

**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 STATUS REPORT FOR THE FIRST QUARTER OF 2015**

**I. INTRODUCTION**

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”), submits this Quarterly Status Report (the “Report”) in accordance with the Order of this Court entered on August 17, 2012, and for the purpose of providing a status report on the work and findings to date (the “Investigation”) of the Receiver, his counsel, agents, consultants, and advisors (the “Receiver Team”). The facts presented herein may be supplemented, amended and/or corrected as the Investigation continues.

## **II. SUMMARY OF ACTIVITIES OF THE RECEIVER BETWEEN JANUARY 1, 2015 AND MARCH 31, 2015**

### **A. Operations of the Receiver**

#### **1. Investigating the Receivership Defendant's Financial Information**

During the first quarter, the Receiver Team continued to work with FTI and various government agencies to collect, analyze, and further reconcile information from financial institutions, e-wallet vendors, payment processors, and other related entities and individuals to support the Receiver's efforts to identify and recover potential outstanding Receivership Assets. These efforts are focused primarily on analysis of documents and information contained in supplemental productions in response to the Receiver's subpoenas, produced during discussions with these entities and individuals regarding outstanding Receivership Assets, and provided in connection with court filings and court-ordered discovery. In addition, the Receiver Team continued to assist various government agencies in their own investigations concerning the Receivership Defendant, principals, affiliates, and the entities and financial institutions that provided services to or transacted with the Defendants.

#### **2. Marshaling and Preserving Receivership Assets**

##### **a. Accounts for Holding Receivership Assets**

The Receiver currently maintains six bank accounts on behalf of the Receivership Estate for holding Receivership Assets: the "Affiliate Account," the "Seized Asset Account," the "Pre-Filing Account," the "Settlement Account," the "Withholding Account," and the "Holdback Account."

Excluding earned interest and transfers between accounts, the Receiver made the following deposits into these accounts during the first quarter of 2015:

- \$1,577,043.06 into the Settlement Account from settlements with non-affiliate third parties;
- \$520,250.00 into the Affiliate Account from payments from various financial institutions relating to previously dishonored cashier's checks, teller's checks, official checks, and bank money orders.

As of March 31, 2015, the Receivership Estate held approximately \$91.3 million in the Affiliate Account, approximately \$89.3 million in the Seized Asset Account, approximately \$293,000 in the Pre-Filing Account, approximately \$6.3 million in the Settlement Account, \$0 in the Withholding Account, and approximately \$1.1 million in the Holdback Account.

**b. Outstanding and Dishonored Negotiable Instruments**

In the quarter ending March 31, 2015, the Receiver's conflicts counsel, Erwin, Bishop, Capitano & Moss, P.A. ("EBCM") continued work to resolve claims against various financial institutions arising from outstanding and dishonored cashier's checks, teller's checks, official checks, and bank money orders. During the quarter, EBCM received payments on behalf of the Receiver from three financial institutions in the gross amount of \$520,250.00. Four additional claims are in the process of being resolved, and EBCM anticipates that this will result in a recovery of \$74,941.00 during the second quarter.

As of March 31, 2015, EBCM was working thirty-one active claims against financial institutions currently valued at \$310,261. The thirty-one remaining claims are at an impasse and require litigation activity for collection. EBCM filed a motion seeking an order to show cause or turnover Receivership Assets against the financial institution with the largest outstanding claim, and it anticipates this claim being resolved during the second quarter. Similar proceedings on

remaining claims relating to outstanding and dishonored cashier's checks and other instruments are planned for the second quarter.

EBCM also prepared claim stipulations for eligible financial institutions and related parties that paid money to the Receivership to resolve claims for outstanding or dishonored negotiable instruments after the court-authorized December 1, 2013 claims deadline for certain financial instruments. As of March 31, 2015, claim stipulations were complete or in process for thirty-four financial institutions. In addition, the Receiver Team has been working on stipulated claims for affected individuals.

**c. Funds Held by E-Wallets**

The Receiver Team is awaiting a ruling on its Motion for an Order Directing NxSystems to Turn Over Receivership Assets and/or Find them in Contempt of the Court's Order Freezing Receivership Assets regarding the approximately \$9 million outstanding.

**d. Additional Asset Recovery**

During the first quarter, the Receiver Team continued litigation against Preferred Merchants and Jaymes Meyer to recover the approximately \$4.8 million they improperly transferred and failed to return in violation of the Freeze Order. Pursuant to the Court's Orders on the pending motions relating to these outstanding assets, the Receiver Team deposed Jaymes Meyer and collected additional documents and information relating to these assets. In addition, the Receiver Team filed motions to secure the properties purchased and/or improved with Receivership Assets that Preferred Merchants and Jaymes Meyer received or improperly transferred to themselves from the Receivership Defendant. One property in the Turks & Caicos Islands has been frozen, and the Court has issued an order directing that it be transferred to the Receiver. The estimated value of this property is believed to be over \$2 million. In addition,

Mr. Meyer agreed to a lis pendens upon California real property that he purchased with Receivership Assets for over \$400,000.

The Receiver Team also continued litigation against Plastic Cash and Brian Newberry, including Plastic Cash's and Brian Newberry's production of additional information and a mediation among the parties. The parties are still in discussions toward finalizing a settlement.

**e. Foreign Accounts**

The Receiver Team is continuing its investigation and pursuit of outstanding funds from Payza, Payment World, Solid Trust Pay, and Cyber Profit. With regard to the outstanding Receivership Assets from Payza and/or Payment World, the Receiver Team issued a demand to Payza, Payment World, and VictoriaBank in Moldova. The Receiver Team also continues to pursue options to recover assets directly from VictoriaBank in Moldova. The Receiver Team will continue to explore all available options, including litigation, to recover the outstanding funds. With respect to Solid Trust Pay, the Receiver Team has issued a demand to Solid Trust Pay for approximately \$1.6 million in outstanding Receivership Assets and is awaiting additional information from Solid Trust Pay to evaluate its response to the Receiver's Demand.

**3. Analyzing the Operations of the Receivership Entity**

**a. Investigating and Validating the Receivership Defendant's Electronic and Financial Data**

During the first quarter, FTI did not receive additional financial data of the Receivership Defendant. There is no indication that additional financial data will be received in future quarters. Therefore, the validation of the Receivership Defendant's financial data is complete and the Receivership now has a complete accounting of the Receivership Defendant's financial records for the data and information received to date. As additional financial data is produced,

those records will be validated and used to update the Receivership Defendant's books and records.

The Receiver Team and FTI continued to investigate the Receivership Defendant's financial data during the first quarter to support efforts to recover Receivership Assets. FTI's financial data investigation activities primarily consisted of (1) reconciling the ZeekRewards database records to disbursement information for specific net winners and insiders to support clawback actions; (2) providing analysis and financial records to support efforts to recover Receivership Defendant assets held by several financial institutions; and (3) research and analysis of specific financial institution transactions to determine potential claims against financial service providers to the Receivership Defendant.

#### **b. Investigating the Receivership Defendant's Operations**

During the first quarter, the Receiver's investigation of RVG's operations included the continued analysis of interactions and financial transactions among RVG and certain vendors and third-party advisors. This analysis was performed for various purposes, including the pursuit of Receivership Assets from financial institutions, support for the Receiver's ongoing fraudulent transfer lawsuits, analysis of additional claims against foreign net winners, and analysis of additional claims against third parties.

#### **4. Communicating with Affiliates and Creditors**

The Receiver Team continued to communicate with Affiliates and other Creditors on a daily basis throughout the first quarter of 2015. These communications were largely in regard to the claim allowance and objection processes. Most of these communications were in relation to specific objections raised to claim determinations and addressing questions regarding status of claims and distribution payments previously made or being made in the early portion of the first quarter.

Additionally, the Receiver Team had discussions with various Affiliates regarding pending net-winner litigation.

In addition to individual communications, the Receiver Team posted two updates on the Receivership website, one regarding the claim and distribution process and the other regarding net-winner litigation. Finally, the Receiver Team sent blast emails to affected Affiliates in order to update Affiliates that might be subject to a deadline or other event that could affect their rights.

## **5. Issues Concerning Federal Taxes**

During the first quarter, FTI and the Receiver Team tracked and reviewed IRS Form 1099-related correspondence from affiliates. This work included responding to various affiliate questions and comments, and reviewing transaction data for each affiliate who inquired about a 1099 received from the Receiver. Additional work included performing any necessary analysis and research to respond to various requests from the Receiver and claimants and in some cases working with National Law Forms to generate amended 1099s.

The Receiver Team reviewed the tax filing obligations of the Receivership entity in the first quarter. In conducting the review, the Receiver Team determined that there are no reporting requirements with respect to the first interim, partial distribution payments, and the Receiver filed no such information returns.

Additionally, the Receiver Team determined that it would be necessary to file certain tax returns relating to the Receivership entity as ordered by the Court. The Receiver Team is in the process of determining whether the Receiver is required to file additional tax returns on behalf of any other persons. Efforts were focused on collecting the necessary information for tax reporting, including analyzing the tax liability for payments received for the sale of assets that closed in the fourth quarter of 2014.

## **6. Litigation in the SEC Enforcement Action<sup>1</sup>**

The Receiver Team litigated the following matters in the SEC Action:

- The Receiver Team filed a response brief in the Fourth Circuit Court of Appeals regarding the Belsome movants' appeal of the striking of attorney charging liens.
- The Receiver Team continued litigation seeking the return of Receivership Assets from NxSystems.
- The Receiver's conflicts counsel filed a Motion for Order to Show Cause or Turn Over Receivership Assets Against Compass Bank.
- The Receiver team continued litigation to recover Receivership Assets from James Meyer and Preferred Merchants Solutions, LLC.

The Receiver team also took part in various communications, negotiations, and settlement discussions in seeking the return of Receivership Assets from multiple third party financial institutions and operators.

### **B. The Receiver's Fund Accounting**

The Receiver's Second Standardized Fund Accounting Report ("SFAR") is attached hereto as Exhibit A.

### **C. The Receiver's Receipts and Disbursements**

The Receiver's Schedule of Receipts and Disbursements ("Schedule") from January 1, 2015 through March 31, 2015, is attached hereto as Exhibit B. The Schedule sets forth the following receipts and disbursements:

1. The Receivership received funds in the amount of \$520,250.00 from the deposit of Affiliate-Investor financial instruments;<sup>2</sup>

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<sup>1</sup> The Receiver's efforts related to the recovery of fraudulently transferred funds and other damages incurred by RVG are discussed later in this Report.

<sup>2</sup> These funds are the result of financial institutions paying the Receiver for affiliates' cashier's checks upon which those financial institutions had previously wrongfully stopped payment.



2. Received funds of \$1,577,043.06 from third-party litigation settlements;<sup>3</sup>
3. Received income from other sources, such as interest income and return of pre-paid funds, totaling \$43,702.57; and
4. Disbursed \$29,026,983 from the Receiver's accounts. Of that sum, the Receiver disbursed \$28,615,086.80 to investors; the balance consisted of bank fees related to management of the Receiver's accounts; claims process expenses; RVG website and database hosting; legal services; property insurance, maintenance, and taxes; and other professional services.<sup>4</sup>

Between January 1, 2015 and March 31, 2015, the Receivership Estate deposited \$2,140,995.63 and disbursed \$29,026,983.67. The Receiver has marshaled total assets of approximately \$344.8 million during the period between August 17, 2012 and March 31, 2015, while disbursing approximately \$157.2 million<sup>5</sup> during the same period.<sup>6</sup>

**D. Description of All Known Non-Cash Receivership Property**

In the fourth quarter, the Receiver took possession of a residential home at 5600 Roundhouse Lane in Charlotte, NC, as part of a settlement with the estate of Defendant Roger Plyler. The Receiver retained a real estate agent to sell the home, which went to market in the first quarter of 2015. The Receiver accepted an offer on the home in late March.<sup>7</sup> In the first quarter, the Receiver also took possession of several motor vehicles as part of the settlement with

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<sup>3</sup> As of the end of the first quarter, the Receiver has agreed to approximately \$2.9 million in settlements with net winner affiliates. The Receiver has collected over \$6.2 million in total litigation-related settlements since the inception of the Receivership.

<sup>4</sup> See attached Exhibit B for further detail regarding disbursements and receipts.

<sup>5</sup> Disbursements to claimants from September 2014 to the present total approximately \$145 million.

<sup>6</sup> A significant amount of the available funds on hand are being reserved in light of the more than 50,000 claimants who have yet to accept their claims and potential future payments on subrogation claims.

<sup>7</sup> The sale of this property is set to close on April 30, 2015.

Defendant Dawn Wright-Oliveras. The Receiver has retained an auctioneer and intends to liquidate these vehicles during the second quarter of 2015.

**E. Description of Claims Held by the Receivership Estate**

**1. Identifying and Pursuing Fraudulently Transferred Funds Held by Net-Winner Affiliate-Investors**

**a. U.S. Net Winner Lawsuit**

On February 10, 2015, the Court granted the Receiver's Motion for Class Certification, certifying a class of approximately 9,400 defendants who obtained at least \$1,000 in net gains from the ZeekRewards scheme. The Court approved the Receiver's Motion to Approve Notice of Class Certification on March 11, 2015, and the Receiver sent court-authorized notice to all class members beginning on March 18, 2015.

Discovery has continued in this lawsuit, and during the first quarter, the Receiver conducted depositions of defendants Durant Brockett and Aaron Andrews. The Receiver noticed depositions for certain other named defendants, but they failed to appear for their depositions.

Regarding judgment collection, the Receiver continued work to collect a judgment obtained against Michael Van Leeuwen. During the quarter ending March 31, a Notice of Filing of Foreign Judgment in Cumberland County was served, via Sheriff, on Mr. Van Leeuwen. On March 11, 2015, following Mr. Van Leeuwen's return from a trip to the Philippines, the Cumberland County Clerk of Court issued a Notice of Rights to Have Exemptions Designated. The Notice of Rights to Have Exemptions Designated was delivered to Cumberland County Sherriff's Department for service. The Receiver anticipates a Writ of Execution and commencement of post judgment discovery in the second quarter following completion of the Notice of Rights procedure.

## **b. Claims Against Foreign Net Winners**

During the first quarter, the Receiver filed additional lawsuits against foreign net winners in the British Virgin Islands, New Zealand, Norway, and the United Kingdom. In addition, the Receiver previously filed actions against net winners in Canada and Australia. The Receiver has worked extensively with local counsel in each of these countries to locate and serve as many of these defendants as possible. In addition, the Receiver Team has researched and analyzed jurisdictional and judgment enforcement issues specific to each of the countries in question in support of the Receiver's claims and eventual enforcement of judgments in these countries. Further, the Receiver Team corresponded with individual foreign defendants and attorneys for certain foreign defendants regarding potential settlements and extensions for filing responses to the respective lawsuits.

The Receiver expects to file lawsuits against foreign net winners in additional countries during the second quarter of 2015.

### **2. Investigating Claims against Receivership Defendant Insiders**

The Receiver has settled with each of the defendants named in the lawsuit against insiders of the ZeekRewards scheme other than Darryle Douglas, against whom the Receiver has obtained a default judgment. The Court has approved each of these settlements, and the case currently remains open on the Court's docket pending satisfaction of the terms of the various settlement agreements.

### **3. Investigating Claims against the Receivership Defendant's Third-Party Advisors and Others**

During the first quarter, the Receiver continued to litigate the claims against Kevin Grimes and his former law firm and business entity, as well as the claims against attorney

Howard Kaplan. The Court recently stayed consideration of Mr. Kaplan's motion to dismiss pending the Receiver's mediation efforts in the case against the Grimes defendants.

Further, the Receiver filed a lawsuit against USHBB, Inc. and its principals, James Moore, O.H. Brown, and Robert Mecham, who provided marketing and advertising materials in promoting the ZeekRewards scheme. *See Bell v. USHBB, Inc. et al.*, No. 3:15-cv-137 (W.D.N.C. filed Mar. 26, 2015). This lawsuit alleges claims for fraudulent transfer, aiding and abetting breach of fiduciary duty, unfair and deceptive trade practices, and unjust enrichment, and it seeks the imposition of a constructive trust.

In addition, the Receiver's conflicts counsel worked with the Receiver to identify and evaluate claims against a financial institution that provided services to Rex Venture Group.

**F. Potential Creditors of the Receivership Estate**

As set forth above, the Receiver Team continues to litigate against NxPay, Plastic Cash, Preferred Merchants, and their principals and affiliates, which appear to have transferred assets in violation of the Freeze Order. As part of these proceedings, the Receiver Team is defending against any claim that the entities or individuals are entitled to the funds improperly held or transferred whether outright or as a set off against amounts owed to the Receivership Estate.

Of these entities, only Plastic Cash filed a claim as part of the Court-approved claims process. The Receiver participated in a mediation with Plastic Cash to resolve the respective claims, and as reported above, the parties are working toward finalizing a settlement.

**G. Status of Creditor Claims Proceedings, After Such Proceedings Have Been Commenced**

On January 30, 2015, the Receiver issued checks to approximately 8,100 Affiliate claimants as part of the second interim distribution. Claimants receiving a check in the second interim distribution held an allowable claim, were not issued a distribution as part of the first

interim distribution on September 30, 2014, agreed to their claim determination, and provided the required Release and OFAC Statement.

During the first quarter, the Receiver Team identified a small group of claims asserted by Affiliates that were improperly filed on the Claim Portal. These claims had been timely filed, but had been filed in the wrong category. The Receiver Team determined that the most equitable course was to treat those claims as properly filed and reconciled those claims. The Receiver Team has now begun issuing letters of determination for such claimants. All but a handful of subrogation claims have been determined. The letters of determination for subrogation claims are slated to be sent in the early portion of the second quarter of 2015. No further review of claims in the different classes of claims are anticipated because, pursuant to an order of the Court, the Receiver does not need to review any additional class of claims until the class of Affiliate claimants and their subrogees are paid in full.

To date, almost 121,000 Affiliate claimants have accepted their claim determinations and have been or will be issued a distribution in the near term. The next distribution date for claimants who have not already received a distribution is April 30, 2015. However, in excess of 50,000 Affiliate claimants have failed to respond to their claim determinations. Each claimant is required to act further if they would like to receive a distribution from the Receivership Estate. Failure to act further may eventually cause a claimant to forfeit the distribution. The Receiver contacted each of the Affiliate claimants who failed to respond to their claim determination to request that such claimants respond to the claim determination by April 15, 2015 and notified them that, pursuant to authority granted by court order, they would be deemed to have accepted their claim determination if they failed to respond by that date.

Approximately 1,800 Affiliates have objected to the claim determination issued by the Receiver Team. The Receiver Team is continuing to address these objections in an effort to resolve such objections before intervention by the Special Master or the Court would be needed. The Receiver Team has been successful in resolving the majority of these objections to date.

### **III. CONCLUSION**

At this time, the Receiver recommends the continuation of the Receivership for the following reasons:

1. To continue the Receiver's efforts to investigate and marshal assets of the Receivership Estate;
2. To continue the Receiver's efforts to implement the claims and distribution processes in order to distribute proceeds to injured claimants;
3. To continue the Receiver's efforts to liquidate various assets of the Receivership Estate; and
4. To carry out any other legal or appointed duties of the Receiver identified in the Receiver Orders or as the Court deems necessary.

Dated: April 30, 2015

By: /s/ Kenneth D. Bell  
Kenneth D. Bell, Esq., Receiver

and

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have electronically filed the foregoing **RECEIVER'S STATUS REPORT FOR THE FIRST QUARTER OF 2015** with the Clerk of Court using the CM/ECF system, which will send electronic copies to counsel of record registered to receive electronic service.

Dated: April 30, 2015

/s/ Kenneth D. Bell  
Kenneth D. Bell, Esq., Receiver