

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-CIV-ALTONAGA/SELTZER

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.

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**RECEIVER JONATHAN E. PERLMAN'S FIFTH INTERIM REPORT**

September 25, 2020

Miami, Florida

Submitted By:

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Receiver for the Receivership Defendants

-and-

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### **EXECUTIVE SUMMARY**

1. The Court appointed Jonathan E. Perlman as Temporary Receiver on May 8, 2018, and Permanent Receiver on June 7, 2018, over a scam telemarketing operation that sold claiming and verification of listing services relating to Google and other search engines. This Fifth Interim Report describes the Receiver's and his team's efforts and results since his filing of the Fourth Interim Report on January 21, 2020.
2. Since being appointed, the Receiver opened fiduciary accounts, and has recovered \$348,305.18. The Receiver's fiduciary bank accounts have a current total balance of \$231,353.56, plus \$111,279.12 in a segregated account. A copy of the Receiver's accounting is attached hereto as Exhibit "A."
3. Since the Fourth Interim Report, the Receiver sent demand letters to BMW Financial Services NA, LLC, Excell Auto Finance, LLC, and Excell Auto Group, Inc. as transferees of fraudulent transfers of misappropriated consumer funds, which were used for personal expenses unrelated to business expenses. The Receiver is engaged in settlement discussions regarding these demands.
4. The Receiver is also currently engaged in settlement discussions with Louis Vuitton North America, Inc. and should have a finalized settlement agreement in the near future.
5. In addition, the Receiver has made demands and been involved in settlement discussions with merchant processors who serviced the Receivership Entities.
6. Following Defendant Pillonato's violation of this Court's Asset Freeze and the resulting Homeland Security seizure of \$109,020 in cash, the Receiver secured from Homeland Security those funds. The Receiver deposited these funds into a segregated Receivership account. During this period, the Receiver has taken discovery from third parties and undertaken a tracing analysis to understand the source of these funds and will soon be filing a motion to determine ownership.
7. To date, despite demands, Defendants Pillonato and Ramsey have failed to turn over to the Receiver any of the property, as required by this Court's final judgment against them. Defendants Pillonato and Ramsey claim that they do not possess any of the property required to be turned over. The Receiver is continuing to investigate the veracity of Defendants' claims, as well as assets and claims of these Defendants.
8. The Receiver continues to investigate Receivership claims and other Receivership assets, and anticipates making additional demands and filing litigation claims, if necessary, against third parties.

## **THE RECEIVER'S FIFTH INTERIM REPORT**

Jonathan E. Perlman, Receiver for the Receivership Defendants<sup>1</sup>, pursuant to this Court's Preliminary Injunction Orders, files his Fifth Interim Report to describe his continuing investigation and completion of tasks as the Court directed.

### **I. BACKGROUND**

1. On May 7, 2018, the Federal Trade Commission ("FTC" or "Plaintiff") commenced this action by filing a complaint for permanent injunction and other relief (the "Complaint") and a motion for a temporary restraining order and other equitable relief ("TRO") alleging that Defendants Dustin Pillonato ("Pillonato"), Justin Ramsey ("Ramsey"), Aaron Michael Jones ("Jones"), Ricardo Diaz ("Diaz"), Michael Pocker ("Pocker"), and Steffan Molina ("Molina") (collectively, the "Individual Defendants"), and the corporate defendants violated and were likely to violate Section 5(a), of the FTC Act, 15 U.S.C. § 45(a).<sup>2</sup>

2. Plaintiff alleged that since approximately November 2016, Defendants operated their common enterprise through a series of business aliases and limited liability companies. These entities all performed functions related to the unfair and deceptive practices outlined below. They had shared owners, managers, office space, and employees, and had commingled funds. [ECF No. 1, Compl. at ¶ 88].

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<sup>1</sup> Pursuant to the Order granting the Receiver's Motion for Order of Reappointment [ECF No. 174], the "Receivership Defendants" means Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; Modern Source Media, LLC; Perfect Image Online LLC; Allstar Data, LLC; National Business Listings, LLC; Pinnacle Presence, LLC; and their divisions, subsidiaries, affiliates, predecessors, successors, assigns, and any fictitious business entities or business names created or used by these entities, or any of them. [ECF No. 175].

<sup>2</sup> Subsequently, the First Amended Complaint added new counts and named Vincent Yates and Daniel Carver as additional defendants, and added Stephanie Watt and Jennefer Ramsey as "Relief Defendants" (the Individual Defendants, Receivership Defendants and Relief Defendants may be referred to herein collectively as the "Defendants"). [ECF No. 109].

3. Specifically, Plaintiff alleged that Defendants' false, deceptive or unfair practices (the "Sales Practices") included:

a. Defendants represent or have represented, expressly or by implication, that:

- i. Defendants are authorized by, or affiliated with, Google;
- ii. Consumers' businesses are in imminent danger of being marked permanently closed by Google or removed from Google's search results because consumers have not "claimed and verified" those businesses with Google;
- iii. Defendants, as part of claiming and verifying the consumers' businesses, can assign certain keywords to those businesses that will result in the prominent display of the businesses' websites or listings; and
- iv. Defendants can guarantee prominent, first-page, or first-place placement in Google search results to consumers who pay for Defendants' Citation Program.

b. Defendants have obtained consumers' bank account information and caused billing information to be submitted for payment on those accounts without consumers' authorization. [ECF No. 1, Compl. at pp. 28-29].

4. The Court granted Plaintiff's motion for TRO, entered an Order freezing assets belonging to any of the Defendants, and appointed Mr. Perlman Temporary Receiver on May 8, 2018. [ECF No. 12]. Subsequently, this Court entered Preliminary Injunctions (the "PI") against the Defendants and appointed Mr. Perlman as Permanent Receiver.

5. The PI directed Mr. Perlman, as Receiver, to take exclusive custody, control and

possession of all property of the Receivership Entities, wherever situated; to conserve, hold, and manage all assets and documents of the Receivership Entities; to conduct discovery; and to institute such actions as the Receiver deems advisable to recover additional assets. [*See, e.g.*, ECF No. 64 at pp. 14-16]. The PI also directed the Receiver to file reports with this Court. [*Id.* at p. 20].

6. On June 6, 2018, the Receiver filed his First (Corrected) Interim Report. [ECF No. 57].

7. On January 7, 2019, the Receiver filed his Second Interim Report. [ECF No. 235].

8. On February 25, 2019, Plaintiff filed its Pretrial Proposed Findings of Fact and Conclusions of Law. [ECF No. 249]. On March 11, 2019, Magistrate Judge Chris McAliley entered a Report and Recommendation [ECF No. 251], recommending that this Court grant Plaintiff's Motion for Summary Judgment and enter a permanent injunction against *pro se* Defendants, Pillonato and Ramsey. [ECF No. 251]. This Court affirmed the Report and Recommendation on April 4, 2019. [ECF No. 258].

9. On April 25, 2019, this Court entered Permanent Injunctions and Monetary Judgments against Defendants Pillonato and Ramsey. [ECF No. 266]. The other Defendants each stipulated to entry of permanent injunctions and monetary judgments. [ECF Nos. 267, 268, 269, 270, 271 and 272]. Pursuant to certain of the judgments, the Receiver is authorized and directed to liquidate certain real and personal property of the Defendants.

10. The Court has entered Final Judgments against all named Defendants. Accordingly, on April 25, 2019, the Court closed the FTC's case [ECF No. 273], leaving open the Receivership in order for the Receiver to continue identifying additional Receivership assets and claims, to seek recovery upon such assets and claims, and to liquidate property for additional consumer redress. [*See, e.g.*, ECF No. 269 at p. 14].

11. On July 18, 2019, the Receiver filed his Third Interim Report. [ECF No. 276].

12. On January 21, 2020, the Receiver filed his Fourth Interim Report. [ECF No. 279].

13. The following is a summary of the Receiver and his team's efforts and accomplishments since filing the Fourth Interim Report in January 2020. [ECF No. 279].

## **II. WORK OF RECEIVER SINCE FOURTH INTERIM REPORT**

### **A. General Summary of Activities.**

14. During this phase of the Receivership, the Receiver and his counsel continued to liquidate non-cash assets, as well as continue to negotiate and recover on litigation claims against third parties.

15. For example, in July 2020, the Receiver sent a demand letter to BMW Financial Services NA, LLC as a transferee of fraudulent transfers of misappropriated consumer funds, which were used for personal expenses unrelated to business expenses. The Receiver continues to engage in settlement discussions with BMW Financial Services, NA, LLC.

16. Additionally, in July 2020 the Receiver sent a demand letter to Excell Auto Finance, LLC and Excell Auto Group, Inc. as transferees of fraudulent transfers of misappropriated consumer funds, which were used for personal expenses unrelated to business expenses. The Receiver also continues to engage in settlement discussions with these entities.

17. The Receiver is also engaged in settlement discussions with Louis Vuitton North America, Inc. and should have a finalized settlement agreement in the near future.

18. In addition, the Receiver continues to have on going settlement discussions with the former payment merchant processors for the Receivership Defendants. Absent a settlement with these entities, the Receiver will likely be initiating litigation and/or an arbitration.

19. The Receiver continues his on-going analysis in evaluating additional third-party fraudulent transfer litigation claims.

20. The Receiver also spent time and effort overseeing the transfer of assets to be made by Defendants, pursuant to this Court's judgments, to the Receivership for the benefit of the victims.

21. The Receiver also expects to file his Second Motion for Award of Professional Fees in the near future.

**B. Storage of Receivership Property.**

22. The Receiver continues to rent a climate controlled storage unit in Pompano Beach, Florida (for a nominal fee) to secure the property from the Receivership Defendants' former Deerfield Beach and Boca Raton Offices. The Receiver anticipates liquidating this property in the near future.

**C. The Receiver's Tracing of Seized Cash from Homeland Security.**

23. As detailed in the Third and Fourth Report, the Receiver secured \$109,020 from the United States Treasury. The Receiver opened a separate bank account and deposited the \$109,020 into that segregated account. The \$109,020 remains under the custody and control of the Receiver to hold until further order of the Court. [ECF No. 202].

24. The Receiver sent additional subpoenas to financial institutions and reviewed voluminous document productions in order to trace the \$109,020. The Receiver believes these monies are property of the Receivership Estate and is exploring options to seek turnover of these monies to the Receiver.

**D. Jewelry the Receiver Has Demanded to be Brought Back to the Receivership Estate.**



25. Pursuant to the Final Order of Permanent Injunction and Monetary Judgment [ECF No. 266], Defendants Pillonato and Ramsey are required to turn over certain property including jewelry to the Receiver. [*Id.* at pp. 7-10]. In early May 2019, Defendants Pillonato and Ramsey wrote to Receiver's counsel via email that they did not possess any of the jewelry listed in that order. At their depositions, Defendants Pillonato and Ramsey invoked their Fifth Amendment rights in response to questions inquiring of the location of this property and jewelry.

26. The Receiver's team prepared a detailed excel spreadsheet, which identifies all the jewelry that Defendants purchased from Diamond Exchange USA II Inc, totaling nearly \$500,000. The Receiver's team is reviewing Receivership Entities' bank statements and invoices produced by Diamond Exchange to identify the pieces of jewelry that were purchased with misappropriated consumer funds to assess the claims of Pillonato and Ramsey.

**E. The Receiver's Website, 1-800 Hotline and Customer Relations.**

27. The Receiver and his staff continue to make available the 1-800 hotline number, (844)-635-1608, and emails at the Receivership's email address, [info@pointbreakreceivership.com](mailto:info@pointbreakreceivership.com), for customers seeking information and assistance.

**F. Monies the Receiver Has Successfully Brought Back to the Receivership Estate.**

28. Since being appointed, the Receiver opened fiduciary accounts, and increased the cash balance of the Receivership by expanding the Receivership, enforcing the Court's Asset Freeze, and demanding turnover of funds held by third parties. *See* (Exhibit A – Income and Expenses).

29. Based upon the Receiver and his professionals, the current bank balance of the Receivership Estate is \$342,632.68. Additionally, the Receiver coordinated with settling parties

with the Plaintiff, which required the turnover of monies and property to the Receiver. [See ECF Nos. 266, 268, 269, 271 and 272].

30. To date, the FTC has recovered \$733,394.98 from various Defendants in settlements for consumer redress. Recently, the FTC made its first round of consumer redress payments.

### **III. THE RECEIVER'S CONTINUING WORK**

31. The Receiver is currently negotiating a settlement agreement with a third-party regarding fraudulent transfers received from misappropriated consumer funds, which were used for personal expenses unrelated to business expenses

32. The Receiver and his team continue to investigate, secure, and preserve assets of the Receivership Defendants to identify and bring claims for recovery the Receiver may have against third parties.

Respectfully submitted this 25th day of September 2020.

RECEIVER FOR THE RECEIVERSHIP DEFENDANTS

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**CERTIFICATE OF SERVICE**

I HEREBY certify that on September 25, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Gregory M. Garno  
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## **EXHIBIT A**

**Pointbreak Media LLC Receivership**  
**Income and Expenses**  
 Inception through 9-24-20

		<u>Total</u>
<b>Income</b>		
Receivership account interest		4,984.67
Recovered funds		348,305.18
Sale of personal property		24,396.00
* Recovered funds J. Drob plus account interest		111,279.12
<b>Total Income</b>	<b>\$</b>	<b>488,964.97</b>
<b>Expenses</b>		
Data recovery and management		2,285.00
Moving and storage		5,389.00
Professional expenses		7,653.94
Professional fees		127,959.75
Website		1,380.00
Miscellaneous charges		1,664.60
<b>Total Expenses</b>	<b>\$</b>	<b>146,332.29</b>
<b>Net Income</b>	<b>\$</b>	<b>342,632.68</b>

\* Funds recovered \_\_\_\_\_

Receivership account interest	6/30/2018 deposit	120.54	Biscayne Bank
	7/31/2018 deposit	173.82	Biscayne Bank
	8/31/2018 deposit	125.00	Biscayne Bank
	9/30/2018 deposit	73.72	Biscayne Bank
	10/31/2018 deposit	97.02	Biscayne Bank
	11/30/2018 deposit	92.00	Biscayne Bank
	12/10/2018 deposit	27.00	Biscayne Bank
	12/31/2018 deposit	96.23	Biscayne Bank
	1/31/2019 deposit	138.72	Biscayne Bank
	2/28/2019 deposit	126.10	Biscayne Bank
	3/29/2019 deposit	139.77	Biscayne Bank
	4/30/2019 deposit	141.96	Biscayne Bank
	5/31/2019 deposit	178.40	Biscayne Bank
	6/30/2019 deposit	231.34	Biscayne Bank
	7/31/2019 deposit	265.90	Biscayne Bank
	8/31/2019 deposit	263.53	Biscayne Bank
	9/30/2019 deposit	277.95	Biscayne Bank
	10/31/2019 deposit	287.57	Biscayne Bank
	11/30/2019 deposit	278.65	Biscayne Bank
	12/6/2019 deposit	74.39	Biscayne Bank
	12/31/2019 deposit	249.99	First Citizens Bank
	1/31/2020 deposit	336.45	First Citizens Bank
	2/29/2020 deposit	315.20	First Citizens Bank
	3/31/2020 deposit	225.91	First Citizens Bank
	4/30/2020 deposit	139.83	First Citizens Bank
	5/31/2020 deposit	144.57	First Citizens Bank
	6/30/2020 deposit	140.00	First Citizens Bank
	7/31/2020 deposit	144.76	First Citizens Bank
	8/31/2020 deposit	78.35	First Citizens Bank
		<u>4,984.67</u>	
Recovered funds	6/5/2018 deposit	60,000.00	Roth Jackson Trust Account
	6/5/2018 deposit	7,273.72	Perfect Image Online LLC
	6/11/2018 deposit	12,918.10	Stripe, Inc.
	6/12/2018 deposit	112,773.29	Modern Source Media LLC
	6/12/2018 deposit	16,244.13	Pinnacle Presence, LLC
	6/12/2018 deposit	64.97	Pinnacle Presence, LLC
	7/12/2018 deposit	257.56	Allstar Data LLC
	7/31/2018 deposit	3,014.45	Forté Payment Systems, Inc.
	8/7/2018 deposit	10,000.00	Nearshore Call Center Services LTD
	9/26/2018 deposit	29,346.12	National Account Services
	4/2/2019 deposit	4,825.71	Modern Source Media LLC
	4/30/2019 deposit	20,000.00	Stephanie Watt per DE271
	5/21/2019 deposit	8,594.04	Payless Plumbing, LLC DE 269
	5/21/2019 deposit	0.13	Modern Spotlight Group LLC
	5/24/2019 deposit	7,111.00	Payless Plumbing, LLC DE 269
	5/24/2019 deposit	2,097.96	Perfect Image Online LLC
	6/13/2019 deposit	52,321.00	Jennifer Ramsey DE 272
	3/5/2020 deposit	1,463.00	Saks Fifth Ave. Settlement
		<u>348,305.18</u>	
Sale of personal property	1/7/2019 deposit	3,200.00	MG Media Solutions Inc.
	8/28/2019 deposit	21,196.00	Molina's Toyota 4 Runner- DE 269
		<u>24,396.00</u>	
Data Recovery and management	10/31/2018 ck 1002	1,700.00	Bradeen Digital Forensics
	11/30/2018 ck 1006	585.00	E-Hounds, Inc.
	12/11/2018 ck 1008	1,200.00	Ytel, Inc.
	1/3/2019 deposit	(1,200.00)	US Govt. reimbursement Ytel, Inc.
		<u>2,285.00</u>	
Recovered funds J. Drob plus interest	2/7/2019 deposit	109,020.00	Jeremy Drob - Homeland Security
	2/28/2019 deposit	97.90	Biscayne Bank
	3/31/2019 deposit	138.09	Biscayne Bank
	4/30/2019 deposit	133.80	Biscayne Bank
	5/31/2019 deposit	138.43	Biscayne Bank
	6/30/2019 deposit	134.14	Biscayne Bank
	7/31/2019 deposit	138.77	Biscayne Bank
	8/31/2019 deposit	138.95	Biscayne Bank
	9/30/2019 deposit	134.64	Biscayne Bank
	10/31/2019 deposit	139.30	Biscayne Bank
	11/30/2019 deposit	134.97	Biscayne Bank
	12/6/2019 deposit	36.04	Biscayne Bank
	12/31/2019 deposit	121.09	First Citizens Bank
	1/31/2020 deposit	162.98	First Citizens Bank
	2/29/2020 deposit	152.68	First Citizens Bank
	3/31/2020 deposit	143.38	First Citizens Bank
	4/30/2020 deposit	69.50	First Citizens Bank
	5/31/2020 deposit	69.62	First Citizens Bank
	6/30/2020 deposit	67.41	First Citizens Bank
	7/31/2020 deposit	69.70	First Citizens Bank
	8/31/2020 deposit	37.73	First Citizens Bank
		<u>111,279.12</u>	
Moving and storage	10/31/2018 ck 1003	4,025.00	Beltmann Group
	1/3/2019 ck 1009	1,364.00	Beltmann Group
		<u>5,389.00</u>	
Professional expenses	8/16/2018 ck 1001	4,561.95	Genovese, Joblove & Battista
	11/30/2018 ck 1004	3,091.99	KapilaMukamal, LLP
		<u>7,653.94</u>	
Professional fees	8/16/2018 ck 1001	127,959.75	Genovese, Joblove & Battista
		<u>127,959.75</u>	
Website	6/26/2018 ck 1000	1,380.00	Zielinski Creative
		<u>1,380.00</u>	
Miscellaneous charges	8/16/2018 ck 1001	429.78	Broward Century Locksmith
	8/16/2018 ck 1001	194.82	Google
	11/30/2018 ck 1005	65.00	Arrow Express
	6/21/2019 ck 1010	975.00	Moecker Auctions, Inc.
		<u>1,664.60</u>	