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11 KRISTA L. FREITAG

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 FEDERAL TRADE COMMISSION,
15 Plaintiff,
16 vs.

17 IMPETUS ENTERPRISE, INC., a
California corporation, also d/b/a Aiding
Student Relief, Aiding Students &
18 Teachers, Aidnest, Avec Staffing, and
National Education Student and Teacher;
19 FIG TREE & CO., LLC, a California
limited liability company, also d/b/a
20 Aiding Student Relief, Aiding Students
& Teacher, and Aiding Students &
21 Teachers; TUAN DINH DUONG, a/k/a
Thomas Duong, a/k/a Thomas Dinh,
22 individually and as an officer of
IMPETUS ENTERPRISE, INC.;
23 BRENDA AVITIA-PENA, individually
and as an officer of IMPETUS
24 ENTERPRISE, INC. and FIG TREE &
CO., LLC; and BRIAN COLOMBANA
25 d/b/a FUTERO, individually and as an
officer of FIG TREE & CO., LLC,

26 Defendants,
27 NOEL SOLUTIONS, LLC, a Wyoming
limited liability company,
28 Relief Defendant.

Case No. 8:18-cv-01987-JLS-KES

**RECEIVER'S FOURTH INTERIM
REPORT**

Ctrm: 10A
Judge: Hon. Josephine L. Staton

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1 On November 13, 2018, this Court entered the Ex Parte Temporary
2 Restraining Order with Asset Freeze, Appointment of a Temporary Receiver, and
3 Other Equitable Relief, and Order to Show Cause Why Preliminary Injunction
4 Should Not Issue (the "TRO"), appointing Krista L. Freitag ("Receiver") temporary
5 receiver for Impetus Enterprise, Inc. ("Impetus") and Fig Tree & Co., LLC ("Fig
6 Tree"), each of their subsidiaries, affiliates, successors and assigns, and any other
7 entity that has conducted any business related to Defendants' student debt relief
8 enterprise, including receipt of Assets derived from any activity that is the subject of
9 the Complaint in this matter, and that the Receiver determines is controlled or
10 owned by any Defendant (collectively the "Receivership Entities" or individually, a
11 "Receivership Entity") with full powers of an equity receiver. Dkt. No. 23.

12 On November 29, 2018, this Court entered the associated Preliminary
13 Injunction with Asset Freeze, Appointment of Receiver and Other Equitable Relief
14 order "the PI Order" appointing Receiver as permanent receiver for the Receivership
15 Entities, including but not limited to Capital Sun Investments, LLC (d/b/a Studora)
16 or Premier Capital Investments, LLC, and Jimmy Calderon (when conducting
17 activities in relation to any of the foregoing entities). Dkt. No. 38. The Receiver's
18 bond was filed with the Court on December 6, 2018. Dkt. No. 40. Then on April 2,
19 2019, this Court entered a Superseding Second Preliminary Injunction with Asset
20 Freeze, Appointment of Receiver, and Other Equitable Relief, which modified the
21 PI Order in certain respects.¹ Dkt. No 68. The orders are referred to hereinafter
22 collectively as the "PI Orders."

23 The following report serves as an update regarding the Receiver's work
24 performed through and during the second quarter of 2019 pursuant to the PI Orders.
25 During the second quarter of 2019, the Federal Trade Commission ("Commission")
26

27
28 ¹ On April 5, 2019 (Dkt. 74), the Receiver filed her Statement of Receiver's
Qualifications and Rates pursuant to the Superseding Second Preliminary
Injunction.

1 resolved its claims against Defendants Calderon, Capital Sun Investments, Duong,
2 and Avitia-Pena, subject to internal approval of the settlement with Avitia-Pena by
3 the Commission and approval by the Court. The Commission also obtained entry of
4 default against Defendant Entities Impetus, Fig Tree, and Relief Defendant Noel
5 Solutions. Therefore, the underlying litigation has been, or likely soon will be,
6 resolved as to all Defendants, with the exception of Defendant Brian Colombana.
7 Upon resolution of the Commission's claims against Defendant Colombana, the
8 Receiver anticipates recommending wrap-up of the receivership estate.

9 **I. EXECUTIVE SUMMARY UPDATE**

10 Based on her investigation of documents and computer records to date, the
11 Receiver has identified and recovered approximately \$346,000, which primarily
12 includes bank account balances and reserve balance held by credit card payment
13 processors. No real property owned by the Receivership Entities has been
14 identified. At this point, the Receiver is not aware of any other *material* funds or
15 assets of the Receivership Entities.

16 As further discussed below, due to incomplete accounting records, the lack of
17 sufficient funds in the receivership estate and the substantial time and expense that
18 would be involved, the Receiver has not identified the entire scope of the
19 Receivership Entities' enterprise, the consumers or the specific amounts invested
20 and expended.

21 Through service of the TRO and PI Orders on the customer relationship
22 management ("CRM") software companies (four separate companies
23 identified/served), the Receiver has been able to freeze and gain administrative
24 control over the CRM databases for the following:

- 25 1. Capital Sun Investments, LLC d/b/a Studora – affiliated with
26 Receivership Entities as further discussed below
- 27 2. Avec Staffing (aka People's Choice) – associated with Defendant
28 Brenda Avitia-Pena

1 3. IDR Education (and what appears to be an additional d/b/a of Synergy
2 Student Services) – associated with Defendant Brian Colombana
3 Through diligent efforts, the Receiver was also able to efficiently gain access
4 to certain defendant entities' Quickbooks accounts, Microsoft Exchange email
5 accounts and other One Drive records, and Go Daddy accounts holding certain
6 website domains. Unfortunately, thorough accounting records are not captured in
7 the Quickbooks accounts recovered; in order to determine integrity of the
8 accounting data, the Receiver attempted, but was unable to successfully complete a
9 comprehensive reconciliation of data in the Quickbooks accounts to banking records
10 to the CRM data. In performing this efficient exercise, it quickly became clear the
11 accounting data in the Quickbooks account is incomplete. As discussed below in
12 Section III, at this time, given the limited funds recovered, the large number of
13 victims, and the extensive analysis required to properly identify victims and their
14 losses, it is not feasible to perform a forensic accounting or claims process necessary
15 to make a distribution of funds held by the Receiver to the victims. If significant
16 additional funds are recovered through the ongoing, active litigation, settlements or
17 otherwise, it may become feasible to take these steps and the Receiver will seek
18 appropriate relief from the Court in that regard. On the other hand, if the
19 Commission's claims against Defendant Colombana are resolved without any further
20 recovery, the Receiver anticipates recommending wrap-up of the receivership.

21 **II. RECEIVER'S ACTIONS TO IMPLEMENT TRO AND PI ORDERS**

22 **A. Securing and Taking Control of Operational Premises**

23 Upon her appointment, the Receiver assumed control over the leased premises
24 located at 1651 E. 4th Street, Santa Ana, CA 92701 (the "Office Premises"), and
25 served the TRO on and retrieved mail from the virtual office locations identified in
26 the TRO (18100 Von Karman Ave. and 2252 Chambers Rd.). The Receiver made
27 significant efforts to identify other physical locations (numerous former and virtual
28 addresses were discovered and contacts associated with same thus served), but the

1 one other physical operating location discovered in the United States had been
2 vacated by the time of discovery.

3 With regard to the Office Premises, the Receiver took physical control,
4 changed the locks, served/notified the landlord through property management,
5 served/notified key vendors, and otherwise worked to ensure no entry into the
6 premises. Such physical records were moved to secure storage, and the suite was
7 emptied and turned over to the landlord. Note that the Studora contract employees
8 were given several opportunities to retrieve personal belongings before the space
9 was emptied.

10 Regarding the additional physical location identified in Irvine, and working
11 with the Commission, an Impetus Enterprise, Inc. cancelled check which referenced
12 "rent" was recently received and the entity/payee located. Upon reaching the
13 applicable payee, an insurance services company located in Upland, California, the
14 sublessor (the payee) confirmed the lease with Impetus Enterprise, Inc. (signed by
15 Brenda Avitia). The three-year sublease commenced on March 1, 2018,
16 encompassed 2,720 square feet and was not previously identified or observed
17 through review of other physical records (16510 Bake Parkway, Suite 200, Irvine,
18 California). The sublessor confirmed that the space was completely
19 emptied/vacated; and while timing is not perfectly clear, on or about December 4th,
20 sublessor became aware the space had been vacated upon following up on the late
21 rent payment. He has no indication where the operations and/or subtenant
22 belongings were moved.

23 The Receiver's staff has also checked locations, redirected and continues to
24 monitor mail for more than 14 other addresses. In so doing, several notices and tax
25 claims have been received from the State of California Franchise Tax Board
26 regarding Impetus and Fig Tree dating back to 2015 (totaling less than \$10,000).
27 The Receiver anticipates seeking authority to pay such demands and claims in
28

1 connection with wrapping up the receivership, absent sufficient funds to initiate a
2 formal claims process.

3 **B. Funds Recovered, Known To Date**

4 In addition to the Commission providing notice of the asset freeze, the
5 Receiver also promptly notified each bank and credit card payment processor
6 identified as having an account associated with the Receivership Entities. In such
7 notices, the Receiver demands turnover of the account, immediate cancellation of
8 any debit or credit cards, identification/freeze of any safe deposit box, account
9 balance and reserve information, and account records. As documentation has been
10 received in response to such demands, the Receiver has spent timing reviewing and
11 thus pursuing additional leads for service and/or account providers as well as for
12 additional recovery opportunities, and additional operating locations and/or business
13 addresses. During the second quarter of 2019, several additional subpoenas were
14 issued.

15 As previously mentioned, to date, the Receiver has recovered approximately
16 \$346,000, which primarily includes bank account balances and payment processor
17 reserve balances. There were some very small additional recoveries from payment
18 processors and bank accounts in the second quarter of 2019.

19 The following is a summary of the cash activity in the receivership estate bank
20 account and/or Receiver-controlled bank accounts for the period from November 16,
21 2018 through June 30, 2019:

RECEIVERSHIP ESTATE CASH ACTIVITY:	
Capital Sun Investments – Chase Bank Recovery	\$6,783
Premiere Capital Investments – Chase Bank Recovery	\$13
Fig Tree – Chase Bank Recovery	\$2
Impetus Enterprise – Wells Fargo Bank Recovery	\$27,565
Electronic Merchant Systems Reserve Recovery	\$143,938

1	Choice Merchant Solutions Reserve Recovery	\$124,905
2	Madera Merchant Reserve Recovery	\$31,039
3	Payliance Merchant Reserve Recovery	\$10,558
4	FF&E Proceeds (net of moving costs)	\$1,000
5	Interest Income	\$13
6	Receiver Fees Paid	(\$68,468)
7	Receiver Legal Fees Paid	(\$26,982)
8	Operating Expenses Paid	(\$3,624)
9	Cash Balance as of June 30, 2019	<u>\$246,742</u>

10
11 Both physical location leases had significant term remaining, so no recovery
12 of security deposits is anticipated.

13 **C. Assessing Receivership Entities, Business Operations**

14 The operational appearance of the Office Premises was that of a call center,
15 with a few offices and cubicles located throughout. Through the interviews of
16 employees on site, the Receiver learned that the student loan debt relief services
17 were marketed through mailers, call leads were purchased and that ultimate relief
18 results may not be known (e.g., the company may have to contact the client or
19 Department of Education directly to obtain results). As previously mentioned, call
20 scripts and other similar documents were located, including a document entitled
21 "Mandatory Enrollment Fees". Based upon (a) this document, which states that
22 "First payment needs to be scheduled within 5-10 days of enrollment date", (b) bank
23 records showing six figure monthly receipts, (c) sample customer data pulled from
24 the CRM software showing payment requirements in the contract and payments
25 reflected in the CRM system, and (d) other information gleaned from interviews
26 discussed below, it appears very likely that payments were demanded and/or
27 received prior to services being rendered and/or results delivered.

28

1 Accordingly, and with no cash available to fund any level of operations (less
2 than \$15 in the Studora-related operating accounts at takeover), the Receiver
3 determined the business could not be operated at all, let alone operated legally and
4 profitably, and therefore suspended operations.

5 **D. Control Over Receivership Entity Records, Electronic Accounts**

6 The Receiver obtained control over three GoDaddy.com (website hosting,
7 domain registration and email service provider) accounts of the Receivership
8 Entities. Included with these accounts is control to now 33 separate domains, a few
9 email accounts with minimal usage and some website files. Due to the fact the TRO
10 and PI Orders did not provide specific reference to the websites and the accounts
11 were held under various names, a considerable effort was undertaken to gain access.
12 Once access was granted, the Receiver was able to redirect traffic from those
13 websites to the receivership website. This effectively shut down the Receivership
14 Entities web presence and disabled the ongoing marketing of the Receivership
15 Entities' debt relief services. It also serves to notify the previous customers of the
16 Receivership Entities of the Receiver's appointment and provides basic information
17 to assist them in their search for debt relief. The Receiver issued a subpoena for
18 documents relating to additional GoDaddy.com accounts that may have been used
19 by the Receivership Entities. One additional site, given its inclusion in the
20 Superseding Second Preliminary Injunction, was also obtained and effectively shut
21 down.

22 Additionally, as the email accounts controlled by GoDaddy.com appeared to
23 hold very little information, the Receiver continued to search for any other email
24 service providers. As part of that process, the Receiver noted that four domains
25 used Microsoft as the provider of their email services and accordingly issued notice
26 of the PI Order to them. Shortly thereafter, the Receiver was contacted by outside
27 counsel for Microsoft requesting that the Receiver seek a specific order from the
28 Court directing them to turn over access. After various discussions and

1 negotiations, Microsoft agreed to freeze and preserve the accounts, notify the
2 owners of the accounts and then, absent an objection within five days, turn over
3 control to the accounts. That access was gained on Friday January 11, 2019, and the
4 Receiver thereafter secured the data in the One Drive accounts and over 240 email
5 accounts related to four domains.

6 The Receiver also obtained access to three CRM software platforms and three
7 Intuit/QuickBooks online accounts. Unfortunately, the data in QuickBooks
8 accounts is incomplete, although some information was obtained. Additional
9 possible vendors were also noticed, however substantive or current information
10 from those vendors has been limited.

11 **E. Scope of the Enterprise**

12 Without comprehensive banking and/or accounting records, the Receiver is
13 not able to efficiently identify the entire scope of the Receivership Entities'
14 enterprise, the consumers affected, or the specific amounts invested and expended.
15 However, as a point of reference, she was able to perform a preliminary analysis and
16 accounting based on bank statements for the Capital Sun Investments, LLC account
17 ending 8336, which was opened on September 29, 2017 and analyzed through
18 November 2018 (what appears to be reflective of the Studora operation). Such
19 analysis shows the following:

- 20 • Gross deposits, after adjusting for intercompany transfers, what appear
21 to be a few small loans and retail returns, total \$1,313,000. This
22 number is based solely on bank statement level transactional activity.
23 It does not take into account chargeback/consumer returns and is not
24 based on review of debit (e.g., canceled check) and credit (e.g., deposit
25 slip) level details.
- 26 • A "Conversion" report in the Studora customer management account
27 shows the total fees to date to be \$1,324,000 and returns to date to be
28 \$545,000 – with 3,289 accounts enrolled and 1,412 accounts cancelled.

- 1 • An "Enrollment" report also reflects the net 1,877 (3,289 less 1,412)
- 2 enrolled and 1,412 cancelled numbers.
- 3 • It should be noted that \$1,313,000 in fees paid for 3,289 enrollments
- 4 translates to approximately \$400 per consumer, which is in the general
- 5 range of fees charged based on documents found at the Office
- 6 Premises.

7 Additionally, through review of training videos and review of the three CRM
8 databases, the Receiver has observed certain information regarding the potential
9 number of consumers involved for *all* Receivership Entities, which could be tens of
10 thousands based on contact lists located therein.

11 **F. Personal Property**

12 During the Receiver's takeover of the Office Premises, her staff took a
13 photographic inventory. For the most part, the personal property consisted of
14 CPU's, computer monitors, cubicles and other miscellaneous office furniture,
15 fixtures and equipment. The Receiver located an auction company who agreed to
16 pay a small sum for and who removed all office items at no cost.

17 **G. Pending Litigation**

18 Not including this action, the Receiver is aware of only one other pending
19 action involving the Receivership Entities. This action was brought by Defendant
20 Colombana in Orange County Superior Court against Duong, Avitia-Pena, and
21 Impetus. The Receiver, through her counsel, provided notice of the TRO and PI
22 Order and the stay of litigation against the Receivership Entities contained therein to
23 counsel representing Duong, Avitia, and Impetus in that action, the receipt of which
24 has been acknowledged. The Receiver's understands that Colombana has filed for
25 dismissal of the Orange County Superior Court action.

26 **H. Territorial Jurisdiction Over Receivership Assets**

27 By filing the Complaint and the TRO with other federal district courts in the
28 United States, the territorial jurisdiction of this Court over receivership assets is

1 extended to such districts. 28 U.S.C. § 754, *see also Haile v. Henderson Nat'l Bank*,
2 657 Fed. 2d 816, 822 (6th Cir. 1981). Based on information obtained to date, the
3 Receiver has filed the Complaint and TRO in the Districts of Wyoming, Utah,
4 Oregon and the Middle District of Florida. If and when additional information
5 regarding company assets becomes available, the Receiver will file and record the
6 Complaint and the appointment order in applicable districts and counties in
7 conformity with § 754 and the federal law.

8 **I. Borrower/Consumer Communications**

9 The Receiver has established a dedicated web page on the Receiver's website
10 which will be used to provide case information, regular updates, and answers to
11 frequently asked questions to employees and consumers. The Internet address for
12 the webpage is as follows: [http://www.ethreadvisors.com/ftc-case-docs/ftc-v-](http://www.ethreadvisors.com/ftc-case-docs/ftc-v-impetus-et-al/)
13 [impetus-et-al/](http://www.ethreadvisors.com/ftc-case-docs/ftc-v-impetus-et-al/). In addition, the Receiver is maintaining a dedicated e-mail address
14 and telephone line for all inquiries, which are regularly addressed. The website also
15 includes a platform for consumers to sign-up for direct updates from the Receiver.
16 To date, approximately 352 people have signed up.

17 **III. RECOMMENDATIONS**

18 The Receiver's efforts to marshal and recover assets and relevant
19 Receivership Entity documents and records are ongoing. At this time, given the
20 limited funds recovered, the large number of consumer victims, and the extensive
21 analysis required to identify victims and their losses, it is not feasible to perform a
22 forensic accounting or claims process necessary to make a distribution of funds held
23 by the Receiver to the victims. If significant additional funds are recovered through
24 the remaining litigation or otherwise, it may become feasible to take these steps and
25 the Receiver will seek appropriate relief from the Court in that regard. If the
26 remaining litigation does not result in a significant recovery in the near term, the
27 Receiver anticipates recommending wrap-up of the receivership.

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IV. CONCLUSION

Based upon the Receiver's investigation and findings, the Receiver recommends and requests that the Court order that the receivership continue pursuant to the PI Orders issued by the Court. The Receiver also requests the Court authorize her continuing investigation, pending resolution of the underlying litigation, and approve this fourth interim report and recommendations.

Dated: July 30, 2019



KRISTA L. FREITAG
Receiver

Dated: July 30, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Court-Appointed
Receiver
KRISTA L. FREITAG