

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)

**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). No opposition to the Motion have been filed and for good cause appearing, 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:**

*/s/ Edward S. Kiel*

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Edward S. Kiel, U.S.M.J.

**Date: September 2, 2021**

**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\_\_\_\_\_