

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 AMENDED MOTION FOR APPROVAL OF SECOND AMENDMENT
TO GANADOR SETTLEMENT AND RELEASE AGREEMENT¹**

The Court-appointed receiver, Jon A. Sale (the "Receiver"), not individually, but solely in his capacity as Receiver for Ganador Enterprises, LLC ("Ganador"), Bright Smile Financing, LLC, BRR Block Inc., Digi South LLC, Media Pay LLC, Pay Now Direct LLC, the Ruderman Family Trust, and the Bright Smile Trust, by and through his undersigned counsel, respectfully files this

¹ The Receiver files this amended version of his Motion for Approval of Second Amendment to Ganador Settlement and Release Agreement because the original version, filed on August 3, 2020 [D.E. 261], contains inaccuracies in paragraph 7 regarding the description of the business of Unified and Techmark. The Receiver requests that the original motion be deemed withdrawn.

Amended Motion for Approval of Second Amendment to Ganador Settlement and Release Agreement (“Motion”).

The SEC does not object to the relief requested herein.

The Settlement

1. Pursuant to this Court’s Order Granting Receiver’s Motion for Approval of Settlement Agreement Related to Ganador Enterprises, LLC [ECF No. 124] (“Order”), dated December 27, 2018, the Receiver entered into a settlement agreement (“Agreement”) with two entities, Unified Analytics, LLC (“Unified”) and National Techmark Inc. (“Techmark”), related to approximately \$5.8 million that Ganador loaned to Unified and Techmark.

2. One of the essential terms of the Agreement was payment by Unified and Techmark of \$4,000,000 to the Receiver on an agreed upon payment schedule.² The payment schedule required: (a) \$750,000 paid to the Receiver “up front”; (b) after the initial payment, twelve monthly interest payments to the Receiver of \$20,312.50, paid on the first day of each month;³ and (c) payment of the remaining \$3,250,000 to the Receiver within 365 days after the second monthly interest payment (“Maturity Date”).

3. Unified and Techmark made the interest payments required by the Agreement without issue through March 2020.

The First Amendment

4. In the interim, in February 2020, the parties agreed to enter into a First Amendment to the Agreement that would extend the Maturity Date and amend the agreed payment schedule

² The Court listed the other essential terms in its Order. (ECF No. 124, pp. 3-4).

³ As explained in the Motion for Approval of the Agreement (ECF No. 120), this amount was 7.5% interest on the remaining \$3,250,000 owed under the Agreement.

(“Amended Payment Schedule”). Subsequently, the Receiver filed a motion for approval of the First Amendment, which the Receiver determined was in the best interest of the Receivership Estate. (ECF No. 249).

5. On April 1, 2020, the Court approved the First Amendment. [ECF No. 254].

The Proposed Second Amendment

6. As of July 2020, Unified and Techmark owe the Receiver \$2,600,000.00 under the First Amendment.

7. In early May 2020, counsel for Unified and Techmark contacted counsel for the Receiver to inquire whether the Receiver would consider a further amendment to the Agreement under which Unified and Techmark would make an immediate lump-sum payoff to the Receiver in exchange for a reduction of the total amount owed (“Discounted Payoff”). Unified and Techmark claimed they were requesting this second amendment because COVID-19 has negatively impacted their businesses (servicer to an installment lender and lender to an installment lender respectively). Among other things, they claimed that COVID-19 caused reduction of employment which has resulted in a corresponding reduction in new installment loans and collectability on outstanding installment loans. For Unified, they claimed these market conditions negatively impact servicing fees which is its primary source of revenue. For Techmark, they claimed that its borrower was negatively impacted by these market conditions and, therefore, payment of Techmark’s loan to borrower was impaired and/or at risk. As a result of the forgoing, ultimate payment of Unified’s and Techmark’s’ obligations is uncertain absent a restructuring.

8. The Receiver requested substantial due diligence materials and related financial reporting from Unified and Techmark to justify a departure from the terms of the First Amendment. Unified and Techmark provided this diligence to the Receiver, and the Receiver’s professionals

reviewed it. While the parties negotiated the Discounted Payoff, Unified and Techmark continued to make all monthly payments required by the First Amendment, including the June 2020 payment.

9. After substantial due diligence and negotiations, and consultation with his retained professionals, the Receiver agreed to a second amendment to the Agreement (“Second Amendment”) memorializing a Discounted Payoff of \$1,950,000.00, subject to Court approval, which Discounted Payoff represents a combination of the present value of the future cash flows due under the First Amendment and a discount of the total principal amount owed.

10. A copy of the proposed Second Amendment is attached as **Exhibit A**. Pursuant to the Second Amendment:

- Within three (3) business days of the Court’s approval of the Second Amendment, Unified and Techmark shall pay the Receiver the \$1,950,000 Discounted Payoff.
- Unified and Techmark’s counsel is holding the \$1,950,000.00 in its trust account.
- Unified and Techmark’s payment obligations under the First Amendment are suspended (beginning with the July 2020 payment) pending the Court’s entry of an order on the Second Amendment.⁴

See Ex. A.

11. Based on the diligence received and reviewed, the Receiver and his professionals were satisfied that Unified and Techmark’s claims concerning the impact of the COVID-19 pandemic should not be disregarded. Given economic and financial uncertainty related to Unified

⁴ The First Amendment shall remain in full force and effect if the Court does not approve the Second Amendment, and Unified and Techmark is required to pay all amounts due and owing under the First Amendment within five (5) business days of the Court denying the Second Amendment.

and Techmark's business, and the desire to obtain funds immediately (rather than risk payment over time or the failure of Unified and Techmark to make scheduled payments), the Receiver has determined that the Discounted Payoff is in the best interests of the Receivership Estate. The Receiver prefers to execute the Second Amendment, with Court approval, and immediately receive the lump-sum payment of \$1,950,000 from Unified and Techmark. The Receiver has determined that this result is more advantageous to the Receivership than waiting for payment over time with risk of non-payment and potential costly litigation in hopes of collecting the balance owed.

12. If the Second Amendment is approved by the Court, the Receiver will recover a total of approximately \$3.57 million of the \$4 million Settlement Amount (as defined in the Receiver's motion for approval of the original settlement). [D.E. 120]. That represents a greater than 60% recovery of \$5.8 million that was transferred from Ganador to Unified and Techmark.

13. 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 Second Amendment with a limited objection procedure. The Receiver proposes posting this Motion and the Second Amendment 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.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests entry of an order approving the Second Amendment to the Agreement.

Respectfully submitted,

NELSON MULLINS BROAD AND CASSEL
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By: /s/ Gary M. Freedman
Gary M. Freedman
Florida Bar No. 727260
Daniel S. Newman
Florida Bar No. 0962767
Christopher Cavallo
Florida Bar No. 0092305

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 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.

By: /s/ Gary M. Freedman
Gary M. Freedman

SERVICE LIST

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<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>	

Execution Version

SECOND AMENDMENT TO SETTLEMENT AND RELEASE AGREEMENT

SECOND AMENDMENT TO SETTLEMENT AND RELEASE AGREEMENT (this "Second Amendment") is made and entered on July 17, 2020, by and between National Techmark Inc., a Nevada corporation ("Techmark"), Unified Analytics, LLC, a Nevada limited liability company ("Unified"), and Jon A. Sale, Esq., solely in his capacity as the receiver (the "Receiver") over Ganador Enterprises, LLC, a Florida limited liability company ("Ganador"). Techmark, Unified, and the Receiver may each be referred to as a "Party," and together as the "Parties." References to "Company" or "Companies" shall mean each of Unified and Techmark, or both, as applicable.

RECITALS:

- A. Companies and Receiver are parties to that certain Settlement and Release Agreement dated as of December 10, 2018 (the "Settlement Agreement").
- B. Companies and Receiver are parties to that certain First Amendment to Settlement and Release Agreement dated as of March 9, 2020 (the "First Amendment"). Capitalized terms not specifically defined herein shall have the meaning ascribed in the Settlement Agreement and First Amendment (where applicable).
- C. As of the date hereof, the Settlement Agreement and First Amendment have been approved by the Receivership Court presiding over the SEC Proceeding.
- D. As of the date hereof, Companies have paid the Receiver all amounts due and owing under the Settlement Agreement as amended by the First Amendment, including the March 13, 2020, April 1, 2020, May 1, 2020 and June 1, 2020 payments set forth in the Amended Payment Schedule.
- E. Companies have requested that the Receiver accept a discounted lump sum payment in full satisfaction of all of the Companies' remaining payment obligations under the Settlement Agreement as amended by the First Amendment. The Receiver has agreed to such request as set forth herein and subject to obtaining the approval of the Receivership Court.
- F. The Companies' have represented to the Receiver that their attorneys Fox Swibel Levin & Carroll LLP (the "Companies' Attorneys") are presently holding in their client trust account the sum of One Million Nine Hundred Fifty Thousand and 00/100 U.S. Dollars (USD \$1,950,000.00) (the "Payoff Amount") for purposes of funding the Companies' obligation under this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Companies and Receiver hereby agree to amend the Settlement Agreement and First Amendment as follows:

Execution Version

1. Payment of Remaining Obligations. In full satisfaction of all remaining payment obligations as set forth in Section 3 of the Settlement Agreement as Amended by Section 1 of the First Amendment, the Companies, jointly and severally, agree to pay the Receiver the Payoff Amount, paid or payable as follows:

(a) The Payoff Amount shall be paid to the Receiver by the Companies within three (3) business days of the Receivership Court's entry of an order approving this Second Amendment. The due date under this subsection shall be referred to as the "Payoff Amount Due Date".

(b) The Companies shall instruct Companies' Attorneys to pay the Receiver the Payoff Amount on behalf of the Companies on or before the Payoff Amount Due Date pursuant to wire transfer instructions to be provided by the Receiver.

Upon timely payment of the Payoff Amount as set forth in this Section, the provisions of Section 14(a) (release of the Receiver Release and IGC Release from escrow) and Section 14(b) (termination of the UCC-1 statements) of the Settlement Agreement shall be triggered.

2. Court Approval. This Second Amendment shall only be effective upon the Receivership Court entering an order approving this Second Amendment.

3. Suspension of Payment Obligations. The Companies' payment obligations pursuant to the Amended Payment Schedule shall be suspended (starting with the July 1, 2020 payment) and shall not be due and owing while the Parties' are seeking an order from the Receivership Court approving this Second Amendment. If the Receivership Court does not approve this Second Amendment, the Settlement Agreement and First Amendment shall remain in full force and effect and the Companies shall pay to the Receiver any unpaid amounts due and owing pursuant to the Amended Payment Schedule within five (5) business days of the Receivership Court's entry of an order denying approval of this Second Amendment.

4. Full Force and Effect. Except as expressly amended by this Second Amendment, the Settlement Agreement as amended by the First Amendment remains unmodified and in full force and effect.

[Signature page follows]

Execution Version

Companies and the Receiver have caused this Second Amendment to Settlement and Release Agreement to be executed and delivered by their duly authorized representatives, effective as of the date set forth above.

UNIFIED:

Unified Analytics, LLC, a Nevada limited liability company

By: _____
Name: _____
Title: _____

TECHMARK:

National Techmark Inc., a Nevada corporation

By: _____
Name: _____
Title: _____

GANADOR:

By: _____
Name: Jon A. Sale, Esq.
Title: Court-appointed Receiver over Ganador Enterprises, LLC