

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.

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**RECEIVER'S MOTION TO RETAIN SPECIAL COUNSEL *NUNC PRO TUNC***

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 to Retain Special Counsel *Nunc Pro Tunc* as of August 20, 2019 (the "Motion"), and in support states as follows:

NELSON MULLINS BROAD AND CASSEL

1. The Securities & Exchange Commission (“SEC”) initiated this action on August 23, 2018 [D.E. 1]. That same day, the Court entered an order appointing Jon A. Sale, Esq. as Receiver for the Receivership Entities (the “Receivership Order”). [D.E. 12].

2. The Receivership Order was expanded by the Court on November 21, 2018. [D.E. 115].

3. Pursuant to the Receivership Order, the Receiver is obligated to, among other things: (i) take immediate possession of the Receivership Entities’ property, assets, and estates of every kind; and (ii) 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. [D.E. 12 at ¶¶ 1-3].

4. To assist in these efforts, the Receivership Order allows the Receiver to “[a]ppoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses[.]” [D.E. 12 at ¶ 4].

5. Accordingly, the Receiver seeks to appoint and retain the law firm of Damian & Valori LLP (the “Firm”) to represent him for purposes of investigating, pursuing and litigating certain clawback litigations against various third parties (the “Clawbacks”).

6. To minimize the expense and risk to the Receivership Estate of prosecuting the Clawbacks, the Firm will work for the Receiver on a contingency basis. A copy of the proposed retainer agreement between the Receiver and the Firm is attached as **Exhibit A**.

7. Specifically, in consideration for the Firm representing the Receiver in the Clawbacks:

- a. The Receivership Estate will pay the Firm twenty percent (20%) of any recovery by way of settlement prior to instituting a lawsuit;
- b. The Receivership Estate will pay the Firm thirty percent (30%) of any recovery after a lawsuit has been instituted but prior to the filing of a response to the complaint; and
- c. The Receivership Estate will pay the Firm thirty-three (33%) of any recovery by way of settlement, trial, or judgment after the filing of a response to the complaint.

See Ex. A at p. 1.

8. The Receiver will seek leave of Court in its periodic fee applications to pay the Firm 100% of the costs and expenses the Firm incurs in prosecuting the Clawbacks.

9. As indicated in the attached retainer agreement, Melissa Damian Visconti, who has significant experience in representing federal equity receivers in these types of litigation, will have primary responsibility for the representation and litigation on behalf of the Firm.

10. Prior to disbursing the contingency fee as set forth above, the Receiver will notify counsel for the SEC of any recovery obtained in the Clawbacks and the proposed contingency fee to be disbursed, and explain why such fee is reasonable and in accord with the duties of the Receiver to the Receivership Estate, so that counsel for the SEC

may consider its reasonableness in light of any unanticipated circumstances and, if appropriate, assert an objection thereto.

11. The fee arrangement proposed herein will greatly benefit the Receivership Estate by eliminating the risk of incurring legal fees and not receiving any recovery or an insufficient recovery. Further, compensation of the Firm on a contingency fee basis is reasonable and customary when attorneys assume such a risk and provide legal services and advice without compensation based on the number of hours expended doing so.

12. Accordingly, the Receiver believes that the proposed contingency fee arrangement for the Firm for purposes of pursuing the Clawbacks for the benefit of the Receivership Estate is in the best interest of the Receivership Estate.

#### **CONCLUSION**

For the foregoing reasons, the Receiver respectfully requests entry of an order approving his retention of the Firm *nunc pro tunc* as of August 20, 2019, and authorizing him to execute the proposed retainer agreement attached as Ex. A.

#### **MEET AND CONFER CERTIFICATION**

Counsel for the Receiver discussed this Motion with the SEC on August 20, 2019. The SEC does not object to the relief sought herein.

Dated: August 20, 2019.

NELSON MULLINS BROAD AND CASSEL  
Attorneys for Receiver  
One Biscayne Tower, 21<sup>st</sup> 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 20, 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.

By: /s/Daniel S. Newman  
Daniel S. Newman

**SERVICE LIST**

**SECURITIES AND EXCHANGE COMMISSION**

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and Relief Defendant 1 West Capital, LLC*

**DAMIAN & VALORI LLP**  
ATTORNEYS AT LAW

August 20, 2019

**VIA EMAIL**

Jon Sale, as Receiver for Bright Smile Financing, LLC, *et al.*  
Nelson Mullins Broad and Cassel  
2 South Biscayne Blvd  
21<sup>st</sup> Floor  
Miami, Florida 33131

RE: Representation of Receiver in connection with clawback litigations arising out of  
Receivership appointment in *SEC v. 1 Global Capital, LLC* (Case No. 18-61991-CV-  
Bloom)

Dear Mr. Sale:

We are pleased that you, not personally but solely in your capacity as the Court-appointed Receiver ) (“You” or the “Client”) in the case *SEC v. 1 Global Capital, LLC* (Case No. 18-61991-CV-Bloom (“Receivership Court”), have elected to engage Damian & Valori, LLP (hereinafter, the “Firm”) to represent You for purposes of investigating, pursuing, and litigating clawback litigations arising out of and related to your appointment as Receiver in the above-referenced action (hereinafter, the “Matters”). Melissa Visconti will have primary responsibility for the representation on behalf of the Firm. This letter will confirm the terms of the Firm’s representation in connection with the Matters.

In consideration of our services, You agree to pay compensation to the Firm based on a percentage of any recovery by You, if any, in the Matters for which the Firm has been retained and performed services. You agree that the term “recovery” shall include, without limitation, cash, securities, pre-judgment interest, post-judgment interest, awards of attorneys’ fees, awards of costs, forgiveness of indebtedness and any other consideration or benefit conferred on You or received by You, in connection with any claims asserted by You against the parties identified in those Matters for which the Firm has been retained and performed services, or those parties’ owners, managers or agents, by way of settlement, award, order, judgment or otherwise. For purposes of calculating the amount of the contingency payable to the Firm, You and the Firm agree that You shall pay the Firm 20% (twenty percent) of any recovery by way of settlement prior to instituting a lawsuit, 30% (thirty percent) of any recovery as a result of a judgment or settlement obtained after a lawsuit has been instituted but prior to the filing of a response to the complaint, 33% (thirty-three percent) of any recovery by way of settlement, trial, or judgment after the filing of a response to the complaint.

In addition to paying for the services rendered by the foregoing professionals, You agree to pay the Firm’s expenses incurred in connection with its rendering such legal services to You. Such expenses include, without limitation, long distance telephone charges, long distance facsimile charges, incoming facsimiles, photocopying expenses, courier service fees, postage,

Mr. Jon Sale, as Receiver  
August 20, 2019  
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filing fees, court fees, title search expenses, transcript costs, Westlaw online legal research expenses, expert's and consultant's fees and expenses (when retention of expert and/or consultant is approved by Client), staff overtime (when necessary and approved by Client), and travel expenses, if any. The Firm's expenses will be billed to you each month in a statement prepared by the Firm setting forth a description of the expenses incurred by the Firm for the Matters. The Firm agrees to get prior approval from Client for any expenses that may exceed \$5,000.00. The Firm agrees that Client may seek to obtain prior Court approval before paying the costs and expenses described in this paragraph, in which cases payment shall not be made until such approval is received.

You acknowledge and agree that during the course of the Firm's representation in connection with the Matters, it may be necessary for the Firm to incur significant expenses on your behalf for which payment is required to an outside vendor, professional or entity, including, without limitation, a court reporter, a videographer, experts or consultants, airlines, hotels and other travel related vendors, copy or other document processing service providers, U.S. Postal Service or other mailing or courier services, courts or other tribunals, federal, state, county or other government or recording agency, and outside data and file storage providers. If requested by the Firm, Client agrees to make prompt direct payment to the vendor, professional or entity for such expenses and not require the Firm to advance payment on Client's behalf. As agreed above, the Firm understands and agrees that Client may seek to obtain prior Court approval before paying such expenses, in which cases payment shall not be made until such approval is received.

In certain cases the law may provide for payment of reasonable attorneys' fees by the person or firm liable for the Clients' damages. If such a fee is awarded by the Court, or by the agreement of the parties, and if the fee exceeds the percentage contingency fee listed above, the greater amount shall be deemed the attorneys' fee for the purposes of this contract. Although the Client agrees to a reduced hourly rate below in the event of a quantum meruit award, if the Firm is entitled to a fee award for any other purpose, the Firm may seek a reasonable fee and rate for such purpose which rate may exceed the rate set forth below for quantum meruit purposes. If the fee awarded is less than applicable contingency fee rate noted above and the fees are collected, You will receive a credit against the fees owed. Nothing in this contract shall be construed or deemed to limit the fee paid by the person or firm liable to the percentages listed above.

The foregoing arrangement does not include any appeals. A separate agreement must be reached in the event that an appeal is deemed necessary.

Firm agrees to notify Client of all significant developments and to consult with Client in advance as to any significant decisions or actions. Counsel agrees to copy Client and any designated counsel for Client on all relevant correspondence and court filings related to any action.

The Firm may withdraw from representation at any time if, in its discretion, it determines that it is not prudent or economically feasible to pursue Your claim or if facts or law develop that suggest that the Claims lack merit. If the Firm withdraws without cause, the Firm would have no claim against You for any fees. The Firm also may withdraw for cause, which is defined as a withdrawal based on: (1) the Client's failure to behave in an ethical fashion; (2) the Client's failure



to follow any pertinent court or arbitrator orders or rules; or (3) the Client's failure to follow the Firm's advice or failure or refusal to cooperate with the Firm in its prosecution of the Claims. Client's cooperation shall include, but not be limited to, providing the Firm with all accurate, material information pertinent to the Claims, and keeping the Firm advised of Client's current mailing address, telephone number, and other necessary contact information.

You may terminate the Firm's representation at any time, in your discretion. If You terminate the Firm, or if the Firm withdraws for cause as defined herein, the Firm shall be entitled to receive a *quantum meruit* fee from You that is equal to the time expended by the attorney at the reduced hourly rate of \$400.00 per hour, but only if any ultimate recovery by Client on the claims for which Firm was retained minus any attorneys' fees Client must pay to achieve such recovery, exceeds the amount of such *quantum meruit* fee. To secure payment of such fees, You agree to grant the Firm a charging lien against any recovery. If for any reason, a dispute arises as to the amount of any such *quantum meruit* fee, and the parties to this Agreement are unable to reach agreement, the parties shall submit such dispute to the Receivership Court for resolution.

Unless requested by the Firm, do not send the Firm original documents of Client; only send copies of documents. At the conclusion of the Matter, the Firm will send You all original documents, if any, in the Firm's possession. The Firm will provide You with written notification to pick-up all documents of Client related to your concluded matter, including all documents prepared or recovered during the Firm's representation of Client, within a certain period of time, usually thirty (30) days, or the Firm will destroy its files, including documents of Client, on your concluded matter. The Firm may destroy its files on your concluded matters if You fail to timely respond to such notification.

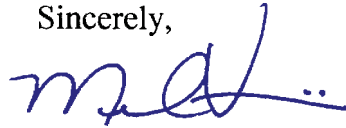
You acknowledge that the Firm may be asked to represent a person or entity whose interests may be adverse to Your interests. The Firm is accepting this engagement on the understanding that our representation in connection with the Matters will not preclude the Firm from accepting any other engagement from any existing or new client, provided that such other engagement (i) will not adversely affect the Firm's responsibilities to and relationship with You, and the other client, (ii) is not substantially related to the subject matter of any services that the Firm is providing to You in connection with the Matter, and (iii) would not impair the confidentiality of proprietary, sensitive or otherwise confidential communications that You have made to the Firm or any attorney or employee thereof.

You agree and understand that this engagement agreement represents the entire agreement between You and the Firm with regard to the Firm's representation in connection with the Matters. If You wish to retain the Firm for representation in matters other than the Matters described herein, the Firm and You must reach an additional agreement regarding such new representation. Please contact me with regard to any questions You may have concerning this agreement for Your engagement of the Firm; otherwise, please indicate your acceptance of this agreement by signing and dating this letter where indicated below and returning a signed and dated copy to me.

We appreciate the trust and confidence You have shown us in engaging the Firm in connection with the Matters, and we look forward to working with You.

Mr. Jon Sale, as Receiver  
August 20, 2019  
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Sincerely,



Melissa Damian Visconti  
Of Counsel, for the Firm

AGREED TO BY:

JON SALE, RECEIVER OF BRIGHT SMILE FINANCING; BRR BLOCK, INC., DIGI SOUTH LLC; GANADOR ENTERPRISES LLC; MEDIA PAY LLC; PAY NOW DIRECT LLC, THE RUDERMAN FAMILY TRUST, AND THE BRIGHT SMILE TRUST.

Sign: \_\_\_\_\_

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