

**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 THIRD QUARTER OF 2014**

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.

**I. INTRODUCTION**

During the third quarter of 2014, the Receiver issued approximately 90,000 checks to Affiliates holding Allowed Claims as their first interim, partial distribution. Approximately 48,000 additional Affiliate claims have been recognized by the Receiver, but were ineligible to

receive a distribution on September 30, 2014 because each such claimant failed to provide the required release and OFAC Certification. If any of those Affiliate claimants provide the required release and OFAC Certification by December 31, 2014, such Affiliate will receive a distribution on January 31, 2015. In addition, the Receiver continued resolving purported creditors' claims and issuing claim determinations, litigated multiple clawback lawsuits including a new lawsuit against net winners residing in Canada, and continued his investigation and pursuit of funds wrongfully held by certain financial institutions, e-wallets, and payment processors.

## **II. SUMMARY OF ACTIVITIES OF THE RECEIVER BETWEEN JULY 1, 2014 AND SEPTEMBER 30, 2014**

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

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

During the third 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 identify and recover potential outstanding Receivership Assets. As in the second quarter, the focus of many of these efforts was on the investigation and recovery of improper transfers or withdrawals and funds that entities and individuals failed to remit to the Receiver in violation of the Court's order freezing Receivership Assets. 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 otherwise transacted with the Defendants.

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

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

In addition to the four interest-bearing bank accounts holding Receivership Assets that the Receiver has reported on in previous status reports (the “Affiliate Account,” the “Seized Asset Account,” the “Pre-Filing Account,” and the “Settlement Account”), the Receiver opened two new accounts during the third quarter: one for the purpose of withholding amounts that may be owed to the IRS on distributions made to affiliates (the “Withholding Account”), and another for the purpose of maintaining payments owed for professional services provided to the Receivership Estate (the “Holdback Account”).

Excluding transfers between accounts, the Receiver deposited the following funds into its accounts during the third quarter of 2014:

- \$259,294.00 into the Affiliate Account from payments from various financial institutions relating to previously dishonored cashier’s checks, teller’s checks and bank money orders; and
- \$1,868,251.77 into the Settlement Account from settlements with net-winners.

As of September 30, 2014, the Receivership Estate held approximately \$90.7 million in the Affiliate Account, approximately \$204 million in the Seized Asset Account, approximately \$295,000 in the Pre-Filing Account, approximately \$4.3 million in the Settlement Account, approximately \$23 million in the Withholding Account, and approximately \$858,000 in the Holdback Account.

### **b. Cashier’s Checks**

In the quarter ending September 30, 2014, the Receiver’s conflicts counsel, Erwin, Bishop, Capitano & Moss, P.A. (“EBCM”) continued non-litigation strategies to resolve claims against financial institutions for dishonored cashier’s checks, teller’s checks, and bank money

orders. During the quarter, EBCM collected payments on these dishonored instruments and transferred those payments to the Receiver, resulting in the deposit of \$259,294.00.

As of September 30, EBCM was working thirty-nine (39) unresolved claims currently valued at \$506,258. EBCM has advised the Receiver that litigation will be necessary to resolve thirty-three (33) of these claims. EBCM finalized a form complaint for use in litigation against non-compliant financial institutions. EBCM and the Receiver are working to determine litigation strategy on a claim by claim basis.

EBCM also assisted the Receiver with claim stipulations for seventy-five (75) financial institutions that made payments to the Receiver after the December 1, 2013 claims deadline. EBCM and the Receiver drafted a Settlement Agreement and Stipulation that will provide for Class 3 allowed claims. Administration of claim stipulations remains ongoing.

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

As stated in our prior report, the Receiver Team recovered approximately \$3.98 million from NxPay. In the third quarter, the Receiver Team, working with various government agencies, continued to work to recover the outstanding amount, which includes funds that were transferred in violation of the Court's freeze order. It is likely that the Receiver will commence litigation against NxPay to recover the approximately \$9 million in outstanding assets that should have been frozen and remitted to the Receiver.

**d. Additional Asset Recovery**

The Receiver Team, with FTI, continues to investigate and pursue the recovery of Receivership Assets from Preferred Merchants and its CEO Jaymes Meyer. As part of these efforts, in the third quarter, the Receiver Team reviewed additional documents that Preferred Merchants produced in response to the Receiver's subpoena. In addition, as discussed in more detail below, Preferred Merchants filed a motion requesting that the Court lift the litigation stay

and permit it to file a declaratory action to validate Preferred Merchants' claim to the funds Preferred Merchants fraudulently transferred to itself upon notice of the freeze. (*See infra*, Section II.E). The Receiver Team filed an opposition to this motion requesting that the Court maintain the litigation stay and decide the issues in a contempt proceeding to prevent Preferred Merchants from circumventing the Court's claims process and the onslaught of similar suits. The Receiver Team also moved for an order finding Preferred Merchants and Jaymes Meyer in contempt for violating the Court's freeze order by failing to return the \$4.8 million that Preferred Merchants fraudulently transferred to itself from an account held in trust for the benefit of RVG upon notice of the asset freeze and imminent shutdown of RVG.

The Receiver Team also determined that in July and August of 2012, \$2 million of Receivership Assets were fraudulently transferred to an individual named Matt Weber purportedly in exchange for a website business that the Receivership Defendant never received, and that, in any event, appears to have had no value. The Receiver Team located the bank where these funds were first deposited and petitioned the Court for a sealed ex parte temporary restraining order ("TRO") freezing these funds pursuant to Court's freeze order. The Court granted the TRO, and the bank then notified the Receiver that a business account related to Mr. Weber contained approximately \$1.3 million. The Receiver Team is currently negotiating with counsel for Mr. Weber regarding these funds, and the Court granted a consent motion to extend the TRO for an additional 30 days for these negotiations.

**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 respect to the approximately \$13.2 million outstanding from Payza and/or Payment World, during the third quarter, the Receiver Team reviewed numerous documents that Payment World produced in response to the

Receiver's subpoena. The Receiver Team also continues to pursue avenues of communication with, and options to recover assets directly from, VictoriaBank in Moldova, the bank that purportedly holds these outstanding Receivership Assets. Finally, the Receiver Team is working with various United States and international government agencies in efforts to recover the outstanding funds.

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

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

The Receiver continues to investigate and validate the Receivership Defendant's electronic databases and financial data. During the third quarter, FTI reviewed, analyzed, and summarized settlement account information and data from NxPay in preparation for a meeting with the Receiver and governmental authorities. Further work was completed to compile support and analyses related to NxPay frozen funds.

During the third quarter, FTI reviewed disbursement and payment data for specific net-winner defendants and RVG vendors and advisors. This work included compiling all ZeekRewards-related payments received by specific defendants and reconciling the payment transactions to bank and various eWallet data. Summaries of these analyses were produced to assist MW with clawback litigation.

FTI received document productions from two RVG payment processors during the third quarter. FTI reviewed and analyzed the transactional data, account statements, and various other documents contained in these productions. FTI researched data provided by the payment processors in an ongoing effort to trace the location and flow of funds related to Receivership assets. This work will likely continue as new information and data is produced and provided by various financial institutions.

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

During the third quarter, the Receiver's investigation of RVG's operations included analyzing in detail the interactions and financial transactions among RVG and certain vendors and third-party advisors. This analysis was performed for various purposes, including support for the Receiver's ongoing fraudulent transfer lawsuits, analysis of potential claims against foreign net winners, and analysis of potential claims against third parties.

**c. Privilege Review Team**

The Court ruled on the privilege issues previously reported on and ordered additional documents produced to the Department of Justice. The Receiver's Privilege Review Team prepared and produced the documents pursuant to the Court's Order.

**4. Communicating with Affiliates and Creditors**

The Receiver Team routinely communicated with individual Affiliates and other Creditors throughout the third quarter of 2014. The vast majority of these individual communications were related to the claims determination process (including the resolution of objections to specific claim determinations), the first interim distribution, the litigation that was filed against certain domestic net-winner Affiliates in the first half of 2014, and the recently filed litigation against certain foreign net-winner Affiliates.

Approximately 12,000 Affiliate claimants were sent claim determinations in the third quarter of 2014, bringing the total number of claim determinations issued by the Receiver to approximately 168,000. Affiliates who have received their claim determinations often contact the Receiver Team regarding the claim acceptance and objection process.

The Receiver Team has communicated individually with each of the various Affiliates that objected to the determination of his/her claim. Those communications have been largely successful in resolving such objections. The Receiver Team has also communicated with

Affiliates regarding the allowance of claims they filed as well as Affiliates' eligibility to receive the first interim, partial distribution. Additionally, in specific instances, the Receiver Team had communications with various Affiliates and their counsel where that Affiliate had listed an attorney to receive its distribution. The Receiver Team also had various individual communications with net winners regarding settlement.

In addition to these individual communications, the Receiver posted several updates on the Receivership website ([www.zeekrewardsreceivership.com](http://www.zeekrewardsreceivership.com)) regarding the first interim, partial distribution and litigation against net winners.

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

During the third quarter, FTI tracked and reviewed 1099-related correspondence from affiliates. This work included responding to various affiliate questions and comments and reviewing transaction data for each affiliate who inquired on a 1099 received from the Receiver. Additional work included performing any necessary analyses 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.

As previously reported for the second quarter of 2014, the Receiver Team had discussions to determine whether a penalty abatement request was viable with respect to outstanding employment-related taxes and related penalties and interest owed because of RVG's failure to pay these taxes prior to the inception of the Receivership. The Receiver Team is preparing a request seeking a penalty waiver with respect to these taxes. In addition, the Receiver Team had reported during the second quarter that payment was submitted for the amount of tax and interest owed to the North Carolina Department of Revenue (the "NCDOR"). The NCDOR received the payment and waived the penalty amount.

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

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

- An appeal by the Belsome movants' attorneys to the Fourth Circuit Court of Appeals challenging the Court's order to pay claim distributions directly to victims of the scheme rather than third parties purporting to represent victims;<sup>2</sup>
- A motion requesting an order finding Preferred Merchants and Jaymes Meyer in contempt of the Court's Order Appointing Temporary Receiver and freezing certain assets; and
- A motion for temporary restraining order enforcing the Court's asset freeze on a third-party account containing significant funds transferred from RVG in July and August 2012.

These various matters required significant research and briefing by the Receiver Team.

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

The Receiver's 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 July 1, 2014 through September 30, 2014, is attached hereto as Exhibit B. The Schedule sets forth the following receipts and disbursements:

1. The Receivership received funds in the amount of \$259,294.00 from the deposit of Affiliate-Investor financial instruments;<sup>3</sup>

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<sup>1</sup> This section discusses litigation in the SEC Enforcement Action. 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> In addition, the Fourth Circuit Court of Appeals recently ruled in the Receiver's favor and affirmed this Court's order denying the Belsome plaintiffs' motion to lift the stay on their purported class action lawsuit against Paul Burks and RVG. See *Belsome et al. v. Burks et al.*, No. 14-1028 (filed Oct. 10, 2014).

2. Received funds of \$1,868,251.77 from third-party litigation settlements;<sup>4</sup>
3. Received funds of \$30.35 from a tax withholding refund;
4. Received interest income totaling \$81,345.96; and,
5. Disbursed funds of \$1,543,693.67 from the Receiver's accounts, which includes the fees previously approved for payment of FTI and MW. These funds were also disbursed for bank fees related to management of the Receiver's accounts; claims process expenses; RVG website and database hosting with InternetDynamo in Miami, Florida; legal services; and other professional services.<sup>5</sup>

Between July 1, 2014 and September 30, 2014, the Receivership Estate received \$2,199,922.08 and disbursed \$1,543,693.67. The Receiver has marshaled total assets of approximately \$338.4 million during the period between August 17, 2012 and September 30, 2014, while disbursing approximately \$15.7 million during the same period.<sup>6</sup>

**D. 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**

The Receiver Team focused significant effort during the third quarter litigating the lawsuit against U.S. net winners. *See Bell v. Disner et al.*, No. 3:14cv91 (W.D.N.C.). With

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<sup>3</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.

<sup>4</sup> As of the end of the third quarter, the Receiver has agreed to approximately \$3.0 million in settlements with third parties.

<sup>5</sup> See attached Exhibit B for further detail regarding disbursements and receipts.

<sup>6</sup> Disbursements resulting from the first partial, interim distribution all occurred after the final day of the third quarter and will be reflected in the Receiver's status report for the fourth quarter of 2014.

multiple motions to dismiss and motion for class certification fully briefed, the Receiver now awaits resolution of these motions while moving forward with discovery.

First, the Defendants collectively filed four separate motions to dismiss. In addressing these motions, the Receiver Team drafted and filed a consolidated response to all of the Defendants' motions to dismiss in the interests of clarity, efficiency, and cost. In addition, the Receiver moved to dismiss the various counterclaims filed by multiple Defendants.

Further, on July 30, 2014, the Receiver filed a motion to certify a class of approximately 9,000 defendants who received more than \$1,000 in net winnings from RVG. After the named Defendants filed a response in opposition to this motion, the Receiver filed a reply in support of the motion on September 18, 2014.

Meanwhile, the Receiver Team worked to prepare discovery responses and produce documents to one requesting defendant. In addition, the Receiver issued discovery requests to all named Defendants, receiving documents from some. One group of defendants, after receiving an extension of thirty days to produce documents to the Receiver, refused to produce the documents and filed a last-minute motion to stay discovery pending the Court's resolution of the motions to dismiss. The Receiver team worked drafting a response to the motion to stay during the final days of the third quarter.

Finally, the Receiver obtained entry of default against Defendants Michael Van Leeuwen, Todd Disner, and David Sorrells. The Clerk of Court entered default judgment against Van Leeuwen on August 25, 2014 for the sum of \$1,617,444.99. The Receiver is awaiting ruling upon the motions for default judgment against Disner and Sorrells.

**b. Claims Against Foreign Net Winners**

The Receiver filed a complaint in this Court against net winners in Canada on August 15, 2014. *Bell v. Parker et al.*, No. 3:14cv444 (W.D.N.C.). Naming additional defendants on

September 4, 2014, the Amended Complaint seeks the return of fraudulent transfers from twenty-six net winners in Canada who each received more than \$50,000 from the ZeekRewards scheme through one or more usernames.<sup>7</sup> Collectively, these defendants received over \$2.9 million from the scheme. The Receiver will soon pursue similar actions against additional foreign defendants.

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

The Receiver obtained default judgment against Defendant Darryle Douglas on September 4, 2014 for the sum of \$2,271,239.20. *See Bell v. Burks et al.*, No. 3:14cv89 (W.D.N.C.) (Doc. No. 37). In addition, the Receiver Team negotiated and finalized settlement agreements with the remaining Insider Defendants in this action, bringing the substantive work of this lawsuit to a close.

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

In the action against attorney Kevin Grimes and his former law firm, Grimes & Reese, the Receiver filed an Amended Complaint adding defendant MLM Compliance VT, LLC and asserting additional claims, including a claim for fraudulent transfer of a sum in excess of \$800,000. *Bell v. Grimes & Reese et al.*, No. 3:14cv351 (W.D.N.C.). Both Grimes and Grimes & Reese filed motions to dismiss, and the Receiver agreed to an extension by which MLM Compliance VT would file a motion to dismiss in the early fourth quarter of 2014, allowing the Receiver to file a single consolidated response to all three motions to dismiss.

In the action against attorney Howard Kaplan, the Defendant filed a motion to dismiss on August 25, 2014. *Bell v. Kaplan*, No. 3:14cv352 (W.D.N.C.). The Receiver Team drafted and

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<sup>7</sup> The Receiver has determined that a \$50,000 threshold is necessary to ensure the greatest possible net return for the Receivership Estate. Multiple factors make litigation against foreign net winners more costly to pursue, including the difficulty and cost of service of process, increased expenses for discovery, and the costs of pursuing translation and collection of a judgment in a foreign country.

filed a response in opposition to this motion to dismiss, and Kaplan filed a reply in support of the motion. As a result, this motion is fully briefed and awaiting court resolution.

The Receiver continues to evaluate claims against additional third parties and will pursue other RVG advisors and vendors to the extent colorable claims exist against these individuals for their receipt of fraudulent transfer or for their role in supporting the ZeekRewards scheme.

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

During the third quarter of 2014, alleged creditor Preferred Merchants Solutions LLC (“Preferred Merchants”) sought relief from the Freeze Order to bring a declaratory judgment action against the Receiver (the “PM Action”). The PM Action seeks a ruling that the transfer of certain funds by Preferred Merchants from a ZeekRewards trust account—an account for which Preferred Merchants served as trustee—to an account owned by Preferred Merchants was proper. The PM Action also seeks a ruling that Preferred Merchant’s use of these funds as a “setoff” of alleged debts of the Receivership Defendant to Preferred was likewise proper. As discussed above, the Receiver has opposed that motion and the proposed PM Action.

In addition, the Receiver Team continues to investigate and pursue the actions of Plastic Cash, NxPay (as set forth above), and their principals and affiliates, as these entities appear to have transferred assets in violation of the Freeze Order. These efforts, absent a settlement, will likely result in the Receiver commencing litigation to recover the assets improperly retained by these entities.

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

On September 30, 2014, the Receiver made a first partial interim distribution, issuing checks to approximately 91,000 Affiliate claimants who hold allowed claims. Those claimants received a distribution that, using the rising tide method, ensured that such Affiliates had

received, in the aggregate, 40% of the amount of cash that they paid to ZeekRewards during the course of the ZeekRewards Scheme. The first interim, partial distribution totaled \$134.2 million, from which approximately \$23 million was withheld on account of potential tax withholdings. The Receiver is continuing to investigate and discuss with the Internal Revenue Service (IRS) whether he can distribute these funds to claimants or whether he is required to provide them to the IRS. The Receiver will provide an update on the Receivership Website regarding this issue as soon as possible.

Despite the issuance of approximately 167,000 claim determinations, approximately 61,000 Affiliates have failed to respond to their claim determination. By Order of this Court, an affiliate who does not provide the required Release and the OFAC Statement is not eligible to receive a distribution. These Affiliates will remain ineligible to receive a distribution until they have completed the claim determination process. However, the Receivership Team has maintained adequate reserves to pay all Affiliates whose claims are allowed in the amounts in which such Affiliate submitted a claim. In the month subsequent to the end of each quarter, the Receiver will make a first partial, interim distribution to those affiliates who have become eligible to receive a distribution in that preceding quarter.

Because there are a possible 61,000 additional first partial, interim distributions to be made, as well as ongoing expenses in the administration of the Receivership Estate and pursuit of Receivership Assets, the magnitude of a second distribution will depend on how much more money can be brought in the door through settlements, clawback litigation, other litigation, and the pursuit of Receivership Assets through other avenues.

Approximately 1,000 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 from the Special Master or the Court would be needed. The Receiver Team has been successful in resolving the majority of these objections to date.

Approximately 8,000 claims remain subject to reconciliation and review at this time. The Receiver Team anticipates issuing claim determinations to these remaining affiliates and holders of subrogation claims by the end of the fourth quarter of 2014. The subrogation claims made by financial institutions against the Receivership Estate are in the process of being reconciled, and no claim determinations have been issued in regard to such subrogation claims at this time. It is anticipated that these claims will be reconciled in the near term.

### **III. CONCLUSION**

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

1. The continuing efforts of the Receiver to investigate and marshal assets of the Receivership Estate;
2. The continuing efforts of the Receiver to implement the claims and distribution processes in order to distribute proceeds to injured claimants; and
3. The carrying out of any other legal and/or appointed duties of the Receiver as identified in the Receiver Orders or as the Court deems necessary.

Dated: October 30, 2014

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 THIRD QUARTER OF 2014** 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: October 30, 2014

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