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7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 APEX CAPITAL GROUP, LLC, et al.,

15 Defendants.  
16

Case No. 2:18-cv-09573-JFW (JPRx)

**PRELIMINARY REPORT OF  
TEMPORARY RECEIVER**

JUDGE: Hon. John F. Walter  
CTRM: 7A

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1                   **PRELIMINARY REPORT OF TEMPORARY RECEIVER**

2           On Friday, November 16, 2018, the Court entered the Temporary  
3 Restraining Order (“TRO”) which appointed me Temporary Receiver (“Receiver”)  
4 of the Receivership Entities. By this Preliminary Report, I report to the Court my  
5 initial actions, review of the Receivership Entities, and conclusions to date.

6                                   **I.**

7                                   **IMPLEMENTATION OF TRO**

8           **A. Receivership Entities**

9           Receivership Entities subject to the receivership are expressly defined to  
10 include the Corporate Defendants,<sup>1</sup> the Wyoming Related Companies,<sup>2</sup> and the  
11 U.K. Related Companies.<sup>3</sup> TRO, Definition K, page 8. In addition, Receivership  
12 Entities include “any other entity that has conducted any business related to  
13 Defendants’ marketing or sale of products with a Negative Option Feature,  
14 including receipt of Assets derived from any activity that is the subject of the  
15 Complaint in this matter, and that the Receiver determines is controlled or owned  
16 by any Defendant.” TRO, Definition K, page 8. To date, we have determined that  
17 multiple additional entities qualify as Receivership Entities under this definition:

- 18                   • Five new nominee entities formed by Defendants for the purpose of  
19                   opening new merchant accounts to conduct business inextricably  
20                   related to Defendants’ sale of products with a Negative Option

21 \_\_\_\_\_  
22           <sup>1</sup> The Corporate Defendants include: Apex Capital Group, LLC (“Apex”);  
23 Capstone Capital Solutions Limited; Klik Trix Limited; Empire Partners Limited;  
24 Interzoom Capital Limited; Lead Blast Limited; Mountain Venture Solutions  
25 Limited; Nutra Global Limited; Omni Group Limited; Rendezvous IT Limited;  
26 Sky Blue Media Limited; and Tactic Solutions Limited; and each of their  
27 subsidiaries, affiliates, successors, and assigns. TRO, Definition C, pages 6-7.

28           <sup>2</sup> The Wyoming Related Companies include entities formed in Wyoming by  
Defendants, in the names of nominees, for the sole purpose of fronting merchant  
accounts. They are identified in Exhibit A to the FTC Complaint.

<sup>3</sup> The U.K. Related Companies include entities formed in the U.K. by  
Defendants, in the names of nominees, to front merchant accounts. They are  
identified in Exhibit B to the FTC Complaint.

1 Feature: Albright Solutions LLC (“Albright”); Asus Capital Solutions  
2 LLC (“Asus Capital”); Element Media Group LLC (“Element”);  
3 NextLevel Solutions LLC (“NextLevel”); and Vortex Media Group  
4 LLC (“Vortex”); and

- 5 • Seven other entities which have received assets from Defendants’  
6 negative option sales and are controlled by Defendants: Brandooza  
7 LLC (“Brandooza”); Jaci, LLC (“Jaci”); Jaci Holding LLC (“Jaci  
8 Holding”); Jaci PR LLC (“Jaci PR”, and together with Jaci and Jaci  
9 Holding, “Jaci Entities”); NextG Payments, LLC (“NextG”); Apex  
10 Capital International S.a.r.l. (“Apex International”); and DMB  
11 Marketing LLC (“DMB”).

12 On November 21 and 28, 2018, we provided notice to all parties, as required  
13 by TRO Section XV(U), that we had determined that the above-identified entities  
14 are Receivership Entities.

15 **B. Business Location**

16 As directed by TRO Sections XV(H) and XXIII, at approximately 10:00  
17 a.m. on Monday, November 19, 2018, we entered the Defendants’ current business  
18 location at 21300 Victory Boulevard, Suite 740, Woodland Hills, California. Upon  
19 our arrival, only the Chief Financial Officer (“CFO”) of Apex, Raul Camacho  
20 (“Camacho”), was onsite. A web developer, Derrick Lyons (“Lyons”), arrived at  
21 approximately 11:00 a.m. Neither Defendant Phillip Peikos (“Peikos”) nor  
22 Defendant David Barnett (“Barnett”) were present.

23 The business location is a modest 1,700 square feet suite in a high rise  
24 building. The office has three individual window offices, an area with central  
25 work stations, a conference room, and a small kitchen. Apex moved into the  
26 location in late March 2018 and pays rent of roughly \$4,000 per month. While  
27 there were numerous computer monitors set up throughout the office, there was

28 ///

1 only one laptop and one external hard drive backup present.<sup>4</sup> See Appendix,  
2 Exhibit 1 for inventory of furniture and equipment onsite.

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

4 We secured the very limited quantity of hard copy documents onsite. Those  
5 documents were mostly located in CFO Camacho's corner office.<sup>5</sup> Computer  
6 forensics professionals from Plaintiff Federal Trade Commission ("FTC") imaged  
7 the hard drive of the laptop located in Camacho's office and Camacho's  
8 smartphone, which he used to conduct business.<sup>6</sup> We also secured access to  
9 Defendants' server, which hosts their websites and emails. Additionally, we  
10 served the TRO/Asset Freeze on the domain registrars for the operative websites.

11 **D. Receiver's Website**

12 We have activated a receivership website to ultimately serve as a vehicle to  
13 communicate with consumers.<sup>7</sup>

14 **E. Cooperation**

15 On the day of the immediate access, November 19, the Receiver contacted  
16 Defendant Peikos via telephone and spoke with him twice. Peikos stated he would  
17 cooperate with our requests and agreed to provide administrative credentials to the  
18 Receivership Entities' email accounts. These credentials were later provided. On

19 ///

20 ///

21 \_\_\_\_\_  
22 <sup>4</sup> This dearth of onsite computer equipment and personnel to use it is  
23 consistent with Defendants' practice of outsourcing nearly all aspects of their  
24 business (i.e., advertising, fulfillment, call center, etc.). When asked why there  
were so many computer monitors, Camacho stated that Defendants were  
considering bringing some programming functions in-house, but that never  
occurred.

25 <sup>5</sup> Neither Peikos nor Barnett had a dedicated office in the suite.

26 <sup>6</sup> The Receiver's computer forensic expert coordinated with FTC  
27 professionals to ensure the steps taken to image the items were forensically sound.

28 <sup>7</sup> <https://regulatoryresolutions.com/case/federal-trade-commission-v-apex-capital-group-llc-et-al/>.

1 November 21, 2018, we met with Peikos' counsel in our offices and gave him a  
2 verbal report on our initial observations.<sup>8</sup>

3 We attempted to speak with Defendant Barnett. We called his cell phone  
4 prior to Thanksgiving, but were unable to leave a message because his mailbox  
5 was full. We telephoned again on Monday, November 26, 2018 at noon, and this  
6 time were able to leave a message in his voicemail box. Barnett has not responded.  
7 We did locate a settlement agreement between Peikos and Barnett in the Apex  
8 offices which appeared to settle all matters between the two as of November 2017,  
9 leaving Peikos in control of the enterprise. Per the agreement, Peikos agreed to  
10 repay a purported \$1 million loan from Barnett. In return, Peikos assumed sole  
11 ownership of Apex and other companies jointly owned by Barnett and Peikos. *See*  
12 *Appendix, Exhibit 2.*

13 The two onsite employees, Camacho and Lyons, submitted to interviews.  
14 Camacho operates as the CFO, onsite manager and hub of operations (particularly  
15 financial matters), and *de facto* executive assistant to Peikos. His primary duties  
16 were to secure and manage the numerous merchant accounts necessary to process  
17 consumer payments and to orchestrate a myriad of fund transfers at Peikos'  
18 direction. He met with us for several hours and was generally cooperative and  
19 credible.

20 Lyons' duties were limited. He created and monitored "bank pages" or  
21 "clean pages" (internet websites which were submitted with merchant account  
22 applications); he also minimized consumer chargebacks by granting pre-emptive  
23 refunds on a daily basis. While Lyons did meet with us, he was not entirely  
24 cooperative or credible.

25 ///

26  
27 <sup>8</sup> After our meeting with counsel, we identified additional receivership  
28 assets (*i.e.*, two high end cameras) and requested that counsel work with the  
Defendants to immediately turn over the items.

1 The interviews of Camacho and Lyons, combined with our review of  
2 documents and data, provide dramatic confirmation of the fraudulent premise of  
3 this business.

4 **III.**

5 **CAN OPERATIONS BE CONTINUED**  
6 **LEGALLY AND PROFITABLY?**

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

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

20 We have determined the businesses of the Receivership Entities identified in  
21 the Complaint and the five new nominee entities which are identified in Section  
22 I.A, pages 1-2, above cannot operate lawfully and profitably under the terms of the  
23 TRO. The consumer product sales of these businesses were premised on, and  
24 could not continue without, misrepresentations about “risk free” trials and the  
25 Negative Option Feature and rampant credit card laundering. Given this  
26 determination, the Receiver has suspended all operations pending the outcome of  
27 the show cause hearing.

28 ///

1 We have also delivered the TRO/Asset Freeze to merchant processors,  
2 banks, a fulfillment center, a CRM provider, an accounting firm, a product  
3 manufacturer, and a call center. As a result, we believe that all consumer charges  
4 have been halted.

5 The seven other additional Receivership Entities identified in Section I.A.,  
6 page 2 above, do not presently appear to have active sales operations, but we are  
7 continuing to investigate.

### 8 **A. Defendants' Unlawful Operations**

9 Our determination on the lawful/profitable issue is based on our review thus  
10 far of the various components of the businesses as detailed below.

#### 11 1. The Risk Free Trial Continuity "Sale"

12 The first step in this scheme was to lure consumers with the promise of a  
13 risk free trial of a product (e.g., brain and focus supplements, male enhancement  
14 and workout supplements, and skin care). While Defendants managed and profited  
15 greatly from the business, most operational aspects were outsourced to third  
16 parties, including the acquisition of customers through Internet advertising. We  
17 observed invoices from more than six different "affiliate" advertisers which  
18 aggressively spread ads across the Internet. In return, these affiliates were richly  
19 rewarded – \$36 for each consumer who agreed to the first risk free trial offer, and  
20 another \$36 for a successful "upsell," which occurs when the consumer in the  
21 process of agreeing to the first product, is offered a second "risk free" trial for a  
22 second product.<sup>9</sup> See Appendix, Exhibit 3. Affiliate advertising is expensive. For  
23 example, during October and November of this year, Defendants spent \$70,000-  
24 \$80,000 per week on affiliates.<sup>10</sup>

25 \_\_\_\_\_  
26 <sup>9</sup> We did find some evidence that Defendants recently initiated their own  
27 advertising, but we do not have much clarity on this yet. It appears Peikos was  
pursuing a crypto and casino scheme and, based on instant messaging chats we  
reviewed, placing related internet ads directly.

28 <sup>10</sup> We observed a substantial increase in spending for affiliate advertising in  
October and November. Camacho attributed this to the five new domestic



1           Once a consumer completed the information requested on the affiliates’  
2 landing page, they were transferred to a “sales” page. According to Camacho and  
3 Lyons, these sales pages were created by third parties, most recently by an Indian  
4 company, Codeclouds, which coordinated closely with Peikos.<sup>11</sup> In our review of  
5 sample sales pages, we observed many of the deceptions alleged by the FTC:

- 6           • On one such sales page, after entering his or her name and address,  
7           the consumer is shown a disclaimer at the bottom of the page in hard-  
8           to-read, light grey text in a small font against a white background.  
9           This disclaimer deploys the Negative Option Feature and is purposely  
10          obtuse. *See* Appendix, Exhibit 4.
- 11          • Another sample sales page includes the same disclaimer language in  
12          the same hard-to-read light grey text, but adds “offer terms” in dark  
13          grey text against the white background. Those offer terms include  
14          “agreement” to the “Terms and Conditions.” *See* Appendix,  
15          Exhibit 5. Even if customers were able to track these disclaimers and  
16          clicked the terms and conditions, they would likely be confused as  
17          these terms and conditions were opaque and misleading. In  
18          particular, consumers were unlikely to understand they had 14 days to  
19          cancel. The 14 day period started as soon as they agreed to the “risk  
20          free” trial. *See* Appendix, Exhibit 6.

21 \_\_\_\_\_  
22 nominee merchant accounts recently activated (discussed further below at Section  
23 III(A)(5)). The affiliate spend was artificially low in the previous months because  
24 Defendants lost their primary merchant accounts at Transact Pro, a Latvian  
25 processor.

26           <sup>11</sup> In contrast, Lyons was responsible for the hundreds of “bank pages” or  
27 “clean pages.” Bank pages clearly lay out all material terms of a sale and are  
28 submitted to merchant processors as part of the application process. Processors  
rely on the webpage submitted by merchant account applicants to accurately  
portray the offer and terms of sale. Defendants lied to processors via the  
submission of false websites (and in numerous other ways). When asked what the  
distinction was between bank pages and sales pages, Lyons could not explain the  
difference or why two pages were necessary. His only comment was that sales  
pages were more “salesy.”

- 1 • The sales pages prompt the consumer to accept the offer or risk being  
2 closed out of the free trial. After a few seconds, a pop-up appears  
3 that says “Due to High Demand We Can Only Guarantee Availability  
4 Today . . . PAY ONLY FOR SHIPPING . . . ACCEPT OFFER.” *See*  
5 Appendix, Exhibit 7.
- 6 • Consumers who actually accepted the risk free trial offer were  
7 immediately linked to an upsale opportunity. *See* Appendix,  
8 Exhibit 8.

9 2. Sourcing

10 Contrary to the claims made in Defendants’ ads, the actual products were not  
11 proprietary or special by any means. Instead, they were run-of-the-mill generic  
12 products produced by third-party vendors and shipped with labels designed by  
13 Defendants. The primary vendors at present are Ion Labs, Inc. in Florida (which  
14 provided products for U.S. sales at wholesale prices as low as \$2.10 per bottle) and  
15 Global Naturals in the U.K. (which has provided product for U.K. sales with  
16 wholesale prices as low as €1.96 per bottle). *See* Appendix, Exhibits 9 and 10.

17 3. Shipping

18 Shipment of the products, and the processing of returns, was subcontracted  
19 to Rapid Fulfillment LLC (“Rapid Fulfillment”) in California for U.S. consumers  
20 and Rapid Fulfillment Services Ltd. for U.K. consumers. *See* Appendix, Exhibits  
21 11 and 12.

22 4. Consumer Complaints, Refunds, and Chargebacks

23 Inevitably, consumers complained they were charged the full price of the  
24 “risk free” trial products. *See* Appendix, Exhibit 13. Rather than handling these  
25 complaints in-house, Defendants outsourced customer service to call centers run by  
26 a third-party vendor, ePlanet Communications Inc.

27 Our review of a sampling of recorded calls and Defendants’ scripts and  
28 policies confirms that every effort was made to keep the customer in the continuity

1 program. Even when customers threatened to contact the Better Business Bureau,  
2 the FTC, state attorney general’s office, or their bank, Defendants first tried to save  
3 the sale by offering a refund of 25%, then 50%, and ultimately 100%. However,  
4 even when granted, the refunds were limited to the most recent shipment and a  
5 promise to cancel future shipments. *See* Appendix, Exhibit 14.

6 Defendants also utilized several vendors (Verifi, Chargebacks911.com, and  
7 Ethoca), to identify orders likely to result in chargebacks because of some  
8 preliminary refund steps taken by the consumer. Whenever such a potential  
9 chargeback was identified, it was employee Lyons’ daily responsibility to  
10 immediately issue a full refund without calling or otherwise contacting the  
11 consumer. Defendants granted these refunds in an attempt to avoid more merchant  
12 account cancellations due to excessive chargebacks.

13 5. Defendants’ Proliferation and Manipulation of Nominee  
14 Merchant Accounts

15 a. *Opening Nominee Merchant Accounts*

16 The continued viability of any internet sales operation is dependent on the  
17 ability to utilize merchant accounts to process consumer payments by credit card.  
18 CFO Camacho conceded that the “name of the game” is access to merchant  
19 accounts and that the Defendants’ ability to grow is dependent on “what the banks  
20 give us.”

21 Defendants’ risk free trial continuity offers were so successful that they  
22 required the capacity to process a high volume of consumer charges. This need  
23 was heightened by the practice of most processors to impose monthly dollar  
24 volume caps, particularly on new accounts, and to cancel accounts, in the high risk  
25 account universe in which Defendants operate, when chargebacks exceeded 3% of  
26 sales.

27 ///

28 ///

1 Defendants overcame the merchant account challenge by recruiting people  
2 who were not on the MATCH list (aka Terminated Merchant File)<sup>12</sup> to act as straw  
3 persons. Defendants built a stable of merchant accounts by enticing individuals to  
4 act as signors for entities applying for the accounts. Camacho was tasked with  
5 recruiting these individuals, who were paid \$1,000 per month commissions (less a  
6 \$250 cut taken by Camacho), to act as the owners of the entities. Defendants did  
7 all the work necessary: they formed the entity; opened a bank account in the name  
8 of the entity; submitted the merchant account application to the processor; and  
9 created clean bank pages for the processor to review.

10 When a spate of domestic accounts were cancelled due to chargebacks,  
11 Defendants shifted their credit card processing to a Latvian provider, Transact Pro,  
12 in early 2016.<sup>13</sup> Last spring, however, Transact Pro notified Defendants that they  
13 would no longer service their type of sales model and would need to close the  
14 merchant accounts. Recently, Transact Pro lined up a new foreign processing  
15 company for Defendants and was preparing to migrate Defendants' merchant  
16 accounts to Decta Limited ("Decta"). *See* Appendix, Exhibit 15. Camacho  
17 reported that Defendants were within a week or two of having merchant accounts  
18 with Decta.

19 With the loss of Transact Pro, Defendants scrambled over the summer to  
20 find new domestic acquiring banks where they could open merchant accounts.  
21 This was a challenge because many banks refuse to work with companies using the  
22 Negative Option Feature. Defendants established six new corporate entities,

23 \_\_\_\_\_  
24 <sup>12</sup> The MATCH list is a database of businesses and individuals whose credit  
25 card processing privileges have been terminated. Once a business or an individual  
is on the MATCH list, the business or the individual remains on the list for five  
years.

26 <sup>13</sup> Even though Transact Pro was initially attractive to Defendants because it  
27 was "more lenient" on chargebacks than domestic banks, Camacho explained that  
28 because it was a foreign processor, many charges were rejected by the consumer's  
credit card issuer, leading to fewer successful sales. As such, Defendants preferred  
domestic processors.

1 through the use of six nominee owners sourced by Camacho, and have succeeded  
2 in getting merchant accounts for five of the entities using two domestic processors,  
3 Vantiv and Harris Bank/Humboldt. Each merchant account is typically allowed  
4 two MIDs and up to \$50,000 per month, meaning, according to Camacho, that the  
5 five new corporations (and ten new MIDs) could potentially generate up to  
6 \$500,000 per month for Defendants.

7 The availability of new domestic merchant accounts to process charges  
8 allowed Defendants to ramp up affiliate advertising in October and November.  
9 Camacho estimated that the Defendants processed between \$100,000-\$150,000 in  
10 the new accounts in October and were on track to process \$500,000 in  
11 November.<sup>14</sup> Given that they were also only a week or two away from accessing  
12 foreign merchant processing through Decta, the Defendants would have resumed  
13 full-throttle operations but for the FTC action.

14 *b. Managing and Monitoring Nominee Accounts*

15 After merchant accounts were opened, Camacho closely monitored the  
16 accounts and Lyons attempted to limit chargebacks. The goal was to do everything  
17 possible to keep the accounts open. In the event of closures, new nominees would  
18 have to be found to apply to new processors. Camacho explained that after the  
19 recent closures at Transact Pro, and before the new domestic merchant accounts  
20 were acquired, the Defendants were living off the reserves from closed accounts –  
21 such reserves are typically released six months after the account is closed.<sup>15</sup>

22 During our interview, Camacho claimed Defendants were “getting out” of  
23 the risk free trial business and transitioning to a “straight” sales and continuity

24 \_\_\_\_\_  
25 <sup>14</sup> In an instant messaging chat between Peikos and Camacho in August,  
26 2018, as the new domestic merchant accounts were acquired, Camacho warned  
27 Peikos “that with all these new [merchant accounts. . . we need to run as clean as  
28 possible for 1st 3 months. Once they drop from risk radar[,] then we do business  
as normal.” See Appendix, Exhibit 16.

<sup>15</sup> We located Telegram chats between Peikos and Camacho discussing the  
fact they were surviving on these reserves. See Appendix, Exhibit 17.

1 model focused on a new shampoo product (Jaci). While we did see efforts to  
2 develop Jaci shampoo (*see* below at Section C), the recent frantic activity to  
3 establish new domestic and foreign merchant accounts casts doubt on Camacho’s  
4 claim of going straight. Moreover, he admitted that the Defendants’ prior  
5 experiments with a straight sale model were not profitable.

6           6.     Proliferation of Websites

7           Apex controlled more than a thousand websites. *See* Appendix, Exhibit 18.  
8 Since each merchant account was required to be associated with a specific website,  
9 there had to be a proliferation of websites to match the proliferation in merchant  
10 accounts. As discussed above, Defendants created bank pages which could be  
11 submitted during the merchant account application process. Indeed, Lyons was  
12 specifically tasked with creating these pages, which had to constantly change as  
13 products and processors changed. These bank pages do not, however, drive  
14 consumer traffic – that is achieved by deceptive advertisements placed by affiliates  
15 and sales pages created by vendors.

16           The proliferation of websites and nominee merchant accounts also had the  
17 benefit of protecting the anonymity of Defendants. When customers complained  
18 to the Better Business Bureau (“BBB”) or authorities, it was about the merchant or  
19 the product, and not the Defendants. When a merchant account was closed due to  
20 excessive chargebacks – as they all were, even with close monitoring – there was  
21 no prejudice to Defendants.

22           **B.     Additional Nominee Entities**

23           Camacho reported that six new entities were recently established in order to  
24 obtain domestic merchant accounts. Five of these entities, identified as additional  
25 Receivership Entities in Section I.A, pages 1-2 above, have secured merchant  
26 accounts through which Defendants’ product sales are being processed.

27     ///

28     ///

1           **C. Jaci**

2           Camacho reported that Defendants were planning to transition to straight  
3 sales. Their plan was allegedly to abandon their highly-lucrative Negative Option  
4 sales of nutraceutical products and to start selling proprietary shampoo and other  
5 products created by Peikos direct to consumers via social media. According to  
6 Camacho, Peikos was the “brains” behind Jaci, working with a laboratory to  
7 formulate the shampoo and other products and with factories in China to design the  
8 bottles. Defendants started working on Jaci in May 2017 and spent more than  
9 \$300,000 of Apex’s money in order to fund the startup. At present, Defendants  
10 apparently have completed the formula for the shampoo and have finished  
11 designing the bottles, but have no current inventory and no sales.

12           **D. NextG Payments**

13           NextG was a merchant processing company formed in 2012 with Peikos as  
14 the sole owner.<sup>16</sup> While there do not appear to be any current operations at NextG,  
15 Peikos has long used the company to shift millions of dollars back and forth within  
16 the Apex universe of accounts. It appears at present that NextG’s primary use is to  
17 hold the lease on Peikos’ convertible Bentley.

18           **E. Brandooza**

19           Brandooza LLC is a Puerto Rico entity formed by Peikos in or about April  
20 2018. Its principal place of business is San Juan, Puerto Rico, and it has applied  
21 for domestic tax incentives under Act 20 in Puerto Rico as an advertising and  
22 public relations firm. We have seen little evidence that it has active operations.

23 ///

24 ///

25 ///

26 \_\_\_\_\_  
27 <sup>16</sup> Peikos has been involved in other questionable and related businesses.  
28 He was the owner of Diginetwork, Inc. which was involved in mobile cramming  
and appears to have narrowly avoided FTC action in 2013-2014 based on  
documents we located at the Apex office.

1           **F. Apex Capital International S.a.r.l.**

2           Defendant Apex’s funds were invested in Bright Guard Inc. Bright Guard  
3 shares issued for the investment were titled in the name of Apex Capital  
4 International, which, at the time, was jointly owned by Peikos and Barnett.

5           **G. DMB Marketing LLC**

6           DMB was used by Barnett to receive millions of dollars in fund transfers  
7 from Receivership Entities. For example, a 2014 DMB federal tax return reflects  
8 the receipt of roughly \$30 million from Receivership Entities.

9   **IV.**

10   **FINANCIAL RESULTS**

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

12           The Receiver’s forensic accountant, Lisa Jones, has reviewed the available  
13 financial records of the Receivership Entities, principally QuickBooks data, and  
14 prepared a preliminary accounting report. *See* Appendix, Exhibit 19. As the report  
15 notes, the findings are preliminary, based on a review of available data to date, and  
16 limited in scope and accuracy to the data input by Defendants into the QuickBooks  
17 files.

18           For purposes of this Preliminary Report, the most material conclusions of  
19 the report are as follows:

- 20           • In the years 2015-2018, a total of 57 nominee entities controlled by  
21 Defendants (25 U.K. and 32 Wyoming) with 68 different bank  
22 accounts recorded net sales (*i.e.*, gross sales net of refunds and  
23 chargebacks) of approximately \$50.4 million (\$14.4 million by U.S.  
24 entities and \$36 million<sup>17</sup> by U.K. entities). After the sales proceeds

25 \_\_\_\_\_  
26 <sup>17</sup> As detailed in the Accountant’s Report, Exhibit 19 at page 2, some of the  
27 U.K. nominee sales were recorded in QuickBooks in U.S. dollars (\$18,157,257)  
28 and some in British Pounds (£ 17,779,013). For purposes of this report, and clarity  
of presentation, we have assumed a conversion rate of 1 to 1 (which is lower than  
the current conversion rate of £1.00 to \$1.27). In a future report, we will present a  
more precise calculation of the conversion to U.S. dollars.



1 were deposited by the respective processors to the various nominee  
2 bank accounts, funds were transferred to accounts belonging to Apex  
3 Capital and Omni Group, often labeled as management income.

- 4 • The QuickBooks records also record \$9.9 million additional sales by  
5 Apex, extending back to 2013. Most of those sales (\$8.2 million, 82%  
6 of the total) are recorded for the earlier years, 2013-2014. For 2015-  
7 2018, Apex net sales were \$1.7 million. We do not yet have the full  
8 details on the products and methodology behind these Apex sales.
- 9 • For the years 2015-2018, the aggregate net sales recorded by the 57  
10 nominee entities and Apex combined were \$52.1 million. If the 2013-  
11 2014 Apex sales are included, the total net sales are \$60.3 million.
- 12 • For the years 2015-2018, aggregate refunds and chargebacks recorded  
13 in QuickBooks for the nominee accounts in the aggregate are nearly  
14 \$15 million, representing 20% of gross sales by the nominee entities.  
15 The U.K. nominee entities' share of those refunds and chargebacks  
16 was \$ 12.5 million, 27% of the U.K. gross sales.
- 17 • We have not undertaken any calculation or audit of net income  
18 derived from these sales, but can note that any such calculation would  
19 require a complex reconstruction of a myriad of intra-company  
20 transfers (usually recorded as "management income" or "management  
21 fees"), as well as entries for shareholder loans, accounts payable,  
22 accounts receivable, undeposited funds held in merchant accounts,  
23 and other idiosyncratic entries.

## 24 V.

### 25 ASSETS AND LIABILITIES

#### 26 A. Asset Freeze

27 Beginning on November 19, 2018, we served the TRO/Asset Freeze on  
28 banks and other financial institutions where the Receivership Entities were known

1 to have accounts or credit card merchant accounts. The following accounts were  
 2 frozen:

Account Name	Financial Institution	Acct. No.	Balance Frozen
Absolutely, LLC	JPMC	8812	\$6,194.48
Alpha Group LLC	Wells Fargo	2069	\$13,394.16
Apres Vous Media, LLC	Paysafe	8911	\$4,949.99
Apres Vous Media, LLC	Wells Fargo	4941	\$99.00
Cascade Canyon LLC	Paysafe	2713	\$3,513.77
Cascade Canyon LLC	Wells Fargo	2944	\$4,662.39
Confidential Holdings LLC	Wells Fargo	8505	\$108.41
Confidential Holdings LLC	Wells Fargo	7158	\$14.00
Cornice Group LLC	Paysafe	9612	\$21,300.00
Cornice Group LLC	Wells Fargo	4982	\$14.00
Dataflow LLC	Wells Fargo	0281	\$312.15
DMB Marketing LLC	EVO Payments	4429	\$20,697.02
Horizon Media, LLC	Paysafe	7055	\$1,370.00
Horizon Media, LLC	Wells Fargo	8305	\$12.18
Interzoom, LLC	Wells Fargo	3074	\$211.00
Jaci Holding LLC	Citibank	5540	\$160.00
Jaci, LLC	Citibank	557	\$5,995.01
Mountain Range Ventures LLC	Wells Fargo	2621	\$14.00
NextG Payments, LLC	Citibank	6446	\$3,654.82
Old West Equity LLC	Global Electronic Technology	N/A	\$50.00
Omni Holding Company, LLC	JPMC	6081	\$890,812.19
Precision Labs LLC	EVO Payments	4641	\$3,008.32
Pure Indoor Cycling, Inc.	Wells Fargo	5209	\$54,226.80
Shadow Peak, LLC	Wells Fargo	4966	\$14.00
Singletrack Solutions LLC	Wells Fargo	2434	\$73.37
Singletrack Solutions LLC	Wells Fargo	1101	\$57.60
Sky Media Group, LLC	Wells Fargo	2969	\$14.00
Sure Science LLC	Wells Fargo	0307	\$95.35

<b>Account Name</b>	<b>Financial Institution</b>	<b>Acct. No.</b>	<b>Balance Frozen</b>
Teton Pass LLC	Wells Fargo	8690	\$37.25
Top Quality Goods LLC	National Merchant Services	9888	\$27,552.99
Top Quality Goods LLC	National Merchant Services	0886	\$30,000.00
Top Quality Goods LLC	National Merchant Services	8880	\$25,903.07
Top Quality Goods LLC	National Merchant Services	1884	\$21,342.10
Wyoming Coastal Partners, LLC	Wells Fargo	2951	\$71.38
Wyoming Freedom Group, LLC	Paysafe	7089	\$825.00
Wyoming Freedom Group, LLC	Wells Fargo	2977	\$14.00
<b>TOTAL</b>			\$1,140,773.80

Individual accounts of Peikos and Barnett have also been frozen, but are not presented here.

#### **B. Other Assets and Liabilities**

Peikos envisions himself as a private equity investor and has deployed funds from the Apex business to fund multiple investments, including: vending machines in Australia (Vend3d Pty. Ltd.); a touch-free sunscreen dispensing company (Bright Guard, Inc.); a video e-commerce marketplace technology company (Cinsay, Inc.), and others.

Apex, as lender, and Bright Guard, Inc., as borrower, entered a loan agreement dated May 14, 2015 in the amount of \$300,000. Bright Guard agreed to repay the \$300,000 loan in full with no interest on or before May 14, 2020. *See* Appendix, Exhibit 20. The loan may have been converted to shares of stock. *See* Appendix, Exhibit 21.

1 In January 2018, Peikos invested \$900,000 in American Patriot Brands, Inc,  
2 a cannabis company. While Peikos put the investment in his own name, the source  
3 of the funds was likely from Apex.

4 In February 2018, Apex purchased 370 Class A shares of Highpost Holdings  
5 Limited, a Cyprus company for,1.5 million euros. See Appendix, Exhibit 22.

6 We are investigating these investments made by Peikos with Apex funds,  
7 potential claims against third parties who may hold assets of Receivership Entities,  
8 and potential fraudulent conveyance claims against third parties who may have  
9 received funds in connection with their participation in the scheme.

10 We do not yet have a calculation of liabilities.

11 Dated: November 28, 2018

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 28, 2018, 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/ Edward Chang  
Edward Chang  
*Attorney for Temporary Receiver,*  
*Thomas W. McNamara*