

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
FIRST AMENDMENT TO GANADOR SETTLEMENT AGREEMENT**

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 Motion for Approval of First Amendment to Ganador Settlement Agreement (the "Motion").

The SEC does not object to the relief requested herein.

1. Pursuant to this Court's Order Granting Receiver's Motion for Approval of Settlement Agreement Related to Ganador Enterprises, LLC [ECF No. 124] (the "Order"), dated December 27, 2018, the Receiver entered into a settlement agreement (the "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 payment schedule.¹ 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;² and (c) payment of the remaining \$3,250,000 to the Receiver within 365 days after the second monthly interest payment (the "Maturity Date").

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

4. 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 (the "Amended Payment Schedule"). A copy of the First Amendment is attached as **Exhibit A**.

¹ The Court listed the other essential terms in its Order. (ECF No. 124, pp. 3-4).

² 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.

5. Pursuant to the First Amendment:

- On March 13, 2020, Unified and Techmark shall pay the Receiver a principal payment in the amount of \$250,000, which amount shall be held in escrow by the Receiver's attorneys until the First Amendment is approved by the Court.³
- Beginning on April 1, 2020, and on the first of each month thereafter through March 1, 2021, Unified and Techmark shall pay the Receiver \$100,000 towards the remaining principal of \$3,000,000 owed under the Agreement, plus 7.5% interest.
- On April 1, 2021, Unified and Techmark shall pay the Receiver the final \$1,800,000 owed under the Agreement, plus all outstanding interest.

Below is a chart reflecting the Amended Payment Schedule:

Date	Beginning Balance	Principal Payment	Interest Payment (7.5%)	Total Payment	Ending Balance
13-Mar-20	\$ 3,250,000.00	\$ 250,000.00	\$ -	\$ 250,000.00	\$ 3,000,000.00
1-Apr-20	\$ 3,000,000.00	\$ 100,000.00	\$ 18,750.00	\$ 118,750.00	\$ 2,900,000.00
1-May-20	\$ 2,900,000.00	\$ 100,000.00	\$ 18,125.00	\$ 118,125.00	\$ 2,800,000.00
1-Jun-20	\$ 2,800,000.00	\$ 100,000.00	\$ 17,500.00	\$ 117,500.00	\$ 2,700,000.00
1-Jul-20	\$ 2,700,000.00	\$ 100,000.00	\$ 16,875.00	\$ 116,875.00	\$ 2,600,000.00
1-Aug-20	\$ 2,600,000.00	\$ 100,000.00	\$ 16,250.00	\$ 116,250.00	\$ 2,500,000.00
1-Sep-20	\$ 2,500,000.00	\$ 100,000.00	\$ 15,625.00	\$ 115,625.00	\$ 2,400,000.00
1-Oct-20	\$ 2,400,000.00	\$ 100,000.00	\$ 15,000.00	\$ 115,000.00	\$ 2,300,000.00
1-Nov-20	\$ 2,300,000.00	\$ 100,000.00	\$ 14,375.00	\$ 114,375.00	\$ 2,200,000.00
1-Dec-20	\$ 2,200,000.00	\$ 100,000.00	\$ 13,750.00	\$ 113,750.00	\$ 2,100,000.00
1-Jan-21	\$ 2,100,000.00	\$ 100,000.00	\$ 13,125.00	\$ 113,125.00	\$ 2,000,000.00
1-Feb-21	\$ 2,000,000.00	\$ 100,000.00	\$ 12,500.00	\$ 112,500.00	\$ 1,900,000.00
1-Mar-21	\$ 1,900,000.00	\$ 100,000.00	\$ 11,875.00	\$ 111,875.00	\$ 1,800,000.00
1-Apr-21	\$ 1,800,000.00	\$ 1,800,000.00	\$ 11,250.00	\$ 1,811,250.00	\$ -

³ If the Court does not approve the First Amendment, the \$250,000 is to be returned to Unified and Techmark, and the parties retain all rights and remedies available under the Agreement. Unified and Techmark funded the \$250,000, minus a \$15 bank fee that will be made with the next payment.

6. The Receiver respectfully submits that entry into the First Amendment, and the Amended Payment Schedule therein, is in the best interests of the Receivership Estate. It is the Receiver's understanding that Unified and Techmark are not presently able to make the lump sum \$3,250,000 payment required by the existing Agreement. The Receiver prefers to enter into the First Amendment and continue to *receive* funds from Unified and Techmark (including additional interest) rather than *expend* Receivership resources suing to enforce the Agreement, with questionable ability to collect from Unified and Techmark if he prevails.

7. 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 First Amendment with a limited objection procedure. The Receiver proposes posting this Motion and the First 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 First Amendment to the Agreement.

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 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.

Respectfully submitted,

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/ Gary M. Freedman
Gary M. Freedman
Florida Bar No. 727260
Daniel S. Newman
Florida Bar No. 0962767
Christopher Cavallo
Florida Bar No. 0092305

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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FIRST AMENDMENT TO SETTLEMENT AND RELEASE AGREEMENT

THIS FIRST AMENDMENT TO SETTLEMENT AND RELEASE AGREEMENT (this "First Amendment") is made and entered into effective as of March 9, 2020, 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 Seller are parties to that certain Settlement and Release Agreement dated as of December 10, 2018 (the "Settlement Agreement"). Capitalized terms not specifically defined herein shall have the meaning ascribed in the Settlement Agreement.
- B.** As of the date hereof, the Settlement Agreement has been approved by the Court in the SEC Proceeding.
- C.** As of the date hereof, Companies have paid the Receiver all amounts due and owing under the Settlement Agreement.
- D.** Companies have disclosed to the Receiver that the following Deposit Account appearing on Schedule 1 of the Settlement Agreement is being or has been closed by the bank: Bank of America, Account No. ending in 4416. Companies have opened a new Deposit Account and the Parties have agreed that the Receiver shall have the same rights in this new Deposit Account it has in any of the Companies' Deposit Accounts pursuant to the Settlement Agreement.
- E.** Companies have requested that the Receiver extend the Maturity Date under the Settlement Agreement (including, the February 2020 interest payment). The Receiver has agreed to extend the Maturity Date and to the revised payment schedule herein subject to obtaining the approval of the Receivership Court.

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, Receiver, Seller and Buyers hereby agree to amend the Settlement Agreement as follows:

- 1. AMENDMENT TO SECTION 3(b)(A) and (B).** Sections 3(b)(A) and (B) of the Settlement Agreement shall be deleted and replaced in their entirety by the following payment schedule (the "Amended Payment Schedule"):

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Date	Beginning Balance	Principal Payment	Interest Payment (7.5%)	Total Payment	Ending Balance
13-Mar-20	\$ 3,250,000.00	\$ 250,000.00	\$ -	\$ 250,000.00	\$ 3,000,000.00
1-Apr-20	\$ 3,000,000.00	\$ 100,000.00	\$ 18,750.00	\$ 118,750.00	\$ 2,900,000.00
1-May-20	\$ 2,900,000.00	\$ 100,000.00	\$ 18,125.00	\$ 118,125.00	\$ 2,800,000.00
1-Jun-20	\$ 2,800,000.00	\$ 100,000.00	\$ 17,500.00	\$ 117,500.00	\$ 2,700,000.00
1-Jul-20	\$ 2,700,000.00	\$ 100,000.00	\$ 16,875.00	\$ 116,875.00	\$ 2,600,000.00
1-Aug-20	\$ 2,600,000.00	\$ 100,000.00	\$ 16,250.00	\$ 116,250.00	\$ 2,500,000.00
1-Sep-20	\$ 2,500,000.00	\$ 100,000.00	\$ 15,625.00	\$ 115,625.00	\$ 2,400,000.00
1-Oct-20	\$ 2,400,000.00	\$ 100,000.00	\$ 15,000.00	\$ 115,000.00	\$ 2,300,000.00
1-Nov-20	\$ 2,300,000.00	\$ 100,000.00	\$ 14,375.00	\$ 114,375.00	\$ 2,200,000.00
1-Dec-20	\$ 2,200,000.00	\$ 100,000.00	\$ 13,750.00	\$ 113,750.00	\$ 2,100,000.00
1-Jan-21	\$ 2,100,000.00	\$ 100,000.00	\$ 13,125.00	\$ 113,125.00	\$ 2,000,000.00
1-Feb-21	\$ 2,000,000.00	\$ 100,000.00	\$ 12,500.00	\$ 112,500.00	\$ 1,900,000.00
1-Mar-21	\$ 1,900,000.00	\$ 100,000.00	\$ 11,875.00	\$ 111,875.00	\$ 1,800,000.00
1-Apr-21	\$ 1,800,000.00	\$ 1,800,000.00	\$ 11,250.00	\$ 1,811,250.00	\$ -

Each payment set forth in the Amended Payment Schedule shall be a “Payment,” and collectively the “Payments” and the day any Payment is due shall be a “Due Date.” If a Due Date falls on a weekend or holiday, the Due Date shall be the next business day.

On April 1, 2021 (the “Maturity Date”), the entire outstanding Remaining Balance along with any outstanding interest shall be due and payable to the Receiver.

With respect to the March 13, 2020 Payment set forth above, Companies shall pay the Receiver TWO HUNDRED FIFTY THOUSAND U.S. DOLLARS (USD \$250,000.00) (the “First Amendment Deposit”) and such payment shall be held in escrow in a trust account at the Receiver’s law firm, Nelson Mullins Broad and Cassel (“Nelson Mullins”). The First Amendment Deposit shall be released from escrow upon entry of an order in the SEC Proceeding approving this First Amendment. In the event the Receivership Court does not approve this First Amendment, the First Amendment Deposit shall be returned to Companies and all Parties retain all rights and remedies under the Settlement Agreement. In the event a motion to approve this First Amendment is still pending when a Payment is due, such Payment shall still be timely paid and such Payment shall be held in escrow under the same terms as the First Amendment Deposit.

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2. SCHEDULE 1. Schedule 1 to the Settlement Agreement shall be deleted and replaced in its entirety by:

<u>Bank Name and Address</u>	<u>Account Holder</u>	<u>Last Four Digits of Account Number</u>
Bank of America – 7100 SW Archer Rd., Gainesville, Florida 32608-4606	National Techmark Inc.	4416 (closed)
Bank of America – 7100 SW Archer Rd., Gainesville, Florida 32608-4606	Unified Analytics, LLC	2318
Suntrust Bank – 5303 SW 91st Dr., Gainesville, Florida 32608	National Techmark Inc.	6802

3. COURT APPROVAL. This First Amendment shall only be effective upon Receivership Court approval.

4. FULL FORCE AND EFFECT. Except as expressly amended by this First Amendment, the Settlement Agreement remains unmodified and in full force and effect.


[Signature page follows]

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Companies and the Receiver have caused this First 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: Jesus Diaz
Title: President

TECHMARK:

National Techmark Inc., a Nevada corporation

By: 
Name: Oscar Rodriguez
Title: President

GANADOR:

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