

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

Case no. 19-cv-1028-40LRH

vs.

FIRST CHOICE HORIZON LLC, et al.,

Defendants.

---

**RECEIVER'S PRELIMINARY INITIAL REPORT**

Mark J. Bernet, as Receiver for the Receivership Entities consisting of (i) the "Receivership Defendants" (First Choice Horizon LLC, First Southern Trust LLC, First United Mutual LLC, Premier Union Trust LLC, d/b/a Second Choice Horizon, South Premier Trust LLC, and Suncoast Mutual LLC), and (ii) certain non-parties (United Choice Plus LLC, Southern Pride LLC, Financial Service Trust LLC, Southern Choice LLC, and Sun Premier LLC) declared by the Receiver to be "Receivership Entities" by his *Receiver's Notice of Identifying Additional Receivership Entities* (doc. no. 16), files his preliminary initial report.

**PRELIMINARY STATEMENT**

The Court has scheduled a preliminary injunction hearing for 10:00 a.m. on Friday, June 28, 2019. The Plaintiff and the Defendants have engaged in substantial negotiations relating to a possible stipulated preliminary injunction, and the Receiver believes that there is a good possibility that those negotiations will be successful. However, given that the preliminary injunction could proceed as a contested hearing, the Receiver has prepared this

preliminary initial report to assist the Court and the parties. If called to testify at a contested preliminary injunction hearing, the Receiver's testimony would be the same as is set forth in this preliminary initial report.

I. BACKGROUND

In their Complaint, filed June 3, 2019 (doc. no. 1), the FTC alleged that the Defendants "engaged in a telemarketing scheme that defrauds financially distressed and often older adult consumers by selling a bogus credit card interest rate reduction service." Complaint, ¶2. The FTC alleged that the Defendants "induce the sale of their [interest rate reduction] service by making numerous material misrepresentations," and that Defendants "charge a substantial fee for their service, which can generally range from \$200 to \$8,000." Complaint, ¶¶25, 26. Defendants' actions, the FTC alleged, violated various provisions of Section 5 of the FTC Act, 15 U.S.C. §45(a) *et seq.*, as well as provisions contained within the Telemarketing Sales Rule codified at 16 C.F.R. Part 310. The FTC therefore requested permanent injunctive relief as well as money damages to address the injury to consumers.

At the same time it filed its Complaint, the FTC filed *Plaintiff's ex parte Motion for Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, other Equitable Relief, and an Order to Show Cause why a Preliminary Injunction should not Issue* (doc. no. 4) (the "Motion for TRO"), in which the FTC requested, among other things, (i) a temporary restraining order enjoining the Defendants from engaging in their telemarketing business or any other activity violating the FTC Act or the Telemarketing Sales Rule, and (ii) an order appointing a temporary receiver to, essentially, implement the terms of the requested TRO. The Court granted the FTC's motion by its June 4, 2019 *Temporary Restraining Order* (doc.

no. 12) (hereafter the "TRO"). Under the TRO, the Court temporarily enjoined the Defendants from a host of activities, including generally operating their business or engaging in any telemarketing activities whatsoever. The Court also appointed the Receiver as receiver of the "Receivership Defendants," a term defined as the non-individual Defendants herein, and charged him with various duties.

This report outlines the Receiver's efforts, since his appointment, to complete his duties as set forth in the TRO. The Receiver anticipates filing an expanded report as further information becomes available.

## II. EVENTS OF RECEIVERSHIP.

### A. Business Premises.

The Court entered the TRO on June 4, 2019. Counsel for the Plaintiffs provided the Receiver with copies of the Complaint, the Motion for TRO and its supporting materials, and the TRO on June 6, 2019. At that time the Receiver learned that the Receivership Defendants were engaging in a lower-interest rate telemarketing business (known as "LI"), but there was no known office address for the Receivership Defendants. The Receiver subsequently learned that the Defendants maintained a small office at 3700 Commerce Drive, Kissimmee, Florida. However, they leased that office only within the prior two weeks, and they maintained no business records there. The Receiver has obtained the keys from the individual defendants and has secured the office.

### B. Discussions with the Defendants and Subsequent Meeting.

Because the Receiver was not aware of the location of the Defendants' business operations, he opted for a strategy of waiting to be contacted by the Defendants after

they became aware of the TRO. The Receiver also located e-mail addresses for the Defendants Raymond Gonzalez and Joshua Hernandez, and he sent copies of the Complaint and TRO to them with a request that they contact him. Simultaneously, the Plaintiff contacted all of the Defendants' banks and financial institutions to advise them that the Defendants' bank accounts had been frozen under the TRO. The banks promptly froze the accounts, and then provided information to the Defendants concerning how to contact the Plaintiff and the Receiver.

The Receiver received a telephone call from the Defendants Gonzalez and Hernandez on June 7, 2019. They acknowledged receiving the Complaint and TRO. They told the Receiver that they did not feel they had done anything wrong. The Receiver explained the effect of the TRO and requested an opportunity to meet with them, but they declined, stating that they wanted to employ counsel first. They said they were considering hiring their corporate attorney but were concerned that he did not have the necessary experience to handle litigation.<sup>1</sup> They requested that the Receiver recommend attorneys; the Receiver recommended three attorneys with experience representing Defendants in FTC/SEC enforcement actions.

The Receiver also located a telephone number for the Defendant Carlos Guerrero, and called him on June 7, 2019. Mr. Guerrero stated that he was aware of the lawsuit but had not seen the suit papers because he had just returned from a trip to New York. The Receiver offered to e-mail the papers to him, and Mr. Guerrero provided an e-mail address. The Receiver then e-mailed the Complaint and TRO to Mr. Guerrero.

---

<sup>1</sup> The corporate attorney, Coleman A. Watson, has not yet been interviewed by the Receiver.

The Receiver subsequently was contacted by attorney Robert Eckard, who advised that he would represent the Defendants. The Receiver requested information concerning the Receivership Defendants, including

- (i) Completed financial disclosures (as required under the TRO);
- (ii) A list of all work locations or offices for the Receivership Defendants, plus keys/access cards so that the Receiver could enter;
- (iii) Passwords for all computers located in the office facilities, plus passwords for all software programs;
- (iv) Login information for accounts with all bank/financial institutions, Google Docs,<sup>2</sup> and the US Postal Service;
- (v) Access to WhatsApp<sup>3</sup> or other work-related message services;
- (vi) Copies of tax returns (included as part of item (i) above);
- (vii) IRS form W-2s and 1099s issued by all of the Receivership Defendants; and
- (viii) A list of all of the companies' employees/independent contractors.

The Receiver met with the Defendants and their counsel at Mr. Eckard's office at approximately 3:00 p.m. on Tuesday, June 12, 2019. All of the Individual Defendants were present. At that meeting the Individual Defendants turned over to the Receiver two

---

<sup>2</sup> Google Docs is a word processor included as part of a free, web-based software office suite offered by Google with its Google Drive service. It includes Google Sheets (a spreadsheet program similar to Excel) and Google Slides (a presentation program similar to Power Point). In the Receiver's experience, telemarketing companies frequently utilize Google Docs to maintain most of their business records.

<sup>3</sup> WhatsApp is a free message and Voice over IP (VoIP) service. It is owned by Facebook. With WhatsApp users can send and receive encrypted text and voice messages, and also make telephone calls. In the Receiver's experience, telemarketing companies frequently utilize WhatsApp. For a discussion concerning VoIP generally, *see* fn. 8, *supra*.

laptop computers, one from each of Mr. Gonzalez and Mr. Hernandez, which contained a significant amount of the ESI for the Receivership Defendants. The Defendants also turned over to the Receiver keys for three post office boxes owned by the Receivership Defendants and the keys for the Commerce Drive office. The Defendants advised that the names and contact information for all of the employees of the Receivership Defendants was located in the ESI on the laptops.<sup>4</sup> The Defendants provided password information for their Skype accounts, as well as for the Google Docs programs. They also said that they utilized a CRM program call Less Annoying, and they provided the login information for that program.<sup>5</sup>

C. Additional Receivership Entities.

Under the Court's June 4, 2019 TRO, the Receiver is appointed as receiver for the "Receivership Entities," a term defined to include the six Receivership Defendants, plus

any other entity that has conducted any business related to the marketing, promotion, offering for sale, or sale of Defendants' credit card interest rate reduction service, including receipt of Assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant.

TRO, pp. 6-7.

The Receiver learned that the non-parties United Choice Plus, LLC, Southern Pride LLC, Financial Service Trust LLC, Southern Choice LLC and Sun Premier LLC (collectively, the "New Receivership Entities") were involved with receiving funds from consumers in connection with the marketing, promotion, offering for sale, or sale of the LI

---

<sup>4</sup> Mr. Gonzalez said that all of the employees worked from their homes.

<sup>5</sup> Customer Relationship Management, or CRM, is a management process under which a company utilizes data analysis about its customer's relationship history with the company. It is dependent on data concerning customers. CRM software assembles and analyzes the data. The Defendants utilized their Less Annoying CRM program for all data concerning their telemarketing customers.

product or service that is the subject of the Plaintiff's lawsuit. In fact, they received over \$2.4 million from consumers and forwarded those funds to one or more of the Defendants. The Receiver therefore invoked the provision of the TRO, quoted above, to declare that the New Receivership Entities were subject to the Receiver's receivership. The Individual Defendants acknowledged that they had created the New Receivership Entities for various purposes (discussed below), and they did not object to the Receiver's declaration. *See Receiver's Notice of Identifying Additional Receivership Entities* (doc. no. 16) filed herein on June 13, 2019.

D. Depositions.

The Receiver scheduled depositions of all off the Defendants for June 18 and 19, 2019.<sup>6</sup> Transcripts have been ordered, but the Receiver summarizes the depositions as follows:

Mr. Gonzalez claimed to be operating the companies. He said that his companies engage only in the fulfillment aspect of the LI telemarketing program. He claimed that outbound calls were placed by "rooms"<sup>7</sup> that he hired through telemarketing brokers, including among others Pinnacle Business Fundings, LLC, Intermedia Networking,

---

<sup>6</sup> Under the "Expedited Discovery" provisions of the TRO, the Court authorized the Receiver to set depositions on 48 hours' notice. *See* TRO, Section XIV (page 32).

<sup>7</sup> In the telemarketing business a "room" is a "call room", sometimes referred to as a "boiler room," where calls are handled. Sometimes, as was the case with the Defendants' telemarketing operations, the initial outbound call to consumers is placed by an autodialing machine or software program; when a customer answers, a pre-recorded message plays pitching the product or service offered for sale, whether an LI product or service, a debt elimination product or service, a burial insurance product, raspberry ketone weight loss products, etc. If a customer is interested in an LI product or service, the robocall will be switched to a "fronter," or a live telemarketer located in a "room." The fronter's functions with regard to an LI product or service are (i) to confirm the customer's interest, (ii) to determine whether the customer will be able to pay, and (iii) to obtain information from the customer as to the amount of credit card debt owed, and the amount of available credit. If the customer satisfies the "fronter," then the call is forwarded, in this case, to the Receivership Defendants, for fulfillment.

Techcore LLC, and Optimal Marketing Inc. The rooms, which were located outside of the country, would contact consumers by placing outbound VoIP calls<sup>8</sup> that played a recorded message to consumers who answered. Mr. Gonzalez admitted that he did not know how the rooms selected the customers they called, and he said he did not know what precisely was said either on the recorded message that was played to consumers, or by live telemarketers. Mr. Gonzalez instructed the rooms to transfer to the Receivership Defendants calls involving consumers who had over \$3,000 in credit card debt and at least \$1,000 in available credit.

When the Receivership Defendants' employees received a transferred call from an interested consumer, the employees began the fulfillment process. This involved the Receivership Defendants applying for a new "zero-interest rate" credit card by submitting an application for a new card on behalf of the consumer, frequently without the consumer's knowledge or consent.<sup>9</sup> If consumers were approved for a "zero-interest rate" card, then the Receivership Defendants would transfer consumer's balances from their existing cards to their new card. Consumers were not told about transfer fees associated with balance transfers.

Mr. Gonzalez testified that the Receivership Entities did not utilize scripts. He said they had never applied for or obtained telemarketing licenses from the Florida Department of Agriculture and Consumer Services. He said the Receivership Entities never

---

<sup>8</sup> VoIP" stands for "Voice over Internet Protocol," which means that calls are placed through the internet and not through telephone networks. VoIP is less expensive than traditional telephone services, and it allows for callers to disguise their telephone numbers by inserting a false number to appear on the recipients telephone screen. This practice, known as "spoofing," is unlawful in the United States under the Truth in Caller ID Act of 2009 if done with the intent to defraud, cause harm, or wrongfully obtain anything of value. See 47 U.S.C. §227(e).

<sup>9</sup> "Zero-interest rate" cards are promotional cards offered by credit card companies to encourage consumers to apply for new cards. The low interest rate typically lasts for only a short period of time, such as three months, before increasing to a market rate of interest.

posted any telemarketing bonds. These are violations of Florida law. *See Fla. Stat. §§ 501.605, 501.611, 501.616.*

Mr. Gonzalez testified that the Receivership Entities did not accept payment in advance for their services. Instead, he claimed that, after the Receivership Defendants "did the work," the companies would request that the consumer send payment by check, virtual check, money order, or remotely-create check to one of the Receivership Entities, at a post office box (in the case of paper instruments) or to the Receivership Defendants' bank accounts.

When received, checks were deposited into bank accounts in the names of one of the Receivership Entities. According to Mr. Gonzalez, First Choice Horizon LLC ("First Choice") and South Premier LLC ("South Premier") were the two "primary" companies.<sup>10</sup> Each of the other Receivership Entities was created for the sole purpose of opening a bank account. This was because, with the high volume of checks deposited and cash withdrawn, banks and financial institutions would frequently close the Receivership Entities' accounts and direct them to take their business elsewhere.

While funds were deposited to accounts owned by Receivership Entities other than First Choice and South Premier, funds ultimately were transferred to those companies, where they were used to fund the business operations, or the Individual Defendants. According to Mr. Gonzalez, the typical cost of "rooms" was 60 percent of collected sales receipts originating from the particular rooms, although he also testified that he was able to

---

<sup>10</sup> First Choice Horizon was the lead company that paid most of the combined Receivership Entities' bills. South Premier Trust functioned as a "common paymaster" company, or the company within a conglomerate that paid employees.

negotiate 50/50 splits with some of the room brokers. Other operating expenses included telephone service, payroll, the cost of equipment (each employee was provided with a laptop and headsets), room brokers, and the Individual Defendants.

According to records supplied by the FTC, Mr. Gonzalez personally received at least \$1,585,872.00 from the Receivership Defendants from May, 2016. Mr. Gonzalez disputed this; he claimed that, while he may have received that much, he in turn wired funds out to the Dominican Republic to pay for employees who resided there.<sup>11</sup> Certainly, Mr. Gonzalez's court-order financial disclosures did not show that he had possession of any unusual amount of cash. The FTC records also showed that Mr. Hernandez received \$426,016.37. Mr. Guerrero's take is discussed more thoroughly below.

Mr. Gonzalez also testified concerning the Receivership Entities' tax returns. From the Receiver's perspective, the returns contained inconsistencies and what appeared to be incorrect data. For most of the Receivership Entities, the entities' "gross sales" were only marginally higher than deductions for unspecified "other costs" and/or "cost of goods sold." Mr. Gonzalez was not able to provide any clarity on this; in particular, while he agreed that a 60/40 split on revenues with the room brokers would still leave 40 percent of the gross for the Receivership Entities, he was not able to explain how the 40 percent was used.<sup>12</sup>

Mr. Hernandez is the half-brother of Mr. Gonzalez. He enlisted in the United States Army and served in Afghanistan as an IED Removal Specialist. He has a permanent

---

<sup>11</sup> Mr. Gonzalez testified that employees who lived in the Dominican Republic were "more loyal." He claimed that he had problems with American employees who would divert funds from consumers to their own bank accounts instead of to the Receivership Entities.

<sup>12</sup> The Receiver suspects, but cannot yet confirm, that funds transferred to Mr. Gonzalez, Mr. Hernandez and Mr. Guerrero might account for some of the unspecified "other costs" and "costs of goods sold," even though placing funds into those categories on tax returns could very well amount to tax fraud, if in fact the funds were paid to the individuals.

disability, to his hearing, he suffered during his service. He received an honorable discharge. He acknowledged that he owned South Premier and that he processed payroll for the employees (although he and Mr. Gonzalez were paid by First Choice, not South Premier). All of the employees were treated as "independent contractors", which means that South Premier did not withhold payroll taxes from paychecks. In this fashion, South Premier avoided having to make the 6.2 percent employer's social security tax; instead, the entire 12.4 percent for SSI was shifted to the independent contractor (it is not clear to the Receiver that this was proper under IRS regulations). Mr. Hernandez testified that South Premier issued IRS form 1099s to its independent contractors. By contrast, Mr. Hernandez testified that he and Mr. Gonzalez were W-2 employees of First Choice.

Some of the employees were paid in cash. Given that South Premier utilized a payroll processing company, this meant that the "cash employees" almost certainly were paid "off the books." The Receiver has just begun the process of analyzing the Receivership Entities' financial data contained in the Google Sheets and hopes to have a more thorough explanation for the Court shortly.

Mr. Guerrero also testified. He was evasive and in several instances provided false answers under oath in response to the Receiver's questions. The Receiver called a break and had a short conversation with Mr. Eckard concerning this subject; thereafter, Mr. Guerrero corrected some of his earlier statements and otherwise appeared to be more willing to provide truthful answers.

Mr. Guerrero at first testified that he knew nothing about telemarketing and that he never engaged in any telemarketing business. After his discussion with Mr. Eckard,

he corrected his earlier testimony to acknowledge that he had learned about telemarketing from someone who told him how it might work. He said that he then contacted Mr. Gonzalez,<sup>13</sup> and the two of them decided to form CSG Solutions Consulting LLC to engage in telemarketing.<sup>14</sup>

Records provided to the Receiver by the FTC showed that Mr. Guerrero received \$886,283.48 from the Receivership Entities from May, 2016. Mr. Guerrero denied this at first, but then stated that he was not sure. While he insisted that he had no role with the Receivership Entities, he could not explain why he received money from them. He said that he transferred some of the money to the Dominican Republic. He claimed to have none left. He testified that he bought a home in the Dominican Republic for USD \$168,000 and let his sister live in it. He claims that he later sold it, for the same \$168,000, and gave all of the money to his sister and other members of his family.

### III. PRELIMINARY ANALYSIS OF THE BUSINESS OPERATIONS

Since 2003, the Receiver has served as a receiver for over 100 companies. Many of these companies were defendants charged with offering an LI product or service through telemarketing. The LI product or service in this case is similar, if not identical, to the other LI products or service offered in other lawsuits: the telemarketer attempts to qualify the consumer for a "zero-interest rate" or "teaser rate" credit card and then transfer existing credit card balances to the new card. By doing this, it is argued, the consumer will save money

---

<sup>13</sup> CSG Solutions Consulting LLC, which is not a party to this action and which ceased operations as of approximately May, 2016, is a Florida limited liability company that engaged in the telemarketing business. It is not clear to the Receiver whether Mr. Gonzalez had any involvement with the company.

<sup>14</sup> Mr. Gonzalez testified that he knew Mr. Guerrero because Mr. Guerrero at one time dated his mother.

because the interest will accrue at -0-, or at least at a lower rate, than it accrued on the existing cards. There are several problems with this approach:

- It ignores the amounts charged by the telemarketer. Obviously, an account accruing no interest will cost less than an account accruing interest, UNLESS, additional fees are added to the principal balance. Here, the Receivership Entities tried to charge 30 percent of the outstanding balance, and while they would accept less, all of their representation that consumers could save thousands of dollars if the interest rate were lowered to -0- did not account for new charges, including the fee charged by the Receivership Entities.
- It ignores other costs. Transferring a balance from one card to another typically will cause a consumer to incur a 3 to 5 percent balance transfer fee. The Receivership Entities did not disclose this to consumers.
- It falsely states, or at least implies, that the interest rate will be lowered permanently. The "zero-interest" rate credit cards are promotional items. They are not permanent. Within a certain period of time, sometimes as little as three months, the "teaser rates" revert to normal market rates of interest. At that point, there are no interest savings. Mr. Gonzalez claimed that when the promotional period ends the Receivership Companies would simply advise the consumers to open another new "zero-interest rate" credit card and start the process all over again. This, of course, might result in another fee for the Receivership Defendants. The Receiver has seen no evidence that the Receivership Defendants ever obtained a second "zero-interest rate" card for consumers after the "teaser" rate expired.

- It does not disclose the effect on credit scores. A consumer's credit score is affected by opening a new account, and also by closing of old accounts. In fact, opening a new account while simultaneously leaving old accounts open also can negatively affect a consumer's credit score. Mr. Gonzalez testified that he thought that the LI product or service would positively impact a consumer's credit score, but the Receiver's experience is to the contrary.

- It does not disclose that consumers do not need the Receivership Entities to obtain new "zero-interest rate" credit cards. Consumers can apply for new credit cards without the need for paying an intermediary 30 percent of the amounts owed on existing cards. A consumer who needs or wants a new card can easily complete an application, usually online, and usually receive an answer from the credit card company within minutes.

In addition to these problems, the Receivership Entities have run afoul of the Telemarketing Sales Rule and Florida law. The FTC included several declarations whereby a consumer swears that he or she is on the National Do Not Call Registry and still received a telephone call; and that the calls received were "robocalls" that falsely showed a number that was not the real telephone number of the entity placing the call. Mr. Gonzalez testified that he had no idea whatsoever what the "rooms" told consumers before they transferred calls to the Receivership Entities, although he admitted that the Receivership Entities had to spend "a lot of time" correcting misstatements made by the rooms. Mr. Gonzalez was generally aware that the rooms utilized robocalls, and he had no idea whether the rooms screened their telephone lead lists against the numbers contained in the National Do Not Call Registry.

Mr. Gonzalez also testified that the Receivership Entities have not applied for or obtained licenses from the Florida Department of Agriculture and Consumer Services to operate as "commercial telephone sellers" in Florida.<sup>15</sup> This is unlawful.

Mr. Gonzalez also testified that the Receivership Entities were just about ready to offer a credit repair, or "CR," product or service to consumers. Under their version of a CR program, the Receivership Entities intended to offer to consumers to negotiate with credit card companies to eliminate all interest, and not charge further interest, on outstanding balances, in return for consumers' promises to pay the principal balance owed on a fixed term. Mr. Gonzalez was not clear on how the Receivership Entities would charge for this CR product. While Mr. Gonzalez testified that his proposed CR program would increase consumers' credit scores, the fact is that requesting write-offs and interest moratoriums severely and negatively impacts a consumer's credit score. Fortunately, the Receivership Entities had not yet implemented their CR program.

IV. RECEIVER'S DECISION TO SHUT DOWN  
THE RECEIVERSHIP ENTITIES' BUSINESSES.

Under Section XIV.T of the TRO (page 23), the Court directed the Receiver to "[s]uspend business operations of the Receivership Entities if, in the judgment of the Receiver, such operations cannot be continued legally and profitably." Here, the businesses operate in violation of Florida law for failure to apply for or obtain telemarketing licenses, failure to post a required telemarketing bond, and failure to submit telemarketing scripts for approval. The businesses also operate in violation of federal law; the Receivership Entities

---

<sup>15</sup> There is no legitimate argument that the Receivership Entities did not engage in "commercial telephone solicitations" as that term is defined at Fla. Stat. §501.603(1). As such, the Receivership Entities are required, under Florida law, to obtain telemarketing licenses and post the required telemarketing bonds.

rely on overseas rooms to refer potential customers, but the Receivership Entities have absolutely no idea of what these rooms say to consumers, or who the rooms contact, or whether consumers contacted are listed on the National Do Not Call Registry. Given the substantial and, as yet, unrebutted complaints from consumers, the Receiver has to conclude that the overseas rooms make material misrepresentations to consumers likely to mislead them.<sup>16</sup>

Moreover, the Receivership Entities themselves omit to disclose material facts, such as how much they charge, what other charges are likely (including balance transfer fees), the effect on credit scores, and why consumers need the Receivership Entities at all in order to apply for new credit cards. The Receivership Entities even make false statements, insofar as they tell consumers that they can "permanently" reduce their credit card interest rates to -0-. And, the Receivership Entities frequently applied for new credit cards on behalf of consumers without the consumers' authorization or consent.

In light of the foregoing, the Receiver has concluded that the Receivership Entities have not operated "legally." To operate "legally," all of these concerns would need to be addressed. But, if consumers were told the truth about the LI program, it is likely that far fewer would agree to proceed. Thus, correcting the deficiencies noted above would preclude the Receivership Entities from operating "profitably."<sup>17</sup>

---

<sup>16</sup> In other words, the Receivership Entities' business practices involve material representations or omissions that would likely mislead consumers, acting reasonably under the circumstances. *FTC v. Tashman*, 318 F.3d 1273 (11<sup>th</sup> Cir. 2003).

<sup>17</sup> It is not clear to the Receiver whether the Receivership Entities operated "profitably" even while operating "illegally." The Receiver is analyzing the financial data of the Receivership Entities. At a minimum, it is a virtual certainty that the tax returns contain incorrect and inconsistent information.

For these reasons, the Receiver has determined that the Receivership Entities cannot be operated.

V. FUNDS RECOVERED

Attached as Composite Exhibit "A" are spreadsheets showing the amount of funds recovered to date by the Receiver. They total slightly more than \$50,000.

VI. FEES AND COSTS.

Through June 21, 2019, the Receiver personally has recorded 79 hours on this matter. At his agreed discounted hourly rate of \$350.00, his fees would total \$27,650.00. The Receiver also has incurred \$321.90 in reimbursable costs.<sup>18</sup> The Receiver's fees and costs are described in further detail on the attached Exhibit "B."

VII. CONCLUSION.

The Receiver invites the questions and comments of the Court and the parties.

/s/ Mark J. Bernet, Receiver  
Mark J. Bernet, Receiver  
Florida Bar no. 606359  
401 E. Jackson Street, Suite 1700  
Tampa, Florida 33602  
Telephone: (813) 223-7333  
Facsimile: (813) 218-5495  
Email: [mark.bernet@akerman.com](mailto:mark.bernet@akerman.com)  
Secondary: [judy.barton@akerman.com](mailto:judy.barton@akerman.com)

---

<sup>18</sup> Costs do not include court reporter fees, fed ex charges or labor charges associated with sending someone to secure the Receivership Entities' business premises in Kissimmee.

CERTIFICATE OF SERVICE

I certify that on June 27, 2019, a copy of the foregoing was served by e-mail to Barbara E. Bolton, Esquire and Michael A. Boutros, Esquire, Attorneys for Plaintiff, Federal Trade Commission, 225 Peachtree Street, N.E., Suite 1500, Atlanta, Georgia 30303, e-mail: [bbolton@ftc.gov](mailto:bbolton@ftc.gov) and [mboutros@ftc.gov](mailto:mboutros@ftc.gov); and to Robert D. Eckard, Esquire, and Beth Ann Tobey, Esquire, Law Office of Robert Eckard and Associates, P.A., 3110 Palm Harbor Blvd., North, Palm Harbor, Florida 34683, e-mail [robert@roberteckardlaw.com](mailto:robert@roberteckardlaw.com), [bethann@roberteckardlaw.com](mailto:bethann@roberteckardlaw.com).

/s/ Mark J. Bernet

\_\_\_\_\_  
Mark J. Bernet, Receiver

**First Choice Horizon LLC**

**Valley National Bank Money Market Acct. no. XXXXXXXXX5588**

<u>Date</u>	<u>Description</u>	<u>Credit</u>	<u>Debit</u>	<u>Balance</u>
06/14/2019	DEPOSIT (check from BOA re First Choice Horizon \$27,554.48)	25,054.48		25,054.48
06/17/2019	DEPOSIT (check from Addition Financial re Joshua Hernandez)	24,468.42		49,522.90
06/21/2019	DEPOSIT (checks from MidFlorida re Carlos Guerrero)	2,047.87		51,570.77

**First Choice Horizon LLC**

**Valley National Bank Checking Acct. no. XXXXXXXX0986**

<u>Date</u>	<u>Description</u>	<u>Credit</u>	<u>Debit</u>	<u>Balance</u>
06/14/2019	DEPOSIT (check from BOA re First Choice Horizon \$27,554.48)	2,500.00		2,500.00

**Mark J. Bernet, Receiver****INVOICE**INVOICE #19-1016-1  
DATE: JUNE 26, 2019

**TO:**

**FOR:**

MARK J. BERNET, as Receiver FIRST CHOICE HORIZON LLC, et al.

Services rendered and costs incurred for the period 06/04/2019 through

DESCRIPTION	HOURS	RATE	AMOUNT
06/03/2019 – Prepare "First Day" Package – employee questionnaires, Receiver Written privilege Policy, coordinate team responsibilities, arrange for locksmith, etc.	1.5	350.00	525.00
06/04/2019 – Discussions with FTC attorneys re status	0.4	350.00	140.00
06/05/2019 -- Review/analyze Complaint, Motion for TRO and supporting materials and TRO (2.1); correspondence to financial institutions re TRO (includes locating addresses); discussions with FTC attorneys re status, location of defendants (0.6); arrange for "drive-by" of possible operating address for Defendants (0.5); analysis of domains and means of shutting down websites (0.8); prepare 'to-do' lists (0.4);	4.0	350.00	1,400.00
06/06/2019 – ORLANDO TRIP Efforts at locating office addresses for Defendants (1.2); continue preparation of correspondence to Banks re TRO (2.2); telephone calls from Banks re TRO, effect, etc. (0.7); meeting with FTC attorneys re status (0.7); telephone calls and e-mails to/from Defendants re status, TRO, etc. (0.5); prepare status memoranda (0.6) (TRAVEL TIME NOT BILLED)	5.3	350.00	1,855.00
06/07/2019 – ORLANDO TRIP Telephone calls to/from C. Guerrero, J. Hernandez and R. Gonzalez re asset freeze, TRO and scope, etc. (1.4); several telephone calls from attys representing or considering representing Defendants re TRO and its effect, logistics of representation, etc. (0.8); efforts to locate offices for defendants (1.8); internet research re online websites, means of taking down (0.5); telephone calls and e-mails to/from FTC attorneys re status (0.6); telephone calls from financial institutions re TRO and asset freeze (0.8); arrange for meeting on 06/10/2019 with Defendants (0.5); analyze PO boxes and begin efforts to control mail from consumers (1.2); (TRAVEL TIME NOT BILLED)	7.0	350.00	2,450.00

<p>06/10/2019 – ORLANDO TRIP Discussions with individual defendants Hernandez and Gonzalez re financial disclosures, etc. (0.5); telephone calls and e-mails to/from R. Eckard (atty for Defendants) re status, including financial disclosures, location of offices, telephone numbers, dialers, bank accounts, depositions, etc. (1.4); telephone calls from FTC investigator re non-party "Receivership Entities" and their bank account activities, and review bank account records (2.2); call from Addition Financial re funds in account (0.4); further efforts at locating AB Multi Services (accountants for Defendants) to serve subpoena (0.7); discussions with FTC forensic IT examiners/recovery agents re laptops and other Defendant ESI (0.4); (TRAVEL TIME NOT BILLED)</p>	5.0	350.00	1,750.00
<p>06/11/2019 – PALM HARBOR TRIP Discussions with FTC attorneys re service of process, related non-parties, etc. (0.5); discussions with forensic IT examiners/technicians re structure of obtaining and copying ESI from Defendants' laptop computers (0.5); meeting with Defendants and their atty, R. Eckard, re ESI, structure/operations of companies, post office boxes, Skype, etc, (3.9); further discussions with forensic IT examiners concerning ESI on laptops (0.3); telephone call to FTC attys re status, recovery of ESI, etc. (0.3)</p>	5.0	350.00	1,750.00
<p>06/12/2019 – prepare memo re meeting with Defendants and their attorney (0.6); prepare Affidavit of Possession concerning laptops (0.5); discussions with FTC attorneys re non-parties' involvement and need to address their conduct by declaring them "Receivership Entities" under the TRO (0.6); analysis of TRO re ability to declare non-parties subject to receivership and legal research concerning due process implications of same (3.1); work on Notice of Additional Receivership Entities for filing with Court (0.5); meeting with FTC IT Forensic Examiner re laptops (0.4); analysis of financial records from FTC concerning non-party entities and their receipt of funds (2.5);</p>	7.4	350.00	2,590.00
<p>06/13/2019 – Analysis of TRO provisions concerning Receiver's control over non-party related entities (0.8); prepare, revise and finalize Notice of Addition Receivership Entities (includes analysis of financial records concerning funds transfers between Receivership Defendants and related Receivership Entities) (2.2); prepare correspondence to each of United Choice Plus, LLC, Southern Pride LLC, Financial Service Trust LLC, Southern Choice LLC and Sun Premier LLC concerning designating them as "Receivership Entities" under the TRO, demanding turnover of documents, funds, etc. (2.6); prepare letters to financial institutions concerning 5 new Receivership Entities, demanding records and turnover of funds (1.3); telephone call to R. Eckard re 5 new Receivership Entities (0.5); prepare letter to R. Eckard re 5 new Receivership Entities (0.3); telephone calls and e-mails to/from FTC attorneys re status (0.6); meeting with FTC forensic IT examiner re copying ESI from laptops (0.4); open new bank accounts for all 11 Receivership Entities (0.7)</p>	8.5	350.00	2,975.00
<p>06/14/2019 – Coordinate depositions of all defendants and 5 new Receivership Entities (1.1); prepare subpoena duces tecum for each of five new Receivership Entities (3.2); telephone call from JPMorgan Chase re defendant bank accounts (0.2); prepare letter/fax to JPMorgan Chase transmitting requested information (0.2); e-mails to/from FTC attorneys re status (0.5); discussions with R. Eckard re depositions, timing of depositions, possible settlement of claims, money to be released for attorneys/living expenses, etc. (0.8);</p>	5.7	350.00	1,995.00
<p>06/17/2019 – Review financial disclosure forms for all Receivership Entities and for all Individual Defendants and prepare for depositions on 06/18 &amp; 06/19 (6.0); telephone calls and e-mails to/from FTC attorneys re logistics of depositions (0.4); telephone calls and e-mails to/from R. Eckard re logistics of depositions, etc. (0.3); telephone call from forensic IT examiner regarding efforts of Individual Defendants to delete information from laptops (0.3);</p>	6.3	350.00	2,205.00

06/18/2019 – Prepare for and conduct depositions of R. Gonzalez and J. Hernandez (8.0); prepare for deposition of C. Guerrero on 06/19 (1.9)	8.9	350.00	3,115.00
06/19/2019 – finish deposition of J. Hernandez (2.8); continued prep for Guerrero deposition and conduct deposition of C. Guerrero and his related companies (5.4); discussions with FTC attorneys re discovery issues and discussions with R. Eckard re same (0.7);	8.0	350.00	2,800.00
06/20/2019 – Begin preparation of Receiver's Initial Report (2.4); discussions with FTC attys re status of discovery, etc. (0.4); conference call with Defendants and forensic IT examiners concerning access to Google accounts and other ESI of Defendants (1.0); begin review of Googlesheets (accounting information) (1.1)	4.4	350.00	1,540.00
06/21/2019 – Continue on Receiver's Initial Report (1.3); telephone call from R. Eckard re depositions scheduled for 06/25 (0.3); telephone call to FTC attys re recommendation to cancel 06/25 depositions (0.2);	1.6	350.00	560.00
	79.0	350.00	27,650.00

**EXPENSES**

06/06/2019 – Roundtrip Tampa/Orlando (168 miles @ \$0.58/mile)	\$97.44
06/07/2019 -- Roundtrip Tampa/Orlando (168 miles @ \$0.58/mile)	97.44
06/10/2019 -- Roundtrip Tampa/Orlando (168 miles @ \$0.58/mile)	97.44
06/11/2019 – Roundtrip Tampa/Palm Harbor (51 miles @ \$0.58/mile)	<u>29.58</u>
<b>TOTAL EXPENSES</b>	<b><u>\$321.90</u></b>