

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 JPMORGAN CHASE BANK, N.A.**

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 the Bright Smile Trust (the "Receivership Entities"), respectfully submits this Motion for Approval of Settlement Agreement with JPMorgan Chase Bank, N.A. (the "Motion").

INTRODUCTION

On August 23, 2019, the Receiver filed a Complaint to Avoid and Recover Fraudulent Transfers against JPMorgan Chase Bank, N.A. (“Defendant”), alleging four causes of action. That case is styled *Jon Sale, Receiver v. JPMorgan Chase Bank, N.A.*, Case No. 19-cv-23561-CMA (the “Lawsuit”). In the Lawsuit, the Receiver alleges, based upon the bank records of the Receivership Entities and records produced in discovery, that Defendant received a total of approximately \$64,744.33 in fraudulent transfers from one or more Receivership Entities.

To avoid the expense and risk of litigating claims, the Receiver and Defendant have agreed to resolve the Lawsuit pursuant to the terms of a proposed settlement agreement (the "Settlement Agreement"), attached as **Exhibit A**. Pursuant to the Settlement Agreement, Defendant shall pay the Receiver \$38,100.00, which is a 59% recovery of the alleged fraudulent transfers.¹ The Receiver’s authority to both file and settle the Lawsuit is derived from the Receivership Order, entered by the Court in this action, Case No. 18-cv-61991 (the "SEC Action"). [D.E. 12, ¶6].

THE RECEIVERSHIP ORDER

On August 23, 2018, the Court entered an order appointing Mr. Sale as the Receiver. [D.E. 12]. The Receivership Order provides, among other things, that the assets and property of the Receivership Entities, whatsoever and wherever located, are to be placed in the Receiver’s control [*Id.* at ¶ 1] and the Receiver has sole title to the assets and property, including but not limited to all books, papers, codes, records, data, bank accounts, savings accounts, securities, supplies, equipment, and other real property [*Id.* at ¶¶ 1, 17].

¹ The Lawsuit was handled by the Receiver’s contingency counsel (“Special Counsel”). Special Counsel is entitled to 30% of the settlement amount, or \$11,430, pursuant to the retainer agreement approved by the Court on August 21, 2019. [D.E. 228]. As such, \$26,670 of the settlement amount is for the benefit of the Receivership Estate.

The Receivership Order also gives the Receiver power to “[d]efend, compromise or settle legal actions, including the instant proceeding in which these Relief Defendants or the Receiver are a party, commenced either prior to or subsequent to this Order.” [*Id.* at ¶ 6].

Finally, the Receivership Order further provides:

In the event the Receiver discovers that investor funds received by these Relief Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds[.]

[*Id.* at ¶ 24].

THE TRANSFERS

The Receiver contends that from May 18, 2015 through August 6, 2018, Pay Now Direct LLC, a Receivership Entity, transferred \$64,744.33 to Defendant (the "Transfers"). The Receiver contends that the records of the Receivership Entities demonstrate that these were fraudulent transfers and the funds rightfully belong to the Receivership Estate.

THE PROPOSED SETTLEMENT AGREEMENT

The proposed Settlement Agreement provides in pertinent part:

- Defendant will pay \$38,100.00 (the "Settlement Amount") to the Receiver within 30 days of the later of: (i) Defendant’s receipt of a properly-completed 2019 W-9 form from Plaintiff; (ii) Defendant’s receipt of a fully-executed Agreement; and (iii) the issuance of an Order approving the Agreement by the Court.
- The Receiver and Defendant agree to mutual general releases upon the Court's approval of the Settlement Agreement and the Receiver's receipt of the full Settlement Amount due under the terms of the Settlement Agreement.

See Ex. A.

JURISDICTION

The Receiver and Defendant request that the United States District Court for the Southern District of Florida retain jurisdiction to enforce the terms of the Settlement Agreement and decide any other issues arising from the Settlement Agreement. Defendant exclusively submits to the jurisdiction of this Court for such purposes and waives any right to challenge this Court's jurisdiction. The Receiver and Defendant agree that in the event an enforcement action or any other litigation arises from the Settlement Agreement, Defendant submits to the jurisdiction of this Court exclusively for such purposes and waives any right to challenge this Court's jurisdiction.

BEST INTERESTS OF THE RECEIVERSHIP ESTATE

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

The ultimate 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 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."). Determining the fairness of [a] settlement is left to the sound discretion of the trial court." *Sterling*, 158 F. 3d at 1202 (11th Cir. 1998). In determining fairness, the Court should examine the following broad array of factors: (1) the likelihood of success on the merits; (2) the range of possible discovery; (3) the point on or below the range of discovery 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

the settlement was achieved. *Sterling*, 158 F. 3d at 1204. *See also SEC v. Princeton Economic Int'l*, 2002 WL 206990, *2 (S.D.N.Y. 2002) (receivership court should consider “various factors including, inter alia: (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”).

For example, the District Court in *Gordon v. Dadante* “analyze[d] the settlement as a whole, under the totality of the circumstances.” 2008 U.S. Dist. LEXIS 32281, *39, 48 (N.D. Ohio April 18, 2008). The Sixth Circuit affirmed, finding that the district court had fulfilled its responsibilities by engaging in an “independent analysis of the settlement,” as “the district court had extensive knowledge of the claims involved in the case, the valuation of those claims, and the nature of the settlement,” and thus “had more than sufficient information to assess the fairness of the settlement proposed.” 2009 U.S. App. LEXIS 15517 at **16, 23. As the district court noted in a later approval proceeding, “the courts must recognize that plans relating to settlement of a receivership are inherently imperfect, “because no proposal can be [perfect],” and the “task at hand, however, is to do justice to the extent possible.” *Gordon v. Dadante*, 2010 U.S. Dist. LEXIS 1979, *13-14 (N.D. Ohio Jan. 11, 2010).

Here, the Receiver respectfully submits that the Settlement Agreement is a fair, adequate, and reasonable resolution of the Receiver's causes of action against Defendant. The Settlement Agreements provides for a 59% recovery of funds transferred to Defendant. The Receiver believes that the outcome for the Receivership Entities will be better under the Settlement Agreement than it would be if the Receiver was forced to expend attorneys’ fees and costs proceeding with litigation.

Based on the Receiver's due diligence, the terms of the proposed Settlement Agreement are

fair and reasonable, representing a sensible means of assuring a beneficial outcome for the investors.

OBJECTION PROCEDURE

As noted above, the determination of the fairness of a settlement is left to the sound discretion of the trial court. *See Sterling*, 158 F. 3d at 1202. Because "the substance and amount of opposition to the settlement" is a factor for the Court's consideration pursuant to the *Sterling* test, the Receiver respectfully requests that the Court, in exercising its broad discretion, approve the Settlement Agreement with a limited objection procedure. The Receiver proposes posting this Motion and the Settlement Agreement on both the Receiver's website and 1 Global's website and allowing fourteen (14) days for any potential objections to be filed with the Court.

It is the Receiver's position that given the amount at stake in the Lawsuit, an expensive, elongated objection procedure would render the benefits of the settlement worthless to the Receivership Estate, and thus this limited objection procedure should be permitted.

CONCLUSION

For the foregoing reasons, Jon A. Sale, as Receiver, respectfully requests that this Court enter an Order approving the Settlement Agreement, subject to the limited objection procedure described above, and granting any further relief it deems just and proper.

Dated: March 20, 2020.

NELSON MULLINS BROAD AND CASSEL
Attorneys for Receiver
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2 S. Biscayne Boulevard
Miami, FL 33131
Telephone: 305.373.9400
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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 March 20, 2020, 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 TRAURIG, 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 ____ day of _____, 2020, 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 JPMorgan Chase Bank, N.A. ("Chase"). The Receiver and Chase 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 August 23, 2019, the Receiver filed a Complaint to Avoid and Recover Fraudulent Transfers in connection with a Chase credit card used by Carl Ruderman and paid by Receivership Entities and asserted four causes of action against Chase in *Jon Sale, Receiver, v. JP Morgan Chase Bank*, Case Number 19-cv-23561-CMA (the "Lawsuit");

WHEREAS, on October 1, 2019, Chase filed a Motion to Dismiss the Complaint, which Motion is fully briefed and ripe for determination by the Court; and

WHEREAS, to avoid the expense and risk of litigating the Lawsuit, the Parties hereto are desirous of resolving all disputes between them in connection with the Lawsuit;

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, and/or equitable relief, arising from the Lawsuit which the Receiver has or may have had against Chase in connection with or related to the Chase credit card as alleged in the Lawsuit or which Chase has or may have had against the Receiver, the Receivership Entities, or the Receivership Estate in connection with or related to the Chase credit card as alleged in the Lawsuit.
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.
3. **Settlement Terms.** In consideration and exchange for the settlement and releases contained herein:

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- a. Chase shall pay \$38,100.00 (the "Settlement Amount") within thirty (30) days of the Effective Date or within thirty (30) days of receipt by Chase of a properly completed IRS W-9 Form for the Receiver and any person designated by the Receiver as a payee of such funds, whichever is later.
- b. Chase shall remit the Settlement Amount by mailing a check to the Receiver's counsel using the mailing instructions attached hereto.
- c. Within 3 days of the receipt of the Settlement Amount by the Receiver's counsel, the Receiver shall file a Stipulation for Dismissal With Prejudice or a Notice of Voluntary Dismissal With Prejudice dismissing the claims in the Lawsuit with prejudice.

4. **General Releases.**

Upon the entry of the Final Order and the Effective Date and upon the Receiver'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 the Receivership Entities, their 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 Chase 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 connection with or related to the Chase credit card as alleged in the Lawsuit 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 in connection with or related to the Chase credit card as alleged in the Lawsuit, 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 and shall have no effect whatsoever in relation to any of the Receiver's claims against Chase in Case No. 19-23565-CV-JEM (So. Dist. Fla.) (the "Mortgage Case") nor as to any breach of the promises, covenants, conditions or representations contained in this Agreement.

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Upon the entry of the Final Order and the Effective Date and upon the Receiver'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, Chase, 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, the Receivership Estate, 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, 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 connection with or related to the Chase credit card as alleged in the Lawsuit, 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 and shall have no effect whatsoever in relation to any of the Receiver's claims against Chase in the Mortgage Case and, reciprocally, any claims or defenses Chase may assert in the Mortgage Case, nor as to any breach of the promises, covenants, conditions or representations contained in this Agreement. This release also does not include and shall have no effect whatsoever on any claim Chase may have against Svetlana Ruderman arising out of or related to the Chase credit card at issue in the lawsuit.

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 wrongdoing on the part of the Parties, which liability, culpability, or wrongdoing is expressly denied. Nothing in this Agreement shall constitute or be construed as an admission of liability on behalf of Chase, their agents, affiliates, assigns, parents, successors, subsidiaries, and/or successors, or an admission as to the validity of the allegations in the Lawsuit. It is also understood and agreed to by the Parties that this Agreement does not constitute an order or finding of any violation of law related to fraudulent, manipulative, or deceptive conduct.
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

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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, scanned, and emailed 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 paralegal fees in any trial, bankruptcy and/or appellate proceedings).
14. **Default.** In the event Chase fails to timely make payment pursuant to paragraph 3(a), the Receiver shall provide Chase with five (5) business days written notice of default. During this five (5) business day period, Chase shall have the opportunity to cure such default (the "Cure Period"). Said written notice shall be sent to counsel

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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 Melissa Visconti, Damian & Valori, LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131, which shall constitute good and sufficient notice. All notices sent to Chase shall be addressed to Marc Gottlieb, Akerman LLP, 350 East Las Olas Boulevard, Suite 1600, Ft. Lauderdale, Florida 33301, which shall constitute good and sufficient notice.

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: Jon A. Sale, Receiver
Name: Jon A. Sale
Title: Receiver
Date:

JP MORGAN CHASE BANK

By: Jennifer Smith
Name: Jennifer Smith
Title: Team Manager
Date: 3/11/2020

