did all the work, they: formed the entity with the nominee as member; opened a  
16 bank account in the name of the entity and Phillips as an authorized signer; funded  
17 the bank account so it had sufficient activity not to be categorized as a “new”  
18 business by the merchant processor; submitted the application to the processor;  
19 created “straight sale” websites which would pass muster in the bank review; upon  
20 approval, had Triangle and Hardwire employees manage the account; and prepared  
21 annual tax returns for the LLC.<sup>5</sup>

22 Brittany Wise, a Triangle employee in San Diego who was responsible for  
23 managing the nominee merchant account application process and then monitoring  
24 active accounts, agreed to be a nominee herself. She reported that signing the bank  
25 account opening documents was a painless way to make \$500 a month which was  
26

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27 <sup>5</sup> All the nominee had to do was meet Phillips outside the bank to open the  
28 bank account, and then sign on the dotted line as directed by Phillips. *See*  
Appendix, Exhibit 5.

1 auto-deposited from the LLC’s bank account to her personal bank account. She  
2 explained that any risk was contained by the merchant account reserve holdback  
3 maintained by the processor and the fact that any negative history for the LLC  
4 would not impact her personal credit.

5 Although she worked at Triangle, Ms. Wise claimed she knew almost  
6 nothing about her merchant account – not what exactly the “merchant” sold, not  
7 how much money came into the merchant account, and not the balances in the  
8 bank account. She was, however, aware that her merchant account was closed by  
9 the bank as a result of excessive chargebacks. *See* Appendix, Exhibit 6.

10 Triangle and Hardwire employees recruited their friends to sign up as  
11 nominees. Ms. Wise invited her friends<sup>6</sup>, as did Hardwire employee Sierra Owen  
12 based in San Diego. Before lending their identities, the nominees were assured  
13 that the sales were real and everything was above board. As Ms. Owen described  
14 her friends, they “were young and broke” and happy to receive \$500 monthly for  
15 opening up a merchant account.<sup>7</sup> Even the head of operations of Triangle had his  
16 girlfriend become a nominee.

17 The recruitment became so entrenched that Triangle and Hardwire  
18 employees set up a checklist of all the items new nominees were required to  
19 provide. *See* Appendix, Exhibit 8. The process of lining up nominees, submitting  
20 applications, and then monitoring active accounts, was very labor intensive – both  
21 Ms. Wise and Ms. Owen provided administrative support, with Ms. Owen focusing  
22 on forming and monitoring the necessary LLCs. The employees often struggled to  
23 secure all the documents needed from nominees – senior management was well  
24 aware of these struggles. *See* Appendix, Exhibit 9 (email chain including Ms.

25 \_\_\_\_\_  
26 <sup>6</sup> *See* Appendix, Exhibit 7 (a redacted merchant account application for a  
signer recruited by Ms. Wise).

27 <sup>7</sup> Ms. Owen explained that after Defendant Jasper Rain’s merchant accounts  
28 were shut down, she became its member (replacing a friend) to ensure the entity  
received its merchant account reserve funds.

1 Wise, Ms. Owen, Brett Bond and Phillips discussing efforts to obtain required  
2 documents from a number of nominees, so applications could be submitted).

3 When Ms. Wise left Triangle in early 2018, her role was transitioned to a  
4 Hardwire employee (or contractor), Angela Kim, who lived in the Los Angeles  
5 area. She was knowledgeable in the industry and had worked with the Defendants  
6 while she was an employee of Processing.com, a merchant account processor with  
7 which the Corporate Defendants and Messrs. Keer, Phillips, and Brett Bond  
8 worked very closely.

9 Over the course of the scheme, Triangle and Hardwire amassed hundreds of  
10 nominee merchant accounts in the U.S. and internationally. For example, a review  
11 of the Processing.com portal reveals Defendants, at present, have 208 active  
12 merchant accounts, and 903 distinct MIDs. These nominee merchant accounts  
13 appear to be located internationally, but roughly half of these accounts have the  
14 ability to transact in U.S. dollars. In August, 2015, Devin Keer boasted in one of  
15 his Hardwire update reports to employees that new projects required the formation  
16 of 80+ corporations, 80+ MID websites, and application and approval of 80+  
17 merchant accounts in a single quarter. *See* Appendix, Exhibit 10. A review of  
18 Defendant Phillips' laptop revealed hundreds of completed merchant account  
19 application packages for people across the globe going back to at least 2011.

20 Triangle and Hardwire also maintained meticulous details of all their  
21 merchant accounts in a massive spreadsheet that included more than 800 merchant  
22 accounts. *See* Appendix, Exhibit 11.

23 This proliferation of nominee merchant accounts also had the benefit of  
24 protecting the anonymity of Hardwire and Triangle. When customers complained  
25 to the Better Business Bureau (“BBB”) or authorities, it was about the merchant or  
26 the product, and not the Defendants. When a merchant account was closed from a  
27 flood of chargebacks – as they all were, even with close monitoring – there was no  
28 prejudice to Defendants.

1                                    *b. Managing and Monitoring Nominee Accounts*

2            After merchant accounts were opened, they were zealously monitored by  
3 Triangle and Hardwire employees, particularly as to chargeback ratios and refunds.  
4 Account notices, warnings and closings were received by Hardwire employees and  
5 then forwarded to Triangle employees. *See* Appendix, Exhibit 12.<sup>8</sup>

6            Merchant accounts were also closely monitored by senior management at  
7 Triangle and Hardwire. *See* Appendix, Exhibit 13 (March 29, 2017 email chain  
8 among Devin Keer, Defendant Phillips, Brett Bond and other Triangle and  
9 Hardwire employees analyzing a final fraud warning received from a processor;  
10 June 26, 2017 email among Henrik Risvang (operations at Triangle), Keer,  
11 Phillips, and Brett Bond about Discover card chargebacks; a July 11, 2017 email  
12 chain among Keer, Phillips, and Brett Bond discussing the closing of numerous  
13 merchant accounts; and an August 16, 2017 email chain among Henrik Risvang,  
14 Keer, Phillips, Brett Bond and Triangle CFO Marcel Bouwens).

15                                    3. Proliferation of Websites

16            Hardwire also controlled hundreds of websites. *See* ECF No. 5-3 at 355-  
17 382. Since each merchant account was required to be associated with a specific  
18 website URL, proliferation of websites had to match the proliferation in merchant  
19 accounts. Defendants created “straight sale” websites to present a “clean” website  
20 page without the free trial and negative option features to the merchant processor  
21 during the application process. These clean, straight sale websites do not,  
22 however, drive consumer traffic – that is achieved by deceptive advertisements  
23 placed by marketing companies and affiliates on social media sites do drive  
24 consumers.

25  
26            <sup>8</sup> Given the effort and resources expended to get a nominee merchant  
27 account open, it is no surprise that Triangle and Hardwire employees (and senior  
28 management) would closely monitor and manage the accounts, shifting charges  
among accounts – load balancing – to keep chargebacks at bay. They also hired  
vendors with special expertise to “alert” or warn of potential chargebacks.



1 We have confirmed that Hardwire spent \$9.6 million with one internet  
2 advertising vendor alone in the period 2012-2018. The ad content placed by this  
3 vendor (and others) was created internally at Hardwire. This content is something  
4 we would like to review, but we do not have access given Hardwire's refusal to  
5 cooperate.

6 4. Common Enterprise

7 Despite creative efforts to disguise and conceal reality, the Receivership  
8 Entities are a common enterprise.

9 a. *Common Ownership*

10 Brian Phillips and his best friend and partner Devin Keer have been in the  
11 "risk free trial" offer business for a decade. In our meeting with Phillips, he  
12 confirmed that he and Devin Keer began working together in 2008 when they were  
13 living in Bermuda and setup an entity in McKinney, Texas. That entity, which  
14 sold goods to U.S. consumers, ultimately ran afoul of the BBB and was shut  
15 down.<sup>9</sup>

16 In describing their respective roles, Phillips depicted Mr. Keer as the  
17 ultimate mastermind, marketer, and businessman,<sup>10</sup> while Phillips' primary role  
18 was to obtain and maintain merchant accounts in the United States. Phillips  
19 emphasized that the entire business is dependent on merchant accounts.

20 The companies they established (Triangle, Hardwire, and others) were  
21 commonly owned and run by Messrs. Phillips and Keer. A third person, Brett  
22 Bond, who employees reported to be very close to Phillips and Keer, also plays a  
23 management role at Hardwire – perhaps he also has an ownership interest in  
24 Hardwire, but that is unclear and without cooperation by Hardwire we cannot

25 \_\_\_\_\_  
26 <sup>9</sup> In one of his Hardwire company reports, Devin Keer provides a similar  
start date.

27 <sup>10</sup> Our limited review of documents supports this characterization. Devin  
28 Keer's reports, emails, and analyses that we have had the opportunity to review  
reveal an astute, organized, and detailed operator.



1 confirm or deny. Mr. Bond, an Australian who has held himself out as Hardwire’s  
2 general manager and Triangle’s COO, was stationed at Triangle San Diego during  
3 much of 2017, but then moved to Bangkok, Thailand. Devin Keer, a Canadian,  
4 also lives in Bangkok.

5 i. Triangle

6 Mr. Keer has submitted a declaration claiming that the relationship between  
7 Triangle and Hardwire has been that of a vendor and client for the last 18 months.  
8 Documents we have reviewed do reveal an effort to put some daylight between the  
9 companies, but that began in the Fall of 2017. At that time, the parties did appear  
10 to have made structure changes, but Devin Keer’s email of September 25, 2017 to  
11 Triangle employees described it as an amicable re-alignment – “a change in  
12 corporate structure that really is mostly a formality” – effective October 1, 2017.  
13 *See* Appendix, Exhibit 14. Whether the changes were more form or substance is  
14 unclear at this point.

15 In his declaration, Keer claims that through his entity Mantra Media Capital  
16 BVI (“Mantra Media”), which is also the parent of Hardwire, he sold his 50%  
17 interest in Triangle for \$1,000,000 as evidenced by a promissory note from  
18 Phillips. To support this claim, Keer submitted a Sale and Purchase Agreement  
19 between Mantra Media and Phillips, dated October 1, 2017 (ECF No. 26-3 at 29-  
20 34). We have, however, located a second contemporaneous agreement on Phillips’  
21 laptop – a Consultancy Agreement between Phillips and Mantra Media of the same  
22 date. In that agreement, Mantra Media engaged Phillips to consult on e-commerce  
23 matters for a two-part consultancy fee: a \$1,000,000 “Engagement Fee,”  
24 immediately used to fully offset Phillips’ supposed \$1,000,000 promissory note to  
25 Mantra Media for the purchase of the Triangle shares; and a \$1,000,000 Service  
26 Fee payable to Phillips, at \$50,000 per month for 20 months. *See* Appendix,  
27 Exhibit 15.

28 ///

1 Keer appears, therefore, to have transferred his interest in Triangle to  
2 Phillips for no consideration and Phillips remains on the payroll at \$50,000 per  
3 month for 20 months.

4 ii. Hardwire

5 Phillips claims that he has no present ownership interest in Hardwire<sup>11</sup> and  
6 has had none since 2014. Our review casts doubt on this claim. Mr. Phillips is in  
7 the midst of divorce proceedings – his wife asserts in pleadings that he did have an  
8 interest in Hardwire up until last year and only attempted to transfer complete  
9 ownership to Devin Keer in the summer of 2017, when divorce was imminent, as a  
10 ruse to minimize Mr. Phillips’ assets and income in the dissolution. *See* Appendix,  
11 Exhibit 16. The unusual structure of the supposed Triangle sale and companion  
12 Consultancy Agreement described above does appear to lend some credence to her  
13 claim.

14 Keer claims in his declaration that Phillips has had no ownership “and no  
15 decision-making or any other authority over Hardwire since” December 1, 2013  
16 (ECF No. 26-2 at 4). This claim is belied by a Distribution Agreement, dated  
17 October 5, 2016, between Hardwire and Abran Limited, a company based in  
18 Manchester, UK. Phillips executed the agreement on behalf of Hardwire as its  
19 COO – some three years after Keer claims Phillips had no authority. *See*  
20 Appendix, Exhibit 17. Incredibly, Brett Bond, the Hardwire general manager who

21 \_\_\_\_\_  
22 <sup>11</sup> Mr. Phillips has confirmed that he received a substantial payout when he  
23 and Devin Keer sold Defendant Hardwire to a publicly traded company, Electronic  
24 Cigarettes International Group, Ltd. (“ECIGS”) in 2014. We have reviewed SEC  
25 filings by ECIGS, describing the Hardwire purchase in which ECIGS paid  
26 \$5 million, granted stock options to Messrs. Keer and Phillips, and entered  
27 employment contracts with them. One of the deal terms of the purchase was that  
28 the “Seller Parties” had to “cause[] all the assets owned by Global Northern  
Trading Ltd. to be transferred” to Defendant Hardwire prior to the sale to ECIGS.  
So, as far back as 2014, Global Northern and Defendant Hardwire apparently had  
common ownership. SEC filings reflect that ECIGS later sold the assets back to  
Defendant Hardwire in 2016 for a much reduced purchase price, the  
relinquishment of the stock options by Messrs. Keer and Phillips, and the  
termination of their employment contracts. Mr. Phillips denies that he was  
involved in the buyback.

1 spent most of 2017 as Triangle COO, signed on behalf of the counterparty Abran  
2 Limited. Whether this document – and others we have located – was an arms-  
3 length transaction or just another attempt to paper things over (and for what  
4 reason) is unclear at this early point. It is notable that Hardwire agreed to apply  
5 Michigan law (where defendants at one time had a logistics operation) and submit  
6 to the exclusive jurisdiction of the state and federal courts in Oakland County, MI  
7 in the agreement.

8 Defendant Phillips claims that both Hardwire and Global Northern are  
9 ultimately owned (through intermediate entities) by Devin Keer.<sup>12</sup>

10 Organizational charts we have discovered in emails and on Mr. Phillips’  
11 computer reflect Mantra Media, Devin Keer’s company, as the ultimate owner of  
12 this whole operation. According to a confidential Hardwire organization chart,  
13 U.S. consumers “order from [Global Northern] via US nominee company, are  
14 invoiced by the US nominee, and make payment to the US nominee company.”  
15 “US nominee companies remit receipts to [Triangle] for consolidation.” Then  
16 Triangle sends the receipts to Global Northern which sends it to Hardwire, which  
17 is a Mantra Media company controlled by Keer. Non-U.S. consumers paid a  
18 nominee, who sent the money directly to Hardwire. *See* Appendix, Exhibit 19.

19 The cross-ownership described above is consistent with the common  
20 enterprise allegations made by the FTC and supports the conclusion that the  
21 companies – Triangle, Hardwire, and Global Northern – have a parent/subsidiary  
22 relationship or are at a minimum “affiliates, successors, and assigns.”

23 \_\_\_\_\_  
24 <sup>12</sup> Although the companies were an integrated operation, the Defendants  
25 were mindful in their outward projection to appear to be distinct and separate  
26 organizations. For example, we reviewed a 2013 email string among Messrs.  
27 Phillips and Keer, and Marcel Bouwens, who acted as CFO of Triangle,  
28 concerning the establishment of Global Northern. Mr. Bouwens warned Mr. Keer  
not to use a Triangle Media email address because he did not want Hardwire and  
Triangle “appearing related.” Later in the same email string when discussion turns  
to creating letterhead for Global Northern, Mr Bouwens reminds the participants  
“We certainly don’t want to use a triangle/hardwire etc extension” on the Global  
Northern letterhead. *See* Appendix, Exhibit 18.



1 After September, 2017, our view into operations is much more limited.  
 2 Hardwire has refused to cooperate and we have yet to get the recent bank records.  
 3 Defendant Phillips told us that transfers from nominee bank accounts are no longer  
 4 passed through Triangle accounts, but are made directly into a recently established  
 5 Global Northern bank account in the United States. We have yet to confirm this  
 6 claim and it is inconsistent with an email we located. *See* Appendix, Exhibit 23.

7 ii. Fungible Officers

8 Despite the outward projection of separate companies and efforts to keep  
 9 lower level employees in the dark about the ownership described above, Defendant  
 10 Phillips, Devin Keer, and perhaps Brett Bond, had an ownership in the Corporate  
 11 Defendants and management roles which spanned across the companies. Phillips  
 12 acted as CEO of Triangle, but as late as October of 2016 signed a binding contract  
 13 on behalf of Hardwire as that company's Chief Operating Officer. Phillips is  
 14 presently being paid \$50,000 per month by Keer through Mantra Media, the parent  
 15 of Hardwire. Hardwire general manager Brett Bond was stationed in Triangle's  
 16 San Diego office as COO for most of 2017. In March of 2018, long after the  
 17 supposed re-alignment of Triangle and Hardwire as vendor and client, Bond  
 18 appeared to be acting for both companies. *See* Appendix, Exhibit 24 (email string  
 19 using Triangle email address and email string using Hardwire email address).  
 20 Devin Keer used both Hardwire and Triangle email addresses interchangeably until  
 21 the Fall of 2017.

22 Lower level employees also had intercompany roles – Steven Sproules is a  
 23 Hardwire employee based in Bangkok, but also acted in an operations role for  
 24 Global Northern; Juliana Lashley, believed to be Canadian, had nominee merchant  
 25 supervision roles at Hardwire and accounting/banking roles at Global Northern.<sup>14</sup>

26 \_\_\_\_\_  
 27 <sup>14</sup> As noted earlier, Marcel Bouwens, CFO at Triangle, warned Keer not to  
 28 use a Triangle email address because of the risk of the companies appearing  
 related. *See* fn. 12. The senior management at the Corporate Defendants did not  
 follow Mr. Bouwens' advice. Defendant Phillips, Devin Keer, and Brett Bonds  
 used email addresses from the different Corporate Defendants as it suited their

1 **IV.**

2 **FINANCIAL RESULTS**

3 **A. Receiver’s Forensic Accountant’s Report**

4 The Receiver retained forensic accountant Thad Meyer of Alliance  
5 Turnaround Management, Inc. (“Alliance”) in San Diego to review the available  
6 financial records of Receivership Entities and provide a preliminary accounting.

7 The “Initial Accounting, Books and Records Report” prepared by Alliance is  
8 attached at Appendix, Exhibit 25. As the report notes, the findings are preliminary  
9 and based on the review to date.

10 For purposes of this Preliminary Report, the most material conclusions of  
11 the Alliance report are as follows:

- 12 • For the years 2013 through June 30, 2018, the Triangle income  
13 statements indicate gross income of \$26.7 million and net income  
14 of -\$1,034,706. Revenues increased in each period through year end  
15 2017, but then decreased during the first six months of 2018. This  
16 decrease appears to reflect the operational changes commenced in the  
17 fall of 2017 by which Triangle was no longer the primary payment  
18 gateway.
- 19 • The Receipts and Disbursements Summary for the same time periods,  
20 however, shows much higher receipts of \$81.7 million (versus income  
21 of \$26.7 million in the Income Statement) and much higher  
22 disbursements of \$80.9 million (versus expenses of \$27.7 million in  
23 the Income statement). Receipts included \$14.1 million from  
24 Hardwire. Disbursements included \$43 million to Global Northern  
25 (gross disbursements of \$44,266,479 less receipts of \$1,253,972).

26 ///

27 \_\_\_\_\_  
28 needs while communicating with each other and people within and outside of the  
Corporate Defendants.



- The disparity between the Income Statement and the Receipts and Disbursements Summary indicates that large amounts of cash receipts were “cleared” through Triangle accounts and forwarded to related entities, primarily Global Northern. These items were not recorded as income/expense, but treated as “related company” receipts and disbursements. As such, the Income Statement may under-report revenues by as much as \$50 million.

**B. U.S. Operations and Sales Results**

In Keer’s declaration, he claims that Hardwire made a decision to leave the U.S. market in 2017 and this resulted in a drop of U.S. sales. Our review of documents does not support that claim. Indeed, in an email to senior management, Bond, Phillips, and Bouwens in late March 2017, Keer was bullish on the U.S. market – anticipating possibly 100% growth. He stated:

[Hardwire] “expects to see at least 50% year over year growth on USD campaigns. A lot rests on the ability to shore up the distributor model in the US, and then a sequence of dominoes – new nominee capacity, new accounts via Esquire and others, and potentially new offshore USD cap opening. It’s hard to forecast the execution on all those elements so I’m using 50% as a safe call, but if we nail all the elements of the project I’d say easily 100% YoY growth on US.”

See Appendix, Exhibit 26.

Hardwire had a very good year in 2017, but widespread merchant account closings in late 2017/early 2018 changed its trajectory. In an email chain between Keer, Phillips, Henrik Risvang, and Marcel Bouwens in mid-February of 2018, Bouwens and Keer discuss the closings. Bouwens begins by noting, “I understand that recently there have been some big (negatively impactful) changes in the industry.” Keer confirms things have changed, “we’ve run into a temporary crunch due to widespread USD mid closures.” See Appendix, Exhibit 27. Thus, while it is true that the U.S. volume seems to have dropped – but not nearly at the level Keer claims – that drop was not a planned change of course. Instead, it is one

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1 of the dangers of using nominee accounts to make negative option sales – they get  
2 shut down.

3 We have generated reports in the Tripayments gateway system for  
4 Hardwire’s U.S. revenues. These numbers differ substantially from – and are  
5 much larger than – those presented in Keer’s declaration and exhibits. We cannot  
6 explore why that is the case because Hardwire is not cooperating.

7 According to Tripayments internal payment gateway which we were able to  
8 access, Hardwire sales and refunds for 2017 and the first half of 2018 were as  
9 follows:

10 2017

11 In the United States, there were approximately 1 million sales totaling \$10.3  
12 million and 630,000 recurring sales totaling \$44.9 million. There were also  
13 approximately 250,000 refunds (\$8.5 million) and 22,000 voided transactions  
14 (\$367,000). Total 2017 net sales in the U.S. were thus approximately \$46 million.

15 In the UK, there were approximately 440,000 sales totaling £2.5 million and  
16 280,000 recurring sales totaling £17.2 million. There were also approximately  
17 99,000 refunds (£2.9 million) and 6,800 voided transactions (£73,000). Total 2017  
18 net sales in the UK were thus approximately £16 million.

19 In the EU, there were approximately 520,000 sales totaling €5.7 million and  
20 380,000 recurring sales totaling €25.2 million. There were also 82,000 refunds  
21 (€3.0 million) and 3,000 voided transactions (€30,000). Total 2017 net sales in the  
22 EU were thus approximately €27 million.

23 2018 (January 1 to June 30)

24 In the United States, there were roughly 180,000 sales (\$3.4 million),  
25 150,000 recurring sales (\$11 million), 58,000 refunds (\$2.2 million) and 2,800  
26 voided transactions (\$62,000) for net sales of approximately \$12 million.

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1 In the UK, there were approximately 510,000 sales (£1.9 million), 270,000  
2 recurring sales (£16.9 million), 87,000 refunds (£2.4 million) and 41,000 voided  
3 transactions (£340,000) for net sales of approximately £16 million.

4 In the EU, there were approximately 270,000 sales (€3.4 million), 230,000  
5 recurring sales (€4.9 million), 62,000 refunds (€2.4 million), and 2,000 voided  
6 transactions (€17,000) for net sales of approximately €16 million.

7 **V.**

8 **ASSETS AND LIABILITIES**

9 **A. Asset Freeze**

10 Beginning July 2, 2018, we served the TRO/Asset Freeze on banks and other  
11 financial institutions where the Receivership Entities were known to have accounts  
12 or credit card merchant accounts. The following accounts were frozen:

Account Name	Financial Institution	Acct. No.	Amt. Frozen
BH Wellness LLC	Wells Fargo	7745	\$63,249.73
Blended Wellness Marketing LLC	Wells Fargo	6788	\$7,929.96
Brand Junction Wellness LLC	Wells Fargo	2091	\$55,066.93
Centered Energy Marketing LLC	Wells Fargo	4332	\$1,548.46
Clear Option Wellness LLC	Wells Fargo	5572	\$204.82
Concur Marketing Solutions LLC	Wells Fargo	4631	\$6,700.28
Direct Access Products LLC	Wells Fargo	4091	\$1,513.36
Endeavour Steel Marketing LLC	Wells Fargo	9161	\$22,229.44
Everjoy Nutrition LLC	Wells Fargo	2737	\$14,960.23
Fast Order Marketing LLC	Wells Fargo	8053	\$3,932.93
Flat6 Development LLC (proceeds from sale of San Diego business condo)	IOLTA Accts. of Phillips' counsel and Mrs. Phillips' counsel		\$1,048,090.31
Flat6 Development LLC dba Kit and Kaboodle	Wells Fargo	5864	\$5.60

<b>Account Name</b>	<b>Financial Institution</b>	<b>Acct. No.</b>	<b>Amt. Frozen</b>
Flat6 Development LLC dba Kit and Kaboodle	Wells Fargo	7828	\$5,656.11
Flat6 Development LLC dba Kit and Kaboodle	Wells Fargo	7910	\$6,751.40
Global Northern Trading Ltd.	Royal Bank of Canada	4835	\$4,913.38
Global Northern Trading Ltd.	Royal Bank of Canada	3158	\$1,493.19
Global Northern Trading Ltd.	Royal Bank of Canada	9593	\$1,749.25
Global Northern Trading Ltd.	Royal Bank of Canada	7102	\$0.33
Global Northern Trading Ltd.	Royal Bank of Canada	7201	\$0.27
Global Northern Trading Ltd.	Royal Bank of Canada	7219	\$0.09
Global Northern Trading Ltd.	Royal Bank of Canada	7227	\$0.20
Global Northern Trading Ltd.	Royal Bank of Canada	2407	\$4.75
Great Plains Nutrition LLC	Wells Fargo	7208	\$14,969.92
Green Valley Wellness LLC	Wells Fargo	3007	\$61,683.63
H1 Marketing LLC	Wells Fargo	6108	\$67,877.80
Jasper Rain Marketing LLC	Priority Payment Systems	8750	\$14,095.24
Jasper Rain Marketing LLC	Wells Fargo	4167	\$4,764.31
Jester Youth Marketing LLC	Wells Fargo	5917	\$1,980.74
Jet Time Marketing LLC	Wells Fargo	4655	\$1,895.52
Joint Capital Marketing LLC	Wells Fargo	7516	\$20,506.86
Jolt Line Marketing	Wells Fargo	8215	\$1,635.12
Kinetic Products Marketing LLC	Wells Fargo	5765	\$34,201.18
Little Kite Wellness LLC	Wells Fargo	5759	\$27,872.79
Mass Drift Marketing LLC	Wells Fargo	7287	\$94,635.72

<b>Account Name</b>	<b>Financial Institution</b>	<b>Acct. No.</b>	<b>Amt. Frozen</b>
Mind Wellness Marketing LLC	Wells Fargo	0058	\$1,484.58
Rainbow Drop Wellness LLC	Wells Fargo	3304	\$4,808.45
Real Vitality Marketing LLC	Wells Fargo	8402	\$25.00
Rivers Edge Marketing LLC	Wells Fargo	5907	\$249.09
Simple Gig Marketing LLC	Wells Fargo	3061	\$2,771.91
Sunrise Pointe Wellness LLC	Wells Fargo	2446	\$28,905.90
Sunset Orders Marketing LLC	Wells Fargo	4939	\$9,931.51
Total Market Products LLC	Wells Fargo	4558	\$35,565.83
Triangle Media Corp.	Wells Fargo	0203	\$70.95
Triangle Media Corporation	Wells Fargo	0572	\$530.12
Triangle Media Corporation	Wells Fargo	4362	\$88,807.82
Triangle Media Corporation	Wells Fargo	5717	\$82,379.18
Turbid Elite Marketing	Wells Fargo	4175	\$31,997.00
Zoom Standard Marketing LLC	Wells Fargo	3215	\$449.14
<b>Total</b>			<b>\$1,880,096.33</b>

Individual accounts of Mr. Phillips have also been frozen, but are not presented here.

**B. Other Assets and Liabilities**

Flat6 Development has entered into a sale agreement for the sale of the second condominium in San Diego – when that transaction closes, the net funds will be frozen.

We are investigating potential claims against third parties who may hold assets of Receivership Entities and potential fraudulent conveyance claims against third parties who may have received funds in connection with their participation in the scheme.

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1 We do not yet have a calculation of liabilities.

2 Dated: July 16, 2018

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of July, 2018, the foregoing document was electronically transmitted to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4.

**VIA CM/ECF**

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