

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**BRENDA SMITH, BROAD REACH  
CAPITAL, LP, BROAD REACH  
PARTNERS, LLC, and BRISTOL  
ADVISORS, LLC,**

**Defendants.**

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**C. A. No. 2:19-cv-17213 (MCA)**

**RECEIVER KEVIN D. KENT'S INITIAL PRESERVATION PLAN**

Robin S. Weiss, Esq.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: (215) 864-9600  
Facsimile: (215) 864-9620  
E-mail: rweiss@conradobrien.com

Andrew S. Gallinaro, Esq.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: (215) 864-8083  
Facsimile: (215) 864-7403  
E-mail: agallinaro@conradobrien.com

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The Receiver, Kent D. Kent, Esq., has been appointed by Order of this Court dated June 29, 2020 (“Receivership Order”), to assume control of, marshal, pursue and preserve the Receivership Assets. The Receivership Assets include all assets of Defendants, Brenda Smith; Broad Reach Capital, LP; Broad Reach Partners, LLC; and Bristol Advisors, LLC (“Defendants”); and all affiliated companies owned or controlled by one or more of the Defendants, including BA Smith & Associates LLC; Bristol Advisors LP; CV Brokerage, Inc.; Clearview Distribution Services LLC; CV International Investments Limited; CV International Investments PLC; CV Investments LLC; CV Lending LLC; CV Minerals LLC; BD of Louisiana, LLC; TA 1, LLC; FFCC Ventures LLC; Prico Market LLC; GovAdv Funding LLC; Elm Street Investors LLC; Investment Consulting LLC; and Tempo Resources LLC (“Affiliated Entities”), including the assets and accounts set forth in Paragraphs 2 and 3 of the Receivership Order. The Receiver hereby submits this Initial Preservation Plan (the “Plan”) in accordance with Paragraphs 65 and 66 of the Receivership Order, and reports to the Court as follows:

## **I. INTRODUCTION**

On August 27, 2019, the Securities and Exchange Commission (“SEC”) filed a Complaint against Defendants, Brenda A. Smith (“Brenda Smith” or “Smith”), Broad Reach Capital, LP, Broad Reach Partners, LLC and Bristol Advisors, LLC, alleging that these Defendants raised approximately \$105 million

from at least forty (40) investors, based upon Brenda Smith's false representations that these funds would be invested in highly liquid securities through various sophisticated and profitable trading strategies with consistently high returns. According to the Complaint, in reality, the vast majority of these investments were funneled into unrelated companies, used to pay back other investors, or utilized for personal use; meanwhile, Defendants generated and provided false performance statements and fabricated documents regarding the Fund's assets and valuations, to lull existing and prospective investors. The SEC estimates that Defendants' investors are still owed in excess of \$63 million in principal.

In conjunction with the Complaint, the SEC secured a Temporary Restraining Order Freezing Assets and Granting Other Relief on August 27, 2019. A Preliminary Injunction extending the freeze was subsequently entered on September 10, 2019. The asset freeze remains in effect, and has been modified and/or extended by the June 29, 2020 Receivership Order.

In the June 29, 2020 Receivership Order, the Court took exclusive jurisdiction and possession of all Receivership Assets including, but not limited to, assets of Broad Reach Capital, LP; Broad Reach Partners, LLC; Bristol Advisors, LLC; BA Smith & Associates LLC; Bristol Advisors LP; CV Brokerage, Inc.; Clearview Distribution Services LLC; CV International Investments Limited; CV International Investments PLC; CV Investments LLC; CV Lending LLC; CV

Minerals LLC; BD of Louisiana, LLC; TA1, LLC; FFCC Ventures LLC; Prico Market LLC; GovAdv Funding LLC; Elm Street Investors LLC; Investment Consulting LLC; and Tempo Resources LLC (collectively referred to as “Receivership Parties”). Receivership Order, ¶ 1. This includes assets that are (1) attributable to assets derived from investors or clients of Defendants; (2) are held in constructive trust for the Defendants; (3) were fraudulently transferred by the Defendants; and/or (4) may otherwise be included as assets of the estates of the Defendants or Affiliated Entities (hereinafter collectively referred to as “Receivership Assets” or “Receivership Estate”).

The Order explicitly identifies the following known assets, believed to be owned, possessed, or controlled by the Receivership Parties or Brenda Smith:

Personal property at Smith’s former residence at 222 West Rittenhouse Square, Penthouse 3, Philadelphia, Pennsylvania; any vehicles owned by Smith, the Receivership Parties, or Affiliated Entities; personal property or office equipment at the former office spaced used by Defendants at 200 Four Falls Corp., Suite 211, 1001 Conshohocken State Road, West Conshohocken, Pennsylvania; certain real property at David Road and Adams Road, Parish of Tangipahoa, Louisiana; bank or brokerage accounts held or controlled by Smith; interests in any securities (such as stocks, bonds, and options); and securities purchased by Prico LLC, including but not limited to securities of LYFT Inc. and Palantir Technologies; interests in any cryptocurrency, digital currencies, or virtual currencies; digital or electronic property; intellectual property; receivables; minerals or mineral rights; and interests in any companies or partnerships.

Receivership Order, ¶ 2. Receivership Assets also include frozen accounts in the names of Prophecy Alpha Fund LP; Raffle Trading LLC; Ardeleigh Investment

Advisory Services, Ltd.; Taylor Trading LLC; Awooton Consulting; and Rybicki Capital Partners LLC, though certain third parties have expressed an interest or ownership of certain assets in these accounts. Receivership Order, ¶ 3.

Pursuant to the Receivership Order, this Plan provides preliminary information regarding the known assets and liabilities of the Receivership Estate, details regarding the Receiver's investigation and attempts to secure such assets, as well as an initial preservation plan. However, due to limited confirmed assets and the breadth of the fraud alleged, this Plan is necessarily limited and will require supplementation as additional assets are identified and/or become available.

## **II. SUMMARY**

To date, the main source of recovery for the receivership has been funds identified in several bank accounts, accounting for approximately \$825,000 in undisputed funds that are in the process of being transferred to the Receiver, in addition to roughly \$450,000 in disputed funds maintained by Industrial and Commercial Bank of China. The Receiver is also in the process of evaluating for sale several parcels of real property that it is hoped will bring additional revenue into the estate. As set forth below, the Receiver's investigation into the existence of additional assets remains ongoing.

Despite the existence of approximately \$63 million in unaccounted for investor funds, Brenda Smith's two-bedroom Rittenhouse apartment contained

modest furnishings, and it appears that any high-value items, such as expensive paintings, jewelry, shoes and handbags, were either removed from the apartment or never stored there in the first place.<sup>1</sup> The Defendants' office at Four Falls Corporate Center was likewise lacking in expensive equipment and furnishings with significant re-sale value, and the safe there had been emptied of any valuable items that may have once been stored inside. Similarly, to date, the location of Smith's lone vehicle – a 2017 Infiniti SUV – is unknown. The Receiver has taken possession of the title of the vehicle, but its physical location remains unclear, despite the Receiver's attempts to obtain information regarding its location from Ms. Smith as well as a garage where Ms. Smith thought it was parked. The Receiver is now in the process of contacting other area garages in the geographic area where Smith believes the vehicle was left.

Smith and her Affiliated Entities own four parcels of land in Louisiana –two contiguous parcels in the name of BD of Louisiana, LLC (“BD of Louisiana Property”), and two contiguous parcels owned by Smith personally (“Smith Property”). The BD of Louisiana Property appears to consist of largely undeveloped forestland in the midst of a residential area. The Smith Property appears to consist at least partly of farmland, and it appears that there may be a

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<sup>1</sup> The apartment has been unoccupied since Brenda Smith's arrest in August of 2019, but may have been accessed during the time before the Receiver's appointment on June 29, 2020. The Receiver has since requested the landlord to change the locks to prevent access of the property by unauthorized individuals.

small house or other structure on the property, though further investigation is needed to confirm. The Receiver is investigating Smith's possible ownership interest in a cattle ranch in Texas.

Based on the Receiver's preliminary review of available financial information, Smith appears to have funneled money into various private equity investments and other forms of non-traditional and illiquid investments, many relating to energy and mineral sources. The extent to which Ms. Smith or her related entities realized any benefit from such investments, or whether any potentially recoverable value remains, is presently unclear. For example, Smith invested significant funds in the mining and purchase of magnetite concentrate, and appeared to have elaborate plans regarding its potential for revenue generation from the extraction of rare-earth minerals through experimental methods. To date, the Receiver has traced the location of at least some of the magnetite acquired by Smith to a ranch in New Mexico, but has since discovered that the ranch owner sold the Magnetite after Smith stopped making storage payments.

In addition to what appears to have been numerous unsuccessful business ventures, Smith appears to have transferred significant sums of money to individuals without any apparent benefit to Smith's business entities or her investors. These transactions are being investigated by the Receiver, and notice of



the Receivership Order and asset freeze has been served upon all known and identifiable recipients of such funds.

Brenda Smith also appears to have invested and/or held ownership interests in numerous other entities—some domestic, but many overseas. The Receiver is attempting to ascertain whether any of these entities hold meaningful value and is investigating material leads in this regard.

### **III. OVERVIEW OF THE RECEIVER'S ACTIVITIES**

During the two months since the Court's appointment, the Receiver has assumed control, or taken steps to assume control, of known and discovered Receivership Assets, with the objective of preserving the Receivership Assets and maximizing recovery for defrauded investors. The Receiver is continuing his investigation and efforts to uncover additional assets. However, as of now, the confirmed Receivership Assets are limited, and the anticipated value of known real and/or personal property is very small in comparison to the vast liabilities the Receivership Entities face, including the \$63+ million owed back to defrauded investors.

Thus far, however, the Receiver has confirmed the existence of four (4) land parcels in Louisiana—the sale of which Smith does not contest; a Rolex watch which needs to be authenticated; a 2017 Infiniti SUV which the Receiver is attempting to locate; over \$1.2 million in Receivership Accounts—nearly

\$225,000.00 of which is expected to be deposited into the Receivership Account from PNC next week, and approximately \$600,000.00 of which ICBCFS has agreed to promptly transfer to the Receiver;<sup>2</sup> in excess of a half a million dollars of contested funds in frozen accounts which require further forensic review; and a confirmed and uncontested at least \$1.9 million due under a secured promissory note, with interest continuing to accrue. The Receiver does believe, presently, that there may be viable causes of action held by Receivership Entities against certain third parties involved with Ms. Smith's business dealings.

**A. Summary of Assets**

**1. Spouting Rock Receivable**

On March 6, 2020, Spouting Rock Holdings, LLC, ("Sprouting Rock") filed an Interpleader Complaint in the District Court for the District of New Jersey, concerning an obligation owed to Broad Reach Capital, LP. (*See Spouting Rock Holdings, LLC v. Broad Reach Capital, LP, et al.*, Civ. No. 20-cv-02498). As set forth in the interpleader action, Spouting Rock owes payment of principal and interest on a secured promissory note, payable to Defendant, Broad Reach Capital, LP. As of the date of the filing of the Interpleader Complaint, the amount owed was \$1,900,931.51, with interest continuing to accrue. At the request of the SEC

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<sup>2</sup> The remaining ICBCFS funds are alleged to be clearing deposits which are the subject of ICBCFS' currently pending Motion to Amend.

and in consultation with the Receiver, Spouting Rock withdrew the interpleader complaint shortly after the appointment of the Receiver and does not dispute that payment is owed to the Receivership Estate under the terms of the note. Spouting Rock did not make immediate payment and has indicated that it is currently in the process of taking steps to satisfy its obligation to the Receivership over the next few weeks. The Receiver has been in regular contact with counsel for Spouting Rock concerning the status of its payment, and has made clear that timely payment of its obligation is the Receiver's highest immediate priority.

## **2. Louisiana Properties**

As discussed above, the Receiver has located four (4) parcels in Tangipahoa Parish, Louisiana, which are part of the Receivership Estate, as follows:

- Assessment No. 3418405, Davis Road (BD of Louisiana LLC)
- Assessment No. 4104900, Adams Road (BD of Louisiana LLC)
- Assessment No. 5615305, 17091 Highway 1064 East (Brenda Smith)
- Assessment No. 6157491 (Brenda Smith)

One property, made up of two contiguous parcels, is owned by BD of Louisiana, and another property, owed by Brenda Smith, is made up of the other two contiguous parcels. There is sparse public information available regarding the majority of these properties, including the purchase price for all but one. Three of the properties appear to be undeveloped raw land, while, according to internet research, the fourth parcel may have a small home or similar structure as well as a registered mailing address.

One of the BD of Louisiana, LLC parcels, which is believed to have some value, was purchased for \$850,000.00 in 2008, but may be encumbered by a mortgage with Business First Bank, the current status and value of which is being investigated. The Receiver notified Business First Bank of this action on July 10, 2020, and served it with a copy of the Receivership Order, instructing the bank of its obligation not to transfer, sell, convey or dissipate the property, and advising of the stay on all civil legal proceedings, including, *inter alia*, any foreclosure actions. Business First Bank has not yet responded to this notice. The Receiver also filed and recorded *lis pendens* notices on all four (4) properties with the Clerk of Court's Office for Tangipahoa Parish on July 24, 2020.

The Receiver believes that the sale of these properties has the potential to generate proceeds to benefit the Receivership Estate. The Receiver has asked Godwyn & Stone Real Estate in Metairie, Louisiana, to investigate the potential market for these properties. Since most of the land is largely undeveloped, surveyors and abstractors will be necessary to ascertain the exact acreage and characteristics of the land. If it appears, through the real estate agency's investigation, that at least one of these properties is marketable and that a sale will generate funds, the Receiver will take appropriate steps to seek Court approval to retain Godwyn & Stone—as well as any other consultants whose fees would be expected to exceed \$10,000.00—to sell such property, in accordance with the June

29, 2020 Order Appointing Receiver and applicable federal law governing the sale of Receivership property. Ms. Smith has been advised of the Receiver's intentions in this regard, and has communicated, through her sister, that she has no objection to the sale of the Louisiana properties.

### **3. Bank Accounts**

The Receiver has located numerous bank accounts potentially belonging to Brenda Smith and/or Receivership Entities—some of which are located overseas. All such banks have been placed on notice of, and have been sent copies of, the Receivership Order, with a request for account information and transfer of Receivership funds.

PNC Bank has confirmed that as of August 20, 2020, it holds approximately \$224,185.98 in Receivership assets across fourteen (14) open accounts, and that several other Receivership Accounts were closed before the SEC Complaint was filed in this action. PNC has agreed to transfer these funds to the Receiver and is in the process of doing so.

The Receiver, through Counsel, has been in communication with counsel for the Industrial and Commercial Bank of China (ICBCFS), which holds accounts in the name of Receivership Parties Broad Reach Capital, LP and CV Brokerage, Inc. ICBCFS advised the Receiver that a substantial amount of funds was withdrawn from Broad Reach Capital's ICBCFS account before the SEC Complaint was filed

in this matter, and that minimal funds remained. However, ICBCFS still holds approximately \$600,000.00 in Receivership funds across numerous accounts, and agreed through Counsel, on the date of this filing, to arrange for immediate transfer of these assets to the Receiver.

ICBCFS also holds two accounts that are purported to be clearing accounts for CV Brokerage, containing approximately \$450,000.00. However, ICBCFS has not turned these funds over to the Receiver as the Receiver believes is required by the Receivership Order, claiming that it has indemnification claims that exceed the value of these funds. ICBCFS filed a Motion to Amend the Amended Order Appointing Receiver on August 25, 2020, requesting that the Receivership Order be amended to allow ICBCFS to maintain these funds on deposit until this Court has entered a final order regarding ICBCFS's right of setoff of the funds in the Account against its claims against CV Brokerage. The Motion to Amend only references the clearing deposit funds, and not the approximately \$600,000.00 in additional funds that ICBCFS has agreed to transfer to the Receiver.

Cidel Bank & Trust Inc. ("Cidel"), which is headquartered in Barbados, has indicated that it holds under \$13,000 in Receivership Assets. Cidel's Chief Compliance Officer has directed the Receiver to forward the Receivership Order to the Barbados Attorney General Office, indicating that it would comply with any production order issued by the Barbados AG's Office. The Receiver, through

Counsel, sent a copy of the Receivership Order, with correspondence requesting that Cidel be ordered to turn over these funds, on August 12, 2020, and is awaiting a response.

The Receiver has not yet received confirmation from any other banks or financial institutions that they are in possession of Receivership Assets. However, there are numerous banks that have not yet responded, for which there are records indicating that funds were present shortly before the freeze order was issued. There are also several additional accounts which have been frozen which are believed to contain receivership funds, but they require further forensic analysis, which is ongoing.

Documents obtained from Brenda Smith's apartment and the Four Falls office space indicate the existence of numerous high-value international and/or overseas banking transactions involving Receivership Entities. Investigation conducted prior to the Receiver's appointment revealed that some of these documents—including documents pertaining to ownership of a high-value HSBC bond, were fraudulent. It is at present unclear whether any of these transactions, and purported notes held by Brenda Smith and/or Receivership Entities, are legitimate, but their existence and validity warrant further investigation. If any legitimate assets belonging to the Receivership appear to exist in overseas financial institutions which are not willing to comply with the Receivership Order, the

Receiver may seek to retain local counsel to domesticate and enforce the Receivership Order.

#### **4. Corporate Ownership/Shares**

Receivership entity, CV Brokerage, Inc., holds 50,000 shares in Greenbriar Capital Corp. (“Greenbriar”). The Chief Executive Officer of Greenbriar has confirmed that these shares are still held in the name of CV Brokerage. The Receiver has taken possession of the certificate issuing these shares.

Subject to an analysis of the shares’ marketability, the Receiver intends to liquidate CV Brokerage’s interest in Greenbriar. Greenbriar is a Canadian company that trades on the Toronto Venture Exchange under the symbol GRB, as well as the United States OTC market under the symbol GEBRF. As of August 28, 2020 at 9:39 a.m., the value per share is \$1.69 USD, making the value of CV Brokerage’s interest approximately \$84,500.00, assuming all shares could be liquidated at the current price. However, given the limited liquidity of the stock, a complete liquidation of the Receiver’s position may not be possible.

The Receiver is awaiting response regarding stock held by Receivership Parties in other entities, including Lyft and Palantir Technologies, and is continuing his search for additional stock ownership information through detailed record review.



Based upon records and documentation collected by the Receiver from Brenda Smith's apartment and the Four Falls office space occupied by one or more Receivership Entities, it is believed that Brenda Smith and/or the Receivership entities may have an ownership interest in numerous other overseas and/or domestic entities that are not currently part of the Receivership Estate. The Receiver has sent notice and a copy of the Receivership Order to all such potential entities for which an address could be located, and will continue to investigate the existence, and value of, Brenda Smith's other potential ownership interests and/or other entities which should be added as additional parties to the Receivership.

#### **5. Vehicle**

Brenda Smith owns a vehicle, believed to be a 2017 Infiniti QX70, which she indicates was parked at a garage in Philadelphia. She has not been able to identify the garage where the vehicle was parked, but has provided a general area where the garage is situated. The Receiver is continuing in his efforts to locate the vehicle. If the vehicle is located, the Receiver intends to seek the transfer of the property to the Receiver, for appropriate disposition.

#### **6. Magnetite**

Brenda Smith and/or one of the Receivership Entities purchased substantial amounts of magnetite concentrate. This magnetite concentrate was stored on Hooper Ranch in Deming, New Mexico, pursuant to what was intended to be a

short-term lease. According to the property owner, after payments ceased under the lease agreement and the magnetite was not removed, he obtained a Landlord's Lien, and eventually sold the magnetite to a construction company identified as CalPortland. The magnetite's current whereabouts are presently unknown.

Upon learning about the sale of the magnetite, the Receiver served a copy of the Receivership Order on CalPortland on August 6, 2020, with a letter requesting, *inter alia*, that all magnetite and other Receivership assets be preserved, and requesting all information and documentation regarding the sale of the magnetite and its current location. The Receiver, through Counsel, has also been in communication with both the owner of the ranch, Larry Hooper and his attorney, both of whom have been served with a copy of the Receivership Order. The Receiver has requested further information and documentation from them regarding, *inter alia*, the sale of the magnetite and circumstances surrounding the sale, and has requested that Mr. Hooper's attorney advise his client that, to the extent he may still possess any receivership assets—including potentially the proceeds from any sale of the magnetite—those assets should not be transferred, sold, or disbursed, nor should he engage in any further acts of self-help or set-off.

## **7. Personal Property**

The Receiver, through Counsel, has taken inventory of the furnishings and personal effects remaining in Brenda Smith's Rittenhouse Square apartment and is

in the process of ascertaining what, if any, of these effects, can and should be sold for the benefit of the Receivership. To the extent Smith maintained any personal property of significant value at the apartment –e.g. expensive jewelry, fine art, etc., it is likely that such items were removed from the property prior to the Receiver’s appointment. However, a few miscellaneous jewelry items were found at the apartment, and a Rolex watch belonging to Smith was found at the Four Falls office space. The Receiver is seeking to have the watch authenticated and appraised, and will continue to explore the option of selling any items that have significant resale value. The Receiver has also agreed to make arrangements for a representative acting on behalf of Brenda Smith to secure certain sentimental and non-marketable items and clothing from the apartment.

#### **8. Office Items**

The Receiver, through his Counsel, has been in communication with the landlord and property manager for the office space used by one or more Receivership Parties, located at 200 Four Falls Corp., Suite 211, 1001 Conshohocken State Road, West Conshohocken, Pennsylvania. The property consists of basic office equipment of marginal value. Because the costs associated with removing and/or disposing of these items would exceed any anticipated resale value, the Receiver has concluded that the contents of the Four Falls corporate office represent a liability to the Receivership Estate. Therefore, the Receiver will

likely abandon the property to the current landlord, which has been unable to realize a rent stream from the property since Brenda Smith's arrest in August of 2019. However, the Receiver was able to sell a safe that needed to be removed from the property—which in the Receiver's judgment was of *de minimus* value, for \$700, and will deposit these funds into the Receivership Account.

The Receiver has also learned that certain Smith and/or Receivership entities own computer server equipment currently in the possession of Equinix, at one of its data centers. The Receiver has notified Equinix of the Receivership Order, and is in the process of taking possession of the equipment. The following equipment has been identified:

- Cisco ASA 5525-x, quantity 2
- Cisco 3750 PoE 48, quantity 1
- QNAP Storage Device, quantity 1
- Dell Server, ST 8MZTLM1
- HP DL360 Gen9 S/N MXQ629093R
- HP DL360 Gen9 S/N MXQ629092R
- Cisco Nexus 3548P, quantity 2
- QNAP Model TS-EC1280U-RP
- Cisco UCS-FI-6332, quantity 2
- Cisco UCS 5108 S/N FOX2023GE8F
- Pure Storage Flash Array, quantity 1

In addition to potentially useful information that may be stored on this server equipment, the equipment may have significant resale value. Once the server equipment is in his possession and its condition can be assessed, the Receiver will

ascertain its possible resale value and seek approval from the court to sell the equipment, if warranted.

## **9. Insurance**

The Receiver is in the process of investigating whether Brenda Smith and/or any Receivership Entity possessed any insurance which may potentially provide coverage in connection with this matter. While Smith does not recall the names of companies providing insurance to her and/or the Receivership Entities, she provided the name of her insurance broker/agent, and the Receiver is in the process of attempting to secure relevant insurance information through them.

## **10. Potential Claims**

The Receiver's review of available records indicates that the Receivership may hold claw-back claims against individuals and/or entities that received gifts, donations or other fraudulent transfers from Smith or the other Receivership Entities. The Receiver is analyzing whether there are potential claw-back claims against net winner investors. The Receiver will also investigate whether any potential causes of action may exist with regard to individuals and/or entities that possess, or possessed and sold certain Receivership Assets for their own pecuniary benefit, and/or which enabled or were complicit in the conduct alleged in the SEC Complaint. To the extent any such causes of action are warranted, the Receiver

would seek Court approval to proceed with litigation, consistent with his June 29, 2020 Order of appointment.

**B. Administration and Management**

All known parties currently in possession of Receivership Assets have been served with a copy of the Receivership Order and have been advised not to liquidate, transfer, sell, convey, or otherwise transfer any Receivership Assets, except upon instructions from the Receiver. They have likewise been instructed not to exercise any form of set-off, alleged set-off, lien, or any other form of self-help, or to refuse to transfer funds or assets to the Receiver's control.

The Receiver is of the position that all real and personal property of value belonging to the Receivership Estate should be monetized and/or liquidated, to the extent feasible, under the supervision of the Court, in order to maximize their value. The Receiver anticipates needing to engage brokers and/or intermediaries to assist with the sale of various assets, and will seek approval of the Court to both liquidate/sell these assets and to engage such brokers/intermediaries to the extent required under the Receivership Order.

The Receiver's initial liquidation efforts are focused on the sale of the Louisiana real estate, to the extent it is marketable. It is believed that the sale of these properties will require the Receiver to retain a real estate agent and/or brokerage firm, a surveyor, an abstractor, a title company, and appraisers. The

Receiver will seek appropriate permission from the Court and comply with all federal rules and requirements in connection with any such sale.

#### **IV. UNRESOLVED CLAIMS AGAINST RECEIVERSHIP PROPERTY**

As discussed above, ICBCFS claims that it has indemnification claims worth in excess of the withheld funds held in the CV Brokerage clearing deposit account(s). The Receiver has requested, and is awaiting receipt of, documentation regarding ICBCFS's purported indemnification claims and accompanying lien, but ICBCFS has indicated that it will not produce these items without a confidentiality order.

Southern Minerals Group, LLC ("SMG") pursued an arbitration action against CV Investments LLC (CVI) in connection with its purported breach of a Magnetite Concentrates Purchase and Sale Agreement ("PSA"), under which CVI was to purchase up to 400,000 tons of magnetite concentrate for the price of \$80.00 per ton, with a minimum monthly purchase of 4,000 tons. Upon information and belief, CVI did not actually receive any magnetite for which it failed to pay; rather, it failed to purchase the full amount of magnetite required by the PSA. It is further believed that some of the magnetite paid for by CVI was retained by SMG.

According to pleadings reviewed by the Receiver, SMG made a demand for arbitration on September 20, 2019, when Smith was already incarcerated. On

December 6, 2019, the Arbitrator determined that the matter would proceed with a single arbitrator, at SMG's request. The Arbitrator established a schedule for the proceeding on January 31, 2020, and determined that it would be adjudicated through written filings only.

Smith remained incarcerated throughout the entirety of the discovery process, without access to her records. There was no attorney to represent CVI in connection with the matter, so CVI did not file any responsive pleadings or respond to discovery requests during that time period. Upon information and belief, Smith made requests on CVI's behalf that the matter be continued until she could be afforded the opportunity to gather necessary documentation; however, the Arbitrator nonetheless closed the record in the case on May 13, 2020, while she remained incarcerated and CVI was without counsel.

On May 29, 2020, before the Receiver was appointed and without any defense being presented on behalf of CVI, the Arbitrator entered an award in favor of SMG on all claims, finding that CVI materially breached the PSA, CVI breached the covenant of good faith and fair dealing, CVI's bad acts warranted punitive damages and the application of the maximum interest rate available under New Mexico law, and CVI must bear the cost of arbitration. As a result, the Arbitrator awarded damages and costs as follows: \$4,215,000 in liquidated damages as of March 1, 2020, \$14,080,599 in lost profits, \$3,600,000 in punitive



damages, \$23,660 in arbitration costs, prejudgment and post-judgment interest of 15% on all liquidated damages, and post-judgment interest of 15% on all other damages and costs.

On June 5, 2020, Counsel for SMG filed a Petition for Order Confirming Arbitration Award in the District Court for the Eastern District of Pennsylvania in *Southern Minerals Group, LLC v. CV Investments LLC*, No. 2:20-cv-02643. That Petition has not yet been ruled upon. On August 4, 2020, the Receiver, through Counsel, filed a Notice of Stay in that action, attaching a copy of this Court's June 29, 2020 Receivership Order.

The Receiver has serious concerns that SMG's claims against CVI were not and could not be fairly defended under the circumstances, and that accepting an uncontested arbitration award as a valid and liquidated claim would be manifestly unjust. It is, therefore, the Receiver's position that the validity and amount of SMG's claims will need to be adjudicated as part of the claims process in this matter. For this reason, the Receiver does not intend to consent to any request to have the stay lifted in connection with that matter, and will seek to prevent having the arbitration award confirmed.

Also proceeding in the District Court for the Eastern District of Pennsylvania is the matter of *Surefire Dividend Capture, LP v. Smith et al.*, No. 2:19-cv-04088, against Smith and numerous other Receivership Entities, as well as

non-Receivership parties. Pursuant to the June 29, 2020 Receivership Order, the claims against Smith and all Receivership Entities were stayed, with a carve-out allowing the other claims against third parties in both that and a pending arbitration matter to proceed, subject to certain conditions. However, on July 21, 2020, the *Surefire* matter was temporarily stayed in its entirety, following the submission of briefs by the parties addressing the effect of the stay in this matter on that litigation.

There is another matter proceeding in the Superior Court of the State of California against numerous Receivership and non-Receivership entities, in *Innovative Fund I, L.P. v. Heckler et al.*, No. 30-2019-01053812-CU-FR-CJC (Ca. Super. Orange Cty.). TA1, LLC was one of the original named defendants in that matter when it was originally filed on July 30, 2019. On or about September 25, 2019, after Smith's arrest, the Complaint was amended to name Smith and Broad Reach Capital, LP, as well as CV Fund Administration, LLC as additional defendants. On February 4, 2020, the plaintiff in that matter requested an entry of default against these defendants. Smith thereafter attempted to file an answer, which was rejected, but her request for waiver of court fees was granted on May 28, 2020. The Plaintiff in that matter filed a notice of the Receivership Order and resulting stay on July 28, 2020.

In addition to the above proceedings, the Receiver is aware of at least two FINRA arbitrations, including *Alpha Capital v. CV Brokerage, Inc. et al.*, (FINRA Arbitration No. 19-03157) and *Jeffrey Bydalek v. Brenda Smith and CV Brokerage et al.* (FINRA Arbitration No. 18-03955). The Receiver believes that there are likely other pending actions and/or judgments against Smith and/or other Receivership Parties. The Receiver will seek to stay any such pending actions of which he becomes aware, in accordance with the June 29, 2020 Receivership Order.

#### **V. RECEIVER'S ONGOING INVESTIGATION**

The Receiver's investigation remains in a preliminary stage, as the Receiver is still in the process of requesting and collecting material from numerous sources including bank records, investment records and correspondence as well as attorney records from various firms. Through his investigation and review of voluminous documents obtained from Brenda Smith's residence and office, and numerous communications with the SEC, the Receiver has identified in excess of one hundred fifty (150) individuals and/or entities who potentially possess, or have knowledge regarding, Receivership Assets, in addition to the Receivership Entities and frozen account holders. These include, *inter alia*, other entities in which Brenda Smith may possess some degree of ownership and/or control, individuals and/or entities with whom Brenda Smith and/or the Receivership Entities have

done business, former attorneys for the Receivership Entities and/or Smith, and banks and other financial institutions holding, or appearing to hold, Receivership Assets and/or accounts in the name of Receivership Entities.

The vast majority of these individuals and/or entities have been served with notice and a copy of the Receivership Order over the course of the last sixty (60) days, along with requests for documents and information. There remain additional individuals and/or entities who have been identified but for whom contact information is in the process of being secured.

## **VI. CLAIMS DETERMINATION AND DISTRIBUTION PROCESS**

As set forth above, the Receiver's primary focus, at this time, is locating and securing tangible Receivership Assets and engaging in activities that will be most likely to generate proceeds for the Receivership Estate. Because the Receiver is still in the process of securing material funds for the Receivership Account, the Receiver has deferred developing a claims determination and distribution process.

In the meantime, however, the Receiver and his Counsel continue to collect information from various knowledgeable individuals, including investors and creditors, as well as the individuals and/or entities to whom notice has been sent. Additionally, the Receiver has created a website, available at <http://broadreachreceiver.com/index.html>, where case updates are posted. The website contains links to an investor questionnaire and a creditor claim form for

submission to the Receiver, which the Receiver will utilize to track, monitor, evaluate and assess investor and creditor claims. Claims determination and distribution will then be addressed at a later date.

## VII. CONCLUSION

The Receiver, Kevin D. Kent, Esq., hereby respectfully submits this Initial Preservation Plan for the Court's consideration. The Receiver anticipates providing additional informational updates in his reports per the Receivership Order, and in connection with motions pertaining to specific assets.

Respectfully Submitted,

Date: 8/28/20

s/ Robin S. Weiss

Robin S. Weiss, Esq.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: (215) 864-9600  
Facsimile: (215) 864-9620  
E-mail: rweiss@conradobrien.com

Andrew S. Gallinaro, Esq.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: (215) 864-8083  
Facsimile: (215) 864-7403  
E-mail: agallinaro@conradobrien.com

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

v.

**BRENDA SMITH, BROAD REACH  
CAPITAL, LP, BROAD REACH  
PARTNERS, LLC, and BRISTOL  
ADVISORS, LLC,**

**Defendants.**

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C. A. No. 2:19-cv-17213 (MCA)

**CERTIFICATE OF  
SERVICE**

I hereby certify, this 28th day of August, 2020, that I caused to be served a true and correct copy of the Receiver Kevin D. Kent's Initial Preservation Plan, through counsel of record by electronic filing pursuant to Fed.R.Civ.P. 5(b), and upon Defendant, Brenda A. Smith, on behalf of all defendants, via first-class mail, postage prepaid, as follows:

Brenda A. Smith  
Permanent ID 2019-339640  
CCIS# 07-571432  
U.S. Marshalls Number 72832-050  
Essex County Correctional Facility  
354 Doremus Avenue  
Newark, NJ 07105

s/ Robin S. Weiss  
Robin S. Weiss, Esq.  
Attorney for Receiver, Kevin D. Kent, Esq.