

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 14-81397-CIV-MARRA

FEDERAL TRADE COMMISSION and
STATE OF FLORIDA,

Plaintiffs,

v.

BOOST SOFTWARE, INC.,
VAST TECH SUPPORT LLC, et al.,

Defendants.

RECEIVER'S SECOND STATUS REPORT

David S. Mandel, the court-appointed Receiver of Vast Tech Support, LLC, OMG Tech Help, LLC, Success Capital, LLC, Jon-Paul Holdings, LLC, and any related entities (together “Vast Corporate Defendants” or “Receivership Entities”), files his Second Status Report to inform the Court, as well as customers and creditors, of the Receivership’s activities to date.¹

I. PROCEDURAL BACKGROUND

On November 10, 2014, the Federal Trade Commission (the “FTC”) and the Attorney General’s Office for the State of Florida (the “AG”) (together the “Government”) filed a civil complaint, charging the Defendants with deceptive business practices and alleging consumer injury of approximately \$22 million dollars. D.E. 1, 4 (the “Complaint”). On November 12, 2014, on the Government’s motion, the Court entered a Temporary Restraining Order that, among other things, appointed David S. Mandel as Receiver over the Vast Corporate Defendants (the “T.R.O.” or “Receivership Order”), and freezing the Vast Corporate Defendants’ assets. D.E. 1,

¹ The Receiver’s initial status report was filed on Dec. 16, 2014 and may be found at D.E. 56.

5, 6, 11, 12 & 13. The Government's motion for preliminary injunction against the Vast Corporate Defendants and Elliot Loewenstern, Jon-Paul Vasta, and Mark Donohue (together "the Individual Defendants") remains pending. D.E. 33, 42, 43, 41; *see also* D.E. 44.

On Jan. 12, 2015, the Court granted the Receiver's motion to extend the Receivership Estate to include a related entity, OMG International Group LLC ("OMG International"). D.E. 60. On January 20, the Receiver sought the Court's approval to pay the health care premiums of the Vast Corporate Defendants' employees for the month of January 2015, and on January 21 the Court granted this motion. D. E. 61, 62.

II. THE RECEIVER'S ROLE AND RESPONSIBILITIES

The Court directed the Receiver to engage in various activities, including: (1) "[a]ssume full control of the Vast Corporate Defendants . . .;" D.E. 13, Receivership Order, Sect. XII. ¶A; (2) "[t]ake exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control, of the Vast Corporate Defendants, wherever situated" and "[t]ake all steps necessary to secure and take exclusive custody of each location from which the Vast Corporate Defendants operate their businesses;" *Id.*, ¶¶B, C; (3) "[c]onserve, hold, and manage all Assets of the Vast Corporate Defendants . . .;" *Id.*, ¶D; (4) "[c]hoose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;" *Id.*, ¶H; (5) "[m]ake payments and disbursements from the receivership estate that are necessary . . . for carrying out the directions of, or exercising the authority granted by, this Order;" *Id.*, ¶I; (6) "apply to the Court for prior approval of any payment of any debt or obligation incurred by the Vast Corporate Defendants prior to the entry of this Order, except payments the Receiver deems necessary or advisable to secure the Assets of the Vast Corporate Defendants, such as rental payments;" *Id.*; (7)

“[c]ooperate with reasonable requests for information or assistance from any state or federal civil or criminal law enforcement agency;” *Id.*, ¶U; and (8) “[f]ile timely reports with the Court at reasonable intervals, or as otherwise directed by the Court.” *Id.*, ¶V.

Pursuant to the authority granted in the Receivership Order, the Receiver retained the following professionals to search, recover and protect the Receivership Estate’s corporate assets, and to otherwise untangle the financial and operational affairs: (1) the law firm of Mandel & Mandel LLP; (2) the law firm of Meland Russin & Budwick, P.A. (collectively both law firms referred to as “Counsel”) (3) the forensic accounting firm of KapilaMukamal LLP; and (4) the firm of Andrews International to serve as the Receiver’s digital forensics expert (“digital forensics expert” or “Andrews”).

Upon his appointment, the Receiver took immediate possession and control over the Vast Corporate Defendants’ offices, and promptly began the process of marshaling the assets to protect customers’ and creditors’ interests. The Receiver also commenced an inquiry into the business affairs and financial condition of the Vast Corporate Defendants.

To quickly provide information to customers, creditors, and employees, the Receiver established an informational website at omgtechhelp.com, and established an email address: OMGTechhelp-Receiver@mandel-law.com, dedicated to Receivership business. In addition, Mandel & Mandel LLP dedicated an extension on its telephone system for communications relating to the Receivership.

Upon taking control of the Receivership Entities, the Receiver determined that he could not operate the Vast Corporate Defendants’ business legally or profitably, and therefore, he suspended the ongoing business operations. Soon after taking over the Vast Corporate Defendants, the Receiver confirmed that the entities’ bank accounts were frozen. The Receiver also investigated the status of essential expenses, including rent, insurance, telecommunications, computers and

internet access, and others. The Receiver has set forth below the status of his activities, investigation and analysis of the assets of the Vast Corporate Defendants to date.

A. Taking Possession of Receivership Property

Since the previous status report, the Receiver has maintained the Vast Corporate Defendants' business premises, including all physical property, computers, computer servers, and business records, located at 2855 S. Congress Ave, Suite AB, Delray Beach, Florida 33445. The Receiver has made periodic inspections, and preserved the property, including paying the rent, insurance and essential utilities. *See* Receivership Order, Sect. XII. ¶¶ C, I.

With regarding the electronic data, the Receiver's digital forensic experts from Andrews International continued to address numerous issues relating to the Vast Corporate Defendants' onsite computer systems and cloud-based services. Due to the highly technical nature of the Receivership Entities' businesses, which allegedly involved technical computer support, customer backup services, periodic software updates, customer phone call recordings, and remote accessing of customers' computers, most of the company's electronic information was stored in the "cloud" and involved significant amounts of data.

In addition, because the Receivership Entities maintained significant internet and phone line usage in order to sell and maintain their various computer products, there were hundreds of phone lines and customer recordings to secure, preserve, and disable, if necessary. Andrews' professionals continued to handle various aspects of these services, including extensive data backups and downloads, customer service related issues, taking control of customer telephone call recordings site, and creating evidence files with data from recordings. Andrews also has assisted in the removal of certain hardware upon the cancelation of various phone and internet services.

The Receiver has reduced the number of active digital accounts to the minimum necessary to preserve the Receivership's assets, and has canceled services to eliminate any unnecessary

costs. The Receiver's counsel has also spent considerable amounts of time working with Andrews in contacting vendors, facilitating access to Receivership Entities' accounts, preserving certain accounts, and canceling accounts when necessary.

In addition, Andrews regularly managed issues relating to the various websites, and ultimately terminated all but the essential websites. After consolidation or re-direction of one hundred websites, the Receiver continues to maintain one internet location, omgtechhelp.com. The Receiver continues to use the "OMG Tech Support" website to disseminate information regarding the Receivership and related litigation to customers and creditors. Pertinent information is posted and links to relevant documents are established so that customers and creditors can keep current with the litigation. Andrews also assisted with informing customers of a potential new scam via mass emails, and updated the website with key information.

Similarly, Andrews assisted in facilitating the final productions of data and information from various media including hard drives, computers and the "cloud." Andrews' work included forensically imaging onsite computers including management and certain employees' personal laptops, phones and other hardware and finalizing the information for production to the defendants. Furthermore, Andrews has worked with defendant's counsel on any technical challenges regarding data production. The Receiver's digital expert has secured all currently known locations of electronic data and information and continues to maintain any necessary information.

In summary, to date, Andrews has now downloaded 4.3 gigabytes of data from cloud-based storage, and 1.1 terabytes in electronic information and data from other sources, and has preserved all important identified sources of electronic data to date.

B. Investigation of the Affairs of the Vast Corporate Entities

1. Financial Assets

On November 13, 2014 (the “TRO Service Date”) the TRO was served on several financial institutions believed to have funds on deposit belonging to the Vast Corporate Defendants. In accordance with Section XIII, the Receiver assumed possession of, closed and received turnover of funds from bank accounts that were identified and maintained in the names of the Vast Corporate Defendants and established new cash accounts in the name of David S. Mandel, as Receiver of: Vast Tech, Success, JP Holdings, and OMG Total Protection, LLC. As a result of the Receiver’s actions, funds aggregating in excess of \$1.3 million were transferred to the Receivership from the Vast Corporate Defendants’ accounts maintained at the following financial institutions:

Vast Corporate Defendant	Bank / Merchant	Bank Acct #	Amount
JP Holdings	Citi	5856	\$ 9,965.08
OMG TP	Wells Fargo	2057	420.97
OMG TP	Wells Fargo	6110	4,623.02
Success	Wells Fargo	7155	144.02
Success	Wells Fargo	6669	88.75
Vast Tech	Wells Fargo	7668	145,867.56
Vast Tech	Wells Fargo	4531	93,602.52
Vast Tech	Wells Fargo	4523	410,520.25
Vast Tech	RevenueWire		685,182.43
Total			1,350,414.60

2. Overview of Forensic Accountants’ Activities

The Receiver’s forensic accountants, KapilaMukamal LLP (“KM”), have continued to assist the Receiver with the investigation and analysis of the Vast Corporate Defendants’ books and records, preparation of all necessary Federal and state tax filings, and the Receivership treasury functions, among other tasks. The forensic accountants have spent a significant amount

of time analyzing the financials of the Vast Corporate Defendants, and providing substantial assistance to the Receiver's counsel and the digital expert with requested information necessary for investigation and preservation of the assets of the estate.

a. Bank Accounts

In order to discover information about the newest entity included in the Receivership Estate, OMG International, KM submitted correspondence to JP Morgan Chase to freeze any accounts in the name of OMG International, and turnover records and funds. JP Morgan Chase produced account opening documents and bank statements for July 2014 through December 2014, as well as transactions details for OMG International. Additionally, OMG International's counsel provided records for the period July 2014 through November 2014 to the Receiver.

b. State and Federal Tax Filings

To ensure compliance with State and Federal tax filing requirements, KM prepared and filed the annual and fourth quarter tax filings for the Vast Corporate Defendants including Federal Form 940s, Federal Form 941s, State RT-6, W2s, and 1099s. As part of the preparation of these filings, the forensic accountants and counsel extensively negotiated the end-of-year processing of employees W2s by Wells Fargo, and KM facilitated the delivery of these W2s to employees. KM is in the process of reviewing and preparing extensions to be filed for the Vast Corporate Defendants' 2014 Federal Tax Returns.

c. Treasury Functions

KM has maintained bank account records for the Receivership Estate and accounted for receipts and disbursements from the TRO Service Date through the Receiver's Second Status Report. KM continues to reconcile the Receivership accounts and make necessary deposits and disbursements as directed by the Receiver. The balance in the Receivership account as of January 31, 2015 totals \$966,879.84 and consists of the following:

Receipts:	
Turnover of funds from frozen accounts	\$ 1,350,414.60
Other receipts	7,530.93
Total Receipts	1,357,945.53
Disbursements:	
Professional fees and expenses	142,481.53
Health insurance premiums	97,141.76
Rent	53,626.26
Taxes - Federal	38,818.90
Receiver's fees and expenses	25,913.93
Vast Tech - Wells Fargo payroll and fees	15,871.88
Costs to secure/maintain property	6,291.43
Insurance	6,059.74
Other expenses	4,860.26
Total Disbursements	391,065.69
Cash balance as of January 31, 2015	\$ 966,879.84

III. FORENSIC ANALYSIS

After review of the appropriate OMG International records produced by JP Morgan Chase and counsel, KM prepared a preliminary analysis of receipts and disbursements from of OMG International bank records and provided the analysis to the Receiver. A summary of receipts and disbursements for OMG International is illustrated in the following table:

OMG International Group, LLC for the period from 7/15/2014 - 12/31/2014	Amount
Receipts:	
Insiders\ Related parties	\$ 845,777.83
Other	25.00
Total Receipts	845,802.83
Disbursements:	
Insiders\ Related parties	762,793.36
Other	83,009.47
Total Disbursements	845,802.83
Ending Balance	\$ -

IV. Overview of Counsel's Activities

Since taking possession of the corporate offices, counsel has continued to ensure that the premises is secure and maintained all documents, data and assets.

1. Vast Corporate Defendants' Office and Maintenance of Assets

Regarding the Vast Corporate Defendants' Office, the Receiver's counsel continues to assess any legal basis for assertion of ownership of the assets in the corporate office. The Receiver's notices regarding the appointment of the Receiver, the shutdown of the business, and the Receiver's contact information remain at the building. In order to maintain the premises and assets inside the premises, counsel continues to pay rent and utilities. Due to the faulty division of electricity within the building where the corporate office is located, the Receiver's counsel has been working with the landlord to correct the overpayment of electricity. Counsel expects reimbursement for the overpayment to Florida Power & Light from the building's co-tenant, an unrelated entity.

In order to protect against any liabilities in the corporate office, the Receiver continues to be a certificate holder on the liability insurance. Counsel met with the insurance claims adjuster and prepared a detail summary of the required information in order to facilitate the claims process for the corporate office burglary. Counsel also continued to work with Andrews on the preservation and maintenance of all company electronic information.

Since the last Report, the Receiver was notified of another location of Vast Tech Corporate Defendants' assets located in a Delray Beach storage facility. After counsel negotiated access to the storage container, counsel and Kapila accessed the contents of the container and documented the inventory. The Receiver continues to pay rent for the container in order preserve these assets.

2. Management of Third Party Invoices

Counsel also continues to receive all mail for Vast Corporate Defendants and regularly updates the detailed list of creditors and customers/victims. The Receiver's counsel maintains an extensive list of invoices from vendors and creditors received via mail and email.

In order to minimize the use of resources, counsel continues to contact vendors and cancel all unnecessary services. To facilitate this goal, counsel negotiated with various contract holders to gain access to the accounts, and provided the appropriate documentation to cancel the services. Additionally, counsel worked with Andrews to download and retain any data maintained by these vendors, and Andrews assisted in the removal of certain technical hardware from the corporate office.

The Receiver's counsel and Kapila negotiated extensively with Wells Fargo's counsel and the business division regarding the final processing of employees' year-end payroll taxes. After lengthy and detailed negotiations, the Receiver and Wells Fargo were able to come to a consensus and Wells Fargo provided year-end processing for employees' taxes for a negotiated amount. Counsel also discussed Wells Fargo's other issues regarding the Receivership Estate and its purported claims against the Estate.

3. Business Decisions and Employee-related Issues

Since the filing of the Status Report, the Receiver's counsel and accountants discussed payroll and health insurance, information requests regarding employees from government agencies, forensic analysis results, end-of-year tax processing, and made preliminary determinations to benefit the estate. Counsel and KM identified additional financial accounts and made other necessary legal assessments to facilitate the preservation of Estate assets. Moreover, the Receiver's counsel has also worked with the accountants on the status of the ongoing financial analysis, and provided the issuance of additional letters or subpoenas as necessary in order to assist

their findings.

In furtherance of the Vast Tech Corporate Defendants' tax obligations, the Receiver's counsel maintained the list of 700+ employees' addresses and assisted the accountants in providing updated addresses to send W2s timely. Additionally, counsel received notice of a pending trademark application for a Vast Tech Corporate Defendant, and discussed the application with trademark counsel. In order to maintain the assets of the Receivership Estate, the Receiver is not pursuing the trademark application but maintains abreast of all deadlines. Also, counsel prepared and filed an answer to a writ of garnishment in a debt collection suit against an employee of Vast Tech Corporate Defendants, and contacted counsel in the case. Regarding health insurance, counsel prepared and filed a motion requesting the payment of health insurance premiums for employees for the month of January 2015. The Receiver is not seeking leave of court to pay for continuing health insurance at this time.

As part of the ongoing review of information provided to the Receiver, the Receiver received a complaint of possible theft of customer information. In order to fulfill the Receiver's obligations to protect all customer information, an asset of the Receivership Estate, the Receiver researched the complaint and made a determination that there may be a possible risk of the unlawful use of Receivership assets. As a result, counsel issued and served a subpoena for a deposition and documents to a provider of similar services to the Vast Corporate Defendants. Counsel deposed the provider in order to glean any possible theft of customer information, and determined no customer information had been illegally stolen or misused.

4. Asset recovery

The Receiver's counsel and KM also contacted additional institutions to demand immediate turnover of any Receivership funds and facilitated the return of certain funds to the Estate. Along with KM, counsel continued discussions with financial institutions regarding

payroll issues, the proper return of estate monies, and any purported claims against the Estate. In addition, counsel has contacted numerous service providers in order to assess any new assets. Counsel continued to strategize with the accounting and digital experts regarding any necessary services and ways to lessen fees.

With assistance of the forensic accountants at KM, the Receiver's counsel remains focused on identifying any additional funds that may be targeted to be returned to the Estate via negotiation, litigation or other means.

5. Notices to customers and creditors

Counsel continues to respond to various inquiries from employees, customers and third party vendors via email and telephone on a daily basis. To the extent that any additionally follow-up is needed, counsel has provided any available information to answer the inquiries, and responded with appropriate action if necessary. Counsel regularly updates the website to keep the public informed.

6. Communication with the Government

The Receiver's counsel has continued to work with the Government regarding their inquiries, and assisted them with any requested information. Similarly, counsel provided the Government with the regular updates of the Receiver's activities in furtherance of preserving the Receivership Estate. Further, the Government's forensic digital expert and the Receiver's counsel and digital expert continued to work together to secure all electronic data and to facilitate final production to the Individual Defendants. Counsel has also assisted the Government by pulling certain requested original documents for reproduction, and facilitated the return of all original documents to the corporate office.

7. Cooperation with the Individual Defendants

In furtherance of the Receiver's ongoing cooperation with the Individual Defendants, the Receiver's counsel worked with Individual Defendants to provide them with information and access to data and documents. Counsel produced all remaining electronic information retrieved by Andrews to Defendant Loewenstern,² and responded to any inquiries regarding any technical issues regarding production. Further, counsel met with Defendant Loewenstern and his counsel in order to allow them to pull and copy any requested hard documents from the corporate office. Counsel facilitated the return of any pulled original documents to the premises.³ The Receiver's counsel has also worked with Individual Defendants in responding to their particular requests and assisted them with their inquiries.

V. REPORT ON THE RECEIVER'S INVESTIGATION

In addition to the efforts enumerated above regarding marshaling assets, the Receiver and his professionals have performed many services in connection with Vast Corporate Defendants, including, but not limited to:

- a. closing the related businesses and identifying customers, creditors, and investors;
- b. interviewing employees;
- c. obtaining and reviewing all financial records to trace fraudulent transfers and other asset diversions;

² Although unlikely, upon discovery of any additional electronic information, the Receiver will produce such information to Defendant Loewenstern promptly.

³ As previously noted, Defendants Donahue and Vasta have still not contacted the Receiver about access to Vast Corporate Defendants' information or documents. However, the Receiver previously advised Defendant Loewenstern's counsel that he does not object to Loewenstern sharing any Vast Corporate Defendant information with the co-Defendants.

- d. investigating and attempting to reconstruct the Vast Corporate Defendants' financial and operational affairs, despite disorganized and incomplete records;
- e. analyzing potential claims to be pursued on behalf of the Receivership estate;
- f. communicating via email and telephone with customers and creditors of the Defendants;
- g. communicating and coordinating efforts with the Government;
- h. interviewing creditors of the Vast Corporate Defendants;
- i. locating and conducting an inventory of assets belonging to the Defendants;
- j. locating and consolidating Vast Corporate Defendants' banking accounts into interest bearing accounts under the Receiver's control;
- k. analyzing account receivables;
- l. reviewing legal authorities on property issues, securities issues, debt collection and Receivership issues;
- m. researching transfers of Receivership funds to various entities and individuals, and offshore accounts and activities;
- n. securing the Vast Corporate Defendants' computer network from outside access;
- o. imaging and preservation of all electronic data and information;
- p. gaining access to the Vast Corporate Defendants' websites and domains;
- q. changing all security passwords for computers, websites and electronic funds transfer software; and
- r. updating the Receivership website to provide notice to consumers and creditors about the status of the Government's action against the Defendants.

VI. SUPPLEMENTAL REPORTS

The Receiver will file further reports at reasonable intervals, or as otherwise directed by the Court.

Dated: February 20, 2015

Respectfully submitted,

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Counsel for the Receiver, David S. Mandel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 20, 2015, a true and correct copy of the foregoing was filed by CM/ECF, and that a copy of the foregoing was sent by email and regular U.S. Mail to the following Individual Defendants who are *pro se*:

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/s/ Nina Stillman Mandel