

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION, and

STATE OF MINNESOTA, by its Attorney  
General, Lori Swanson,

Plaintiffs,

v.

SELLERS PLAYBOOK, INC., a corporation,

EXPOSURE MARKETING COMPANY, a  
corporation also, d/b/a Sellers Online and  
Sellers Systems,

JESSIE CONNERS TIEVA, individually and  
as an officer of SELLERS PLAYBOOK, INC.  
and EXPOSURE MARKETING COMPANY,  
and

MATTHEW R. TIEVA, individually and as an  
officer of SELLERS PLAYBOOK, INC. and  
EXPOSURE MARKETING COMPANY,

Defendants.

CASE NO. 18-cv-02207-DWF-TNL

**RECEIVER'S MOTION FOR  
ORDER APPROVING  
SETTLEMENT AGREEMENT  
WITH FIDELITY BANK**

TO: ALL ABOVE-NAMED PARTIES THROUGH THEIR COUNSEL OF RECORD.

The Court-Appointed Receiver, Robb Evans & Associates, LLC, by its counsel, moves for an Order approving the Settlement Agreement it has reached with Fidelity Bank. This motion is made based on the supporting memorandum of law and declaration filed herewith, and all the files, records, pleadings and proceedings herein.

Dated: April 24, 2019

Respectfully submitted,

BARNES & THORNBURG LLP

Christopher Lynch (#0284154)  
225 South Sixth Street, Suite 2800  
Minneapolis, MN 55402  
Tel: (612) 333-2111  
Fax: (612)333-6798  
christopher.lynch@btlaw.com

and

By: /s/ Gary Owen Caris

Gary Owen Caris  
California Attorney SBN 088918  
*Admitted Pro Hac Vice*  
BARNES & THORNBURG LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067  
Tel. (310) 284-3880  
Email: gcaris@btlaw.com

*Attorneys for Receiver*  
**ROBB EVANS & ASSOCIATES LLC**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION, and

STATE OF MINNESOTA, by its Attorney  
General, Lori Swanson,

Plaintiffs,

v.

SELLERS PLAYBOOK, INC., a corporation,

EXPOSURE MARKETING COMPANY, a  
corporation also, d/b/a Sellers Online and  
Sellers Systems,

JESSIE CONNERS TIEVA, individually and  
as an officer of SELLERS PLAYBOOK, INC.  
and EXPOSURE MARKETING COMPANY,  
and

MATTHEW R. TIEVA, individually and as an  
officer of SELLERS PLAYBOOK, INC. and  
EXPOSURE MARKETING COMPANY,

Defendants.

CASE NO. 18-cv-02207-DWF-TNL

**MEMORANDUM OF LAW IN  
SUPPORT OF RECEIVER'S  
MOTION FOR ORDER  
APPROVING SETTLEMENT  
AGREEMENT WITH FIDELITY  
BANK**

**MEMORANDUM OF LAW**

**I. INTRODUCTION**

This lawsuit was commenced by the Federal Trade Commission (“FTC”) and the State of Minnesota (“Minnesota”) with a Complaint for Permanent Injunction and Other Equitable Relief (Doc. 1) (“Complaint”) on July 30, 2018 against Sellers Playbook, Inc. (“Sellers Playbook”), Exposure Marketing Company (“Exposure Marketing”), Jessie

Connors Tieva (“Jessie Tieva”), individually and as an officer of those entities, and Matthew R. Tieva (“Matthew Tieva”), individually and as an officer of those entities (collectively, the “Defendants”). Under the Temporary Restraining Order (Doc. 29) (“TRO”) entered on July 30, 2018, the Receiver became temporary receiver over the “Receivership Entities,” defined in the TRO to mean Sellers Playbook, Exposure Marketing, and each of their subsidiaries, affiliates, successors and assigns, and “any other entity that the Receiver determines is controlled or owned by any Defendant and (1) conducted any business related to Defendants’ advertising, marketing, distributing, promoting, or selling of business opportunities, (2) commingled or pooled assets with any Defendant, or (3) otherwise participated in the transfer of assets stemming from the advertising, marketing, distributing, promoting, or selling of business opportunities.” (Definition M) The TRO was extended pursuant to a stipulated Order Extending the Duration of the Temporary Restraining Order and Postponing Preliminary Injunction Hearing (Doc. 39) (“Order Extending TRO”) until the Court issued a ruling on the Plaintiffs’ request for a preliminary injunction or further order of the Court.

Prior to the rescheduled preliminary injunction hearing, the parties entered into a global settlement of the litigation pursuant to the Amended Stipulated Order for Permanent Injunction and Monetary Judgment (Doc. 64) (“Stipulated Judgment”) which was entered on November 28, 2018. Under the Stipulated Judgment, the Receiver became the permanent equity receiver over Sellers Playbook and Exposure Marketing and their successors and assigns (collectively, the “Corporate Defendants”). Pursuant to the Stipulated Judgment, the assets identified in Section IV.C and IV.D of the Stipulated

Judgment, the Receiver was to take possession of the assets identified in Section IV.B of the Stipulated Judgment to the extent the assets were not already in the possession of the Receiver, and to commence the sale of the unliquidated assets identified therein as soon as practicable using a commercially reasonable procedure, and hold the surrendered assets and the proceeds from the sale of the unliquidated assets for future transfer in accordance with further instructions from the Court. Pursuant to Section VII of the Stipulated Judgment, the Receiver was authorized to pursue collection actions regarding the assets not already in its possession and enter into compromises with respect to the receivership estate, subject to notice to the FTC and Minnesota and their opportunity to object.

Pursuant to the Stipulated Judgment, the Receiver has entered into a settlement agreement with Fidelity Bank (“Bank”), a pre-receivership secured creditor of Sellers Playbook. The FTC and Minnesota do not object to the settlement. While the Stipulated Judgment does not require Court approval before the Receiver may consummate settlements when the FTC and Minnesota has no objection, the Bank has requested Court approval as a condition to the settlement.

## **II. TERMS OF THE SETTLEMENT AGREEMENT**

The Bank contends that various debts are owed to it by Sellers Playbook and by Jessie Tieva and Matt Tieva (collectively, the “Tievas”) as guarantors. These debts include the following: (a) promissory note executed by Sellers Playbook with a principal balance of \$252,000 plus accrued interest of \$5,500.25 through December 7, 2018 and per diem interest accruing thereafter of \$43.75; (b) executive line of credit executed by the Tievas with a present principal balance of \$315,000, plus accrued interest of \$6,755.23

through December 7, 2018 and per diem interest thereafter of \$52.23; (c) unlimited guaranties executed by the Tievias securing all of the Sellers Playbook's debts to the Bank; (d) credit card guaranty owed by the Bank to Elan which guaranties Sellers Playbook's credit card debt to Elan, with an outstanding balance of \$65,983.65, plus accruing interest; and (e) attorneys' fees and collection costs of approximately \$50,000 (collectively, the "Bank Obligations"). The Bank further contends that the Bank Obligations are secured by two commercial security agreements in virtually all of Sellers Playbook's assets, including accounts, inventory, equipment, instruments, chattel paper, general intangibles, documents, investment property and deposit accounts, and that the security interests have been perfected by the filing of a financing statement and, where applicable, by possession of the collateral, and that the executive line of credit is secured by an assignment of life insurance policies described below.

Since the entry of the Stipulated Judgment, the Receiver has been in the process of complying with Sections IV.C and IV.D therein by taking possession of the assets identified in Section IV.B of the Judgment to the extent not already in the Receiver's possession and selling the unliquidated assets identified in Section IV.B.

The Bank is in possession of various bank accounts at the Bank in the name of Sellers Playbook, with an aggregate balance of \$208,946.28 as of December 12, 2018 and *de minimis* amounts of interest accruing thereafter ("Bank Accounts"). The Bank Accounts are identified in the Stipulated Judgment and part of the receivership estate as defined therein. The Bank is in the process of obtaining the cash surrender value of certain life insurance policies, which were assigned to it to secure the obligations set forth

above. The cash surrender value of the insurance policies are approximately \$340,000 (“Insurance Policy Proceeds”). The life insurance policies and Insurance Policy Proceeds are not part of the receivership estate under the Stipulated Judgment.

The Receiver and the Bank have had disputes and differences with respect to the extent to which the Bank has valid and perfected security interests which secure the repayment of the Bank Obligations and the extent to which the Receiver’s, the FTC’s and/or Minnesota’s rights and claims in the receivership assets, including the Bank Accounts, are superior to the Bank’s rights and claims.

In full and complete resolution of these disputes and differences, the Receiver and the Bank have entered into a Settlement Agreement and Release (“Settlement Agreement”), attached as Exhibit 1 to the Declaration of Brick Kane filed concurrently herewith. In the Settlement Agreement, the Receiver and the Bank have agreed that: (a) all of the money held in the Bank Accounts shall be retained by the Bank and applied against the Bank Obligations; (b) the Insurance Policy Proceeds may be retained by the Bank and applied against the Bank Obligations; (c) the Bank waives and relinquishes any claim to or interest in all other receivership assets, even though it contends that its remaining indebtedness under the Bank Obligations are approximately \$150,000 after application of the Bank Accounts and the Insurance Policy Proceeds to the Bank Obligations; (d) the Bank waives and relinquishes any claims against the Receiver or the receivership estate and waives and relinquishes any claims against the FTC or Minnesota; and (e) the parties enter into mutual general releases.

**III. THE SETTLEMENT IS FAIR AND EQUITABLE AND SHOULD BE APPROVED FORTHWITH**

The leading treatise on receivership law states:

The only justification for the compromise of claims is that it is done for the best interests of the receivership and the estate under the control and possession of the court.

*3 Clark on Receivers § 655 (3d ed. 1992).*

The court appointing a receiver must use its discretion in determining whether it is for the best interests of the estate that the receiver be authorized to compromise a claim, and when the appointing court has not abused its discretion in giving instructions to the receiver, its orders will not be disturbed or reviewed in the appellate court.

*3 Clark on Receivers § 770 (3d ed. 1992).*

Under Rule 9019 of the Federal Rules of Bankruptcy Procedure and Local Rule 9019-1, the court in a bankruptcy case may approve a proposed compromise of controversies after notice and an opportunity for hearing. Eighth Circuit decisions in *In re Flight Transp. Corp.* 730 F.2d 1128, 1135 (8th Cir. 1984) and *Drexel v. Loomis* 35 F.2d 800, 806 (8th Cir. 1929) establish four factors the court must consider in ruling on the approval of compromises in bankruptcy:

“(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the



complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.”

*In re Flight Transp. Corp.* 730 F.2d at 1135, *Drexel*, 25 F.2d at 806.

The foregoing factors have been examined by courts in receiverships in approving settlements, but the court in a federal equity receivership has even broader authority to approve proposed settlements by a receiver and to look to other factors in determining that the settlement should be approved. *See Gordon v. Dadante*, 336 Fed. Appx. 540 (6th Cir. 2009) (settlement by receiver in a federal equity receivership within the receiver's discretion and should be approved if it is fair); *Securities and Exchange Commission v. Credit Bancorp, Ltd.*, No. 99 Civ. 11395, 2002 WL 1792053 at \*4-5 (S.D.N.Y. Aug. 2, 2002); *Securities and Exchange Commission v. Princeton Economic International, Inc.*, No. 99 Civ. 9667, 2002 WL 206990 at \*1 (S.D.N.Y. Feb. 8, 2002). “[R]eceivers benefit from the general presumption that district courts favor settlements.” *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998). The District Court's determination of the fairness of a settlement by the Receiver is subject to the sound discretion of the Court and will only be overturned based on a clear showing of abuse of discretion. *Gordon v. Dadante*, 336 Fed. Appx. at 545 (holding that district court did not abuse its discretion in approving settlement agreement entered into by a receiver); *Sterling v. Stewart*, 158 F.3d at 1202 (quoting *Bennett v. Behring*, 737 F.2d 982, 986 (11th Cir. 1984)); *Securities and Exchange Commission v. Arkansas Loan and Thrift Corp.*, 427 F.2d 1171, 1172 (8th Cir.

1970) (court finds no abuse of discretion in trial court's approval of receiver's settlement on fidelity bond claim).

The settlement is a favorable resolution of the dispute between the Receiver and the Bank. The Bank retains its security interest in the Bank Accounts, which are subject to its commercial security agreements. The perfection of its security interest in the Bank Accounts is not disputed given the Bank's possession of the Bank Accounts. Therefore, the Receiver would have to prove that equitable considerations prevail over the Bank's secured claim. The Receiver believes it has strong arguments, but recognizes the uncertainty and difficulty facing a challenge to the Bank's perfected security interest. The Insurance Policy Proceeds are not part of the receivership estate under the Stipulated Judgment, so there is nothing being given up by the Receiver with respect to those proceeds. In return, the Bank gives up any rights to the other assets in the receivership estate to pay off the balance of its claim of approximately \$150,000. Because the Settlement Agreement ensures that the Bank cannot assert its broad security interest in any other receivership estate assets, this frees up approximately \$150,000 of additional funds for defrauded consumers. Essentially, the Receiver gives up an uncertain claim to approximately \$209,000 in the Bank Accounts, which are subject to the Bank's perfected security interest, in exchange for approximately \$150,000 in assets which will be unencumbered by the Bank's security interest. Further, the Bank gives up any claim in the receivership estate. Therefore, the Receiver has determined that the Settlement Agreement is fair and reasonable and the settlement avoids the costs, delays and risks of litigation. Declaration of Brick Kane in Support of Motion to Approve Settlement ¶9.

Further, the FTC and Minnesota, the principal creditors in the estate and the parties seeking to maximize value for defrauded consumers, support the settlement.

Therefore, the Settlement Agreement is clearly beneficial within the four factors in the *In re Flight Transp. Corp.* decision and is fair and reasonable under the circumstances.

#### IV. CONCLUSION

For the reasons set forth herein, it is respectfully requested that the Court grant the Receiver's motion to approve the Settlement Agreement with Fidelity Bank in its entirety.

Dated: April 24, 2019

Respectfully submitted,

BARNES & THORNBURG LLP

Christopher Lynch (#0284154)  
225 South Sixth Street, Suite 2800  
Minneapolis, MN 55402  
Tel: (612) 333-2111  
Fax: 612-333-6798  
christopher.lynch@btlaw.com

and

By: /s/ Gary Owen Caris  
Gary Owen Caris  
California Attorney SBN 088918  
*Admitted Pro Hac Vice*  
BARNES & THORNBURG LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067  
Tel. (310) 284-3880  
Email: gcaris@btlaw.com

*Attorneys for Receiver*  
**ROBB EVANS & ASSOCIATES LLC**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION, and  
STATE OF MINNESOTA, by its Attorney  
General, Lori Swanson,

Plaintiffs,

v.

SELLERS PLAYBOOK, INC., a corporation,

EXPOSURE MARKETING COMPANY, a  
corporation also, d/b/a Sellers Online and  
Sellers Systems,

JESSIE CONNERS TIEVA, individually and  
as an officer of SELLERS PLAYBOOK, INC.  
and EXPOSURE MARKETING COMPANY,  
and

MATTHEW R. TIEVA, individually and as an  
officer of SELLERS PLAYBOOK, INC. and  
EXPOSURE MARKETING COMPANY,

Defendants.

CASE NO. 18-cv-02207-DWF-TNL

**DECLARATION OF BRICK KANE  
IN SUPPORT OF RECEIVER'S  
MOTION FOR ORDER  
APPROVING SETTLEMENT  
AGREEMENT WITH FIDELITY  
BANK**

I, Brick Kane, declare

1. I am President and Chief Operating Officer of Robb Evans & Associates LLC ("Receiver"), the Receiver as defined under the Temporary Restraining Order over the assets of Sellers Playbook, Inc. ("Sellers Playbook"), Exposure Marketing Company ("Exposure Marketing"), Jessie Connors Tieva ("Jessie Tieva"), individually and as an officer of those entities, and Matthew R. Tieva ("Matthew Tieva"), individually and as an

officer of those entities (collectively, the “Defendants”). I am one of the members of Receiver with primary responsibility for the daily administration, supervision, and management of the receivership estate. I have personal knowledge of the matters set forth in this declaration or I have gained knowledge of these matters through other members and deputies of the Receiver during my supervision and management in this matter. If called upon to testify as to these matters I could and would competently testify thereto.

2. This lawsuit was commenced by the Federal Trade Commission (“FTC”) and the State of Minnesota (“Minnesota”) with a Complaint for Permanent Injunction and Other Equitable Relief on July 30, 2018 against the Defendants.

3. Under the Temporary Restraining Order (“TRO”) entered on July 30, 2018, the Receiver became temporary receiver over the “Receivership Entities,” defined in the TRO to mean Sellers Playbook, Exposure Marketing, and each of their subsidiaries, affiliates, successors and assigns, and “any other entity that the Receiver determines is controlled or owned by any Defendant and (1) conducted any business related to Defendants’ advertising, marketing, distributing, promoting, or selling of business opportunities, (2) commingled or pooled assets with any Defendant, or (3) otherwise participated in the transfer of assets stemming from the advertising, marketing, distributing, promoting, or selling of business opportunities.” The TRO was extended pursuant to a stipulated Order Extending the Duration of the Temporary Restraining Order and Postponing Preliminary Injunction Hearing (“Order Extending TRO”) until the Court issued a ruling on the Plaintiffs’ request for a preliminary injunction or further order of the Court.

4. Prior to the rescheduled preliminary injunction hearing, the parties entered into a global settlement of the litigation pursuant to the Amended Stipulated Order for Permanent Injunction and Monetary Judgment (“Stipulated Judgment”) which was entered on November 28, 2018. Under the Stipulated Judgment, the Receiver became the permanent equity receiver over Sellers Playbook and Exposure Marketing and their successors and assigns (collectively, the “Corporate Defendants”). Pursuant to the Stipulated Judgment, the assets identified in Section IV.C and IV.D of the Stipulated Judgment, the Receiver was to take possession of the assets identified in Section IV.B of the Stipulated Judgment to the extent the assets were not already in the possession of the Receiver, and to commence the sale of the unliquidated assets identified therein as soon as practicable using a commercially reasonable procedure, and hold the surrendered assets and the proceeds from the sale of the unliquidated assets for future transfer in accordance with further instructions from the Court. Pursuant to Section VII of the Stipulated Judgment, the Receiver was authorized to pursue collection actions regarding the assets not already in its possession and enter into compromises with respect to the receivership estate, subject to notice to the FTC and Minnesota and their opportunity to object.

5. Since the entry of the Stipulated Judgment, the Receiver has been in the process of complying with Sections IV.C and IV.D therein by taking possession of the assets identified in Section IV.B of the Judgment to the extent not already in the Receiver’s possession and selling the unliquidated assets identified in Section IV.B.

6. The Bank is in possession of various bank accounts at the Bank in the name of Sellers Playbook, with an aggregate balance of \$208,946.28 as of December 12, 2018

and *de minimis* amounts of interest accruing thereafter (“Bank Accounts”). The Bank Accounts are identified in the Stipulated Judgment and part of the receivership estate as defined therein. The Bank is in the process of obtaining the cash surrender value of certain life insurance policies, which were assigned to it to secure the obligations set forth above. The cash surrender value of the insurance policies are approximately \$340,000 (“Insurance Policy Proceeds”). The life insurance policies and Insurance Policy Proceeds are not part of the receivership estate under the Stipulated Judgment.

7. The Receiver and the Bank have had disputes and differences with respect to the extent to which the Bank has valid and perfected security interests which secure the repayment of the Bank Obligations and the extent to which the Receiver’s, the FTC’s and/or Minnesota’s rights and claims in the receivership assets, including the Bank Accounts, are superior to the Bank’s rights and claims.

8. In full and complete resolution of these disputes and differences, the Receiver and the Bank have entered into a Settlement Agreement and Release (“Settlement Agreement”). In the Settlement Agreement, the Receiver and the Bank have agreed that: (a) all of the money held in the Bank Accounts shall be retained by the Bank and applied against the Bank Obligations; (b) the Insurance Policy Proceeds may be retained by the Bank and applied against the Bank Obligations; (c) the Bank waives and relinquishes any claim to or interest in all other receivership assets, even though it contends that its remaining indebtedness under the Bank Obligations are approximately \$150,000 after application of the Bank Accounts and the Insurance Policy Proceeds to the Bank Obligations; (d) the Bank waives and relinquishes any claims against the Receiver

or the receivership estate and waives and relinquishes any claims against the FTC or Minnesota; and (e) the parties enter into mutual general releases. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

9. The settlement is a favorable resolution of the dispute between the Receiver and the Bank. The Bank retains its security interest in the Bank Accounts, which are subject to its commercial security agreements. The perfection of its security interest in the Bank Accounts is not disputed given the Bank's possession of the Bank Accounts. Therefore, I am advised that the Receiver would have to prove that equitable considerations prevail over the Bank's secured claim. The Receiver believes it has strong arguments, but recognizes the uncertainty and difficulty facing a challenge to the Bank's perfected security interest. The Insurance Policy Proceeds are not part of the receivership estate under the Stipulated Judgment, so there is nothing being given up by the Receiver with respect to those proceeds. In return, the Bank gives up any rights to the other assets in the receivership estate to pay off the balance of its claim of approximately \$150,000. Because the Settlement Agreement ensures that the Bank cannot assert its broad security interest in any other receivership estate assets, this frees up approximately \$150,000 of additional funds for defrauded consumers. Essentially, the Receiver gives up an uncertain claim to approximately \$209,000 in the Bank Accounts, which are subject to the Bank's perfected security interest, in exchange for approximately \$150,000 in assets which will be unencumbered by the Bank's security interest. Further, the Bank gives up any claim in the receivership estate. Therefore, the Receiver has determined that the Settlement



Agreement is fair and reasonable and the settlement avoids the costs, delays and risks of litigation.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 22, 2019, at Sun Valley, California.

  
BRICK KANE

# EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this <sup>12<sup>th</sup></sup> day of March, 2019, by and between Robb Evans & Associates LLC ("Receiver") as Receiver of Sellers Playbook, Inc. ("Sellers Playbook") and Exposure Marketing Company ("Exposure Marketing"), and each of their successors and assigns, on one hand, and Fidelity Bank (the "Bank"), on the other, in reference to and in consideration of the following:

RECITALS

- A. The Receiver was appointed as temporary receiver over Sellers Playbook and Exposure Marketing, and each of their subsidiaries, affiliates, successors and assigns, pursuant to the Temporary Restraining Order ("TRO") entered on July 30, 2018 in the case of *Federal Trade Commission and State of Minnesota v. Sellers Playbook, Inc. et al.*, Civil No. 18-SC-2207 (DWF/TNL) ("FTC Action") in the United States District Court, District of Minnesota ("District Court"). (The Federal Trade Commission is hereafter referred to as the "FTC" and the State of Minnesota is hereafter referred to as "Minnesota.")
- B. The Receiver remained as temporary receiver pursuant to the Order Extending the Duration of the Temporary Restraining Order and Postponing Preliminary Injunction Hearing entered on August 7, 2018 in the FTC Action.
- C. The Receiver became the permanent equity receiver over Sellers Playbook and Exposure Marketing and their successors and assigns (collectively, the "Corporate Defendants") pursuant to the Amended Stipulated Order for Permanent Injunction and Monetary Judgment ("Judgment") entered on November 28, 2018 in the FTC Action. Pursuant to the Judgment, the assets identified in Section IV.B of the Judgment and all assets of the Corporate Defendants were defined in the Judgment (and defined herein) to comprise the "Receivership Estate." Pursuant to Sections IV.C and IV.D of the Judgment, the Receiver was to take possession of the assets identified in Section IV.B. of the Judgment to the extent that such assets were not already in possession of the Receiver, and to commence the sale of the unliquidated assets identified therein as soon as practicable using a commercially reasonable procedure, and hold the surrendered assets and the proceeds from the sale of the unliquidated assets for future transfer in accordance with further instructions from the District Court. Pursuant to Section VII of the Judgment, the Receiver was authorized to pursue collection actions regarding the assets not already in possession of the Receiver and enter into compromises with respect to the assets, subject to notice to the FTC and Minnesota and their opportunity to object.
- D. The Bank contends that various debts are owed to it by Sellers Playbook and by two other defendants in the FTC Action, Jessie Tieva and Matthew Tieva (collectively, the "Tievas"), including the following: (a) promissory note dated July 23, 2018 executed by Sellers Playbook in favor of the Bank, with a present principal balance outstanding of \$252,000, plus accrued interest of \$5,500.25 through December 7, 2018 and per diem interest accruing thereafter of \$43.75; (b) executive line of credit dated May 8, 2018 executed by the Tievas in favor of the Bank, with a present principal balance outstanding of \$315,000, plus accrued interest of \$6,755.23 through December 7, 2018 and per diem interest accruing thereafter of \$52.23; (c)

unlimited guaranty executed by Jessie Tieva on March 13, 2017 securing all of Seller Playbook's debts to the Bank, including the obligation set forth below at Recital D(e); (d) unlimited guaranty executed by Matthew Tieva on March 13, 2017 securing all of Seller Playbook's debts to the Bank, including the obligation set forth below at Recital D(e); (e) credit card guaranty owed by the Bank to Elan which guaranties Sellers Playbook's credit card debt to Elan, with an outstanding balance of \$65,983.65, plus accruing interest; and (f) attorneys' fees and collection costs of approximately \$50,000. (All obligations set forth in this Recital D and all other obligations of any kind or nature, whether presently existing or contingent, now owed or hereafter arising, owed by any of the Corporate Defendants and/or the Tievas, or either of them, in favor of the Bank, are hereafter collectively referred to as the "Bank Obligations.")

E. The Bank contends that the Bank Obligations are secured by the following: (a) commercial security agreement dated March 13, 2017, granting the Bank a security interest in, among other things, all of Sellers Playbook's accounts, inventory, equipment, instruments, chattel paper, general intangibles, documents, government payments and programs, investment property and deposit accounts; and (b) commercial security agreement dated July 23, 2018, granting the Bank a security interest in, among other things, all of Sellers Playbook's accounts, inventory, equipment, instruments, chattel paper, general intangibles, documents, government payments and programs, investment property and deposit accounts. (The two commercial security agreements set forth in this Recital D are hereafter collectively referred to as the "Security Interests.") The Bank contends that the Security Interests are perfected by a UCC-1 Financing Statement filed as document no. 940262800029 in the Office of the Minnesota Secretary of State on March 13, 2017 and, where applicable, by possession of the collateral.

F. The Bank is in possession of various bank accounts at the Bank in the name of Sellers Playbook. The Bank contends that the accounts have an aggregate balance of \$208,946.28 as of December 12, 2018, with *de minimis* amounts of interest accruing thereafter (the "Bank Accounts"). The Bank contends that the Bank Accounts are its collateral pursuant to the Security Interests.

G. The Bank is in the process of obtaining the cash surrender value of certain life insurance policies which the Bank contends were assigned to it to secure the Bank Obligations. The Bank contends that the cash surrender value of the insurance policies are approximately \$340,000 (the "Insurance Policy Proceeds").

H. Since entry of the Judgment, the Receiver has been in the process of complying with Sections IV.C and IV.D of the Judgment by taking possession of the assets identified in Section IV.B of the Judgment to the extent not already in the Receiver's possession and selling the unliquidated assets identified in Section IV.B.

I. The Bank Accounts are identified in Section IV.B of the Judgment and therefore are part of the Receivership Estate as defined therein. The Insurance Policy Proceeds are not part of the Receivership Estate as defined in the Judgment. All assets comprising the Receivership Estate as defined in the Judgment except for the Bank Accounts are hereafter referred to as the "Other Receivership Assets."

J. The Receiver and the Bank have had disputes and differences with respect to the extent to which the Bank has valid and perfected security interests which secure the repayment of the Bank Obligations and the extent to which the Receiver's, the FTC's and/or Minnesota's rights and claims in and to the assets which may be subject to the Security Interests are superior to the rights and claims of the Bank. The Bank has retained possession of the money held in the Bank Accounts pending efforts to resolve this dispute with the permission of the Receiver, FTC and Minnesota.

K. The Receiver and the Bank desire to resolve all of their disputes and differences as they relate to the Bank Obligations and Security Interests and any other claims, disputes and differences that may exist between them, including without limitation those set forth in the Recitals herein.

NOW THEREFORE, in reference to the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do stipulate and agree as follows:

### AGREEMENT

1. Recitals. The Recitals set forth above are true and correct according to their terms.
2. Bank Accounts Retained by the Bank. All of the money held in the Bank Accounts shall be retained by the Bank and may be applied by the Bank in partial satisfaction of the Bank Obligations.
3. Insurance Policy Proceeds. All of the Insurance Policy Proceeds shall be retained by the Bank and may be applied by the Bank in partial satisfaction of the Bank Obligations.
4. Bank's Waiver and Relinquishment of any Claim to or Interest in all Other Receivership Assets. The Bank contends that after application of the money held in the Bank Accounts and the Insurance Policy Proceeds to the Bank Obligations, it will have a remaining indebtedness under the Bank Obligations of approximately \$150,000. Irrespective of the extent to which the Bank Obligations remain partially unpaid after application of the money held in the Bank Accounts and the Insurance Policy Proceeds to the Bank Obligations, the Bank hereby waives and relinquishes all of its rights, claims and interests in all of the Other Receivership Assets. The Bank shall not be permitted to assert any right, claim or interest in any of the Other Receivership Assets at any time.
5. Bank's Waiver and Relinquishment of any Claim in the Receivership Estate and any Claim Against the FTC and Minnesota. The Bank hereby waives and relinquishes all of its rights, claims and interests against the Receiver and/or the Receivership Estate, including without limitation any claims it may otherwise have been entitled to assert against the Receiver or the Receivership Estate, whether as a secured creditor, unsecured creditor, administrative claimant or otherwise, and hereby waives and relinquishes all of its rights to seek or obtain a payment from the Receiver in connection with the FTC Action and/or Receivership Estate. The Bank further waives and relinquishes all of its rights, claims and

interests it may otherwise have been entitled to assert against the FTC and/or Minnesota, and hereby waives and relinquishes all of its rights to seek or obtain a payment from the FTC and/or Minnesota in connection with the FTC Action and/or funds received or to be received by the FTC and/or Minnesota as a result of the Judgment.

6. Immediate General Release of Receiver and Receivership Estate.

Effective upon the Effective Date of this Agreement, and excepting only the obligations imposed or created by this Agreement, the Bank does hereby forever relieve, release and discharge the Receiver, individually and in its capacity as Receiver in the FTC Action, and the Receivership Estate under the Judgment, and the Receiver's officers, directors, shareholders, members, employees, deputies, agents, associates, partners, past or present attorneys, representatives and administrators, jointly and severally, from any and all lawsuits, debts, losses, claims, liens, liabilities, demands, obligations, promises, acts, agreements, costs, expenses, attorneys' fees, damages, actions and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, contingent or fixed, arising from the beginning of time through the date of this Agreement, that the Bank had, have or may have against the parties being released in this paragraph, which arise out of, relate to, or pertain in any way to any of the Recitals herein, the FTC Action, and the Receivership Estate (individually and collectively the "Bank Claims").

7. Effect of General Release of Bank Claims. The Bank expressly waives any and all rights under Section 1542 of the Civil Code of the State of California which provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

The Bank expressly waives and releases any rights or benefits that it may have under Section 1542 of the Civil Code of the State of California, and any similar statute, code, law or regulation of any state, territory, commonwealth or possession of the United States, or the United States, to the full extent that it may waive all such rights and benefits pertaining to the Bank Claims. The Bank acknowledges that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that it now knows or believes to be true pertaining to the Bank Claims. Nevertheless, it is the intention of the Bank through this Agreement to fully, finally and forever release all of the Bank Claims. The releases herein given shall be and remain in effect as a full and complete release of the Bank Claims notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

8. No Assignment of the Bank Claims. The Bank represents and warrants that the Bank is the sole and lawful owner of all right, title and interest in and to each of the claims released herein and it has not heretofore assigned or transferred, or purported to assign or transfer, to any individual, partnership, corporation, firm, estate or entity, any of the claims released herein. Bank hereby agrees to indemnify, defend and hold harmless the Receiver and the Receivership Estate from and against all claims based upon or arising out of or in connection with any assignment or transfer or purported assignment or transfer of any of the Bank claims.

9. General Release of the Bank. Effective upon the Effective Date of this Agreement, and excepting only the obligations imposed or created by its Agreement, the Receiver does hereby forever relieve, release and discharge Bank from any and all lawsuits, debts, losses, claims, liens, liabilities, demands, obligations, promises, acts, agreements, costs, expenses, damages, claims to the funds in the Bank Accounts, proceeds of the Insurance Policy Proceeds, actions and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, contingent or fixed, arising from the beginning of time through the date of this Agreement, that the Receiver, on behalf of the Receivership Estate, had, has or may have against Bank which arise out of, relate to, or pertain in any way to any of the Recitals herein, the FTC Action, and the Receivership Estate (the "Receiver Claims").

10. Effect of General Release of Receiver Claims. The Receiver expressly waives any and all rights under Section 1542 of the Civil Code of the State of California, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

The Receiver expressly waives and releases any rights or benefits which it has or may have under Section 1542 of the Civil Code of the State of California, and any similar statute, code, law or regulation of any state, territory, commonwealth or possession of the United States, or the United States, to the full extent that it may waive all such rights and benefits pertaining to the Receiver Claims. The Receiver acknowledges that it is aware it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that it now knows or believes to be true pertaining to the Receiver Claims. Nevertheless, it is the intention of the Receiver through this Agreement to fully, finally and forever release all of the Receiver Claims. The Releases herein given shall be and remain in effect as a full and complete release of the Receiver Claims notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

11. No Assignment of Receiver Claims. The Receiver represents and warrants that it is the sole and lawful owner of all right, title and interest in and to each of the Receiver Claims and it has not heretofore assigned or transferred, or purported to assign or transfer, to any individual, partnership, corporation, firm, estate or entity any of the Receiver Claims. The Receiver hereby agrees to indemnify, defend and hold harmless the Bank from and against all claims based upon or arising out of or in connection with any assignment or transfer or purported assignment or transfer of any of the Receiver Claims.

12. Notices. All notices and other communications which are required or may be given hereunder shall be in writing and shall be duly given if mailed by U.S. Mail and sent by overnight courier, postage prepaid and addressed to the other party at the address set forth herein:

If to the Receiver: Robb Evans & Associates LLC  
11450 Sheldon Street  
Sun Valley, CA 91352-1121  
Attention: Brick Kane

with copies to: Barnes & Thornburg LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067  
Attention: Gary Owen Caris, Esq.

If to the Bank: Fidelity Bank  
7600 Parklawn Avenue  
Edina, MN 55435  
Attn: Charles Mueller

with a copy to: Gislason & Hunter LLP  
701 Xenia Avenue South, Suite 500  
Minneapolis, MN 55416  
Attention: Daniel A. Beckman, Esq.

or at any other address as may be given by any party to the other party by notice in writing pursuant to the provisions hereof. Notices will be deemed given and received on the next business day following the day such notice is mailed and sent by overnight courier, in the manner described above.

13. No Waiver. No Failure or delay on the part of the Receiver or the Bank in the exercise of any right, power, or privilege hereunder, or under any other agreement entered into in connection herewith, shall operate as a waiver thereof, and no single or partial exercise of any such right, power, or privilege shall preclude a further exercise thereof or of any other right, power or privilege.

14. Opportunity for Consultation with Counsel. Each of the parties hereto has had an opportunity to consult with legal counsel of its own choice with respect to the advisability of making the settlement and granting the releases provided herein, and with respect to the advisability of executing this Agreement, and prior to the execution of this Agreement each of the parties hereto reviewed it, had the opportunity to make any desired changes, and signed the Agreement to indicate that each has approved the Agreement as to its form and content. Each of the parties hereto and each of their legal and other advisors have made such investigation of the facts pertaining to the Agreement, and all of the matters pertaining thereto, as each of them deem necessary. This Agreement has been carefully read by, the contents hereof are known by, and it has been signed freely by each person executing this Agreement.



15. Neutral Interpretation. This Agreement is the product of the joint negotiations between the parties hereto. The interpretation and/or enforcement of this Agreement is not to be interpreted more strongly in favor of any one party.

16. Bank Representation and Warranty. The Bank represents and warrants to the Receiver that the information concerning the Bank Obligations and the indebtedness thereunder, Security Interests, Bank Accounts, and Insurance Policy Proceeds are true and correct to the best of the Bank's knowledge. The Receiver is relying on this representation and warranty in entering into this Agreement.

17. Mutual Representations and Warranties. Each of the parties hereto hereby represents and warrants to one another and covenants and agrees with one another as follows:

(a) Each party executing this Agreement has the full legal right, power and Authority to enter into and perform this Agreement. This Agreement is a valid and binding obligation of each of the parties hereto, enforceable against each of them in accordance with its terms. Each person executing this Agreement in a representative capacity has been duly authorized to do so by all appropriate actions.

(b) Except as expressly stated in this Agreement, no party hereto nor any other person has made any statement or representation to any party to this Agreement regarding the facts relied upon by them in entering into this Agreement, and no party hereto has relied upon any statement, representation, or promise of any other person or entity in executing this Agreement except as expressly stated in this Agreement.

(c) The terms of this Agreement are contractual and not a mere recital.

18. Integration/Modification in Writing. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all other agreements, oral or written, between the parties hereto with respect to the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth in this Agreement. No claim of waiver, modification, consent, or acquiescence with respect to any provisions of this Agreement shall be made against any party hereto, except upon the basis of a written instrument executed by or on behalf of such party.

19. Survival of Agreement. All covenants, representations, warranties and agreements contained in this Agreement shall survive the execution of this Agreement by the parties hereto, the delivery of documents and any performance on account of the obligations set forth herein.

20. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors in interest and assigns.

21. No Unnamed Third Party Beneficiaries. There are no unnamed third party beneficiaries to this Agreement. It is expressly agreed and understood that the FTC and Minnesota are named third party beneficiaries to this Agreement.

22. Governing Law/Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. All actions and proceedings relating directly or indirectly to this Agreement shall be litigated in the FTC Action in the District Court.

23. Headings. The headings of paragraphs of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction or interpretation of any term or provisions hereof.

24. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be original, and all of which together shall constitute the same agreement. Signatures may be delivered by electronic transmission and shall have the same effect and enforceability as original signatures.

25. Effective Date. The "Effective Date" of this Agreement shall be the date on which the District Court in the FTC Action enters an order approving and authorizing the terms of the Agreement and approving and authorizing the Receiver entering into the Agreement.

26. District Court Approval. The Receiver shall, within a reasonable time after execution of this Agreement by all parties hereto and by the FTC and Minnesota indicating that they have no objection to it, present this Agreement for approval by the District Court in the FTC Action.

WHEREFORE, the parties hereto have executed this Agreement as of the date first written above.

FIDELITY BANK

BY: 

TODD WILLIAMS, Senior Vice President

ROBB EVANS & ASSOCIATES LLC, as Receiver  
of Sellers Playbook, Inc., et al.

BY: \_\_\_\_\_

BRICK KANE, Deputy to the Receiver

[SIGNATURES CONTINUED ON NEXT PAGE]

22. Governing Law/Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. All actions and proceedings relating directly or indirectly to this Agreement shall be litigated in the FTC Action in the District Court.

23. Headings. The headings of paragraphs of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction or interpretation of any term or provisions hereof.

24. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be original, and all of which together shall constitute the same agreement. Signatures may be delivered by electronic transmission and shall have the same effect and enforceability as original signatures.

25. Effective Date. The "Effective Date" of this Agreement shall be the date on which the District Court in the FTC Action enters an order approving and authorizing the terms of the Agreement and approving and authorizing the Receiver entering into the Agreement.

26. District Court Approval. The Receiver shall, within a reasonable time after execution of this Agreement by all parties hereto and by the FTC and Minnesota indicating that they have no objection to it, present this Agreement for approval by the District Court in the FTC Action.

WHEREFORE, the parties hereto have executed this Agreement as of the date first written above.

FIDELITY BANK

BY: \_\_\_\_\_  
TODD WILLIAMS, Senior Vice President

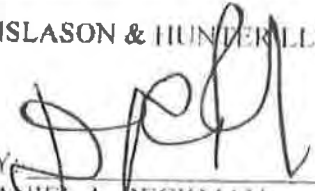
ROBB EVANS & ASSOCIATES LLC, as Receiver  
of Sellers Playbook, Inc., et al.

BY:   
BRICK KANE, Deputy to the Receiver

[SIGNATURES CONTINUED ON NEXT PAGE]

APPROVED AS TO FORM AND CONTENT:

GISLASON & HUNTER LLP

BY:   
DANIEL A. BECKMAN  
Attorneys for FIDELITY BANK

BARNES & THORNBURG LLP

BY: \_\_\_\_\_  
GARY OWEN CARIS  
Attorneys for ROBB EVANS & ASSOCIATES  
LLC, as Receiver of Sellers Playbook, Inc., et al.


14122699

APPROVED AS TO FORM AND CONTENT:

GISLASON & HUNTER LLP

BY: \_\_\_\_\_  
DANIEL A. BECKMAN  
Attorneys for FIDELITY BANK

BARNES & THORNBURG LLP

BY:   
GARY OWEN CARIS  
Attorneys for ROBB EVANS & ASSOCIATES  
LLC, as Receiver of Sellers Playbook, Inc., et al.

14122699

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION, and

STATE OF MINNESOTA, by its Attorney  
General, Lori Swanson,

Plaintiffs,

v.

SELLERS PLAYBOOK, INC., a corporation,

EXPOSURE MARKETING COMPANY, a  
corporation also, d/b/a Sellers Online and  
Sellers Systems,

JESSIE CONNERS TIEVA, individually and  
as an officer of SELLERS PLAYBOOK, INC.  
and EXPOSURE MARKETING COMPANY,  
and

MATTHEW R. TIEVA, individually and as an  
officer of SELLERS PLAYBOOK, INC. and  
EXPOSURE MARKETING COMPANY,

Defendants.

CASE NO. 18-cv-02207-DWF-TNL

**NOTICE OF HEARING ON  
RECEIVER'S MOTION FOR  
ORDER APPROVING  
SETTLEMENT AGREEMENT  
WITH FIDELITY BANK**

**PLEASE TAKE NOTICE** that on May 30, 2019 at 1:30 p.m. before the Honorable Donovan W. Frank, in Courtroom 7C in the Warren Burger Federal Building and U.S. Courthouse, 316 North Robert Street, St. Paul, MN 55101, the Court will hear the Receiver's Motion for Order Approving Settlement Agreement with Fidelity Bank.

Dated: April 24, 2019

Respectfully submitted,

BARNES & THORNBURG LLP

Christopher Lynch (#0284154)  
225 South Sixth Street, Suite 2800  
Minneapolis, MN 55402  
Tel: (612) 333-2111  
Fax: (612)333-6798  
christopher.lynch@btlaw.com

and

By: /s/ Gary Owen Caris

Gary Owen Caris  
California Attorney SBN 088918  
*Admitted Pro Hac Vice*  
BARNES & THORNBURG LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067  
Tel. (310) 284-3880  
Email: gcaris@btlaw.com

*Attorneys for Receiver*  
**ROBB EVANS & ASSOCIATES LLC**

14295393v2