

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-CIV-ALTONAGA/SELTZER

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, et al.,

Defendants.

**RECEIVER JONATHAN E. PERLMAN'S UNOPPOSED
MOTION FOR ORDER OF REAPPOINTMENT**

Jonathan E. Perlman (“Perlman”), Receiver (the “Receiver”) over all Defendants who are entities pursuant to orders this Court entered at various times, submits this Unopposed Motion for Order of Reappointment.

I. BACKGROUND AND SUMMARY

1. On May 8, 2018, the U.S. Federal Trade Commission (“FTC” or “Plaintiff”) commenced this action by filing a complaint for permanent injunction and other relief (the “Complaint”), and a motion for a temporary restraining order (“TRO”) alleging that Defendants Dustin Pillonato, Justin Ramsey, Aaron Michael Jones, Ricardo Diaz, Michael Pocker, Steffan Molina, Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; Modern Source Media; Perfect Image Online LLC, and their divisions, subsidiaries, affiliates, predecessors, successors, assigns, and any fictitious business entities or business names created or used by these entities, or any of them, violated and were likely to violate Section 5(a), of the FTC Act, 15 U.S.C. §45(a). [ECF

No. 1, “Compl.”].

2. The Court granted Plaintiff’s motion for TRO that same day and appointed Jonathan E. Perlman temporary receiver over the “Receivership Entities,” then defined as all “Corporate Defendants, as well as any other entity that the Receiver determines is controlled or owned by any Defendant and has (a) conducted any business related to Defendants’ marketing of Google listings and search engine optimization services; (b) commingled or pooled assets with any defendant; or (c) otherwise participated in the transfer or receipt of assets derived from any activity that is the subject of the Complaint in this matter.” [ECF No. 12 at p. 5]. The order defined “Corporate Defendants” to “mean[] Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; Modern Source Media, LLC; Perfect Image Online LLC; and each of their subsidiaries, affiliates, successors, and assigns.” [*Id.* at p. 4]. Additionally, the TRO provided that Receiver Perlman was authorized to deem additional entities as “Receivership Entities” that the Receiver determined were controlled or owned by any Defendant who had engaged in a related business, commingled assets or otherwise participated in the transfer or receipt of assets derived from such business. [*Id.* at p. 5].

3. On June 5, 2018, Receiver Perlman filed a notice identifying Pinnacle Presence, LLC and National Business Listings, LLC as additional Receivership Entities. [ECF No. 55].

4. On June 6, 2018, the Court entered a preliminary injunction as to Defendants Molina and Perfect Image Online and appointed Mr. Perlman permanent receiver over the “Receivership Entities,” which this First Preliminary Injunction defined as Perfect Image Online and any other entities the Receiver determined were controlled or owned by any Defendant who had engaged in a related business, commingled assets or otherwise participated in the transfer or

receipt of assets derived from such business. [ECF No. 58 at pp. 4, 14].

5. On June 7, 2018, the Court entered its Second Preliminary Injunction, which appointed Mr. Perlman permanent receiver over additional “Receivership Entities,” defined as meaning the “Corporate Defendants” plus any other entities the Receiver determined were controlled or owned by any Defendant who had engaged in a related business, commingled assets or otherwise participated in the transfer or receipt of assets derived from such business. [ECF No. 64 at pp. 5, 14]. Corporate Defendants in the Second Preliminary Injunction were defined as Pointbreak Media; DCP Marketing; Modern Spotlight; Modern Spotlight Group; Modern Internet Marketing; Modern Source Media; and each of their subsidiaries, affiliates, successors, and assigns, individually, collectively, or in any combination. [*Id.* at p. 4].

6. On July 3, 2018, the FTC filed a First Amended Complaint naming as additional defendants National Business Listings and Pinnacle Presence (both of whom Receiver Perlman had previously identified as Receivership Entities), and Allstar Data, LLC. [ECF No. 109]. On August 2, 2018, the FTC moved for a preliminary injunction as to these defendants. [ECF No. 142].

7. On August 30, 2018, the Court entered a Third Preliminary Injunction which appointed Mr. Perlman permanent receiver over the “Receivership Entities,” defined as the “Corporate Defendants” plus any other entities the Receiver determined were controlled or owned by any Defendant who had engaged in a related business, commingled assets or otherwise participated in the transfer or receipt of assets derived from such business. [ECF No. 169 at p. 5]. The order defined Corporate Defendants to mean Allstar Data, National Business Listings, Pinnacle Presence and each of their subsidiaries, affiliates, successors, and assigns, individually, collectively, or in any combination. [*Id.* at p. 4].

8. As a result of the foregoing, it is unclear whether the Court's August 30 order constituted an order of appointment of permanent receiver over all current Receivership Entities.

9. Having a date of appointment applicable to all Receivership Entities will assist Receiver Perlman in complying with his obligations to preserve and recover Receivership property, by establishing a clear deadline for the Receiver to file a copy of the First Amended Complaint and the order of appointment in district courts where the Receiver has determined Receivership property to exist pursuant to 28 U.S.C. § 754. Compliance with this rule establishes the Receiver's authority and this Court's in rem jurisdiction over Receivership property located outside of this District.

10. Requests for orders of reappointment in instances such as this are judicially favored and have been uniformly granted, even where the receiver has made such request **after** failing to file within § 754's 10-day deadline—which is not the case here.¹ *See Terry v. June*, No. Civ.A. 303CV00052, 2003 WL 22125300, at *3 (W.D. Va. Sept. 12, 2003) (collecting cases) (“Permitting a receiver to reassume jurisdiction in this manner is consistent with the role and purpose of a federal receivership. Were this not the rule, a receiver would be forced to file the required documentation in all ninety-four federal districts to protect jurisdiction over any potential, but presently unknown, receivership assets—a result that would produce a needless waste of time and lead to dissipation of assets otherwise returnable to defrauded investors.”);²

¹ The Receiver filed the FTC's original complaint and TRO in the U.S. District Court for the Central District of California on May 17, 2018 and in the U.S. District Court for Rhode Island on May 23, 2018. On September 5, 2018, within 10-days of the August 30 order of appointment, the Receiver upon learning of the existence of Receivership Property in South Carolina and Pennsylvania, caused to be filed the First Amended Complaint, Original Complaint, June 7 Preliminary Injunction, and August 30 Preliminary Injunction in the U.S. District Court for South Carolina and the U.S. District Court for the Middle District of Pennsylvania.

² An order of reappointment is especially appropriate in this case, as Defendant Pillonato, with the aid of his brother Jeremy Drob and father Ray Pillonato, recently removed assets from this District in violation

see also Pennant Mgmt., Inc. v. First Farmers Fin., LLC, No. 14-cv-7581, 2015 WL 4511337, at *4 (N.D. Ill. July 24, 2015) (same).

11. Accordingly, Receiver Perlman respectfully requests that the Court enter an order of reappointment as to all Receivership Entities at this time.

II. LEGAL ARGUMENT

12. In federal equity receiverships, a receivership court acquires jurisdiction over receivership property located in other districts (and any persons in possession of such property) pursuant to 28 U.S.C. §§ 754 and 1692. *See SEC v. Cook*, No. 3-01-CV-0480-R, 2001 WL 803791, at *2-3 (N.D. Tex. July 11, 2001); *see also SEC v. Bilzerian*, 378 F.3d 1100, 1104-06 (D.C. Cir. 2004); *Am. Freedom Train Found. v. Spurney*, 747 F.2d 1069, 1073 (1st Cir. 1984); *Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 823-24 (6th Cir. 1981); *Terry*, 2003 WL 22125300, at *5.

13. However, in order for national jurisdiction to attach under 28 U.S.C. § 754, it is up to the receiver to comply with the statute by filing a copy of the complaint and order appointing the receiver in the district court for each district in which property is located within 10-days of appointment:

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall ... be vested with complete jurisdiction and control of all such property with the right to take possession thereof

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

of this Court's asset freeze. Because those assets are now located in Pennsylvania where Ray Pillonato resides and in South Carolina where Drob was ensnared during a traffic stop, the Receiver filed orders of appointment and the Complaints in the appropriate district courts in those states.

28 U.S.C. § 754. *See Cook*, 2001 WL 803791, at *2 (citing *SEC v. Vision Commc'ns, Inc.*, 74 F.3d 287, 290 (D.C. Cir. 1996) and *Haile*, 657 F.2d at 823).

14. The receiver's compliance with § 754, in turn, activates Section 1692, which authorizes national service of process upon persons in possession of receivership assets, subject to the statutory prerequisites found in § 754. Section 1692 provides:

In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

28 U.S.C. § 1692.

15. Thus, acting “[t]ogether, these statutes give a receivership court both *in rem* and *in personam* jurisdiction in all districts where property of the receivership estate may be located.” *Quilling v. Stark*, No. 3:05-CV-1976-L, 2006 WL 1683442, at *3 (N.D. Tex. June 19, 2006).

16. The receiver's ability to timely file the complaint and order of appointment in each jurisdiction where Receivership property is located is, however, subject to practical limitations—including the receiver's developing knowledge of the existence and location of receivership property and property ultimately traceable to the receivership estate and changes in the scope of the receivership.

17. Additionally, on occasion, receivers have simply failed to file within 10-days. In such instances, courts have repeatedly held, that absent prejudice to defendants, the court is empowered, and should, issue an order reappointing the receiver, which resets the 10-day deadline under 28 U.S.C. § 754. *See Vision Commc'ns, Inc.*, 74 F.3d at 291 (“On remand, the court may appoint the receiver and start the ten-day clock of § 754 ticking once again. Presumably, the receiver will take advantage of his second chance to comply with § 754 and

promptly file the necessary papers . . . Once he does so, the receiver will have jurisdiction over the . . . property.”); *SEC v. Heartland Grp., Inc.*, No. 01-cv-1984, 2003 WL 21000363, at *5 (N.D. Ill. May 2, 2003) (“[T]he court can easily correct this failure to file such a claim by merely reappointing the Receiver and thereby starting the 10-day time period under § 754 ticking once more.”); *Terry*, 2003 WL 22125300, at *3 (collecting cases) (“Permitting a receiver to reassume jurisdiction in this manner is consistent with the role and purpose of a federal receivership. Were this not the rule, a receiver would be forced to file the required documentation in all ninety-four federal districts to protect jurisdiction over any potential, but presently unknown, receivership assets—a result that would produce a needless waste of time and lead to dissipation of assets otherwise returnable to defrauded investors.”); *Terry v. Walker*, 369 F. Supp. 2d 819-21 (W.D. Va. 2005); *SEC v. Equity Serv., Corp.*, 632 F.2d 1092, 1095 (3d Cir. 1980); *Pennant Mgmt.*, 2015 WL 4511337, at *4; *Warfield v. Arpe*, No. 3:05-cv-1457-R, 2007 WL 549467, at *12 (N.D. Tex. Feb 22, 2007).

18. Having a date of appointment applicable to all Receivership Entities in this case will assist the Receiver in complying with his obligations to preserve and recover Receivership property, by establishing a clear deadline for the Receiver to file a copy of the First Amended Complaint and the order of appointment in district courts where the Receiver has determined Receivership property to exist.

19. Moreover, here, unlike any of the cases cited above, the Receiver submits this request for reappointment prior to the expiration of the 10-day period, in an abundance of caution to ensure the existence of a uniform applicable date of appointment as to all Receivership Defendants. Consequently, the requested order of reappointment clearly will not prejudice the rights of others. Accordingly, the Receiver’s motion for entry of order reappointment should be

granted.

III. CERTIFICATION

Pursuant to Local Rule 7.1.A.3, undersigned counsel hereby certifies that he conferred with counsel for the Plaintiff and counsel for the Defendants. The Plaintiff has authorized the Receiver to state that it does not object to the relief sought. In addition, the Defendants do not object to the requested relief.

WHEREFORE, the Receiver, Jonathan E. Perlman, Esq., respectfully requests this Court to enter an order reappointing the Receiver.

Respectfully submitted this 11th day of September 2018.

s/Jonathan E. Perlman
Jonathan E. Perlman, Esq., Receiver –

and

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 11, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and entities identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/Gregory M. Garno
Gregory M. Garno

SERVICE LIST

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USDC, SD Fla., Case No. 18-61017-CIV-ALTONAGA/SELTZER

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I further certify that, on September 11, 2018, a true and correct copy of the foregoing was also served on the parties listed below, which to the best of my knowledge are unrepresented by counsel, by the method indicated below:

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[10675-007/2918631/v2]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-CIV-ALTONAGA/SELTZER

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, et al.,

Defendants.

ORDER

THIS CAUSE came before the Court upon the Receiver Jonathan E. Perlman's Unopposed Motion for Order of Reappointment (the "Unopposed Motion") [ECF No. ____]. The Court having considered the Unopposed Motion, and being otherwise fully advised in the premises, it is:

ORDERED AND ADJUDGED:

1. The Unopposed Motion is **GRANTED**. The Court reappoints the Receiver over all entities in the receivership estate as set forth in this Court's prior preliminary injunction orders, namely Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; Modern Source Media, LLC; Perfect Image Online LLC; Allstar Data, LLC; National Busuiness Listings, LLC; and Pinnacle Presence, LLC.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this ____ day of _____, 2018.

**CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE**

cc: All counsel of record