

**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.	:	
	:	

**RECEIVER’S MOTION TO APPROVE  
(A) NOTICING AND CLAIMS ADMINISTRATION PROCESS  
AND (B) PARTIAL PLAN OF DISTRIBUTION**

Melanie E. Damian, the court-appointed receiver (“Receiver”) in the above-captioned enforcement action, moves (the “Motion”) for an order approving the Receiver’s proposed (a) noticing and claims administration procedures and the form of the notice to be sent to potential claimants (the “Claims Process”), and (b) partial plan of distribution (the “Partial Distribution Plan”) for assets of the receivership estate (the “Estate”) of Today’s Growth Consultant, Inc. d/b/a/ the Income Store (“TGC” or “Defendant”). In support of this Motion, the Receiver states as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

**A. Appointment and Duties of Receiver**

On December 30, 2019, the Court entered a Temporary Restraining Order Freezing Assets and Imposing Other Emergency Relief [ECF No. 20] (“TRO”) and an Order Appointing Receiver

[ECF No. 19] (“Appointment Order”) in this Securities and Exchange Commission (“SEC”) enforcement action. The TRO ordered the freezing of all assets of Defendants TGC and Kenneth D. Courtright, III (collectively, “Defendants”) to preserve the *status quo*. See ECF No. 20 at pp. 6-7. Further, the TRO ordered the preservation of all Defendants’ documents, books and records concerning (1) the allegations of the Complaint, (2) any securities offered for sale by Defendant TGC<sup>1</sup>, including, but not limited to the Agreements, and (3) any communications with, between, or among either Defendant. See ECF No. 20 at pp. 7-8.

The Appointment Order requires the Receiver to marshal Defendants’ assets and provide the Court with quarterly reports on the status of the Estate. See ECF No. 19. In her Initial Status Report the Receiver advised the Court that she would provide a proposed plan for a bifurcated distribution of the assets of the Estate by February 28, 2020, based on the unique assets and circumstances of this case. See ECF No. 45. Accordingly, the Receiver proposes the two-part Claims Process and the Partial Distribution Plan detailed herein.

## **B. Marshalling and Liquidating Assets**

### **1. Cash on Hand**

The Receiver currently has \$220,955.94 in cash on hand in the Estate’s fiduciary account.

### **2. TGC’s Personal Property**

The Receiver has also recovered all of the personal property located in TGC’s office, including computers and related equipment, office equipment, and inventory for fulfillment of certain e-commerce websites, as detailed in Exhibit B to the Receiver’s Initial Status Report. See

---

<sup>1</sup> Capitalized terms herein not otherwise defined are given the definition ascribed to such terms in the Court’s Orders.

ECF No. 45. Such assets have not yet been liquidated.<sup>2</sup>

### **3. TGC's Domain Names**

The Receiver has also recovered domain names owned by TGC, the value of which has not yet been fully determined. Preliminary figures reflect 3,130 domains owned and operated by the Defendants as detailed in Exhibit C to the Receiver's Initial Status Report. *See* ECF No. 45.

### **4. The Estate's Potential Claims Against Third Parties**

The Receiver also continues to investigate whether TGC and the Receivership Estate hold liquidated and unliquidated claims against third parties, affiliates, and insiders of the Defendants.

### **5. The Consulting Performance Agreements and Websites**

Defendant Courtright raised more than \$100 million from more than 500 investors who entered into certain Consulting Performance Agreements with TGC (the "Agreements") pursuant to which the investors would provide up-front payments and TGC promised to pay investors a minimum guaranteed rate of return, in perpetuity, on revenues generated by websites (the "Websites") that TGC acquires or builds for the investors and then develops, maintains and hosts. *See* Receiver's Initial Status Report, ECF No. 45 at Exhibit D for a list of Agreements listed by number.<sup>3</sup> There are more than 700 Agreements but fewer investors because some have multiple Agreements.

---

<sup>2</sup> Mr. Courtright's personal assets are frozen. If made part of the Estate, they would also be liquidated to contribute to the distribution fund.

<sup>3</sup> Some of the Websites promised to investors are not yet developed, but TGC did purchase and register the domain names that provide the URL for those Websites and those domain names have been assigned to specific investors pursuant to the Agreements. To the extent that the investor assigned a domain name requests turnover of their respective domain name through this Claims Process, such request will be treated exactly the same as a request for a Website. The domain name and any transferable Website content related thereto will be turned over to the claimant in lieu of any monetary remedy.

The Receiver is presently operating TGC's business with a minimal staff of IT personnel to preserve the Websites and other digital assets, at an approximate monthly cost of \$80,000, which cost has been covered by the revenue earned from the Websites until now. Nevertheless, the Receiver foresees that continued operation of the Websites will drain the Estate's minimal funds. Thus, the Receiver herein proposes a hybrid claims process that permits investors to make a claim for the Websites "assigned" to them in the Agreements in exchange for releasing any claim against the Receivership Estate under certain parameters and those investors who do not want their site could participate in a later distribution process from a pool of liquidated assets and recovered funds.<sup>4</sup>

The Receiver has heard from many of the investors and while all express anger and surprise, some investors have expressed a strong desire to have the Websites "assigned" to them actually transferred to them while others do not and would prefer a monetary recovery. Indeed, some investors use their assigned Websites as their business website and are struggling to operate without such site. Those investors are willing to take over their Websites and operate them at their own cost. Meanwhile, other investors simply do not have the means or the know how to operate their Websites without TGC's services such that they would prefer to have their Websites liquidated and to receive monetary compensation from the distribution fund. The proposed Claims Process and Partial Distribution Plan detailed herein takes into account the wishes of both groups of potential claimants and allows them to elect a remedy, *i.e.*, turnover of the Website(s) assigned to them or await liquidation of assets and receive an unknown monetary sum. Creditors of TGC

---

<sup>4</sup> The Receiver is aware that certain investors have already been repaid their full investment and are therefore "net winners". The Receiver proposes that those investors return any net winnings prior to the Receiver's transfer of their Websites.

would only be permitted to participate in the monetary distribution but would be required to make a claim during this initial claims process.

Any proceeds recovered from the liquidation of all of the aforementioned assets including, the unclaimed or unwanted Websites, will be used to pay the administrative expenses of the Estate and to make the monetary distribution to claimants as detailed *infra* in the Partial Distribution Plan.

### **KNOWN INVESTORS AND CREDITORS OF THE RECEIVERSHIP ESTATE**

The Receiver has sent emails to all known investors, informing them of the commencement of the enforcement action and the receivership, providing general information regarding the case, and inviting them to contact the Receiver at the dedicated telephone number and email address that the Receiver provided and visit the website the Receiver created for the receivership ([incomestorereceivership.com](http://incomestorereceivership.com)), on which the Receiver has provided a summary of the action, posted important court filings and dates, and included several frequently asked questions and the Receiver's answers thereto. The Receiver's professionals have received and responded to hundreds of telephone calls and emails from investors, providing various requested information and referring them to the receivership website for further information.

Further, the Receiver has been contacted by one company claiming that TGC owes it several million dollars. The Receiver has not yet investigated this purported indebtedness.

### **THE PROPOSED NOTICING AND CLAIMS PROCESS** **AND DISTRIBUTION PLAN**

#### **A. The Noticing Process and Claims Documentation**

The Receiver will use her best efforts to notify all known investors and creditors of the Estate using the proposed Legal Notice and Proof of Claim and Release Form, attached hereto as **Exhibits A and B** (collectively, the "Claims Package"), by email to all known email addresses as

contained in TGC's business records and as provided by investors and creditors that have contacted the Receiver. For any known investors and creditors that only have a physical mailing address on record with TGC, the Receiver will mail them the Notice and Proof of Claim Form by U.S. Mail. The Receiver will also post the Claims Package on the website of the Receivership [incomestorereceivership.com](http://incomestorereceivership.com) and her counsel ([www.dvllp.com](http://www.dvllp.com)), and by filing them with the Court.

The Legal Notice will apprise the potential claimants of how the Claims Process was created, who is eligible to submit a claim in order to receive turnover of a Website or a monetary distribution from Receivership Estate, the process by which eligible claimants can submit a claim, and the process by which the Receiver will determine which eligible claimants have Allowed Claims and thus are entitled to receive either turnover of the assigned Website(s) or a distribution from the Estate. *See* Exhibit A.

The Proof of Claim and Release Form will ask that potential investors elect a remedy and then provide, among other things: (a) details regarding the investor's identity and contact information; (b) details regarding the amount, timing and transfer of the investor's payment to TGC; and (c) details regarding the amount, timing and transfer of any monies that TGC paid to the investor. *See* Exhibit B. The Proof of Claim and Release Form will ask potential creditors to provide, among other things: (a) details regarding TGC's debt to the creditor; (b) details regarding the goods and/or services the creditor provided to TGC; and (c) details regarding the amount, timing and transfer of any monies that TGC paid to the creditor. The Proof of Claim and Release Form also will require the claimant to, *inter alia*, certify the accuracy of the information provided and certify that each of the three factors of an Allowed Claim, set forth above, are satisfied. *Id.*

To the extent possible, in the Claims Package, the Receiver will provide to investors prefilled claim forms, based on TGC's records, providing information regarding the "assigned" Website(s), the amounts they received from TGC, and the Receiver's estimate of each prospective claimant's Allowed Claim, and will give each claimant the option of certifying his or her acceptance of the Receiver's calculations. If the potential claimant does not certify acceptance, such claimant must submit his/her own claim amount with supporting documentation.

**B. The Claims Process and Partial Distribution Plan**

After analysis of the equities, expenses and likely recovery to the Estate, the Receiver proposes a hybrid Claims Process that permits investors to make a claim for the Website(s) "assigned" to them in the Agreements in exchange for releasing any claim against the Estate. And, for the investors who do not want their purportedly assigned Website(s) or if such promised Websites were not developed for them, those investors could participate in a later pool of recovered funds, the distribution of which will be subject to subsequent Court approval.

Moreover, the Receiver is aware that certain investors have already been repaid their full investment and are therefore "net winners". The Receiver proposes that those investors return any net winnings prior to transfer of their Website(s). In addition, because it is believed that historically misinformation was provided to investors as to the value and/or income of their Websites, the Receiver will provide investors with actual data relating to the Websites upon request prior to the investor making any such election of remedy.

Thus, the attached Proof of Claim and Release Form requests that claimants establish that they are "net losers" prior to having an Allowed Claim (as defined *infra*). The Receiver requests

that the Court permit the Receiver to determine which claimants hold Allowed Claims, in her sole discretion, without further order of this Court.<sup>5</sup>

This expedited process will permit the Receiver to transfer and/or liquidate the remaining Websites in the next 60 to 90 days after the Court's approval of this process, thereby preserving the Receivership assets that would otherwise be required to maintain them.

The investors choosing monetary compensation as their remedy will have to wait for the liquidation of TGC's assets and the pooling of those proceeds to receive a distribution based on a distribution plan approved by the Court at that time. The Receiver will ask the Court to approve the amount and timing of any monetary distribution that she seeks to make.

### **1. Proposed Eligibility of Claimants**

The Receiver proposes that only those investors and creditors for whom there exists documentation of an investment in the Defendants' fraud or a debt that TGC owes to such creditor should be eligible to file a claim in this Receivership at this time. All such investors and creditors, as determined based on the Receiver's forensic accountant's analyses and TGC's business records, will receive the Claims Package including an approved form of Legal Notice, Proof of Claim and Release Form and a calculation of estimated claim.

### **2. Proposed Definition of "Allowed Claim" and Basis for Distribution**

The claim of an investor or creditor will be allowed (an "Allowed Claim"), such that the investor or creditor will be *entitled* to receive turnover of the assigned Website(s) or a monetary distribution based on the investor's loss of principal investment in TGC or the amount still owed to the creditor, provided that the investor or creditor sufficiently demonstrates to the satisfaction of the Receiver through documentation and/or sworn statements, among other things:

---

<sup>5</sup> Claims that are denied in whole or in part will be subject to an appeals process detailed below.



- (i) that such investor (a) entered into a Consulting Performance Agreement or Software Development Agreement with TGC, (b) paid an up-front fee to TGC, and (c) did not receive from TGC or their affiliates any amount, or received an amount less than the amount they had paid to TGC, and thus incurred a net loss;

OR

that TGC incurred a debt to such creditor, for goods or services that such creditor provided to TGC and such debt remains unpaid in whole or in part;

AND

- (ii) that such investor or creditor is not: (a) Defendant Kenneth D. Courtright, III, or a member of his family, including without limitation a spouse, child, parent, sibling or parent or sibling of Defendant Courtright's spouse, or any entity directly or indirectly controlled by them or a trust established for their benefit; (b) a person who was employed by or contracted to TGC or Defendant Courtright at any time from December 2009 through December 2019 (the "relevant period"); (c) a person or entity affiliated with TGC or Defendant Courtright during the relevant period, including without limitation Conklin Web Properties; and (d) a person or entity that promoted TGC or its investment contracts and was directly or indirectly compensated for such promotion.

The Receiver may consider other factors in determining whether a claim is an Allowed Claim.<sup>6</sup> If an investor or creditor cannot prove all three of the foregoing factors, that investor's or creditor's claim will be disallowed and such investor or creditor will receive no turnover of an assigned Website(s) or monetary distribution.<sup>7</sup>

If an investor or creditor makes the requisite showing regarding his or her claim and the Receiver determines that such claim is an Allowed Claim, then and only then, will the investor or

---

<sup>6</sup> Notwithstanding these factors for determining whether a claim should be allowed, the Receiver will analyze each claim individually and the circumstances surrounding each investor's investment with or transfers to TGC, or the goods and/or services provided by each creditor and the amount owed to the creditor, and each investor's or creditor's relationship with Defendants and reserves the right to object to and seek to disallow any claim.

<sup>7</sup> To the extent an investor received transfers from TGC in excess of such investor's total investment with or transfer to TGC, such that the investor profited from the fraud, the Receiver reserves the right to pursue a claim against such investor for the return of the profit received and any other appropriate relief.

creditor be entitled to recovery from the Estate. For investors requesting turnover of an assigned Website(s), to the extent such information is not in TGC's records, the Receiver will require that they provide documentation or other proof of the assignment from TGC to the investor. Those claims for turnover of Websites will be processed first and the Websites will be turned over as soon as practicable after investors are determined to have an Allowed Claim for their respective Websites, without further order of the Court.

If an investor elects monetary distributions, the Receiver will calculate the amount of such Allowed Claim by subtracting the total amount of all transfers that such investor received from TGC from the total amount that such investor paid to TGC, irrespective of the success or failure of the particular investment or terms in any agreement underlying the debt providing for interest or fees. **Claimants with Allowed Claims will receive a distribution pursuant to a plan proposed and approved by the Court at the time of the distribution.** The Receiver will not include within her calculation for distributions any interest or profit that was promised to such claimants.

For example, an investor who demonstrates that he or she invested a total of \$100,000 in the fraud and received back from TGC a total of \$60,000 in purported returns on such investment would, subject to the Receiver's final determination and the Court's approval, have an Allowed Claim in the amount of \$40,000. Similarly, a creditor who demonstrates that TGC owed them a total of \$100,000 but paid \$60,000 towards that debt would, subject to the Receiver's final determination and the Court's approval, have an Allowed Claim in the amount of \$40,000.

### **3. Proposed Sequence and Timing of Claims Process**

The Receiver proposes that the claims process proceed in accordance with the following schedule:

- a. Claims Process Approval: The date upon which this Court grants this Motion and approves the Receiver's proposed Claims Process shall be referred to herein as the "Claims Process Approval Date";
- b. Receiver's Mailing of Claims Package: The Receiver would send the Claims Package to known investors and creditors of TGC via email or first-class mail, within fifteen (15) days after the Claims Process Approval Date;
- c. Claims Bar Date: Claimants would then have until forty-five (45) days after the Claims Process Approval Date (the "Claims Bar Date") to return the completed Proof of Claim and Release to the Receiver. Any completed Proof of Claim and Release not postmarked by the Claims Bar Date would be barred, and claims postmarked after the Claims Bar Date will not be allowed except for good cause shown;
- d. Receiver's Initial Determination of Allowed Claims: The Receiver will have until twenty (20) days after the Claims Bar Date ("Receiver's Initial Determination Date") to approve or reject, in whole or in part, all claims received. In the event that the Receiver were to reject any claim, in whole or in part, the Receiver would apprise the claimant, via first class mail and/or email, of the rejection of the claim, the basis for that rejection, and the process for appealing such rejection.
- e. Claimant's Request for Reconsideration of Initial Determination: Any claimant whose claim is rejected by the Receiver, in whole or in part, may request that the Receiver reconsider that denial by sending the Receiver a letter seeking a reconsideration, which must be postmarked within twenty (20) days after the Receiver's Initial Determination Date and which must state the basis of the claim and the claimant's response to the Receiver's notice of rejection.

- f. Receiver's Final Determination: The Receiver has until thirty (30) days after the Receiver's Initial Determination Date (which is ten (10) days after the claimants' deadline to request reconsideration of initial determination) (the "Receiver's Final Determination Date") to reconsider any request by any claimant whose claim was initially rejected by the Receiver and to apprise the claimant, via first class mail and/or email, of the reconsideration or rejection of the claim.
- g. Claimant's Appeal of Receiver's Final Determination: Any claimant whose claim was finally rejected by the Receiver may appeal the Receiver's rejection of the claim to the Court by filing with the Court an Appeal of the Receiver's Final Determination, which must be postmarked twenty (20) days after the Receiver's Final Determination Date, (the "Appeal Deadline") and which must state the basis of the claim and the claimant's response to the Receiver's Final Determination.
- h. Receiver's Response to Appeals: The Receiver's Response to all appeals filed with this Court shall be due within fifteen (15) days after the Appeal Deadline. Following the time for the Receiver's response, the Court may make a final determination or may set the matter for hearing. A final determination by the Court is final for all purposes. There shall be no further appeal of such proceedings.
- i. Receiver's Motion to Approve Monetary Distribution: The Receiver shall file her motion to approve a monetary distribution, which motion would apprise the Court of the status of approved and rejected claims, the status of pending appeals, if any, the Receiver's expectation regarding administrative fees and costs, and proposed interim distribution calculations and proposed methodology, by no later than 30 days after the

liquidation of all assets of the Estate, or earlier if in the Receiver's determination an initial distribution is warranted prior to full liquidation.

The foregoing schedule is reflected in the following summary timetable:

Day 0	Claims Process Approval Date
Day 15	Notice/Proof of Claim forms sent out
Day 45	Claims Bar Date
Day 65	Receiver's Initial Determination Date
Day 95	Claimant Deadline for Appealing to Receiver
Day 105	Receiver's Final Determination Date
Day 125	Claimant Deadline for Appealing to the Court
Day 145	Receiver Response to Appeals Deadline

#### **4. Proposed Distribution of Websites and Monies to Investors and Creditors with Allowed Claims**

The Receiver and her counsel will review all Proofs of Claim and Release Forms received from investors and creditors as of the Claims Bar Date and determine which Allowed Claims will be resolved with the turnover of an assigned Website(s) and the Receiver will carry out those turnovers without further order of this Court. The Receiver will report the status and number of claimants who elect this form of distribution within 30 days of the completed transfers of Websites. The Receiver will then determine the total monetary amount of the remaining Allowed Claims. The Receiver will continue to liquidate assets recovered from Defendants and prepare to make a

monetary distribution, the amount of which will be determined by the amount of funds raised by the asset liquidations or as a result of claims against third parties.

Once an amount is set for the monetary distribution, the Receiver will determine what percentage of the total Allowed Claims is represented by the proposed distribution amount and propose a method for distribution based on the total Allowed Claims, amount available in the distribution fund and other pertinent factors. The Receiver will make further distributions based on the Court's approval as additional distributions become possible; however, approved claimants need not resubmit any claims.

**LEGAL AUTHORITY FOR CLAIMS PROCESS  
AND DISTRIBUTION PLAN**

The Receiver believes that the foregoing proposed Claims Process and Partial Distribution Plan will provide a fair, equitable, and efficient method for distributing the proceeds of the Receivership Estate to claimants holding allowed claims. Generally, the District Court has broad powers and wide discretion to grant relief in an equity Receivership, including in approval and implementation of a claims process and plan of distribution. *See SEC v. Infinity Group Co.*, 226 Fed. Appx. 217, 218 (3d Cir. 2007) (“District Courts have wide equitable discretion in fashioning distribution plans in Receivership proceedings, and we review the District Court’s order only for abuse of that discretion.”) (citations omitted); *SEC v. Forex Asset Mgmt., LLC*, 242 F.3d 325, 331 (5<sup>th</sup> Cir. 2001). When approving a distribution plan, the District Court has the authority to approve any plan provided it is fair and equitable. *See SEC v. Byers*, 637 F. Supp. 2d 166, 174 (S.D.N.Y. 2009) (citing *S.E.C. v. Wang*, 944 F.2d 80, 81 (2d Cir. 1991)).

Accordingly, the Receiver submits that this Court should exercise its discretion to approve the proposed Notice and Claims Process and Partial Distribution Plan as detailed herein.

**CERTIFICATION OF CONFERRAL**

The Receiver hereby certifies that she has conferred with counsel for the SEC and counsel for Defendant Courtright regarding the claims process and partial distribution plan proposed herein. Counsel for the SEC confirmed to undersigned counsel that they have no objection to proposed claims process and partial distribution plan. Counsel for Defendant Courtright informed undersigned counsel that, because they did not receive a copy of this Motion or the proposed Legal Notice or Proof of Claim and Release Form before they were filed with the Court, Defendant Courtright reserves the right to object to or comment on the Receiver's proposed claims process and partial distribution plan.

**CONCLUSION**

WHEREFORE, the Receiver, respectfully requests that this Court enter an order similar in form to the proposed Order attached hereto as **Exhibit C**: (1) approving and authorizing the Receiver to implement the Claims Process and Partial Distribution Plan proposed herein or a process and plan that is substantially similar in form, effect and cost as the Receiver may determine, in her sole discretion, is necessary, appropriate and in the best interest of the Estate; (2) authorizing the Receiver to carry out the noticing and claims processes and distribution plan pursuant to the Legal Notice attached as Exhibit A and the Proof of Claim and Release Form attached as Exhibit B; (3) authorizing the Receiver to send the Claims Package by email to all eligible claimants except to the extent that she only has a physical address for an eligible claimant; (4) authorizing the Receiver, without further order of the Court, to turn over the assigned Websites to the eligible claimants to the extent they have allowed claims against the Estate and doing so will resolve those claims, as determined by the Receiver; and (5) granting such other relief as this Court deems just and appropriate.

Respectfully submitted this 28<sup>th</sup> day of February 2020.

DAMIAN & VALORI LLP  
1000 Brickell Avenue, Suite 1020  
Miami, Florida 33131  
Telephone: (305) 371-3960  
Facsimile: (305) 371-3965  
Email: [kmurena@dvlp.com](mailto:kmurena@dvlp.com)

RACHLIS DUFF & PEEL, LLC  
542 S. Dearborn Street, Suite 900  
Chicago, Illinois 60605  
Telephone: (312) 733-3390  
Facsimile: (312) 733-3952  
Email: [kduff@rdaplawn.net](mailto:kduff@rdaplawn.net)

By: /s/Kenneth Dante Murena  
Kenneth Dante Murena, Esq.  
Florida Bar No. 147486

By: /s/ Kevin B. Duff  
Kevin B. Duff, Esq.  
ARDC No. 6210491

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

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

*Admitted Pro Hac Vice*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on February 28, 2020 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena  
Kenneth Dante Murena,  
*Counsel for Melanie E. Damian,  
Court-Appointed Receiver  
Admitted Pro Hac Vice*