

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:18-cv-61991-BB

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

1 GLOBAL CAPITAL LLC, and
CARL RUDERMAN,

Defendants, and

1 WEST CAPITAL LLC,
BRIGHT SMILE FINANCING, LLC,
BRR BLOCK INC.,
DIGI SOUTH LLC,
GANADOR ENTERPRISES, LLC,
MEDIA PAY LLC
PAY NOW DIRECT LLC, and
RUDERMAN FAMILY TRUST,

Relief Defendants.

**RECEIVER'S MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH BRIDGE BANK**

Jon A. Sale, not individually, but solely in his capacity as the Court-appointed receiver (the "Receiver") for Bright Smile Financing, LLC ("Bright Smile"); BRR Block Inc. ("BRR Block"); Digi South LLC ("Digi South"); Ganador Enterprises, LLC ("Ganador"); Media Pay LLC ("Media Pay"); Pay Now Direct LLC ("Pay Now"); the Ruderman Family Trust; and Bright Smile Trust (collectively, the "Receivership Entities"), respectfully submits this Motion for Approval of Settlement Agreement (the "Motion") with Western Alliance Bank, successor in interest to Bridge Bank (the "Bank").

I. INTRODUCTION

In this Motion, the Receiver seeks approval of a proposed settlement agreement with the Bank, which, if approved, would dispose of both parties' pending motions for attorney's fees and costs.

The proposed settlement agreement, upon completion of its terms, provides for payment of \$150,000 to the Bank, which is approximately 50% of the amount the Bank sought in its Verified Motion to Offset Cash Collateral to Recover its Attorney's Fees and Costs (the "Bank Fee Motion"), and approximately 37% of the amount the Bank claims is owed to it in attorney's fees and costs as of August 23, 2019.¹ [D.E. 181]. While the Receiver maintains the positions taken in his opposition to the Bank's Fee Motion, and in his Verified Motion for Attorney's Fees and Costs Incurred in Connection with Bridge Bank Dispute (the "Receiver's Fee Motion," and together with the Bank's Fee Motion, the "Fee Motions") [D.E. 198], the proposed settlement agreement provides value to the Receivership Estate by (a) limiting the Receiver's expenditure of attorney's fees that would be incurred in litigating the parties' respective claims to attorney's fees and costs, (b) reducing the Bank's recovery to an amount substantially below what it would seek at a hearing, and (c) insulating the Receivership Estate from the possibility of paying a much higher amount to the Bank at the conclusion of uncertain litigation, as it claims an entitlement to even more attorney's fees incurred in the pending litigation between the parties.

There is no known opposition to the proposed settlement. Throughout the settlement process, the Receiver was advised by highly qualified professionals, namely his legal counsel, Nelson Mullins Broad and Cassel ("NMBC").

¹ The Bank has indicated that the approximately \$300,000 sought in its Fee Motion increased to over \$400,000 since filing.

For these reasons, as further explained below, the Receiver respectfully submits the proposed settlement represents a fair, adequate, and reasonable resolution of the litigation with the Bank and is in the best interests of the Receivership Estate.

II. RECEIVER'S APPOINTMENT AND OBLIGATIONS

On August 23, 2018, the United States Securities & Exchange Commission ("SEC") initiated this action against Defendants 1 Global and Carl Ruderman, and Relief Defendants 1 West Capital LLC ("1 West"), Bright Smile, BRR Block, Ganador, Media Pay, Pay Now, and the Ruderman Family Trust. [D.E. 1.] The SEC alleges that Defendants engaged in a four-year long unregistered securities fraud totaling more than \$287 million, victimizing thousands of investors nationwide. *Id.*, ¶ 1. The SEC seeks, among other relief, permanent injunctive relief, civil penalties, and disgorgement. *Id.*, pp. 33-34. The same day, the SEC requested an asset freeze and the appointment of a receiver over Relief Defendants Bright Smile, BRR Block, Digi South, Ganador, Media Pay, and Pay Now. [D.E. 6; D.E. 7.] The Court entered a sealed order appointing Jon A. Sale, Esq. as Receiver for the Receivership Entities (the "Receivership Order").² [D.E. 12.] The Court also entered an order freezing Defendants' assets (the "Freeze Order"). [D.E. 13.]

Pursuant to the Receivership Order, the Receiver is obligated to, among other things: (i) investigate the manner in which the affairs of the Receivership Entities were conducted and institute actions and proceedings for the benefit of investors and other creditors; and (ii) defend, compromise, or settle legal actions [D.E. 12, ¶¶ 1, 6.] The Receiver files this Motion in connection with his obligations under the Receivership Order.

² On November 21, 2018, the Court expanded the Receivership over the Ruderman Family Trust and Bright Smile Trust. The Receivership Order is controlling over them as well. [D.E. 115.]

III. BACKGROUND FACTS

The Receiver's Second Status Report and Third Status Report describe the Receiver's various conflicts with Bridge Bank in detail. [D.E. 172, pp. 8-10; D.E. 213, pp. 7-9].

On April 5, 2019, allegedly in accordance with Local Rule 7.3, the Bank served the Receiver with the Bank's Fee Motion. Counsel for the Receiver and the Bank met and conferred on multiple occasions during the 21-day safe harbor period, both in-person and otherwise, to resolve the Bank's Fee Motion. Those efforts were unsuccessful. Thereafter, on April 29, 2019, the Bank filed its Fee Motion. [D.E. 181]. The Bank's Fee Motion was fully-briefed. *See* [D.E. 186; D.E. 187; D.E. 188].

On May 14, 2019, in compliance with Local Rule 7.3, the Receiver served the Bank with his Fee Motion. On June 6, 2019, the Receiver filed his Fee Motion. [D.E. 198]. The Receiver's Fee Motion was also fully-briefed. *See* [D.E. 199; D.E. 202

On June 5, 2019, the Court ordered the Receiver and the Bank to mediation related to their competing claims for attorney's fees. [D.E. 195]. The parties attended mediation with Harry R. Schafer on August 23, 2019, which resulted in the Settlement Agreement that is the subject of this Motion.

IV. TERMS OF THE PROPOSED SETTLEMENT AGREEMENT

On August 23, 2019, during Court-ordered mediation, the parties agreed to and finalized a written settlement agreement (the "Settlement Agreement"), subject to this Court's approval. A copy of the Settlement Agreement is attached as **Exhibit A**. The essential terms of the Settlement Agreement include:³ (1) payment to the Bank of \$150,000 (the "Settlement Amount"), to be paid

³ The following is only a summary of the salient terms of the Settlement Agreement. To the extent there is any conflict between the summary and the Settlement Agreement, the Settlement

out of the general funds held in the Bright Smile Receivership account, and which funds shall not be considered any part of the \$3 million previously maintained in a money market account by the Bank; and (2) mutual general releases.

V. BEST INTERESTS OF RECEIVERSHIP ESTATE

The Receiver respectfully submits that the Court should approve the proposed settlement because it is in the best interests of the Receivership Estate. The process of reaching the proposed Settlement Agreement was fair, well-informed, and well-advised by legal professionals.

The primary inquiry in assessing a proposed receivership settlement is whether “the proposed settlement is fair.” *Sterling v. Stewart*, 158 F. 3d 1199, 1203 (11th Cir. 1998); *see also In re Consol. Pinnacle West Sec. Litig./Resolution Trust Corp.-Merabank Litig.*, 51 F. 3d 194, 196-97 (9th Cir. 1995) (“We see no reason to upset the court’s conclusion that the settlement process and result were fair.”); *SEC v. Quiros*, 2017 WL 9254719, *3 (S.D. Fla. 2016) (finding settlement entered into by receiver may be approved where it is fair, adequate, and reasonable, and is not the product of collusion).

Determining the fairness of a settlement is left to the sound discretion of the trial court. *Newman v. Sun Capital, Inc.*, 2012 WL 3715150, *10 (M.D. Fla. 2012). In determining the fairness of a settlement, the Court should examine the following factors: (1) the likelihood of success; (2) the range of possible recovery; (3) the point on or below the range of recovery at which settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which

Agreement controls. Also, any terms not defined herein shall have the same meaning as ascribed to them in the Settlement Agreement.

the settlement was achieved. *Sterling*, 158 F. 3d at 1204; *Newman*, 2012 WL 3715150 at *10; *SEC v. Creative Capital Consortium, LLC*, 2014 WL 12629681, *1 (S.D. Fla. 2014).⁴

The *Sterling* factors all weigh in favor of approving the Settlement Agreement.

Likelihood of Success and Complexity, Expense and Duration of Litigation. As to the first and fourth factors—related to litigation risk and cost—proceeding to a final evidentiary hearing on the Fee Motions would have cost the Receivership Estate substantial attorney’s fees and costs. The Receiver estimates that a multi-day evidentiary hearing would have been required to resolve the Fee Motions, with a period of discovery, including depositions on both sides, preceding the hearing. The Fee Motions involved complex issues of law and fact. Resolving these complex issues would have required extensive, time-consuming, and costly research, discovery, and additional motion practice, with no certain results. The Receivership Estate would incur the professional fees related to any litigation, to the detriment of defrauded investors, and with no guarantee that the Receiver would also be awarded “fees on fees,” even if successful. Moreover, the Bank has asserted that it would be entitled to all its fees and costs incurred in litigating these disputes.

Range of Possible Recovery and Point on or Below the Range of Recovery at which Settlement is Fair, Adequate, and Reasonable. The second and third factors—related to range and percentage of recovery—also weigh in favor of approving the Settlement Agreement. The Receiver’s claim for attorney’s fees at the time of mediation was approximately \$150,000. The Bank’s claim for attorney’s fees at the time of mediation was more than \$400,000. The proposed

⁴ See also *SEC v. Princeton Economic Int’l*, 2002 WL 206990, *2 (S.D.N.Y. 2002) (citing to *Sterling*, articulating slightly different but comparable factors, including “(1) the probable validity of the claim; (2) the apparent difficulties attending its enforcement through the courts; (3) the collectability of the judgment thereafter; (4) the delay and expenses of the litigation to be incurred; and (5) the amount involved in the compromise”).

Settlement Agreement provides for a \$150,000 settlement payment to the Bank, representing a near mid-point between the Receiver's claim and the Bank's claim, in a situation where both sides felt strongly about their positions. Under the circumstances, the Bank taking approximately 37% of its total claim in exchange for complete settlement, where the Receivership Estate will not be at risk of paying any additional amounts in uncertain litigation, is a fair, adequate, and reasonable settlement.

Substance and Amount of Opposition to the Settlement. The fifth factor weighs in favor of approval of the Settlement Agreement. There is no known opposition to the Settlement Agreement. Indeed, it was the SEC that requested the Receiver and the Bank attend mediation to resolve the fee dispute, and the mediation process was successful.

Stage of Proceedings. The sixth factor also weighs in favor of approving the Settlement Agreement. The Settlement Agreement was reached prior to the Receivership Estate expending substantial attorney's fees and costs on discovery, motion practice, or preparation for a final hearing on the Fee Motions.

VI. CONCLUSION

For the foregoing reasons, the proposed Settlement Agreement is a fair, adequate, and reasonable resolution of the Receiver's and the Bank's competing claims for attorney's fees and costs. The SEC has approved the Settlement Agreement, subject to Court approval, and there is no known opposition to the Settlement Agreement. No one has argued that the Settlement Agreement is the product of collusion. Finally, all the *Sterling* factors weigh in favor of approving the Settlement Agreement.

Based on the foregoing, the Receiver respectfully requests that the Court enter an order approving the Settlement Agreement attached as Ex. A.

Dated: August 30, 2019.

NELSON MULLINS BROAD AND CASSEL
Attorneys for Receiver
One Biscayne Tower, 21st Floor
2 S. Biscayne Boulevard
Miami, FL 33131
Telephone: 305.373.9400
Facsimile: 305.995.6449

By: s/Daniel S. Newman
Daniel S. Newman
Florida Bar No. 0962767
Gary Freedman
Florida Bar No. 727260
Christopher Cavallo
Florida Bar No. 0092305

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record 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 who are not authorized to receive electronically Notices of Electronic Filing.

s/Daniel S. Newman
Daniel Newman

SERVICE LIST

<p>SECURITIES AND EXCHANGE COMMISSION Miami Regional Office 801 Brickell Avenue, Suite 1800 Miami, Florida 33131 Robert K. Levenson Chris Martin Senior Trial Counsel levensonr@sec.gov martinc@sec.gov Telephone: 305.982.6300 Facsimile: 305.536.4154</p>	<p>MARCUS NEIMAN & RASHBAUM LLP 2 South Biscayne Boulevard Suite 1750 Miami, Florida 33131 Jeff Marcus jmarcus@mnrlawfirm.com Telephone: 305.400.4262 <i>Attorneys for Defendant Carl Ruderman</i></p>
<p>GREENBERG TRAUIG, LLP 333 S.E. 2nd Ave., Suite 4400 Miami, FL 33131 Paul J. Keenan Jr. keenanp@gtlaw.com Telephone: 305.579.0500 <i>Attorneys for Defendant 1 Global Capital, LLC and Relief Defendant 1 West Capital, LLC</i></p>	

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SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into this 23rd day of August 2019, by and between Jon A. Sale, not individually, but solely in his capacity as the Court-appointed receiver ("Receiver") for Bright Smile Financing, LLC; BRR Block Inc.; Pay Now Direct, LLC; Ganador Enterprises, LLC; Pay Now Direct LLC; Media Pay LLC; the Bright Smile Trust; and the Ruderman Family Trust (collectively, the "Receivership Entities"), and Western Alliance Bank, successor in interest to Bridge Bank (the "Bank"). The Receiver and the Bank are collectively referred to as the "Parties."

WHEREAS, Judge Beth Bloom of the United States District Court for the Southern District of Florida (the "District Court") appointed the Receiver in *Securities and Exchange Commission vs. 1 Global Capital LLC and Carl Ruderman, et al.* Case No. 0:18-cv-61991-BB (the "SEC Proceeding"), and authorized the Receiver to marshal the assets of the Receivership Entities, investigate the affairs of the Receivership Entities, institute actions to recover funds for the benefit of investors, and enter into agreements as may be reasonable and advisable in discharging the Receiver's duties;

WHEREAS, on April 29, 2019, the Bank filed its Verified Motion to Offset Cash Collateral to Recover its Attorney's Fees and Costs and Incorporated Memorandum of Law in the SEC Proceeding (the "Bank's Fee Motion");

WHEREAS, on June 6, 2019, the Receiver filed his Verified Motion for Attorney's Fees and Costs Incurred in Connection with Bridge Bank Dispute in the SEC Proceeding (the "Receiver's Fee Motion" and collectively with the Bank's Fee Motion, the "Fee Motions"); and

WHEREAS, to avoid the expense and risk of litigating the Bank's Fee Motion and the Receiver's Fee Motion, the Parties hereto are desirous of resolving all disputes between them in connection with the Fee Motions and the SEC Proceeding;

NOW THEREFORE, in consideration of the premises and mutual promises and covenants contained herein, the Parties agree as follows:

1. **Settlement**. The Parties hereby settle and compromise all claims, disputes, and controversies between them for damages, attorneys' fees, costs, equitable relief, and/or punitive damages arising from the SEC Proceeding, which the Receiver has or may have had against the Bank, or which the Bank has or may have had against the Receiver or Receivership Estate, including the Fee Motions.
2. **Court Approval and Effective Date**. This Agreement is not effective unless and until it is approved by the District Court. The Effective Date of this Agreement is defined as the date the Court enters an order approving the Agreement, if such approval is granted, and such order becomes a Final Order. The term "Final Order" shall mean a final order or judgment entered by the District Court approving this Agreement (the "Order") as to which all of the following have occurred: the

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expiration of the time for the filing or noticing of any appeal from such final order or judgment (including the expiration of the time for petitions for writs of certiorari); if any appeal is taken, the expiration of ten days after dismissal of the appeal or a final appellate determination affirming the order or judgment, not subject to further review, appeal or petition for rehearing, or such appeal by the highest court before which appellate review is or could be sought.

3. **Settlement Terms.** In consideration and exchange for the settlement and releases contained herein:

- a. The Receiver shall pay \$150,000.00 (the "Settlement Amount") to the Bank, within 7 days of the Effective Date, out of the general funds held in the Bright Smile Receivership account at Bank United, and said funds shall not be considered to be any part of the \$3 million previously maintained in the money market account at the Bank; and
- b. The Receiver shall remit the Settlement Amount by wiring the funds to counsel for the Bank using the following wiring instructions:

Citibank, F.S.B.
8750 Doral Boulevard
Miami, FL
ABA#266086554
Account Name: White & Case LLP Trust Account
Account No.: 2101970919
SWIFT CITIUS33MIA
Ref: 1564666-0002

- c. Within 3 days of the Effective Date, to the extent it has not already been done by the Court upon approval of this Agreement, the Parties shall withdraw their respective motions for attorneys' fees.

4. **General Releases.**

Upon the entry of the Final Order and the Effective Date and upon the Bank's receipt and clearing of the entire Settlement Amount as set forth in paragraph 3 above, for good and valuable consideration, the receipt of which is hereby acknowledged, the Bank, on behalf of itself, its beneficiaries, predecessors, subsidiaries, affiliates, current or former agents, shareholders, officers, principals, directors, executives, employees, attorneys, successors and assigns does hereby voluntarily and knowingly, unconditionally and absolutely waive, remise, generally release, acquit, satisfy and forever discharge the Receiver and the Receivership Entities and their predecessors, subsidiaries, affiliates, current or former agents, shareholders, officers, principals, directors, executives, employees, attorneys, insurers, successors and assigns from or concerning any causes of action, claims,

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complaints, liabilities, suits, debts, dues, sums of money, accounts, indemnities, guarantees, contributions, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, injuries, judgments, executions, claims, expenses and all other damages now accrued or hereafter to accrue, of any kind or character whatsoever, in any country or jurisdiction whatsoever, in law or in equity, known or unknown, direct or indirect, fixed or contingent, suspected or unsuspected, including but not limited to, any claims under federal, state or local law or any laws of any country in the world, arising out of or relating to any matters, transactions or events which existed from the beginning of time through the date of this Agreement. This release encompasses any potential claims for any relief, no matter how denominated, including but not limited to, compensatory damages, punitive damages and attorneys' fees and costs actually incurred; provided, however, such release does not include any breach of the promises, covenants, conditions or representations contained in this Agreement.

Upon the entry of the Final Order and the Effective Date and upon the Bank's receipt and clearing of the entire Settlement Amount as set forth in paragraph 3 above, for good and valuable consideration, the receipt of which is hereby acknowledged, the Receiver, on behalf of himself, the Receivership Entities, his beneficiaries, predecessors, subsidiaries, affiliates, current or former agents, shareholders, officers, principals, directors, executives, employees, attorneys, successors and assigns does hereby voluntarily and knowingly, unconditionally and absolutely waive, remise, generally release, acquit, satisfy and forever discharge Bank and its predecessors, subsidiaries, affiliates, current or former agents, shareholders, officers, principals, directors, executives, employees, attorneys, insurers, successors and assigns from or concerning any causes of action, claims, complaints, liabilities, suits, debts, dues, sums of money, accounts, indemnities, guarantees, contributions, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, injuries, judgments, executions, claims, expenses and all other damages now accrued or hereafter to accrue, of any kind or character whatsoever, in any country or jurisdiction whatsoever, in law or in equity, known or unknown, direct or indirect, fixed or contingent, suspected or unsuspected, including but not limited to, any claims under federal, state or local law or any laws of any country in the world, arising out of or relating to any matters, transactions or events which existed from the beginning of time through the date of this Agreement. This release encompasses any potential claims for any relief, no matter how denominated, including but not limited to, compensatory damages, punitive damages and attorneys' fees and costs actually incurred; provided, however, such release does not include any breach of the promises, covenants, conditions or representations contained in this Agreement.

5. **No Admissions**. This Agreement is expressly agreed to be in compromise of all disputes and disputed claims, and the Settlement Amount and/or the releases contained herein are not to be construed as admissions of liability, culpability, or

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wrongdoing on the part of the Parties, which liability, culpability, or wrongdoing is expressly denied.

6. **Integration.** This Agreement contains the entire Agreement between the Parties, and the terms of this Agreement are contractual and not a mere recital. The Parties agree that all prior negotiations and understandings between them have been merged herein, and that this Agreement may not be modified or changed, except by a writing signed by a duly authorized representative of each party.
7. **Binding Nature.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their estates, heirs, legal representatives, successors and assigns. The Parties represent and acknowledge that they have had an opportunity to, and have consulted with, counsel in connection with the execution of this Agreement.
8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same agreement, notwithstanding that each party is not signatory to the original or the same counterpart. Facsimile signatures shall be deemed as effective as original signatures.
9. **Disputes.** Any dispute arising out of this Agreement or its terms shall be resolved exclusively through the District Court presiding over the SEC Proceeding, and Florida law shall govern. The Parties expressly submit to personal jurisdiction in the United States District Court for the Southern District of Florida for any such claims.
10. **Authority.** Each of the signatories hereto represents that she/he has authority to execute this Agreement and to bind the party or parties on whose behalf she/he has signed.
11. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
12. **Construction.** The Parties to this Agreement have negotiated at arms' length and participated in the drafting of this Agreement and, accordingly, any claimed ambiguity shall not be presumptively resolved either in favor of or against any party hereto.
13. **Expenses.** Except as otherwise provided herein, the Parties will bear their own expenses, costs and/or attorneys' fees, including any costs or attorneys' fees incurred in connection with the negotiation and execution of this Agreement. The Parties agree that in the event of any litigation to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party in any action (including but not limited to all

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paralegal fees in any trial, bankruptcy and/or appellate proceedings).

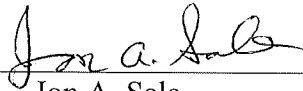
14. **Default.** In the event the Receiver fails to timely make payment pursuant to paragraph 3(a), the Bank shall provide the Receiver with five (5) business days written notice of default. During this five (5) business day period, the Receiver shall have the opportunity to cure such default (the "Cure Period"). Said written notice shall be sent to counsel of record.
15. **Jurisdiction.** The Parties agree to seek an Order providing that the District Court shall retain jurisdiction to enforce the terms of this Agreement and decide any other issues arising from this Agreement. In the event no such order retaining jurisdiction over this Agreement is granted, the Parties agree that the sole venue for any action arising from the Agreement shall be in the District Court for the Southern District of Florida and submit to personal jurisdiction before that Court.
16. **Notices.** All notices to the Receiver shall be addressed to Gary M. Freedman, Nelson Mullins Broad and Cassel, 2 South Biscayne Boulevard, 21st Floor, Miami, Florida 33131 which shall constitute good and sufficient notice. All notices sent to the Bank shall be addressed to James N. Robinson, White & Case LLP, 200 South Biscayne Boulevard, Suite 4900, Miami, Florida 33131 and Susan Wadi, Vice President, Bridge Bank, 55 Almaden Boulevard, Suite 100, San Jose, CA 95113, which shall constitute good and sufficient notice.

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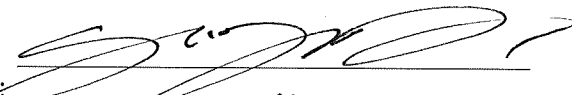
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IN WITNESS WHEREOF, the Parties have affixed or caused to be affixed their respective signatures, effective on the day and year first written above.

JON A. SALE, THE RECEIVER

By: 
Name: Jon A. Sale
Title: Receiver
Date: 8/23/19

WESTERN ALLIANCE BANK

By: 
Name:
Title: Susan Wadi
Vice President
Date: 8/23/2019