

**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: Sept. 7, 2021**

**NOTICE OF MOTION OF RECEIVER, KEVIN D. KENT, ESQUIRE,  
FOR PROTECTIVE ORDER AND APPROVAL OF THE CREATION OF A  
DOCUMENT REPOSITORY FOR THIRD-PARTY ACCESS**

**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 September 7, 2021, or as soon thereafter as the Court permits, at a date and time to be determined by the Court, for a protective order and for approval of the creation of a document repository for third-party access.

**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: 7/26/2021

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

**Return Date: Sept. 7, 2021**

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF RECEIVER,  
KEVIN D. KENT, ESQUIRE, FOR PROTECTIVE ORDER AND  
APPROVAL OF THE CREATION OF A DOCUMENT  
REPOSITORY FOR THIRD-PARTY ACCESS**

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: 7/26/2021

The Receiver hereby moves for entry of a protective order (the “Protective Order”) to govern the treatment of documents and information that the Receiver will produce through an online repository, and seeks Court approval of the Receiver's use of the repository in lieu of other document discovery methods, as detailed herein.

## **I. BACKGROUND 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 assets and records of the following Receivership Parties:

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; TA 1, LLC; FFCC Ventures  
LLC; Prico Market LLC; GovAdv Funding LLC; Elm  
Street Investments, LLC; Investment Consulting LLC;  
and Tempo Resources LLC.

(Dkt. No. 22 at ¶ 1). The Receiver is further authorized to “take immediate possession of all ... books, and records and all other documents or instruments relating to the Receivership Parties.” (*Id.* at ¶ 21).

Pursuant to the authority conveyed to him via the Receivership Order, and in pursuit of his duties thereunder, the Receiver has collected a significant volume of

electronic and physical records related to the Receivership Entities and is in the process of recovering substantial additional data, which is likely to account for several terabytes of storage. Broadly, these records can be categorized as follows:

- (1) electronic data, documents, and information stored by the Receivership Parties and/or Smith using remote cloud storage as well as computers, hard drives and external storage devices located at the Receivership Entities' offices, Brenda Smith's apartment and/or data hosting facilities;
- (2) hard-copy documents and information recovered by law enforcement from the Receivership Entities' offices which have been partially scanned and made available to the Receiver; and
- (3) data, documents, and information obtained by the Receiver in response to information and document requests and/or subpoenas served upon third parties.

The Receiver understands that many of these records (the "Materials") may be relevant to pending and future litigation matters relating to, or arising from, the actions of Brenda Smith and her related businesses, which are the subject of the above-captioned enforcement action.

For example, the Receiver recently filed a Second Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate (Dkt. No. 98) seeking authorization to file complaints against more than a dozen entities and individuals

and has already filed suit against three of those proposed defendants. The Receiver also sought authority to initiate suit against three additional defendants in a prior motion that remains pending before the Court (Dkt. 49). The Receiver anticipates that he will file additional motions seeking authority to bring claims against several more proposed defendants. As a result, it is likely that the Receiver could be required to respond to discovery requests in as many as twenty separate matters. The Receiver has also been served with a third-party subpoena seeking the production of voluminous documents by an investor in Broad Reach Capital, which investor is pursuing independent claims against certain third-parties that it believes share liability for its losses with Brenda Smith. The Receiver expects to receive additional requests for documents in connection with other pending third-party litigations that concern Brenda Smith's conduct.

Rather than respond to piecemeal document requests and subpoenas, which would unduly consume the limited resources of the Receivership, the Receiver has investigated the viability of creating a document repository from which relevant documents could be produced quickly and in a cost-effective manner. To that end, the Receiver's team analyzed the various forms in which information was stored, consulted with several vendors concerning potential approaches to compilation, preparation, storage and production of information, and met and conferred with counsel for the Securities and Exchange Commission ("Commission" or "SEC").

Through this process, the Receiver has created the framework for a centralized database (the “Repository”) that will allow the Materials to be uploaded and disseminated to: (1) third parties involved in litigation concerning or arising out of the conduct of Brenda Smith and/or the Receivership Parties that is the subject of this action; (2) the Commission; and (3) the Receiver ((1) – (3) collectively referred to as the “Repository Recipients”), subject to the terms of the Protective Order and this Motion. The Receiver believes production of the Materials through the Repository is the most timely and cost-effective way to disseminate this information in response to discovery requests from third parties and/or information requests from the Commission.

Some of the Materials are likely to contain confidential information concerning investors and former employees of the Receivership Parties including personally identifying information and financial records. In addition, because Brenda Smith utilized so many corporate entities in the operation of her businesses, there are likely to be documents within the Materials related to entities that are not explicitly defined as Receivership Parties. However, because of the volume of data at issue, and the complex web of business entities Brenda Smith utilized, it would be prohibitively expensive to search for and redact potentially confidential information or material related to non-Receivership Parties from the Materials.

To address this issue, the Receiver believes that the Materials made available through the Repository should be subject to a Protective Order. Additionally, the Receiver proposes that third-party access to the Repository should be limited to the Repository Recipients. The Receiver's proposal would require anyone who wishes to access the Material to sign an express agreement to be bound by the terms of the Protective Order given that it may be used for discovery purposes in litigation pending before other courts. The Receiver's proposal also preserves the ability of the Receiver to maintain confidentiality over, and withhold from the Repository, documents produced to the Receiver pursuant to separate protective orders and confidentiality agreements as well as attorney-client communications between Smith and/or the Receivership Parties and their respective counsel.<sup>1</sup> The Receiver will advise Repository Recipients of the existence of such documents so that any disputes regarding their production may be brought before this Court.

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<sup>1</sup> Communications between Brenda Smith and the attorneys she engaged on matters concerning the investment advisory services at issue in this action may be subject to a joint privilege held by Smith and the Receiver on behalf of the Receivership Parties. To the extent communications are subject to a jointly held privilege, the Receiver may not unilaterally waive the privilege except in certain limited circumstances. See In re Teleglobe Commc'ns Corp., 493 F.3d 345, 363 (3d Cir. 2007) ("a client may unilaterally waive the privilege as to its own communications with a joint attorney, so long as those communications concern only the waiving client").



In anticipation of uploading the Materials to the Repository, the Receiver consulted with several vendors regarding the expenses associated with processing and hosting the data in the Receiver's possession and additional data the Receiver expects to receive. The Receiver's court-approved forensic accountant at Alvarez & Marsal maintains an in-house e-discovery service which provided the most competitive estimate for the work (by far) and would be retained by the Receiver to perform the work to process the data and host the database. The Receiver estimates that the total cost to set up the repository and process the documents currently in the Receiver's possession to be approximately \$10,000. This cost does not contemplate the additional data the Receiver is likely to obtain through his ongoing investigation that also will need to be uploaded to the Repository. At this time, it is difficult to estimate the cost associated with this additional data. As such, the Receiver request authority to incur costs up to \$25,000 related to the creation and maintenance of the repository.

The Receiver believes these costs are in the best interest of the Receivership because the Repository will greatly reduce the fees and costs the Receiver would otherwise incur in responding to discovery and information requests from interested parties. The Receiver has also realized substantial savings in the cost to process some of the data through the cooperation of the Commission, which has already processed certain categories of information collected from the

Receivership Parties prior to the Receiver's appointment, which information has been made available to the Receiver.

Accordingly, and for the reasons set forth herein, the Receiver respectfully requests that the Court enter the Protective Order to govern the treatment of the Materials, and approve both the Receiver's use of the Repository in lieu of other document discovery methods, as well as the costs associated with processing the data recovered by the Receiver and establishing the Repository.

## **II. DISCUSSION**

### **A. A Protective Order is Necessary and Appropriate to Govern the Treatment of the Materials**

Federal Rule of Civil Procedure 26(c) provides for protective orders with respect to all discovery. Based upon good cause shown, the Court may issue any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including an order requiring that confidential information not be revealed, or only be revealed in a specific way. See Fed. R. Civ. P. 26(c)(1)(G). Moreover, the Third Circuit recognizes "the long-standing principle that courts have inherent equitable power by means of protective orders, to prevent abuses, oppression, and injustices in discovery and to grant confidentiality orders, whether or not such orders are specifically authorized by procedural rules." Bonin v. World Umpires Ass'n, 204 F.R.D. 67, 69 (E.D. Pa. 2001) citing Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785 (3d Cir. 1994)

(internal quotations and citations omitted). “In making a determination whether good cause exists for a protective order, courts must engage in a balancing process. In doing so, [courts] have flexibility to minimize the negative consequences of disclosure.” Id. In Bonin the Court recognized that a protective order was necessary to limit the use of a party’s personal financial information. Id. at 70.

Here, a protective order is necessary and appropriate to govern the treatment of the Materials produced to the Repository. As previously indicated, the Materials contain confidential investor information, including sensitive financial information, and, in certain instances, information that is unrelated to the Receivership Entities. Therefore, the unrestricted public disclosure of some of the Materials could cause prejudice and harm to the Receivership Entities’ investors and creditors, and other persons and entities. Accordingly, pursuant to Federal Rule of Civil Procedure 26(c), good cause exists for the Court to issue a protective order to govern the treatment, including the use and disclosure, of the Materials.

The Receiver respectfully submits that the proposed Protective Order attached hereto provides adequate and appropriate protections for the Materials, while ensuring that the Repository Recipients may use them for legitimate and lawful purposes. The Receiver, therefore, respectfully requests that the Court enter the Protective Order.

**B. This Court Should Approve the Receiver’s Use of the Repository to Respond to Discovery Requests**

The Receiver is concerned that responding to traditional discovery requests for information, which would require him to search substantial volume of electronic data for relevant documents would be prohibitively expensive and drain the resources of the estate that would otherwise be available for investor victims and creditors of the Receivership Parties. Accordingly, the Receiver seeks an order permitting him to make the Repository available to parties seeking discovery from the Receiver in lieu of responding to formal document requests. Under the Receiver’s proposal, Recipients would be given access to the Repository through a “data room” where the Materials would be available to download. Recipients would then be able to make their own determinations on whether and how to process the data for their own use.<sup>2</sup>

Ordinarily, “the presumption is that the responding party must bear the expense of complying with discovery requests, but he may invoke the district court's discretion under Rule 26(c) to grant orders protecting him from 'undue

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<sup>2</sup> Because A&M is also acting as the Receiver’s forensic accountant in this action, it would not provide e-discovery services to Recipients beyond any basic assistance necessary to download the Materials, except where a specific Recipient had entered into a joint prosecution agreement with the Receiver. Recipients would be free to retain their own e-discovery vendors to process some or all of the Materials, once downloaded, based on their own cost/benefit analysis and for their own particular purposes.

burden or expense' in doing so..." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 358 (1978). Specifically, Federal Rule of Civil Procedure 26(c) expressly recognizes this Court's authority to issue protective orders "specifying terms, including . . . the allocation of expenses, for the disclosure or discovery." Fed. R. Civ. P. 26(c)(1)(B). "Again and again, 'district courts have recognized the unique burden of producing documents stored on backup tapes and, by invoking Rule 26(c) to fashion order to protect parties from undue burden or expense, have conditioned production on payment by the requesting party.'" U.S. ex rel. Carter v. Bridgepoint Educ., Inc., 305 F.R.D. 225, 241 (S.D. Cal. 2015) (citing Hagemeyer N. Am., Inc. v. Gateway Data Scis. Corp., 222 F.R.D. 594, 601 (E.D. Wis. 2004)).

Courts typically employ a seven-factor test to determine whether an undue burden and expense exists with respect to discovery. The seven factors are:

- (1) the specificity of the discovery request; (2) the quantity of information available from other and more easily accessed sources; (3) the failure to produce relevant information that seems likely to have existed but is no longer available on more easily accessed sources; (4) the likelihood of finding relevant, responsive information that cannot be obtained from other, more easily accessed sources; (5) predictions as to the importance and usefulness of further information; (6) the importance of the issues at stake in the litigation; and (7) the parties' resources.

Major Tours, Inc. v. Colorel, 2009 WL 3446761, at \*3 (D.N.J. Oct. 20, 2009), aff'd, 720 F. Supp. 2d 587 (D.N.J. 2010) (citing Zubulake v. UBS Warburg

LLC, 217 F.R.D. 309, 322 (S.D.N.Y. 2003)). The Receiver submits that the unique circumstances of the Receivership warrant the approval of a centralized Repository, which, once established, can be made available to Recipients with minimal incremental expenses to the Receiver. By making all the Receiver's non-privileged information available to Recipients subject to a protective order the Receiver will avoid substantial expenses in responding to specific document requests, including significant attorney time in searching for relevant documents and removing/redacting confidential information. The Receiver is in the unique position of maintaining control of substantial volume of data that may be relevant to third parties for a variety of legitimate purposes; at the same time, the Receiver must protect and preserve the value of the Receivership estate for the benefit of its creditors. As a result, it is appropriate to institute measures to reduce the financial burden to the Receivership estate of providing information while still allowing third parties to access relevant information.

Here, authorizing the Receiver to respond to third-party discovery requests in related actions by providing such parties access to the Repository upon their agreement to the Confidentiality Order is appropriate, given the total costs of the production, the limited resources available to the Receiver, and the benefits that will be derived from producing the Materials in this efficient and cost-effective manner.

Counsel for the Securities and Exchange Commission has advised that they do not oppose this Motion.

### III. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court enter the Protective Order to govern the treatment of the Materials, and approve the Receiver's proposed use of the Repository for purposes of responding to discovery requests as set forth above.

Date: 7/26/2021

Respectfully Submitted,

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

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

**[PROPOSED] ORDER APPROVING CREATION OF DOCUMENT  
REPOSITORY AND PROTECTIVE ORDER**

On July 26, 2021, Kevin Dooley Kent (“Receiver”), the Court-appointed receiver for the Receivership Parties, filed a Motion to (1) approve the creation of a document Repository to be used in providing information to interested parties and as a mechanism for responding to discovery requests issued to the Receiver and (2) the entry of Protective Order governing information made available through the Repository. (“Motion,” ECF No. 107). The Receiver’s Motion is **GRANTED**. The Receiver is authorized to incur up to \$25,000 to set up and maintain the Repository.



**IT IS FURTHER ORDERED** the Receiver's request for the entry of a Protective Order is **GRANTED** as follows. This Protective Order ("Order") shall govern the treatment of documents and information ("Materials") that the Receiver will produce as part of a database of documents and information relevant to the investment advisory services provided by Brenda Smith and her affiliated entities, including the Receivership Parties ("Repository"). The Court recognizes that some of the Materials to be produced as part of the Repository may contain sensitive financial and personally identifying information of investors and former employees of the Receivership Parties, which should be kept confidential.

The Receiver is further authorized to respond to discovery requests for the production of documents from the Receivership Parties by granting access to the Repository in lieu of providing more formal discovery responses, as provided in the Motion. The Receiver may withhold documents from the Materials that are privileged, attorney work-product or that were produced to the Receiver pursuant to the terms of a separate protective order, confidentiality agreement, and/or other agreement that does not permit production to third parties. The Receiver shall advise Repository Recipients (as defined herein) of the existence of such documents and the basis upon which they were withheld. To the extent the Repository Recipients dispute whether documents are properly withheld from the Repository, they may seek appropriate review in this Court.

The Receiver obtained the Materials principally from the following sources, pursuant to the authority conveyed upon him by virtue of the receivership appointment order (Dkt. No. 22): (a) electronic data, documents, and information stored by the Receivership Entities using remote cloud storage as well as computers, a server and hard drives located at the Receivership Entities' offices; (b) hard-copy documents and information retrieved by the Securities and Exchange Commission from the Receivership Entities' offices and subsequently provided to the Receiver; and (c) data, documents, and information obtained by the Receiver in response to information requests and subpoenas served upon third parties.

The Materials may contain confidential and/or personal private information or other confidential information, as contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of any such information in the Materials as much as practical in connection with the instant action and any current or potential future legal action(s) relating to the conduct of Brenda Smith that is the subject of the above-captioned enforcement action. As used herein, the term "Confidential Information" shall mean all information and data contained or disclosed in any of the Materials, except as provided in Paragraph 14 below, including documents, portions of documents, and data, summaries, and compilations derived therefrom, whether or not previously

designated as "CONFIDENTIAL," that includes or constitutes the following: (1) Social Security numbers; (2) dates of birth; (3) home addresses, except for city and state; (4) driver's license numbers; (5) financial account and routing numbers, except for the last four digits; and (6) trade secrets. The Receiver believes, in good faith, that the disclosure of Confidential Information could be potentially prejudicial to the commercial or personal interests of the original custodian(s).

### GENERAL RULES

1. All Confidential Information produced by the Receiver to, and contained within, the Repository will be considered "CONFIDENTIAL," and shall be treated as such pursuant to the terms of this Order, whether or not the Materials are specifically designated as "CONFIDENTIAL."

2. Confidential Information shall be handled in the manner set forth below and, in any event, shall not be used for any purpose other than in connection with this litigation and any current or potential future legal action(s) arising out of or relating to the conduct of Brenda Smith that is the subject of the Securities and Exchange Commission's Complaint (Dkt. No. 1) in the above-captioned action (collectively, "Related Actions"), unless and until such disclosure is approved by an individual investor with respect to his or her own Materials, the Receiver with respect to the Receivership Entities' Materials, or by order of this Court. Persons and entities who are granted access to the Repository shall, subject to the provisions of this Protective Order and any order approving the Motion, include: (1) litigants who have issued valid discovery requests on the Receiver in a Related Action; (2) the Commission, including its employees and contractors; and (3) the Receiver and his staff, consultants, and counsel; (together (1)-(3), the "Repository Recipients").

3. Subject to the provisions of this Protective Order, Confidential Information may be disclosed to a Repository Recipient, staff and employees of a Repository Recipient or Repository Recipient's counsel; any person who actually was involved in the preparation of the document or who appears on the face of the document as the author, addressee, or other recipient or currently is affiliated with the party that originally produced or appears to have prepared said document; mediators or arbitrators and their staff in Related Actions; witnesses, deponents and court reporters in Related Actions; and juries and court personnel in Related Actions. In addition, Confidential Information may be disclosed to expert witnesses, investigators, vendors, and consultants engaged or retained by a Repository Recipient or a Repository Recipient's counsel in this matter or in Related Actions, once they have executed the form attached hereto as **Exhibit A**.

4. Whenever a deposition taken in the instant action or a Related Action involves a disclosure of Confidential Information:

- a. that portion of the deposition shall be designated as containing Confidential Information subject to the provisions of this Order; such designation shall be made on the record whenever possible, but a party to the proceeding at issue may designate portions of depositions as containing Confidential Information after transcription of the proceedings; a party to the proceeding at issue will have until twenty-one (21) days after receipt of the deposition transcript to inform the other party or parties to the action of the portions of the transcript to be designated "CONFIDENTIAL."
- b. the disclosing party will be obligated to exclude from attendance at the deposition, during such time as the Confidential Information is to be disclosed, any person other than the

deponent, counsel (including their staff and associates), the court reporter, videographer and the person(s) agreed upon pursuant to Paragraphs 2 and 3 above; and

- c. those portions of original deposition transcripts containing Confidential Information, and all copies of the deposition transcripts, shall bear the legend "CONFIDENTIAL," as appropriate, and the original or any copy of a deposition transcript which contains Confidential Information ultimately presented to a court for filing shall not be filed unless it can be accomplished under seal, identified as being subject to this Order, and protected from being opened except by order of this Court or the judge presiding over the Related Action.

5. All of the Confidential Information produced by the Receiver to, and contained within, the Repository, and any and all reproductions of the Confidential Information, must be retained in the custody of the counsel for the Repository Recipients identified in Paragraph 2, above, except that the Receiver and his staff may retain custody of copies as necessary. Before any Confidential Information is filed with this Court or any court in connection with any Related Action(s), for any purpose, the party seeking to file such material shall seek permission of this Court, or the court presiding over the Related Action, to file the applicable Material(s) under seal.

6. All Confidential Information shall be maintained as confidential by those inspecting or receiving it, and shall be used only for purposes of the Related Actions. Counsel for each Repository Recipient, and each person or entity receiving Confidential Information, shall take reasonable precautions to prevent the unauthorized or inadvertent disclosure of such information. If Confidential

Information is disclosed to any person not authorized by this Order, the Repository Recipient responsible for the unauthorized disclosure shall immediately bring all pertinent facts relating to the unauthorized disclosure to the attention of the Receiver and, without prejudice to any rights and remedies of the Receiver and/or the original custodian(s) of the Material(s), shall make every reasonable effort to prevent further disclosure including, but not limited to, requesting the person(s) or entities that received the unauthorized disclosure to destroy the Confidential Information immediately.

7. The Materials may be used, subject to the terms of this Order, in any Related Action, and may be shared with the parties to such Related Action who agree to the terms of this Order. All Repository Recipients shall, upon the request of any other Repository Recipient, stipulate to the entry of a protective order with at least the protections in this Order in any Related Action.

8. Nothing in this Order will bar counsel from rendering advice to their clients with respect to any Related Action and, in the course thereof, relying upon any information designated as Confidential Information, provided that the contents of the Confidential Information shall not be disclosed.

9. The existence of this Order shall not be used by any person or entity as a basis for discovery that is otherwise not authorized under the Federal Rules of Civil Procedure.

10. Nothing within this Order shall be construed to prevent disclosure of Confidential Information if such disclosure is required by law or by court order.

11. This Order shall not prevent the Commission from complying with its obligations under law concerning disclosure of documents including, but not limited to, its published Routine Uses of Information in Forms 1661 and 1662, the Freedom of Information Act, and any other statutes or rules applicable to the Commission, or interfere with the Commission's use of information for law

enforcement activities and to otherwise regulate, administer, and enforce the federal securities laws.

12. The inadvertent production of documents to the Repository by the Receiver shall be without prejudice to any claim that such material is privileged or protected from disclosure under the attorney-client privilege, the attorney work product doctrine, a protective order and/or confidentiality agreement or any other applicable privilege or protection. If the Receiver believes that privileged and/or confidential information was inadvertently produced, the Receiver may provide notice in writing to the Repository Recipients specifying the Materials inadvertently produced along with an explanation for the basis for the claim of privilege and/or confidentiality. After receipt of such notice, the Repository Recipients, other than the Receiver, shall immediately refrain from any use or disclosure of the inadvertently produced privileged Material, and undertake reasonable efforts to return or destroy all copies of the inadvertently produced Material in their possession, custody, or control. Provided, however, that nothing in this Order shall be construed as preventing any Repository Recipient from objecting to the designation of any Material as privileged or confidential and moving the Court for an order compelling the production of such Material or overruling the claim of privilege.

13. Upon the final discharge of the Receiver or termination of the instant case, whichever is later, counsel for each Repository Recipient shall, upon the request of the Receiver, use all reasonable efforts to destroy all Materials, including any copies or excerpts of such Materials, including from all machine-readable media on which it resides. "Reasonable efforts" shall not require the return or destruction of Materials that (i) are stored on backup storage media made in accordance with regular data backup procedures for disaster recovery purposes, (ii) are located in the email archive system or archived electronic files of departed employees, or (iii) are subject to legal hold

obligations. If Materials are subject to a legal hold obligation at the time the Receiver makes a request for destruction, counsel for the Repository Recipient that is subject to such hold obligation shall promptly provide the Receiver with reasonable written proof thereof. Backup storage media will not be restored for purposes of returning or certifying destruction of Materials, but such retained information shall continue to be treated in accordance with the Order. Notwithstanding the foregoing, in the event that any Repository Recipient is involved in a Related Action that terminates after the discharge of the Receiver or the termination of the above-captioned action, such Repository Recipient will promptly destroy all Materials, including any copies, excerpts, and summaries of such Materials, including from all machine-readable media on which it resides, upon the termination of the related legal action(s). Counsel for each Repository Recipient may retain all correspondence, transcripts, written discovery, pleadings, briefs, memoranda, motions, and other documents filed with this Court or any court in connection with a Related Action that refers to or incorporates Confidential Information, and will continue to be bound by this Order with respect to all such retained Confidential Information. Further, attorney work-product materials that contain Confidential Information need not be destroyed, but, if they are not destroyed, the person in possession of the attorney work product shall continue to be bound by this Order with respect to all such retained information. The requirement to destroy all Materials does not apply to the Commission, which shall retain or destroy the materials in accordance with its usual practices and procedures and applicable law.

14. The restrictions and obligations set forth within this Order do not apply to any information that: (a) the Repository Recipients agree, or a court determines, is already public knowledge; (b) the Repository Recipients agree, or a court determines, has become public knowledge other than as a result of disclosure by a Repository Recipient, its employees, or its agents in violation of this Order; or (c)



a Party or Party's counsel already possesses or obtains from a separate source by which the information was not designated as confidential.

13. This Order does not prohibit discussion of any Confidential Information with anyone if that person already has or obtains legitimate possession of the relevant Confidential Information.

14. Transmission by email or some other currently utilized method of transmission is acceptable for all notification purposes within this Order.

15. This Order may be modified by agreement of the Repository Recipients, subject to approval by the Court.

16. The terms and conditions of this Order apply with full force and effect to any and all Related Action(s). The terms and conditions of this Order, as applied to any Related Action, may be enforced by this Court. The Repository Recipients consent and submit to the jurisdiction of this Court with respect to enforcement of the Order, including the imposition of any sanction(s) by the Court for violation thereof.

17. In the event that the Receiver obtains additional data, documents, or information after entry of this Order relating to the Receivership Parties, the Repository Recipients shall meet and confer regarding the necessity, appropriateness and manner of the Receiver producing the additional data, documents, or information, the treatment of such data, documents, or information, and the parameters of any cost-sharing allocation, if necessary and appropriate.

18. Nothing contained herein waives or prejudices any Repository Recipient's rights regarding the demand for, access to, or production of any of the Materials, or any documents, information, or data related to the subjects of the above-

captioned action.

**BY THE COURT:**

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HONORABLE MADELINE COX ARLEO  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

I, \_\_\_\_\_, **DECLARE:**

I have read in its entirety and understand the Protective Order (the "Order") entered by the Court in this Action and have been provided with a copy of the Order.

1. I agree to be bound by the terms of the Order. I will use the Materials only for the purposes of this litigation and related legal actions, pursuant to the terms of the Order. I will hold such Materials in confidence and not disclose to any person or entity not qualified under the Order to receive it.

2. I will destroy all Materials in my possession, custody, and/or control in accordance with the terms of the Order.

3. I understand that violation of the terms of the Order will subject me to sanctions or penalties for contempt of the Order. I consent and submit to the jurisdiction of this Court for the purpose of enforcing the Order.

I declare under penalty of perjury under the laws of the United States of America and the State of New Jersey that the foregoing is true and correct.

Dated: \_\_\_\_\_, 20\_\_ X\_\_\_\_\_

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

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

v.

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

**Defendants.**

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

**CERTIFICATE OF  
SERVICE**

I hereby certify, this 26th day of July, 2021, that I caused to be served a true and correct copy of the Notice of Motion of Receiver, Kevin D. Kent, Esquire, for Protective Order and Approval of the Creation of a Document Repository for Third-Party Access 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.*