

**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: Dec. 20, 2021

**NOTICE OF MOTION OF RECEIVER, KEVIN DOOLEY KENT, FOR
APPROVAL OF FIFTH INTERIM FEE APPLICATION FOR THE
PERIOD JULY 1, 2021 THROUGH SEPTEMBER 30, 2021**

PLEASE TAKE NOTICE that the undersigned, on behalf of the Receiver, Kevin Dooley Kent, 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 20, 2021, 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 Fifth Interim Fee Application for the Period July 1, 2021 through September 30, 2021.

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: 11/24/2021

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**RECEIVER, KEVIN DOOLEY KENT'S FIFTH INTERIM FEE
APPLICATION, FOR THE PERIOD JULY 1, 2021
THROUGH SEPTEMBER 1, 2021**

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Dated: 11/24/2021

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Pursuant to the Court’s Order Appointing Receiver dated June 29, 2020, Kevin Dooley Kent, Esq., Receiver, hereby submits this Fifth Interim Fee Application for the Period July 1, 2021 through September 30, 2021, 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 (“the Application”).

The Receiver and his Counsel have continued to focus their efforts on locating, marshaling, and preserving Receivership Assets; selling and liquidating Receivership Assets and taking actions necessary to prepare for and/or effectuate such sales; continuing document review and investigation; and investigating and now pursuing claims, either informally or through the initiation of litigation, against third parties. The Receiver’s Accountants have continued to focus on reviewing voluminous bank records from various financial institutions and assisting the Receiver with identifying fraudulent transfer recipients and entities subject to other claims for affirmative relief warranting further investigation and/or pursuit; performing tax-related services for the Receivership; and managing the document repository to allow for efficient review and organization of substantial amounts of data from various sources.

As previously reported, the Accountants identified over eighty (80) bank accounts controlled by Smith for sixty (60) entities covering 2007 to 2019, and reconstructed fourteen (14) of these accounts for the period of 2015 to 2019, with

gross transactional activity totaling in excess of \$1.5 billion. This has made financial reconstruction and the analysis of tax issues extremely challenging. The Accountants requested extensions for the filing of tax returns where necessary, and prepared an 1120-SF federal tax return for the Receivership as a Qualified Settlement Fund, which was filed on October 15, 2021, and are supporting the Receiver in his negotiations with the IRS regarding Receivership tax liabilities for the years prior to the Receiver's appointment.

The Receiver has now secured the transfer of funds from all known and undisputed domestic bank accounts, completed the sale of confirmed stock held by the Receivership Parties—with the exception of the Lyft shares previously held by Receivership Party Prico Market, LLC, completed the sale of Brenda Smith's vehicle, has begun selling Smith's personal property collected from her Rittenhouse Apartment, collected the balance of funds owed on a secured promissory note, and received distributions on one of Brenda Smith's investments. Despite incurring significant expenses during this quarter, the Receivership still held \$6,177,449.21 as of September 30, 2021, and \$6,441,040.55 as of November 22, 2021. It is anticipated that this amount will soon increase through the sale of additional Receivership Property and the settlement of various claims.

The Receiver has drafted a proposed claims determination process motion, and is in the process of consulting with the SEC regarding the procedures proposed

therein. It is the Receiver's goal to file this motion as soon as possible. Disposition of this motion is among the necessary precursors to the filing of a proposed interim distribution motion.

In support of the Application, the Receiver states as follows.

I. BACKGROUND

This action involves an investment advisory fraud in connection with which Defendants, Brenda A. Smith ("Brenda Smith" or "Smith"), Broad Reach Capital, LP, Broad Reach Partners, LLC and Bristol Advisors, LLC, are alleged to have raised in excess of \$100 million from at least forty (40) investors, based upon false representations regarding trading strategies to be implemented when, in reality, the vast majority of these investments were funneled into unrelated companies, used to pay back other investors, or utilized for personal use. (Dkt. No. 1). It is estimated that investors are still owed approximately \$60 million in principal. Brenda Smith pled guilty to committing securities fraud in connection with Broad Reach Capital, in the matter of *USA v. Smith*, No. 2:20-cr-00475-MCA (D.N.J.) on September 9, 2021.

On June 29, 2020, this Court appointed Mr. Kent as Receiver to assume control of, marshal, pursue and preserve assets of Defendant, Brenda Smith, and 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, TA1, LLC, FFCC Ventures LLC, Prico Market LLC, GovAdv Funding LLC, Elm Street Investments, LLC,¹ Investment Consulting LLC, and Tempo Resources LLC (hereinafter “Receivership Assets” or “Receivership Estate”). Receivership Order, Whereas ¶ 3; ¶¶ 1–3, 5 (Dkt. No. 22).

The June 29, 2020 Receivership Order authorizes the Receiver to retain the law firm of Conrad O’Brien PC (“Conrad O’Brien”, “Law Firm” or “Counsel”) 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:

¹ Upon motion of the Receiver (Dkt. No. 95), the Receivership Order was amended *nunc pro tunc* on June 24, 2021, to correct the name of Receivership Party Elm Street Investors, LLC to Elm Street Investments, LLC. (Dkt. No. 96).

Receiver

| Name | Rate |
|-------------------|-------------|
| Kevin Dooley Kent | \$510.00 |

The Law Firm

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

The Accountant

| Name/Position | Rate |
|-------------------------------------|---------------------|
| 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.²

Receivership Order, ¶¶ 75, 81, 84.

² 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

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

This is the fifth interim application for approval of fees and expenses of the Receiver and his Retained Professionals.

The Receiver's First Interim Fee Application for the period June 29, 2020 through September 30, 2020 was filed on November 13, 2020. (Dkt. No. 43). The Fee Application was approved on April 5, 2021.³ (Dkt. No. 70). The Order approving the Receiver's First Interim Fee Application allowed for (a) payment to the 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; (b) payment to the 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; and (c) payment to the Law Firm 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. *Id.*

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.

³ Although the Order was dated May 5, 2021, it was docketed on April 5, 2021.

The Receiver's Second Interim Fee Application for the period October 1, 2020 through December 31, 2021 was filed on February 12, 2021. (Dkt. No. 50). The Fee Application was approved on July 6, 2021. (Dkt. No. 103). The July 6, 2021 Order approving the Receiver's Second Interim Fee Application allowed for (a) payment to the Law Firm in the amount of \$80,861.20 for services performed from October 1, 2020 through December 31, 2020, representing eighty percent (80%) of the Law Firm's total fee of \$101,076.50 for the quarter; (b) payment to the Accountant in the amount of \$124,782.00 for services performed from October 1, 2020 through December 31, 2020, representing eighty percent (80%) of the Accountant's total fee of \$155,977.50 for the quarter; (c) payment to the Law Firm in the amount of \$353.26 for expenses incurred from October 1, 2020 through December 31, 2020, representing eighty percent (80%) of the Firm's total expenses of \$441.58 for the quarter; and (d) payment to the Accountant in the amount of \$136.00 for expenses incurred from October 1, 2020 through December 31, 2020, representing eighty percent (80%) of the Accountant's total expenses of \$170.00 for the quarter.

The Receiver's Third Interim Fee Application for the period January 31, 2021 through March 31, 2021 was filed on May 28, 2021. (Dkt. No. 88). The Fee Application was approved on July 6, 2021. (Dkt. No. 104). The Order approving the Receiver's Third Interim Fee Application allowed for (a) payment to the Law

Firm in the amount of \$168,736.80 for services performed from January 1, 2021 through March 31, 2021, representing eighty percent (80%) of the Law Firm's total fee of \$210,921.00 for the quarter; (b) payment to the Accountant in the amount of \$363,894.00 for services provided from January 1, 2021 through March 31, 2021, representing eighty percent (80%) of the Accountant's total fee of \$454,867.50 for the quarter; (c) payment to the Law Firm in the amount of \$408.70 for expenses incurred from January 1, 2021 through March 31, 2021, representing eighty percent (80%) of the Law Firm's total expenses of \$510.87 for the quarter; and (d) payment to the Accountant in the amount of \$2,624.56 for expenses incurred from January 1, 2021 through March 31, 2021, representing eighty percent (80%) of the Accountant's total expenses of \$3,280.70 for the quarter.

The Receiver's Fourth Interim Fee Application for the period July 1, 2021 through September 30, 2021 was filed on August 16, 2021. (Dkt. No. 112). The Fee Application was approved on September 9, 2021. (Dkt. No. 121). The Order approving the Receiver's Fourth Interim Fee Application allowed for (a) payment to the Law Firm in the amount of \$184,131.60 for services performed from April 1, 2021 through June 30, 2021, representing eighty percent (80%) of the Law Firm's total fee of \$230,164.50 for the quarter; (b) payment to the Accountant in the amount of \$316,962.00 for services provided from April 1, 2021 through June 30, 2021, representing eighty percent (80%) of the Accountant's total fee of

\$396,202.50 for the quarter; (c) payment to the Law Firm in the amount of \$5,945.48 for expenses incurred from April 1, 2021 through June 30, 2021, representing eighty percent (80%) of the Law Firm's total expenses of \$7,431.85 for the quarter; and (d) payment to the Accountant in the amount of \$3,659.47 for expenses incurred from April 1, 2021 through June 30, 2021, representing eighty percent (80%) of the Accountant's total expenses of \$4,574.34 for the quarter.

II. CASE STATUS

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

Over the course of the Receivership, the Receiver has consolidated Receivership Assets from various bank accounts, proceeds from the sale of Receivership stock holdings and other Receivership Assets, and payments received pursuant to certain promissory notes and other private investments—including a \$32,356.14 distribution from OTAF Holgate during this fifth quarter—into the centralized Receivership Account with Bank of America (“Receivership Account”). As of September 30, 2021, total cash on hand was \$6,177,449.21. As of November 22, 2021, the balance in the Receivership Account was \$6,441,040.55.

The Receiver anticipates that significant additional funds will soon be forthcoming pursuant to certain settlement agreements, subject to Court approval. One such settlement was approved and resulted in an infusion of \$258,776.99 to the Receivership after the close of the quarter. The Receiver is actively negotiating

potential settlements with several other individuals and/or entities and is hopeful that additional settlement funds will likewise soon be obtained. The Receiver also anticipates that his pursuit of litigation on behalf of the Receivership Estate will result in a financial benefit for the Receivership Estate. The amount at issue in the claims proposed by the Receiver in his Second Motion to Initiate Litigation (Dkt. No. 98) is estimated to be between \$10 - \$15 million; however, this does not include the potential for offsetting counter-claims that may be at issue with respect to some of the proposed defendants, potential collectability risks, or uncertainties inherent in any litigation concerning the ultimate disposition of the claims.

Additional potential assets include more than \$200,000.00 of additional contested funds in frozen accounts for which forensic review and negotiations are continuing,⁴ as well as \$444,213.08 held in two Industrial and Commercial Bank of China Financial Services (“ICBC”) clearing accounts for CV Brokerage.⁵ The Receiver also believes that some 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 and warranted.

⁴ The frozen funds in the Taylor Trading, LLC account, were distributed in accordance with the Court’s Order on the Receiver’s Motion to Approve a Settlement Resolving the Receiver’s April 9, 2021 Motion to Determine Ownership of Taylor Trading, LLC Account (Dkt. No. 130, 134), and have therefore been excluded from this calculation.

⁵ These funds are being held pursuant to the Stipulation to Resolve ICBCFS’ Motion to Amend the Amended Order Appointing Receiver. (Dkt. No. 30).

The Receiver remains hopeful that the sale of additional Receivership Assets, including real property owned by BD of Louisiana and Brenda Smith in Tangipahoa Parish, Louisiana, will generate significant proceeds for the Receivership Estate. The Receiver has learned that a majority of Prico Market LLC's Lyft shares—over which ownership has been disputed—were sold by a third party prior to the entry of the Receivership Order, and the Receiver is working to obtain the proceeds from that sale to the extent these shares cannot be returned. The Receiver's investigation into the existence of cryptocurrency reportedly owned by Smith is ongoing.

Due to three fee petitions being granted during this quarter related to three prior reporting periods, the Receivership paid administrative expenses of \$1,263,684.48 during this quarter. This includes \$433,729.60 in fees to Conrad O'Brien, \$805,638.00 in fees to Alvarez and Marsal, \$6,707.44 in expenses to Conrad O'Brien, and \$6,420.03 in expenses to Alvarez and Marsal, paid in accordance with this Court's Orders approving the Receiver's Second, Third, and Fourth Interim Fee Applications (Dkt. Nos. 103, 104 and 121). Additional expenses include a total of \$9,528.52 for outside legal counsel retained in limited, special engagements for various purposes, broken down as follows: (a) \$175.18 to UK-based PCB Byrne LLP for an outstanding legal bill from a prior quarter relating to advice from Elizabeth Seborg, Solicitor, provided in connection with

CV International Investments; (b) \$4,920.00 to Fleming Petenko Law for specialized tax guidance and advice; (c) \$3,263.34 to Special Counsel, which was retained to perform document review in connection with a subpoena to produce documents served upon the Receiver prior to the entry of the Order Approving the Creation of Document Repository and Protective Order on September 2, 2021 (Dkt. No. 118); and (d) \$1,170.00 to Louisiana-based Fishman Haygood, for advice and guidance in connection with B1 Bank's decision to begin retroactively charging the default interest rate on the mortgage for the BD of Louisiana property in Tangipahoa Parish, Louisiana. Finally, the Receiver paid \$753.87 for liability coverage for the Louisiana Properties, and \$900.00 for one of the appraisals of the BD of Louisiana Property. Finally, there was a \$7.02 account analysis fee deducted from the Receivership Account by Bank of America during this quarter.

For further detail, the Receiver has attached the SEC's Standardized Fund Accounting Report ("SFAR") for this quarter as Exhibit "A" to this Application.

B. Administration of Case to Date

The Receiver, his Counsel and Accountants have continued to focus on identifying, locating, assuming control of, and liquidating Receivership Assets, and identifying potential sources of recovery of additional assets, with the objective of preserving these assets and maximizing recovery for defrauded investors.

1. Litigation-Related Activities

The Receiver's recent litigation-related activities include the following:

a. Motion Practice

On July 19, 2021, the Receiver filed a Motion for Appointment of Replacement Real Property Appraisers after several appraisers initially appointed by the Court to appraise the Louisiana Properties declined the assignment. (Dkt. No. 106). That Motion was granted on August 20, 2021. (Dkt. No. 114).

On July 26, 2021, the Receiver filed a Motion for Protective Order and Approval of the Creation of a Document Repository for Third Party Access. (Dkt. No. 107). That Motion was granted on September 2, 2021. (Dkt. No. 118).

In addition to the above, the Receiver filed a letter with the Court on July 14, 2021, attaching two letters received from Brenda Smith regarding, *inter alia*, her request to participate in depositions and obtain information. (Dkt. No. 105). A telephone conference was held before the Honorable Edward S. Kiel to discuss Smith's letters on August 20, 2021. (Dkt. No. 111). During that conference, Smith reiterated her request for appointment of counsel. Following the conference, an Order was entered denying the relief requested in Smith's letter, and providing that Smith could submit a letter application for appointment of *pro bono* counsel to the Receiver. (Dkt. No. 114). The Receiver received and filed the application for appointment of *pro bono* counsel on August 27, 2021. (Dkt. No. 116). Both the

Receiver and the Securities and Exchange Commission submitted responses to Smith's request on September 7, 2021. (Dkt. Nos. 119 & 120, respectively). Smith's request for appointment of *pro bono* counsel was denied on September 12, 2021. (Dkt. No. 22).

After the close of the quarter, on October 6, 2021, the Receiver filed a Motion to Approve a Settlement Resolving the Receiver's Claims Against BRFP. (Dkt. No. 126). The Receiver filed the exhibits to the Motion under seal (Dkt. No. 127), and, upon the filing of the Receiver's Motion to Seal (Dkt. No. 128), the Court entered an Order approving the sealing of those exhibits the following day. (Dkt. No. 129). On October 8, 2021, the Receiver filed a Motion to Approve a Settlement Resolving the Receiver's April 9, 2021 Motion to Determine Ownership of Taylor Trading, LLC Account (Dkt. No. 130), which was approved on November 10, 2021. (Dkt. No. 134). Additionally, on October 29, 2021, the Receiver filed a Motion for Alternative Service of Subpoena Upon Richard Shawn Ellis. (Dkt. No. 132). At the request of the Court, the Receiver filed a supplemental Letter Brief in Support of that Motion on October 11, 2021. (Dkt. No. 135).

b. Lawsuits Filed on Behalf of the Receivership Estate

The Receiver's first Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate (Dkt. No. 49) was granted on August 31, 2021. (Dkt. No. 117). The Receiver's Second Motion to Initiate Litigation on Behalf of the

Receivership Estate (“Second Motion to Initiate Litigation”) (Dkt. No. 98), filed on June 29, 2021, remains pending as of the date of this filing and is ripe for determination.

As set forth in the Receiver’s Fourth Interim Fee Application, the Receiver filed three (3) lawsuits in the District Court for the District of New Jersey on June 29, 2021. A list of those lawsuits—all of which are being handled on a contingency fee basis—along with a description of their current status, is as follows:

- ***Kevin D. Kent, in his capacity as Receiver v. Emperor Global Enterprises LLP, EGE Limited, Michael P. Michael, and Georgia Iacovou, No. 2:21-cv-13099 (D.N.J.)***

The Receiver successfully effectuated service upon these defendants in the United Kingdom. Entries of Appearance on behalf of all defendants were filed just after the close of the quarter. (Dkt. No. 5, 6, 8). Defendants have been given an extension until December 24, 2021 to respond to the complaint (Dkt. No. 15); meanwhile, a settlement conference will soon be taking place before the Honorable Edward S. Kiel.

- ***Kevin D. Kent, in his capacity as Receiver v. Medical Consultants Instructional Training Center, Medical Construction Industrial Training Center, LLC d/b/a Medical Consultants Instructional Training Center, MCITC School of the Trades LLC d/b/a Medical Consultants Instructional Training Center, and Carol Johnston, No. 2:21-cv-13104 (D.N.J.)***

The Receiver obtained and filed signed waivers of service through counsel for these defendants. (Dkt. No. 4-7). On September 7, 2021, Defendants, Medical Construction Industrial Training Center, LLC and MCITC School of the Trades, LLC filed a Motion to Dismiss the Receiver’s Complaint. (Dkt. No. 8). The Receiver filed an Amended Complaint on September 20, 2021. (Dkt. No. 9). On October 4, 2021, Defendants filed a Stipulation and Order granting Defendants until

November 4, 2021 to file an answer to the amended complaint (Dkt No. 11), which was approved on October 5, 2021. (Dkt. No. 12). The Defendants filed an Answer on November 4, 2021. (Dkt. No. 13).

- ***Kevin D. Kent, in his capacity as Receiver v. Richard C. Galvin, Galvin Investment Company, LLC a/k/a Galvin Investments Company LLC and Galvin Investments, LLC and Galvin Investment Group, Gilman Metals Company, LLC, Galvin Metals Company, LLC and RG Coastal LLC, No. 2:21-cv-13105 (D.N.J.)***

The Receiver obtained and filed signed waivers of service for all defendants in this case. (Dkt. No. 5 – 9). Counsel for the Receiver reached an agreement with Colorado counsel for defendants, granting them an extension to file a response to the Complaint within thirty (30) days of the entry of an Order on the Receiver’s Second Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate. After the Receiver notified the Court of this agreed-upon extension (Dkt. No. 10), the Court entered an Order staying and administratively terminating the case, to be reopened by motion upon resolution of the Receiver’s Second Motion to Initiate Litigation, and providing that Defendants in that matter shall have thirty (30) days to respond to the complaint from the date the case is reopened. (Dkt. No. 11).

Additionally, the Receiver filed a lawsuit against Agostinho Calcada in the United States District Court for the District of New Jersey on October 11, 2021, captioned as follows:

- ***Kevin Dooley Kent, in his capacity as Receiver v. Agostinho Calcada, No. 2:21-cv-18396 (D.N.J.)***

The Receiver obtained and filed a signed waiver of service for Mr. Calcada, and an answer is currently due on December 13, 2021. (Dkt. No. 5).

Depending upon when the Receiver’s Second Motion to Initiate Litigation is adjudicated, the Receiver anticipates that he may need to file additional lawsuits

against other prospective defendants prior to obtaining a ruling from this Court on the Motion, where necessary to preclude certain arguable or purported statute of limitations defenses. Additionally, if and when the Receiver identifies additional claims that need to be pursued, the Receiver will seek appropriate approval from the Court to proceed with those claims, in accordance with the Receivership Order.

The Receiver is in the process of seeing if he can resolve his claims against Nottingham Company (“Nottingham”) and Sanville & Company (“Sanville”) before filing suit against them, and is preparing to initiate litigation against, *inter alia*, Jordan Denise and her entities pursuant to the Court’s Order.

2. Storage & Sale of Belongings, Professional Equipment and Data

The Receiver’s Motion for Permission to Sell Brenda Smith’s Vehicle and Personal Property at Smith’s Rittenhouse Apartment was granted on July 6, 2021. (Dkt. No. 102). Brenda Smith’s marketable personal property is being sold on a rolling basis by Stephenson’s Auction, and has generated \$7,427.60 in net proceeds to the Receivership through nine (9) public auctions so far,⁶ after payment of storage and pick-up fees and commissions.⁷ Brenda Smith’s vehicle

⁶ Three of these auctions, which resulted in total net proceeds of \$626.40, took place after the close of the quarter.

⁷ The Receiver mistakenly reported in his Fourth Interim Fee Application that a majority of Smith’s marketable personal property was sold through public auction for total net proceeds of \$1,646.80. The Receiver has since clarified that those were just the net proceeds from the first auction.

was sold for \$27,000.00 on September 2, 2021. The Receiver is continuing to investigate options for the sale of Smith's potentially valuable rugs. The Receiver continues to store certain personal and/or sentimental items without significant resale value on behalf of Ms. Smith, and will make arrangements for pick-up of these items once the auction process has been completed.

Server equipment retrieved from the Equinix data center is now back in the possession of the Receiver, and the Receiver is exploring his options for the potential sale of this equipment. The Receiver also continues to hold and host substantial amounts of data secured from various sources with Alvarez & Marsal's in-house e-discovery vendor, which process is managed and coordinated by Alvarez & Marsal's Forensic Technology/Data Analysis Team.

On September 2, 2021, this Court entered an Order Approving Creation of Document Repository and Protective Order. (Dkt. No. 118). Alvarez and Marsal's Forensic Technology/Data Analysis Team is in the process of setting up and transferring non-privileged materials onto the repository, and has been working with Counsel to search for, identify and segregate confidential and/or privileged materials for exclusion from the portion of the repository that will be accessible to other interested parties.

3. Louisiana Properties

The Receiver controls four (4) parcels of property located in Tangipahoa Parish, Louisiana, two of which are owned by Brenda Smith personally (“Smith Property”), and two of which are owned by BD of Louisiana, LLC (“BD of Louisiana Property”). The Receiver has secured liability insurance coverage on the Louisiana Properties.

On April 5, 2021, this Court granted the Receiver’s Motion for Appointment of Real Property Appraisers and Approval to Retain Realtor. (Dkt. No. 71). The Court then granted the Receiver’s July 19, 2021 Motion for Appointment of Replacement Appraisers (Dkt. No. 106) on August 20, 2021. (Dkt. No. 114).

Real estate agent, Godwyn & Stone Brokerage (“Godwyn & Stone”) listed the vacant BD of Louisiana Property for sale on or about August 26, 2021 for \$899,500.00.⁸ The Smith Property was listed for sale on or about October 18, 2021 for \$350,000.00. The Receiver has reached an Agreement of Sale on the Smith Property, subject to Court approval, and filed a motion for the confirmation of the sale of the property on November 12, 2021. (Dkt No 136). The BD of Louisiana Property listing remains active as of the date of this filing.

⁸ The mortgaging bank is attempting to charge default interest at a rate of twenty-one percent (21%) on this property, and the Receiver had to retain local counsel specializing in commercial real estate in Louisiana during this quarter for the limited purpose of addressing this issue.

4. Bank Accounts and Records

Receivership funds currently remain in the centralized Receivership Account with Bank of America. As of September 30, 2021, the balance in the Receivership Account was \$6,177,449.21. As of November 22, 2021, the balance in the Receivership Account was \$6,441,040.55. The Receiver has received document productions from numerous domestic financial institutions.⁹

5. Brokerage Account and Liquidation of Stock Holdings

As outlined in the Receiver's prior fee applications, the Receiver previously sold Receivership shares in Palantir Technologies, Tremor International Limited, and Greenbriar Capital Corp., which resulted in net proceeds of over \$4.5 million.

The Receiver has been working to locate and secure Prico Market, LLC's 30,000 Lyft shares, which are defined as a Receivership Asset under the Receivership Order. The Receiver recently learned that 25,000 of these shares were sold prior to the entry of the Receivership Order, which sale was initiated by an individual to whom the remaining 5,000 shares have been transferred. The Receiver has confirmed that the remaining 5,000 shares remain in this individual's

⁹ To date, the only overseas account identified as potentially holding receivership assets is Cidel Bank in Barbados, which has represented that it holds less than \$13,000.00 in an account in the name of CV International Investments. The Receiver has been advised that he will need to retain local counsel to domesticate the Receivership Order and compel production of account documents and turnover of funds from that account, which the Receiver has not yet done out of concern that the costs and fees involved may exceed the funds left in the account.

possession.¹⁰ The Receiver is awaiting additional documentation and is actively working to determine appropriate next steps, which will likely require Court intervention if the issue cannot be resolved through the return of the remaining shares as well as a transfer of proceeds from the shares that have been sold.

The Receiver has been unable to confirm the existence of any other Receivership holdings in publicly traded securities, but has learned of several private investments and ownership interests through his investigation.

6. Private Investments and Ownership Interests

The Receiver has identified the several private investments/ ownership interests:

Brenda Smith, through her entity Rocmen Holdings, LLC, holds 15 million shares in Bluwater Holdings Corp. (“Bluwater”), a Nevada Corporation run by Hector Valdes, for which she paid \$1.5 million of Receivership Assets. This ownership interest represents twenty percent (20%) of the authorized stock in Bluwater. Ms. Smith, through the Receivership Parties, also contributed substantial sums of money to support and ramp-up Bluwater’s business operations, but these payments eventually stopped. Mr. Valdes claims that Bluwater suffered significant financial losses as a result of Smith’s conduct, from which he is still attempting to

¹⁰ The individual by whom the shares were sold, and to whom the remaining shares were transferred, maintains that the shares belong(ed) to him.

recover. The Receiver's Counsel has been communicating with Mr. Valdes in an attempt to resolve and wind-up Smith's ownership interest in Bluwater.

Smith paid a total of \$250,000.00 in Receivership Assets to Pennsylvania-based CMCC Development Group, LLC ("CMCC"), in exchange for which she was given one (1) share in CMCC. CMCC has submitted a creditor claim to the Receivership Estate claiming damages for CV Investment, LLC's purported breach of a contract, seeking \$5,000,000.00 for the breach, \$500,000.00 in direct damages and \$2,400,000.00 in direct damages.

In December 2017, Smith invested \$100,000.00 into OTAF, to participate in OTAF's investment in its wholly owned subsidiary OTAF (Holgate) LLC, which was investing \$5 million into a real estate development project in Long Beach Island. That project is estimated to be completed in late 2022. OTAF made its first five (5) investor distributions to Brenda Smith this year in the amounts of \$48,128.52, \$19,000.00, \$17,000.00, \$32,356.14 and \$7,142.86, respectively. The first two distributions were sent to the Receiver on June 7, 2021, the third distribution was sent to the Receiver on June 23, 2021, the fourth distribution was sent to the Receiver on September 23, 2021, and the fifth distribution was sent to the Receiver after the close of the quarter on October 29, 2021. It is anticipated that additional distributions will be made on this investment.

Brenda Smith, through Investment Consulting, LLC and Broad Reach Capital LP, transferred over \$1 million to Calais Management Corporation (“Calais”) as an investment in a gold mine. Calais and its affiliated and/or successor entities (“Calais Entities”) are asserting that the majority of these payments were made pursuant to an agreement through which Smith/the Receivership Parties now have a royalty interest of 2% in future profits, up to 120% of the amount funded. The Receiver is investigating the Calais Entities’ assertions, is in active discussions with their counsel, and is awaiting additional documentation.

7. CV International Investments Limited

The Receiver has not discovered any legitimate assets of CV International Investments Limited, with the exception of the small bank account with Cidel Bank in Barbados. Accordingly, in the interest of avoiding the expense of additional time, administrative costs, and professional fees in connection with the takeover and maintenance of this overseas company, the Receiver decided not to renew his objections to the Application to Strike-Off, and the company was administratively dissolved by Companies House on or about September 21, 2021.

8. Fidelity Bond Claim

With the assistance of the Accountants and his Counsel, the Receiver submitted a sworn proof of loss with supporting documentation to American

International Group, Inc. (“AIG”) on October 1, 2021, seeking coverage under a fidelity bond in effect from August 30, 2018 through August 30, 2019.¹¹ The bond has a coverage limit of \$120,000.00, with a \$25,000.00 deductible. The Receiver hopes to receive a response from AIG regarding its coverage position before the close of the fourth quarter of 2021.

9. Document Review and Investigation

The Receiver’s Counsel continues to review data obtained from a back-up server and a cloud-based storage device, now that the Receiver’s Motion for Approval of the Receiver’s Proposed Protocol for Review of Electronic Data has been approved. (Dkt. No. 72), as well as documents produced by various individuals and/or entities in response to the Receiver’s requests and/or subpoenas.

10. Interviews and Depositions

The Receiver’s Counsel continues to participate in calls and informal interviews with various individuals who received Receivership Assets or who appear to possess meaningful information regarding the potential whereabouts of additional Receivership Assets. The Receiver’s Counsel is scheduling the deposition(s) of certain individual(s) closely affiliated with Brenda Smith, and is attempting to schedule an interview with Brenda Smith, now that she has entered a guilty plea in the underlying criminal action.

¹¹ AIG did not agree to reconsider its coverage position for earlier bond periods.

11. Communications with Creditors, Investors, Debtors and Claimants

Counsel for the Receiver, particularly its paralegal staff, has continued to have communications with various creditors, investors, debtors and claimants, either directly or through their counsel. Counsel has continued to direct any known investors to complete the investor questionnaire on the Receivership website, and has also advised known and potential creditors of the creditor claim form on the website, which is located at <http://broadreachreceiver.com/index.html>. The Receiver has developed a proposed claims procedure which will provide for formal notification to investors and creditors, and will file a motion for Court approval of that procedure in the near future after consultation with the SEC.

12. Investigation, Development, Negotiation and Pursuit of Claims

The Receiver's Accountants have largely completed their forensic account reconstruction, which has enabled the Receiver to issue various claw-back and demand letters during the last two quarters. The Receiver has issued seventeen (17) demands to various individuals and/or entities, including potential fraudulent transfer recipients, investors who have been identified as net winners and others who appear to have contractual obligations to the Receivership Parties. The Receiver is in the process of attempting to resolve claims with certain of these individuals and/or entities and has entered into tolling agreements with others while information and documentation is exchanged. The Receiver has sought

approval from this Court to pursue litigation against certain of these individuals and/or entities to whom demands were issued, and has initiated four (4) lawsuits.

The Receiver and his Counsel, with the assistance of the Accountants, have continued to research, investigate, analyze and develop other potential claims. It is anticipated that these efforts will continue over the course of the next few quarters, and will likely result in the filing of additional motions to initiate litigation.

13. Analysis of Frozen Contested Accounts

The Receiver has resolved his Motion to Determine Ownership of the Taylor Trading Account (Dkt. No. 76) through settlement. The Receiver's Motion to Resolve the Taylor Trading Motion was filed on October 8, 2021, (Dkt. No. 130), and was approved on November 10, 2021. (Dkt. No. 134). Communications and forensic review regarding the Awooton Consulting and Rybicki Capital Partners PNC accounts are likewise continuing, and ownership over these accounts may be the subject of motion practice in the near future.

In addition to the frozen accounts identified as contested in the Receivership Order, certain other individuals and/or entities have expressed an ownership interest in other frozen accounts identified as Receivership Assets in the Receivership Order. *See* Receivership Order, ¶ 3. Specifically, Prophecy Alpha Fund LP is asserting an ownership interest in funds previously held in the Prophecy Alpha Fund LP PNC Account, and certain other individuals have

expressed a potential interest in other frozen accounts. The Receiver has requested supporting information and documentation in connection with these claims, but has not yet received any such documentation.

14. Financial Account Reconstruction

The Receiver's Accountants at Alvarez and Marsal have performed significant work in support of the Receiver's efforts. In addition to what has been identified above, this accounting work includes, but is not limited to, the following:

The Accountants have been working to reconstruct financial accounts to determine investor capital account activity and identify third-party recipients of investor funds. The majority of this work is complete, with the exception of some additional records which have been recently received and/or may be forthcoming.

This work involved the reconstruction of accounts held by Receivership Parties, while performing targeted review of other accounts held or controlled by Smith. The Accountants identified over eighty (80) bank accounts for sixty (60) entities covering 2007 to 2019, and reconstructed fourteen (14) accounts for the period of 2015 to 2019, with gross activity totaling over \$1.5 billion.

The Accountants' work on reconstruction of investor capital accounts involved determining the net position of investors, identifying potential claw-back claims, and analyzing investor claims. The Accountants' preliminary analyses with

regard to net winner investors provided the support necessary for the Receiver to issue demands for the return of net winnings.

The Accountants also conducted investigations to determine the nature and amounts of transactions with third-party recipients of investor funds, in support of the Receiver's continued efforts to pursue potential fraudulent transfer or other tort, contractual and/or quasi-contractual claims.

Although the Accountants' work has decreased over the last few months, they will continue to be useful to the Receiver in negotiating and prosecuting claims against net winner investors and recipients of funds, resolving disputes regarding contested accounts, and evaluating investor claims.

15. Receivership Taxes

Alvarez and Marsal is handling the tax returns and other tax-related issues for the Receivership Estate. Specifically, they have communicated with the IRS on behalf of the Receiver, searched for and reviewed historical tax filings for the Receivership Parties, and prepared tax filing extensions for various Receivership Parties. They prepared an 1120-SF federal tax return which treats the Receivership Estate as a Qualified Settlement Fund ("QSF"). The return was filed on October 15, 2021. They will continue to assist the Receiver in discussions with the IRS about negating or minimizing tax liabilities, and will be preparing a plan for the

ultimate dissolution of most, if not all, of the Receivership Parties, which will require tax clearance certificates from the relevant state authorities.

The Accountants have determined that the Receivership Parties did not file federal or state tax returns for at least the two years preceding the Receiver's appointment. The Receiver is in regular communication with the IRS to attempt to resolve the scope of the tax returns that must be filed. It is the Receiver's preliminary position that historical tax returns need not and should not be filed by the Receiver for each individual entity in Receivership. However, if there is not yet an agreement on this point or there is an adjudication differing from the Receiver's position, the Receivership may be forced to incur substantial additional professional fees to prepare and file historical tax returns for pre-appointment time periods, and respond to any notices from taxing authorities related to those returns.

The Receiver engaged Fleming Petenko Law, which has experience advising federal equity receivers, for the purpose of providing advice in connection with certain unique and discrete legal matters pertaining to taxes. Fleming Petenko Law has agreed that fees for the engagement will not exceed \$10,000.00 per calendar year, without prior notice and the Receiver seeking the Court's approval.

16. Anticipated Closure of Case

Given the ongoing nature of the Receiver's investigation, the collectible assets still outstanding, and the current and future pursuit of litigation on behalf of

the Receivership Estate, the Receiver does not have a projected date by which he expects the Receivership to close.

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, which has been published on the Receiver's website, at <http://broadreachreceiver.com/index.html>. The Receiver is in the process of notifying known and potential creditors to visit the site to complete claim forms.

The Receiver is preparing to file a motion for an order setting forth a claims bar date, establishing a claims procedure and approving a notification process for investors and creditors. This will allow for the orderly, efficient and equitable administration of all claims while avoiding confusion, delay and unnecessary expense in connection with any future distributions. The development of a claims procedure, along with a resolution of ongoing tax liability issues with the Internal Revenue Service, are necessary precursors to the Receiver's ability to make an interim distribution of Receivership Assets.

D. Receivership Assets

The Receiver believes that, at this point, he has likely identified the majority of Receivership Assets, and his Accountants have traced the funds from the bulk of

the investments that were made with Broad Reach. However, some of those funds are non-recoverable. Other funds likely cannot be recovered without litigation.

1. Receivership Bank Account

As of the close of the quarter on September 30, 2021, the balance in the Receivership Account was \$6,177,449.21. As of November 22, 2021, the balance in the Receivership Account was \$6,441,040.55.

2. Pending and Upcoming Settlements

The Receiver anticipates that significant additional funds will soon be forthcoming pursuant to certain settlement agreements. On October 6, 2021, the Receiver filed a Motion to Approve a Settlement Resolving the Receiver's Claims Against BRFP. (Dkt. No. 126).¹² On October 8, 2021, the Receiver filed a Motion to Approve a Settlement Resolving the Receiver's April 9, 2021 Motion to Determine Ownership of Taylor Trading, LLC Account, (Dkt. No. 130), which was approved on November 10, 2021. (Dkt. No. 134). Pursuant to the Court's Order, the Receivership recovered \$258,776.99 from the Taylor Trading, LLC Account after the close of the quarter. The Receiver is in the process of attempting to resolve other claims as well, and anticipates filing additional motions to approve settlements in the near future.

¹² The exhibits to this Motion were filed under seal (Dkt. Nos. 127, 128, 129).

3. Stock Holdings

The Receiver previously confirmed the existence of, and sold, the following Receivership stock holdings:

- 180,000 shares in Palantir Technologies held by PriCo Market, LLC, for net proceeds of \$4,450,580.34.
- 50,000 shares in Greenbriar Capital Corp held by CV Brokerage, for net proceeds of \$62,030.68.
- 932 shares of Tremor Int Ltd held by CV Brokerage, for net proceeds of \$4,432.78.

Additionally, the Receiver and his Counsel have been advised that Prico Market, LLC's ("Prico") 30,000 shares in Lyft are no longer held by Prico. 25,000 of these shares were sold prior to the entry of the Receivership Order, while this individual responsible for that sale continues to hold the remaining 5,000 shares. This individual maintains that the shares belong to him. The Receiver is in active discussions with this individual's counsel regarding the shares, and is working to determine appropriate next steps to ensure that the Receivership Estate secures a return of the remaining shares and is compensated for the shares that cannot be returned.

4. Private Investments

The Receiver has identified four (4) private investment/ownership interests which constitute part of the Receivership Estate, which the Receiver is hopeful he will be able to liquidate either through distributions and/or a buy-out, as follows:

- Brenda Smith, through her entity Rocmen Holdings, LLC, holds 15 million shares, or a twenty percent (20%) ownership interest in Bluwater, for which she paid \$1.5 million in Receivership Assets.
- Brenda Smith holds one (1) share in CMCC, for which she paid \$250,000.00 in Receivership Assets.
- Brenda Smith invested \$100,000.00 in OTAF (Holgate) LLC for a real estate development project which is estimated to be completed in late 2022. So far, the Receiver has received distributions totaling \$123,627.52 on this investment.
- Brenda Smith invested over \$1 million in Calais Management Corporation, which its affiliated and subsidiary entities are claiming has been converted into a 2% royalty interest, for up to 120% of the amount funded. The Receiver is still investigating these assertions and is in the process of gathering and evaluating documentation.

5. Receivables and Promissory Notes

The Receiver has recovered the principal and interest owed on a secured promissory note from Spouting Rock, totaling \$2,149,634.00.

The Receiver has also identified several outstanding promissory notes. For example, Medical Consultants Instructional Training Center (“MCITC”) issued three (3) promissory notes to Receivership Party Investment Consulting LLC on April 11, 2016, May 23, 2016 and July 20, 2016, in the amounts of \$100,000.00, \$200,000.00 and \$150,000.00, respectively, in connection with \$450,000.00 in loans made to MCITC by Investment Consulting LLC and Broad Reach Capital LP. The MCITC Notes are subject to varying interest rates. Claims under the MCITC Notes have been asserted in connection with the lawsuit filed by the

Receiver styled *Kevin D. Kent, in his capacity as Receiver v. Medical Consultants Instructional Training Center et al.*, No. 2:21-cv-13104 (D.N.J.).

Additionally, Sunny Ocean 699, LLC and Agostinho Calcada, individually, issued a promissory note to Receivership Party Elm Street Investments, LLC (“Elm Street”) on October 19, 2016, in the amount of \$1,530,740.83, subject to a six percent (6%) annual interest rate, in connection with a loan of that same amount provided by Elm Street for the purchase of property in Golden Beach, Florida which was subsequently lost through foreclosure. A breach of contract claim under the Note has been asserted in the lawsuit filed by the Receiver styled *Kevin Dooley Kent, in his capacity as Receiver v. Agostinho Calcada*, No. 2:21-cv-18396_(D.N.J.).

The Receiver is investigating the recoverability of several additional outstanding promissory notes/loan obligations which may be the subject of future litigation.

6. Louisiana Properties

As noted in previous fee applications, the Receiver has located four (4) parcels of land in Tangipahoa Parish, Louisiana, which make up two properties which are part of the Receivership Estate: the BD of Louisiana Property and the Smith Property. The BD of Louisiana Property consists of undeveloped raw land,

while there is a home on the Smith Property which has fallen into disrepair over the years while occupied by a prior tenant.

It is the Receiver's understanding that the Smith Property is not subject to a mortgage. The BD of Louisiana property has a mortgage from B1 Bank, which matured on June 25, 2019 and continues to accrue interest. The principal amount of the mortgage is approximately \$345,000.00. B1 Bank is now attempting to charge a default interest rate of twenty-one percent (21%) on the mortgage, and is claiming that the balance owed with principal and interest exceeds \$500,000.00. The Receiver is in the process of analyzing the default interest assertion, and engaged local counsel for the limited purpose of addressing that issue. The Receiver hopes to sell the BD of Louisiana Property as soon as possible.

After the Receiver's Motion for Appointment of Replacement Real Property Appraisers was approved on August 20, 2021 (Dkt. No. 114), the Receiver's realtor listed the BD of Louisiana Property for \$899,500.00. The listing for the BD of Louisiana Property can be found here:

<https://www.realtor.com/realestateandhomes-detail/E-Adams->

[Rd Hammond LA 70403 M91155-75798](https://www.realtor.com/realestateandhomes-detail/E-Adams-Rd-Hammond-LA-70403-M91155-75798). The Receiver's realtor listed the Smith Property for \$350,000.00. This listing for the Smith Property can be found here:

<https://www.zillow.com/homedetails/17091-Highway-1064-Tickfaw-LA->

[70466/213661938_zpid/](https://www.zillow.com/homedetails/17091-Highway-1064-Tickfaw-LA-70466/213661938_zpid/). The Receiver has entered into an Agreement of Sale on

the Smith Property, subject to Court approval, and filed a motion with the Court regarding the sale of the Smith Property on November 12, 2021. (Dkt. No. 136). The BD of Louisiana Property listing remains active as of the date of this filing.

7. Additional Bank Accounts and Funds

It is estimated that there is over \$200,000.00 remaining in frozen, contested accounts in the name of Awooton Consulting and Rybicki Capital Partners LLC.

Likewise, ICBCFS continues to hold \$444,213.08 in two clearing accounts for CV Brokerage, pursuant to the Stipulation to Resolve ICBCFS' Motion to Amend the Amended Order Appointing Receiver. (Dkt. No. 30). Cidel Bank in Barbados has confirmed that it holds under \$13,000.00 in Receivership Assets in an account held by CV International Investments.¹³ The Receiver has not been able to confirm the existence of additional funds in other overseas bank accounts, due in part to a lack of cooperation from banks outside the jurisdiction of the United States Courts. The Receiver is investigating all reasonable and cost-effective options for gaining easier access to overseas funds.

8. Vehicle

The Receiver sold Brenda Smith's 2017 Infiniti QX70 for \$27,000.00 on September 2, 2021, which is within the Kelly Blue Book Fair Market Range for the

¹³ As previously indicated, the Receiver has been advised that he must retain local counsel in order to get the Receivership recognized and get access to these funds.

vehicle, in accordance with the permission granted to him by the Court (Dkt. No. 102). The battery on the vehicle had died. The Receiver was able to sell it the vehicle to a Nissan dealership which provided the most attractive offer for the vehicle and was able to tow it away, without the Receivership needing to incur costs for private towing or repair.

9. Magnetite

Brenda Smith is no longer in possession of any magnetite concentrate. The Receiver has confirmed that the magnetite purchased by Smith and stored on a ranch in New Mexico was sold by the ranch owner after Smith stopped making payments. The Receiver continues to investigate potential remedies.

10. Personal Property

With the Court's approval, Stephenson's Auction was retained to auction off a majority of the personal property found in Smith's apartment, including furniture, clothing, jewelry, rugs, and other miscellaneous items. (Dkt. No. 102). They are selling Smith's marketable personal property on a rolling basis. These sales have generated \$7,427.60 in net proceeds so far.

The Receiver is exploring his options to separately sell certain potentially valuable rugs from Smith's Rittenhouse Apartment. Additionally, administrative staff at Conrad O'Brien will be making arrangements to have someone retrieve personal / sentimental items without significant resale value for Ms. Smith.

11. Server Equipment

The server equipment retrieved from the Equinix data center has not yielded usable data. The Receiver is in the process of investigating whether any options are available for the sale of this equipment. However, the Receiver has been advised that at least some of this equipment may belong to Smith's former IT person, and the Receiver is investigating this claimed ownership.

12. Insurance

On October 1, 2021, the Receiver submitted a sworn proof of loss with supporting documentation to AIG under a fidelity bond with coverage limits of \$120,000.00 and a \$25,000.00 deductible. The Receiver will investigate other information he receives regarding other potentially applicable insurance coverage and/or bonds.

13. Cryptocurrency

The Receiver has not yet been able to confirm the existence of any cryptocurrency of value belonging to the Receivership Estate, but investigations are continuing in this regard.

E. Liquidated and Unliquidated Claims

The Receiver believes that the Receivership holds viable claw-back claims against certain net winner investors and/or individuals and entities that received gifts, donations, or other fraudulent transfers from Smith or other Receivership

Parties. There may also be claims for breach of contract, unjust enrichment, negligence and/or intentional tort claims against certain individuals and/or entities. The Receiver and his Accountants continue to investigate such claims, and to resolve some of them through pre-litigation settlements.

On February 9, 2021, the Receiver filed a Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate. (Dkt. No. 49). That Motion was granted on August 31, 2021. (Dkt. No. 117). On June 29, 2021, the Receiver filed his Second Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate, which remains ripe for determination. (Dkt. No. 98). Those potential claims have already been researched and investigated by the Receiver and his Counsel, and discussed with counsel for the SEC. The Receiver anticipates filing additional similar motions in the near future, as his investigation continues, when he determines that the pursuit of any such claims will be financially beneficial for the Receivership Estate.

On June 29, 2021, the Receiver filed three (3) lawsuits in the United States District Court for the District of New Jersey against several of the prospective defendants identified in Exhibit 1 to the Receiver's Second Motion to Initiate Litigation. Descriptions regarding these lawsuits are as follows:

Kevin D. Kent, in his capacity as Receiver v. Emperor Global Enterprises LLP, et al., No. 2:21-cv-13099 (D.N.J.)

This lawsuit involves the transfer of \$1,429,755.00 in Receivership Assets for the benefit of Emperor Global Enterprises LLP (“Emperor Global”), EGE Limited, and their directors, Michael P. Michael and Georgia Iacovou, from March 1, 2017 through September 8, 2017, purportedly pursuant to a Joint Venture Agreement (“JVA”) entered into between Clearview Investments LLC—which, upon information and belief, is a fictitious name for Receivership Party CV Investments LLC—and Emperor Global, and invoices issued by Emperor Global and EGE Limited. It is the Receiver’s understanding that none of the business ventures in connection with which these payments were made ever came to fruition. Further, pursuant to the JVA, certain of these funds were to be returned if the transaction contemplated in the JVA did not take place. The Complaint includes claims for avoidance of fraudulent and voidable transfer, unjust enrichment, breach of contract and a demand for accounting.

Kevin D. Kent, in his capacity as Receiver v. Medical Consultants Instructional Training Center, et al., No. 2:21-cv-13104 (D.N.J.)

This lawsuit involves the transfer of \$450,000.00 in Receivership Assets for the benefit of the MCITC Defendants and/or their owner, Carol Johnston between April 8, 2016 through July 21, 2016. This money was used to pay for various expenses of the MCITC Defendants and Johnston, including but not limited to rent, operating expenses, payroll and personal tax liabilities. These loans were memorialized by three promissory notes issued by Medical Consultants Instructional Training Center to Receivership Party Investment Consulting, LLC, which provided for the accrual of interest on the notes. As of the date of the filing of the Complaint, the total owed on the notes was \$800,542.60. The Complaint includes claims for confession of judgment, breach of contract, unjust enrichment, action to avoid fraudulent and voidable transfer, and a demand for accounting.

Kevin D. Kent, in his capacity as Receiver v. Richard C. Galvin, et al., No. 2:21-cv-13105 (D.N.J.)

This lawsuit arises from complex business dealings between Brenda Smith and Richard Galvin (“Galvin”) and several of Galvin’s entities, including Galvin Investment Company (“GIC”), Gilman Metals Company, LLC

(“Gilman Metals”), Galvin Metals Company, LLC (“Galvin Metals”) and RG Coastal LLC (“RG Coastal”), and the transfer of in excess of \$5,000,000.00 in Receivership Assets to, for the benefit of and/or at the request of Richard Galvin and his various entities. More specifically, Brenda Smith caused \$606,000.00 in Receivership Assets to be transferred directly to Richard Galvin and/or GIC in 2016, along with approximately \$1.5 million in additional funds for which investigation is ongoing. Smith also used \$677,737.48 in Receivership Assets to pay off a loan for Gilman Metals, which was guaranteed by Galvin and GIC, and made additional payments on behalf of Galvin and his entities for various business dealings. Further, Smith loaned approximately \$3.1 million to a company called 2019 Stout Development (“2019 Stout”), of which RG Coastal was a member and Galvin was manager, which allowed 2019 Stout to purchase property at 2019 Stout Street, Denver, Colorado (“the Property”) and pay-off prior investors. RG Coastal was obligated to pay back \$3.1 million to Receivership Party CV Investments, LLC, pursuant to a settlement agreement and promissory note. RG Coastal failed to meet its payment obligations, and \$2,990,000.00 remains due and owing on the Note. The Note provided that if RG Coastal fails to meet its payment obligations, CV Investments, LLC would be the sole member of 2019 Stout and therefore the owner of the Property. However, Galvin took out loans and issued two deeds of trust on the Property before his final payment to CV Investments, LLC was due, and failed to make the required payments. The Property was ultimately lost to foreclosure, leaving CV Investments, LLC’s ownership interest in 2019 Stout essentially worthless. The Complaint includes claims for action to avoid fraudulent and voidable transfers, unjust enrichment, breach of contract, breach of fiduciary duty, and a demand for accounting.

On October 11, 2021 the Receiver filed another lawsuit in the United States District Court for the District of New Jersey against Agostinho Calcada. A description regarding this lawsuit is as follows:

Kevin Dooley Kent, in his capacity as Receiver v. Agostinho Calcada, No. 2:21-cv-18396 (D.N.J.)

This lawsuit involves \$1,530,740.83 loaned by Elm Street Investments, LLC (“Elm Street Investments”) to Sunny Ocean 699, LLC and Agostinho Calcada in October 2016 for the purchase of property in Golden Beach,

Florida. The loan was documented by a promissory note which provides for repayment of principal plus payment of interest at an annual rate of six percent (6%), and the Note was secured by a second mortgage on the Golden Beach Property, which was lost through foreclosure. No payments have been made on the Note. The Note is enforceable against Agostinho Calcada individually, pursuant to its terms. As of the date of the filing of the Complaint, the total owed on the Note was \$1,988,201.68. The Complaint includes a claim for breach of contract.

III. CURRENT AND PREVIOUS BILLINGS

The total fees incurred by the Receiver and the Law Firm for the period covered by this Application are \$170,406.50, and the total fees incurred by the Accountant for the period covered by this Application are \$184,725.00. The total expenses incurred by the Receiver and the Law Firm for the period covered by this Application are \$551.38, and the total expenses incurred by the Accountant for this time period are \$5,126.90. Both the Law Firm and Accountant acknowledge that such fee compensation and expense reimbursement is subject to a twenty percent (20%) holdback, pending the completion of this case. With the holdback applied, the Receiver and Law firm are seeking compensation in the amount of \$136,325.20 and expense reimbursement in the amount of \$441.10, while the Accountant is seeking payment of \$147,780.00 in compensation and expense reimbursement in the amount of \$4,101.52 at this time.

In the First Interim Fee Application, the Receiver requested payment to the Law Firm in the amount of \$137,408.64 for services performed, and \$9,947.40 for expenses incurred during the first quarter, both of which represent eighty percent

(80%) of the Firm's total fees and expenses for the first quarter. The Receiver likewise requested payment of \$34,862.00 to the Accountant for services performed through the first quarter, which likewise represented eighty (80%) of the Accountant's total fee. (Dkt. No. 43). The First Interim Fee Application was approved on April 5, 2021. (Dkt. No. 70).

In the Second Interim Fee Application, the Receiver requested payment to the Law Firm in the amount of \$80,861.20 for services performed, and \$353.26 for expenses incurred during the second quarter, both of which represent eighty percent (80%) of the Firm's total fees and expenses for the second quarter. The Receiver likewise requested payment of \$124,782.00 to the Accountant for services performed, and \$136.00 for expenses incurred during the second quarter, both of which represent eighty percent (80%) of the Accountant's total fees and expenses for the second quarter. (Dkt. No. 50). The Second Interim Fee Application was approved on July 6, 2021. (Dkt. No. 103).

In the Third Interim Fee Application, the Receiver requested payment to the Law Firm in the amount of \$168,736.80 for services performed, and \$408.70 for expenses incurred during the third quarter, both of which represent eighty percent (80%) of the Firm's total fees and expenses for the third quarter. The Receiver likewise requested payment of \$363,894.00 to the Accountant for services performed, and \$2,624.56 for expenses incurred during the third quarter, both of

which represent eighty percent (80%) of the Accountant's total fees and expenses for the third quarter. (Dkt. No. 50). The Third Interim Fee Application was approved on July 6, 2021. (Dkt. No. 104).

In the Fourth Interim Fee Application, the Receiver requested payment to the Law Firm in the amount of \$184,131.60 for services performed, and \$5,945.48 for expenses incurred during the fourth quarter, both of which represent eighty percent (80%) of the Firm's total fees and expenses for the fourth quarter. The Receiver likewise requested payment of \$316,962.00 to the Accountant for services performed, and \$3,659.47 for expenses incurred during the fourth quarter, both of which represent eighty percent (80%) of the Accountant's total fees and expenses for the fourth quarter. (Dkt. No. 112). The Fourth Interim Fee Application was approved on September 9, 2021. (Dkt. No. 121).

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 and Expenses.

These exhibits,¹⁴ 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 during this quarter, by legal category as defined by the SEC's billing guidelines:

| Activity Category | Hours | Fee Amount |
|--------------------------------------|---------------|---------------------|
| Asset Analysis and Recovery | 348.90 | \$117,967.00 |
| Asset Disposition | 36.20 | \$14,505.50 |
| Business Operations | 1.20 | \$417.00 |
| Case Administration | 98.00 | \$34,013.00 |
| Claims Administration and Objections | 9.60 | \$3,504.00 |
| Totals | 493.90 | \$170,406.50 |

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

| Activity Category | Hours | Fee Amount |
|--------------------------|---------------|---------------------|
| Data Analysis | 101.40 | \$49,027.50 |
| Forensic Accounting | 261.40 | \$111,637.50 |
| Litigation Consulting | 16.60 | \$7,422.50 |
| Status Reports | 2.50 | \$1,195.00 |
| Tax Issues | 31.80 | \$15,442.50 |
| Totals | 413.70 | \$184,725.00 |

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

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

| Name/Position | Hourly Rate | Hours | Fee Amount |
|---------------------------------|--------------------|---------------|---------------------|
| Kevin Dooley Kent, Receiver | \$510.00 | 52.20 | \$26,622.00 |
| Andrew Gallinaro, Partner | \$365.00 | 97.30 | \$35,514.50 |
| Robert N. Feltoon, Partner | \$365.00 | 28.20 | \$10,293.00 |
| Andrew K. Garden, Of Counsel | \$330.00 | 1.80 | \$594.00 |
| Robin Weiss, Associate | \$330.00 | 275.80 | \$91,014.00 |
| Brianna Dinmore, Paralegal | \$165.00 | 32.20 | \$5,313.00 |
| Erika Finkernagel, Paralegal | \$165.00 | 6.40 | \$1,056.00 |
| TOTALS | | 493.90 | \$170,406.50 |

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

| Name/Position | Hourly Rate | Hours | Fee Amount |
|---|--------------------|---------------|---------------------|
| Forensic Analysis Team | | | |
| Michael Shanahan (Senior Director) | \$550.00 | 50.90 | \$27,995.00 |
| David Medway (Director) | \$475.00 | 103.10 | \$48,972.50 |
| Nichole Lunt (Senior Associate) | \$375.00 | 31.80 | \$11,925.00 |
| Meghan Morine (Senior Associate) | \$375.00 | 84.80 | \$31,800.00 |
| Natalie DiNuzzo (Paraprofessional) | \$150.00 | 0.50 | \$75.00 |
| Matthew Ryan II (Paraprofessional) | \$150.00 | 14.90 | \$2,235.00 |
| Forensic Analysis Team Sub-Total | | 286.00 | \$123,002.50 |

| Data Analysis Team | | | |
|---|----------|---------------|---------------------|
| Mark Kindy (Managing Director) | \$550.00 | 1.60 | \$880.00 |
| Bradley Koehler (Senior Director) | \$550.00 | 56.60 | \$31,130.00 |
| James McKenzie IV (Manager) | \$425.00 | 15.80 | \$6,715.00 |
| Thanh Phan (Manager) | \$425.00 | 8.00 | \$3,400.00 |
| Curtis Stecke (Manager) | \$425.00 | 11.30 | \$4,802.50 |
| Ahmed Salim (Analyst) | \$225.00 | 7.20 | \$1,620.00 |
| Data Analysis Team Sub-Total | | 100.50 | \$48,547.50 |
| Tax Services Team | | | |
| Sean Menendez (Managing Director) | \$550.00 | 7.90 | \$4,345.00 |
| Jennifer Palacios (Senior Director) | \$550.00 | 9.10 | \$5,005.00 |
| Jadyna Seelye (Senior Associate) | \$375.00 | 10.20 | \$3,825.00 |
| Accounting Team Sub-Total | | 27.20 | \$13,175.00 |
| OVERALL TOTALS | | 413.70 | \$184,725.00 |

The fees and expenses included herein were incurred in the best interests of the Receivership Estate. With the exception of the Billing Instructions and the proposed Contingency Fee Agreement for the pursuit of litigation which was submitted under seal in support of the Receiver's Second Motion for Permission to Initiate Litigation, (Dkt. No. 98, 99), 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.

Significantly, in accordance with the proposed Contingency Fee Agreement, the Receiver and his Counsel's time spent preparing the complaints filed on June 29, 2021 and October 11, 2021, and all work performed in connection with those lawsuits, have not been, and will not be, billed to the Receivership on an hourly basis. Rather, the Receiver will only receive payment in connection with those lawsuits if and when a settlement or judgment is obtained, pursuant to the terms set forth in the Contingency Fee Agreement.

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 though a 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. While the Receiver and his Accountants continue to expend significant time locating and recovering assets on behalf of the Receivership Estate in this complex case, as predicted, their fees and associated expenses have begun to decrease during this quarter, consistent with the Receiver’s prediction that fees would be front-loaded in the first year. *See Gordon v. Dadante*, 2008 WL 1805787 at *11 (N.D. Ohio 2008) (recognizing that, with receiverships, 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, his Counsel and Accountants have acted quickly to take control of the Receivership Entities and to prevent the further dissipation of assets. The liquid cash on hand has increased significantly since the inception of the Receivership, when the existence of substantial valuable assets was in serious question. 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 investment scheme involved approximately \$100 million during its operation, at least \$1.5 billion of financial

transactions occurred in accounts controlled by Smith over its last several years, and it is currently estimated that investors are still owed approximately \$60 million in principal.

The issues being addressed by the Receiver, his Counsel and Accountants are extremely 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, transactions involving 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 few assets still in the Receivership Parties’ possession. The Receivership has, and will continue to require, extensive investigation to attempt to locate additional assets and gather the evidence necessary to identify and pursue potential claw-back claims, but the Receiver remains optimistic that, with additional time and effort, additional significant funds can be recovered on behalf of the Receivership Estate.

The Receiver worked swiftly to identify and locate millions of dollars in Receivership stock holdings and four (4) parcels of land in Louisiana so that he could, with the Court’s authority, sell these Receivership Assets for the benefit of

the Receivership Estate. The Receiver believes the Receivership will likely have claims to recover significant assets from third parties, including, but not limited to, recipients of fraudulent transfers and net-winner investors. The Receiver has already filed two motions to initiate litigation on behalf of the Receivership Estate, and anticipates that additional motions will be forthcoming as his Counsel and Accountants' factual investigation and forensic analysis continue.

The Receiver's efforts have been 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, which the Accountant has likewise done where appropriate. Additionally, the

Receiver and his Counsel have extensively utilized non-billing administrative personnel where appropriate – utilizing IT staff to assist with data collection and retrieval of server equipment, having administrative staff handle administrative issues relating to the Louisiana properties, including coordinating with real estate agents and appraisers, using 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, and the transfer, storage, and sale of property. Most significantly, the Receiver and his Law Firm’s willingness to pursue litigation under a contingency fee arrangement as set forth in his Second Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate, will result in significant cost savings for the Receivership Estate.

The Receiver and his Retained Professionals’ compensation in this matter is subject to the final approval of this Court. 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. The risk is even greater with regard to the pursuit of litigation on behalf of the Receivership Estate, in connection with which the Receiver and

his Law Firm risk non-payment entirely if the claims are unsuccessful and/or the prospective defendants are judgment-proof.

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 Fifth Interim Fee Application for the Time Period July 1, 2021 through September 30, 2021, and thereby authorize the following:

1. Payment to Conrad O'Brien PC in the amount of \$136,325.20, as compensation for services performed from July 1, 2021 through September 30, 2021, such payment representing eighty percent (80%) of its fees for this quarter;
2. Payment to Alvarez & Marsal Disputes and Investigations, LLC in the amount of \$147,780.00, as compensation for services performed from July 1, 2021 through September 30, 2021, such payment representing eighty percent (80%) of its fees for this quarter;
3. Payment to Conrad O'Brien PC in the amount of \$441.10, for expenses incurred from July 1, 2021 through September 30, 2021, representing eighty percent (80%) of its expenses for this quarter; and
4. Payment to Alvarez and Marsal Disputes and Investigations, LLC in the amount of \$4,101.52 for expenses incurred from July 1, 2021 through

September 1, 2021, representing eighty percent (80%) of its expenses for this quarter.

Date: 11/24/2021

Respectfully Submitted,

s/ Robin S. Weiss

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*Attorneys for Receiver,
Kevin Dooley Kent*

EXHIBIT “A”

Kevin Dooley Kent
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Philadelphia, PA 19102
(215) 864-9600

STANDARDIZED FUND ACCOUNTING REPORT

CIVIL – RECEIVERSHIP FUND

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 07/01/2021 TO 09/30/2021

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 07/01/2021 TO 09/30/2021

| FUND ACCOUNTING (See Instructions): | | Current Reporting Period - 07/01/21 to 09/30/21 | | | 06/29/20 - 09/30/21 |
|---|--|---|----------|------------------------|------------------------|
| | | Detail | Subtotal | Period Total | Case to Date |
| Line 1 | Beginning Balance (As of 07/01/21) | | | \$ 7,374,976.35 | \$ - |
| Increases in Fund Balance: | | | | | |
| Line 2 | Business Income | | | - | - |
| Line 3 | Cash and Securities | | | (7.02) | 7,510,069.21 |
| Line 4 | Interest/Dividend Income | | | - | 5.67 |
| Line 5 | Business Asset Liquidation | | | - | 700.00 |
| Line 6 | Personal Asset Liquidation | | | 69,170.14 | 153,298.66 |
| Line 7 | Third-Party Litigation Income | | | - | - |
| Line 8 | Miscellaneous - Other | | | - | - |
| Total Funds Available (Lines 1 – 8): | | | | \$ 7,444,139.47 | \$ 7,664,073.54 |
| Decreases in Fund Balance: | | | | | |
| Line 9 | Disbursements to Investors/Claimants | | | - | - |
| Line 10 | Disbursements for Receivership Operations | | | 1,266,690.26 | 1,486,624.33 |
| Line 10a | Disbursements to Receiver or Other Professionals | | | 1,262,023.59 | - |
| Line 10b | Business Asset Expenses | | | 1,653.87 | - |
| Line 10c | Personal Asset Expenses | | | 3,012.80 | - |
| 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 | | | - | - |
| Total Disbursements for Receivership Operations | | | | \$ 1,266,690.26 | \$ 1,486,624.33 |
| 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 | | | - | - |
| Total Disbursements for Distribution Expenses Paid by the Fund | | | | \$ - | - |
| Line 12 | Disbursements to Court/Other: | | | - | - |
| Line 12a | Investment Expenses/Court Registry Investment System (CRIS) Fees | | | - | - |
| Line 12b | Federal Tax Payments | | | - | - |
| Total Disbursements to Court/Other | | | | \$ - | - |
| Total Funds Disbursed (Lines 9 – 11): | | | | \$ 1,266,690.26 | \$ 1,486,624.33 |
| Line 13 | Ending Balance (As of 09/30/21): | | | \$ 6,177,449.21 | \$ 6,177,449.21 |
| Line 14 | Ending Balance of Fund – Net Assets: | | | | |
| Line 14a | Cash & Cash Equivalents | | | 6,177,449.21 | 6,177,449.21 |
| Line 14b | Investments | | | - | - |
| Line 14c | Other Assets or Uncleared Funds | | | - | - |
| Total Ending Balance of Fund – Net Assets | | | | \$ 6,177,449.21 | \$ 6,177,449.21 |

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 07/01/2021 TO 09/30/2021

| OTHER SUPPLEMENTAL INFORMATION: | | Current Reporting Period - 07/01/21 to 09/30/21 | | | 06/29/20 - 09/30/21 |
|---------------------------------|--|---|----------|--------------|---------------------|
| | | Detail | Subtotal | Period Total | Case to Date |
| Line 15 | Report of Items NOT To Be Paid by the Fund: | | | | |
| | Disbursements for Plan Administration Expenses Not Paid by the Fund: | | | \$ - | \$ - |
| <i>Line 15a</i> | <i>Plan Development Expenses Not Paid by the Fund:</i> | | | | |
| | 1. Fees: | | | - | - |
| | Fund Administrator | | | - | - |
| | IDC | | | - | - |
| | Distribution Agent | | | - | - |
| | Consultants | | | - | - |
| | Legal Advisers | | | - | - |
| | Tax Advisers | | | - | - |
| | 2. Administrative Expenses | | | - | - |
| | 3. Miscellaneous | | | - | - |
| | <i>Total Plan Development Expenses Not Paid by the Fund</i> | | | \$ - | - |
| <i>Line 15b</i> | <i>Plan Implementation Expenses Not Paid by the Fund:</i> | | | | |
| | 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 | | | - | - |
| | <i>Total Plan Implementation Expenses Not Paid by the Fund</i> | | | \$ - | - |
| <i>Line 15c</i> | <i>Tax Administrator Fees & Bonds Not Paid by the Fund</i> | | | - | - |
| | Total Disbursements for Plan Administration Expenses Not Paid by the Fund | | | - | - |
| Line 16 | Disbursements to Court/Other Not Paid by the Fund: | | | | |
| <i>Line 16a</i> | <i>Investment Expenses/CRIS Fees</i> | | | - | - |
| <i>Line 16b</i> | <i>Federal Tax Payments</i> | | | - | - |
| | Total Disbursements to Court/Other Not Paid by the Fund: | | | - | - |
| Line 17 | DC & State Tax Payments | | | \$ - | \$ - |
| Line 18 | No. of Claims: | | | | |
| <i>Line 18a</i> | <i># of Claims Received This Reporting Period</i> | | | | - |
| <i>Line 18b</i> | <i># of Claims Received Since Inception of Fund</i> | | | | - |
| Line 19 | No. of Claimants/Investors: | | | | |
| <i>Line 19a</i> | <i># of Claimants/Investors Paid This Reporting Period</i> | | | | - |
| <i>Line 19b</i> | <i># of Claimants/Investors Paid Since Inception of Fund</i> | | | | - |

Receiver:

By: Kevin Dooley Kent
(signature)

Kevin Dooley Kent
(printed name)

Receiver
(title)

Date: October 27, 2021

NOTES TO THE STANDARDIZED FUND ACCOUNTING REPORT

Receivership Cash Accounts

As of September 30, 2021, the Receiver's cash balance of \$6,177,449.21 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 Account Report, the Receiver anticipates recovering future distributions related to Brenda Smith's personal investment in OTAF LLC.

Lastly, the Receivership has an interest in four parcels in Tangipahoa Parish, Louisiana, two of which are owned by Brenda Smith personally ("Smith Property"), and two of which are owned by BD of Louisiana, LLC ("BD of Louisiana Property"). The Smith Property is currently listed for sale for \$350,000. The BD of Louisiana Property is currently listed for sale for \$899,500. The BD of Louisiana Property is subject to a mortgage with outstanding principal of approximately \$345,000.

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 tile 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 11th day of November, 2021.


Kevin Dooley Kent

**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)

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 Dooley Kent hereby submits this Statement in lieu of the submission of a formal brief in support of the Motion for Approval of Fifth Interim Fee Application for the Period July 1, 2021 through September 30, 2021. 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: 11/24/2021

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 Dooley Kent

**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 DOOLEY KENT'S
FIFTH INTERIM FEE APPLICATION FOR THE PERIOD
JULY 1, 2021 THROUGH SEPTEMBER 30, 2021**

THIS MATTER having come before this Court upon the Motion of Receiver, Kevin Dooley Kent for Approval of Fifth Interim Fee Application for the Period July 1, 2021 through September 30, 2021;

It is on this _____ day of _____, 2021,

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

FURTHER ORDERED that Payment to Conrad O'Brien PC ("Law Firm") in the amount of \$136,325.20, for services performed from July 1, 2021 through

September 30, 2021, representing eighty percent (80%) of the Law Firm's total fee of \$170,406.50 for this quarter, 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 \$147,780.00 for services performed from July 1, 2021 through September 30, 2021, representing eighty percent (80%) of the Accountant's total fee of \$184,725.00 for this quarter, 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 \$441.10 for expenses incurred from July 1, 2021 through September 30, 2021, representing eighty percent (80%) of the Firm's total expenses of \$551.38 for this quarter, 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 in the amount of \$4,101.52 for expenses incurred from July 1, 2021 through September 30, 2021, representing eighty percent (80%) of the Accountant's total expenses of \$5,126.90 for this quarter, is hereby APPROVED and may be paid by the Receiver at this time.

BY THE COURT:

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 24th day of November, 2021 that I caused to be served a true and correct copy of the Notice of Motion of Receiver, Kevin Dooley Kent for Approval of Fifth Interim Fee Application for the Period July 1, 2021 through September 30, 2021, upon Plaintiff, Securities and Exchange Commission, through counsel of record, and upon counsel of record for all other parties, 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 Dooley Kent