

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

DRIVE PLANNING, LLC, and  
RUSSELL TODD BURKHALTER,

Defendants,

and

JACQUELINE BURKHALTER,  
THE BURKHALTER RANCH  
CORPORATION, DRIVE  
PROPERTIES, LLC, DRIVE  
GULFPORT PROPERTIES LLC,  
and TBR SUPPLY HOUSE, INC.,

Relief Defendants.

Case No. 1:24-cv-03583-VMC

**RECEIVER’S NOTICE TO INVESTORS REGARDING  
PROPOSED SETTLEMENT PROCEDURES  
PURSUANT TO COURT ORDER [ECF NO. 234]**

Kenneth D. Murena, as Court-Appointed Receiver (the “Receiver”) in the above-captioned action, provides notice of his proposed settlement procedures set forth in the Receiver’s motion to approve litigation and settlement procedures filed on August 5, 2025 [ECF No. 229] (the “Motion to Approve Litigation and

Settlement Procedures”) pursuant to this Court’s August 7, 2025 Order [ECF No. 234], and states:<sup>1</sup>

### SUMMARY

The Court has permitted the Receiver to sue certain parties to recover: (i) Net Gains – funds received by investors in excess of their principal investment (“Net Gains”); (ii) Commissions – payments to agents or representatives who solicited investments in unregistered securities issued by Drive Planning, LLC (“Commissions”); and (iii) Improper Transfers – transfers of Receivership Assets to third parties with no legitimate business relationship to Drive Planning, LLC (“Improper Transfers”). *See* ECF No. 234.

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<sup>1</sup> The undersigned hereby certifies that contemporaneously with this filing, the following notice will be prominently posted on the homepage of the Receiver’s website ([www.driveplanningreceivership.com](http://www.driveplanningreceivership.com)) with a link to this filing:

### **NOTICE TO INVESTORS OF DRIVE PLANNING, LLC**

**The Receiver has proposed certain procedures governing the settlement of certain claims brought by the Receiver. Investors may submit written comments or objections regarding the proposed Settlement Procedures directly to the Receiver at [driveplanningreceiver@dvcattorneys.com](mailto:driveplanningreceiver@dvcattorneys.com) by September 20, 2025. All submissions must identify the investor’s name and contact information. After the 21-day comment period has ended, the Receiver will file a notice with the Court summarizing any timely comments or objections received that are responsive to the subject matter of these proposed Settlement Procedures.**

The Receiver asked the Court to pre-approve the settlements which meet certain conditions (described below) to save the Receivership Estate the expense of seeking Court approval of individual settlements (“Settlement Procedures”). *See id.*

The Court directed the Receiver to file this notice and invite comments from investors regarding the proposed Settlement Procedures before the Court decides the Receiver’s Motion. **Any comments or objections to the Receiver’s proposal must be submitted to the Receiver at [driveplanningreceiver@dvcattorneys.com](mailto:driveplanningreceiver@dvcattorneys.com) by September 20, 2025.**

*The Proposed Settlement Procedures*

1. The Settlement Procedures are designed to facilitate the efficient resolution of claims by the Receivership Estate to recover the Net Gains, Commissions, and Improper Transfers on behalf of the Receivership Estate, while avoiding the delay and expense associated with filing individual motions for Court approval of each settlement.

2. The Receiver is asking the Court to permit him to enter into and effectuate settlements with investors, agents, and/or third parties (each a “Settling Party”) without prior or subsequent notice, a hearing, or court approval, if the settlement meets the following conditions (“Pre-Approved Settlements”):

**a) Pre-Approved Settlements Payment Range**

Settlement payments are pre-approved if they fall within:

- (i) 100% to 60% of the total Net Gains, Commissions, and/or Improper Transfers of \$500,000 or more;
- (ii) 100% to 70% of the total Net Gains, Commissions, and/or Improper Transfers between \$100,000 and \$499,999; and
- (iii) 100% to 80% of the total Net Gains, Commissions, and/or Improper Transfers under \$100,000.

**b) Factual or Legal Defenses**

The Receiver may, in his discretion, reduce the settlement amount by up to an additional 50% from the Pre-Approved Settlement payment range if the Settling Party presents credible documentary evidence or sworn testimony showing a substantial likelihood of success on a factual or legal defense, such that the Receiver determines the claim has a limited likelihood of success.

**c) Financial Hardship**

If a Settling Party demonstrates, through requested financial disclosures and a sworn declaration, that they are unable to repay all or part of the Net Gains, Commissions, and/or Improper Transfers, the Receiver may approve a settlement for less than the Pre-Approved Settlement payment range, including a reduction to zero, if justified by the financial hardship documentation.

**d) Settlement Terms and Default Remedies**

Where financial hardship is established, the Receiver may agree to payment of the settlement amount over a term of up to twelve (12) months. Any settlement with such terms must include default provisions requiring: (i) consent to

service at the notice address in the settlement agreement; (ii) waiver of all defenses, except set-off for amounts actually paid, and waiver of jury trial rights; and (iii) agreement to entry of a consent judgment for 125% of the unpaid balance, with a credit for prior settlement payments. The Receiver must provide written notice of default and allow seven (7) days to cure. If uncured, the Receiver may accelerate the remaining balance due under the settlement agreement and seek entry of the consent judgment within twenty-one (21) days without further notice.

3. The Receiver and Settling Party would sign a written settlement agreement (“Settlement Agreement”), substantially in the form attached as **Exhibit A**, which would include the following material terms: (i) the settlement payment amount and any agreed payment term; (ii) mutual releases between the Receiver, Drive Planning, LLC, and the Receivership Estate, and the Settling Party, excluding any release of obligations under the Settlement Agreement; (iii) a stipulation that each party shall pay its own attorneys’ fees and costs through final consummation, except that the Receiver may recover from the Settling Party attorneys’ fees and costs incurred in enforcing the Settlement Agreement; (iv) the Settling Party’s consent to personal jurisdiction and venue in the United States District Court for the Northern District of Georgia as the exclusive forum for enforcement of the Settlement Agreement; and (v) provisions for implementation of the Default Remedies.

4. The Receiver believes that the Pre-Approved Settlements would be reasonable and approved by the Court if they were considered individually by the Court under the applicable laws. But, by having the Court pre-approve the settlements that meet the conditions described above, the Receivership Estate would save substantial resources by not having to file separate motions to approve more than 100 likely settlements.

5. If the Receiver wishes to settle a case in a way which does not meet the conditions listed above, he will seek Court approval of the proposed settlement.

6. Investors may read the Receiver's proposal in more detail in his Motion to Approve Litigation and Settlement Procedures. *See* ECF No. 229.

7. As explained above, if an investor has any comments or objections to the Receiver's proposal, the Court has set a deadline of September 20, 2025, to submit them to the Receiver. Investors may submit any comment or objection to [driveplanningreceiver@dvcattorneys.com](mailto:driveplanningreceiver@dvcattorneys.com). The Court has instructed the Receiver to file a notice with the Court summarizing any comment or objection he receives related to the Settlement Procedures for the Court's review.

Dated: August 21, 2025.

Respectfully submitted,

s/Russell Landy  
Russell Landy, Esq.  
Florida Bar No. 44417  
*Admitted Pro Hac Vice*

*Lead Counsel for Kenneth D. Murena,  
as Court-Appointed Receiver*

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*Local Counsel for Kenneth D. Murena,  
as Court-Appointed Receiver*

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Georgia Bar No. 636265

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Atlanta, GA 30305

Telephone: (404) 926-0053

hsewell@sewellfirm.com

**CERTIFICATE OF SERVICE, FONT AND MARGINS**

I hereby certify that on August 21, 2025, I electronically filed the foregoing *Notice* using the CM/ECF System that will automatically send e-mail notification of such filing to all registered attorneys of record and I separately e-mailed this filing to Defendant Russell Todd Burkhalter.

I further certify that I prepared this document in 14-point Times New Roman font and complied with the margin and type requirements of this Court.

*s/Russell Landy*

Russell Landy, Esq.

Florida Bar No. 44417

*Admitted Pro Hac Vice*

## EXHIBIT A

### SETTLEMENT AND RELEASE AGREEMENT BY AND BETWEEN KENNETH D. MURENA, AS RECEIVER OF DRIVE PLANNING, LLC AND [NAME OF SETTLING PARTY]

THIS SETTLEMENT AND RELEASE AGREEMENT (the “Agreement”) is made and entered into by and between **Kenneth D. Murena**, as Receiver (the “Receiver”) of Drive Planning, LLC (“Drive Planning”), any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held by, or on behalf of, or for the benefit of Drive Planning, LLC, and **[Name of Settling Party]** (the “Settling Party”) (the Receiver and Settling Party are each a “Party” and are collectively the “Parties”).

#### I. RECITALS

A. WHEREAS, on August 13, 2024, the Securities and Exchange Commission (“SEC”) filed a Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief against Drive Planning, LLC and Russell Todd Burkhalter (together, the “Receivership Defendants”), alleging they operated a massive Ponzi scheme, in the United States District Court for the Northern District of Georgia (the “Receivership Court”) styled *Securities and Exchange Commission v. Drive Planning, LLC, et al.*, Case No. 1:24-cv-03583-VMC (the “SEC Action”).

B. WHEREAS, on August 13, 2024, the Court entered the Receivership Order (ECF No. 10 in the SEC Action), appointing Kenneth D. Murena, Esq., as the Receiver of Drive Planning and all assets owned by or purchased with funds derived from investors or clients of Drive Planning. The Court found that the appointment of a Receiver was necessary to marshal, preserve, and recover assets derived from fraudulent activities tied to the Defendants’ alleged Ponzi scheme. The Receiver was tasked with, *inter alia*, securing assets acquired with or otherwise traceable to investor funds, managing the Receivership Estate, and liquidating assets for the benefit of defrauded investors.

C. WHEREAS, the Receiver and his forensic accountants reviewed and analyzed the financial records of Drive Planning, including their accounting records and bank account statements and those records reveal that Settling Party received a total sum of **[\$Insert Total Amount of Net Gains, Commissions, or Improper Third-Party Transfers]** from Drive Planning for commissions (collectively, “Transfers”).

D. WHEREAS, pursuant to the Receivership Order, on **[Insert Date of Demand Letter]**, the Receiver, through his counsel, sent a demand letter to the Settling Party seeking to recover the Transfers it had received from Drive Planning, for the benefit of its investors.

E. WHEREAS, on **[Insert Date of Response to Demand Letter]**, Settling Party responded to the Receiver’s demand letter requesting return of the Transfers.

F. WHEREAS, the Receiver does not claim any wrongdoing by Settling Party.

**NOW THEREFORE**, in consideration of the mutual promises and exchanges set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

## **II. GENERAL PROVISIONS**

A. **Court Approval**: The Parties acknowledge and agree that this Agreement is subject to the approval of the SEC and the Receivership Court and, therefore, will not be binding until the Receivership Court enters an order approving this Agreement or settlement procedures proposed by the Receiver and approved by the Receivership Court that would apply to this Agreement such that this Agreement would meet the requirements of the court-approved settlement procedures (“Court Approval”).

B. **Recitals**: The Parties acknowledge and agree that the Recitals set forth hereinabove are integral terms, are true, accurate and correct and are hereby incorporated into this Agreement and are not mere surplusage.

C. **Settlement Payment**:

***Single Payment***: The Settling Party has agreed to and shall pay (or caused to be paid) to the Receiver **[Insert Among of Settlement Payment]** (USD) (**[\$[Insert Amount of Settlement Payment]**) (the “Settlement Payment”), by wire transfer to the Receiver’s fiduciary account for the Receivership Estate using the wire instructions that the Receiver’s counsel will provide to Settling Party on or before **[Insert Date]**; *or*

***Term Payment***: The Settling Party has agreed to and shall pay (or caused to be paid) to the Receiver **[Insert Among of Settlement Payment]** (USD) (**[\$[Insert Amount of Settlement Payment]**) (the “Settlement Payment”), in **[Insert number of months up to 12]** (#) consecutive monthly payments, in the amounts and time periods set forth below, by wire transfer to the Receiver’s fiduciary account for the Receivership Estate using the wire instructions that the Receiver’s counsel will provide to Settling Parties:

- i. ***Initial Payment***: **[\$[Insert Amount of Initial Payment]** (USD) within seven (7) days after the date this Agreement is fully executed by the Parties; and
- ii. ***Monthly Payment***: **[\$[Insert Amount of Monthly Payment]** (USD) each month following the first payment for **[Insert number of months up to 11]** (#) consecutive months, with each payment to be made within thirty (30) days after the prior payment.
- iii. ***Default Remedies***: Settling Parties agree and stipulate: (i) that service of process for any proceeding to enforce the Settlement Agreement may be effected on Settling Party as set forth in Notice provision in the Settlement Agreement; (ii) to waiver of all

defenses and affirmative defenses, other than set-off regarding to payments the Receiver actually received from Settling Party, and to waiver of any right to a jury trial regarding enforcement of this Agreement; and (iii) to expedited entry of an agreed upon consent judgment for 125% of the amount of outstanding Settlement Payment (giving credit to payments the Receiver actually receives from Settling Party) in an ancillary proceeding whether dismissed as to the Settling Party and pending as to other defendants or initiated as a separate ancillary proceeding to enforce the Agreement (“Default Remedies”). The Receiver shall, prior to implementing the Default Remedies, give the defaulting Settling Party written notice pursuant to the terms of this Agreement and seven (7) days to cure the default (“Cure Period”). If the default remains uncured after expiration of the Cure Period, the Receiver may, in his business judgment and discretion, accelerate the outstanding unpaid amount of the Settlement Payment and proceed to enforce the Default Remedies without further notice, including by seeking entry of the agreed upon consent judgment by filing a verified agreed motion for entry of consent judgment within twenty-one (21) days after expiration of the Cure Period.

D. **Mutual Releases:** Upon the Receiver’s receipt of the full amount of the Settlement Payment in cleared funds, the Receiver, the Receivership Estate, and Drive Planning hereby do release and forever discharge Settling Party from any and all claims, manner of claims, liabilities, demands, obligations, actions, causes of action, injuries, complaints, levies, fines, charges, interest, suits, debts, indebtedness, duties, obligations, rights, damages, punitive damages, attorneys’ fees, costs, expenses and compensation of any nature whatsoever and of any kind, based on any legal, statutory or equitable theory, right of action or otherwise (whether arising under federal, state or local law or regulation, statute, or common law and whether by any federal, state or local taxing or regulatory authority or agency), foreseen or unforeseen, known or unknown, matured or unmatured, liquidated or unliquidated, absolute or contingent, accrued or not accrued, actual or potential, which the Receiver, the Receivership Estate, and/or Drive Planning, now has or which may hereafter accrue or otherwise be acquired against Settling Party related to the Transfers, regardless of whether any other information obtained by the Receiver after the date of this Agreement substantiates any additional claims or causes of action the Receiver could have brought against Settling Party related to the Transfers. For avoidance of doubt, and notwithstanding any reading of this Agreement to the contrary, these releases do not release claims the Receiver, the Receivership Estate, and/or Drive Planning have against or in connection with any other individuals and/or entities, including their insurers or reinsurers, which are not the Settling Party. Nothing in this paragraph affects the Parties’ ability to enforce the terms of this Agreement, as applicable to them.

Upon the Receiver’s receipt of the full amount of the Settlement Payment in cleared funds, Settling Party shall and hereby do release and forever discharge the Receiver, the Receivership Estate, and Drive Planning from any and all claims, manner of claims, liabilities, demands, obligations, actions, causes of action, injuries, complaints, levies, fines, charges, interest, suits,

debts, indebtedness, duties, obligations, rights, damages, punitive damages, attorneys' fees, costs, expenses and compensation of any nature whatsoever and of any kind, based on any legal, statutory or equitable theory, right of action or otherwise (whether arising under federal, state or local law or regulation, statute, or common law and whether by any federal, state or local taxing or regulatory authority or agency), foreseen or unforeseen, known or unknown, matured or unmatured, liquidated or unliquidated, absolute or contingent, accrued or not accrued, actual or potential, which Settling Party now has or which may hereafter accrue or otherwise be acquired against the Receiver, the Receivership Estate, and/or Drive Planning related to the Transfers, regardless of whether any other information obtained by Settling Party after the date of this Agreement substantiates any additional claims or causes of action Settling Party could have brought against the Receiver, the Receivership Estate, and/or Drive Planning related to the Transfers. Nothing in this paragraph affects the Parties' ability to enforce the terms of this Agreement, as applicable to them.

E. **No Admission of Liability:** Nothing herein shall be construed as an admission of liability by Settling Party, any such liability being expressly disputed and denied, and shall never be construed as an admission(s) by Settling Party.

### III. **WARRANTY OF CAPACITY TO EXECUTE AGREEMENT**

The Parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this Agreement; that the Receiver has the sole and exclusive right to receive sums specified in it; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.

### IV. **ENTIRE AGREEMENT AND SUCCESSORS-IN-INTEREST**

The Parties agree that this Agreement contains the entire agreement between the Receiver and Settling Party with regard to the matters set forth in it and shall be binding upon and inure to the benefit of their respective successors and assigns. There are no other understandings or agreements, verbal or otherwise, in relation thereto between the Parties, except as herein expressly set forth. There have been no representations not set forth herein that the Parties have relied upon when entering into this Agreement. Should any provision of this Agreement require interpretation or construction, the Parties agree that all Parties have participated in the drafting of this document and no presumption regarding construing the document against one Party shall apply.

### V. **PARTIES' OPPORTUNITY TO BE REPRESENTED BY COUNSEL**

The Parties acknowledge that each has had the opportunity to consult with the attorney of their choice. Furthermore, each Party to this Agreement represents and warrants that they are entering into this Agreement of their own free will, without having been subjected to any form of duress or coercion of any kind.

**VI. EXECUTION**

This Agreement may be executed in counterparts, and such execution shall be valid and binding on the Parties. Electronic, facsimile, or PDF signatures shall be binding as originals.

**VII. SEVERABILITY**

In the event any provision of this Agreement is found to be invalid by any court of law, the remaining provisions of the Agreement shall remain valid and binding on the Parties.

**VIII. MODIFICATION**

The Parties agree that this Agreement may only be modified or amended in any respect in a writing signed by both parties. Oral modifications or amendments are expressly prohibited. Unilateral modifications or amendments are also expressly prohibited.

**IX. JURISDICTION AND VENUE FOR LITIGATION OF DISPUTES**

In the event of a dispute as to the interpretation, enforcement, application or violation of this Agreement, the Parties consent, understand, and agree that the United States District Court for the Northern District of Georgia, shall have exclusive jurisdiction, and be the exclusive venue, to resolve any litigation arising from or relating to this Agreement, and to award to the prevailing Party attorneys' fees and costs, as set forth below.

**X. CONSTRUCTION BY STATE LAW**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida to the extent state law is applicable, without giving effect to principles of conflicts of law.

**XI. ATTORNEYS' FEES AND COSTS**

The Parties agree that they each shall bear its own attorneys' fees and costs incurred arising from or related to the Transfers and the SEC Action, including through the date of this Agreement. The Parties further agree that the prevailing party in any litigation arising from or relating to this Agreement shall be entitled to recovery of attorneys' fees and costs from the non-prevailing party, including those incurred in bankruptcy and appellate proceedings, and the amount of attorneys' fees and costs incurred in litigating the amount of such attorneys' fees and costs.

**XII. FURTHER COOPERATION**

The Parties agree to further cooperate with each other and execute any additional documents that are reasonable and necessary to achieve the settlement memorialized by this

Agreement.

### **XIII. NOTICE**

The Parties agree that for notice purposes:

(a) All notices, requests and other communications to any party here under shall be in writing and shall be given by hand or by a nationally recognized overnight courier service, mailed by postage prepaid certified or registered mail, or by email, provided that in the case of email, notice must also be given by one of the other methods (which may arrive later) to the addresses below or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice by to the other parties hereto in the manner provided in this Section XIII. A notice shall be deemed to be give: (a) in the case of a hand delivery, at the time of delivery; (b) in the case of registered or certified mail, when delivered or the first attempted deliver on a business day; (c) in the case of overnight courier service upon the first attempted delivery on a business day; or in the case of email, upon delivery of such email provided that (i) such email notice was also delivered by one of the means set forth in (a), (b), or (c) above (which may arrive after such email) and (ii) the transmitting party did not receive an electronic notice of transmission failure, except that, if any of the foregoing means of delivery does not occur on a business day during normal business hours for the recipient, it shall be deemed give at the opening of business for such recipient on the next business day. A party receiving notice that does not comply with the technical requirements for notice under this Section XIII may elect to waive any deficiencies and treat the notice as having been properly give. The attorneys for the Parties are hereby authorized to sign and deliver the notice on behalf of their respective clients.

If to Kenneth D. Murena, as Receiver for Drive Planning, LLC:

Kristopher E. Pearson, Esq.  
Russell Landy, Esq.  
Adriana M. Pavon, Esq.  
DAMIAN | VALORI | CULMO  
1000 Brickell Avenue, Suite 1020  
Miami, Florida 33131  
Telephone: (305) 371-3960  
[kpearson@dvcattorneys.com](mailto:kpearson@dvcattorneys.com)  
[rlandy@dvlp.com](mailto:rlandy@dvlp.com)  
[apavon@dvcattorneys.com](mailto:apavon@dvcattorneys.com)

If to Settling Party:

**[Insert Physical Address and Email Address]**

**XIV. WAIVER OF JURY TRIAL**

EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREUNDER OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OR OMISSIONS OF ANY PARTY; OR ANY OTHER AGREEMENTS EXISTING BETWEEN ANY ONE OR MORE OF THE PARTIES TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE RECEIVER ENTERING INTO THIS AGREEMENT. FURTHER, SETTLING PARTY HEREBY CERTIFIES THAT NO REPRESENTATIVE OF THE RECEIVER, NOR THE RECEIVER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE RECEIVER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.

AGREED TO BY:

**[SETTLING PARTY]**

**KENNETH D. MURENA, AS RECEIVER  
FOR DRIVE PLANNING, LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_