

1 Edward Chang (SBN 268204)
echang@mcnamarallp.com
2 McNamara Smith LLP
655 West Broadway, Suite 1600
3 San Diego, California 92101
Telephone: 619-269-0400
4 Facsimile: 619-269-0401

5 *Attorneys for Receiver,*
Thomas W. McNamara
6
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.

Case No. 2:18-cv-09573-JFW (JPRx)
STATUS REPORT OF RECEIVER
JUDGE: Hon. John F. Walter
CTRM: 7A

16
17
18
19
20
21
22
23
24
25
26
27
28

I.

INTRODUCTION

On November 16, 2018, this Court entered a Temporary Restraining Order and appointed Thomas W. McNamara as temporary Receiver of the Receivership Entities¹ (ECF No. 16) (“TRO”). The Receiver filed the Preliminary Report on November 28, 2018 (ECF No. 31), which described in detail the initial implementation of the receivership, summarized Defendants’ operations and finances, and documented the Receiver’s conclusion that the business could not be operated lawfully and profitably going forward. The Receiver’s appointment was confirmed, and the temporary designation removed, by two separate preliminary injunctions (the “Preliminary Injunctions”) entered December 18, 2018 (ECF Nos. 40 and 41).

Since the entry of the Preliminary Injunctions, the Receiver has vacated office space, worked to secure electronic records held by a third-party, and coordinated with the parties as needed.² The Receiver’s primary focus has been the recovery of Receivership Entities’ assets in the U.S. and internationally. Thus far, more than \$1 million has been received from financial institutions and payment

///

¹ The Receivership Entities (TRO, Definition K) include the Corporate Defendants (TRO, Definition C), the Wyoming Related Companies (TRO, Exhibit 1), and the U.K. Related Companies (TRO, Exhibit 2). The Receiver also determined that the following entities qualify as Receivership Entities: Albright Solutions LLC; Asus Capital Solutions LLC; Element Media Group LLC; NextLevel Solutions LLC; Vortex Media Group LLC; Brandooza LLC; Jaci, LLC (“Jaci”); Jaci Holding LLC; Jaci PR LLC; NextG Payments, LLC; Apex Capital International S.a.r.l.; DMB Marketing LLC; and Omni Holding Company, LLC. The Receiver provided notice to all parties that the above-identified entities are Receivership Entities and, to date, no one has opposed the Receiver’s determination.

² By the end of January 2019, we vacated the Woodland Hills location and returned the office space to the landlord. The limited business records and computer from the Woodland Hills location are now stored in San Diego. Defendants also leased a server at Namecheap for their emails and website domains. Namecheap provided a mirror image of the server.

1 processors. We are also making efforts to recover funds held by a foreign payment
2 processor.

3 **II.**

4 **SUMMARY OF RECEIVERSHIP ACTIVITIES**

5 **A. Receivership Sites**

6 Defendants operated from 21300 Victory Boulevard, Suite 740, Woodland
7 Hills, California. By late January 2019, the Woodland Hills location was vacated
8 and returned to the landlord. The Receivership Entities' business records and
9 computer were transferred to storage. In order to minimize expenses to the
10 receivership estate and expedite the return of the office to the landlord, we sold the
11 few pieces of office furniture and equipment (none of which had much value) at
12 the Woodland Hills office to a liquidator who also agreed to remove all trash and
13 debris from the office.

14 Receivership Entity Omni Holding Company, LLC ("Omni Holding")³ was
15 located at 600 West Broadway, Suite 1140, San Diego, CA 92101. Obtaining
16 access to Omni Holding's office required significant effort. Ultimately, the
17 Receiver was able to obtain access in early February 2019. It was clear that
18 business records and computers were removed from the office. After informing
19 Defendant Barnett's counsel, a number of computer monitors were returned, but
20 Defendant Barnett alleged that there were no paper business records and that his
21 former employees had the computers. We will attempt to recover the computers
22 from the employees, but recovery may be difficult. We are also in the process of
23 vacating Omni Holding's San Diego office.

24 ///

25

26 ³ Omni Holdings is a company owned by Defendant David Barnett and
27 received assets derived from activity that is the subject of the Complaint. From
28 2014 to 2018, approximately \$3.6 million of Defendant Apex Capital Group,
LLC's funds were transferred to Defendant David Barnett who subsequently
transferred \$3 million to Omni Holding.

1 **B. Receivership Entities’ Assets**

2 As reported in the Preliminary Report, Defendant Phillip Peikos envisioned
3 himself as a private equity investor and used the Receivership Entities’ funds for
4 various investments. We briefly report on the status of each investment.

5 Jaci is a hair care company in the preliminary startup phase. While there
6 were no business plans, the formulation for the shampoo and other products was
7 completed. Additionally, Jaci developed and ordered bottles and product to fill the
8 bottles. Jaci also obtained certain trademarks, which were temporarily held by a
9 third party. The Receiver secured Jaci’s trademarks. Jaci also spent approximately
10 \$30,000 of Receivership Entities’ funds on camera equipment, which the Receiver
11 has secured.

12 The Receivership Entities funded \$1 million to Cinsay, Inc. (“Cinsay”) in
13 the form of ten convertible notes due in a few years. Recently, the Receiver
14 contacted Cinsay and demanded payment of delinquent interest due on each
15 convertible note. Cinsay has not yet responded to the Receiver’s demand.

16 The Receiver also contacted Bright Guard, Inc. (“Bright Guard”) concerning
17 the Receivership Entities’ investment in the company. Bright Guard agreed to
18 provide financial information about the company. After reviewing Bright Guard’s
19 financial information, the Receiver will determine how best to monetize the Bright
20 Guard investment.

21 Peikos provided \$200,000 to Sestito Property Management, LLC (“Sestito”).
22 Peikos was about to file a lawsuit against Sestito when the FTC filed its case. The
23 Receiver contacted Sestito who confirmed that they received \$200,000, but
24 claimed that it was an investment and not a loan. Sestito also claims that its
25 financial condition is dire. The Receiver continues to evaluate how best to proceed
26 against Sestito.

27 Finally, Peikos issued a loan to a Greek beach club and purchased shares of
28 the Greek beach club using Receivership Entities’ funds. We have evaluated these

1 foreign investments and engaged counsel to determine the Receivership Entities’
2 rights and the prospect of recovery.

3 Peikos used approximately \$100,000 of Receivership Entities funds to
4 acquire and heavily modify a Jeep Wrangler that he transported to Puerto Rico.
5 Accordingly, the vehicle is a receivership estate asset. Peikos is currently
6 searching for the title to the vehicle and will provide it to the Receiver. The
7 vehicle is currently in a Puerto Rico auto shop. Once we secure the title, we will
8 pay the outstanding invoice and move to sell the vehicle.

9 **III.**

10 **RECEIVERSHIP ACCOUNTING**

11 Attached as Exhibit A is a Receipts and Disbursements Summary from the
12 Receiver’s appointment on November 16, 2018 through March 29, 2019. During
13 this time period, receipts were \$1,298,855.44, primary comprised of transfers from
14 the Receivership Entities’ frozen bank accounts and merchant accounts
15 (\$1,296,655.44). Disbursements were \$127,749.36, primarily comprised of
16 professional fees approved by the Court on February 20, 2019 (ECF No. 56)
17 (\$61,229.54 for Receiver’s fees and costs; \$47,807.46 for legal fees and costs;
18 \$5,242.00 for computer forensics) and \$10,000 released to Defendant David
19 Barnett’s counsel for attorneys’ fees (ECF No. 45). The receivership bank account
20 has a current balance of \$1,171,106.08.

21 Dated: April 1, 2019

MCNAMARA SMITH LLP

22
23 By: /s/ Edward Chang
Edward Chang
24 Attorneys for Receiver,
Thomas W. McNamara
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2019, 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 Receiver,
Thomas W. McNamara