

**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)**

**Return Date: Dec. 7, 2020**

**NOTICE OF MOTION OF RECEIVER, KEVIN D. KENT, ESQUIRE, FOR  
APPROVAL OF FIRST INTERIM FEE APPLICATION FOR THE  
PERIOD JUNE 29, 2020 THROUGH SEPTEMBER 30, 2020**

**PLEASE TAKE NOTICE** that the undersigned, on behalf of the Receiver, Kevin D. Kent, Esq. will move before the Honorable Madeline Cox Arleo, U.S.D.J., United States District Court for the District of New Jersey, Martin Luther King Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, on December 7, 2020, or as soon thereafter as the Court permits, at a date and time to be determined by the Court, for Approval of the Receiver's First Interim Fee Application for the Period June 29, 2020 through September 30, 2020.

**PLEASE TAKE FURTHER NOTICE THAT**, in support of this Motion, the undersigned will rely upon the accompanying Interim Fee Application with exhibits attached thereto, which incorporates and is in lieu of a more formal brief, and which is incorporated herein by reference.

**PLEASE TAKE FURTHER NOTICE** that the undersigned requests that the proposed form of Order submitted herewith be entered by the Court.

Respectfully submitted,

Dated: 11/13/2020

*s/ Robin S. Weiss*  
Robin S. Weiss, Esquire  
Andrew S. Gallinaro, Esquire.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: 215-864-9600  
Fax: 215-864-9620  
rweiss@conradobrien.com  
agallinaro@conradobrien.com  
*Attorneys for Receiver, Kevin D. Kent,  
Esq.*

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**RECEIVER, KEVIN D. KENT'S FIRST INTERIM FEE APPLICATION,  
FOR THE PERIOD JUNE 29, 2020 THROUGH SEPTEMBER 30, 2020**

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

Dated: 11/13/2020

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Pursuant to the Court’s Order Appointing Receiver dated June 29, 2020, Kevin D. Kent, Esq., Receiver, hereby submits this First Interim Fee Application for the Period June 29, 2020 through September 30, 2020, and moves for approval of payment of fees and expenses invoiced by the Receiver, counsel for the Receiver, Conrad O’Brien PC, and the Court-appointed accountant to the Receiver, Alvarez & Marsal Disputes and Investigations, LLC. In support of the Application, the Receiver states as follows.

**I. BACKGROUND**

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 and deceive existing and prospective investors. The SEC estimates that Defendants' investors are still owed in excess of \$63 million in principal.

In conjunction with the filing of 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.

On June 29, 2020, this Court entered an Order Appointing Receiver ("Receivership Order"), taking 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, including *inter alia*, the assets and accounts set forth in Paragraphs 2 and 3 of the Receivership Order (hereinafter collectively referred to as “Receivership Assets” or “Receivership Estate”). In the same Order, the Court appointed Kevin D. Kent, Esq., of Conrad O’Brien PC as Receiver to assume control of, marshal, pursue and preserve the Receivership Assets. Receivership Order, ¶ 5.

The June 29, 2020 Receivership Order also authorizes the Receiver to retain the law firm of Conrad O’Brien PC (“Conrad O’Brien” or “Law Firm”) and Alvarez & Marsal Disputes and Investigations, LLC (“Alvarez” or “Accountant”) as his counsel and accountant, respectively (collectively “Retained Personnel”), in connection with his appointment. Receivership Order, ¶ 71. The Receivership Order further provides that, subject to the Court’s approval, the Receiver and his Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate. Receivership Order, ¶ 72.

The Court-approved fee schedules, which provide substantial discounts from the standard rates of the Law Firm and the Accountant, and which hourly fee rates the Court has already found to be reasonable, are as follows:

	<b><u>Receiver</u></b>	
<b>Name</b>		<b>Rate</b>
Kevin D. Kent		\$510.00

**The Law Firm**

<b>Name/Position</b>	<b>Rate</b>
Andrew Gallinaro, Partner	\$365.00
Associate	\$240.00 - \$330.00
Paraprofessional	\$165.00

**The Accountant**

<b>Name/Position</b>	<b>Rate</b>
Michael Shanahan, Managing Director	\$550.00
Managing Director/Senior Director	\$550.00 - \$725.00
Directors/Managers	\$425.00 - \$525.00
Sr. Associates/Associates	\$275.00 - \$375.00

Receivership Order, ¶¶ 79-83.

Pursuant to the Receivership Order and the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission (“Billing Instructions”), the Receiver, Counsel and the Accountant are to be paid their reasonable fees and expenses out of the Receivership Estate. Upon Order of this Court approving such Application, the Receiver may pay up to eighty percent (80%) of the compensation/professional fees and expenses of the applicants.<sup>1</sup>

Receivership Order, ¶¶ 75, 81, 84.

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<sup>1</sup> At the close of the Receivership, the Receiver will file a final fee application for reasonable compensation and expense reimbursement, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the Receivership. Although Interim Fee Applications are subject to a holdback in the amount of twenty percent (20%) of the amount of fees and expenses for each application filed, “[t]he total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.” Receivership Order, ¶¶ 74-75.

The Receiver previously submitted this Application to the SEC, in accordance with the Billing Instructions and Paragraph 73 of the Receivership Order. The SEC has advised the Receiver that it does not have any objection to the Application.

This is the first application for approval of fees and expenses by the Receiver and his Retained Professionals; therefore, there have been no previous orders on interim applications.

## **II. CASE STATUS**

### **A. Cash on Hand, Administrative Expenses, and Unencumbered Funds**

The Receiver has consolidated Receivership Assets from bank accounts held with Industrial and Commercial Bank of China Financial Services (ICBCFS), PNC, and Citizens Bank, into a central Receivership Account (“Receivership Account”). As of September 30, 2020, the balance of that account was \$808,872.10.<sup>2</sup> As of November 10, 2020, the balance of that account is now \$1,141,525.37, and the Receiver hopes that there will soon be significant increases in the cash available through the sale of Receivership property and stock holdings, which are among the Receiver’s top priorities. The Receiver also believes that additional funds may be held with other banks, most of which are overseas and the Receiver will take steps to repatriate those funds where practical. The Receiver

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<sup>2</sup> This includes \$860.30 of funds from Citizens Bank accounts held in the name of Brenda Smith.

continues his investigation and collection efforts in this regard, which may ultimately require the retention of local counsel for the purpose of domesticating the Receivership Order in other countries. Any such action, however, would be subject to a cost-benefit analysis with regard to the estimated value of anticipated assets and the projected costs involved in securing same.

In addition to the above, there is a confirmed and uncontested at least \$1.9 million due under a secured promissory note from Spouting Rock Holdings, LLC (“Spouting Rock”), with interest continuing to accrue. Additional potential assets include in excess of \$700,000.00 of contested funds in frozen accounts for which forensic review is continuing.

Additionally, as discussed further below, this application is made while the Receiver is exploring the potential liquidation of numerous assets, including Receivership holdings in publicly traded securities, as well as four parcels of real property located in Louisiana and owned by Brenda Smith and BD of Louisiana, LLC (“Louisiana properties”), some of which are subject to a mortgage. For example, the Receiver sold 36,000 shares in Palantir Technologies after the close of this quarter – the maximum amount of shares the Receiver was authorized to sell in that company’s initial public offering. The Receiver, through Receivership Party Prico Market LLC, still holds an additional 144,000 shares in Palantir Technologies, which will likely be freed up for sale during the first quarter of

2021. While the value of these shares depends upon market conditions and therefore fluctuates over time, these remaining shares are estimated to be worth in excess of \$1 million currently, based upon current market prices. This, however, is subject to change, and value will depend upon the price per share at the time of sale. Additionally, the BD of Louisiana property was found to have significant value according to an appraisal performed several years ago. It is, therefore, believed, that even with payoff of the mortgage, the sale of that property will still result in a significant flow of cash to the Receivership Estate. The Receiver is continuing to search for Brenda Smith's vehicle and plans to sell it once located. The Receiver anticipates that the liquidation of these assets will result in substantial increases of cash. For further details, the Receiver has attached the SEC's Standardized Fund Accounting Report ("SFAR") as Exhibit "A" to this Application.

The Receivership incurred administrative expenses of \$750.00 from the Receivership Account through September 30, 2020, for payment to Title Management Group, Inc. for abstracts of the Louisiana properties.<sup>3</sup> The Receivership has paid an additional \$4,452.16 to the Tangipahoa Sheriff's Office for redemption of the Louisiana properties after the end of this quarter, as the

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<sup>3</sup> This not a reflection of the Law Firm expenses for which the Receiver is seeking reimbursement in this application; rather, these are the administrative expenses directly withdrawn from the Receivership Account in connection with the maintenance of assets.

properties were sold at a tax sale on June 30, 2020, for failure to pay 2019 property taxes. Property taxes for 2020 have not yet been posted but will soon need to be paid. Additionally, since the Receiver intends to sell these properties, subject to the Court's approval, it is anticipated that there will be additional costs incurred in connection therewith, including, *inter alia*, the costs for appraisal and other associated fees. Additionally, the Receiver retained and paid \$500.00 to a private investigator to help locate Smith's vehicle after the end of this quarter, but prior to the time of this filing.

**B. Administration of Case to Date**

On May 19, 2020, the SEC filed a Motion to Appoint Receiver in this matter. During the time that the motion was pending, the Receiver and his team took steps to prepare for the appointment, including, *inter alia*, reviewing litigation-related materials in lawsuits brought against Receivership Parties, beginning preliminary investigations into potential Receivership Assets, and preparing for notices of receivership to be filed in all federal jurisdictions within ten (10) days of the appointment. The Receiver and the Law Firm are not applying for compensation for such pre-appointment activity, but ask the Court to take these activities into account in evaluating this application for post-appointment fees and expenses.

On June 29, 2020, the Receiver was appointed to assume control of, marshal, pursue and preserve Receivership Assets. During the first three months of the Receivership, the Receiver, his Counsel and Accountants have focused a majority of their efforts on identifying, locating, and assuming control of, Receivership Assets, with the objective of preserving these assets and maximizing recovery for defrauded investors. The Receiver is generally 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, and will seek authority from the Court as necessary in connection with these liquidation efforts.

**1. General Legal Matters**

Immediately following the Receiver's appointment, the Receiver, through Counsel, worked diligently to comply with the requirements of 28 U.S.C. § 754, which requires that a receiver, appointed in any civil action or proceeding involving property situated in different districts, "shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located." *Id.* Given the breadth of the scheme involved and the uncertainties regarding the location of real and personal property in the United States, the Receiver sent out a Notice of the Filing of Complaint and Order Appointing Receiver, with the Complaint and Order Appointing Receiver attached, with all necessary filing fees,

to every other District Court in the United States for filing on July 2, 2020.<sup>4</sup> Where possible, and for the vast majority of courts, the filings were sent out via Federal Express overnight delivery. All of the Notices have been filed, with most having been electronically filed through CM/ECF and docketed by the courts by July 9, 2020. Likewise, with the assistance of his paralegal, the Receiver filed IRS Form 56's for the Receivership Parties on July 9, 2020.

**2. Visits to Rittenhouse Apartment and Four Falls Office, and Collection of Valuable Belongings and Professional Equipment**

Counsel for the Receiver, with the assistance of administrative staff, promptly made arrangements to visit Brenda Smith's Rittenhouse apartment and the Four Falls office space in Conshohocken within two (2) weeks of the entry of Receivership Order. During these visits, in addition to taking inventory of the personal belongings, furnishings, and equipment at both locations, Counsel secured numerous important documents from both properties, thumb drives from Smith's apartment, a share certificate in Greenbriar Capital Corp., held by CV Brokerage, and the title for Smith's vehicle. Administrative staff has since returned to the Four Falls office space to assist with the disposition of property, and is in the process of completing the removal of Smith's belongings from her Rittenhouse Apartment.

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<sup>4</sup> Counsel for the Receiver had to communicate with the clerks of numerous courts with regard to questions and issues that arose in connection with the filings. Where possible and appropriate, these communications were delegated to administrative staff to handle.



Administrative staff has identified and secured potentially valuable furnishings, rugs, jewelry, and other personal effects in Smith's Rittenhouse apartment, which are being evaluated for possible resale and/or auction.<sup>5</sup> They also retrieved the keys to Smith's vehicle.

Additionally, IT staff from Conrad O'Brien personally retrieved server equipment from an Equinix data center in New Jersey. In addition to potentially significant monetary value, it is believed that this server equipment contains valuable information relevant to the operation of Smith's businesses and the potential location of assets. The Receiver is in the process of attempting to make arrangements for efficient, cost-effective and secure data storage and hosting of the data contained on the equipment, and will then likely seek permission from the Court to sell the equipment for the benefit of the Receivership Estate.

### **3. Initial Document Review and Investigation**

The documents retrieved from Smith's apartment and Four Falls office space, both in paper and on flash drive, proved to be a valuable source of information with regard to the potential whereabouts of Receivership Assets, primarily through the identification of individuals and/or entities who either appear to have been recipients of Receivership Assets, who have had dealings with Smith

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<sup>5</sup> Smith was given the opportunity to remove sentimental, personal effects with marginal resale value.

and/or the Receivership Parties, or who may otherwise possess valuable information in this regard. With the assistance of the Accountant and his Counsel, and through extensive file review of available records and documentation, the Receiver has thus far identified in excess of two hundred (200) non-Receivership individuals and/or entities which may possess Receivership Assets and/or valuable information regarding Receivership Assets, including, *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, recipients of substantial funds from Receivership bank accounts, and banks and other financial institutions holding, or appearing to hold, Receivership Assets and/or accounts in the name of Receivership Entities.

#### **4. Notices of Receivership**

In addition to the Receivership Parties and certain governmental authorities, the Receiver sent notice of the Receivership and asset freeze to more than 200 individuals and/or entities identified through investigation and file review,<sup>6</sup> with commensurate document and/or asset turnover demands. All known parties

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<sup>6</sup> Some of these notices have been returned. The Receiver continues to search for additional, alternative contact information for individuals and/or entities whose notice letters have been returned. Further, some individuals and/or entities had to be sent numerous letters before a response was received, and the Receiver continues his attempts to follow-up with those who have not yet responded.

currently in possession of Receivership Assets were 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.

As a result of these Notices, the Receiver, through his Counsel and/or Paraprofessionals, where appropriate, has conducted interviews and/or exchanged communications with many individuals and/or entities served with the Receivership Order, directly or through their counsel, many of which have turned over additional documents for review. In total, the Receiver is in possession of at least several terabytes of data.<sup>7</sup> The Receiver's review of documents and investigation continues, and additional parties are routinely identified for noticing and/or interview. It is anticipated that additional responses will be forthcoming, and that individuals and/or entities believed to possess either valuable information and/or Receivership Assets will continue to be identified and served with the Receivership Order and document and/or turnover requests, where appropriate, on a rolling basis.

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<sup>7</sup> A terabyte is equivalent to 1,000 gigabytes.

**5. Receivership Bank Account Opening and Collection of Funds and Documentation from Banks**

Pursuant to the Receivership Order, the business manager at Conrad O'Brien arranged for the opening of a centralized Receivership Account with Bank of America, where Receivership Assets could be deposited. The current balance of the Receivership Account is \$1,141,525.37 as of November 10, 2020. On August 28, 2020, \$700 in cash from the sale of a safe in the Four Falls office, and \$350.19 found in a coin jar in the office, were retrieved and transferred by Law Firm administrative staff to the Receivership Account. ICBCFS transferred \$577,088.16 in uncontested funds to the account via wire on August 31, 2020. PNC Bank sent the Receiver \$224,185.98 by check, and Citizens Bank sent a check for \$7,297.77, which checks were deposited into the Receivership Account by Law Firm administrative staff on September 2, 2020 and September 28, 2020, respectively.<sup>8</sup> While Counsel has already received productions from PNC Bank and ICBCFS, Counsel is still waiting for additional productions from these entities, as well as the document production from Citizens Bank.

The Receiver is still awaiting responses from several other banks and financial institutions, many of which are overseas. Some institutions have advised that all accounts have been closed and that they are not in possession of

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<sup>8</sup> An additional \$337,605.43 was deposited into the Receivership Account after the close of the quarter on October 21, 2020, in connection with the sale of 36,000 shares held in Palantir Technologies.

Receivership funds. Others have refused to cooperate and/or turn over funds to the Receiver because they are not under the jurisdiction over the United States courts. This has required the involvement of Counsel to attempt to obtain account information and communicate with these institutions, and may ultimately require the retention of local counsel if it is determined that there are sufficient assets held in such overseas accounts to justify the cost of doing so.

For example, the Receiver, through Counsel, attempted to secure Receivership Assets held in an account with Cidel Bank & Trust, Inc. (“Cidel”), which is headquartered in Barbados. Counsel attempted to obtain assistance in this regard from the Barbados AG’s Office; however, on September 2, 2020, the Attorney-General advised that local counsel will need to be retained in order to compel compliance and effectuate the transfer of these funds from Cidel. Likewise, the New York branch of National Australia Bank has refused to even confirm the existence of any Receivership Accounts held with the institution, advising that such accounts would be held in Australia, rather than a local United States branch, and that retention of Australian counsel would be necessary to secure such information from the Bank.

Counsel involvement was also required in connection with disputes that have arisen with ICBCFS with regard to two accounts holding clearing funds for CV Brokerage, in the amount of \$444,213.08, where ICBCFS has claimed that it

has a security interest in this balance, arising from claims which purportedly exceed the amount of the balance. After the exchange of numerous communications with regard to these disputed funds, ICBCFS filed a Motion to Amend the Order Appointing Receiver on August 25, 2020, which was ultimately resolved, following extensive negotiations, by Stipulation filed on September 8, 2020. In addition, due to ICBCFS' concerns regarding the confidential nature of certain documents requested by the Receiver, the parties agreed to enter into a stipulated protective order. Counsel for the Receiver drafted the Stipulated Protective Order, which was ultimately agreed upon and filed on September 10, 2020. Counsel continues to wait for additional documents from ICBCFS.

**6. Louisiana Properties**

Through investigation, the Receiver discovered four (4) parcels of property located in Tangipahoa Parish, Louisiana, two of which are owned by Brenda Smith personally, and two of which are owned by BD of Louisiana, LLC. The Receiver's paralegal performed extensive research regarding the properties through the Recorder of Deeds and the Clerk of Courts, attempting to locate and identify any claims, lawsuits, liens and other encumbrances potentially affecting these properties. The Receiver was able to identify the mortgaging bank on the BD of Louisiana parcels, and promptly sent notice to the bank. Through these efforts, Counsel for the Receiver is now in contact with Counsel for the mortgaging bank.

Additionally, on July 6, 2020, the Receiver sent notice of the Receivership Order to the Recorder of Deeds of Tangipahoa Parish, and filed *lis pendens* notices with the Tangipahoa Parish Clerk of Courts for all four parcels on July 24, 2020. Through communications with, and documentation received from, Counsel for the mortgaging bank, as well as communications with the Tangipahoa Parish Sheriff's Office, the Receiver has learned that all four (4) Louisiana parcels were sold at a tax sale on June 30, 2020, for failure to pay taxes for the year 2019, as discussed further below. Tax sales are subject to a three-year redemption period, following which the tax purchaser can take possession of the property if redemption has not occurred. Counsel for the Receiver communicated and coordinated with the Tangipahoa Parish Sheriff's Office to arrange for redemption of the four properties through payment of the delinquent taxes and associated penalties, which were paid after September 30, 2020 and are not accounted for in the current account balance.

The Receiver, through Counsel, has been in communication with Godwyn & Stone Real Estate ("Godwyn & Stone" or "Realtor") regarding the potential sale of the four parcels. The Realtor made arrangements for abstracts to be completed for the parcels, in order to ascertain the full property and title history and identify any potential encumbrances, in preparation for a possible sale. Counsel is now in the process of identifying and locating appraisers, with the assistance of Godwyn &

Stone, and will seek appropriate approval from the Court to retain these professionals and pursue the sale of these properties.

The Receiver wrote to Brenda Smith on August 20, 2020, advising of his intention to sell these properties and requesting that she advise of any objection to the sale of these properties. On August 26, 2020, Brenda Smith's sister, Linda Smith, confirmed in writing that she spoke with Brenda Smith regarding the Receiver's letter, and that Brenda Smith is not raising any objection to the sale of these properties.

**7. Search for Smith's Vehicle**

At the direction of Counsel, administrative staff for the Law Firm has continued to search for Brenda Smith's vehicle, and has visited and communicated with numerous area garages attempting to locate it. After locating a parking receipt in Smith's apartment, the Receiver identified the last known location where the vehicle was last parked. However, the attorney for the garage has advised that the vehicle is no longer there. Therefore, the Receiver has retained a private investigator to search for the vehicle. If located, the Receiver will seek authority to sell the vehicle for the benefit of the Receivership Estate.

**8. Communications with Creditors, Investors, Debtors and Claimants**

Counsel for the Receiver, as well as paralegal staff, where appropriate, have had numerous communications with various creditors, investors, debtors and



claimants, largely through their counsel. Counsel has directed any known investors to complete the investor questionnaire on the Receivership website, <http://broadreachreceiver.com/index.html>, and has also advised known and potential creditors of the creditor claim form on the website.

Counsel has communicated with numerous attorneys representing plaintiffs and/or co-defendants in related actions, particularly with regard to the stay and whether or not it should be lifted in connection with certain actions. The Receiver has not agreed to the lifting of the stay in any of these actions. After receiving such a request in connection with *Southern Minerals Group, LLC v. CV Investments LLC*, No. 2:20-cv-02643, pending in the Eastern District of Pennsylvania, the Receiver, through Counsel, filed a Notice of Stay on August 4, 2020, attaching a copy of this Court's June 29, 2020 Receivership Order.

The Receiver and his Counsel remain in regular contact with counsel for Spouting Rock with regard to the repayment of a \$1.9 million loan, plus interest, due and owing to Defendant, Broad Reach Capital, LP, which was the subject of the Interpleader Complaint filed by Spouting Rock in the United States District Court for the District of New Jersey. *See Spouting Rock Holdings, LLC v. Broad Reach Capital, LP, et al.*, Civ. No. 20-cv-02498. Spouting Rock has not yet made payment, but has advised that it is still in the process of taking steps to satisfy its obligation to the Receivership.

The Receiver has also been in communication with individuals claiming entitlement to funds held in certain disputed frozen accounts, and the Accountants have been conducting forensic analyses for the purposes of evaluating these claims.

**9. Brokerage Account Opening and Transfer of Stock Holdings**

The Receiver has identified several Receivership holdings in publicly traded securities. Some of these securities either do not trade on the New York Stock Exchange, or only trade on the United States OTC market. The Receiver continues his efforts to identify additional stock holdings belonging to the Receivership Parties and/or which belong to entities that should be added as Receivership Parties.

Most significantly, after sending numerous letters and notices to Palantir Technologies (“Palantir”) and Computershare, the Receiver located the stock holdings held by Prico Market LLC (“Prico”) – a Receivership Party – with Computershare—which are believed to be of significant value. After learning of an imminent initial public offering (IPO) for Palantir, the Receiver filed an Emergency Motion to Retain a Wealth Management Firm and for Discretion to Liquidate Receivership Holdings in Publicly Traded Securities on September 25, 2020. The Motion was granted on September 28, 2020, enabling the Receiver to retain Terry Fant, CFP and Eric Geedey, of Raymond James, for the purpose of

opening a brokerage account to hold Receivership stock holdings, providing financial guidance and advice to the Receiver with regard to the potential sale of Receivership stock holdings, and coordinating and assisting with the potential sale and/or liquidation of Receivership stock holdings. The Order grants the Receiver discretion to sell Receivership holdings in publicly traded securities where he believes, based upon the advice and guidance of Raymond James, that doing so would maximize value for the Receivership Estate, and also authorizes the payment of reasonable commissions to Raymond James in connection with such sales.

Opening the brokerage account and securing the conversion and transfer of Prico's shares to the Receiver required the involvement of counsel due to the complexity and unconventional nature of the transaction. Counsel for the Receiver had numerous communications with Counsel for Palantir and Computershare, as well as Raymond James, in an effort to arrange for the transfer of Prico's freed-up shares to the Receiver. Through those efforts, after the close of the quarter, 36,000 of Prico's shares in Palantir were transferred to the Raymond James brokerage account, and were promptly sold at \$9.4183 per share.<sup>9</sup> After payment of a small

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<sup>9</sup> Pursuant to the terms of Palantir's initial public offering, shareholders of Class A Common Stock in Palantir were permitted to sell up to twenty percent (20%) of their shares in connection with Palantir's direct listing on the New York Stock Exchange. The remaining eighty percent (80%) of Prico's shares remain locked-up with Computershare. It is anticipated that this lock-up period will end sometime in the first quarter of 2021, at which point those remaining 144,000

commission to Raymond James in accordance with this Court's September 28, 2020 Order, at the rate of 4 cents per share and other associated fees, this resulted in an infusion of \$337,605.43 in cash into the Receivership Account on October 21, 2020.<sup>10</sup>

**10. Investigation of Potential Claims**

Counsel has communicated with numerous individuals and/or entities, either directly or through counsel, who received Receivership Assets and against whom the Receivership may possess potential claw-back claims. Investigation and document review continue in this regard, and once the Receiver has gathered necessary evidence and has made an evaluation of the costs and benefits of pursuing such claims, he will seek approval from the Court, where appropriate, to pursue such actions where he believes doing so will be financially beneficial for the Receivership Estate.

**11. Anticipated Closure of Case**

Given the ongoing nature of the Receivers' investigation, the Receiver does not have a projected date by which he expects the Receivership to close.

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shares should be eligible to be transferred to the brokerage account with Raymond James and then sold.

<sup>10</sup> There may be tax liabilities associated with this sale.

### **C. Summary of Creditor Claims Proceedings**

In anticipation of numerous creditor claims against the Receivership Estate, the Receiver has created a creditor claim form to document all such claims being made against the Estate. The creditor claim form has been published on the Receiver's website, at <http://broadreachreceiver.com/index.html>, and the Receiver is in the process of notifying known and potential creditors to visit the site to complete claim forms.

The Receiver has been made aware of several claims against the Receivership Estate, which he is in the process of evaluating.<sup>11</sup> However, it is believed that there remain additional creditors about which the Receiver is not yet aware, and the Receiver continues his review of voluminous records and documents, and anticipates that additional fact investigation will lead to the identification of additional creditors.

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.

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<sup>11</sup> Information regarding the claims of known creditors is included in the Receiver's Quarterly Status Report.

There are, at present, insufficient funds available to pay creditor claims. When appropriate, the Receiver will formulate a creditor claims procedure for review and approval by the Court.

#### **D. Receivership Assets**

While the Receiver is continuing his investigation and efforts to uncover additional assets, confirmed Receivership Assets remain limited, particularly in comparison to the vast liabilities the Receivership Entities face, including the more than \$63 million owed back to defrauded investors.

##### **1. Receivership Bank Account**

As set forth above, as of September 30, 2020, the balance of the Receivership bank account is \$808,872.10. As of November 10, 2020, the balance of that account is now \$1,141,525.37.

##### **2. Stock Holdings**

The Receiver has confirmed the existence of the following Receivership stock holdings:

- 180,000 shares in Palantir Technologies held by PriCo Market, LLC. The Receiver sold 36,000 shares of Class A Common Stock in Palantir on the New York Stock Exchange after the close of this quarter, and the remaining 144,000 are presently held with Computershare. Palantir (PLTR) is now trading on the New York Stock Exchange.
- 50,000 shares in Greenbriar Capital Corp, which is a Canadian company that trades on the Toronto Venture Exchange (GRB), and

the United States OTC market (GEBRF). The Receiver is in the possession of the certificate issuing these shares to CV Brokerage.

- 932 shares of Tremor Int Ltd (TRMR), which trades on the London Stock Exchange. ICBCFS is currently in possession of these shares, and the Receiver is attempting to make arrangements for their transfer. The shares belong to CV Brokerage.

As discussed above, the remaining Palantir Stock held with Computershare is expected to be freed up in the first quarter of 2021, at which point the Receiver will seek to have them transferred to the brokerage account with Raymond James and then liquidated. Raymond James is presently investigating options that may be available to the Receiver for the liquidation of the Greenbriar and Tremor stock. Additionally, the Receiver is still investigating the potential existence of stock holdings in Lyft, Inc. and Facebook, but does not yet have definitive information with regard to these potential holdings.

### **3. Spouting Rock Receivable**

At the time of the filing of its Interpleader Complaint on March 6, 2020, Spouting Rock Holdings, LLC, owed payment of principal and interest on a secured promissory note, payable to Defendant, Broad Reach Capital, LP, in the amount of \$1,900,931.51, with interest continuing to accrue. Spouting Rock acknowledges its obligation to the Receivership, and is making efforts to satisfy these obligations in a timely fashion.

#### **4. 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. Three of the properties appear to be undeveloped land, while, according to internet research, the fourth parcel may have a small home or similar structure as well as a registered mailing address.

The adjacent parcels owned by BD of Louisiana, LLC (“BD of Louisiana Property”), were purchased for \$850,000 in 2008. A 2017 appraisal valued the property at in excess of \$1 million. The property is subject to a mortgage from B1 Bank, which had a maturity date of June 25, 2019. As of August 2019, the balance of the mortgage was approximately \$345,000.00, with interest continuing to accrue. The Receiver is not aware of any mortgage with regard to the two contiguous parcels owned by Brenda Smith individually (“Smith Property”), but believes that the Smith property is of significantly lower value than the BD of Louisiana Property.



As noted, the four parcels were sold at tax sales on June 30, 2020 for 2019 tax delinquencies. The Receiver had to redeem these properties for a total payment of taxes and penalties in the amount of \$4,452.16, which payment took place after the close of the quarter ending on September 30, 2020. Property taxes for 2020 will soon become due and owing.

The Receiver believes that the sale of these properties has the potential to generate proceeds to benefit the Receivership Estate, and, as noted, Smith does not object to the sale of these properties. The Receiver intends to work with Godwyn & Stone Real Estate in Metairie, Louisiana in connection with the sale of these properties, which already made arrangements for title abstracts to be completed. The Receiver has been gathering quotes from appraisers, and anticipates that he will soon file motions with the Court for approval to formally retain these real estate professionals and begin the liquidation process, pursuant to the Receivership Order and applicable federal law.

#### **5. Additional Bank Accounts and Funds**

It is estimated that there is in excess of \$700,000.00 in frozen, contested accounts in the name of Awooton Consulting, Rybicki Capital Partners LLC and Taylor Trading LLC. Forensic analysis and investigation is ongoing to ascertain whether these funds rightfully belong to the Receivership Estate.

As outlined above, ICBCFS holds two additional accounts that are purported to be clearing accounts for CV Brokerage, containing \$444,213.08, which funds have not been turned over to the Receiver, as ICBCFS is claiming that it has a perfected lien in connection with indemnification claims that exceed this balance. Pursuant to the Stipulation to Resolve ICBCFS' Motion to Amend the Amended Order Appointing Receiver, ICBCFS is entitled to maintain possession and control of the balance in these accounts until (i) the amount and priority of the ICBCFS Claim, (ii) the validity and priority of ICBCFS's lien on the Balance and (iii) ICBCFS's right to set off the Balance against the allowed ICBCFS Claim are determined by entry of a final order of the Court. ICBCFS is otherwise bound to comply with all other terms of the Receivership Order.

Cidel Bank in Barbados has confirmed that it holds under \$13,000.00 in Receivership Assets. However, thus far, the Receiver has been advised that he must retain local counsel in order to get the Receivership recognized and get access to these funds. The Receiver believes that additional funds may be held in other overseas banking institutions, but is getting minimal cooperation from banks outside the jurisdiction of the United States courts. The Receiver is investigating and contemplating all reasonable and cost-effective options for gaining easier access to overseas funds.

**6. Additional Business Entities**

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.

**7. Vehicle**

Brenda Smith's 2017 Infiniti QX70 remains unaccounted for. Assuming the vehicle can be located with the assistance of the private investigator, the Receiver hopes to secure possession of the vehicle and then sell it, with Court approval, for the benefit of the Receivership Estate.

**8. Magnetite**

Based upon his investigation, the Receiver believes that Brenda Smith is no longer in possession of any magnetite concentrate. The Receiver believes that the magnetite owned by Smith has since been sold or disposed of by third parties. The

Receiver will evaluate potential claims in connection with the disposition of this property, for which Smith paid substantial funds.

**9. Personal Property**

As noted in the Receiver's Initial Preservation Plan, it appears that, to the extent Smith maintained any personal property of significant value at her 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. Although a few miscellaneous jewelry items were found at the apartment, a Rolex watch found at the Four Falls office space was appraised and determined to be fake.

Administrative staff at Conrad O'Brien has identified and secured furnishings, rugs, electronic equipment, and various pieces of jewelry and other personal effects in Smith's Rittenhouse apartment, and is in the process of attempting to have them evaluated for potential sale and/or auction. The Receiver will continue to explore the option of selling any marketable items that appear to have significant resale value, for the benefit of the Receivership Estate.

**10. Office Items**

The Four Falls Office space Brenda Smith utilized to run her various businesses contained basic office equipment which the Receiver has determined has no value to the Receivership after consulting with several auction / estate-sale companies with experience in second-hand office equipment. Accordingly, the

Receiver has agreed to abandon the office equipment to the landlord in exchange for a release agreement.

While there was little to no valuable computer equipment maintained in the Four Falls office space, the Receiver did recover potentially valuable offsite server equipment from a data center that hosted Brenda Smith's equipment. As noted above, the Receiver is in the process of determining how best to extract the data from the server equipment.<sup>12</sup> After necessary data has been transferred from this equipment onto a secure data storage and hosting platform, the Receiver will ascertain its possible resale value and seek approval from the court to sell the equipment, if warranted.

## **11. Insurance**

After communicating with Smith's insurance agent, the Receiver has learned that Brenda Smith and/or some of the Receivership Parties may have had insurance

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<sup>12</sup> As noted in the Receiver's Initial Preservation Plan, the following equipment has been identified and retrieved:

- 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

with Liberty Mutual. The Receiver has served Liberty Mutual with a copy of the Receivership Order and document requests. Once received, the Receiver will review these policies to see whether any potential insurance coverage may be available in connection with this matter and the investor and creditor claims. The Receiver will continue to investigate and pursue any other leads he receives with regard to other potentially applicable insurance coverage and/or fidelity bonds.

**E. Liquidated and Unliquidated 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.

Of note, based upon initial review of documents and preliminary forensic analysis, it appears that many individuals and/or entities received substantial sums

of money from Smith and/or the Receivership Entities, potentially without any meaningful benefit being provided in return. With the assistance of his Accountants, the Receiver is thoroughly investigating all such substantial and potentially fraudulent transfers. For recipients who cannot provide meaningful documentation and proof with regard to the goods, services, or other benefits conferred to Smith and/or the Receivership Parties in exchange for these funds, and where a cost-benefit analysis leads the Receiver to believe that bringing a lawsuit against such individuals and/or entities would be financially beneficial to the Receivership Estate, he will seek the necessary approval from this Court to pursue such claims.

### **III. CURRENT AND PREVIOUS BILLINGS**

The total fees incurred by the Receiver and the Law Firm for the period covered by this Application are \$171,760.80,<sup>13</sup> and the total fees incurred by the Accountant for the period covered by this Application are \$43,577.50. The total expenses incurred by the Receiver and the Law firm for the period covered by this Application are \$12,434.25, and the Accountant has not incurred any expenses. Both the Law Firm and Accountant acknowledge that such fee compensation and expense reimbursement is subject to a twenty percent (20%) holdback, pending the

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<sup>13</sup> As discussed further below, the Receiver has cut his hours by ten percent (10 %) for this quarter, resulting in a fee reduction of \$4,013.70, as compared to the \$175,774.50 reflected in the billing statement for the Law Firm and Receiver.

completion of this case. With the holdback applied, the Receiver and Law firm are seeking compensation in the amount of \$137,408.64 and expense reimbursement in the amount of \$9,947.40, while the Accountant is seeking payment of \$34,862.00 in compensation at this time. Since this is the first Interim Fee Application, the Receiver and his Retained Professionals have not requested, nor received, any fee compensation or expense reimbursement previously.

As evidence of the substantial time and effort the Receivership has required, and in support of the fee compensation and expense reimbursement sought herein, the Receiver will submit the following exhibits under seal for the Court's review and consideration:

- Exhibit "B" – Summary of Legal Professional & Paraprofessional Time and of Expenses by the Receiver and his Counsel; and
- Exhibit "C" – Summary of Accounting Professional & Paraprofessional Time.

These exhibits,<sup>14</sup> as well as the narrative descriptions in this Application, evidence the time and labor employed in this matter.

The following includes a breakdown of the Receiver and the Law Firm's hours and fees, by legal category as defined by the SEC's billing guidelines:

<b>Activity Category</b>	<b>Hours</b>	<b>Fee Amount</b>
Asset Analysis and Recovery	277.6	\$91,725.00

<sup>14</sup> These exhibits are being filed under seal pursuant to Paragraph 73 of the Receivership Order.



Asset Disposition	0.2	\$73.00
Business Operations	1.7	\$823.50
Case Administration	222.8	\$82,715.00
Claims Administration and Objections	1.2	\$438.00
<b>Totals</b>	<b>503.50</b>	<b>\$175,774.50</b>

The following includes a breakdown of the Accountant's hours and fees, as defined by the SEC's billing guidelines:

<b>Activity Category</b>	<b>Hours</b>	<b>Fee Amount</b>
Accounting/Auditing	0.5	\$212.50
Forensic Accounting	110.1	\$42,732.50
Tax Issues	1.4	\$632.50
<b>Totals</b>	<b>112</b>	<b>\$43,577.50</b>

The following includes a breakdown of the Receiver and the Law Firm's, hours and fees, broken down by biller:

<b>Name/Position</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Fee Amount</b>
Kevin D. Kent, Receiver	\$510.00	78.7	\$40,137.00
Andrew Gallinaro, Partner	\$365.00	117.6	\$42,924.00
Robin Weiss, Associate	\$330.00	254.7	\$84,051.00
Brianna Dinmore, Paralegal	\$165.00	52.5	\$8,662.50
<b>Totals</b>		<b>503.5</b>	<b>\$175,774.50</b>

The Receiver has decided to cut his time by ten percent (10 %) for this quarter.

Adjusted hours for the Receiver total 70.83, for an adjusted fee amount of

\$36,123.30. This results in an adjusted total fee of \$171,760.80 for the Receiver and Law Firm.

The following includes a breakdown of the Accountant's hours and fees, broken down by biller:

<b>Name/Position</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Fee Amount</b>
Michael Shanahan (Senior Director)	\$550.00	13.5	\$7,425.00
David Medway (Manager)	\$425.00	46.4	\$19,720.00
Meghan Morine (Senior Associate)	\$375.00	38.3	\$14,362.50
Matthew Ryan II (Paraprofessional)	\$150.00	13.8	\$2,070.00
<b>Totals</b>		<b>112.0</b>	<b>\$43,577.50</b>

The fees and expenses included herein were incurred in the best interests of the Receivership Estate. With the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

#### **IV. REQUEST FOR COMPENSATION FOR FEES AND EXPENSES**

This Court has the power to appoint a receiver and to award the receiver fees for his services and for expenses incurred by the Receiver in the performance of his duties. *See Donovan v. Robbins*, 588 F. Supp. 1268, 1272 (N.D. Ill. 1984) (“[T]he receiver diligently and successfully discharged the responsibilities placed

upon him by the Court and is entitled to reasonable compensation for his efforts.”); *see also Securities & Exch. Comm’n v. Elliot*, 953 F. Supp. 1560 (11th Cir. 1992) (noting that the receiver is entitled to compensation for faithful performance of his duties). The case law on equity receiverships sets forth the standards for approving receiver compensation and the fees and expenses for the receiver’s counsel. The District Court has discretion to determine compensation to be awarded to a court-appointed equity receiver and his counsel and “may consider all of the factors involved in a particular receivership in determining the appropriate fee.” *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). Many authorities provide “convenient guidelines,” but in the final analysis, “the unique fact situation renders direct reliance on precedent impossible.” *Securities & Exch. Comm’n v. W.L. Moody & Co.*, 374 F. Supp. 465, 480 (S.D. Tex. 1974), *aff’d*, 519 F. 2d 1087 (5th Cir. 1975).

In allowing counsel fees in Securities Act receiverships, “[t]he court will consider . . . the complexity of problems faced, the benefit to the receivership estate, the quality of work performed, and the time records presented.” *Securities & Exch. Comm’n v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973); *see also United States v. Code Prods.*, 362 F.2d 669, 673 (3d Cir. 1966) (noting that court should consider the time, labor and skill required—but not necessarily expended—the fair value of such time, labor and skill, the degree of activity, the dispatch with which the work is conducted and the result obtained).

“[R]esults are always relevant.” *Securities & Exch. Comm’n v. Elliot*, 953 F.2d 1560, 1577 (11th Cir. 1992), *quoting Moody*, 374 F. Supp. at 480. However, a good result may take a form other than a bare increase in monetary value. *See id.* (“Even the receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation.”).

Another “basic consideration is the nature and complexity of the legal problems confronted and the skill necessary to resolve them.” *Moody*, 374 F. Supp. at 485. Moreover, “[t]ime spent cannot be ignored.” *Id.* at 483. Lastly, the Court should recognize that the fees and expenses incurred in the first four months of the Receivership will not necessarily be typical of future applications due to the extent of initial start-up work required to secure and liquidate the assets and to wind up the business entities. *See Gordon v. Dadante*, 2008 WL 1805787 at \*11 (N.D. Ohio 2008) (recognizing that, with receivership, as is “common in cases of this nature, the bulk of the effort—and expense—is frontloaded.”).

Under these standards, the Receiver has adequately demonstrated that the amount of fees requested is appropriate. The Receiver as well as his counsel and accountants have acted quickly to take control of the Receivership Entities and to prevent the further dissipation of assets. The benefit to investors, though not quantifiable at this early stage of the receivership, will become quantifiable as the

case proceeds. Investors are being located and catalogued, and will be kept informed of the Receiver's progress toward winding up the Receivership Estate and making an ultimate distribution. The amounts at issue in this case are substantial, where the Ponzi scheme involved in excess of \$100 million during its operation, and it is estimated that investors are still owed in excess of \$63 million in principal.

The issues being addressed by the Receiver and his counsel are complex and involve the investigation of widespread, international fraud perpetrated across a complex web of various entities managed or controlled by Smith over a multi-year period. Following numerous bizarre, and largely failed, investments in restaurants, property development projects, mineral mining, extraction and transport endeavors, and overseas companies—most of which were abandoned by Smith and/or the Receivership Parties at a loss—as well as what appear to be substantial “gifts” to friends and/or colleagues of Smith without any known benefit to the Receivership Parties, the Estate has been left with very few known assets remaining. The Receivership has, and will continue to require, extensive and time-consuming investigation to attempt to locate additional assets and gather the evidence necessary to identify and pursue potential claw-back claims, but the Receiver remains hopeful that, with additional time and effort, significant funds can be recovered on behalf of the Receivership Estate.

Through the Receiver's and his Retained Professional's efforts thus far, the Receivership now has in excess of \$1 Million in uncontested funds in the Receivership Account. The Receiver has worked swiftly to identify and locate four (4) parcels of land in Louisiana and understand the encumbrances affecting the property, so that he can, with the Court's authority, sell these properties for the benefit of the Receivership Estate. While forensic investigation is ongoing, the Receiver believes the Receivership will likely have claims to recover significant assets from the recipients of fraudulent transfers and net-winner investors. Once the Receiver is in possession of all applicable bank account information and a complete forensic analysis can be completed, the Receiver will be in a better position to fully evaluate the potential of these claims and petition the Court for permission to proceed with actions which he feels will be of meaningful financial benefit to the Receivership Estate.

The Receiver's efforts are greatly complicated by the fact that many of Smith's dealings were overseas, resulting in minimal responsiveness and cooperation from banks, individuals and entities receiving notice abroad, and that several of the individuals with whom Smith has had substantial dealings have, thus far, failed to respond to the Receiver and/or cooperate with his investigation.

This Court has already found that the rates charged by the Receiver and his Counsel and Accountant are reasonable for the experience of the individuals

performing the work and in light of the complexity of the work performed, and are consistent with the rates charged for similarly complex work done by other, similarly experienced professionals in this geographic region. Receivership Order, ¶¶ 80, 83. The Receiver has attempted to maximize cost savings and administer the Estate as efficiently as possible, by, for example, assigning professionals and paraprofessionals with the lowest billable rate appropriate for the task at issue. Additionally, the Receiver and his Counsel have utilized non-billing administrative personnel where appropriate – utilizing IT staff to assist with data collection and retrieval of server equipment, Conrad O’Brien’s business manager to assist with account opening, maintenance, and wire transfers; utilizing administrative and secretarial staff to communicate with courts in connection with issues and procedures relating to filings pursuant to 28 U.S.C. § 754; and utilizing the mailroom staff to assist with site visits, the transfer of personal property, and the attempts to locate Brenda Smith’s vehicle. Additionally, the Receiver and his Law Firm have not sought compensation for any pre-appointment time.

The Receiver and his Retained Professionals’ compensation in this matter is subject to the final approval of this Court. The Receiver and his team have not received any compensation for their services or unreimbursed costs incurred during the first application period. The Court should consider that the Receiver as well as his attorneys and accountants have assumed the risk of non-payment and/or

substantial delay in payment in accepting the Court appointment, particularly with so little known regarding the amount and availability of Receivership Assets.

Based on the foregoing, the Receiver respectfully submits that the compensation sought by the Receiver and his team is wholly warranted.

WHEREFORE, the Receiver respectfully requests that the Court grant the Receiver's Motion for Approval of the First Interim Fee Application for the Time Period June 29, 2020 through September 30, 2020, and thereby authorize the following:

1. Payment to Conrad O'Brien PC in the amount of \$137,408.64, as compensation for services performed through September 30, 2020, such payment representing eighty percent (80%) of its fees;
2. Payment to Alvarez & Marsal Disputes and Investigations, LLC in the amount of \$34,862.00, as compensation for services performed through September 30, 2020, such payment representing eighty percent (80%) of its fees; and
3. Payment to Conrad O'Brien PC in the amount of \$9,947.40, for expenses incurred through September 30, 2020, representing eighty percent (80%) of its expenses.

Respectfully Submitted,

Date: 11/13/2020

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

# **EXHIBIT “A”**

Kevin Dooley Kent  
1500 Market Street, Suite 3900  
Philadelphia, PA 19102  
(215) 864-9600

# STANDARDIZED FUND ACCOUNTING REPORT

CIVIL – RECEIVERSHIP FUND

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Brenda Smith, Broad Reach Capital, LP, Broad Reach Partners,  
LLC, and Bristol Advisors, LLC  
Civil Action No.: 2:19-cv-17213-MCA-ESK

REPORTING PERIOD 06/29/2020 TO 09/30/2020

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Broad Reach Capital Receivership Entities - Cash Basis**  
**Receivership; Civil Court Docket No. 2:19-CV-17213-MCA-ESK**  
**REPORTING PERIOD 06/29/2020 TO 9/30/2020**

FUND ACCOUNTING (See Instructions):		Current Reporting Period - 06/29/20 to 09/30/20			06/29/20 - 09/30/20
		Detail	Subtotal	Period Total	Case to Date
Line 1	Beginning Balance (As of 6/29/20)			\$ -	\$ -
	<i>Increases in Fund Balance:</i>				
Line 2	Business Income			-	-
Line 3	Cash and Securities			808,922.10	808,922.10
Line 4	Interest/Dividend Income			-	-
Line 5	Business Asset Liquidation			700.00	700.00
Line 6	Personal Asset Liquidation			-	-
Line 7	Third-Party Litigation Income			-	-
Line 8	Miscellaneous - Other			-	-
	<b>Total Funds Available (Lines 1 – 8):</b>			<b>\$ 809,622.10</b>	<b>\$ 809,622.10</b>
	<i>Decreases in Fund Balance:</i>				
Line 9	Disbursements to Investors/Claimants			-	-
Line 10	Disbursements for Receivership Operations			750.00	750.00
Line 10a	Disbursements to Receiver or Other Professionals			-	-
Line 10b	Business Asset Expenses			750.00	-
Line 10c	Personal Asset Expenses			-	-
Line 10d	Investment Expenses			-	-
Line 10e	Third-Party Litigation Expenses			-	-
	1. Attorney Fees			-	-
	2. Litigation Expenses			-	-
	Total Third-Party Litigation Expenses			-	-
Line 10f	Tax Administrator Fees and Bonds			-	-
Line 10g	Federal and State Tax Payments			-	-
	<b>Total Disbursements for Receivership Operations</b>			<b>\$ 750.00</b>	<b>\$ 750.00</b>
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			-	-
Line 11a	Distribution Plan Development Expenses:				
	1. Fees:				
	Fund Administrator			-	-
	Independent Distribution Consultant (IDC)			-	-
	Distribution Agent			-	-
	Consultants			-	-
	Legal Advisers			-	-
	Tax Advisers			-	-
	2. Administrative Expenses			-	-
	3. Miscellaneous			-	-
	Total Plan Development Expenses			-	-
Line 11b	Distribution Plan Implementation Expenses:				
	1. Fees:				
	Fund Administrator			-	-
	IDC			-	-
	Distribution Agent			-	-
	Consultants			-	-
	Legal Advisers			-	-
	Tax Advisers			-	-
	2. Administrative Expenses			-	-
	3. Investor Identification:				
	Notice/Publishing Approved Plan			-	-
	Claimant Identification			-	-
	Claims Processing			-	-
	Web Site Maintenance/Call Center			-	-
	4. Fund Administrator Bond			-	-
	5. Miscellaneous			-	-
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			-	-
	Total Plan Implementation Expenses			-	-
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			<b>\$ -</b>	<b>\$ -</b>
Line 12	Disbursements to Court/Other:			-	-
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			-	-
Line 12b	Federal Tax Payments			-	-
	<b>Total Disbursements to Court/Other</b>			<b>\$ -</b>	<b>\$ -</b>
	<b>Total Funds Disbursed (Lines 9 – 11):</b>			<b>\$ 750.00</b>	<b>\$ 750.00</b>
Line 13	Ending Balance (As of 09/30/20):			\$ 808,872.10	\$ 808,872.10
Line 14	Ending Balance of Fund – Net Assets:				
Line 14a	Cash & Cash Equivalents			808,872.10	808,872.10
Line 14b	Investments			-	-
Line 14c	Other Assets or Uncleared Funds			-	-
	<b>Total Ending Balance of Fund – Net Assets</b>			<b>\$ 808,872.10</b>	<b>\$ 808,872.10</b>

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Broad Reach Capital Receivership Entities - Cash Basis**  
 Receivership; Civil Court Docket No. 2:19-CV-17213-MCA-ESK  
 REPORTING PERIOD 06/29/2020 TO 9/30/2020

OTHER SUPPLEMENTAL INFORMATION:		Current Reporting Period - 06/29/20 to 09/30/20			06/29/20 - 09/30/20
		Detail	Subtotal	Period Total	Case to Date
Line 15	<b>Report of Items NOT To Be Paid by the Fund:</b> Disbursements for Plan Administration Expenses Not Paid by the Fund:				
Line 15a	Plan Development Expenses Not Paid by the Fund:			\$ -	\$ -
	1. Fees:				
	Fund Administrator			-	-
	IDC			-	-
	Distribution Agent			-	-
	Consultants			-	-
	Legal Advisers			-	-
	Tax Advisers			-	-
	2. Administrative Expenses			-	-
	3. Miscellaneous			-	-
	<b>Total Plan Development Expenses Not Paid by the Fund</b>			\$ -	\$ -
Line 15b	Plan Implementation Expenses Not Paid by the Fund:				
	1. Fees:				
	Fund Administrator			-	-
	IDC			-	-
	Distribution Agent			-	-
	Consultants			-	-
	Legal Advisers			-	-
	Tax Advisers			-	-
	2. Administrative Expenses			-	-
	3. Investor Identification:				
	Notice/Publishing Approved Plan			-	-
	Claimant Identification			-	-
	Claims Processing			-	-
	Web Site Maintenance/Call Center			-	-
	4. Fund Administrator Bond			-	-
	5. Miscellaneous			-	-
	6. FAIR Reporting Expenses			-	-
	<b>Total Plan Implementation Expenses Not Paid by the Fund</b>			\$ -	\$ -
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund				
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>				
Line 16	Disbursements to Court/Other Not Paid by the Fund:				
Line 16a	Investment Expenses/CRIS Fees			-	-
Line 16b	Federal Tax Payments			-	-
	<b>Total Disbursements to Court/Other Not Paid by the Fund:</b>			-	-
Line 17	DC & State Tax Payments			\$ -	\$ -
Line 18	No. of Claims:				
Line 18a	# of Claims Received This Reporting Period				-
Line 18b	# of Claims Received Since Inception of Fund				-
Line 19	No. of Claimants/Investors:				
Line 19a	# of Claimants/Investors Paid This Reporting Period				-
Line 19b	# of Claimants/Investors Paid Since Inception of Fund				-

Receiver:

By: Kevin Dooley Kent  
(signature)

Kevin Dooley Kent  
(printed name)

Receiver  
(title)

Date: 10/30/20

**NOTES TO THE STANDARDIZED FUND ACCOUNTING REPORT****Receivership Cash Accounts**

As of September 30, 2020, the Receiver's cash balance of \$808,872.10 was maintained in a checking account at Bank of America.

**Investments, Real and Personal Property**

The Receiver is in the process of identifying and liquidating all of the investments, real and personal property of the Receivership Parties. In addition to the transactions reflected within the Standardized Fund Accounting Report, the Receivership has an interest in the following securities valued using per share closing prices as of September 30, 2020:

<b>Investment</b>	<b>Symbol</b>	<b>Shares</b>	<b>Approximate Value as of 09/30/2020<sup>[A]</sup></b>
Palantir Technologies Inc	PLTR	180,000	\$ 1,710,000.00
Greenbriar Capital Corp	GRB.V	50,000	\$ 74,305.64
Tremor International Ltd	TRMR	932	\$ 2,239.27

<sup>[A]</sup> Certain investments are traded on foreign exchanges. Values converted to USD using historical exchange rates published at x-rates.com.

Additionally, the Receivership has an interest in four parcels in Tangipahoa Parish, Louisiana. The Receiver is in the process of determining the value of these properties.



therein are true and accurate and comply with the Billing Instructions;

- (c) All fees contained in the Application are based on the rates listed in the Applicant's fee schedule attached hereto and such fees are reasonable, necessary and commensurate with the skill and experience for the activity performed;
- (d) I have not included in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay (except to the extent that any such amortization is included within the permitted allowable amounts set forth herein for photocopies and facsimile transmission); and
- (e) In seeking reimbursement for a service which the Applicant justifiably purchased or contracted for from a third party (such as copying, imaging, bulk mail, messenger service, overnight courier, computerized research, or title and lien searches), the Applicant requests reimbursement only for the amount billed to the Applicant by the third party vendor and paid by the Applicant to such vendor. With regard to such services performed by the Receiver or his staff, the Receiver certifies that he is not making a profit on such reimbursable service.



2. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 13 day of November 2020.

  
Kevin Dooley Kent, Esq.

**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)**

**STATEMENT IN LIEU OF BRIEF PURSUANT TO L.CIV.R. 7.1(d)(4)**

Pursuant to Local Civil Rule 7.1(d)(4), the undersigned, on behalf of the Receiver, Kevin D. Kent, Esquire, hereby submits this Statement in lieu of the submission of a formal brief in support of the Motion for Approval of First Interim Fee Application for the Period June 29, 2020 through September 30, 2020. Inasmuch as the attached Interim Fee Application complies with the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission and otherwise satisfies the requirements for Interim Fee Applications as set forth in this Court's June 29, 2020 Order Appointing Receiver, and contains all information and documentation required by the SEC as well as legal argument in

support of the Interim Fee Application, and until any opposition to the Motion is filed, it is respectfully suggested that any additional, formal brief in support of the Motion and attached Application would be duplicative and unnecessary at this time.

Respectfully submitted,

Dated: 11/13/2020

*s/ Robin S. Weiss*

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Robin S. Weiss, Esquire  
Andrew S. Gallinaro, Esquire.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: 215-864-9600  
Fax: 215-864-9620  
rweiss@conradobrien.com  
agallinaro@conradobrien.com  
*Attorneys for Receiver, Kevin D. Kent,  
Esq.*

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

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

v.

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

**Defendants.**

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

**ORDER APPROVING THE RECEIVER, KEVIN D. KENT, ESQUIRE'S  
FIRST INTERIM FEE APPLICATION FOR THE PERIOD  
JUNE 29, 2020 THROUGH SEPTEMBER 30, 2020**

**THIS MATTER** having come before this Court upon the Motion of Receiver, Kevin D. Kent, Esquire, for Approval of First Interim Fee Application for the Period June 29, 2020 through September 30, 2020;

It is on this \_\_\_\_\_ day of \_\_\_\_\_, 2020,

**ORDERED** that the Receiver's First Interim Fee Application is APPROVED;  
and it is

**FURTHER ORDERED** that Payment to Conrad O'Brien PC ("Law Firm") in the amount of \$137,408.64, for services performed through September 30, 2020,

representing eighty percent (80%) of the Law Firm's total fee of \$171,760.80, is APPROVED and may be paid by the Receiver at this time; and it is

**FURTHER ORDERED** that payment to Alvarez & Marsal Disputes and Investigations, LLC ("Accountant") in the amount of \$34,862.00 for services performed through September 30, 2020, representing eighty percent (80%) of the Accountant's total fee of \$43,577.50, is APPROVED and may be paid by the Receiver at this time; and it is

**FURTHER ORDERED** that payment to Conrad O'Brien PC in the amount of \$9,947.40 for expenses incurred through September 30, 2020, representing eighty percent (80%) of the Firm's total expenses of \$12,434.25, is APPROVED and may be paid by the Receiver at this time.

**BY THE COURT:**

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HONORABLE MADELINE COX ARLEO  
UNITED STATES DISTRICT JUDGE

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

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

v.

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

**Defendants.**

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

**CERTIFICATE OF  
SERVICE**

I hereby certify, this 13th day of November, 2020, that I caused to be served a true and correct copy of the Notice of Motion of Receiver, Kevin D. Kent, Esquire, for Approval of First Interim Fee Application for the Period June 29, 2020 through September 30, 2020, and all documents in support thereof upon Plaintiff, Securities and Exchange Commission, 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.*