

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 FIRST 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 Bright Smile Trust (the "Receivership Entities"), respectfully submits this First Report covering the period of August 23, 2018 through November 12, 2018 (the "Reporting Period").

**I. 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 “Receivership Order”).<sup>1</sup> [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: (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, ¶¶ 1-2.]

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

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<sup>1</sup> The Court later expanded the Receivership over the Ruderman Family Trust and Bright Smile Trust, on November 21, 2018, and the Receivership Order is controlling over them as well. [D.E. 115.]

## **II. PRELIMINARY STEPS**

### **A. Retention of Professionals**

Shortly after his appointment, the Receiver sought approval to retain Nelson Mullins Broad and Cassel (“NMBC”) to act as his legal counsel, [D.E. 31], and Kapila Mukamal (“Kapila”) as his accountants and financial advisors, [D.E. 55], both of which the Court approved, [D.E. 33; D.E. 56]. Kapila assists the Receiver and his counsel in various capacities, including, but not limited to, providing forensic accounting services to assist in locating and recovering assets, analyzing relevant books and records, assisting with potential business transactions, assisting with operation of ongoing business functions, and assisting with tax and compliance issues. NMBC and Kapila are working at discounted rates to minimize the impact of their professional fees on Receivership assets and to maximize distribution to creditors.

### **B. Coordination with the SEC**

Immediately after his appointment, and in the days and weeks that followed, the Receiver and his professionals coordinated closely with the SEC to identify assets already in the possession of the Receivership Entities, to identify potential assets for recovery, to obtain background information on the Receivership Entities, to obtain contact information for relevant non-party individuals and entities, and to learn more about the alleged fraud and the Receivership Entities’ activities. The Receiver and his professionals also coordinated with the SEC on issues related to the Freeze Order, [D.E. 13], including identifying individuals and entities that needed to be sent copies of the Freeze Order (as described in Section III).

The Receiver and the SEC coordinated for the preliminary injunction hearing originally scheduled for September 7, 2018. [D.E. 13.] The Receiver was set to testify as a witness at that hearing and spent considerable time preparing for that testimony, reviewing the SEC’s filings,

reviewing other documents, and meeting with SEC. The hearing was rescheduled for September 20, 2018, [D.E. 40], but was ultimately rendered moot as a result of an agreement between the parties, [D.E. 76].

**C. Coordination with Counsel for 1 Global and 1 West**

The Receiver and his professionals coordinated with counsel for Defendant 1 Global and Relief Defendant 1 West; 1 Global and 1 West's chief restructuring officer, James Cassel; and 1 Global and 1 West's financial advisors, Development Specialists, Inc. 1 Global and 1 West are not under Receivership. On July 27, 2018, prior to the SEC's filing this action and the appointment of the Receiver, 1 Global and 1 West filed for bankruptcy in the cases styled *In re 1 Global Capital LL*, Case No. 18-19121-RBR, and *In re 1 West Capital LLC*, Case No. 18-19122-RBR, both pending and being jointly administered in the U.S. Bankruptcy Court in the Southern District of Florida (the "Bankruptcy Case"). 1 Global possesses and controls many documents related to the Receivership Entities, and many of the Receivership Entities were run out of 1 Global's office prior to the Bankruptcy Action and the Receiver's appointment. To date, counsel for 1 Global and 1 West have cooperated with the Receiver's counsel and undertaken efforts to allow the Receiver access to the documents he requires to fulfill his obligations. The Receiver and his professionals have similarly cooperated in providing requested information. There is a general understanding that the Receiver and the professionals for 1 Global and 1 West are all seeking to recover assets for the benefit of the substantially same creditors.

**D. Contacts with Counsel for Carl Ruderman**

The Receiver and his professionals spoke with counsel for Defendant Carl Ruderman several times. The Receiver sought access to documents and information believed to be in Ruderman's possession, custody, and control. While Ruderman's counsel maintained a putatively

cooperative posture, the discussions ultimately proved fruitless. While Ruderman's counsel answered some of the Receiver's basic questions, neither Ruderman nor his counsel have provided the Receiver with any documents or critical information. Moreover, Ruderman declined to provide a proffer or follow any other suggested protocol that would allow him to maintain his Fifth Amendment protections and still provide the Receiver with information fundamental to the Receiver's administration of the Receivership Estate.

#### **E. Securing Bright Smile's Office and Information**

Bright Smile is the only Receivership Entity that had ongoing, daily business operations at the time of the Receiver's appointment.<sup>2</sup> Bright Smile was and still is operating out of an office on the tenth floor of the same building where 1 Global operates in Hallandale Beach, Florida. Immediately after his appointment, the Receiver began preparations to secure the office and image all of the documents and information available in Bright Smile's office for preservation purposes.

On August 24, 2018, the Receiver's counsel went to the Bright Smile office. There were no employees at the office, although workstations, computers, and other electronic devices appeared largely undisturbed. The Receiver's counsel took pictures of the office space, inventoried computers and other electronics, and spoke at length with 1 Global's representatives. In speaking with those representatives, the Receiver's counsel learned that 1 Global's IT team controlled Bright Smile's office space, including physical security and data security. The Receiver's counsel directed 1 Global's representatives to shut down all outside access to Bright Smile's systems and to change the electronic door locks to prevent entry to the office, except for entry by the Receiver and his counsel.

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<sup>2</sup> This First Report discusses Bright Smile's operations and assets in further detail below. *Infra* at Section III(C). Bright Smile was in the business of making loans for consumers to receive dental and cosmetic procedures. [D.E. 79, ¶ 94.]

During the Receiver's efforts to secure Bright Smile, Ms. Jeanne Canigiani, Bright Smile's director of operations, came to the office. She informed the Receiver's counsel that John Snead, Bright Smile's President, having heard of the Receivership, instructed all employees to not go into work that morning. Mr. Snead also told Ms. Canigiani to go to the office and to help the Receiver's counsel as necessary. The Receiver's counsel spoke briefly with Mr. Snead on the phone, during which time Mr. Snead reiterated that Ms. Canigiani was there to assist the Receiver's counsel in securing the office and to answer any questions they may have.

Ms. Canigiani explained to the Receiver's counsel the current status of Bright Smile's business, which was focused solely on collecting outstanding loans. Ms. Canigiani told the Receiver's counsel that Bright Smile had not made any new loans since 1 Global's bankruptcy. Ms. Canigiani also explained Bright Smile's business model to the Receiver, to the best of her knowledge, and demonstrated some of Bright Smile's computer programs.

In the course of their discussions with Ms. Canigiani, the Receiver's counsel learned that Bright Smile had approximately \$14 million<sup>3</sup> in loans outstanding, which needed to be collected to preserve their value. The Receiver's counsel took immediate steps to ensure collections would restart as soon as possible. Anticipating that collections efforts would require a team of employees working under the Receiver's supervision, the Receiver's counsel asked Ms. Canigiani for a list of employees sufficient to continue collections going forward. Ms. Canigiani provided the Receiver's counsel with a list of approximately 10 Bright Smile employees capable of continuing collections. The Receiver's counsel arranged for Ms. Canigiani and these employees to restart collections the following Monday, August 27, 2018, to preserve the value of the loan portfolio.

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<sup>3</sup> As noted in Section III(C), the Receiver's professionals believe that a substantial amount of this money is uncollectible.

As noted, the Receiver's counsel also began the process of imaging Bright Smile's electronic information and documents. Having turned off all outside access to Bright Smile's documents, the Receiver arranged for FTI Consulting<sup>4</sup> to begin mirroring Bright Smile's server, Bright Smile's computers, and all other accessible electronic information on the following Monday, August 27, 2018.

On Monday, August 27, 2018, the Bright Smile personnel identified by Ms. Canigiani restarted collections. At the same time, FTI Consulting began the process of preserving Bright Smile's documents and information. FTI Consulting completed its preservation efforts several days later. Bright Smile's collections operations continue to this day, as monitored by the Receiver and his professionals.<sup>5</sup>

### **III. ASSET IDENTIFICATION**

Immediately after the Court appointed the Receiver, the SEC sent correspondence and served orders on numerous individuals and entities in order to freeze the Defendants' assets and prevent dissipation.<sup>6</sup> Within days of being appointed, the Receiver's counsel issued additional correspondence, copies of the Court's orders, and subpoenas to individuals and entities, demanding records and the freezing of any assets related to the Receivership Entities. The Receiver's correspondence directed that, consistent with the Receivership Order, all assets be placed under the Receiver's control.

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<sup>4</sup> 1 Global retained FTI Consulting, a forensic data collection vendor, to perform similar services on the 1 Global server, which is the server that housed Bright Smile's data. As such, to maximize efficiency and minimize costs to the Receivership Estate, the Receiver elected to retain FTI Consulting for this task, as the firm was already familiar with the server that housed Bright Smile's data.

<sup>5</sup> As described in Section VI, the Receiver has discussed the potential sale of Bright Smile's assets to Mr. Snead.

<sup>6</sup> The SEC's efforts were extremely beneficial to the Receivership Entities.

The Receiver's counsel also filed copies of the Receivership Order in 70 jurisdictions where Receivership property or claims were believed to exist, in order to preserve the Receiver's right to pursue property and claims in those jurisdictions.

The Receiver and his counsel continue to identify individuals and entities that may be in possession of Receivership assets or critical information. As necessary, the Receiver's counsel subpoenas these individuals and entities. Included in Section III(B) of this First Report is a list of many of the individuals and entities from whom the Receiver has requested documents. Upon receipt, these documents are analyzed by the Receiver's professionals.

The Receiver established a website ([www.1globalreliefdefendants.com](http://www.1globalreliefdefendants.com)) to provide updates to investors about developments in the Receivership, to post documents that have been filed with the Court, and to provide the Receiver's telephone number and address to anyone with information that may be helpful to the Receiver in carrying out his obligations under the Receivership Order.

#### **A. Bank Accounts**

Upon entry of the Freeze Order and transmittal of same to various institutions, the following accounts related to the Receivership Entities were frozen:<sup>7</sup>

##### Bank of America

Ganador Enterprises, LLC, ending in 046	\$0
Digi South, LLC, ending in 659	\$0
Digi South, LLC, ending in 662	\$0
Digi South, LLC, ending in 675	\$0
Digi South, LLC, ending in 505	\$154,122.13 <sup>8</sup>

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<sup>7</sup> The below account balances are as of the morning of November 7, 2018.

<sup>8</sup> The Receiver has not moved these funds into a Receivership account but has confirmed the funds and the account are frozen.



Pay Now Direct LLC, ending in 771	\$0 <sup>9</sup>
Bright Smile Financing, LLC, ending in 714	\$0
Ruderman Family Trust, ending in 733	\$0
Media Pay LLC, ending in 154	\$0
 <u>City National Bank</u>	
Bright Smile Financing, LLC, ending in 867	\$0 <sup>10</sup>
 <u>Bridge Bank<sup>11</sup></u>	
Bright Smile Financing, LLC, ending in 343	\$534,010.36 <sup>12</sup>
Bright Smile Financing, LLC, ending in 835	\$0 <sup>13</sup>
Bright Smile Financing, LLC, ending in 484	\$3,008,500.67 <sup>14</sup>
 <u>JP Morgan Chase</u>	
BRR Block Inc., ending in 673	\$0 <sup>15</sup>

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<sup>9</sup> There was \$2,348.00 in this account when it was closed in early August 2018, before the Receiver’s appointment. Those funds were transmitted by 1 Global’s representatives to the Receiver, in cash, after the Receiver’s appointment. The Receiver’s counsel is currently holding the cash in a lockbox.

<sup>10</sup> City National Bank informed the Receiver that this account was overdrawn. The bank covered the overdrawn amount and closed the account in October 2018.

<sup>11</sup> Also known as “Western Alliance Bank.”

<sup>12</sup> Given Bright Smile’s continuing operations, the balance fluctuates daily. This operating account receives incoming funds from collections and pays funds necessary to keep the business operational, including customer refunds, monies for payroll, and payments to vendors. Since the Receiver’s appointment, approximately \$600,000 has been transferred out of this account and into the Bright Smile Receivership account at Bank United.

<sup>13</sup> This account was closed after the Receiver’s appointment, and the funds, totaling approximately \$50,000, were transferred into Bright Smile’s operating account at Bridge Bank (account ending in 343).

<sup>14</sup> In order to continue using Bridge Bank as its ACH processor, Bridge Bank required that Bright Smile keep \$3,000,000 in cash collateral in this account.

<sup>15</sup> Upon the Receiver’s appointment, this account contained \$300,764.99. Those funds were transferred to the BRR Block Receivership account at Bank United.

In connection with his duty to marshal the Receivership's assets, the Receiver opened Receivership bank accounts at Bank United in August and September 2018. Currently, the Receiver holds the following funds in those accounts:

Jon Sale as Receiver for Bright Smile Financing, LLC	\$597,765.57
Jon Sale as Receiver for Ganador Enterprises LLC	\$0
Jon Sale as Receiver for BRR Block Inc.	\$300,764.99

## **B. Subpoenas and Other Document Requests**

The Receiver served the Freeze Order, the Receivership Order, informal document requests, and subpoenas on numerous individuals and entities since his appointment, including but not limited to: (i) Blake Ruderman; (ii) Svetlana Ruderman; (iii) Valentina Radchuk; (iv) Oscar Rodriguez; (v) Jesus Diaz; (vi) Darice Lang; (vii) Richard Samuels; (viii) several lawyers and law firms; and (ix) several financial institutions.<sup>16</sup> To date, tens of thousands of documents have been produced in response to the Receiver's requests, all of which the Receiver's professionals are in the process of reviewing and analyzing.<sup>17</sup>

## **C. Bright Smile**

Bright Smile is owned by the Bright Smile Trust. Defendant Ruderman, the grantor of the Bright Smile Trust, granted ownership of Bright Smile to the Bright Smile Trust when the trust was created. Emails and other documents the Receiver and his professionals have reviewed suggest that Defendant Ruderman controlled Bright Smile and made decisions about its funding, including

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<sup>16</sup> Blake Ruderman is associated with BRR Block, a Receivership Entity; Svetlana Ruderman is Carl Ruderman's wife; Valentina Radchuk is associated with the Ruderman Family Trust, the Bright Smile Trust, and Media Pay, all Receivership Entities, among others; Oscar Rodriguez and Jesus Diaz are affiliated with Ganador, a Receivership Entity; Darice Lang is affiliated with 1 Global and Pay Now, a Receivership Entity, among others; Richard Samuels is affiliated with 1 Global, among others.

<sup>17</sup> The Receiver is using Encompass to host and review the documents. Encompass is owned by NMBC.

the decision for 1 Global to transfer over \$15 million to Bright Smile. [D.E. 79, ¶ 94; D.E. 8-3 at pp. 8-9.]<sup>18</sup>

The Receiver and his professionals are still in the process of analyzing Bright Smile's business. The following is a general summary.

Bright Smile made loans for consumers to receive various dental and cosmetic procedures. These loans averaged from \$3,000 to \$4,000, but did not exceed \$10,000, and were for terms no longer than 24 months. Most borrowers make monthly payments on the loans through ACH transactions. Bright Smile's loans are generally considered to be subprime; they are largely made to risky borrowers with below average credit scores.

During their initial visit to the Bright Smile office, the Receiver's counsel requested a loan aging report for the Receiver's accountants to review. 1 Global's and Bright Smile's staff provided the aging report, among other documents, to the Receiver's professionals, who then began to determine the loan portfolio's value. In basic terms, the aging report and other documents revealed that Bright Smile had a loan portfolio totaling approximately \$14 million, of which approximately \$6 million was "performing" and active. The remaining approximately \$8 million was classified as "non-performing," and the Receiver was informed by Bright Smile staff that collection of those funds was doubtful given the subprime nature of the loans, the length of delinquency, and historical experience. Based on discussions with his accounts, the Receiver believes that is the case. Based on other calculations and historical trends, the Receiver's professionals determined that some percentage of the \$6 million that was performing would fall into the non-performing classification over time and become uncollectible.

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<sup>18</sup> This comes in part from the Receiver's review of the allegations in the SEC's Amended Complaint.

Given the nature of the portfolio, Bright Smile's timely collection efforts are of critical importance to maintain the loan portfolio's value for the benefit of the Receivership Estate. For this reason, the Receiver and his professionals made the determination to keep Bright Smile operational and to employ a staff of people capable of performing collections, as described above in Section II(E). The Receiver and his professionals monitor Bright Smile's collections and are in daily contact with Bright Smile's director of operations and President, both of whom oversee day-to-day operations.

In addition to the value of the loan portfolio, Bright Smile's other assets include: (i) the funds in its operating account and cash collateral account at Bridge Bank, the latter of which totals approximately \$3,000,000; and (ii) the funds already transferred to the Bright Smile Receivership account at Bank United, totaling approximately \$600,000.

#### **D. Ganador**

According to Ganador's operating agreement, the Ruderman Family Trust<sup>19</sup> owns 50% of the company, and Jesus Diaz and Oscar Rodriguez each own 25% of the company. Emails and other documents the Receiver and his professionals have reviewed suggest that Defendant Ruderman controlled Ganador and made decisions about its funding, including the decision for 1 Global to transfer over \$5 million to Ganador. [D.E. 79, ¶ 13.]

Ganador used most if not all of the funds it received from 1 Global to fund and make loans to two entities: Unified Analytics, LLC ("Unified") and National Techmark Inc. ("Techmark"), which are owned by Jesus Diaz and Oscar Rodriguez, respectively. Ganador sent approximately \$2 million to Unified and \$3.8 million to Techmark pursuant to two separate promissory notes.

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<sup>19</sup> As mentioned, the Receiver has moved to expand the Receivership over the Ruderman Family Trust. [D.E. 98.]

Based on information available to the Receiver to date: (i) the approximately \$2 million sent to Unified appears to have been used to pay overhead, develop software processes, and cover other expenses related to a short term consumer lending business with a Native America tribe; and (ii) the approximately \$3.8 million sent to Techmark appears to have been loaned to a Native American Tribe to fund the actual consumer loans themselves. Short term consumer loans are generally subprime and high interest.

Based on the analysis conducted by the Receiver's professionals to date, the monies owed by Techmark to Ganador under the approximately \$3.8 million promissory note may be collectible. Presumably, these funds, unlike those used by Unified for overhead and other startup costs, can be tied to outstanding payday loans associated with the Native American tribe. Although, actually proceeding with collections against the Native American Tribe may be more challenging given sovereign immunity protections.

As described below in Section V, subject to the Receiver's continued analysis and investigation, the Receiver intends to seek Court approval of a proposed settlement with Unified and Techmark, which would result in a substantial recovery for the benefit of the Receivership Estate. In the event the settlement is not approved by the Court, the Receiver's professionals are in the process of analyzing the recoverability of the funds owed by Techmark, as well as possible claims against Unified and Techmark, among others.

#### **E. BRR Block**

Corporate records reflect that Blake Ruderman, Defendant Ruderman's son, is BRR Block's sole officer and director. Emails and other documents the Receiver and his professionals have reviewed suggest that Defendant Ruderman made decisions regarding BRR Block's funding,

including the decision for 1 Global to transfer approximately \$1 million to BRR Block. [D.E. 70, ¶ 96.]

Shortly after his appointment, the Receiver's counsel met with Blake Ruderman at NMBC's office in Miami, Florida. Blake Ruderman informed the Receiver's counsel that he owns BRR Block, and he used the \$1 million received from 1 Global to invest in digital (crypto) currencies. At the meeting, Blake Ruderman provided the Receiver with: (i) an LG cellphone, which is programmed to access the cryptocurrency accounts controlled by BRR Block; (ii) spreadsheets and ledgers reflecting the amounts, locations, exchanges, prices, and values of the digital currencies BRR Block invested in; (iii) passcodes and other information necessary to access the digital currencies; (iv) contact information for individuals with knowledge of the digital currencies; and (v) trade histories for digital currencies that had already been sold.

Other than the purchase of digital currencies, BRR Block did not have any business operations. Digital currencies are subject to an extremely volatile market, and their values fluctuate rapidly. Blake Ruderman provided information reflecting that the digital currencies he had purchased declined in value by over 50% by the time the Receiver was appointed. The Receiver intends to seek expert assistance in cryptocurrency to maximize value from the Receivership's cryptocurrency holdings. In addition to the value of the digital currencies, BRR Block had a bank account at JPMorgan Chase containing approximately \$300,000 in cash. Those funds were transferred into the BRR Block Receivership account at Bank United.

#### **F. Digi South**

Digi South is owned by the Ruderman Family Trust and used the same address as 1 Global. [D.E. 79, ¶ 15.] Documents the Receiver and his professionals have reviewed suggest that

Defendant Ruderman controlled Digi South and made decisions regarding Digi South's funding, including the decision for 1 Global to transfer approximately \$800,000 to Digi South. *Id.*

Upon his appointment, the Receiver froze Digi South's bank accounts at Bank of America. Three of the four accounts had zero balances, but one of the accounts still holds over \$150,000 in cash. The Receiver has confirmed that account is frozen. The Receiver will transfer those funds to a Digi South Receivership account at Bank United once an account is opened.

The Receiver's professionals continue to investigate Digi South and review related documents in an effort to locate other possible avenues of recovery for the benefit of the Receivership Estate.

#### **G. Media Pay**

Corporate records reflect that Media Pay's manager was Defendant Ruderman's sister-in-law, Valentina Radchuk. The company was formed in January 2015 and administratively dissolved in September 2016. Documents the Receiver and his professionals have reviewed suggest that Defendant Ruderman controlled Media Pay and made decisions regarding Media Pay's funding and use of funds, including the decision for 1 Global to transfer approximately \$650,000 to Media Pay. *Id.*

Based on the Receiver's investigation to date, there are no remaining assets related to Media Pay. Media Pay's bank account at Bank of America had a zero balance at the time of the entry of the Freeze Order. The Receiver's professionals continue to investigate Media Pay and review related documents in an effort to locate other possible avenues of recovery for the benefit of the Receivership Estate.

#### **H. Pay Now**

The only person associated with Pay Now in its corporate records is Darice Lang, 1 Global's former operations manager. The corporate records also reflect that Ms. Lang used the 1 Global office address for Pay Now's contact information. Documents the Receiver and his professionals have reviewed suggest that Defendant Ruderman controlled Pay Now and made decisions regarding Pay Now's funding and use of funds, including the decision for 1 Global to transfer, directly and indirectly, over \$5 million to Pay Now. [D.E. 79, ¶ 17.]

Based on the Receiver's investigation to date, there are no remaining assets related to Pay Now, Pay Now never had any business operations, and Pay Now was used to pay Defendant Ruderman's personal 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, in cash, 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 a Pay Now Receivership account at Bank United once an account is opened.

The Receiver's professionals continue to investigate Pay Now and review related documents in an effort to locate other possible avenues of recovery for the benefit of the Receivership Estate.

#### **IV. PROTECTION OF BRIGHT SMILE'S ASSETS AND CONFLICT WITH BRIDGE BANK**

Bright Smile's primary banking relationship is with Bridge Bank. In connection with that relationship, Bridge Bank also provides Bright Smile with critical ACH processing services. Bright Smile relies on Bridge Bank's ACH processing for most of the payments it receives on outstanding loans. The availability of ACH processing is critical to the continued preservation of Bright



Smile's multi-million dollar loan portfolio, which appears to be the most significant Receivership asset.

Since the Receiver's appointment, Bright Smile has had several conflicts with Bridge Bank related to its bank accounts and ACH processing. The Receiver has spent an extraordinary amount of time and professional fees ensuring that Bright Smile's loan portfolio is not destroyed by the loss of ACH processing, untimely ACH processing, and other actions taken and threatened by Bridge Bank in the wake of the Receivership. The following is a summary of the conflicts between the Receiver and Bridge Bank.<sup>20</sup>

First, upon receiving the Freeze Order, Bridge Bank blocked both incoming and outgoing transactions, such that Bright Smile could not receive loan payments in any of its Bridge Bank accounts. Bridge Bank refused to allow incoming payments to Bright Smile's accounts despite receiving the Freeze Order and the Receivership Order, the clear language in those orders, and Receiver's requests and directions to Bridge Bank to open the accounts to such payments. Bridge Bank demanded clarification from the Court that the Receivership Order and Freeze Order allowed it to accept incoming payments. Bridge Bank's actions cause significant delays in ACH processing and threatened the value of the loan portfolio. Upon the Receiver's motion, on August 29, 2018, the Court entered an order clarifying the Freeze Order and directing Bridge Bank to take direction from the Receiver with respect to Bright Smile's accounts and any issue necessary for the Receiver to carry out his duties (the "Clarification Order"). [D.E. 28.]

Second, despite the clear mandates of the Clarification Order, and the Freeze Order and Receivership Order before it, Bridge Bank refused to process ACH transactions that had backed up while it was not permitting incoming payments into Bright Smile's accounts, once again putting

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<sup>20</sup> These conflicts are described in more detail in court filings. [D.E. 27; D.E. 35; D.E. 77.]

the value of the loan portfolio at substantial risk of loss. The Receiver was forced to file an emergency motion for an order to show cause why Bridge Bank should not be held in contempt of the Court's orders. [D.E. 35.] The Court granted the Receiver's request for emergency relief and ordered Bridge Bank to process backed up ACH transactions. [D.E. 41.]

Third, Bridge Bank requested the Court's blessing to terminate its relationship with Bright Smile and to keep possession and control of Bright Smile's \$3,000,000 collateral for an extended period of time after the relationship ends (the "Termination Motion"). [D.E. 77.] As explained in the Receiver's motion for extension of time to respond to the Termination Motion, [D.E. 82], the Receiver should not be required to respond until Bridge Bank fully complies with a subpoena the Receiver served upon it before the Termination Motion was filed. The Court agreed, granting the Receiver an extension of time to respond to the Termination Motion until seven (7) days after Bridge Bank certifies it has produced all documents responsive to the subpoena. [D.E. 84.] Notably, the Receiver is in negotiations with a new ACH processor. The Receiver submitted an application to the ACH processor on behalf of Bright Smile. If the Receiver successfully secures a new ACH processing relationship, it would moot much of the relief sought by Bridge Bank in the Termination Motion, but not Bridge Bank's demand to retain the \$3 million in cash collateral.

Finally, after all of this, and after months of allowing Bright Smile to refund overpayments to borrowers through its Bridge Bank account, Bridge Bank unilaterally stopped the practice and refused to allow refunds until the Receiver executed a new set of documents.

Bridge Bank's actions threatened and continue to threaten the value of the Bright Smile loan portfolio, a critical Receivership asset. The Receiver expended significant time and incurred significant attorneys' fees obtaining Court orders to preserve that asset.

**V. PROPOSED GANADOR SETTLEMENT**

On September 25, 2018, the Receiver and the Receiver’s professionals had an in-person meeting with Jesus Diaz—one of two beneficial owners of Unified and Techmark—and counsel for Unified and Techmark. During the meeting, as referenced earlier in this First Report, the Receiver and Mr. Diaz negotiated the material terms for the settlement of any potential claims the Receiver may have against Unified and Techmark. Among other things, the proposed settlement requires the payment of the sum of \$4,000,000 to the Receiver over time. The specific terms of the proposed agreement will be included in a forthcoming motion for Court approval of the settlement.

**VI. POTENTIAL BRIGHT SMILE SALE**

The Receiver and his professionals worked toward the potential sale of Bright Smile’s assets to its current President, John Snead. On September 25, 2018, the Receiver and the Receiver’s professionals had an in-person meeting with Mr. Snead and his counsel about the potential sale. Discussions with Mr. Snead and his counsel remain ongoing.

**VII. MISCELLANEOUS**

**A. Expansion of the Receivership**

On October 25, 2018, the Receiver moved to expand the Receivership over the Ruderman Family Trust and Bright Smile Trust (the “Expansion Motion”). [D.E. 98.] As explained in the Expansion Motion in greater detail, the Receiver believes, based upon his investigation and marshaling of assets, that the Receivership should be expanded over both trusts and any and all assets held in those trusts.<sup>21</sup>

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<sup>21</sup> Except for 1 Global and 1 West, which are owned by the Ruderman Family Trust and thus assets of that trust.

The Receiver had two primary reasons for the requested expansion. First, the trusts were substantially funded by proceeds derived from the fraudulent scheme sought to be remedied by the appointment of the Receiver. Second, the trusts ostensibly hold the ownership interests of certain Receivership Entities and, thus, absent expansion, individuals purporting to act for these trusts could take action inconsistent with the Receivership Order.

After no responses or objections were filed with respect to the Expansion Motion, the Court entered an order expanding the Receivership over the Ruderman Family Trust and Bright Smile Trust on November 21, 2018. [D.E. 115.]

### **B. Fees and Costs Incurred by Receiver and Retained Professionals**

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 to maximize recoveries while working at substantially discounted rates. Thus far, the Receiver has utilized his and his team's collective experience to avoid costly litigation while also securing cash recoveries. Any litigation that may become necessary will be described in future reports.<sup>22</sup>

### **C. Future Claims Process**

The Receiver is in the process of determining the scope of a potential claims process, whereby investors will receive proof of claims to be completed by a claims deadline that has not yet been established. Further information related to a claims process will be detailed in future reports.

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<sup>22</sup> On October 23, 2018, the Receiver was served with a civil complaint in a case styled *Jolie Plastic Surgery, Inc. v. Bright Smile Financing, LLC*, Case No. 2018-035469-CA-01 in the Eleventh Judicial Circuit in and for Miami Dade County. After the Receiver's counsel consulted with Plaintiff's counsel, explained the Receivership, and sent Plaintiff's counsel a copy of the Receivership Order, Plaintiff's counsel voluntarily dismissed the complaint.

**D. Consent Judgment**

On November 1, 2018, the SEC moved for entry of a consent judgment against the Receivership Entities. [D.E. 100.] The Court entered the consent judgment against the Receivership Entities the same day. [D.E. 101.] Pursuant to the Consent Judgment, the parties agree that any issues pertaining to disgorgement of the Receivership Entities will be determined by the Court, including the amount and manner any such disgorgement may be paid.

**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 continues to encourage investors and other non-parties who may be in possession of relevant information that is helpful to contact the Receiver or his counsel. The Receiver will be filing additional reports with the Court on a quarterly basis, as required by the Receivership Order.

Dated: November 30, 2018.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2018, 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.

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s/Daniel S. Newman

Daniel Newman

**SERVICE LIST**

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