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19 KRISTA L. FREITAG

20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA

22 FEDERAL TRADE COMMISSION,  
23 Plaintiff,  
24 vs.

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

**RECEIVER'S THIRD INTERIM  
REPORT**

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

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

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

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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.<sup>1</sup> 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 first quarter of 2019 pursuant to the PI Orders.

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

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**I. EXECUTIVE SUMMARY UPDATE**

Effective Thursday, November 14, 2018, the Receiver successfully obtained possession of and secured the following physical location included in the TRO and associated with the operations of Impetus, Fig Tree and Capital Sun Investments, LLC, a Wyoming Limited Liability Corporation<sup>2</sup>:

- 1651 E. 4th Street, Santa Ana, CA 92701 (including the 2522 Chambers Rd., 11<sup>th</sup> Floor, Tustin, CA 92626 and 18100 Von Karman Ave., Suite 850, Irvine, CA 92612 virtual office locations, where it appears mail was directed and received).

Numerous documents and records (including electronic forms thereof) were initially secured therein and/or were otherwise secured. Such physical records have now been moved to secure storage, and the 1651 E. 4<sup>th</sup> Street suite has been emptied and turned over to the landlord. The landlord expressed appreciation for the Receiver's swift action.

Through review of banking records, one other physical (and vacated) operating location was identified in Irvine, and numerous additional virtual office addresses and active operations of defendant Impetus (d/b/a Avec Staffing) and affiliated entities, IDR Education and Synergy Student Services, were identified. Change of address forms and notices of the TRO and/or PI Orders have been processed as such locations have been discovered. Numerous banking records also suggest a physical operation existed in Colombia.

Bank accounts and payment processors previously identified by the Federal Trade Commission ("Commission") and additional accounts and payment processors identified through an investigation of documents and information found at the physical and virtual office locations where the Receivership Entities

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<sup>2</sup> Capital Sun Investments, LLC, d/b/a Studora, was operating in the 1651 E. 4<sup>th</sup> Street, Santa Ana, CA 92701 location, and was determined to be to an affiliate and/or successor operator of Defendants' student debt relief business.

1 conducted business as well as through additional investigation have been directed to  
2 be frozen. A summary of the recovery of assets to date is presented below.

3 Based on the Receiver's investigation of documents and computer records, the  
4 Receiver has identified and recovered approximately \$345,000, which primarily  
5 includes bank account balances and payment processor reserve balances. No real  
6 property owned by the Receivership Entities has yet been identified. At this point,  
7 the Receiver is not aware of any other *material* funds or assets of the Receivership  
8 Entities, but does expect a few more small recoveries.

9 The Receiver has not yet identified the entire scope of the Receivership  
10 Entities' enterprise, the consumers or the specific amounts invested and expended.  
11 Through service of the TRO and PI Orders on the customer relationship  
12 management ("CRM") software companies (four separate companies  
13 identified/served), the Receiver has been able to freeze and gain administrative  
14 control over the CRM databases for the following:

- 15 1. Capital Sun Investments, LLC d/b/a Studora – affiliated with  
16 Receivership Entities as further discussed below
- 17 2. Avec Staffing (aka People's Choice) – associated with Defendant  
18 Brenda Avitia-Pena
- 19 3. IDR Education (and what appears to be an additional d/b/a of Synergy  
20 Student Services) – associated with Defendant Brian Colombana

21 Through diligent efforts, the Receiver was also able to efficiently gain access  
22 to certain defendant entities' Quickbooks accounts, Microsoft Exchange email  
23 accounts and other One Drive records, and Go Daddy accounts holding certain  
24 website domains. Unfortunately, thorough accounting records are not captured in  
25 the Quickbooks accounts recovered; in order to determine integrity of the  
26 accounting data, the Receiver attempted, but was unable to successfully complete a  
27 comprehensive reconciliation of data in the Quickbooks accounts to banking records  
28 to the CRM data. In performing this efficient exercise, it quickly became clear the

1 accounting data in the Quickbooks account is incomplete. As discussed below in  
2 Section III, at this time, given the limited funds recovered, the large number of  
3 victims, and the extensive analysis required to properly identify victims and their  
4 losses, it is not feasible to perform a forensic accounting or claims process necessary  
5 to make a distribution of funds held by the Receiver to the victims. If significant  
6 additional funds are recovered through the ongoing, active litigation or otherwise, it  
7 may become feasible to take these steps and the Receiver will seek appropriate relief  
8 from the Court in that regard. If the active litigation does not result in resolution of  
9 the underlying case in the near term, the Receiver anticipates recommending wrap-  
10 up of the receivership.

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

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

13 Upon her appointment, the Receiver assumed control over the leased premises  
14 located at 1651 E. 4th Street, Santa Ana, CA 92701 (the "Office Premises"), and  
15 served the TRO on and retrieved mail from the virtual office locations identified in  
16 the TRO (18100 Von Karman Ave. and 2252 Chambers Rd.). The Receiver made  
17 significant efforts to identify other physical locations (numerous former and virtual  
18 addresses were discovered and contacts associated with same thus served), but the  
19 one other physical operating location discovered in the United States had been  
20 vacated by the time of discovery.

21 With regard to the Office Premises, the Receiver took physical control,  
22 changed the locks, served/notified the landlord through property management,  
23 served/notified key vendors, and otherwise worked to ensure no entry into the  
24 premises. Such physical records were moved to secure storage, and the suite was  
25 emptied and turned over to the landlord. Note that the Studora contract employees  
26 were given several opportunities to retrieve personal belongings before the space  
27 was emptied.

28

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

14           The Receiver's staff has also checked locations and redirected mail for more  
15 than 14 other addresses.

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

17           In addition to the Commission providing notice of the asset freeze, the  
18 Receiver also promptly notified each bank and credit card payment processor  
19 identified as having an account associated with the Receivership Entities. In such  
20 notices, the Receiver demands turnover of the account, immediate cancellation of  
21 any debit or credit cards, identification/freeze of any safe deposit box, account  
22 balance and reserve information, and account records. As documentation has been  
23 received in response to such demands, the Receiver has spent timing reviewing and  
24 thus pursuing additional leads for service and/or account providers as well as for  
25 additional recovery opportunities, and additional operating locations and/or business  
26 addresses.

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1 As previously mentioned, to date, the Receiver has recovered approximately  
 2 \$345,000, which primarily includes bank account balances and payment processor  
 3 reserve balances.

4 The following is a summary of the cash activity in the receivership estate bank  
 5 account and/or Receiver-controlled bank accounts for the period from November 16,  
 6 2018 through March 31, 2019:

<b>RECEIVERSHIP ESTATE CASH ACTIVITY:</b>	
Capital Sun Investments – Chase Bank Recovery	\$6,040
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	\$143,839
Choice Merchant Solutions Reserve Recovery	\$124,905
Madera Merchant Reserve Recovery	\$31,039
Payliance Merchant Reserve Recovery	\$10,558
FF&E Proceeds (net of moving costs)	\$1,000
Operating Expenses Paid	(\$3,618)
<b>Cash Balance as of March 31, 2019</b>	<b><u>\$341,343</u></b>

21  
 22 There could be some very small additional recoveries from payment  
 23 processors and/or bank accounts. Both physical location leases had significant term  
 24 remaining, so no recovery of security deposits is anticipated.

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

26 The operational appearance of the Office Premises was that of a call center,  
 27 with a few offices and cubicles located throughout. Through the interviews of  
 28 employees on site, the Receiver learned that the student loan debt relief services

1 were marketed through mailers, call leads were purchased and that ultimate relief  
2 results may not be known (e.g., the company may have to contact the client or  
3 Department of Education directly to obtain results). As previously mentioned, call  
4 scripts and other similar documents were located, including a document entitled  
5 "Mandatory Enrollment Fees". Based upon (a) this document, which states that  
6 "First payment needs to be scheduled within 5-10 days of enrollment date", (b) bank  
7 records showing six figure monthly receipts, (c) sample customer data pulled from  
8 the CRM software showing payment requirements in the contract and payments  
9 reflected in the CRM system, and (d) other information gleaned from interviews  
10 discussed below, it appears very likely that payments were demanded and/or  
11 received prior to services being rendered and/or results delivered.

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

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

17 The Receiver has obtained control over three GoDaddy.com (website hosting,  
18 domain registration and email service provider) accounts of the Receivership  
19 Entities. Included with these accounts is control to now 33 separate domains, a few  
20 email accounts with minimal usage and some website files. Due to the fact the TRO  
21 and PI Orders did not provide specific reference to the websites and the accounts  
22 were held under various names, a considerable effort was undertaken to gain access.  
23 Once access was granted, the Receiver was able to redirect traffic from those  
24 websites to the receivership website. This effectively shut down the Receivership  
25 Entities web presence and disabled the ongoing marketing of the Receivership  
26 Entities' debt relief services. It also serves to notify the previous customers of the  
27 Receivership Entities of the Receiver's appointment and provides basic information  
28 to assist them in their search for debt relief. The Receiver issued a subpoena for

1 documents relating to additional GoDaddy.com accounts that may have been used  
2 by the Receivership Entities. One additional site, given its inclusion in the  
3 Superseding Second Preliminary Injunction, has also been obtained and effectively  
4 shut down.

5       Additionally, as the email accounts controlled by GoDaddy.com appeared to  
6 hold very little information, the Receiver continued to search for any other email  
7 service providers. As part of that process, the Receiver noted that four domains  
8 used Microsoft as the provider of their email services and accordingly issued notice  
9 of the PI Order to them. Shortly thereafter, the Receiver was contacted by outside  
10 counsel for Microsoft requesting that the Receiver seek a specific order from the  
11 Court directing them to turn over access. After various discussions and  
12 negotiations, Microsoft agreed to freeze and preserve the accounts, notify the  
13 owners of the accounts and then, absent an objection within five days, turn over  
14 control to the accounts. That access was gained on Friday January 11, 2019, and the  
15 Receiver thereafter secured the data in the One Drive accounts and over 240 email  
16 accounts related to four domains.

17       The Receiver also obtained access to three CRM software platforms and three  
18 Intuit/QuickBooks online accounts. Unfortunately, the data in QuickBooks  
19 accounts is incomplete, although some information was obtained. Additional  
20 possible vendors have also been noticed, however substantive or current information  
21 from those vendors has been limited.

22       **E. Scope of the Enterprise**

23       Without comprehensive banking and/or accounting records, the Receiver is  
24 not able to efficiently identify the entire scope of the Receivership Entities'  
25 enterprise, the consumers affected, or the specific amounts invested and expended.  
26 However, as a point of reference, she was able to perform a preliminary analysis and  
27 accounting based on bank statements for the Capital Sun Investments, LLC account  
28 ending 8336, which was opened on September 29, 2017 and analyzed through

1 November 2018 (what appears to be reflective of the Studora operation). Such  
2 analysis shows the following:

- 3 • Gross deposits, after adjusting for intercompany transfers, what appear  
4 to be a few small loans and retail returns, total \$1,313,000. This  
5 number is based solely on bank statement level transactional activity.  
6 It does not take into account chargeback/consumer returns and is not  
7 based on review of debit (e.g., canceled check) and credit (e.g., deposit  
8 slip) level details.
- 9 • A "Conversion" report in the Studora customer management account  
10 shows the total fees to date to be \$1,324,000 and returns to date to be  
11 \$545,000 – with 3,289 accounts enrolled and 1,412 accounts cancelled.
- 12 • An "Enrollment" report also reflects the net 1,877 (3,289 less 1,412)  
13 enrolled and 1,412 cancelled numbers.
- 14 • It should be noted that \$1,313,000 in fees paid for 3,289 enrollments  
15 translates to approximately \$400 per consumer, which is in the general  
16 range of fees charged based on documents found at the Office  
17 Premises.

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

22 **F. Personal Property**

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

28

1           **G. Pending Litigation**

2           Not including this action, the Receiver is aware of only one other pending  
3 action involving the Receivership Entities. This action was brought by Defendant  
4 Colombana in Orange County Superior Court against Duong, Avitia, and Impetus.  
5 The Receiver, through her counsel, provided notice of the TRO and PI Order and the  
6 stay of litigation against the Receivership Entities contained therein to counsel  
7 representing Duong, Avitia, and Impetus in that action, the receipt of which has  
8 been acknowledged.

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

10           By filing the Complaint and the TRO with other federal district courts in the  
11 United States, the territorial jurisdiction of this Court over receivership assets is  
12 extended to such districts. 28 U.S.C. § 754, *see also Haile v. Henderson Nat'l Bank*,  
13 657 Fed. 2d 816, 822 (6th Cir. 1981). Based on information obtained to date, the  
14 Receiver has filed the Complaint and TRO in the District of Wyoming and is  
15 presently taking steps to file them in the Districts of Utah, Oregon and the Middle  
16 District of Florida. As additional information becomes available, the Receiver will  
17 file and record the Complaint and the appointment order in applicable districts and  
18 counties in conformity with § 754 and the federal law.

19           **I. Borrower/Consumer Communications.**

20           The Receiver has established a dedicated web page on the Receiver's website  
21 which will be used to provide case information, regular updates, and answers to  
22 frequently asked questions to employees and consumers. The Internet address for  
23 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/)  
24 [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  
25 and telephone line for all inquiries, which are regularly addressed. The website also  
26 includes a platform for consumers to sign-up for direct updates from the Receiver.  
27 To date, approximately 302 people have signed up.

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**III. PRELIMINARY RECOMMENDATIONS**

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

**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 and approve this third interim report and recommendations.

Dated: April 29, 2019

  
\_\_\_\_\_  
KRISTA L. FREITAG  
Receiver

Dated: April 29, 2019

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
By:           /s/ Edward Fates            
EDWARD G. FATES  
Attorneys for Court-Appointed  
Receiver  
KRISTA L. FREITAG