

1 Andrew M. Greene (SBN 167386)  
agreene@mcnamarallp.com  
2 Cornelia J. B. Gordon (SBN 320207)  
cgordon@mcnamarallp.com  
3 McNamara Smith LLP  
655 West Broadway, Suite 900  
4 San Diego, California 92101  
Telephone: 619-269-0400  
5 Facsimile: 619-269-0401

6 *Attorneys for Receiver,*  
*Thomas W. McNamara*

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 INTERNET TRANSACTION  
SERVICES, INC., et al.,

15 Defendants.  
16  
17

Case No. 2:21-cv-06582-JFW (KSx)

**JOINT MOTION TO APPROVE  
SETTLEMENT AGREEMENT  
WITH NON-PARTY LINDEN J.  
FELLERMAN**

JUDGE: Hon. John F. Walter  
CTRM: 7A  
DATE: June 6, 2022  
TIME: 1:30 p.m.

18

19

20 The Court-appointed receiver, Thomas W. McNamara (“Receiver”) and  
21 non-party Linden J. Fellerman (“Fellerman”) jointly move the Court to approve a  
22 proposed settlement agreement (the “Settlement Agreement”), resolving a dispute  
23 arising from the provision of payment processing services for the Receivership  
24 Entities by Secure Payment Systems Inc. (the “Payment Processor”), of which  
25 Fellerman was formerly the majority shareholder (hereafter, Fellerman and the  
26 Payment Processor are jointly referred to as the “Settling Parties”). Pursuant to  
27 Section 5.1 of the Settlement Agreement, the Settling Parties and their corporate  
28 affiliates will jointly pay a total of Four Million, Two Hundred Thousand Dollars

1 (\$4,200,000.00) to the Receiver, provided the Court approves the Settlement  
2 Agreement.<sup>1</sup>

3         Shortly after his appointment, the Receiver began investigating the  
4 defendants' relationship with third parties, including the Settling Parties, which  
5 acted as a merchant processor for many of the defendants' entities. The Receiver  
6 obtained documents from the Settling Parties, interviewed witnesses, and  
7 conducted a thorough review of the communications between the Settling Parties,  
8 the defendants, and other third parties. Based on the results of the investigation, on  
9 February 22, 2022, the Receiver sent the Settling Parties a detailed demand letter  
10 outlining the Receiver's findings and attaching evidence supporting the Receiver's  
11 findings. The Receiver demanded the return of \$6,151,811.12, the amount paid by  
12 the Receivership Entities to the Payment Processor in fees. Counsel for the  
13 Receiver and the Settling Parties thereafter participated in extensive settlement  
14 negotiations and ultimately reached a settlement of the Receiver's claims.

15         If the parties had been unable to reach a settlement, the Receiver would have  
16 filed a lawsuit alleging various legal theories to recover the fees and for damages  
17 caused to the Receivership Entities. The Settling Parties would have vigorously  
18 defended these claims. The litigation would have resulted in significant expense  
19 and recovery risk to the Receivership Estate. Instead, after extensive negotiations  
20 and consideration of their respective legal positions, the parties reached a  
21 settlement, which provides a substantial benefit to the Receivership Estate without  
22 litigation risk and expense.

23  
24 <sup>1</sup> The parties are aware of Local Rule 7-3, however, they are currently unaware of  
25 any "opposing party" to this joint motion. On April 22, 2022, the Receiver  
26 nonetheless conferred with counsel for the United States of America who  
27 represented that they have no objections to the settlement. Further, on April 26,  
28 2022, the Receiver's counsel provided notice to all of the individual defendants  
(with the exception of Guy Benoit (who has never appeared and is believed to be in  
Cyprus) and Harold Sobel (who is incarcerated) of a telephone conference on April  
28, 2022 to discuss this motion. Only Defendant Edward Courdy attended the  
conference and he indicated he had no objection to this motion.

1           The Settling Parties and their corporate affiliates have now agreed to pay  
2 Four Million Two Hundred Thousand Dollars (\$4,200,000.00) to the Receiver,  
3 pending approval by this Court of the Settlement Agreement. Fellerman  
4 represents, and the Receiver has no information to the contrary, that the settlement  
5 amount exceeds the net profit earned by the Payment Processor in transactions  
6 associated with the Receivership Entities. Additionally, the \$4.2 million settlement  
7 amount takes into account the fact that the Payment Processor paid approximately  
8 \$1.8 million dollars to third parties in commissions from the funds it received from  
9 the Receivership Entities. None of these third parties are being released in the  
10 Settlement Agreement.

11           Further, pending the Court’s consideration of this motion, the settlement  
12 funds have been deposited into the client trust account of the Payment Processor’s  
13 counsel (Troutman Pepper Hamilton Sanders LLP (“Troutman”). If approval is  
14 granted, the Receiver will receive payment from Troutman’s client trust account  
15 within three days.

16           The proposed settlement represents a substantial and principled return of  
17 assets to the Receivership Estate that was only reached after extensive arms-length  
18 settlement negotiations. The Settlement Agreement contains a complete mutual  
19 release of claims between the parties which inures to the benefit of the Receiver,  
20 the Settling Parties, and Collections Acquisitions Company Inc. (which purchased  
21 the Payment Processor in February 2022, after the events at issue in the  
22 settlement).

23           The Settlement Agreement is attached as Exhibit 1 to the Declaration of  
24 Andrew M. Greene filed herewith.

25           This settlement reflects a fair compromise of the Receiver’s claims against  
26 the Settling Parties and was reached after protracted arms-length negotiations  
27 between counsel for the parties. The settlement also reflects the careful

28 ///

1 considerations of the claims and defenses and avoids the risk and expense of  
2 litigation.

3 For the reasons set forth above, the Receiver and Fellerman hereby jointly  
4 ask that the Court issue an order approving the Settlement Agreement.


5 Dated: May 2, 2022

Dated: May 2, 2022

6 MCNAMARA SMITH LLP

GLASER WEIL LLP

7  
8 By: /s/ Andrew M. Greene  
9 Andrew M. Greene  
10 655 West Broadway, Suite 900  
11 San Diego, California 92101  
12 Tel.: 619-269-0400  
13 Fax: 619-269-0401  
14 agreene@mcnamarallp.com  
15 *Attorneys for Receiver,*  
16 *Thomas W. McNamara*

By:   
17 Michael Cypers  
18 10250 Constellation Blvd.  
19 19th Floor  
20 Los Angeles, CA 90067  
21 Main: 310-553-3000  
22 Direct: 310-556-7885  
23 Fax: 310-843-2685  
24 mcypers@glaserweil.com  
25 *Attorneys for Linden J. Fellerman.*

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28