

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

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

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

**Defendants.**

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

**Return Date: April 18, 2022**

**NOTICE OF MOTION OF RECEIVER, KEVIN DOOLEY KENT,  
TO APPROVE A SETTLEMENT RESOLVING THE RECEIVER'S  
CLAIMS AGAINST SANVILLE & COMPANY**

**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 April 18, 2022 or as soon thereafter as the Court permits, at a date and time to be determined by the Court, to approve a settlement resolving the Receiver's claims against Sanville & Company.

**PLEASE TAKE FURTHER NOTICE THAT**, in support of this Motion, the undersigned will rely upon the accompanying Memorandum of Law—the

exhibits to which are being filed under seal—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: March 17, 2022

*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*

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**Defendants.**

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

**Return Date: April 18, 2022**

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF RECEIVER,  
KEVIN DOOLEY KENT, TO APPROVE A SETTLEMENT RESOLVING  
THE RECEIVER'S CLAIMS AGAINST SANVILLE & COMPANY.**

Robin S. Weiss, Esq.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: (215) 864-9600  
Facsimile: (215) 864-9620  
E-mail: rweiss@conradobrien.com

Andrew S. Gallinaro, Esq.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: (215) 864-8083  
Facsimile: (215) 864-7403  
E-mail: agallinaro@conradobrien.com

Dated: March 17, 2022

Pursuant to the Court's Order Appointing Receiver dated June 29, 2020, Kevin Dooley Kent, Receiver, hereby moves this Court for an order approving a settlement resolving the Receiver's claims against Sanville & Company (hereafter, "Sanville"). In support of this Motion, the Receiver states as follows.

## **I. STATEMENT OF FACTS**

The Receiver, Kent Dooley Kent, has been appointed by Order of this Court dated June 29, 2020 ("Receivership Order"), to assume control of, marshal, pursue and preserve the Receivership Assets, and where appropriate to pursue litigation for the benefit of the Receivership Estate. (Dkt. No. 22). On February 9, 2021 the Receiver filed a motion seeking permission to assert claims against various persons/entities, including Sanville. (Dkt. No. 49). The Receiver's motion asserted that Sanville provided auditing services for Broad Reach Capital ("BRC") and CV Brokerage, Inc., and performed additional services for various other Receivership Parties. The Receiver asserted that the Independent Auditor's 2016 Report contained material misstatements and misrepresented that BRC's financial statements accurately reflected its financial position as of December 31, 2016.

The Receiver's motion included a request for authorization to assert his claims in an already-pending action in the United States District Court for the Eastern District of Pennsylvania in case captioned Surefire Dividend Capture, LP v. Smith et al., No. 2:19-cv-04088 ("the Surefire Action"). The Surefire action

was initially filed by Surefire Dividend Capture LP (“Surefire”), a substantial investor in BRC that claimed it invested, and subsequently lost, more than \$31 million with BRC and alleged various causes of action against Sanville in connection with its role as auditor of the fund and as well as its role in soliciting Surefire’s investment. On August 31, 2021, the Receivership Court entered an order granting the Receiver’s request to seek intervention in the Surefire Action and to initiate litigation against Sanville (Dkt. No. 117).

During the time that the Receiver was contemplating suit against Sanville, he became aware of a second lawsuit brought against Sanville in California, by Innovative Fund I, L.P., Innovative Fund I, L.P. v. The Nottingham Company, Inc., 30-2020-01153215-CU-BC-CJC (Cal. Sup. 2020) (“the Innovative Action”). The Innovative Action asserted that George Heckler and Brenda Smith solicited Innovative’s investment of more than \$26 million into various entities controlled by George Heckler and/or Brenda Smith and that they recommended Innovative use Sanville to provide auditing and tax preparation services in connection with these investments. Innovative, like Surefire, alleges it lost its entire investment and asserted various causes of action against Sanville in connection with the services and representations it provided to Innovative in connection with its investments.

In the Receiver’s attempts to discuss pre-litigation resolution with Sanville, it became clear that Sanville and its insurer were not able or willing to settle the

Receiver's claims without also settling the substantial claims asserted by Surefire and Innovative. To that end the Receiver organized a global settlement demand that resulted in successful negotiations with Sanville for a resolution of the Receiver's, Surefire's and Innovative's claims. The Receiver, Surefire and Innovative have further agreed to evenly divide the settlement proceeds among them (i.e. one-third to each), which the Receiver asserts is the most equitable resolution of their competing claims. While the Receivership Estate's overall loss exceeds the losses of both Surefire and Innovative, the Receiver was able to settle this dispute without filing a complaint and with minimal expense to the Receivership based largely on the factual records developed by Surefire and Innovative and the substantial work those litigants had put into their respective cases. Moreover, because the settlement amount is far less than the losses at issue for each party, the Receiver has determined that a protracted dispute over the percent allocation to each party would not be in the best interests of the Receivership. Finally, to the extent either Surefire or Innovative submit claims through the Receiver's claims process and those claims are accepted, the Receiver would reduce the amount of either claimant's loss by the amount of their individual recovery from this settlement. Accordingly, the Receiver seeks in this motion approval of both the global settlement with Sanville and the agreed-upon allocation of the settlement proceeds between the Receiver, Surefire and Innovative.

A more fulsome description of the terms of the proposed settlement (which includes confidentiality provisions that prevent its public filing), and the basis for the settlement are included in a Declaration attached hereto as Exhibit “A”, which is being separately filed under seal. A copy of the executed Settlement and Release Agreement is attached hereto as Exhibit “B”, which is also being separately filed under seal.

## **II. ARGUMENT**

The Receiver submits that the proposed settlement is a fair and equitable resolution and is in the best interest of the Receivership Estate, for the reasons set forth in Declaration attached hereto as Exhibit “A”. Accordingly, and for the reasons set forth therein, the Receiver respectfully requests that the Court approve the proposed settlement.

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

## **III. CONCLUSION**

In light of the foregoing, the Receiver respectfully requests that this Court enter the attached Order approving the settlement resolving the Receiver’s claims against Sanville.

Respectfully Submitted,

Date: March 17, 2022

s/ Robin S. Weiss

Robin S. Weiss, Esq.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
Centre Square, West Tower  
Philadelphia, PA 19102  
Phone: (215) 864-9600  
Facsimile: (215) 864-9620  
E-mail: rweiss@conradobrien.com

Andrew S. Gallinaro, Esq.  
Conrad O'Brien PC  
1500 Market Street, Suite 3900  
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**Defendants.**

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

**ORDER APPROVING SETTLEMENT RESOLVING THE RECEIVER'S  
CLAIMS AGAINST M.C. & M.S.C.**

**THIS MATTER** having come before this Court upon the Motion of Receiver, Kevin D. Kent, Esquire, to Approve a Settlement Resolving the Receiver's Claims Against Sanville & Company;

It is on this \_\_\_\_\_ day of \_\_\_\_\_, 2022,

**ORDERED** that the Receiver's Motion is **GRANTED**; and it is

**FURTHER ORDERED** that the Receiver may resolve and settle his claims against Sanville & Company pursuant to the terms set forth in the Declaration and proposed Settlement Agreement attached to the Motion, which have been filed under seal.

**BY THE COURT:**

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HONORABLE MADELINE COX ARLEO  
UNITED STATES DISTRICT JUDGE

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**Defendants.**

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

**CERTIFICATE OF  
SERVICE**

I hereby certify that on March 17, 2022 I caused to be served a true and correct copy of the Notice of Motion of Receiver, Kevin Dooley Kent, to Approve a Settlement Resolving the Receiver's Claims Against Sanville & Company, upon Plaintiff, Securities and Exchange Commission, through counsel of record, and 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*