

**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 FOURTH 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 fourth quarter of 2014, the Receiver caused 58,000 additional checks to be issued to all affiliates who had taxes withheld from their first, interim partial distributions. In addition, the Receiver continued the pursuit of Receivership Assets from domestic and foreign

payment processors, e-wallets, and other financial institutions, while litigating clawback claims against both domestic and foreign defendants.

## **II. SUMMARY OF ACTIVITIES OF THE RECEIVER BETWEEN OCTOBER 1, 2014 AND DECEMBER 31, 2014**

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

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

During the fourth 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. During the fourth quarter, these efforts primarily focused on analysis of documents and information contained in supplemental productions in response to the Receiver's subpoenas or that were produced during the course of discussions with these entities and individuals regarding outstanding 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 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 deposited the following funds into its accounts during the fourth quarter of 2014:

- \$3,977,188.96 turned over by e-wallet provider NxSystems, Inc. This amount was originally deposited to the Pre-Filing Account and then transferred to the Seized Asset Account.
- \$323,592.12 into the Settlement Account from settlements with net winners.

As of December 31, 2014, the Receivership Estate held approximately \$90.7 million in the Affiliate Account, approximately \$118 million in the Seized Asset Account, approximately \$294,000 in the Pre-Filing Account, approximately \$4.7 million in the Settlement Account, \$0 in the Withholding Account, and approximately \$1.1 million in the Holdback Account.

**b. Cashier's Checks**

In the quarter ending December 31, 2014, the Receiver's conflicts counsel, Erwin, Bishop, Capitano & Moss, P.A. ("EBCM") continued working to resolve claims against financial institutions arising from dishonored cashier's checks, teller's checks and bank money orders. As of December 31, 2014, EBCM had resolved six claims pending completion of settlement documentation, and continued work on thirty-two active claims with a gross adjusted value of \$465,668. Discussions with responsible parties on the thirty-two remaining claims are at impasse such that litigation will be required to resolve these claims.

EBCM also assisted the Receiver by preparing and administering claim stipulations for eligible banks and related parties that paid money to the Receivership to resolve claims for dishonored instruments after the court-authorized extended December 1, 2013 claims deadline for certain financial instruments. As of December 31, 2014, claim stipulations are complete or in process for thirty-two financial institutions. Thirty financial institutions that are potentially eligible to file claims against the estate did not respond to the Receiver's invitation to enter into a claim stipulation.

The Receiver is at an impasse in negotiations with several banks over the cashier's check claims. As a result, the Receiver has decided to pursue those claims through turnover / civil contempt motions under the freeze order. The Receiver expects to file an initial motion in this regard within the next ten days.

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

The Receiver Team filed a Motion for an Order Directing NxSystems, Inc. to Turn Over Receivership Assets and/or Find them in Contempt of the Court's Order Freezing Receivership Assets seeking to recover the approximately \$9 million in outstanding assets that should have been frozen and remitted to the Receivership pursuant to the Court's Freeze Order.

**d. Additional Asset Recovery**

During the fourth quarter, the Receiver Team continued litigating 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. The Receiver Team filed supplemental briefing supported by an affidavit from the SEC in connection with its contempt motion, apprising the Court of new information that was just recently brought to the Receiver's attention regarding Preferred Merchants' and Meyer's notice of the asset freeze prior to the Court's Freeze Order; false and/or incomplete representations made to the SEC about the assets held or controlled by Preferred Merchants and/or Meyer when the SEC requested that Meyer freeze all RVG accounts and assets; and failure to freeze the assets that were held in trust for RVG despite the Court's Order and the SEC's specific instructions to do so.

Upon learning this information, given the apparent increased risk of dissipation of the \$4.8 million, the Receiver Team moved for a temporary restraining order in connection with these funds, asking the Court to order Preferred Merchants and Jaymes Meyer to segregate and protect these funds until the other motions are resolved on the merits. Pursuant to Court Order,

the parties are currently engaged in discovery relating to these assets to assist the Court in its ruling, including supplemental productions of financial information from Preferred Merchants and Jaymes Meyer and the deposition of Jaymes Meyer. Finally, in response to a request from the Court, the parties submitted briefing on whether a plenary proceeding may be conducted within the context of the pending contempt motion. As set forth in his brief, it is the Receiver's position that the Court should uphold the litigation stay and resolve these matters in a plenary proceeding within the context of the existing SEC Action and the Receiver's contempt motion, which would allow for the resolution of all issues and also the protection of all parties' rights and interests, including the important interests served by the litigation stay.

During the fourth quarter, the Receiver Team also filed a Motion for an Order Directing Plastic Cash International LLC and Brian Newberry to Turn Over Receivership Assets and/or Find them in Contempt of the Court's Order Freezing Receivership Assets, in connection with the approximately \$8.3 million of Receivership Assets that they failed to freeze and return to the Receivership Estate.

**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 approximately \$13.2 million outstanding from Payza and/or Payment World, the Receiver Team met and conferred with Payment World's counsel, seeking the production of outstanding information and documents responsive to the Receivership's subpoena and information about individuals who may have information to assist in recovering the assets from VictoriaBank in Moldova. The Receiver Team also continues to pursue avenues of communication with and options to recover assets directly from VictoriaBank in Moldova and will continue to explore all available options in its 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**

During the fourth quarter, FTI's activities primarily related to resolving claimant disputes and reviewing claims requiring manual reconciliation. Claims were reviewed further during the quarter as new information was made available through the objection process.

FTI continued to assist the Receivership in pursuing outstanding Receivership assets from various financial vendors and institutions. Specifically, FTI assisted by reviewing documents, preparing asset tracing analyses, and compiling documents, facts and analyses to support legal pleadings against several financial vendors. Additional work included updating the Receivership's financial books and records as new data was received. More updates will likely continue as new information is received.

FTI also provided litigation support service to the Receivership. FTI continued to receive new document productions from several financial institutions (including NxPay and Preferred Merchants). It assisted McGuireWoods with the litigation process related to actions against NxPay and Preferred Merchants/Jaymes Meyer, including document review and deposition preparation. FTI reviewed the new documents received and worked closely with MW to trace funds for both the Meyer accounts and the Settlement Account at NxPay, and it incorporated this new financial data into the RVG books and records as necessary. Further, FTI continued to review disbursement and payment data for additional net-winner defendants at the direction of McGuireWoods. Similar to last quarter, FTI compiled ZeekRewards payments related to these defendants and compared transactions to RVG bank records and e-wallet transactional data. FTI sent summaries of these analyses to McGuireWoods to assist with the litigation. In addition, FTI prepared an Expert Report regarding the determination of payments into and out of the scheme,

which will be used in all clawback actions. FTI also assisted the Receivership in preparing for depositions of specific financial vendors in order to trace Receivership Assets.

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

During the fourth quarter, the Receiver's investigation of RVG's operations included analyzing the 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 claims against foreign net winners, and analysis of potential claims against third parties.

**4. Communicating with Affiliates and Creditors**

The Receiver Team continued to communicate with individual Affiliates and other Creditors on a daily basis throughout the final quarter of 2014. These communications were largely focused on the claims determination and allowance process. These communications were usually in relation to objections to specific claim determinations and addressing questions regarding distribution payments. Additionally, the Receiver Team had discussions with various Affiliates regarding pending net-winner litigation that has been filed against such Affiliates.

The final approximately 7,000 claim determinations were issued to Affiliate claimants in the final quarter of 2014. The total approximate number of claim determinations issued by the Receiver through the final quarter of 2014 was 175,000. Claim determinations for subrogation claims of financial institutions have not been issued at this time, but should be issued in the first quarter of 2015.

In addition to individual communications, the Receiver Team posted three updates on the Receivership website regarding the claim and distribution process. Additionally, the Receiver Team

updated the claim portal in December 2014 so that Affiliate Claimants are now able to check the status of their claim determination and distribution, if any.

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

During the fourth quarter, FTI and the Receiver Team 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 analysis and research to support various tax-related obligations of the Receiver and in some cases working with National Law Forms to generate amended 1099s.

During the fourth quarter, the Receiver Team reviewed the applicable federal tax laws in connection with its first interim, partial distribution payments made to net losers. The Receiver Team had discussions with the Internal Revenue Service regarding potential withholding requirements. Eventually, the Receiver Team determined that there are no withholding requirements with respect to the first interim, partial distribution payments, and the Receiver disbursed to claimants the amounts that had been initially withheld from these distributions.

As previously reported for the third quarter of 2014, the Receiver Team had begun preparing a request seeking a penalty waiver. This waiver had been prepared for 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 continues to work on preparing the penalty waiver and had discussions with the Internal Revenue Service in this regard.

## 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 multiple motions and associated briefing regarding claims discussed above for the return of Receivership Assets from various payment processors, e-wallets, and financial institutions.
- The Receiver and his counsel deposed James Meyer.
- The Receiver Team filed an objection to the attorney charging lien filed by the attorney for the *Belsome* movants and litigated a subsequent motion to stay filed with the Fourth Circuit Court of Appeals by that attorney. This Court granted the Receiver's motion to strike the charging lien, and the motion to stay was denied by the Fourth Circuit.
- The Receiver Team filed a consent motion extending the Temporary Restraining Order freezing funds in an individual's account that had been transferred from RVG in July and August 2012, which funds the Receiver will obtain pursuant to a settlement agreement returning approximately \$1.37 million to the Receivership Estate.

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

### **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 October 1, 2014 through December 31, 2014, is attached hereto as Exhibit B. The Schedule sets forth the following receipts and disbursements:

1. Received funds of \$3,977,188.96 that were seized by the U.S. Secret Service,

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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.

2. Received funds of \$323,592.12 from third-party litigation settlements;<sup>2</sup>
3. Received interest income totaling \$54,796.81; and,
4. Disbursed funds from the Receiver's accounts of \$112,452,773.79, which includes \$110,772,395.52 of disbursements to investors. The remaining funds were disbursed for fees previously approved for payment to FTI and McGuireWoods; bank fees related to management of the Receiver's accounts; claims process expenses; RVG website and database hosting; legal services; check return charges; and other professional services.<sup>3</sup>

Between October 1, 2014 and December 31, 2014, the Receivership Estate received \$4,355,577.89 and disbursed \$112,452,773.79. The Receiver has marshaled total assets of approximately \$342.7 million during the period between August 17, 2012 and December 31, 2014, while disbursing approximately \$128.2 million during the same period.<sup>4</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 has retained a real estate agent to sell the home and anticipates that it will go on the market in the first 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**

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<sup>2</sup> As of the end of the fourth quarter, the Receiver has agreed to approximately \$4.8 million in settlements with third parties.

<sup>3</sup> See attached Exhibit B for further detail regarding receipts and disbursements.

<sup>4</sup> A significant amount of the available funds on hand are being reserved in light of the more than 60,000 claimants who have yet to accept their claims as well as thousands of subrogation claims that are being resolved.

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

In the case of *Bell v. Disner et al.*, No. 3:14-cv-91 (W.D.N.C.), the Receiver Team litigated the defendants' motions to stay discovery pending resolution of the multiple motions to dismiss during the fourth quarter. On December 9, the Court denied each of the defendants' motions to dismiss, moving the lawsuit along to its next stages of discovery and resolution of the motion for class certification.<sup>5</sup>

Further, the Court granted the Receiver's motions for default judgment against Defendants Todd Disner and David Sorrells and entered Judgments against them for \$2,079,757.88 and \$1,197,241.12, respectively, which will incur post-judgment interest until satisfied.

**b. Claims Against Foreign Net Winners**

**(1) Claims Against Canadian Net Winners**

In the Receiver's lawsuit against net winners residing in Canada, *Bell v. Parker et al.*, No. 3:14-cv-444 (W.D.N.C.), the Receiver worked closely with Canadian counsel and an investigation firm to locate and serve the defendants with legal process. The Receiver obtained entries of default against eight Canadian net winners. Two of these net winners subsequently settled with the Receiver.<sup>6</sup> The Receiver is pursuing default against the remaining defendants who have failed to answer the Amended Complaint and will file these motions in the first quarter of 2015.

**(2) Claims Against Australian Net Winners**

On December 29, 2014, the Receiver filed a lawsuit against net winners residing in Australia. *See Bell v. Bjerring, et al.*, No. 3:14-cv-724 (W.D.N.C.). The Receiver Team is

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<sup>5</sup> In addition, on January 14, 2015, the Court granted the Receiver's motion to dismiss the defendants' counterclaims and dismissed all such counterclaims.

<sup>6</sup> The Receiver obtained default judgments against the other six defaulted defendants on January 6, 2015.

working with Australian counsel in order to serve these defendants with legal process. It is expected that service efforts in this lawsuit will continue throughout the first quarter of 2015.

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

The Receiver has now 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. On October 2, 2014, the Receiver filed a motion in the SEC Action seeking Court approval of these settlements. (Doc. No. 259). On October 14, 2014, the Court granted the Receiver's motion. (Doc. No. 261). 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**

In the Receiver's action against attorney Kevin Grimes and his former law firm and business entity, the defendants filed motions to dismiss. *See Bell v. Grimes et al.*, No. 3:14-cv-351 (W.D.N.C.). The Receiver filed responses in opposition to these motions to dismiss, and the Court is in the process of resolving these motions. The parties are now discussing the prospects of a settlement conference, which may occur during the first quarter of 2015.

In addition, in the Receiver's lawsuit against attorney Howard Kaplan, the Court is in the process of resolving the defendant's motion to dismiss. The Receiver will pursue discovery in this matter during the first quarter of 2015.

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

As set forth above, the Receiver Team has initiated litigation against NxPay, Plastic Cash, and their principals and affiliates, and it continues to litigate against Preferred Merchants and its principal, Jaymes Meyer. These entities appear to have transferred assets in violation of the Freeze Order. As part of these litigation 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 amount owed to the Receivership Estate.

Of these entities, only Plastic Cash filed a claim as part of the Court-approved claims process, which the Receiver denied. The parties have agreed to begin planning for potential mediation, subject to certain agreed terms and conditions, in an effort to resolve the parties' respective claims.

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

In December, the Receiver determined in consultation with his professionals that he was not required to withhold taxes from distributions to be made on account of Affiliate claims. As such, on December 23, 2014, the Receiver caused 58,000 additional checks to be issued to all affiliates who had taxes withheld from their first, interim partial distributions. These checks were issued in the amount of the tax that was previously withheld in regard to the applicable Affiliate claimant. Additionally, the Receiver also caused certain checks that were returned as undeliverable or where issued improperly to be reissued on December 23, 2014 if the recipient had requested such reissuance.

FTI provided significant assistance with the claims process during the fourth quarter. It reviewed and responded to claimant disputes, organized and tracked correspondence while providing dispute support, and requested additional information from claimants to verify disputes. The magnitude of claimants and disputes in a claims process that has seen more than 175,000 claims required a substantial effort by FTI to manage the claims reconciliation process. To this end, FTI developed a claims review tool that allowed automating the review of over 170,000 of the 175,000 claims filed. Approximately 2,000 claims were unable to be automated

and required manual review and additional research to verify the specific information related to the each of the claims.

The completion of the issuance of claim determinations for Affiliate claimants also occurred in the fourth quarter of 2014. As noted above, claim determinations for subrogation claims should be issued in the first or 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.

Finally, almost 113,000 Affiliate claimants have accepted their claim determinations and have been or will be issued a distribution shortly. However, in excess of 60,000 Affiliate claimants have failed to respond to the claim determination that was issued on account of his/her claim. Each such claimant is required to act further if he/she would like to have his/her claim allowed and to receive a distribution from the Receivership Estate. Failure to act further may cause a claimant to eventually forfeit his/her distribution. The Receiver intends to contact the Affiliate claimants who have failed to respond to their claim determination to request that such claimants respond to the claim determination.

### **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: January 30, 2015

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

and

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KENNETH D. BELL, ESQ.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have electronically filed the foregoing **RECEIVER'S STATUS REPORT FOR THE FOURTH 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: January 30, 2015

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