

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 LEAVE TO MAKE
SECOND DISTRIBUTION TO COURT-APPROVED CLAIMANTS**

Jon A. Sale, not individually, but solely in his capacity as the Court-appointed receiver ("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 (collectively, the "Receivership Entities"), respectfully submits this Motion for Leave to Make Second Distribution to Court-Approved Claimants ("Motion"). *The Receiver is authorized to state that the Securities and Exchange Commission does not object to the relief requested.*

I. PRIOR COURT APPROVAL OF CLAIMS AND PRO RATA PERCENTAGES FOR DISTRIBUTIONS

On June 2, 2020, the Receiver filed his Motion for Court Approval of Recommendations Concerning Claims (“Claims Motion”). [D.E. 257]. In the Claims Motion, the Receiver sought leave to make a first distribution to Court-approved Claimants (as defined in the Claims Motion). *Id.* On June 4, 2020, the Receiver filed an Amended Schedule of Claims, which included each Claimant’s approved claim amount, pro rata percentage, and proposed first distribution amount. [D.E. 259-1].

On July 8, 2020, the Court granted the Claims Motion, approving the Receiver’s recommendations on claims, as well as the pro rata percentage amount and first distribution amount for each Claimant in [D.E. 259-1]. [D.E. 260].

II. SUMMARY OF REQUESTED RELIEF

This Receivership is coming to a close, as discussed in detail in the Receiver’s Ninth Status Report. [D.E. 316]. As such, the Receiver now seeks leave to make a second distribution to Claimants, consistent with the Court’s prior ruling at [D.E. 260] and the Schedule for Second Distribution, attached as **Exhibit A**. Specifically, the Receiver seeks an order from the Court permitting a pro rata distribution of monies to Claimants, consistent with the Court-approved percentages reflected in column 5 of Ex. A (“Pro Rata Percentages”) and the distribution amounts in column 6 of Ex. A (“Proposed Second Distribution Amounts”).

II. ASSETS FOR DISTRIBUTION

As of October 6, 2022, the Receiver currently maintains approximately \$3,838,487.03 in the Receivership bank accounts. As there are insufficient funds in the Receivership Estate to pay Claimants in full, the Receiver proposes to distribute funds to Claimants on a pro rata basis, consistent with the pro rata percentages approved by the Court in July 2020.

The Receiver seeks to distribute, pro rata, \$3,330,000.00. The Receiver believes that sufficient funds (approximately \$509,000.00) will remain after the second distribution to cover the Receiver's pending application for fees and cost [D.E. 317] and to cover any fees and costs associated with filing a final report, winding down the Receivership, and handling any remaining administrative matters. If any funds remain after final applications for fees and costs, preparation of a final report, and Receivership is wound down, the Receiver will seek leave to make a final distribution.

III. SUPPORT FOR RECEIVER'S RECOMMENDATIONS

This Court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). "[I]t is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *Id.*, citing *SEC v. Lincoln Thrift Ass'n*, 577 F.2d 600, 606 (9th Cir. 1978) and *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (a court overseeing a receivership is given "wide discretionary powers" because of "the concern for orderly administration").

A. The Court's Use of Summary Proceedings Is Appropriate In Receivership Actions

Claimants' opportunity to object to this Motion provides sufficient due process. The use of summary proceedings in equity receiverships, as opposed to plenary proceeding, is within the jurisdictional authority of the federal district courts. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992); *Hardy*, 803 F.2d at 1040. "A summary proceeding reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets." *Elliot*, 953 F.2d at 1566 (citation omitted). Summary proceedings may be used to allow, disallow and subordinate claims of creditors. *Hardy*, 803 F.2d at 1040. "[A] district court does not generally

abuse its discretion if its summary procedures permit parties to present evidence when facts are in dispute and to make arguments regarding those facts.” *Elliot*, 953 F.2d 1567.

As a party to these summary proceedings, the Receiver may make recommendations to the Court in connection with distributions, and the Court may adjudicate any Claimant’s objection. By filing their claims with the Receiver, Claimants have submitted themselves to the jurisdiction of this Court. *Alexander v. Hillman*, 296 U.S. 222, 238 (1935).

The Receiver believes these summary proceedings strike a proper balance between distributing the assets of the Receivership efficiently and providing all Claimants an opportunity to be heard on the distribution of those funds. The Claimants’ due process rights are met by providing all Claimants notice and an opportunity to object to the Receiver’s proposed distribution.

B. Pro Rata Distribution Of The Receivership Estate Is Equitable And Appropriate

The task of formulating a proper distribution plan is a sensitive undertaking because a plan that is “equitable” might not necessarily be popular with all Claimants. Federal law is clear, however, that securities receiverships, such as the instant proceeding, are governed by equitable principles. *Elliot*, 953 F.2d 1560, 1572 (11th Cir. 1992); *SEC v. First Sec. Co.*, 528 F.2d 449, 454 (7th Cir. 1976); *SEC v. Credit Bancorp, Ltd.*, 194 F.R.D. 457, 464 (S.D.N.Y. 2000) (“the fundamental principal of a [receivership] distribution plan is that it should be equitable and fair, with similarly-situated investors treated alike”).

Under these principles, the Court may distribute the assets of a receivership estate in a manner that is fair and equitable to all the creditors. *See Elliot* at 1569-70. As with many fraudulent schemes, some assets may be “fortuitously identifiable by virtue of the liquidation or encumbering of the assets of [other investors],” but the traceability of a claimant’s funds does not distinguish that claim in a legally cognizable way. *See SEC v. Credit Bancorp*, 194 F.R.D. at 463; *See United*

States v. Real Property, 89 F.3d 551, 552, 553 (9th Cir. 1996) (holding that it is inequitable to allow creditors to use tracing fictions to recover full amount of its claim at expense of equally innocent fraud victims).

As reported, there is one type of conduct at the core of this fraudulent scheme. Defendants were engaging in ongoing violations of the federal securities laws through their illegal activities in connection with their operation of 1 Global and the Receivership Entities. The money raising activity and the operations of 1 Global and the Receivership Entities were under the control and direction of Defendants.

The Receiver's investigation revealed that Defendants commingled funds in the various accounts of the Receivership Entities and related entities. Thus, all Claimants should share equally in the pooled assets in accordance with the Receiver's distribution plan. Indeed, the Court has already approved this plan of distribution in July 2020 at [D.E. 260].

VII. CONCLUSION

The Receiver respectfully requests that this Court, after the time for objections has passed, enter an order approving the proposed second distribution of \$3,330,000.00 in funds to Court-approved Claimants, consistent with the Schedule of Claims for Second Distribution (Ex. A), and granting any other relief it deems just and proper.

Dated: November 9, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2022, 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/Christopher Cavallo
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SERVICE LIST

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EXHIBIT A – Schedule of Claims for Second Distribution

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Claimant No.	Claim No.	Claimed Amount	Court Approved Amounts	Court Approved Pro Rata Percentage	Proposed Second Distribution Amount
1	1-1	\$ 31,719,330.36	\$ 31,719,330.36	99.704 %	\$ 3,320,143.20
2	2-1	\$ 650.00	\$ 650.00	00.002 %	\$ 66.60
3	3-1	\$ 6,163.90	\$ 6,163.90	00.019 %	\$ 632.70
4	4-1	\$ 3,281.85	\$ 3,281.85	00.010 %	\$ 333.00
5	5-1	\$ 8,689.20	\$ 8,689.20	00.027 %	\$ 899.10
6	6-1	\$ 7,666.80	\$ 7,666.80	00.024 %	\$ 799.20
7	7-1	\$ 50,790.40	\$ 50,790.40	00.160 %	\$ 5,328.00
7	7-2	\$ 1,800.00	\$ 1,800.00	00.006 %	\$ 199.80
7	7-3	\$ 15,196.80	\$ 15,196.80	00.048 %	\$ 1,598.40
TOTALS		\$ 31,813,569.31	\$ 31,813,569.31	100 %	\$ 3,330,000.00