

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 15-80446-CIV-COHN/SELTZER

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

ECAREER HOLDINGS, INC.;  
ECAREER, INC.; JOSEPH J. AZZATA;  
DEAN A. ESPOSITO; JOSEPH DEVITO, and  
FREDERICK J. BIRKS,

Defendants,

VIPER ASSET MANAGEMENT, LLC;  
ESPO CONSULTING, LLC;  
DJC CONSULTING, LLC;  
J & D MARKETING, LLC;  
GRYPHON ASSET MANAGEMENT, LLC, and  
CARLA AZZATA,

Relief Defendants.

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**RECEIVER'S MOTION TO APPROVE PRE-SUIT  
SETTLEMENT AGREEMENT WITH AMERICAN EXPRESS  
BANK, FSB AND AMERICAN EXPRESS CENTURION BANK**

David M. Levine, not individually, but solely in his capacity as the court-appointed receiver (the "Receiver") for Defendants eCareer Holdings, Inc. and eCareer, Inc. (collectively, "eCareer" or the "Receivership Entities") moves this Court for an order approving a pre-suit settlement of a claim against American Express Bank, FSB and American Express Centurion Bank (collectively, "American Express") for recovery of sums received from one or more of the Receivership Entities.

In support of the Motion, the Receiver states as follows:

### **Introduction**

1. As part of his duties in the receivership of eCareer, the Receiver made a demand to American Express for recovery of alleged fraudulent transfers.

2. The Receiver and American Express have agreed pre-suit to settle their dispute. The Receiver is filing and serving this Motion to approve that settlement.

### **Factual and Procedural Background**

3. On April 7, 2015, the United States Securities and Exchange Commission (the “SEC”) filed a Complaint in this Court, commencing the subject civil injunctive and enforcement action against the above-captioned Defendants and Relief Defendants in connection with an alleged ongoing operation that was defrauding investors.

4. On May 22, 2015, this Court appointed the Receiver.

5. The Order Granting Plaintiff’s Motion for Appointment of Receiver provides that the Receiver may “[i]nvestigate the manner in which the affairs of [eCareer] were conducted and institute such actions and legal proceedings on behalf of [eCareer] and their investors and other creditors, as the Receiver deems necessary” and “such actions may include, but not be limited to, seeking ... recovery and/or avoidance of fraudulent transfers...” [Docket No. 72, ¶2.]

6. By letter dated July 22, 2015 (the “Demand”), the Receiver, through his special counsel for purposes of the American Express claim, made demand on American Express regarding approximately \$1.3 million (net of credits) in alleged fraudulent transfers (the “Transfers”) made by the Receivership Entities to American Express. The Transfers were in payment of charges incurred by Carla J. Azzata, Joseph J. Azzata and Timothy Kardok on credit card accounts issued to eCareer and Carla J. Azzata.

7. American Express has contested and asserted pre-suit defenses to the Receiver’s

allegations set forth in the Demand, and denied that it has any liability to the Receiver for the Transfers.

### **The Settlement**

8. In an effort to avoid the cost and uncertainty of litigation, the Receiver and American Express have entered into a settlement agreement that resolves the Demand (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit "1."

9. The material terms of the Settlement Agreement include the following:

- a. American Express will pay the Receiver the sum of \$175,000.00 within thirty (30) days of the Order from this Court granting this Motion and approving the Settlement Agreement; and
- b. American Express and the Receiver will exchange mutual releases, again conditioned on an Order from this Court granting this Motion and approving the Settlement Agreement.

10. The foregoing provisions of the Settlement Agreement are included here for summary purposes only and are not intended to constitute a full recitation of all of the terms. Accordingly, the Receiver suggests that a review of this notice should not be considered a substitute for review of the complete Settlement Agreement.

### **This Court Should Approve the Settlement**

11. The settlement of \$175,000.00 is essentially a 100% recovery of the personal American Express charges associated with Relief Defendant Carla Azzata and paid by eCareer. The remaining charges are associated largely with charges to which eCareer was an obligor or accountholder on the subject cardmember accounts, to which American Express would argue

value, including reasonably equivalent value, was provided in the context of fraudulent transfer claims, and/or associated with potential business expenses of eCareer, to which American Express would again argue value, including reasonably equivalent value, was provided in the context of fraudulent transfer claims.

12. Considering the costs and inherent uncertainty and risks of litigating the matter, including, but not limited to, the insolvency analysis of eCareer, including potential expert expenses, and asserted pre-suit defenses regarding value and good faith in the context of fraudulent transfer claims, the Receiver believes that the Settlement Agreement is fair, reasonable and equitable; is in the best interests of the receivership estate; and benefits eCareer's investors.

13. The Receiver has corresponded with the SEC and the SEC has no objection to this Motion.

WHEREFORE, the Receiver respectfully requests that this Court approve the subject Settlement Agreement and enter the proposed Order attached as Exhibit "2."

Dated: April 27, 2016.

Respectfully submitted,

**PAYTON & ASSOCIATES, LLC**  
*Special counsel for the Receiver*  
2 South Biscayne Blvd., Suite 1600  
Miami, Florida 33131  
Telephone: (305) 372-3500  
Facsimile: (305) 577-4895

By: Patrick J. Rengstl, Esq.  
Patrick J. Rengstl  
FL Bar No. 0581631

**CERTIFICATE OF SERVICE**

I hereby certify that on April 27, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties 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 or parties who are not authorized to receive electronically Notices of Electronic Filing.

s:/Patrick J. Rengstl  
Patrick J. Rengstl, Esq.

**SERVICE LIST**

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| <p><b>Arthur C. Koski</b><br/>                 Arthur C Koski P.A.<br/>                 Counsel for DJC Consulting, LLC, Espo Consulting, LLC, J &amp; D Marketing, LLC, Viper Asset Management, LLC, Dean A. Esposito, and Joseph Devito<br/>                 101 N Federal Highway<br/>                 Suite 602<br/>                 Boca Raton, FL 33432<br/>                 561-362-9800<br/>                 362-9870 (fax)<br/>                 akoski@koskilaw.com</p> | <p><b>Christopher E. Martin</b><br/>                 Securities &amp; Exchange Commission<br/>                 801 Brickell Avenue<br/>                 Suite 1800<br/>                 Miami, FL 33131<br/>                 305-982-6386<br/>                 536-4154 (fax)<br/>                 martinc@sec.gov</p>   |
| <p><b>Mark C. Perry</b><br/>                 Counsel for Joseph J. Azzata<br/>                 2400 East Commercial Blvd Suite 201<br/>                 Fort Lauderdale, FL 33308<br/>                 954-351-2601<br/>                 954-351-2605 (fax)<br/>                 markperryesq@yahoo.com</p>  | <p><b>James D. Sallah</b><br/>                 Sallah Astarita &amp; Cox, LLC<br/>                 Counsel for Carla Azzata<br/>                 One Boca Place<br/>                 2255 Glades Road<br/>                 Suite 300E<br/>                 Boca Raton, FL 33431<br/>                 561 989-9080<br/>                 561-989-9020 (fax)<br/>                 jds@sallahlaw.com</p> |
| <p><b>Frederick J. Birks</b><br/>                 Defendant<br/>                 3685 Cassia Drive<br/>                 Orlando, FL 32828<br/>                 fredbirks1@gmail.com</p>  | <p><b>Gryphon Asset Management, LLC</b><br/>                 Defendant<br/>                 Attention: Frederick J. Birks<br/>                 3685 Cassia Drive<br/>                 Orlando, FL 32828<br/>                 fredbirks1@gmail.com</p>  |
| <p><b>Matthew J. McGuane, Esq.</b><br/>                 Counsel for Receiver<br/>                 Levine Kellogg Lehman Schneider + Grossman LLP<br/>                 Miami Center, 22nd Floor<br/>                 201 South Biscayne Blvd.<br/>                 Miami, Florida 33131<br/>                 305-403-8788<br/>                 305-403-8789 (fax)<br/>                 mjm@lklsg.com</p>  |  |

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement"), is effective as of the date of the last signature below ("Effective Date"), and is made by and among: David M. Levine, the duly appointed and authorized receiver (the "Receiver") in the below referenced case, on the one hand, and American Express Bank, FSB and American Express Centurion Bank (collectively, "American Express"), on the other hand. The Receiver and American Express are also referred to below individually as "Party" or collectively as the "Parties."

## RECITALS AND STIPULATIONS

WHEREAS, on or about April 7, 2015, the United States Securities and Exchange Commission (the "SEC") filed a Complaint in the United States District Court for the Southern District of Florida before the Honorable James I. Cohn (the "Court") against Defendants eCareer Holdings, Inc., eCareer, Inc., Joseph J. Azzata, Dean A. Esposito, Joseph DeVito and Frederick J. Birks, and against Relief Defendants Viper Asset Management, LLC, Espo Consulting, LLC, DJC Consulting, LLC, J & D Marketing, LLC, Gryphon Asset Management, LLC and Carla Azzata, Case No. 15-80446-CIV-COHN/SELTZER, which remains pending before the Court;

WHEREAS, on or about May 22, 2015, the Court entered an *Order Granting Plaintiff's Motion for Appointment of Receiver* [Docket No. 72] ("Receiver Order"), appointing David M. Levine as the Receiver for eCareer Holdings, Inc. and eCareer, Inc. (collectively, "eCareer" or the "Receivership Entities"), and authorizing the Receiver to investigate the Receivership Entities' affairs and to bring legal actions including those for recovery and/or avoidance of fraudulent transfers;

WHEREAS, pursuant to his authority under the Receiver Order, by letter dated July 22, 2015 (the "Demand"), the Receiver, through his special counsel for the American Express claim, made a pre-suit demand on American Express regarding approximately \$1.3 million in alleged fraudulent transfers (the "Transfers") made by the Receivership Entities to American Express in payment of charges to certain credit card accounts;

WHEREAS, American Express disputes that the Receiver is entitled to recover the Transfers, or to any relief whatsoever sought against American Express related to the Demand, and has asserted defenses to the pre-suit claims set forth in the Demand;

WHEREAS, the Receiver and American Express have engaged in good faith settlement discussions and have reached mutually agreeable settlement terms, which are set forth in this Agreement;

WHEREAS, this Agreement is subject to and conditioned upon approval by the Court; and

**NOW THEREFORE**, in consideration of the foregoing and the mutual promises, undertakings and agreements contained herein, the Parties agree as follows:



1. Incorporation of Recitals and Stipulations. The foregoing recitals and stipulations are true and correct and incorporated herein by reference.

2. Settlement Payment. American Express shall cause to be paid a lump sum of \$175,000.00 to the Receiver (the "Settlement Payment"), and the Receiver shall accept the Settlement Payment in full and final satisfaction of all claims and demands that were or could have been asserted by the Receiver or the Receivership Entities against American Express and their affiliates, including with respect to the Transfers. The Settlement Payment shall be paid within thirty (30) calendar days of the Order from the Court granting the Motion to approve this Agreement. The Receiver shall deliver to counsel for American Express an IRS Form W-9 completed in the name of the payee. The Settlement Payment shall be made by wire transfer or check payable to "David M. Levine, Receiver for eCareer Holdings, Inc." If paid by check, the check shall be mailed to the Receiver at his business address.

3. Attorneys' Fees and Costs. Each Party shall bear his or its own attorneys' fees and costs incurred in regard to all matters arising out of or relating to this Agreement and the Demand.

4. Mutual Release. Effective upon the Order from the Court granting the Motion to approve this Agreement, and except for enforcing this Agreement, the Receiver, on behalf of himself and the Receivership Entities, forever remises, releases, acquits, satisfies, and forever discharges American Express and each of their affiliates (including, without limitation, American Express Travel Related Services Company, Inc. and American Express Company) (collectively, the "American Express Parties"), including their respective officers, directors, employees, agents, attorneys, members, personal representatives, successors, heirs and assigns of and from all manner of actions, causes of action, suits, debts, covenants, contracts, controversies, agreements, promises, claims and demands whatsoever, which the Receiver or the Receivership Entities ever had or now have related to the Demand or the Receivership Entities, whether known or unknown, from the beginning of time to the date of this Agreement. Effective upon the Order from the Court granting the Motion to approve this Agreement, and except for enforcing this Agreement, American Express, on behalf of themselves and the other American Express Parties, forever remise, release, acquit, satisfy, and forever discharge the Receiver and the Receivership Entities, including the Receiver's employees, agents, attorneys, personal representatives, successors, heirs and assigns (the "Receiver Parties") of and from all manner of actions, causes of action, suits, debts, covenants, contracts, controversies, agreements, promises, claims, and demands whatsoever, which American Express ever had or now has related to the Demand, whether known or unknown, from the beginning of time to the date of this Agreement; provided, however, that such release does not extend to any charges on credit or charge cards issued by any of the American Express Parties to the Receiver Parties or to any other contractual obligations that may exist between the American Express Parties and the Receiver Parties, and provided further that such release does not extend to Joseph J. Azzata or Carla Azzata.

5. Motion to Approve Settlement. The Receiver shall file with the Court and serve a Motion to approve this Agreement. This Agreement is conditioned and effective upon the Court's entry of an Order granting the Motion and approving this Agreement.



6. Authority. Each Party to this Agreement warrants and represents that the person signing this Agreement on its behalf is duly authorized to enter into this Agreement on behalf of such party. Each Party signing this Agreement separately acknowledges and represents that this representation and warranty is an essential and material provision of this Agreement and shall survive execution of this Agreement.

7. Acknowledgement of Terms. The Parties acknowledge and agree that they have been represented by legal counsel and: (i) they have completely read and fully understand this Agreement and have voluntarily accepted the terms contained herein for the purposes of making a full and final compromise, adjustment and settlement; and (ii) they have determined that this settlement is fair and reasonable under all the circumstances and that this determination is based solely upon their independent judgment after an opportunity to consult with counsel of their choice and, that in making this determination, they have had an adequate opportunity to discuss and assess the merits of all claims or potential claims.

8. Counterparts and Copies. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. A facsimile, .pdf or electronic copy of this Agreement and any signature hereon shall be considered for all purposes as originals and delivery of an executed counterpart.

9. Merger Clause. This Agreement constitutes the entire agreement of the Parties. All prior oral and written agreements for all Parties are only those that are set forth herein, and none of the Parties is relying on any promise or representation not set forth in this Agreement. This Agreement can be amended only in writing, signed by all Parties, and none of the terms, conditions or provisions of the Agreement can be waived, changed, altered or modified except by an instrument in writing signed by all the Parties against whom enforcement of such change is sought.

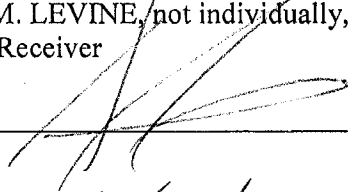


10. Choice of Law and Jurisdiction. The Parties agree that this Agreement is governed by Florida law and consent to and agree to the Court retaining and having exclusive jurisdiction to interpret and enforce the terms of this Agreement. Because the Parties have agreed that the Court will retain jurisdiction to enforce the Settlement Agreement, the effectiveness of this Agreement is conditioned upon the Court's entry of an Order in which the Court retains jurisdiction to enforce the terms of this Agreement.

11. Joint Drafting. This Agreement shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Agreement, no provisions shall be construed and interpreted for or against any of the Parties because such provisions or any other provision of the Agreement as a whole is purportedly prepared or requested by such Party.

12. No Admission of Liability. The Parties expressly acknowledge that this Agreement is entered into by way of compromise and settlement only and that it is not and shall not be held or deemed to be an admission of liability on the part of any party to this Agreement.

13. Captions. Captions in this Agreement are included for identification and shall not be used to interpret the Agreement.

14. Assignability. This Agreement may not be assigned by any Party to any other individual or entity without the prior written consent of each of the other Parties.

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| <p>DAVID M. LEVINE, not individually, but solely as Receiver</p> <p>Sign: </p> <p>Date: <u>4/26/16</u></p> | <p>AMERICAN EXPRESS BANK, FSB</p> <p>Sign: </p> <p>By: Michelle T. Visiedo</p> <p>Its: Chief Bankruptcy Counsel</p> <p>Date: <u>April 22, 2016</u></p>      |
|   | <p>AMERICAN EXPRESS CENTURION BANK</p> <p>Sign: </p> <p>By: Michelle T. Visiedo</p> <p>Its: Chief Bankruptcy Counsel</p> <p>Date: <u>April 22, 2016</u></p> |

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 15-80446-CIV-COHN/SELTZER

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

ECAREER HOLDINGS, INC.;  
ECAREER, INC.; JOSEPH J. AZZATA;  
DEAN A. ESPOSITO; JOSEPH DEVITO, and  
FREDERICK J. BIRKS,

Defendants,

VIPER ASSET MANAGEMENT, LLC;  
ESPO CONSULTING, LLC;  
DJC CONSULTING, LLC;  
J & D MARKETING, LLC;  
GRYPHON ASSET MANAGEMENT, LLC, and  
CARLA AZZATA,

Relief Defendants.

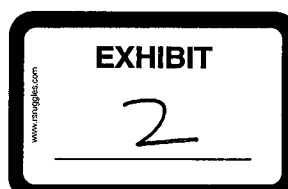
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**ORDER GRANTING RECEIVER'S MOTION TO  
APPROVE PRE-SUIT SETTLEMENT AGREEMENT WITH AMERICAN  
EXPRESS BANK, FSB AND AMERICAN EXPRESS CENTURION BANK**

THIS CAUSE came before the Court upon the *Receiver's Motion to Approve Pre-Suit Settlement Agreement with American Express Bank, FSB and American Express Centurion Bank* [DE 142] (the "Motion"). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

**ORDERED AND ADJUDGED** that:

1. The Motion is **GRANTED**.
2. The Settlement Agreement (as defined in the Motion) is in the best interests of the



receivership estate and eCareer's investors. Good cause exists to approve the Settlement Agreement. Therefore, the Settlement Agreement attached to the Motion as Exhibit "1" is approved.

3. The parties to the Settlement Agreement are directed to perform and consummate all terms and conditions set forth in the Settlement Agreement.
4. Because the parties to the Settlement Agreement have agreed that this Court will retain jurisdiction to enforce the Settlement Agreement, the effectiveness of the Settlement Agreement is conditioned upon the Court's entry of this Order in which the Court retains jurisdiction to enforce the terms of the Settlement Agreement. *See Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1280 (11<sup>th</sup> Cir. 2012).

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this

\_\_\_\_\_ day of \_\_\_\_\_, 2016.

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JAMES I. COHN  
UNITED STATES DISTRICT COURT JUDGE

Copies provided to:  
Counsel of record via CM/ECF  
*Pro se* parties