

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

Jon A. Sale, not individually, but solely in his capacity as the Court-appointed receiver (the “Receiver”) for Media Pay LLC (“Media Pay”), respectfully submits this Motion for Approval of Settlement Agreement (“Motion”) with Jumbleberry Enterprises USA, Ltd., Jumbleberry Interactive Group, Ltd., and Jumbleberry Publishing Group, Ltd. (collectively, “Jumbleberry”).

The Securities and Exchange Commission does not object to the relief sought herein.

INTRODUCTION

On August 23, 2019, the Receiver filed a Complaint to Avoid and Recover Fraudulent Transfers against Jumbleberry. That case is styled *Jon Sale, as Receiver v. Jumbleberry*

Enterprises USA, Ltd., et al., Case No. 1:20-cv-20716 (“Lawsuit”). In the Lawsuit, the Receiver alleges that Jumbleberry received at least \$647,000 in transfers (“Transfers”) from Media Pay. Jumbleberry denies all liability to the Receiver in connection with the Transfers.

To avoid the expense and risk of litigating claims, the Receiver and Jumbleberry have agreed to resolve the Lawsuit pursuant to the terms of a proposed settlement agreement (“Settlement Agreement”), attached hereto as **Exhibit A**. Under the terms of the Settlement Agreement, Jumbleberry shall pay the Receiver \$87,640.00. For reasons explained below, the Settlement Agreement is in the best interest of the Receivership Estate. 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].

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 PROPOSED SETTLEMENT AGREEMENT¹

The proposed Settlement Agreement provides in pertinent part:

- Jumbleberry will pay \$87,640.00 ("Settlement Amount") to the Receiver within fifteen (15) days of the Effective Date of the Settlement Agreement; and
- The Receiver and Jumbleberry 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., ¶¶ 3, 6.

RETENTION OF JURISDICTION

The Receiver and Jumbleberry 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. *See* Ex. A, ¶ 15.

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*

¹ This is only a summary of the settlement terms. Parties are advised to review the Settlement Agreement as it sets forth the full settlement between the Receiver and Jumbleberry.

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. 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 WL 1805787, at *10 (N.D. Ohio Apr. 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.” 336 Fed. App’x 540, 546-47 (2009). 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 WL 148131, at *3 (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 Jumbleberry. Although the Receiver sued Jumbleberry for \$647,000, the Settlement Agreements provides for a greater than 100% recovery of the approximately \$77,000 in funds actually retained by Jumbleberry as profits from the Transfers. Moreover, the litigation with Jumbleberry was aggressively contested and there were significant issues of fact and law that remained subject to Court determination. *See Sale, as Receiver for Media Pay LLC v. Jumbleberry Enterprises USA, Ltd., et al.*, Case No. 1:20-cv-20716-KMW. The Receiver believes that the outcome for the Receivership Estate will be better under the Settlement Agreement than it would be if the Receiver was forced to expend fees and costs proceeding with a hotly contested 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.

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, protracted objection procedure would render the benefits of the settlement worthless to the

Receivership Estate, and therefore this limited objection procedure should be implemented.

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: October 6, 2021

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/ 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 October 6, 2021, 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 S. 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 TRAUIG, 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>	<p>GORDON REES SCULLY MANSUKHANI, LLP Joseph A. Sacher 100 SE Second Street, Suite 3900 Miami, FL 33131 jsacher@grsm.com Telephone: 305.428.5339 <i>Attorney for Jumbleberry Enterprises USA, Ltd., Jumbleberry Interactive Group, Ltd., and Jumbleberry Publishing Group, Ltd.</i></p>

SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is entered into as of the date of the final signature affixed below, by and between Jon A. Sale, in his capacity as the Court-appointed receiver for Media Pay LLC (the "Receiver"), on the one hand, and Jumbleberry Enterprises USA, Ltd., Jumbleberry Interactive Group, Ltd. and Jumbleberry Publishing Group, Ltd. (collectively "Jumbleberry"), on the other hand. (Hereinafter, the Receiver and Jumbleberry are each sometimes referred to as a "Party" and collectively referred to as the "Parties" to this Agreement.)

RECITALS

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 Media Pay LLC ("Media Pay"), investigate the affairs of Media Pay, 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;; and

WHEREAS, in connection with the provision of online advertising services, Jumbleberry received payments from Media Pay between April 2015 and October 2015; and

WHEREAS, Receiver initiated a civil action currently pending in the United States District Court for the Southern District of Florida, styled *Jon Sale, as Receiver for Media Pay LLC v. Jumbleberry Enterprises USA, Ltd., et al.*, Case No. 1:20-cv-20716-KMW (the "Litigation") asserting claims against Jumbleberry in connection with the payments from Media Pay; and

WHEREAS, Jumbleberry has defended the Litigation and denies any and all liability to the Receiver, including any liability in connection with the payments from Media Pay; and

WHEREAS, the Parties now desire to settle all claims and possible claims between and among them and conclude the Litigation on the basis described in this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Receiver and Jumbleberry agree as follows:

1. Incorporation of Recitals. The above recitals and preamble clauses are hereby adopted and expressly made part of this Agreement.

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 District Court in the SEC Proceeding enters an order approving this Agreement, if such approval is granted.

Receiver Initials: ja.s

Jumbleberry Initials: ~~A~~

3. **Settlement Payment to Media Pay.** In consideration of the terms and conditions of this Agreement, Jumbleberry shall pay Media Pay c/o the Receiver the sum of Eighty-Seven Thousand Six Hundred Forty Dollars (\$87,640) (the "Settlement Amount"). Such Settlement Amount shall be paid as a single lump sum via electronic fund transfer (EFT) to an account designated by the Receiver, and shall be initiated no later than fifteen (15) business days following the Effective Date. The Parties agree that the Settlement Amount represents the total amount due and owing from Jumbleberry for the resolution of any and all claims between the Parties hereto with respect to the Litigation.

4. **Dismissal of Litigation.** Within five (5) calendar days of the Receiver's receipt of the full Settlement Amount described in Paragraph 2, the Parties shall file a joint Stipulation of Dismissal with Prejudice pursuant to Fed. R. Civ. P. 41, causing the Litigation to be dismissed with prejudice, and with each Party to bear its own costs and attorneys' fees. The Parties agree that this Agreement shall be contingent upon such dismissal with prejudice of the Litigation, and further agree to timely execute any documents necessary to effectuate this provision.

5. **Non-Disparagement.** The Parties agree and stipulate that as part of the consideration exchanged between the Parties in connection with this Agreement, each Party, including its receivers, executors, administrators, officers, employees, attorneys, agents, and/or assigns will not defame or disparage the other Party. For the purposes of this Agreement, the term "disparage" shall mean "the making of a negative, critical and/or injurious statement that discredits or detracts from the reputation of the other party."

6. **Release of Claims.**

A. Upon the Effective Date and clearing of the Settlement Amount, Receiver and Media Pay, and each of them, on behalf of their respective heirs, legal representatives, agents, owners, officers, directors, employees, successors, and assigns hereby forever release and discharge Jumbleberry and its past and present employees, managers, officers, directors, agents and attorneys, their subsidiary and affiliated business entities and franchisees and their respective past and present employees, agents, officers, and directors (collectively, the "Jumbleberry Releasees"), from any and all claims, whether at law or equity, statutory or common law, that could be asserted by Media Pay, the Receiver, and/or any Receivership Entity against any of the Jumbleberry Releasees from the beginning of time through the Effective Date, as well as any claim(s) of Media Pay, the Receiver, and/or any Receivership Entity for relief that could have been alleged, no matter how characterized, including, without limitation, compensatory damages, damages for breach of contract, bad faith damages, reliance damages, liquidated damages, punitive damages, costs and attorney's fees related to or arising from the Litigation. This Release shall not cover any claims related to breaches of this Agreement.

B. Upon the Effective Date and clearing of the Settlement Amount, Jumbleberry, for itself and on behalf of its heirs, legal representatives, agents, owners, officers, directors, employees, successors, and assigns, hereby forever releases and discharges Receiver and Media Pay and their past and present employees, managers, officers, directors, agents and attorneys, their subsidiary and affiliated business entities and franchisees and their respective past and present employees, agents, officers, and directors (collectively, the "Receiver Releasees"),

Receiver Initials: J a S

Jumbleberry Initials: A_{SJ}

from any and all claims, whether at law or equity, statutory or common law, that could be asserted by Jumbleberry against any of the Receiver Releasees from the beginning of time through the Effective Date, as well as any claim(s) for relief that could have been alleged, no matter how characterized, including, without limitation, compensatory damages, damages for breach of contract, bad faith damages, reliance damages, liquidated damages, punitive damages, costs and attorney's fees related to or arising from the Litigation. This Release shall not cover any claims related to breaches of this Agreement.

7. **No Admission of Fault.** The Parties acknowledge that the consideration set forth herein was agreed upon as a compromise and final settlement of disputed claims and that the giving of such consideration is not, and may not be, construed as an admission of liability by any Party.

8. **Fees and Costs.** The Parties acknowledge and agree they are solely responsible for paying any attorneys' fees and costs incurred by them or on their behalf and that no Party or its attorney(s) will seek any award of attorneys' fees or costs from any other Party, except as provided herein. The Parties further agree that they each shall bear their own costs and expenses, including attorney fees, disbursements, and costs incurred in the Litigation and in reaching the resolution of this matter.

9. **Agreement is Legally Binding.** The Parties intend this Agreement to be legally binding upon and inure to the benefit of each of them and their respective successors, assigns, executors, administrators, heirs, and estates.

10. **Tax Consequences.** Each Party agrees to be responsible for any tax consequences affecting said Party as a result of this Agreement.

11. **Complete Understanding.** This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by each of the Parties hereto. No knowledge possessed or investigations made by a Party on or prior to the Effective Date shall constitute a waiver or other defense to the enforcement of any right or remedy of a Party pursuant to this Agreement. Each Party shall be presumed to have relied upon the representations of the other Party in connection with the execution of this Agreement and the consummation of the transactions contemplated thereby.

12. **Interpretation.** Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Moreover, this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

13. **Headings.** The headings of the various sections of this Agreement have been inserted for reference only and shall not be deemed to have any legal effect or meaning.

Receiver Initials: J a b

Jumbleberry Initials: A
SJ

14. **Reliance on Own Counsel.** In entering into this Agreement, the Parties acknowledge that they have had the opportunity to consult with legal counsel, who are the attorneys of their own choosing, that such terms are fully understood and voluntarily accepted by them.

15. **Law.** This Settlement Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Florida, without regard to the principles of conflicts of laws. Any action related to this Settlement Agreement shall be brought only in the United States District Court, Southern District of Florida, in Miami, Florida. **THE PARTIES FURTHER AGREE THAT ANY ACTION REGARDING A BREACH OF THIS AGREEMENT SHALL BE HEARD BY A JUDGE AND HEREBY WAIVE ANY RIGHT TO JURY TRIAL.**

16. **Counterparts and Electronic Signature.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic format (e.g., DocuSign or ".pdf") shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," and words of similar import in the Agreement shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity and enforceability as manually executed signatures or a paper-based record keeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 USC § 7001 *et seq.*) or any other similar state or federal laws.

(Endorsements appear on the following page.)

(The remainder of this page intentionally left blank.)

Receiver Initials: DAJ

Jumbleberry Initials: A
SJ

Accepted and Agreed:

JON A. SALE, as Receiver for
Media Pay LLC

Jon A. Sale, receiver

Date: 9/15/21

JUMBLEBERRY ENTERPRISES USA, LTD

[Signature]
Steve Jukes (Sep 17, 2021 16:14 EDT)

By: Steve Jukes, President and CEO

Date: Sep 17, 2021

JUMBLEBERRY INTERACTIVE GROUP, LTD

[Signature]
Steve Jukes (Sep 17, 2021 16:14 EDT)

By: Steve Jukes, President and CEO

Date: Sep 17, 2021

JUMBLEBERRY PUBLISHING GROUP, LTD

[Signature]
Steve Jukes (Sep 17, 2021 16:14 EDT)

By: Steve Jukes, President and CEO

Date: Sep 17, 2021

Receiver Initials: _____

Jumbleberry Initials: A
SJ