

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 FIFTH STATUS REPORT

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 the Bright Smile Trust (collectively, the "Receivership Entities"), respectfully submits this Fifth Status Report covering the period of November 5, 2019 through March 20, 2020 (the "Reporting Period").

I. INTRODUCTION

The Receiver and his professionals achieved significant results for the benefit of the Receivership Estate during the Reporting Period by: (1) recovering funds in connection with the previously-reported-upon settlement of claims related to Ganador; (2) liquidating the Receivership's crypto currency holdings; and (3) litigating clawback (fraudulent transfer) actions against several third-parties. In addition, the Receiver started and is in the process of carrying out a Court-approved claims process.

To date, the Receiver has recovered over \$8 million for the benefit of the Receivership Entities, of which over \$1.2 million has been recovered since November 1, 2019.¹

II. RECEIVER'S APPOINTMENT AND DUTIES

On August 23, 2018, the United States Securities & Exchange Commission ("SEC") initiated this action against Defendants 1 Global Capital, LLC ("1 Global") and Carl Ruderman, and Relief Defendants 1 West Capital LLC ("1 West"), Bright Smile, BRR Block, Ganador, Media Pay, Pay Now, and the Ruderman Family Trust. [D.E. 1]. The SEC alleges that Defendants engaged in a four-year long unregistered securities fraud totaling more than \$287 million, victimizing thousands of investors nationwide. *Id.*, ¶ 1. The SEC seeks, among other relief, permanent injunctive relief, civil penalties, and disgorgement. *Id.*, pp. 33-34. The same day, the SEC requested an asset freeze and the appointment of a receiver over Relief Defendants Bright Smile, BRR Block, Digi South, Ganador, Media Pay, and Pay Now. [D.E. 6; D.E. 7]. The Court entered a sealed order appointing Jon A. Sale, Esq. as Receiver for the Receivership Entities (the

¹ This includes over \$600,000 in connection with the sale of Bright Smile's assets, \$330,000 in connection with the settlement of claims against Ganador, and \$290,000 from the liquidation of digital currencies, all of which are discussed further below.

“Receivership Order”).² [D.E. 12]. The Court also entered an order freezing Defendants’ assets (the “Freeze Order”). [D.E. 13].

Pursuant to the Receivership Order, the Receiver is obligated to, among other things: (1) take immediate possession of the Receivership Entities’ property, assets, and estates of every kind; and (2) investigate the way the affairs of the Receivership Entities were conducted and institute actions and proceedings for the benefit of investors and other creditors. [D.E. 12, ¶¶ 1-2].

The Receivership Order requires the Receiver to prepare quarterly status reports. [D.E. 12, ¶ 3]. This Fifth Report summarizes the Receiver’s and his professionals’ relevant activities during the Reporting Period.

III. ACTIVITY DURING REPORTING PERIOD

On November 7, 2019, the Receiver filed his Fourth Status Report with this Court, which covered the period of July 11, 2019 through November 4, 2019. [D.E. 241]. In it, the Receiver explained the results he and his team of retained professionals achieved in connection with: (1) recoveries related to the sale of Bright Smile’s assets and settlement of claims related to Ganador; (2) resolving litigation with Bridge Bank and their reciprocal requests for an award of attorneys’ fees; (3) the investigation and filing of clawback (fraudulent transfer) actions against third-parties; and (4) steps for future liquidation of the Receivership’s crypto currency holdings. *Id.*

In this Fifth Status Report, the Receiver addresses similar issues, including recoveries in connection with the settlement of claims held relating to Ganador, the proposed amendment of the settlement with Ganador, the status of clawback litigations, an update on the liquidation of the

² The Court later expanded the Receivership over the Ruderman Family Trust and the Bright Smile Trust, on November 21, 2018, and the Receivership Order is controlling over them as well. [D.E. 115.]

Receivership's crypto currency holdings, the current state of the claims process, and the general maintenance of the Receivership Estate.

A. Recoveries Related to Bright Smile Asset Sale

As previously reported, in 2019, the Receiver and specified third parties ("Buyers") agreed to and finalized the Purchase and Sale Agreement memorializing the terms of sale of certain of Bright Smile's assets to Buyers (the "PSA"). On October 4, 2019, Buyer's counsel expressed the desire to pay off the balance due under the PSA by November 1, 2019. The parties, through their respective counsel, worked collaboratively to put logistics in place for the payoff. Thereafter, on November 1, 2019, Buyers paid the entire balance due under the PSA without discount. As of the date of this Status Report, the Receiver has recovered the full amount owed by Buyers under the PSA, in addition to the approximately \$3,018,000.00 Bridge Bank was holding in connection with its clearing services on behalf of Bright Smile.

B. Recoveries Related to Ganador Settlement

As previously reported, on December 10, 2018, the Receiver agreed to and finalized a written settlement agreement (the "Ganador Settlement") with Unified Analytics, LLC ("Unified") and National Techmark Inc. ("Techmark"). On December 27, 2018, the Court entered its order approving the Ganador Settlement. [D.E. 124].

Unified and Techmark made the interest payments required by the Ganador Settlement without issue through March 2020. The first interest payment of \$20,312.50 was made to the Receiver on February 26, 2019. The \$750,000 "up front" payment was made to the Receiver on March 21, 2019, and additional interest payments, each in the amount of \$20,312.50, were made to the Receiver from March 2019 through February 2020.

In or about February 2020, Unified and Techmark expressed to the Receiver a need to amend the Ganador Settlement to extend the Maturity Date because of a lack of liquidity. In February 2020, the parties agreed to enter into a First Amendment to the Ganador Settlement, which, if approved by the Court, would extend the Maturity Date and amend the agreed payment schedule (the “Amended Payment Schedule”). The Receiver filed a motion for approval of the First Amendment to the Ganador Agreement on March 17, 2020. [D.E. 249]. That motion remains pending before the Court.

Pursuant to the First Amendment:

- On March 13, 2020, Unified and Techmark paid the Receiver a principal payment in the form of a \$250,000 check, which is being held pending Court approval of the motion;
- 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.

See [D.E. 249; 249-1].

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	\$ -

Id.

As explained in the Receiver’s motion for approval of the amendment to the Ganador Settlement, entry into the amendment 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 balloon payment of \$3,250,000 required by the terms of the current Ganador Settlement. The Receiver prefers to enter into the amendment and continue to *receive* funds from Unified and Techmark (including additional interest) rather than *expend* Receivership resources seeking to enforce the Ganador Settlement.

C. Clawback Litigation

As previously reported, on August 23, 2019, Damian Valori, the Receiver’s contingency counsel, filed seven lawsuits against defendants that received funds from the Receivership Entities (the “Clawback Actions”), including: (1) Bank of America, N.A.; (2) J.P. Morgan Chase Bank, N.A., related to credit cards; (3) J.P. Morgan Chase Bank, N.A., related to mortgage payments; (4)

Citibank, N.A.; (5) Mercedes Benz Financial Services, USA, LLC; (6) American Express Company; and (7) Ferrari Financial Services Inc.

To date, the Receiver has settled with three of these entities and sought Court approval of those settlements, including Citibank, N.A. [D.E. 246] (for approval of a settlement resulting in a greater than 60% recovery for the Receivership), Bank of America, N.A. [D.E. 248] (for approval of a settlement resulting in a 55% recovery for the Receivership), and JP Morgan Chase Bank related to credit cards [D.E. 250] (for approval of a settlement resulting in a 59% recovery for the Receivership). The Receiver is in settlement discussions with several other defendants in the above cases, including an agreed settlement with American Express that is pending execution.

On March 18, 2020, after discussions with the SEC and J.P. Morgan Chase Bank, N.A. (“Chase”), the Receiver filed a stipulation to dismiss without prejudice his action against Chase related to Carl Ruderman’s mortgage payments, which claim is the subject of a tolling agreement. The property at issue in that lawsuit (for which Mr. Ruderman made the mortgage payments using Pay Now) is the subject of a consent judgment³ between the SEC and Mr. Ruderman. The SEC and Mr. Ruderman are in the process of attempting to sell the property, pursuant to the terms of the consent judgment. It is the Receiver’s understanding that Chase is working cooperatively with the SEC in that process. If the issues raised in the Receiver’s claim against Chase are not addressed through the sale process, the Receiver will re-file his claims against Chase.

³ The consent judgment [D.E. 225], which deals with matters such as residence in the condominium and terms of its sale, was agreed to by the SEC and Ruderman. The Receiver was not a participant in those discussions. Nothing in the consent judgment affects or purports to affect the Receiver’s claims against Chase.

Finally, on February 19, 2020, the Receiver filed a clawback lawsuit against Jumbleberry, a Canadian entity. The Receiver is in the process of serving Jumbleberry in accordance with the Hague Convention.

Rather than initiating litigation, when able the Receiver entered into tolling agreements with approximately 15 other entities/individuals to provide the parties the opportunity to further investigate and discuss a consensual resolution of potential claims relating to subject transfers received from the Receivership Entities (collectively the “Tolled Entities”). The Receiver’s counsel is actively engaged in settlement discussions with certain of the Tolled Entities. Regarding other Tolled Entities, the Receiver is still determining the viability of potential litigation given cost-benefit analysis and other factors.

D. Liquidation of Crypto Currency Holdings

BRR Block’s funds were used, in part, to purchase approximately \$700,000 of numerous digital currencies (*i.e.*, crypto currencies). These purchases were made at or near the height of the market for those currencies. BRR Block’s digital currency holdings include mainstream coins, such as Bitcoin and Ethereum, and other illiquid, exotic coins. To assist with the liquidation of the crypto holdings, the Receiver retained a digital currency consultant, Marshall Swatt.

In his motion to retain Mr. Swatt, the Receiver provided Mr. Swatt’s qualifications and an explanation of his expected tasks. [D.E. 239]. The Court approved Mr. Swatt’s retainer on October 15, 2019. [D.E. 240]. From on or about November 11, 2019 to December 31, 2019, Mr. Swatt worked with the Receiver’s professionals and other third parties to strategically liquidate the digital currency holdings, converting them into U.S. dollars. During that time, Mr. Swatt and the Receiver liquidated approximately \$290,000 in crypto currency. To facilitate the liquidation, the Receiver created an account at Coinbase. Coinbase is a large, well-known, and respected digital currency

exchange based in the United States. Mr. Swatt: (1) converted Bitcoin and Ethereum into U.S. dollars using the Receiver's Coinbase account; and (2) converted illiquid or lesser known coins first into Bitcoin or Ethereum, and then into U.S. dollars, using the Coinbase account. To date, the Receiver has recovered approximately 41% of the funds invested by BRR Block. Given the volatility of these markets, the Receiver determined that an orderly liquidation was in the best interests of the Receivership Estate.⁴

About \$15,000-\$20,000 in other digital currencies remain to be liquidated, but there is either no market for those more exotic currencies or they are located on foreign exchanges that do not accept U.S. customers and have frozen the relevant exchange accounts.

E. Claims Process

The Receiver filed a motion for approval of a claims process on November 30, 2019. [D.E. 244]. The Court approved the proposed claims process on December 4, 2019 (the "Claims Order"). [D.E. 245]. Pursuant to the Claims Order, potential claimants had until March 3, 2020 (the "Bar Date") to submit proof of claim forms and related documents to the Receiver. Approximately seven claims were submitted to the Receiver.⁵ One of the seven claims accounts for approximately 99% of the total claimed amount. The Receiver will keep claimants' identities anonymous unless and until he receives approval from each claimant to do otherwise.

Pursuant to the Claims Order, the Receiver has until approximately June 3 to make recommendations to the Court on the treatment of claims. Given the relatively few claims that were submitted, the Receiver will make every effort to file his recommendations before that time,

⁴ The Receiver's consultant is in the process of confirming that these losses were the result of a decrease in value of the currencies and not because there are funds remaining beyond the Receiver's knowledge.

⁵ One of the seven claims may have been submitted late. The Receiver is still in the process of determining whether that is the case.

although this process has been slowed initially given displacement and other challenges resulting from the coronavirus pandemic.

IV. BANK ACCOUNTS

In connection with his duty to marshal the Receivership's assets, the Receiver opened Receivership bank accounts at BankUnited. The following is a list of bank accounts and their corresponding balances:⁶

Jon Sale as Receiver for Bright Smile Financing, LLC	\$4,901,197.39
Jon Sale as Receiver for Ganador Enterprises LLC	\$1,263,530.00
Jon Sale as Receiver for BRR Block Inc.	\$591,397.49
<u>Jon Sale as Receiver for Digi South LLC</u>	<u>\$154,071.53</u>
TOTAL	\$6,910,196.41

V. ASSET IDENTIFICATION

A. Bright Smile

As explained in the Receiver's prior reports, the Receiver sold Bright Smile's assets to Buyers, which sale was approved by the Court on February 20, 2019. The Receiver has investigated whether there are any additional claims or other sources of recovery available as it relates to Bright Smile. Currently, the Receiver does not believe there are any additional claims or other sources of recovery related to Bright Smile.

B. Ganador

As explained in the Receiver's prior reports, in December 2018, the Receiver settled claims that Ganador had against Unified and Techmark, two entities to which it transferred a total of approximately \$5.8 million. The Ganador Settlement was approved by the Court on December 27, 2018. [D.E. 124]. The Receiver's motion to approve an amendment to the Ganador Settlement is

⁶ The account balances are as of the afternoon of March 20, 2020.

pending before the Court. Currently, the Receiver does not believe there are any additional claims or other sources of recovery available related to Ganador.

C. BRR Block

As explained above, the Receiver has liquidated the most of the Receivership's digital currency holdings, which were purchased using funds from BRR Block. The Receiver retained a digital currency consultant to assist with the liquidation, as approved by the Court on October 15, 2019 [D.E. 240]. The Receiver is strategizing with the consultant to determine the most effective means of liquidating the remaining crypto currencies, valued at approximately \$15,000-\$20,000.

D. Digi South

The Receiver's professionals continue to investigate Digi South to identify other possible sources of recovery for the benefit of the Receivership Estate. The Receiver has obtained tolling agreements from several entities that received transfers from Digi South, which are included within the Tolled Entities. The Receiver is actively engaged in settlement negotiations with one of these Tolled Entities, which received approximately \$250,000 from Digi South. The Receiver continues to negotiate and exchange information with this Tolled Entity, and believes the decision whether to file an action will be made within the next several months, well before expiration of the tolling agreement.

In addition, as described above, on August 23, 2019, the Receiver filed a lawsuit against Ferrari Financial Services, Inc. for recovery of fraudulent transfers the Receiver contends it received from Digi South.

E. Media Pay

The Receiver's professionals continue to investigate Media Pay and review related documents to locate other possible sources of recovery for the benefit of the Receivership Estate.

The Receiver has obtained tolling agreements from several entities that received funds from Media Pay, which are included within the Tolled Entities. The Receiver believes the decision whether to file actions against these entities will be made within the next several months, well before the expiration of the tolling agreements.

In addition, as described above, on February 19, 2020, the Receiver filed a lawsuit against Jumbleberry for recovery of fraudulent transfers the Receiver contends were made by Media Pay.

F. Pay Now

As explained in the Receiver's prior reports, there are no remaining assets related to Pay Now. Pay Now never had any business operations and was only used to pay Defendant Ruderman's personal and family expenses including his mortgage and condominium related fees. Pay Now had a bank account at Bank of America, which was closed in early August 2018 before the Receiver's appointment. The bank account contained approximately \$2,348.00, which funds were transmitted by 1 Global representatives to the Receiver after the Receiver's appointment. The cash is currently held in a lockbox by the Receiver's counsel. The Receiver will transfer those funds to the Pay Now Receivership account at Bank United that was recently opened.

The Receiver's professionals continue to investigate Pay Now and review related documents to locate other possible sources of recovery for the benefit of the Receivership Estate, including records made available to the Receiver by 1 Global. The Receiver has obtained tolling agreements from several entities that received funds from Pay Now, which are included within the Tolled Entities. The Receiver is still in the process of determining whether to proceed with claims against these Tolled Entities but expects to make a decision within the next several months, well before the expiration of the tolling period.

In addition, as described above, on August 23, 2019, the Receiver filed several lawsuits for recovery of funds the Receiver contends were the subject of fraudulent transfers made by Pay Now, including complaints against: (1) Bank of America, N.A.; (2) J.P. Morgan Chase Bank, N.A.; (3) J.P. Morgan Chase Bank, N.A.; (4) Citibank, N.A.; (5) Mercedes Benz Financial Services, USA, LLC; and (6) American Express Company.

G. The Ruderman Family Trust and Bright Smile Trust

The Receiver's professionals continue to investigate the Ruderman Family Trust and Bright Smile Trust, and to review related documents to locate other possible sources of recovery for the benefit of the Receivership Estate. The Receiver does not anticipate that this will be a time consuming or expensive process and does not believe that his efforts in this regard will be duplicative of the efforts of the SEC and 1 Global. The Receiver will work with them to avoid duplication of claims and efforts wherever possible. Currently, the Receiver does not believe there are any additional claims or other sources of recovery available as it relates to the Ruderman Family Trust and Bright Smile Trust.

H. Witness Interviews

The Receiver and his counsel continue to interview witnesses, who have only recently been made available, to determine whether there are any additional sources of recovery that could benefit the Receivership Estate.

VI. FEES AND COSTS

The Receiver and his team are especially cognizant of the impact their professional fees have on the return of monies to defrauded investors. The Receiver and his team have worked diligently through complex issues to maximize recoveries while billing at substantially discounted rates. In addition, the Receiver has sought to work collaboratively with the SEC and 1 Global in

sharing information, identifying recovery sources and targets, and reducing duplication of efforts. Thus far, the Receiver has utilized his and his team's collective experience to avoid costly litigation while also securing cash recoveries. In certain instances where litigation has become necessary, the Receiver has obtained counsel to pursue those claims under a contingency fee agreement, where such counsel only receives payment for fees if there is a recovery to the Receivership Estate.

CONCLUSION

The foregoing is a summary of the Receiver's and his retained professionals' activities during the Reporting Period. Further information is available upon request. The Receiver will be filing additional reports with the Court on a quarterly basis, as required by the Receivership Order.

Dated: April 1, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 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.

s/Daniel S. Newman

Daniel Newman

SERVICE LIST

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