

1 Sanjay Bhandari (SBN 181920)
sbhandari@mcnamarallp.com
2 Edward Chang (SBN 268204)
echang@mcnamarallp.com
3 McNamara Smith LLP
655 West Broadway, Suite 1600
4 San Diego, California 92101
Telephone: 619-269-0400
5 Facsimile: 619-269-0401

6 *Attorneys for Temporary Receiver,*
Thomas W. McNamara
7
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 Bureau of Consumer Financial Protection;
State of Minnesota, by its Attorney
13 General, Keith Ellison; State of North
Carolina, *ex rel.* Joshua H. Stein, Attorney
14 General; and The People of The State of
California, Michael N. Feuer, Los Angeles
15 City Attorney,

16 Plaintiffs,

17 v.

18 Consumer Advocacy Center Inc., d/b/a
Premier Student Loan Center; True Count
19 Staffing Inc., d/b/a SL Account
Management; Prime Consulting LLC,
20 d/b/a Financial Preparation Services;
Albert Kim, a/k/a Albert King; Kaine
21 Wen, a/k/a Wenting Kaine Dai, Wen Ting
Dai, and Kaine Wen Dai; and Tuong
22 Nguyen, a/k/a Tom Nelson,

23 Defendants, and

24 Infinite Management Corp., f/k/a Infinite
Management Solutions Inc.; Hold The
25 Door, Corp.; and TN Accounting Inc.,

26 Relief Defendants.
27
28

Case No. 8:19-cv-01998-JVS (JDEx)

**PRELIMINARY REPORT OF
TEMPORARY RECEIVER**

JUDGE: Hon. James V. Selna
CTRM: 10C

TABLE OF CONTENTS

Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. RECEIVERSHIP ACTIVITIES 2

 A. Immediate Access 2

 1. 15261 Laguna Canyon Rd, Suite 200, Irvine, CA..... 2

 2. 173 Technology Drive, Suite 202, Irvine, CA..... 4

 3. 8 Hughes Parkway, Suite 210, Irvine, CA..... 4

 B. Bank Accounts 5

 C. Documents/Information/Electronic Data 6

 D. Accounting 7

 E. Notice to Consumers 7

III. DEFENDANTS’ PIVOT TOWARD COMPLIANCE IN AUGUST 2019..... 7

IV. DEFENDANTS COLLECT UNLAWFUL ADVANCE FEES 11

 A. The Law – Telemarketing Sales Rule (16 C.F.R. § 310.4(a)(5)) 11

 B. Defendants Collect Advance Fees 12

 C. No Valid Escrow or Trust Procedure..... 12

V. TRUSTED ACCOUNT SERVICES 14

 A. Defendants Establish Trusted Account Services 15

 1. Incorporation..... 15

 2. Website 16

 B. Defendants’ First Attempt to Secure Payment Processing for
Trusted Account Services 17

 C. Defendants Deceive DebtPayPro to Get Trusted Account
Services on the Platform 18

 D. Defendants Purloined Legitimate Third Party Companies’
Methods and Documents to Establish Trusted Account Services 19

 E. Defendants Own and Control the Trusted Account Services
Bank Accounts 20

 F. Defendants Arrange Trusted Account Services Payment
Processing through Jimmy Lai and National Merchant Center..... 21

 G. Defendants’ Assertion that Trusted Account Services Is a Third
Party Dedicated Account Provider Is False 23

VI. STUDENT LOAN DEBT RELIEF – THE SALES PITCH AND
PROCESS..... 25

 A. Leads 26

 B. Sales Tactics..... 26

 C. Enrollment Fees 28

 D. Customer Service and Processing..... 29

 E. Compliance 32

 F. Complaints 32

VII. FINANCIAL INFORMATION 35

VIII. CAN THE BUSINESSES BE OPERATED LAWFULLY AND
PROFITABLY?..... 36

I.

INTRODUCTION

I was appointed Temporary Receiver for the business activities of Receivership Defendants True Count Staffing Inc., d/b/a SL Account Management (“True Count”) and Prime Consulting LLC, d/b/a Financial Preparation Services (“Prime Consulting”) by the Temporary Restraining Order (“TRO”) entered October 21, 2019.¹ Defendant Consumer Advocacy Center Inc., d/b/a Premier Student Loan Center (“CAC”), which is in bankruptcy, is not a Receivership Defendant. Albert Kim, Kaine Wen, and Tuong Nguyen are named Individual Defendants.

By this Preliminary Report, I convey to the Court my team’s preliminary observations and initial actions.

Our onsite review of operations has identified the basic realities of the student loan debt relief business of Receivership Defendants:

- The overall enterprise secured more than 170,000 customers and more than \$71 million in gross revenue. But, 70% of these customers cancelled their enrollments. *See* Exhibit 1.
- Historically, the sales process to secure consumers with student loan debt relief has included hard sell tactics and misrepresentations prohibited by the TRO which have misled and confused consumers.
- Beginning in late August 2019, Defendants pivoted to a more compliant process, but based on recent documents and consumer

¹ Receivership Defendants are defined in the TRO to mean True Count and Prime Consulting “and their successors, assigns, affiliates, or subsidiaries, and each of them, by whatever names each may be known, provided that the Receiver has reason to believe they are owned or controlled in whole or in part by any of the Receivership Defendants.” *See* TRO, Definitions, pages 6-7.

On October 25, 2019, pursuant to Section XIII(T) of the TRO we gave notice to the parties that First Priority LLC, Horizon Consultants LLC, and TAS 2019 LLC d/b/a Trusted Account Services qualify as Receivership Defendants. No party has challenged that determination.

1 complaints, this pivot was not comprehensive and, of course, it did not
2 remedy prior unlawful practices.

3 • Defendants collect consumer fees in advance without complying with
4 the Telemarketing Sales Rule, which renders the entire business
5 unlawful. The August 2019 pivot included representations that fees
6 would be deposited to a “dedicated customer account” at third party
7 Trusted Account Services and only paid out when work was
8 completed. But, this appears to be a new deception designed to create
9 the appearance of a procedure consistent with the Telemarketing Sales
10 Rule “escrow exception” to the advance fee prohibition. Not only is
11 Trusted Account Services not an independent third party, I have
12 determined that it is a Receivership Defendant.

13 **II.**

14 **RECEIVERSHIP ACTIVITIES**

15 **A. Immediate Access**

16 As authorized by the TRO (Section XIV, page 24), we took control and
17 exclusive custody of Defendants’² three business premises in Irvine, California on
18 October 23, 2019, commencing at approximately 10:30 a.m. At each location, we
19 received support from law enforcement officers. After securing each site, we
20 provided access to counsel and other representatives of Plaintiffs and retained
21 locksmiths who changed all exterior locks.

22 1. 15261 Laguna Canyon Rd, Suite 200, Irvine, CA

23 This 22,000 square foot space, bearing a nondescript “Prime Consulting”
24 sign, comprises the entire second floor of a two-story building in an upscale office
25 ///

26

27 ² “Defendants” means collectively the Corporate Defendants, Individual
28 Defendants and Relief Defendants, individually, collectively, or in any
combination. TRO, Definitions at p. 6.

1 park. Prime Consulting is the lessee at a monthly rent of approximately \$65,000.
2 Exhibit 2 is a schematic of the space and an inventory of the property on site.

3 At our arrival, we encountered an active operation with approximately
4 130 personnel on site, many of whom appeared to be either brand new hires
5 commencing training or prospects on site for job interviews. None of the
6 Individual Defendants were present.

7 Given the large number of people, many with minimal history with the
8 business, it was a challenge to assemble them as a group and secure their
9 cooperation. While several supervisors were on site, they were not cooperative;
10 they did not assist during our effort to explain the receivership situation and secure
11 TRO-required questionnaires from employees.³ We ultimately imposed order,
12 secured questionnaires from those employees who were cooperative, and met with
13 a small number of sales personnel.

14 The premises are built out to support a large telephone sales operation. The
15 open floor space includes nearly 150 individual workstations equipped with
16 telephones, computers, and monitors and organized in a pod-type system with each
17 pod housing 12-15 sales workstations and one team leader. At our arrival,
18 97 workstations appeared to be currently active. The walls are adorned with
19 multiple big screen TVs and the usual accoutrements of sales boiler rooms,
20 including white boards tracking the daily “closings” of each sales agent,
21 motivational sales posters, and instructions to “close” the sale. *See* Section VI
22 below for a summary of the sales operation.

23 The space also includes a large conference room, eleven interior offices,⁴
24

25 ³ Two of the supervisors who refused to cooperate and complete questionnaires –
26 Compliance Manager Nicole Balestreri and HR Director Shirena Hulzar – did,
27 however, file declarations in connection with Defendants’ opposition to a
Preliminary Injunction.

28 ⁴ The interior offices are allocated to Human Resources (2), Training (4), the Floor
Manager and his staff (2), a Compliance Manager, Information Technology, and
Marketing. The marketing office is occupied by Pub Club Leads, allegedly a third

1 and four exterior offices.⁵

2 2. 173 Technology Drive, Suite 202, Irvine, CA

3 This suite of approximately 15,000 square feet is subleased by Defendant
4 CAC from a neighboring company at a monthly rent of approximately \$18,000.

5 The site has capacity for nearly 120 staff with 4 individual exterior offices.
6 At our arrival, approximately 60 employees were on site: 2 managers (the
7 Customer Support Manager and the head of “Junior Processing”); 10-15 members
8 of the Customer Service team; 10-15 members of the Junior Processing Team; and
9 30 temporary employees, just recently hired for the reverification campaign
10 described below. Two other managers (Adon Janse and Isabel Banda) with offices
11 at this site were both at the Hughes location, conducting hiring and training of
12 temporary employees for the reverification campaign.

13 Nearly all employees at this site were cooperative, completed questionnaires,
14 and responded to our questions.

15 Exhibit 3 is a schematic of the office and an inventory of the property on
16 site.

17 3. 8 Hughes Parkway, Suite 210, Irvine, CA

18 This site is an approximately 10,000 square foot suite in a two-story building
19 in an office park leased by True Count at a monthly rate of approximately \$10,000.
20 A small sign for “SL Account Management” is posted on the front door.

21 About a dozen people were present – most were temporary staff from
22 AppleOne, a staffing agency regularly used by Receivership Defendants, on their
23 first day of training for the reverification campaign.

24 The suite consists of seven rooms built out along the windows (only one in
25 _____
26 party firm to which Defendants have subcontracted advertising and lead
generation.

27 ⁵ The exterior offices are allocated to operations/accounting (with 9 workstations),
28 employee Le Ho (aka Calvin Ho) and one office each to Individual Defendants
Tuong Nguyen (aka Tom Nelson) and Albert Kim.

1 active use) and a large open area with approximately 120 cubicles (almost all of
2 which were out of use).^{6, 7}

3 Exhibit 4 is a schematic of the space and an inventory of the property on
4 site.⁸

5 **B. Bank Accounts**

6 Immediately after receiving the TRO, Plaintiffs and the Receiver served the
7 asset freeze on banks and other financial institutions where Defendants were
8 known to maintain accounts. In the brief time since the TRO was entered, we have
9 received the following information as to frozen accounts:

| Account Name | Financial Institution | Acct. No. | Balance Frozen |
|---|-----------------------|-----------|----------------|
| First Priority LLC | JPMorgan Chase Bank | 8566 | \$159,457.33 |
| First Priority LLC | Sunwest Bank | 0992 | \$4,534.25 |
| Hold The Door Corp. (Relief Defendant) | Wells Fargo | 7284 | \$53,634.41 |
| Horizon Consultants LLC | Sunwest Bank | 1069 | \$707,127.02 |
| Infinite Management Corp. | JPMorgan Chase Bank | 3880 | \$40,628.40 |
| Prime Consulting LLC | JPMorgan Chase Bank | 0325 | \$517,412.78 |
| Prime Consulting LLC | Sunwest Bank | 1026 | \$10,000.00 |
| TAS 2019 LLC | HSBC Bank USA | 3327 | \$2,870,097.75 |
| TAS 2019 LLC | HSBC Bank USA | 0413 | \$3,096.99 |

19
20 ⁶ One of the rooms was set up as a training room and was in use when we arrived.
21 Another office was occupied by Ms. Banda (HR), and another appeared to be in
22 occasional use by IT personnel. The rest seemed to be unoccupied. Nearly all the
cubicles were equipped with computer monitors, but many lack an actual
computer, and appear to have been out of use for some time.

23 ⁷ Both IT personnel (Keneth Hu and Mr. Vu) listed 8 Hughes as their principal
24 office, but Mr. Hu told us that IT had offices in each location, and determined
25 where they would spend each day based on the support requests it needed to
26 address. Next to the IT office in the corner of 8 Hughes, we found a room
containing a large rack of computer equipment apparently running bitcoin mining
computations as a personal hobby of Mr. Hu. With Mr. Hu's consent, we turned
that equipment off.

27 ⁸ At all three locations, we observed thousands of unopened letters from various
28 student loan servicers and the Department of Education addressed to customers but
sent to Defendants' various mail drops.

| Account Name | Financial Institution | Acct. No. | Balance Frozen |
|---------------------------------------|------------------------------|------------------|-----------------------|
| TN Accounting Inc. (Relief Defendant) | JPMorgan Chase Bank | 7163 | \$18,461.53 |
| True Count Staffing Inc. | BNY Mellon | 2000 | \$2,824.83 |
| True Count Staffing Inc. | JPMorgan Chase Bank | 1126 | \$8,887.95 |
| True Count Staffing Inc. | Sunwest Bank | 2499 | \$364,355.56 |
| True Count Staffing Inc. | Wells Fargo | 7276 | \$1,500.00 |
| TOTAL | | | \$4,762,018.80 |

C. Documents/Information/Electronic Data

Upon taking possession of each of the three offices, we confirmed the hard copy documents onsite were secure. We retained a computer forensic firm to supervise Plaintiffs' computer forensics experts in making images of selected desktop computers.

Receivership Defendants utilize multiple cloud computing services – Microsoft Office 365 for email; Intuit QuickBooks Online for accounting; and DebtPayPro for their customer relationship management database (CRM). Despite some initial difficulty, we ultimately secured access, via the administrative credentials, to most of the email accounts attached to the active domains⁹ and to QuickBooks Online for most of the Receivership Defendants.¹⁰ DebtPayPro immediately suspended the CRM accounts.¹¹

⁹ slaccountmgmt.com, financialpreparationservices.com, processingsupport.com, and studentservicesplus.com.

¹⁰ We do not yet have QuickBooks access for Receivership Defendants First Priority, Horizon Consultants, or Trusted Account Services.

¹¹ DebtPayPro also suspended the CRM database for EDU Doc Support – a related entity identified by Plaintiffs. When EDU Doc Support complained that their account should not be locked, we asked them to provide additional information to determine whether they are a related entity (i.e., owner's name, type of business, location, etc.). To date, EDU Doc Support has not provided any information. Based on a review of their website (www.edudocsupport.com), they also provide student loan debt relief services. Until EDU Doc Support demonstrates that they are not related to the common enterprise, we are not comfortable taking its DebtPayPro account off suspension.

1 Receivership Defendants employed CallerReady for telephone services.
2 CallerReady’s counsel has confirmed they have preserved call recordings and are
3 cooperating with the Receiver.

4 **D. Accounting**

5 Our forensic accountant, Lisa Jones, is in the process of reviewing available
6 financial records, which include QuickBooks records, bank statements, and
7 merchant account statements for True Count and Prime Consulting. Based on the
8 information available to date, she has prepared a Receivership Initial Account
9 Records Review report attached as Exhibit 5. She has confirmed Defendants took
10 in more than \$71 million in gross deposits from consumer payments from January
11 2016 to August 2019. We have also identified accountants who have provided
12 bookkeeping and tax preparation services for Receivership Defendants in the past.
13 We will follow up with them to secure relevant records and tax returns.

14 **E. Notice to Consumers**

15 We added an outgoing telephone greeting to the Receivership Defendants’
16 telephone numbers noting the suspension of operations and strongly encouraging
17 customers to contact their student loan servicers. We have also placed a notice on
18 the Receiver’s website and will use that as a vehicle to communicate with
19 consumers.

20 **III.**

21 **DEFENDANTS’ PIVOT**

22 **TOWARD COMPLIANCE IN AUGUST 2019**

23 As important context for this receivership, we must note Defendants’
24 operation has attracted significant state and federal regulatory attention over the
25 last several years. Defendants failed to comply with fundamental regulations for
26 telemarketing sales, including the prohibition of advance fees. Only beginning in
27 August 2019 did Defendants initiate any material changes to their operations and
28 then only after the regulators were knocking at the door.

1 As alleged in Plaintiffs' submissions to the Court and reflected in CAC's
2 bankruptcy filings, Defendants' regulatory exposure was highlighted by a
3 \$31 million bankruptcy claim by the State of Minnesota and by the CFPB's
4 issuance on September 10, 2018 of a civil investigative demand ("CID") to
5 Defendant CAC.

6 Around the time of the CID, CAC shifted operations and assets to other
7 Receivership Defendants – the sales operations were transferred to Prime
8 Consulting and the customer base and revenue stream were shifted to True Count.
9 CAC then filed bankruptcy in Florida in January 2019 with the goal, according to
10 the testimony of Individual Defendant Albert Kim, to avoid the regulatory
11 enforcement agencies which were circling. Because of concerns about false
12 statements in its filings, the bankruptcy court later appointed a trustee over CAC's
13 bankruptcy estate.

14 The CFPB's and the states' investigation of Defendants proceeded despite
15 the bankruptcy. In July 2019, the CFPB took the investigative testimony of at least
16 two former employees.¹² Individual Defendants Kaine Wen and Albert Kim were
17 aware of this testimony and they contacted one of the witnesses just before his
18 scheduled appearance.

19 Defendants appear to have reached a tipping point after the *Wall Street*
20 *Journal* published an article highly critical of their practices on August 26, 2019,
21 which was immediately emailed to Individual Defendants Albert Kim and Kaine
22 Wen. *See* Exhibit 6.

23 A day after the *Wall Street Journal* article ran, management¹³ convened an
24 emergency meeting which resulted in a decision to immediately suspend all sales
25

26 ¹² Excerpts of the testimony of these former employees – Maxwell Camp and
27 Jovani Ortoro – are attached as Exhibits 33 and 34 to Plaintiffs' TRO Application.

28 ¹³ This meeting of management included Kaine Wen, Albert Kim, Isabel Banda,
Sal Avila, Kenny Nguyen, and Eric Ortiz.

1 efforts. Defendants announced to employees that “effective immediately all sales
2 and marketing will be paused until further notice.” The stated purpose of this
3 pause, projected to last approximately three weeks, was that “[d]uring this period
4 the company and each department will work on re-training, compliance, and
5 policies. In addition, each department will work together to address any and all
6 mistakes on all client files.” *See* Exhibit 7.

7 The sales pause was broadcast on the Financial Preparation Services website
8 on August 28, 2019.¹⁴ Human Resources emailed customer service personnel on
9 August 28, 2018 to alert them that there was a new script to follow and instructed
10 them to tell customers as follows:

11 [W]e are upgrading our technology and other systems to
12 ensure that clients have received and continue to receive
13 high-quality services from us. While our acceptance of
14 new clients has been temporarily put on pause, we are
absolutely continuing to work with current clients who
have paid at least one installment for our services.”

15 *See* Exhibit 8.¹⁵

16 At the outset of the sales pause, management identified prohibited practices
17 that would be subject to a new “zero tolerance” policy.¹⁶ We located a flyer
18 reciting these new policies posted just outside the “Junior Processing” department

19 _____
20 ¹⁴ The “ATTENTION ALL CUSTOMERS” notice recited that as of that date
21 Financial Preparation Services “will be integrating new operational changes” and
had “decided to temporarily pause our acceptance of new clients while
undertak[ing] this integration.” *See* Exhibit 8.

22 ¹⁵ The email also instructed that customers needing more information be told (1)
23 “We are working on a variety of upgrades, including the way we process payments
24 and other operational processes”; and (2) “Improved quality control to ensure that
100% of our customers received the services that they paid for and are in the right
loan modification, repayment, or forgiveness plan.” If a customer wanted to
cancel, customer service should “process the cancellation without hesitation.”

25 ¹⁶ These prohibited practices included: Accessing NSLDS (National Student Loan
26 Data System); accessing FSA (Federal Student Aid); changing FS (family size);
27 signing documents on behalf of clients; misrepresentation of the company
(Example: we work with the DOE/servicer); submitting clients as unemployed on
annual recertifications; and final pay without ROA [release of
28 authorization]/confirmation documents uploaded. *See* Exhibits 7 and 9.

1 with a character wagging his fingers, “Ah, Ah, Ah, You Didn’t Say the Magic
2 Words.” *See* Exhibit 9.

3 During this sales pause (August 29, 2019 to September 30, 2019),
4 Defendants took some steps toward compliance, including new sales scripts and
5 training, a reverification campaign, and new claims about not accepting advanced
6 fees. *See* Section VI.E “Compliance” below. A new dba “Student Services Plus”
7 was also launched as Defendants’ public face for new customers, replacing
8 Financial Preparation Services which had been featured prominently in the *Wall*
9 *Street Journal* article. The launch of a new dba was consistent with Defendants’
10 practice of deploying multiple generic-sounding business names.¹⁷

11 The business changes implemented after the *Wall Street Journal* article
12 could fairly be interpreted as a mad scramble to correct illegal practices to stave off
13 potential regulatory, civil, and possibly criminal liability. Or, the changes might be
14 a sincere effort to embrace compliance. But as Receiver, I need not reach a
15 definitive conclusion on such internal motivations, which do not impact my
16 determination, as detailed below, that the Receivership Defendants operated
17 unlawfully even after the August pivot and the businesses cannot operate profitably
18 and lawfully using the assets of the Receivership Estate going forward.

19 With this history as context, we present below a summary of the operations
20 as we found them.

21

22 ¹⁷ At the time of immediate access, we found lists identifying employee teams,
23 each with a different, and very generic, company name including: Premier Student
24 Loan Center; Financial Preparation Services; South Coast Financial Center; Direct
25 Account Services; Financial Loan Advisors; Account Preparation Services;
26 Administrative Financial; Tangible Savings Solutions; Coastal Shores Financial
27 Group; First Choice Financial Centre; Administrative Account Services; Primary
28 Account Solutions; Prime Document Services; Financial Accounting Center; Doc
Management Solutions; Sequoia Account Management; Pacific Palm Financial
Group; Pacific Shores Advisory; First Document Services; Keystone Document
Center; Administrative Accounting Center; Global Direct Accounting Services;
Signature Loan Solutions; Best Choice Financial Center; Yellowstone Account
Services; Regional Accounting Center; and Financial Direct Services. *See*
Exhibit 10.

1 **IV.**

2 **DEFENDANTS COLLECT UNLAWFUL ADVANCE FEES**

3 The Telemarketing Sales Rule prohibition of such fees is a significant
4 structural obstacle to this business succeeding as a lawful enterprise. The well-
5 documented policy goal of the advance fee rule is to deter telemarketing
6 opportunists from entering the debt relief business by removing a critical lure of
7 such businesses – instant cash flow from susceptible consumers. Without that cash
8 flow, the financial rationale for the business expires. Even with a TSR-compliant
9 escrow, the impact on cash flow of deferring actual collection until the TSR pre-
10 conditions are met is significant.

11 Defendants’ current position, which is that their collection of advance fees is
12 now lawful because the fees go to dedicated client accounts provided by third-
13 party Trusted Account Services, is an ill-conceived effort to invoke the escrow
14 exception to the TSR’s advance fee prohibition.

15 **A. The Law – Telemarketing Sales Rule (16 C.F.R. § 310.4(a)(5))**

16 The Telemarketing Sales Rule (16 C.F.R. § 310, “TSR”) expressly prohibits
17 the collection of advance fees for any debt relief service. *See* 16 C.F.R.
18 § 310.4(a)(5). The full text is complex, but at its core, it prohibits requesting or
19 receiving payment of any fee unless and until (A) the telemarketer has settled at
20 least one debt pursuant to an agreement executed by the customer, and (B) the
21 customer has made at least one payment pursuant to that agreement.

22 The TSR includes a very narrow exception (the “Escrow Exception”) which
23 permits the collection of advance fees if the funds are placed in a dedicated
24 escrow-type account that meets five specific requirements, namely:

- 25
- 26 • The account is at an insured financial institution;
 - 27 • The customer owns those funds and is paid accrued interest;
 - 28 • The account holder is not owned or controlled by the debt relief
servicer;

- 1 • The account holder does not give or accept any referral fees; and
- 2 • The customer may withdraw from the debt relief service at any time
- 3 without penalty and, upon withdrawal, must receive all funds in the
- 4 account, except for compliant advance fees, within seven days of the
- 5 withdrawal request.

6 **B. Defendants Collect Advance Fees**

7 Consumer payments for Defendants’ services have been and continue to be
8 collected long before any work has been completed or the customer has made a
9 first payment on a new renegotiated plan. During the initial sales call, Defendants
10 acquire the customer’s payment information and schedule the first payment, which
11 is generally processed almost immediately after the customer executes the Services
12 Agreement.

13 The recurring monthly “recertification fee” is by definition collected in
14 advance for 12 months before the annual recertification process even commences.

15 **C. No Valid Escrow or Trust Procedure**

16 In four years of operation, Defendants have not had escrow or trust
17 procedures which could lawfully invoke the TSR’s Escrow Exception.¹⁸

18 Consumer payments have been collected and deposited directly to Defendants’
19 bank accounts. Nearly \$71 million have flowed directly to Defendants in this
20 manner.

21 Despite these immediate deposit procedures, Defendants have for years
22 **falsely** trumpeted the absence of advance fees. A standard “No Advance Fees”
23 provision of the form contract recites: A “third-party dedicated account provider
24 (“DAP”) [will be used] to collect and deposit payments that Client has agreed to

25 _____
26 ¹⁸ There are two very minor exceptions. Defendants contracted with third party
27 dedicated account holders Reliant Account Management and Account
28 Management Plus for a very short time. As best we can discern this was done so
Defendants could steal these companies’ trade practices, methods, and documents.
(Discussion below).

1 make with company . . . and to deposit and hold Client’s funds in a trust account
2 established and serviced by the DAP. The DAP will not disburse any Client fees
3 until Client has received a consolidation, adjustment, or otherwise satisfactory
4 result, and Client completes one payment towards such.”¹⁹

5 Now, Defendants have introduced Trusted Account Services into this “No
6 Advance Fees” misrepresentation. The October 21, 2019 Sales Script in use at the
7 time of the TRO proclaims:

- 8 • “Our fees will be placed into your own Dedicated Client Account and
9 these funds belong to you at all times. Your dedicated account
10 provider is Trusted Account Services, and they will only release our
11 fees after the Department of Education approves your Income Driven
12 Repayment Program every year.” *See* Exhibit 11.
- 13 • “As noted earlier on the call, all payments to us will be placed into
14 your Dedicated Client Account. Any time before completion of the
15 work, you can cancel and get your funds back. Your funds will only
16 be released to us after we prove to you and Trusted Account Services
17 that we have completed the work” *See* Exhibit 11.

18 The “Compliance Call Script” within the Sales Script further recites:

19 “Do you understand that our company does not take any
20 upfront fees, and that your payments to us will be placed
21 into your own Dedicated Client Account for your benefit
22 until we successfully complete our work for you?” If the
23 consumer responds No, then the script continues: “It is
24 very important to us your money is protected. You are
25 making payments for our fees to your own Dedicated
26 Client Account held by a non-related company (like a trust
company). Your payments will be released to our
company only after the Department of Education accepts
your program/plan. That money belongs to you at all
times and you can ask for it back prior to completion of
our work.”

27 ¹⁹ The consumer declarations filed by plaintiffs in connection with the TRO
28 Motion include these underlying contracts. *See, e.g.*, Pl. Exhibit 52, attachment A,
p. 1466, para. 4. *See also* Pl. Exhibit 53, attachment A, para. 4.

1 See Exhibit 11 (emphasis in original). Even if Defendants followed procedures as
2 described in the scripts, they do not comply with the specific requirements of the
3 TSR.²⁰

4 Defendants' fundamental misrepresentation is that a Dedicated Client
5 Account has been set up with a third party: Trusted Account Services. Our
6 investigation has revealed that Trusted Account Services is not a third party, but an
7 appendage of Defendants' operation which is maintained in-house by a very
8 narrow group of insiders. Hence, Trusted Account Services does not provide
9 Defendants cover that they are in compliance with the TSR.

10 Given the complex history of Defendants' deep deception as to Trusted
11 Account Services, we present below as Section V a summary of Trusted Account
12 Services' formation and implementation based on the materials available to us
13 from the immediate access.

14 V.

15 TRUSTED ACCOUNT SERVICES

16 Trusted Account Services (sometimes referred to as TAS) is not an
17 independent third-party provider of dedicated client accounts. Rather, it was
18 created and is beneficially owned and controlled by the Defendants who have
19 closely guarded their ownership secret. The truth was shared with only a handful
20 of Defendants' high-level and trusted employees, who, in turn, relied on internal IT
21 personnel and IT contractors located in Vietnam to build the Trusted Account
22 Services facade.²¹

23 _____
24 ²⁰ TSR prohibits the release of fees from the consumer's trust account until (A) the
25 telemarketer has settled at least one debt pursuant to an agreement executed by the
26 customer, and (B) the customer has made at least one payment pursuant to that
27 agreement. Defendants' script ignores the one payment requirement, stating that
28 funds will be released "only after Department of Education accepts your
program/plan," *not* after the plan has been accepted and one payment has been
made as the TSR requires.

²¹ Outside the C-suite executives and IT functionaries, employees within
Defendants' companies were fed the party line about Trusted Account Services.
Despite that, however, some employees we interviewed – who were mid-level

1 Because Trusted Account Services is owned and controlled by the Individual
2 Defendants and affiliated with the Receivership Defendants – and indeed is part of
3 the Defendants’ student loan debt relief common enterprise – I have determined it
4 is a Receivership Defendant.

5 Once Trusted Account Services was operational, it was touted as the
6 independent provider of dedicated client accounts for Receivership Defendants, all
7 in an effort to create the appearance of an escrow procedure compliant with the
8 TSR advance fee rule.

9 **A. Defendants Establish Trusted Account Services**

10 1. Incorporation

11 The Trusted Account Services entity, TAS 2019 LLC (“TAS 2019”), was
12 incorporated on March 20, 2019 as a Wyoming entity through an anonymous
13 process using a local registered agent. The Wyoming Secretary of State does not
14 provide information beyond the name of the registered agent – this allowed
15 Defendants to conceal their involvement.

16 The address listed for Trusted Account Services on its website is 109 E. 17th
17 Street Suite 5656, Cheyenne, WY which is simply a virtual office that accepted
18 mail and provided the false appearance of an actual operating company. The
19 Wyoming virtual office was rented in the name of Trusted Account Services and
20 Kenny Huang and was instructed to forward Trusted Account Services mail to an
21 address in Huntington Beach, CA – 17011 Beach Blvd, Suite 900. *See* Exhibit 12.
22 The Beach Blvd location is yet another virtual office/mail drop arranged and paid
23 for by Defendants’ employees, including operations manager Calvin Ho, in the
24 name of Trusted Account Services and Kenny Huang. *See* Exhibit 13.

25 The TAS 2019 incorporation documents we recently secured identify Kenny
26 Huang as the managing member of the LLC. We believe Kenny Huang is or was
27 _____
28 managers and line employees – noted they were suspicious about the independence
of Trusted Account Services.

1 an employee of the Defendants or perhaps was simply acting as a “front” for the
2 Defendants in their effort to secure merchant payment processing.²² During a
3 phone call with Kenny Huang at 6:12 p.m. on October 30, 2019, I directly asked
4 him if he was the owner of TSA 2019, and he responded “yes” twice, but then
5 would not answer further questions and has not responded to our several calls since
6 then.

7 2. Website

8 On March 20, 2019, Defendants also registered a website –
9 trustedaccountservices.com. Although the domain is registered anonymously with
10 internet domain registrar GoDaddy, our investigation indicates that Defendants
11 control the Trusted Account Services server and website. We discovered
12 correspondence between Defendants’ employees Calvin Ho and Thein Nguyen
13 discussing, evaluating and revising the initial content for this website. We also
14 located the GoDaddy and TAS domain credentials (username and password) in
15 Individual Defendant Albert Kim’s Dropbox.

16 Defendants also controlled the Trusted Account Services email system. In a
17 Customer Service Manager’s workstation, we located the Outlook password for
18 email account studentloanmanagement@trustedaccountservices.com. *See*
19 Exhibit 14. That email mailbox was only recently created (October 13th), but had
20 already received several hundred emails from customers. Although they were
21 addressed to a Trusted Account Services account, these emails were regularly
22 reviewed and responded to by Defendants’ employees.

23 _____
24 ²² We found an IRS W-4 form completed in the name of Kenny Huang at
25 Defendants’ Laguna Canyon office. Trusted Account Services merchant account
26 application documents purportedly completed by Kenny Huang reflect he is
27 employed by the U.S. Department of Labor. Regardless of where Mr. Huang is
28 employed, we believe he was acting as a “front” or nominee used to establish TAS
2019, open bank accounts, and most importantly obtain merchant account payment
processing. Defendants have used other employees, for example, Keneth Hu
(discussed below), to act as “front” for Defendants’ merchant account applications.
In Mr. Hu’s case, he opened a Horizon Consultants LLC d/b/a Premier Student
Loan Center merchant account.

1 **B. Defendants’ First Attempt to Secure Payment Processing for**
2 **Trusted Account Services**

3 In February 2019, even before the Trusted Account Services name had been
4 selected, Defendants sought a payment processing vendor for the new venture.
5 They began discussions with Donald Cook, a broker who seems to cater to high-
6 risk clients. On February 26, Cook told the Individual Defendants Wen and
7 Nguyen and senior employee Calvin Ho that he could secure processing services,
8 but warned they needed a third party intermediary for client funds. *See*
9 Exhibit 15.²³

10 Not long after the entity was incorporated, Kaine Wen (copying the other
11 Individual Defendants and Calvin Ho) notified Donald Cook that TAS 2019 LLC
12 would be the processing applicant with Kenny Huang as the owner. *See*
13 Exhibit 18. Cook responded by email to Kenny Huang (who Mr. Cook understood
14 was an employee of the Defendants) with more requests for information. In
15 response, Kaine Wen, who had been copied on the email, forwarded Cook’s
16 requests to his operations manager Calvin Ho to complete (which he did).²⁴ While
17 he was able to secure some payment processing for Defendants, Cook terminated
18 the relationship after a falling out with Defendants. As a result, Trusted Account
19 Services was left without payment processing capability, but the void was later
20 filled by Jimmy Lai – a long-time associate of the Defendants, discussed below.

21 ///

22 ///

23 _____
24 ²³ A few days later, on March 3, Calvin Ho emailed the Individual Defendants a
25 flow chart for a new “DAP” [dedicated account provider] intermediary, Exhibit 16,
26 and on March 11, he emailed his technical team a list of desired functions for the
DAP intermediary, **which for the first time he identifies as Trusted Account
Services.** Exhibit 17.

27 ²⁴ Kenny Huang was purported to be using the email TAS2019@gmail.com, but in
28 fact Kaine Wen actually controlled that email account and used it frequently
(posing as Kenny Huang) in communications with vendors.

1 **C. Defendants Deceive DebtPayPro to Get Trusted Account Services**
2 **on the Platform**

3 For Trusted Account Services to function, it had to be integrated with
4 Defendants' customer relation management (CRM) software, provided by
5 DebtPayPro. Kaine Wen along with Calvin Ho orchestrated a ruse to get Trusted
6 Account Services accepted and integrated in the DebtPayPro CRM database. They
7 went to great lengths to posture Trusted Account Services as a real and
8 independent company, including creating fictional characters to interact with DPP
9 via email and over the telephone.

10 On May 1, 2019, Kaine Wen emailed DebtPayPro's support team, writing:

11 “Please provide detailed answers and explanations to the
12 following questions from Trusted Account Services. *We*
13 *are testing out their dedicated account provider services*
(same services as Reliant Account Management or
Account Management Plus). Thank you in advance.

- 14 1. *How can we integrate with DPP?*
15 2. *Do you have any document that details what*
information we need to receive from DPP's end or pass to
DPP from our end?
16 3. *Do you have any API to use for integration?*
17 4. *How can we manage the transactions and*
clients between our systems and DPP?”

18 *See Exhibit 19 (emphasis added)*

19 The questions posed by Kaine Wen did not, however, originate from Trusted
20 Account Services, but were crafted by Defendants' IT employee²⁵ who had been
21 tasked to integrate Trusted Account Services into the DebtPayPro platform. *See*
22 *Exhibit 20.*

23 Kaine Wen created these questions and the lead-in to them to paint the
24 mirage of Trusted Account Services as a separate company. When DebtPayPro
25 support staff followed up with a request for the company's website and the name
26 of a direct contact there, Calvin Ho responded with a link to the website

27 _____
28 ²⁵ We believe the Vietnam company, Processing Service Co., Ltd., is owned by Calvin Ho's mother. It received nearly \$600,000 from Horizon Consultants.

1 (https://trustedaccountservices.com) and an email address
2 (technicalsupport@tasportal.com). *See* Exhibit 19. DebtPayPro support then
3 asked, “[i]s there a person there you’ve been working with that I can ask reach
4 [sic] out to specifically?” *Id.* Calvin Ho responded with a name: Michael Tabin
5 (michaelt@trustedaccountservices.com) whose signature listed him as Trusted
6 Account Services’ Chief Technology Officer. *Id.* We believe, however, that
7 “Michael Tabin” is a fictional name invented by Kaine Wen and Calvin Ho to deal
8 with DebtPayPro.

9 On May 23, Ho emailed the group – addressing both DebtPayPro and
10 “Michael” – to ask how the integration was proceeding and when Defendants
11 could begin using Trusted Account Services. *Id.* DebtPayPro responded that they
12 were still reviewing the API documentation and drafting a scope of work proposal
13 and quote. *Id.* Throughout the email chain with DebtPayPro, Wen and Ho
14 maintained the deception that they were Trusted Account Services. Trusted
15 Account Services was ultimately accepted by DebtPayPro – which gave
16 Defendants the ability to process consumer payments through Trusted Account
17 Services on the DebtPayPro platform.

18 **D. Defendants Purloined Legitimate Third Party Companies’**
19 **Methods and Documents to Establish Trusted Account Services**

20 Our review also revealed that in establishing Trusted Account Services,
21 Defendants just copied the methods, operations and documents of other such
22 providers like Reliant Account Management (“RAM”) and Account Management
23 Plus (“AMP”). Defendants had their IT contractor in Vietnam copy wholesale the
24 practices and documents (generally word-for-word) of RAM and AMP which were
25 then only slightly modified and rebranded as Trusted Account Services materials.
26 We located in Defendants’ team management software, Monday.com (which is
27 used to monitor IT and operations projects), a project associated with the creation
28 of Trusted Account Services. The Defendants’ Monday.com platform includes

1 tasks such as “Figure AMP’s services charges to find a processing comp for TAS”
 2 and “Create a new agreement based on RAM Authorization Form,” as well as
 3 “Build database for TAS” and “Revise TAS Contents.” *See* Exhibit 21.²⁶ This
 4 “creative” history demonstrates that Trusted Account Services was hatched by
 5 Defendants, complete with intellectual property thievery.

6 **E. Defendants Own and Control the Trusted Account Services Bank**
 7 **Accounts**

8 Defendants opened Trusted Account Services bank accounts at HSBC Bank
 9 shortly after TAS 2019 was incorporated. While we have not yet received a
 10 fullsome response from HSBC, we found the following documents at the Laguna
 11 Canyon offices which show Defendants own and control these HSBC accounts:

- 12 • An HSBC account statement for Trusted Account Services for
 13 September/October 2019 was found in a back corner office (where
 14 Defendants’ operations/accounting were located).
- 15 • Two large packages of Trusted Account Services HSBC business
 16 checks were found in a safe in the same office. Although Kenny
 17 Huang is the signatory on the account, the checks were mailed to the
 18 home address of Defendants’ accounting employee, Thu Quach. Ms.
 19 Quach labeled the two accounts as an operating account and a client
 20 funds account.
- 21 • One sheet of checks were pre-signed via a signature stamp in the
 22 name of Kenny Huang. *See* Exhibit 22. We later found the stamp in
 23 the safe in Ms. Quach’s office.

24
 25 ²⁶ Notably, Defendants contracted with both RAM and AMP for a short period of
 26 time. For example, Defendants entered into a contract in November 2018 with
 27 RAM, but the relationship terminated in roughly March of 2019 – Defendants
 28 having used RAM for only a couple of dozen customers (out of the Defendants’
 roughly 50,000 active customers). But in doing so, Defendants learned the
 methods of these third party dedicated account provider companies and accessed
 their agreements and contracts which the Defendants promptly plagiarized.

- 1 • We also found Costco receipts, dated September 10, 2019, for two
- 2 orders of Trusted Account Services HSBC checks. The checks had
- 3 been mailed to Ms. Quach’s home.
- 4 • The address on the checks is the Beach Blvd. virtual office for Trusted
- 5 Account Services, which was opened under Kenny Huang’s name but
- 6 which Defendants arranged.

7 **F. Defendants Arrange Trusted Account Services Payment**
8 **Processing through Jimmy Lai and National Merchant Center**

9 Once Defendants integrated Trusted Account Services into the DebtPayPro
10 platform, they still needed a payment processing vendor. Defendants had been on
11 alert for payment processing options for several months. *See* Exhibit 23. When
12 the arrangement with Donald Cook fell apart, the Defendants went back to Jimmy
13 Lai, who, like Cook, acts as a middle man between high-risk merchants and
14 payment processors.²⁷ He has worked with Defendants on numerous occasions to
15 secure payment processing for their various entities.

16 Defendants did not have to present an elaborate charade of Trusted Account
17 Services’ independence with Jimmy Lai. Lai was in on the lie. He understood that
18 Defendants owned and controlled TAS 2019 and that Kenny Huang was a front.
19 He had worked with Defendants for years and, in fact, had previously executed
20 nearly this exact “front” scam with Defendants.

21 In late 2018, Lai worked with Individual Defendants Wen and Nguyen to
22 use a front – this time Keneth Hu, an IT employee of Defendants – to apply for a
23 merchant processing account in the name of Horizon Consultants LLC d/b/a
24 Premier Student Loan Center. Hu claimed to be the 100% owner of Horizon
25 Consultants for purposes of the application – but all involved understood that

26
27 ²⁷ In this instance it is unclear whether Lai was acting as a broker or as an
28 employee of National Merchant Center, as we see that he uses a National Merchant
email address in connection with Trusted Account Services.

1 Defendants own and control the company. When the application was finalized – in
2 Keneth Hu’s name and containing all of his personal information – Lai sent it to
3 Individual Defendants Wen and Nguyen, not Hu, with a note: “Please review for
4 accuracy, sign and return.” Kaine Wen then forwarded the application on to Hu
5 with instructions, “Please sign on page 6 (twice) and page 7.” *See* Exhibit 24.
6 Horizon Consultants’ merchant application was approved and it proceeded to run
7 consumer charges through the account. *See* Exhibit 25.

8 Eight months later, Defendants approached Lai about filing another
9 application package using a “front” – this time for Trusted Account Services. Lai
10 was happy to oblige. On June 19, Lai submitted an application for TAS 2019 with
11 National Merchant Center with Kenny Huang as the “front” – listed as the 100%
12 owner. *See* Exhibit 26. Six days later, the associate director of underwriting wrote
13 to Lai and identified a number of holes in the application. Lai simply forwarded
14 the email with a one sentence introduction: “Kaine/Kenny, There are a lot of things
15 missing that we need to obtain before we can send to First Data for review and
16 approval.” *Id.* The application was revised and submitted on July 1. *See*
17 Exhibit 27. Again, Kenny Huang was the “front,” listed as the owner of TAS
18 2019. On July 9, Lai forwarded the final application for signature, listing Kenny
19 Huang as the 100% owner. But Lai did not send the application to Kenny Huang;
20 he sent it **only** to Kaine Wen with the instruction to “[p]lease execute with Wet
21 Signature.” *See* Exhibit 28.

22 National Merchant Center accepted the application – an application that
23 Kaine Wen, Kenny Huang and Jimmy Lai knew was false. Processing for Trusted
24 Account Services began on September 12 and by the end of the month more than
25 \$800,000 in consumer funds had been processed. Another \$2,000,000 in consumer
26 charges were processed before the TRO was issued.²⁸

27 _____
28 ²⁸ Based upon information contained in the Trusted Account Services portal that
Defendants’ employees control, more than 56,000 separate transactions were
processed in the roughly six weeks of operation. Indeed, it appears that all of

1 **G. Defendants’ Assertion that Trusted Account Services Is a Third**
2 **Party Dedicated Account Provider Is False**

3 In Defendants’ Response to the Order to Show Cause, they assert that
4 Trusted Account Services is a “third party” which is “a dedicated account provider
5 that provides escrow services” and that “[n]o Defendant or Relief Defendant owns
6 or controls (or has ever owned or controlled) [Trusted Account Services].”
7 Response at pp. 9-10. Each of these assertions is based entirely on the declaration
8 of Jimmy Lai attached to the Response. Mr. Lai’s declaration is riddled with
9 extraordinary falsehoods.

10 As discussed above, Mr. Lai was a long-time payment processing broker for
11 the Defendants and was instrumental on at least two occasions in obtaining
12 merchant accounts for Defendants using “fronts” or nominees, including Trusted
13 Account Services. Nevertheless, Mr. Lai now claims that Trusted Account
14 Services is not, and was never, owned or controlled by any Defendant or Relief
15 Defendant (§ 6). This claim is belied by substantial evidence as described above.
16 Mr. Lai also claims he is the majority owner of TAS 2019 and has been since
17 September 1, 2019 (§ 1), and that since his involvement with Trusted Account
18 Services, its connection to Defendants has been limited to software integration
19 (§ 6). These claims are inconsistent with the facts described above and any number
20 of objective post-September 1, 2019 facts:

- 21 • On September 9, 2019, two Merchant Account Change Request
22 Forms for Trusted Account Services were filed with National
23 Merchant Center (a company at which Mr. Lai is or was employed).
24 The owner of Trusted Account Services is listed as Kenny Huang and
25 a signature in that name appears on the forms. *See* Exhibit 29. The
26

27 _____
28 Defendants customers’ payment processing was transferred to Trusted Account
Services without notice to customers.

1 email listed for Mr. Huang, tas2019llc@gmail.com, is controlled by
2 Kaine Wen.

- 3 • A Trusted Account Services voided check was attached to the
4 September 9th Merchant Account Change Request Forms. The
5 address listed on the check is Kenny Huang's home address. *Id.*
- 6 • Also included with the Merchant Account Change Request Forms was
7 a letter from HSBC, dated September 9, 2019, reflecting that
8 TAS 2019 and Kenny Huang established a business account with the
9 bank. *Id.*
- 10 • On September 10, 2019, Defendants' employees ordered new HSBC
11 Trusted Account Services checks and had them mailed to an
12 employee's home.
- 13 • On September 19, 2019, National Merchant Center ran another check
14 on the Wyoming Secretary of State site to confirm that TAS 2019
15 remained active at the mail drop in Wyoming. *See Exhibit 30.*
- 16 • On September 20, 2019, a Trusted Account Services mail drop
17 invoice in the amount of \$125 for October 2019 was forwarded to an
18 employee of Defendants for payment.
- 19 • National Merchant Center sent a "card processing statement" for the
20 period of September 1 to September 30, 2019 to Kenny Huang at the
21 mail drop in Wyoming. *See Exhibit 31.*
- 22 • In early October, National Merchant Center mailed the Trusted
23 Account Services September processing statement to Kenny Huang at
24 the mail drop in Wyoming (the address listed on the Wyoming
25 Secretary of State site). *See Exhibit 32.*
- 26 • We located the check stub for the last customer refund check written
27 on the Trusted Account Services HSBC business account at the
28

1 Laguna Canyon office; the check was written on October 4 using a
2 signature stamp in the name of Kenny Huang.

- 3 • On October 7, 2019, National Merchant Center forwarded the
4 TAS 2019 September statements to Jimmy Lai at his
5 swiftpaymentsinc.com and his nationalmerchant.com addresses.
6 (Again, it is unclear if Mr. Lai continues to work at National
7 Merchant Center.) Within eight minutes of getting the statements, Lai
8 forwarded them to Defendant Nguyen. *See* Exhibit 33.
- 9 • Two days ago, Wednesday, October 30 at 6:12 p.m., in a short
10 telephone call with me, Kenny Huang claimed (twice) that **he owns**
11 TAS 2019. Mr. Huang asked to see the TRO before having any
12 further conversation. The TRO was provided. Mr. Huang has not
13 responded to our emails or telephone calls since.

14 We noticed and served a deposition notice on Mr. Lai on Tuesday, October 29, for
15 a Friday, November 1 deposition. (That deposition is now set for Tuesday,
16 November 5.)

17 VI.

18 STUDENT LOAN DEBT RELIEF – 19 THE SALES PITCH AND PROCESS

20 Defendants’ acceptance of advance fees in violation of the TSR dooms the
21 business from the start.²⁹ But, the analysis of whether this business can continue
22 lawfully and profitably does not hang entirely on advance fees. We identified
23 fundamental flaws in the tactics deployed to secure customers which have left
24 consumers feeling confused and misled. *See* Section VI.F “Complaints” below.

25 Defendants’ student loan debt relief business is built on a challenging
26 premise: identify and target consumers with student loan debt to sell them a

27 _____
28 ²⁹ Even advance fees collected through TSR-compliant escrow would pose serious
challenges to financial sustainability – see discussion below.

1 utilitarian service they can do themselves (by filling out Department of Education
2 forms or with the assistance of resources available from the DOE, DOE-approved
3 loan servicers, and other consumer-friendly resources. And do this in an
4 environment that is heavily regulated to protect consumers and prohibits advance
5 fees until the work is completed and accepted by consumers. By any definition,
6 this is not a promising business model for a lawful operator, and this reality is
7 borne out by Defendants' 70% cancellation rate. *See* Exhibit 1.

8 **A. Leads**

9 New customers are secured by the telemarketing sales team by calls to and
10 from consumer "leads." Lead generation has been managed by Pub Club Leads
11 ("Pub Club"), the marketing business which operated from an interior office at the
12 Laguna Canyon site. Pub Club was tasked to generate "Billable Leads" based on
13 parameters set forth in time-specific orders from Prime Consulting. Pub Club did
14 this by retaining and managing multiple sub-vendors who deployed various data
15 mining techniques. Pub Club was compensated by a percentage of the total
16 "advertising buy" for each of the Orders. Our review indicates that for the period
17 October 2018 to October 2019, Pub Club received approximately \$9 million from
18 Prime Consulting. Pub Club also received approximately \$5 million from Horizon
19 Consultants between March 2019 and September 2019.

20 **B. Sales Tactics**

21 Defendants' new "zero tolerance compliance" protocols, announced in
22 August 2019, are themselves confirmation of bad practices that historically
23 permeated the sales process. *See* Exhibit 7. One such practice related to family
24 size where sales agents, with or without the customer's assistance, inflated family
25 size to secure lower payments. In one recorded telephone call from July 25, 2019,
26 that we reviewed, the sales advisor added the customer's two dogs to increase
27 family size. In June 2019, a customer service manager identified an issue
28 internally that customers felt "scammed" because they were paying \$1,300 when

1 Defendants do “very little.” *See* Exhibit 34. In April, 2019, Individual Defendant
2 Nguyen internally reported that he had done a small audit on family size and found
3 that 6 out of 10 failed with “All fake FS.” *See* Exhibit 35.

4 Our review of the Laguna Canyon site confirmed the obvious reality that
5 Defendants were in the sales business with sales personnel incentivized to sell:

- 6 • The Sales Department was physically structured to maximize results
7 with sales agents organized in pods headed by a Team Leader, each
8 with a separate white board to track results and weekly goals.
- 9 • Sales advisors (who were retitled Student Loan Specialists on
10 September 30, 2019) were paid weekly with an hourly minimum
11 (\$12-\$15 per hour) and a commission based on a percentage (18%-
12 22%) of the dollar value of closed deals after the enrollment payment
13 cleared. The applicable percentage was determined by the advisor’s
14 rank, which was based on total revenue from sales over the previous
15 four weeks. *See* Exhibit 36.
- 16 • Sales advisors were also paid bonuses through various “performance
17 sprints”, including special bonuses for same day closings/payments
18 and 5 deals in a day. The big producers even got to participate in
19 raffles for laptops, gaming consoles, headphones and movie tickets.
20 *See* Exhibit 37.
- 21 • The overriding mission was to “Close.” A big screen TV in the main
22 room ranked the highest closers. Inspirational signs promoted
23 “Always Be Closing” and “Assume the Close.”
- 24 • Sales advisors were exhorted to complete the “Hard Close,”
25 sometimes called “Same Days,” by manufacturing a need to close
26 now. Rebuttals to customers wanting to “call back” included “the
27 government is very strict” and the “system does not allow me to keep
28 your application open.” *See* Exhibit 38.

1 Absent aggressive real time supervision, these incentives created an
2 atmosphere where sales agents are tempted to do whatever necessary to “close”
3 and get their commissions and bonuses.

4 We reviewed scripts, training materials, and sales directives found at each
5 workstation in the Sales Department. After August 2019, the Sales Scripts were
6 revised several times, but even the most recent Sales Script – October 21, 2019
7 (Exhibit 11) – may confuse consumers about the services and the related fees, and
8 creates the impression that fees paid to Defendants would be credited to their loan.
9 This confusion is reflected in consumer complaints. *See* Section VI.F
10 “Complaints” below.

11 **C. Enrollment Fees**

12 “Enrollment Fees” (now called “Initial Fees”) were a key component of the
13 sales process and engendered significant confusion among customers. The most
14 recent schedule includes three tiers based on the customers student loan balance.
15 The “Initial Fee” was set at \$1,545 (loan balance above \$40,000), \$1,395 (loan
16 balance \$25,000-\$40,000), and \$1,245 (loan balance \$9,000 – \$25,000).³⁰ The
17 standard payment plan was five monthly payments (six with manager approval).
18 Consumers who agreed to immediately pay in full were rewarded with a \$100
19 discount and sales advisors received bonuses. The fee structure with the
20 corresponding monthly payment amounts and related commissions were published
21 in materials and on white boards around the office. *See* Exhibit 36.

22 All customers were also charged a recurring monthly “recertification fee”
23 (\$22, \$32, or \$42) as required by most repayment plans. This recertification fee
24 created residual monthly cash flow for Defendants with no immediate benefit to
25 the customer and was paid out well before the annual recertification application
26 was actually prepared or even due.

27 _____
28 ³⁰ Fee amounts have varied over time with \$1,750 being the highest level we
identified.

1 Fee payment schedules were entered into DebtPayPro and monthly auto
2 payments were pulled from customer accounts. The recertification fee was
3 scheduled to be charged in the month after receipt of the final payment on the
4 Initial Fee.³¹

5 **D. Customer Service and Processing**

6 At the time of the TRO, customer service operated from the 173 Technology
7 Drive site. In early October 2019, Defendants actually laid off the entire
8 processing department as a prelude to outsourcing processing functions to an
9 offshore vendor.³²

10 The Customer Service Team was primarily tasked to handle complaints from
11 consumers, the BBB, and regulators. Internal protocols emphasized, however, that
12 representatives were to answer the phone generically as “customer
13 service/customer support” and to give the appearance of being a “third party.”³³

14 Scripts and instructions found on site confirmed complaints were a big part
15 of the business. Written instructions found in Customer Service cubicles identified
16 two primary goals (1) retain the customer by resolving the issue and (2) mitigate
17 the fallout from customers likely to complain to outsiders. “Retention Policies”
18

19 ³¹ For example, the DPP file for customer L. Burdick (loan balance \$40,303)
20 shows enrollment on October 4, 2019 with the Initial Fee of \$1,245 scheduled out
21 at 5 monthly payments of \$249 commencing October 4, 2019, completing
February 4, 2020, and the \$42 monthly recertification fee scheduled to commence
March 4, 2020 and running through September 4, 2029.

22 ³² Historically, the primary processing functions were to pick up the customer
23 “file” from the sales agent once the agreement was signed. From there, processing
24 finalized data collection on income and other matters, secured customer signatures
on the necessary documents and commenced the processing of enrollment fees.

25 ³³ The customer service representatives were provided scripted language: “We are
26 a third party customer service department that takes care of customer support for
27 many different companies. It looks like you have been working with (insert
appropriate name here: SL Account Management, Premier Student Loan Center,
Financial Preparation Services, Financial Loan Advisors, and Tangible Saving
28 Solutions.)” They were also instructed not to acknowledge any of Defendants’
name changes or that customer service was part of any of those companies. *See*
Exhibit 39.

1 directed that full refunds be given to consumers likely to complain to the BBB,
2 regulators, or enforcement authorities. *See* Exhibit 40.

3 Customer Service also maintained a list of 20 “Disposition Codes” which
4 highlight the level of customer confusion. These codes included “Fees not
5 Explained to Me,” “Program not Explained Correctly,” and “Payments did not go
6 toward my Student Loan Payment.” *See* Exhibit 41.

7 During September and October 2019, a primary activity at the Technology
8 Drive site was a reverification campaign supposedly designed to confirm the data
9 on more than 40,000 files and have customers sign new documentation. This
10 campaign was implemented by personnel from Junior Processing, Customer
11 Service, and approximately 30 temporary workers who made outbound calls to
12 customers based on a script. After verifying identity, the customer was directed to
13 a website to verify and initial a series of compliance questions and provide fresh
14 signatures on documents signed at their original enrollment. This campaign also
15 introduced customers for the first time to Trusted Account Services and directed
16 them to sign a contract with Trusted Account Services.^{34, 35}

17

18

19 ³⁴ In this regard, the reverification script included Compliance Questions,
Paragraph 10 of which provides:

20

21

22

23

24

25

26

27

28

- “Do you understand that your monthly recertification assistance fee to us will be placed into your own Dedicated Client Account held for your benefit until we successfully complete our work for you?”
- “You are making payments for our fees to your own Dedicated Client Account **held by a non-related company (like a trust account) until your program is finalized and complete.**”
- “To fully emphasis we do not take upfront fees. That means that until your program is approved any payments you are making are going into a separate trust account for you until you are placed in the program initially outlined with the payment details initially discussed.”

See Exhibit 42 (Emphasis added).

³⁵ Notably, Defendants unilaterally transferred all customer payment processing to Trusted Account Services in September 2019 without customer consent.

1 In their recent filings, Defendants cite a supposed 96% success rate in the
2 reverification campaign as evidence that their customers were fully satisfied and
3 re-executed agreements willingly. *See, e.g.*, Defendants’ Response re: OSC at 8-9
4 (citing Balestreri Decl. ¶ 12 & Ex. F). They claim this high success rate for the
5 3,252 reverifications is “more statistically significant and a more accurate picture”
6 than the customer complaints relied on by the CFPB because Defendants’
7 “sampling of customers is random.” *Id.* at 8. This success figure is astounding and
8 suspect, particularly in a business with a 70% customer cancellation rate.

9 My investigation indicates, however, that the reverification campaign was
10 not an objective scientific process confirming universally happy customers.
11 Rather, it was a hastily organized exercise using temporary employees with little
12 training to retroactively confirm data in old files, guided by a script that required
13 more than 90 minutes of talk time to complete. In addition, Defendants’
14 “sampling” does not appear random at all, but instead it appears Defendants
15 cherry-picked the initial files to be reverified in order to achieve a higher success
16 rate. Notes we found in the office of Mr. Ortiz, the head of Junior Processing,
17 from a September 20, 2019 meeting with customer service managers Christian
18 Sangalang and Adon Janse indicate that Mr. Ortiz’s team was assigned 2,800 files
19 designated “High priority.” All of these had small “FS (family size),” between 1
20 and 5 members, thus reducing the likelihood of prior family size inflation. The
21 notes indicate that Mr. Janse stated that approximately 2% of these files “have
22 issues” and that “Most clients will sign.” *See* Exhibit 43.

23 Defendants also suggest that the reverification campaign reflected a
24 “random” sampling of calls coming *into* customer service. This is, however,
25 belied by the reverification scripts which state: “I am calling you today on a
26 recorded line to ensure the accuracy of all details on your account. We are
27 contacting all our existing clients to complete a routine follow up as part of our

28 ///

1 newly required compliance policies and procedures.”³⁶ See Exhibit 42.

2 **E. Compliance**

3 Compliant practices did not come naturally to Defendants. Compliance
4 concerns and procedures before the August pivot were sporadic. Beginning
5 August, 2019, however, compliance efforts were upgraded, including:

- 6 • The zero tolerance policies first announced in the August 27, 2019
7 Memo, were re-stated in various other formats. See Exhibit 44.
- 8 • New Hires were run through a week of day-long training and
9 education sessions. See Exhibit 45.
- 10 • The basic Sales Script was updated and revised multiple times
11 resulting in the current version of October 21, 2019. See Exhibit 11.
- 12 • The 4 training rooms at the Laguna Canyon site, each outfitted with 4
13 workstations, were updated with new directives and information
14 posted above each workstation, including Rebuttals, Doc. Assistance,
15 File Accuracy, and Verbal Consent. See Exhibit 46.

16 These are representative, but not exhaustive examples of compliance efforts
17 after the August pivot. These moves were in the right direction, although some
18 elements could be described as window dressing. Regardless of motivation or
19 sincerity, however, compliance was on Defendants’ radar, beginning in August
20 2019.

21 **F. Complaints**

22 The ultimate gauge of whether consumers are confused or feel misled is to
23 review the flow of complaints generated by those consumers. Defendants suggest
24 that the August pivot has resulted in a compliant operation and claim a
25

26 ³⁶ Customer service representatives were instructed that they could conduct the
27 reverification during regular customer service calls, but when customers called
28 with concerns about withdrawals made by a new entity (Trusted Account Services)
they were told they would be receiving separate calls to reverify their information
and sign contracts with Trusted Account Services.

1 96% satisfaction rate by customers contacted in the reverification campaign.
2 While we did not have the time or resources to statistically sample all the data, we
3 do have the ability to get a sense of the situation by reviewing Defendants’
4 customer contacts post-pivot.

5 We identified a Trusted Account Services email box
6 studentloanmgmt@trustedaccountservices.com established around October 13,
7 2019. Defendants controlled and monitored this email box. Defendants’
8 employees reviewed and responded (as necessary) to customer inquiries.³⁷ This
9 has given us a discrete stream of inquiries to review – some 400 emails delivered
10 since October 13 – which again, is obviously after the Defendants’ August pivot.

11 We identified approximately 250 informational inquiries (*e.g.*, requests for a
12 return call or email, requests to update payment information, inquiries about the
13 status of consumers’ application or the recertification process, etc.). One customer
14 stated he was satisfied with Defendants’ service, but then asked for clarification
15 why FedLoan was asking him for a large payment, thinking that the monthly \$40
16 payment handled his obligation.

17 We identified approximately 150 troubling customer contacts – complaints
18 of one kind or another. Some examples follow:

- 19
- 20 • “The payments that are being taken each month are not the payments I
21 agreed to and not an amount I can manage. I need to hear back from
22 someone asap and get this resolved.” *See* Exhibit 47.
 - 23 • “If I’m paying \$40/month, WHY has my student loan increased from
24 \$52k to \$54k? . . . Instead of paying \$52k to Nelnet, at the end of 240
25 payments, I will pay a total of \$10,555 to Premier Student Loans?
26 Will the balance be expunged from my financial obligation?” *See id.*

27 ³⁷ We have not yet been able to canvas all Defendants’ email accounts and
28 therefore have not identified all mailboxes which might be receiving customer
inquiries and complaints.

- 1 • “Who is this payment going to? I just logged into my FEDloan
- 2 Servicing Account, and none of my \$40 monthly payments are
- 3 showed as posting to my actual student loans. I am wondering who I
- 4 am paying?” *See id.*
- 5 • “Why am I paying y’all money and fed loan servicing is reporting
- 6 missed payments to the credit bureaus. It’s messing up my credit
- 7 score and I really do not need that.” *See id.*
- 8 • “Is Navient aware that I am paying my student loans through this
- 9 company now?” *See id.*

10 The volume of complaints (roughly 150) compared to the number of
11 customer contacts (roughly 400) is very high – 40% of the people who contacted
12 Defendants through the email box had a complaint. This paints a far different
13 picture of customer satisfaction than that presented by the purported
14 96% satisfaction rate in the reverification campaign. And these are customer
15 initiated contacts, rather than outreach instituted by a reverification campaign.

16 Beyond the volume of complaints, the content of the complaints is troubling.
17 The complaint themes are consistent with the consumer declarations and the
18 allegations made by the Plaintiffs. Pre-pivot or post-pivot, Defendants’ sales
19 materials and tactics have left consumers confused and feeling misled, particularly
20 about Defendants’ services, their fees, and whether the fees reduced their loan
21 balances.

22 VII.

23 FINANCIAL INFORMATION

24 The Receiver’s forensic accountant, Lisa Jones, has prepared a Receivership
25 Initial Account Records Review report based on available Receivership Defendant
26 records which is attached as Exhibit 5.

27 ///

28 ///

1 **VIII.**

2 **CAN THE BUSINESSES BE OPERATED**
3 **LAWFULLY AND PROFITABLY?**

4 Section XIII(O) (at page 23) of the TRO directs and authorizes the
5 Temporary Receiver to continue and conduct the business of Receivership
6 Defendants “conditioned on the Receiver’s good faith determination that the
7 business can be lawfully operated at a profit using the Assets of the Receivership
8 Defendants’ estate.” I conclude that the business cannot.

9 These defendants chose to operate a highly-regulated and revenue-
10 challenged business. The product is not unique or proprietary. The marketing
11 costs to secure and retain customers are high, compounded by very high
12 cancellation rates. Operating expenses, including commission for sales personnel,
13 are high. And the TSR prohibits the collection of fees until the work is completed
14 and the consumer makes the first payment.

15 Even if Defendants were to activate a legitimate third party provider of
16 dedicated accounts and fully comply with the TSR escrow exception, the impact on
17 cash flow and sustainability would be enormous, all with the added administrative
18 costs of the escrow procedure itself. And the business would still face the
19 compliance challenges, and related new expenses, to re-invent a sales process free
20 of tactics and procedures that leave consumers feeling confused and misled.

21 Dated: November 1, 2019

22
23 By: /s/ Thomas W. McNamara
24 *Thomas W. McNamara*
25 *Temporary Receiver*
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November 2019, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in the case who are registered CM/ECF users.

/s/ Edward Chang
Edward Chang
*Attorney for Temporary Receiver,
Thomas W. McNamara*