

**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 NOTICE OF COMPLIANCE WITH COURT ORDER DATED
MARCH 6, 2020 AND STATUS REPORT REGARDING OBJECTIONS TO
PROPOSED CLAIMS PROCESS AND PARTIAL DISTRIBUTION PLAN**

Melanie E. Damian, the court-appointed receiver (“Receiver”) in the above-captioned enforcement action, hereby files this Notice of Compliance with Court Order dated March 6, 2020 and Status Report Regarding Objections to Proposed Claims Process and Partial Distribution Plan (the “Report”), outlining and responding to investor objections received in response to the Receiver’s Motion to Approve (a) Noticing and Claims Administration Process and (b) Partial Plan of Distribution [ECF Nos. 53, 62¹], and hereby states as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 28, 2020 the Receiver filed her Motion to Approve (a) Noticing and Claims Administration Process and (b) Partial Plan of Distribution (the “Motion”) for the assets of the

¹ On March 10, 2020, the Receiver filed an amendment to the Motion, described *infra*. See ECF No. 62.

Receivership Estate (the “Estate”) of Today’s Growth Consultant, Inc. d/b/a the Income Store (“TGC” or “Defendant”). *See* ECF No. 53.

On March 5, 2020, this Court heard oral arguments on the Motion and ruled that any interested party that desires to object or otherwise respond to the proposed claims administration process and partial distribution plan shall make a written filing with the Court setting forth its position by March 16, 2020. *See* ECF No. 59.² Additionally, the Court set a deadline of March 19, 2020 for the Receiver to file a short status report with the Court stating whether she has received any objections to the proposed claims administration process and distribution plan. *See id.* Finally, the Court ordered the Receiver to provide notice of these deadlines to all investors by e-mail. *See id.*

On March 10, 2020, the Receiver filed a Notice of Amendment to Proposed Noticing and Claims Administration Process (the “Amendment”). *See* ECF No. 62. The Amendment proposed a modification to one eligibility requirement proposed in the Motion and the Legal Notice and Proof of Claim form attached as Exhibits to the Motion, to provide the Receiver with discretion to allow the claim of a former employee or contractor of TGC, under appropriate circumstances as determined by the Receiver. *See id.*

On March 10, 2020, in compliance with this Court’s Order, the Receiver posted to the Receivership website³ and sent out e-mail correspondence providing notice to all known investors of the March 16, 2020 deadline to submit to the Court or the Receiver any objection to, or comment regarding, the Receiver’s proposed claims process and partial distribution plan, as modified by the

² The Court took the Motion under advisement while providing time for interested parties to object to the proposed claims process. *See* ECF No. 59.

³ www.incomestorereceivership.com

Amendment. See copy of March 10, 2020 correspondence at <http://incomestoreceivership.com/letterstoinvestors.htm>.

On March 12, 2020, after some investors communicated to the Receiver confusion regarding the objection and commentary process, the Receiver posted to the Receivership website and sent out additional e-mail correspondence to all known investors providing further explanation and clarification on the process and deadline by which investors must communicate objections/comments as to the proposed claims process. See copy of March 12, 2020 correspondence at <http://incomestoreceivership.com/letterstoinvestors.htm>.

In compliance with this Court's March 6, 2020 Order, the Receiver has compiled all twenty (20) timely objections and comments to the proposed claims process set forth by the Motion and responds to each as follows:⁴

II. OBJECTIONS AND RECEIVER'S RESPONSES

A. *Claims of Investors or Creditors Employed by or Under Contract with TGC or Mr. Courtright on a Case-By-Case Basis*

The Receiver received seven (7) objections in response to the proposal in the Amendment to allow claims of an investor or creditor who was employed by or under contract with TGC or Mr. Courtright ("TGC Employees"). See Exhibits A-G.

RESPONSE: The Receiver does not propose in the Amendment that all claims of TGC Employees will be approved. Rather, the Receiver proposes that she be granted the discretion to approve such claims on a case-by-case basis to ensure equity to those few TGC Employees that may be prejudiced by this enforcement action. See ECF No. 62 at p. 2 ("[T]he Receiver amends that proposed requirement to provide the Receiver the discretion to allow the claim of an investor

⁴ The names and websites of all investors and interested parties have been redacted to ensure anonymity. See Exhibits A-T.

or creditor who was employed by or contracted to TGC or Mr. Courtright during the relevant period, as the Receiver, on a case-by-case basis, deems appropriate under the circumstances.”).

B. Return of Any Net Winnings Prior to Transfer of Assigned Website(s)

The Receiver received three (3) objections regarding the proposed requirement that “net winners”⁵ return their “net winnings” before they can receive the websites that were assigned to them. *See* ECF No. 53, p. 7. Investors objected to being required to return “net winnings” because some investors are “net winners” on their first Agreement⁶ with TGC but are “net losers” on their second Agreement with TGC.⁷ Investors explained that, if their investments pursuant to all Agreements are viewed collectively, they would be “net losers” as their net loss would be greater than their net gain. As such, these investors request that the Receiver view investments collectively for purposes of determining whether an investor is a “net winner” in the proposed claims process and partial distribution plan. *See* Exhibit H. In addition to the above, a former TGC Employee has objected to a possible claim by the Receiver to recover revenue he believes he earned from his assigned website because he “would not be able to make that payment in [his] lifetime.” *See* Exhibit J. Finally, one investor argued that “net winners” opting to receive the website(s) assigned to them should only be required to return the net gain they received if there exists proof of their complicity in any alleged fraud of the Defendants. *See* Exhibit G.

RESPONSE: The Receiver believes that equity requires that net winners return net winnings prior to any distribution (of the websites assigned to them in the first instance) because

⁵ “Net-winners” refers to those investors that have already been repaid their full investment. *See* ECF No. 53, p. 7.

⁶ Investor contracts/agreements with TGC are known as Consulting Performance Agreements (“Agreement(s)”).

⁷ Many investors have more than one Agreement with TGC.

such winnings were derived from the investments of other, subsequent investors rather than from actual revenues of TGC. For purposes of the proposed partial distribution plan in which investors may opt to receive the websites assigned to them, the Receiver believes she must assess whether an investor is a net winner based on the amounts the investor received under each Agreement, rather than collectively under all Agreements, to the extent that the websites were assigned to each investor pursuant to an Agreement. For purposes of the monetary distribution plan, the Receiver will propose such plan at a later date (which will not involve the transfer of any website); however, the Receiver will likely propose to assess whether an investor is a net winner based on the amounts the investors paid to and received from TGC under all Agreements to which they were a party. When the Receiver proposes the monetary distribution plan, investors will have the opportunity to object to that plan and, even if the plan is approved by the Court, the investors will still have the opportunity to object to any determination by the Receiver regarding whether they are net winners and/or the amount of the monetary distributions the Receiver proposes to make to each investor and further ask the Court to modify the Receiver's determination.

C. Liquidation or Release of Websites

Certain investors who were never assigned websites objected to the liquidation or release of websites proposal on the basis that they will not have an opportunity to claim websites on a preferential basis while some investors claim they should have the option to retain specific websites that they were assigned while also retaining their claim against the Estate. *See* Exhibits J-K, O. Other investors that were assigned websites objected to the liquidation or release of websites proposal claiming that it would force them to choose between keeping their website in which they invested their personal time and effort or surrender their website and only retain a claim

for potential monetary award from the assets of the Estate.⁸ See Exhibits A, L-N. And, certain other investors objected to the transfer of income-generating websites, even if they were assigned to particular investors, because such websites are providing a benefit to the Estate and, thus, should be liquidated and the proceeds distributed among all investors with allowed claims. See Exhibits A, M.

RESPONSE: The Receiver agrees that the bifurcated distribution approach is not perfect and benefits those who were assigned websites that generate income. However, there are potential advantages and disadvantages to any proposal. The Receiver's proposal sought to balance the multiple competing interests. The Receiver believes under the circumstances, in light of the fact that many of the assigned websites are attached to businesses of the investors or their personal professions, or were owned by investors but assigned to TGC to manage, the Receiver's proposal is the most fair approach because it (i) provides those who opt to receive the websites that were assigned to them the benefit of their bargain and (ii) provides those who do not or cannot opt to receive any websites an alternative remedy in the form of a monetary distribution. The Receiver is hopeful that, in time, through her efforts the alternative remedy will be meaningful.

D. Vague or Ambiguous Language

Some investors have submitted objections claiming certain language of the proposed claims process is vague or lacking detail, including information regarding the worth of their websites or a prediction of recoverable monetary funds. See Exhibits A, O-Q.

⁸ Specifically, investors believe that they should be able to elect to both keep their site into which they personally invested time and work as well as claim financial compensation from the Estate. See Exhibit N. Additionally, one investor believes that investors should be granted the choice to relinquish their revenue generating sites while retaining their authority sites and still have the option to file a claim with the Estate. See Exhibit A.

RESPONSE: These objections are premature at this time and/or are incorrect. The Receiver cannot predict what amounts are recoverable at this time particularly without Court approval to implement the proposed claims process and partial distribution plan. Furthermore, the Receiver has advised the investors both in response to numerous phone calls by investors and in correspondence sent via e-mail and posted to the Receivership website that they may obtain additional information regarding their assigned websites in order for them to make a more informed decision on whether to claim or forfeit their assigned websites. To date, the Receiver and her professionals have provided website performance and other information to a number of investors and will continue to do so as requested to assist investors in better understanding their TGC assigned websites and to help investors make informed decisions. *See Exhibit U.*

Certain Investors also objected to the language of the Election of Remedy in Section II on page 7 of the Motion and requested that the language not only include the turnover of website(s), domain name(s) and URL(s), but also include the transfer of passwords related to website hosting, social media applications, and revenue generators. *See Exhibit Q.*

RESPONSE: The Receiver will include in the Election of Remedy identified above passwords to website hosting, social media applications, and revenue generators used in connection with websites assigned to investors so long as those passwords, applications and generators were retained by TGC and are currently within TGC's control. Investors interested in knowing whether such passwords, applications and/or generators are in TGC's possession and control may inquire about such information at any time.

E. Distribution Process

Certain investors that were never assigned a website or never received payment from TGC have submitted objections, claiming they should be granted higher priority in the claims process

than investors who have recovered at least some of their investment or received a website from TGC. *See* Exhibits I & Q-T. Other investors objected because the Receiver has not identified all classes of investors or different types of Agreements to determine how distribution should occur. And, others claimed the Receiver has not delivered fair notice of liability to all investors. *See* Exhibits I, P.

RESPONSE: The objections requesting priority in the ultimate distribution plan are premature at this time. After liquidation of the assets remaining in the Estate after the transfer of the websites pursuant to the partial distribution plan this Court may approve, and recoveries from claims the Receiver will bring against third parties, the Receiver will propose to the Court a detailed distribution plan. The distributions pursuant to any such distribution plan that is approved by the Court will be made after the Receiver has collected all proofs of claims from investors (who have not opted to receive websites in the instant proposed partial distribution plan), determined all “classes” of investors, and is made aware of each investor’s particular circumstance. Furthermore, the Receiver has attempted to notify each and every investor of this enforcement action and resulting Temporary Restraining Order, asset freeze, and receiver appointment soon after the commencement of the action using the investor contact list provided by TGC. The Receiver also created a website to, among other things, notify investors of court proceedings and important dates and deadlines, and to provide the investors with copies of important court filings as well as the Receiver’s contact information in the event that investors have any questions. The Receiver will continue to notify investors of any updates to this case through the receivership website and/or by e-mail.

III. CONCLUSION

The Receiver requests that the objections be overruled and that she be permitted to proceed with the claims process and partial distribution plan which the Receiver believes is in the best interest of the overall Estate and its investors and creditors.

This 19th day of March, 2020.

Respectfully submitted,

DAMIAN & VALORI, LLP

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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 March 19, 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