

O

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 **SECURITIES AND EXCHANGE**  
12 **COMMISSION,**

13 Plaintiff,

14 v.

15 **BRADLEY L. RUDERMAN;**  
16 **RUDERMAN CAPITAL**  
17 **MANAGEMENT, LLC; RUDERMAN**  
18 **CAPITAL PARTNERS, LLC; and**  
19 **RUDERMAN CAPITAL PARTNERS A,**  
20 **LLC,**

21 Defendants.

Case No. 2:09-cv-02974-ODW(JCx)

**ORDER GRANTING PETITION**  
**FOR APPROVAL OF**  
**SETTLEMENT [153]**

22 **I. INTRODUCTION**

23 David Ray, as the appointed Receiver for the Ruderman Capital Defendants,  
24 petitions the Court to approve a settlement reached with American Express Company  
25 and American Express Travel Related Services Company, Inc. (collectively  
26 “American Express”). (ECF No. 153.) Plaintiff Securities and Exchange  
27 Commission has not submitted an opposition to the Receiver’s petition. Having  
28 carefully considered the papers the Receiver filed in support of its Petition, the Court  
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78;  
L. R. 7-15. The Court finds the Receiver has met his burden of demonstrating that the  
proposed settlement falls within the range of reasonableness and was negotiated in

1 good faith. Accordingly, the Court **GRANTS** the Receiver’s Petition for Approval of  
2 Settlement.

## 3 **II. FACTUAL BACKGROUND**

4 On April 28, 2009, the Securities and Exchange Commission filed a Complaint  
5 against Bradley Ruderman; Ruderman Capital Management, LLC (“RCM”);  
6 Ruderman Capital Partners, LLC (“RCP”); and Ruderman Capital Partners A, LLC  
7 (“RCP-A”). (ECF No. 1.) The SEC alleged that Ruderman engaged in a scheme to  
8 defraud investors by offering investment materials through RCM to secure  
9 investments in the hedge funds RCM and RCP-A, which allegedly would never have  
10 been repaid. (*Id.*)

11 On May 7, 2009, based on the SEC’s request and Defendants’ consent, the  
12 Court entered a permanent injunction and appointed David L. Ray as receiver of  
13 RCM, RCP, and RCP-A. (ECF Nos. 25, 31.) On August 31, 2009, the Court  
14 subsequently entered default as to Defendants RCM, RCP, and RCP-A for failure to  
15 obtain counsel. (ECF No. 59.) Additionally, on motion of the Receiver and  
16 stipulation of bankruptcy trustee for RCP, the Court (1) terminated the duties of the  
17 Receiver as to RCP; and (2) required advance approval of acts falling outside of  
18 Section IV ¶ C of the May 7, 2009 Injunction. (ECF No. 31.) Section IV ¶ C  
19 permitted investigation and discovery to account for all assets of Defendants. (ECF  
20 No. 59.) The Court also permitted the Receiver to retain attorneys for purposes of  
21 Section IV ¶ C. (*Id.*)

22 On September 9, 2009, the Court entered an Order modifying the Receiver’s  
23 duties so as to be consistent with the Receiver’s stipulation with the Trustee. (ECF  
24 No. 62.) As a result, the Receivership Estate currently consists of RCM and RCP-A  
25 only. (*Id.*) Subsequently, on September 2, 2010, the Court entered an Order  
26 permitting the Receiver to retain legal counsel to investigate and pursue all viable  
27 claims and avoidance actions of the Receivership Estate, but required the Receiver to

28 ///

1 obtain additional approval on the terms and conditions for which counsel was to be  
2 retained. (ECF No. 105, at 2.)

3 With respect to American Express, the Receiver asserts that Ruderman used  
4 funds obtained from investors held in an RCM account to make payments to  
5 American Express on certain outstanding charges incurred primarily for Ruderman's  
6 personal benefit. (Pet. 5.) The Receiver does not contend, however, that American  
7 Express had any involvement in Ruderman's diversion of investor funds, had any  
8 knowledge that Ruderman and the entities he controlled were engaged in a Ponzi  
9 scheme or any other fraudulent activity, or had knowledge that any transfer American  
10 Express received from RCM was related to fraudulent activity. (*Id.*) Further,  
11 American Express contends it "may have provided value to RCM in connection with  
12 the charges incurred on the credit card accounts maintained by RCM and on the  
13 payments thereon made to American Express." (*Id.*)

14 The Receiver, American Express, and the bankruptcy trustee engaged in a  
15 collective mediation resulting in a settlement agreement.<sup>1</sup> The proposed settlement  
16 calls for American Express to pay the Receiver \$10,000.00 in full and complete  
17 satisfaction of all claims the Receiver and the Receivership Estate have against  
18 American Express.

### 19 III. LEGAL STANDARD

20 Local Rule 66-8 states, "[e]xcept as otherwise ordered by the Court, a receiver  
21 shall administer the estate as nearly as possible in accordance with the practice in the  
22 administration of estates in bankruptcy." Accordingly, bankruptcy procedure informs  
23 the Court's approval of the proposed settlements. Federal Rule of Bankruptcy  
24 Procedure 9019 governs compromises and settlements reached in bankruptcy court  
25 and provides that a court may approve a compromise or settlement on motion and  
26

---

27 <sup>1</sup> The Receiver notes that the settlement is part of a global settlement including resolution of an  
28 adversary proceeding commenced by the trustee in the RCM bankruptcy case against American  
Express. The bankruptcy trustee is currently seeking approval of his proposed compromise with  
American Express from the bankruptcy court.

1 following notice and a hearing. In examining a proposed settlement, the Court must  
2 evaluate four factors:

- 3 (a) [t]he probability of success in the litigation;
- 4 (b) the difficulties, if any, to be encountered in the matter of  
5 collection;
- 6 (c) the complexity of the litigation, as well as the expense, and the  
7 expense, inconvenience and delay necessarily attending it; [and]
- 8 (d) the paramount interest of creditors, giving proper deference to their  
9 reasonable views [regarding the proposed compromise].

10 *United States v. Edwards*, 595 F.3d 1004, 1012 (9th Cir. 2010) (quoting *In re A&C*  
11 *Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986)).

12 “The purpose of a compromise agreement is to allow the trustee and the  
13 creditors to avoid the expenses and burdens associated with litigating sharply  
14 contested and dubious claims.” *Id.* In general, compromises are favored in  
15 bankruptcy actions. *In re Stein*, 236 B.R. 34, 37 (D. Or. 1999). Accordingly, the  
16 Court generally gives deference to a trustee’s business judgment, *In re Pac. Gas &*  
17 *Elec. Co.*, 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004), and will approve a compromise  
18 that falls within the “range of reasonableness.” The Second Circuit has defined “range  
19 of reasonableness” as “a range [that] recognizes the uncertainties of law and fact in  
20 any particular case and the concomitant risks and costs necessarily inherent in taking  
21 any litigation to completion.” *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).  
22 Approval of a compromise will not be disturbed on appeal where the compromise falls  
23 within the range of reasonableness. *See id.*

24 Although the Court may not simply “rubber-stamp” the decision to enter into a  
25 settlement, it need not conduct an exhaustive investigation, hold a mini-trial on the  
26 merits of the claims sought to be compromised, or require that the settlement be the  
27 best that could possibly be achieved. *In re Walsh Const., Inc.*, 669 F.2d 1325, 1328

28 ///

1 (9th Cir. 1982). Rather, the Court “need only find that the settlement was negotiated  
2 in good faith and is reasonable, fair and equitable.” *Pac. Gas*, 304 B.R. at 417.

#### 3 **IV. DISCUSSION**

4 The Court finds that the Receiver has met his burden in demonstrating each  
5 factor with respect to the American Express settlement. As to the probability of  
6 success on the merits, the Receiver informs the Court that there are material issues the  
7 Receiver cannot state with certainty would be resolved in his favor and that could  
8 result in a judgment for American Express. These issues include whether American  
9 Express provided value to RCM in connection with the subject transfers, whether  
10 RCM was insolvent at the time of the transfers or rendered insolvent as a result of the  
11 transfers, and whether the statute of limitations bars the Receiver’s claims. These  
12 issues increase the uncertainty of the litigation and therefore weigh in favor of the  
13 settlement.

14 Proceeding with the remaining factors, the Court discerns no impediment to the  
15 Receiver’s collection of any claim against American Express; thus, this factor weighs  
16 against the settlement. As to the complexity, expense, and inconvenience of litigation,  
17 the Court finds that the merits complications addressed above tend to increase the  
18 complexity and expense of this litigation. Further, as the Receiver notes, “there is  
19 little doubt that American Express will appeal any adverse judgment. An appeal  
20 would consume a substantial amount of time, and further increase the Receivership  
21 Estate’s litigation expenses.” (Pet. 8.) This factor therefore weighs in favor of the  
22 settlement.

23 Finally, as to the paramount interests of creditors, the Court finds that the  
24 American Express Settlement, together with prior recoveries by the Receiver, gives  
25 the Receivership Estate a means of potentially providing a distribution to the  
26 unsecured creditors of the estate. The settlement agreement provides a certain benefit  
27 to the estate, thereby eliminating any uncertainty and additional costs in obtaining that  
28 benefit. In addition, the Receiver notes that the settlement agreement was reached as

1 part of a global settlement along with the compromise reached between the RCP  
2 bankruptcy trustee in the trustee's action against American Express, and this global  
3 settlement will allow the trustee and the Receiver to complete their outstanding  
4 litigation against American Express in both estates. Taking into consideration the  
5 expense of litigation, the risks and uncertainty of outcome, and the opportunity for  
6 immediate infusion of cash into the Receivership Estate, the Court finds that the  
7 paramount interests of creditors are served by the settlement agreement. Thus, this  
8 factor weighs in favor of the settlement.

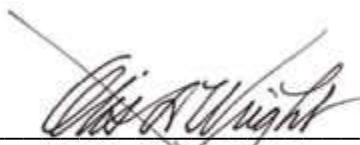
9 On balance, the Court finds the settlement agreement reasonable and negotiated  
10 in good faith.

11 **V. CONCLUSION**

12 The Court holds that the Receiver has met his burden of demonstrating that the  
13 proposed settlement with American Express falls within the range of reasonableness  
14 and was negotiated in good faith. The Court therefore **APPROVES** the Receiver's  
15 proposed settlement with American Express. Accordingly, the Receiver is hereby  
16 authorized to execute any documents and take any actions reasonably necessary to  
17 effectuate the terms of the settlement agreement.

18  
19 **IT IS SO ORDERED.**

20  
21 January 15, 2013

22  
23   
24 \_\_\_\_\_  
25 **OTIS D. WRIGHT, II**  
26 **UNITED STATES DISTRICT JUDGE**  
27  
28