
KEVIN D. KENT, in his capacity as :
Receiver for Broad Reach Capital, LP; Board Reach :
Partners, LLC; Bristol Advisors, LLC; BA Smith & Associates :
LLC; BA Smith & Associates LLC; Bristol Brokerage, Inc.; :
Clearview Distribution Services LLC; CV International :
Investments Limited; CV International Investments PLC; :
CV Investments LLC; CV Lending LLC; CV Minerals :
LLC; BD of Louisiana, LLC; TA 1, LLC; FFCC Ventures, :
LLC; Prico Market LLC; GovAdv Funding LLC; Elm Street :
Investments LLC; Investment Consulting LLC; and :
Tempo Resources LLC :
1500 Market Street, Centre Square :
West Tower, Suite 3900 :
Philadelphia, PA 19102-2100, :

Plaintiff :
v. :

RICHARD C. GALVIN :

4645 E. Lake Avenue :
Centennial, CO 80121 :

AND :

GALVIN INVESTMENT COMPANY, :
LLC a/k/a Galvin Investments Company, :
LLC and Galvin Investments, LLC and :
Galvin Investment Group :
4645 E. Lake Avenue :
Centennial, CO 80121 :

AND :

GILMAN METALS COMPANY, LLC :
4645 E. Lake Avenue :
Centennial, CO 80121 :

AND :

GALVIN METALS COMPANY, LLC :
4645 E. Lake Avenue :
Centennial, CO 80121 :

AND :

RG COASTAL LLC :
4645 E. Lake Avenue :
Centennial, CO 80121 :

Defendants :

Civil Action

No. 2:21-cv-13105

DEFENDANTS' AMENDED
ANSWER AND
COUNTERCLAIMS

Jury Trial Demanded

Defendants Richard C. Galvin (“Galvin”), Galvin Investment Company, LLC (“GIC”), Gilman Metals Company, LLC (“Gilman Metals”), Galvin Metals Company, LLC (“GMC”) and RG Coastal LLC (“RG Coastal”), by and through their undersigned counsel, do hereby respond to the Complaint in this matter and state as follows:

ANSWER

INTRODUCTION

1. Defendants admit that this is an action brought pursuant to the Receivership Order and attached as Exhibits A and B are the SEC Complaint and the Receivership Order which documents speak for themselves, and Defendants refer to such documents for the complete contents thereof.

2. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 except that Defendants specifically deny having any knowledge of or participating in the scheme alleged in Paragraph 2.

3. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 except that Defendants specifically deny having any knowledge of or participating in the scheme alleged in Paragraph 3.

4. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 except that Defendants deny the majority of alleged conduct underlying this litigation occurred in the Commonwealth of Pennsylvania.

5. Defendants admit the Brenda Smith is being criminally prosecuted in the Criminal Action and that SEC orders have been entered in the SEC Action, which orders speak for themselves, and refer to such orders for the complete contents thereof.

6. Defendants admit that Kevin D. Kent was appointed under the Receivership Order, which order speaks for itself, and refer to such order for the complete contents thereof.

7. Defendants admit that paragraph 7 contains a partial quote from the Receivership Order which order speaks for itself, and Defendants refer to such order for the complete contents thereof.

8. Defendants admit that paragraph 8 paraphrases the Receivership Order which order speaks for itself, and Defendants refer to such order for the complete contents thereof.

9. Defendants admit that this action seeks to recover under various legal theories. To the extent such categorizations of this action may be construed as averments of fact, they are denied.

10. The allegations in paragraph 10 contain conclusions of law to which no response is required. To extent such allegations purport to assert the contents of the Receivership Order, state that such order speaks for itself, and refer to such Order for the complete contents thereof.

11. The allegations in paragraph 11 contain conclusions of law to which no response is required. To extent such allegations purport to assert the contents of the Receivership Order, state that such Order speaks for itself, and refer to such order for the complete contents thereof.

12. Defendants deny the allegations contained in paragraph 12 of the Complaint, except admit that Galvin is an individual with the address referenced therein, and the sole and managing member of GIC, Gilman Mentals, Galvin Metals and RG Coastal.

13. Defendants admit the allegations in paragraph 13.

14. Defendants admit the allegations in paragraph 14.

15. Defendants admit the allegations in paragraph 15.

16. Defendants admit the allegations in paragraph 16.

17. Defendants admit the allegations in paragraph 17.

JURISDICTION AND VENUE

18. The allegations in paragraph 18 contain conclusions of law to which no response is required. To the extent they may be construed as averments of fact, Defendants deny the allegations in Paragraph 18.

19. The allegations in paragraph 19 contain conclusions of law to which no response is required. To the extent they may be construed as averments of fact, Defendants deny the allegations in Paragraph 19.

20. The allegations in paragraph 20 contain conclusions of law to which no response is required. To the extent they may be construed as averments of fact, Defendants refer the Receiver to the Receivership Order which document speaks for itself.

21. The allegations in paragraph 21 contain conclusions of law to which no response is required. To the extent they may be construed as averments of fact, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and, therefore, they are denied.

22. The allegations in paragraph 22 contain conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 22.

FACTUAL BACKGROUND

The Fraudulent Scheme

23. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 except that Defendants specifically deny having any knowledge of or participating in the fraud alleged in Paragraph 23.

24. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24.

25. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 except that Defendants specifically deny having any knowledge of or participating in the making of any representations to Smith's investors.

26. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 except that Defendants specifically deny having any knowledge of or participating in the fraud alleged in Paragraph 26.

27. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 except that Defendants specifically deny having any knowledge of or participating in the fraud alleged in Paragraph 27.

28. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 except that Defendants specifically deny having any knowledge of or participating in the fraud alleged in Paragraph 28.

Transfer of Receivership Assets to Defendants

29. Defendants admit receiving funds from Smith but deny that any such transfers were fraudulent and state that Smith and/or her entities, including the Receivership Parties, received valuable consideration for such transfers in the form of investments in various ventures and/or introductions to business opportunities which Smith and/or one more entities controlled by Smith did or intended to exploit for the benefit of Smith and/or one or more entities controlled by Smith.

30. Defendants admit receiving funds from Smith but deny that any such transfers were fraudulent and state that Smith and/or her entities, including the Receivership Parties, received valuable consideration for such transfers in the form of investments in various ventures and/or introductions to

business opportunities which Smith and/or one more entities controlled by Smith did or intended to exploit for the benefit of Smith and/or one or more entities controlled by Smith. Defendants further admit Exhibit C is a true and accurate copy of the Galvin Declaration and that Paragraph 30 partially quotes or paraphrases portions of the Galvin Declaration, which document speaks for itself, and refer to such document for the complete contents thereof.

31. Defendants admit receiving funds from Smith but deny that any such transfers were fraudulent and state that Smith and/or her entities, including the Receivership Parties, received valuable consideration for such transfers in the form of investments in various ventures and/or introductions to business opportunities which Smith and/or one more entities controlled by Smith did or intended to exploit for the benefit of Smith and/or one or more entities controlled by Smith. Defendants further admit Exhibit C is a true and accurate copy of the Galvin Declaration and that Paragraph 31 partially quotes or paraphrases portions of the Galvin Declaration which document speaks for itself, and refer to such document for the complete contents thereof.

32. Defendants deny the allegations in Paragraph 32.

33. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 except that Defendants deny that they had any obligation to repay any amounts allegedly due and owing to Smith or the Receivership Parties.

34. Defendants deny the allegations in Paragraph 34.

35. Defendants lack knowledge and information sufficient to form a believe as to the truth of the allegations contained in Paragraph 35 except that Defendants admit Galvin is the sole member of GIC. Defendants further admit Exhibit C is a true and accurate copy of the Galvin Declaration, which document speaks for itself, and refer to such document for the complete contents thereof

36. Defendants lack knowledge and information sufficient to form a believe as to the truth of the allegations contained in paragraph 36 and state that they were unaware any funds paid by Smith or entities controlled by Smith to or for the benefit of the Defendants, were directly or indirectly from investments made investors in the Funds.

37. Defendants deny the allegations contained in paragraph 37, except admit that the Receiver has made a demand upon Galvin to pay certain amounts to the Receiver and that Galvin has refused to do so.

Transfer of Receivership Assets to MAC Business Services on Behalf of Defendants, Galvin, GIC and Gilman

38. Defendants deny the allegations contained in paragraph 38, except admit that on or about May 13, 2016, Gilman entered into the Gilman Loan pursuant to various loan documents, which documents speak for themselves, and refer to such documents for the complete contents thereof.

39. Defendants deny the allegations contained in paragraph 39, except admit that Gilman entered into the Gilman Loan pursuant to various loan documents, which documents speak for themselves, and refer to such documents for the complete contents thereof.

40. Defendants deny the allegations contained in paragraph 40, except admit that Gilman entered into the Gilman Loan pursuant to various loan documents, which documents speak for themselves, and refer to such documents for the complete contents thereof.

41. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41.

42. Defendants deny the allegations in Paragraph 42 except that Defendants admit certain payments were made by Smith in connection with the Gilman Loan.

43. Defendants deny the allegations in Paragraph 43.

44. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 except that Defendants deny that they had any obligation to repay any amounts allegedly due and owing to Smith or the Receivership Parties.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants lack knowledge and information sufficient to form a believe as to the truth of the allegations contained in Paragraph 46, and state that they were unaware any funds paid by Smith or entities controlled by Smith to or for the benefit of the Defendants, were directly or indirectly from investments made investors in the Fund.

47. Defendants deny the allegations contained in paragraph 47, except admit that the Receiver has made a demand upon Galvin to pay certain amounts to the Receiver and that Galvin has refused to do so.

Transfer of Receivership Assets to Other Entities for the Benefit of the Defendants

48. Defendants deny the allegations contained in paragraph 48, except admit that they introduced Smith to Lucky June and Renewable Industries and that Smith and/or companies controlled by Smith, made certain payments to Lucky June and/or Renewable Industries, and aver that such payments were made by Smith because Smith was interested in investing in Lucky June and Renewable Industries.

49. Defendants deny the allegations contained in paragraph 49, except admit that they introduced Smith to Lucky June and Renewable Industries and that Smith and/or companies controlled by Smith, made certain payments to Lucky June and/or Renewable Industries and aver that such payments were made by Smith because Smith because she was interested in investing in Lucky June and Renewable Industries.

50. Defendants deny the allegations in Paragraph 50.

51. Defendants deny the allegations contained in paragraph 51, except admit that they introduced Smith to Plasma Energy Design and that Smith and/or companies controlled by Smith, made certain payments to Plasma Energy Design, and aver that such payments were made by Smith because Smith was interested in investing in Plasma Energy Design.

52. Defendants deny the allegations contained in paragraph 52, except admit that they introduced Smith to Plasma Energy Design and that Smith and/or companies controlled by Smith, made certain payments to Plasma Energy Design, and aver that such payments were made by Smith because Smith because she was interested in investing in Plasma Energy Design.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 except that Defendants deny that they had any obligation to repay any amounts allegedly due and owing to Smith or the Receivership Parties.

55. Defendants deny the allegations in Paragraph 55.

56. Defendants lack knowledge and information sufficient to form a believe as to the truth of the allegations contained in Paragraph 56, and state that they were unaware any funds paid by Smith or entities controlled by Smith to or for the benefit of the Defendants, were directly or indirectly from investments made investors in the Fund.

57. Defendants deny the allegations contained in paragraph 57.

2019 Stout Development, LLC

58. Defendants admit the allegations in Paragraph 58.

59. Defendants admit that Exhibit D is a copy of the 2019 Stout Operating Agreement, without exhibits, which document speaks for itself, and refer to such document for the complete contents thereof.

60. Defendants admit neither Smith nor any Receivership Party is identified as a member of 2019 Stout in the 2019 Stout Operating Agreement.

61. Defendants deny the allegations contained in paragraph 61, except admit that Exhibit D is a true and accurate copy of the Stout Operating Agreement, which document speaks for itself, and refer to such document for the complete contents thereof.

62. Defendants deny the allegations contained in paragraph 62, except admit that Exhibit D is a true and accurate copy of the Stout Operating Agreement, which document speaks for itself, and refer to such document for the complete contents thereof.

63. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63, except admit that Brenda Smith caused certain amounts to be transferred to James B. Dunlap in connection with the referenced purchase.

64. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64, except admit that Brenda Smith caused certain amounts to be transferred to First American Title Insurance Company in connection with the referenced purchase.

65. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65, except admit that Brenda Smith caused certain amounts to be transferred in connection with the referenced buy-out.

66. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66, except admit that Brenda Smith caused certain amounts to be transferred in connection with 2019 Stout.

67. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67, except admit that there are no written agreements memorializing the terms of any transfers relating to 2019 Stout.

68. Defendants deny the allegations in Paragraph 68.

69. Defendants deny the allegations contained in paragraph 69, except admit that Exhibit E is a true and accurate copy of the referenced Settlement Agreement, which document speaks for itself, and refer to such document for the complete contents thereof.

70. Defendants deny the allegations contained in paragraph 70, except admit that Exhibit E is a true and accurate copy of the referenced Settlement Agreement, which document speaks for itself, and refer to such document for the complete contents thereof.

71. Defendants deny the allegations contained in paragraph 71, except admit that Exhibit E is a true and accurate copy of the referenced Settlement Agreement, which document speaks for itself, and refer to such document for the complete contents thereof.

72. Defendants deny the allegations contained in paragraph 72, except admit that Exhibit E is a true and accurate copy of the referenced Settlement Agreement, which document speaks for itself, and refer to such document for the complete contents thereof.

73. Defendants deny the allegations contained in paragraph 73, except admit that Exhibit E is a true and accurate copy of the referenced Settlement Agreement, which document speaks for itself, and refer to such document for the complete contents thereof.

74. Defendants deny the allegations contained in paragraph 74, except admit that Exhibit E is a true and accurate copy of the referenced Settlement Agreement, which document speaks for itself, and refer to such document for the complete contents thereof.

75. Defendants deny the allegations contained in paragraph 75, except admit that Exhibit F is a true and accurate copy of the referenced Secured Promissory Note, which document speaks for itself, and refer to such document for the complete contents thereof.

76. Defendants deny the allegations contained in paragraph 76, except admit that Exhibit F is a true and accurate copy of the referenced Secured Promissory Note, which document speaks for itself, and refer to such document for the complete contents thereof.

77. Defendants admit the allegations in paragraph 77.

78. Defendants deny the allegations in paragraph 78.

79. Defendants deny the allegations in paragraph 79, except admit that 2019 Stout borrowed \$104,000 from John H. Moore Investment Co. LLC, and that Exhibit G is a true and accurate copy of the Moore Deed of Trust executed by Galvin, which document speaks for itself, and refer to such document for the complete contents thereof.

80. Defendants deny the allegations in Paragraph 80.

81. Defendants deny the allegations in paragraph 81, except admit that Galvin's signature is on the Moore Deed of Trust.

82. Defendants deny the allegations contained in paragraph 82, except admit that Exhibit G is a true and accurate copy of the Moore Deed of Trust, which document speaks for itself, and refer to such document for the complete contents thereof.

83. Defendants deny the allegations contained in paragraph 83, except admit that Exhibit G is a true and accurate copy of the Moore Deed of Trust, which document speaks for itself, and refer to such document for the complete contents thereof.

84. Defendants deny the allegations contained in paragraph 84, except admit that Exhibit H is a true and accurate copy of the Hopfe Note, which document speaks for itself, and refer to such document for the complete contents thereof.

85. Defendants deny the allegations contained in Paragraph 85.

86. Defendants deny the allegations contained in paragraph 84, except admit that Exhibit H is a true and accurate copy of the Hopfe Note, which document speaks for itself, and refer to such document for the complete contents thereof.

87. Defendants deny the allegations contained in paragraph 87, except admit that that Exhibit I is a true and accurate copy of the Hopfe Deed of Trust, which document speaks for itself, and refer to such document for the complete contents thereof.

88. Defendants deny the allegations contained in paragraph 88, except admit that no payment of \$2,990,000 was ever made by Defendants to CVI.

89. Defendants deny the allegations contained in paragraph 89, except admit that the Operating Agreement was not amended by a written amendment as of September 2021.

90. Defendants admit that on or about February 16, 2018, Hopfe commenced the Action to Quiet Title by the filing of a complaint, which document speaks for itself, and refer to such document for the complete contents thereof.

91. Defendants deny the allegations contained in paragraph 91, except admit that Exhibit J is a true and accurate copy of an Order entered in the Action to Quiet Title, which document speaks for itself, and refer to such Order for the complete contents thereof.

92. Defendants deny the allegations contained in paragraph 92, except admit that Exhibit J is a true and accurate copy of the Order, which document speaks for itself, and refer to such Order for the complete contents thereof.

93. Defendants deny the allegations contained in paragraph 93.

94. Defendants deny the allegations contained in paragraph 94, except admit that 2019 Stout did not make the referenced payments on July 1, 2018.

95. Defendants deny the allegations contained in paragraph 95, except admit that Moore made a demand for foreclosure and caused a Notice of Rights to Cure or Redeem to be issued which documents speak for themselves, and Defendants refer to such documents for the complete contents thereof.

96. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96.

97. Defendants deny the allegations contained in paragraph 97, except admit that Galvin and GIC failed to make the payments under the Hopfe Note.

98. Defendants admit that the allegations contained in paragraph 98.

99. Defendants deny the allegations contained in paragraph 99, except admit that Exhibit K is a true and accurate copy of an Order and Decree entered by the Court in the Hopfe Foreclosure action, which Order and Decree speaks for itself, and refer to the documents for the complete contents thereof.

100. Defendants deny the allegations contained in paragraph 100, except admit that Exhibit K is a true and accurate copy of an Order and Decree entered by the Court in the Hopfe Foreclosure action, which Order and Decree speaks for itself, and refer to those documents for the complete contents thereof.

101. Defendants deny the allegations in Paragraph 101.

102. Defendants deny the allegations in Paragraph 102.

103. Defendants deny the allegations in Paragraph 103.

104. Defendants deny the allegations in Paragraph 104.

105. Defendants deny the allegations in Paragraph 105.

106. Defendants deny the allegations in Paragraph 106.

107. Defendants deny the allegations in Paragraph 107.

108. Defendants deny the allegations in Paragraph 108.

109. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109, and state that they were unaware any funds paid by Smith or entities controlled by Smith to or for the benefit of the Defendants, were directly or indirectly from investments made investors in the Fund.

DISCOVERY OF CLAIMS

110. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110.

111. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111.

112. The allegations contained in Paragraph 112 are conclusions of law to which no response is required. To the extent they may be construed as averments of fact, Defendants deny the allegations in Paragraph 112.

COUNT I

ACTION TO AVOID FRAUDULENT AND VOIDABLE TRANSFERS

113. Defendants repeat, reallege and incorporate their responses to Paragraphs 1-112 as if they were fully set forth herein.

114. Defendants admit the receipt of certain payments from Smith but deny the allegations in Paragraph insofar as they seek to incorporate the allegations in Paragraph 1-112 and refer the Receiver to their responses to these Paragraphs.

115. Defendants deny the allegations in paragraph 115.

116. Defendants deny the allegations in paragraph 116.

117. Defendants deny the allegations in paragraph 117.

118. Defendants deny the allegations in paragraph 118.

119. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 119. To the extent they may be construed as averments of fact, Defendants deny participating in or having any knowledge of a fraudulent scheme conducted by Smith or that they received any funds from a Receivership Party that would result in the insolvency of any Receivership Party.

120. Defendants deny the allegations in paragraph 120.

121. Defendants deny the allegations in paragraph 121.

122. Defendants deny the allegations in paragraph 122.

COUNT III

UNJUST ENRICHMENT

123. Defendants repeat, reallege and incorporate their responses to paragraphs 1-122 as if they were fully set forth herein.

124. Defendants deny the allegations in paragraph 124.

125. Defendants deny the allegations in paragraph 125.

126. Defendants deny the allegations in paragraph 126.

COUNT III (RG COASTAL LLC)

BREACH OF CONTRACT

127. Defendants repeat, reallege and incorporate Defendants' responses to paragraphs 1-126 as if they were fully set forth herein.

128. Defendants deny the allegations in paragraph 128.

129. Defendants deny the allegations in paragraph 129.

130. Defendants deny the allegations in paragraph 130.

131. Defendants deny the allegations in paragraph 131.

132. Defendants deny the allegations in paragraph 132.

133. Defendants deny the allegations in paragraph 133.

COUNT IV (RICHARD GALVIN)

BREACH OF FIDUCIARY DUTY

134. Galvin repeats, realleges and incorporates Defendants' responses to Paragraphs 1-126 as if they were fully set forth herein.

135. The allegations in Paragraph 135 contain conclusions of law to which no response is required. To the extent they may be construed as averments of fact, Galvin denies the allegations in Paragraph 135.

136. Galvin denies the allegations in paragraph 136.

137. Galvin denies the allegations in paragraph 137.

138. Galvin denies the allegations in paragraph 138.

139. Galvin denies the allegations in paragraph 139.

COUNT V (ALL DEFENDANTS)

140. Defendants repeat, reallege and incorporate the responses to Paragraphs 1-139 as if they were fully set forth herein.

141. Defendants admit that the Receiver is the successor-in-interest to the Receivership Parties and has assumed all of their rights and obligations but deny that they owe any amounts to the Receivership Parties on account of any alleged loans.

142. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 142.

143. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 143, except that Defendants deny participating in any alleged fraudulent scheme conducted by Smith.

144. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 144 except that Defendants deny that all of the transfers set forth in the Complaint were intended to be loans.

145. Defendants deny the allegations in Paragraph 145.

146. Defendants deny the allegations in Paragraph 146.

147. Defendants deny the allegations in Paragraph 147 and state that the Receivership Order speaks for itself, and refer to such Order for the complete contents thereof.

148. Defendants admit the Receiver has requested certain documents be produced by Defendants and aver that Defendants have complied with the Receiver's requests.

149. Defendants deny the allegations in Paragraph 149.

DEFENSES

FIRST DEFENSE

150. The Receiver's claims are barred in whole or in part by one or more of the applicable statutes of limitations.

SECOND DEFENSE

151. The Receiver's claims are barred in whole or in part by the doctrine of laches.

THIRD DEFENSE

152. The Receiver's claims are barred in whole or in part by the doctrines of *res judicata* and collateral estoppel.

FOURTH DEFENSE

153. The Receivership Parties received sufficient consideration for any and all amounts transferred to or for the benefit of the Defendants.

FIFTH DEFENSE

154. The Receiver's claims are barred in whole or in part by the doctrines of offset or setoff. Among other things, Smith and/or one or more of the Receivership Parties tortiously interfered with GIC's contract with Southern Mineral Groups LLC ("Southern Minerals") and/or usurped GIC's business opportunity under said contract to process magnetite concentrates mined by Southern Minerals and to sell the products of such processed concentrates at market prices that were estimated to generate hundreds of millions of dollars in profit for GIC.

SIXTH DEFENSE

155. The Receiver's claims are barred in whole or in part because the Complaint was filed in the wrong venue.

SEVENTH DEFENSE

156. The Receiver's claims are barred in whole or in part by the doctrines of waiver and estoppel.

EIGHTH DEFENSE

157. The Receiver's claims are barred in whole or in part by the doctrine of accord and satisfaction.

NINTH DEFENSE

158. The Receiver's claims are barred in whole or in part by the doctrine of unclean hands.

TENTH DEFENSE

159. The Receiver's claims are barred under the doctrine of *in pari delicto*.

ELEVENTH DEFENSE

160. The Complaint fails to state a claim on which relief may be granted therefore should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

TWELFTH DEFENSE

161. The Receiver's Complaint fails to plead fraud, including the circumstances constituting fraud, as well as time and place, with the requisite particularity pursuant to Fed. R. Civ. P. 9(b) and (f)

THIRTEENTH DEFENSE

162. The claims arising out of the subject matter of the transactions and occurrences alleged were the result of the acts or omissions of third parties over which Defendants had no authority or control.

FOURTEENTH DEFENSE

163. The court lacks subject matter jurisdiction over the claims asserted.

FIFTEENTH DEFENSE

164. The Court lacks personal jurisdiction over the Defendants.

SIXTEENTH DEFENSE

165. Since early 2016, Galvin had been in discussions with Calais Resources, Inc. about a possible investment into the Calais gold mining operation, which was also an area of possible collaboration that he had also discussed with Brenda Smith. On August 12, 2016, Galvin Metals entered into an Agreement, pursuant to which Galvin Metals would provide \$400,000.00 immediately for the benefit of Calais Resources, Inc., and obtain options to make additional investments into the mine operation, in exchange for various financial considerations, including a 2% royalty up to 120% of the amount of the investment.

166. Galvin Metals thereafter advanced \$400,000.00, provided by Brenda Smith, to or for the benefit Calais Resources, Inc. Upon information and belief, this amount was followed by an additional \$600,000 in investment that was forwarded for the benefit of Calais Resources. As a result of the \$1,000,000.00 investment, Brenda Smith's entities became entitled to 2% royalty on future mine production, to be paid up to 120% of the amount funded, or \$1,200,000. This was in addition to future possible benefits, including the opportunity to take control of the mining operation.

167. In his Status Reports, the Receiver has reported that the benefits of these investments are assets of the Receivership Estate.

168. Galvin and Galvin Metals located and procured this opportunity, and the subsequent investments that they arranged created substantial value for the Receivership Entities. To the extent Defendants are adjudicated to be indebted to the Receiver, the amount of this value should be set off against the Defendant's liability.

SEVENTEENTH DEFENSE

169. In connection with the 2019 Stout Street property, Galvin, RG Coastal, CV Investments, and R. Shawn Ellis (“Ellis”), among others, entered into a Settlement Agreement, dated March 31, 2017 and attached as Exhibit E to the Complaint which called for, among other things, an opportunity for RG to reacquire the property upon certain payments being made by RG Coastal to CV Investments (the “Stout Settlement”). During this time, Ellis continued to act as attorney-in-fact for Brenda Smith and her companies.

170. The Stout Settlement also required, under Paragraph 1(j)(4), that “Ellis shall use reasonable efforts to assist [2019 Stout Development, LLC] in sourcing the funds to make the Stout Payment.”

171. Upon information and belief, Ellis located sufficient funds to make the Stout Payment within the “Option Period” specified by the Settlement Agreement.

172. Also upon information and belief, Brenda Smith and CV Investments were aware that Ellis had located the funds to make the Stout Payment, but failed to share that information with Galvin or RG Coastal, or to take other steps to compel Ellis to forward the funds to RG Coastal.

173. Brenda Smith/CV Investments’ failure to disclose that Ellis had located the funds or to encourage him to provide the funds, which would have satisfied all amounts due in connection with the Stout Street property, breached their duties of good faith and fair dealing under the Stout Settlement, thereby denying RG Coastal from having the opportunity to reacquire the property. Upon information and belief, Brenda Smith/CV Investments failed to make this disclosure because they deliberately wanted to harm Galvin and RG Coastal.

174. Brenda Smith/CV Investment's breaches of the duty of good faith and fair dealing and resulting unclean hands bar any claim against Galvin or RG Coastal for the amount of the Stout Payment.

WHEREFORE, Defendants demand that judgment to be entered in their favor and against the Plaintiff:

- (a) Dismissing the action with Prejudice;
- (b) Awarding the costs of this action; and
- (c) Granting such other and further relief as the Court deems just and proper.

COUNTERCLAIMS

INTRODUCTION

1. In the Spring of 2016, Galvin was introduced to Brenda Smith by a mutual acquaintance as an individual who could assist in advancing Galvin's business. Numerous and frequent communications followed regarding various business opportunities.

2. Galvin disclosed to and discussed with Ms. Smith a great number of these opportunities. These included the possible acquisition for development of a large real estate property in Eagle County, Colorado; the acquisition of a gold mine near Nederland, Colorado; the acquisition of commercial property in downtown Denver with redevelopment potential, the acquisition of a large 35,000 square foot residential property on a 70-acre Douglas County tract for use as a corporate headquarters; the establishment of an upscale restaurant in the Denver, Colorado area; and, most importantly, the use and implementation of new technology, developed by Galvin, to improve the recovery of precious metals for mine tailings and slag.

3. Over the next two years, Galvin introduced Ms. Smith and her various entities to many of these opportunities, as well as the critical people and technology that were a part of them.

4. The benefits of at least two of at least one of these opportunities have been wrongfully diverted to Ms. Smith or claimed by the Receiver.

5. In late 2016, Galvin, on behalf of GIC, entered into serious negotiations with Southern Minerals Group, LLC, a Nevada company operating in New Mexico with access to hundreds of thousands of tons of material known as magnetite concentrates, a treated byproduct of copper mining and mulling operations. Given the potential size of the opportunity, GIC desired to acquire as much of such tonnage as possible.

6. Galvin and GIC had been aware of this opportunity for many years and early in their association with Ms. Smith they had disclosed and discussed the opportunity with her. This reflected what was then a growing feeling of trust in Ms. Smith. Galvin likewise kept Ms. Smith advised of his negotiations.

7. Final negotiations occurred on March 10, 2017 at Southern Mineral's place of business in Silver City, New Mexico. Present at that meeting and fully aware of the terms being negotiated were representatives of Southern Minerals, Galvin, Ms. Smith and various others. The proposed contract would sell 350,000 tons of magnetite concentrates to GIC.

8. However, before delivery could commence a \$100,000.00 letter of credit had to be pledged for the benefit of Southern Minerals. Ms. Smith, on behalf of her entity, CV Investments LLC ("CV Investments") assured Mr. Galvin that she would provide that financial backing and based on that assurance, Galvin executed the contract on behalf of GIC.

9. The letter of credit had to be posted within seven (7) days. Despite her specific assurances, Ms. Smith and CV Investments did not provide the letter of credit. While Southern Minerals agreed to extend the deadline several times, ultimately to April 6, 2017, Ms. Smith never did provide it for the benefit of GIC or Galvin.

10. On April 7, 2017, one day after GIC's extension lapsed, Ms. Smith obtained for herself through CV Investments a contract for the purchase of 400,000 tons of the material from Southern Minerals and therefore became the beneficial owner of the material. By April 14th she deposited \$250,000.00 into escrow with a solicitor in the United Kingdom, home of Southern Mineral's parent Strategic Minerals Plc, to assure her performance on the contract.

11. Upon information and belief, in June, 2017, CV Investments began purchasing the tonnage, and thereafter purchased over 38,000 tons pursuant to its contract.

12. Upon information and belief, the gross value of the precious metals to be realized by their extraction from this material is \$330,000.00 per U.S. short ton.

THE PARTIES AND OTHERS

13. Counterclaim Plaintiff Galvin Investment Company, LLC is a limited liability company organized and existing under the laws of the State of Colorado with its principal place of business in Arapahoe County, Colorado.

14. Counterclaim Defendant Kevin D. Kent (the "Receiver"), is a Receiver duly appointed on behalf of Broad Reach Capital, LP; Broad Reach Partners, LLC; Bristol Advisors, LLC; BA Smith & Associates, LLC; Bristol Brokerage, Inc.; Clearview Distribution Services LLC; CV International Limited; CV International Investments Plc; CV Investments LLC; CV Lending LLC; CV Minerals LLC; BD of Louisiana, LLC; TA 1, LLC; FFCC Ventures, LLC; Prico Market LLC; Gov Adv Funding LLC; Elm Street Investments LLC; Investment Consulting LLC; and Tempo Resources LLC (collectively, the "Receivership Entities").

15. The Receiver is the legal successor-in-interest to the assets and obligations of the Receivership Entities.

16. Non-Party Brenda Smith is an individual who is a citizen of the State of Pennsylvania.

JURISDICTION AND VENUE

17. Venue in this Court is proper under 28 USC §1391(b) because Counterclaim-Defendant is subject to personal jurisdiction in this District and/or a substantial part of the event giving rise to the claims occurred in this district.

18. This Court has jurisdiction over the subject matter of this case pursuant to 28 USC §§ 754, 959, 1332 and 1367.

FIRST COUNTERCLAIM

(Tortious Interference with Contract)

19. Counterclaim Plaintiff repeats, reiterates and realleges each of the allegations included in Paragraphs 1 to 18 of the Counterclaim as if set forth at length herein.

20. On or about March 10, 2017, GIC entered into a valid and enforceable contract with Southern Mineral Groups LLC to purchase up to 350,000 tons of magnetite concentrates (the “SMG Contract”).

21. The material terms of the contract required GIC to purchase at least 2,000 tons per month for the price of \$80.00 per ton and to pay for each monthly purchase within ten (10) days after being presented with an invoice.

22. In relevant part, the SMG Contract stated as follows:

Prior to commencement of this Agreement, but not greater than the seven days from signing of this Agreement, the Purchaser shall provide the Seller with a standby letter of credit in the amount of \$100,000.00 issued by a major US banking institution authorizing seller to draw against it in the event purchaser fails to timely pay any invoice in full (para 5).

23. Ms. Smith acting through Receivership Entity CV Investments, was present at the meeting between GIC and Southern Mineral Group, in which terms were discussed and agreed and therefore was fully aware all material terms of the SMG Contract before its execution, and fully aware of the existence of the SMG Contract after its execution.

24. Ms. Smith told GIC in prior to the execution of the SMG Contract “Go ahead and sign it. I will put up the letter of credit required.” In reliance upon this representation, GIC executed the Contract at a contract price of \$80.00 per ton.

25. The initial deadline to provide the letter of credit was March 17, 2017 which was subsequently extended to April 6, 2017.

26. Ms. Smith did not provide the letter of credit by the initial deadline, the extended deadline or at any point in time and the failure to do so made it impossible for GIC to perform under the Contract and in fact induced GIC to breach the SMG Contract.

27. Ms. Smith’s failure to post the letter of credit was intentional, for purposes of inducing the termination of the SMG Contract, which in turn permitted CV Investments to usurp the contractual rights that belonged to GIC.

28. As a result of GIC’s inability to perform, the SMG Contract was terminated by Southern Minerals.

29. As a result of Ms. Smith/CV Investments’ tortious interference with the SMG Contract, GIC suffered damages and harm, including without limitation lost profits, pecuniary losses of the benefits of the SMG Contract, lost business opportunities and prospective relationships as well as reputational harm and consequential damages in an amount not less than \$50 million.

30. As the successor-in-interest to CV Investments, Counterclaim Defendant is liable for these damages.

WHEREFORE, Counterclaim Plaintiff demands that judgment to be entered in its favor and against Counterclaim Defendant on this claim for:

- (a) Damages in an amount no less than \$50 million;
- (b) Costs of this action;
- (c) Pre and post judgment interest as provided by law; and
- (d) Such other and further relief as the Court deems just and proper.

SECOND COUNTERCLAIM

(Fraud)

31. Counterclaim Plaintiff repeats, reiterates and realleges each of the allegations included in Paragraphs 1 to 30 of the Counterclaim as if set forth at length herein.

32. On or about March 10, 2017, Ms. Smith/CV Investments represented and promised GIC that they in fact would provide the \$100,000.00 letter of credit as required under the SMG Contract.

33. At the time Ms. Smith made the representation, she did not intend to fulfill such promise; thus she misrepresented her intentions

34. This misrepresentation was material.

35. The misrepresentation was made with the intent that GIC rely upon it.

36. GIC relied upon the representation and such reliance was reasonable and justified under the circumstances.

37. If Ms. Smith/CV Investments had not made such representation, GIC would have obtained the required letter of credit from another source, thereby preserving the SMG Contract and the benefits thereof.

38. As a result of the aforementioned false representation of material fact, GIC lost the SMG Contract and the profits therefrom and suffered losses and damages in the amount no less than \$50 million.

39. As the successor-in-interest to the CV Investments, Counterclaim Defendant is liable for these damages.

WHEREFORE, Counterclaim Plaintiff demands that judgment to be entered in its favor and against the Counterclaim Defendant on this claim for:

- (a) Damages in an amount no less than \$50 million;
- (b) Costs of this action;
- (c) Pre and post judgment interest as provided by law; and
- (d) Such other and further relief as the Court deems just and proper.

THIRD COUNTERCLAIM

(Promissory Estoppel)

40. Counterclaim Plaintiff repeats, reiterates and realleges each of the allegations included in Paragraphs 1 to 39 of the Counterclaim as if set forth at length.

41. On or about March 10, 2017, Ms. Smith/CV Investments clearly and unambiguously promised GIC that she would provide the \$100,000.00 letter of credit as required under the SMG Contract.

42. GIC entered into the Contract and did not seek to obtain an alternative source for the letter of credit in reliance upon Smith's promises.

43. Ms. Smith/CV Investments knew or reasonably should have expected that their promise would be relied upon by GIC and would induce such action by GIC; therefore GIC's reliance was foreseeable.

44. Such reliance by GIC was entirely reasonable under the circumstances.

45. Ms. Smith/CV Investments did not provide the letter of credit.

46. The reliance on Ms. Smith/CV Investment's promise caused injury to GIC.

47. As a result of the failure to provide the letter of credit, Counterclaim Plaintiff lost business opportunities and the Contract, including the right to obtain and profit from 350,000 tons of the magnetite material and the 1250 tons the letter of credit would have paid for.

48. As a result, Counterclaim Plaintiff suffered losses including lost profits, loss of pecuniary benefits and consequential damages of at least \$50 million.

49. As the successor-in-interest to CV Investments, Counterclaim Defendant is liable for these damages.

WHEREFORE, Counterclaim Plaintiff demands judgment be entered in its favor and against Counterclaim Defendant on this claim for:

- (a) Damages in an amount no less than \$50 million;
- (b) Costs of this action;
- (c) Pre and post judgment interest as provided by law; and
- (d) Such other and further relief as the Court deems just and proper.

FOURTH COUNTERCLAIM

(Conversion)

50. Counterclaim Plaintiff repeats, reiterates and realleges each of the allegations in paragraphs 1-49 of the Counterclaim as if set forth at length herein.

51. Upon executing the SMG Contract, GIC had ownership rights and expectations in the SMG Contract and the business opportunity set forth therein.

52. Between March 17, 2017 and April 8, 2017, Ms. Smith and CV Investments converted to their own use and benefit the contractual rights enjoyed by GIC under the SMG Contract, as well as the business opportunity to acquire the subject magnetite concentrates.

53. Ms. Smith/CV Investments affected such conversion by failing to provide the letter of credit for the benefit of GIC as she promised to and by surreptitiously negotiating directly with Southern.

54. On or about April 7, 2017 CV Investments completed the conversion by obtaining her own contract from Southern Minerals to acquire 350,000 tons of concentrates formerly contracted by Southern Minerals to be sold to GIC, as well as an additional 50,000 tons.

55. As a result of this new contract, Ms. Smith converted at least 40,000 tons of such material for her own use and benefit, at the expense of GIC.

56. Despite due demand, Smith/CV Investments have refused to turnover such material to GIC.

57. As a result, Counterclaim Plaintiff has suffered losses and damages including lost profits, loss of pecuniary benefits and consequential damages of no less than \$50 million.

58. As the successor-in-interest to CV Investments, Counterclaim Defendant is liable for these damages.

WHEREFORE, Counterclaim Plaintiff demands judgment to be entered in its favor and against Counterclaim Defendant on this claim for:

- (a) Damages in an amount no less than \$50 million;
- (b) Costs of this action;

- (c) Pre and post judgment interest as provided by law; and
- (d) Such other and further relief as the Court deems just and proper.

FIFTH COUNTERCLAIM

(Unjust Enrichment/Constructive Trust)

59. Counterclaim Plaintiff repeats, reiterates and realleges each of the allegations included in Paragraphs 1 to 58 of the Counterclaim as if set forth at length.

60. CV Investments acquired the contractual right and business opportunity with respect to the magnetite concentrates and approximately 38,000 tons of such concentrates by improper means including tortious interference, misappropriation, conversion, and misrepresentation.

61. At no time was CV Investments entitled to acquire such items or the proceeds thereof.

62. The acquisition of this material by CV Investments was wrongful and in equity in good conscious she is not entitled to retain these materials or any benefits thereof.

63. As a result, Counterclaim Plaintiff is entitled to the declaration imposition of a constructive trust on all contractual rights, concentrates, profits and proceeds associated therewith.

64. To the extent CV Investments was permitted to retain such materials or the associated profits/proceeds, she would be unjustly enriched at the expense of Counterclaim Plaintiff.

65. As the successor-in-interest to the CC Investments, Counterclaim Defendant is liable for CV Investment's actions.

WHEREFORE, Counterclaim Plaintiff demands judgment to be entered in its favor and against Counterclaim Defendant on this claim for:

- (a) an Order directing that CV Investments disgorge all materials wrongfully acquired, along with all proceeds and profits thereon;
- (b) Costs of this action;
- (c) Pre and post judgment interest as provided by law; and
- (d) Such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendants demand that this case be tried to a jury.

Dated: April 15, 2022

Respectfully submitted,

/s/ Stuart J. Wells

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

KEVIN D. KENT, in his capacity as	:	
Receiver for Broad Reach Capital, LP, et al.,	:	
	:	
Plaintiff	:	Civil Action
	:	No. 2:21-cv-13105
v.	:	
	:	
RICHARD C. GALVIN, et al.	:	CERTIFICATE OF SERVICE
	:	
Defendants	:	
	:	

I hereby certify, this 15th day of April 2022, that I caused to be served a true and correct copy of the Defendants’ Amended Answer and Counterclaims to be served upon counsel of record for all parties by electronic filing pursuant to Fed.R.Civ.P. 5(b).

/s/ Stuart J. Wells
Stuart J. Wells
*Attorney for Richard C. Galvin, Galvin
Investment Company, LLC, Gilman Metals
Company, LLC, Galvin Metals Company,
LLC and RG Coastal LLC*