

District Court, Denver County, State of Colorado 1437 Bannock Street, Room 256 Denver, Colorado 80202 Phone Number: 720-865-8301	
In re the Marriage of: Petitioner: KELSY M. YATES Respondent: KIRI A. HUMPHREY	▲ COURT USE ONLY ▲
Attorney for Receiver: John M. Tanner, #16233 Fairfield and Woods, P.C. 1801 California St., #2600 Denver, Colorado 80202 Phone: 303-830-2400 Fax: 303-830-1033 Email: jtanner@fwlaw.com	Case Number: 16DR30252 Division: 303
RECEIVER'S MOTION FOR ORDER TO PRESENT AND FILE CLAIMS AND DESIGNATION FOR A SPECIAL CAPTION FOR RECEIVERSHIP MATTERS	

Sterling Consulting Corporation, as receiver, by and through its attorneys, Fairfield and Woods, P.C., hereby moves this Court for an Order requiring presentation and filing of claims, and as grounds therefor states as follows:

Certification pursuant to Rule 121: Undersigned counsel has consulted with those with standing to object to this motion, and none do.

Request for Order to Present and File Claims.

In the Order Appointing Receiver, the Court granted the receiver powers, in part, as follows:

2. The Receiver shall have all the powers and authority usually held by receivers and reasonably necessary to accomplish the purposes herein stated including, but not limited to, the following powers and duties, which may be exercised without further Order of the Court:

...

b. . . . to exercise all of Petitioner's and Respondent's rights and remedies with respect to proceedings brought to collect any accounts related to the Property; and

...

i. To settle any claims against the Property with the approval of this Court.

The receiver has endeavored to assess and evaluate the liabilities of the Receivership Estate, but until the Court enters a deadline (the "Bar Date") before which claims against the Receivership Estate ("Claims") must be filed, the receiver cannot be certain that: (a) it has, in fact, identified all Claims; (b) correctly quantified the amounts of all Claims; (c) correctly prioritized the order of repayment of all Claims; and (d) correctly qualified the Assets encumbered by secured Claims.

In addition, the Receivership Estate contains numerous Properties that are leased from third parties, which leases are in default, and where there is a danger that an eviction could impair valuable rights the Receivership Estate has in the Properties. Due to the intricate nature of the various licenses that are required from local governments, in particular, the receiver believes a formal claims process is necessary to protect the assets in the Receivership Estate from forfeiture. As the Court is aware, one landlord has already filed a Motion to Intervene, and more are anticipated.

Similarly, the Receivership Estate contains at least one property that is subject to a foreclosure action. Although the Order Appointing Receiver stayed all foreclosure actions, absent a systematic Claims procedure, creditors would be precluded from their remedies. The proposed Order would not lift the stay against foreclosures, but it would give creditors the right to file Claims against the Receivership Estate and obtain the remedies that this Court affords them.

In addition to the leases and foreclosures at issue, there are numerous liabilities that predate the appointment of the receiver. Claims that post-date the appointment of the receiver are administrative in nature, and should be paid on a current basis to the extent the receiver is utilizing the premises, good, or service. Claims that predate the appointment should be filed and given the appropriate security and priority of repayment from the assets that existed at the time of the appointment of the receiver. The receiver recommends that Claimants conform to the following requirements in their Claims:

1. The Claimant should be required to provide information identifying the Claimant and giving the receiver contact information of the Claimant, including the following:
 - a. Complete names of all Claimants;
 - b. Addresses of all Claimants;
 - c. Telephone numbers of all Claimants; and

d. Email addresses of all Claimants.

2. Claimants may file their Claims with the receiver on their own behalf without engaging an attorney.¹ The Claimant should state whether the Claimant has engaged an attorney to represent the Claimant and, if so, the full identity of, and contact information for, the attorney. If the Claim of an individual Claimant is challenged by the receiver or otherwise as described in paragraph 17 below, an individual Claimant may appear *pro se* to respond to the challenge. If the Claim of a Claimant that is a company is challenged by the receiver or otherwise, the company may not appear *pro se*, and must engage an attorney to represent it in the Court.

3. The Claimant should specify the interest the Claimant Claims in the Assets of the Receivership Estate, and the basis of the Claim.

4. The Claimant should give a description of the Assets in which the Claimant Claims an interest, and attach true and correct copies of the documents and instruments supporting the Claim.

5. The Claimant should specify the date the Claim arose.

6. The Claimant should state the exact amount, components, and nature of the Claim as it existed on September 15, 2016 (the date the receiver was appointed).

¹ Claimants should understand that the receiver does not suggest self representation, but must disclose and honor an individual and company Claimant's right to self representation in connection with filing Claims. Similarly, the receiver does not suggest self representation by an individual Claimant in the event his or her Claim is challenged by the receiver.

7. The Claimant should provide a description of the nature and value of any offset or counterclaim.

8. The Claimant should specify the preference, security, and priority status of the Claim.

9. The Claimant should specify whether the Claim bears interest, late fees, or penalties, and, if so, the basis for claiming interest, late fees, or penalties.

10. If the Claim is supported by a note or similar debt instrument, the Claimant should provide a detailed ledger calculated no less often than monthly demonstrating how the balance under the note or debt instrument was funded, together with evidence of the cash used to fund the note or debt instrument, and the ledger should disclose all advances made under the note or debt instrument, and all payments made on the note or debt instrument. Upon request by the receiver, the Claimant should provide support documentation for every entry on the ledger.

11. Unlike bankruptcy actions, there is no automatic stay prohibiting a Claimant from proceeding against assets in a Receivership Action in a separate action. Controlling precedent indicates that if a Claimant obtains an actual judgment in another action before a court of competent jurisdiction, that judgment is binding upon the receiver. *E.g.*, *Riehle, as Receiver v. Margolies*, 279 U.S. 218 (1929). As a result of the foregoing authority, a Claimant in the receivership could continue to pursue

an action elsewhere, and the receiver would be forced either to defend the action in a distant court, which would greatly reduce the efficiency of the receivership, or have default entered against the Company in an amount over which the receiver had no control. That judgment would likely be binding.

12. Accordingly, a Claimant should be required to state whether the Claimant has commenced any type of action against the Assets including a legal action, administrative action, foreclosure action, or other judicial or quasi-judicial proceeding (an "Action"). If the Claimant has commenced an Action, the Claimant should specify the court, agency, or venue, and case number, and specify whether the Claimant has received a judgment, order, or other disposition against the Assets.²

13. If the Claimant has brought an Action against the Assets that has not been reduced to judgment or has not otherwise been subject to final disposition, before filing a Claim, the Claimant should be required to dismiss the Action and should certify to this Court that such Claim has been dismissed, either with or without prejudice before being allowed to file a Claim in this Action. A Claimant that persists in pursuing an Action against the Assets should have its Claim, counterclaim, or offset denied and disallowed by this Court, and should not be allowed to participate in distributions from the Receivership Estate.

² The law allowing claims to proceed against assets in receivership appears to be limited to legal claims. Equitable claims against assets in receivership are improper unless brought in this Court in the first instance, and this Court has issued a stay against such actions in the Order Appointing Receiver.

14. By requiring Claimants in the receivership to dismiss claims in other venues, this Court would simply be requiring that all Claims regarding the Receivership Estate be heard in the this Court. This is neither a novel nor unusual approach to receiverships—receivership courts should try generally to consolidate all disputes into one action as a matter of policy. *E.g. 313 New York Trust Co. v. Watts-Ritter & Co.*, 57 F.2d 1012, 1015 (4th Cir. 1932) (“As was said by Judge (later Chief Justice) Taft in *Continental Trust Co. et al. v. Toledo, St. L. & K.C.R. Co.* (C.C.) 82 F. 642, it is the duty of the court to consolidate causes, where no one will be injured thereby. Here the action of the [receivership] court below in requiring the whole matter to be adjudicated in the pending suit was proper.”).

15. The Claimant should represent whether the Claimant owes the Receivership Estate anything, and if so, the Claimant should specify what the Claimant owes the Receivership Estate. The Claimant should further represent whether the Receivership Estate has a right of set-off or recoupment form, or counterclaim against, Claimant, and if so, the Claimant should thoroughly describe the right of set-off, counterclaim, or recoupment.

16. The receiver further requests that the Claimants be required to submit their Claims by sworn and notarized statement.

17. The receiver recommends that within three weeks after the Bar Date, the receiver should submit a special report to the Court approving or disapproving each Claim submitted, and recommending whether this Court

should allow or disallow each Claim.³ Parties to the action and Claimants should have two weeks to respond to the receiver's treatment of Claims and recommendations. The receiver should have two weeks to reply.

18. Due to their claims to assets as marital property, the receiver recommends that Petitioner and Respondent be exempted from the Claims Process.

Request for special caption for receivership matters.

19. As is often the case with actions such as this one, where certain assets are ordered into receivership, but the parties themselves are not, the receiver has encountered confusion on the part of some Claimants. In order to eliminate the confusion as to what and who is in receivership, the receiver asks the Court to approve the use of a special caption for receivership purposes, while retaining the original caption for marital issues. Issues raised under the special caption for receivership matters would not be subject to the Confidentiality Order, whereas issues raised under the original caption would be subject to the Confidentiality Order. All parties would have the opportunity to object to each use of the special receiver's caption at the time the receiver's counsel consults with the parties under Rule 121.

³ Approval or disapproval of a Claim by the Receiver, and the recommendation as to how the Claim should be treated by the Court, are not Judgments. Rather, they are in the nature of a motion and are intended to attract a response from those Claimants who disagree with the findings and recommendation of the Receiver.

20. For the Court's convenience, a proposed Order is submitted herewith using the special receiver's caption, and a proposed Order is submitted herewith using the original caption if the Court decides against the use of the receiver's special caption.

WHEREFORE, Sterling Consulting Corporation, as receiver, prays that this Court enter an Order: (a) that Claimants with Claims against the Assets present and file their Claims with the receiver consistent with the Proposed Order to Present and File Claims; (b) that Claims be filed on a form substantially similar to the Claim of Creditor form attached as Exhibit A (the receiver will modify the caption if required), (c) that this Court approve the form Notice of Order by publication in a newspaper of general circulation in the Denver, Colorado area substantially in the form of the notice attached hereto as Exhibit B, and (d) for such other and further relief as this Court deems just and proper.

Respectfully submitted this 12th day of December, 2016.

FAIRFIELD AND WOODS, P.C.

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EXHIBIT A

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202 Phone Number: 720-865-8301	
In re the Receivership Estate of MYH And Concerning: Alpine Herbal Wellness, LLC, Serenity Moon Wellness Center, LLC, Walnut Associates, LLC, ADG Herbal Wellness Center, Inc., FL89, LLC Frosted Leaf, LLC; Straight River, LLC; Vape Tools, LLC; 11975 East 40th Avenue, LLC; 420 Events, LLC; Canna Co, LLC	▲ COURT USE ONLY ▲
Claimant: Claimant: _____ Claimant's Attorney: _____ _____ Attorney Reg. No.: _____ Address: _____ _____ _____ City, State Zip: _____ _____ Telephone: _____ Email: _____ Date: the _____ of _____, _____	Case Number: 16DR30252 Division: 303 Courtroom: Hon. Lael Montgomery (retired), Judicial Arbitrator Group, Inc., Appointed Pursuant to C.R.S. §13-3- 111 and C.R.C.P. 122
CLAIM	

Comes now _____ (the "Claimant"), who
resides at the following address [*do not use Post Office Box*] _____

_____ being first duly sworn, deposes, and says:

The receiver for the assets in the Receivership Estate in Case No.
16DR30252 was, on September 14, 2016, and still is, in possession and
control of certain assets (the "Assets"), including Assets identified on Exhibit

Third-Party Claim for Assets

Date: _____ of _____, _____

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A attached to the Order Appointing Receiver entered on September 14, 2016 and the following Assets:

1. The Claimant Claims an interest in the Assets described as follows: _____.
[please specify, e.g. ownership, purchase order, bill of sale, etc.]

2. Claimant describes the Assets as follows:

Asset:	Description:
_____	_____
_____	_____
_____	_____
_____	_____

3. True and correct copies of the documents and instruments supporting this Claim are attached hereto.

4. Claimant has has not *[please check the appropriate box]* filed a legal action, administrative action, or foreclosure against the Assets of the Receivership Estate as follows:

[please specify court, agency, venue, and case number] and has has not *[please check the appropriate box]* received a judgment against the Assets of the Receivership Estate.

5. If the Claim is supported by a note or similar debt instrument, the Claimant shall attach a detailed ledger from and after the date of the note or debt instrument to the present, calculated no less often than

Third-Party Claim for Assets

Date: _____ of _____, _____

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monthly, demonstrating how the balance under the note or debt instrument was funded, together with evidence of the cash used to fund the note or debt instrument.

6. The Claim has the following preference, security, or priority:

7. The Claim bears interest, late fees, or penalties in the following amount, and the basis for claiming interest, late fees, or penalties is as follows:

8. Claimant represents that Claimant owes the Receivership Estate nothing and the Receivership Estate has no right of set-off, counterclaim, or recoupment from Claimant, except as set forth in Paragraph 12 below.

9. The date the Claim arose is: _____

10. Amount of obligation on September 14, 2016 was: _____

11. The components and nature of the Claim as it existed on September 14, 2016 was as follows:

12. The Receivership Estate has the following offset or counterclaims against the Claimant:

EXHIBIT B

NOTICE OF ORDER

THE COURT, upon the receiver's Motion for an Order to Present and File Claims HEREBY ORDERS that such Motion is Granted.

All persons and firms having claims or demands against the assets of the Cheesman Park and Lipan Street Receivership Estate in case styled In Re the Receivership Estate of MYH, and concerning Alpine Herbal Wellness, LLC, Serenity Moon Wellness Center, LLC, Walnut Associates, LLC, ADG Herbal Wellness Center, Inc., FL89, LLC Frosted Leaf, LLC; Straight River, LLC; Vape Tools, LLC; 11975 East 40th Avenue, LLC; 420 Events, LLC; Canna Co, LLC; Kelsy M. Yates; and Kiri A. Humphrey, Civil Action No. 16DR30252, District Court, City and County of Denver, Colorado (the "Assets" in the "Receivership Action"), are required, on or before the 15th day of July, 2016 to file their claims with Sterling Consulting Corporation, receiver in the Receivership Action, 4101 East Louisiana Avenue, Denver, Colorado, 80246, under penalty of having said claims denied by this Court if not timely filed, and not being allowed to use the facts that underlie the unfiled claim as an offset or counterclaim to any action brought by the receiver.

Further, any party shall, before filing, dismiss any other claims pending against the Assets in any other court or proceeding, and shall verify to this Court, under penalty of perjury, that such claims have been dismissed with or without prejudice. A party that persists in pursuing actions against the Assets in other courts or proceedings shall have its claim, counterclaim, or offset denied and disallowed by this Court, and shall not be allowed to participate in distributions from this Receivership Action.

Done this ____ day of _____, 2016.

LAEL MONTGOMERY
District Court Judge:

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was Efiled via ICCES this 12th day of December, 2016, and E-served upon the following:

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By: s/ Sharon A. Chiecuto
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