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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

APEX CAPITAL GROUP, LLC, et al.,

Defendants.

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

**RECEIVER'S FOURTH INTERIM
STATUS REPORT**

JUDGE: Hon. John F. Walter

CTRM: 7A

1 Pursuant to Section XV(W) of the two stipulated preliminary injunctions
2 (ECF Nos. 40 and 41) (collectively, the “Preliminary Injunctions”), directing the
3 Receiver to file reports every 120 days, the Receiver submits this Status Report for
4 the period of November 27, 2019 through March 26, 2020.

5 **I.**

6 **SUMMARY OF RECEIVERSHIP ACTIVITIES**

7 **A. Westlake Village Property**

8 As previously reported, the Receiver selected Alpha Builders Group, Inc. to
9 undertake significant repairs and renovations of the former home of Defendant
10 Phillip Peikos (“Peikos”) located at 740 Country Valley Road, Westlake Village,
11 California 91362 (the “Westlake Village Property”). Ultimately, the contractor
12 completed the project in late January 2020. The total amount paid to the contractor
13 was \$456,730.87.

14 After renovations were completed, the Westlake Village Property was listed
15 for \$4 million on February 2, 2020. On March 13, 2020, the Court approved the
16 sale of the Westlake Village Property to David Herrera for \$4.1 million
17 (\$3.95 million for the property and \$150,000 for the personal property and
18 furnishings). *See* ECF No. 156. The buyer has now transferred the initial deposit
19 of \$120,000 to escrow and completed his inspection of the property. While current
20 economic conditions and COVID-19 has strained financing, the buyer’s lender
21 represents that it will still be able to complete the transaction. Escrow is scheduled
22 to close on April 6, 2020.

23 As previously noted, the HOA for the Westlake Village Property imposed
24 significant fees and penalties on Defendant Peikos for his failure to restore
25 landscaping, complete renovations, and removal of the facade from the mailbox
26 and entry gate pilasters. The HOA initially presented a demand of \$87,415.58 for
27 past due fees, fines, and penalties. The HOA also recorded a lien against the
28 property on May 29, 2019, which they would release upon full payment of their

1 demand. We contacted the HOA and their counsel. The HOA later presented a
2 revised demand amount of \$12,915.58, which will be paid at closing. However,
3 the HOA is continuing to press for the payment of more than \$74,000 in various
4 and sundry fines and penalties imposed against Peikos for the condition in which
5 he kept the property. Our efforts to persuade the HOA to forgo the fines and
6 penalties have been unsuccessful. Counsel for the HOA has indicated that the
7 HOA will look to the new owner to pay the fines and penalties in order to become
8 a recognized member of the association. Absent some resolution, we expect the
9 buyer will ask that the fines and penalties be paid as part of the sale transaction. It
10 would be extremely unfortunate to have the net proceeds on Westlake Village
11 Property reduced more by \$74,000 to compensate the HOA for Peikos' eyesore
12 when those funds are, in the end, coming from defrauded consumers.

13 **B. Receivership Entities' Assets**

14 Defendant Peikos used Receivership Entities' proceeds to fund lavish
15 personal purchases and an assortment of investments. The investments were,
16 however, haphazard in approach and almost all were either incomplete or
17 unsuccessful or both.

18 1. Vehicles

19 Peikos' 2017 Jeep Wrangler and Barnett's 2018 Audi SQ5 were turned over
20 to the Receiver as part of their settlements with the Federal Trade Commission
21 ("FTC") and were sold in RM Auctions' December 2019 online auction. The Jeep
22 sold for \$51,000. After shipping costs (\$3,800), detailing (\$325), and repairs
23 (\$950.23), the Jeep netted \$45,924.77. The Audi sold for \$38,000. After shipping
24 costs (\$550), the Audi netted \$37,450. Total net proceeds of \$83,347.77 were
25 transferred to the FTC on January 23, 2020.

26 2. Sestito Property Management, LLC

27 Peikos via the Receivership Entities made a \$200,000 investment or loan to
28 Simone Sestito via Sestito Property Management, LLC. The \$200,000 was

1 provided in connection with Places, a supposed “destination for unique experiences
2 centered around a collection of owned and curated homes” of which Simone
3 Sestito is the founder. At the time of the FTC action, Peikos was preparing to file a
4 lawsuit against Sestito demanding repayment. The Receiver corresponded with
5 Sestito’s former counsel (who was no longer representing Sestito because of lack
6 of funds) and later spoke directly with Mr. Sestito, who claimed he was broke and
7 did not have the ability to repay the money. We have continued to monitor Sestito
8 and Places to determine whether they are worth pursuing in a lawsuit. Despite
9 grandiose claims on its website, in press releases, and LinkedIn profiles, it appears
10 that Sestito is insolvent. Given that recovery is unlikely, the Receiver does not
11 intend to pursue Sestito absent a material change in his financial condition.

12 3. BrightGuard, Inc.

13 The Receivership Entities also invested in BrightGuard, Inc.,
14 (“BrightGuard”), a startup company whose main product is a touch-free sunscreen
15 dispenser. In a very recent letter (March 6, 2020) to shareholders and noteholders,
16 the company stated it is seeking additional financing of \$1 million in order to stay
17 afloat. This follows a 2018 restructuring of the business in which new
18 management diluted early investors such as the Receivership Entities as the
19 company was on the verge of financial collapse. According to the letter, the
20 company operated at a loss in 2019. Given the dilution and the state of
21 BrightGuard’s financial condition, there is no market for the Receivership Entities’
22 BrightGuard shares. Accordingly, while the Receiver will continue to monitor the
23 situation, it seems unlikely the estate will see any return on the BrightGuard
24 investment.

25 4. Cinsay, Inc.

26 Cinsay, Inc. (“Cinsay”), an early stage video e-commerce technology
27 company, received \$1 million from the Receivership Entities in exchange for ten
28 convertible promissory notes that mature between August 2022 and July 2023.

1 When the Temporary Restraining Order was entered, Cinsay was delinquent on its
2 interest payments. However, since then Cinsay has rectified the situation and is
3 presently current and continuing to make regular quarterly interest payments.
4 Indications from the company are that the notes will be paid on schedule until
5 maturity. Given the start-up nature of the Cinsay business, there does not appear to
6 be a reasonable market in which to sell the notes.

7 In addition to the convertible promissory notes, Peikos and Barnett each
8 purchased 666,680 shares of Cinsay stock for \$1 million. Since Cinsay is a non-
9 public company, we contacted Cinsay's CFO to discuss the market for the shares
10 and whether the company or other investors would be interested in purchasing
11 these shares. The CFO inquired of the board but reported back that the company
12 was not interested in re-purchasing the shares. He also revealed that Cinsay has
13 more than 700 million outstanding shares. Given that Peikos and Barnett paid
14 roughly \$1.50 per share, it appears they vastly overpaid for their shares. We will
15 continue to monitor developments at Cinsay but it is unlikely that the receivership
16 estate will be able to monetize the Cinsay shares.

17 5. Jaci, LLC

18 Receivership Entities' monies were used to fund a preliminary start-up hair
19 care company, Jaci, LLC ("Jaci"). A number of initial tasks had been completed
20 including selecting shampoo formulations, bottle design and order, a domain name
21 and applications for trademarks. However, even these initial steps were at various
22 states of incompleteness and there was no business plan or even a rudimentary
23 roadmap for the business. These assets, primarily the domain name and trademark
24 applications, were sold for \$15,000.

25 6. Greek Beach Club

26 As previously reported, the Receivership Entities lent €600,000 to a Greek
27 beach club and paid €1.5 million to purchase shares in the same Greek beach club
28 through an intermediary (a corporation in Cyprus) prior to the FTC action.

1 Counsel hired by the Receiver in Greece and Cyprus have presented demands, but
2 neither the Greek beach club nor the Cypriot corporation responded. Counsel was
3 instructed a couple of months ago to take the necessary next steps for litigation.

4 Cyprus counsel prepared all the necessary filings, but due to COVID-19,
5 Cyprus courts closed before they could file. Cyprus courts will be closed until the
6 end of April. Once the courts re-open, Cyprus counsel will proceed with the
7 action.

8 Greek counsel informed us that they prepared a complaint against the Greek
9 beach club. However, despite numerous requests, we have not yet received
10 confirmation of whether the complaint was filed. Greek courts may also be
11 affected by COVID-19, which could delay the filing of the complaint, but we will
12 not know until we hear further from Greek counsel.

13 7. Artwork

14 Barnett had ten pieces of artwork for which he paid approximately \$69,000
15 that were stored at ArtWorks San Diego. The Receiver has taken control of this
16 art, had it professionally photographed, and retained Upsilon Gallery in New York
17 City to sell the art. Upsilon Gallery operates Phi Auctions, an online art auction
18 website, and has the option to sell the artwork either via a private sale or online
19 auction. The listing agreement with Upsilon Gallery expires on July 20, 2020 but
20 it may be necessary to extend the listing given the current health emergency in
21 New York and more generally national economic conditions.

22 **II.**

23 **RECEIVERSHIP ACCOUNTING**

24 Attached as Exhibit A is a Receipts and Disbursements Summary from
25 November 27, 2019 through March 26, 2020. During this time period, receipts
26 were \$118,996.41, comprised of funds from the sale of the two vehicles
27 (\$83,374.77) (which were later transferred to the Federal Trade Commission),
28 interest payments on the Cinsay promissory notes (\$20,444.44), and the sale of

1 Jaci's assets (\$15,000.00). Disbursements were \$367,137.03, primarily comprised
2 of costs associated with the Westlake Village property (\$200,710.96 construction
3 costs, \$64,689.24 mortgage payments, \$8,840.97 property insurance, and
4 \$2,884.88 utilities), transfer of the vehicle sale proceeds to the FTC (\$83,374.77),
5 and Relativity hosting fees (\$4,481.05). In aggregate, the receivership bank
6 accounts have a current balance of \$249,588.20.

7 Dated: March 27, 2020

MCNAMARA SMITH LLP

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By: /s/ Edward Chang
Edward Chang
Attorneys for Receiver,
Thomas W. McNamara

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2020, 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