

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Civil Action No. 1:19-cv-08454
TODAYS GROWTH CONSULTANT INC.	:	
(dba THE INCOME STORE)	:	
	:	
and	:	
	:	
KENNETH D. COURTRIGHT, III,	:	
	:	
Defendants.	:	

RECEIVER’S MOTION FOR (i) PRELIMINARY APPROVAL OF SETTLEMENT AND RELEASE AGREEMENT WITH HEARTLAND BANK AND TRUST COMPANY AND (ii) APPROVAL OF NOTICE TO PERSONS AFFECTED BY PROPOSED BAR ORDER AND AN OPPORTUNITY TO OBJECT

Melanie E. Damian, Esq., the court-appointed Receiver (“Receiver”) for Todays Growth Consultant Inc. (“TGC”) in the above-captioned enforcement action, moves this Court to (i) preliminarily approve the Settlement and Release Agreement (the “Settlement”) entered into by and between the Receiver and Heartland Bank and Trust Company (the “Bank”) and (ii) approve the form of notice to be sent to persons who may be affected by the settlement and proposed bar order barring all non-governmental claims. In support of this Motion, the Receiver states as follows:

BACKGROUND

A. Appointment of Receiver

On December 30, 2019, this Court in the above-captioned Securities and Exchange Commission (“SEC”) enforcement action (the “SEC Enforcement Action”) entered a Temporary Restraining Order Freezing Assets and Imposing Other Emergency Relief [ECF No. 20 (the “TRO”)], which, among other things, made preliminary findings that Defendants TGC and Kenneth D. Courtright, III (“Courtright”) (collectively, the “Defendants”) had violated the federal securities laws in connection with their offering and servicing of investment contracts called Consulting Performance Agreements, from at least 2017 through at least December 30, 2019. [ECF No. 20.]

On the same date, this Court entered an Order Appointing Receiver [ECF No. 19 (“Appointment Order”)], which appointed the Receiver as equity receiver of TGC and directed and authorized her to, among other things, “bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver[,]” and “pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates.” (Appointment Order, ¶¶ 42, 43). Such actions include, without limitation, actions for violations of the Illinois Fiduciary Obligations Act, aiding and abetting breach of fiduciary duty, unjust enrichment, and fraudulent transfer to recover transfers that TGC had made to insiders, affiliates and third parties without receiving reasonably equivalent value and, thereby, increasing the value of the Receivership Estate for the benefit of the investors who had been defrauded by the Defendants.

B. Receiver's Claims against the Bank

On December 20, 2020, the Receiver commenced litigation against the Bank, in an action styled *Melanie E. Damian, as Receiver of Today's Growth Consultant Inc. (dba The Income Store) v. Heartland Bank and Trust Company, et al.*, Case No. 1:20-cv-07819, pending in the U.S. District Court for the Northern District of Illinois (the "Receiver's Action"). On May 11, 2022, the Receiver filed a Second Amended Complaint alleging that the bank breached certain duties to TGC to protect it from and/or assisted in the alleged misconduct of Defendant Courtright. The Second Amended Complaint charges the Bank with (i) violations of the Illinois Fiduciary Obligations Act, 760 Ill. Comp. Stat. § 65/1, et seq., (ii) aiding and abetting Courtright's breaches of fiduciary duty, (iii) violations of Sections 5(a)(1) and 5(a)(2) of the Illinois Uniform Fraudulent Transfer Act, 750 ILCS §§ 160/5(a)(1), 160/5(a)(2), and (iv) unjust enrichment. The Bank has vigorously defended the Receiver's claims throughout; expert discovery is about to commence in the case.

C. Class Claims against the Bank

On February 12, 2020, certain plaintiffs (the "Class Plaintiffs") commenced a putative class action against the Bank, and others, on behalf of themselves and all persons or entities who entered into Consulting Performance Agreements with TGC from 2013 through December 2019, and were allegedly injured. The action, styled *PLB Investments LLC, et al. v. Heartland Bank and Trust Company*, Case No. 1:20-cv-1023, is pending in the United States District Court for the Northern District of Illinois (the "Class Action"). An Amended Complaint was filed on June 14, 2021 alleging that the Bank breached certain duties to the class members to protect them from and/or assisted in the alleged misconduct of Defendant Courtright. The Amended Complaint alleges claims against the Bank for (i) violations of the Illinois Fiduciary Obligations Act, 760 Ill. Comp. Stat. § 65/1, et seq., (ii) aiding and abetting TGC's and Courtright's fraud from September 10,

2018 onward, and (iii) aiding and abetting TGC's and Courtright's breaches of fiduciary duties from September 10, 2018 onward. The Bank has vigorously defended the Class's claims throughout; expert discovery is about to commence. The class has yet to be certified.

D. Consolidation of the Receiver's Action and Putative Class Action for Certain Purposes

On January 26, 2022, the Receiver, the Class Plaintiffs, and the Bank asked to consolidate the Receiver's Action and Class Action for discovery purposes on grounds that the two cases "involve common questions of law and fact, the same defendant, and the same facts, evidence, and witnesses" and consolidation of discovery would "avoid overlapping and redundant discovery, permit the efficient sharing of documents among the parties, and avoid duplicative depositions." [Receiver's Action ECF No. 86; Class Action ECF No. 159]. The Receiver's Action and Class Action were consolidated for discovery purposes effective February 2, 2022. [Receiver's Action ECF No. 88; Class Action ECF No. 161]. Extensive consolidated discovery has since been conducted in both actions, including the production and exchange of over four million documents and the taking of numerous depositions; expert reports have yet to be exchanged and expert depositions have yet to occur.

On February 1, 2023, the Receiver, Class Plaintiffs, and the Bank also participated in a single mediation of the claims in the Receiver's Action and Class Action. [Receiver Action ECF No. 120; Class Action ECF No. 195.] The Receiver and Class Plaintiffs agreed to this mediation because both actions seek to remedy injuries that allegedly arise from the same acts, practices, and course of conduct, as opposed to unique or isolated actions taken by TGC and/or Courtright. The Receiver, Class Plaintiffs, and Bank were not able to reach a resolution at the mediation. But, on February 20, 2023, the Receiver and Class Plaintiffs reached agreements with the Bank which, if accepted, would settle both Actions, and result in a dismissal of the Class Action without

certification of the class, making the SEC Enforcement Action the principal action in which persons who entered into Consulting Performance Agreements with TGC will obtain a remedy. The settlement in the Receiver's Action is expressly conditioned on the entry of a bar order (the "Bar Order") that would permanently bar and enjoin all non-governmental barred persons (defined below and in the Settlement Agreement), from directly or indirectly asserting claims against the Bank (and released parties as defined below and in the Settlement Agreement), that in any way relate to, are based upon, arise from, or are connected to the acts, practices, and course of conduct alleged or that could have been alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action. The Bank has no obligation to pay the Settlement Amounts unless the Bar Order is entered and fully effective on its terms, all objections to such Bar Order are overruled, and no appeal of any orders overruling such objections are timely filed or such appeal(s) are denied or dismissed.

THE SETTLEMENT

The Receiver and the Bank, subject to this Court's approval, have agreed to the terms of a Settlement Agreement dated March 10, 2023 (the "Settlement Agreement"), which is attached hereto as **Exhibit A**.

The principal terms of the Settlement Agreement are as follows: The Bank shall make one lump sum payment to the Receivership Estate in the total amount of \$9,000,000 (Nine Million Dollars) (the "**Settlement Amount**") within two (2) weeks of the full and complete satisfaction of each of the conditions enumerated in the Settlement Agreement (the "**Settlement Conditions**"), including, but not limited to, (i) the entry of a Bar Order (defined below); (ii) dismissal of the Receiver's Action; and (iii) dismissal of the Class Action. This description of the Settlement is included here for summary purposes only and not intended to constitute a full recitation of the

terms of the Settlement. A review of this description or this Motion should not be a substitute for a review of the complete Settlement Agreement. *See Exhibit A.*

For the reasons stated below, the Court should exercise its discretion and preliminarily approve the Settlement Agreement in this federal equity receivership. A District Court may approve a settlement in an equity receivership if it is fair, taking into consideration factors such as (i) whether it is prudent in the administration of the assets of the estate, (ii) the claims at issue, (iii) the difficulties, delay, and expense involved in litigating the claims, and (iv) the amount involved in the compromise. *SEC v. Wealth Mgmt., LLC*, 2010 WL 11601158, at *2 (E.D. Wisc. Sept. 13, 2010) (citing *SEC v. Arkansas Loan & Thrift Corp.*, 297 F. Supp. 73, 78 (W.D. Ark. 1969), *aff'd*, 427 F.3d 1171 (8th Cir. 1970)). The Court's settlement determination will not be reversed where the Court has exercised informed and independent judgment and did not abuse its discretion. *In re American Reserve Corp.*, 841 F.2d 159, 161-62 (7th Cir. 1987).

The Court Should Exercise its Discretion and Preliminarily Approve the Settlement

The Receiver believes that the Settlement is in the best interest of the Receivership Estate, considering the costs and attendant risks of continued litigation, as well as the Bank's limited funds, and wasting insurance policy.

The Receiver's claims against the Bank and those asserted in the Class Action involve substantial issues of fact and law and would require substantial additional time and expense, including expert discovery, dispositive motion practice, and trial, coupled with the attendant uncertainty as to the outcome of such litigation and any ensuing appeal. Continued litigation among the Receiver, the Class Plaintiffs, and the Bank would also substantially delay *any* potential recovery to investors and other claimants.

Specifically, the Bank expects to fund the Settlement Amount, in part, by tendering the remaining limits of an insurance policy and funding the remainder from its liquid assets. The Bank's insurance policy is a "wasting policy," and if the Receiver's Action and Class Action continue, the insurance policy's limits will first pay any defense costs of continued litigation, with only the remainder available toward satisfaction of any judgment. Even if continued litigation would not completely exhaust the policy, the amount that would be left to pay claimants in the SEC Enforcement Action would be substantially reduced. In short, the Settlement Agreement allows all Parties to manage their risks, and is a superior result for all Parties. Approval of the Settlement Agreement also makes sense because, as a condition of the settlement, the Class Action will be dismissed, and the only fees and costs that will be deducted from the \$9,000,000 Settlement Amount are the court-approved fees and costs of the Receiver and her counsel. By contrast, if the Receiver Action and Class Action both continued through judgment, the economics would be materially different and, absent an agreement between the Receiver's counsel and Class Action counsel, there would potentially be duplicative fees and expenses, including for a claims process and distribution. It is a virtual certainty that persons and entities holding Receiver-approved claims would receive a lesser recovery.

The Settlement Agreement, if approved, would also enable the Receiver to make a first distribution to approved claimants within approximately 90 days after this Court's final approval of the Settlement Agreement and accompanying Plan of Distribution. As set forth in the Receiver's Proposed Distribution Plan, filed on the same date as this Motion (ECF No. 254), the Receiver expects to make a first distribution of approximately \$7 million to 439 approved claimants, who will be paid, on a pro-rata basis, just under 10% of their total allowed claims. A distribution now

would greatly assist the claimants who have been waiting more than 3 years for any monetary recovery.

For the foregoing reasons, the Receiver now seeks this Court's preliminary approval of the Settlement Agreement in the form attached as **Exhibit B** on the grounds that it is in the best interest of the Receivership Estate, and will substantially benefit claimants against the Estate.

The Bar Order is Necessary and Appropriate Ancillary Relief

As set forth in the Settlement Agreement, attached as Exhibit A hereto, the Bank has made it a condition of the settlement and its payment obligations that this Court enter the proposed Bar Order to provide for a full and final resolution with respect to any and all claims now or hereafter by any of the Barred Persons, as defined therein. For the reasons that follow, the Receiver believes that the proposed Bar Order is appropriately tailored and necessary to achieve the finality and repose that is contemplated under the Settlement Agreement. *See* proposed Bar Order attached hereto as **Exhibit C**.

As part of its authority to approve a settlement in an equity receivership, a District Court has authority to approve bar provisions preventing parties who receive notice and opportunity to be heard from pursuing ancillary claims against a party to the settlement. *Wealth Mgmt., LLC*, 2010 WL 11601158, at *2; *see also In re Ingersoll, Inc.*, 562 F.3d 856, 865 (7th Cir. 2009) (releasing non-debtors from claims where release was essential to the plan, narrow in scope, and the result of a long negotiation, and supported by valuable consideration). Although the appropriateness of a bar order is unique to the facts and circumstances of each settlement, Courts have routinely entered bar orders in connection with settlements of ancillary actions brought by an equitable receiver. *SEC v. DeYoung*, 853 F.3d 1172, 1182-83 (10th Cir. 2017) (abuse of discretion

standard applies to review of a court's decision to enter a Claims Bar Order); *SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (approving bar order in receivership).

For the reasons that follow, the Receiver believes that the proposed Bar Order is fair and good cause exists for the entry of the proposed Bar Order. If entered, the proposed Bar Order would include the following language:

BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST THE HEARTLAND RELEASED PARTIES WITH RESPECT TO THE BARRED CLAIMS, as those terms are herein defined.

a. The “Barred Persons”: Any non-governmental person or entity, including, without limitation, (i) all Claimants, as defined herein; (ii) any current or former owners, officers and directors, limited and general partners, investors, and creditors of TGC; (iii) any persons or entities against whom the Receiver has asserted or may hereafter assert any claims, demands, or lawsuits involving TGC's Consulting Performance Agreements or that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action; and (iv) any person, entity, or affiliate claiming by or through the persons or entities identified in (i), (ii), or (iii);

b. The “Barred Conduct”: Instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;

c. The “Barred Claims”: Any and all direct, indirect, and/or derivative claims, actions, lawsuits, causes of action, complaints, cross-claims, counterclaims, or third-party claims or proceedings of any nature, whether known or unknown against the Heartland Released Parties, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, Canada or

elsewhere, whether arising under local, state, federal or foreign law, that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action;

d. The "Heartland Released Parties": Heartland, its parent, affiliates, and subsidiary companies, all current, former and future employees, agents, attorneys, officers and directors, and consultants, and each of its shareholders, managers, principals, associates, representatives, attorneys, and each of their respective administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest;

e. "Claimants": Any and all investors, site partners, and customers of TGC, all persons and entities that entered into any contracts with TGC, and all persons and entities to whom the Receiver sent any notices concerning any right to file claims in the SEC Enforcement Action, whether or not such Claimants filed a claim in the SEC Enforcement Action or elected to receive a distribution of one or more websites in the claims process in the SEC Enforcement Action, and whether or not any such claim was allowed or disallowed.

This proposed Bar Order is narrowly tailored to the facts and circumstances of the SEC's Enforcement Action, the Receiver's Action, and the Class Action. Specifically, the Barred Persons are those persons who entered into so-called Consulting Performance Agreements, any current or former owners, officers, directors, employees, limited and general partners, and creditors of TGC, that received notice and an opportunity to participate in the claims process, and any persons or entities against whom the Receiver has asserted or may hereafter assert any claims, demands, or lawsuits involving TGC's Consulting Performance Agreements or that relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action. The proposed Bar Order would preclude such persons from directly or indirectly pursuing claims against the Bank (and Bank-related entities included in the release) arising from the same acts, practices, or course of conduct alleged in the SEC Enforcement Action, Receiver Action, and Class Action.

The Receivership here exists precisely to gather the collective interests in the service of equity and aggregate recovery. If the proposed Barred Persons were allowed to pursue claims against the Bank, every dollar they collect from the Bank would be a dollar the Receiver could not recover, which, in turn, would frustrate the Receiver's pro-rata distribution to investors – a core element of its draw upon equity. Accordingly, as in other similar settlements, the Receiver asks the Court to recognize the reality that, given the Bank's finite resources, the Barred Persons must be required to recover their alleged Ponzi-scheme losses through the receivership distribution process. *See, e.g., Zacarias v. Stanford International Bank Ltd.*, 945 F.3d 883, 894-896 (5th Cir. 2019) (a receiver is “allowed to curb investors’ individual advantage-seeking in order to reach settlements for the aggregate benefit of investors under the court’s supervision ... [and] a receiver may systematically use ancillary litigation against third-party defendants to gather the entity’s assets ... [which] are distributed through a court-supervised administrative process.”); *Kaleta*, 530 F. App'x 360, at 362-63 (upholding bar order that was necessary to guarantee settlement, ensure that key members of the fraudulent scheme paid the receivership, and noting it was limited to duplicative claims arising from the same fraudulent scheme); *DeYoung*, 850 F.3d 1172, 1176-83 (court’s equitable powers authorized it to bar claims substantially similar to those brought by the receiver, finding similarity where claims involved the “same loss, from the same entities, related to the same conduct, and arising out of the same transactions and occurrences by the same actors”).

The alleged claims, injuries, and harms in both the Receiver's Action and Class Action arise from a singular alleged scheme, not isolated acts—that is, from a composite of conduct by TGC, Ken Courtright, and others taken over years, collectively establishing and perpetuating the alleged fraud. Additionally, the claims of the Class Plaintiffs and those of the Receiver seek recovery to address the same harms sustained by the same conduct and transactions in the same

alleged scheme. See, *Zacarias* at 899-902. All Receivership Claimants, if such claims were brought, seek recovery based on the same alleged losses or injuries, from the same entities, related to the same conduct, and arising out of the same transactions and occurrences, and by the same actors, as claims asserted by the Receiver. *Zacarias* at 899-902. *Contra, Digital Media Solutions, LLC v. S. U. of Ohio, LLC*, 2023 WL 1794250, *8-11 (6th Cir. Feb. 7, 2023).

The Receiver is not aware of any evidence or allegation that Heartland communicated or interacted with Claimants, or made any representations to Claimants, or took any actions directly with Claimants. As such, any claims that were or could have been asserted by Claimants against Heartland are not independent or non-derivative of the claims asserted by the Receiver against the Bank in the Receiver's Action, and any injuries or losses allegedly incurred by the Claimants were incurred indirectly as a result of any harm caused to TGC. *Contra, Digital Media Solutions*, 2023 WL 1794250, *8-11.

The Claimants are also the beneficiaries of any recoveries obtained by the Receiver in the Receiver's Action, and the Receiver has adequately represented and advocated for their interests in the Receiver's Action. All such Claimants had the ability to participate in the Receivership claims process, and their claims are derivative of and dependent on the Receiver's claims, and their claims directly affect the Receivership Estate's assets. *Contra, Digital Media Solutions*, 2023 WL 1794250, *8-11. *See also DeYoung* at 1182.

For all of the foregoing reasons, the Receiver submits that the injunctive relief sought by its proposed Bar Order should be approved. The Due Process Rights of all persons potentially affected by proposed Bar Order will be protected by the Receiver's Notice. The Receiver attaches a copy of her proposed notice herewith as **Exhibit D** for Court approval.

NOTICE

Upon setting the timeline for objections and final hearing for approval, the Receiver will provide notice of this Motion to Claimants as defined above by electronic mail and/or U.S. Mail (if an electronic mail address is not available) and on the Receivership website¹ as listed on the notice matrix for the Receivership Estate as also used in the original claims process.

**REQUEST TO PAY CONTINGENCY FEES AND COSTS
TO COUNSEL FOR RECEIVER PURSUANT TO ORDER**

Pursuant to the Court's November 5, 2020 Order Granting Receiver's Motion for Approval of Contingency Fee Arrangement [ECF No. 103], and the September 1, 2022 Stipulation and Order Concerning the Receiver's Payment of Expenses in the Ancillary Actions [ECF No. 228] (collectively, the "Contingency Fee Orders"), the Receiver requests the Court authorize and approve payment to the Receiver's counsel for contingency fees and out-of-pocket expenses advanced or incurred in connection with prosecuting the claims against the Bank immediately upon receiving the settlement payment, without further order of the Court. Specifically, the Receiver requests the Court authorize and approve payment of \$2,970,000 to Damian Valori Culmo from the Settlement Amount, which represents 33% of the \$9 million Settlement Amount. The Receiver has offered, and Counsel for the SEC has agreed, that the \$2,970,000 shall be applied as follows: (a) \$500,000 of the \$2,970,000 will be applied toward the payment of administrative fees previously incurred, which the Receiver has held back pursuant to the March 2, 2022

¹ "The service or publication of the Notice in the manner set forth in the Court's Procedures Order constitutes good and sufficient notice..." [SEC v. Quiros, 2016 U.S. Dist. LEXIS 191599, *6](#) (S.D. Fla. 2016) (approving Notice of Settlement to be sent via email and publication); [Douglas v. Western Union Co., 2015 U.S. Dist. LEXIS 171969, *4](#) (N.D. Ill. 2015); [Simms v. ExactTarget, LLC, 2018 U.S. Dist. LEXIS 27391, *5](#) (S.D. Ind. 2018) (approving the proposed Notice by e-mail, or U.S. mail to the last-known addresses (electronic and/or physical) of the Settlement Class members and posting on website).

Stipulation and Order Concerning Receiver's Interim Fee Applications; (b) \$191,745 will reimburse the Receiver's expenses incurred in the Receiver's Action against the Bank; and (c) the remainder (\$2,278,255) will be applied as the contingency fee from the settlement amount.

Although the Receiver is entitled to 33% of the recovery (\$2,970,000) **plus** her out-of-pocket expenses which total \$191,745 (including expert fees advanced), the Receiver in essence has offered to reduce her contingent fee on her case against the Bank from 33% to 25% in order to assist the investors to recover more and facilitate the proposed contemporaneous \$7 million distribution. Accordingly, the total payment to her will be 33% of the \$9 million Settlement Amount, but her out-of-pocket expenses and \$500,000 toward her outstanding administrative fees will be absorbed into the amount.

The Receiver's outstanding attorney's fees for her and her counsel's administrative work are over \$800,000 (even at the reduced rates and with significant write offs). The proposed credit represents a significant benefit to the Receivership Estate. The net result is that the contingency fee for this recovery is reduced from 33% to 25.33% or (\$2,278,254). Invoices of costs advanced, incurred, and/or paid by Damian Valori Culmo in pursuit of the foregoing Settlement including expert witness fees is attached as Composite **Exhibit E**.

CERTIFICATION OF CONFERENCE

Undersigned counsel for the Receiver hereby certifies that he emailed a copy of this Motion and the attached Settlement Agreement to counsel for Plaintiff, the Securities and Exchange Commission, and to Defendant Kenneth D. Courtright, and asked that they confirm whether or not they have any objections to the relief requested herein. Counsel for Plaintiff confirmed that the Securities and Exchange Commission has no objection to the requested relief. Mr. Courtright indicated that he objects to the Motion.

WHEREFORE, the Receiver respectfully requests that this Court enter an Order in the form of Exhibit B: (i) preliminarily approving the Settlement Agreement; (ii) approving the form of the Notice to be sent to all potential claimants attached as Exhibit D; (ii) setting a Final Hearing to hear any objections and approve the Settlement Agreement and (iii) granting such other relief as this Court deems just and proper.

Respectfully submitted this 13th day of March, 2023.

/s/ Kenneth Dante Murena

Kenneth Dante Murena

Florida Bar No. 147486

General Admission to N.D. Ill.

DAMIAN | VALORI | CULMO

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*Counsel for Plaintiff Melanie E. Damian,
Court-Appointed Receiver*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 13th day of March 2023, I electronically filed with Court using the CM/ECF system the foregoing Motion upon all counsel of record and parties who have appeared in this case and are registered to receive electronic notice of all court filings.

/s/ Kenneth Dante Murena

Kenneth Dante Murena

**SETTLEMENT AND RELEASE AGREEMENT BY AND BETWEEN
MELANIE E. DAMIAN, AS RECEIVER OF TODAY'S GROWTH
CONSULTANT, INC., AND HEARTLAND BANK AND TRUST COMPANY**

THIS SETTLEMENT AND RELEASE AGREEMENT (the “**Agreement**”) is made and entered into by and between **Melanie E. Damian**, as Receiver (the “**Receiver**”) of Today's Growth Consultant Inc., and **Heartland Bank and Trust Company** (the “**Bank**”) (each a “**Party**” and collectively the “**Parties**”):

I. RECITALS

A. WHEREAS, on December 30, 2019, the United States Securities and Exchange Commission filed an action against Today's Growth Consultant Inc. (“**TGC**”) and its principal Kenneth D. Courtright, III (“**Courtright**”) (collectively, the “**Defendants**”) in the United States District Court for the Northern District of Illinois (the “**Court**”) styled *Securities and Exchange Commission v. Today's Growth Consultant Inc., et al.*, Case No. 1:19-cv-08454 (the “**SEC Enforcement Action**”).

B. WHEREAS, On December 30, 2019, the Court in the SEC Enforcement Action entered an Order Appointing Receiver (the “**Appointment Order**”) and a Temporary Restraining Order Freezing Assets and Imposing Other Emergency Relief (the “**TRO**”). Under the TRO, among other things, the Court made preliminary findings that the Defendants had violated various sections of the Securities Exchange Act and Rules promulgated thereunder. Under the Appointment Order, the Receiver was “authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind” that, in her discretion may be advisable or proper to recover and/or conserve Receivership Property. (Appointment Order ¶ 42). The Appointment Order appointed the Receiver as equity receiver of TGC and directed and authorized her to, among other things, “bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver[.]” and to “pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates.” (Appointment Order, ¶¶ 8.K., 43). Such actions include, without limitation, actions for violations of the Illinois Fiduciary Obligations Act, aiding and abetting breach of fiduciary duty and fraud, unjust enrichment, and fraudulent transfer to recover transfers that TGC had made to insiders, affiliates and third parties without receiving reasonably equivalent value and, thereby, increasing the value of the Receivership estate for the benefit of the investors who had been defrauded by the Defendants.

C. WHEREAS, on March 2, 2020, the Court entered two separate stipulated preliminary injunction orders titled Order Imposing Preliminary Injunction Freezing Assets and Granting Other Relief (collectively, the “**PI Orders**”) against each of the Defendants, TGC and Courtright, extending the relief granted in the TRO.

D. WHEREAS, pursuant to TRO, the Appointment Order and the PI Orders, the Receiver commenced an action styled *Melanie E. Damian, as Receiver of Today's Growth*

Consultant Inc. (dba The Income Store) v. Heartland Bank and Trust Company, Case No. 1:20-cv-07819, pending in the U.S. District Court for the Northern District of Illinois (the “**Receiver’s Action**”), alleging claims against Heartland for violations of the Illinois Fiduciary Obligations Act, aiding and abetting breach of fiduciary duty, fraudulent transfers, and unjust enrichment in connection with the Receivership Defendants’ scheme.

E. WHEREAS, on February 12, 2020, certain plaintiffs (the “**Class Plaintiffs**”) commenced an action styled *PLB Investments LLC, et al. v. Heartland Bank and Trust Company*, Case No. 1:20-cv-1023, pending in the United States District Court for the Northern District of Illinois (the “**Class Action**”), alleging claims against Heartland for violations of the Illinois Fiduciary Obligations Act, and aiding and abetting breach of fiduciary duty.

F. WHEREAS, the Bank asserted numerous defenses to the Receiver’s Action and the Class Action, including that the Bank did not have knowledge, act in bad faith, or provide substantial assistance with respect to the allegedly fraudulent scheme run by Receivership Defendants, among other defenses.

G. WHEREAS, the Receiver’s Action and the Class Action were consolidated for the purposes of discovery. The Parties, and the Class Plaintiffs and their counsel, engaged in extensive discovery included the exchange of millions of documents and took multiple depositions.

H. WHEREAS, the Parties and Class Plaintiffs engaged in a full day of mediation of the claims in the Receiver’s Action and Class Action with the Honorable United States District Judge Andersen (Ret.). Thereafter, the Receiver, the Class Plaintiffs, and the Bank reached an agreement on the terms of a proposed settlement of the Receiver’s Action and Class Action, as a result of which the Parties and Class Plaintiffs have agreed to amicably resolve any and all disputes between them associated with the Receiver’s claims and the Class Plaintiffs’ claims, subject to the conditions more fully set forth below.

NOW THEREFORE, in consideration of the mutual promises, exchanges, and forbearances set forth below, the sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

II. GENERAL PROVISIONS

A. Approval: The Parties acknowledge and agree that this Agreement is subject to the approval of the Court and, therefore, will not be binding until such approval has been granted (the “**Approval**”), including the approval and issuance of the Bar Order (defined below).

B. Recitals: The Parties acknowledge and agree that the Recitals set forth hereinabove are true, accurate and correct and the same are hereby incorporated into this Agreement.

C. Settlement Amount and Payment: The Bank will pay to the Receivership Estate a total of Nine Million Dollars (USD) (\$9,000,000) (the “**Settlement Amount**”) in one lump sum within two (2) weeks of the full and complete satisfaction of each and all of the Settlement Conditions defined below. The payment of the Settlement Amount to the Receivership Estate shall

be by wire transfer made payable to “Melanie E. Damian, as Receiver for Today's Growth Consultant Inc.”

D. Conditions of Settlement. This Agreement and the obligations of Heartland to pay the Settlement Amount hereunder are expressly conditioned on the satisfaction and completion of each of the following conditions (the “**Settlement Conditions**”):

- i. Bar Order.** An order (the “**Bar Order**”) in the form of the order attached hereto and incorporated herein as **Exhibit 1** shall have been entered by the Court in the SEC Enforcement Action. The Bar Order shall be entered after appropriate notice and an opportunity to object as determined by the Court in the SEC Action shall have been given to all Barred Persons (as defined in the Bar Order). All objections, if any, to such Bar Order shall have been overruled, and no appeal of any orders overruling such objections are timely filed or all such appeal(s) are denied or dismissed.
- ii. Dismissal of Receiver’s Action.** The Receiver’s Action shall be dismissed with prejudice upon such date on which all objections to the Bar Order shall have been overruled, and no appeal of any orders overruling such objections are timely filed or all such appeal(s) are denied or dismissed.
- iii. Dismissal of Class Action.** The Class Action shall have been dismissed prior to the certification of the class without prejudice on or before the date of the entry of the Bar Order, and such dismissal, by its terms, shall become a dismissal with prejudice upon the date on which all objections, if any, to such Bar Order shall have been overruled, and no appeal of any orders overruling such objections are timely filed or all such appeal(s) are denied or dismissed. In the event that such dismissal does not, by its terms, provide that it shall become a dismissal with prejudice upon the occurrence of the above events, then Class Plaintiffs shall immediately dismiss the Class Action with prejudice upon the occurrence of the above events.
- iv. Settlement Agreement and Release by Class Plaintiffs.** The Class Plaintiffs and the Bank shall have entered a settlement agreement (the “**Class Settlement Agreement**”) on such terms as are acceptable to the Bank, which shall contain the requirements for the recognition and entry of the Bar Order described herein, the dismissal of the Class Action on the terms set forth above, and such other terms as are reasonably required by the Class Plaintiffs and the Bank consistent with the terms of this Agreement.

E. Entry of Bar Order: For the avoidance of doubt, the entry of a final, non-appealable Bar Order is an essential condition to this Agreement, and the effectiveness of this Agreement and the obligation of the Bank to pay the Settlement Amount are expressly conditioned upon the entry of the Bar Order by the Court in the SEC Enforcement Action that fully and finally bars and enjoins any persons or entities from asserting any claims against the Bank involving

TGC's Consulting Performance Agreements or that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action, and that includes the following language:

BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST THE HEARTLAND RELEASED PARTIES WITH RESPECT TO THE BARRED CLAIMS, as those terms are herein defined.

- a. **The "Barred Persons":** Any non-governmental person or entity, including, without limitation, (i) all Claimants, as defined herein; (ii) any current or former owners, officers and directors, limited and general partners, investors, and creditors of TGC; (iii) any persons or entities against whom the Receiver has asserted or may hereafter assert any claims, demands, or lawsuits involving TGC's Consulting Performance Agreements or that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action; or (iv) any person, entity, or affiliate claiming by or through the persons or entities identified in (i), (ii), or (iii);
- b. **The "Barred Conduct":** Instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;
- c. **The "Barred Claims":** Any and all direct, indirect, and/or derivative claims, actions, lawsuits, causes of action, complaints, cross-claims, counterclaims, or third-party claims or proceedings of any nature, whether known or unknown against the Heartland Released Parties, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, Canada or elsewhere, whether arising under local, state, federal or foreign law, that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action;
- d. **The "Heartland Released Parties":** Heartland, its parent,

affiliates, and subsidiary companies, all current, former and future employees, agents, attorneys, officers and directors, and consultants, and each of its shareholders, managers, principals, associates, representatives, attorneys, and each of their respective administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest;

e. **“Claimants”**: Any and all investors, site partners, and customers of TGC, all persons and entities that entered into any contracts with TGC, and all persons and entities to whom the Receiver sent any notices concerning any right to file claims in the SEC Enforcement Action, whether or not such Claimants filed a claim in the SEC Enforcement Action or elected to receive a distribution of one or more websites in the claims process in the SEC Enforcement Action, and whether or not any such claim was allowed or disallowed.

F. **Release; Conditions for Release**: In consideration of the payment of the Settlement Amount required herein, and effective immediately upon the payment of the Settlement Amount by the Bank, the Receiver, individually and in her capacity as Receiver, and on behalf of the Receivership estate, and for her respective agents, representatives, successors and assigns, and all other non-government persons and entities claiming by, through or under any of them, does hereby release, acquit and forever discharge the Heartland Released Parties, whomsoever they may be, each in their respective corporate and individual capacities, from any and all claims, demands, obligations, actions, causes of action, rights, damages, punitive damages, attorneys’ fees, costs, expenses and compensation of any nature, arising from her claims, which the Receiver now has or which may hereafter accrue or otherwise be acquired against the Bank. The foregoing release shall relate to any and all claims and causes of action of any kind or character relating to TGC, the Receiver’s Action, and arising out of or in any way connected with or resulting from the acts, actions, or omissions of any of the Heartland Released Parties, or any agent, servant, employee, attorney, officer or director of any of the Heartland Released Parties, including, without limitation, any loss, costs, or damage arising or incurred in connection with any statutory or common law claims, fraudulent transfers, unjust enrichment, negligence, usurious interest, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel or slander, aiding and abetting any of the foregoing actions, or any other action arising in tort, breach of contract or violation of any statute, regulation or law (without admitting or implying that any such claim or cause of action exists or has any validity).

G. **Non-Disturbance of Mortgages**: The priority of the positions of the Bank’s mortgages (the **“Mortgages”**) with respect to the properties owned by Kenneth and Kerri Courtright, located at 212 Slalom Ct., Minooka, Illinois and 405 N. Wabash, Unit 5109-10, Chicago, Illinois (the **“Properties”**) shall not be disturbed. In addition, the Receiver agrees not to hinder, obstruct, or delay Heartland’s right and ability to foreclose on and enforce the Mortgages with respect to the Properties at any time. The Bank acknowledges that both Properties are subject

to the asset freeze provisions of the PI Order against Courtright, which was served on the Bank. Additionally, the SEC has advised that it has filed certain lis pendens against both Properties, and, if the Bank seeks to foreclose on and enforce the Mortgages, the Bank acknowledges that it must first seek permission from the Court presiding over the SEC Enforcement Action before initiating any foreclosure action. The Parties acknowledge that the Securities and Exchange Commission may seek the Court's appointment of a liquidating agent with respect to the Properties, but in such case the priority of the positions of the Bank's Mortgages shall not be disturbed. The Court's approval of this Agreement shall constitute the approval of the foregoing provisions.

H. Material Breach: The Parties acknowledge and agree that the failure by the Bank to pay the Settlement Amount upon satisfaction of each of the Settlement Conditions as set forth above will constitute a material breach of this Agreement and that should such a material breach occur, the Receiver shall be entitled to the entry of a final judgment against the Bank in the amount of \$9,000,000, less any and all amounts that the Receivership Estate received hereunder. If any Party hereto commences an action, suit or other proceeding concerning the negotiation, interpretation, validity, performance or breach of this Agreement, the prevailing Party shall recover such Party's reasonable attorneys' fees and costs incurred in each such action, suit, or other proceeding.

I. No Admission of Liability: Nothing herein shall be construed as an admission of liability by the Bank. Nothing in this Agreement, and no aspect of the Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Bank with regard to the Receivers' Action, the Class Action, or any proceeding therein, or any other case or proceeding, any such liability being expressly disputed and denied, and shall never be construed as an admission(s) by the Bank.

J. Costs: The Parties shall each bear their own attorneys' fees and costs, including court costs, in connection with this Agreement and the settlement of the Receiver's Action and Class Action. Each Party shall be responsible for the payment of all costs incurred in the taking of any depositions in the Receiver's Action and Class Action, with the Party taking such depositions paying the costs and attendance fees of any court reporters and videographers and the cost of that Party's original or copy of transcripts or video recordings of such depositions, and the Party attending such depositions paying the costs of any transcripts or video recordings of such depositions that have been ordered by such Party.

III. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

The Parties represent and warrant that they have the sole and exclusive right to receive sums specified in this Agreement; that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement; and that the persons executing this Agreement on behalf of the Parties have the authority to execute the terms and conditions set forth in this Agreement.

IV. WARRANTY OF SOLVENCY

In order to induce the Receiver to enter into this Agreement, the Bank represents and warrants that it is not presently insolvent, that payment of the Settlement Amount and Class Action settlement amount will not render it insolvent, and it does not intend to file for relief under any section of the United States Bankruptcy Code during the two-year period following the Court's approval of this Agreement. The Receiver reasonably relied upon such representations and warranties of Heartland Bank and Trust Company in entering into this Agreement.

V. ENTIRE AGREEMENT AND SUCCESSORS-IN-INTEREST

The Parties agree that this Agreement contains the entire agreement between the Receiver and the Bank with regard to the matters set forth in it and shall be binding upon and inure to the benefit of their respective successors and assigns. There are no other understandings or agreements, verbal or otherwise, in relation thereto between the Parties, except as herein expressly set forth. There have been no representations not set forth herein that the Parties have relied upon when entering into this Agreement. Should any provision of this Agreement require interpretation or construction, the parties agree that all Parties have participated in the drafting of this document and no presumption regarding construing the document against one Party shall apply. The Bank shall have no duty or liability with respect to the administration of, management of or other performance by the Receiver of her duties relating to the Receivership, including, without limitation, the process to be established by the Receiver for filing, adjudicating and paying claims against the Receivership estate or the allocation, disbursement or other use of the Settlement Amount.

VI. PRESERVATION OF CLAIMS; NO THIRD-PARTY BENEFICIARIES

This Agreement is solely for the benefit of the parties hereto and no persons other than the undersigned shall be entitled to claim or receive any benefit by reason of this Agreement. Nothing in this Agreement, nor the performance of the Parties' obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of the Parties against any person or entity (collectively, "Third Parties") that are not Parties to this Agreement. The Parties reserve all rights to assert any such claims against Third Parties as they may determine appropriate.

VII. PARTIES' OPPORTUNITY TO BE REPRESENTED BY COUNSEL

The Parties acknowledge that each has had the opportunity to consult with the attorney of their choice. Furthermore, each Party to this Agreement represents and warrants that they are entering into this Agreement of their own free will, without having been subjected to any form of duress or coercion of any kind.

VIII. EXECUTION

This Agreement may be executed in counterparts, and such execution shall be valid and binding on the Parties.

IX. SEVERABILITY

In the event any provision of this Agreement, other than the Settlement Conditions, is found

to be invalid by any court of law, the remaining provisions of the Agreement shall remain valid and binding on the Parties. For the avoidance of doubt, if any of the Settlement Conditions, including but not limited to the Bar Order, are found to be invalid, this Agreement shall not be binding on the Parties.

X. JURISDICTION AND VENUE FOR LITIGATION OF DISPUTES

In the event of a dispute as to the interpretation, enforcement, application, or violation of this Agreement, the Parties consent, understand, and agreed that the District Court for the Northern District of Illinois, Eastern Division, shall retain exclusive jurisdiction, and be the exclusive venue, in which to resolve such dispute.

XI. CONSTRUCTION BY STATE LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois to the extent state law is applicable, without giving effect to principles of conflicts of law.

AGREED TO BY:

HEARTLAND BANK AND TRUST
COMPANY

MELANIE E. DAMIAN, AS RECEIVER FOR
TODAY'S GROWTH CONSULTANT, INC.

By: _____

By: _____

Melanie E. Damian, Receiver

Its: _____

Date: _____

Date: _____

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

Civil Action No. 1:19-CV-08454

TODAY’S GROWTH CONSULTANT INC. :
(dba THE INCOME STORE) :

and :

KENNETH D. COURTRIGHT, III, :

Defendants. :

**ORDER (I) PRELIMINARILY APPROVING
SETTLEMENT BETWEEN RECEIVER AND HEARTLAND
BANK AND TRUST COMPANY (II) APPROVING FORM AND
CONTENT OF NOTICE, AND MANNER AND METHOD OF SERVICE;
(III) SETTING DEADLINE TO OBJECT TO APPROVAL OF SETTLEMENT
AND ENTRY OF BAR ORDER; AND (IV) SCHEDULING A HEARING**

THIS CAUSE comes before the Court upon the Motion for (i) Preliminary Approval of Settlement and Release Agreement With Heartland Bank and Trust Company (the “Bank”) and (ii) Approval of Notice to Persons Affected by Proposed Bar Order And Opportunity to Object (the “Motion”). The Motion concerns the Receiver’s request for approval of a proposed settlement between the Receiver and the Bank. By way of the Motion, the Receiver seeks an order preliminarily approving the Settlement Agreement and establishing procedures to provide notice of the settlement and an opportunity to object, setting a deadline to object, and scheduling a hearing. After reviewing the terms of the Settlement Agreement, reviewing the Motion and its exhibits, and considering the arguments and proffers set forth in the Motion, the Court

preliminarily approves the Settlement Agreement and hereby establishes procedures for final approval of the Settlement Agreement and entry of the bar order attached as Exhibit D to Motion as follows:

Preliminary Approval.

Based upon the Court's review of the Settlement Agreement, the Motion and its attachments, and upon the arguments and proffers set forth in the Motion, the Court preliminarily finds that the settlement is fair, adequate and reasonable, is a prudent exercise of the business judgment by the Receiver, and is the product of good faith, arm's length and non-collusive negotiations between the Receiver and the Bank.

The Court, however, reserves a final ruling with respect to the approval of the Settlement Agreement, including the Bar Order, until after the Final Approval Hearing (defined below).

Notice.

The Court approves the form and content of the notice attached as Exhibit B to the Motion (the "Notice"). Service of the Notice to all potential claimants, creditors of the Receivership Estate, and persons and entities against whom the Receiver has asserted any claims, by e-mail and US Mail and publication on the Receivership website constitutes good and sufficient notice, and is reasonably calculated under the circumstances to notify all interested parties of the Motion, the Settlement Agreement, and the Bar Order, and of their opportunity to object thereto and attend the Final Approval Hearing (defined below) concerning these matters; furnishes all parties in interest a full and fair opportunity to evaluate the settlement and object to the Motion, the Settlement Agreement, the Bar Order, and all matters related thereto; Accordingly:

The Receiver is directed, no later than ten (10) days after entry of this Order, to cause the Notice in substantially the same form as attached to the Motion as Exhibit B to be served by email

and first-class U.S. mail, postage prepaid, to: (i) all counsel who have appeared of record in the SEC Action; (ii) all counsel who are known by the Receiver to have appeared of record in any legal proceeding on behalf of any of the Receivership Entities; (iii) all known investors in the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein; (iv) all known non-investor creditors of the Receivership Entities identified after a reasonable search by the Receiver; (v) all owners, officers, directors, and senior management employees of the Receivership Entities; and (vi) all persons and entities against whom the Receiver has asserted any claims, demands, or lawsuits, involving TGC's Consulting Performance Agreements or that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action (as defined in the Motion), and their counsel.

The Receiver is directed, no later than five (5) days before the Final Approval Hearing (defined below), to file with this Court written evidence of compliance with the subparts of this paragraph, which may be in the form of an affidavit or declaration.

Final Hearing.

The Court will conduct a hearing via Zoom before the Honorable Andrea Wood in the United States District Court for the Northern District of Illinois (the "Final Approval Hearing") on _____, 2023. The link for the Zoom hearing shall be placed on the Court's docket and otherwise be provided by the Receiver prior to the Final Approval Hearing. The purposes of the Final Approval Hearing will be to consider final approval of the Settlement Agreement and entry of the Bar Order.

Objection Deadline.

Any person who objects to the terms of the Settlement Agreement, the Bar Order, the Motion, or any of the relief related to any of the foregoing, must file an objection, in Case 1:19-cv-08454 in writing, with the Court no later than ten (10) days before the Final Approval Hearing.

All objections filed with the Court must:

a. Contain the name, address, telephone number of the person filing the objection or his or her attorney;

b. Be signed by the person filing the objection, or his or her attorney;

c. State, in detail, the factual and legal grounds for the objection;

d. Attach any document the Court should review in considering the objection and ruling on the Motion; and

e. If the person filing the objection intends to appear at the Final Approval Hearing, give notice that the objector intends to do so.

Subject to the discretion of this Court, no person will be permitted to appear at the Final Approval Hearing without first filing a written objection and giving notice that they intend to appear at the hearing in accordance with the provisions of this paragraph. Copies of any objections filed must be served by email or regular mail on: Tom@culomlaw.com Thomas A. Culmo, 1000 Brickell Avenue Suite 1020, Miami Florida 33131. Any person failing to file an objection by the time and in the manner set forth in this paragraph shall be deemed to have waived the right to object (including any right to appeal) and to appear at the Final Approval Hearing, and such person shall be forever barred from raising such objection in this action or any other action or proceeding, subject to the discretion of this Court.

Responses to Objections.

The Parties to the Settlement Agreement may respond to an objection filed pursuant to this Order by filing a response in this Case No. 1:19-cv-08454. To the extent any person filing an objection cannot be served by the Court's CM/ECF system, a response must be served to the email address provided by that objector, or, if no email address is provided, to the mailing address provided.

Adjustments Concerning Hearing and Deadlines.

If no objections are timely filed or if the objections are resolved before the hearing, the Court may cancel the Final Approval Hearing.

___ day of MARCH 2023.

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE
HON. ANDREA WOOD

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:19-CV-08454
TODAY’S GROWTH CONSULTANT INC.	:	
(dba THE INCOME STORE)	:	
	:	
and	:	
	:	
KENNETH D. COURTRIGHT, III,	:	
	:	
Defendants.	:	
	:	

**ORDER APPROVING SETTLEMENT AGREEMENT
BY AND BETWEEN MELANIE E. DAMIAN, AS RECEIVER
OF TODAY’S GROWTH CONSULTANT, INC., AND HEARTLAND
BANK AND TRUST COMPANY, AND BARRING CERTAIN CLAIMS**

THIS MATTER came before the Court on _____, 2023, upon *Melanie Damian’s, as Receiver of Today’s Growth Consultant, Inc., Motion to Approve (i) Settlement Agreement, and (ii) Bar of Certain Claims* [ECF No. ___] (the “Motion”), seeking approval of the Settlement Agreement¹ by and between Melanie Damian, as Receiver (the “Receiver”) of Today’s Growth Consultant, Inc. (“TGC”), and Heartland Bank and Trust Company (the “Bank” or “Heartland,” and together with the Receiver, collectively, the “Parties”), fully resolving all claims.

The Court, having reviewed the Motion and the record in this case, having found that proper notice of the Motion and the Order Setting Hearing was provided to all interested parties as required pursuant to the Order Setting Hearing [ECF No. ___], having noted that ___ objections

¹ All capitalized terms shall have the same meaning as defined in the Motion unless otherwise defined herein.

have been filed with the Court opposing the relief requested in the Motion prior to the _____ Objection Deadline set forth in the Order Setting Hearing, having heard argument of counsel in support of the relief sought by the Motion, having found that good and sufficient cause exists to approve the Settlement Agreement because the Agreement is made in good faith and is fair and equitable. *See Shapo v. Engle*, 98 C 7909, 1999 U.S. Dist. LEXIS 18221, *9 (N.D. Ill. Nov. 16, 1999); *Barash v. Morris*, 144 B.R. 401, 405 (Bankr. C.D. Ill. 1992).

Findings and Conclusions

The Court hereby finds and concludes as follows:

1. On December 30, 2019, this Court entered its Order Appointing Receiver (the “Appointment Order”). Under the Appointment Order, the Receiver was “authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in her discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.” (Appointment Order, ¶ 42).

2. Under the Appointment Order, in relevant part, the Receiver was also “authorized, empowered and directed to investigate the manner in which the Receivership Defendant conducted its financial and business affairs and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.” (Appointment Order, ¶ 43).

3. The Appointment Order also imposed a stay of “(a)ll civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in her capacity as Receiver; (b) any Receivership Property, wherever located; (c) the Receivership Defendant, including subsidiaries and partnerships; or, (d) any of the Receivership Defendant's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as “Ancillary Proceedings”).” (Appointment Order, ¶ 32).

4. The Appointment Order also provided that “(t)he parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process,” and “(a)ll Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.” (Appointment Order, ¶¶ 33 and 34).

5. Pursuant to the Appointment Order, the Receiver commenced an action styled *Melanie E. Damian, as Receiver of Today's Growth Consultant, Inc. (dba The Income Store) v. Heartland Bank and Trust Company*, Case No. 1:20-cv-07819, pending in the United States District Court for the Northern District of Illinois (the “Receiver's Action”), alleging claims against Heartland for violations of the Illinois Fiduciary Obligations Act, aiding and abetting breach of fiduciary duty, fraudulent transfers, and unjust enrichment in connection with TGC and Kenneth Courtright (collectively, the “Receivership Defendants”).

6. On February 12, 2020, certain plaintiffs (the “Class Plaintiffs”) commenced an action styled *PLB Investments LLC, et al. v. Heartland Bank and Trust Company*, Case No. 1:20-cv-1023, pending in the United States District Court for the Northern District of Illinois (the “Class Action”), alleging claims against Heartland for violations of the Illinois Fiduciary Obligations Act, and aiding and abetting breach of fiduciary duty.

7. The alleged claims, injuries, and harms in both the Receiver’s Action and Class Action arise from a singular alleged scheme, not isolated acts—that is, from a composite of conduct by TGC, Ken Courtright, and others taken over years, collectively establishing and perpetuating the alleged fraud. Additionally, the claims of the Class Plaintiffs and those of the Receiver seek recovery to address the same harms sustained by the same conduct and transactions in the same alleged scheme. *See, Zacarias v. Stanford International Bank Ltd.*, 945 F.3d 883, 899-902 (5th Cir., Dec. 19, 2019).

8. The claims asserted by the Class Plaintiffs are substantially identical to claims asserted by the Receiver because they involved “the same loss, from the same entities, related to the same conduct, and arising out of the same transactions and occurrences by the same actors.” *Id.* at 898, citing *SEC v. DeYoung*, 850 F.3d 1172, 1175 (10th Cir. 2017).

9. There is no evidence or allegation that Heartland communicated or interacted with Claimants (as defined below), made any representations to Claimants, or took any actions directly with Claimants.

10. The Receiver asserts additional claims in the Receiver’s Action that are not and cannot be asserted by the Class Plaintiffs in the Class Action.

11. By reason of the Appointment Order and applicable law concerning federal equity receiverships, the Receiver is the owner of, possesses, and has the sole and exclusive right to assert

all alleged claims and potential causes of action against the Bank arising from TGC's relationship with the Bank, including any alleged claims related to TGC's Consulting Performance Agreements with its investors or similar agreements with TGC.

12. The Receiver's Action and the Class Action were consolidated for the purposes of discovery. Extensive consolidated discovery was conducted in the Receiver's Action and the Class Action, including the production and exchange of over four million documents and the taking of numerous depositions.

13. On February 1, 2023, the Receiver, the Class Plaintiffs, the Bank, and their respective counsel participated in a single mediation of the claims in the Receiver's Action and Class Action. Thereafter, the Receiver, the Class Plaintiffs, and the Bank reached an agreement on the terms of a proposed settlement of the Receiver's Action and Class Action, which such terms are set forth in certain settlement agreements in each case (collectively, the "Settlement Agreement").

14. The settlement contemplated in the Settlement Agreement is expressly conditioned on the entry of a bar order (the "Bar Order") that permanently bars and enjoins all persons, firms, and entities (collectively, "Claimants") from commencing, prosecuting, or asserting any judicial, administrative, arbitration, or other proceeding, either directly or in any other capacity, against the Bank, defined to include its parent or subsidiary companies, affiliates, past and present officers, employees, shareholders, beneficiaries, members, directors, attorneys, agents, partners (whether general or limited), successors or assigns, as to any and all liabilities, judgments, rights, claims, cross-claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions, and causes of action of every kind and description, arising under common law, rule, regulation, or statute, whether arising under state or federal law, whether

presently known or unknown that any Claimant now has, ever had, or may claim to have in the future that is a direct, indirect, and/or derivative claim, whether known or unknown, that relates in any manner whatsoever to TGC. As used in the Settlement Agreement, the term “Claimant” includes all such persons, firms, and entities, whether or not the Claimant filed a claim in the Receivership Action or elected to receive a distribution of one or more websites in the claims process in the Receivership Action.

15. Heartland has conditioned its willingness to enter the Settlement Agreement and make the Settlement Payment on a full and final resolution with respect to any and all claims instituted now or hereafter by any and all of the Barred Persons (as defined below) against any and all of the Heartland Released Parties (as defined below) that in any way relate to, are based upon, arise from, or are connected with Today’s Growth Consultant, Inc. or to transactions and occurrences alleged in the Receiver’s Action or the Class Action (the “Barred Claims,” as more fully defined below). Under the Settlement Agreement, Heartland has no obligation to pay the Settlement Amounts unless the Bar Order is entered and fully effective on its terms, all objections to such Bar Order are overruled, and no appeal of any orders overruling such objections are timely filed or such appeal(s) are denied or dismissed.

16. The Court finds that the Bar Order is an essential requirement for the existence of the settlements under the Settlement Agreement, and without such Bar Order, such settlements will not be possible.

17. The Court also notes that the source of funds for payment of the Settlement Amounts under the Settlement Agreement is derived in part from the proceeds of certain insurance that may or may not provide coverage for the claims alleged against the Bank, and that the policy with respect to such insurance is a “wasting” policy under which the costs of the Bank’s defense

are depleting such insurance. Accordingly, the imposition of the Bar Order to enable the settlements under the Settlement Agreement at this time is in the best interests of the Receivership estate and all Claimants, given the likelihood of depletion of such insurance if the Receiver's Action, the Class Action, or any other future action against the Bank are permitted to proceed.

18. The Court also notes that, because the settlements contemplated under the Settlement Agreement will not occur without the Bar Order, and because the settlements are important to the Receivership estate, the barring of other judicial proceedings is appropriate and necessary where they would undermine the receivership's operation. *Zacarias*, 945 F.3d at 902.

19. The Court has been apprised of the negotiations that preceded the Settlement Agreement and finds that the Settlement Agreement and the Motion and incorporated request for Bar Order are a result of arms'-length bargaining among the Parties. The Court has also been apprised that the Receiver and the Receiver's Action were substantially benefitted by extensive work of the Class Plaintiffs' counsel in the consolidated discovery, thereby justifying the settlement under the Settlement Agreement. There is no evidence that the settlement reached by and between the Parties is the result of collusion between the Parties or that there has been any intent to prejudice any other interested parties.

Order

For the reasons stated on the record, it is:

ORDERED as follows:

20. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367(a).

21. The form and means of the notice of the Motion, Bar Order, and Order Setting Hearing are determined to have been the best notice practicable under the circumstances and to be

good and sufficient notice to all persons and entities whose interests would or could be affected by this Order.

22. The Court finds that entry of this Order is appropriate to achieve finality and repose that contemplated as a term of the proposed Settlement Agreement and that good cause exists for the entry of this Order and is fair and equitable. *In re Kmart Corp.*, 381 F.3d 709, 715 (7th Cir. 2004) *Stern v. Clearing, LLC*, 09 C 794, 2011 U.S. Dist. LEXIS 103156, *4 (N.D. Ill. Sept. 12, 2011).

23. “Pursuant to their jurisdiction under the securities laws, federal courts can make use of receiverships where “a troubled entity, bedeviled by their violation, will be unable to satisfy all of its liabilities to similarly situated investors in its securities.” *Zacarias* at 894-895. “In these instances, the district court can take possession of the troubled entity and its assets and vest control in an appointed receiver to ‘stand in the shoes’ of the troubled entity, who ‘is entitled to pursue the corporation’s claims ‘for the benefit not of [the wrongdoers] but of innocent investors.’ The receiver is therefore allowed to curb investors’ individual advantage-seeking in order to reach settlements for the aggregate benefit of investors under the court’s supervision ... [and] a receiver may systematically use ancillary litigation against third-party defendants to gather the entity’s assets ... [which] are distributed through a court-supervised administrative process.” *Id.* at 896.

24. Orders preventing interference with the administration of receivership property may include “stays of claim in other courts against the receivership and bar orders foreclosing suit against third-party-defendants with whom the receiver is also engaged in litigation.” *Id.* at 896-97. “(B)ar orders enjoining ... investors’ third-party claims fall well within the broad jurisdiction of the district court to protect the receivership res. The exercise of jurisdiction over a receivership is not an exercise of jurisdiction over other judicial proceedings. Rather, it permits the barring of

such proceedings where they would undermine the receivership’s operation.” *Id.* at 902. In so doing, the court affords objecting investors “all the process due: notice and opportunity to be heard on the proposed settlement and bar orders.” *Id.* at 903. “They (are) not deprived of any entitlement to recovery: the bar orders channel investors’ recovery ... through the receivership’s distribution process.” *Id.*

25. Courts have frequently used bar orders for these purposes in cases similar to the Receiver’s Action. *See e.g., SEC v. Quiros*, 1:16-cv-21301-DPG, Doc. 523-1 (S.D. Fla., Jan. 8, 2019); *SEC v. Adams*, 2021 WL 8016843, 3:18-cv-252 (S.D. Miss., Feb. 25, 2021); *SEC v. Alleca*, 2015 WL 11199076, 1:12-cv-3261-WSD (N.D. Ga., Oct. 15, 2015); *SEC v. Nadel*, 2012 WL 12910648, 8:09-cv-87-T-26TBM (M.D. Fla., Feb. 10, 2012); *SEC v. Parish*, 2010 WL 8347143, 2:07-cv-00919-DCN (D. S.C., Feb. 10, 2010); and *Harmelin v. Man Financial, Inc.*, 2007 WL 4571021, 06-1944, 05-2973 (E.D. Pa., Dec. 28, 2007).

26. A third-party defendant’s “incentives to settle are reduced—likely eliminated—if each ... investor retains an option to pursue full recovery in individual satellite litigation. Such resolution is no resolution. And the costs of undermining this settlement are potentially large. The receivership—and thus qualifying investor claimants—would be deprived of ... settlement proceeds.” *Id.* at 900.

27. As set forth above, the Court considered the factors set forth in *Digital Media Solutions, LLC v. S. U. of Ohio, LLC*, 2023 WL 1794250 (6th Cir. Feb. 7, 2023) and *Zacarias v. Stanford International Bank Ltd.*, 945 F.3d 883, 899-902 (5th Cir., Dec. 13, 2019).

28. The Court does not find that the factors applied by the court in *Digital Media Solutions, LLC v. S. U. of Ohio, LLC*, 2023 WL 1794250 (6th Cir. Feb. 7, 2023) apply to the

circumstances surrounding the alleged claims in the Receiver's Action, the Class Action, or the potential claims of any other Claimants that may be asserted against the Bank.

29. The alleged claims, injuries, and harms in both the Receiver's Action and Class Action arise from a singular alleged scheme, not isolated acts—that is, from a composite of conduct by TGC, Ken Courtright, and others taken over years, collectively establishing and perpetuating the alleged fraud. Additionally, the claims of the Class Plaintiffs and those of the Receiver seek recovery to address the same harms sustained by the same conduct and transactions in the same alleged scheme. See, *Zacarias* at 899-902. All Receivership Claimants, if such claims were brought, seek recovery based on the same alleged losses or injuries, from the same entities, related to the same conduct, and arising out of the same transactions and occurrences, and by the same actors, as claims asserted by the Receiver. *Zacarias* at 899-902. *Contra, Digital Media Solutions, LLC v. S. U. of Ohio, LLC*, 2023 WL 1794250, *8-11 (6th Cir. Feb. 7, 2023).

30. The Receiver is not aware of any evidence or allegation that Heartland communicated or interacted with Claimants, or made any representations to Claimants, or took any actions directly with Claimants. As such, any claims that were or could have been asserted by Claimants against Heartland are not independent or non-derivative of the claims asserted by the Receiver against the Bank in the Receiver's Action, and any injuries or losses allegedly incurred by the Claimants were incurred indirectly as a result of any harm caused to TGC. *Contra, Digital Media Solutions*, 2023 WL 1794250, *8-11.

31. The Claimants are also the beneficiaries of any recoveries obtained by the Receiver in the Receiver's Action, and the Receiver has adequately represented and advocated for their interests in the Receiver's Action. All such Claimants had the ability to participate in the Receivership claims process, and their claims are derivative of and dependent on the Receiver's

claims, and their claims directly affect the Receivership Estate's assets. *Contra, Digital Media Solutions*, 2023 WL 1794250, *8-11. *See also DeYoung* at 1182.

32. The Court also finds that the reasoning of the court in *Zacarias* is in line with the important principles applicable to federal equity receiverships in this Circuit.

33. Accordingly, the Court finds that the entry of the Bar Order set forth below is necessary and appropriate.

34. The Motion is **GRANTED**, and the Settlement Agreement is **APPROVED** *in toto*.

35. All objections, to the extent asserted, to the Motion and Settlement Agreement are hereby **OVERRULED**.

36. The terms of the Settlement Agreement are incorporated into this Order as if fully set forth herein, including the non-disturbance of the priority of the Bank's Mortgages as provided in the Settlement Agreement.

37. The Court approves the Receiver's attorney's fees as set forth in the Motion. Specifically, the Receiver requests the Court authorize and approve payment of \$2,970,000 to Damian Valori Culmo from the Settlement Amount, which represents 33% of the \$9 million Settlement Amount. To be applied as follows: (a) \$500,000 of the \$2,970,000 will be applied toward the payment of administrative fees previously incurred, which the Receiver has held back pursuant to the March 2, 2022 Stipulation and Order Concerning Receiver's Interim Fee Applications; (b) \$191,745 will reimburse the Receiver's expenses incurred in the Receiver's Action against the Bank; and (c) the remainder (\$2,278,255) will be applied as the contingency fee from the settlement amount.

38. **BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN**

THE BARRED CONDUCT AGAINST THE HEARTLAND RELEASED PARTIES WITH RESPECT TO THE BARRED CLAIMS, as those terms are herein defined.

- a. **The “Barred Persons”**: Any non-governmental person or entity, including, without limitation, (i) all Claimants, as defined herein; (ii) any current or former owners, officers and directors, limited and general partners, investors, and creditors of TGC; (iii) any persons or entities against whom the Receiver has asserted or may hereafter assert any claims, demands, or lawsuits involving TGC’s Consulting Performance Agreements or that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver’s Action, or the Class Action; and (iv) any person, entity, or affiliate claiming by or through the persons or entities identified in (i), (ii), or (iii);
- b. **The “Barred Conduct”**: Instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;
- c. **The “Barred Claims”**: Any and all direct, indirect, and/or derivative claims, actions, lawsuits, causes of action, complaints, cross-claims, counterclaims, or third-party claims or proceedings of any nature, whether known or unknown, including, but not

limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, Canada or elsewhere, whether arising under local, state, federal or foreign law, that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action;

- d. **The "Heartland Released Parties"**: Heartland, its parent, affiliates, and subsidiary companies, all current, former and future employees, agents, attorneys, officers and directors, and consultants, and each of its shareholders, managers, principals, associates, representatives, attorneys, and each of their respective administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest;
- e. **"Claimants"**: Any and all investors, site partners, and customers of TGC, all persons and entities that entered into any contracts with TGC, and all persons and entities to whom the Receiver sent any notices concerning any right to file claims in the SEC Enforcement Action, whether or not such Claimants filed a claim in the SEC Enforcement Action or elected to receive a distribution of one or more websites in the claims process in the SEC Enforcement Action, and whether or not any such claim was allowed or disallowed.

39. Nothing in this Order or the Settlement Agreement, and no aspect of the Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability, or wrongdoing, or of any infirmity in the

claims or defenses of the Parties with regard to the Receivers' Action, the Class Action, any proceeding therein, or any other case or proceeding.

40. Heartland shall have no duty or liability with respect to the administration of, management of, or other performance by the Receiver of her duties relating to the Receivership, including, without limitation, the process to be established by the Receiver for filing, adjudicating and paying claims against the Receivership estate or the allocation, disbursement, or other use of the Settlement Amount.

41. Nothing in this Order or the Settlement Agreement, nor the performance of the Parties' obligations thereunder, shall in any way impair, limit, modify, or otherwise affect the rights of Heartland or the Receiver against any party not released in the Settlement Agreement.

42. Pursuant to Fed.R.Civ.P. 54(b), and the Court's authority in this equity receivership to issue ancillary relief, this Order is a final order for all purposes, including, without limitation, for purposes of the time to appeal or to seek rehearing or reconsideration. Other than by direct appeal of this Order, or motion for reconsideration or rehearing thereof, made in accordance with the Federal Rules of Civil Procedure, no appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement Agreement, or to impair, modify, or otherwise affect in any manner the Bar Order.

43. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, interpret, and enforce this Order, including, without limitation, the injunctions, bar orders, and releases herein or in the Settlement Agreement, or the implementation thereof.

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE
HON. ANDREA WOOD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Civil Action No. 1:19-cv-08454
TODAY’S GROWTH CONSULTANT, INC.	:	
(dba THE INCOME STORE)	:	
	:	
and	:	
	:	
KENNETH D. COURTRIGHT, III,	:	
	:	
Defendants.	:	
	:	

**NOTICE OF PROCEEDINGS TO APPROVE
SETTLEMENT WITH BAR ORDER**

**IMPORTANT NOTICE REGARDING A BAR ORDER
PLEASE READ CAREFULLY**

PLEASE TAKE NOTICE that the Receiver for Today’s Growth Consultant, Inc. (“TGC”) (the “Receiver”) in the above-captioned action, and Heartland Bank and Trust Company (the “Bank”) have entered into a Settlement to settle all claims that were and could have been asserted against the Bank by the Receiver, the Receivership Defendants, and any person or entity that may hold a claim related to TGC (the “Barred Parties”), including but not limited to the claims brought in *Melanie E. Damian, as Receiver of Today’s Growth Consultant, Inc. (dba The Income Store) v. Heartland Bank and Trust Company*, Case No. 1:20-cv-07819 (the “Receiver’s Action”), pending in the U.S. District Court for the Northern District of Illinois.

PLEASE TAKE FURTHER NOTICE that the Receiver and the Bank have requested that the District Court approve the Settlement and include in the order approving such Settlement a provision permanently barring, restraining and enjoining any person or entity from pursuing claims, **including claims you may possess**, against the Bank, including but not limited to claims set forth in the Receiver’s Action (the “Bar Order”).

PLEASE TAKE FURTHER NOTICE that the Barred Parties include any non-governmental person or entity, including, without limitation, (i) all Claimants in the Receivership as defined in the Settlement Agreement, (ii) any current or former owners, officers and directors, limited and general partners, investors, and creditors of TGC; (iii) any persons or entities against whom the

Receiver has asserted or may hereafter assert any claims, demands, or lawsuits involving TGC's Consulting Performance Agreements or that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action or the Receiver's Action

PLEASE TAKE FURTHER NOTICE that copies of the relevant Complaint, the Settlement Agreement between the Receiver and Bank and the Receiver's Motion For (i) Preliminary Approval of the Settlement and Release Agreement with Heartland Bank and Trust and Company and (ii) Approval of Notice to Persons affected by the Proposed Bar order and Opportunity to Object (the "Motion"), may be obtained from the Receivership's website at <https://incomestorereceivership.com/index.htm>.

PLEASE TAKE FURTHER NOTICE that the final hearing on the Motion, at which time the Court will consider approval of the Settlement Agreement including grant of the releases and Bar Order, will take place by [zoom or at the U.S. District Courthouse for the Northern District of Illinois, Eastern Division, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, in Courtroom _____, at ____:____, on _____, 2023 (the "Final Approval Hearing")]. Any objection to the Settlement or the Bar Order or any related matter, must be filed, in writing, with the District Court in the above-captioned action, and served by email or regular mail, on the Receiver's counsel at, Thomas A. Culmo, DAMIAN | VALORI | CULMO, 1000 Brickell Avenue, Suite 1020 Miami, FL 33131, tom@culmolaw.com **no later than _____ 10 days prior to the hearing regarding the Settlement (the "Objection Deadline")**.

PLEASE TAKE FURTHER NOTICE that any person or entity failing to file or serve an objection in writing on or before the Objection Deadline may not be heard by the District Court at the Final Approval Hearing or otherwise.

This matter may affect your rights. You may wish to consult an attorney.

Respectfully submitted this ____ day of _____, 2023.

/s/ Thomas A. Culmo
Thomas A. Culmo
General Admission to N.D. Ill.
DAMIAN | VALORI | CULMO
1000 Brickell Avenue, Suite 1020
Miami, FL 33131
Telephone: (305) 371-3960
Facsimile: (305) 371-3965
tom@culmolaw.com

*Counsel for Plaintiff Melanie E. Damian,
Court-Appointed Receiver*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this ____ day of March 2023, I electronically filed with Court using the CM/ECF system the foregoing Notice upon all counsel of record and parties who have appeared in this case and are registered to receive electronic notice of all court filings and served the Notice by electronic mail and/or by U.S. Mail on all potential claimants in the Receivership Matter as well as posted this notice on the Receivership website. <https://incomestorereceivership.com/index.htm>.

/s/ Thomas A. Culmo

Thomas A. Culmo

EXHIBIT E

OUT-OF-POCKET COSTS:

Heritage Capital Group (Banking Expert)	\$1,856.25
McElroy Consulting & Litigation Services (Banking Expert)	\$65,862.50
Kapila Mukumal (Damage Experts)	\$78,858.45
Other Expenses	<u>\$45,168.72</u>
<u>TOTAL:</u>	\$191,745.9