

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TODAYS GROWTH CONSULTANT INC.
(dba "The Income Store")

and

KENNETH D. COURTRIGHT, III,

Defendants.

1:19-cv-08454
Judge Andrea R. Wood
Magistrate Judge Jeffrey Cummings

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**PLAINTIFF SEC's MEMORANDUM IN SUPPORT OF ITS
EMERGENCY *EX PARTE* EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER FREEZING ASSETS AND IMPOSING OTHER ANCILLARY
RELIEF, AND FOR AN ORDER APPOINTING A RECEIVER**

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Plaintiff Securities and Exchange Commission (“SEC”) respectfully submits this memorandum of law in support of its emergency *ex parte* Motion for a Temporary Restraining Order Freezing Assets and Imposing Other Ancillary Relief against defendants Today’s Growth Consultant Inc. d/b/a The Income Store (“TGC”) and Kenneth D. Courtright, III (“Courtright”) (collectively, “Defendants”) and for an Order Appointing a Receiver over Defendant TGC.¹

I. PRELIMINARY STATEMENT

The SEC seeks emergency *ex parte* relief to stop an ongoing fraudulent scheme in which the Defendants have raised, since at least January 2017, at least \$75 million from more than 500 investors through the unregistered offer and sale of investment contracts called Consulting Performance Agreements and by making false representations about TGC’s financial soundness and the intended use of investors’ funds.

The Consulting Performance Agreements require TGC’s counterparty (“investors”) to pay an “Upfront Fee” (typically ranging from \$50,000 to \$500,000), in exchange for which TGC promises to buy or build a revenue-generating website or websites, and to develop, market, and maintain each website on the investor’s behalf. The goal is for the websites to generate revenue, primarily from advertisements and the sale of third-party products sold on each website; TGC claims that 100% of the websites are succeeding financially.

The Consulting Performance Agreements provide for a 50/50 share of website revenue between TGC and each investor but also guarantee the investor a minimum annual rate of return (typically ranging from 13% to 20% of the investor’s Upfront Fee) to be paid if website revenues are below a threshold amount. Collectively, since at least 2017, the websites have not generated

¹ Given the emergency nature of this motion, the conduct alleged, and the number of issues addressed herein, this brief exceeds the page limitations set forth in Local Rule 7.1. The SEC hereby seeks leave to file this oversize brief *instantly*.

revenues above the threshold amounts; TGC has been obligated to pay investors amounts that exceed the revenues generated by their websites, and it has been making those payments.

However, without a sufficient source of revenues to fund its guarantee obligations, and rather than default on such obligations, Defendants resorted to using funds raised from new investors to pay existing investors, in classic Ponzi-like fashion.

Courtright, TGC's founder and lead spokesperson, knowingly or recklessly has allowed this to occur; indeed, in a surprisingly upfront admission, he told TGC's bank in September 2018 that TGC covers the shortfall between website revenues and guaranteed obligations with funds from new investors. In response, the bank closed the accounts. Courtright then moved TGC's accounts to another bank and continued to operate TGC in the same Ponzi-like fashion.

On December 13, 2019, TGC notified investors that it is imposing a four-month moratorium on payments due to cash flow problems. It is now encouraging investors to terminate their Consulting Performance Agreements either by moving existing websites to other servicers, selling existing websites to third-parties with TGC's assistance, or selling the entire contract back to TGC, or, remaining with TGC, in which case, the guaranteed payments will resume without a change in terms on April 20, 2020. TGC, headed by Courtright, is hoping many investors will leave, thereby materially reducing its guarantee obligations, at which point, it intends to start again, in April 2020, with the same failed business model that has been operating as a Ponzi-like scheme for at least three years.

The SEC seeks an order that temporarily, preliminarily, and permanently restrains and enjoins Defendants from violating the federal securities laws; an order prohibiting Defendants from offering, selling, entering into, or buying back Consulting Performance Agreements or other securities; and orders freezing Defendants' assets, requiring sworn accountings, prohibiting

document destruction or alteration, providing for expedited discovery, and appointing a receiver over TGC.

Based on Defendants' conduct, the SEC will likely succeed in proving that Defendants have violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Given the exigent circumstances, the SEC requests that the Court promptly enter a Temporary Restraining Order, schedule a hearing requiring Defendants to Show Cause as to why a preliminary injunction should not issue, and enter an Order Appointing a Receiver over TGC.

II. STATEMENT OF FACTS

A. The Defendants

Today's Growth Consultant Inc. ("TGC"), is a private corporation, organized under the laws of the State of Illinois, and is co-owned by Defendant Courtright and his wife. Courtright's residence serves as TGC's headquarters. TGC also does business through a division called The Income Store, which occupies premises in Lancaster, Pennsylvania. TGC has claimed at various times to have offices in Naples, Florida, and in Romania. It recently announced it is growing and has plans to open offices in the Philippines and India. Declaration of Patrick L. Feeney, dated December 26, 2019 ("Feeney Decl.") ¶ 9 and Ex. 7; Declaration of Gregg Parnell dated December 16, 2019 ("Parnell Decl.") Ex. 2.

Kenneth D. Courtright, III ("Courtright"), age 49, resides in Minooka, Illinois, and is currently TGC's Chairman. From March 2009 through August 2019, Courtright was TGC's Chief Executive Officer and President. Together with his wife, who took over as President of

TGC in or about August 2019, Courtright co-owns TGC with his wife. Feeney Decl. at ¶¶ 11-12 and Ex. 3.

B. TGC's Business Model

Since at least 2017, TGC has offered and sold unregistered investment contracts called Consulting Performance Agreements to investors across the United States and the world. Feeney Decl. Exs. 4, 5; Declaration of Thomas Kentner dated December 17, 2019 ("Kentner Decl.") Exs. 7-10.

The Consulting Performance Agreements require investors to pay a so-called "Upfront Fee" and to give TGC password access to the websites; TGC is required to use the Upfront Fee to acquire or build revenue-generating websites for the investor and then to develop, market and maintain the websites. The agreements, since at least 2017, have principally been structured in a manner that require no effort from the investor beyond payment of the initial investment amount, and investors are led to expect profits solely from TGC's expertise and efforts. Feeney Decl. ¶ 13 and Exs. 4, 5; Kentner Decl. ¶ 12 and Exs. 7, 8; Declaration of Gregg Parnell dated December 16, 2019 ("Parnell Decl.") Ex. 6.

Investors are guaranteed a minimum return on their investment. Pursuant to the terms of the Consulting Performance Agreements, investors are entitled to receive, in perpetuity, a monthly payment equal to 50% of the revenues generated by their websites; but, if website revenues do not exceed an agreed-to threshold dollar amount specified in the agreement, TGC promises to pay the investor the minimum return specified in their agreement. The threshold amounts vary from agreement to agreement but typically are a percentage of the investor's Upfront Fee, converted to a monthly dollar equivalent. Feeney Dec. ¶ 13.c. and Exs. 4, 5; Parnell Decl. ¶¶ 9-10, Exs. 2, 6.

The guaranteed returns typically ranged from 13% to 20% depending on the amount of an investor's Upfront Fee, as reflected in marketing materials sent to a then-prospective investor when he contacted TGC to inquire about the investment opportunity. Parnell Decl. ¶ 10 and Ex. 3. Some investors succeeded in negotiating even higher guaranteed rates of return, going as high as 30% of their Upfront Fee. Feeney Decl. ¶ 13.c.

TGC's performance guarantee is accompanied by its express representation in the Consulting Performance Agreements that it "is in satisfactory financial condition, solvent, and able to pay its bills when due and financially able to perform its contractual duties hereunder." Its website also represents it is "debt free." Feeney Decl. ¶ 13.d. and Exs. 4, 5; Parnell Decl. ¶ 20 and Ex. 6.

TGC's Consulting Performance Agreements restrict TGC's use of investor funds. TGC agrees to "use the Upfront Fee exclusively" for purchasing or building, hosting, maintaining, and marketing of the investor's website(s). Feeney Decl. Exs. 4, 5; Parnell Decl. ¶ 21 and Ex. 6.

From at least January 1, 2017 through October 2019, TGC marketed its Consulting Performance Agreements through, among other ways, Sirius XM Satellite radio advertisements, online advertisements including on the website www.bizbuysell.com, and also through its own website www.todaysgrowthconsultant.com and that of its division, The Income Store, www.incomestore.com. Parnell Decl. ¶¶ 5, 30 and Exs. 1, 2.

C. TGC Used New Investors' Upfront Fees to Pay Guaranteed Returns to Existing Investors and to Pay Business Expenses

SEC forensic accountants have estimated the following information based on their analysis of 25 Consulting Performance Agreements, reports provided to the SEC by TGC's bank, including financial statements Courtright gave TGC's bank in 2018, TGC's bank records through November 2019, and other information in the SEC's investigative record: (i) how many persons

or entities entered into Consulting Performance Agreements with TGC between January 2017 and October 2019 (*i.e.*, how many new investors signed agreements each month during that period), (ii) how much money was raised from those investors (*i.e.*, how much was their “Upfront Fee”), (iii) how much did TGC pay out to investors during the same period, (iv) whether TGC could have paid investors using website revenues only, or, some other source of funds besides funds raised from new investors. Declaration of Jeffrey R. Anderson dated December 23, 2019 (“Anderson Decl.”) ¶¶ 4-17 (methodology), 18-24 (number of investors), 25-28 (funds raised), 29-35 (payouts), 37-44 (website revenue), 45-51 (other sources).

Based on this analysis, TGC raised at least \$75 million from more than 500 investors through the offer and sale of Consulting Performance Agreements from January 2017 through October 2019. Anderson Decl. ¶¶ 5, 18-24, 25-28.

The websites underlying TGC’s Consulting Performance Agreements generated approximately \$9 million in advertising revenues and revenues from the sale of third-party products from January 2017 through October 2019. Anderson Decl. ¶¶ 37-44. During the same period, January 2017 through October 2019, TGC made payments to investors of at least \$30 million. Anderson Decl. ¶¶ 29-36. Accordingly it was a mathematical impossibility for investors to have been paid exclusively from website revenues, as TGC represented. Anderson Decl. ¶¶ 45-51. At least one investor received payments from TGC before TGC had purchased or built him a website. Even after a website was purchased, this investor received his guaranteed minimum amount because his websites generated \$0 in revenue or amounts substantially below the threshold. Parnell Decl. ¶¶ 24, 29, 38, 40 and Ex. 14; *see also* Feeney Decl. Exs. 4, 5 (these investors were paid the guarantee rate throughout, not amounts based on fluctuating website revenues).

To pay investors their guaranteed returns, and in the absence of sufficient website revenues, TGC turned to other funding sources to make up the difference.

From January 2017 up to May 2019, TGC raised funds from new investors that comprised the sole funding source for TGC to pay existing investors. Anderson Decl. ¶ 47 (determining that TGC raised at least \$75 million from new investors during that period). From January 2017 up to May 2017, TGC had no source of funding that, singly or when combined with other sources, would have been sufficient to fund the over \$20 million shortfall, except new investor funds. Anderson Decl. ¶ 51.

Starting in May 2019, and contrary to TGC's representations that it was "debt free," TGC entered into loan or other debt instruments, which provided it with a second flow of funds, but, TGC continued to offer and sell Consulting Performance Agreements during that period and it co-mingled the funds it raised from new investors with the loan proceeds it received. All of these funds were deposited into TGC's principal bank account and, from that account, TGC paid existing investors their guaranteed monthly amounts. Anderson Decl. ¶¶ 48-51. Specifically, from May to October 2019, from the account with co-mingled funds, TGC paid investors approximately \$8 million, while raising approximately \$12 million from new investors and receiving approximately \$8.5 million in loan proceeds, net of amounts it repaid to its lenders during the same period. Anderson Decl. ¶ 51.

SEC forensic accountants believe that their approach to estimating the funds TGC paid to investors during the period January 2017 through October 2019 was conservative and likely materially underestimated the amounts paid to investors. Anderson Decl. ¶ 36.

Using investor funds to pay other investors and using investor funds to serve TGC's corporate debt is contrary to the use of funds provision reflected in Consulting Performance

Agreements. Feeney Decl. ¶ 13.d. and Exs. 4, 5; Parnell Decl. ¶¶ 18, 21, 36 and Exs. 6, 13; Kentner Decl. Ex. 8. Yet that is exactly what TGC did.

D. Courtright Knew Or Recklessly Did Not Know That New Investor Funds Were Used to Pay Guaranteed Returns to Existing Investors

Courtright, TGC's founder, co-owner, and principal spokesperson, was familiar with TGC's business model and the terms of its Consulting Performance Agreements, including the minimum returns guaranteed by TGC and he had signature authority on TGC's bank accounts and access to the accounts. Anderson Decl. ¶ 13; *see also* Kentner Decl. ¶¶ 8, 12 and Exs. 1-4, 7.

Courtright reviewed and approved Consulting Performance Agreements before they were signed; he sometimes signed the agreements on behalf of TGC. Parnell Decl. ¶¶ 13 and Ex. 6; Feeney Decl. Exs. 4, 5; *see also* Kentner Decl. Ex. 8.

Courtright knew that TGC was using the Upfront Fees from new investors to pay the guaranteed returns to existing investors and admitted this practice to TGC's bank in September 2018. Specifically, in connection with a request to extend and enlarge a \$200,000 line of credit with the bank, Courtright provided the bank with TGC financial statements that showed for 2017, and from January to July 2018, the following, among other things: (i) website revenues were less than investor payouts by millions of dollars for both periods, (ii) website revenues were on trend to decrease in 2018 while investor payouts were on trend to increase, and (iii) TGC could not have made its investor payouts in the amounts reflected on TGC's own financial statements without using incoming funds from new investors, which were approximately \$16 million in 2017 and on trend to be more than \$28 million in 2018. Kentner Decl. ¶ 17, Exs. 9, 10. In a meeting with bank officials in September 2018, Courtright told the bank that TGC had and would continue to pay the guaranteed returns to existing investors by using incoming funds from new investors, until either advertising revenue increased or an alternative revenue stream

was adopted. Kentner Decl. ¶ 20. The bank immediately asked TGC to move its accounts and closed the relationship in October 2018. Kentner Decl. ¶ 21.

Further, in early 2019, at least one investor voiced concerns to TGC that the company was operating as a Ponzi scheme, based on the fact that he was receiving monthly guarantee payments but his first website was generating no revenue and a second website had not been purchased yet. Parnell Decl. ¶ 34, Ex. 12. Courtright called the investor but never addressed his concerns that TGC was a Ponzi scheme. According to the investor, during that call, Courtright requested the investor's patience and promised to obtain websites that would generate sufficient revenues. Parnell Decl. ¶¶ 31-35. The investor's websites have never generated enough revenue to cover the payments the investor has received. Parnell Decl. ¶¶ 38, 42.

E. Courtright Diverted TGC Funds for His Personal Use

Courtright's personal bank records are not part of the SEC's investigative record; however, TGC's bank records are, and an analysis of those records show that, from at least 2017 onward, Courtright has transferred large sums of money from TGC's principal bank account (the account with co-mingled investor funds, website revenue, and loan proceeds) into his personal bank accounts and also transferred funds from TGC's principal bank accounts directly to third-parties to pay for personal expenditures.

From January 2017 through October 2019, more than \$1.5 million in cash was transferred from TGC accounts to Courtright's personal bank accounts, including accounts held jointly with his wife. Anderson Decl. ¶ 54. During the same period, TGC paid more than \$323,000 toward the mortgage balance on Courtright's personal residence. Anderson Decl. ¶ 55. In 2018 and 2019, TGC made a total of \$36,000 in payments for tuition at a private secondary school that certain members of Courtright's family attended at the time. Anderson Decl. ¶ 56.

F. TGC's Ongoing Misconduct and Recent Financial Distress

TGC's business appears to be in the midst of a collapse. On Friday, December 13, 2019, TGC emailed investors a notice that it is experiencing cash flow problems and is therefore placing a moratorium on investor payouts "for the next four months." The notice asks investors to make an immediate choice among four options. Investors may: (i) terminate their Consulting Performance Agreement and transfer to another service provider, (ii) sell the websites underlying their Consulting Performance Agreements with TGC's assistance, and then terminate their agreements, (iii) sell their Consulting Performance Agreements back to TGC for a price equal to their Upfront Fee less payments received to date, in exchange for a promissory note from TGC with interest, or (iv) remain as investors, agree to a temporary modification of their Consulting Performance Agreements to provide investors with 8% interest on an annual basis until April 20, 2020, after which time the moratorium will lapse and investor payments will continue according to the original terms of Consulting Performance Agreements. Parnell Decl. ¶ 41 and Ex. 16.

TGC has not put a moratorium on its efforts to raise funds from new investors. It raised approximately \$2 million in new investor money in November 2019, while it made payments to lenders of more than \$2.5 million. Anderson Decl. ¶ 58. One of TGC's websites appears to be defunct and for sale but the other site (www.incomestore.com) remains active, and TGC continues to promote investment opportunities through that site. On that website, TGC continues to make false statements about its investment opportunity. For example, a graphic that appears on the site at least as of December 18, 2019, claims that 100% of its websites are "succeeding financially." The site also falsely represents that "TGC is a debt-free privately held company with no accounts payable or loans outstanding." Feeney Decl. ¶¶ 16-19.

III. ARGUMENT

A. Showing Required for a Temporary Restraining Order

Section 20(b) of the Securities Act and Section 21(d)(1) of the Exchange Act empower the SEC, “upon a proper showing,” to seek the Court’s issuance of a “temporary injunction or restraining order.” 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d)(1). Pursuant to these provisions, what is required is “a substantial showing of likelihood of success as to (a) current violations and (b) a risk of repetition.” *See SEC v. Kameli*, 276 F. Supp. 3d 852, 860 (N.D. Ill. 2017) (citations omitted); *SEC v. Lauer*, 52 F.3d 667, 671 (7th Cir. 1995); *SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982) (“[O]nce a violation has been demonstrated, the moving party need only show that there is a reasonable likelihood of future violations in order to obtain relief.”).

The likelihood of future violations should be determined by considering the totality of the circumstances, including: (1) the gravity of the harm caused by the offense; (2) the extent of the defendant’s participation and degree of scienter; (3) the isolated or recurrent nature of the infraction and the likelihood that the defendant’s customary business activities might again involve him in such transactions; (4) the defendant’s recognition of his own culpability; and (5) the sincerity of his assurances against future violations. *Kameli*, 276 F. Supp. 3d at 860; *see also SEC v. Suter*, 732 F.2d 1294, 1301 (7th Cir. 1984); *SEC v. Texas Int’l Co.*, 489 F. Supp. 1231 (N.D. Ill. 1980) (past illegal conduct is “highly suggestive of the likelihood of future violations”) (*quoting SEC v. Keller Corp.*, 323 F.2d 397, 402 (7th Cir. 1963)).

In the context of obtaining preliminary relief, the Seventh Circuit has held that “all that is required is a degree of likelihood” that a violation has been committed, “coupled with greater irreparable harm from the denial of the injunction than from the grant.” *Lauer*, 52 F.3d at 671.

As demonstrated below, the SEC has established both a prima facie case that a violation of the securities laws has occurred and a likelihood that a violation will occur again in the future if the Defendants are not restrained. Accordingly, a temporary restraining order and, subsequently, a preliminary injunction should issue.

B. The Defendants Have Committed Securities Law Violations and Are Likely To Do So Again in the Future

1. A Ponzi Scheme is a Device, Scheme, or Artifice to Defraud

To establish a primary violation of Exchange Act Section 10(b) and Rules 10b-5(a) and 10b-5(c), the SEC must show that a defendant (i) employed a device, scheme, or artifice to defraud, and engaged in transactions, acts, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser; (ii) with scienter; (iii) in connection with the purchase and sale of securities. *See Kameli*, 276 F. Supp. 3d at 862. The elements of a claim under Securities Act Section 17(a)(1) or (3), which prohibits fraud in the offer or sale of a security, are essentially the same as the elements of claim under Exchange Act Rule 10b-5(a) or (c), except the Commission need only establish negligence to establish the elements of Section 17(a)(3). *Aaron v. SEC*, 446 U.S. 680, 691 & 697 (1980).

From at least January 2017 through at least October 2019, TGC, under Courtright's leadership, operated a Ponzi-like scheme in which TGC raised funds from investors through the offer and sale of Consulting Performance Agreements and then used the funds to pay guaranteed returns to earlier investors.

A Ponzi scheme is a device, scheme or artifice to defraud. *See, e.g., SEC v. Traffic Monsoon, LLC*, 245 F. Supp. 3d 1275, 1299 (D. Utah 2017), *aff'd* 913 F.3d 1204 (10th Cir. 2019), *cert denied*, 2019 WL 5686461 (Nov. 4, 2019) (Ponzi scheme is inherently deceptive because it generates a false appearance of profitability using funds obtained from new investors

to generate returns for earlier investors rather than by earning profits from assets already invested); *SEC v. Helms*, No. A-13CV01036-ML, 2015 WL 501298, at *13-14 (W.D. Tex. Aug. 21, 2015) (artificial returns of a Ponzi scheme mislead new investors and conceal the fact that the Ponzi will inevitably collapse and investors will lose money); *Burnett v. Rowzee*, 561 F. Supp. 2d 1120, 1127-1128 (C.D. Cal. Feb. 11, 2008) (same).

2. Defendants Made Materially False Representations and Omissions

To establish a primary violation of Exchange Act Section 10(b) and Rule 10b-5(b), the SEC must show a defendant (i) made a material misrepresentation or an omission as to which he had a duty to speak; (ii) with scienter; (iii) in connection with the offer and sale of securities. *See Kameli*, 276 F. Supp. 3d at 862. The elements of a claim under Securities Act Section 17(a)(2) are essentially the same as the elements of claim under Exchange Act Rule 10b-5(b), except, in addition the SEC must show the defendant obtained money or property by means of his material misrepresentations or omission; negligence suffices for Section 17(a)(2) *Aaron*, 446 U.S. at 691 & 697.

At the core of TGC's business is its representation, spelled out in its Consulting Performance Agreements, and on its website, that each investor's Upfront Fee will go toward the purchase or building of a website or websites for the investor and, thereafter, for the development, marketing and maintenance of the investors' websites. That representation is false. TGC uses a material portion of investors' Upfront Fees to make up the gap between website revenues and TGC's guarantee obligations to existing investors, and, since May 2019, to repay loans, and for other impermissible purposes, such as payment of Courtright's personal expenses. Misrepresentations about the use of investor funds are material as a matter of law. *SEC v.*

Research Automation Corp., 585 F.2d 31, 35-36 (2d Cir. 1978); *SEC v. First Pac. Bancorp.*, 142 F.3d 1186, 1189 n.3 (9th Cir. 1998).

Additionally, TGC attracts prospective investors with its guaranteed minimum returns, but it backs its guarantee with a false representation – also spelled out in its Consulting Performance Agreements – that it is in “satisfactory financial condition, solvent, able to pay its bills when due and financially able to perform its contractual duties.” Its own financial statements, as provided to TGC’s bank, show a company that could only satisfy its guaranteed obligations by tapping into newly-raised investor funds. Further, since May 2019, its representations on its website that it is “debt-free ... with no accounts payable or loans outstanding” is simply false because the company, as of then, had clearly taken on significant debt and was beginning to pay on that debt. These misrepresentations were material. A reasonable investor would want to know that TGC did not generate sufficient revenues either to pay the investors’ guaranteed returns or to pay business expenses. *See SEC v. Coplan*, 13-62127-CIV, 2014 WL 695393, at *4 (S.D. Fla. Feb. 24, 2014).

3. Defendants Acted with Scienter

The Defendants acted with scienter. At the time TGC made misrepresentations about the use of investors’ upfront fees, Courtright knew, or was reckless in disregarding a substantial risk, that they were false. The Seventh Circuit has stated that “proof of recklessness can establish scienter.” *SEC v. Lyttle*, 538 F.3d 601, 603 (7th Cir. 2008) (citations omitted).

Courtright, who is TGC’s founder, a co-owner, and its Chairman and principal spokesperson, knew that TGC provided guaranteed returns to investors. He approved and even signed some Consulting Performance Agreements. Courtright had access to and signature authority over TGC’s bank accounts. In September 2018, he admitted to representatives of

TGC's bank that TGC was using new investor funds to close the gap between website revenues and investor payouts. Despite knowing that the guaranteed returns paid by TGC were not paid from website revenues, but rather from new investors' upfront fees, Courtright continued promoting TGC and soliciting new investors.

Courtright's scienter can be imputed to TGC. The scienter of TGC's Controller can also be imputed to TGC. The Controller, like Courtright, admitted to TGC's bank that TGC makes up the difference between website revenue and investor payouts by using funds raised from new investors. A company may have imputed to it the scienter of the individuals who control it. *See SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1089 n. 3 1097 n. 18 (2d Cir. 1972); *SEC v. Montana*, 464 F. Supp. 2d 772, 783 (S.D. Ind. 2006) (a company may have imputed to it the scienter of the individuals who control it); *cf. SEC v. Householder*, 2002 WL 1466812, at *5 (N.D. Ill. July 8, 2002) ("A company's scienter can be imputed to the individuals controlling it.").

4. The Consulting Performance Agreements are Securities

TGC's Consulting Performance Agreements are "investment contracts," and therefore securities, because they satisfy the test set forth in *SEC v. W.J. Howey & Co.*: (1) they involve the investment of money, (2) in a common enterprise, (3) with the profits derived solely from the efforts of others. 328 U.S. 293, 298-99 (1946). Defendants' conduct and misrepresentation thus were in connection with the purchase or sale of securities.

The first prong is satisfied because, as demonstrated, more than 500 retail investors have committed at least \$75 million to enter into Consulting Performance Agreements since 2017. Anderson Decl. ¶¶ 24, 28.

The second prong of *Howey* is met because each investor contributed to a common enterprise. The Seventh Circuit requires the pooling of assets from multiple investors and the distribution of pro rata benefits to those investors. *See Stenger v. R.H. Love Galleries, Inc.*, 741 F.2d 144, 146 (7th Cir. 1984); *see also Lauer*, 52 F.3d at 670. TGC pooled and comingled investors' upfront fees, as well as revenue generated from the websites, and, since May 2019, loan proceeds, into its principle bank account. Anderson Decl. ¶ 50. Further, just as investors in *Howey* depended on the issuer's personnel and equipment to derive profits, so too did investors who entered into Consulting Performance Agreements depend on the expertise and efforts of TGC's personnel to locate and purchase, or build, revenue-generating websites, and then to develop the content, market, and maintain the websites. *See Howey*, 328 U.S. at 300; *see also, e.g., SEC v. Sg Ltd.*, 265 F.3d 42, 50-51 (1st Cir. 2001) (acknowledging that "Ponzi schemes typically satisfy the horizontal commonality standard" because they "inherently involve the sharing of profit and risk among investors").

The third *Howey* prong is satisfied because, investors who entered into Consulting Performance Agreements expected profits derived from the efforts of TGC. The Seventh Circuit has explicitly eschewed a strict interpretation of *Howey*'s "solely" requirement, looking instead to "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." *Kim v. Cochenour*, 687 F.2d 210, 213 n.7 (7th Cir. 1982) (quoting *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973), *cert. denied* 414 U.S. 821 (1973)). The Seventh Circuit's test is "whether the investor relied on present and future efforts of another to produce profits." *Kim*, 617 F.2d at 213 n.7 (internal quotations omitted).

Here, pursuant to the express terms of the Consulting Performance Agreements, investors are required to pay their Upfront Fee and then give access to TGC which will do the rest. Investors thus relied heavily on TGC's efforts to monetize the websites.²

Indeed, in a recent case involving Ponzi schemes, the court determined that investment contracts, similar to TGC's Consulting Performance Agreements, are securities. *See, e.g., Traffic Monsoon*, 245 F. Supp. 3d at 1301-02 (defendant sold advertising packs that delivered website visits and clicks to the member's banner ad, and permitted the investor to share in defendant's revenues by clicking on a number of websites each day and by referring other investors).

5. Defendants' Fraud, Unless Restrained and Enjoined, Will Continue

Defendants' fraud is ongoing. The SEC's analysis of bank account statements shows that Defendants continued to raise funds through at least November 2019, the last month for which the SEC has TGC bank statements. Andersen Decl. ¶ 58. TGC continues to solicit investors through its website. Feeney Decl. ¶¶ 16-19. Defendants have promised investors that monthly payments will resume after four months, but there is no reason to believe that website revenues will then be sufficient to fund the investor payments for the first time since at least January 2017.

Additionally, past illegal conduct is highly suggestive of the likelihood of future violations. *Manor Nursing*, 458 F.2d at 1100. Defendants' illegal conduct is not isolated, but is part of a pattern and practice that repeated itself over a period of many years and continues. *See*

² Even if investors occasionally contributed website content, as may have been the case with earlier investors before TGC switched completely to its present model, the essential nature of the relationship between the investor and TGC depended at all times on TGC's success in generating revenue from the websites. *See, e.g., Howey*, 328 U.S. 301 (issuer engaged in unregistered offering of securities even where some investors rejected the service contract and worked the land themselves because issuer had offered the essential ingredients of an investment contract, even if some persons did not accept the full offer of an investment contract); *see also Glenn W. Turner Enterprises, Inc.*, 474 F.2d at 482-83.

id. (holding that “factors suggesting that the infraction might not have been an isolated occurrence” are relevant in determining whether the defendant is “likely to repeat the wrong”). Defendants’ ongoing fraud must therefore be stopped.

6. Defendants Offered and Sold Securities in Unregistered Offerings, and No Exemption from Registration Applied

Sections 5(a) and 5(c) of the Securities Act require that every offer and sale of securities must be either registered or validly exempted from registration. To establish a *prima facie* violation of Section 5, the defendant must have, directly or indirectly, (i) offered or sold a security, (ii) using interstate commerce, (iii) while no registration was filed or in effect as to the transaction. *See SEC v. Zenergy Int’l, Inc.*, 141 F. Supp. 3d 846, 852 (N.D. Ill. 2015). The defendant bears the burden of showing that an exemption from registration applies to the offer or sale of the security. *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953).

TGC and Courtright offered and sold investment contracts, in the form of Consulting Performance Agreements, using interstate commerce while no registration was filed with the SEC for those transactions. They have conducted a continuous unregistered offering of the Consulting Performance Agreements since at least 2017 through the present. Feeney Decl. ¶ 14.

7. Defendants’ Offer and Sale of Securities in Unregistered Transactions, Unless Restrained and Enjoined, Will Continue

Defendants’ offer and sale of securities in unregistered transactions is ongoing. Even after TGC informed investors of the suspension of payments, TGC’s website has continued to solicit and offer investments. Feeney Decl. ¶ 14, 16-19.

Again, past illegal conduct is highly suggestive of the likelihood of future violations. *Manor Nursing*, 458 F.2d at 1100. Defendants’ illegal conduct is not isolated, but is part of a pattern and practice that repeated itself over a period of many years and continues. *See id.*

(holding that “factors suggesting that the infraction might not have been an isolated occurrence” are relevant in determining whether the defendant is “likely to repeat the wrong”). Defendants’ ongoing offer and sale of securities in unregistered transactions must therefore be stopped.

8. Gravity of the Harm if the Requested TRO is Denied

Despite the current brief moratorium on TGC’s payments to investors, TGC continues to solicit investors today and to make the same false representations it has been for years concerning its financial state of affairs, the success of investor websites, and use of investor funds. Feeney Decl. ¶¶ 16-19. By its own admission, it is planning to resume payments to investors in April 2020, though it hopes some choose to terminate their contracts. Feeney Dec. Ex. 6. If the Court does not grant this motion, TGC not only is likely to continue soliciting investors to enter into Consulting Purchase Agreements, but also might convince prospective investors to give TGC their money. Any new funds raised are likely to quickly dissipate. Accordingly, the harm to investors is greater if no temporary restraining order is entered, than if one is entered.

C. An Asset Freeze Is Necessary

An asset freeze is an ancillary remedy that serves to prevent waste and dissipation of assets and to ensure the availability of funds in the event that a court ultimately awards disgorgement, penalties, and prejudgment interest. *SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990) (noting that where there is wrongdoing, “the Commission should be able to preserve its opportunity to collect funds that may yet be ordered disgorged”); *see also Householder*, 2002 WL 1466812; *SEC v. One or More Unknown Purchasers of Call Options for the Common Stock of TXU Corp.*, No. 07C-1208, 2007 WL 1144701 (N.D. Ill. Mar. 28, 2007).

The standards for ordering an asset freeze are less strict than for imposing other injunctive relief. To obtain an asset freeze, the SEC must establish only that it is likely to succeed on the merits, and need not show risk of irreparable injury (unlike a private litigant) or likelihood of a future violation. *SEC v. Cavanagh*, 155 F.3d 129, 132, 136 (2d Cir. 1998); *SEC v. Bravata*, 763 F. Supp. 2d 891, 920 (E.D. Mich. 2011).

It is appropriate to freeze TGC's assets. TGC has operated as a Ponzi scheme for years. TGC's financial statements and bank records show a clear pattern. TGC deposits investor Upfront Fees into a comingled account and then sends the funds to a variety of locations that do not relate to acquiring or building a website for those investors, or for the development, marketing, or maintenance of their websites. TGC has diverted investor funds, in part, to close the gap between website revenues and guaranteed payouts to existing investors. Since May 2019, it has diverted investor funds, in part, to service TGC's debt. It has also diverted investor funds to Courtright personally or to third-parties on Courtright's behalf.

It is also appropriate to freeze Courtright's personal assets. Courtright, together with his wife, wholly owns TGC and there is a demonstrated pattern of Courtright misappropriating investor assets. Specifically, at a time when TGC has been unable to pay its guaranteed obligations to investors under Consulting Performance Agreements, other than by using new investor funds, TGC has transferred assets to Courtright personally and to third-parties for the benefit of Courtright and his family. Even without the benefit of having access to Courtright's personal account records, the SEC has shown that Courtright received from TGC: (i) transfers of more than \$1.5 million in cash, (ii) payments of more than \$300,000 on his residential mortgage, and (iii) payments of tuition for private schools. Anderson Decl. ¶¶ 52-56, Exs. 2-4. These funds were obtained indirectly from investors who signed Consulting Performance Agreements

under the mistaken impression that their Upfront Fees would be used to buy or build revenue-generating websites and then to develop, market, and maintain those website; instead their funds were used for Courtright's personal enrichment before investor websites were generating sufficient revenues. There is a substantial risk that, if Courtright's personal assets are not frozen, he will dissipate any assets that become available to him.

Although it is unknown whether any significant funds exist to freeze, because of TGC's current moratorium on payments to investors, TGC's asset levels may be at higher levels than in recent times and higher than they will be if TGC's asserts are not frozen and TGC resumes payments to investors in April 2020.

There is a high likelihood that, if no freeze order is entered as to TGC, any funds that still exist will be dissipated. For these reasons, the Court should enter an order freezing Defendants' assets.

D. The Court Should Order Defendants to Provide a Sworn Accounting

An accounting requires a defendant to provide information about the amount and location of investors' funds. To protect investors, the Court and the SEC need to know how many victims may exist, where the money is, and how it can be recovered. Information about where the money is – and how much is left, in whatever form it exists – will increase the likelihood of returning any remaining funds to investors. An accounting also requires a defendant to identify any other assets, including personal funds, so that they can be preserved for investors, too.

It is within a court's inherent equitable powers to order a defendant to perform an accounting of funds and fully disclose their financial assets. *SEC v. Eadgear, Inc.*, 3:14-CV-04294, 2015 WL 11578507, at *6-7 (N.D. Cal. July 14, 2015); *SEC v. Brewer*, No. 10C-6932, 2011 WL 3584800, at *2 (N.D. Ill. Aug. 15, 2011). Courts frequently require defendants to

provide an accounting so that a plaintiff may accurately determine the scope of a fraud, trace assets, and ascertain a defendant's ability to disgorge illicit proceeds. *See, e.g., Suter*, 732 F.2d at 1296 (affirming issuance of preliminary injunction requiring "an accounting regarding funds received from the sale of securities"); *Householder*, 2002 WL 1466812, at *8; *SEC v. Mattera*, No. 11 Civ. 8323(PKC), 2012 WL 4450999, at *10–11 (S.D.N.Y. Sept. 26, 2012) (holding defendant in contempt for violating accounting provisions); *SEC v. Spongetech Delivery Sys., Inc.*, No. 10–CV–2031, 2011 WL 887940, at *15 (S.D.N.Y. Mar. 14, 2011) (noting that "an accounting is appropriate where it is necessary to determine the amount of profits reaped from the allegedly illicit sales, the present location of such proceeds, or the defendants' ability to repay"); *SEC v. Quan*, Civil No. 11–723 ADM/JSM, 2011 WL 1667985, at *9 (D. Minn. May 3, 2011) (ordering accounting contemporaneous with TRO).

Requested Accounting As To TGC: An accounting is appropriate as to TGC so that, at the Preliminary Injunction hearing, the SEC may present the Court with numbers from TGC's own books and records reflecting (i) the identity and number of investors who entered into Consulting Performance Agreements with TGC and the cash flows associated with each Consulting Performance Agreement; (ii) the identity of TGC's counterparties to loan agreements or other forms of indebtedness, and the amount of funds received from and repaid to such counterparties. TGC should have this information readily at hand. An accounting is also appropriate as to TGC so the SEC can understand TGC's current financial situation and trace assets in order to effectively implement any freeze order. Accordingly TGC should be required to account for (i) its current assets and liabilities; (ii) asset transfers of \$10,000 more than \$10,000 since January 1, 2019, except, if the transfer was to or for the benefit of Courtright, then all asset transfers to or

for his benefit since January 1, 2013. TGC should also be required to list all of its bank accounts and other locations where it holds assets or where assets are held for its benefit.

Requested Accounting As To Courtright: An accounting is appropriate as to Courtright so that the SEC may ascertain (i) his current assets and liabilities, including any asset held directly or indirectly by, or for the benefit of, Courtright; (ii) all asset transfers from TGC to Courtright or for the benefit of Courtright since January 1, 2013; (iii) all financial institutions where Courtright has held accounts, or where accounts in which he has a beneficial interest have been held, since January 1, 2013; and (iv) all safety deposit boxes, storage facilities and other similar locations used or maintained by Courtright since January 1, 2013. Given the nature of the SEC's investigation thus far, the SEC staff has limited visibility into this information, which Courtright should have readily at hand.

E. Expedited Discovery is Appropriate and Necessary

The SEC seeks an order providing for expedited discovery between now and the date of the Preliminary Injunction Hearing. Such expedited discovery can help focus and streamline a preliminary injunction hearing and potentially also assist the SEC to properly effectuate any Order freezing Defendants' ill-gotten assets.

Expedited discovery is authorized under certain circumstance by Rules 26(d), 30(a), 33(b), and 34(b) of the Federal Rules of Civil Procedure. This Court and others have granted expedited discovery when "good cause" is shown, such as in anticipation of and to allow preparation for a preliminary injunction hearing. *See* Advisory Committee Notes to the 1993 amendments to Rule 26(d) ("[Expedited discovery] will be appropriate in some cases, such as those involving request for a preliminary injunction"); *see also, e.g., SEC v. Marcum*, No. 1:13-cv-1361, 2013 U.S. Dist. LEXIS 194109, at *9 (S.D. Ind. Aug. 26, 2013) (granting temporary restraining order and allowing expedited discovery in advance of preliminary injunction

hearing); *Mattera*, 2012 WL 4450999 at *10–11 (holding defendant in contempt for violating expedited discovery provisions); *Quan*, 2011 WL 1667985 at *9–10 (ordering expedited discovery in anticipation of a preliminary injunction); *SEC v. Universal Consulting Res. LLC*, No. 10–cv–2794–JLK–KLM, 2010 WL 4873733, at *5–6 (D. Colo. Nov. 23, 2010) (same).

The SEC proposes to depose at least one officer of TGC and take other discovery on an expedited basis prior to a preliminary injunction hearing, including serving targeted discovery on Defendants, such as interrogatories and requests for admission, relating to TGC’s business practices, including execution of Consulting Performance Agreements.

F. An Order Mandating Preservation of Documents is Appropriate and Necessary

The SEC seeks an order preventing the alteration or destruction of documents and other information. Such orders are routinely granted to protect the integrity of litigation and “preserve the status quo until a final resolution of the merits.” *Spongetech*, 2011 WL 887940 at * (citing *Unifund*, 910 F.2d at 1040 n. 11) (upholding an order prohibiting the alteration or destruction of documents).

This Court and others have entered document preservation directives at the inception of SEC enforcement actions. See *One or More Unknown*, 2007 WL 1121791 at *1; *SEC v. Shields*, Civil Action No. 11–cv–02121–REB, 2011 WL 3799061, at *2 (D. Colo. Aug. 26, 2011); *SEC v. Watermark Fin. Servs. Grp., Inc.*, No. 08–CV–361S, 2008 WL 2120779, at *5 (W.D.N.Y. May 16, 2008).

An order mandating the preservation of documents is appropriate here because Defendant TGC’s officers, employees, and contractors are dispersed throughout the United States (and, according to TGC’s representations, abroad) and may not receive simultaneous or consistent

communication of the pendency of the litigation. A preservation order will help with to protect the integrity of litigation and preserve the status quo.

G. A Receiver is Necessary and Appropriate

The SEC requests an order appointing a receiver over TGC. Courts regularly appoint receivers to manage corporate assets when there has been fraud and mismanagement and a receiver is necessary to identify, marshal, preserve, and protect the assets. *SEC v. Enter. Trust Co.*, 559 F.3d 649, 650 (7th Cir. 2009); *SEC v. Homa*, 514 F.3d 661, 665 (7th Cir. 2008); *Keller Corp.*, 323 F.2d at 403; *SEC v. Hollinger Int'l, Inc.*, No. 04 C 0336, 2004 WL 1125904, *7 (N.D. Ill. May 19, 2004). As the Seventh Circuit held in affirming a receiver's appointment:

The prima facie showing of fraud and mismanagement, absent insolvency, is enough to call into play the equitable powers of the court. It is hardly conceivable that the trial court should have permitted those who were enjoined from fraudulent misconduct to continue in control of [the corporate defendant's] affairs for the benefit of those shown to have been defrauded. In such cases the appointment of a trustee-receiver becomes a necessary implementation of injunctive relief.

Keller Corp., 323 F.2d at 403.

This case calls for the appointment of a receiver. Defendants raised at least \$75 million by defrauding more than 500 investors in a Ponzi scheme involving the supposed purchase, development, marketing, and maintenance of revenue-generating websites. Courtright is its founder, co-owner, its Chairman, and a driving force behind the enterprise; his wife is TGC's current President and the other co-owner; his brother its marketing chief. Its Controller admitted to TGC's bank that TGC is using new investor money to pay existing investors, and then continued to work for TGC, and continued to allow it to operate as a Ponzi scheme. Courtright and these individuals should not remain in control of TGC.

A receiver is needed to assess whether there is a company that can be salvaged, and, if there is not a company that can be salvaged, a receiver is needed to wind down the company and

sell its assets in a responsible manner that preserves the maximum value for investors. A receiver is also needed to marshal and preserve assets to allow for the maximum possible recovery for investors.

The SEC recommends the Court appoint Melanie Damian of Damian & Valori, LLP as receiver over TGC. Ms. Damian is an experienced federal equity receiver who has served as a federal court appointed receiver in 10 previous regulatory enforcement matters involving a variety of businesses including similar Ponzi schemes throughout the United States. She has ably served as the receiver in five SEC cases. In these receiverships, Ms. Damian and her firm have demonstrated an ability to efficiently and effectively locate and liquidate assets for the benefit of invest-victims.

Ms. Damian's experience as a receiver in other matters makes her well-suited to be a receiver in this case. As reflected in the attached resume, Exhibit 1 to the brief, she has extensive experience and qualifications to serve in a fiduciary capacity in matters involving (i) taking control of, evaluating, and if necessary winding down companies involved in web-based businesses, (ii) marshaling, securing and selling a variety of assets, including those held in accounts at financial institutions, in vendor and merchant accounts, and in escrow and trust accounts, security deposits, shares in public and closely held companies, securities, commodities, cryptocurrencies, residential and commercial real property, cars, boats, artwork, jewelry, watches and other significant assets located throughout the United States and abroad, (iii) the formulation of claims administration processes and distribution plans, and (iv) the distribution of sale proceeds and other receivership assets to defrauded investors and/or creditors.

Additionally, per Ms. Damian's proposal to the SEC, she will engage the services of her law firm, and both she and her firm are have agreed to provide services at reduced rates to assist

the Court. The SEC considers her rates and her firm's rates to be reasonable. Ms. Damian has also identified and spoken to qualified local counsel, with offices in Chicago, Illinois, to assist her in this matter.

For all of these reasons, the SEC recommends that Ms. Damian be appointed the Receiver over Defendant TGC.

H. The Court Should Schedule a Preliminary Injunction Hearing

The SEC requests that, after the temporary restraining order is entered and the asset freeze is in place, the Court schedule this matter for a preliminary injunction hearing. The SEC requests that, at that hearing, the Court extend the asset freeze and enter an order preliminarily finding that the Defendants have violated the securities laws.

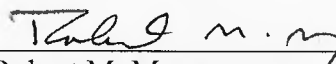
IV. CONCLUSION

For the foregoing reasons, the SEC respectfully requests that the Court enter the proposed orders attached as Exhibits 1 and 2 to the SEC's motion, and grant such other relief as the Court deems just and proper.

Dated: December 27, 2019

Respectfully submitted,

SECURITIES AND
EXCHANGE COMMISSION



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Attorneys for Plaintiff

EXHIBIT 1

MELANIE E. DAMIAN

ATTORNEY PROFILE



Ms. Damian represents public and private companies and individuals in a variety of complex business and securities litigation. She regularly serves as court-appointed Federal Equity Receiver, Special Monitor, and distribution Agent, and also serves as Receiver and Monitor in state court matters. Ms. Damian also serves as counsel to Receivers serving in both state and federal court. She counsels companies on corporate governance matters and serves as counsel to special litigation committees performing internal investigations in response to shareholder derivative demands. She also represents officers and directors in corporate and securities litigation matters.

Ms. Damian represents a number of local and national developers in real estate and brokerage disputes and has represented national law firms in a variety of legal malpractice matters, including those involving allegations of malpractice in connection with failed advocacy, failed transactions, and the failure of financial institutions.

Ms. Damian also has substantial experience advising executives on contractual and compensation matters and litigating executive and general employment matters, including representation and counseling on behalf of national and local companies in discrimination and harassment claims. She also has experience in counseling clients and litigating issues concerning various employment-related issues, non-competition agreements, theft of trade secrets, hiring and firing policies, employment agreements, and employment manuals.

Ms. Damian is a Past Chair of the Business Law Section of The Florida Bar, President of the International Women's Forum (IWF) Florida Chapter, and served as Co-Chair of the IWF 2018 World Leadership Conference. Ms. Damian has received several professional acknowledgments. She is listed as one of the Top 50 Women Lawyers in the state of Florida by Florida Super Lawyers. Ms. Damian has also been included in Florida Trend's Legal Elite and the South Florida Legal Guide since 2004.

Ms. Damian is active in child advocacy and is a founder of the non-profit Educate Tomorrow. Ms. Damian currently serves as Chair of the Board of the SEED School of Miami. Ms. Damian received numerous awards for her service including The 2011 Pro Bono Award for Child Advocacy from the Dade County Bar Association and Eleventh Judicial Circuit; The 2005 Florida Bar Association Young Lawyer Division Pro Bono Award; The Lawyers For Children 2005 John Edward Smith Award; 2006 Junior League of Miami, Inc. "Woman Who Make a Difference" award; "2007 Pepsi Everyday Freedom Hero Award" and "The Florida Bar President's 2008 Pro Bono Service Award, and the 2012 Florida Association of Women Lawyers (FAWL) "Mattie Belle Davis Award."

PROFILE AT A GLANCE

POSITION: Founding Partner

PRACTICE AREAS

- Business Litigation, Receivership, Officer & Director Liability, Corporate Governance Litigation, Securities Litigation, Real Estate Litigation, Professional Negligence Litigation, Employment Litigation

ADMITTED

- The Florida Bar, 1996
- The U.S. District Courts for the Southern & Middle Districts of Florida
- 11th Circuit Court of Appeals
- United States Supreme Court

ORGANIZATIONS & COMMITTEES

- The Florida Bar
 - Business Law Section, Past Chair
 - Federal Court Practice Committee, Past Chair
- SEED School of Miami: Chair of the Board
- Educate Tomorrow: Founder and Board Member

- International Women's Forum (IWF)
 - World Leadership Conference, Co-Chair
 - IWF Florida Chapter, President
- Women's Chamber of Commerce of Miami-Dade: Past President

ACKNOWLEDGEMENTS

- AV Rated by Martindale-Hubbell
- Florida Association of Women Lawyers (FAWL) - Mattie Belle Davis Award (2012)
- The Florida Bar President's Pro Bono Service Award (2008)
- South Florida Legal Guide (2004-Present)
- Florida Trend's Legal Elite (2004-Present)
- Florida Super Lawyer (2006-Present): Listed as Top 50 Women Lawyers and Top 100 Attorneys in Florida.

EDUCATION

- University of Wisconsin (B.A. 1991)
- University of Miami Law School (J.D. cum laude, 1996)

NOTABLE RECEIVERSHIP & CLASS COUNSEL CASES

FEDERAL EQUITY RECEIVERSHIPS

- *Commodity Futures Trading Commission v. Timothy Joseph Atkinson, et al.*, Case No. 18-23992-CIV-MARTINEZ/AOR-OTAZO-REYES, for the U.S. District Court for the Southern District of Florida, Court-Appointed Receiver
- *U.S. Securities and Exchange Commission v. Onix Capital LLC, et al.*, Case No. 16-CV-24678-COOKE/TORRES, U.S. District Court for the Southern District of Florida, Court-Appointed Receiver (www.OnixReceivership.com)
- *U.S. Federal Trade Commission v. Consumer Collection Advocates, et al.*, Case No. 14-62491-CIV-BLOOM, U.S. District Court for the Southern District of Florida, Court-Appointed Receiver (www.ccareceivership.com)
- *U.S. Commodity Futures Trading Commission v. Worth Group, Inc., et al.*, (Case No. 9:13-cv-80796-KLR), U.S. District Court for the Southern District of Florida, Court-Appointed Corporate Monitor (www.worthmonitor.com)
- *U.S. Commodity Futures Trading Commission v. Hunter Wise Commodities, LLC et al.*, Case No. 9:12-cv-81311-DMM, U.S. District Court for the Southern District of Florida, Court-Appointed Corporate Monitor
- *U.S. Securities and Exchange Commission v. We the People Inc. of the United States*, Case No. 2:13-cv-14050-JEM, U.S. District Court for the Southern District of Florida, Court-Appointed Receiver
- *U.S. Securities and Exchange Commission v. Aubrey Lee Price et al.; PFG LLC et al.*, Case No. 1:12-cv-2296-TCB, U.S. District Court for the Northern District of Georgia, Court-Appointed Receiver
- *U.S. Securities and Exchange Commission v. Marc Roup et al.*, Case No. 09-CD-01685, Western District of Pennsylvania, Court-Appointed Receiver
- *U.S. Securities and Exchange Commission v. Sean Healy, et al.*, Case No. 1:09-CV-1330, U.S. District Court, Middle District, Pennsylvania, Court-Appointed Receiver
- *U.S. Commodity and Futures Trading Commission v. Sean Nathan Healy, et al.*, Case No. 1:09-CV-1331, U.S. District Court, Middle District, Pennsylvania, Court-Appointed Receiver
- *U.S. Securities and Exchange Commission v. Concorde America, Inc., et al.*, Case No. 05-80128-CIV-ZLOCH/SNOW, U.S. District Court, Southern District, Miami Division, Court-Appointed Distribution Agent
- *U.S. Securities and Exchange Commission v. Bio-Heal Laboratories, Inc., et al.*, Case No. 05-21116-CIV-SEITZ/O'SULLIVAN, U.S. District Court, Southern District, Miami Division, Court-Appointed Distribution Agent
- *U.S. Securities and Exchange Commission v. Charles O. Morgan, Jr., as Personal Representative of the Estate of Frederick J. Kunen*, Case No. 07-22204-CIV-GOLD/TURNOFF, U.S. District Court, Southern District, Miami Division, Counsel for Receiver
- *U.S. Commodity Futures Trading Commission v. Jason B. Scharf, et al.*, Case No. 17-cv-774-J-32MCR, U.S. District Court for the Middle District of Florida, Counsel for Receiver (www.BinaryOptionsReceivership.com)

NOTABLE RECEIVERSHIP & CLASS COUNSEL CASES

STATE COURT RECEIVERSHIPS

- *South Beach 18, LLC, et al. v. Tziyona Cohen, et al.*, Case No. 18-023532, Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, Court-Appointed Custodian
- *Benjany Viera v. Klever Ontaneda*, Case No. 12-5693-FC-04, Eleventh Judicial Circuit in and for Miami-Dade County Florida, Family Division, Court-Appointed Receiver
- *Estate of Robert Warren Meddoff, Deceased*, Case No. PRC-130005341, Seventeenth Judicial Circuit in and for Broward County, Florida, Probate Division, Court-Appointed Curator
- *Spenzi v. Green*, Case No. 13-0225945 FC 04, Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Court-Appointed Receiver
- *Fannie Mae v. Residences at 107 Avenue, Inc.*, Case No. 11-14926 CA32, Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Court-Appointed Receiver
- *Wauchula State Bank v. Ridobel Gonzalez et al.*, Case No. 10-37523 CA-13, Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Court-Appointed Receiver
- *U.S. Mortgage Finance II, LLC v. 3079 Aventura Lakes, LLC*, Case No. 09-59337CA13, Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Court-Appointed Receiver
- *BAC Florida Bank, a Florida Chapter Bank v. 1910 Island, LLC, et al.*, Case No. 09-59348CA13, Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Court-Appointed Receiver
- *State of Florida Office of Financial Regulations v. Robert Kurland Mortgage Co., Inc.*, Case No. 05-11974 CA 30, Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Court-Appointed Receiver
- *U.S. Mortgage Finance II, LLC v. 1406 Mystic Point, LLC*, Case No. 09-59351 CA 13, Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Court-Appointed Receiver
- *Amanecer Investment Company, LLC v. Amanecer Christian Network, Inc., et al.*, Case No. 06-7931-CA-31, Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, Counsel for Receiver
- *Floriano de Alencar Filho v. Mony Life Ins. Co. of the Americas, Ltd*, Case No. 06-23093-CA-21, Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Court-Appointed Class Counsel

FEDERAL COURT CLASS ACTIONS

- *Nancy Butler-Jones, and Hywel Jones, Nelson I. Del Toro, Mehmet Sahin, Linda Meyers, and William Davis v. Sterling Casino Lines, L.P., Sextant Sterling I, Inc., and John Brevick*, Case No. 6:08-cv-01186-ACC-DAB, U.S. District Court, Middle District, Orlando Division, Court-Appointed Class Counsel
- *Guillermo Santacruz, et al. v. Velocity Express Corporation, Velocity Express Leasing, Inc., Velocity Express, Inc.*, Case No. 1:08-cv-21591-WMH, U.S. District Court, Southern District, Miami Division, Counsel for Plaintiffs, Served on Court Appointed Executive Committee for Class Plaintiffs in Multi-District Suit
- *Jerry Gustin, et al. v. Paul A. Hoffman, et al.*, Case No. 6:08-cv-00057-Orl-31-DAB, U.S. District Court, Middle District, Orlando Division, Court Appointed Class Counsel
- *Armando Sicard, Karen Cirillo, and Alexis Jose Nevares v. Aquasino, LLC*, Case No. 08-20976-CIV-LENARD/GARBER, U.S. District Court, Southern District, Miami Division, Counsel for Collective Class Action Plaintiffs

SEC RECEIVERSHIPS

1. *U.S. Securities and Exchange Commission v. Onix Capital LLC, et al.*, Case No. 16-CV-24678-COOKE/ TORRES, U.S. District Court for the Southern District of Florida, Court-Appointed Receiver ([www. OnixReceivership.com](http://www.OnixReceivership.com))
2. *U.S. Securities and Exchange Commission v. We the People Inc. of the United States*, Case No. 2:13-cv- 14050-JEM, U.S. District Court for the Southern District of Florida, Court-Appointed Receiver
3. *U.S. Securities and Exchange Commission v. Aubrey Lee Price et al.; PFG LLC et al.*, Case No. 1:12-cv- 2296-TCB, U.S. District Court for the Northern District of Georgia, Court-Appointed Receiver
4. *U.S. Securities and Exchange Commission v. Marc Roup et al.*, Case No. 09-CD-01685, Western District of Pennsylvania, Court-Appointed Receiver
5. *U.S. Securities and Exchange Commission v. Sean Healy, et al.*, Case No. 1:09-CV-1330, U.S. District Court, Middle District, Pennsylvania, Court-Appointed Receiver
6. *U.S. Securities and Exchange Commission v. Concorde America, Inc., et al.*, Case No. 05-80128-CIV-ZLOCH/SNOW, U.S. District Court, Southern District, Miami Division, Court-Appointed Distribution Agent
7. *U.S. Securities and Exchange Commission v. Bio-Heal Laboratories, Inc., et al.*, Case No. 05-21116-CIV-SEITZ/ O'SULLIVAN, U.S. District Court, Southern District, Miami Division, Court-Appointed Distribution Agent
8. *U.S. Securities and Exchange Commission v. Charles O. Morgan, Jr., as Personal Representative of the Estate of Frederick J. Kunen*, Case No. 07-22204-CIV-GOLD/TURNOFF, U.S. District Court, Southern District, Miami Division, Counsel for Receiver