

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Kevin Dooley Kent, Esquire, as Receiver

(b) County of Residence of First Listed Plaintiff Philadelphia, PA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Andrew S. Gallinaro, Conrad O'Brien PC, 1500 Market St., West Tower, Suite 3900, Philadelphia, PA 19102 (215) 864-9600

DEFENDANTS

The Nottingham Company, Kip Meadows, et al.

County of Residence of First Listed Defendant Rocky Mt., NC (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Joel Eads, Greenberg Traurig, 1717 Arch St., Philadelphia, PA 19103

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause: Various claims arising out of professional services defendants provided to investment company that defrauded its clients

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Berle M. Schiller DOCKET NUMBER 19-cv-04088

DATE June 15, 2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Andrew S. Gallinaro

FOR OFFICE USE ONLY: RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: Kevin Dooley Kent, 1500 Market Street, West Tower, Suite 3900, Philadelphia, PA 19102
 Address of Defendant: 116 S. Franklin St., Rocky Mount, NC 27804
 Place of Accident, Incident or Transaction: West Conshohocken, Pennsylvania

RELATED CASE, IF ANY:

Case Number: 19-cv-04088 Judge: Berle M. Schiller Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|---|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 06/10/2022 Must sign here 201326

 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FEELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): _____
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Andrew Gallinaro, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- Relief other than monetary damages is sought.

DATE: 06/15/2022 Sign here if applicable 201326

 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN DOOLEY KENT, ESQ., AS RECEIVER	:	Civil Action No.: 19-CV-04088-
	:	BMS
	:	
Plaintiff,	:	
v.	:	
	:	
THE NOTTINGHAM COMPANY	:	
	:	
AND	:	
	:	
KIP MEADOWS	:	
	:	
Defendants.	:	
	:	

AMENDED COMPLAINT IN INTERVENTION

INTRODUCTION

1. This action is brought against The Nottingham Company (“Nottingham”) and its CEO, Kip Meadows, by Kevin Dooley Kent in his capacity as court-appointed Receiver pursuant to a June 29, 2020 Order (the “Receivership Order”) issued by the Honorable Madeline Cox Arleo, United States District Judge for the District of New Jersey. The Receivership Order was issued in an underlying action brought by the Securities and Exchange Commission (“SEC” or the “Commission”) against Defendants Brenda Smith (“Smith”), Broad Reach Capital, LP (“the Fund”), and other related entities (collectively, the “Smith Defendants”), styled *Securities and Exchange Commission v. Smith, et al.*, Civil Action No. 19-17213 (the “SEC Action”). True and correct copies of the SEC Complaint and the Receivership Order are attached hereto as Exhibit “A” and Exhibit “B,” respectively.

2. The SEC Action arises out of an investment advisory fraud in which, *inter alia*, the

Smith Defendants solicited over \$100 million from investors for purported investment in sophisticated securities trading strategies. In reality, Smith took the vast majority of these funds for unrelated companies, to pay back other investors, and for personal use.

3. Nottingham acted as the independent third-party Fund Administrator for the Fund and in this role confirmed for Smith's investors the total assets under management with the Fund, calculated fund performance, and provided individual investor statements purporting to show the value and growth of each investors' ownership interest in the Fund. Nottingham also provided recordkeeping services for Smith, including the processing of new investor subscription agreements. In addition to performing these functions, Nottingham also assisted Smith in attracting new investors to the Fund by vouching for the legitimacy and success of Smith and the Fund.

4. From at least February 2016 through August 2019, Smith orchestrated a scheme in which she made misrepresentations to investors and promised that she would invest their funds in particular trading strategies that the Fund was allegedly optimally situated to execute. Smith referred to these strategies as dividend capture, VIX Convergence, and opportunistic trading (hereafter "the Trading Strategies").

5. With the assistance of Nottingham and Meadows, Smith misrepresented the success and performance of Broad Reach Capital to investors and prospective investors. Smith touted Broad Reach Capital as a trade-focused investment fund that was highly liquid and employed a robust risk management program. Smith distributed written materials about Broad Reach Capital to investors and prospective investors that included purported historical performance information, such as claimed annual returns of over 33 percent in 2017 and positive monthly returns in 2018, all of which were purportedly independently calculated and verified by Nottingham.

6. In fact, the total cash and securities in the Broad Reach Capital bank and brokerage accounts decreased from approximately December 2016 through June 2019. For example, the written materials claimed that Broad Reach Capital had a 1.76 percent return in February 2018 when in reality, Broad Reach Capital's brokerage accounts lost approximately 50 percent of their value.

7. To lull investors and induce them to continue investing, Smith and Nottingham provided monthly account statements to investors that falsely showed that their investments were safe and earning significant returns.

8. Over the course of the scheme, Smith collected more than \$100 million of cash into Broad Reach Capital from approximately 40 investors. At its peak, however, the value of cash and securities in the Broad Reach Capital bank and brokerage accounts did not exceed approximately \$32 million.

9. Instead of investing the money as she promised, Smith transferred tens of millions of dollars out of Broad Reach Capital to entities she controlled for purposes entirely inconsistent with the Trading Strategies, including investments in mineral mining operations, real estate development, foreign oil assets, restaurants and various other businesses. All of these transactions were, at best, highly speculative and resulted in massive losses to the Fund. When investors requested redemption of their investments, Smith diverted other investors' funds to pay the requested redemption amounts.

10. When initially supplying information to Nottingham to support its creation of investor statements, Smith accounted for these improper transactions in a one-page "financial statement" by identifying certain "private investments" that were not part of the Fund's brokerage balances. While Smith did provide various forms of supporting documentation to Nottingham to

verify its brokerage balances and trading activity, she provided nothing to support the claimed value of these “private investments.”

11. The reported value of these improper “private investments” quickly made up a larger and larger percentage of the total NAV of the Fund, despite its express purpose and purported focus on the Trading Strategies. From January to July of 2017, for example, the “private investments” Smith reported to Nottingham went from accounting for 30% of the value of the fund, to 65%. Again, Smith never provided *any* supporting documentation to Nottingham to justify the value of these investments.

12. Nottingham was or should have been aware that the majority of the assets making up the Fund’s NAV were highly questionable private investments, and that the fund was advertising investing strategies that were entirely inconsistent with how the majority of the Fund’s assets were deployed.

13. Nottingham employees raised concerns about the lack of understanding of the basis of the valuation of these “private investments” from the very beginning of the relationship, but Meadows ignored those concerns because Nottingham was making money through its relationship with Smith and needed the revenue.

14. Additionally, after just the first six months of the relationship, Smith stopped providing Nottingham with *any support whatsoever* for the NAV of the fund – not even the one-page financial statement she supplied for all previous months. Instead, Smith simply informed Nottingham what each of her investors’ capital account balances were. Nottingham did not question or raise issue with this change in procedure and continued to provide fictional capital account balances to Fund investors that were calculated and supplied by Smith without support.

15. Smith also falsely represented that she was personally invested in Broad Reach

Capital and provided a fictitious account statement prepared by Nottingham to at least one investor.

16. Nottingham was aware the account statement for Smith was fictitious because it purposefully excluded Smith's account balance from its fee calculations, which were based on a percentage of the Fund's total Net Asset Value.

17. Smith was criminally prosecuted for her conduct. The government filed its criminal complaint against Smith on August 22, 2019 in the matter of *USA v. Smith*, No. 2:20-cr-00475-MCA-1 (D.N.J.) (the "Criminal Action"). Smith pled guilty to one count of Securities Fraud on September 9, 2021 and is scheduled to be sentenced in early 2022. The SEC Action is ongoing, but currently subject to a stay pending the completion of the Criminal Action. Under the terms of the stay order all orders relating to the Receivership and all powers granted to the Receiver remain in full force and effect during the pendency of the stay.

18. While not directly relevant to this lawsuit, Nottingham simultaneously acted as a fund administrator for a colleague of Brenda Smith, George Heckler. Mr. Heckler has been charged with and pled guilty to running a separate fraudulent scheme. On July 21, 2021 George Heckler was sentenced to more than five (5) years in prison for his theft of approximately \$20 million from investors. In ongoing litigation filed in California, defrauded investors of George Heckler have alleged disturbingly similar conduct by Nottingham in providing substantial assistance to Mr. Heckler's fraudulent scheme.

19. The Receiver asserts in this action claims for common law negligence, breach of contract, indemnification, deepening insolvency, and aiding and abetting breach of fiduciary duty, and seeks to recover damages from Nottingham and Meadows for injury and losses suffered by the Receivership Parties as a result of Defendants' acts and failures to act, as set forth herein.

PARTIES

20. Plaintiff Kevin D. Kent was appointed under the Receivership Order as the receiver (“Receiver” or “Plaintiff”) with the goal and purpose to investigate, marshal, and preserve, *inter alia*, the assets, monies, securities, choses in action, and properties of the Receivership Parties (defined below) to maximize the recovery available to the investors defrauded by Smith.

21. The parties within the Receivership and that the Receiver controls are: the Fund; the Partners; Bristol; BA Smith & Associates LLC; Bristol Advisors LP; CV Broker-age, 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, (collectively, the “Receivership Parties”).

22. Under the Receivership Order, the Receiver is a representative of the Court with the full powers of an equity receiver.

23. The Receivership Order authorizes Receiver to institute legal proceedings on behalf of and for the benefit of the Receivership Estate as may be necessary or appropriate in order to recover, conserve, or maximize Receivership Assets, including, *inter alia*, actions seeking legal or equitable or legal relief, to avoid fraudulent transfers, to collect debts, for disgorgement of profits, for creation of a constructive trust, for asset turnover, and such other relief as this Court may deem necessary to enforce the Receivership Order. *See* Ex. “B”, ¶¶ 50-51. Receiver is specifically authorized to pursue actions to recover Receivership Assets from third parties, such as the recipients of funds from the Receivership Parties.

24. Nottingham is a North Carolina corporation with a principal place of business at

116 South Franklin Street, Rocky Mount, NC 27804. At all relevant times, Nottingham held itself out as the independent third-party fund administrator for Broad Reach Capital.

25. Kip Meadows is a resident of North Carolina who at all times relevant to this Complaint held the position of CEO of Nottingham.

26. The Receiver has been granted permission to pursue this action against Nottingham pursuant to an August 31, 2021 Order entered in the *SEC v. Smith Action* (ECF No. 117).

JURISDICTION AND VENUE

27. Federal courts have jurisdiction over all suits in equity and actions at law brought to enforce any liability or duty created by the federal securities laws pursuant to 15 U.S.C. §§ 77v(a) and 78aa, laws at issue in the SEC Action.

28. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, in that it arises under the laws of the United States, and 28 U.S.C. § 1332, in that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and is between citizens of different States.

29. This Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. § 1367, as Receiver brings this action to accomplish the objectives of the Receivership Order entered in the SEC Action, and as such this action forms part of the same case or controversy as the SEC Action.

30. This Court also has jurisdiction over this action under 28 U.S.C. §§ 754 and 1692. Receiver has filed copies of the Receivership Order with the United States district court in each federal judicial district, including the Eastern District of Pennsylvania. As a result of those filings, Receiver is vested with complete control over any real or personal property of the Receivership Estate located in any federal judicial district.

31. Venue is proper in this Court under 28 U.S.C. §§ 754, 1391(b), and 1692.

FACTUAL BACKGROUND

The Fraudulent Scheme

32. Smith offered limited partnership interests in the Fund to investors beginning in early 2016.

33. Since the Fund's inception, Smith raised approximately \$100 million from investors, and investors are still owed approximately \$60 million in principal.

34. To solicit and retain investors, Smith represented that the Fund employed profitable and sophisticated Trading Strategies, which she claimed involved highly liquid securities, including those that it was uniquely positioned to pursue because of its access to the Philadelphia Stock Exchange trading floor.

35. To lend an air of legitimacy to her operations, Smith marketed the fact that Nottingham had been engaged by the Fund to act as an independent third-party administrator. Smith did this with the full knowledge and consent of Nottingham, who at times actively participated in the solicitation of investors to the fund. A true and correct copy of the private placement memo used by Smith, and identifying Nottingham as the Fund's administrator is attached hereto as Exhibit C.

36. In reality, only a small fraction of investor money was actually used for the Trading Strategies Smith advertised. The vast majority of the funds were moved through bank accounts Smith controlled, funneled into unrelated companies, used to pay back other investors, or diverted to Smith's personal use.

37. Smith initially disclosed these unauthorized uses of investor funds to Nottingham by supplying Nottingham with "financial statements" that disclosed huge and increasing

percentages of the Fund's assets were comprised of "private investments" for which Smith provided no support.

38. Nottingham accepted these questionable statements and created investor account statements that reflected positive performance and increasing balances – none of which was true.

39. In this way, Smith was able to conceal from investors her fraudulent misappropriation and mishandling of investor funds with the substantial assistance of Nottingham.

40. In creating account statements for investors, Nottingham created the impression that it was independently verifying the value of investor account balances. In reality, it reported that investor account balances were whatever Smith claimed them to be – there was no independent verification performed by Nottingham whatsoever.

Nottingham's Role as Fund Administrator

41. On January 1, 2017, Nottingham entered into an Administrative Services Agreement (hereafter "the ASA") with Broad Reach Partners, LLC in which it agreed to serve as Fund Administrator for Broad Reach Capital, LP and Broad Reach Capital Offshore, Ltd. A true and correct copy of the ASA is attached hereto as Exhibit D.

42. The ASA provides that Nottingham would provide the following "accounting services" to the Fund:

(1) Accounting Services:

(a) For each valuation date of the Funds and consistent with written instructions from the General Partner, obtain security prices from the General Partner (or from standard pricing sources approved by the General Partner) and apply those prices to the portfolio positions. It is understood and agreed that the Administrator shall have no responsibility or obligation to verify or question the accuracy of the security prices received or approved by the General Partner. For purposes of this agreement, "valuation date" shall mean the last business day of each calendar month. Unless otherwise instructed by the General Partner, security prices

will be determined as of the time regular trading closes on the New York Stock Exchange.

(b) Identify interest and dividend accrual balances as of each valuation date and calculate gross earnings on investments for the accounting period.

(c) Determine gain/loss on security sales and identify them as to short- or long-term status.

(d) Account for periodic distributions of gain to the Funds and maintain undistributed gain or loss balances as of each valuation date.

(Ex. D, at A-3)

43. The ASA further provided that Nottingham would provide the following “Valuation and Financial Reporting Services” to the Fund:

(3) Valuation and Financial Reporting Services:

(a) Account for Fund subscriptions, sales, exchanges, transfers, dividend reinvestments, and other portfolio activity as reported by the General Partner or the Fund on each valuation date.

(b) Determine net investment income for the Funds as of each valuation date. Account for periodic distributions of earnings to the Funds and maintain undistributed net investment income balances as of each valuation date.

(c) Maintain a general ledger for the Funds in a form reasonably prescribed by the General Partner and produce a set of financial statements as may be agreed upon from time to time as of each valuation date.

(d) For each valuation date, determine the net asset value of the Funds according to the accounting policies and procedures set forth by the General Partner.

(e) Calculate net asset value, net earnings, and other amounts with respect to each investor’s capital account in the Funds reflective of the Funds’ operation as of each valuation date and at such times as required by the nature and characteristics of the Funds.

(f) Prepare standard performance calculations in a manner and form to be mutually agreed upon.

(g) Support financial statement preparation by making the fund accounting records of the Funds in the Administrator's possession available to the General Partner and the outside auditors of the General Partner or the Funds.

(Id., at A-3)

44. The ASA further provided that Nottingham would provide the following "Investor Recordkeeping and Servicing Services" for the Fund:

Investor Recordkeeping and Servicing Services:

(a) Process subscriptions, both initial and subsequent, in accordance with conditions set forth by the General Partner, reviewing each subscription agreement to ensure that it has been fully and properly completed and, if not so completed, contacting the General Partner to gather missing information needed to complete the agreement.

(b) Transfer limited partnership interests to an existing account or to a new account upon receipt of required documentation in good order.

(c) Distribute dividends and capital gain distributions (including disbursements as cash or reinvestment) and change the disbursement option at the request of the General Partner.

(d) Process and direct subscriptions/withdrawals and initiate new account or process to existing account as directed by the General Partner.

(e) Make miscellaneous changes to records, including, but not necessarily limited to, address changes as directed by the General Partner.

(f) Prepare and maintain a year-to-date confirmation and statement as each transaction is recorded in the Funds' account.

[...]

(Id. at A-3).

45. For these services, the ASA provided that Nottingham would be paid .09% of the net asset value of the Fund, subject to a \$3,000 per month minimum, plus a \$5,000 annual fee

“Audit & Tax coordination.” (Id. at B-1).

46. Upon information and belief, Nottingham received fees that exceeded the amount it was due under the ASA, in part as a result of the fictitiously inflated net asset value of the Fund.

47. Pursuant to paragraphs 5 and 7 of the ASA, Nottingham was designated an “authorized agent” of the Fund for purposes of making various payments, including for brokerage fees and commissions, and was granted explicit authority to “access the Funds’ account information, (including position and balance information); (ii) utilize one or more electronic payment systems provided in connection with such accounts for payments and transfers of funds from the accounts; and (iii) enter into any agreement regarding access to the accounts with the provider of such accounts.”

48. Through this arrangement, Nottingham had complete access to the financial performance of the Fund and was, or should have been, aware that the Fund’s account balances did not match the investor account statements Nottingham produced at Smith’s direction.

Nottingham Ignores Significant Indicia of Fraud

49. Nottingham became suspicious of Brenda Smith’s business practices within the first month of their relationship. But Nottingham’s CEO, Kip Meadows, chose to ignore the warning signs because his business needed revenue.

50. For example, as Nottingham was attempting to construct individual investor monthly account statements for the first time, on February 8, 2017 Nottingham's EVP of Client Development, Kate Honey wrote to CEO Kip Meadows to identify irregularities in the information supplied by Smith and stated: “Would be helpful and prudent for you to think through this with your investigative hat on to determine if you think this is something we should take on.”

51. Mr. Meadows dismissed these concerns and responded:

Roger. well on the con side, I agree with you that messiness is always a potential liability. On the pro side, Brenda as a CPA and all her securities licenses and broker dealer, **she has a ton to lose by being involved with anything untoward.**

Will give it some more thought, but I always take a little comfort at least when the counter party has a more to lose than we do. **Since it's a private fund, we can disclaim responsibility for the data** (which I think we don't have any or much liability) and the GP has all the legal liability and responsibility.

But let's be prudent about it. **revenue is revenue and we don't have a surplus.**

(February 8, 2017 Email attached as Exhibit E).(emphasis added).

52. In other words, Nottingham took on the role of Fund Administrator intending to blindly rely on questionable data believing it could disclaim responsibility for doing so.

53. Nottingham routinely ignored highly questionable transactions that any reasonable fund administrator would have regarded as significant red flags.

54. To support Nottingham's primary function of preparing individual investor account statements, Smith sent a monthly package of information including a one-page "financial statement" together with other supporting documentation to Nottingham. Nottingham used this material to produce its Net Asset Value ("NAV") calculations and individual investor account statements.

55. The packages Smith provided were inconsistent and often lacked information that Nottingham needed to calculate NAV and investor account statements.

56. In multiple instances, Nottingham would request supporting information, which Smith would ignore. Each time, Nottingham's CEO overlooked the lack of support and instructed his team to prepare the investor account statements regardless.

57. For example, in the process of preparing January 2017 investor account statements,

Kate Honey wrote to Smith multiple times asking for support for two line items in Smith's financial statement that made up more than 30% of the Fund's value: PriCo Market, LLC and Sunny Ocean. Her emails noted, for example: "The financial statement has PriCo Market LLC and Sunny Ocean. We did not receive any information for these 2 items" and "Do you have statements for PriCo Market and Sunny Ocean? We assume these are private holdings – please provide details, documentation, pricing methodology, etc." (February 2017 Kate Honey "Jan. Financials" emails attached as Exhibit F).

58. Brenda Smith ignored Ms. Honey's multiple requests for information supporting what accounted (at the time) for more than 30% of the value of the fund. After her multiple attempts get this information failed, Nottingham CEO Kip Meadows spoke with Brenda Smith. In a February 22, 2017 email, he then instructed his team to create "quick and dirty" account statements despite the lack of support:

I just talked to her, she said she will send those % tonight. We can take her fund valuation data and create shareholder accounts. **With a partnership the liability for the data is on the GP, not us. She recognizes that and is completely comfortable with the numbers she has provided.**

[...]

...for the time being we are going to use the "quick and dirty" method of using Brenda's total fund valuation and applying percentages. We should communicate tomorrow, agree on a draft, let Brenda review it, and then try to crank out the statements and put this one in the rear view mirror for January.

(February 22, 2017 Meadows email attached as Exhibit G) (emphasis added).

59. This "quick and dirty" methodology, in fact, became Nottingham's normal operating procedure as Fund Administrator. Smith never provided supporting documentation for PriCo Market, LLC or Sunny Ocean. Between January and March of 2017, the financial statement she provided to Nottingham reflected that the value of those two "assets" increased from \$10

million and \$2.8 million respectively, to \$16.9 million and \$3.6 million respectively. These amounts went from accounting for 30.4% to 43.5% of the Funds total value (according to Smith's financial statements) in three months.

60. In reality, these "investments" were dramatically overstated, which Nottingham would have discovered had it insisted on the data it had asked for and that Smith refused to provide. For example, "Sunny Ocean" was a \$1.5 million loan that Brenda caused one of her related entities to make on October 16, 2016 to an entity called Sunny Ocean LLC and an individual named Agostino Calcada for the purpose of acquiring and developing beach-front property in Florida. While a related Smith entity may have had an ownership interest in Sunny Ocean, the property was never developed, no payments were ever made on the loan and the property was ultimately lost to foreclosure in 2019. And yet Smith's financial statements reflected this asset as worth \$2.8 million in January of 2017, \$3.6 million just three months later in March of 2017, and more than \$5.1 million by July of 2017. Nottingham would have learned that there was nothing to substantiate these numbers if it had insisted on getting support from Smith.

61. Similarly, PriCo Market was a vehicle Smith used to invest in two pre-IPO entities in 2016. The ownership interests PriCo acquired in those entities did not come close to the values Brenda reported, which would have been obvious to Nottingham had it insisted on the supporting documentation it had requested and that Smith refused to provide.

62. After March 2017, PriCo Market dropped off the financial statements Smith provided to Nottingham without explanation. In April of 2017 Smith substituted "Private Investments" for PriCo and represented that this investment ballooned from \$16.9 million in March, to more than \$23.5 million in April. By July, the "Private Investments" line item on Smith's financial statement reflected a value of more than \$31.2 million. Together with Sunny

Ocean, these two “investments” accounted for 65% of the total value of the Fund, which Nottingham used to calculate investor account statements despite never having received a single document supporting either investment.

63. Upon information and belief, the funds allocated to “Private Investments” on the financial statements provided to Nottingham consisted of various speculative investments and projects with friends, associates, and complete strangers, including, but not limited to, the following:

- a. Approximately \$7.5 million paid toward the development of a restaurant, the entirety of which was lost;
- b. Approximately \$3 million paid toward the development of a hotel project, the entirety of which was lost;
- c. Approximately \$5 million paid to an international business associate who purportedly was engaged to assist Smith in procuring interests in monetary instruments which never occurred;
- d. Approximately \$1.6 million paid toward acquiring mineral rights and mining interests in Colorado;
- e. Approximately \$7.7 million paid to fund experimental mineral extraction projects with individuals and entities that claimed to be able to extract rare earth minerals from magnetite ore concentrates;
- f. \$1.1 million loaned/invested to a company that sells medical and personal hygiene products; and
- g. Approximately \$450,000 loaned/invested to a professional educational and certification school that serves the medical industry.

64. Each of the above-identified transactions were funded by investor money and resulted in zero benefit to the Fund. Had Nottingham asked for support for Smith's "Private Investments," it would have learned that Smith was diverting funds for purposes that were wildly inconsistent with the purpose and stated strategy of the Fund and that could not possibly have supported that amounts claimed on Smith's financial statement.

65. After July of 2017, Brenda Smith inexplicably stopped providing **any financial statements or supporting documentation whatsoever to Nottingham**. Instead, Smith provided only a single sheet calculating each individual investor's capital account balance. The Receiver has not located any correspondence between Nottingham and Smith that would explain this change in procedure or indicate whether Nottingham questioned why Smith stopped providing support for her investors' account statements.

66. Internal Nottingham emails from 2018 reflect that its personnel understood they should have been independently confirming account values and were concerned with their own exposure for not doing so.

67. In a June 6, 2018 internal email, Nottingham internally discussed its potential liability for its involvement with Broad Reach Capital. Specifically, Nottingham's EVP of Client Development, Kate Honey wrote to CEO Kip Meadows:

I have concern that 1) contract state's we're valuing, 2) we have documentation I think saying we need this info in order to be able to value, but never received it, it might still be hard to prove. Based on the latest communication, she's [Brenda Smith] had back/forth with him [another BRC investor] on calculations and could be throwing Nottingham under the bus. We do not know b/c we are cut out! I fear she could use Nottingham as scapegoat!

68. Mr. Meadows replied:

Understand. I can find that out with a call to him. I'll also reach back out to her. The good thing is that a non-registered fund isn't

under purview of either SEC or FINRA and our role certainly isn't but just like with any lawsuit, it doesn't necessarily matter whether it will succeed, it's the hassle expense factor during.

(June 6, 2018 email chain attached as Exhibit H).

69. Nottingham became increasingly worried about producing investor account statements despite having no support. For example, on August 15, 2018, Nottingham again discussed its potential liability for its role as administrator to the Fund after an investor questioned Nottingham about certain fees that Smith had charged to the Fund that Nottingham could not explain. In responding to the inquiry, a Nottingham employee admitted:

We do not receive a detail breakdown of the changes in the fund. What we see from Brenda's report is the total earnings. Brenda would be the person to provide the details as to the fee schedule.

70. In a reply email, the investor wrote: "Are you not the administrator of the fund? As such, is it not your responsibility to be doing the accounting and administration on the fund?"

71. After receiving this email, the Nottingham employee immediately wrote to Kate Honey (with high importance):

I was worried about this. I raised the question when this started if [this Investor] was aware of our limited role and responsibilities for the Broadreach relationship. This is a sensitive account/relationship

72. Kate Honey immediately forwarded these concerns on to CEO Kip Meadows "for discussion."

73. Mr. Meadows then wrote to Ms. Smith:

You know I love you, but if we don't get this all straight and figured out within the next few weeks we're resigning. I can't be put in a position where we are not doing our job because we don't have information and we both look really bad and have tons of liability.

(August 15, 2018 email chain attached as Exhibit I).

74. Nottingham also should have been placed on notice of potentially fraudulent activity when Smith suddenly asked in December of 2018 for Nottingham to create an account statements showing that Smith herself was an investor with a balance of more than \$13 million. At this time, Nottingham had been producing investor account statements going back to January of 2017. Every month Smith provided Nottingham with a purportedly complete listing of individual investor capital account balances, and none had ever included Smith. Accordingly, Nottingham should have asked Smith whether this was a new investment, and if so, for copies of her subscription agreement which it was Nottingham's job under the ASA to process and maintain as part of its recordkeeping functions.

75. Nottingham did not ask for confirmation of her investment because, upon information and belief, Nottingham suspected that the claimed investment was false. Nottingham was aware that Smith's purpose in asking for the statement was to solicit additional investors by assuring them that she had her own money invested in the Fund.

76. In a December 7, 2018 email to Nottingham, Smith wrote:

Surefire wants to see a statement for me. Could you possibly prepare one for me? I came into 2018 with 3,138,568 and have earned 12,345,000 incentive allocation thru Nov. 30 with draws of 2,000,000. This is supposed to be the last item they need and I would really appreciate it. Could you please email to me as I am on a river cruise for my sister's birthday.

77. Nottingham responded:

Hey Brenda, We will need the data broken down per month in order to generate a statement. Once we have received the information, we can generate the statement. Let me know if you have any questions.

78. Ms. Smith replied: "Just divide evenly please as we only email him November."

79. When pressed for more information by Nottingham, Ms. Smith wrote:

Can we please divide evenly? I am out of the country & can give all specifics as soon as back. This is only for one prospect & will not go anywhere else.

80. Mr. Meadows then replied: “We'll come up with a ballpark based on other shareholders. We'll take care of it from here.” (December 10, 2018 email chain attached as Exhibit J).

81. Tellingly, after creating a fictional account statement for Brenda purporting to reflect an additional \$13 million in assets within the Fund, Nottingham debated internally whether to include Brenda’s investment in the NAV of the fund when calculating its own administration fee. In an internal email dated February 19, 2019, a Nottingham Fund Team Leader instructed: “We had to produce a statement from Brenda a few months ago, that is why her capital balance is showing up. She does not provide an updated balance every month. Can you please exclude Brenda’s account from the calculation of the management fees?” (Feb. 19, 2019 Email attached as Exhibit K).

82. Accordingly, it appears that Nottingham knowingly created a one-time fictional account statement for Smith, valued at over \$13 million, that somehow remained frozen in value on the subsequent investor capital account statements Smith provided to Nottingham, while the accounts of other investors in the same fund continued to fluctuate. Nottingham did this knowing that the purpose of the statement was to solicit a large new investment from an unsuspecting investor.

83. In addition, Nottingham was charged under the ASA with overseeing the payment of the Fund’s expenses, including commissions to brokers and securities traders Smith employed at CV Brokerage. The Receiver is aware that numerous commission payments were made to CV Brokerage personnel using methods and in amounts that bore no connection to fund performance

and that were entirely at odds with investor agreements.

84. The agreements between Broad Reach and the investors (which Nottingham was responsible for obtaining) provide that the investors receive the first 8% percent of profits, and that only after that level of profitability is achieved does the fund manager share in the subsequent profits. *See*, Exhibit C at 17. The agreements provide further that the investment advisor (i.e. Bristol Advisors), and not the investors, is responsible for the costs of the fund. *Id.* at 46.

85. As Nottingham should have been aware, the Fund never generated any profits, let alone surpassed the 8% threshold necessary to allocate any expenses (including commissions) to the investors of the Fund.

86. Moreover, Smith's method of paying commissions to her in-house securities traders at CV Brokerage was highly suspicious. In some cases, there were no formal written agreements outlining commission structures for her traders. Smith appears to have paid traders haphazardly in odd and intermittent amounts, including by transferring ownership of entire bank accounts over to her employees, containing approximately \$1.8 million in investor funds.

87. Upon information and belief, Nottingham was, or should have been, aware of these questionable commission payments to Smith's employees and recognized that they were at odds with investor subscription agreements with the Fund.

88. Finally, because Nottingham was responsible for processing investor redemption requests, it was or should have been aware of significant problems with the reported Net Asset Value of the fund, particularly in 2019. In 2019, a number of large investors began to request full redemptions of their investments. Smith was unable to do so because there were insufficient funds to do so, even though Smith and Nottingham had reported to investors that their investments were intact and growing year-over-year.

89. Despite its knowledge that Smith was unable to redeem her investors, causing some to bring FINRA actions against her, Nottingham continued to act as Fund Administrator, earn fees, and assist Smith in providing fraudulent and false information to investors.

COUNT I – BREACH OF CONTRACT AGAINST NOTTINGHAM

90. Plaintiff incorporates by reference all of the preceding paragraphs as though fully forth herein.

91. On January 1, 2017, Nottingham entered into a contract (the ASA) with Broad Reach Partners, LLC in which it agreed to serve as Fund Administrator for Broad Reach Capital, LP and Broad Reach Capital Offshore, Ltd.

92. By virtue of the conduct set forth in this Complaint, Nottingham willfully breached its obligations to the Fund under the terms of the ASA, including by:

- a. Failing to properly process, maintain and track investor subscription agreements, thereby allowing significant funds to be distributed to non-investors;
- b. Failing to account for fund expenses that Smith improperly paid to various employees and third parties;
- c. Failing to properly calculate investor account statements based on verifiable bank and brokerage account information.

93. Nottingham's breaches caused damage to the Fund.

WHEREFORE, Receiver requests that this Court enter a judgment in his favor and against Defendant and an order requiring Defendant to pay damages in an amount to be determined at trial, together with pre and post judgment interests, attorneys fees and costs, and such other and further relief as this Court may deem just and proper.

COUNT II – INDEMNIFICATION AGAINST NOTTINGHAM

94. Plaintiff incorporates by reference all of the preceding paragraphs as though fully forth herein.

95. The ASA provides that Nottingham:

agrees to indemnify and hold harmless the General Partner and the Funds from any and all claims, losses, liabilities, damages, fines, penalties, interest, and expenses (including reasonable attorneys' fees and expenses) incurred by the General Partner or the Funds in connection with the defense or disposition of any matter related to or resulting from any willful misconduct, negligent conduct or bad faith on the part of the Administrator in the performance of its duties under this agreement.

(Exhibit D, at 6)

96. The Fund was damaged by Nottingham's willful misconduct and/or negligence as outlined in the Complaint, therefore entitling the fund to indemnification pursuant to the above-referenced indemnification obligations contained in the ASA.

WHEREFORE, Receiver requests that this Court enter a judgment in his favor and against Defendant and an order requiring Defendant to pay damages in an amount to be determined at trial, together with pre and post judgment interests, attorneys fees and costs, and such other and further relief as this Court may deem just and proper.

COUNT III – NEGLIGENCE AGAINST ALL DEFENDANTS

97. Plaintiff incorporates by reference all of the preceding paragraphs as though fully forth herein.

98. Nottingham had a duty to the Fund to act reasonably in the conduct of its business.

99. Nottingham breached its duty by virtue of its woefully inadequate and inappropriate conduct including, among other things, failing to properly supervise the payment of expenses of the Fund, ignoring and violating its own policies and procedures requiring independent verification

of information received from Smith, and by turning a blind eye to suspicious or questionable transactions. This conduct was undertaken with actual appreciation of the risks involved and with a complete disregard of or indifference to an obvious risk of loss to the Fund.

100. As a direct and proximate result of Nottingham's breach of this duty, Smith was able to perpetrate and continue the fraudulent scheme more fully set forth above against all of the Receivership Parties.

101. The Fund has suffered injury to its business and property as a direct and proximate results of the breach of this duty.

WHEREFORE, Receiver requests that this Court enter a judgment in his favor and against Defendant and an order requiring Defendant to pay damages in an amount to be determined at trial, together with pre and post judgment interests, attorneys fees and costs, and such other and further relief as this Court may deem just and proper.

COUNT IV– DEEPENING INSOLVENCY AGAINST ALL DEFENDANTS

102. Plaintiff incorporates by reference all of the preceding paragraphs as though fully forth herein.

103. Through their knowing promotion of the Fund and of Smith as an investment advisor, and its facilitation of Smith's conduct in operating a fraudulent scheme as more fully set forth above including by falsifying Fund performance and investor return rates, Nottingham and Meadows facilitated and participated in the expansion of the debt of the Fund and artificially prolonged the corporate life of the Receivership Parties, including the Fund.

104. As a proximate and direct result of Defendants' actions and inaction, the Fund and the other Receivership Parties have suffered injury to their business and property.

WHEREFORE, Receiver requests that this Court enter a judgment in his favor and against

Defendants and an order requiring Defendant to pay damages in an amount to be determined at trial, together with pre and post judgment interests, attorneys fees and costs, and such other and further relief as this Court may deem just and proper.

**COUNT V – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
AGAINST ALL DEFENDANTS**

105. Plaintiff incorporates by reference all of the preceding paragraphs as though fully forth herein.

106. As detailed above, Smith perpetrated a massive fraud that included, among other things, making material misrepresentations about the Fund in order to solicit and retain investors, and diverting Fund assets for use in improper and highly speculative transactions. Smith's conduct constitutes a breach of fiduciary duty to the Fund to ensure the appropriate use of its assets.

107. Defendants willingly, knowingly, consciously, and recklessly failed to use reasonable skill and care to be aware of, discover, investigate and report numerous glaring red flags which would have put a reasonably prudent fund administrator on notice that Smith was engaged in conduct to the extreme detriment of the Fund.

108. Defendants knew, or were reckless in not knowing, that Smith was diverting assets belonging to the Fund for improper purposes and overstating the value and performance of the Fund to solicit and retain investors for the purpose of prolonging the Fund's corporate life and to attract additional money for Smith to siphon off for her own improper purposes.

109. Defendants substantially assisted Smith's fraudulent conduct by supplying investor account statements that it knew were not supported by reliable financial information and that Defendants in fact suspected was false.

110. Defendants also substantially assisted Smith's fraudulent conduct by creating a fictitious account statement purporting to demonstrate that Smith was personally invested in the

Fund when Defendants knew or should have known that she was not.

111. Given Defendants knowledge of Smith's fraudulent conduct and their role as Administrator to the Fund, Defendants had a duty to the Fund to disclose Smith's conduct to investors that they assisted in soliciting.

112. Defendants similarly had a duty to attempt to prevent Smith's fraudulent conduct from causing further damage to the Fund by alerting others in positions of authority within the Fund, including but not limited to its general counsel.

WHEREFORE, Receiver requests that this Court enter a judgment in his favor and against Defendants and an order requiring Defendant to pay damages in an amount to be determined at trial, together with pre and post judgment interests, attorneys fees and costs, and such other and further relief as this Court may deem just and proper.

JURY DEMAND

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

Dated: 2/10/2022

s/ Andrew S. Gallinaro
Andrew S. Gallinaro (PA I.D. No. 201326)
Robin S. Weiss (PA I.D. No. 312071)
CONRAD O'BRIEN, P.C.
1500 Market Street, Suite 3900, West Tower
Philadelphia, Pennsylvania 19102
215-864-9600

Attorneys for Receiver Kevin D. Kent