

**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)

Return Date: Mar. 15, 2021

**NOTICE OF MOTION OF RECEIVER, KEVIN D. KENT, ESQUIRE,
FOR PERMISSION TO INITIATE LITIGATION ON
BEHALF OF THE RECEIVERSHIP ESTATE**

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 March 15, 2021, or as soon thereafter as the Court permits, at a date and time to be determined by the Court, for permission to initiate litigation on behalf of the Receivership Estate.

PLEASE TAKE FURTHER NOTICE THAT, in support of this Motion, the undersigned will rely upon the accompanying Memorandum of Law, 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: 2/9/2021

s/ Robin S. Weiss
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF RECEIVER,
KEVIN D. KENT, ESQUIRE, FOR PERMISSION TO INITIATE
LITIGATION ON BEHALF OF THE RECEIVERSHIP ESTATE**

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Dated: 2/9/2021

Pursuant to the Court’s Order Appointing Receiver dated June 29, 2020, Kevin D. Kent, Esq., Receiver, hereby moves this Court for permission to initiate litigation on behalf of the Receivership Estate. In support of this Motion, the Receiver states as follows.

I. STATEMENT OF FACTS

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 (Dkt. No 22). The Receivership Assets include, but are not limited to, assets of the following Defendants and Affiliated Entities: Broad Reach Capital, LP; Broad Reach Partners, LLC; and 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; TA 1, LLC; FFCC Ventures LLC; Prico Market LLC; GovAdv Funding LLC; Elm Street Investors LLC; Investment Consulting LLC; and Tempo Resources LLC (hereinafter “Receivership Parties”) Receivership Order, ¶ 1.

The Receiver’s powers and duties include, *inter alia*, “[t]o use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Parties, including, but not limited to, . . . claims [and] causes of

action . . . which the Receivership Parties own, possess, have a beneficial interest in, or control directly or indirectly[,]” and “[t]o take such action as necessary and appropriate for the preservation of Receivership Assets or to prevent the dissipation or concealment of Receivership Assets.” Receivership Order, ¶ 11 (A, G).

The Receiver has identified at least five individuals and/or entities against whom potential claims and causes of action exist, as follows:

- **The Nottingham Company and its employees and/or agents, where necessary and/or appropriate:** The Nottingham Company (“Nottingham”) was the Fund Administrator for Broad Reach Capital, LP (“BRC”). Based upon information and documentation currently available to the Receiver, the Receiver believes that Nottingham claimed to have directly accessed and checked BRC’s brokerage accounts online, verified and evaluated monthly performance, verified and reconciled all accounts, generated and sent verified monthly statements based upon this information, and calculated the monthly Net Asset Value of the Fund. Additionally, it appears that Nottingham generated false account statements without verifying the funds represented therein. In general, it appears that Nottingham failed to carry out its duties and obligations owed as Fund Administrator for BRC.
- **Sanville & Company and its employees and/or agents, where necessary and/or appropriate:** Sanville & Company (“Sanville”) provided auditing services for BRC and CV Brokerage, Inc., and performed additional services for various other Receivership Parties, including, but not limited to, Bristol Advisors LP and TA1, LLC. Sanville prepared an Independent Auditor’s Report for BRC for 2016. Based upon information and documentation currently available, the Receiver believes that the Independent Auditor’s Report contained material misstatements regarding investment strategies utilized by BRC, and also misrepresented that BRC’s financial statements accurately reflected its financial position as of December 31, 2016.

The Report further misstated that financial statements were prepared in accordance with accounting principles generally accepted in the United States (GAAP), and that the audit was conducted in accordance with the standards generally accepted in the United States (GAAS). In general, it appears that Sanville failed to carry out its duties and obligations owed as auditor for BRC.

- **Jordan Denise, Entercore, Inc. and Orange Splendor, Inc.:** The Receiver has identified in excess of \$1 million transferred from Receivership Party, Investment Consulting, LLC to Entercore, Inc., between January 26, 2018 and May 3, 2018. Based upon review of available documentation, the Receiver believes that these transfers may have been fraudulent and/or for the personal benefit of Entercore's principal, Jordan Denise, and were not in exchange for any goods, services, or other meaningful benefit to the Receivership Parties. In reality, they may have been utilized by Jordan Denise personally in her efforts to purchase real estate. After feigning surprise at receiving the Receiver's Notice of Receivership, Jordan Denise was asked to explain these transactions over four (4) months ago, and has failed to provide a response to the Receiver. Orange Splendor, Inc., is another entity of Jordan Denise's which the Receiver believes may have been involved in the transactions in question.

At this time, the Receiver is seeking approval from this Court to initiate litigation against these individuals and/or entities, for the benefit of the Receivership Estate and in accordance with the Receivership Order.

II. ARGUMENT

Subject to certain enumerated exceptions, the Receivership Order imposes a stay on "all civil legal proceedings of any nature . . . involving (a) the Receiver, in his capacity as Receiver; (b) any Receivership Assets, wherever located; [or] (c) any of the Receivership Parties, including subsidiaries and partnerships. . . .

Receivership Order, ¶ 38. The Order further provides that “[t]he Receiver shall not have the power to initiate suits in law or in equity without further Order of this Court, except and to the extent necessary to preserve any limitations period in which case the Receiver shall seek this Court’s approval to proceed any further with any such suit.” Receivership Order, ¶ 9.

Subject to the requirement that leave of Court is required in order to commence or resume litigation, the Receivership Order further provides that “the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may [be] in his discretion, and in consultation with SEC counsel, be advisable or proper to recover, conserve and/or maximize Receivership Assets.” Receivership Order, ¶ 50. The Order continues:

Subject to the obligations to expend Receivership Assets in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Parties were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.

Receivership Order, ¶ 51.

The Receiver and his Counsel believe, based upon their investigation, and after consultation with counsel for the Securities and Exchange Commission, that claims should be pursued for the benefit of, and on behalf of, the Receivership Estate against Nottingham, and potentially its agents and/or employees, where appropriate; Sanville, and potentially its agents and/or employees, where appropriate; Jordan Denise, Entercore, Inc. and Orange Splendor, Inc.¹ The Receiver and his Counsel believe that such claims are necessary, appropriate, reasonable, and worthy of pursuit, in order to recover, conserve and/or maximize Receivership Assets. It is the Receiver's opinion that pursuing these claims and initiating litigation against these individuals and/or entities will be in the best interests of the creditors, investors and other stakeholders of the Receivership Parties.

In connection with the claims against Nottingham and Sanville, it is the Receiver's intention to assert these claims in the lawsuit pending in the United States District Court for the Eastern District of Pennsylvania in *Surefire Dividend Capture, LP v. Smith et al.*, No. 2:19-cv-04088, for which an exception to the stay has already been carved out in the Receivership Order. Surefire Dividend Capture LP ("Surefire") was an investor in Broad Reach Capital and instituted the action in

¹ This is not an exhaustive list of the claims the Receiver intends to pursue. Investigation is ongoing, and the Receiver anticipates filing subsequent motions to proceed with litigation against other individuals and/or entities.

connection with its substantial losses. Given the factual overlap between Surefire's claims and the Receiver's anticipated claims, it is the Receiver's belief that such action will result in reduced litigation costs and attorneys' fees for the Receivership Estate. The Receiver and Surefire have agreed that the proceeds of any settlement or judgment paid by Sanville or Nottingham, or their respective principals, in connection with claims asserted by the Receiver or Surefire ("Claim Proceeds"), will be paid to the Receiver to hold in escrow pending resolution of how the Claim Proceeds are to be allocated between Surefire and the Receivership. Surefire and the Receiver have further agreed that they will use their best efforts and exercise good faith in negotiating an equitable allocation of Claim Proceeds and that, in the event they are unable to reach an agreement, they will jointly file an appropriate motion in this matter to determine an equitable distribution of the Claim Proceeds.

In light of the foregoing, the Receiver hereby requests an Order from the Court lifting the stay on litigation with regard to claims to be pursued against the above-specified individuals and/or entities, and specifically authorizing the Receiver to pursue such claims. Counsel for the Securities and Exchange Commission has advised that they do not oppose this Motion.

III. CONCLUSION

In light of the foregoing, the Receiver respectfully requests that the Court grant the Receiver's Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate, and enter an Order in the form proposed.

Respectfully Submitted,

Date: 2/9/2021

s/ Robin S. Weiss

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Defendants.

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**ORDER APPROVING THE RECEIVER, KEVIN D. KENT, ESQUIRE'S
MOTION FOR PERMISSION TO INITIATE LITIGATION
ON BEHALF OF THE RECEIVERSHIP ESTATE**

THIS MATTER having come before this Court upon the Motion of Receiver, Kevin D. Kent, Esquire, for Permission to Initiate Litigation on Behalf of the Receivership Estate;

It is on this _____ day of _____, 2021,

ORDERED that the Receiver's Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate is APPROVED; and it is

FURTHER ORDERED that the Receiver may initiate litigation against Nottingham Company, and potentially their agents and/or employees, where

appropriate; Sanville & Company, and potentially their agents and/or employees, where appropriate; Jordan Denise, Entercore, Inc. and Orange Splendor, Inc. on behalf of the Receivership Estate; and it is

FURTHER ORDERED that the stay on litigation shall remain intact with regard to all other claims stayed pursuant to the Receivership Order, with the applicable statute of limitations to remain tolled with regard to any cause of action accrued or accruing in favor of one or more of the Receivership Parties against a third person or party for which the injunction against commencement of legal proceedings remains in effect.

BY THE COURT:

HONORABLE MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

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**CERTIFICATE OF
SERVICE**

I hereby certify, this 9th day of February, 2021, that I caused to be served a true and correct copy of the Notice of Motion of Receiver, Kevin D. Kent, Esquire, for Permission to Initiate Litigation on Behalf of the Receivership Estate, 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.