

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

KEVIN DOOLEY KENT, in his capacity :
as Receiver for Broad Reach Capital, LP, :
Broad Reach Partners, LLC, Bristol :
Advisors, LLC, TA1, LLC, Investment :
Consulting LLC, and Prico Market LLC :

Civil Action

No. 2:22-cv-01811

Plaintiff,

Motion Day: Feb. 6, 2023

v.

JEFFREY BYDALEK and CREDIT :
THE AMERICAS LP and FX ALGO :
LLC and HURRICANE HOLDINGS, :
INC. and M3 MEDIA GROUP, INC., :

Defendants.

**NOTICE OF MOTION OF RECEIVER KEVIN DOOLEY KENT
TO APPROVE A SETTLEMENT RESOLVING THE RECEIVER’S
CLAIMS AGAINST DEFENDANTS**

PLEASE TAKE NOTICE that the undersigned, on behalf of the Receiver, Kevin Dooley Kent, will move before the Honorable Madeline Cox Arleo, U.S.D.J., or the Honorable Edward S. Kiel, U.S.M.J., United States District Court for the District of New Jersey, Martin Luther King Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, on February 6, 2023 or as soon thereafter as the Court permits, at a date and time to be determined by the Court, to approve a settlement resolving the Receiver’s claims against Defendants Jeffrey

Bydalek, Credit the Americas, LP, FX Algo, LLC, Hurricane Holdings, Inc., and M3 Media Group, Inc. (collectively, “Bydalek Defendants”).

PLEASE TAKE FURTHER NOTICE that in support of this Motion, the undersigned will rely upon the accompanying Memorandum of Law—the exhibits to which are being filed under seal—which is incorporated herein by reference.

PLEASE TAKE FURTHER NOTICE that the undersigned requests that the proposed form of Order submitted herewith be entered by the Court.

PLEASE TAKE FURTHER NOTICE that Bydalek Defendants have advised that they do not oppose this motion.¹ Additionally, counsel for the Securities and Exchange Commission have advised that they do not oppose this motion.

Respectfully submitted,

/s/ Robin S. Weiss
Robert N. Feltoon, Esquire (NJ I.D. 012391996)
Robin S. Weiss (NJ I.D. 018182011)
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Attorneys for Receiver, Kevin Dooley Kent

Date: 1/9/2023

¹ The Bydalek Defendants have only reviewed a redacted version of the Receiver’s Declaration filed under seal as Exhibit “A.” While Bydalek Defendants do not oppose the relief requested in this motion or the motion itself, and have agreed to be bound by the terms of the Settlement Agreement filed under seal as Exhibit “B,” this lack of objection should not be construed as Bydalek Defendants’ agreement with the contents of the Receiver’s Declaration, which they have not had the opportunity to review in full.

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Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF RECEIVER
KEVIN DOOLEY KENT TO APPROVE A SETTLEMENT RESOLVING
THE RECEIVER’S CLAIMS AGAINST DEFENDANTS**

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Date: 1/9/2023

Pursuant to the Court’s Order Appointing Receiver dated June 29, 2020 (“Receivership Order”) and the Orders Approving the Receiver’s Second and Third Motions For Permission to Initiate Litigation on Behalf of the Receivership Estate dated January 27, 2022 and February 22, 2022, all of which were issued in the case of *SEC v. Smith, et al.*, C.A. No. 2:19-cv-17213 (MCA) (the “SEC v. Smith Matter”), the Receiver, Kevin Dooley Kent (“Receiver”), hereby moves this Court for an order approving a settlement resolving the Receiver’s claims against Defendants Jeffrey Bydalek, Credit the Americas, LP, FX Algo, LLC, Hurricane Holdings, Inc., and M3 Media Group, Inc. (collectively, “Bydalek Defendants”).

I. STATEMENT OF FACTS

The Receivership Order in the SEC v. Smith Matter appointed the Receiver to assume control of, marshal, pursue, and preserve the Receivership Assets. (SEC v. Smith Matter, ECF No. 22.) The Receivership Assets include, *inter alia*, assets of the “Defendants” and “Affiliated Entities,” as those terms are defined in the Receivership Order, that (1) are attributable to assets derived from investors or clients of Defendants; (2) are held in constructive trust for the Defendants; (3) were fraudulently transferred by the Defendants; and/or (4) may otherwise be included as assets of the estates of the Defendant or Affiliated Entities (collectively, “Receivership Assets”). Receivership Order, Whereas Clause 3.

On January 27, 2022, the Court approved the Receiver's Second Motion for Permission to Initiate Litigation on Behalf of Receivership Estate, which authorized the Receiver to pursue claims against various individuals and entities, including Jeffrey Bydalek. (SEC v. Smith Matter, ECF Nos. 98, 161). On February 22, 2022, the Court approved the Receiver's Third Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate, which authorized the Receiver to pursue claims against various additional individuals and entities, including Hurricane Holdings, Inc., FX Algo, LLC, Credit the Americas, LP and M3 Media Group, Inc. (SEC v. Smith Matter, ECF Nos. 147, 167).

The Receiver filed a Complaint in the above-captioned case on March 31, 2022. The Receiver's Complaint asserts claims against the Bydalek Defendants in connection with, *inter alia*, their investment activity with TA1, LLC and/or Broad Reach Capital, LP and their receipt and sale of Lyft shares, which the Receiver maintains are and/or were owned by Receivership Party Prico Market LLC. Bydalek Defendants deny the vast majority of factual allegations and legal assertions made by the Receiver, including but not limited to each and every allegation of wrongdoing, and they deny all liability to the Receiver in the above-captioned lawsuit.

Bydalek Defendants previously filed a FINRA Complaint against Brenda Smith and Receivership Party CV Brokerage, Inc. asserting that Bydalek Defendants

suffered losses as a result of Brenda Smith's mismanagement of funds. Bydalek Defendants also submitted a creditor claim through the Receivership claims process in the SEC v. Smith Matter, asserting various claims including for claimed investment losses, indemnification, and contractually owed payments.

On or about December 19, 2022, the Receiver and Bydalek Defendants, without any admission of liability, agreed to resolve all claims between them in exchange for the return of the 5,000 shares of Lyft stock remaining in Bydalek Defendants' possession to the Receiver,² in addition to the payment of \$1,200,000.00 to be paid by Bydalek Defendants to the Receiver according to the following schedule: \$400,000 within 10 days of execution of the settlement agreement; \$400,000 on or before the one-year anniversary of settlement; \$200,000 on or before the two-year anniversary of settlement; and \$200,000 on or before the three-year anniversary of the settlement.³

A more complete description of the claims, the terms of the proposed settlement, and the basis for the settlement are included in a Declaration attached hereto as Exhibit "A," which is being separately filed under seal. A copy of the executed Settlement and Release Agreement is attached hereto as Exhibit "B" and

² It is the Receiver's position that these Lyft shares were owned by Receivership Party Prico Market LLC. They were identified as a Receivership Asset in the Receivership Order.

³ There are prepayment discounts available for any payment made at least one (1) year before the specified due date.

is also being separately filed under seal. Under the terms of the Court's Order Approving the Receiver's Second and Third Motions for Permission to Initiate Litigation on Behalf of the Receivership Estate, the undersigned counsel is entitled to attorneys' fees on a contingency fee basis as it relates to the Receiver's claims against Bydalek Defendants, the specifics of which are detailed under seal as Exhibit 2 to the Second and Third Motions of Receiver, Kevin D. Kent, Esquire, for Permission to Initiate Litigation on Behalf of the Receivership Estate. (*See SEC v. Smith Matter*, ECF No. 98, 99, 147, 148, 161, 167).

II. STATEMENT REGARDING BYDALEK DEFENDANTS

Prior to the filing of this lawsuit, Mr. Bydalek expressed a willingness to provide information to the Receiver and has cooperatively produced documents and other information in response to the Receiver's formal and informal requests, both before litigation commenced and during the pendency of the case. Mr. Bydalek also reports that he cooperated with federal authorities and that he, through his counsel, provided information pertaining to Ms. Smith's fraudulent scheme to the U.S. Attorney's Office for the Eastern District of Pennsylvania in February 2019, that supporting documents and materials were also provided to the DOJ, FBI and SEC in March 2019, and that he attended a May 2019 meeting with representatives from the SEC, the U.S. Attorney's Office, and the FBI. He further maintains that he also provided this information to FINRA.

The Receiver has no personal knowledge regarding Mr. Bydalek's claims of cooperation with federal authorities, and had not yet been appointed at the time this purported cooperation was provided. The Receiver has agreed to recite the preceding paragraph as part of the negotiations leading to this Agreement; however, by doing so, the Receiver is not agreeing with or otherwise confirming the accuracy of Mr. Bydalek's claims of cooperation with and assistance to federal authorities. The Receiver does not have authority to speak on behalf of the SEC, the DOJ, the U.S. Attorney's Office, the FBI, or FINRA, and the inclusion of the preceding paragraph should not be interpreted as a recognition or acknowledgement of any claimed cooperation or assistance by Mr. Bydalek on behalf of those authorities.

III. ARGUMENT

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

Counsel for the Securities and Exchange Commission have advised that they do not oppose this Motion. Counsel for Defendants have likewise advised that they do not oppose this Motion.⁴

⁴ Defendants' lack of opposition should not be construed as an agreement with the contents of the Receiver's Declaration attached as Exhibit "A," which Defendants have not had the opportunity to review in full.

IV. CONCLUSION

In light of the foregoing, the Receiver respectfully requests that this Court enter the attached Order approving the settlement resolving the Receiver's claims against Bydalek Defendants and the Bydalek Defendants' claims against the Receivership Estate.

Respectfully Submitted,

s/ Robin S. Weiss

Robert N. Feltoon (N.J. ID. 012391996)

Robin S. Weiss (N.J. ID. 018182011)

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Attorney for Receiver, Kevin Dooley Kent

Date: 1/9/2023

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Defendants.

**ORDER APPROVING SETTLEMENT RESOLVING THE RECEIVER’S
CLAIMS AGAINST DEFENDANTS**

THIS MATTER having come before this Court upon the Motion of Receiver, Kevin Dooley Kent, Esquire, to Approve a Settlement Resolving the Receiver’s Claims Against Defendants;

It is on this _____ day of _____, 2023, **ORDERED** that the Receiver’s Motion is **GRANTED**; and it is

FURTHER ORDERED that the Receiver may resolve and settle his claims against Jeffrey Bydalek, Credit the Americas, LP, FX Algo, LLC, Hurricane Holdings, Inc., and M3 Media Group, Inc. pursuant to the terms set forth in the Declaration and

Settlement and Release Agreement attached to the Motion, which have been filed under seal, and that the settlement funds may be disbursed, including payment of attorneys' fees and expenses, in accordance with this Court's January 27, 2022 and February 22, 2022 Orders Approving the Receiver's Second and Third Motions for Permission to Initiate Litigation on Behalf of the Receivership Estate entered in *SEC v. Smith, et al.*, C.A. No. 2:19-cv-17213 (MCA) (DNJ) (ECF No. 161 and 167, respectively).

BY THE COURT:

J.

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify, this 9th day of January, 2023, that I caused to be served a true and correct copy of the publicly filed portions of the Notice of Motion of Receiver, Kevin Dooley Kent, to Approve a Settlement Resolving the Receiver’s Claims Against Defendants, via e-mail upon the Securities and Exchange Commission through counsel of record in the matter of *SEC v. Smith, et al.*, C.A. No. 2:19-cv-17213 (MCA), and upon defendant, Jeffrey Bydalek, on behalf of all defendants, via electronic mail, as follows:

Jeffrey Bydalek
c/o Matthew Faranda-Diedrich, Esq. & Julie Latsko, Esq.
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s/ Robin S. Weiss
Robin S. Weiss, Esq.
Attorney for Receiver, Kevin Dooley Kent,
Esq.