

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

Case no. 8:24-cv-1459-JLB-AAS

vs.

LEGION MEDIA, LLC, KP COMMERCE, LLC,
PINNACLE PAYMENTS, LLC, SLOAN HEALTH
PRODUCTS, LLC, HARSHIL TOPIWALA,
KIRTAN PATEL, and MANINDRA GARG,

Defendants.

RECEIVER'S INITIAL REPORT

September 5, 2024

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MARK J. BERNET, as receiver for Legion Media, LLC, KP Commerce, LLC, Pinnacle Payments, LLC, Sloan Health Products, LLC, Black Window Group, LLC, F & B Cosmetics, LLC, Face and Body, LLC, H & M Distribution, LLC, HK Distribution, LLC, and Larchwood Distribution, LLC, files his initial report.

PRELIMINARY STATEMENT

The Defendants operated a business venture in which they sold health, diet and nutritional supplements, skin and hair care products, and cosmetics, both in the business-to-business (B2B) and business-to-consumer (B2C) markets. Certain Defendants also manufactured some of the products they sold. While some of the Defendants' B2B operations were and can be operated

legally and profitably, the far larger B2C sales programs were not operated legally, and cannot be. The Receiver accordingly is continuing to operate a portion of the Defendants' B2B operations but has suspended the B2C portion.

Broadly, the Defendants can be divided into two groups. The Legion Defendants, controlled by the Individual Defendant Topiwala and utilizing unlawful sales practices, engaged in B2C sales of products and, with the assistance of non-parties, utilized sophisticated credit card laundering and load balancing techniques to obtain processing accounts and mask the true number of complaints and chargebacks initiated by consumers. The Sloan Defendants, controlled by the Individual Defendant Garg, supplied much of the product sold by the Legion Defendants and supported the B2C sales programs, and Garg also participated in the profits generated by the Legion Defendants. Topiwala and Garg also created and utilized other entities to assist them with their business ventures, many of which the Receiver has added to the receivership.

In this report, the Receiver will detail his efforts and preliminary conclusions formed as of the date hereof. Briefly:

- The Receiver has added additional non-party business entities to the receivership because they (i) participated in the conduct that is the subject of the lawsuit, and (ii) were controlled by one or more of the Defendants;
- The Receiver has suspended the business operations of the Legion Defendants and various related entities added to the receivership; and

- The Receiver is operating a portion of the business of the Sloan Defendants and two related entities added to the receivership.

To assist the reader, the Receiver has included a list of defined terms used in this report. *See* Exhibit “A.”

I. PROCEDURAL BACKGROUND

The Federal Trade Commission commenced this case by filing a Complaint (doc. no. 1) on June 17, 2024, against Defendants Harshil Topiwala, Manindra “Manin” Garg and Kirtan “Kits” Patel (the “Individual Defendants”), as well as Defendants Legion Media, LLC, KP Commercial, LLC, Pinnacle Payments, LLC and Sloan Health Products, LLC (together the “Company Defendants”), alleging that the Defendants operated as a “common enterprise” to commit violations of various provisions of federal law, including:

- Section 5 of the FTC Act, prohibiting unfair or deceptive acts or practices in or affecting commerce;
- Sections 3 and 4 of the Restore Online Shoppers’ Confidence Act (ROSCA), prohibiting merchants from charging consumers for goods or services sold in internet transactions through a “negative option” feature absent specific material disclosures and consumers’ express consent; and
- The Electronic Fund Transfer Act and associated Regulation E, prohibiting preauthorized transfers of funds from consumers’ accounts without consumers’ express written authorization.

On June 18, 2024, the district court entered a Temporary Restraining Order (doc. no. 17) that, among other things, enjoined all of the Defendants from violating the federal laws and rules listed above. The TRO also appointed

Mark J. Bernet as a Temporary Receiver to take control of the Company Defendants to examine their business practices and suspend their business operations unless the Receiver determined they could be continued legally and profitably. TRO, Section XIV.T (page 25).

The Court has extended the TRO through September 9, 2024, by its orders dated June 28, July 15, and August 5, 2024 (doc nos. 28, 63 & 77). The Receiver advises that since the entry of the TRO the parties have been working to agree on a stipulated preliminary injunction and other matters.

II. TAKING CONTROL OF RECEIVERSHIP ENTITIES

A. Preparations for Taking Possession of Business Premises

The Court entered the TRO during the afternoon of June 18, 2024, and the Receiver was notified of his appointment at approximately 3:30 p.m. The attorneys for the Plaintiff subsequently provided copies of the Complaint, their motion requesting a TRO and the TRO to the Receiver. The Receiver learned that the Receivership Defendant Sloan Health Products, LLC (“Sloan”)¹ transacted business from offices in the Westshore area of Tampa. Additionally, it was believed that Sloan operated out of a warehouse located in Smyrna, Tennessee (a suburb of Nashville), where it was thought to store skin and hair care products, cosmetics, and health and nutritional supplements

¹ Sloan is owned and, prior to receivership, was controlled by the Individual Defendant Garg.

that had been returned by the Legion Defendants' customers.² The Receiver determined that he would take possession of both of the Sloan facilities at the same time, and so he sent his Deputy Receiver, Daniel Bernet,³ from Tampa to Smyrna. Because June 19 is a federal holiday, the Receiver determined that he would take possession of Sloan's office and warehouse premises on June 20, 2024. The plan was to remove Sloan's officers, managers and employees from the business premises to assure that Sloan and the other Receivership Defendants ceased performing the acts enjoined under the TRO. The Receiver's original objectives were:

1. To take possession of the Receivership Defendants' business premises and evaluate the nature of the Receivership Defendants' business practices.

2. If the Receiver concluded that the Receivership Defendants were operating their businesses in violation of applicable law, to cause them to cease doing so, including suspending their operations if necessary.

² There was no information to determine where the Receivership Defendants Legion, KP, and Pinnacle operated their businesses, although it was known that they operated websites which they used to sell diet, health and nutritional supplements and other products to consumers.

³ Daniel Bernet is the Receiver's son.

3. If the Receiver determined to suspend the Receivership Defendants' business operations, to remove the management of the Receivership Defendants from the business premises.

4. To secure the Receivership Defendants' business premises and their property and business records located therein.

5. To determine whether the employees of the Receivership Defendants were necessary, and if not, to terminate their employment.

6. To obtain control of all of the Receivership Defendants' bank accounts, accounts receivable and other financial resources.

7. In the event the Receiver determined that the Receivership Defendants were operating their businesses in violation of applicable law, to determine whether, with modifications, they could be operated legally and profitably.

B. Taking Possession of the Sloan Business Premises

The Receiver, his representatives, Plaintiff's counsel and a member of the FTC's Digital Forensic Unit, and law enforcement officials met in Tampa on the morning of June 20, 2024, to coordinate serving the Court's TRO and simultaneously taking possession of Sloan's Tampa offices, located in the Westshore area. Separately, the Deputy Receiver met with law

enforcement officials in Smyrna, Tennessee to coordinate taking possession of Sloan's warehouse.

1. Sloan's Westshore Premises. The Receiver and law enforcement backup entered Sloan's Westshore offices, located at 500 N. Westshore Boulevard, Suite 955, Tampa, Florida (the "Westshore Premises"), at 11:00 a.m. EDT on June 20, 2024. The Receiver announced his presence, described the lawsuit and the TRO to the eight employees who were present, and then directed them to wait in a conference room where they were given copies of the Complaint and TRO. After securing the premises, the Receiver invited the FTC attorneys and forensic IT professional into the office and granted them permission to make digital copies of Sloan's electronically stored information, including accounting records, e-mails, etc. The Receiver also authorized the FTC team to review Sloan's paper records.⁴

The Receiver interviewed Esther Happle, Sloan's CFO. Ms. Happle said that Sloan was engaged in multiple businesses, including purchasing health and nutritional supplements⁵ from manufacturers and brokers and then selling them to third parties. Ms. Happle further advised that part of the Sloan organization was a new company, called F & B

⁴ The Receiver instructed the FTC attorneys that if they discovered any document from an attorney, they were not to review it, but instead to place it in a separate box for the Receiver to review. The Receiver controls the attorney-client privilege for entities in receivership. *Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343, 105 S.Ct. 1986 (1985).

⁵Examples include ginseng and keto pills and capsules, as well CBD gummies.

Cosmetics, LLC (“F & B”), that manufactured and sold skin and hair care products and cosmetics. Ms. Happle estimated that approximately 30 percent of Sloan’s 2023 sales were to the Receivership Defendant KP Commerce, LLC (“KP”) (the Receiver subsequently determined the actual number was 51 percent), while the remainder was “white label” sales to brokers who in turn sold the products to retailers, like Sephora (www.sephora.com). While Ms. Happle knew that Sloan sold products to KP and its successor, the non-party Larchwood Distribution, LLC, she was not aware that those companies engaged in credit card laundering,⁶ or that they charged consumers for goods or services sold in internet transactions by utilizing a “negative option” feature, or that they charged consumers’ accounts without their prior authorization.⁷

As a complete surprise, Ms. Happle explained that the Smyrna “warehouse” was, in fact, a manufacturing facility at which Sloan and F & B manufactured diet and nutritional supplements (Sloan), as well as skin and hair care products and cosmetics (F & B). Sloan and F & B are owned by the

⁶ Credit card laundering involves a business's use of a credit card processing account owned by another person to process credit card transactions. The practice is unlawful, and potentially illegal if it involves intentional, knowing misrepresentations made through the use of mail, a telephone call or an electronic communication. *FTC v. Electronic Payment Solutions of America, Inc.*, 482 F. Supp. 3d 921 (D. Ariz. 2020); 18 U.S.C. §§ 1341, 1343.

⁷ When the Receiver first arrived Ms. Happle contacted one of Sloan's attorneys, Bradley Cebeci. Cebeci instructed her not to cooperate with the Receiver and not to allow access to Sloan's ESI or paper records. The Receiver sent a copy of the TRO to Cebeci, but he did not change his instruction. After robust discussions between Cebeci and the Receiver, Cebeci relented and directed Ms. Happle to cooperate. The Receiver subsequently learned that Cebeci was involved, not-insubstantially, with the Legion Receivership Entities' pre-receivership efforts involving credit card laundering and load balancing.

Individual Defendant Garg, who also is a 50 percent owner of a third operating company, the non-party H & M Distribution, LLC (“H & M” which, together with Sloan and F & B, are referred to as the “Garg Companies”).⁸ Ms. Happle said that the Garg Companies employed 130 people.

The Receiver interviewed Ms. Happle for over four hours and learned that the Garg Companies are haphazardly integrated. For example, the Smyrna manufacturing facility is a 110,000 sq. ft. building leased solely in the name of Sloan, even though F & B and H & M occupy as much space, if not more. Similarly, all of the manufacturing equipment is owned, and financed, by Sloan, even though significant portions are utilized exclusively by F & B. A further analysis is contained in Section III.A below.

Ms. Happle provided the Receiver with rudimentary financial information⁹ of the Garg Companies. From this, the Receiver was able to ascertain, on a preliminary basis, the following:

- Slightly more than half of Sloan’s gross revenues for 2023 derived from sales to KP and other entities controlled by Topiwala (discussed below). KP and its sister company, the Defendant Pinnacle

⁸ H & M, standing for "Harshil & Manin," is a fulfillment company that picked, packed and shipped products sold by the Legion Receivership Companies to consumers. H & M is owned 50/50 by the Individual Defendants Topiwala and Garg, and operates out of the Midway Plant with Sloan and F & B. Garg controlled H & M.

⁹ By "rudimentary" the Receiver means that the records for 2024 were incomplete. The 2023 records, however, were substantially completed, although the Receiver noted that many (as in dozens) of "expense" entries depicted items that are not proper expense items.

Payments, LLC (“Pinnacle”), engaged in B2C sales and utilized unlawful “negative options” as part of their sales strategies.¹⁰ KP and Pinnacle also charged consumers’ credit cards without authorization. *See* Section III below.

- The remainder of Sloan’s 2023 sales were B2B sales to third parties that, from all appearances, were not unlawful.
- Sloan was profitable in 2023 and would have been profitable even if all sales to KP and Pinnacle were eliminated.
- F & B was not profitable in 2023, primarily because it was a start-up. However, the trend for 2024 suggested that it was on its way to becoming profitable.

2. The Midway Plant. At 10:00 a.m. CDT the Deputy Receiver, accompanied by law enforcement officials, took possession of Sloan’s “warehouse” located at 1900-1998 Midway Lane, Smyrna, Tennessee (the “Midway Plant”). Instead of the expected storage/warehouse facility with perhaps five employees, the Deputy Receiver discovered that the “warehouse” was a manufacturing plant with approximately 130 employees. The Deputy Receiver’s initial plan had been to take possession of the warehouse, send the employees home and change the locks to secure the premises. The Deputy

¹⁰ Based on incomplete records for the 2024 fiscal year, the percentage of sales to KP and Pinnacle had fallen to approximately 35 percent. Some of those sales, however, were redirected to the Receivership Companies Black Window and Larchwood, which employed the same unlawful sales strategies that KP and Pinnacle utilized.

Receiver instead met with the plant manager and the HR director and determined that there were approximately 130 employees operating eight “kettles” and other manufacturing equipment on multiple shifts for Sloan and F & B.¹¹ The Deputy Receiver sent the employees home, and then contacted the Receiver to discuss next steps.

C. Determining whether the Receivership Entities were Operating Illegally. The FTC provided sworn affidavits attesting to specific instances whereby the Legion Defendants engaged in unlawful B2C sales strategies by utilizing “negative options” and other unlawful means to charge customers’ debit and credit card accounts without their authorization. The FTC also provided substantial evidence that the Legion Defendants engaged in credit card laundering, an unlawful practice. *See* fn. 6, *supra*. The Receiver discovered nothing to challenge these assertions, and the Legion Defendants since have made no effort to show that they are incorrect. The Receiver therefore accepted the allegations as true and determined that he would suspend the business activities of the Legion Defendants. *See* TRO, Section XIV.T (page 25). The Receiver subsequently verified that the Legion Defendants obtained bank accounts and merchant processing accounts by

¹¹ “Kettles” are 250+ gallon kettles in which Sloan and F & B manufacture cosmetics, skin and hair care products, and diet and nutrition supplements. Sloan and F & B have other equipment used for bottling, labelling, testing and making and filling pill capsules, among other things.

submitting false applications, and that they also utilized the services of non-parties to engage in “load balancing” actions designed to hide the number of consumer complaints and chargeback claims received on their card processing accounts. *See* Section III below. The Receiver concluded that such actions confirmed that the Legion Defendants were not operating legally.

Sloan’s financial records showed that just over 50 percent of its 2023 revenues derived from sales to the Legion Defendants, and the Receiver determined that such sales must cease because the Legion Defendants employed an unlawful B2C sales strategy. However, after backing out the sales to the Legion Defendants, the Receiver believed that Sloan could be operated legally and that, even without the revenues from the Legion Receivership Companies, Sloan still was profitable.

D. Removing Management. The Legion Receivership Defendants are controlled by the Individual Defendant Topiwala, a resident of the United Kingdom. Given that the Receiver determined to suspend the business operations of the Legion Receivership Defendants, he directed that those companies, and their customers and business partners, should no longer take direction from Topiwala or Patel.

Sloan is owned and was controlled by the Individual Defendant Garg. Garg took millions of dollars from Sloan, much of which he improperly attempted to deduct as business expenses. Garg also had a direct relationship

with the Legion Receivership Defendants and their affiliates Black Window Group, LLC (“Black Window”) and Larchwood Distribution, LLC (“Larchwood”),¹² including a profit participation agreement under which he shared in the profits generated by the Legion Receivership Companies from their B2C sales. The Receiver therefore removed Garg from Sloan’s management, although the Receiver retained the vast majority of Sloan’s managers and employees (including Ms. Happle, its CFO).

E. Securing Business Premises. As of June 20, 2024, the Receiver was not aware of any premises from which the Legion Defendants operated their business, and so it was not necessary to secure their business premises.

Sloan operated from the Westshore Premises (corporate offices) and from the Midway Plant (manufacturing/warehouse facility). Given the Receiver’s decision not to suspend Sloan’s business operations, there was no need to secure these facilities.

F. Determining whether Employees were Necessary. Because he determined to suspend the business operations of the Legion Receivership Defendants, the Receiver concluded that none of their employees were necessary. On the other hand, the Receiver did not suspend the operations of

¹² The Legion Receivership Defendants (Legion, KP and Pinnacle), together with Black Window and Larchwood, collectively are referred to as the “Legion Receivership Companies.”

Sloan, and in fact he expanded the receivership to include F & B and H & M, as discussed in more detail in Section III below. F & B (which manufactures skin and hair care products, as well as cosmetics) and H & M (a fulfillment company that picks, packs and ships products to customers) both operate out of the Midway Plant. The Receiver retained the vast majority of the employees of Sloan, F & B and H & M (together the “Sloan Receivership Companies”).

G. Obtaining Control of Bank Accounts, Accounts Receivable and Other Financial Resources. This section is broken into two parts.

1. The Legion Defendants. Shortly after his appointment, the Receiver learned that Topiwala was in the process of shifting the operations of the Legion Receivership Defendants to Black Window and Larchwood.¹³ Because they were controlled by the Individual Defendants and engaged in the exact same business as the Legion Receivership Defendants (Legion, KP and Pinnacle), the Receiver declared Black Window and Larchwood as “Receivership Entities” under Section XIV.U of the TRO.¹⁴ The Receiver’s decision has not been challenged.

¹³ Black Window's bank account application with SSB Bank showed that "Ruth Solis" claimed to be its owner and manager, while Larchwood's account application showed "Chloe Arias" as its owner and manager. Ms. Solis, who is an employee of Sloan and who had a romantic relationship with Garg, was paid \$5,000 per month by Black Window for posing as its owner and manager. Ms. Arias, who is Garg's current spouse, lives on Larchwood Place in Riverside, California. Larchwood paid Ms. Arias \$5,000 per month for posing as its owner and manager. Notwithstanding all of this, Topiwala owned and controlled Black Window, and Topiwala and Garg owned and controlled Larchwood.

¹⁴ It is not uncommon for entities engaged in fraudulent business activities to re-name themselves, or to shift their operations to new, differently-named entities, when financial

The Legion Receivership Companies (Legion, KP, Pinnacle, Black Window and Larchwood, *see* fn. 12 *supra*), all maintained bank accounts with SSB Bank, formerly Slovak Savings Bank, a small bank in Pittsburgh.¹⁵ The total in those accounts was approximately \$16 million.¹⁶ Because it is a small bank, SSB expressed concern that a sudden withdrawal of all the money would amount to a “bank run” that could leave SSB with less than its government-required capital. *See* 12 CFR §§324.10 *et seq.* The Receiver therefore agreed to withdraw \$7 million and leave \$9 million in SSB, on condition that it pay 4.25 percent interest on the money. SSB agreed to this proposal. The Receiver subsequently advised SSB that he would transfer the remaining \$9 million to receivership accounts at other banks over six months, at the rate of \$1.5 million per month.¹⁷

Additionally, the Legion Receivership Companies owned card processing accounts used to collect payments from consumers for their B2C business transactions. When a customer purchased any of the products from

institutions learn they are engaged in suspicious business practices. In this case, Bank of America and JP Morgan Chase both forced the Legion Receivership Defendants to close their accounts and take their business elsewhere due to suspicious behavior. It is likely that SSB Bank in Pittsburgh was one of only a few banks willing to take on the risk associated with high-risk customers such as the Legion Receivership Companies.

¹⁵ According to its unaudited balance sheet, SSB claimed total assets of approximately \$295 million as of December 31, 2023. By contrast, the receivership bank accounts in this case are with Valley Bank (total assets of \$62 billion) and Truist (total assets of \$535 billion).

¹⁶ Curiously, all of the accounts were non-interest bearing.

¹⁷ The Receiver also secured the pre-receivership bank accounts for the Legion Receivership Companies maintained at PNC Bank and Truist.

the Legion Receivership Companies and paid with a credit card the Legion Receivership Company (generally KP or Larchwood, but also Pinnacle and Black Window), as the “merchant,” would seek authorization from the customer’s credit card issuer (the “issuing bank”). This authorization request, and the subsequent capture of the charge, is handled by credit card processing companies. If approved, the funds were paid by the issuing bank and deposited into a merchant account maintained for the benefit of the Legion Receivership Companies with an “acquiring bank” or “merchant bank.”

Money held in a merchant account is owned by the merchant (in this case, the Legion Receivership Companies), and can be withdrawn by the merchant. However, if a customer successfully challenges a charge posted to his or her credit card, then the merchant bank is obligated to refund the amount of the charge to the customer.¹⁸ The merchant bank then must seek reimbursement from the merchant. To protect itself in high-risk industries, a merchant bank may choose to establish a “reserve account.” This account typically is funded with a portion of the merchant’s funds collected in the merchant account, with the amount of the reserve being determined based on the history of chargeback activity for the particular merchant. The merchant

¹⁸ If there is a credit card processor involved, then the obligation to refund payments to customers usually is contractually assumed by the credit card processor. Payment is made to the issuing bank, which then credits the amount to the customer's credit card statement.

bank claims an interest in the reserve account to secure the merchant's obligation to reimburse the merchant bank for any chargebacks it pays.¹⁹

With significant legal support, the Receiver has asserted that credit card reserves held by merchant banks and card processors are "Assets" of the receivership estate that must be delivered to the Receiver. The Receiver will focus on recovering reserves in the near future.

2. Sloan. The Receiver learned that Sloan operated out of common business facilities with two affiliates, F & B and H & M. They had common employees, particularly at the senior manager level, and F & B and H & M both used equipment owned and purchased by Sloan. All were controlled by Garg.²⁰ The Receiver expanded the receivership to include F & B and H & M as additional Receivership Entities.²¹ Sloan, F & B and H & M maintained bank accounts at Bank of Tampa and PNC Bank. Sloan also had several loans from PNC.²² The Receiver closed the Bank of Tampa accounts and transferred the money in them to new receivership accounts at Truist, which the Receiver

¹⁹ For a good discussion of how card processing and chargebacks work, see *FTC v. MOBE, Ltd.*, 2018 WL 4960232 (M.D. Fla. August 8, 2018).

²⁰ H & M is owned 50/50 by Topiwala and Garg but controlled by Garg.

²¹ The Receiver also expanded the receivership to include Face and Body, LLC, a Florida limited liability company co-owned by Garg and an individual named Scott Knox. Garg and Knox had a business falling-out resulting in multiple lawsuits, one of which remains pending but is inactive. A further discussion concerning Face and Body is set forth in Section III below.

²² The loans included two equipment loans and an unsecured line of credit, totaling approximately \$4 million. PNC also loaned money to Garg to enable him to purchase a Rolls Royce automobile; Sloan pledged a \$1 million certificate of deposit to PNC to secure the Rolls Royce loan.

chose because it was best suited to provide treasury services that Sloan *et al.* would need to continue business operations.

In April, 2024, Sloan transferred \$650,000 to the trust account of Rosende, Velez & Paul, PLLC, a law firm in Doral, Florida, in connection with Garg's investment in a partnership that was purchasing an ambulatory surgery center. After applying amounts to deposits associated with the purchase, the Rosende law firm was holding \$489,000 in its trust account as of the commencement of this lawsuit. On June 20, 2024, the Receiver personally spoke with Garg and advised him that the Court's TRO placed the Receiver in charge of Sloan, and also enjoined Garg from transferring or concealing any of his or Sloan's assets. Notwithstanding this, on June 24, 2024, Garg personally contacted the Rosende law firm and provided written instructions directing it to transfer the \$489,000 to a friend of Garg's "for various deals that are upcoming and Mr. Garg plans on investing in." Garg signed that document "Manindra Garg Authorized Representative of Sloan Health Products, LLC." Garg's actions violated at least two provisions of the TRO. The Receiver was able to recover the \$489,000, which he has deposited into a Sloan account with Valley Bank.

H. Determining whether the Receivership Entities can be Operated Legally and Profitably. As noted above, the Receiver determined that the Legion Receivership Companies (including Black Window and

Larchwood), could not be operated legally and profitably. This conclusion was premised upon (i) the sworn evidence submitted by the Plaintiff in its motion requesting the TRO, and (ii) the lack of any effort on the part of the Legion Receivership Companies or Topiwala to demonstrate otherwise. The Receiver therefore suspended the business operations of the Legion Receivership Companies.

The Receiver determined that Sloan and F & B could be operated legally and profitably, provided they no longer participated in sales of product to the Legion Receivership Companies. With that modification, the Receiver has continued to operate Sloan and F & B. H & M, which provided fulfilment services to the Legion Receivership Companies, is not operating profitably after ceasing to provide services for those companies, but the Receiver believes that it may become profitable in a new business venture that will involve selling products manufactured by Sloan and F & B.

Face and Body, the predecessor to F & B, was not operating profitably; in fact, it was not operating at all. The Receiver has suspended all business operations for that Receivership Entity, but he included it in the receivership for the reasons discussed in Section III.B below.

Finally, the Receiver declared the non-party HK Distribution, LLC (“HK”) to be subject to the receivership. HK was a fulfillment company owned by the Individual Defendant Topiwala and operated by the Individual

Defendant Patel. It leases a warehouse in Tampa at which it receives skin and hair care products and cosmetics (including some manufactured by F & B) as well as diet and nutritional supplements (including some manufactured by Sloan), and then picks, packs and ships product to consumers who purchase such products through the websites of the Legion Receivership Entities. HK was engaged almost exclusively in B2C sales for the Legion Receivership Entities, and the Receiver has determined to suspend its business operations for the near term. However, it is possible that the Receiver may choose to begin HK's operations again after he finalizes a business plan concerning the Sloan Receivership Companies.

III. NATURE OF DEFENDANTS' BUSINESS OPERATIONS

The following is the Receiver's analysis of the business operations of the various Receivership Entities.

A. The Common Enterprise of the Individual Defendants, Sloan, F & B, H & M, Legion, KP, Pinnacle, HK, Black Window, Larchwood and Cicack Holdings. The Individual Defendant Topiwala created and, with the Individual Defendant Garg,²³ controlled a combined B2C business enterprise that sold health and diet supplements, skin care products, hair care products, cosmetics and health and wellness resources to consumers.

²³ The Individual Defendant Patel, the brother of a former romantic interest of Topiwala, operated HK as a fulfillment company. He also signed merchant account applications on behalf of KP, although there is no question that HK and KP were controlled by Topiwala.

Topiwala’s companies – at first Legion, HK, KP and Pinnacle, then later adding Black Window and Larchwood – operated dozens of websites offering consumer products for sale. The sales included “negative options” whereby consumers were enrolled into continuity plans with recurring charges without their consent. Consumers also were charged for add-on online memberships without their knowledge or consent. The FTC estimated that KP and Pinnacle, the two Legion Defendants with consumer-facing exposure, generated approximately \$300 million in revenues between November 2021 and November 2023 through their “negative option” and unauthorized add-on practices (*see Ex Parte TRO Motion*, fn. 4 (page 7)) citing PX2 (Agwarwal Decl.) at ¶¶)).²⁴

KP operated consumer-facing sales sites. Of the Legion Receivership Companies, KP had the vast majority of sales to consumers. Pinnacle charged customers for unwanted “add on” products that were automatically included, without customers’ consent, to KP’s sales. KP and Pinnacle ceased operating at the end of 2023 and were replaced by Larchwood and Black Window respectively. *See* fns. 13 & 14, *supra*, and accompanying text.²⁵

²⁴ KP's federal tax returns reportedly were prepared by Topiwala, who is not an accountant. KP's 2022 federal tax return shows gross revenues of more than \$67 million. KP's 2023 federal tax return shows gross revenues of more than \$222 million. As discussed in more detail below, Sloan's accounting staff maintained financial records not only for the Sloan Receivership Companies but also for most of the Legion Receivership Companies.

²⁵ In addition to having Bank of America and JPMorgan Chase terminate their relationships, KP and Pinnacle's primary processor, Moov also terminated its relationship with them.

Topiwala and Garg used Larchwood and Black Window to open additional merchant accounts for the B2C enterprise with individuals who served as nominal owners on the merchant account applications.²⁶ Proceeds from transactions processed through these merchant accounts were transferred to bank accounts set up in the names of Black Window and Larchwood, which then would re-transfer money to accounts in the name of Legion and Sloan.

Topiwala and Garg also used merchant accounts opened by another entity, Cicack Holdings, LLC,²⁷ for the B2C enterprise. Proceeds from transactions processed through Cicack Holdings merchant accounts were deposited into a Cicack Holdings bank account at SSB, which then transferred money to accounts in the name of Legion and Sloan as well as other Cicack accounts. These transfers were pursuant to an agreement between Topiwala, Garg, and Cicack to split profits from Defendants' sales processed through the Cicack merchant accounts. Under this agreement, the Defendants received 76 percent of such profits, and Cicack (together with another BankCard USA employee, Alex Nelson) received the other 24 percent. Cicack Holdings also

²⁶ Black Window merchant account applications listed Ruth Solis (a Sloan employee and a former romantic partner of Garg) as its 100 percent owner. Larchwood merchant account applications listed Chloe Arias (Garg's current spouse) as its 100 percent owner.

²⁷ Cicack Holdings is a Texas limited liability company created in March 2022 by Charlie Cicack. Cicack was employed by BankCard USA (a payment processing entity), although after the commencement of this lawsuit (i) his profile was removed from BankCard USA's website, and (ii) he removed all references to BankCard USA from his LinkedIn profile.

utilized the accounting staff of Sloan and F & B to receive and pay its vendor invoices.²⁸ Cicack Holdings generated gross revenues of more than \$50 million in 2022 and 2023 (this was the amount deposited into its SSB bank accounts), although the Receiver cannot say that all of it was derived from the sale of products sold by Defendants.

The practice of recruiting others to open card processing accounts, which includes (and in this case included) false representations made to merchant banks and processing companies, is called credit card laundering. The Legion Receivership Companies' credit card laundering was designed to disguise the true nature of their unlawful or high-risk activities, and possibly violated federal criminal wire and mail fraud statutes. *See* 18 U.S.C. §§1343 & 1334.

The Legion Defendants, along with Garg, also engaged in "load balancing" activities designed to thwart fraud detection safeguards employed by merchant banks and card networks such as Visa, Mastercard, American Express and Discover. Typically, payment processors will establish a certain threshold of chargeback activity that will be permitted, but if a merchant's

²⁸ Sloan and F & B's accounting staff worked with CPAs to prepare tax returns for Sloan, Face and Body, and H & M. Sloan and F & B's accounting staff also provided financial information to Topiwala, who personally prepared federal tax returns for Legion, KP, Pinnacle, and HK. Cicack Holdings generated \$50+ million in revenues in 2022 and 2023, although Cicack and Nelson declined the offer from Sloan/F & B's accounting staff to provide relevant financial information necessary for Cicack Holdings to file tax returns. The Receiver does not know if Cicack Holdings filed federal tax returns.

chargebacks exceed the threshold,²⁹ then the merchant account may be suspended or closed. To manipulate the chargeback load, Topiwala and Garg, along with Cicack Holdings, created a series of merchant identification accounts (MIDs) under each of their processing accounts, with the intent of using them to manipulate chargeback-to-transaction ratios by, essentially, transferring charges and chargeback claims among the dozens of MIDs they created.³⁰

Not surprisingly, the Legion Receivership Companies generated a significant amount of chargeback activity. Customers also returned the products they received, for the primary reason that they believed they had ordered only on a single occasion and did not want to be in any recurring program. The Legion Receivership Companies attempted to limit the returns by, among other things, making it difficult for consumers to find where products could be returned. Even so, customers were able to determine that the products had been shipped (by H & M) from the Midway Plant, and they returned product by mail to that facility. H & M arranged with the local post

²⁹ Chargebacks are actions initiated by consumers challenging a charge on their credit card statement. The "fraud threshold" for Mastercard is one percent of sales; for Visa, the threshold is 0.65 percent.

³⁰ Cicack and Nelson, utilizing e-mail accounts from Cicack Holdings, BankCard USA, and High Wire Payments, provided reports to Topiwala and Garg showing the money received, and chargebacks commenced, against each of the MIDs. E-mails from Cicack and Nelson also show their participation in helping to manage responses to inquiries from Visa regarding elevated levels of chargeback activity.

office in Smyrna to have the returned product held at the postal facility and then delivered by the post office to the Midway Plant.³¹

The Legion Receivership Companies discouraged customers from returning products and from seeking refunds. Consumers found it difficult to contact customer service, and those that did were told that only partial refunds would be available. H & M was supposed to process all returned items and, in fact, it maintained records of returned product, although it was not always possible for H & M to identify the customer who returned an item. Even so, the Legion Receivership Companies frequently ignored requests for refunds.³²

Sloan and F & B operated out of the Westshore Premises and the Midway Plant.³³ These companies engaged almost exclusively in B2B sales activities (including sales to KP, Larchwood and Cicack Holdings), with little to no B2C sales. Sloan and F & B, along with F & B's predecessor, Face and Body, LLC, manufactured product that the Legion Receivership Companies sold to consumers. Approximately half of Sloan's 2023 sales were to KP, HK and Cicack Holdings and through June 2024 Sloan and F & B sold approximately the same amount of product to Larchwood (KP's successor), HK and Cicack Holdings. The Receiver directed that Sloan and F & B cease selling

³¹ The Post Office placed returned items in Gaylord containers, which are shipping containers measuring approximately 4' high x 4' wide x 6' long. The Post Office generally delivered three to five Gaylords to H & M every week.

³² KP's 2022 federal tax return shows that it claimed no deductions whatsoever for returns.

³³ F & B did not seriously transact business until 2024, and so had few if any sales in 2023.

product to any of the Legion Defendants or Cicack Holdings after his appointment. To assure compliance and otherwise assist with operations, the Receiver directed Sloan and F & B to hire the Deputy Receiver, Daniel Bernet, at \$25 per hour to serve as its acting Chief Operating Officer.³⁴

Sloan and F & B handled the vast majority of the accounting functions for most of the Receivership Entities and for Cicack Holdings, utilizing their accounting staff at the Westshore Premises. Sloan's accounting staff received and paid vendor invoices for Sloan, F & B and H & M (at Garg's direction), KP and Larchwood (at Topiwala's direction)³⁵ and Cicack Holdings (at the direction of Cicack and Nelson). Sloan/F & B's accounting staff also monitored and balanced the bank accounts for Sloan, F & B and H & M, KP and Larchwood, and Cicack Holdings, and even assisted each of those entities with opening bank accounts with SSB and PNC. The accounting staff also worked with outside CPAs to prepare tax returns for Sloan, F & B, H & M and Face and Body. Topiwala and Garg routinely directed the accounting staff on various accounting functions for the Receivership Entities.

The Sloan Receivership Companies were not organized in any systemic fashion. Both the Westshore Premises and the Midway Plant were leased in the name of Sloan. Although F & B and H & M occupied space in

³⁴ Management professionals typically cost \$300 per hour or more.

³⁵ Topiwala's control extended beyond the Legion Receivership Entities; at one point, angered about something, he insisted that one of Sloan's accounting employees be fired.

both facilities, neither had any formal sublease, or even an understanding concerning their share of rent or maintenance expenses.³⁶ Similarly, F & B and H & M utilized equipment owned by Sloan to manufacture, label and ship their products, but had no formal agreement in place to pay Sloan for the use of the equipment. The three companies also shared employees; Ms. Happle, the CFO, received pay checks from both Sloan and F & B, while most other employees were paid only by Sloan (through its payroll company, Paychex). There was no formal arrangement among the Sloan Receivership Companies to allocate employees' salaries.

The Receiver believes that the Sloan Receivership Companies can be operated legally and profitably, and that they have more value as going concerns than they would have if liquidated. The companies have a very good manufacturing facility with state-of-the-art equipment, along with a skilled work force to operate it. The companies face certain challenges, including in connection with their sales and marketing efforts, but the Receiver is confident he can address these.

B. Face and Body. Face and Body, the predecessor to F & B, is a Florida limited liability company formed in 2017 by the Individual Defendant Garg and Scott Knox. Knox, who claimed experience in the business of

³⁶ F & B occasionally would make a payment to Sloan, generally when it had extra cash available.

manufacturing skin and hair care products and cosmetics, located the Midway Plant in Tennessee and persuaded Garg to fund the startup. The company met with moderate success, although in 2020 Knox and Garg sued each other, charging that the other had stolen company property and opportunities. In 2021, Garg obtained a court order dissociating Knox from Face and Body as a discovery sanction. Garg, acting as the sole owner of Face and Body, then transferred all of Face and Body's assets to his new company, F & B. The Receiver is concerned that F & B potentially could have liability to Knox, and so he has negotiated a settlement with Knox, whereby in return for a \$5,000 payment, Knox released all of his claims against Face and Body and F & B.

Face and Body ceased operating in 2021, shortly after Knox and Garg filed their first lawsuit in Tennessee.³⁷ It has no present tangible value, but was included in the receivership because of its relationship to F & B.

C. HK Distribution. HK Distribution, operated by the Individual Defendant Patel but controlled by the Individual Defendant Topiwala, is a fulfillment company operating out of a 25,000 sq. ft. warehouse in Tampa. The Receiver took possession of the facility on July 3, 2024. He changed the locks and secured the inventory contained therein,³⁸ and is in the

³⁷ One F & B employee cynically, but accurately, said that Garg and Knox each correctly accused the other of stealing more than his fair share.

³⁸ The inventory includes approximately 180 pallets, each containing 36 cases, with each case containing an average of 60 bottles of products.

process of seeking to liquidate the inventory. The HK warehouse also contained almost 100 unopened bags of returned product, which caused the Receiver to conclude that HK did not process customer returns, at least not on a timely basis.

The Receiver concluded that HK was owned or controlled by the Individual Defendants Topiwala and Garg, and that it conducted business related to Defendants' marketing or sale of products with a negative option feature, including receiving assets that were derived from activity that is the subject of the Plaintiff's Complaint herein. The Receiver therefore declared HK to be subject to his receivership.³⁹ This has not been challenged.

The Receiver recovered five laptop computers from HK's warehouse facility. Patel has provided passwords for four of the laptops but claims he cannot remember the password for the fifth. Not surprisingly, the fifth laptop likely contains critical information that the Receiver needs to secure and evaluate. The Receiver does not accept Patel's claim of forgetfulness and is contemplating seeking contempt sanctions against Patel.

D. Cicack Holdings. The Receiver determined that Cicack Holdings and its principal, Charles Cicack, were members of the common

³⁹ The Receiver was not aware of the existence or conduct of HK as of the commencement of this lawsuit. Interestingly, when it learned that the Receiver had taken possession of the Receivership Defendants, HK closed its warehouse and ceased its business operations. The warehouse was completely empty of any employees when the Receiver took possession on July 3, 2024, and had been for approximately two weeks.

enterprise, with the Legion Defendants and the Garg Defendants, which engaged in B2C sales involving negative options and unauthorized add-on products. Cicack Holdings for itself generated over \$50 million of revenues in 2022 and 2023 through B2C sales, utilizing merchant processing accounts it obtained for the Receivership Entities. Cicack Holdings used Sloan/F & B's accounting staff to pay its vendor invoices and to monitor and balance its bank accounts.⁴⁰

By his *Notice of Expansion of Receivership* (doc. no. 25) filed on June 28, 2024, the Receiver advised that he had expanded the receivership to include additional non-parties as "Receivership Entities," including Cicack Holdings. Cicack Holdings responded by filing a motion challenging the determination. Cicack Holdings did not deny that it had engaged in B2C sales with the Defendants herein, or that it had participated in credit card laundering or load management. Rather, it argued that it was not "controlled" by any of the Defendants, a requirement under the TRO for expanding the receivership.

The Receiver discussed the motion with counsel for Cicack Holdings, noting that whether or not Cicack Holdings was "controlled" by Topiwala or Garg, it undeniably had participated in the conduct that resulted

⁴⁰ As noted above, Charles Cicack and Nelson sent daily e-mails to Topiwala and Garg showing the previous day's sales and chargeback claims, sorted by merchant identification numbers.

in this lawsuit, and that the Receiver would necessarily need to make that conduct public in a court filing. Eventually, the Receiver agreed to a compromise with Cicack Holdings involving (i) the Receiver's agreement to release Cicack Holdings from the receivership, in return for (ii) Cicack Holdings' acknowledgment that the Receiver could retain for the receivership estate \$954,728.75 from Cicack Holdings' bank accounts at SSB Bank in Pittsburgh. The Receiver also agreed to withdraw four records subpoenas he had served on Cicack Holdings' affiliated companies Blackwater Legacy, LLC, Blackwater Media, LLC, DB Licensing, LLC and Sweetwater Holdings Group, LLC.⁴¹

E. Expanding the Receivership. The Court's TRO defines the term "Receivership Entities" as the Receivership Defendants (Legion, KP, Pinnacle and Sloan)

as well as any other entity that has conducted any business related to Defendants' marketing or sale of products with a Negative Option Feature, 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.

Utilizing this definition, the Receiver determined that the non-parties Black Window, F & B, Face and Body, H & M, HK, and Larchwood all

⁴¹ Cicack Holdings resisted being in receivership because, in receivership, the Receiver would have had complete control of the company, including with respect to privileges. *See* fn. 4, *supra*. For his part, the Receiver had some concerns that Cicack Holdings may have been involved in business conduct beyond its involvement with the Defendants herein, which could have made it difficult to prove that it was "controlled" by the Defendants.

were “Receivership Entities.” The Receiver gave the appropriate notices that each of these companies was being declared a Receivership Entity, *see* TRO, Section XV.U (p. 25), and received no challenges to his declaration.

The Receiver also expanded the receivership to include Cicack Holdings as a Receivership Entity. This was met with an objection, which the Receiver resolved by acknowledging that Cicack Holdings would not be a Receivership Entity, in return for a payment of \$954,728.75. *See* Section III.D, *supra*.

IV. ASSET RECOVERY

Since the commencement of this case the Receiver has worked to preserve the assets of the various Receivership Entities, including the following:

A. Bank Accounts. The Legion Receivership Companies maintained bank accounts at SSB Bank holding approximately \$16 million. Those accounts were frozen by the Court’s TRO. The Receiver transferred \$7 million to new receivership accounts with Truist and Valley Bank in Tampa and is in the process of transferring the rest at a measured pace to allow SSB ample time to comply with federal bank capital requirements, *See* fns. 15 – 17 and accompanying text, *supra*. The Receiver also recovered funds from bank accounts held by Truist and PNC.

Sloan's primary banking relationships were with the Bank of Tampa and PNC. The Receiver closed the Bank of Tampa accounts and transferred the funds to new operating accounts for Sloan, F & B and H & M with Truist. The Receiver also transferred some of the money from PNC to the new Truist accounts.⁴²

B. Vehicles. Using funds derived exclusively from Sloan, F & B and H & M, Garg purchased and/or leased five separate vehicles: Three Rolls Royces, a Bentley, and a Lamborghini. One of the Rolls Royces and the Bentley were leased, and the Receiver determined that he would make no further lease payments because doing so would provide no value to the receivership estate. One of the Rolls Royce, specifically a RR Spectre, is titled in the name of Sloan and is not encumbered by any lien;⁴³ the Receiver recovered that vehicle and has it stored in a secure facility. As part of his negotiations with the FTC Garg agreed to return the other Rolls Royce (a RR Ghost) and the Lamborghini to the Receiver; they are scheduled to be delivered on September 4, 2024.⁴⁴ The Ghost and the Lamborghini as encumbered by liens in favor of SSB Bank.

⁴² PNC made several loans to Sloan and Garg and claimed a lien on some of the deposits, including on a \$1 million certificate of deposit that Sloan purchased and then pledged as collateral for an otherwise unsecured \$550,000 line of credit from PNC to Garg. Some of the loans to Sloan mature at the end of September, and the Receiver is in the process of negotiating extensions that may require the use of the unused part of the CD.

⁴³ The 2024 Spectre is Rolls Royce's first all-electric vehicle.

⁴⁴ Both vehicles were delivered. After he committed to returning the Lamborghini, Garg reportedly loaned it to a friend who took off on a cross-continental tour, racking up toll and parking violations with the vehicle in California and Las Vegas.

The Receiver intends to sell the vehicles after he obtains possession and cleans them.

C. Other Items of Personal Property. Topiwala and Garg both listed other items of valuable personal property on their financial disclosure forms, which the Receiver understands are stored in secure locations. Both have agreed to turn over some of these items to the Receiver. The Receiver will sell these items at a public auction sale.

D. Funds on Deposit. The Receiver recovered \$489,000 from the Rosende law firm. *See* Section II.G.2, *supra*.

Additionally, Topiwala and Garg made deposits on condominium presale agreements for condominium projects under construction in Miami and Tampa, utilizing money derived exclusively from the Receivership Companies. Topiwala has agreed to assign his interests in the pre-sales to the Receiver. Garg has not agreed to assign his interests, and so the Receiver will proceed to declare a constructive trust over Garg's interests to recover the deposits.

E. Cryptocurrency. By agreement with the Plaintiff, Topiwala turned over approximately \$1.4 million in cryptocurrency, which the Receiver has obtained in a crypto wallet. The Receiver will liquidate the account and deposit the funds into the receivership bank accounts until further instructions from the Court.

F. Real Estate. Utilizing funds derived exclusively from the Garg Companies, Garg purchased a condominium unit on Harbor Island in Tampa, as well as a house located in South Tampa. The Receiver is investigating whether he can assert a constructive trust over these assets. *See e.g. FTC v. Life Management Services of Orange County, LLC*, 2020 WL 13094593 (M.D. Fla. November 30, 2020).

G. Cicack Holdings. The Receiver recovered \$954,728.75 from Cicack Holdings.

H. Sports Memorabilia. Prior to the commencement of this lawsuit Legion, at the direction of Topiwala, paid approximately \$1,350,000 for a Michael Jordan game-worn jersey and shorts set.⁴⁵ Topiwala transferred control of the sports memorabilia to an individual in Tampa named John Tsikouris, claiming it was a "gift."⁴⁶ The memorabilia was maintained in a vault under the control of Fanatics, a dealer in sports memorabilia. The Receiver demanded that Tsikouris surrender his control of the memorabilia, and after letters between the Receiver and Tsikouris's counsel on the subject, the Receiver obtained control of the memorabilia. The memorabilia will be sold for the benefit of the receivership estate.

⁴⁵ Fanatics, the seller of the memorabilia, labelled it a "Michael Jordan Game Used 1998 Eastern Conference Semi Finals Jersey and Shorts Game Matched for May 8th, 1998."

⁴⁶ The Receiver has not located any gift tax return associated with the "gift."

V. EMPLOYING PROFESSIONALS

The Receiver reviewed the tax and accounting work of the Garg Companies' pre-receivership CPA firm and was dissatisfied with the product. The Receiver therefore determined to hire a new CPA firm, Rehmann, which specializes in tax and accounting work for entities in receivership.

Topiwala advised that the Legion Receivership Companies did not employ accountants. Topiwala, who is not an accountant, claims to have prepared and filed all required federal tax returns for all of the Legion Receivership Entities (the Receiver acknowledges that tax returns have been filed for the Legion Receivership Entities). The Receiver determined that Rehmann also would perform tax and accounting services for the Legion Receivership Companies.

The Receiver personally has handled most of the legal issues that have arisen to date. The Receiver has utilized his law firm, Akerman LLP, to handle discreet matters, including a pending lawsuit against Sloan.

Additionally, the Receiver is contemplating hiring a temporary CEO for Sloan, F & B and H & M. These companies will be sold, and the Receiver expects they have more value as going concerns than they would have if liquidated. The companies have a number of operational and organizational issues that must be addressed in anticipation of a potential sale, and the Receiver believes that a temporary CEO would be able to assist in this process.

VI. CONCLUSION

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

/s/ Mark J. Bernet

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by via e-mail to: Darren H. Lubetzky, Esquire, e-mail dlubetzky@ftc.gov; Karen Dahlberg O'Connell, Esquire, e-mail koconnell@ftc.gov; Vikram Jagadish, Esquire, e-mail vjagadish@ftc.gov; Stephen R. Freeland, Esquire, sfreeland@grsm.com; James E. Felman, Esquire, e-mail JFelman@kmf-law.com; Katherine E. Yanes, Esquire, e-mail KYanes@kmf-law.com; Janelly Crespo, Esquire, janelly.crespo@dclapiper.com; Austin K. Brown, Esquire, Austin.brown@dclapiper.com; Eric Forni, Esquire, e-mail eric.forni@us.dclapiper.com; David Stier, Esquire, e-mail david.stier@us.dclapiper.com; Constantine Economides, Esquire, ceconomides@dynamislpl.com; Eric S. Rosen, Esquire, e-mail erosen@dynamislpl.com, and Robert K. Tucker, II, Esquire, e-mail rtucker@grsm.com and mbperez@grsm.com this 5th day of August, 2024.

/s/ Mark J. Bernet
Mark J. Bernet, Receiver