

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	No. 3:12-CV-519
REX VENTURE GROUP, LLC	)	
d/b/a ZEEKREWARDS.COM, and	)	
PAUL BURKS,	)	
	)	
Defendants,	)	
	)	
	)	
	)	

**RECEIVER'S MOTION FOR ORDER SEEKING APPROVAL OF (1) CLAIMS PROCESS, (2) SETTING OF BAR DATE, AND (3) CERTAIN NOTICE PROCEDURES**

Kenneth D. Bell, Esq., the Court-appointed Temporary Receiver (the “Receiver”) for and over the estate of Rex Venture Group, LLC d/b/a ZeekRewards.com, any of its subsidiaries, whether incorporated or unincorporated, and any businesses or business names under which it does business (the “Receivership Defendant”), by and through his undersigned counsel, respectfully requests by this motion (the “Motion”) entry of an order substantially in the form attached hereto as **Exhibit A** that (1) establishes the claims process that provides for the procedures and manner of filing, determining, and adjudicating claims against the Receivership Defendant (the “Claims Process”); (2) establishes the date by which claims against Receivership Defendant are required to be filed (the “Bar Date”); and (3) approves the manner of notice for the Claims Process (the “Notice Procedures”). In support of this application, the Receiver respectfully states as follows:

## **I. PRELIMINARY STATEMENT**

The Receiver's chief duties include marshaling the assets of the Receivership Defendant (the "Assets") and creating a claims process to determine the valid claims against the Receivership Defendant, in order to distribute the Assets to the investors and other potential creditors of the Receivership Defendant (the "Claimants"). The Claims Process is designed to provide the greatest possible return to the Claimants of the Receivership Defendant. Therefore, the Receiver hereby seeks specific relief (as further described below) that will: (1) authorize the electronic notice of the Claims Process; (2) authorize the electronic submission of claims by Claimants through the Receiver's Claim Portal—unless such Claimant can demonstrate a reason to submit a claim in a different manner; (3) authorize the Receiver's claim determination process; (4) authorize the Receiver to provide the Claimant with a claim determination notice stating: (i) whether the Receiver agrees that the Claimant has a valid claim, (ii) whether the Receiver agrees with the amount of the asserted claim, or, if not, the amount of the claim that the Receiver asserts is valid, and (iii) instructions for accepting or disputing the Receiver's proposed allowance or disallowance of the claim; (5) establish the Bar Date; and (6) permit the Receiver to disregard any data or purported claim that is submitted by a Claimant outside of the Claims Process (including untimely claims submitted prior to the opening of the Claims Process or after the Bar Date). The Receiver is not, however, seeking to establish the manner in which he will determine the distributions to be made on account of valid claims against the Receivership Defendant at this time. The Receiver will, upon completing the determination of the valid claims asserted against the Receivership Defendant, file a motion which seeks to determine in what priorities claims will be paid by the Receivership Defendant and whether the calculation of

distributions on claims will be done in accordance with the “rising tide” method or the “net loss” method.

## **II. FACTUAL INTRODUCTION**

The Receivership Defendant is a group of interrelated entities and websites, all of which were either controlled or owned directly or indirectly by Defendants Rex Venture Group, LLC (“RVG”) and Paul Burks (“Burks” and with the Receivership Defendant, the “Defendants”). RVG and Burks operated a penny auction website, [www.zeekler.com](http://www.zeekler.com) (“Zeekler”), and a self-described “private, invitation-only, affiliate advertising division” for Zeekler at [www.zeekrewards.com](http://www.zeekrewards.com) (“ZeekRewards” or the “ZeekRewards Program”). The ZeekRewards Program had its physical operations—though minimal—in Lexington, North Carolina and had internet-based affiliates and contacts throughout the United States and internationally. The Zeekler participants were required to pay a non-refundable fee to purchase and place each incremental bid (typically one cent) on merchandise sold via auction. Bidders could acquire those bids by purchasing them directly on [Zeekler.com](http://Zeekler.com), but ZeekRewards and its affiliates purchased the vast majority of the bids that they sold or gave away for free.

On August 17, 2012, the Securities and Exchange Commission (“SEC”) commenced a civil enforcement action (the “Enforcement Action”) against Burks and the Receivership Defendant. *See* (Doc. No. 2, Complaint filed Aug. 17, 2012) (the “SEC Complaint”). The SEC Complaint alleges that the Defendants engaged in (1) the unregistered offer and sale of securities in violation of Sections 5(a) and 5(c) of the Securities Act; (2) fraud in the offer or sale of securities in violation of Section 17(a) of the Securities Act; and (3) fraud in connection with the purchase or sale of securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. According to the SEC Complaint, Burks and RVG engaged in the fraudulent

unregistered offer and sale of securities with unregistered investment contracts constituting securities in a combined Ponzi and pyramid scheme (the “Scheme”) involving hundreds of millions of dollars supplied by domestic and foreign investors. *Id* at ¶¶ 1 and 3. The SEC sought equitable relief, including injunctions against future violations of the securities laws, disgorgement, prejudgment interest, and civil monetary penalties.

Simultaneous with the filing of the SEC Complaint, the SEC, the Receivership Defendant and Burks agreed to an order granting emergency relief, including a preliminary injunction, in the form of an order freezing the Assets of the Receivership Defendant and appointing a Temporary Receiver over the estate of the Receivership Defendant (the “Receivership Estate”). *See* (Doc. No. 4, Agreed Order Appointing Temporary Receiver And Freezing Assets of Defendant Rex Venture Group, LLC, filed Aug. 17, 2012), (“Initial Receiver Order”).<sup>1</sup> An Amended Order Appointing Temporary Receiver was entered on August 30, 2012, expanding the definition of the Receivership Estate. *See* (Doc. No. 21, Order Granting in part and Denying in part Motion to Amend/Correct Order) (“Amended Receiver Order”) (collectively with the Initial Receiver Order the “Receiver Orders”).

There are approximately 2.2 million unique users (“Affiliates” or “usernames”) in ZeekRewards. However, the number of Affiliates does not reflect the number of unique individuals who participated in ZeekRewards, as it is likely that some individuals had more than one username. Approximately one million Affiliates paid money into the ZeekRewards Program (“Affiliate-Investors”). Through an extensive forensic and investigative process, the Receiver has identified more than 800,000 Affiliate usernames who may have a claim against the Receivership Defendant. The Claims Process as proposed by the Receiver takes into account this unusually large claim pool.

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed them in the Initial Receiver Order.

### III. RELIEF REQUESTED

The Receiver requests that this Court enter an order that:

1. Establishes the Bar Date as the date that is the first business day that is 120 calendar days from the date on which an order approving the Claims Process has been deemed a Final Order of the Court;<sup>2</sup>
2. Permits the Receiver to provide notice of the Claims Process, including the Bar Date, via e-mail, U.S. mail to certain creditors, and via publication notice in certain newspapers and on the websites of certain multilevel marketing associations;
3. Authorizes the collection of data from each Claimant as part of the Claims Process so that the Receiver may make a determination of the claims;
4. Approves the “form” to be filled out on the Receiver’s Claim Portal, which will be found at [www.zeeekrewardsreceivership.com](http://www.zeeekrewardsreceivership.com), by all Claimants as part of the Claims Process (the mock-up of the online “Claims Submission Form” is attached hereto as **Exhibit C**);
5. Provides for the electronic submission of all claims (including supporting documentation) against the Receivership Defendant, except in the rare instance where the Claimant can establish cause, in the Receiver’s sole discretion, to permit that individual or entity to submit their claim using an alternative method;
6. Finds that any claim that is not submitted between the opening of the Claims Process and the Bar Date, or not otherwise in accordance with the Claims Process (whether submitted before or after the Bar Date), be disallowed in its entirety;
7. Provides for the electronic distribution of all claims determinations made by the Receiver, except those determinations being sent to those Claimants that the Receiver permitted to submit their claims using an alternative method and to whom the Receiver has agreed to provide alternative notice;

---

<sup>2</sup> Final Order as used in this Motion means an order or judgment of the Court as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending; and if an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied or reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, may be but has not then been filed with respect to such order, shall not cause such order not to be a Final Order.

8. Provides for the method to accept or dispute the claim determination made by the Receiver; and
9. Provides for the release of the Receiver and his professionals.

#### **IV. ARGUMENT**

##### **A. Who Should File a Claim**

Except as otherwise set forth herein, the Receiver proposes that all individuals and entities holding claims against the Receivership Defendant be required to file claims on or before the Bar Date.

##### **B. Establishing the Bar Date**

All Claimants of the Receivership Defendant must have the opportunity to assert and prove their claims against the Receivership Defendant before the Receiver is able to make any distribution of the Assets. The potential universe of claims must be established prior to any distribution so that distributions are made fairly and in the best interests of justice. In order to establish the universe of claims with certainty, the Receiver is asking this Court to establish the Bar Date. The absence of a bar date by which claims are required to be filed would prolong Claimant uncertainty regarding their recoveries, increase the costs and expenses incurred by the Receiver in connection with the claims reconciliation process, and delay or even derail the Claims Process in its entirety.

Therefore, the Receiver requests this Court establish a Bar Date of 11:59 p.m. (prevailing Eastern Time) on the date that is the first business day that is 120 calendar days after the entry of a Final Order establishing the Bar Date. The Receiver submits that the 120-day period will permit the Receiver to activate the Claims Portal for all Claimants<sup>3</sup> and provide notice of the Claims Process, while balancing the need to move forward in resolving this case. The 120-day

---

<sup>3</sup> Subject to the discussion below, the Claims Portal will become active within 14 days of the entry of the Final Order approving the Claims Process.

period will also provide both domestic and foreign Claimants ample time to determine the amount of the claims they believe they hold, and to collect and submit their claims with whatever records they may have to validate the amount of their claims. It will also allow adequate time for Claimants who wish to deviate from the general requirements of the Claims Process by seeking permission from the Receiver to submit claims outside of the Claims Portal to do so.

### **C. Notice Procedures**

The Receiver believes there are over 2.2 million Affiliate usernames associated with the Receivership Defendant, of which more than 800,000 usernames who may have a claim against the Receivership Defendant. One of the greatest challenges in this matter has been to design a Claims Process and Notice Procedures so that Affiliates could efficiently assert their claims without causing the Receiver to expend all the Assets he marshaled. The challenge of providing cost-effective notice is caused in large part by the large number of Affiliates generally, the large number of Affiliates located in foreign jurisdictions, and the large number of Affiliates with missing or incomplete mailing addresses, all of whom the Receiver must attempt to provide notice of the Bar Date and Claims Process.

The chief consideration in determining the sufficiency of notice of the Claims Process is due process. If a party's legal rights will be affected, procedural due process requires that a party receive fair notice and an opportunity to be heard in regard to the rights which are being affected. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To satisfy the due process requirement, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). To determine the adequacy of notice given to a creditor, the law distinguishes between "known" and "unknown" creditors. *Zurich Am. Ins. Co. v. Tessler (In re J.A. Jones, Inc.)*, 492

F.3d 242, 249-50 (4th Cir. 2007). Known creditors are those creditors “whose identities are actually known to the debtor, as well as claimants whose identities are ‘reasonably ascertainable’ to the debtor.” *Id.* at 250. As the Fourth Circuit has noted, for notice of a bar date to be effective against known creditors “. . . actual notice of [the] applicable bar date is required. By contrast, where a creditor is unknown to the [estate], constructive notice—typically in the form of publication—is generally sufficient to pass Constitutional muster.” *Id.* at 249-250. In order to determine whether an individual has received proper notice, the Court “must examine the relevant facts of each case.” *United States v. Hoechst Celanese Corp.*, 128 F.3d 216, 224 (4th Cir.1997).

The Receiver submits that this Court should find the following proposed Notice Procedures are reasonably calculated, under the circumstances of this case, to apprise any and all interested parties of the pendency of the Bar Date and the Claims Process: that within 14 days after entry of the Final Order approving this Motion (1) the online Claims Process will be made publically available on the Receiver’s Claim Portal; (2) the Receiver will provide the notice attached hereto as **Exhibit B** (the “Notice”) via e-mail to all known Affiliates (Affiliate email addresses are obtained from RVG records and the email addresses provided to the Receiver via the Receivership website at [info@zeekrewardsreceivership.com](mailto:info@zeekrewardsreceivership.com)); (3) the Receiver will provide the Notice via U.S. Mail to trade creditors and other known, non-Affiliate creditors; and (4) the Receiver will publish the Notice on the Receiver’s information website and certain multilevel marketing industry websites, in certain newspapers, and by sending the Notice to certain trade groups in the financial industry.

*1. E-mail Notice Procedures for Affiliates*

After balancing due process rights against the accuracy of the contact information in the Receivership Defendant's database and the costs associated with providing notice to all parties, the Receiver has determined that the only accurate, fair, and cost effective means for providing the Notice to Affiliate-creditors is through electronic means and publication notice.

As this Court is aware, the Receivership Defendant was an internet-based multilevel marketing company that had in excess of two million Affiliate usernames registered on its websites. The two million Affiliates make up the overwhelming majority of the creditors in this case. In fact, non-Affiliate creditors likely make up less than one-percent of the number of all creditors of the Receivership Defendant. Affiliates almost exclusively interacted with the Receivership Defendant using the internet and e-mail—indeed, other than certain of these Affiliates submitting payments via U.S. Mail, Affiliates likely had only internet-based contact with the Receivership Defendant. The Receivership Defendant maintained its Affiliate database, including records of the Affiliates' actual names and addresses<sup>4</sup>, based on these usernames and required Affiliates to provide an e-mail address for communication in order to receive a username. The Receivership Defendant communicated with these Affiliates via the internet or e-mail almost exclusively. In other words, the Receivership Defendant's only interaction with more than 99% of its creditors was through the internet and/or e-mail, and almost all of its records regarding these Affiliate-creditors were maintained based on the usernames the Affiliates adopted and the e-mail addresses they submitted when creating their accounts on the ZeekRewards website. Therefore, because the Receivership Defendant communicated with its

---

<sup>4</sup> Unfortunately, much of the information that the Receivership Defendant maintained regarding the postal mailing addresses of Affiliates is incomplete and is, therefore, not reliable. To date neither the Receiver nor his advisors has been able to determine whether the Receivership Defendant used the postal mailing addresses. Thus, even the complete address information may not be reliable.

Affiliates almost exclusively via e-mail or through the RVG websites, the e-mail addresses of the creditors are likely the most accurate method that the Receiver has of contacting these creditors, and the great cost of serving up to 2.2 million Claimants by any other method, the Receiver requests this Court find that providing the Notice via e-mail constitutes fair notice of the Claims Process and the Bar Date to all Affiliate creditors of the Receivership Defendant. *See Browning v. Yahoo Inc.*, No 5:04cv01463, 2007 WL 4105971 (N.D. Cal. Dec. 27, 2006) (Finding that e-mail notice was particularly suitable in this case where the claimants’ “claims ar[o]se from their visits to Defendants’ Internet websites.”).

Federal Courts have found that providing notice via e-mail comports with due process. *See id.*; *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002) (finding service of a complaint via e-mail valid); *RPost Holdings, Inc. v. Kagan*, 2012 WL 194388, at \*2 (E.D.Tex. Jan. 23, 2012) (same); *Liberty Media Holdings, LLC v. Vinigay.com*, 2011 WL 810250, at \*2–5 (D.Ariz. Mar.3, 2011) (same). Absent this finding, the Receiver would be required to mail or devise some other form of notice process at great cost and delay. The Receiver’s claims agent estimates a cost savings of more than \$1.2 million by using e-mail to distribute notice to Affiliates versus U.S. Mail.

If the Receiver receives a return e-mail demonstrating that the e-mail address previously provided to the Receivership Defendant is no longer valid, the Receiver will attempt to serve the Notice by an alternative method (either by an alternative e-mail address provided when the original e-mail is returned or by providing a postcard to the last known address of the Claimant, if known, informing the Claimant of the Claims Process and where they can obtain information on filing a claim).

## 2. *Notice to Non-Affiliate Creditors*

The Receiver will send the Notice via U.S. Mail to trade creditors, other known, non-Affiliate creditors, and insured depository institutions, some of whom are potential unknown creditors.<sup>5</sup> Additionally, because some creditors may be unknown to the Receiver, the Receiver will publish the Notice (1) on multilevel marketing websites so that participants in the multilevel marketing industry, including Affiliates for whom the Receiver does not have accurate contact information, will have knowledge of the Notice, (2) in each of USA Today National Edition, the Wall Street Journal, the Charlotte Observer, and the Lexington Dispatch so that any unknown creditors of the Receivership Defendant that provided services locally to the Receivership Defendant but are not known to the Receiver will have notice of the Bar Date and the Claim Process, and (3) by sending it to certain trade associations in the financial industry.

The Receiver believes that it is in the best interest of the Receivership Defendant's Estate to find that the proposed Notice and the proposed Notice Procedures for disseminating the Notice satisfy the requirements of due process and should be approved.

### **D. The Receiver's Claim Portal and the Data To Be Collected**

#### *1. Formulation of the Receiver's Claim Portal*

The Receiver hereby requests the approval of the proposed electronic claim submission website (the "Claim Portal") for the submission of claims against the Receivership Defendant that is attached hereto as **Exhibit C**.<sup>6</sup> The Receiver's Claim Portal will be deployed within 14

---

<sup>5</sup> As previously stated, the vast majority of Claimants are Affiliates. Those Claimants that are not Affiliates did not routinely communicate with the Receivership Defendant via electronic means. Moreover, the Receiver believes that the Receivership Defendant's records have accurate mailing addresses for such Claimants.

<sup>6</sup> The attached Exhibit is a mockup of the Claims Portal; certain of the functional portions of the website cannot be demonstrated through a hardcopy rendering of the site. A demonstration of the Claim Portal can be provided to the Court upon request.

days of the entry of the Final Order approving this Motion and will be found at [www.zeekrewardsreceivership.com](http://www.zeekrewardsreceivership.com).

The Receiver consulted with his counsel, FTI Consulting, Inc., and the Garden City Group, Inc. to formulate the Claim Portal. The purpose of the Claim Portal is to provide a form that Claimants can use to assert their claims and to provide the backup information necessary to establish such claims. The Receiver and his professionals will, in turn, use the information provided by the Claimants and compare the claims asserted against the Receivership Defendant's own information in order to reconcile and validate the claims.

The Claim Portal was designed to capture the claims of **all Claimants** of the Receivership Defendant in the most cost effective way possible. As such, **all Claimants** of the Receivership Defendant should assert and file all claims which they hold against the Receivership Defendant via the Claim Portal. Failure to submit a validly completed claim on the Claim Portal (or by alternative means that are agreed to between such Claimant and the Receiver prior to the Bar Date) will preclude a Claimant from receiving a distribution from the Receivership Defendant regardless of the validity of the Claimant's claims.<sup>7</sup>

## 2. *Use of the Receiver's Claim Portal*

Each electronic notice will provide the link to the Receiver's Claim Portal so that a Claimant may file its claim. If a Claimant did not receive the Notice via e-mail, they will be notified of the web address for the Receiver's Claim Portal in the Notices sent by U.S. Mail or the published Notices.

---

<sup>7</sup> Individuals or entities that believe they have good cause to either extend the Bar Date or to submit their claim by means other than the Receiver's Claim Portal should contact the Receiver at [claims@zeekrewardsreceivership.com](mailto:claims@zeekrewardsreceivership.com) before the Bar Date to request this relief, which relief may be granted in the Receiver's sole discretion. Creditors wishing to file a claim who do not have internet access may contact the Receiver by sending a letter to ZeekRewards Receivership, c/o GCG, P.O. Box 9964, Dublin, Ohio 43017-5964.

Upon entering the web address for the Receiver's Claim Portal, each Claimant will be prompted to login or, if the Claimant has not visited the Claim Portal previously, the Claimant will be asked to register with the Receivership Estate. Registration will require each Claimant to provide their name, mailing address, telephone number, e-mail address, and social security or employee identification number (if a U.S. individual or entity). The Claimant will also be requested to create a new Claims Portal Registration ID and password for use on the Receiver's Claim Portal so they can save their Claim Submission Form and return to it later before they finally submit their claim. Affiliate-creditors may create one Claims Portal Registration ID, but they must complete and file a separate Claim Submission Form using that Claims Portal Registration ID for each ZeekRewards username for which the Affiliate intends to file a claim. In other words, Affiliates should submit a different claim on the Receiver's Claim Portal for each of the usernames it operated if it wants to file a claim on behalf of more than one username.<sup>8</sup>

### *3. Information Requested and Collected*

After completing registration, Claimants must provide specific information about the types of claims they may assert against the Receivership Defendant as detailed in the mockup provided as **Exhibit C**. Though the information requested on the Claim Portal is specific in nature, at its core, it is seeking to determine (1) in the case of Affiliates, how much that Affiliate paid into ZeekRewards and how much that Affiliate received from ZeekRewards, and (2) in the case of non-Affiliate creditors, the amounts owed to the creditor for services or goods provided or any other basis for the claim asserted against the Receivership Defendant.

The information requested varies based on creditor type (Affiliate, trade creditor, former employee, etc.) and is then further categorized into various subcategories. These categories and

---

<sup>8</sup> Claimants are not guaranteed a distribution on account of each ZeekRewards username that is the subject of a claim. The Receiver will seek Court-Approval prior to making any distributions.

subcategories were not created to demonstrate a preference or prejudice to any type of claim; rather, they have solely been created to aid the Receiver in the reconciliation of the claims. Each Claimant must state the amount it claims to be owed by the Receivership Defendant in each category and subcategory. The amounts claimed will then be aggregated to establish the total amount of the Claimant's claim. It is highly unlikely that any Claimant will hold a claim in each category listed on the Claim Portal. The Receiver has also provided a category labeled "Other" for Claimants to assert their own categories or subcategories of claims if the Claim Portal does not specifically list the Claimant's type of claim.

Claimants must also provide the details of any payments made by ZeekRewards to or for the benefit of the Claimant. Such information will aid the Receiver in reconciling the claims. Claimants must also answer several short questions. The answers to these questions will be used both in the claims reconciliation process and to further aid the Receiver in his investigation of the ZeekRewards Scheme.

The two final sections of the Claim Portal are a consent to jurisdiction and an attestation under penalty of perjury. The former concept requires a Claimant to submit to this Court's jurisdiction for matters that arise concerning the Receivership Defendant. These creditors, by seeking their share of the Receivership Estate, are each filing a claim and should have that claim and any counterclaim asserted by the Receiver determined by this Court. Finally, the Claim Portal requires each Claimant to attest that its claim is true and correct under penalty of perjury.

At the end of the Claims Submission Process, a Claimant will be given the opportunity to upload supporting documentation for its claim. Failure to upload supporting documentation for a claim will not cause that claim against the Receivership Defendant to be disallowed, but it may result in the claim taking longer to reconcile and, therefore, delay receipt of a distribution.

At any time during the claim submission process, prior to the final submission of the claim, the Claimant will be permitted to save its work. The Claimant may then choose to leave the Receiver's Claim Portal and return at a later time to complete the claim submission. However, a claim will not be filed for purposes of complying with the Bar Date until the creditor completes its submission by finalizing and submitting its claim through the Receiver's Claim Portal. Upon submission of the claim, the Receiver's Claim Portal will send an email to the email address provided with the claim in order to confirm the claim was received.

4. *Retail Profit Points Are Not the Basis for Any Claim*

The Receiver omitted and is not requesting any information regarding "Retail Profit Points" that may have been accumulated by an Affiliate. As part of the Receivership Defendant's multilevel marketing program, many Affiliates participated in the "Retail Profit Pool" that was advertised as a daily profit-share program. Affiliates accrued "VIP Points" in the Retail Profit Pool by purchasing sample or VIP bids for \$1.00 and then giving them away to retail customers, other Affiliates, or back to the Receivership Defendant.<sup>9</sup> Each "VIP Point" allegedly entitled the Affiliate to a percentage payout of the alleged daily revenue of RVG. The alleged daily return averaged approximately 1.5%. Affiliates could choose to take their Retail Profit Pool "award" as a cash payment, use it to purchase more VIP bids to give away and increase their VIP Points balance, or a combination of both. Therefore, at the time of shut down, many Affiliates allegedly had large VIP Points balances.

In sum, Affiliates generated and accumulated VIP Points by perpetuating the Scheme that was created by the Receivership Defendant. The vast majority of the funds used to pay for an Affiliate's cash "award," which was based on the Affiliate's VIP Points balance, were funds

---

<sup>9</sup> To be a "qualified" Affiliate and join the Retail Profit Pool, Affiliates also were supposed to have a paid subscription and place an internet ad for Zeekler.com or ZeekRewards.com on the internet every 24 hours.

invested in the Receivership Defendant by other Affiliates. There was little, if any, legitimate business revenue of the Receivership Defendant that was used to pay any amount due or alleged to be due to a creditor or an Affiliate of the Receivership Defendant. Instead of funding distributions from the multilevel marketing program with funds generated through actual business operations, the multilevel marketing program merely redistributed payments made by one Affiliate to another. The Retail Profit Pool was the mechanism used by the Receivership Defendant to redistribute cash among the Affiliates. The exact nature of the redistribution of these amounts is still under review by the Receiver and his advisors.

In examining these facts, the Receiver has determined that because the VIP Points aspect of the multilevel marketing program did nothing more than redistribute funds among Affiliates in Ponzi-scheme fashion, points generated and/or accumulated by Affiliates will not be an includable part of an Affiliate's claim for purposes of receiving a distribution from the Receivership Estate. Including any of these points as part of any claim of an Affiliate would merely effectuate a continued redistribution of funds from later-investing Affiliates to earlier-investing Affiliates. In other words, these Retail Profit Points were an instrument for the perpetration of the Scheme and will, therefore, not be honored as claims by the Receiver. Instead, the Receiver will solely recognize the actual cash paid to ZeekRewards by or for the benefit of an Affiliate, not Retail Profit Points accumulated by such Affiliates that were "earned" through the perpetration of the Scheme. Therefore, the Affiliates should not provide any information regarding points on the Claim Portal.

#### 5. *Claim Reconciliation Process*

Upon the submission of a claim, the Receiver and his professionals will reconcile the claim data provided by the Claimant with the Receivership Defendant's data and information.

The reconciliation process will be used to establish the amount of a Claimant's claim against the Receivership Defendant that the Receiver believes is legitimate. In this process, the Receiver will also determine the amount of cash the Claimant received from the Receivership Defendant. It has not been decided whether the Receiver will deduct any amounts previously received by the Claimant from the Receivership Defendant from the amount of the claim held by the Claimant (the "net-loss" method) or whether he will deduct this amount from the future distributions to be made to such Claimant (the "rising tide" method). The Receiver contemplates filing a motion to permit distributions in this case, and will, in that motion, seek this Court's approval of making distributions under the "rising tide" method or the "net-loss" method.

As part of the reconciliation process, the Receiver Team will also determine which ZeekRewards usernames it considers to be associated with an individual person or entity. The Receiver will then determine the aggregate amount of cash that individual invested in the Receivership Defendant across all associated ZeekRewards usernames. The Receiver will also determine the aggregate amount of cash that individual or entity received from the Receivership Defendant across all associated ZeekRewards usernames. To the extent the Receiver determines there is more than one ZeekRewards username associated with a Claimant, the Receiver will aggregate all the claims for that individual or entity (an "Aggregate Claimant").

The reconciliation of claims will occur on a rolling basis starting when a claim is submitted through the Receiver's Claim Portal. Because of the volume of potential claims and data to be collected, the Receiver cannot estimate how long this reconciliation process will take. However, the Receiver and his professionals will seek to complete the reconciliation of every claim against the Receivership Defendant's information as soon as is practicable.

Upon completing the reconciliation for an individual Claimant, the Receiver will issue the Claim Determination (defined below) to the Claimant.

**E. The Claims Determination Process**

Once the Receiver and his professionals make a determination regarding the amount of a properly submitted claim and the amount of cash that was paid by ZeekRewards to the creditor, the Receiver's advisors shall notify the Claimant of this determination via an e-mail (the "Claim Determination"). The form of Claim Determination is attached hereto as **Exhibit D**. To the extent the Receiver determines there is more than one ZeekRewards username associated with a Claimant, and the Claimant is, therefore, an Aggregate Claimant, the Claim Determination will reflect the aggregate amounts invested in and received from the Receivership Defendant. In other words, while an individual may submit more than one claim because she used more than one ZeekRewards username, that individual will receive only one Claim Determination which aggregates the activity of all their usernames. For simplicity purposes here, we have assumed each Claimant used only one username.

The Claim Determination will be sent by the Receiver to the e-mail address provided by the Claimant when she asserted their claim, unless the Receiver has agreed to notify such Claimant using an alternative method. The Claim Determination will state whether the claim has been allowed or disallowed by the Receiver, and will also provide how a party may object to the Claim Determination (collectively, the "Claim Determination Process"). In instances where the Receiver agrees a Claimant has a legitimate claim, the Claim Determination will state the amounts the Receiver believes the creditor invested in and/or received from the Receivership Defendant. It is possible that the amount asserted by the Claimant and the amount of the claim asserted by the Receiver will be identical.

In instances where the Receiver does not recognize that the entity asserting a claim holds a valid claim against the Receivership Defendant, the Claim Determination will state that the Receiver does not recognize a claim for such entity.

A determination of the amount of a claim at this stage in the process—even in the instance where the Receiver does not dispute the amount claimed by a Claimant—does not mean that the Claimant will receive a distribution equal to 100% of the amount of their determined claim. The distribution percentage (i.e., the percentage a Claimant can expect to recover on account of their allowed claim) will be established in the future and will be the total amount of Assets available for distribution by the Receivership Defendant divided by the aggregate total of the allowed claims asserted (subject to the determination of whether the “net-loss” or “rising tide” method of claim allowance and distribution calculation will be used).

Claimants whose claims have been allowed will have 30 days from the date of the Claim Determination to object to the amount that the Receiver has determined is the valid amount of the claim or to dispute the amount of cash the Receiver has determined the Claimant received from ZeekRewards. An entity whose claim was not recognized as valid will likewise have 30 days to object to the Claim Determination. Objections to the Claim Determination should be submitted to the Receiver electronically on or before 11:59p.m. (prevailing Eastern Time) on the date that is 30 days after the Claim Determination has been sent to such Claimant. All objections to the Claim Determination must be specific. The Receiver and his professionals will work with objecting Claimants to seek to resolve objections. If an objection cannot be resolved between the parties, the Receiver will pursue a Court-approved process for resolution.

If the Receiver does not actually receive an objection on or before 11:59p.m. (prevailing Eastern Time) on the date that is 30 days after the Claim Determination has been sent, the Claim

Determination amounts will become final and shall be used to make distributions on account of the claim.

Upon the Claim Determination becoming final, Claimants will be asked to return to the Receiver's Claim Portal in order to log in to finalize the details needed to receive distributions from the Receivership Defendant and to execute the Release (defined below). Failure to submit payment information or the Release will preclude a Claimant from receiving a distribution in this case.

**F. Release**

The Receiver hereby requests that this Court authorize the Receiver to obtain the release attached hereto as **Exhibit E** (the "Release") from each Claimant who wishes to receive a distribution in this case. This Release requires the Claimant to release the Receiver and the Receivership Defendant from any claim the Claimant has or may assert that is in excess of the amount of the Final Claim Determination and any claim it has or could claim to have against the Receiver for his actions in liquidating and marshaling the Receivership estate. Such releases have been found to be appropriate in other cases involving a receiver or trustee making distributions on account of claims. *In re MF Global Holdings Ltd.* 2013 WL 139594, 1 (S.D.N.Y. January 11, 2013); *In re MF Global Inc.*, 2012 WL 1424670 (Bankr. S.D.N.Y. Apr. 24, 2012).

The Release is narrowly tailored and does not release

any claims against any current or former employee, officer, member or managing member, or member of the Receivership Defendant or any of its subsidiaries or affiliates, except with respect to any work performed by such employee, officer, or director in connection with respect to the liquidation and marshaling of the assets of the Receivership Defendant under the supervision of the Receiver.

See **Exhibit E**. The purpose of this Release is simple. Upon the Receiver and a Claimant reaching agreement on the Claim Determination, the Claimant cannot later contest that determination or the distribution they receive. The Receiver submits that this Release is appropriate in these circumstances, is narrowly tailored, and should be required from any Claimant wishing to receive a distribution in this case. Any Claimant not submitting the Release via the Receiver's Claim Portal should be barred from receiving any distributions in this case until such entity provides the Release. The Receiver further submits that if a Claimant fails to submit such a Release within 180 days of the date that the Claim Determination becomes final, after reminder notices sent 60, 120, and 170 days after the Claim Determination becomes final, such Claimant should be deemed to have forfeited her distribution and such funds should be returned to the pool of Assets to be distributed to other Claimants of the Receivership Defendant.

**V. CONCLUSION**

WHEREAS, the Receiver hereby requests that this Court enter an Order (1) substantially in the form attached hereto as **Exhibit A** approving the Motion, and (2) providing for whatever further relief this Court finds just and proper.

Dated: March 29, 2013

By: /s/ Kenneth D. Bell  
MCGUIREWOODS LLP  
201 North Tryon Street  
Suite 3000  
Charlotte, NC 28202  
Telephone: 704-343-2000  
Facsimile: 704-343-2300

*Attorneys for Receiver, KENNETH D.  
BELL, ESQ.*