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

SECURITIES AND EXCHANGE COMMISSION,	**C. A. No. 2:19-cv-17213 (MCA)**
Plaintiff,	
v.	
	Motion Day: April 18, 2022
BRENDA SMITH, BROAD REACH CAPITAL, BROAD REACH PARTNERS, LLC, and BRISTOL ADVISORS, LLC, et al,	
Defendants.	

NOTICE OF FIRST OMNIBUS MOTION OF RECEIVER, KEVIN DOOLEY KENT, FOR ORDER RESOLVING DISPUTED NON-INVESTOR CREDITOR CLAIMS

PLEASE TAKE NOTICE that the undersigned, on behalf of the Receiver, Kevin Dooley Kent, will move before the Honorable Madeline Cox Arleo, U.S.D.J., United States District Court for the District of New Jersey, Martin Luther King Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, on April 18, 2022, or as soon thereafter as the Court permits, at a date and time to be determined by the Court, for an order resolving disputed non-investor creditor claims submitted through the Receiver's Court-approved creditor claims process.

PLEASE TAKE FURTHER NOTICE THAT, in support of this Motion, the undersigned will rely upon the accompanying Memorandum of Law, which is incorporated herein by reference.

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

Respectfully submitted,

s/ Robin S. Weiss

Dated: March 14, 2023

Robin S. Weiss, Esquire
Andrew S. Gallinaro, Esquire
Clark Hill PLC
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19102
Phone: 215-864-8086
Fax: 215-523-9714
rsweiss@clarkhill.com
agallinaro@clarkhill.com
Attorneys for Receiver, Kevin Dooley Kent

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

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **BRENDA SMITH, BROAD REACH CAPITAL, LP, BROAD REACH PARTNERS, LLC, and BRISTOL ADVISORS, LLC,** **Defendants.**	**C. A. No. 2:19-cv-17213 (MCA)** **Motion Day: April 18, 2022**

MEMORANDUM OF LAW IN SUPPORT OF FIRST OMNIBUS MOTION OF RECIVER, KEVIN DOOLEY KENT, FOR ORDER RESOLVING DISPUTED NON-INVESTOR CREDITOR CLAIMS

Robin S. Weiss, Esq.
Clark Hill PLC
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
Phone: (215) 864-9600
Facsimile: (215) 523-9714
E-mail: rsweiss@clarkhill.com

Andrew S. Gallinaro, Esq.
Clark Hill PLC
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
Phone: (215) 864-8083
Facsimile: (215) 640-8501
E-mail: agallinaro@clarkhill.com

Dated: March 14, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION[1]

On August 27, 2019, the SEC filed a Complaint against Defendants, Brenda A. Smith ("Brenda Smith" or "Smith"), Broad Reach Capital, LP, Broad Reach Partners, LLC and Bristol Advisors, LLC, alleging that these Defendants raised approximately $105 million from at least forty (40) investors, based upon Brenda Smith's false representations that these funds would be invested in highly liquid securities through various sophisticated and profitable trading strategies with consistently high returns. (ECF No. 1). According to the Complaint, the vast majority of these investments were funneled into unrelated companies, used to pay back other investors, or utilized for personal use; meanwhile, Defendants generated and provided false performance statements and fabricated documents regarding the Fund's assets and valuations, to lull existing and prospective investors. The SEC estimates that Defendants' investors are still owed in excess of $63 million in principal.

Pursuant to the June 29, 2020 Receivership Order, this Court took exclusive jurisdiction and possession of all Receivership Assets including, but not limited to,

[1] This Omnibus Motion addresses disputed claims with eight (8) individual trade creditors, each of which are separately addressed herein. The Receiver recognizes that by combining the majority of disputed claims into a single Omnibus Motion, the Receiver has exceeded the page limit set by Local Rule 7.2. The Receiver believes combining these various disputes into one motion is a more efficient approach and respectfully requests the Court accept this motion notwithstanding the length of this submission.

assets of Broad Reach Capital, LP ("Broad Reach Capital"); Broad Reach Partners, LLC; Bristol Advisors, LLC; BA Smith & Associates LLC; Bristol Advisors LP; CV Brokerage, Inc. ("CV Brokerage"); Clearview Distribution Services LLC; CV International Investments Limited; CV International Investments PLC; CV Investments LLC ("CV Investments") ; CV Lending LLC; CV Minerals LLC; BD of Louisiana, LLC; TA1, LLC ("TA1"); FFCC Ventures LLC; Prico Market LLC; GovAdv Funding LLC; Elm Street Investments, LLC;[2] Investment Consulting LLC; and Tempo Resources LLC (collectively referred to as "Receivership Parties"). Receivership Order, ¶ 1. This includes assets that are (1) 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 Defendants or Affiliated Entities, including *inter alia*, the assets and accounts set forth in Paragraphs 2 and 3 of the Receivership Order (hereinafter collectively referred to as "Receivership Assets" or "Receivership Estate"). In the same Order, the Court appointed Kevin Dooley Kent as Receiver ("the Receiver") to assume control of, marshal, pursue and preserve the Receivership Assets, and authorized him to seek further Orders that may be "deemed necessary to conserve the Receivership

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

Assets, secure the best interests of creditors, investors, and other stakeholders of the Receivership Parties." Receivership Order, ¶¶ 5, 14.

In accordance with the aforementioned duties and obligations, on January 14, 2022 the Receiver filed a motion seeking to establish a Claims Resolution Process for identifying and determining the claim amounts of all known Investor Creditors[3] and Trade Creditors of the Receivership Estate, and a Claims Bar Date after which time no claims could be submitted or disputed. (ECF No. 160). The Court approved the Receiver's proposed Claims Resolution Process on February 22, 2022 (ECF No. 168).

In accordance with the approved procedure, the Receiver provided notice of the Claims Bar Date and Claims Resolution Procedure to all Known Investor Creditors and Trade Creditors, and also published notice of the same in multiple forms of media to provide unknown creditors the opportunity to present claims. Thirty-nine (39) Known Investors were provided with transaction schedules providing a summary of the Receiver's analysis regarding that investor's transactions and, where appropriate, a preliminary assessment of the investor's total net loss.[4] Those investors were asked to respond to the transaction schedule

[3] Investor Creditors are defined as investors in the Receivership Entities that suffered a net loss, i.e., total contributions exceed total withdrawals.
[4] Certain investors whom the Receiver does not recognize as having suffered net losses, but with whom the Receiver had not yet resolved any claw-back claims, were still provided with transaction schedules and the opportunity to respond.

by either confirming or rejecting the Receiver's analysis, and providing additional information where appropriate. Trade Creditors were provided with a claim form and were asked to list all claims to be asserted against the Receivership Estate together will all information in support of the asserted claims. Pursuant to the Claims Procedure Order, non-responding Investor Creditors and Trade Creditors have waived their rights to challenge the Receiver's claim determinations.

The Receiver has received and processed a total of thirty-seven (37) Investor Creditor Claims[5] and fifteen (15) Non-Investor Creditor claims, totaling $156,295,769.40.[6] Of the claims processed, thirty-five (35) Investor Creditor Claims and four (4) Non-Investor Creditor Claims have been fully and finally confirmed by the Receiver. The total amount of confirmed Investor Creditor claims is $54,773,769.53. The total amount of confirmed Non-Investor Creditor claims is $613,549.68. The remaining claims, many of which are presented below, are currently in dispute, and to date have not been resolved through the claims procedure. The total amount of disputed Investor Creditor claims is

[5] For purposes of this Motion, Investor Creditors include investors who invested money in any of the Receivership Parties, not just Broad Reach Capital or TA1. The Receiver reserves the right to amend these classifications and/or differentiate such investors from investors in Broad Reach Capital and TA1, if warranted, in future distribution motions.

[6] This includes a claim from the IRS which the Receiver is treating as part of this claims process for purposes of this motion, as set forth further below. These numbers exclude claims that have been withdrawn prior to the filing of this Motion.

$14,300,000.00, with another $300,000.00 claim only conditionally approved. The total amount of disputed Non-Investor Creditor claims is $86,308,360.19. The Receiver has presented a majority of the disputed Non-Investor Creditor claims below, together with the Receiver's recommendation for an order resolving the claims.[7] The Receiver will present any disputed Investor Creditor claims in a subsequent omnibus motion, to the extent they cannot be resolved. The Receiver will serve this motion on each of the affected parties within five (5) business days of this filing.

II. NON-INVESTOR CREDITOR DISPUTED CLAIMS

A. Richard Galvin/Galvin Investment Company, LLC

The Receiver filed a lawsuit against Richard Galvin ("Galvin"), Galvin Investment Company, LLC ("GIC") and various other affiliated entities under Galvin's control, in the matter styled *Kent v. Galvin, et al.*, No. 2:21-cv-13105 ("Kent v. Galvin Matter"), which the Receiver has identified as being the recipients and/or beneficiaries of over $2 million in fraudulently transferred funds

[7] The Receiver is in the process of attempting to resolve his claims against certain related individuals and entities, including Investor Nos. 19 and 31, which have collectively asserted a total of $14,600,000.00 in disputed Investor Creditor claims and a total of $1,990,759.68 in disputed Non-Investor Creditor claims. Given the current posture of negotiations and the Receiver's interest in minimizing expense to the Receivership Estate, the Receiver will file a supplemental motion seeking to resolve these unique and complex claims if they cannot be resolved through a settlement.

and whose conduct in connection with property Receivership Assets paid for in Colorado resulted in nearly $3 million in additional losses to the Receivership Estate. On April 15, 2022, GIC asserted an unrelated $50+ million counterclaim against the Receiver for tortious interference with contract, fraud, promissory estoppel, conversion and unjust enrichment/constructive trust. (Kent v. Galvin Matter, ECF No. 23). Galvin also submitted a $50+ million creditor claim to the Receivership Estate, relating to the counterclaims GIC asserted in the Kent v. Galvin matter (collectively, the "Galvin claims").[8]

The Galvin claims arise from GIC's failed efforts to purchase 350,000 tons of magnetite concentrates from Southern Minerals Group, LLC ("SMG") and GIC's alleged inability to perform on a contract it entered into with SMG to

[8] The Receiver filed a Motion to Dismiss All Counterclaims on May 6, 2022. (Kent v. Galvin Matter, ECF No. 25). The Receiver thereafter filed a Reply in Support of the Motion to Dismiss on June 21, 2022. (Kent v. Galvin Matter, ECF No. 30). The Receiver asserted in his Motion to Dismiss and Reply that the Galvin claims should be adjudicated through the claims process, rather than through ancillary litigation, given that Galvin/GIC did not seek leave from this Court or relief from the stay before asserting the counterclaims, and the factors for a lifting of the stay are not present. The Receiver argued that the fairest and most efficient procedure would be to address the Galvin claims through the claims process, and to dismiss the counterclaims asserted in the Kent v. Galvin Action. On December 7, 2022, the Court entered an order staying GIC's counterclaim (Kent v. Galvin Matter, ECF No. 39). On December 9, 2022, the Receiver filed an application to strike GIC's counterclaim due to GIC's failure to secure substitute counsel after its prior counsel withdrew, and its inability to proceed *pro se* as a corporation (Kent v. Galvin Matter, ECF No. 40). Therefore, these creditor claims are appropriate for adjudication through the claims process.

purchase the magnetite because of Smith's purported failure to pledge a $100,000.00 standby letter of credit on GIC's behalf for the benefit of SMG. (Counterclaim ("Count."), ¶¶ 7-9, 22). Galvin alleges that Smith "assured" him that she would provide that financial backing, and then instead, after he failed to perform and his time for doing so lapsed, she obtained her own separate contract for the purchase of 400,000 tons of magnetite from SMG through CV Investments. (Count., ¶¶ 9-10). Galvin and his affiliated entities seek no less than $50 million in damages, costs, and pre- and post-judgment interest, as well as a disgorgement of all materials acquired by CV Investments, along with all proceeds and profits thereon. Portions of Galvin's claim submission are attached hereto as Exhibit "A".[9] Galvin's supplemental submission is attached hereto as Exhibit "B".[10]

In essence, Galvin claims that: (1) Smith promised to provide a letter of credit that SMG could draw against any time GIC failed to make payment on any invoice for the purchase of magnetite from SMG; (2) that he lost the right to acquire the magnetite after failing to provide the required letter of credit after

[9] Galvin's claim submission included a copy of the Amended Answer with Counterclaims, the Magnetite Concentrates Purchase and Sale Agreement entered into between GIC and SMG, the Magnetite Concentrates Purchase and Sale Agreement entered into between CV Investments and SMG, and various supporting communications. Since the Amended Answer with Counterclaims is publicly available on the docket in the Kent v. Galvin matter at ECF No. 23, that portion of the claim submission is not attached hereto.

[10] The Receiver has been unable to open Exhibit 6 to the supplemental submission, which is purportedly a video, and is unable to attach it to this filing.

multiple extensions; and (3) that Smith, on behalf of CV Investments, entered into her own contract with SMG for the purchase of magnetite after GIC failed to satisfy its obligations. Defendants seek over $50 million in highly speculative damages primarily for lost profits they claim would have been attainable if they had acquired the magnetite and then—using experimental and unproven alchemical processes—extracted precious metals from hundreds of thousands of tons of ore. Although he only seeks $50+ million, according to Galvin's calculations, the gross value of this opportunity exceeded $115 billion, and yet, he was unable to locate anyone other than Brenda Smith willing to provide a letter of credit for this purportedly lucrative business opportunity.

Brenda Smith was similarly interested in the prospect of extracting gold from mundane mineral ores, and as the Galvin claim asserts, purchased magnetite ore on her own in an attempt to do so. But Smith and CV Investments got no benefit from the Receivership Parties' purchase of magnetite concentrates and their dealings with SMG, or from any of the conduct alleged in Galvin claims.

The Receiver recommends that the Court deny the Galvin claims because they are (1) time-barred, (2) barred by the statute of frauds, (3) without merit and fail as a matter of law, (4) factually unsupported, (5) highly speculative, (6) an improper attempt to force the Receivership Estate to answer for Brenda Smith's

alleged personal liabilities, and (7) not the type of claims that should be recognized in these equitable proceedings. These shortcomings are discussed further below.

1. The Claims are Time-Barred

The relevant events giving rise to the Galvin claims are alleged to have taken place over five (5) years ago, between March 10, 2017 (the date of final negotiations on GIC's alleged contract with SMG) and April 7, 2017 (the date Smith is alleged to have obtained her own contract for the purchase of magnetite and become the "beneficial owner of the material"). (Count., ¶¶ 7-10). These claims were time-barred before the Receiver was even appointed in this action.

Pursuant to New Jersey's choice-of-law rules, the applicable statute of limitations is governed by the Restatement (Second) Conflict of Laws, § 142. *McCarrell v. Hoffman-La Roche, Inc.*, 153 A.3d 207, 221-22 (N.J. 2017). Under Section 142, where the forum state has no substantial interest in the claim, and the claim would be time-barred under the statute of limitations of a state with a more significant relationship to the parties and occurrences giving rise to the claims, that other state's statute of limitations must apply. *Id.*; *Rigollet v. Kassoff*, No. 221CV15587WJMJSA, 2021 WL 5122074, at *2-3 (D.N.J. Nov. 4, 2021).[11]

[11] The following factors should be considered in determining which state has the most significant relationship to the occurrence and the parties: "(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties

Galvin is a Colorado resident and GIC is a Colorado company. Galvin's reliance leading to his purported harm occurred in Colorado, and the harm alleged occurred in Colorado. GIC has also previously claimed in prior litigation that Smith's obligations to perform on her purported promises were in Colorado, and that the claims all arose out of or were related to business dealings between GIC and Smith in Colorado. Accordingly, Colorado has the most significant relationship to the Galvin claims and its statute of limitations should apply.

---

is centered." R2d Conflict of Laws, § 145 (2). These contacts are evaluated according to their relative importance to the issue at hand. *Id.* Additionally, the following contacts may be relevant under the most significant relationship test for fraudulent misrepresentation claims: "(a) the place, or places, where the plaintiff acted in reliance upon the defendant's representations, (b) the place where the plaintiff received the representations, (c) the place where the defendant made the representations, (d) the domicil, residence, nationality, place of incorporation and place of business of the parties, (e) the place where a tangible thing which is the subject of the transaction between the parties was situated at the time, and (f) the place where the plaintiff is to render performance under a contract which he has been induced to enter by the false representations of the defendant.
R2d Conflict of Laws, § 148 (2). In conducting an analysis under section 148 (2), the plaintiff's principal place of business, if a corporation, is a contact of substantial significance when the loss is pecuniary in nature, "because a financial loss will usually be of greatest concern to the state with which the person suffering the loss has the closest relationship." *Id.*, cmt. i. Additionally, the place where the plaintiff received the representation is not as important a contact as the place where his reliance occurred. *Id.*, cmt. g. Further, where a major part of the plaintiff's reliance take place in one state and a lesser part in another, the first state has a more important connection with the occurrence than the latter. *Id.*, cmt. f.

The Galvin claims are all time-barred by Colorado's statutes of limitations. The tortious interference with contract claim is governed by a two (2) year statute of limitations, C.R.S.A. § 13-80-102 (1)(a), while the fraud, promissory estoppel, conversion and unjust enrichment/constructive trust claims are governed by a three (3) year statute of limitations. C.R.S.A. § 13-80-101 (1)(a, c, h); *see also Bank of Am., N.A. v. Dakota Homestead Title Ins. Co*., 553 F. App'x 764, 766 (10th Cir. 2013) (discussing the statute of limitations on promissory estoppel claims); *Sterenbuch v. Goss*, 266 P.3d 428, 437 (Colo. App. 2011) (discussing the statute of limitations on unjust enrichment/constructive trust claims).

Given that the latest alleged date on which the Galvin claims could have arisen was April 7, 2017, the statute of limitations on all of these claims expired before this Court's June 29, 2020 Receivership Order—the tortious interference claims by no later than April 7, 2019, and the remaining claims by April 7, 2020, at latest. These claims should therefore be denied.

2. The Galvin Claims Are Barred by the Statute of Frauds

The Galvin claims, which are all premised on Smith's purported oral promise to provide a $100,000.00 letter of credit, are barred by the statute of frauds. (Count., ¶¶ 8, 23-24, 32). Pursuant to Colorado law, "no debtor or creditor may file or maintain an action or a claim relating to a credit agreement involving a principal amount in excess of twenty-five thousand dollars unless the credit

agreement is in writing and signed by the party against whom enforcement is sought." *Univex Int'l, Inc. v. Orix Credit All., Inc.*, 902 P.2d 877, 879-80 (Colo. App. 1995), *aff'd*, 914 P.2d 1355 (Colo. 1996) (citing C.R.S.A. § 38-10-124(2)). A "credit agreement" includes: "[a] contract, promise, undertaking, offer, or commitment to lend, borrow, repay, or forbear repayment of money, to otherwise extend or receive credit, or to make any other financial accommodation." *Id.* at 880 (citing C.R.S.A. § 38-10-124(1)(a)). This Section "applies to any agreement to extend credit, regardless of the context in which the agreement was formed, and bars any action or claim relating to a credit agreement, regardless of whether the action is based upon a breach of contract or some other theory of recovery." *Id*. (citing *Northwest Bank Lakewood v. GCC Partnership*, 886 P.2d 299 (Colo. App. 1994); *Pima Fin. Serv. Corp. v. Selby*, 820 P.2d 1124 (Colo. App. 1991)).

Colorado law further provides that "[a] credit agreement may not be implied under any circumstances, including, without limitation, from the relationship, fiduciary or otherwise, of the creditor and the debtor or from performance or partial performance by or on behalf of the creditor or debtor, or by promissory estoppel." *Id*. (citing C.R.S.A. § 38-10-124(3)). This bars promissory estoppel claims as a matter of law. *Id.* at 880-81. Since all of the Galvin claims are based

upon Smith's purported oral promise and failure to provide the $100,000.00 letter of credit, they all fail.[12] These claims should be denied for this additional reason.

3. The Galvin Claims Meritless and Fail as a Matter of Law

The Galvin claims also fail for reasons independent of the statute of limitations and statute of frauds, as set forth in detail below.

a. The Conversion Claim Fails

Conversion is defined as "any distinct, unauthorized act of dominion or ownership exercised by one person over personal property belonging to another." *Byron v. York Inv. Co.*, 296 P.2d 742, 745 (Colo. 1956). "An action for damages for the conversion of personal property cannot be maintained unless plaintiff had a general or special property in the personalty converted, coupled with possession or

[12] *See, e.g.*, Count., ¶¶ 27 (Tortious Interference) ("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"), 32 (Fraud) ("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"), 41 (Promissory Estoppel) (alleging that 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"), 53 (Conversion) ("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"); 60 (Unjust Enrichment/Constructive Trust) ("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").

the immediate right thereto." *Id.* (citations omitted). To have authority to sue, the plaintiff must have had actual possession, title and constructive possession, or a right to possession of the land from which the property was taken at the time of the alleged conversion. *Id.* at 425-26.

The conversion claim must fail because there was no right to any property taken by CV Investments. At most, GIC can claim that it hoped to acquire rights to purchase minerals, but it never acquired those rights. Its unfulfilled contract with SMG granted GIC the right to purchase certain quantities of magnetite concentrates, *if* GIC provided a $100,000.00 standby letter of credit issued by a major US banking institution, which it was never able to do. (Count., ¶ 22). Smith/CV Investments did not convert this contract. Brenda Smith's failure to obtain a letter of credit for GIC is not an act of conversion. And because GIC never perfected its right to purchase the magnetite from SMG, no conversion occurred when CV Investments entered into its *own* contract with SMG after GIC's contract with SMG terminated due to GIC's inability to perform.

b. The Unjust Enrichment Claim Fails

A claim for unjust enrichment requires a showing that (1) the defendant received a benefit, (2) at the plaintiff's expense, (3) under circumstances that would make it unjust for the defendant to retain that benefit without compensation. *Sterenbuch v. Goss*, 266 P.3d 428, 437 (Colo. App. 2011). A constructive trust

prevents a defendant from being unjustly enriched and may attach to property that in equity and good conscience does not belong to the constructive trustee. *Mt. Sneffels Co. v. Est of Scott*, 789 P.2d 464, 466 (Colo. App. 1989).

The Galvin claim for unjust enrichment and creation of a constructive trust fails because any purported benefits received through the purchase of the magnetite was not at GIC's expense.[13] CV Investments did not enter into a contract with SMG or purchase any magnetite until *after* SMG terminated its contract with GIC due to GIC's failure to obtain the necessary letter of credit. (Count., ¶¶ 10-11). GIC did not pay one penny for the magnetite; thus, the purchase was not at its expense.

Further, in reality, the Receivership Parties received no benefit or profits from the purchase of magnetite from SMG. All the Receivership Estate has been left with as a result of these dealings is (a) a creditor claim from SMG for nearly $22 million discussed in Section II(B) *infra* in connection with CV Investments' alleged breach of its own Magnetite Concentrates Purchase and Sale Agreement with SMG; (b) a lawsuit the Receiver was prosecuting against Larry Hooper and Hooper Ranch in connection with their conversion and sale of the magnetite which had been stored at Hooper Ranch in the matter captioned *Kevin Dooley Kent, in his*

[13] "A person confers a benefit by giving the adverse party the possession of, or an interest in personal property by adding to the property of the adverse party or by saving the adverse party expense or loss." *Dove Valley Bus. Park. Assocs., Ltd. v. Bd. of Cty. Commissioners of Arapahoe Cty.*, 945 P.2d 395, 403 (Colo. 1997).

capacity as Receiver v. Larry Hooper, et al., No. 2:22-cv-01876 (D.N.J.), which has since settled with the Court's approval for an amount less than the price Smith paid for the magnetite; and (c) losses totaling several millions of dollars for the purchase, transfer, storage and loss of the magnetite. To the extent GIC seeks to recover benefits the Receivership Parties obtained as a result of Smith's dealings with SMG, there were none.

c. The Promissory Estoppel Claim Fails

A promissory estoppel claim requires proof of the following elements: (1) the promisor made a promise to the promisee; (2) the promisor should reasonably have expected that promise would induce action or forbearance by the promisee; (3) the promisee in fact reasonably relied on the promise to the promisee's detriment; and (4) the promise must be enforced to prevent injustice. *Centennial–Aspen II Ltd. Partnership v. City of Aspen*, 852 F.Supp. 1486 (D.Colo.1994). The Galvin claim for promissory estoppel fails for two reasons in addition to those enumerated above.

First, Galvin cannot show reasonable reliance upon Smith's purported promise to "put up the letter of credit required." (Count., ¶ 24). GIC's contract with SMG required that the letter of credit be issued by a "major US banking institution." (Count., ¶ 22). Neither Brenda Smith nor her entities qualify as a

major US banking institution; therefore, they were not qualified to post the letter of credit pursuant to the express terms of the contract. Galvin knew this.

Second, Galvin cannot show that any reliance upon Smith's purported promise was the cause of GIC's alleged injuries. Galvin claims GIC relied upon Smith's purported promise in two ways: (1) by entering into a contract with SMG, and (2) by not seeking to obtain an alternative source for the letter of credit. (Count., ¶ 42). GIC's entering into a contract with SMG did not cause its harm because it was released from any obligation thereunder after it failed to obtain a letter of credit. And the claim that GIC did not seek an alternative source for the letter of credit is false. Galvin's claim submission reveals that Galvin attempted to secure a letter of credit from at least two (2) other individuals or entities prior to the expiration of the extended deadline for producing a letter of credit, and was unable to do so. *See* Ex. "A". Causation is entirely lacking.

d. The Fraud Claim Fails

Fraud claims require proof that the defendant made a false representation of a material fact, knowing that representation to be false; that the person to whom the representation was made was ignorant of the falsity; that the representation was made with the intention that it be acted upon; and, that the reliance resulted in damage to the plaintiff." *Coors v. Sec. Life of Denver Ins. Co.*, 112 P.3d 59, 66 (Colo. 2005). Further, the reliance on the representation must be justifiable. *Nelson*

v. Gas Research Inst., 121 P.3d 340, 344 (Colo. App. 2005). "Fraud requires more than the mere nonperformance of a promise or the failure to fulfill an agreement to do something at a future time. *State Bank v. States,* 723 P.2d 159, 160 (Colo. App. 1986). Unless the speaker making the representations deliberately falsified his or her intention to induce reliance, statements of future events are not actionable. *See Brody v. Bock*, 897 P.2d 769, 776 (Colo.1995). Promises concerning a future act can only be actionable where there is proof that the defendant had the present intention not to fulfill the promise. *Stalos v. Booras,* 528 P.2d 254, 256 (Colo. App. 1974); *see Kinsey v. Preeson,* 746 P.2d 542 (Colo.1987).

While Galvin/GIC make the barebones assertion that "[a]t the time Ms. Smith made the misrepresentation, she did not intend to fulfill such promise; thus she misrepresented her intentions", there is no evidence to support this. (Count., ¶ 33). In fact, this assertion is belied by e-mails Brenda Smith sent to PNC Bank in which she did, in fact, attempt to get PNC to issue the line of credit on GIC's behalf. Copies of select e-mails are attached hereto as Exhibit "C". Therefore, there is no proof that Ms. Smith misrepresented her intentions at the time the alleged promise was made; on the contrary, the evidence suggests Smith did intend and attempt to secure a letter of credit from PNC even after that date.

Galvin's fraud claim also fails for the same reasons as the promissory estoppel claim – there is no evidence of justifiable reliance or causation, where

Galvin attempted to secure a letter of credit from other sources and was unable to do so. *See* Ex. "A".

e. Tortious Interference Claims

The tort of intentional interference with contract is premised on the existence of a contract between a plaintiff and a third party. *Colorado Nat. Bank of Denver v. Friedman*¸846 P.2d 159, 170 (Colo. 1993). Here, Galvin alleges that Smith's failure to post the letter of credit resulted in GIC's inability to perform. (Count., ¶ 28). The Supreme Court of Colorado addressed the theory of intentional interference with another's performance of his own contract in *Westfield Devt. Co. v. Rifle Inv. Assocs.*, 786 P.2d 1112 (Colo. 1990). There, the Court applied Section 766A of the Restatement (Second) of Torts, which provides:

> One who *intentionally* and *improperly* interferes with the performance of a contract (except a contract to marry) between another and a third person, by preventing the other from performing the contract or causing his performance to be more expensive or burdensome, is subject to liability to the other for the pecuniary loss resulting to him.

Westfield, 786 P.2d at 1117 (citing R2d Torts § 766A).

In order to hold CV Investments liable for tortious interference, Galvin must prove that CV Investments: (1) was aware of the contract between GIC and SMG; (2) that CV Investments intended for GIC to breach the contract; and (3) that CV Investments in fact did induce GIC to breach the contract, or made it impossible for GIC to perform. *Krystkowiak v. W.O. Brisben Cos., Inc.*, 90 P.3d 859, 871

(Colo. 2004). Further, Galvin must prove that the conduct was both intentional and improper in order for liability to attach. *Westfield*, 786 P.2d at 1117-18. "Generally, tortious interference with contractual rights must involve a wrongful act or a legal act performed in an unlawful manner." *Omedelena v. Denver Options, Inc.*, 60 P.3d 717, 721 (Colo. App. 2002) (citing *Int'l Ass'n of Machinists v. Southard*, 459 P.2d 570 (Colo. 1969)).

Determining whether a person acts "improperly" in interfering with a contract depends upon consideration of the following factors: (1) the nature of the person's conduct, (2) the motive, (3) the interests of the other party with which the conduct interferes, (4) the interests sought to be advanced by the person, (5) the social interests in protecting the person's freedom to act as well as the other's contractual interests, (6) the proximity or remoteness of the conduct to the interference, and (7) the relationship between the parties. *Id*. at 1117-18; *W.O. Brisben Cos., Inc. v. Krystkowiak*, 66 P.3d 133, 136-37 (Colo. App. 2002). Further, in the agency context, the analysis focuses on whether the agent acted, at least partly, to serve the corporation's interest or whether the agent was motivated out of personal animus to one or both of the contracting parties. *Krystkowiak*, 66 P.3d at 137. "[A]n agent acts improperly only when he or she is motivated solely by the desire to harm one of the contracting parties or to interfere in the contractual

relations between the parties." *Id.* No liability can attach where the actor had the right to engage in the act complained of. *Omedelena*, 60 P.3d at 721.

Galvin's tortious interference claim fails for multiple reasons. First, it is premised upon *Smith's* alleged failure to post the letter of credit, rather than a failure of CV Investments (against whom the claim is asserted). Second, the purported promise to provide the letter of credit was not even enforceable due to the statute of frauds; therefore, Smith had the legal right not to perform. Third, the failure to post the letter of credit was not motivated solely by a desire to harm or interfere with a contractual relationship. In reality, Smith had a legitimate business interest in *not* providing, extending or financing a letter of credit that exposed her and the Receivership Parties to extremely significant financial risk. The $100,000.00 standby letter of credit required by GIC's contract with SMG would have authorized SMG to draw against it *each and every time* GIC failed to pay any invoice in full. *See* Ex. "A"; (Count., ¶ 22) ("Prior to commencement of this Agreement, but not greater than seven days from the 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 <u>any</u> invoice** in full) (emphasis added). Fourth, rather than a failure to post the letter of credit being wrongful or illegal, the posting of the letter of credit and diversion of additional

Receivership Assets in connection therewith would have resulted in additional violations of applicable fraudulent transfer laws. Finally, Smith/CV Investments did not induce GIC to breach the contract or make it impossible for GIC to perform, where GIC in fact tried, and failed, to secure a letter of credit from at least two (2) others. That GIC could not obtain financial backing for this purportedly lucrative business venture is not the fault of CV Investments, and CV Investments did not cause GIC's alleged harm.

4. The Claims Are Factually Untenable

As referenced above, neither Smith nor any of the Receivership Parties are a major US banking institution. They were simply not qualified to post the letter of credit as Smith purportedly promised. (Count., ¶ 22). Additionally, Galvin/GIC attempted to secure other sources for the letter of credit before SMG terminated the contract, but were unable to do so. *See* Ex. "A". And CV Investments did not obtain a contract until after GIC's contract with SMG was already terminated and GIC no longer possessed the right to purchase the magnetite. (Count., ¶¶ 9-10, 25-26, 28). Additionally, Brenda Smith ultimately bought under 50,000 tons of the 400,000 tons of magnetite set aside for CV Investments pursuant to its contract with SMG. (Count., ¶¶ 54-55). That left 350,000 tons of available magnetite which Galvin/GIC could have separately pursued had they been able to locate an

alternative funding source. For all these reasons, the elements of causation and damages cannot be satisfied on any of the GIC claims.

5. The Claims are Highly Speculative and Unsubstantiated

While the damages sought in the counterclaims of "no less than $50 million" would swallow up the current assets in the Receivership Estate six times over, Galvin/GIC purposefully understate their damages to mask the pure absurdity of their claim. According to the Galvin claim, GIC was going to purchase 350,000 tons of magnetite concentrates, at a price of $80 per ton. (Count., ¶¶ 7, 20, 21). Galvin/GIC assert that the gross value of the precious metals to be realized from the extraction of the material is $330,000.00 per U.S. short ton. (Count., ¶ 12). For 350,000 tons, that amounts to a gross value of $115,500,000,000.00. It is surprising that Defendants could not find another source for a letter of credit for such a purportedly lucrative business opportunity, and that their only hope for obtaining this letter of credit was from Brenda Smith.[14]

However, even if the letter of credit had been obtained, it is apparent that Defendants did not have the billions of dollars in capital necessary to purchase,

[14] This begs a rather obvious question – if Galvin was really capable of converting $80 of ore into $330,000 of precious metals, why didn't he simply purchase three tons of ore for $240, extract $990,000 from it, and then scale his operations from there?

transport, store and process the magnetite in order to realize these highly speculative profits.

Pursuant to GIC's contract with SMG, had it been able to secure a letter of credit, GIC would have been obligated to purchase a minimum of 2,000 tons of magnetite per month from commencement, at a price of $80.00 per ton for the first 200,000 tons purchased, for a minimum of $160,000.00 per month. The purchase of all 350,000 tons of magnetite—the final 150,000 tons at a price of $75.00 per ton—would have cost $27,250,000.00. *See* GIC's SMG Contract, attached to Exhibit "A". And the cost for processing, estimated on the low end at $35,000.00 per ton, would have been $12,250,000,000.00.[15] There also would have been significant costs involved in storing and transporting the magnetite. It defies logic that Galvin and his entities would have been able come up with the funds necessary to purchase, transport, process/extract and store the magnetite, all of which were required to realize any profits, when they were unable to satisfy much smaller debts and obligations and relied upon Brenda Smith/the Receivership Parties to help fund their various business operations, as alleged in the Receiver's Complaint against them.

In their supplemental claim submission, Galvin/GIC submitted a few documents regarding purported financing available through Cornerstone Private

[15] *See* Declaration of Richard Mittasch, attached hereto as Exhibit "D".

Capital Group ("Cornerstone"), a purported Bahamian entity. *See* Ex. "B". However, none of those documents specifically reference the magnetite project, or indicate that the use of funds for that particular project had been approved. Further, on March 29, 2017, the Securities Commission of the Bahamas issued a public notice regarding Cornerstone, advising that neither the company, nor its agents or consultants, were registrants of the Securities Commission of the Bahamas, and, to the extent they were holding themselves out as a bona fide entity operating in or from the Bahamas, they were committing an offense and liable for criminal prosecution and/or regulatory sanctions under Bahamas law. The Securities Commission strongly urged individuals and/or companies conducting business with Cornerstone "to exercise the utmost caution and to conduct full and proper due diligence before engaging in transactions" with the entity, its agents and consultants. *See* https://www.scb.gov.bs/wp-content/uploads/2019/02/Public-Notice-Cornerstone-Private-Capital-Group-Ltd-final-pdf.pdf. Further, while the e-mail address for Cornerstone was identified as info@cornerstonepcg.com, the website for domain name cornerstonepcg.com has been associated with a church located in Cleburne, Texas since at least 2004. *See* https://www.cornerstonepcg.com/ and https://web.archive.org/web/20040324193449/http://cornerstonepcg.com/.

Additionally, in exchange for the financing, Galvin was required to post $1.2 billion worth of collateral, consisting of "barrels" allegedly worth $975 million and cash security in the form of a $225 million bond, and any indications of a default risk could result in immediate seizure of the collateral as well as all outstanding projects borrowed funds were used to finance.

Finally, although GIC was going to be obligated to purchase 2,000 tons of magnetite per month, the Texas facility he was planning to rent which could allegedly process the magnetite could only process approximately 1 ton per day, or at most 22 tons ***per month***, if it ran continuously, 24-hours per day, five days per week. *See* Ex. "D". If Galvin had succeeded in purchasing the 350,000 tons of magnetite ore, it would have taken him well over 1,000 years to process based on the experimental capabilities in place at the time.

All of these factors demonstrate that the Galvin claims are highly speculative and should not be recognized or accepted by this Court.

6. The Galvin Claims Attempt to Require the Receivership Estate to Answer for Brenda Smith's Personal Liabilities

Over three (3) years ago, GIC filed a lawsuit containing the same claims against Brenda Smith personally in the United States District Court for the District of Colorado, styled *Galvin Investment Company, LLC v. Smith*, No. 1:19-cv-

00796-RBJ (D. Colo.) ("GIC v. Smith Action").[16] Smith was the only named defendant in that case. Galvin and GIC's admissions and sworn statements in that case assert that the alleged tortious conduct giving rise to these claims was the conduct of Smith personally on her own behalf, rather than that of her entities. Even with regard to the contract Smith entered into with SMG in the name of CV Investments, GIC alleged that Ms. Smith acquired the contract in the name of an entity that "serves only as her nominee" and that she acquired the magnetite for "her own use and benefit". (GIC v. Smith Action, ECF No. 1, ¶¶ 78-79).

Defendants are now attempting to seek redress for Brenda Smith's personal liabilities by asserting claims against the Receivership Estate. But Brenda Smith is not a Receivership Party. The Receiver has not been appointed as Receiver for Ms. Smith in her personal capacity, and is not authorized to address claims for her personal liabilities. The Galvin claims should be denied for this additional reason.

7. For Policy Reasons, the Galvin Claims Should be Denied

Galvin and GIC were not entitled to receive the benefit of funds fraudulently transferred by the Receivership Parties. Richard Galvin was the sole member of GIC, so the extension of the letter of credit, and any payments in connection therewith, would not have provided reasonably equivalent value to Brenda Smith

[16] The GIC v. Smith Action was dismissed because the Court found it could not exercise personal jurisdiction over Brenda Smith. (GIC v. Smith Action, ECF No. 40).

or the Receivership Parties. Further, any payments under the letter of credit made with Receivership Assets would have been inconsistent with the trading strategies Broad Reach investors had authorized Smith to pursue with their money and therefore made with an intent to defraud Broad Reach's investors. Had the letter of credit been extended, and any payments made thereunder, the Receiver would be seeking to recoup such payments as fraudulent and voidable transfers. Even payments made in accordance with an agreement between the parties can be fraudulent and voidable. *See, e.g.*, *In re EBC I, Inc.*, 356 B.R. 631, 640 (Bankr. D. Del. 2006) ("A transfer may be fraudulent even if it is made in accordance with the terms of a contract between the parties") (citing *In re R.M.L., Inc.*, 92 F.3d 139, 148 (3d Cir. 1996)). Accordingly, the Receivership Estate should not be bound by, or liable for, Smith's purported promise to provide the letter of credit.

Additionally, for the reasons set forth in Section II (B)(3) *infra*, equity requires that the highly speculative Galvin claims be denied in their entirety because they primarily seek to recover lost profits, rather than actual out-of-pocket losses, which places Galvin and GIC on significantly different footing than investors and Non-Investor Creditors.

B. Southern Minerals Group

SMG has submitted a trade creditor claim for $21,929,259.00. A copy of SMG's claim submission is attached hereto as Exhibit "E". SMG's claim is based

on an alleged breach of contract in which Brenda Smith, acting on behalf of CV Investments, agreed to purchase 400,000 tons of magnetite ore from SMG, to be delivered in 4,000-ton monthly shipments. Smith paid for and took delivery of approximately 38,000 tons of Magnetite before she stopped ordering further deliveries. Smith paid more than $3.9 million to SMG for the ore she received, which was sufficient to cover 49,000 tons of ore, despite the fact she received only 38,000 tons.[17] As a result, Smith caused CV Investments to pay $900,000 to SMG for ore that was never delivered, an obvious benefit to SMG. SMG is not asserting a claim for any material or services it provided that were not paid for (because there were none), and has not identified any out-of-pocket losses it suffered in connection with the transactions at issue. Rather, SMG's claim is based on Brenda Smith's breach of her agreement to purchase an additional 351,000 – 362,000 tons of ore, and the profit SMG would have otherwise earned if Smith completed this purchase. For the reasons described in greater detail below, the Receiver fundamentally disagrees that this claims procedure is intended to recognize claims for lost-profits, particularly where those profits would have been earned on transactions that were being funded with money stolen from investors.

[17] *See* Receiver's May 28, 2021 letter filed in the above-referenced matter (ECF No. 90)

1. The Transaction at Issue

The SMG transaction is a prime example of one of the ways Brenda Smith carelessly spent her investors' money on bizarre business prospects that defy rational explanation. On April 7, 2017, Smith entered into a purchase and sale agreement ("PSA") with SMG on behalf of CV Investments. Pursuant to the PSA, Smith agreed to purchase 400,000 tons of magnetite ore in 4,000 monthly increments at a price of $80 per ton, beginning in June 2017. Smith was apparently taken in by individuals who claimed to have a process that could extract gold, platinum, and other rare-earth minerals from magnetite ore. While the technology was commercially unproven, Smith decided to divert millions in investor funds toward the purchase of a massive amount of ore from SMG that would have required a huge industrial operation to process.[18] Some context to illustrate the absurdity of the transaction is helpful:

- According to SMG's principal, Clovis Hooper, Smith had agreed to purchase half of all the ore SMG could access through its New Mexico mining operations, an amount that otherwise would have taken SMG 20 years to sell. A copy of the Verified Statement of Clovis Hooper is attached hereto as Exhibit "F". *See* Ex. "F", p. 5 ("SMG will likely have to extend its operating period over 20 years to sell the same volume of magnetite concentrate").

- SMG and CV Investments contracted with Runyan Construction to haul the magnetite using semi-trailer trucks which were capable of

[18] The diversion of Investor funds for this purpose was completely at odds with the stated purpose of Broad Reach Capital, which was intended to pursue securities trading strategies that Smith alleged she was uniquely situated to execute.

> carrying 20-22 tons at a time. In other words, it would have taken **20,000** "big rig" semi-trailer trucks to haul and deliver the full 400,000 tons of ore that Smith agreed to purchase from SMG.

When Smith agreed to purchase this massive amount of ore, she had no place to store it, let alone an operation that could process it within any human time-scale.[19] Because Smith never identified a place to deliver the ore she purchased, SMG began shipping truckloads of ore to a ranch owned by Clovis Hooper's parents, where it continued to build up and—according to his father—caused environmental damage. After delivering approximately 38,000 tons of magnetite to the Hooper Ranch, in 2018 Smith began to fall behind in payments for future deliveries. As a result, Smith and SMG agreed to suspend deliveries for a year to allow Smith time to make quarterly payments to SMG, which payments were intended to build up a "security deposit against future sales" before SMG would resume deliveries in 2019. (Ex. "F", Hooper Statement at pg. 3). Smith made a number of payments, which cleared up all arears for prior deliveries and began to build up the security deposit for future purchases. The Receiver believes this agreement explains the $900,000 paid to SMG for ore that was never delivered. Smith stopped making the quarterly security payments as of October 2018. (*Id*.)

[19] Had Smith utilized the Texas facility Richard Galvin was considering, it would have taken her well over 1,000 years to process the 400,000 tons of magnetite ore based on the experimental capabilities purportedly in place at the time. *See* Ex. "D".

According to SMG, CV Investments was obligated to resume its purchases in March of 2019, and was required under an amended PSA to pay $3,840,000 for monthly deliveries of ore over the following 12 months. Smith did not resume her purchases as of March 2019 and ultimately stopped communicating with SMG. As a result, SMG did not deliver any additional ore to Smith / CV Investments. There is no dispute that SMG has been paid for all the magnetite ore that it did deliver.

2. The Arbitration Award

Before this Court's order establishing the Receivership and issuing a stay of all litigation against Receivership Entities, SMG initiated an arbitration on September 20, 2019 asserting a breach of contract claim against CV Investments. The arbitration was conducted through the American Arbitration Association (AAA) pursuant to the arbitration provisions within SMG's contract with CV Investments. When SMG initiated the arbitration, Smith had already been arrested, indicted for Securities Fraud, and was simultaneously named as a defendant in the above-captioned SEC civil enforcement action. Smith submitted a handwritten letter from prison to the arbitrator requesting a stay, which was denied. SMG issued requests for admission to Smith, who did not respond. As a result, all requests for admission propounded by SMG were deemed admitted by the arbitrator. Based upon those deemed admissions, the arbitrator issued an award to SMG on May 29, 2020, awarding $21,929,259 plus 15% pre-judgement and post-

judgment interest. The award includes the following components: (1) $4,215,000 in "liquidated damages"[20]; (2) $14,090599 in "lost profits"; (3) $3,600,000 in punitive damages; and (4) $23,660 in arbitration costs. SMG's arbitration award is attached hereto as Exhibit "G". SMG did not have this award confirmed in court and reduced to a judgment prior to the June 29, 2020 Receivership Order which stayed all litigation against Receivership Entities.[21]

3. SMG's Claim is Inequitable to Creditors with Actual Losses

Brenda Smith and CV Investments paid SMG for all the magnetite ore that was actually delivered. Additionally, to protect itself when Smith stopped accepting deliveries, SMG required CV Investments to pay significant amounts in advance of any further purchases. Brenda Smith caused CV Investments to pay more than $900,000 to SMG to secure future purchases, which purchases never occurred. Accordingly, SMG realized an almost $1 million windfall for ore it was never required to deliver. Moreover, SMG has not submitted anything to the Receiver indicating that it suffered out-of-pocket costs with respect to the

[20] This was not pursuant to a "liquidated damages" provision in SMG's contract. Rather, this amount represents the fixed sum Brenda Smith would have paid to SMG for the delivery of magnetite ore she was required to take (but did not) between March 2019 and February 2020.

[21] After his appointment SMG did inquire of the Receiver whether he would consent to a motion by SMG to lift the stay for the limited purpose of confirming its award in court. The Receiver advised SMG that he would oppose such a request.

magnetite ore that CV Investments did not purchase. Except for the nominal costs of the arbitration itself, SMG's claim is based exclusively on a "lost profits" damages analysis. There is no dispute that SMG still has access to the ore Brenda Smith did not purchase and the ability to sell it to other customers—however it will likely never find a purchaser willing to purchase the outlandish amount Brenda Smith agreed to purchase (with other people's money) and for such a high price, other than Richard Galvin.[22]

SMG's arbitration award was obtained without opposition and was largely predicated on deemed admissions based on Smith's failure to respond to SMG's Statement of Claim and to discovery requests served while Smith was incarcerated. The arbitrator did so, despite Brenda Smith submitting a *pro se* letter requesting a stay because of her ongoing criminal prosecution. The arbitrator denied that request on the basis that Smith's request for stay was "indeterminate" and that even without access to company records, "there was no suggestion that Smith lacked sufficient knowledge to participate." The Receiver believes this decision was made with a manifest disregard of the law given that the arbitrator did not analyze any of the relevant factors required to address a request for stay pending criminal

[22] Documents submitted by SMG in the arbitration confirmed that Smith had agreed to pay a higher price for its ore than other customers, with the exception of Richard Galvin/GIC. In fact, it seems that if SMG and Richard Galvin just agree to enter into another contract for GIC's purchase of magnetite concentrates at the price they agreed to in 2017, this would eliminate both of their claims entirely.

proceedings of a criminal defendant. *See In re Adelphia Commc'ns Sec. Litig.*, 2003 WL 22358819, at *3 (E.D. Pa. May 13, 2003); *Keesee v. Dougherty*, 230 A.3d 1128, 1133 (Pa. Super. 2020) (adopting same).

Had a stay been issued in the arbitration, the matter would not have resulted in the entry of an award predicated on the deemed admissions of Brenda Smith. While SMG's claim could still be submitted in this claims process, it would need to be established on its own merits and without reliance on an unopposed arbitration award. Regardless, because the award has not been confirmed, the Receiver does not believe it is entitled to preclusive effect in the Receivership claims process. *McDonald v. City of W. Branch, Mich.*, 466 U.S. 284, 292 (1984) (finding that res judicata and collateral estoppel do not apply to an unconfirmed arbitration award in a § 1983 action, noting that "arbitral factfinding is generally not equivalent to judicial factfinding."); *N.L.R.B. v. Yellow Freight Sys., Inc.*, 930 F.2d 316, 319 (3d Cir. 1991) (Reasoning that "Section 1738 [Full Faith and Credit] does not by its terms apply to the findings of an arbitrator" and that a different analysis applies "[w]hen a state court has affirmed an arbitration award… because then the issue is the preclusive effect to be given to a state court judgment.")

Given the circumstances in which the award was entered and the nature of the relief awarded, the Receiver does not believe SMG has established a valid claim. The Receivership claims process is an equitable proceeding. The fact that

SMG's claim is one for lost profits places SMG on a different footing than other creditors who are seeking to recover actual out-of-pocket losses. For example, the Receiver would not accept claims from investors seeking profits supposedly earned on their principal investments, and the Receiver has consistently demanded net winner investors to return profits earned on their principal investments.[23] The Receiver believes that equity requires the same approach here.

It is true that SMG's claim seeks the classic measure of contract damages, asking the Receiver to place it in the position it would have been in if Brenda Smith and CV Investments fully complied with their contract to purchase 400,000 tons of SMG's magnetite ore.[24] However, doing so ignores the context of the transaction and the purpose of the Receivership. Brenda Smith stole the money from her investors that she used to purchase magnetite ore from SMG. While that is not SMG's fault, SMG suffered no actual losses and was paid for all the magnetite it supplied plus nearly $1 million more. As a result, SMG is in a far better position than other trade creditors who were not paid for their labor, or investor creditors who invested with Smith and lost everything. Recognizing a claim that is inherently predicated on placing SMG in the position of profiting

[23] With regard to Trade Creditors, examples of out-of-pocket claims that the Receiver has accepted include service providers who performed services but were not paid for their work.

[24] In fact, SMG is seeking to be put in a better position as its award provides for punitive damages and interest, and also allows it to keep the magnetite.

from Smith's fraudulent conduct (and earning profits that by SMG's own calculations would have otherwise taken SMG 20 years to realize) is not equitable under the circumstances.

Moreover, the Receiver also does not agree that it is appropriate to include interest and punitive damages in a receivership claim, which were both included in SMG's arbitration award. No other creditor is entitled to interest on amounts owed and the Receiver does not believe that SMG's arbitration award requires a different approach. Similarly, punitive damages are entirely inappropriate for a receivership claim since by definition they are a windfall intended to punish a wrongdoer. No creditor of the Receivership is entitled to a windfall, and here the "punishment" would be visited upon the victims of Brenda Smith's fraud and paid from assets that would otherwise be available for distribution to victims. Accordingly, the Receiver recommends that the Court reject SMG's claim so that the Receiver's assets may be used to repay victims that suffered actual losses as opposed to alleged lost opportunities to profit.

C. William McCormack[25]

William McCormack was employed as a securities trader by Brenda Smith and CV Brokerage. Mr. McCormack submitted a claim seeking $560,063.50 in legal fees alleging a right of common law indemnification in connection with various legal proceedings. Mr. McCormack also submitted a claim for $776,244.45 for allegedly unpaid commissions earned on his trading activity with CV Brokerage. A copy of William McCormack's initial claim submission is attached hereto as Exhibit "H".[26] A copy of William McCormack's supplemental claim submission is attached hereto as Exhibit "I". The Receiver recommends that the Court reject both claims and will address each separately below.

1. Mr. McCormack's Claim for Common Law Indemnification Should be Denied

Mr. McCormack seeks common law indemnification from the Receiver and has submitted legal invoices related several matters identified as: (1) "Surefire

[25] Mr. McCormack passed away on February 16, 2023. His counsel filed a Notice of Suggestion of Death of Estate Creditor on February 24, 2023. (ECF No. 231). In the Suggestion of Death, his counsel indicated that they were in the process of ascertaining the identity of those administering Mr. McCormack's personal estate. *Id.* Accordingly, it is presently unclear whether these claims will be pursued by Mr. McCormack's estate.

[26] Mr. McCormack's original claim submission included several pages of attachments consisting of legal invoices with all time designations redacted, which the Receiver has excluded from this exhibit.

litigation[27]"; (2) McCormack v. Eric Seeley Arbitration ("Seeley Arbitration"); (3) "FINRA Investigation"; (4) "PA Litigation"; (5) "SEC and DOJ Matters"; (6) "FINRA Arbitration"; and (7) "White Collar Defense." Except for the "Surefire litigation" and the "Seeley Arbitration," Mr. McCormack provided very little detail concerning the nature of these matters.

It is undisputed that Mr. McCormack had no employment agreement with CV Brokerage or any other Receivership Party. A right of indemnification arises under Pennsylvania law in limited circumstances: either by contract, or by operation of common law. Mr. McCormack has not submitted an employment contract or any other agreement that would entitle him to indemnification for legal fees incurred in connection with any litigation related to his employment with CV Brokerage. Accordingly, the Receiver understands Mr. McCormack to be submitting a claim based on a common law indemnification theory. Mr. McCormack was employed in Pennsylvania to trade securities on the Philadelphia Stock Exchange. Accordingly, the Receiver believes Pennsylvania law applies to his claim. In *Builders Supply Co. v. McCabe*, 77 A.2d 368 (Pa. 1951), the leading

[27] The Receiver is familiar with this litigation because he has intervened in the lawsuit initiated by Surefire Dividend Capture in federal court for the Eastern District of Pennsylvania. That case is captioned *Surefire Dividend Capture, LP v. Brenda Smith, et al.*, Civ No. 19-cv-04088-BMS (EDPA).

case in Pennsylvania on common law indemnity, the Pennsylvania Supreme Court explained the right of common law indemnification as follows:

> The right of indemnity rests upon the difference between the primary and the secondary liability of two persons each of whom is made responsible by the law to an injured party. **It is a right that inures to a person who, without active fault on his own part, has been compelled, by reason of some legal obligation, to pay damages occasioned by the initial negligence of another**, and for which he himself is only secondarily liable.

Builders Supply Co., 77 A.2d at 370 (bold added); *see also Eastern Elec. Corp. of N.J. v. Rumsey Elec. Co.*, 2010 WL 2788294, at *1 (E.D. Pa. July 14, 2010) ("Under Pennsylvania law, indemnity is available only in the following circumstances: (1) where primary versus secondary or vicarious liability is present or (2) where there is an express contract to indemnify."). The law in New Jersey similarly requires the employee seeking common law indemnification to be without fault with respect to the alleged injury. *Ramos v. Browning Ferris Indus. of S. Jersey, Inc.*, 510 A.2d 1152, 1159 (N.J. 1986) ("to be entitled to indemnification as one who is secondarily or vicariously liable, a party must be without fault."); *Cartel Cap. Corp. v. Fireco of New Jersey*, 410 A.2d 674, 683 (N.J. 1980) ("It is

settled that indemnity may not ordinarily be obtained by a party who has been at fault."). [28]

By its very definition, common law indemnification applies to "damages" that someone is obligated to pay solely because of a legal relationship with another. In other words, it covers ***judgments*** that a defendant may be obligated to pay solely because of his/her legal relationship with another. Common law indemnification does not apply to attorney fees incurred in defense of a claim, which is what Mr. McCormack is seeking. And even if common law indemnification could be extended to cover attorney fees (it cannot), it certainly does not apply to claims where the purported indemnitee (here, Mr. McCormack) is alleged to have been at fault. The Receiver is not aware of any litigation in which Mr. McCormack is alleged to have been only secondarily or vicariously liable for the actions of his employer, CV Brokerage, and where he was otherwise

[28] The claim form submitted by Mr. McCormack references a right of indemnification under Michigan law, presumably because CV Brokerage is incorporated there. Because none of the conduct or transactions giving rise to Mr. McCormack's indemnity claim occurred in Michigan, the Receiver does not agree that Michigan law is applicable to his claim. But even if the indemnity claim was governed by Michigan law, the result would be the same because Michigan law is consistent with both Pennsylvania and New Jersey in requiring the person seeking indemnity to be without fault. *See Botsford Continuing Care Corp. v. Intelistaf Healthcare, Inc.*, 807 N.W.2d 354, 361 (Mich. Ct. App. 2011) ("It has long been held in Michigan that the party seeking [common law] indemnity must plead and prove freedom from personal fault. This has been frequently interpreted to mean that the party seeking indemnity must be free from active or causal negligence.")

without fault. The Receiver is also not aware of any legal theory that holds employees responsible for the actions of their employers if they otherwise did nothing wrong. While employers can be legally responsible and held vicariously liable for the conduct of their employees under the doctrine of *respondeat superior*, there is no doctrine that works in reverse. And the Receiver is not aware of any litigation in which a third party seeks to pierce the corporate veil or hold Mr. McCormack vicariously liable for the actions of his employer or Brenda Smith.

For example, "Surefire litigation" Plaintiff Surefire alleged that Mr. McCormack made knowingly false representations to induce its investment and that he is liable for his own conduct in assisting Brenda Smith with her fraudulent scheme. The Receiver is not aware of any theory under which common law indemnity would cover legal fees incurred by an employee alleged to have actively participated in a fraudulent scheme. Mr. McCormack has asserted that the claims asserted by Surefire are meritless and that he is being subjected to frivolous claims only because he worked for Brenda Smith. But common law indemnification does not create an obligation for an employer to cover an employee's legal expenses when the employee is alleged to have engaged in wrongdoing associated with his job. Nor is it an obligation that depends on the merits of the claim. It is a doctrine that creates a right where one is made liable to another as a matter of law, solely because of a legal relationship. Therefore, it is the Receiver's position that there is

no indemnification obligation arising from the Surefire litigation under any applicable law.

Mr. McCormack's request for indemnification in connection with the Seeley arbitration is even more tenuous. On April 15, 2021, *Mr. McCormack initiated a FINRA arbitration* against another former employee of CV Brokerage alleging that this employee stole Mr. McCormack's clients. The Receivership Parties were not parties to the proceeding — Mr. McCormack asserted purely personal claims against the Respondent. The FINRA arbitration panel determined that Mr. McCormack's claims were frivolous and ordered him to pay the legal fees of the Respondent. Simply stated, the Receiver has no legal obligation to insure Mr. McCormack against the adverse consequences of his own personal legal proceedings.

Finally, Mr. McCormack has provided no explanation for the legal fees related to the other five matters referenced on his legal invoices and no support for his request that his former employer reimburse him for those costs. Accordingly, the Receiver recommends the Court deny Mr. McCormack's creditor claim for legal fees.

2. Mr. McCormack's Claims for Unpaid Compensation Should be Denied

Mr. McCormack was the lead securities trader for CV Brokerage. Mr. McCormack concedes he had no written employment agreement and relies on an

alleged oral agreement with Brenda Smith in which he would be paid an 85/15 split on all commissions earned on his trading activity. Mr. McCormack originally submitted a claim for unpaid commissions in the amount of $260,000 with no supporting information, which the Receiver denied on the basis that the claim was unsupported. (*See* Ex. "H" - Original McCormack Claim). Mr. McCormack submitted a supplemental response asserting that he did not receive over $776,000 in commissions he was owed during a limited and specific time: April – October of 2017. In support of these claims, Mr. McCormack relies on an expert report, which in turn relies on an analysis of internal CV Brokerage spreadsheets as well as bank records obtained from the Receivership's document repository (*See* Ex. "I" - McCormack Supplemental Response). These documents purportedly demonstrate a pattern and practice of payments made to Mr. McCormack consistent with an 85/15 commission split. Mr. McCormack's expert appears to conclude that Mr. McCormack is owed all the money that was deposited into the Awootton Consulting, LLC bank account between May and October 2017, totaling $776,244.45.[29] Mr. McCormack's expert concludes that he is not aware of other payments made to Mr. McCormack during this time and that the Awooton deposits

[29] The Receiver previously filed a motion to determine ownership of the Awootton Consulting, LLC bank account, which contains additional background information on the history, funding sources, and uses of the account. (See ECF No. 180). This Court granted the Receiver's motion, determining that the funds contained in the account belong to the Receivership.

are reasonably consistent with internal CV Brokerage documents reflecting that Mr. McCormack was owed between $746,852 and $796,285 during the same time that the deposits were made.

As an initial matter, Mr. McCormack and his expert are simply incorrect that Mr. McCormack did not receive payments other than through Awootton Account deposits between April and October of 2017. From a review of bank records the Receiver's forensic accountant has identified $437,724,23 in payments from CV Brokerage directly to Mr. McCormack between April and October of 2017, and an additional $136,848.61 in November and December. (See Ex "J" - schedule of McCormack payments). The Receiver notes that it is unlikely that commissions would be earned and paid in the same month, and that it is therefore likely that at least some of the payments Mr. McCormack received in November and December of 2017 relate to the April – October time frame that he challenges. Moreover, Mr. McCormack's expert ignores that Mr. McCormack controlled the Awootton Account during the relevant time period, and that the Receiver has determined that Mr. McCormack directed the use of $267,044.95 from the account for personal and business expenses as well as ATM cash withdrawals. (*See* ECF No. 180 at pg. 3; ECF No. 180-4 (schedule of sources and uses of Awootton Account)). Totaling the direct payments made by CV Brokerage to Mr. McCormack together with Mr. McCormack's use of the Awooton Account, Mr. McCormack received more than

$841,000 in compensation from Brenda Smith / CV Brokerage during the time he claims to have received nothing.

Lastly, the Receiver notes that Mr. McCormack is claiming not to have been compensated for a 7-month period during 2017. Notably, Mr. McCormack continued working for CV Brokerage after this time up through (and after) Brenda Smith's arrest in August of 2019. The Receiver has not seen any correspondence or documents suggesting that Mr. McCormack had ever complained to Brenda Smith that he had not been paid in the nearly two years that he worked for CV Brokerage *after* the time-period for which he claims he was not compensated. Based on all the foregoing information, the Receiver recommends that the Court deny Mr. McCormack's claim for unpaid compensation as unsubstantiated.

D. Scott Koppenheffer

Scott Koppenheffer is another former employee of CV Brokerage who has been personally sued by Broad Reach investors. Mr. Koppenheffer makes a virtually identical claim as Mr. McCormack for common law indemnification in the amount of $141,052.56, which amount purportedly represents attorney fees incurred in defending the lawsuits brought against him. A copy of Mr. Koppenheffer's initial claim submission is attached hereto as Exhibit "K".[30] A

[30] Mr. Koppenheffer's original claim submission included several pages of attachments consisting of legal invoices with all time designations redacted, which the Receiver has excluded from this exhibit.

copy of Mr. Koppenheffer's supplemental response in support of his claim submission is attached hereto as Exhibit "L". Mr. Koppenheffer is not named in any judgments, nor has he been required to make payment in connection with a judgment entered against any third party associated with his employment with CV Brokerage. Mr. Koppenheffer is also not the subject of any lawsuits in which he is alleged to be without fault and solely responsible to another based on his legal relationship with CV Brokerage and/or Brenda Smith. For the reasons set forth in more detail in response to Mr. McCormack's indemnification claim in Section II (C)(1) *supra*, these facts preclude Mr. Koppenheffer's right to indemnification. The Receiver incorporates by reference the argument in response to Mr. McCormack's common law indemnification claim and requests the Court deny Mr. Koppenheffer's claim for all the same reasons.

E. Industrial and Commercial Bank of China Financial Services LLC

ICBCFS is asserting a claim in the amount of $1,429,174 based on an asserted right of indemnification that includes a right to recover defense costs in several matters, identified by ICBCFS as: (1) "Bydalek Claim"; (2) "Alpha Capital Claim"; (3) "SureFire Litigation"; and (4) "CV Brokerage Investigation."[31]

[31] ICBSFS' claim asserts that its "Liquidated Indemnity Claim" is based on legal fees incurred in defending the "CV Brokerage Related Actions" described in Exhibit B to its Claim Submission. However, the Receiver notes that included in the "liquidated" amount are fees incurred in an unidentified category described as

ICBCFS's claim further purports to reserve the right to increase its claim as it continues to incur attorney fees defending itself in the CV Brokerage Related Actions" or any new actions that may be filed. Finally, ICBCFS acknowledges that is currently maintaining $444,213.08 in two CV Brokerage accounts (hereafter "the Disputed Accounts") and claims that it maintains a first-priority security interest in the Disputed Accounts based on its setoff rights, which ICBCFS maintains it may exercise in partial satisfaction of its indemnification claim. A copy of ICBC's claim submission is attached hereto as Exhibit "M".

For the reasons that follow, the Receiver does not agree that ICBCFS has established a valid indemnification claim. The Receiver further disputes that ICBCFS may exercise a right of setoff against the Disputed Accounts even if its claim is deemed valid pursuant to the Claims Procedure. In the event the ICBCFS indemnification claim is deemed valid (it should not be), ICBCFS may not exercise setoff rights unless and until creditor priority is established as part of a Court-approved distribution process, which is not at issue in this Claims Procedure Motion to Resolve Disputed Claims.

"CV Brokerage Investigation" for which no description has been provided and which does not appear to flow from the defense costs of any particular case. While the Receiver rejects that a right to indemnification has been established with respect to any matter for the reasons described herein, the Receiver separately rejects the indemnification claim for $289,526.50 in connection with the "CV Brokerage Investigation" on the basis that no information has been provided to explain the nature of these costs.

As an initial matter, the Receiver cannot accept ICBCFS' open-ended claim for unknown future defense costs. ICBCFS purports to reserve the right to increase its claim in connection with existing and any potential litigation that may arise in the future. In this Court's February 22, 2022 Claims Procedure Order, the Court established a Claims Bar Date of April 25, 2022. The Court ordered that "All claims or demands against the Receivership that are not submitted to the Receiver on or before The Claims Bar Date shall be barred from recovery." (Feb. 22, 2022 Order at ¶ 2). The Claims Bar Date was established to finalize the total liabilities of the Receivership Estate so that the Receiver can recommend an orderly process for distributing the Estate's limited assets. As a practical matter, if claims are permitted to continue to accrue beyond the Claims Bar Date, the Receiver could never distribute the assets of the Receivership to creditors because he would need to maintain sufficient funds to cover future claims that may arise. Allowing new or supplemental claims to be submitted beyond the Claims Bar Date would frustrate a core purpose of the Receivership. Accordingly, the Receiver does not recommend that the Court allow ICBCFS to assert an "Unliquidated Indemnity Claim" for unspecified amounts that may continue to accrue for an indeterminate amount of time, potentially years into the future.

With respect to the "Liquidated Indemnity Claim," the Receiver does not believe that ICBCFS has established its right to indemnification in connection with

the "CV Brokerage Actions." In each of these actions ICBCFS is alleged to have engaged in intentional conduct that caused injury to the Plaintiff/Claimant, and that if proven would also demonstrate injuries to CV Brokerage. For example, the Surefire complaint asserts claims for aiding and abetting fraud and aiding and abetting breach of fiduciary duty based on allegations that ICBCFS was aware of, and turned a blind eye toward, voluminous and frequent suspicious transactions, and that in some instances ICBCFS personnel flagged particularly concerning transactions for Brenda Smith to help her avoid regulatory inquiries. Surefire also alleges that ICBCFS permitted Smith to transfer funds between accounts without proper documentation and in frequencies and amounts that constituted "red flag" transactions. Surefire alleges that ICBCFS obtained marketing material from Smith pursuant to its "know your customer" obligations that put it on notice that Broad Reach Capital's representations to its investors were inconsistent with the balances and trading activity within its brokerage accounts. Finally, Surefire alleges that ICBCFS failed to take necessary precautions to protect CV Brokerage assets from Smith when it was notified by one of Smith's clients that she was engaged in theft and fraud. The Bydalek[32] and Alpha Capital Claims allege similar conduct.

Under New York law, indemnification agreements are unenforceable to the extent the loss flows from the intentional conduct of the indemnitee. *See Gibbs-*

[32] Bydalek is in the process of dismissing his FINRA Action.

Alfano v. Burton, 281 F.3d 12, 21 (2d Cir. 2002) ("Indemnification agreements are unenforceable as violative of public policy only to the extent that they purport to indemnify a party for damages flowing from the intentional causation of injury.") (*citing Austro v. Niagara Mohawk Power Corp.*, 66 N.Y.2d 674, 676, 487 N.E.2d 267 (1985)). As a result, if any of the CV Brokerage Actions are successful in demonstrating ICBCFS aided and abetted Brenda Smith's fraudulent conduct, public policy would prohibit its right to seek indemnity from the Receivership. Given the uncertain status of the claims, the Receiver does not believe it would be equitable to accept a claim that may later be determined to violate public policy. At most, the Receiver should be required to recognize ICBCFS's liquidated claim as contingent, pending the outcome of the cases against it.

Finally, ICBCFS has asserted that it maintains a security interest in funds currently held in a Receivership account with ICBCFS. ICBCFS further claims that as a result of its security interest in the account, it may exercise a right of self-help to seize the account in partial satisfaction of its indemnity claim. The Receiver has advised ICBCFS that he has not yet recommended a distribution plan to the Court, which would necessarily include a recommended determination of creditor priority. Despite its purported security interest, there may be reasons that this Court would determine ICBCFS does not have priority over other creditors and may not seize the Receivership account that it maintains. But that is a question for another

day. To the extent this Court is inclined to recognize ICBCFS's liquidated claim (it should not), the Court should make clear that recognition of its claim does not grant ICBCFS the right to sweep the Receivership account it currently maintains to satisfy that claim.

F. CMCC Development Group, LLC

CMCC Development Group, LLC ("CMCC") has submitted a creditor claim seeking damages for breach of contract and for depreciated stock in connection with CV Investments' purported breach of a January 29, 2018 Letter of Intent. A copy of CMCC's creditor claim submission is attached hereto as Exhibit "N". CMCC seeks damages of $5,000,000.00 for CV Investments' purported breach, in addition to $500,000.00 in direct damages and $2,400,000.00 in consequential damages resulting from the alleged depreciated sale of stock following CV Investments' purported breach.

CMCC's claims arise from a tentative agreement between CMCC and CV Investments (referred to in the agreement as "CVI") for CMCC to assign, sell and transfer to CVI its right to purchase 75% of the outstanding shares of DataPlanet, N.V. for a price of $16,500,000.00 (the "Transaction"). The January 29, 2018 Letter of Intent ("LOI") provides that "CVI and CMCC *intend* to negotiate, execute and deliver a definitive agreement (the 'Definitive Agreement') with respect to the Transaction based on the preliminary terms set forth herein." LOI, ¶

1 (emphasis added). The LOI further states that CVI was *willing* to pursue a Transaction relating to the purchase of 75% of the outstanding DataPlanet shares. *Id.*, ¶¶ 1-2. Paragraph 5 of the LOI provides:

> As **compensation for consummating** a purchase of 75% of the outstanding shares of DataPlanet, **CVI shall pay CMCC** $5,000,000 (the "Consideration"). The Consideration shall be paid as follows**: $5,000,000 due upon closing of the purchase of the DataPlanet shares, less any payments made to CMCC prior to closing**. Payment of the Consideration is **expressly conditioned upon (i) CVI obtaining financing for the Transaction, (ii) negotiation of the Definitive Agreement or Purchase Agreement** and (iii) strict adherence to all terms set forth in this Letter of Intent by CMCC, its members and its principal, George Kearns. CVI Shall provide proof of funds within 30 days of the date of this Agreement. Notwithstanding the foregoing, CVI shall pay to CMCC the following: **(i) $75,000 upon execution of this Agreement, [(ii)] $175,000 upon [DataPlanet, N.V.'s parent company] United Telecommunication Services N.V.'s [("UTS")] acceptance of the assignment or a Purchase Agreement for the exclusive right to purchase 75% of the outstanding shares of DataPlanet for a purchase price of $16,500,000, and (iii) an additional $250,000 paid thirty (30) days thereafter**, provided however, ***in the event that CVI fails to obtain financing for the Transaction, or fails to close the Transaction, all monies paid to CMCC shall be applied to equity in CMCC on behalf of CVI at the rate of $250,000 per Unit***. In the event CVI closes the Transaction, all monies paid to CMCC shall be credited against the Consideration.

Id., ¶ 5 (emphasis added). Three things are clear from the language of the LOI: (1) CVI's purchase of 75% of the outstanding shares of DataPlanet was subject to contingencies, including the ability to obtain financing, and was therefore not guaranteed or required; (2) CMCC was only entitled to receive a total of $5,000,000.00 if the deal was consummated, and that amount was to be reduced by

payments already received; and (3) most significantly, CMCC was not entitled to any compensation if the deal did not close; instead, any and all payments CVI made to CMCC pursuant to the LOI were to be converted to equity in CMCC at the rate of $250,000.00 per unit.

The Receiver recommends that these claims be rejected in their entirety for the following reasons: (1) CV Investments was not required to close the transaction that would have resulted in the payment of $5,000,000.00 to CMCC; (2) there is no proof that UTS accepted the assignment, which was a necessary precursor to payment of the majority of interim payments due under the LOI; (3) any interim payments would have been converted to an equity interest for CVI in CMCC when the Transaction failed to close; (4) CMCC has failed to provide sufficient evidence in support of its claim for consequential damages; and (5) for the reasons set forth *supra* in Section II (B)(3), these are not the types of damages that should be recognized in an equitable proceeding such as this.

The Receiver notified CMCC of his position and set forth the above-referenced deficiencies in the claim by letter dated May 25, 2022, and provided CMCC with the opportunity to provide additional information in support of its claims by June 8, 2022. CMCC never responded or provided additional material in support. The Receiver therefore recommends that the Court reject CMCC's claims

in their entirety. The grounds for denial of these claims are discussed in further detail below.

1. $5,000,000.00 Claim for CVI's Purported Breach of the LOI

CMCC claims it is entitled $5,000,000.00 for CVI's purported breach of the LOI. However, this payment was never guaranteed. Under the express terms of the LOI, since financing was never obtained and the Transaction was never consummated, CMCC was never entitled to receive the $5,000,000.00. Further, this claim is duplicative of CMCC's $500,000.00 direct damage claim, because CMCC was only entitled to receive a **total** of $5,000,000.00 if the Transaction closed, which would have been reduced by the $500,000.00 in interim payments made under the LOI.

2. $500,000.00 Claim for Direct Damages Arising from CVI's Purported Breach of the LOI

At *most*, the obligations of CVI are limited to $500,000.00 under the LOI. However, while CMCC claims that UTS accepted the assignment, it has not provided any evidence or proof of UTS's purported acceptance, which was necessary to trigger $425,000.00 worth of CVI's obligations under the LOI. Since these payments were contingent on the acceptance of the assignment, they were not guaranteed. Further, any payments made under the LOI would have simply been converted to an equity interest in CMCC since the deal did not close, suggesting that, without such equity provided in exchange, there would have been no

consideration given for these payments. Accordingly, there is no basis for requiring the Receivership Estate to make these interim payments to CMCC.

3. $2,400,000.00 Claim for Consequential Damages Arising from CVI's Purported Breach of the LOI

CMCC claims that "[a]s a result of Ms. Smith's breach of this agreement, CMCC was required to lower its stock price from $250,000 to $50,000 per share in order to sell 12 shares of CMCC stock in rapid fashion in order to meets its obligations[,]" resulting in alleged consequential damages of $2,400,000.00. This claim is wholly lacking in support.

First, as noted above, Smith was never required to complete the Transaction. CVI cannot be responsible for consequential damages for failing to complete a purchase that it was not contractually obligated to perform. If CMCC's financial condition was such that it needed to sell stock in rapid-fire fashion in order to come up with a flow of cash after a contingent deal failed to close, that is not CVI's fault.

Second, CMCC has not provided any proof or documentation in support of these claimed consequential damages. The Receiver finds this particularly concerning where the $250,000.00 purchase price appeared to only apply to Brenda Smith and her affiliates, and no one else.

Prior to the execution of the LOI, Investment Consulting made two payments totaling $175,000.00 to CMCC in 2016 ($100,000.00 on 5/23/16 and $75,000.00 on 6/29/16), for personal loans to CMCC's owner, George Kearns.

Those payments were to be converted to an ownership interest in CMCC for Brenda Smith, pursuant to a December 22, 2017 Ownership Interest Purchase Agreement ("OIPA"). A copy of the OIPA is attached hereto as Exhibit "O". The OIPA provided that Mr. Kearns agreed to sell, transfer and convey a 1% ownership interest, being one unit out of 100 total units in CMCC, for a purchase price of $250,000.00. OIPA, ¶¶ 1-2. The transfer of Mr. Kearns' interest was contingent upon the complete satisfaction of the purchase price through a $75,000.00 payment. *Id.*, ¶ 3. Investment Consulting, LLC made another payment to CMCC on 12/22/17 in the amount of $75,000.00, in accordance with OIPA, thereby completing the purchase of one share of CMCC for a purchase price of $250,000.00.

According to the List of Members attached the Second Amended Operating Agreement for CMCC dated September 19, 2017—which was never amended to reflect Brenda Smith's 1% ownership interest—Robert Bray has or had a 4% ownership interest in CMCC based on an initial capital contribution of $100,000.00, and Andrew Mason has or had a 1% ownership interest in CMCC based on an initial capital contribution of $25,000.00. This suggests that, at least at one point, the value of one share in CMCC was only $25,000.00. At some other point in time, CCZ Holdings, LLC purchased a 7% interest in CMCC for $850,000.00, suggesting a cost of $121,428.57 per share at the time of their

purchase. By contrast, Brenda Smith received only one share in exchange for the $250,000.00 paid by Investment Consulting. CMCC has provided no objective evidence that these shares were ever worth $250,000.00, or that the $50,000 for which the twelve (12) shares were each allegedly sold represented a sale at below fair market value.

4. CMCC's Claim is Inequitable as Compared to Creditors Who Suffered Out-of-Pocket Losses

CMCC is essentially seeking to recover damages for lost profits and inability to sell shares at the inflated rate for which Brenda Smith agreed to purchase them. Much like SMG and for the reasons set forth in Section II(B)(3) *supra*, this places CMCC on different footing from other creditors who are seeking to recover actual out-of-pocket losses. CMCC is asking to be placed in the position it would have been in if Brenda Smith & CVI fully complied with the terms of a LOI which was replete with contingencies. Brenda Smith stole money from her investors to make payments to CMCC, and would have done the same to purchase shares from DataPlanet. Her investments in CMCC and/or DataPlanet was not an authorized use of funds by Smith, who raised funds by advertising highly specific and specialized securities trading strategies to unsuspecting investors. Recognizing a claim that is inherently predicated on Smith's theft of investor funds would not be equitable to investor victims who are already not likely to recover more than a small percentage of their actual losses.

G. Alpha Capital Trading Group

Alpha Capital Trading Group LLC ("Alpha Capital") submitted a claim form seeking $250,000.00 in connection with a $4 million deposit with CV Brokerage that Alpha Capital was able to partially redeem through several withdrawals totaling $3.75 million.[33] Alpha Capital supplied a spreadsheet detailing its funding and withdrawal activity with CV Brokerage to support this claim. A copy of Alpha Capital's claim submission is attached hereto as Exhibit "P".

It is the Receiver's understanding that Alpha Capital alleges that the purpose of the deposits with CV Brokerage was to establish a segregated trading account within CV Brokerage so that Alpha Capital could utilize its available margin with ICBCFS. Alpha Capital has filed pleadings in which it alleged that after establishing the $4 million account, it actively traded within its account for six months before Smith froze its ability to conduct further trades. The Receiver is unaware whether that trading activity resulted in gains or losses to Alpha Capital. As a result, the Receiver is concerned that the diminution in value of the account may be a result of Alpha Capital's trading activity as it is unlikely that Alpha Capital's starting and ending balance would remain exactly $4 million despite its

[33] Alpha Capital filed a FINRA Complaint in connection with these transactions as well, which is currently stayed.

own admitted six months of trading activity within the account. Additionally, the Receiver's forensic accountant has reviewed the submitted transaction history with Alpha Capital and has identified that none of its deposits into CV Brokerage were sourced from accounts held by Alpha Capital, but rather were transfers from unknown entities. Similarly, all withdrawals initiated by Alpha Capital were transferred from CV Brokerage to unknown third parties. Accordingly, on May 25, 2022, the Receiver sent a letter to Alpha Capital, advising that he cannot accept the claim based on the information presently known, and advised that if Alpha Capital had any additional support that would address those concerns, the Receiver would reevaluate the claim. The Receiver requested that Alpha Capital advise by June 8, 2022 whether it had additional information to support the claim, or whether it intended to dispute the Receiver's determination.

Alpha Capital provided a responsive letter on June 3, 2022, but failed to provide any supplemental information or documentation purporting to establish that the $250,000.00 was not diminished through trading activity. The Receiver spoke with counsel for Alpha Capital and requested further support demonstrating that Alpha Capital's trading activity did not impact the balance of segregated account with CV Brokerage. Alpha Capital provided an additional letter on July 31, 2022 which provided similar explanations as the prior June 3 letter, but did not provide any documentary support for its position. The Receiver responded with

specific requests for documents that the Receiver believes should exist and that would address his concerns. As of the time of this filing, the Receiver has not received a response to those requests. Accordingly, based upon the limited information provided, the Receiver recommends that the Court reject this claim.

H. Internal Revenue Service

The Receiver has been attempting to address claims asserted by the Internal Revenue Service ("IRS") against the Receivership Estate regarding the Receiver's obligation to submit pre-appointment returns for Receivership Parties and the willingness of the IRS to submit to the creditor claims process and have its claims subordinated to those of investor creditors for over one (1) year. The Receiver still does not have clarity on the IRS' formal position with respect to these issues.

Initially, the Receiver notified the IRS of his appointment through the submission of IRS Form 56's for each of the Receivership Parties within the first two (2) weeks of his appointment.

The Receiver subsequently contacted the IRS on July 14, 2021, requesting to speak with the appropriate contact regarding tax return obligations for the Receivership Parties, including the scope of the returns that would need to be filed and the applicable time periods, as well as the IRS' position regarding potential future distributions to investors and/or other creditors. The Receiver noted his position, from the outset, that filing returns for periods prior to his appointment

would not be appropriate or practicable, and that any arguable tax obligations should be subordinated to investor victim claims. The Receiver expressed his desire to address these issues with the IRS soon, given that he did not anticipate there would be sufficient recoveries to make investor victims whole.

In response to this communication, the Receiver was put in touch with a bankruptcy specialist at the IRS assigned to the Receivership. The Receiver spoke with that representative by telephone on August 2, 2021, setting forth the position outlined above. The IRS requested additional information regarding the Receivership Parties, as well as the link for purposes of filing a creditor claim with the Receivership Estate. The Receiver sent the IRS a copy of the Receivership Order on August 4, 2021, and sent an organizational chart and further information regarding the Receivership Parties, along with a link to the creditor claim form, by e-mail on August 6, 2021. The Receiver again reiterated his position regarding the significant expense and difficulties that would be involved in created pre-appointment tax returns for the Receivership Parties, and that any arguable tax obligations of the Receivership Parties should, at a minimum, be subordinated to victim claims.

On September 10, 2021, the IRS sent a Notice ("Notice") of tax obligations to the Receiver, asserting that the Receivership Parties owe approximately $1,331,807.00 to the IRS, that is comprised of penalties for late and/or unfiled tax

returns of $416,020, estimated corporate income taxes of $899,050, and estimated unpaid payroll taxes of $26,737 for various tax years ranging from 2010 to 2020. The Receiver informed the IRS that, for purposes of this Motion, the Receiver is treating the IRS' September 10 Notice as its claim submission.

Following a November 2021 follow-up call regarding the Notice, the Receiver, through his Accountants, responded to this letter in writing on January 4, 2022, arguing that the filing of returns for periods prior to the Receiver's appointment is neither appropriate nor practical and will result in significant expense and cost to the Receivership at the expense of victim investors, and again asserting that any arguable tax obligations should be subordinated to victim claims. The Receiver highlighted that completing returns for the Receivership Parties for pre-appointment time periods would add substantial expense to the Receivership due the additional forensic accounting that would be involved, which would reduce funds available for distribution to victims, and that the preparation of such tax returns would be extremely problematic because of the nature and size of the fraud and the inability to verify the accuracy of many transactions given their murky nature.

The Receiver expressed that where victims are not expected to be made whole, using Receivership assets to pay late filing penalties for unfiled partnership returns and/or purported "estimated" taxes of a C corporation within the

Receivership Estate (for which no supportable basis had been provided and in which the victim investors held no economic interest) conflicts with the objectives set forth in the IRS Penalty Handbook.

Assessing penalties under the Internal Revenue Code does not serve the underlying purposes for using this power. Specifically, imposing late filing penalties on Receivership Parties would serve as further punishment to the investors of Smith's elaborate scheme. The Penalty Handbook provisions — IRM 20.1.1.2 (11-21-2017) — state that, "Penalties exist to encourage voluntary compliance by supporting the standards of behavior required by the Internal Revenue Code." The IRM further provides that, "Although penalties support and encourage voluntary compliance, they also serve to bring additional revenues into the Treasury and indirectly fund enforcement costs. However, these results are not reasons for creating or imposing penalties." See IRM 20.1.1.2.1 (11-25-11). Lastly, the IRM provides that, "Voluntary compliance is achieved when a taxpayer makes a good faith effort to meet the tax obligations defined by the Internal Revenue Code." See IRM 20.1.1.2.1 (11-25-11).

Although the Receiver acknowledges and respects the importance of taxpayer compliance and the IRS's role in enforcing the tax law, the affected investors in good faith placed reliance on and expected Ms. Smith to fully perform her duties which did not occur. Subordination of the IRS' claim for assessment of

penalties would be the most fair and equitable course of action under the facts and circumstances.

The Receiver expressed similar concerns about any claim related to purported corporate income tax and payroll taxes due for CV Brokerage, Inc., a C corporation under the Receivership. The Notice reflects "estimated" corporate income taxes for tax years 2018 through 2020, and "estimated" payroll taxes for the last quarter of 2019 and all four quarters of 2020. No returns for such tax periods have been filed with the IRS by the Taxpayer or any representative. Thus, there is particular concern about the methodology used to determine the amounts due. Specifically, the corporate income taxes for 2018 through 2020 were estimated solely based on the gross tax liability reported by the corporation on its 2017 return. Given the extent of Ms. Smith's fraudulent activity, the 2017 tax return was likely prepared, at least in part, using fraudulent financial information and could overstate this entity's tax liability for this period.

The payroll taxes were estimated based on the payroll taxes due for the third quarter of 2019. It is worth emphasizing that the Receiver has not located any books or other financial information of the corporation for 2018 through 2020 suitable for tax reporting purposes and would need to update the forensic accounting in order for the tax liability, if any, to be properly assessed for these periods. Further, CV Brokerage, Inc.'s membership with FINRA was cancelled as

of October 2019, and it is believed that CV Brokerage, Inc. has not done any business since approximately August 2019. Its registered brokers left to join another broker-dealer, taking its clients with them, while CV Brokerage was left with hundreds of thousands of dollars worth of unpaid bills and obligations—including a $100,000.00 fine imposed by FINRA on July 2, 2019, and nearly $400,000.00 owed to its executing broker, exclusive of fees, interest and other charges, for charges incurred through September 2019. In light of the foregoing, the Receiver does not believe that these purported taxes due have any supportable basis upon which to present a claim against the Receivership.

Under the circumstances of this case, an attempt by the IRS to assess the aforementioned penalties and taxes against the Receivership would unduly cause further harm to victims, hindering the Receiver's attempts and purpose of recovering and distributing the stolen funds. Accordingly, the Receiver requested that the IRS reconsider both the amount and type of claims it is submitting against the Receivership Estate. To date the, IRS has not done so.

On or about May 16, 2022, the Receiver sent an e-mail to the IRS about the IRS' claim against the Receivership, advising that he was working through the claims process and had to provide responses to claimants by May 25, 2022. He requested a conversation to discuss the parties' respective positions to see if some of their differences could be resolved or minimized prior to that date. This was

followed-up by phone call on that same date, during which the Receiver advised the IRS that his plan is to treat the Notice as the IRS' claim in the claims process. This plan was based on prior communications which led the Receiver to understand that the IRS wanted its claim addressed in the claims process. The Receiver advised the IRS that he needed to know if it was confirming that the IRS is participating in the Court's claims process as a claimant, or taking the position that it is not doing so. The Receiver's communications with the IRS are driven by a desire to expedite the claims process and any subsequent distribution process by resolving any claimed personal liability of the Receiver for making any distributions to investors / creditors but as to which the IRS may claim it has priority. See *SEC v. Credit Bancorp*, 297 F.3d 127 (2d Cir. 2003).

Having not received a substantive follow-up response, the Receiver sent a follow-up letter to the IRS on May 25, 2022 reiterating his previously stated positions and concerns regarding the IRS' claim and requesting that the IRS consult with its internal counsel as soon as possible and confirm by no later than June 8, 2022 whether the IRS is willing to reconsider or revise its claims and for clarity on its position regarding participation in the claims process.

On June 28, 2022, the Receiver and his Accountants spoke with the IRS representative again by phone. Having not received a substantive response to his prior inquiries, the Receiver advised the IRS representative that he intended to

submit the IRS Notice as a claim submission for purposes of the creditor claims process. The Receiver followed-up with an e-mail attaching (1) the Department of Justice Tax Division Directive No. 137, Tax Claims Against Embezzlers, Swindlers, etc. v. Recovery by Investors, Dupes, and Victims, etc. (providing that where the tax claim and claim of the victim or investor arise from the same transaction and the victim or investor can trace its property to the fund in issue, the Tax Division will recognize the priority of the claim of the investor or victim), and (2) an article from the Department of Justice Tax Division titled "Tax Claims Against Embezzlers, Swindlers, Etc. v. Recovery By Investors, Dupes and Victims" (providing that in accordance with Tax Division Directive 137, the United States "will cede its federal tax claim to the victim's claim when" the tax claim and the victim's claim arise from the same transaction and the funds or property at traceable to the fraud or wrongdoing).

At this juncture, the Receiver respectfully requests the Court's assistance in directing a response from the IRS to confirm whether or not it intends its September 2021 detailed outline of taxes it believes are due as a claim to be adjudicated through the creditor claims process, which will allow the Receiver to have clarity regarding priority of claims and enable him to make distributions to investors without having to wait for the IRS' position outside of the claims process. The Receiver is cognizant of the caselaw from other circuits involving the

IRS and, absent consent or waiver, the arguably limited scope of District Court jurisdiction over tax claims in receivership matters. So to be prudent, at this time the Receiver is simply asking that the Court issue an order requesting that the IRS respond regarding its position on whether any tax claims can or should be adjudicated in the claims process. See, e.g., *SEC v. Credit Bancorp*, 297 F.3d 127 (2d Cir. 2003) (addressing interplay between Receiver claims motions and jurisdiction over IRS).[34]

III. CONCLUSION

For all the foregoing reasons, Receiver, Kevin Dooley Kent requests entry of the proposed order attached hereto.

Respectfully Submitted,

Date: March 14, 2023

s/ Robin S. Weiss

Robin S. Weiss, Esq.
Andrew S. Gallinaro, Esquire
Clark Hill PLC
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19102
Phone: 215-864-8086
Fax: 215-523-9714
rsweiss@clarkhill.com
agallinaro@clarkhill.com
Attorneys for Receiver, Kevin Dooley Kent

[34] To the extent the IRS' claims cannot be determined through the claims process, and there are substantial open questions about the scope of potential liability, it may lead to substantial delay of material distributions to investors and/or trade creditors.

Exhibit A

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

CREDITOR CLAIM FORM

Name of Creditor:

Richard C. Galvin, Galvin Investment Company LLC, Galvin Investments, LLC, Galvin Investment Group, Galvin Metals Company, LLC, Gilman Metals Company, LLC, and RCG Coastal LLC.

Name and Address Where Notices Should be Sent:

Richard G. Galvin
[redacted]

-and-

Thomas E. Butler
White and Williams LLP
7 Times Square, Suite 2900
New York, New York 10036

Email Address:

butlert@whiteandwilliams.com

Telephone No.:

Tom Butler: (212) 714-3070

Date(s) of Claim:

The claims arose from tortious conduct that occurred between 2016 and 2019 as more fully set forth in the counterclaims asserted by the creditors in the Amended Answer and Counterclaims in the action entitled *Kent v. Richard C. Galvin, et. al.,* United States District Court of New Jersey, Case No. 21-cv-13105 (the "Action"). A copy of the Amended Answer and Counterclaims is attached hereto as Exhibit A.

Amount of Claim:

Damages in an amount of not less than $50 million.

Please attach copies of all invoices relating to your claim. Do not send original documents. Copies of the documents provided to the Receiver will not be returned to the creditor. You must maintain the original documents as the Receiver may ultimately request them for verification.

The Action is in its infancy and discovery has not yet begun. Creditors will supplement this claim as documents and information become available during the course of discovery, but, initially, Creditors include the documents affixed hereto as Exhibit B.

Exhibit B

Magnetite Concentrates
Purchase and Sale Agreement

Southern Minerals Group, LLC of P. O. Box 535 Silver City, NM 88062 as "**Seller**," and Galvin Investment Company, LLC of 4649 East Lake Avenue, Centennial, CO 80121 as "**Purchaser**," agree as follows:

1. Seller has the exclusive right to access approximately 800,000 tons of magnetite concentrates (this is an estimate of the size and should not be relied upon as a definition of resource), a treated by-product of copper mining and milling operations conducted at the Mine site formerly operated by Freeport-McMoRan located in Grant County, New Mexico, and has in place contracts or purchase orders to sell approximately one-half of that inventory to other purchasers. The Purchaser will ensure that it does not undertake any activities that impact on the Seller's rights to the magnetite concentrates. Should, for any reason, the Seller's right to access this material be terminated, then on the day that access is terminated this Agreement will terminate, without further recourse to Buyer and Seller other than amounts already outstanding or breaches of Agreement occurring up to that date.

2. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller up to of 350,000 tons of such magnetite concentrates for the price of $60.00 per ton for the first 200,000 tons purchased and sold, and for the price of $75.00 per ton for tonnage in excess of 200,000. These prices include Seller loading the concentrates into Purchasers' trucks with Seller's equipment and equipment operators, and Seller shall bear all costs associated with such loading operations. The Purchaser undertakes to purchase a minimum of 2,000 tons per month from commencement of this Agreement

3. Purchaser shall provide the trucks and truck operators to haul the concentrates and shall bear all costs associated with such hauling operations. The Purchaser shall ensure that representatives of the Purchaser (including truck drivers) shall conduct its activities in a good and professional manner and in accordance with the reasonable directions (if any) given to it by the Seller from time to time.

4. Seller shall maintain accurate certified weighing facilities and will weigh the Purchaser's trucks on entrance and exit, unloaded and loaded, and provide the net weights of each load to Purchaser as each loaded truck exits the site, and provide appropriate Material Safety Data Sheets. The Seller shall not be liable for loss or damage suffered or incurred by the Purchaser due to any failure or interruption of equipment due to the need for repair or alteration or breakdown but, the Seller will assist the Purchaser in minimizing any losses that the Purchaser may incur

5. Purchaser shall make payment for all concentrates purchased on a monthly basis within ten days after being presented with an invoice from Seller. Prior to commencement of this Agreement, but not greater than seven days from signing of this Agreement, the Purchaser

CH

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. Should purchases during the month exceed 2,000 tons, the Seller will have the right to require the Purchaser to provide additional standby letter of credit increasing as follows:

Tonnage Being Sourced Per Month	Additional Required Letter of Credit
0 to 2,000	
2,001 to 3,000	$ 50,000
3,001 to 4,000	$100,000
4,001 to 5,500	$150,000

6. Purchaser acknowledges and is aware that local governmental regulations limit the total tonnage of concentrates that may be removed from the mine site to 11,000 tons per month, and that Seller's other existing commitments presently utilize up to approximately one-half of that amount, leaving only approximately 5,500 tons per month now available to Purchaser. Seller agrees to inform Purchaser if and when other purchasers fail to purchase their entire committed amount so as to allow Purchaser the opportunity to acquire a larger amount in any particular month.

7. Seller warrants and covenants to and with Purchaser that it can provide good and marketable title to the subject concentrates, that they are by-products of lawful mining operations, have been properly severed from the realty from which they came, are free and clear of any liens or claims of any kind or nature, and will be free and clear of any liens or claims of any kind or nature when conveyed to Purchaser.

8. If a Force Majeure Event affecting a Party precludes that party ("Precluded Party") partially or wholly from complying with its Obligations (except its payment obligations) under this Agreement then:

(a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other Party of

(i) the Force Majeure Event;

(ii) which obligations the Precluded Party is precluded from performing ("Affected Obligations");

(iii) the extent to which the Force Majeure Event or its consequences preclude the Precluded Party from performing the Affected Obligations ("Precluded Extent"); and

(iv) the expected duration of the delay arising directly out of the Force Majeure Event or in consequence of it;

CH

Magnetite Concentrates
Purchase and Sale Agreement

Southern Minerals Group, LLC of P. O. Box 535 Silver City, NM 88062 as "Seller," and CV Investments LLC 200 Four Falls Corp. Ctr. Suite 211, Conshohocken, PA. 19428 and affiliates as "Purchaser" agree as follows:

1. Seller has the exclusive right to access approximately 800,000 tons of magnetite concentrates (this is an estimate of the size and should not be relied upon as a definition of resource), a treated by-product of copper mining and milling operations conducted at the Mine site formerly operated by Freeport-McMoRan located in Grant County, New Mexico, and has in place contracts or purchase orders to sell approximately one-half of that inventory to other purchasers. The Seller will ensure that it does not undertake any activities that impact on the Purchases rights to the magnethe concentrates. Should, for any reason, the Sellers right to access this material be terminated, then on the day that access is terminated this Agreement will terminate, without further recourse to Purchaser and Seller other than amounts already outstanding or breaches of Agreement occurring up to that date.

2. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller up to of 400,000 tons of such magnetite concentrates for the price of $80.00 per ton. These prices include Seller loading the concentrates into Purchasers' trucks with Seller's equipment and equipment operators, and Seller shall bear all costs associated with such loading operations. The Purchaser undertakes to purchase a minimum of 4,000 tons per month from ~~commencement of this Agreement~~ June 1, 2017. BS CH

3. Purchaser shall provide the trucks and truck operators to haul the concentrates and shall bear all costs associated with such hauling operations. The Purchaser shall ensure that representatives of the Purchaser (including truck drivers) shall conduct its activities in a good and professional manner and in accordance with the reasonable directions (if any) given to it by the Seller from time to time.

4. Seller shall maintain accurate certified weighing facilities and will weigh the Purchaser's trucks on entrance and exit, unloaded and loaded, and provide the net weights of each load to Purchaser as each loaded truck exits the site, and provide appropriate Material Safety Data Sheets. The Seller shall not be liable for loss or damage suffered or incurred by the Purchaser due to any failure or interruption of equipment due to the need for repair or alteration or breakdown but, the Seller will assist the Purchaser in minimizing any losses that the Purchaser may incur.

5. Purchaser shall:

(i) provide a deposit of $10,000 to the Southern Minerals Group, LLC bank account within one business day of signing of this Agreement, as advised. BS CH

(ii) Prior to commencement of this Agreement, but not greater than seven days from signing of this Agreement, the Purchaser shall provide the Seller with a standby letter of credit in the amount of $250,000.00 issued by a major US banking institution authorizing the seller to draw against it in the event Purchaser fails to timely pay any invoice in full or provide, in solicitor's trust, a deposit of $250,000 with instructions that this is to be released to SMG on the provision by SMG that there has been a default on payment under the Agreement. This notification is to be given at SMG's sole discretion and the solicitor has to be irrevocably instructed to act on any such notice.

(iii) make payment for all concentrates purchased on a monthly basis within ten days after being presented with an invoice from Seller.

6. Purchaser acknowledges and is aware that local governmental regulations limit the total tonnage of concentrates that may be removed from the mine site to 11,000 tons per month, and that Seller's other existing commitments presently utilize up to approximately one-half of that amount, leaving only approximately 5,500 tons per month now available to Purchaser. Seller agrees to inform Purchaser if and when other purchasers fail to purchase their entire committed amount so as to allow Purchaser the opportunity to acquire a larger amount in any particular month.

7. Seller warrants and covenants to and with Purchaser that it can provide good and marketable title to the subject concentrates, that they are by-products of lawful mining operations, have been properly severed from the realty from which they came, are free and clear of any liens or claims of any kind or nature, and will be free and clear of any liens or claims of any kind or nature when conveyed to Purchaser.

8.1 If a Force Majeure Event affecting a Party precludes that party ("Precluded Party") partially or wholly from complying with its Obligations (except its payment obligations) under this Agreement then:

(a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other Party of

(i) the Force Majeure Event;

(ii) which obligations the Precluded Party is precluded from performing ("Affected Obligations");

(iii) the extent to which the Force Majeure Event or its consequences preclude the Precluded Party from performing the Affected Obligations ("Precluded Extent"), and

(iv) the expected duration of the delay arising directly out of the Force Majeure Event or in consequence of it;

(b) the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event ("Actual Delay"), and

(c) the other Party's Obligations which are dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

8.2 The Precluded Party must, as soon as reasonably practicable after cessation of a Force Majeure Event, resume performance of the Affected Obligations and must use reasonable

"reasonable endeavours" does not require a Party to pay money in an attempt to overcome the event or to settle any industrial dispute against its wishes.

9. To prevent possible confusion Seller and Purchaser agree that this Agreement is to be applied in accordance with the laws of the State of New Mexico other than its conflicts of laws principles.

10. Parties agree that any dispute or controversy arising out of or relating to this agreement or the interpretation thereof, shall be settled by arbitration, held in a mutually acceptable location to the parties, in accordance with the rules, then in effect, of the American Arbitration Association.

11. Either Party may assign this agreement, upon written notice, provided such assignment is to a commonly controlled affiliate.

12. Either Party may terminate this Agreement on a serious breach of Agreement after giving 30 days notice ("Notice Period") to the other Party to rectify the breach and that breach is not rectified within the Notice Period. The termination of this Agreement shall not affect the rights of the aggrieved party in seeking damages in relation to the Agreement being terminated.

13. Southern Mineral Group, and its affiliates agree not to use the name CV Investments in any public media without Purchasers written permission unless required by law CH CH

Seller and Purchaser have executed this Agreement effective as of the 7 day of April, 2017.
CH CH

Southern Minerals Group, LLC

By: Clovis Hooper

Clovis Hooper,
President
Southern Minerals Group LLC

CV Investments LLC

By: Brenda Smith

Brenda Smith,
Managing Member
CV Investments LLC

From: [redacted]
To: rbutler691@aol.com, bsmith@bristolsdv.com,
Subject: LOC
Date: Thu, Mar 30, 2017 1:23 pm

Hello Richard,

I hope this finds you well.

I wanted to touch base. According to the contract the LOC was to be in place 7 days after signing the contract.

As a publicly listed company, if we don't receive it soon, we will have to announce this fact and terminate the contract.

Please advise. I am currently out at the mine and can't receive calls but will be back in cell range at about 6:30 this evening.

Regards,
Clovis

From: 8038@zianet.com,
To: rbuller691@aol.com,
Cc: bsmith@[redacted]tv.com, 8038@zianet.com,
Subject: Galvin contract
Date: Fri, Mar 31, 2017 8:47 am

Good morning Richard,

As per the email and the phone conversations late yesterday I look forward to seeing the LOC today. I understand you have everything in place.

Please understand, if this is not in place today we reserve the right to terminate the contract solely at our discretion.

Regards,
Clovis

From: rbutler691@aol.com,
To: michael.strachen2@gmail.com, rbutler691@aol.com,
Subject: Fwd: Galvin contract
Date: Fri, Mar 31, 2017 10:21 am

Mike you can see she circumventing & pushing hard to steal this deal ..Please don't let her and post the LOC today ..Please call and text me when done at the bank.. Thanks

Best ,
Richard C. Galvin
PH # 303-257-3077 / 303-740-8318
LEGAL NOTICE:
——Original Message——
From: Clovis Hooper <6098@zianet.com>
To: Richard Galvin <rbutler691@aol.com>
Cc: Brenda Smith <bsmith@bristoladv.com>; Clovis Hooper <6098@zianet.com>
Sent: Fri, Mar 31, 2017 5:47 am
Subject: Galvin contract

Good morning Richard,

As per the email and the phone conversations late yesterday I look forward to seeing the LOC today. I understand you have everything in place.

Please understand, if this is not in place today we reserve the right to terminate the contract solely at our discretion.

Regards,
Clovis

From: [redacted]@gmail.com,
To: rbutler691@aol.com,
Cc: jdegall@earthlink.net,
Subject: Re: From Credit Suisse bankers today
Date: Mon, Apr 3, 2017 7:15 pm

Richard,

I received your note. My managing director is currently on "holidays" and has given close of business on Thursday to be the absolute deadline.

Regards,
Clovis

On Apr 3, 2017, at 8:56 AM, Richard C Galvin <rbutler691@aol.com> wrote:

> Hi Clovis just in from my bankers .... Where getting it done this morning all signature at the bank ,so lets talk when you can today
>
> [4/2/2017 5:45:19 PM] Anthony: Hey Rich fund letter is being signed should have LOC in the AM
> [8:06:28 AM] Anthony: Hey Rich
> [8:06:36 AM] Anthony: At the bank now getting LOC finalized
> [8:06:43 AM] Anthony: Fund letter is getting last signature now
> [8:06:58 AM] Anthony: Will revert to you when in hand and will call when done here at the bank
>
> Best,
> Richard C. Galvin
> FH # 303-257-3077 / 303-740-8318
> LEGAL NOTICE: This communication including any attached files or pages is an unofficial response to a prior request for private, legally privileged confidential information for educational purposes only. Disclosure, reproduction, transmission or use of this communication for any other purpose is prohibited. If you are not the intended recipient, please be aware that interception of e-mail is a crime under the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and 2701-2709. If you have received this communication in error, please immediately notify the sender by e-mail, fax and/or telephone and destroy this communication without reading or saving any of it in any manner. This communication contains trade secrets as defined by H.R. 3723 signed by the President of the USA on October 11, 1996 and is not to be redistributed without specific authorization. The content of this communication is believed to be accurate and reliable but is subject to change without notice. Information VOID where prohibited by law. This communication is not intended to be, and must not be construed to be any form of solicitation of investment funds, securities offering, or a request to engage in any transaction involving the purchase or sale of registered securities. Nothing in this communication should be interpreted as a digital or electronic signature that can be used to authenticate a contract or other legal document. No statement herein should be construed in any way as advice or commitment. The author is not a licensed broker/dealer, registered financial advisor, attorney or accountant, and recommends that any party intending to participate in any financial transaction seek competent independent review and professional counsel prior to engaging in any such activity.
> click on my disclaimer http://www.fic.gov/privacy/g2bscc/g1bsah1.htm

From: 8008@xtanet.com,
To: routter881@aol.com,
Subject: Notice of Termination
Date: Fri, Apr 7, 2017 4:34 pm

Richard,

As requested, I had a chance to speak with my Managing Director and the Notice of Termination is final. As to the public notice, we will put out the notification as required for a publicly listed company.

Regards,
Clovis

NOTICE OF TERMINATION OF CONTRACT

On 10 March, you, on behalf of Galvin Investment Company ("Galvin"), signed a contract with Southern Minerals Group ("SMG") for the purchase of 350,000 tons of magnetite. Galvin's failure to provide a Letter of Credit within 7 days of the signing of the contract, as required under Clause 5 of the contract, has provided SMG the right to terminate this contract without recourse and SMG hereby notifies Galvin that it is terminating this contract effective from receipt of this email. A copy of this email will also be sent by ordinary mail to Galvin's nominated address of 4645 East Lake Avenue, Centennial, CO 80121.

It is noted that Galvin has been previously notified of this breach of the contract and has been provided Galvin ample time to rectify this breach. Galvin has failed to do rectify the breach and, accordingly, SMG exercises its right to terminate the contract without recourse.
Regards

Clovis Hooper
President
Southern Minerals Group, LLC

7 April 2017

Regards,
Clovis

Exhibit B

White and Williams LLP

Stuart J. Wells | Counsel

7 Times Square, Suite 2900 | New York, NY 10036-6524
Direct 212.631.1255 | Fax 212.631.4434
wellss@whiteandwilliams.com | whiteandwilliams.com

June 17, 2022

VIA EMAIL

Andrew S. Gallinaro, Esq.
Conrad O'Brien
Centre Square West Tower
1500 Market Street, Suite 3900
Philadelphia, PA 19102-2100

RE: *SEC v. Smith, et. al.*, Civ. No. 2:19-cv-17213-MCA (D.N.J.) (the "Smith Action")

Dear Andrew:

We are the attorneys for Richard C. Galvin, Galvin Investment Company, LLC, Galvin Investments, LLC, Galvin Investment Group, Galvin Metals Company, LLC, Gilman Metals Company, LLC and RCG Coastal LLC (collectively, "GIC"). We write in response to your letter dated May 25, 2022 (the "Claims Letter") wherein you advised that you will recommend that the Court deny GIC's claims (the "Claims") for damages of not less than $50 million.

GIC disagrees with your position and objects to your attempt to adjudicate the Claims as part of a summary claims process rather than litigate them as counterclaims (the "Counterclaims") in the pending matter entitled *Kent v. Galvin, et. al.*, No. 2:21-cv-13105 (D.N.J.) (the "Galvin Action"). Resolution of the Claims and the identical Counterclaims requires witness and expert testimony and documentary evidence that can only be obtained through the discovery process. The claims procedure order (Smith Action, ECF No. 168) does not provide for discovery or any means by which the parties can obtain the information necessary to resolve the parties' factual disputes, many of which are highlighted in the Claims Letter.

1. The Claims and Counterclaims are not barred by the Statute of Limitations.

For the reasons set forth in GIC's Opposition to the Receiver's Motion to Dismiss (Galvin Action, ECF No 29, the "Opposition"), the Claims and Counterclaims are not barred by the statute of limitations. Contrary to your assertions, the applicable statute of limitations is New Mexico's four-year statute of limitation, N. M. Stat. Ann. § 37-1-4. That statute was tolled by operation of the Receivership Order (Smith Action, ECF No. 22) and N.M. Stat. Ann. § 37-1-12. At the very least, as set forth in the Opposition, facts exist that refute your conclusory assertions that the shorter limitations period of Colorado and/or Pennsylvania apply to the Claims and

Counterclaims. (*See* Opposition, pp. 32-33), and these questions of fact must be resolved before any determination with regard to the statute of limitations. Thus, as further set forth in the Opposition. resolution of these factual issues is not appropriate through the summary claims process.

2. GIC is not seeking to hold Brenda Smith personally liable.

While Mr. Kent may not have been appointed as Receiver for Ms. Smith in personal capacity, he has been appointed as the Receiver over all of Ms. Smith's assets (Receivership Order, ¶ 2), making the Receiver the appropriate party for resolution and recovery asserted against Mrs. Smith. Regardless, the Claims and Counterclaims are not asserted directly against Ms. Smith, but rather, they are asserted against Receivership Entities, most notably, CV Investments LLC ("CV Investments").

The Receiver's reliance upon allegations in *Galvin Investment Company, LLC v. Smith*, No. 1:19-cv-00796 (D.Colo) (the "Colorado Action") is misplaced. As I am sure that you know, the Colorado Action was dismissed for lack of personal jurisdiction. Had dismissal been denied, nothing would have prevented GIC from amending its pleadings to add CV Investments or any other Receivership Entity as a defendant and nothing in the Colorado court's decision prevents GIC from asserting its claims here. The decision to bring claims against Ms. Smith, one culpable party, does not prevent the assertion of claims against other culpable parties. As alleged in the Counterclaims, Ms. Smith was acting on behalf of CV Investments and CV Investments was the party that tortiously interfered with GIC's business relationship with Southern Minerals Group ("SMG") by failing to fund the letter of credit required by GIC's contract with SMG (the "SMG Contract") and then immediately entering into its own contract with SMG, just one day after the SMG and GIC contract expired. (*See* CV Investments Contract, attached hereto as Exhibit 1). Your self-serving characterization of CV Investment as a nominal party is not supported by the allegations in the Claims, the Counterclaims or the documentary evidence. At the very least, determining CV Investments' responsibility for the harm caused requires findings of fact making such determination inappropriate as part of the claims process or on a motion to dismiss.

3. GIC's claims are not highly speculative and unsupported.

The assertion that GIC's claims are highly speculative and unsupported is once again a bald assertion of fact that is inappropriate for determination in a summary proceeding. Further, it is simply wrong. Ample evidence exists to establish GIC's damages, and we maintain that discovery will only bolster GIC's position.

a. The mineral extract is valuable.

The value of the ore extract is established by a report from an expert retained by the Receivership Entities. In August 2016, CV Brokerage, Inc. ("CV Brokerage") retained Richard Mittasch of MSH to audit the process by which GIC would extract the precious metals from a sample of ore taken from the mine in Silver City, New Mexico and to conduct a Value

Determination and Refining Assessment of the ore. (*See* Initial Assessment Report (the "MSH Report"), attached hereto as Exhibit 2). After processing the ore through a plasma unit at a facility in Fort Worth, Texas (the "Texas Facility"), and testing the extracted `product, Mr. Mittasch valued the ore at $351,233.75 per ton. *Id.* at p.1. Less estimated production costs of $35,000-$40,000 per ton, the MSH Report establishes that GIC's ore had a net value of more than $300,000 per ton. *Id.* at p. 2. As part of the audit process, CV Brokerage performed a detailed analysis of the processing costs at the Texas Facility, and consistent with the MSH Report, determined that it would cost approximately $42,000 per ton to process the ore. (*See* Excel Spreadsheet (the "CV Audit") attached hereto as Exhibit 3). At $300,000 per ton, the MSH Report and CV Brokerage's own analysis support the conclusion that had CV Investments not interfered with the opportunity, GIC could have earned well more than $55 million. GIC believes that Mr. Mittasch's testimony, as well as that of other experts in the field, will only further support what is evident from the documents. Defendants should not be deprived of the opportunity to obtain and present such evidence.

b. The operating facilities.

The valuable minerals were to be extracted using plasma arc technology. On or about December 12, 2016, GIC entered into a Tolling and Post Processing Agreement (the "PED Agreement") with Plasma Energy Design, LLC ("Plasma Energy"), a company founded by two engineers, Jonathan Reed and Dr. Mark Shuey, each with expertise in plasma technology. Pursuant to the PED Agreement, Plasma Energy agreed to process GIC's ore through its existing thermal plasma system located at the Texas Facility. (*See* PED Agreement, attached hereto as Exhibit 4). On behalf of the Receivership Entities, Mr. Mittasch inspected the Texas Facility in August 2016 and it was fully operational as indicated in the MSH Report. Attached hereto as Exhibits 5 and 6 are pictures of the Texas Facility which Mr. Galvin advises were taken in or about August 2016 and a video of the plasma system in operation during the same time period. According to the specifications for the system, the Texas Facility could process 17.5 tons per month. (*See* CV Audit, Exhibit 3). Hence, far from being unproven, the technology existed and was in place to process the ore under the SMG Contract. Again, at the very least, questions of fact exist with regard to the viability of the technology.

c. The availability of funds to perform.

Contrary to your bald assertions, had CV Investments funded the letter of credit, GIC would have had more than sufficient funds to perform under the SMG Contract. As even the Claims Letter acknowledges, at the time of the SMG Contract, GIC was in the process of obtaining funding from other sources. GIC had retained the services of an investment banker, Michael Strachan from Cornerstone Private Capital Group ("Cornerstone"). In May 2016, Mr. Strachan reported that he was negotiating with "4 Family Offices/Funds" to obtain capital secured by barrels of ore stored by GIC with an estimated value of almost $1 billion. (*See* Letter dated May 5, 2016 Letter (the "May 5 Letter), attached hereto as Exhibit 7). The May 5 Letter goes on to state that the Funds/Family Offices will form a special purpose vehicle to complete the transaction. *Id.*

By letter dated March 25, 2017 (the "March 25 Letter", attached hereto as Exhibit 8), Mr. Strachan advised that additional funds were necessary to cover attorney fees, regulatory filings and analytic work which would take approximately 3-5 weeks to close. *Id*. GIC sent its required share of these additional funds. After obtaining an extension until April 6, 2017 for CV Investments to post the letter of credit required by the SMG Contract with GIC, the Private Funds Corporation (Cayman) Ltd. wrote to GIC on April 3, 2017 and advised that it was the special purpose vehicle formed by the four family offices for the "sole purpose" of jointly investing in projects with GIC, including the SMG Contract, and further, that it was completing the final processes to begin funding GIC, just as Mr. Strachan had stated in the March 25 Letter. (*See* April 3, 2017 Letter, attached hereto as Exhibit 9).

After GIC reported to Mr. Strachan that the letter of credit had not been provided by CV Investments, it having instead usurped GIC's business opportunity with SMG just one day after the SMG contract expired, the funding arranged by Cornerstone simply cratered, thereby preventing GIC from otherwise taking advantage of its relationship with SMG or purchasing magnetite after the Receivership Entities had defaulted under the CV Investment Contract.

Once again, this history refutes the conclusory assertions made by the Receiver and illustrates again that at the very least, the Receiver's position raises issues of fact that need to be resolved, rendering this Claim inappropriate for summary disposition.

4. The Receivership Entities received a benefit.

Your categorical assertion that the Receivership Entities failed to realize upon the business opportunity stolen by CV Investments is self-serving and, even if material, does nothing more than further demonstrate questions of fact exist that preclude resolution of the Claims and Counterclaims in a summary proceeding. The fundamental assertion here is that CV Investments stole a key opportunity from GIC, with the potential for a substantial return. That CV Investments and Mrs. Smith may have mismanaged the opportunity with SMG has no bearing on whether the Receivership Entities received a benefit from their conduct. They clearly did, even if they failed to realize the full potential of that benefit. It likewise has no bearing on whether GIC has been harmed by their conduct. The ore subject to the SMG Contract had substantial value which, as demonstrated herein, GIC had been in position to realize upon. CV Investments plainly saw a benefit because it proceeded to purchase more than 38,000 tons. The conduct alleged in the Counterclaims prevented GIC from seizing upon that opportunity and the measure of its damages is amply supported by the documents submitted herein and by the anticipated testimony and further documentary evidence that will be revealed by the discovery to be conducted in the Galvin Action.

Similarly, the Receiver's efforts to analogize GIC to an investor seeking to recover profits is misplaced. GIC has been harmed by the Receivership Entities' conducting of business in the ordinary course, and it is entitled to recover damages against those entities for their conduct. It is not seeking to profit from Mrs. Smith's fraudulent conduct vis-a-via other investors as implied by the Receiver's analogy.

5. The Claims and Counterclaims do not otherwise fail as a matter of law.

For the reasons set forth in the Opposition, GIC's allegations in the Counterclaims amply support the relief it seeks. We see no need to further respond to your sweeping conclusion that the Counterclaims are "legally deficient" and we refer you to the Opposition for a complete recitation of the facts and law supporting our position.

Regards,
WHITE AND WILLIAMS LLP

Stuart J. Wells

Stuart J. Wells

29046983v.1

Exhibit 1

Magnetite Concentrates
Purchase and Sale Agreement

Southern Minerals Group, LLC of P. O. Box 535 Silver City, NM 88062 as "Seller," and CV Investments LLC 200 Four Falls Corp. Ctr. Suite 211, Conshohocken, PA 19428 and affiliates as "**Purchaser**," agree as follows:

1. Seller has the exclusive right to access approximately 800,000 tons of magnetite concentrates (this is an estimate of the size and should not be relied upon as a definition of resource), a treated by-product of copper mining and milling operations conducted at the Mine site formerly operated by Freeport-McMoRan located in Grant County, New Mexico, and has in place contracts or purchase orders to sell approximately one-half of that inventory to other purchasers. The Seller will ensure that it does not undertake any activities that impact on the Purchases rights to the magnetite concentrates. Should, for any reason, the Sellers right to access this material be terminated, then on the day that access is terminated this Agreement will terminate, without further recourse to Purchaser and Seller other than amounts already outstanding or breaches of Agreement occurring up to that date.

2. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller up to of 400,000 tons of such magnetite concentrates for the price of $80.00 per ton. These prices include Seller loading the concentrates into Purchasers' trucks with Seller's equipment and equipment operators, and Seller shall bear all costs associated with such loading operations. The Purchaser undertakes to purchase a minimum of 4,000 tons per month from ~~commencement of this Agreement~~ June 1, 2020. BJS CH

3. Purchaser shall provide the trucks and truck operators to haul the concentrates and shall bear all costs associated with such hauling operations. The Purchaser shall ensure that representatives of the Purchaser (including truck drivers) shall conduct its activities in a good and professional manner and in accordance with the reasonable directions (if any) given to it by the Seller from time to time.

4. Seller shall maintain accurate certified weighing facilities and will weigh the Purchaser's trucks on entrance and exit, unloaded and loaded, and provide the net weights of each load to Purchaser as each loaded truck exits the site, and provide appropriate Material Safety Data Sheets. The Seller shall not be liable for loss or damage suffered or incurred by the Purchaser due to any failure or interruption of equipment due to the need for repair or alteration or breakdown but, the Seller will assist the Purchaser in minimizing any losses that the Purchaser may incur.

5. Purchaser shall:

(i) provide a deposit of $10,000 to the Southern Minerals Group, LLC trust account within one business day of signing of this Agreement, as advised. BJS CH

(ii) Prior to commencement of this Agreement, but no later than seven days from signing of this Agreement, the Purchaser shall provide the Seller with a standby letter of credit in the amount of $250,000.00 issued by a major US banking institution authorizing the seller to draw against it in the event Purchaser fails to timely pay any invoice in full or provide, in solicitor's trust, a deposit of $250,000 with instructions that this is to be released to SMG on the provision by SMG that there has been a default on payment under the Agreement. This notification is to be given at SMG's sole discretion and the solicitor has to be irrevocably instructed to act on any such notice.

(iii) make payment for all concentrates purchased on a monthly basis within ten days after being presented with an invoice from Seller.

6. Purchaser acknowledges and is aware that local governmental regulations limit the total tonnage of concentrates that may be removed from the mine site to 11,000 tons per month, and that Seller's other existing commitments presently utilize up to approximately one-half of that amount, leaving only approximately 5,500 tons per month now available to Purchaser. Seller agrees to inform Purchaser if and when other purchasers fail to purchase their entire committed amount so as to allow Purchaser the opportunity to acquire a larger amount in any particular month.

7. Seller warrants and covenants to and with Purchaser that it can provide good and marketable title to the subject concentrates, that they are by-products of lawful mining operations, have been properly severed from the realty from which they came, are free and clear of any liens or claims of any kind or nature, and will be free and clear of any liens or claims of any kind or nature when conveyed to Purchaser.

8.1 If a Force Majeure Event affecting a Party precludes that party ("Precluded Party") partially or wholly from complying with its Obligations (except its payment obligations) under this Agreement then:

(a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other Party of

(i) the Force Majeure Event;

(ii) which obligations the Precluded Party is precluded from performing ("Affected Obligations");

(iii) the extent to which the Force Majeure Event or its consequences preclude the Precluded Party from performing the Affected Obligations ("Precluded Extent"); and

(iv) the expected duration of the delay arising directly out of the Force Majeure Event or in consequence of it;

(b) the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event ("Actual Delay"); and

(c) the other Party's Obligations which are dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

8.2 The Precluded Party must, as soon as reasonably practicable after cessation of a Force Majeure Event, resume performance of the Affected Obligations and must use reasonable

endeavours" does not require a Party to pay money in an attempt to overcome the event or to settle any industrial dispute against its wishes.

9. To prevent possible confusion Seller and Purchaser agree that this Agreement is to be applied in accordance with the laws of the State of New Mexico other than its conflicts of laws principles.

10. Parties agree that any dispute or controversy arising out of or relating to this agreement or the interpretation thereof, shall be settled by arbitration, held in a mutually acceptable location to the parties, in accordance with the rules, then in effect, of the American Arbitration Association.

11. Either Party may assign this agreement, upon written notice, provided such assignment is to a commonly controlled affiliate.

12. Either Party may terminate this Agreement on a serious breach of Agreement after giving 30 days notice ("Notice Period") to the other Party to rectify the breach and that breach is not rectified within the Notice Period. The termination of this Agreement shall not affect the rights of the aggrieved party in seeking damages in relation to the Agreement being terminated.

13. Southern Mineral Group, and its affiliates agree not to use the name CV Investments in any public media without Purchasers written permission unless required by law BS CH

Seller and Purchaser have executed this Agreement effective as of the 7 day of April, 2017.
CH HG

Southern Minerals Group, LLC

By: _____
Clovis Hooper,
President
Southern Minerals Group LLC

CV Investments LLC

By: _____
Brenda Smith,
Managing Member
CV Investments LLC

1

Exhibit 2

INITIAL ASSESSMENT REPORT

Brenda Smith
CV Brokerage Inc.
200 Four Falls Suite 211
1001 Conshohocken State Rd
West Conshohocken, PA 19428

Dear Ms. Smith

As instructed, I met with Mr. Galvin in Denver. I took possession of two buckets of his ore from his warehouse; approximately 75 pounds. Later that night, I began testing material on the Xcalibur XRF to build a profile of material. I then shipped the two buckets to a pilot plasma plant in Fort Worth Texas named Nu Way Solutions LLC. There the ore was thermally processed and subsequently tested to determine the post processing value of the material. While I was at the facility we discussed a processing agreement with the owners of the facility and Dr. Mark Shuey who has considerable experience processing and selling the metal from the Galvin ore. The results are as follows:

GALVIN ORE TEST RESULTS

The buckets that I sent from Denver to Fort Worth Texas arrived and were unbroken and fully sealed. I removed the 10 pound quantity of the material and with the help of the staff at the Nu Way facility, we loaded it into their plasma processor. The facility has categorized the Galvin ore as ore number 37, they've also categorized the current run of their equipment as run 70 all subsequent tests will be labeled as 70.1, 70.2 etc. The results are as follows:

Table 1. Average or value calculation (Ore37)

Valued Metal	Troy Ounces per ton	Value per ton*
Gold	58.33	$77,971.25
Platinum	160.42	$185,762.50
Iridium	175.0	$87,500.00
	Total value per ton	$351,233.75

***Metal prices were as of August 5, 2016**

The material was loaded in and fed by Auger into the 35kva pilot plasma unit. The ore went through the unit only once. Silica was added to help the operation of the unit in addition to different value inert fluxes to aid in liberating the precious metals. Operation of the unit and the flux formulas were provided by Dr. Mark Shuey.

REFINING ASSESSMENT

After the testing was completed we had discussions with the facility owner regarding renting out the facility for processing Galvin's ore. They are very interested in moving forward with a processing agreement for the ore. Besides the plasma processing unit, the Nu Way plant also has a significant wet chemistry and hydro-metallurgical equipment which can be used for post processing the material into a product that can be brought to a refiner. The technology and staff training will be provided by Plasma Energy Design LLC (PEDL) represented by Dr. Mark Shuey. The facility that we are renting would be owned by Nu Way Solutions LLC. Based on the conversations with the facility owner and with PEDL, I feel confident that a continuous production of 1 ton a day can be processed at this facility. We also reviewed a number of refining techniques. An early estimate total cost of processing a ton of material is $35-$40,000 per ton. This would include post processing chemical costs, incourting with either copper or nickel, and preparing the material for shipping to a refiner or a storage facility.

CONCLUSION

Based on the value revealed in the material and the processing cost of the material it is my conclusion that processing Galvin's ore (Ore 37) is a profitable venture. Additional information is needed from whatever refiner we choose to ship the ore to. We will need to determine what their testing procedures are so that we can assure quality of the material. In addition, the refiner needs to provide us the form they would prefer the material in; whether we incourt with copper, nickel or leave it as an iron concentrate. We would also need to determine if they're looking for it in bar form, or as a powder to be put into super sacks. Once it is up and running in the Nu Way Solutions LLC facility I believe that the ore can be optimized to bring out the highest value, and the extraction methods can be simplified increasing profitability in the long-term.

Exhibit 3

ATTACHMENT "A" BUDGET

TEXAS OPERATION BUDGET AND FINANCIALS

Note: Cells in blue are formulas. PLEASE DO NOT CHANGE.

Time Constants

Min / Hr	60	minutes	Please do not change blue cells - contain formulas
Hrs / Day	24	hours	
Calendar days / mo	30	days	

Precious Metals Data

1 short ton	= 2000	lbs	Please do not change blue cells - contain formulas
1 lb	= 14.58322	OzT	
1 short ton	= 29,166.67	Troy Oz	
Refiner Charge	10%	Refiner share + broker / buyer fees.	
PM value / ton	$360,000.00	per ton (Audit for Elrerd Smith)	
Ore Cost	$150	per ton of ore.	

Production Variables

Work Days / Week	5	days	Please do not change blue cells - contain formulas
Number of shifts	3	shift(s)	
Hrs / Shift	8	hours	
Work Days / Month	22	days	
Uptime	85%	percent of shift that machine is producing metal	
Production Hours / Day	20.4		
Production Hours / Mo	448.8		
Production Hours / ton of Plasma Product	28.57		
Reduction of ore	10%	of ore weight is eliminated in transition to plasma product	
Plasma Product output / hr	70	lbs / hr	
plasma Product output / month	15.7	tons	
Ore consumption / month	17.5	tons	
Secure outbound logistics / ton	$300	[ROUGH ESTIMATE] per ton of plasma Product delivered from plant to refiner	

Consumables Variables

Please do not change blue cells - contain formulas

Number of torches in production	1		

NaOH

NaOH Concentration	50.0	% Solution	
NaOH Cost per gallon	$ 2.600	$ / gallon	
NaOH total for one month	5.0	Gallons used	
NaOH costs per month	$13	estimate	

Crucible

Crucible cost each	280	cost per crucible	
Crucible used per day	2	Machine Graphite	
Crucibles used per month	132	Crucible used	
Crucible cost per month	$36,960	estimate	

ATTACHMENT "A" BUDGET

Electricity

Electricity consumption (torches)	100	kWh per torch plus Induction	
Electricty consumption (support)	25	kWh	Estimate (Cooling water circuit, controls, gas delivery circuit)
Electricity use for entire plant	**125.0**	kWh	
Electricity Cost	$0.60	$ /kWh	
Electricity Cost for plant	$75.00	$ / hr	
Electricuty costs per month	$ 39,600		

Direct Labor

Average hourly rate	$ 25.00		
Direct labor per shift	**3**	people	laborers, torch tech, feed tech, offgas tech, maintenance
Payroll Taxes	6.75%	SSDI, Medicare	
Unemployement Insurance	5.00%	of payroll estimate	
Worker's Comp. Insurance	5.70%	of payroll	
Profit sharing	15.00%	of payroll	
Retirement Contribution	4.50%	of payroll	
Overtime rate	10%		
Overtime premium	1.5		
Group Insurance	$ 2,500	per mo.	Health, dental, disability, life
Straight time hours / mo-worker	1,584	hours	
Overtime hrs / mo-worker	158	hours	
Total Wages / mo-worker	$ 45,540		
Total Benefits / mo-worker	$ 19,327		

Management Labor

Supervisors per shift	**1**		
Average hourly rate	$ 40.00		
Payroll Taxes	6.75%	SSDI, Medicare	
Unemployement Insurance	5.00%	of payroll	estimate
Worker's Comp. Insurance	5.70%	of payroll	
Profit sharing	20.00%	of payroll	
Retirement Contribution	4.50%	of payroll	
Overtime rate	10%		
Overtime premium	1.5		
Group Insurance	$ 2,500	per mo.	Health, dental, disability, life
Straight time hours / mo-worker	528	hours	
Overtime hrs / mo-worker	53	hours	
Total Wages / mo-supervisor	$ 24,288		
Total Benefits / mo-supervisor	$ 12,689		

TEXAS LABOR ONLY	$ 101,843.85	
TEXAS EXPENSES PER MONTH	$ 178,416.85	(AT $42,000 A TON X 5.2 TONS = $ 218,400.00)

ATTACHMENT "A" BUDGET

ARCH ENETERFRISES REFINING 10%FEE	$ 628,320.00		
VALUE FCR CNE TON	$ 360,000.00		
GROSS INCOME PER MONTH	$ 6,283,200.00		
PROFIT PER MONTH	$ 5,476,463.15	$ 5,436,480	(IF PROCESSING CHARGE IS $218,400)

Exhibit 4

charged $40,000 per ton and paid for upon acceptance by GIC or its representative. The acceptance method will be mutually agreed upon.

3. GIC will be responsible for shipping the ore to and from the plasma processing facility and bear all costs including copper or other collector metal if used. GIC may call upon PED to help facilitate shipping such as scheduling, loading, unloading and storing (at facility site or otherwise agreed upon location).

4. PED with GIC, will establish a quality control program that will track each Lot and barrel of ore and enable GIC to remotely observe the processing as mutually agreed upon.

5. PED agrees to toll and post process the ore product using its best know-how, technology and expertise. Upon completion of toll processing PED will invoice GIC at the rate of $40,000.00 per ton of Ore fed, which GIC agrees to promptly pay. If payment is not made within 90 calendar days the plasma processed ore product in the amount of unpaid balances reverts to PED.

7. PED will do its best effort to meet a minimum value of $200,000 per ton of Ore #37 composition, or other ore in PED's inventory, processed, in a mutually agreed upon lot size. Owing to the compositional variation of ore, the value may be greater or less than $200,000. PED will notify GIC should the value be less than $200,000.

8. The post plasma processed product from the ore will be in particulate form, and will be dried and put in mutually agreed upon containers.

9. **Confidentiality.** This Agreement does not provide a license or access to intellectual property of any kind. To the contrary, all parties agree to use their utmost efforts to protect and keep confidential any trade secrets, know how, machinery, methods, and all intellectual property of whatever kind PED may use in its processing, and shall protect and defend against any claims that it wrongfully disclosed them. GIC and its individual personnel shall agree to and sign PED's confidentiality and non-disclosure Agreements prior to commencement of work. Cameras, cell phones, computers, and recording or transcription devices of any kind shall remain outside the processing area in the building and not be used to record plant operation unless both parties agree. Likewise, this Agreement and its

provisions. Jurisdiction and venue shall be solely in the jurisdiction and venue of PED's charter state and registered agent location.

m) **Titles.** Section headings or titles are for convenience only and shall not be used in the construction or interpretation of the document.

n) **Certificates.** Certificate of analysis and MSDS of ore provided GIC shall not be withheld by one Party from the other and must be available for all personnel who work with the ores.

o) **Implementation.** Implementation of this Agreement is based upon GIC's demonstration to provide down payment for the first five (5) tons to be processed at the thermal processing facility in Fort Worth, Texas.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

Plasma Energy Design LLC

By: _____
Jonathan Reed, COO

Galvin Investment Company, LLC

By: _____
Richard C. Galvin, CEO

Exhibit 5


HYPERTHERM

Exhibit 7

CORNERSTONE
PRIVATE CAPITAL GROUP

PRIVATE & CONFIDENTAL B. SMITH ONLY

PRIVATE AND CONFIDENTIAL CV BROKERAGE ONLY

Brenda Smith
Chief Executive Officer
CV Brokerage Inc.

May 5, 2016

RE: Galvin Investments Line of Credit

Good Day Brenda,

As promised we are writing this letter to provide you with a summary synopsis regarding the ongoing credit line negotiations for Richard Galvin and his related companies.

We have been in negotiation with 4 Family Offices/Funds in providng the capital needed. Currently the barrels have a decreased value of $975 Million Dollars at current average levels. Based in this below is the broad strokes if the deal:

Galvin Barrels held as partial collateral $975 Million Dollars
Cash Security in form of bond held at back valuing $225 Million
Total Collateral $1.2 Billion USD

Funds/Family Offices providing funds for credit line

CRF Family Office (Brazil) $1 Billion Dollars
Vanguard Family Trust (Cayman Islands) : $1 Billion Dollars
Roush Rothstein Funds (Monaco): $1.3 Billion Dollars
TPPG Private Family Trust (Channel Islands) 1.25 Billion Dollars

Highlights of Agreement

The above family offices will form a joint ICON vehicle to be administered in the Bahamas for the sole purpose of the fund.

Fund administrators will manage all outflows generated by the credit line.

Credit line is for an intital period of 3 years revolving with an interest rate of 4.75%

First payments due 30 days after initial drawdon

Galvin will be responsible for the management fees associated with fund accountants and analysts to be employed by fund administrators and managers.

All projects must be approved by board appointed by the ICON fund owners

All fund managers must sign off on closing and drawdown cycle dates

Fund accounting committee to meet every 30 days to monitor performance of the credit line.

1 Bay Street, Nassau, The Bahamas
Centre of Commerce
1 (242) 455-7004
info@cornerstonepcg.com

CORNERSTONE
PRIVATE CAPITAL GROUP

PRIVATE & CONFIDENTAL B. SMITH ONLY

Any indication of default risk can result in funds immediate seizure of collateral and outstanding projects where borrowed funds were used to finance.

All assets purchased using borrowed money must be declared and approved before purchase is conducted.

Credit Suisse is the bank facilitator on this deal meaning they are only acting as the bank that will house the joint funds and conduct banking transactions per the funds instructions.

Upon closing we have already approved a drawdown of $125 Million Dollars a portion of which to be set aside and managed by CV Brokerage.

I hope this helps.

Best Regards

Michael A. Strachan
Managing Director
Cornerstone Private Capital Group

1 Bay Street, Nassau, The Bahamas
Centre of Commerce
1 (242) 455-7004
info@cornerstonepcg.com

Exhibit 8

March 25, 2017

Richard C. Galvin
Galvin Investment Co. Ltd
ATTN: Richard Galvin

Dear Richard,

Please be advised that this agreement is between Galvin Investment Co. & Cornerstone Advisors a division of The Cornerstone Group.

The funds required for the completion of the present financing exercise in the amount of $70,000 are being sent and appropriated by Richard Galvin only and not the responsibility of The Cornerstone Group, are to be used for the sole purpose of completion regulatory filings, legal fees and analytical work associated with the completion of financing in progress for Galvin Investments involving a consortium of Funds and Family Offices to fund expansion and new projects.

We anticipate once this process is started there will be 3-5 weeks until closing of the financing. The costs associated with this have been calculated at $300,000 of which Galvin is responsible for $70,000.

Any financial borrowings related to the completion of work are the sole responsibility of Galvin Investments and this agreement covers only the completion of works in process as stated previously.

Please remit a signed copy to us at info@cornerstonepcg.com for our records.

Best Regards,

Trevor Mackey
President
The Cornerstone Group

Signed:

Richard C Galvin

Richard Galvin
President
Galvin Investments

Signed:

Michael Strachan
Senior Advisor
The Cornerstone Group

Exhibit 9

PRIVATE FUNDS CORPORATION (CAYMAN) LTD.

April 3, 2017

Richard C. Galvin
Galvin Investments Limited
Centennial, CO, USA

RE: Confirmation of Credit Line

Dear Richard,

We are writing this letter to inform you to reaffirm our groups commitment to providing you and your co-guarantors with the negotiated credit facility valued at $3.88 Billion Dollars in United States Currency. We have been informed that the necessary processes to close this deal are being put in place and once completed and turned over to us we will begin our closing as a group which we look forward to

About us

Private Funds Corporation is a Cayman Islands formed Special Purpose Vehicle founded by a group of four family offices. The sole purpose of this structure is to jointly invest in projects that our team and directors feel are viable and solid investment. Currently we have joint assets of over $33 Billion and cash balances as at December 31, 2016 totaling $9.2 Billion Dollars.

Per request of your group we will issue you a statement of assets to be viewed by you only. Your signature at the bottom will act as agreement to not share this information with any parties not approved.

We look forward to closing this transaction and wish you the best in your endeavors.

Best Regards,

Ryan Lockhart, CFA, MCSI
Managing Director
Private Funds Corporation

Acknowledged:

Richard C Galvin

Richard C. Galvin

Exhibit C

Weiss, Robin S.

From: Brenda Smith
Sent: Wednesday, March 15, 2017 2:11 PM
To: D'Abruzzo, Joan E
Cc: Ketterman, Allegra
Subject: RE: Letter of Credit
Attachments: document20170315134503.pdf

The LOC relates to the attached contract and is for the purchase of magnetite concentrate. It will be for Galvin Investment Company. If you want to use the existing account, that is fine. Requested sample LOC from Southern Minerals. Brenda

---

From: D'Abruzzo, Joan E [mailto:joan.d'abruzzo@pnc.com]
Sent: Wednesday, March 15, 2017 1:30 PM
To: Brenda Smith <bsmith@bristoladv.com>
Cc: Ketterman, Allegra <allegra.ketterman@pnc.com>
Subject: RE: Letter of Credit

Brenda, We can begin the process but I will need to put the funds into a separate account to hold it as collateral Please send a sample letter of credit so we know what the beneficiary wants to see.
Which entity is establishing the letter of credit and what is its purpose. Is it Galvin Investment Company ?

Thank you

Joan

Joan D'abruzzo,
Senior Vice President
PNC Bank, NA
1000 Westlakes Dr. Ste 300
Berwyn, Pa. 19312
joan.d'abruzzo@pnc.com
610-407-0168

From: Brenda Smith [mailto:bsmith@bristoladv.com]
Sent: Wednesday, March 15, 2017 1:14 PM
To: D'Abruzzo, Joan E <joan.d'abruzzo@pnc.com>
Cc: Tomko, Patricia R <patricia.tomko@pnc.com>
Subject: Letter of Credit

Joan –
I need to establish a $100,000 letter of credit for the Beneficiary below. I would like to move $100,000 into the Galvin Investment Co account at PNC account number [redacted] so you can create the LOC. Does that work? As usual, time is of the essence. Let me know how to proceed. Thanks, Brenda

---

From: Clovis Hooper [mailto:6098@zianet.com]
Sent: Tuesday, March 14, 2017 10:26 PM
To: Brenda Smith <bsmith@bristoladv.com>

Cc: juliewhite.smg@gmail.com; Richard D Mittasch <Rmittasch@gcggold.com>; christianc.brock@gmail.com
Subject: Re: Quick Questions

Brenda,

My apologies for getting back to you so late. Please see the bank details below. I have also listed my contact details. If you need anything further, please let me know.

Clovis Hooper
Cell: 575-544-7025
Email: 6098@zianet.com

Beneficiary Name: Southern Minerals Group LLC
Address: PO Box 934
City: Silver City
State: NM
Zip: 88062
Contact Name: Clovis Hooper

Beneficiary Bank Details
ABA/RTN: [redacted]
Bank Name: Washington Federal
Address: 425 Pike Street
City: Seattle
State: Washington
Zip: 98101
Account Number: [redacted]
Account Type: Checking
SWIFT/BIC: [redacted]
Correspondent Bank SWIFT Code=Wells Fargo
SWIFT: [redacted]

Kind regards,
Clovis

On Mar 14, 2017, at 11:05 AM, Brenda Smith <bsmith@bristoladv.com> wrote:

> Clovis and /or Julie –
>
> This is Brenda Smith and I need to make the arrangement for the LOC and pick up magnetite concentrates this week. Would you please tell me bank coordinates for the $100,000 line of credit? Also, would you please send me the exact address for the site? I am on a plane so I have to use email only. My contact information is below. Thanks, Brenda
>
> Brenda Smith
> 200 Four Falls, Suite 211
> 1001 Conshohocken State Road
> West Conshohocken, PA 19428
> Office: 610.862.0880 ext 202 * Mobile: 610.310.8936 * Fax: 484-351-8093

Exhibit D

DECLARATION OF RICHARD M. MITTASCH

1. My name is Richard M. Mittasch. I am of full legal age and competent to make this Declaration. I have personal knowledge of the facts set forth herein.

2. I currently work at the at the Cross and Caribou mines in Boulder County, Colorado, as the V.P of operations. They have also been known as the Calais mine. I have been familiar with that mining operation since 2011 and in 2016 I was vice-president for its operations.

3. I have known Richard Galvin since 2006 and of his interest in minerals and precious metals concentrates. In early 2016 I began discussions with him about the need of funding for the Calais mining operation. He was interested in investing into it and he introduced me by telephone to Brenda Smith who he had met earlier in 2016 and with whom he was negotiating for funding for several of his ventures. In some subsequent conversations with her she indicated some interest in the mine.

4. I met Brenda Smith face-to-face for the first time in July 2016 at a meeting hosted by Richard Galvin at a restaurant in Greenwood Village, Colorado. I had further discussions with her then about the Calais mine and my background and about Mr. Galvin's interest in precious metals and mineral projects. A day or two after that meeting Mr. Galvin brought her to the Calais mine, which is near Nederland Colorado, and I gave her a tour of it. She expressed interest to me of desiring to invest into it in some way with Mr. Galvin.

5. After that meeting she contacted me about Mr. Galvin's precious metals concentrates and asked me to collect some samples, keep track of them and send them to a facility in Fort Worth for testing and evaluation. I did do that as she instructed and met with Mr. Galvin at his warehouse in Denver, Colorado, took the samples from his ore and sent them

EXHIBIT C

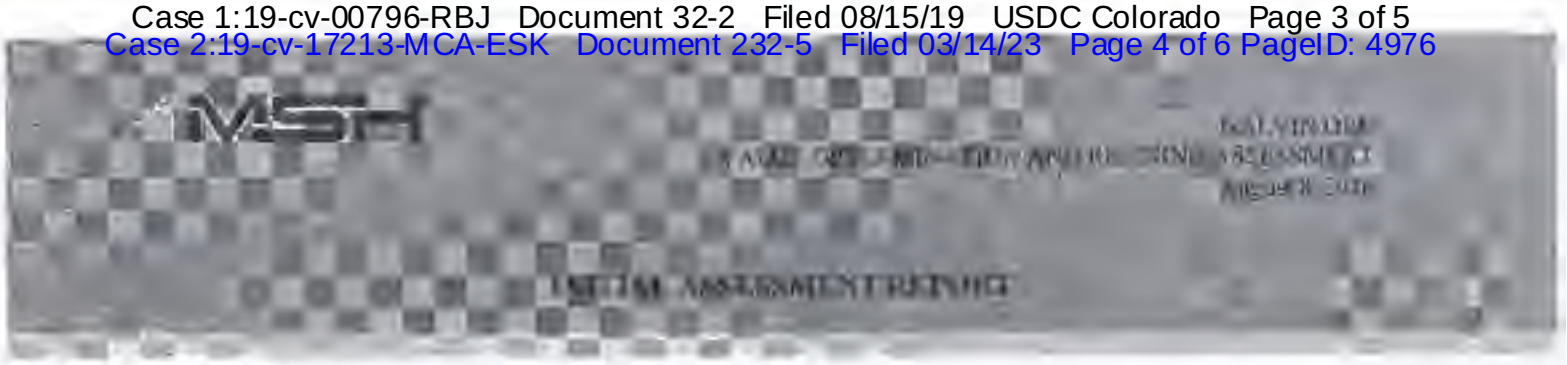
to the facility in Fort Worth. I reported the results to her in my Initial Assessment Report dated August 8, 2016. A true copy of it is attached hereto.

6. After that time I continued discussions with Mr. Galvin and Ms. Smith as to the mine operation. I did not know what the agreement was between Mr. Galvin and Ms. Smith but just that they were working together in some way. She expressed interest in the Cala s mine and I communicated further with her and sent her further information she requested. Attached are true copies of my emails to her of December 8, 2016, regarding financial estimates and plans (without the attachments) and of February 27, 2017, regarding the final 43-101. The 43-101 is a highly technical engineering report evaluating minerals and mines made to satisfy strict Canadian securities laws.

7. I was present at the March 2017 meeting in Silver City, New Mexico, when Mr. Galvin signed the contract to purchase the mining tailings there. Also, two of my employees, Ms. Smith and representatives of Southern Minerals were there. Before Mr. Galvin signed the contract, Ms. Smith did say words to him to the effect of go ahead and sign it Rich, I will put up the letter of credit.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 22, 2019.

Richard M. Mittasch



Brenda Smith
CV Brokerage Inc.
200 Four Falls Suite 2 1
1001 Conshohoken State Rd
West Conshohoken, PA 1 9428

Dear Ms. Smith

As instructed, I met with Mr. Galvin in Denver. I took possession of two buckets of his ore from his warehouse; approximately 75 pounds. Later that night, I began testing material on the Xcalibur XRF to build a profile of material. I then shipped the two buckets to a pilot plasma plant in Fort Worth Texas named Nu Way Solutions LLC. There the ore was thermally processed and subsequently tested to determine the post processing value of the material. While I was at the facility we discussed a processing agreement with the owners of the facility and Dr. Mark Shuey who has considerable experience processing and selling the metal from the Galvin ore. The results are as follows.

GALVIN ORE TEST RESULTS

The buckets that I sent from Denver to Fort Worth Texas arrived and were unbroken and fully sealed. I removed the 10 pound quantity of the material and with the help of the staff at the Nu Way facility, we loaded it into their plasma processor. The facility has categorized the Galvin ore as ore number 37, they've also categorized the current run of their equipment as run 70 all subsequent tests will be labeled as 70.1, 70.2 etc. The results are as follows:

Table 1. Average or value calculation (Ore 37)

Valued Metal	Troy Ounces per ton	Value per ton*
Gold	58.33	$77,971.25
Platinum	160.42	$185,762.50
Iridium	175.0	$87,500.00
	Total value per ton:	$351,233.75

***Metal prices were as of August 5, 2016**

The material was loaded in and fed by Auger into the 35kva pilot plasma unit. The ore went through the unit only once. Silica was added to help the operation of the unit in addition to different value inert fluxes to aid in liberating the precious metals. Operation of the unit and the flux formulas were provided by Dr. Mark Shuey.

REFINING ASSESSMENT

After the testing was completed we had discussions with the facility owner regarding renting out the facility for processing Galvin's ore. They are very interested in moving forward with a processing agreement for the ore. Besides the plasma processing unit, the Nu Way plant also has a significant wet chemistry and hydro-metallurgical equipment which can be used for post processing the material into a product that can be brought to a refiner. The technology and staff training will be provided by Plasma Energy Design LLC (PEDL) represented by Dr. Mark Shuey. The facility that we are renting would be owned by Nu Way Solutions LLC. Based on the conversations with the facility owner and with PEDL, I feel confident that a continuous production of 1 ton a day can be processed at this facility. We also reviewed a number of refining techniques. An early estimate total cost of processing a ton of material is $35-$40,000 per ton. This would include post processing chemical costs, incurring with either copper or nickel, and preparing the material for shipping to a refiner or a storage facility.

CONCLUSION

Based on the value revealed in the material and the processing cost of the material it is my conclusion that processing Galvin's ore (Ore 37) is a profitable venture. Additional information is needed from whatever refiner we choose to ship the ore to. We will need to determine what their testing procedures are so that we can assure quality of the material. In addition, the refiner needs to provide us the form they would prefer the material in; whether we incourt with copper, nickel or leave it as an iron concentrate. We would also need to determine if they're looking for it in bar form, or as a powder to be put into super sacks. Once it is up and running in the Nu Way Solutions LLC facility I believe that the ore can be optimized to bring out the highest value, and the extraction methods can be simplified increasing profitability in the long-term.

-----Original Message-----
From: Richard Mittasch <Rmittasch1@verizon.net>
To: 'Brenda Smith' <bsmith@cvinv.com>; rbutler691 <rbutler691@aol.com>
Sent: Thu, Dec 8, 2016 11:36 am
Subject: Calais presentation and perform

Team
I put together a new presentation for Calais, when timelines and estimates, as well as I created a pro forma based on our current budget where we would build one mill in 2017 and another mill underground in 2018 I put together a PDF of the summary page, and of course so we could tweak and work the model I've included the Excel version mind you this is still a draft and I'm putting a few illogic dates in on mining equipment utilization and life expectancy.

Please give any comments or make any necessary changes

Regards

Richard

-----Original Message-----
From: Richard Mittasch <rmittasch@gcggold.com>
To: 'Brenda Smith' <bsmith@cvinv.com>; Alfred F. Gerriets II < afg_288@verizon.net>; Richard C. Galvin <rbutler691@aol.com>
Sent: Mon, Feb 27, 2017 4:50 pm
Subject: Caribou final - Phase 1 NI 43-101

Team
here is the final 43-101 for this phase it has all the corrections, and draft has been removed from all pages it also has all the seals from the geologists
so this one is ready to fly

Regards

Richard

Exhibit E

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

CREDITOR CLAIM FORM

Name of Creditor: Southern Minerals Group, LLC

Name and Address Where Notices Should be Sent: Daniel M. Jaffe
Slover & Loftus LLP (counsel for Southern Minerals Group, LLC)
1224 17th St. NW
Washington, DC 20036

Email Address: dmj@sloverandloftus.com

Telephone No.: 202-347-7170 (Office), 202-288-4341 (Cell)

Date(s) of Claim: SMG's Claim was set by an arbitration award of the Honorable Mack L. Bernstein (Ret.) dated May 29, 2020, in *Southern Minerals Group, LLC v. CV Investments LLC*, AAA Case 01-19-0002-9998. The applicable contract, Magnetite Concentrates Purchase and Sale Agreement, is dated as of April 7, 2017, and amended as of June 8, 2018.

Amount of Claim: $21,929,259 exclusive of applicable pre-judgment and post-judgment interest. The damages are allocated as follows by the arbitration award: (1) $7,215,000 in liquidated damages as of March 1, 2020, (2) $14,090,599 in lost profits; (3) $5,600,000 in punitive damages; and (4) $23,660 in arbitration costs. The arbitration award granted pre-judgment and post-judgment interest at a rate of 15% as provided for under New Mexico law, which interest totals approximately $531,650 in pre-judgment interest and $6.01 million in post-judgment interest.

Please attach copies of all invoices relating to your claim. Do not send original documents. Copies of the documents provided to the Receiver will not be returned to the creditor. You must maintain the original documents as the Receiver may ultimately request them for verification.

Documents attached:

1. Arbitration Award
2. Magnetite Concentrates Purchase and Sale Agreement
3. Petition for Order Confirming Arbitration Award

Note: On June 5, 2020, SMG filed a Petition for Order Confirming Arbitration Award in the United States District Court for the Eastern District of Pennsylvania, *Southern Minerals Group, LLC v. CV Investments LLC* (2:20-cv-02643). The Petition is stayed by the broad litigation freeze order of the Court in this matter.

AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration under AAA Commercial Rules and Mediation Procedures
Amended and effective October 1, 2013

AAA Case 01-19-0002-9998

Southern Minerals Group, LLC

Represented by Daniel Jaffe, Esq. and A. Rebecca Williams of Slover & Loftus LLP

v.

CV Investments, LLC

ex parte

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement dated April 7, 2017 and entered into between Claimant, and Respondent, and having been duly sworn, and having duly reviewed the proofs and allegations of Southern Minerals Group, LLC, and CV Investments LLC having failed to submit proofs and allegations after due notice by mail in accordance with the Commercial arbitration Rules of the American Arbitration Association, hereby, AWARD as follows:

Decision and Opinion

An award is entered in favor of claimant Southern Minerals Group, LLC and against respondent CV Investments LLC in the amounts set forth below.

Procedure

Pursuant to the agreement between the parties dated April 7, 2017 as amended June 6, 2018, claimant filed this action on September 20, 2019. Apparently, respondent's principal had been indicted by Federal Authorities and at the time of filing its primary representative was incarcerated in Federal custody.

On December 4, 2019, Hon. Mark A. Bernstein (Ret.) was selected to be the AAA arbitrator for this matter under the Large Complex procedures of the Commercial Arbitration Rules as amended. Given the claim amount, the Procedures for Large, Complex Commercial Disputes specifies the number of arbitrators to be three. The parties' arbitration provision was silent as to the number of arbitrators. Pursuant to the applicable rules, expecting to be required to pay all costs of arbitration, petitioner requested that the number of arbitrators be reduced to a single arbitrator. According to the rules the first arbitrator determines whether to proceed with a single arbitrator or if three shall be appointed. Since Respondent's representative was only able to communicate via US Mail, it was directed that all communication was to be made in writing.

On, November 13, 2019, Brenda Smith, respondent's representative, submitted a handwritten letter request an indeterminate stay alleging an inability to respond because company records had been seized and had been retained by federal authorities. Respondent offered no suggestion as to how or when this situation would change, such that the matter could resume. Most significantly, as claimant stated in their response there was no suggestion that Smith lacked sufficient knowledge to participate. Claimant further claimed that had this matter been amenable to court filing, a default judgment, unavailable in AAA arbitration,

would have been entered and claimant would earlier have had a judgment to collect upon if respondent did not participate

Respondent requested a hearing by three arbitrators. Claimant responded that no right existed and since claimant would be paying for all costs of arbitration requested the matter be decided by one arbitrator In accord with the AAA rules. By Order dated December 14, the arbitrator ruled that one arbitrator would decide the matter and that the preliminary hearing would be held by written submission.

On January 8, 2020, the arbitrator received Claimant's written preliminary hearing statement and respondent's written letter which did not contain any substantive preliminary hearing statement and merely asked for a 6-month extension, but offered no explanation as to how anything would change 6 months hence. On January 9 claimant responded in writing to the requested extension. By Order dated January 31, 2020 the arbitrator ruled that this matter would proceed and set a schedule for discovery and hearing through written submissions. By submission dated March 20, 2020, as required by the January 8, 2020 Order, claimant submitted its affirmative case memorandum containing procedural background, statement of material facts, and memo of law. Attached thereto were the verified statements of John Peter and Clovis Hooper and a statement of damages.

Claimant also advised that by correspondence dated February 20, 2020 they had submitted Requests for Admissions, Interrogatories, and Requests for Production of Documents and had received no substantive responses but had received a handwritten letter dated March 20, 2020 which was attached.

Respondent's letter stated that although she was unable to retain papers but could have access to a thumb drive.

Accordingly, On April 8, the arbitrator Ordered a thumb drive be provided to respondent and that thereafter, respondent would have 10 days to respond to Claimants discovery requests, or the Request for Admissions would be deemed admitted.

On April 20 Claimant Southern Mineral Group, submitted a memorandum entitled "Rebuttal of Claimant" in which it pointed out that no substantive response whatever had been received from respondent as to the claim and renewed its request for damages.

Claimant sent a thumb drive to respondent on April 27. Since there has been no response by respondent, the Requests for Admissions are deemed admitted.

All required due process was afforded to both sides through the impartial application of the Arbitration Rules agreed to by the parties in their agreement. All reasonable accommodation was made for the parties. No in person or even telephonic conferences were required and all submissions could be made in writing. Handwritten submissions were accepted, considered, and evaluated. No substantive responses were ever received from respondent.

The record was properly closed on May 13, 2020.

Factual Findings

On April 7, 2017 Mr. Clovis Hooper, President of Claimant Southern Minerals Group, LLC (hereinafter SMG) negotiated a Magnetite Concentrates Purchase and Sale Agreement ("PSA") between SMG and Respondent CV Investments LLC ("CVI")

This agreement was subsequently amended on June 6, 2018. Under that agreement, CVI committed to purchasing 400,000 tons of magnetite from SMG at a price of $80.00 per ton at a rate of 4,000 per month beginning in June 2017. This agreement was amended in mid-2018. However, beginning in October 31, 2018 CVI began a pattern of failure of performance followed by representations and promises which were never fulfilled. (see verified statements of Mr. John Peters and Clovis Hooper) CVI has made no payments to SMG since October 2018 (Request for Admission No. 1). CV. breached the PSA. (Request for Admission No. 3). CVI's Smith was arrested on August 27, 2019. As of March 1, 2020, SMG's liquidated damages are in the amount of $4,215,000, exclusive of interest. (Request for Admission No. 2).

Mr. John Peters is the Managing Director of Strategic Minerals PLC, parent company of Southern Minerals Group, LLC ("SMG"). Together with SMG's President, Mr. Clovis Hooper, Mr. Peters negotiated with CVI the Magnetite Concentrates Purchase and Sale Agreement ("PSA") referred to above which was executed on April 7, 2017. This agreement was amended on June 6, 2018. CVI's sole representative was Ms. Brenda Smith ("Smith").

SMG has exclusive access to a magnetite stockpile and operates a magnetite sales operation from the Cobre Mine in New Mexico. SMG's access rights to the magnetite is limited to 800,000 tons. Pursuant to the PSA contract CVI was obligated to purchase 400,000 tons of concentrates with minimum monthly purchases of 4,000 tons. SMG committed access to those tons exclusively to CVI. This commitment by SMG amounted to 50% of its total access to magnetite. Throughout the term of the agreement SMG was able to provide the full 400,000

tons to CVI in accordance with the PSA's monthly purchase schedule. SMG's staffing and costs increased to accommodate the commitment to CVI. CVI took only a total of 38,414 tons of magnetite concentrate from the initiation of the PSA in June 2017. Most of this volume was taken in the first few months. All but one of the shipments was moved, at CVI's request, to property in New Mexico.

CVI defaulted on its required payments. By the end of 2017, CVI was $642,000 in arrears. All CVI shipments were made by truck as required under the PSA. However, when CVI had no named destination for the delivery of the magnetite concentrates CVI requested storage in New Mexico. CVI made 19 payments to SMG for magnetite between June 19, 2017 and October 31, 2018. At various points in 2018, CVI paid some of its outstanding balance but $371,000 was owing when the Parties negotiated the First Amendment in June 2018. SMG generously reduced the outstanding amount owed by over $215,000, conditioned on CVI's payment of the reduced balance. That amended agreement required CVI to make quarterly deposits in lieu of taking the 4,000-ton minimum.

Despite assurances, CVI repeatedly failed to make these required payments. CVI's regular monthly obligations were to resume beginning March 1, 2019. The last CVI payment to SMG was in October 2018. Despite ceasing to make payments, CVI's Smith repeatedly assured SMG that CVI was about to sell a bond and receive a major infusion of cash. Smith reassured that SMG would be paid what was owed when that sale closed. CVI repeatedly claimed that the closing was delayed by forces outside its control. Smith continued her reassurances until August 2019 when she was arrested for allegedly engaging in a Ponzi scheme and CVI assets were seized. SMG's obligations under the PSA and CVI's excuses, delays and

diversions precluded SMG from pursuing other potential purchasers of the magnetite concentrate.

A detailed spreadsheet of SMG's transactions with CVI under the PSA was attached as Exhibit No. 1 to the statement of Mr. Hooper.

Under the amended agreement, CVI's monthly obligations restarted March 1, 2019. CVI failed to make any required payments, these required payments equaled $3,840,000 for the 12 months between March 2019 and February 2020. Consequently, as of March 2020, CVI's liquidated damages owed to SMG equaled $4,215,000, exclusive of interest. In addition to the liquidated damages CVI's breach of the PSA has resulted in SMG incurring direct and consequential damages. CVI's PSA represented a commitment to purchasing half of SMG's magnetite inventory. The volume committed to, and the expected revenue from, CVI under the PSA far exceeds the volume purchased by, and revenue earned from, all other SMG customers combined. Thus, in 40 months, SMG expected to realize significant profits associated with CVI exclusive access to their magnetite rights.

To determine lost profits, the damages calculation has three complementary analyses. The first analysis assumes that CVI performed as required under the PSA. SMG expected to realize over $45.6 million in total revenues during the approximately 8 years of the PSA (2019 – 2027). Of that $45.6 million, SMG expected that CVI purchases would account for $28.9 million, or 63% of all revenues. During that same period, SMG has known and estimated unit costs. SMG's calculation of $21.1 million in expenses is a conservative analysis representing the expenses that SMG might have incurred. Thus, SMG expected to

earn $24.5 million of net profit over the balance of the PSA. To determine the net present value ("NPV") of the expected profit, SMG applied a discount rate of 2%. The NPV calculation yields a current value of reasonably expected profits of **$22.7** million.

SMG's second analysis accurately assumes that CVI made no further purchases from January 1, 2019 thru the remainder of the PSA. In this analysis, SMG's expected profits drop dramatically because SMG will likely have to extend its operating period by 20 years to sell the same volume of magnetite concentrate, and revenues are likewise impacted because certain customers pay less per ton than CVI. Critically, the extended period means SMG will incur additional recurring and fixed expenses with fewer sales. SMG's calculation is again very conservative. The second analysis shows that over the 20-year period, SMG would earn $41.2 million in revenue and incur approximately $36.0 million in expenses over the same period. The second analysis shows that SMG expected to earn $5.2 million net profit over the 20-year period. Consistent with the first analysis, SMG applied a discount rate of 2% to determine the NPV of the expected profit. The NPV calculation yields a current value of **$4.4** million.

SMG's third analysis calculates the difference between these conservative analyses. The third analysis shows that the difference in the NPV of the expected profits between the first and second analysis is $18.3 million. Thus, SMG submits that its total damages attributable to CVI's breach of the PSA is $18.3 million. However, as $4,215,000 of the damages is already a known and liquidated value, SMG calculated it lost $14,090,599 in profit damages and $4,215,000 million in

liquidated damages. The arbitrator finds this analysis to be reasonable, conservative, and accurate.

Detailed Findings of Bad Faith

CV Investments LLC ("CVI") is owned, controlled, and operated by Ms. Brenda Ann Smith. Ms. Smith stands charged by the U.S. Attorney for the District of New Jersey with five (5) criminal counts, including four (4) counts of wire fraud and one (1) count of securities fraud. On the same day as criminal charges were lodged, the U.S. Securities and Exchange Commission ("SEC") filed a civil complaint in the U.S. District Court for the District of New Jersey against Smith and her various corporate entities for violations of securities laws. On September 10, 2019, the assets and bank accounts of several the named defendants were frozen.

SMG has the exclusive right to access approximately 800,000 tons of magnetite concentrates. Under the PSA, CVI was obligated to purchase 400,000 tons of such magnetite concentrates for the price of $80.00 per ton with a required minimum of 4,000 tons per month beginning June 1, 2017. In return, SMG was required to "ensure that it does not undertake any activities that impact the Purchases [sic] rights to the magnetite concentrates." Given commitments to other customers and local regulations, SMG was prohibited from providing more than 5,500 tons of magnetite concentrates per month to CVI. SMG requested, and CVI provided, "a deposit of $10,000" to SMG. Likewise, SMG requested, and CVI provided, a "standby letter of credit in the amount of $250,000.00 issued by a major U.S banking institution" or a cash deposit in the same amount to be held "in solicitor's trust."

CVI's monthly purchases of magnetite ore began June 1, 2017, and shipments of the material began on or around July 1, 2017. Between June 2017 and October 30, 2017, CVI met its contractual obligations under the PSA by purchasing the required minimum of 4,000 tons of magnetite ore each month and promptly payed for those purchases. Beginning with the SMG invoice dated October 31, 2017, CVI's payments fell into arrears. In January 2018, CVI paid its outstanding balance of $642,572.80. Immediately following its January 2018 payment, CVI again fell into arrears, and by March 2018, CVI owed SMG $321,404. In March 2018, CVI notified SMG that it was "unable to take delivery of the minimum volume" of the magnetite ore due to delays in "obtaining environmental approvals." To continue their contractual relationship the parties entered the First Amendment dated June 6, 2018. The First Amendment suspended CVI's obligation to purchase a minimum of 4,000 tons per month "for the period March 1, 2018 through May 31, 2018; provided, however, that such waiver is contingent on [CVI] meeting its obligations as otherwise required in the PSA and this Amendment." The referenced obligations included CVI paying the amount then in arrears, $321,404, according to a detailed payment schedule. If CVI failed to meet that payment schedule it would "forgo[] any right to take the remaining balance of the Prepaid Quantity for the applicable calendar quarter . . . ." CVI agreed to "resume its obligation to undertake to purchase a minimum of 4,000 tons per month at $80 per ton," beginning March 1, 2019. CVI failed to make the payments required.

On June 15, 2018, SMG invoiced CVI for the first quarterly prepayment of $375,000 in accordance with Section 4 of the First Amendment. Payment was due June 25, 2018. On July 10, 2018, CVI paid that invoice. On September 1, 2018,

SMG invoiced CVI for the second quarterly Prepayment due September 11, 2018. CVI failed to make that payment.

On September 13, 2018, SMG provided notice to CVI that it must rectify its past due amounts of over $600,000 otherwise SMG would consider CVI in default.

On Monday, October 8, 2018, SMG again wrote to CVI regarding the outstanding balance of $371,401 and offered to reduce the outstanding balance by $217,431.20 to reflect the 2,717.89 tons of the 4000 ton minimum that CVI did not take physical delivery of in February 2018. This offer was contingent upon CVI paying the remaining balance in three installments and CVI release to the $250,000 security deposit CVI had previously made. On October 11, 2018, CVI made a counteroffer that accepted the structure of SMG's proposal but extended the time for the installment payments. SMG agreed to CVI's counteroffer. Nonetheless, CVI failed to make the initial installment payment on the agreed upon due date of October 29, 2018 but did make two payments totaling $53,972.80 on October 31, 2018. CVI subsequently missed the two remaining $50,000 installment payments due November 5 and November 19, 2018. Likewise, CVI never paid the outstanding balance by December 11, 2018 as required.

CVI has not made any further payments to SMG. On December 29, 2018, SMG sought further payment, requesting that CVI pay its outstanding balance of $475,000 before the end of 2018.

On December 29, 2018, CVI offered to pay the $475,000 in the first week of January 2019. SMG suggested CVI agree to release to SMG $100,000 from CVI's security deposit; pay the remaining $375,000 owed to SMG in the first week of January 2019; and replenish the amount of the security deposit released to SMG.

On December 30, 2018, CVI agreed to SMG's proposal and consented to the $100,000 transfer from the security deposit to SMG. CVI never paid the remaining $375,000 due to SMG, nor did it ever replenish the deposit. Instead, CVI began a series stalling tactics.

January:

- On January 4, 2019, CVI's Smith stated that SMG should have the funds the "following week."
- On January 9, 2019, CVI's Smith stated that the funding should be approved "[b]y end of day tomorrow"
- On January 17, 2019, CVI's Smith claimed "3 deals to close today or tomorrow. My funds from deal payout within one week."
- On January 17, 2019, CVI's Smith claimed she has the "financial instrument in hand to fund."
- On January 22, 2019, Smith claimed that closing would occur the following day (January 23, 2019) and informed SMG's Peters that she sent him "a confidential copy" of the "actual financial instrument". Nonetheless, no payment was forthcoming.

February:

- On February 8, 2019, Smith said that she "was just told my wire leaves at 9 am tomorrow London time. Of course, I have to wait for banks to open here. I fully expect to be able to send $475,000 tomorrow. I will be happy to discuss future plans early next week."
- Yet again, on February 16, 2019, CVI's Smith claimed to "have taken control of the entire transaction and spent the day working out

details. I now have direct contact with the buyer of my bond and his banker. . . I fully expect a wire on Monday and am not relying on anyone in between." CVI's Smith further assured SMG of CVI's ability to secure funding for payment, stating "BTW (by the way), this is real, I will close" and blaming the delay on a number of things, including the time difference and that the "buyer trader was delayed in [the] subway."

- On February 27, 2019, CVI's Smith claimed that an "[i]nstrument [was] delivered last night at 22:00 by my trade desk."

March:

- Beginning March 1, 2019, SMG resumed invoicing CVI for its monthly minimum purchases of 4,000 tons of magnetite concentrates, pursuant to Section 4(b)(ii) of the parties' First Amendment. Yet on March 1, 2019 Smith claimed that the "buyer bank downloaded the message / instrument today. Waiting for buyer account to get credit for instrument and then funds are released. Unfortunately, I am told that could take up to 5 days from transmission which was Tuesday."
- On March 8, 2019, SMG's Peters notified CVI's Smith that he needed to update his Board of Directors on the "expected timing of payment and plans to address the existing contract . . ." On March 9, 2019, CVI's Smith responded, "still not closed & no production,"
- On March 13, 2019, SMG's Peters again inquired as to the timing of payment, to which CVI's Smith again responded with the claim that she was "[t]rying to close this week."

- On March 29, 2019, SMG requested an update from CVI's Smith by close of business regarding CVI's overdue payments, including a $50,000 wire transfer that CVI supposedly sent to SMG the prior week.
- On March 30, 2019, CVI's Smith claimed her banker had moved their scheduled meeting, and she would have to confirm with him when her transactions would be final and would check on the "outgoing wire."

April

- On April 3, 2019, CVI's Smith again claimed her "banker delayed the meeting until April 8." And that she had "pending transactions that will close this month," but "do[es] not have substantial cash on hand until closing."
- On April 11, 2019, CVI's Smith stated that she did not "have the funds" to pay, but that the "funds are closing on Tuesday April 16."

May:

- On May 15, 2019, Smith, provided a purportedly "internally generated balance sheet" for CVI showing over $99 million in assets.
- On May 21, 2019, CVI's Smith responded to an email from SMG's Peters requesting an update, again claiming that she "expect[ed] to receive funds by close of business" the next day. on
- May 23, 2019, SMG's Peters again asked CVI's Smith via text message if the bonds had settled. CVI's Smith claimed she "should have funds tomorrow." On that same day SMG's Peters asked CVI's Smith to

formally agree to undertake certain actions to avoid legal proceedings, as follows: I was able to get my UK Directors and Alan this morning and I have got them to agree that, provided, on behalf of CV Investments, you undertake to pay SMG, within two weeks, the $375,000 December payment and top up the existing deposit with SMG by $3,690,000 they will hold all actions for those two weeks. . . . . Please provide, on behalf of CV Investments, agreement to these arrangements." CVI's Smith responded "Agreed. Thank you very much. Brenda.".

- When SMG attempted to memorialize the parties' new agreement in a Second Amendment to the PSA, CVI did not execute the Second Amendment, despite having already agreed to the terms. On May 25, 2019, SMG's Peters again asked CVI's Smith via text message if CVI had secured its funds yet. Responding that same day, CVI's Smith again put off SMG's Peters, claiming it would be "first thing Tuesday am [morning]"
- On May 29, 2019 , after the date CVI's Smith claimed the funds would be available, SMG's Peters asked CVI's Smith via text message: "has Merrill released the funds" and, if not, "what are your expectations." CVI's Smith only responded with "tomorrow."
- On May 30, 2019, SMG's Peters asked CVI's Smith to "please update the position with CVI." CVI's Smith responded that same day, stating "Not yet. Still working hard on it."

June:

- On June 3, 2019, CVI's Smith emailed SMG's Peters that the funds would be available in two days, citing issues with the bankers.
- On June 6, 2019, CVI's Smith stated that the buyer "changed delivery," and it would "[p]robably" take an additional day. Later that day, CVI's Smith stated she had "tried to be direct [and] honest" and was "doing everything possible to fund by Friday".
- SMG's Peters then asked CVI's Smith if CVI could at least provide SMG with $100,000 on Friday, June 7, 2019, along with supporting paperwork for the bond funds that Peters could show to SMG's Board of Directors. Id. CVI's Smith responded that it would provide SMG with the requested $100,000 and paperwork by Friday June 7, 2019 but then failed to do so.
- On June 7, 2019, the supposed bond sale did not settle despite CVI's Smith claiming that the bankers were "working on it."
- On June 8, 2019, CVI's Smith claimed she was "[j]ust off [the] phone with [the] Buyer" and that they were working it, but there would be "[n]o wire today but it will go out Monday."
- On June 11, 2019, CVI's Smith again suggested that funds "may" be available "tomorrow" if the bankers can move the process along.
- On June 14, 2019, Peters sent Smith a text message requesting a telephone conference. Smith claimed she was sick. Later that day, when asked for an update on the bonds, Smith responded "[w]orking with bankers now".

- On June 20, 2019, Peters again asked Smith for an update, to which Smith responded "[t]rying to receive one transfer today. Still waiting on email from banker."
- On June 23, 2019, Smith claimed she was "[w]aiting on confirmation of transfer."
- On June 24, 2019 Smith did not respond to Peters request for status.
- On June 26, 2019, Peters asked Smith if CVI was "any firmer on timing of cash payment to SMG," and was told "[e]xpect [F]riday".
- On June 28, 2019, the new expected payment date, CVI failed to make payment.
- On June 30, 2019, CVI's Smith said "I can make that payment based on drawing down the bond,".

July:

- On a July 13, 2019 telephone conference, Peters and Smith discussed an option, whereby CVI would borrow against a supposed LOC for ninety (90) days to pay SMG while CVI awaited its supposed bond settlement.
- On July 14, 2019, Peters asked CVI's Smith whether CVI had considered the option, but CVI's Smith did not answer the question and instead suggested she was "trying."
- On July 14, 2019, Smith purported to send SMG details of the bond issuance.
- On July 18, 2019, alarmed by reports that FINRA had cited and subsequently barred Smith from "associating with any FINRA

member" for rules violations, Peters text messaged Smith asking about the matter. CVI's Smith claimed the FINRA violations were not related to her trading and said she could "explain on [the] phone."

- On July 24, 2019, Smith stated that she should have confirmation that the bond had settled that day.
- On July 26, 2019, Smith claimed her banker "says I will have bank statement showing 100 mm tomorrow & it will be available to disburse next Wednesday" (July 31, 2019).
- On July 27, 2019, Smith said: "I do not have statement yet. I give up. Sue me". She later stated she was still waiting for an update from the banker, but funds should come through "this week for sure."

August:

- Throughout the month of August 2019, the "deal" was supposedly imminent, but then CVI ceased all communication.
- On August 9, 2019, SMG's Peters emailed Smith asking why she had "stopped communicating." Smith responded, claiming that her "banker now says I should have some funds on Tuesday [August 13, 2019]. He says [C]redit Suisse is wrapping up monetization. Can we wait until Tuesday?"
- On August 14, 2019, Smith claimed: "I talked to my banker this morning and he said the 'monetizer' has accepted the instrument. Credit Suisse has completed their process and agreed to start disbursements. He says funding is imminent." Despite these claims, no funds were ever disbursed to SMG.

- On August 16, 2019 Smith said she was waiting "for my banker to schedule." And then said: "[:]turning phone off."
- Throughout the remainder of August Peters and Smith exchanged several emails wherein Smith avoided a personal meeting or telephone conference and suggested instead "sue me or something." And then suggested that her "usa [sic] banker says I am still getting [the] advance this week but I don't have it yet."
- On August 26, 2019, Smith assured that she would sign a note for $4.065 million.
- On August 27, 2019, Smith was arrested by the FBI on charges that she had been running a Ponzi scheme. The federal indictment lodged against Smith and several of her corporate entities states that the behavior with CVI was done to many different victims.

Conclusions:

The arbitrator draws no conclusion from the unproven allegations of the indictment. A defendant has a presumption of innocence and no conclusion can be drawn from the allegations. It is clear however, that CVI cannot now and will not in the future fulfill the requirements of the PSA.

From the submissions that form the record in this claim including the uncontested Demand for Arbitration and the exhibits attached thereto, affirmed in the statements of Mr. Peters and Hooper, the additional information provided by those statements, the unanswered and therefore admitted Request for Admissions, it is clear that CVI entered into a binding agreement, subsequently

amended, made substantial reassurances and additional promises over an eight month period and materially breached that contract, the PSA. CVI made no payments to SMG under the PSA after October 2018. Agreed upon purchases were not made. Neither was the balance due of $375,000 ever paid. Under the PSA and CVI's written assurances of payment, the amount of $4,215,000 is owing as of March 1, 2020. SMG is entitled to liquidated damages in the amount of $4,215,000. SMG is also entitled to lost profits in the amount of as set forth in exhibit 2 of Mr. Hooper's verified statement.

That verified statement explained in detail the methodology used to calculate loss. Mr. Hooper reasonably calculated the net profits expected if CVI had fulfilled its agreement over the 8 years remaining to the PSA. This lost profit was 22.7 Million dollars. He then calculated the profits expected from the sale of the same quantity of magnetite over a longer period given the failure of CVI to fulfill its agreement. This would yield 5.2 million in profits, a mitigating factor in the damages calculation. Subtracting the profits reasonably expected over the longer period due to the failure from the expected profit if the contract had been fulfilled resulted in a total profit loss of $14,090,599. Within the amount of this loss is the lost profit as of March 1, 2020 which had already been calculated and awarded as liquidated damages. Subtracting the award for liquidated damages yields a net future loss of profit at $14,090,599. In all these calculations the profit analysis had been reduced by a reasonable 2% discount rate. Mr. Hooper conservatively estimated the damages which "arise naturally and necessarily" from the breach in accordance with New Mexico Law,

Law

The agreement requires that the law of New Mexico apply. Under New Mexico law the claim has been timely presented. NMSA 1978 §37-1-3(A) provides for a 6-year statute of limitations for contractual claims. Damages recoverable and proven herein are the damages which "arise naturally and necessarily" from the breach in accordance with New Mexico Law (Sunnyland Farms, Inc. v Cent. N.M. Elec. Co-op Inc., 301 P. 3rd 387 (N.M.2013).

Under New Mexico Law, punitive Damages are recoverable "for breach of contract whenever defendant's conduct was malicious, fraudulent, oppressive, or committed recklessly with a wanton disregard for the plaintiff's rights." The defendant repeatedly made false reassurances about imminent performance, and intentionally misled the plaintiff about its intention and ability to perform. As detailed above, there can be no question that the continual bogus reassurances and purportedly detailed explanations of the imminent receipt of funds to pay the debt owed, were both malicious and "committed recklessly with a wanton disregard for the plaintiff's rights". Accordingly, punitive damages are warranted and awarded.

The purpose of punitive damages is to punish the defendant and deter others from similar conduct. The compensatory award entered herein, if collected, shall make plaintiff whole and shall allow plaintiff to recover profits reasonably but conservatively expected under the contract. Accordingly, to punish this bad faith behavior and to deter others from similar conduct, in addition to the compensatory award and in accord with New Mexico law, the arbitrator awards punitive damages in the amount of $3,600,000.

New Mexico law permits pre and post-judgment interest (NMSA 1978 §2004. *Accordingly, pre-judgment interest on the liquidated damages awards of* $4,215,000 is ordered. Pos.-Judgment interest is awarded from the date of entry of judgment. *Since judgment is awarded based on the bad faith and intentional* acts of defendant, interest is by law to be computed in the amount of 15% per annum.

Since SMG has been forced to bear all costs of this arbitration, and CVI has not participated in any meaningful way other than to request extensions, costs are awarded to plaintiff. New Mexico law does not permit the award of attorney fees except where the behavior of the defendant occurs "before the court or in direct defiance of the court's authority"(see state ex rel. N.M. State Highway and Transp. Dep't v. Baca 896 P.2d 1348 (1995), there is no authority to award attorney fees for private contractual claims even where defendant has acted in bad faith and even where the intent of the bad faith actions were intended to defer and dissuade resort to legal (or AAA arbitration) action.

Judgement and Decision

The arbitrator awards Claimant SMG against respondent CVI the following amounts:

Liquidated damages: $4,215,000

Lost Profit: $14,090,599

Punitive Damages: $3,600,000

Prejudgment Interest at 15% on liquidated damages of $4,215,000

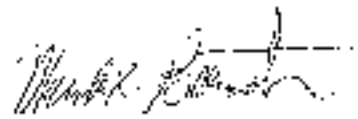
Post judgment Interest at 15%

Costs: The Administrative fees and expenses of the AAA totaling $12,200.00 are to be borne $12,200.00 by CV Investments, LLC. The Compensation and expenses of Arbitrator totaling $11,460.00 are to be borne $11,460.00 by CV Investments, LLC. Therefore, CV Investments, LLC has to pay Southern Minerals Group, LLC, an amount of $23,660.00.

This Final Award is in full and complete settlement and satisfaction of any and all claims that were submitted to the jurisdiction of this Arbitrator in connection with the present dispute. All claims, arguments or issues not specifically addressed in this Final Award and not reserved for further disposition, are rejected and denied with prejudice.

By the Arbitrator:

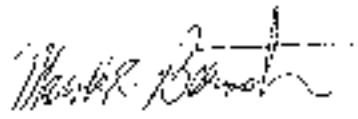
Dated: May 29, 2020



Hon. Mark I. Bernstein (Ret)

Sole Arbitrator

I, Hon. Mark I. Bernstein (Ret), do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is the Decision and Final Award in this Arbitration.



Hon. Mark I. Bernstein (Ret) Sole Arbitrator

Magnetite Concentrates
Purchase and Sale Agreement

Southern Minerals Group, LLC of P. O. Box 535 Silver City, NM 88062 as "Seller," and CV Investments LLC 200 Four Falls Corp. Ctr. Suite 211, Conshohocken, PA 19428 and affiliates as "Purchaser," agree as follows:

1. Seller has the exclusive right to access approximately 800,000 tons of magnetite concentrates (this is an estimate of the size and should not be relied upon as a definition of resource), a created by-product of copper mining and milling operations conducted at the Mine sites formerly operated by Freeport-McMoRan located in Grant County, New Mexico, and has in place contracts or purchase orders to sell approximately one-half of that inventory to other purchasers. The Seller will ensure that it does not undertake any activities that impact on the Purchases rights to the magnetite concentrates. Should, for any reason, the Sellers right to access this material be terminated, then on the day that access is terminated this Agreement will terminate, without further recourse to Purchaser and Seller other than amounts already outstanding or breaches of Agreement occurring up to that date.

2. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller up to of 400,000 tons of such magnetite concentrates for the price of $80.00 per ton. These prices include Seller loading the concentrates into Purchasers' trucks with Seller's equipment and equipment operators, and Seller shall bear all costs associated with such loading operations. The Purchaser undertakes to purchase a minimum of 4,000 tons per month from ~~commencement of this Agreement~~ January 1, 2017. MS CH

3. Purchaser shall provide the trucks and truck operators to haul the concentrates and shall bear all costs associated with such hauling operations. The Purchaser shall ensure that representatives of the Purchaser (including truck drivers) shall conduct its activities in a good and professional manner and in accordance with the reasonable directions (if any) given to it by the Seller from time to time.

4. Seller shall maintain accurate certified weighing facilities and will weigh the Purchaser's trucks on entrance and exit, unloaded and loaded, and provide the net weights of each load to Purchaser as each loaded truck exits the site, and provide appropriate Material Safety Data Sheets. The Seller shall not be liable for loss or damage suffered or incurred by the Purchaser due to any failure or interruption of equipment due to the need for repair or alteration or breakdown but, the Seller will assist the Purchaser in minimizing any losses that the Purchaser may incur.

5. Purchaser shall:

(i) provide a deposit of $10,000 to the Southern Minerals Group, LLC bank account within one business day of signing of this Agreement, as advised. MS CH

(ii) Prior to commencement of this Agreement, but not greater than seven days from signing of this Agreement, the Purchaser shall provide the Seller with a standby letter of credit in the amount of $250,000.00 issued by a major US banking institution authorizing the seller to draw against it in the event Purchaser fails to timely pay any invoice in full or provide, in solicitor's trust, a deposit of $250,000 with instructions that this is to be released to SMG on the provision by SMG that there has been a default on payment under the Agreement. This notification is to be given at SMG's sole discretion and the solicitor has to be irrevocably instructed to act on any such notice.

(iii) make payment for all concentrates purchased on a monthly basis within ten days after being presented with an invoice from Seller.

6. Purchaser acknowledges and is aware that local governmental regulations limit the total tonnage of concentrates that may be removed from the mine site to 11,000 tons per month, and that Seller's other existing commitments presently utilize up to approximately one-half of that amount, leaving only approximately 5,500 tons per month now available to Purchaser. Seller agrees to inform Purchaser if and when other purchasers fail to purchase their entire committed amount so as to allow Purchaser the opportunity to acquire a larger amount in any particular month.

7. Seller warrants and covenants to and with Purchaser that it can provide good and marketable title to the subject concentrates, that they are by-products of lawful mining operations, have been properly severed from the realty from which they came, are free and clear of any liens or claims of any kind or nature, and will be free and clear of any liens or claims of any kind or nature when conveyed to Purchaser.

8.1 If a Force Majeure Event affecting a Party precludes that party ("Precluded Party") partially or wholly from complying with its Obligations (except its payment obligations) under this Agreement then:

(a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other Party of

(i) the Force Majeure Event;

(ii) which obligations the Precluded Party is precluded from performing ("Affected Obligations");

(iii) the extent to which the Force Majeure Event or its consequences preclude the Precluded Party from performing the Affected Obligations ("Precluded Extent"); and

(iv) the expected duration of the delay arising directly out of the Force Majeure Event or in consequence of it;

(b) the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event ("Actual Delay"); and

(c) the other Party's Obligations which are dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

8.2 The Precluded Party must, as soon as reasonably practicable after cessation of a Force Majeure Event, resume performance of the Affected Obligations and must use reasonable

endeavours to overcome or remove a Force Majeure Event as quickly as possible, but "reasonable endeavours" does not require a Party to pay money in an attempt to overcome the event or to settle any industrial dispute against its wishes.

9. To prevent possible confusion Seller and Purchaser agree that this Agreement is to be applied in accordance with the laws of the State of New Mexico other than its conflicts of laws principles.

10. Parties agree that any dispute or controversy arising out of or relating to this agreement or the interpretation thereof, shall be settled by arbitration, held in a mutually acceptable location to the parties, in accordance with the rules, then in effect, of the American Arbitration Association.

11. Either Party may assign this agreement, upon written notice, provided such assignment is to a commonly controlled affiliate.

12. Either Party may terminate this Agreement on a serious breach of Agreement after giving 30 days notice ("Notice Period") to the other Party to rectify the breach and that breach is not rectified within the Notice Period. The termination of this Agreement shall not affect the rights of the aggrieved party in seeking damages in relation to the Agreement being terminated.

13. Southern Mineral Group, and its affiliates agree not to use the name CV Investments in any public media without Purchasers written permission unless required by law CH

Seller and Purchaser have executed this Agreement effective as of the 7 day of April, 2017.
CH HS

Southern Minerals Group, LLC

By: _____

Clovis Hooper,

President

Southern Minerals Group LLC

CV Investments LLC

By: _____

Brenda Smith,

Managing Member

CV Investments LLC

1

FIRST AMENDMENT TO
MAGNETITE CONCENTRATES PURCHASE AND SALE AGREEMENT

This First Amendment ("Amendment") to Magnetite Concentrates Purchase and Sale Agreement is made as of this sixth day of **June** 2018, among **Southern Minerals Group, LLC**, P.O. Box 535 Silver City, **NM** 88062 (**"Seller"**) and **CV Investments, LLC** and affiliates, 200 Four Falls Corp. Ctr. Suite 211 Conshohocken, PA 19428.

WHEREAS, Seller and Purchaser are parties to that certain Magnetite Concentrates Purchase and Sale Agreement dated April 7, 2017 ("PSA"), providing for the sale of magnetite concentrates a treated by-product of copper mining and milling operations conducted at a mine in Grant County, New Mexico; and

WHEREAS, Shipments of magnetite concentrates began on or around July 1, 2017 in accordance with the PSA; and

WHEREAS, the Purchaser has notified the Seller that it is unable to take delivery of the minimum volume of 4,000 tons per month required under Section 2 of the PSA due to delays in the Purchaser obtaining environmental approvals; and

WHEREAS, Seller and Purchaser desire to revise the Purchaser's volume obligation under the PSA as set forth in this Amendment.

NOW, THEREFORE, in consideration of the promises, mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and Purchaser agree as follows:

1. Seller waives Purchaser's obligation under Section 2 of the SA to purchase a minimum of 4,000 tons a month for the period March 1, 2018 through May 31, 2018; provided, however, that such waiver is contingent on Purchaser meeting its obligations as otherwise required in the PSA and this Amendment.

2. Purchaser agrees to pay Seller the "Outstanding Amount" under the PSA of $521,404 as of March 31, 2018 in accordance with the following schedule:

CVI Investments Outstanding Amount Payment Schedule		
Monday, 20 April 2018	$50,000	Paid
Monday, 4 May 2018	$50,000	Paid
Monday, 18 May 2018	$50,000	Paid
Monday, 1 June 2018	$50,000	
Monday, 15 June 2018	$50,000	
Monday, 29 June 2018	$50,000	
Monday, 13 July 2018	$50,000	
Monday, 27 July 2018	$50,000	
Monday, 10 August 2018	$50,000	
Monday, 24 August 2018	$71,404	
Total	**$521,404**	

3. Upon Purchaser's full payment of the Outstanding Amount, Purchaser shall be entitled to 2,717.89 tons for which Purchaser was invoiced in February 2018 and which Purchaser has not yet taken delivery. Purchaser's option to take 2,717.89 tons shall expire on November 30, 2018 and no refund shall issue if the material is not taken by that date.

4. Section 2 of the PSA is amended as follows:

   a. The last sentence of Section 2 is deleted in its entirety and replaced as follows:

      i. "The Purchaser undertakes to purchase a minimum of 4,000 tons per month from June 1, 2017 to February 28, 2018."

   b. The following new paragraphs are added to the end of Section 2:

      i. "Prepayment Period (June 1, 2018 – February 1, 2019): On June 16, 2018, September 1, 2018, and December 1,2018 Seller will invoice Purchaser in advance for 4,585.50 tons per quarter ("Prepaid Quantity") and the Purchaser will pay a non-refundable amount of $375,000 ("Prepayment") in relation to sales for that quarter (the Prepayment is in addition to the payments made in satisfaction of the Outstanding Amount under Section 2 of this Amendment) in accordance with the terms of the PSA. If Purchaser does not take the Prepaid Quantity within 12 months of the invoice date, Purchaser forgoes any right to take the remaining balance of the Prepaid Quantity for the applicable calendar quarter and Seller retains all prepayments made by Purchaser. If Purchaser ships

4,000 or more tons in any month during the Prepayment Period or there after then the "Outstanding Prepayment' which is the sum of all Prepayments made by Purchaser less the value of any material delivered, shall be reduced by a maximum of $125,000 in that month and the Purchaser will be deemed to have been delivered 1,562.50 tons of material."

ii. "Beginning on March 1, 2019, Purchaser shall resume its obligation to undertake to purchase a minimum of 4,000 tons per month at $80 per ton."

5. Section 1 of the PSA is amended as follows:

a. The last sentence of Section 1 is deleted in its entirely and replaced as follows.

i. "Should, for any reason, Seller's right to access this material is terminated, then on the day that access to the material is terminated this Agreement will terminate without further recourse to Purchaser and Seller. Upon termination, Seller has no obligation to refund any Outstanding Prepayment Amount, nor provide any additional material, nor provide material that the Purchaser has paid for but has not yet been delivered."

The Seller and the Purchaser have executed this First Amendment to the Magnetite Concentrates Purchase and Sale Agreement effective as of the sixth day of June, 2018.

Southern Minerals Group LLC

Clovis Tisdale
President Southern Minerals Group LLC

CV Investments LLC

Brenda Smith
Managing Member CV Investments LLC

CIVIL COVER SHEET

JS 44 (Rev. 7/18)

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

Southern Minerals Group, LLC

(b) County of Residence of First Listed Plaintiff: Grant (NM)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Lisa Carney Eldridge, Clark Hill PLC
Two Commerce Square, 2001 Market St., Suite 2620,
Philadelphia, PA 19103 Phone: (215) 640-8514

DEFENDANTS

CV Investments, LLC

County of Residence of First Listed Defendant: Montgomery (PA)
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☒ 1	Incorporated or Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☒ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) — Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		PRISONER PETITIONS		
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability			☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine			☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability			☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	PERSONAL PROPERTY	LABOR	SOCIAL SECURITY	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 480 Consumer Credit
☐ 190 Other Contract	☐ 360 Other Personal Injury	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 862 Black Lung (923)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	☐ 863 DIWC/DIWW (405(g))	☐ 490 Cable/Sat TV
☐ 196 Franchise		☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	☐ 864 SSID Title XVI	☐ 850 Securities/Commodities/ Exchange
			☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	IMMIGRATION	☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence	☐ 462 Naturalization Application		☒ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General	☐ 465 Other Immigration Actions		☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

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 (specify)
- ☐ 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):
28 U.S.C. Section 1332(a)(1)

Brief description of cause:
Petition to Confirm Arbitration Award

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: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions)

JUDGE DOCKET NUMBER

DATE
05/05/2020

SIGNATURE OF ATTORNEY OF RECORD
/s/ Lisa Carney Eldridge

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOUTHERN MINERALS GROUP, LLC	)	
Applicant,	)	
and	)	**Case No.** ____
CV INVESTMENTS LLC	)	
Respondent.	)	

ORDER CONFIRMING ARBITRATION AWARD

Pursuant to its Petition for Order Confirming Arbitration Award ("Petition"), filed June 4, 2020, Applicant Southern Minerals Group, LLC has petitioned this Court for confirmation of the Final Award filed as Exhibit No. 1 to its Petition. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a)(1). Venue attaches under 9 U.S.C. § 9 and 28 U.S.C. § 1391.

Under 9 U.S.C. § 9, the Court must confirm the Final Award "unless the award is vacated, modified, or corrected" under §§ 10 and 11 of the Federal Arbitration Act, 9 U.S.C. §§ 10 and 11. The Final Award has not been vacated, modified, or corrected, so entry of an Order confirming the Final Award is appropriate.

It is **ORDERED** that Applicant's petition is **GRANTED** and that the May 29, 2020 Final Award is confirmed; and

It is **FURTHER ORDERED** that Final Judgment is entered on the Award.

SO ORDERED this _____ day of June 2020.

_____
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOUTHERN MINERALS GROUP, LLC **P.O. Box 535** **Silver City, New Mexico 88062** **Applicant,** **and** **CV INVESTMENTS LLC** **200 Four Falls Corp. Center, Suite 211** **Conshohocken, Pennsylvania 19428** **Respondent.**	**Case No. _____**

PETITION FOR ORDER CONFIRMING ARBITRATION AWARD

Pursuant to 9 U.S.C. §§ 9 and 13 (the Federal Arbitration Act, or "FAA"), Southern Minerals Group, LLC ("SMG"), respectfully petitions this Court for an Order confirming the May 29, 2020 Final Award of the Hon. Mark I. Bernstein (Ret.) ("Arbitrator") in the matter of the arbitration between SMG and CV Investments LLC ("CVI") (collectively with SMG, the "Parties") (copy of the Final Award attached hereto as Exhibit No. 1). In support of this petition, SMG states the following:

THE PARTIES

1. SMG is a limited liability company organized under the laws of the State of Nevada with its principal place of business located near Bayard, New Mexico. SMG has as its sole member Ebony Iron Pty Ltd., a foreign corporation organized under the laws of the Commonwealth of Australia, with its principal place of business in Sydney, Australia. SMG operates a magnetite ore

sales operation within the Cobre Mine complex, which is located about three (3) miles northeast of Bayard, New Mexico. SMG's mailing address is P.O. Box 535 Silver City, New Mexico 88062.

2. CVI is a Pennsylvania limited liability company with its principal place of business located at 200 Four Falls Corp. Center, Suite 211, Conshohocken, Pennsylvania 19428. CVI and its related entities are owned, controlled and operated by Ms. Brenda Ann Smith ("Smith"). On August 27, 2019, Smith was arrested by the Federal Bureau of Investigation for allegedly operating a Ponzi scheme and was subsequently charged by the U.S. Attorney for the District of New Jersey with five (5) criminal counts, including four (4) counts of wire fraud and one (1) count of securities fraud. *See United States v. Smith*, Mag. No. 19-3377 (D.N.J. Aug. 27, 2019). Contemporaneously with the Department of Justice's action, the U.S. Securities and Exchange Commission ("SEC") filed a civil complaint in the U.S. District Court for the District of New Jersey against Smith and a number of her various corporate entities for violations of securities laws. *See SEC v. Smith, et al.*, Civ. A. No. 17213 (D.N.J. Aug. 27, 2019). On September 10, 2019, the District Court Judge issued an order freezing the assets and bank accounts of Smith and the various entities she controlled, including CVI. Smith remains incarcerated pending the outcome of her criminal proceeding but can, and did, accept service and filings at the correctional facility where she has been held throughout the arbitration and in the other suits lodged against her and various entities she controls.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) (diversity). SMG and CVI are citizens of different States, and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

4. The Award arises under a contract involving interstate commerce and is subject to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*

5. Under the FAA, unless the parties have agreed otherwise, venue is proper in the district where the award was made, or in any district proper under the general venue statute. *See, e.g., Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 195 (2000). The Parties' Agreement does not include a forum selection clause for proceedings to confirm any arbitration awards thereunder. However, the arbitration took place in Philadelphia, Pennsylvania.

6. The Eastern District of Pennsylvania is also an appropriate venue because CVI is subject to personal jurisdiction here, and it is the district in which a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. § 1391(b).

THE SUBJECT ARBITRATION

7. SMG and CVI were parties to a Magnetite Concentrates Purchase and Sale Agreement ("PSA") dated April 7, 2017, as amended by the First Amendment dated June 6, 2018, whereby CVI "agrees to purchase from Seller up to [] 400,000 tons of such magnetite concentrates for the price of $80.00 per ton." PSA § 2 (attached hereto as Exhibit No. 2); *see also* First Amendment to the PSA ("First Amendment") (attached hereto as Exhibit No. 3).

8. The PSA provides that "any dispute or controversy arising out of or relating to this agreement or the interpretation thereof, shall be settled by arbitration, held in a mutually acceptable location to the parties, in accordance with the rules, then in effect, of the American Arbitration Association." Ex. 2 at § 10.

9. SMG filed its Demand for Arbitration ("Demand") with the American Arbitration Association ("AAA") on September 20, 2019. The AAA docketed SMG's Demand as AAA Case No. 01-19-0002-9998. SMG's Demand sought an arbitral award against CVI:

(i) finding CVI materially breached the PSA;

(ii) finding CVI breached the implied covenant of good faith and fair dealing;

(iii) finding SMG is entitled to damages, inclusive of interest, for liquidated amounts owned to SMG;

(iv) finding SMG is entitled to lost profit damages;

(v) finding SMG is entitled to punitive damages;

(vi) awarding SMG its attorneys' fees and costs, including but not limited to, all costs of the arbitration;

(vii) awarding SMG any and all other relief determined appropriate by the Arbitrator.

10. On December 6, 2019, the AAA announced the appointment of the Hon. Mark I. Bernstein (Ret.) as the Arbitrator. At SMG's request, and given CVI's circumstances, the Arbitrator determined that a single arbitrator was sufficient for purposes of the arbitration, in accordance with the discretion afford to him under the procedures for Large, Complex Commercial Disputes of the AAA Commercial Arbitration Rules as amended. American Arbitration Association, Commercial Arbitration Rules & Mediation Procedures ("AAA Rules"), Rule L-2(b) (2013).

11. On January 31, 2020, the Arbitrator established a schedule for the proceeding and determined that the proceeding would be adjudicated through written filings only.

12. In accordance with the Arbitrator's January 31 order, SMG propounded a limited set of Requests for Admissions, Interrogatories, and Requests for Production of Documents to CVI on February 20, 2020. SMG filed its Affirmative Case on March 20, 2020 and its Rebuttal on April 20, 2020. CVI made no responsive pleadings, nor did CVI respond to discovery requests despite being afforded additional time by the Arbitrator to do so. By order dated May 13, 2020, the Arbitrator closed the record in the case.

13. The Arbitrator issued his Final Award on May 29, 2020. *See* Exhibit No. 1. Therein, the Arbitrator found that "[a]ll required due process was afforded to both sides through the impartial application of the Arbitration Rules agreed to by the parties in their agreement." *Id.* at 4. The Arbitrator further found that SMG is entitled to relief in its favor. Specifically, the arbitrator found that: (i) CVI materially breached the PSA; (ii) CVI breached the covenant of good faith and fair dealing; (iii) CVI's bad faith acts warranted punitive damages under New Mexico law; (iv) CVI's bad faith acts warranted the application of the maximum interest rate available under New Mexico law; and (v) CVI must bear the cost of the arbitration. *Id.* at 19-22. The Arbitrator awarded damages and costs as follows: (i) $4,213,000 in liquidated damages as of March 1, 2020; (ii) $14,090,599 in lost profits; (iii) $3,000,000 in punitive damages; (iv) $23,660 in arbitration costs; (v) prejudgment and post-judgment interest of 15% is applicable to the liquidated damages; and (vi) post-judgment interest of 15% is applicable to all other damages and costs. The Arbitrator declined to award attorneys' fees as requested by SMG.

14. The Final Award is a final award subject to confirmation in this Court. *Id.* at 23.

CONFIRMATION OF THE AWARD

15. The Court should confirm the Final Award under Section 9 of the FAA, 9 U.S.C. § 9, for the following reasons.

16. Under Section 9 of the FAA, application for confirmation of an award may be made to a court in which jurisdiction exists at any time within one year after the award is made. 9 U.S.C. § 9. Such an application must be granted "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of [9 U.S.C.]." *Id.*

17. The Parties have agreed to the application of the AAA Rules under the PSA. *See* Ex. 1 at § 10. Under AAA Rule R-52(e), "[p]arties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof."

18. Since the PSA does not include a forum selection clause, "application may be made to the United States court in and for the district within which such award was made." 9 U.S.C. § 9. The Final Award was made in Philadelphia, Pennsylvania.

19. This Petition is made well within the one-year deadline, as the Final Award was made on May 29, 2020. Furthermore, no action has been taken to vacate, modify or correct the Final Award under Sections 10 or 11 of the FAA. 9 U.S.C. §§ 10, 11. Thus, the Final Award is ripe for confirmation by this Court.

20. Section 13 of the FAA directs that a judgment be entered on a confirmed award. 9 U.S.C. § 13. Such a judgment "shall be docketed as if it was rendered in an action." *Id.*

21. SMG submits contemporaneously herewith a proposed Order Confirming Arbitration Award and entering judgment thereon.

WHEREFORE, SMG respectfully petitions this Court to enter an order confirming the Arbitrator's Final Award of May 29, 2020, and enter judgment thereon.

CLARK HILL PLC

Dated: June 5, 2020

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge, Esquire (PA ID 462794)
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
Phone: (215) 640-8500
Fax: (215) 640-8501
leldridge@clarkhill.com

Of Counsel:

Dated: June 5, 2020

/s/ Daniel M. Jaffe
Daniel M. Jaffe, Esquire
A Rebecca Williams, Esquire
SLOVER & LOFTUS LLP
1224 17th St., N.W.
Washington, DC 20036
202-347-7170
dmj@sloverandloftus.com
* *Pro Hac Vice applications shall be submitted*

Attorneys for Southern Minerals Group, LLC

CERTIFICATE OF SERVICE

I hereby certify that this 5th day of June 2020, I have caused true and correct copies of the foregoing **Petition to Confirm Arbitration Award** to be served upon Respondent CV Investments LLC by U.S.P.S. Overnight Mail:

CV Investments LLC
200 Four Falls Corp. Center, Suite 211
Conshohocken, PA 19428

A courtesy copy of the foregoing petition to be served via United States Postal Service, overnight mail, upon non-party Brenda A Smith, designated as defendant CVI's "Authorized Representative" in the underlying Arbitration as follows:

Brenda A. Smith
Permanent ID 2019-339640
CCIS# 07-571432
U.S. Marshalls Number 72832-050
Essex County Correctional Facility
354 Doremus Avenue
Newark, NJ 07105

Dated: June 5, 2020

CLARK HILL PLC

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge, Esquire (PA ID #62794)
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
Phone: (215) 640-8500
Fax: (215) 640-8501
leldridge@clarkhill.com

Attorneys for Southern Minerals Group, LLC

EXHIBIT 1

AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration under AAA Commercial Rules and Mediation Procedures
Amended and effective October 1, 2013

AAA Case 01-19-0002-9998

Southern Minerals Group, LLC

Represented by Daniel Jaffe, Esq. and A. Rebecca Williams of Slover & Loftus LLP

v.

CV Investments, LLC

ex parte

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement, dated April 7, 2017 and entered into between Claimant, and Respondent, and having been duly sworn, and having duly reviewed the proofs and allegations of Southern Minerals Group, LLC, and CV Investments LLC having failed to submit proofs and allegations after due notice by mail in accordance with the Commercial Arbitration Rules of the American Arbitration Association, hereby, AWARD as follows:

Decision and Opinion

An award is entered in favor of claimant Southern Minerals Group, LLC and against respondent CV Investments LLC in the amounts set forth below

Procedure

Pursuant to the agreement between the parties dated April 7, 2017 as amended June 6, 2018, claimant filed this action on September 20, 2019. Apparently, respondent's principal had been indicted by Federal Authorities and at the time of filing its primary representative was incarcerated in Federal custody.

On December 4, 2019, Hon. Marc T. Bernstein (Ret.) was selected to be the AAA arbitrator for this matter under the Large Complex procedures of the Commercial Arbitration Rules as amended. Given the claim amount, the Procedures for Large, Complex Commercial Disputes specifies the number of arbitrators to be three. The parties' arbitration provision was silent as to the number of arbitrators. Pursuant to the applicable rules, expecting to be required to pay all costs of arbitration, petitioner requested that the number of arbitrators be reduced to a single arbitrator. According to the rules the first arbitrator determines whether to proceed with a single arbitrator or if three shall be appointed. Since Respondent's representative was only able to communicate via US Mail, it was directed that all communication was to be made in writing.

On, November 11, 2019, Brenda Smith, respondent's representative, submitted a handwritten letter request an indeterminate stay alleging an inability to respond because company records had been seized and had been retained by Federal authorities. Respondent offered no suggestion as to how or when this situation would change, such that the matter could resume. Most significantly, as claimant stated in their response there was no suggestion that Smith lacked sufficient knowledge to participate. Claimant further claimed that had this matter been amenable to court filing, a default judgment, unavailable in AAA arbitration,

would have been entered and claimant would earlier have had a judgment to collect upon if respondent did not participate.

Respondent requested a hearing by three arbitrators. Claimant responded that no right existed and since claimant would be paying for all costs of arbitration requested the matter be decided by one arbitrator in accord with the AAA rules. By Order dated December 14, the arbitrator ruled that one arbitrator would decide the matter and that the preliminary hearing would be held by written submission.

On January 8, 2020, the arbitrator received Claimant's written preliminary hearing statement and respondent's written letter which did not contain any substantive preliminary hearing statement and merely asked for a 6-month extension, but offered no explanation as to how anything would change 6 months hence. On January 9 claimant responded in writing to the requested extension. By Order dated January 31, 2020 the arbitrator ruled that this matter would proceed and set a schedule for discovery and hearing through written submissions. By submission dated March 20, 2020, as required by the January 8, 2020 Order, claimant submitted its affirmative case memorandum containing procedural background, statement of material facts, and memo of law. Attached thereto were the verified statements of John Peter and Clovis Hooper and a statement of damages.

Claimant also advised that by correspondence dated February 20, 2020 they had submitted Requests for Admissions, Interrogatories, and Requests for Production of Documents and had received no substantive responses but had received a handwritten letter dated March 20, 2020 which was attached.

Respondent's letter stated that although she was unable to retain papers but could have access to a thumb drive.

Accordingly, On April 8, the arbitrator Ordered a thumb drive be provided to respondent and that thereafter, respondent would have 10 days to respond to Claimants discovery requests, or the Request for Admissions would be deemed admitted.

On April 20 Claimant Southern Minerals Group, submitted a memorandum entitled "Rebuttal of Claimant," in which it pointed out that no substantive response whatsoever had been received from respondent as to the claim and renewed its request for damages.

Claimant sent a thumb drive to respondent on April 27. Since there has been no response by respondent, the Requests for Admissions are deemed admitted.

All required due process was afforded to both sides through the impartial application of the Arbitration Rules agreed to by the parties in the agreement. All reasonable accommodation was made for the parties. No in person or even telephonic conferences were required and all submissions could be made in writing. Handwritten submissions were accepted, considered, and evaluated. No substantive responses were ever received from respondent.

The record was properly closed on May 28, 2020.

Factual Findings

On April 7, 2017 Mr. Clovis Hooper, President of Claimant Southern Minerals Group, LLC (hereinafter SMG) negotiated a Magnetite Concentrates Purchase and Sale Agreement ("PSA") between SMG and Respondent CV Investments LLC ("CVI")

This agreement was subsequently amended on June 6, 2018. Under that agreement, CVI committed to purchasing 400,000 tons of magnetite from SMG at a price of $80.00 per ton at a rate of 4,000 per month beginning in June 2017. This agreement was amended in mid-2018. However, beginning in October 31, 2018 CVI began a pattern of failure of performance followed by representations and promises which were never fulfilled. (see verified statements of Mr. John Peters and Clovis Hooper) CVI has made no payments to SMG since October 2018 (Request for Admission No. 1). CVI breached the PSA. (Request for Admission No. 3). CVI's Smith was arrested on August 27, 2019. As of March 1, 2020, SMG's liquidated damages are in the amount of $4,215,000, exclusive of interest. (Request for Admission No. 2).

Mr. John Peters is the Managing Director of Strategic Minerals PLC, parent company of Southern Minerals Group, LLC ("SMG"). Together with SMG's President, Mr. Clovis Hooper, Mr. Peters negotiated with CVI the Magnetite Concentrates Purchase and Sale Agreement ("PSA") referred to above which was executed on April 7, 2017. This agreement was amended on June 6, 2018. CVI's sole representative was Ms. Brenda Smith ("Smith").

SMG has exclusive access to a magnetite stockpile and operates a magnetite sales operation from the Cobre Mine in New Mexico. SMG's access rights to the magnetite is limited to 800,000 tons. Pursuant to the PSA contract CVI was obligated to purchase 400,000 tons of concentrates with minimum monthly purchases of 4,000 tons. SMG committed access to those tons exclusively to CVI This commitment by SMG amounted to 50% of its total access to magnetite. Throughout the term of the agreement SMG was able to provide the full 400,000

tons to CVI in accordance with the PSA's monthly purchase schedule. SMG's staffing and costs increased to accommodate the commitment to CVI. CVI took only a total of 38,414 tons of magnetite concentrate from the initiation of the PSA in June 2017. Most of this volume was taken in the first few months. All but one of the shipments was moved, at CVI's request, to property in New Mexico.

CVI defaulted on its required payments. By the end of 2017, CVI was $642,000 in arrears. All CVI shipments were made by truck as required under the PSA. However, when CVI had no named destination for the delivery of the magnetite concentrates CVI requested storage in New Mexico. CVI made 19 payments to SMG for magnetite between June 19, 2017 and October 31, 2018. At various points in 2018, CVI paid some of its outstanding balance but $371,000 was owing when the Parties negotiated the First Amendment in June 2018. SMG generously reduced the outstanding amount owed by over $215,000, conditioned on CVI's payment of the reduced balance. The amended agreement required CVI to make quarterly deposits in lieu of taking the 4,000-ton minimum.

Despite assurances, CVI repeatedly failed to make these required payments. CVI's regular monthly obligations were to resume beginning March 1, 2019. The last CVI payment to SMG was in October 2018. Despite ceasing to make payments, CVI's Smith repeatedly assured SMG that CVI was about to sell a bond and receive a major infusion of cash. Smith reassured that SMG would be paid what was owed when that sale closed. CVI repeatedly claimed that the closing was delayed by forces outside its control. Smith continued her reassurances until August 2019 when she was arrested for allegedly engaging in a Ponzi scheme and CVI assets were seized. SMG's obligations under the PSA and CVI's excuses, delays and

diversions precluded SMG from pursuing other potential purchasers of the magnetite concentrate.

A detailed spreadsheet of SMG's transactions with CVI under the PSA was attached as Exhibit No. 1 to the statement of Mr. Hooper.

Under the amended agreement, CVI's monthly obligations restarted March 1, 2019. CVI failed to make any required payments. These required payments equaled $3,840,000 for the 12 months between March 2019 and February 2020. Consequently, as of March 2020, CVI's liquidated damages owed to SMG equaled $4,215,000, exclusive of interest. In addition to the liquidated damages CVI's breach of the PSA has resulted in SMG incurring direct and consequential damages. CVI's PSA represented a commitment to purchasing half of SMG's magnetite inventory. The volume committed to, and the expected revenue from, CVI under the PSA far exceeds the volume purchased by, and revenue earned from, all other SMG customers combined. Thus, in 40 months, SMG expected to realize significant profits associated with CVI exclusive access to their magnetite rights.

To determine lost profits, the damages calculation has three complementary analyses. The first analysis assumes that CVI performed as required under the PSA. SMG expected to realize over $45.6 million in total revenues during the approximately 8 years of the PSA (2019 – 2027). Of that $45.6 million, SMG expected that CVI purchases would account for $28.9 million, or 63% of all revenues. During that same period, SMG has known and estimated unit costs. SMG's calculation of $21.1 million in expenses is a conservative analysis representing the expenses that SMG might have incurred. Thus, SMG expected to

earn $24.5 million of net profit over the balance of the PSA. To determine the net present value ("NPV") of the expected profit, SMG applied a discount rate of 2%. The NPV calculation yields a current value of reasonably expected profits of **$22.7** million.

SMG's second analysis accurately assumes that CVI made no further purchases from January 1, 2019 thru the remainder of the PSA. In this analysis, SMG's expected profits drop dramatically because SMG will likely have to extend its operating period by 20 years to sell the same volume of magnetite concentrate, and revenues are likewise impacted because certain customers pay less per ton than CVI. Critically, the extended period means SMG will incur additional recurring and fixed expenses with fewer sales. SMG's calculation is again, very conservative. The second analysis shows that over the 20 year period, SMG would earn $41.2 million in revenue and incur approximately $36.0 million in expenses over the same period. The second analysis shows that SMG expected to earn $5.2 million net profit over the 20 year period. Consistent with the first analysis, SMG applied a discount rate of 2% to determine the NPV of the expected profit. The NPV calculation yields a current value of **$4.4** million.

SMG's third analysis calculates the difference between these conservative analyses. The third analysis shows that the difference in the NPV of the expected profits between the first and second analysis is $18.3 million. Thus, SMG submits that its total damages attributable to CVI's breach of the PSA is $18.3 million. However, as $4,215,000 of the damages is already a known and liquidated value, SMG calculated it lost $14,090,599 in profit damages and $4,215,000 million in

liquidated damages. The arbitrator finds this analysis to be reasonable, conservative, and accurate.

Detailed Findings of Bad Faith

CV Investments LLC ("CV") is owned, controlled, and operated by Ms. Brenda Ann Smith. Ms. Smith stands charged by the U.S. Attorney for the District of New Jersey with five (5) criminal counts, including four (4) counts of wire fraud and one (1) count of securities fraud. On the same day as criminal charges were lodged, the U.S. Securities and Exchange Commission ("SEC") filed a civil complaint in the U.S District Court for the District of New Jersey against Smith and her various corporate entities for violations of securities laws. On September 10, 2019, the assets and bank accounts of several the named defendants were frozen.

SMG has the exclusive right to access approximately 800,000 tons of magnetite concentrates. Under the PSA, CVI was obligated to purchase 400,000 tons of such magnetite concentrates for the price of $80.00 per ton with a required minimum of 4,000 tons per month beginning June 1, 2017. In return, SMG was required to "ensure that it does not undertake any activities that impact the Purchases [sic] rights to the magnetite concentrates." Given commitments to other customers and local regulations, SMG was prohibited from providing more than 5,500 tons of magnetite concentrates per month to CVI. SMG requested, and CVI provided, "a deposit of $10,000" to SMG. Likewise, SMG requested, and CVI provided, a "standby letter of credit in the amount of $250,000.00 issued by a major US banking institution" or a cash deposit in the same amount to be held "in solicitor's trust."

CVI's monthly purchases of magnetite ore began June 1, 2017, and shipments of the material began on or around July 1, 2017. Between June 2017 and October 30, 2017, CVI met its contractual obligations under the PSA by purchasing the required minimum of 4,000 tons of magnetite ore each month and promptly payed for those purchases. Beginning with the SMG invoice dated October 31, 2017, CVI's payments fell into arrears. In January 2018, CVI paid its outstanding balance of $642,572.80. Immediately following its January 2018 payment, CVI again fell into arrears, and by March 2018, CVI owed SVG $521,404. In March 2018, CVI notified SVG that it was "unable to take delivery of the minimum volume" of the magnetite ore due to delays in "obtaining environmental approvals." To continue their contractual relationship the parties entered the First Amendment dated June 6, 2018. The First Amendment suspended CVI's obligation to purchase a minimum of 4,000 tons per month "for the period March 1, 2018 through May 31, 2018; provided, however, that such waiver is contingent on [CVI] meeting its obligations as otherwise required in the PSA and this Amendment." The referenced obligations included CVI paying the amount then in arrears, $371,404, according to a detailed payment schedule. If CVI failed to meet that payment schedule it would "forgo[] any right to take the remaining balance of the Prepaid Quantity for the applicable calendar quarter . . . ." CVI agreed to "resume its obligation to undertake to purchase a minimum of 4,000 tons per month at $80 per ton," beginning March 1, 2019. CVI failed to make the payments required.

On June 15, 2018, SVG invoiced CVI for the first quarterly prepayment of $375,000 in accordance with Section 4 of the First Amendment. Payment was due June 25, 2018. On July 10, 2018, CVI paid that invoice. On September 5, 2018,

SMG invoiced CVI for the second quarterly Prepayment due September 11, 2018. CVI failed to make that payment.

On September 13, 2018, SMG provided notice to CVI that it must rectify its past due amounts of over $600,000 otherwise SMG would consider CVI in default.

On Monday, October 8, 2018, SMG again wrote to CVI regarding the outstanding balance of $371,404 and offered to reduce the outstanding balance by $217,431.20 to reflect the 2,717.89 tons of the 4,000 ton minimum that CVI did not take physical delivery of in February 2018. This offer was contingent upon CVI paying the remaining balance in three installments and CVI release to the $250,000 security deposit CVI had previously made. On October 11, 2018, CVI made a counteroffer that accepted the structure of SMG's proposal but extended the time for the installment payments. SMG agreed to CVI's counteroffer. Nonetheless, CVI failed to make the initial installment payment on the agreed upon due date of October 22, 2018 but did make two payments totaling $53,972.80 on October 31, 2018. CVI subsequently missed the two remaining $50,000 installment payments due November 5 and November 19, 2018. Likewise, CVI never paid the outstanding balance by December 11, 2018 as required.

CVI has not made any further payments to SMG. On December 29, 2018, SMG sought further payment, requesting that CVI pay its outstanding balance of $475,000 before the end of 2018.

On December 29, 2018, CVI offered to pay the $475,000 in the first week of January 2019. SMG suggested CVI agree to release to SMG $100,000 from CVI's security deposit; pay the remaining $375,000 owed to SMG in the first week of January 2019; and replenish the amount of the security deposit released to SMG.

On December 30, 2018, CVI agreed to SMG's proposal and consented to the $100,000 transfer from the security deposit to SMG. CVI never paid the remaining $475,000 due to SMG, nor did it ever replenish the deposit. Instead, CVI began a series stalling tactics.

January:

- On January 4, 2019, CVI's Smith stated that SMG should have the funds the "following week."
- On January 9, 2019, CVI's Smith stated that the funding should be approved "[b]y end of day tomorrow"
- On January 17, 2019, CVI's Smith claimed "3 deals to close today or tomorrow. My funds from deal payout within one week."
- On January 17, 2019, CVI's Smith claimed she has the "financial instrument in hand to fund."
- On January 22, 2019, Smith claimed that closing would occur the following day (January 23, 2019) and informed SMG's Peters that she sent him "a confidential copy" of the "actual financial instrument,". Nonetheless, no payment was forthcoming.

February:

- On February 8, 2019, Smith said that she "was just told my wire leaves at 9 am tomorrow London time. Of course, I have to wait for banks to open here. I fully expect to be able to send $475,000 tomorrow. I will be happy to discuss future plans early next week."
- Yet again, on February 16, 2019, CVI's Smith claimed to "have taken control of the entire transaction and spent the day working out

details. I now have direct contact with the buyer of my bond and his banker. . . . I fully expect a wire on Monday and am not relying on anyone in between." CVI's Smith further assured SMG of CVI's ability to secure funding for payment, stating "BTW [by the way], this is real, I will close" and blaming the delay on a number of things, including the time difference and that the "buyer tracer was delayed in [the] subway."

- On February 27, 2019, CVI's Smith claimed that an "[i]nstrument [was] delivered last night at 22:00 by my trace desk."

March:

- Beginning March 1, 2019, SMG resumed invoicing CVI for its monthly minimum purchases of 4,000 tons of magnetite concentrates, pursuant to Section 4(b)(i) of the parties' First Amendment. Yet on March 1, 2019 Smith claimed that the "buyer bank downloaded the message / instrument today. Waiting for buyer account to get credit for instrument and then funds are released. Unfortunately, I am told that could take up to 5 days from transmission which was Tuesday."
- On March 8, 2019, SMG's Peters notified CVI's Smith that he needed to update his Board of Directors on the "expected timing of payment and plans to address the existing contract . . . ." On March 9, 2019, CVI's Smith responded, "still not closed & no production."
- On March 13, 2019, SMG's Peters again inquired as to the timing of payment, to which CVI's Smith again responded with the claim that she was "[t]rying to close this week."

- On March 29, 2019, SMG requested an update from CVI's Smith by close of business regarding CVI's overdue payments, including a $50,000 wire transfer that CVI supposedly sent to SMG the prior week.
- On March 30, 2019, CVI's Smith claimed her banker had moved their scheduled meeting, and she would have to confirm with him when her transactions would be final and would check on the "outgoing wire."

April

- On April 3, 2019, CVI's Smith again claimed her "banker delayed the meeting until April 8." And that she had "pending transactions that will close this month," but "do[es] not have substantial cash on hand until closing."
- On April 11, 2019, CVI's Smith stated that she did not "have the funds" to pay, but that the "funds are closing on Tuesday April 16."

May:

- On May 13, 2019, Smith, provided a purportedly "internally generated balance sheet" for CVI showing over $55 million in assets.
- On May 21, 2019, CVI's Smith responded to an email from SMG's Peters requesting an update, again claiming that she "expect[ed] to receive funds by close of business" the next day. On
- May 23, 2019, SMG's Peters again asked CVI's Smith via text message if the bonds had settled. CVI's Smith claimed she "should have funds tomorrow." On that same day SMG's Peters asked CVI's Smith to

formally agree to undertake certain actions to avoid legal proceedings, as follows: I was able to get my UK Directors and Alan this morning and I have got them to agree that, provided, on behalf of CV Investments, you undertake to pay SMG, within two weeks, the $375,000 December payment and top up the existing deposit with SMG by $3,690,000 they will hold all actions for those two weeks. . . . . Please provide, on behalf of CV Investments, agreement to these arrangements." CVI's Smith responded "Agreed. Thank you very much. Brenda.".

- When SMG attempted to memorialize the parties' new agreement in a Second Amendment to the PSA, CVI did not execute the Second Amendment, despite having already agreed to the terms. On May 25, 2019, SMG's Peters again asked CVI's Smith via text message if CV had secured its funds yet. Responding that same day, CVI's Smith again put off SMG's Peters, claiming it would be "first thing Tuesday am [morning]"
- On May 28, 2019, after the date CVI's Smith claimed the funds would be available, SMG's Peters asked CVI's Smith via text message: "has Merrill released the funds" and, if not, "what are your expectations." CVI's Smith only responded with "tomorrow."
- On May 30, 2019, SMG's Peters asked CVI's Smith to "please update the position with CVI." CVI's Smith responded that same day, stating "Not yet. Still working hard on it."

June:

- On June 3, 2019, CVI's Smith emailed SMG's Peters that the funds would be available in two days, citing issues with the bankers.
- On June 6, 2019, CVI's Smith stated that the buyer "changed delivery," and it would "[p]robably" take an additional day. Later that day, CVI's Smith stated she had "tried to be direct [and] honest" and was "doing everything possible to fund by Friday".
- SMG's Peters then asked CVI's Smith if CVI could at least provide SMG with $100,000 on Friday, June 7, 2019, along with supporting paperwork for the bond funds that Peters could show to SMG's Board of Directors. Id. CVI's Smith responded that it would provide SMG with the requested $100,000 and paperwork by Friday June 7, 2019 but then failed to do so.
- On June 7, 2019, the supposed bond sale did not settle despite CVI's Smith claiming that the bankers were "working on it."
- On June 6, 2019, CVI's Smith claimed she was "[j]ust off [the] phone with [the] Buyer" and that they were working it, but there would be "[n]o wire today but it will go out Monday."
- On June 11, 2019, CVI's Smith again suggested that funds "may" be available "tomorrow" if the bankers can move the process along.
- On June 14, 2019, Peters sent Smith a text message requesting a telephone conference. Smith claimed she was sick. Later that day, when asked for an update on the bonds, Smith responded "[w]orking with bankers now".

- On June 20, 2019, Peters again asked Smith for an update, to which Smith responded "[t]rying to receive one transfer today. Still waiting on email from banker."
- On June 23, 2019, Smith claimed she was "[w]aiting on confirmation of transfer."
- On June 24, 2019 Smith did not respond to Peters request for status.
- On June 25, 2019, Peters asked Smith if CVI was "any firmer on timing of cash payment to SMG," and was told "[e]xpect [F]riday".
- On June 28, 2019, the new expected payment date, CVI failed to make payment.
- On June 30, 2019, CVI's Smith said: "I can make that payment based on drawing down the bond."

July:

- On a July 13, 2019 telephone conference, Peters and Smith discussed an option, whereby CVI would borrow against a supposed LOC for ninety (90) days to pay SMG while CVI awaited its supposed bond settlement.
- On July 14, 2019, Peters asked CVI's Smith whether CVI had considered the option, but CVI's Smith did not answer the question and instead suggested she was "trying."
- On July 14, 2019, Smith purported to send SMG details of the bond issuance.
- On July 18, 2019, alarmed by reports that FINRA had cited and subsequently barred Smith from "associating with any FINRA

member" for rules violations, Peters text messaged Smith asking about the matter. CVI's Smith claimed the FINRA violations were not related to her trading and said she could "explain on [the] phone."

- On July 24, 2019, Smith stated that she should have confirmation that the bond had settled that day
- On July 26, 2019, Smith claimed her banker "says I will have bank statement showing 100 mm tomorrow & it will be available to disburse next Wednesday" (July 31, 2019).
- On July 27, 2019, Smith said: "I do not have statement yet. I give up. Sue me". She later stated she was still waiting for an update from the banker, but funds should come through "this week for sure."

<u>August:</u>

- Throughout the month of August 2019, the "deal" was supposedly imminent, but then CVI ceased all communication.
- On August 9, 2019, SMG's Peters emailed Smith asking why she had "stopped communicating." Smith responded, claiming that her "banker now says I should have some funds on Tuesday (August 13, 2019). He says '[C]redit Suisse is wrapping up monetization. Can we wait until Tuesday?"
- On August 14, 2019, Smith claimed: "I talked to my banker this morning and he said the 'monetizer' has accepted the instrument, Credit Suisse has completed their process and agreed to start disbursements. He says funding is imminent." Despite these claims, no funds were ever disbursed to SMG.

- On August 16, 2019 Smith said she was waiting "for my banker to schedule." And then said: "[…] turning phone off."
- Throughout the remainder of August, Peters and Smith exchanged several emails wherein Smith avoided a personal meeting or telephone conference and suggested instead "[s]ee me or something." And then suggested that her "usa [sic] banker says I am still getting [the] advance this week but I don't have it yet."
- On August 26, 2019, Smith assured that she would sign a note for $1.065 million.
- On August 27, 2019, Smith was arrested by the FBI on charges that she had been running a Ponzi scheme. The federal indictment lodged against Smith and several of her corporate entities states that the behavior with CVI was done to many different victims.

Conclusions:

The arbitrator draws no conclusion from the unproven allegations of the Indictment. A defendant has a presumption of innocence and no conclusion can be drawn from the allegations. It is clear however, that CVI cannot now and will not in the future fulfill the requirements of the PSA.

From the submissions that form the record in this claim including the uncontested Demand for Arbitration and the exhibits attached thereto, affirmed in the statements of Mr. Peters and Hooper, the additional information provided by those statements, the unanswered and therefore admitted Request for Admissions, it is clear that CVI entered into a binding agreement, subsequently

amended, made substantial reassurances and additional promises over an eight month period and materially breached that contract, the PSA. CVI made no payments to SMG under the PSA after October 2018. Agreed upon purchases were not made. Neither was the balance due of $375,000 ever paid. Under the PSA and CVI's written assurances of payment, the amount of $1,215,000 is owing as of March 1, 2020. SMG is entitled to liquidated damages in the amount of $1,215,000. SMG is also entitled to lost profits in the amount of as set forth in exhibit 2 of Mr. Hooper's verified statement.

That verified statement explained in detail the methodology used to calculate loss. Mr. Hooper reasonably calculated the net profits expected if CVI had fulfilled its agreement over the 8 years remaining to the PSA. This lost profit was 22.7 Million dollars. He then calculated the profits expected from the sale of the same quantity of magnetite over a longer period given the failure of CVI to fulfill its agreement. This would yield 5.2 million in profits, a mitigating factor in the damages calculation. Subtracting the profits reasonably expected over the longer period due to the failure from the expected profit if the contract had been fulfilled resulted in a total profit loss of $14,090,599. Within the amount of this loss is the lost profit as of March 1, 2020 which had already been calculated and awarded as liquidated damages. Subtracting the award for liquidated damages yields a net future loss of profit of $14,090,599. In all these calculations the profit analysis had been reduced by a reasonable 2% discount rate. Mr. Hooper conservatively estimated the damages which "arise naturally and necessarily" from the breach in accordance with New Mexico Law,

Law

The agreement requires that the law of New Mexico apply. Under New Mexico law the claim was been timely presented. NMSA 1978 §37-1-3(A) provides for a 6-year statute of limitations for contractual claims. Damages recoverable and proven herein are the damages which "arise naturally and necessarily" from the breach in accordance with New Mexico Law (Sunnyland Farms, Inc. v Cent. N.V. Elec. Co-op Inc., 301 P. 3rd 387 (N.M.2013).

Under New Mexico Law, punitive Damages are recoverable "for breach of contract whenever defendant's conduct was malicious, fraudulent, oppressive, or committed recklessly with a wanton disregard for the plaintiff's rights." The defendant repeatedly made false reassurances about imminent performance, and intentionally misled the plaintiff about its intention and ability to perform. As detailed above, there can be no question that the continual bogus reassurances and purportedly detailed explanations of the imminent receipt of funds to pay the debt owed, were both malicious and "committed recklessly with a wanton disregard for the plaintiff's rights". Accordingly, punitive damages are warranted and awarded.

The purpose of punitive damages is to punish the defendant and deter others from similar conduct. The compensatory award entered herein, if collected, shall make plaintiff whole and shall allow plaintiff to recover profits reasonably but conservatively expected under the contract. Accordingly, to punish this bad faith behavior and to deter others from similar conduct, in addition to the compensatory award and in accordance with New Mexico law, the arbitrator awards punitive damages in the amount of $3,600,000.

New Mexico law permits pre and post-judgment interest (NMSA 1978 §2004. Accordingly, pre-judgment interest on the liquidated damages awards of $4,215,000 is ordered. Post-judgment interest is awarded from the date of entry of judgment. Since judgment is awarded based on the bad faith and intentional acts of defendant, interest is by law to be computed in the amount of 15% per annum.

Since SMG has been forced to bear all costs of this arbitration, and CVI has not participated in any meaningful way other than to request extensions, costs are awarded to plaintiff. New Mexico law does not permit the award of attorney fees except where the behavior of the defendant occurs "before the court or in direct defiance of the court's authority" (see state ex rel. N.M. State Highway and Transp. Dept. v. Baca 896 P.2d 1148 (1995), there is no authority to award attorney fees for private contractual claims even where defendant has acted in bad faith and even where the intent of the bad faith actions were intended to defer and dissuade resort to legal (or AAA arbitration) action.

Judgement and Decision

The arbitrator awards Claimant SMG against respondent CVI the following amounts:

Liquidated damages: $4,215,000

Lost Profit: $14,090,599

Punitive Damages: $3,600,000

Prejudgment Interest at 15% on liquidated damages of $4,215,000

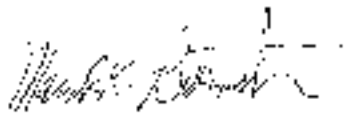
Post judgment Interest at 15%

Costs: The Administrative fees and expenses of the AAA totaling $12,200.00 are to be borne $12,200.00 by CV Investments, LLC. The Compensation and expenses of Arbitrator totaling $11,460.00 are to be borne $11,460.00 by CV Investments, LLC. Therefore, CV Investments, LLC has to pay Southern Minerals Group, LLC, an amount of $23,660.00.

This Final Award is in full and complete settlement and satisfaction of any and all claims that were submitted to the jurisdiction of this Arbitrator in connection with the present dispute. All claims, arguments or issues not specifically addressed in this Final Award and not reserved for further disposition, are rejected and denied with prejudice.

By the Arbitrator:

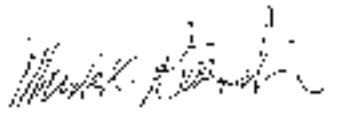
Dated: May 29, 2020



Hon. Mark I. Bernstein (Ret)

Sole Arbitrator

I, Hon. Mark I. Bernstein (Ret), do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is the Decision and Final Award in this Arbitration.



Hon. Mark I. Bernstein (Ret) Sole Arbitrator

EXHIBIT 2

Magnetite Concentrates
Purchase and Sale Agreement

Southern Minerals Group, LLC of P. O. Box 935 Silver City, NM 88062 as "Seller," and CV Investments LLC 200 Four Falls Corp. Ctr. Suite 211, Conshohocken, PA 19428 and affiliates as "Purchaser," agree as follows:

1. Seller has the exclusive right to access approximately 800,000 tons of magnetite concentrates (this is an estimate of the size and should not be relied upon as a definition of resource), a vested by-product of copper mining and milling operations conducted at the Mine site formerly operated by Freeport-McMoRan located in Grant County, New Mexico, and has in place contracts or purchase orders to sell approximately one-half of that inventory to other purchasers. The Seller will ensure that it does not undertake any activities that impact on the Purchaser rights to the magnetite concentrates. Should, for any reason, the Sellers right to access this material be terminated, from on the day that access is terminated this Agreement will terminate, without further recourse to Purchaser and Seller other than amounts already outstanding or breaches of Agreement occurring up to that date.

2. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller up to of 400,000 tons of such magnetite concentrates for the price of $80.00 per ton. These prices include Seller loading the concentrates into Purchasers' trucks with Seller's equipment and equipment operators, and Seller shall bear all costs associated with such loading operations. The Purchaser undertakes to purchase a minimum of 4,000 tons per month from ~~commencement of this Agreement~~ June, 2017. BS CH

3. Purchaser shall provide the trucks and truck operators to haul the concentrates and shall bear all costs associated with such hauling operations. The Purchaser shall ensure that representatives of the Purchaser (including truck drivers) shall conduct its activities in a good and professional manner and in accordance with the reasonable directions (if any) given to it by the Seller from time to time.

4. Seller shall maintain accurate certified weighing facilities and will weigh the Purchaser's trucks on entrance and exit, unloaded and loaded, and provide the net weights of each load to Purchaser as each loaded truck exits the site, and provide appropriate Material Safety Data Sheets. The Seller shall not be liable for loss or damage suffered or incurred by the Purchaser due to any failure or interruption of equipment due to the need for repair or alteration or breakdown but, the Seller will assist the Purchaser in minimizing any losses that the Purchaser may incur.

5. Purchaser shall:

(i) provide a deposit of $10,000 to the Southern Minerals Group, LLC bank account within one business day of signing of this Agreement, as received. BS CH

(i) Prior to commencement of this Agreement, the Purchaser shall provide the Seller with a standby letter of credit in the amount of $250,000.00 issued by a major US banking institution authorizing the seller to draw against it in the event Purchaser fails to timely pay any invoice in full or provide, in solicitor's trust, a deposit of $250,000 with instructions that this is to be released to SMG on the provision by SMG that there has been a default on payment under the Agreement. This notification is to be given at SMG's sole discretion and the solicitor has to be irrevocably instructed to act on any such notice.

(iii) make payment for all concentrates purchased on a monthly basis within ten days after being presented with an invoice from Seller.

6. Purchaser acknowledges and is aware that local governmental regulations limit the total tonnage of concentrates that may be removed from the mine site to 11,000 tons per month, and that Seller's other existing commitments presently utilize up to approximately one-half of that amount, leaving only approximately 5,500 tons per month now available to Purchaser. Seller agrees to inform Purchaser if and when other purchasers fail to purchase their entire committed amount so as to allow Purchaser the opportunity to acquire a larger amount in any particular month.

7. Seller warrants and covenants to and with Purchaser that it can provide good and marketable title to the subject concentrates, that they are by-products of lawful mining operations, have been properly severed from the realty from which they came, are free and clear of any liens or claims of any kind or nature, and will be free and clear of any liens or claims of any kind or nature when conveyed to Purchaser.

8.1 If a Force Majeure Event affecting a Party precludes that party ("Precluded Party") partially or wholly from complying with its Obligations (except its payment obligations) under this Agreement then:

(a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other Party of

(i) the Force Majeure Event;

(ii) which obligations the Precluded Party is precluded from performing ("Affected Obligations");

(iii) the extent to which the Force Majeure Event or its consequences preclude the Precluded Party from performing the Affected Obligations ("Precluded Extent"); and

(iv) the expected duration of the delay arising directly out of the Force Majeure Event or in consequence of it,

(b) the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event ("Actual Delay"); and

(c) the other Party's Obligations which are dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

8.2 The Precluded Party must, as soon as reasonably practicable after cessation of a Force Majeure Event, resume performance of the Affected Obligations and must use reasonable

endeavours [illegible] a Document 1 Filed 06/08/21 Page 72 of 111 PageID: 5050
"reasonable endeavours" does not require a Party to pay money in an attempt to overcome the event or to settle any industrial dispute against its wishes.

9. To prevent possible confusion Seller and Purchaser agree that this Agreement is to be applied in accordance with the laws of the State of New Mexico other than its conflicts of laws principles.

10. Parties agree that any dispute or controversy arising out of or relating to this agreement or the interpretation thereof, shall be settled by arbitration, held in a mutually acceptable location to the parties, in accordance with the rules, then in effect, of the American Arbitration Association.

11. Either Party may assign this agreement, upon written notice, provided such assignment is to a commonly controlled affiliate.

12. Either Party may terminate this Agreement on a serious breach of Agreement after giving 30 days notice ("Notice Period") to the other Party to rectify the breach and that breach is not rectified within the Notice Period. The termination of this Agreement shall not affect the rights of the aggrieved party to seeking damages in relation to the Agreement being terminated.

13. Southern Mineral Group, and its affiliates agree not to use the name CV Investments in any public media without Purchasers written permission unless required by law.

Seller and Purchaser have executed this Agreement effective as of the 7 day of April, 2017.

Southern Minerals Group, LLC

By: _____

Clovis Hooper,

President.

Southern Minerals Group LLC

CV Investments LLC

By: _____

Brenda Smith,

Managing Member

CV Investments LLC

1

EXHIBIT 3

FIRST AMENDMENT TO
MAGNETITE CONCENTRATES PURCHASE AND SALE AGREEMENT

This First Amendment ("Amendment") to Magnetite Concentrates Purchase and Sale Agreement is made as of this sixth day of June 2018, among **Southern Minerals Group, LLC**, P O Box 535 Silver City NM 88062 ("**Seller**") and **CV Investments, LLC** and affiliates 200 Four-Falls Corp. Ctr. Suite 211, Conshohocken, PA 19428.

WHEREAS, Seller and Purchaser are parties to that certain Magnetite Concentrates Purchase and Sale Agreement dated April 7, 2017 ("PSA"), providing for the sale of magnetite concentrates, a treated by-product of copper mining and milling operations conducted at a mine in Grant County, New Mexico; and

WHEREAS, Shipments of magnetite concentrates began on or around July 1, 2017 in accordance with the PSA; and

WHEREAS, the Purchaser has notified the Seller that it is unable to take delivery of the minimum volume of 4,000 tons per month required under Section 2 of the PSA due to delays in the Purchaser obtaining environmental approvals; and

WHEREAS, Seller and Purchaser desire to revise the Purchaser's volume obligation under the PSA as set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises, mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and Purchaser agree as follows:

1. Seller waives Purchaser's obligation under Section 2 of the SA to purchase a minimum of 4,000 tons a month for the period March 1, 2018 through May 31, 2018; provided, however, that such waiver is contingent on Purchaser meeting its obligations as otherwise required in the PSA and this Amendment.

2. Purchaser agrees to pay Seller the "Outstanding Amount" under the PSA of $621,404 as of March 31, 2018 in accordance with the following schedule:

CVI Investments Outstanding Amount Payment Schedule		
Monday, 20 April 2018	$50,000	Paid
Monday, 4 May 2018	$50,000	Paid
Monday, 18 May 2018	$50,000	Paid
Monday, 1 June 2018	$50,000	
Monday, 15 June 2018	$50,000	
Monday, 29 June 2018	$50,000	
Monday, 13 July 2018	$50,000	
Monday, 27 July 2018	$50,000	
Monday, 10 August 2018	$50,000	
Monday, 24 August 2018	$71,404	
Total	**$521,404**	

3. Upon Purchaser's full payment of the Outstanding Amount, Purchaser shall be entitled to 2,717.89 tons for which Purchaser was invoiced in February 2018 and which Purchaser has not yet taken delivery. Purchaser's option to take 2,717.89 tons shall expire on November 30, 2018 and no refund shall issue if the material is not taken by that date.

4. Section 2 of the PSA is amended as follows:

   a. The last sentence of Section 2 is deleted in its entirety and replaced as follows:

      i "The Purchaser undertakes to purchase a minimum of 4,000 tons per month from June 1, 2017 to February 28, 2018."

   b. The following new paragraphs are added to the end of Section 2

      i "Prepayment Period (June 1, 2018 – February 1, 2019): On June 15, 2018, September 1, 2018 and December 1, 2018 Seller will invoice Purchaser in advance for 4,686.60 tons per quarter ("Prepaid Quantity") and the Purchaser will pay a non-refundable amount of $375,000 ("Prepayment") in relation to sales for that quarter (the Prepayment is in addition to the payments made in satisfaction of the Outstanding Amount under Section 2 of this Amendment) in accordance with the terms of the PSA. If Purchaser does not take the Prepaid Quantity within 12 months of the invoice date, Purchaser forgoes any right to take the remaining balance of the Prepaid Quantity for the applicable calendar quarter and Seller retains all prepayments made by Purchaser. If Purchaser ships

4,000 or more tons in any month during the Prepayment Period or there after then the "Outstanding Prepayment" which is the sum of all Prepayments made by Purchaser less the value of any material delivered, shall be reduced by a maximum of $125,000 in that month and the Purchaser will be deemed to have been delivered 1,562.50 tons of material."

ii. "Beginning on March 1, 2019, Purchaser shall resume its obligation to undertake to purchase a minimum of 4,000 tons per month at $80 per ton."

b. Section 1 of the PSA is amended as follows:

a. The last sentence of Section 1 is deleted in its entirety and replaced as follows:

i. Should, for any reason, Seller's right to access this material is terminated, then on the day that access to the material is terminated this Agreement will terminate without further recourse to Purchaser and Seller. Upon termination, Seller has no obligation to refund any Outstanding Prepayment Amount, nor provide any additional material, nor provide material that the Purchaser has paid for but has not yet been delivered."

The Seller and the Purchaser have executed this First Amendment to the Magnetite Concentrates Purchase and Sale Agreement effective as of the sixth day of June, 2018.

Southern Minerals Group LLC

Chris Hooper
President Southern Minerals Group LLC

CV Investments LLC

Brenda Smith
Managing Member CV Investments LLC

Exhibit F

PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION

IN THE MATTER OF THE ARBITRATION BETWEEN:	)	
Southern Minerals Group, LLC	)	
Claimant,	)	
-and-	)	**AAA Case No. 01-19-0002-9998**
CV Investments LLC,	)	
Respondent.	)	

VERIFIED STATEMENT OF CLOVIS HOOPER

My name is Clovis Hooper. I am the President of Claimant Southern Minerals Group, LLC ("SMG"). As President, and in coordination with Mr. John Peters – Managing Director of SMG's ultimate parent company, Strategic Minerals plc (*see* Mr. Peters Verified Statement, also filed today) – I negotiated and executed the April 7, 2017 Magnetite Concentrates Purchase and Sale Agreement ("PSA") between SMG and Respondent CV Investments LLC ("CVI") (together, the "Parties"), and the subsequent "First Amendment" to the PSA, dated June 6, 2018.

The facts and contractual details as described in ¶¶ 3-5, 7-139 of the Demand for Arbitration that SMG filed on September 20, 2019 ("Demand") are true and accurate to the best of my knowledge. Specifically, the Demand details the payments made and

amount of product purchased by CVI. Demand, ¶¶ 18-36. I maintain records with that information in the ordinary course of business, and the detailed spreadsheet of SMG's transactions with CVI under the PSA is attached hereto as Exhibit No. 1. To my knowledge, CVI has not disputed any of the facts regarding the payments made and amounts owed to SMG by CVI. Indeed, I understand that on February 20, 2020, SMG propounded an unrefuted Request for Admission, noting that as of March 1, 2020, CVI owed a liquidated damage amount of $4,215,000. This figure represents only the liquidated amount of SMG's contract damages, and I provide further details of SMG's direct contractual damages below. Briefly summarized, the total amount of contract damages, liquidated and direct, is $18.3 million as of March 1, 2020, exclusive of interest.

I. Background of SMG's Cobre Mine Operations

SMG has exclusive access to a magnetite stockpile and operates a magnetite sales and distribution business at the Cobre Mine, which is located about three (3) miles northeast of Bayard, New Mexico. Cobre Mine was employing six skilled and highly trained employees in the normal course of business. However, CVI's breach of the PSA has forced SMG to reduce its staffing to four people. Cobre Mine also owns or leases a variety of equipment to process, move and load the magnetite concentrate, including two 6.5 yard loaders, dozer, excavator, water truck, screening plant, service truck and additional support equipment. Likewise, Cobre Mine includes and maintains certain buildings, facilities and office space necessary for day-to-day operations at the facility. SMG is assisted in some of its ministerial operations by Strategic Minerals plc, of which

SMG is an indirect subsidiary, as explained by Mr. Peters in his Verified Statement. SMG pays Strategic Minerals a quarterly management fee for those services.

II. SMG Transactions with CVI

CVI took its first shipment of magnetite concentrate in July 2017. Since then, CVI has taken 15 shipments of magnetite concentrate in varying amounts, as detailed in Exhibit 1, resulting in a total take of approximately 38,414 tons. All CVI shipments were made by truck as required under the PSA. However, CVI apparently had no named destination for the delivery of the magnetite concentrates at that point. Consequently, at CVI's request, I arranged for storage of the magnetite concentrates on a third-party property in New Mexico. I have had no further contact with CVI concerning this material.

CVI made 19 payments to SMG for magnetite between June 19, 2017 and October 31, 2018. For extended periods of time in 2018, CVI repeatedly fell behind in its payments owed to SMG. As described in the Demand, SMG and CVI agreed to the First Amendment to the PSA to provide some cash flow and storage relief to CVI by suspending its obligation to purchase 4,000 tons of concentrates per month for a year. Demand at ¶ 23. In return, CVI agreed to pay, on a quarterly basis, a security deposit against future sales for a substantially reduced amount than would have otherwise been due under the minimum requirement in the PSA, and then, beginning March 1, 2019, CVI's regular monthly obligations would resume.

The First Amendment also obligated CVI to pay SMG the $371,404 then in arrears. As explained in the Demand, and confirmed here and Exhibit 1, CVI did not make those payments.

Ultimately, CVI did make some of the quarterly prepayments as required under the First Amendment and agreed to in October 2018 (Demand ¶¶ 33-37). However, CVI ceased all payments to SMG after October 2018, including failing to make the required quarterly payments under the First Amendment and failing to resume its regular monthly payments under the PSA in March 2019. By the start of 2019, CVI was $375,000 in arrears (representing its missed quarterly payment). CVI's monthly obligations restarted as of March 1, 2019, and CVI has failed to make any of those required payments, which equal $3,840,000 for the 12 months covering March 2019-February 2020. Consequently, as of March 2020, CVI's liquidated damages owned to SMG equaled $4,215,000, exclusive of interest.

III. SMG's Contract Damages

In addition to the liquidated damages described above, CVI's breach of the PSA has resulted in SMG incurring direct and consequential damages. Exhibit 2 to my Verified Statement provides details of SMG's calculation of damages, and I provide an overview of the methodology we used to determine our damages below.

CVI's PSA represents a commitment to purchasing half of SMG's magnetite inventory. Moreover, as shown in Exhibit 2, the volume committed to, and resulting expected revenue from, CVI under the PSA far exceeds the volume purchased by, and revenue earned from, all other SMG customers combined. Thus, in 40 months, SMG

expected to realize a significant bulk of all available profits associated with our exclusive access to the magnetite stockpile. To determine the lost profits, the damages calculation has three critical analyses, which are detailed below.

The first analysis assumes that CVI performed as required under the PSA. SMG expected to realize over $45.6 million in revenues among all customers during the approximately 8 years remaining of the PSA, starting from 2019. Of the $45.6 million, SMG expected that CVI would account for $28.9 million, or 63% of all revenues. As for expenses, during the same period, SMG has certain known and estimated unit costs for 19 cost centers detailed in Exhibit 2, page 2. To be conservative, SMG did not index the expenses over the relevant period, so SMG's calculation of $21.1 million in expenses is likely the least amount of expenses that SMG might have incurred.

The first analysis shows that SMG expected to earn $24.5 million of net profit over the balance of the PSA (excluding the 38,413 tons of magnetite ore that CVI has already taken). To determine the net present value ("NPV") of the expected profit, SMG applied a discount rate of 2%. The NPV calculation yields a current value of the profits of $22.7 million.

SMG's second analysis assumes that CVI breached the PSA and made no further purchases from January 1, 2019 thru the remainder of the PSA. In this analysis, SMG's expected profits drop dramatically because SMG will likely have to extend its operating period over 20 years to sell the same volume of magnetite concentrate, and revenues are likewise impacted because certain customers pay less per ton than CVI. Critically, the extended period means SMG will incur many recurring and fixed expenses over the

period, with far less sales each year. Indeed, page 3 of Exhibit 2, provides details of the significant differences in expenses and revenues over the relevant period versus the first analysis. And SMG's calculation is again, very conservative, as SMG did not index the unit cost and recurring fixed costs over the 20-year period.

The second analysis shows that over the 20-year period, SMG would earn approximately $41.2 million in revenues. SMG's calculations also show that it will incur approximately $36.0 million in expenses over the same period. The second analysis shows that SMG expected to earn $5.2 million of net profit over the 20-year period. Consistent with the first analysis, SMG applied a discount rate of 2% to determine the NPV of the expected profit. The NPV calculation yields a current value of the profits of $4.4 million.

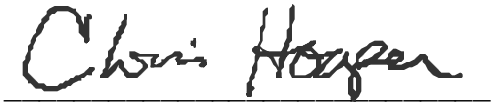
SMG's third analysis determines the differences between the first and second analyses. As shown on page 1 of Exhibit 2, the third analysis shows that the difference in the NPV of the expected profits between the first and second analysis is $18.3 million. Thus, SMG submits that its total damages attributable to CVI's breach of the PSA is $18.3 million. However, as $4,215,000 of the damages is already a known and liquidated value, SMG requests that it be awarded $14,090,599 in damages and $4.215 million in liquidated damages.

I understand that punitive damages are also a possibility under New Mexico law. As President of SMG and a regular party to Mr. Peters' ongoing pursuit of CVI's Smith, I believe that CVI's intentional repeated nonperformance and misrepresentations severely harmed our operation at Cobre Mine, and as a result, all of our employees and

contractors. Thus, to the extent reasonable, SMG asks that the Arbitrator award it punitive damages as well.

VERIFICATION

Clovis Hooper states that he has read the foregoing Statement and knows the contents thereof; and that the same are true as stated, except as to those statements made on information and belief, and as to those, that he believes them to be true.



Clovis Hooper

Executed: March 20, 2020

CV Investments LLC
STATEMENT OF PICKED UP MAGNETITE

Date	Tons
TONS TAKEN 07/19-07/31/17	(2,976.95)
TONS TAKEN 08/01-08/03/17	(1,033.84)
TONS TAKEN 08/03-08/11/17	(3,999.82)
TONS TAKEN 08/12-08/29/17	(4,013.19)
TONS TAKEN 09/01-09/15/17	(1,051.43)
TONS TAKEN 09/16-09/30/17	(2,952.07)
TONS TAKEN 10/01-10/15/17	(4,770.93)
MAGNETITE TAKEN 10/16-10/31/17	(3,253.26)
MAGNETITE TAKEN 11/01-11/15/17	(1,957.11)
MAGNETITE TAKEN 11/16-11/30/17	(2,077.72)
MAGNETITE TAKEN 12/01-12/15/17	(2,632.37)
MAGNETITE TAKEN 12/16-12/31/17	(1,349.43)
MAGNETITE TAKEN 01/01-01/15/18	(2,962.76)
MAGNETITE TAKEN 01/16-01/31/18	(2,100.66)
MAGNETITE TAKEN 02/01-02/15/18	(1,282.11)
TOTAL	(38,413.65)

Summary of SMG Damages

			WITH CVI	WITHOUT CVI	Difference	Net
NPV		US$	22,674,892	4,369,293	18,305,599	14,090,599
Discount Rate	%		2.00%	2.00%	0.00%	
Years of operation			8	20	(12)	
Sales		tons	649,656	710,521	(60,865)	
Revenue		US$	45,649,226	41,224,500	4,424,727	
Expenses		US$	(21,101,404)	(36,013,460)	14,912,056	
PreTax Profit			24,547,823	5,211,040	19,336,783	
Taxation		US$	-	-	-	
Net Profit after tax		US$	24,547,823	5,211,040	19,336,783	
Net Cashflow		US$	24,667,823	5,331,040	19,336,783	
Detailed Totals						
Tons Sold		tons	649,656	710,521	(60,865)	
Revenue		US$	45,649,226	41,224,500	4,424,727	
Expenses						
Equipment Fuel (Other)		US$	(288,069)	(710,521)	422,452	
Equipment Fuel (CVI)		US$	(72,317)	-	(72,317)	
Equipment Rental (Other)		US$	(2,400,000)	(5,920,436)	3,520,436	
Equipment Rental (CVI)		US$	(470,063)	-	(470,063)	
Freight on GCC Rio Grande		US$	(590,931)	(1,435,836)	844,905	
Purchase Rights		US$	(5,846,901)	(6,394,689)	547,788	
Production Costs Other		US$	(720,000)	(1,776,131)	1,056,131	
Production Wages(Other)		US$	(1,600,000)	(3,946,957)	2,346,957	
Production Wages(CVI)		US$	(2,155,059)	-	(2,155,059)	
Management/Admin Wages(Other)		US$	(440,000)	(1,085,413)	645,413	
Management/Admin Wages(CVI)		US$	(470,063)	-	(470,063)	
Insurance		US$	(376,000)	(927,535)	551,535	
Legal and Accounting		US$	(40,000)	(98,674)	58,674	
SMG Management Costs		US$	(1,480,000)	(3,650,935)	2,170,935	
Motor Vehicles		US$	(264,000)	(651,248)	387,248	
Administration Other		US$	(512,000)	(1,263,026)	751,026	
Travel and Entertianment		US$	(56,000)	(138,144)	82,144	
Management Fee		US$	(3,200,000)	(7,893,914)	4,693,914	
Depreciation		US$	(120,000)	(120,000)	-	
Total Expenses			(21,101,404)	(36,013,460)	14,912,056	
					-	
Pre Tax Profit			24,547,823	5,211,040	19,336,783	

Cobre with CVI

Discount Rate	%	2%	US$	22,674,892								
	UoM	INPUTS	UoM	TOTAL	Year 1 2019	Year 2 2020	Year 3 2021	Year 4 2022	Year 5 2023	Year 6 2024	Year 7 2025	Year 8 2026
Years of operation	Year	2028		9.98	1	1	1	1	1	1	1	1
Tons Sold		US$/ton										
GCC Rio Grande		75	tons	59,093	8,693	7,200	7,200	7,200	7,200	7,200	7,200	7,200
Intrepid		70	tons	9,440	1,040	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Mosaic		70	tons	9,614	1,214	1,200	1,200	1,200	1,200	1,200	1,200	1,200
JR Simplot		75	tons	9,317	917	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Universal Minerals		75	tons	9,100	700	1,200	1,200	1,200	1,200	1,200	1,200	1,200
USI ron, LLC		70	tons	-	-	-	-	-	-	-	-	-
NuWay		80	tons	-	-	-	-	-	-	-	-	-
CalPortland		50	tons	191,505	23,505	24,000	24,000	24,000	24,000	24,000	24,000	24,000
Drake		39	tons	-	-	-	-	-	-	-	-	-
CVI		80	tons	361,587	48,000	48,000	48,000	48,000	48,000	48,000	48,000	25,587
Organic Technology		70	tons	-	-	-	-	-	-	-	-	-
Total			**tons**	649,656	84,069	84,000	84,000	84,000	84,000	84,000	84,000	61,587
Sales Revenue												
GCC Rio Grande			US$	4,431,986	651,986	540,000	540,000	540,000	540,000	540,000	540,000	540,000
Intrepid			US$	660,779	72,779	84,000	84,000	84,000	84,000	84,000	84,000	84,000
Mossiac			US$	672,983	84,983	84,000	84,000	84,000	84,000	84,000	84,000	84,000
JR Simplot			US$	698,784	68,784	90,000	90,000	90,000	90,000	90,000	90,000	90,000
Universal Minerals			US$	682,500	52,500	90,000	90,000	90,000	90,000	90,000	90,000	90,000
USI ron, LLC			US$	-	-	-	-	-	-	-	-	-
NuWay			US$	-	-	-	-	-	-	-	-	-
CalPortland			US$	9,575,235	1,175,235	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
Drake			US$	-	-	-	-	-	-	-	-	-
CVI			US$	28,926,960	3,840,000	3,840,000	3,840,000	3,840,000	3,840,000	3,840,000	3,840,000	2,046,960
Organic Technology			US$	-	-	-	-	-	-	-	-	-
Total			**US$**	45,649,226	5,946,266	5,928,000	5,928,000	5,928,000	5,928,000	5,928,000	5,928,000	4,134,960
				0.6337								
Expenses												
Equipment Fuel (Other)	US$/t	(1.00)	US$	(288,069)	(36,069)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)
Equipment Fuel (CVI)	US$/t	(0.20)	US$	(72,317)	(9,600)	(9,600)	(9,600)	(9,600)	(9,600)	(9,600)	(9,600)	(5,117)
Equipment Rental (Other)	US$	(300,000)	US$	(2,400,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)
Equipment Rental (CVI)	US$/t	(1.30)	US$	(470,063)	(62,400)	(62,400)	(62,400)	(62,400)	(62,400)	(62,400)	(62,400)	(33,263)
Freight on GCC Rio Grande	US$/t	(10.00)	US$	(590,931)	(86,931)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)
Purchase Rights	US$/t	(9.00)	US$	(5,846,901)	(756,618)	(756,000)	(756,000)	(756,000)	(756,000)	(756,000)	(756,000)	(554,283)
Production Costs Other	US$	(90,000)	US$	(720,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)
Production Wages (Other)	US$	(200,000)	US$	(1,600,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
Production Wages (CVI)	US$/t	(5.96)	US$	(2,155,059)	(286,080)	(286,080)	(286,080)	(286,080)	(286,080)	(286,080)	(286,080)	(152,499)
Management/Admin Wages (Other)	US$	(55,000)	US$	(440,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)
Management/Admin Wages (CVI)	US$/t	(1.30)	US$	(470,063)	(62,400)	(62,400)	(62,400)	(62,400)	(62,400)	(62,400)	(62,400)	(33,263)
Insurance	US$	(47,000)	US$	(376,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)
Legal and Accounting	US$	(5,000)	US$	(40,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
SMG Management Costs	US$	(185,000)	US$	(1,480,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)
Motor Vehicles	US$	(33,000)	US$	(264,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)
Administration Other	US$	(64,000)	US$	(512,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)
Travel and Entertianment	US$	(7,000)	US$	(56,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)
Management Fee	US$	(400,000)	US$	(3,200,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)
Depreciation			US$	(120,000)	(60,000)	(60,000)	-	-	-	-	-	-
Total			**US$**	(21,101,404)	(2,746,098)	(2,730,480)	(2,670,480)	(2,670,480)	(2,670,480)	(2,670,480)	(2,670,480)	(2,272,425)
NET PROFIT BEFORE TAX			**US$**	24,547,823	3,200,168	3,197,520	3,257,520	3,257,520	3,257,520	3,257,520	3,257,520	1,862,535
TAXATION	%	0%	**US$**	-	-	-	-	-	-	-	-	-
NET PROFIT AFTER TAX			**US$**	24,547,823	3,200,168	3,197,520	3,257,520	3,257,520	3,257,520	3,257,520	3,257,520	1,862,535
Non Cash items												
Depreciation			US$	120,000	60,000	60,000	-	-	-	-	-	-
NET CASH FROM OPERATIONS			**US$**	24,667,823	3,260,168	3,257,520	3,257,520	3,257,520	3,257,520	3,257,520	3,257,520	1,862,535

Cobre without CVI

Discount Rate	%	2%	US$	4,369,293																			
	UoM	INPUTS	UoM	TOTAL	Year 1 2019	Year 2 2020	Year 3 2021	Year 4 2022	Year 5 2023	Year 6 2024	Year 7 2025	Year 8 2026	Year 9 2027	Year 10 2028	Year 11 2029	Year 12 2030	Year 13 2031	Year 14 2032	Year 15 2033	Year 16 2034	Year 17 2035	Year 18 2036	Year 19 2037	Year 20 2038
Years of operation	Year	2036		19.7347861	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.735
Tons Sold		US$/Ton																					
GCC Rio Grande	75	tons		143,584	8,693	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	5,290
Intrepid	70	tons		23,521	1,040	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	882
Mosaic	70	tons		23,696	1,214	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	882
JR Simplot	75	tons		23,399	917	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	882
Universal Minerals	75	tons		23,182	700	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	882
US Iron, LLC	70	tons		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
NuWay	80	tons		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
CalPortland	50	tons		473,140	23,505	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	17,635
Drake	35	tons		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
CVI	84	tons		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Organic Technology	70	tons		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total			tons	710,521	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Sales Revenue																							
GCC Rio Grande			US$	10,768,770	651,986	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	540,000	396,784
Intrepid			US$	1,646,501	72,779	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	61,722
Mosaic			US$	1,658,705	84,983	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	84,000	61,722
JR Simplot			US$	1,754,915	68,784	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	66,131
Universal Minerals			US$	1,738,631	52,500	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	66,131
US Iron, LLC			US$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
NuWay			US$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
CalPortland			US$	23,656,978	1,175,235	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	881,743
Drake			US$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
CVI			US$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Organic Technology			US$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total			US$	41,224,500	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Expenses																							
Equipment Fuel (Other)	US$/t	(1.00)	US$	(710,521)	(36,069)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(36,000)	(26,452)
Equipment Fuel (CVI)	US$/t		US$																					
Equipment Rental (Other)	US$	(300,000)	US$	(5,920,436)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(220,436)
Equipment Rental (CVI)	US$/t		US$																					
Freight on GCC Rio Grande	US$/t	(10.00)	US$	(1,435,836)	(86,931)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(72,000)	(52,905)
Purchase Rights	US$/t	(9.00)	US$	(6,394,689)	(324,618)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(324,000)	(238,071)
Production Costs Other	US$	(90,000)	US$	(1,776,131)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(90,000)	(66,131)
Production Wages (Other)	US$	(2,000,000)	US$	(3,946,957)	(2,000,000)	(2,000,000)	(200,000)	(2,000,000)	(2,000,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(2,000,000)	(2,000,000)	(2,000,000)	(2,000,000)	(2,000,000)	(2,000,000)	(200,000)	(200,000)	(146,957)
Production Wages (CVI)	US$	-	US$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Management/Admin Wages (Other)	US$	(555,000)	US$	(1,085,413)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	(40,413)
Management/Admin Wages (CVI)	US$	-	US$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance	US$	(470,000)	US$	(927,535)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(47,000)	(34,535)
Legal and Accounting	US$	(50,000)	US$	(98,674)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(3,674)
SMG Management Costs	US$	(1,850,000)	US$	(3,650,935)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(185,000)	(135,935)
Motor Vehicles	US$	(33,000)	US$	(651,248)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(33,000)	(24,248)
Administration Other	US$	(640,000)	US$	(1,263,026)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(64,000)	(47,026)
Travel and Entertainment	US$	(70,000)	US$	(138,144)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(5,144)
Management Fee	US$	(4,000,000)	US$	(7,893,914)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(400,000)	(293,914)
Depreciation	US$	(120,000)	US$	(120,000)	(60,000)	(60,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total			US$	(36,013,460)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NET PROFIT BEFORE TAX			US$	5,211,040	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TAXATION	%	0%	US$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
NET PROFIT AFTER TAX			US$	5,211,040	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Non Cash Items																							
Depreciation			US$	120,000	60,000	60,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
NET CASH FROM OPERATIONS			US$	5,331,040	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Exhibit G

JS 44 (Rev. 02/19)

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

Southern Minerals Group, LLC

(b) County of Residence of First Listed Plaintiff Grant (NM)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Lisa Carney Eldridge, Clark Hill Plc
Two Commerce Square, 2001 Market St., Suite 2620,
Philadelphia, PA 19103 Phone: (215) 640-8514

DEFENDANTS

CV Investments, LLC

County of Residence of First Listed Defendant Montgomery (PA)
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- 2 U.S. Government Defendant
- ☒ 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)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☒ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☒ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY		☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	LABOR	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 710 Fair Labor Standards Act	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 720 Labor/Management Relations	SOCIAL SECURITY	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 740 Railway Labor Act	☐ 861 HIA (1395ff)	☐ 480 Consumer Credit
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 751 Family and Medical Leave Act	☐ 862 Black Lung (923)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 790 Other Labor Litigation	☐ 863 DIWC/DIWW (405(g))	☐ 490 Cable/Sat TV
☐ 196 Franchise			☐ 791 Employee Retirement Income Security Act	☐ 864 SSID Title XVI	☐ 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		☐ 865 RSI (405(g))	☐ 890 Other Statutory Actions
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:	IMMIGRATION	FEDERAL TAX SUITS	☐ 891 Agricultural Acts
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	☐ 462 Naturalization Application	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence	☐ 465 Other Immigration Actions	☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General			☒ 896 Arbitration
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			☐ 950 Constitutionality of State Statutes
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

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 *(specify)* ☐ 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)***:
28 U.S.C. Section 1332(a)(1)

Brief description of cause:
Petition to Confirm Arbitration Award

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: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
06/05/2020

SIGNATURE OF ATTORNEY OF RECORD
X

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOUTHERN MINERALS GROUP, LLC	)	
Applicant,	)	
and	)	**Case No. _____**
CV INVESTMENTS LLC	)	
Respondent.	)	

ORDER CONFIRMING ARBITRATION AWARD

Pursuant to its Petition for Order Confirming Arbitration Award ("Petition"), filed June 4, 2020, Applicant Southern Minerals Group, LLC has petitioned this Court for confirmation of the Final Award filed as Exhibit No. 1 to its Petition. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a)(1). Venue attaches under 9 U.S.C. § 9 and 28 U.S.C. § 1391.

Under 9 U.S.C. § 9, the Court must confirm the Final Award "unless the award is vacated, modified, or corrected" under §§ 10 and 11 of the Federal Arbitration Act, 9 U.S.C. §§ 10 and 11. The Final Award has not been vacated, modified, or corrected, so entry of an Order confirming the Final Award is appropriate.

It is **ORDERED** that Applicant's petition is **GRANTED** and that the May 29, 2020 Final Award is confirmed; and

It is **FURTHER ORDERED** that Final Judgment is entered on the Award.

SO ORDERED this _____ day of June 2020.

_____
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOUTHERN MINERALS GROUP, LLC **P.O. Box 535** **Silver City, New Mexico 88062** **Applicant,** **and** **CV INVESTMENTS LLC** **200 Four Falls Corp. Center, Suite 211** **Conshohocken, Pennsylvania 19428** **Respondent.**	)	**Case No. _____**

PETITION FOR ORDER CONFIRMING ARBITRATION AWARD

Pursuant to 9 U.S.C. §§ 9 and 13 (the Federal Arbitration Act, or "FAA"), Southern Minerals Group, LLC ("SMG"), respectfully petitions this Court for an Order confirming the May 29, 2020 Final Award of the Hon. Mark I. Bernstein (Ret.) ("Arbitrator") in the matter of the arbitration between SMG and CV Investments LLC ("CVI") (collectively with SMG, the "Parties") (copy of the Final Award attached hereto as Exhibit No. 1). In support of this petition, SMG states the following:

THE PARTIES

1. SMG is a limited liability company organized under the laws of the State of Nevada with its principal place of business located near Bayard, New Mexico. SMG has as its sole member Ebony Iron Pty Ltd., a foreign corporation organized under the laws of the Commonwealth of Australia, with its principal place of business in Sydney, Australia. SMG operates a magnetite ore

sales operation within the Cobre Mine complex, which is located about three (3) miles northeast of Bayard, New Mexico. SMG's mailing address is P.O. Box 535 Silver City, New Mexico 88062.

2. CVI is a Pennsylvania limited liability company with its principal place of business located at 200 Four Falls Corp. Center, Suite 211, Conshohocken, Pennsylvania 19428. CVI and its related entities are owned, controlled and operated by Ms. Brenda Ann Smith ("Smith"). On August 27, 2019, Smith was arrested by the Federal Bureau of Investigation for allegedly operating a Ponzi scheme and was subsequently charged by the U.S. Attorney for the District of New Jersey with five (5) criminal counts, including four (4) counts of wire fraud and one (1) count of securities fraud. *See United States v. Smith*, Mag. No. 19-3377 (D.N.J. Aug. 27, 2019). Contemporaneously with the Department of Justice's action, the U.S. Securities and Exchange Commission ("SEC") filed a civil complaint in the U.S. District Court for the District of New Jersey against Smith and a number of her various corporate entities for violations of securities laws. *See SEC v. Smith, et al.*, Civ. A. No. 17213 (D.N.J. Aug. 27, 2019). On September 10, 2019, the District Court Judge issued an order freezing the assets and bank accounts of Smith and the various entities she controlled, including CVI. Smith remains incarcerated pending the outcome of her criminal proceeding but can, and did, accept service and filings at the correctional facility where she has been held throughout the arbitration and in the other suits lodged against her and various entities she controls.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) (diversity). SMG and CVI are citizens of different States, and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

4. The Award arises under a contract involving interstate commerce and is subject to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq*.

5. Under the FAA, unless the parties have agreed otherwise, venue is proper in the district where the award was made, or in any district proper under the general venue statute. *See, e.g., Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 195 (2000). The Parties' Agreement does not include a forum selection clause for proceedings to confirm any arbitration awards thereunder. However, the arbitration took place in Philadelphia, Pennsylvania.

6. The Eastern District of Pennsylvania is also an appropriate venue because CVI is subject to personal jurisdiction here, and it is the district in which a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. § 1391(b).

THE SUBJECT ARBITRATION

7. SMG and CVI were parties to a Magnetite Concentrates Purchase and Sale Agreement ("PSA") dated April 7, 2017, as amended by the First Amendment dated June 6, 2018, whereby CVI "agrees to purchase from Seller up to [] 400,000 tons of such magnetite concentrates for the price of $80.00 per ton." PSA § 2 (attached hereto as Exhibit No. 2); *see also* First Amendment to the PSA ("First Amendment") (attached hereto as Exhibit No. 3).

8. The PSA provides that "any dispute or controversy arising out of or relating to this agreement or the interpretation thereof, shall be settled by arbitration, held in a mutually acceptable location to the parties, in accordance with the rules, then in effect, of the American Arbitration Association." Ex. 2 at § 10.

9. SMG filed its Demand for Arbitration ("Demand") with the American Arbitration Association ("AAA") on September 20, 2019. The AAA docketed SMG's Demand as AAA Case No. 01-19-0002-9998. SMG's Demand sought an arbitral award against CVI:

(i) finding CVI materially breached the PSA;

(ii) finding CVI breached the implied covenant of good faith and fair dealing;

(iii) finding SMG is entitled to damages, inclusive of interest, for liquidated amounts owned to SMG;

(iv) finding SMG is entitled to lost profit damages;

(v) finding SMG is entitled to punitive damages;

(vi) awarding SMG its attorneys' fees and costs, including but not limited to, all costs of the arbitration;

(vii) awarding SMG any and all other relief determined appropriate by the Arbitrator.

10. On December 6, 2019, the AAA announced the appointment of the Hon. Mark I. Bernstein (Ret.) as the Arbitrator. At SMG's request, and given CVI's circumstances, the Arbitrator determined that a single arbitrator was sufficient for purposes of the arbitration, in accordance with the discretion afford to him under the procedures for Large, Complex Commercial Disputes of the AAA Commercial Arbitration Rules as amended. American Arbitration Association, Commercial Arbitration Rules & Mediation Procedures ("AAA Rules"), Rule L-2(b) (2013).

11. On January 31, 2020, the Arbitrator established a schedule for the proceeding and determined that the proceeding would be adjudicated through written filings only.

12. In accordance with the Arbitrator's January 31 order, SMG propounded a limited set of Requests for Admissions, Interrogatories, and Requests for Production of Documents to CVI on February 20, 2020. SMG filed its Affirmative Case on March 20, 2020 and its Rebuttal on April 20, 2020. CVI made no responsive pleadings, nor did CVI respond to discovery requests despite being afforded additional time by the Arbitrator to do so. By order dated May 13, 2020, the Arbitrator closed the record in the case.

13. The Arbitrator issued his Final Award on May 29, 2020. *See* Exhibit No. 1. Therein, the Arbitrator found that "[a]ll required due process was afforded to both sides through the impartial application of the Arbitration Rules agreed to by the parties in their agreement." *Id.* at 4. The Arbitrator further found that SMG is entitled to relief in its favor. Specifically, the arbitrator found that: (i) CVI materially breached the PSA; (ii) CVI breached the covenant of good faith and fair dealing; (iii) CVI's bad faith acts warranted punitive damages under New Mexico law; (iv) CVI's bad faith acts warranted the application of the maximum interest rate available under New Mexico law; and (v) CVI must bear the cost of the arbitration. *Id.* at 19-22. The Arbitrator awarded damages and costs as follows: (i) $4,215,000 in liquidated damages as of March 1, 2020; (ii) $14,090,599 in lost profits; (iii) $3,600,000 in punitive damages; (iv) $23,660 in arbitration costs; (v) prejudgment and post-judgment interest of 15% is applicable to the liquidated damages; and (vi) post-judgment interest of 15% is applicable to all other damages and costs. The Arbitrator declined to award attorneys' fees as requested by SMG.

14. The Final Award is a final award subject to confirmation in this Court. *Id.* at 23.

CONFIRMATION OF THE AWARD

15. The Court should confirm the Final Award under Section 9 of the FAA, 9 U.S.C. § 9, for the following reasons.

16. Under Section 9 of the FAA, application for confirmation of an award may be made to a court in which jurisdiction exists at any time within one year after the award is made. 9 U.S.C. § 9. Such an application must be granted "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of [9 U.S.C.]." *Id.*

17. The Parties have agreed to the application of the AAA Rules under the PSA. *See* Ex. 1 at § 10. Under AAA Rule R-52(c), "[p]arties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof."

18. Since the PSA does not include a forum selection clause, "application may be made to the United States court in and for the district within which such award was made." 9 U.S.C. § 9. The Final Award was made in Philadelphia, Pennsylvania.

19. This Petition is made well within the one-year deadline, as the Final Award was made on May 29, 2020. Furthermore, no action has been taken to vacate, modify or correct the Final Award under Sections 10 or 11 of the FAA. 9 U.S.C. §§ 10, 11. Thus, the Final Award is ripe for confirmation by this Court.

20. Section 13 of the FAA directs that a judgment be entered on a confirmed award. 9 U.S.C. § 13. Such a judgment "shall be docketed as if it was rendered in an action." *Id.*

21. SMG submits contemporaneously herewith a proposed Order Confirming Arbitration Award and entering judgment thereon.

WHEREFORE, SMG respectfully petitions this Court to enter an order confirming the Arbitrator's Final Award of May 29, 2020, and enter judgment thereon.

CLARK HILL PLC

Dated: June 5, 2020

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge, Esquire (PA ID #62794)
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
Phone: (215) 640-8500
Fax: (215) 640-8501
leldridge@clarkhill.com

Of Counsel:

Dated: June 5, 2020

/s/ Daniel M. Jaffe
Daniel M. Jaffe, Esquire
A Rebecca Williams, Esquire
SLOVER & LOFTUS LLP
1224 17th St., N.W.
Washington, DC 20036
202-347-7170
dmj@sloverandloftus.com
* *Pro Hac Vice applications shall be submitted*

Attorneys for *Southern Minerals Group, LLC*

CERTIFICATE OF SERVICE

I hereby certify that this 5th day of June 2020, I have caused true and correct copies of the foregoing **Petition to Confirm Arbitration Award** to be served upon Respondent CV Investments LLC by U.S.P.S. Overnight Mail:

CV Investments LLC
200 Four Falls Corp. Center, Suite 211
Conshohocken, PA 19428

A courtesy copy of the foregoing petition to be served via United States Postal Service, overnight mail, upon non-party Brenda A Smith, designated as defendant CVI's "Authorized Representative" in the underlying Arbitration as follows:

Brenda A. Smith
Permanent ID 2019-339640
CCIS# 07-571432
U.S. Marshalls Number 72832-050
Essex County Correctional Facility
354 Doremus Avenue
Newark, NJ 07105

CLARK HILL PLC

Dated: June 5, 2020

/s/ Lisa Carney Eldridge

Lisa Carney Eldridge, Esquire (PA ID #62794)
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
Phone: (215) 640-8500
Fax: (215) 640-8501
leldridge@clarkhill.com

Attorneys for Southern Minerals Group, LLC

EXHIBIT 1

AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration under AAA Commercial Rules and Mediation Procedures
Amended and effective October 1, 2013

AAA Case 01-19-0002-9998

Southern Minerals Group, LLC

Represented by Daniel Jaffe, Esq. and A. Rebecca Williams of Slover & Loftus LLP

v.

CV Investments, LLC

ex parte

FINAL AWARD

I. THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement, dated April 7, 2017 and entered into between Claimant, and Respondent, and having been duly sworn, and having duly reviewed the proofs and allegations of Southern Minerals Group, LLC, and CV Investments LLC having failed to submit proofs and allegations after due notice by mail in accordance with the Commercial Arbitration Rules of the American Arbitration Association, hereby, AWARD as follows:

Decision and Opinion

An award is entered in favor of claimant Southern Minerals Group, LLC and against respondent CV Investments, LLC in the amounts set forth below.

Procedure

Pursuant to the agreement between the parties dated April 7, 2017 as amended June 6, 2018, claimant filed this action on September 20, 2019. Apparently, respondent's principal had been indicted by Federal Authorities and at the time of filing its primary representative was incarcerated in Federal custody.

On December 4, 2019, Hon. Mark I. Bernstein (Ret.) was selected to be the AAA arbitrator for this matter under the Large Complex procedures of the Commercial Arbitration Rules as amended. Given the claim amount, the Procedures for Large, Complex Commercial Disputes specifies the number of arbitrators to be three. The parties' arbitration provision was silent as to the number of arbitrators. Pursuant to the applicable rules, expecting to be required to pay all costs of arbitration, petitioner requested that the number of arbitrators be reduced to a single arbitrator. According to the rules the first arbitrator determines whether to proceed with a single arbitrator or if three shall be appointed. Since Respondent's representative was only able to communicate via US Mail, it was directed that all communication was to be made in writing.

On November 11, 2019, Brenda Smith, respondent's representative, submitted a handwritten letter request an indeterminate stay alleging an inability to respond because company records had been seized and had been retained by Federal authorities. Respondent offered no suggestion as to how or when this situation would change, such that the matter could resume. Most significantly, as claimant stated in their response there was no suggestion that Smith lacked sufficient knowledge to participate. Claimant further claimed that had this matter been amenable to court filing a default judgment, unavailable in AAA arbitration,

would have been entered and claimant would earlier have had a judgment to collect upon if respondent did not participate.

Respondent requested a hearing by three arbitrators. Claimant responded that no right existed and since claimant would be paying for all costs of arbitration requested the matter be decided by one arbitrator in accord with the AAA rules. By Order dated December 11, the arbitrator ruled that one arbitrator would decide the matter and that the preliminary hearing would be held by written submission.

On January 8, 2020, the arbitrator received Claimant's written preliminary hearing statement and respondent's written letter which did not contain any substantive preliminary hearing statement and merely asked for a 6-month extension, but offered no explanation as to how anything would change 6 months hence. On January 9 claimant responded in writing to the requested extension.

By Order dated January 31, 2020 the arbitrator ruled that this matter would proceed and set a schedule for discovery and hearing through written submissions.

By submission dated March 20, 2020, as required by the January 8, 2020 Order, claimant submitted its affirmative case memorandum containing procedural background, statement of material facts, and memo of law. Attached thereto were the verified statements of John Peter and Clovis Hooper and a statement of damages.

Claimant also advised that by correspondence dated February 20, 2020 they had submitted Requests for Admissions, Interrogatories, and Requests for Production of Documents and had received no substantive responses but had received a handwritten letter dated March 20, 2020 which was attached.

Respondent's letter stated that although she was unable to retain papers but could have access to a thumb drive.

Accordingly, On April 8, the arbitrator Ordered a thumb drive be provided to respondent and that thereafter, respondent would have 10 days to respond to Claimants discovery requests, or the Request for Admissions would be deemed admitted.

On April 20 Claimant Southern Mineral Group, submitted a memorandum entitled "Rebuttal of Claimant" in which it pointed out that no substantive response whatever had been received from respondent as to the claim and renewed its request for damages.

Claimant sent a thumb drive to respondent on April 27. Since there has been no response by respondent, the Requests for Admissions are deemed admitted.

All required due process was afforded to both sides through the impartial application of the Arbitration Rules agreed to by the parties in their agreement. All reasonable accommodation was made for the parties. No in person or even telephonic conferences were required and all submissions could be made in writing. Handwritten submissions were accepted, considered, and evaluated. No substantive responses were ever received from respondent.

The record was properly closed on May 13, 2020.

Factual Findings

On April 7, 2017 Mr. Clovis Hooper, President of Claimant Southern Minerals Group, LLC (hereinafter SMG) negotiated a Magnetite Concentrates Purchase and Sale Agreement ("PSA") between SMG and Respondent CV Investments LLC ("CVI")

This agreement was subsequently amended on June 6, 2018. Under that agreement, CVI committed to purchasing 400,000 tons of magnetite from SMG at a price of $80.00 per ton at a rate of 1,000 per month beginning in June 2017. This agreement was amended in mid-2018. However, beginning in October 31, 2018 CVI began a pattern of failure of performance followed by representations and promises which were never fulfilled. (see verified statements of Mr. John Peters and Clovis Hooper) CVI has made no payments to SMG since October 2018 (Request for Admission No. 1). CVI breached the PSA. (Request for Admission No. 3). CVI's Smith was arrested on August 27, 2019. As of March 1, 2020, SMG's liquidated damages are in the amount of $4,225,000, exclusive of interest. (Request for Admission No. 2).

Mr. John Peters is the Managing Director of Strategic Minerals PLC, parent company of Southern Minerals Group, LLC ("SMG"). Together with SMG's President, Mr. Clovis Hooper, Mr. Peters negotiated with CVI the Magnetite Concentrates Purchase and Sale Agreement ("PSA") referred to above which was executed on April 7, 2017. This agreement was amended on June 6, 2018. CVI's sole representative was Ms. Brenda Smith ("Smith").

SMG has exclusive access to a magnetite stockpile and operates a magnetite sales operation from the Cobre Mine in New Mexico. SMG's access rights to the magnetite is limited to 800,000 tons. Pursuant to the PSA contract CVI was obligated to purchase 400,000 tons of concentrates with minimum monthly purchases of 1,000 tons. SMG committed access to those tons exclusively to CVI. This commitment by SMG amounted to 50% of its total access to magnetite. Throughout the term of the agreement SMG was able to provide the full 400,000

tons to CVI in accordance with the PSA's monthly purchase schedule. SMG's staffing and costs increased to accommodate the commitment to CVI. CVI took only a total of 38,414 tons of magnetite concentrate from the initiation of the PSA in June 2017. Most of this volume was taken in the first few months. All but one of the shipments was moved, at CVI's request, to property in New Mexico.

CVI defaulted on its required payments. By the end of 2017, CVI was $642,000 in arrears. All CVI shipments were made by truck as required under the PSA. However, when CVI had no named destination for the delivery of the magnetite concentrates CVI requested storage in New Mexico. CVI made 19 payments to SMG for magnetite between June 19, 2017 and October 31, 2018. At various points in 2018, CVI paid some of its outstanding balance but $371,000 was owing when the Parties negotiated the First Amendment in June 2018. SMG generously reduced the outstanding amount owed by over $215,000, conditioned on CVI's payment of the reduced balance. That amended agreement required CVI to make quarterly deposits in lieu of taking the 4,000-ton minimum.

Despite assurances, CVI repeatedly failed to make these required payments. CVI's regular monthly obligations were to resume beginning March 1, 2019. The last CVI payment to SMG was in October 2018. Despite ceasing to make payments, CVI's Smith repeatedly assured SMG that CVI was about to sell a bond and receive a major infusion of cash. Smith reassured that SMG would be paid what was owed when that sale closed. CVI repeatedly claimed that the closing was delayed by forces outside its control. Smith continued her reassurances until August 2019 when she was arrested for allegedly engaging in a Ponzi scheme and CVI assets were seized. SMG's obligations under the PSA and CVI's excuses, delays and

diversions precluded SMG from pursuing other potential purchasers of the magnetite concentrate.

A detailed spreadsheet of SMG's transactions with CVI under the PSA was attached as exhibit No. 1 to the statement of Mr. Hooper.

Under the amended agreement, CVI's monthly obligations restarted March 1, 2019. CVI failed to make any required payments, these required payments equaled $3,840,000 for the 12 months between March 2019 and February 2020. Consequently, as of March 2020, CVI's liquidated damages owed to SMG equaled $4,215,000, exclusive of interest. In addition to the liquidated damages CVI's breach of the PSA has resulted in SMG incurring direct and consequential damages. CVI's PSA represented a commitment to purchasing half of SMG's magnetite inventory. The volume committed to, and the expected revenue from, CVI under the PSA far exceeds the volume purchased by, and revenue earned from, all other SMG customers combined. Thus, in 40 months SMG expected to realize significant profits associated with CVI exclusive access to their magnetite rights.

To determine lost profits, the damages calculation has three complementary analyses. The first analysis assumes that CVI performed as required under the PSA. SMG expected to realize over $45.6 million in total revenues during the approximately 8 years of the PSA (2019 – 2027). Of that $45.6 million, SMG expected that CVI purchases would account for $28.9 million, or 63% of all revenues. During that same period, SMG has known and estimated unit costs. SMG's calculation of $21.1 million in expenses is a conservative analysis representing the expenses that SMG might have incurred. Thus, SMG expected to

earn $24.5 million of net profit over the balance of the PSA. To determine the net present value ("NPV") of the expected profit, SMG applied a discount rate of 2%. The NPV calculation yields a current value of reasonably expected profits of **$22.7** million.

SMG's second analysis accurately assumes that CVI made no further purchases from January 1, 2019 thru the remainder of the PSA. In this analysis, SMG's expected profits drop dramatically because SMG will likely have to extend its operating period by 20 years to sell the same volume of magnetite concentrate, and revenues are likewise impacted because certain customers pay less per ton than CVI. Critically, the extended period means SMG will incur additional recurring and fixed expenses with fewer sales. SMG's calculation is again very conservative. The second analysis shows that over the 20 year period, SMG would earn $41.2 million in revenue and incur approximately $36.0 million in expenses over the same period. The second analysis shows that SMG expected to earn $5.2 million net profit over the 20-year period. Consistent with the first analysis, SMG applied a discount rate of 2% to determine the NPV of the expected profit. The NPV calculation yields a current value of $**4.4** million.

SMG's third analysis calculates the difference between these conservative analyses. The third analysis shows that the difference in the NPV of the expected profits between the first and second analysis is $18.3 million. Thus, SMG submits that its total damages attributable to CVI's breach of the PSA is $18.3 million. However, as $7,215,000 of the damages is already a known and liquidated value, SMG calculated it lost $14,090,599 in profit damages and $4,715,000 million in

liquidated damages. The arbitrator finds this analysis to be reasonable, conservative, and accurate.

Detailed Findings of Bad Faith

CV Investments LLC ("CVI") is owned, controlled, and operated by Ms. Brenda Ann Smith. Ms. Smith stands charged by the U.S. Attorney for the District of New Jersey with five (5) criminal counts, including four (4) counts of wire fraud and one (1) count of securities fraud. On the same day as criminal charges were lodged, the U.S. Securities and Exchange Commission ("SEC") filed a civil complaint in the U.S. District Court for the District of New Jersey against Smith and her various corporate entities for violations of securities laws. On September 10, 2019, the assets and bank accounts of several the named defendants were frozen.

SMG has the exclusive right to access approximately 800,000 tons of magnetite concentrates. Under the PSA, CVI was obligated to purchase 400,000 tons of such magnetite concentrates for the price of $80.00 per ton with a required minimum of 4,000 tons per month beginning June 1, 2017. In return, SMG was required to "ensure that it does not undertake any activities that impact the Purchases [sic] rights to the magnetite concentrates." Given commitments to other customers and local regulations, SMG was prohibited from providing more than 5,500 tons of magnetite concentrates per month to CVI. SMG requested, and CVI provided, "a deposit of $10,000" to SMG. Likewise, SMG requested, and CVI provided, a "standby letter of credit in the amount of $250,000.00 issued by a major US banking institution" or a cash deposit in the same amount to be held "in solicitor's trust."

CVI's monthly purchases of magnetite ore began June 1, 2017, and shipments of the material began on or around July 1, 2017. Between June 2017 and October 30, 2017, CVI met its contractual obligations under the PSA by purchasing the required minimum of 4,000 tons of magnetite ore each month and promptly payed for those purchases. Beginning with the SMG invoice dated October 31, 2017, CVI's payments fell into arrears. In January 2018, CVI paid its outstanding balance of $642,572.80. Immediately following its January 2018 payment, CVI again fell into arrears, and by March 2018, CVI owed SMG $521,404. In March 2018, CVI notified SMG that it was "unable to take delivery of the minimum volume" of the magnetite ore due to delays in "obtaining environmental approvals." To continue their contractual relationship the parties entered the First Amendment dated June 6, 2018. The First Amendment suspended CVI's obligation to purchase a minimum of 4,000 tons per month "for the period March 1, 2018 through May 31, 2018; provided, however, that such waiver is contingent on [CVI] meeting its obligations as otherwise required in the PSA and this Amendment." The referenced obligations included CVI paying the amount then in arrears, $371,404, according to a detailed payment schedule. If CVI failed to meet that payment schedule it would "forgo[] any right to take the remaining balance of the Prepaid Quantity for the applicable calendar quarter . . ." CVI agreed to "resume its obligation to undertake to purchase a minimum of 4,000 tons per month at $80 per ton," beginning March 1, 2019. CVI failed to make the payments required.

On June 15, 2018, SMG invoiced CVI for the first quarterly prepayment of $375,000 in accordance with Section 4 of the First Amendment. Payment was due June 25, 2018. On July 10, 2018, CVI paid that invoice. On September 1, 2018,

SMG invoiced CVI for the second quarterly Prepayment due September 11, 2018. CVI failed to make that payment.

On September 13, 2018, SMG provided notice to CVI that it must rectify its past due amounts of over $600,000 otherwise SMG would consider CVI in default.

On Monday, October 8, 2018, SMG again wrote to CVI regarding the outstanding balance of $371,404 and offered to reduce the outstanding balance by $217,431.20 to reflect the 2,717.89 tons of the 4,000 ton minimum that CVI did not take physical delivery of in February 2018. This offer was contingent upon CVI paying the remaining balance in three installments and CVI release to the $250,000 security deposit CVI had previously made. On October 11, 2018, CVI made a counteroffer that accepted the structure of SMG's proposal but extended the time for the installment payments. SMG agreed to CVI's counteroffer. Nonetheless, CVI failed to make the initial installment payment on the agreed upon due date of October 22, 2018 but did make two payments totaling $53,972.80 on October 31, 2018. CVI subsequently missed the two remaining $50,000 installment payments due November 5 and November 19, 2018. Likewise, CVI never paid the outstanding balance by December 12, 2018 as required.

CVI has not made any further payments to SMG. On December 29, 2018, SMG sought further payment, requesting that CVI pay its outstanding balance of $475,000 before the end of 2018.

On December 29, 2018, CVI offered to pay the $475,000 in the first week of January 2019. SMG suggested CVI agree to release to SMG $100,000 from CVI's security deposit; pay the remaining $375,000 owed to SMG in the first week of January 2019; and replenish the amount of the security deposit released to SMG.

On December 30, 2018, CVI agreed to SMG's proposal and consented to the $100,000 transfer from the security deposit to SMG. CVI never paid the remaining $375,000 due to SMG, nor did it ever replenish the deposit. Instead, CVI began a series stalling tactics.

January:

- On January 7, 2019, CVI's Smith stated that SMG should have the funds the "following week."
- On January 9, 2019, CVI's Smith stated that the funding should be approved "[b]y end of day tomorrow."
- On January 17, 2019, CVI's Smith claimed "3 deals to close today or tomorrow. My funds from deal payout within one week."
- On January 17, 2019, CVI's Smith claimed she has the "financial instrument in hand to fund."
- On January 22, 2019, Smith claimed that closing would occur the following day (January 23, 2019) and informed SMG's Peters that she sent him "a confidential copy" of the "actual financial instrument,". Nonetheless, no payment was forthcoming.

February:

- On February 8, 2019, Smith said that she "was just told my wire leaves at 9 am tomorrow London time. Of course, I have to wait for banks to open here. I fully expect to be able to send $475,000 tomorrow. I will be happy to discuss future plans early next week."
- Yet again, on February 16, 2019, CVI's Smith claimed to "have taken control of the entire transaction and spent the day working out

details. I now have direct contact with the buyer of my bond and his banker. . . . I fully expect a wire on Monday and am not relying on anyone in between." CVI's Smith further assured SMG of CVI's ability to secure funding for payment, stating "BTW [by the way], this is real, I will close" and blaming the delay on a number of things, including the time difference and that the "buyer tracer was delayed in [the] subway."

- On February 27, 2019, CVI's Smith claimed that an "[i]nstrument [was] delivered last night at 22:00 by my trade desk."

March:

- Beginning March 1, 2019, SMG resumed invoicing CVI for its monthly minimum purchases of 4,000 tons of magnetite concentrates, pursuant to Section 4(b)(ii) of the parties' First Amendment. Yet on March 1, 2019 Smith claimed that the "buyer bank down graded the message / instrument today. Waiting for buyer account to get credit for instrument and then funds are released. Unfortunately, I am told that could take up to 5 days from transmission which was Tuesday."
- On March 8, 2019, SMG's Peters notified CVI's Smith that he needed to update his Board of Directors on the "expected timing of payment and plans to address the existing contract . . ." On March 9, 2019, CVI's Smith responded, "still not closed & no production."
- On March 13, 2019, SMG's Peters again inquired as to the timing of payment, to which CVI's Smith again responded with the claim that she was "[t]rying to close this week."

- On March 29, 2019, SMG requested an update from CVI's Smith by close of business regarding CVI's overdue payments, including a $50,000 wire transfer that CVI supposedly sent to SMG the prior week.
- On March 30, 2019, CVI's Smith claimed her banker had moved their scheduled meeting, and she would have to confirm with him when her transactions would be final and would check on the "outgoing wire."

April

- On April 3, 2019, CVI's Smith again claimed her "banker delayed the meeting until April 8." And that she had "pending transactions that will close this month," but "do[es] not have substantial cash on hand until closing."
- On April 11, 2019, CVI's Smith stated that she did not "have the funds" to pay, but that the "funds are closing on Tuesday April 16."

May:

- On May 15, 2019, Smith provided a purportedly "internally generated balance sheet" for CVI showing over $59 million in assets.
- On May 21, 2019, CVI's Smith responded to an email from SMG's Peters requesting an update, again claiming that she "expect[ed] to receive funds by close of business" the next day, or
- May 23, 2019, SMG's Peters again asked CVI's Smith via text message if the bonds had settled. CVI's Smith claimed she "should have funds tomorrow." On that same day SMG's Peters asked CVI's Smith to

formally agree to undertake certain actions to avoid legal proceedings, as follows: I was able to get my UK Directors and Alan this morning and I have got them to agree that, provided, on behalf of CV Investments, you undertake to pay SMG, within two weeks, the $375,000 December payment and top up the existing deposit with SMG by $3,690,000 they will hold all actions for those two weeks. . . . . Please provide, on behalf of CV Investments, agreement to these arrangements." CVI's Smith responded "Agreed. Thank you very much. Brenda.".

- When SMG attempted to memorialize the parties' new agreement in a Second Amendment to the PSA, CVI did not execute the Second Amendment, despite having already agreed to the terms. On May 25, 2019, SMG's Peters again asked CVI's Smith via text message if CVI had secured its funds yet. Responding that same day, CVI's Smith again put off SMG's Peters, claiming it would be "first thing Tuesday am [morning]"
- On May 29, 2019, after the date CVI's Smith claimed the funds would be available, SMG's Peters asked CVI's Smith via text message "has Mom released the funds" and, if not, "what are your expectations." CVI's Smith only responded with "tomorrow."
- On May 30, 2019, SMG's Peters asked CVI's Smith to "please update the position with CVI." CVI's Smith responded that same day, stating "Not yet. Still working hard on it."

June:

- On June 3, 2019, CVI's Smith emailed SMG's Peters that the funds would be available in two days, citing issues with the bankers.
- On June 6, 2019, CVI's Smith stated that the buyer "changed delivery," and it would "[p]robably" take an additional day. Later that day, CVI's Smith stated she had "tried to be direct [and] honest" and was "doing everything possible to fund by Friday".
- SMG's Peters then asked CVI's Smith if CVI could at least provide SMG with $100,000 on Friday, June 7, 2019, along with supporting paperwork for the bond funds that Peters could show to SMG's Board of Directors. In CVI's Smith responded that it would provide SMG with the requested $100,000 and paperwork by Friday June 7, 2019 but then failed to do so.
- On June 7, 2019, the supposed bond sale did not settle despite CVI's Smith claiming that the bankers were "working on it."
- On June 8, 2019, CVI's Smith claimed she was "[j]ust off [the] phone with [the] Buyer" and that they were working it, but there would be "[n]o wire today but it will go out Monday."
- On June 11, 2019, CVI's Smith again suggested that funds "may" be available "tomorrow" if the bankers can move the process along.
- On June 14, 2019, Peters sent Smith a text message requesting a telephone conference. Smith claimed she was sick. Later that day, when asked for an update on the bonds, Smith responded "[w]orking with bankers now".

- On June 20, 2019, Peters again asked Smith for an update, to which Smith responded "[t]rying to receive one transfer today. Still waiting on email from banker."
- On June 23, 2019, Smith claimed she was "[w]aiting on confirmation of transfer."
- On June 24, 2019 Smith did not respond to Peters request for status.
- On June 26, 2019, Peters asked Smith if CVI was "any firmer on timing of cash payment to SMG." and was told "[e]xpect [F]riday".
- On June 28, 2019, the new expected payment date, CVI failed to make payment.
- On June 30, 2019, CVI's Smith said: "I can make that payment based on drawing down the bond." .

July:

- On a July 13, 2019 telephone conference, Peters and Smith discussed an option, whereby CVI would borrow against a supposed LOC for ninety (90) days to pay SMG while CVI awaited its supposed bond settlement.
- On July 24, 2019, Peters asked CVI's Smith whether CVI had considered the option, but CVI's Smith did not answer the question and instead suggested she was "trying."
- On July 24, 2019, Smith purported to send SMG details of the bond issuance.
- On July 28, 2019, alarmed by reports that FINRA had cited and subsequently barred Smith from "associating with any FINRA

member" for rules violations, Peters text messaged Smith asking about the matter. CVI's Smith claimed the FINRA violations were not related to her trading and said she could "explain on [the] phone."

- On July 24, 2019, Smith stated that she should have confirmation that the bond had settled that day.
- On July 26, 2019, Smith claimed her banker "says I will have bank statement showing 100 mm tomorrow & it will be available to disburse next Wednesday" (July 31, 2019).
- On July 27, 2019, Smith said: "I do not have statement yet. I give up. Sue me". She later stated she was still waiting for an update from the banker, but funds should come through "this week for sure."

August:

- Throughout the month of August 2019, the "deal" was supposedly imminent, but then CVI ceased all communication.
- On August 9, 2019, SMG's Peters emailed Smith asking why she had "stopped communicating." Smith responded, claiming that her "banker now says I should have some funds on Tuesday [August 13, 2019]. He says [C]redit Suisse is wrapping up monetization. Can we wait until Tuesday?"
- On August 14, 2019, Smith claimed: "I talked to my banker this morning and he said the 'monetizer' has accepted the instrument, Credit Suisse has completed their process and agreed to start disbursements. He says funding is imminent." Despite these claims, no funds were ever disbursed to SMG.

- On August 16, 2019 Smith said she was waiting "for my banker to schedule." And then said: "[t]urning phone off."
- Throughout the remainder of August Peters and Smith exchanged several emails wherein Smith avoided a personal meeting or telephone conference and suggested instead "sue me or something." And then suggested that her "usal [sic] banker says I am still getting [the] advance this week but I don't have it yet."
- On August 26, 2019, Smith assured that she would sign a note for $4.065 million.
- On August 27, 2019, Smith was arrested by the FBI on charges that she had been running a Ponzi scheme. The federal indictment lodged against Smith and several of her corporate entities states that the behavior with CVI was done to many different victims.

Conclusions:

The arbitrator draws no conclusion from the unproven allegations of the indictment. A defendant has a presumption of innocence and no conclusion can be drawn from the allegations. It is clear however, that CVI cannot now and will not in the future fulfill the requirements of the PSA.

From the submissions that form the record in this claim including the uncontested Demand for Arbitration and the exhibits attached thereto, affirmed in the statements of Mr. Peters and Hooper, the additional information provided by those statements, the unanswered and therefore admitted Request for Admissions, it is clear that CVI entered into a binding agreement, subsequently

amended, made substantial reassurances and additional promises over an eight month period are materially breached that contract, the PSA. CVI made no payments to SMG under the PSA after October 2018. Agreed upon purchases were not made. Neither was the balance due of $375,000 ever paid. Under the PSA and CVI's written assurances of payment, the amount of $4,215,000 is owing as of March 1, 2020. SMG is entitled to liquidated damages in the amount of $7,215,000. SMG is also entitled to lost profits in the amount of as set forth in exhibit 2 of Mr. Hooper's verified statement.

That verified statement explained in detail the methodology used to calculate loss. Mr. Hooper reasonably calculated the net profits expected if CVI had fulfilled its agreement over the 8 years remaining to the PSA. This lost profit was 22.7 Million dollars. He then calculated the profits expected from the sale of the same quantity of magnetite over a longer period given the failure of CVI to fulfill its agreement. This would yield 5.2 million in profits, a mitigating factor in the damages calculation. Subtracting the profits reasonably expected over the longer period due to the failure from the expected profit if the contract had been fulfilled resulted in a total profit loss of $14,090,599. Within the amount of this loss is the lost profit as of March 1, 2020 which had already been calculated and awarded as liquidated damages. Subtracting the award for liquidated damages yields a net future loss of profit at $14,090,599. In all these calculations the profit analysis had been reduced by a reasonable 2% discount rate. Mr. Hooper conservatively estimated the damages which "arise naturally and necessarily" from the breach in accordance with New Mexico law,

Law

The agreement requires that the law of New Mexico apply. Under New Mexico law the claim has been timely presented. NMSA 1978 §37-1-3(A) provides for a 6-year statute of limitations for contractual claims. Damages recoverable and proven herein are the damages which "arise naturally and necessarily" from the breach in accordance with New Mexico Law (Sunnyland Farms, Inc. v Cent. N.M. Elec. Co-op, Inc., 301 P. 3d 387 (N.M.2013).

Under New Mexico Law, punitive Damages are recoverable "for breach of contract wherever defendant's conduct was malicious, fraudulent, oppressive, or committed recklessly with a wanton disregard for the plaintiff's rights." The defendant repeatedly made false reassurances about imminent performance, and intentionally misled the plaintiff about its intention and ability to perform. As detailed above, there can be no question that the continual bogus reassurances and purportedly detailed explanations of the imminent receipt of funds to pay the debt owed, were both malicious and "committed recklessly with a wanton disregard for the plaintiff's rights". Accordingly, punitive damages are warranted and awarded.

The purpose of punitive damages is to punish the defendant and deter others from similar conduct. The compensatory award entered herein, if collected, shall make plaintiff whole and shall allow plaintiff to recover profits reasonably but conservatively expected under the contract. Accordingly, to punish this bad faith behavior and to deter others from similar conduct, in addition to the compensatory award and in accordance with New Mexico law, the arbitrator awards punitive damages in the amount of $3,600,000.

New Mexico law permits pre and post-judgment interest (NMSA 1978 §2004. Accordingly, pre judgment interest on the liquidated damages awards of $4,215,000 is ordered. Post judgment interest is awarded from the date of entry of judgment. Since judgment is awarded based on the bad faith and intentional acts of defendant, interest is by law to be computed in the amount of 15% per annum.

Since SMG has been forced to bear all costs of this arbitration, and CVI has not participated in any meaningful way other than to request extensions, costs are awarded to plaintiff. New Mexico law does not permit the award of attorney fees except where the behavior of the defendant occurs "before the court or in direct defiance of the court's authority"(see state ex rel. N.M. State Highway and Transp. Dep't v. Baca 896 P.2d 1148 (1995), there is no authority to award attorney fees for private contractual claims even where defendant has acted in bad faith and even where the intent of the bad faith actions were intended to defer and dissuade resort to legal (or AAA arbitration) action.

Judgement and Decision

The arbitrator awards Claimant SMG against respondent CVI the following amounts:

Liquidated damages: $4,215,000

Lost Profit: $14,090,599

Punitive Damages: $3,600,000

Prejudgment Interest at 15% on liquidated damages of $4,215,000

Post Judgment Interest at 15%

Costs: The Administrative fees and expenses of the AAA totaling $12,200.00 are to be borne $12,200.00 by CV Investments, LLC. The Compensation and expenses of Arbitrator totaling $11,460.00 are to be borne $11,460.00 by CV Investments, LLC. Therefore, CV Investments, LLC has to pay Southern Minerals Group, LLC, an amount of $23,660.00.

This Final Award is in full and complete settlement and satisfaction of any and all claims that were submitted to the jurisdiction of this Arbitrator in connection with the present dispute. All claims, arguments or issues not specifically addressed in this Final Award and not reserved for further disposition, are rejected and denied with prejudice.

By the Arbitrator:

Dated: May 29, 2020

_____

Hon. Mark I. Bernstein (Ret)

Sole Arbitrator

I, Hon. Mark I. Bernstein (Ret), do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is the Decision and Final Award in this Arbitration.

_____

Hon. Mark I. Bernstein (Ret) Sole Arbitrator

EXHIBIT 2

[redacted]

"reasonable endeavours" does not require a Party to pay money in an attempt to overcome the event or to settle any industrial dispute against its wishes.

9. To prevent possible confusion Seller and Purchaser agree that this Agreement is to be applied in accordance with the laws of the State of New Mexico other than its conflicts of laws principles.

10. Parties agree that any dispute or controversy arising out of or relating to this agreement or the interpretation thereof, shall be settled by arbitration, held in a mutually acceptable location to the parties, in accordance with the rules, then in effect, of the American Arbitration Association.

11. Either Party may assign this agreement, upon written notice, provided such assignment is to a commonly controlled affiliate.

12. Either Party may terminate this Agreement on a serious breach of Agreement after giving 30 days notice ("Notice Period") to the other Party to rectify the breach and that breach is not rectified within the Notice Period. The termination of this Agreement shall not affect the rights of the aggrieved party in seeking damages in relation to the Agreement being terminated.

13. Southern Mineral Group, and its affiliates agree not to use the name CV Investments in any public media without Purchasers written permission unless required by law CH CH

Seller and Purchaser have executed this Agreement effective as of the 7 day of April, 2017.
CH CH

Southern Minerals Group, LLC

By: Clovis Hooper

Clovis Hooper,

President

Southern Minerals Group LLC

CV Investments LLC

By: Brenda Smith

Brenda Smith,

Managing Member

CV Investments LLC

EXHIBIT 3

FIRST AMENDMENT TO
MAGNETITE CONCENTRATES PURCHASE AND SALE AGREEMENT

This First Amendment ("Amendment") to Magnetite Concentrates Purchase and Sale Agreement is made as of this sixth day of June 2018, among **Southern Minerals Group, LLC**, P O Box 535 Silver City, **NM** 88062 ("**Seller**") and **CV Investments, LLC** and affiliates, 200 Four Falls Corp. Ctr. Suite 211, Conshohocken, PA 19428.

WHEREAS Seller and Purchaser are parties to that certain Magnetite Concentrates Purchase and Sale Agreement dated April 7, 2017 ("PSA"), providing for the sale of magnetite concentrates, a treated by-product of copper mining and milling operations conducted at a mine in Grant County, New Mexico; and

WHEREAS, Shipments of magnetite concentrates began on or around July 1, 2017 in accordance with the PSA; and

WHEREAS, the Purchaser has notified the Seller that it is unable to take delivery of the minimum volume of 4,000 tons per month required under Section 2 of the PSA due to delays in the Purchaser obtaining environmental approvals; and

WHEREAS, Seller and Purchaser desire to revise the Purchaser's volume obligation under the PSA as set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises, mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and Purchaser agree as follows:

1. Seller waives Purchaser's obligation under Section 2 of the SA to purchase a minimum of 4,000 tons a month for the period March 1, 2018 through May 31, 2018, provided, however, that such waiver is contingent on Purchaser meeting its obligations as otherwise required in the PSA and this Amendment.

2. Purchaser agrees to pay Seller the "Outstanding Amount" under the PSA of $521,404 as of March 31, 2018 in accordance with the following schedule:

CVI Investments Outstanding Amount Payment Schedule		
Monday , 20 April 2018	$50,000	Paid
Monday, 4 May 2018	$50 000	Paid
Monday, 18 May 2018	$50 000	Paid
Monday, 1 June 2018	$50 000	
Monday, 15 June 2018	$50 000	
Monday, 29 June 2018	$50 000	
Monday, 13 July 2018	$50 000	
Monday, 27 July 2018	$50 000	
Monday, 10 August 2018	$50 000	
Monday, 24 August 2018	$71 404	
Total	**$521,404**	

3. Upon Purchaser's full payment of the Outstanding Amount, Purchaser shall be entitled to 2,717.89 tons for which Purchaser was invoiced in February 2018 and which Purchaser has not yet taken delivery. Purchaser's option to take 2,717.89 tons shall expire on November 30, 2018 and no refund shall issue if the material is not taken by that date.
4. Section 2 of the PSA is amended as follows :

    a. The last sentence of Section 2 is deleted in its entirety and replaced as follows:

        i "The Purchaser undertakes to purchase a minimum of 4,000 tons per month from June 1, 2017 to February 28, 2018."

    b. The following new paragraphs are added to the end of Section 2:

        i. "Prepayment Period (June 1, 2018 – February 1, 2019): On June 15, 2018, September 1, 2018, and December 1 2018 Seller will invoice Purchaser in advance for 4 685.50 tons per quarter ("Prepaid Quantity") and the Purchaser will pay a non-refundable amount of $375,000 ("Prepayment") in relation to sales for that quarter (the Prepayment is in addition to the payments made in satisfaction of the Outstanding Amount under Section 2 of this Amendment) in accordance with the terms of the PSA. If Purchaser does not take the Prepaid Quantity within 12 months of the invoice date, Purchaser forgoes any right to take the remaining balance of the Prepaid Quantity for the applicable calendar quarter and Seller retains all prepayments made by Purchaser. If Purchaser ships

4 000 or more tons in any month during the Prepayment Period or there after then the "Outstanding Prepayment" which is the sum of all Prepayments made by Purchaser less the value of any material delivered, shall be reduced by a maximum of $125.000 in that month and the Purchaser will be deemed to have been delivered 1 562 50 tons of material."

ii "Beginning on March 1, 2019. Purchaser shall resume its obligation to undertake to purchase a minimum of 4 000 tons per month at $80 per ton."

5. Section 1 of the PSA is amended as follows:

a The last sentence of Section 1 is deleted in its entirety and replaced as follows:

i. "Should for any reason, Seller's right to access this material is terminated, then on the day that access to the material is terminated this Agreement will terminate without further recourse to Purchaser and Seller. Upon termination, Seller has no obligation to refund any Outstanding Prepayment Amount nor provide any additional material, nor provide material that the Purchaser has paid for but has not yet been delivered."

The Seller and the Purchaser have executed this First Amendment to the Magnetite Concentrates Purchase and Sale Agreement effective as of the sixth day of June, 2018

Southern Minerals Group LLC

Clovis Hooper
President Southern Minerals Group LLC

CV Investments LLC

Brenda Smith
Managing Member CV Investments LLC

Exhibit H

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

CREDITOR CLAIM FORM

Name of Creditor: William McCormack

Name and Address Where Notices Should be Sent: c/o Robert V Cornish Jr., 1701 Pennsylvania Ave NW, Suite 200, Washington, DC 20006

Email Address: rcornish@rcornishlaw.com

Telephone No.: 307-264-0535

Date(s) of Claim: 10/19 through 3/22

Amount of Claim: 668,000.50, 408,000.50 of which are legal fees for which McCormack is entitled to indemnification under Michigan law. $260,000 is unpaid commissions wrongfully handled or misappropriated by Brenda Smith

Please attach copies of all invoices relating to your claim. Do not send original documents. Copies of the documents provided to the Receiver will not be returned to the creditor. You must maintain the original documents as the Receiver may ultimately request them for verification.

$	23,312.50
$	9,466.09
$	1,585.00
$	1,800.00
$	900.00
$	2,927.11
$	59.50
$	15,226.50
$	59.50
$	59.50
$	4,348.06
$	34,285.00
$	3,000.00
$	59.50
$	3,248.36
$	595.00
$	982.50
$	595.00
$	59.50
$	2,023.00
$	37,700.00
$	5,532.12
$	5,373.50
$	21,633.17
$	80.58
$	2,261.00
$	297.50
$	30,217.38
$	121.14
$	1,478.00
$	6,426.00
$	23,944.23
$	4,581.50
$	20,025.53
$	14,524.39

$	2,082.50
$	9,949.02
$	10,276.80
$	12,870.00
$	13,367.00
$	7,741.70
$	10,311.50
$	44,655.37
$	5,295.50
$	1,963.50
$	10,853.50
$	408,000.50

Total - 408,000.50

Exhibit I

LAW OFFICES OF
ROBERT V. CORNISH, JR., P.C.

680 South Cache Street, Suite 100
Jackson, WY 83001
Office: (307) 264-0535
Fax: (571) 290-6252
rcornish@rcornishlaw.com

June 22, 2022

VIA E-MAIL

Andrew S. Gallinaro, Esq.
Conrad O'Brien PC
Center Square, West Tower
1500 Market Street, Suite 3900
Philadelphia, PA 19102-2100

Re: Broad Reach Receivership Claims of William McCormack

Dear Andrew,

We have examined the materials regarding the preliminary denial of the claims of William McCormack against the Receivership Estate. Our examination included (a) review of legal bills, (b) review of applicable law on indemnity and (c) examination of banking and other records relating to commissions generated but not paid to McCormack.

I. LEGAL FEES

a. Description of Services to be Indemnified

As a preliminary matter, we are happy to share unredacted bills for legal expenses so long as we have a confidentiality order in place or some mechanism for in camera inspection.

I have represented McCormack since this matter came to a head in September 2019 through the Surefire lawsuit. He has expended extensive fees defending that action (the "PA Litigation") which has absolutely no merit whatsoever. Namely, we have obtained the PHLX guest entry/exit records for the time periods during which Surefire's personnel supposedly visited McCormack on the trading floor. There are no records of any such meetings taking place or any records of Surefire's personnel visiting McCormack. Indemnity in such a case would indeed be proper. The expenses referred to as Surefire expenses on my bills, those of Anderson Kill and BCF in Canada (in connection with Surefire's standing and corporate status) are those for that matter. In fact, costs continue to accrue in this matter given Surefire's reticence in dismissing McCormack. We are thus faced with conducting discovery and depositions in both the US and Canada, and we intend to continue to apply for indemnity from the Estate so long as this case remains active. We also maintain our appeal to the 3rd Circuit on the Section 1782 request for McCormack's putative action in Canada against various parties.

Second, McCormack's costs for "SEC & DOJ Matters" relate specifically to his production of over 340,000 pages of documents in his possession that were provided in imagable form to the SEC in Philadelphia, as well as preparation and attendance at meetings with the SEC and the FBI. McCormack has cooperated at all times with these authorities, and his expenditure of legal fees is as such that indemnity would be proper.

Thirdly, McCormack's costs for "FINRA Arbitration" – the Alpha matter – relates to the FINRA arbitration now stayed in which he was wrongfully named. In that case, the Claimant received over 90% of their funds back after threatening McCormack with legal action after the arrest of Brenda Smith. The Claimant is now inexplicably suing McCormack for the 10% they did not receive despite McCormack's non-involvement in the matter other than being there after Brenda Smith's arrest. There are generally no motions to dismiss in FINRA arbitration, meaning McCormack must defend the claim. The costs of defending this baseless claim can and should be indemnified by the Receivership Estate. There are no assurances that the claim will remain stayed.

In addition, McCormack's "FINRA Investigation" costs relate to his defense of the allegations lodged by NASDAQ that he improperly facilitated the opening of the Broad Reach account at CV Brokerage by allowing it to be handled as a "give up" account to ICBC. McCormack opened this account on the advice of James Delaney of ICBC and instruction of Brenda Smith, and that is recited in the AWC to which McCormack agreed. Those legal costs in defending the action and producing documents are in excess of $97,000 and should be indemnified. McCormack has filed a FINRA arbitration against Delaney for his legal fees and related damages related to the wrongful advice he was given, and will submit to offset of any amounts obtained in that action.

Further, McCormack's "White Collar Defense" costs relate to assorted costs for legal counsel incurred following the FBI/SEC interview, as well as preliminary discussions with NASDAQ on the matters which ultimately led to the AWC.

b. McCormack is entitled to common law indemnity on his legal fees to date relating to CV Brokerage matters

In the context of common law indemnity, the Pennsylvania Supreme Court has spoken of requiring (1) some legal obligation that compels indemnification, and (2) damages occasioned by the initial negligence of the party that owes indemnity. *Builders Supply Co. v. McCabe*, 77 A.2d 368, 370 (Pa. 1951). *See* also *Morris v. Lenihan*, 192 F.R.D. 484, 489 (E.D. Pa. 2000) (explaining that common law indemnification is appropriate when a defendant's liability "arises not out of his own conduct, but out of [1] a relationship that legally compels the defendant to pay for [2] the act or omission of a third party."). The classic example of such a legal relationship is that of principal and agent, employer and employee. *City of Wilkes-Barre v. Kaminski Bros.*, 804 A.2d 89, 92 (Pa. Commw. Ct. 2002).

McCormack satisfies both requirements in Pennsylvania for common law indemnity:

A. McCormack can easily show that there is a legal relationship between himself (as an employee/agent) and Brenda Smith/CV Brokerage as an (employer/ principal);

B. Damages have been shown by McCormack for legal fees incurred that were created by the fault of Brenda Smith/CV Brokerage.

Furthermore, indemnity is a fault-shifting mechanism that comes into play when a defendant held liable by operation of law seeks to recover from a defendant whose conduct actually caused the loss. *See Kaminski Bros., supra.* Further, there is no allegation or claim anywhere in the universe of McCormack legal matters that allege with any credibility that McCormack is an intentional tortfeasor not entitled to indemnity, including the Surefire action. See *Canavin v. Naik*, 648 F. Supp 268, 269 (E.D. Pa. 1986) (common law indemnity in Pennsylvania unavailable to an intentional tortfeasor because it would permit them to escape their own deliberate acts).

Finally, McCormack following Brenda Smith's arrest effectively served as an interim officer in charge of CV Brokerage, albeit in the wreckage left from the Broad Reach fraud in July – September 2019. The Surefire action was instituted while McCormack was serving in that capacity. The Alpha action was filed in connection with McCormack's conduct *after* Brenda Smith's arrest. McCormack as the only officer of CV Brokerage following Brenda Smith's arrest would under virtually any circumstances lead him to be entitled to indemnity from CV Brokerage. It should be noted that McCormack specifically did not seek to use funds of CV Brokerage to pay any of his legal expenses although he arguably had a right to do so, and did not waive his rights in any way to do so.

c. McCormack in entitled to indemnity for the legal fee award in his arbitration against Eric Seeley

We find the Receiver's arguments in denying McCormack's indemnity claims to be unavailing and request the opportunity to further explain our factual and legal positions. But in addition, McCormack amends his claims before the Receiver to also include the legal fee award against him in the arbitration he undertook in connection with the theft of his business in the final days of CV Brokerage. The FINRA arbitration Panel inexplicably determined, in excess of its powers, that McCormack's claims for business theft belonged to CV Brokerage and were thus a receivership asset. That determination is currently being litigated in federal court in New Jersey as a related case to the Receivership. In the event that the Court does not vacate that award, McCormack makes claim for fees that he must pay pursuant to that award. You have already been provided a copy of that document.

II. COMMISSIONS

McCormack has retained Mr. Henry Ferguson of HRF Financial Consultants (resume attached) to review bank records and other matters related to the retention of commissions. Such commissions, given Mr. Ferguson's report, appear to have been frittered away by Brenda Smith through bank accounts of CV Brokerage and Aweotten Consulting. These commissions are in excess of $750,000 as are shown on the report attached to this letter.

In connection with this investigation, Mr. Ferguson reviewed billing statements and spreadsheet records maintained by McCormack which were part of the SEC's production made by McCormack in 2019. Those records specifically show for each month the amount of commissions that were charged to clients of McCormack, the portion owed to McCormack and the portion retained by CV Brokerage. The subject commissions wrongfully retained and misused by Brenda Smith appear to be between April 2017 – October 2017. While these commissions were earned by McCormack, they were not paid to him under his agreement with CV Brokerage and Brenda Smith, which was an 85/15 split as shown on the spreadsheets. While one may be tempted to argue that there is no written contract between CV Brokerage and McCormack, contracts for commissions for business course of dealings are routinely recognized in Pennsylvania.

Under Pennsylvania law, "an implied-in-fact contract is a true contract arising from mutual agreement and intent to promise, but where the agreement and promise have not been verbally expressed. The agreement is inferred from the conduct of the parties." *In re Penn Cent. Transp. Co.*, 831 F.2d 1221, 1228 (3d Cir. 1987) (citations omitted). The comment to Section 4 of the Restatement (Second) of Contracts, adopted in Pennsylvania, explains: Contracts are often spoken of as express or implied. The distinction involves, however, no difference in legal effect, but lies merely in the mode of manifesting assent. Just as assent may be manifested by words or other conduct, sometimes including silence, so intention to make a promise may be manifested in language or by implication from other circumstances, including course of dealing or usage of trade or course of performance. *See also Rissi v. Cappella*, 918 A.2d 131, 140 (Pa. Super. 2007) (implied contracts arise under circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intention to contract).

For these reasons, the 85/15 commission split as evidenced in the documents stands as a valid agreement for McCormack's payout from CV Brokerage. And as shown by Mr. Ferguson, those commissions were funneled by Brenda Smith and never paid. In particular, we note that Alvarez & Marshall did not review these records along with the payout sheets McCormack produced in 2019. We invite the Receiver to review the attached records and the 2017 bank statements in his possession to discuss further.

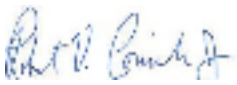
CONCLUSION

McCormack renews his previous claims for indemnity and payment of commissions from the estate, and further amends those claims to include (a) unpaid commissions in excess of

$750,000 as shown on Mr. Ferguson's report and (b) legal costs awarded against McCormack in the Seeley arbitration.

Again, we welcome the opportunity to resolve these matters in an amicable matter. We look forward to further discussions.

Very truly yours,



Robert V. Cornish, Jr.

Encs.

Expert Report of Henry R Ferguson

Bill McCormick Awooton PNC Account # 5873

HRFerguson Financial Consultants, LLC (HRFFC) is a compliance and litigation consulting firm in the financial and securities business for over 40 years. Henry Ferguson has been retained in hundreds of cases to conduct forensic accounting in securities cases. Mr. Ferguson has testified in 187 cases in most arbitration forums, state and federal court, and SEC and CFTC Administrative Proceedings. He has been retained by the SEC in two securities cases. Additionally, his consulting assignments has included two Bernie Madoff cases, as a consulting expert in the SEC v. Enron, SEC v. Goldman Sachs on insider trading in Govt Bonds as well as others. He has an RIA series 65 and a Commodity Series 3. Mr. Ferguson is also a Certified Anti-Money Laundering Specialist (CAMS) and a FINRA and NFA Arbitrator.

HRFFC have been retained by counsel on behalf of Bill McCormack to review and give an opinion regarding commissions due to McCormick during the designated time period relative to the Awooton account from May 1, 2017 thru July 31,2020.

Necessary documents reviewed were:

Bank Account Statements including Awooton and CV Brokerage Inc # [redacted]-2682

Spreadsheets (monthly) entitled "Bill McCormick Invoice Totals"

Various Deposit slips and checks by account deposited in to CV Brokerage #2682

Receiver's Preliminary analysis.

Other documents

Monthly Spreadsheets

The monthly spreadsheets provided were for the months of June thru Nov 2017. The spreadsheets provided a summary of commissions owed by each account for the month and a total. It also included monthly expenses, net brokerage income and the profit due to CVI (15%) and McCormick (85%) of the net brokerage income. (Exhibit A) is a summary of the spreadsheets.

Total commissions due to McCormick were $1,068,760. However, the last deposit was in Oct and November was not paid. McCormick was due approximately $746,852 thru Oct.

Deposit Slips

Clients were sent invoices with wire instructions to be sent to CV Brokerage, Inc. account # [redacted] 2682, Routing # 031-000-053 at PNC Bank. However, most of the clients paid by check and they were deposited by Conestoga Partners Holdings LP into the CV Brokerage account. The deposits are identified as Remote Capture 1 on the bank statements. The checks were accumulated for different periods of time and were not deposited individually.

From June thru Nov 2017, total Receipts from customers of McCormick deposited in the CV Brokerage account totaled $1,201,643.71 (checks only). After aproximate expenses of $264,837.68, (see exhibit A) net commissions were $936,806.03. McCormick's 85% equals $796,285.13.

See (Exhibit B)

Wired funds have as yet not been identified from customers and possibly add to commissions paid.

Conclusion

It is my conclusion Bill McCormick is entitled to all deposits in the Awooton account of $776,744.45 as identified by the Receiver. These Deposits were made from various accounts apparently to reimburse McCormick for his invoiced commissions as identified. I am unaware of any payments made to McCormick for commissions during this identified period except in the Awooton account.

Expert reserves the right to amend the above report based on review of additional documents reviewed.

Exhibit A Bill Mccormick Invoice Totals

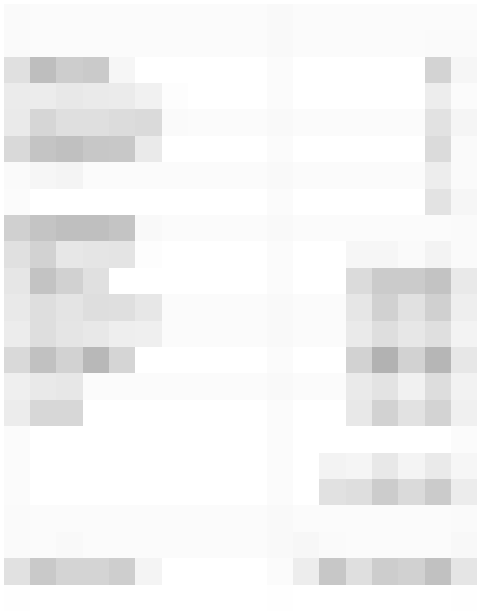
End of Month	Gross Brokerage Revenue	Expenses	Net Brokerage	Profit Due CVI 15%	Profit Due McCormick 85%
Jun-17	$ 248,370.38	$ (44,195.76)	$ 204,174.62	$ 30,626.19	$ 173,548.43
Jul-17	$ 131,146.19	$ (43,619.65)	$ 87,526.54	$ 13,128.98	$ 74,397.56
Aug-17	$ 321,120.71	$ (44,585.17)	$ 276,535.54	$ 41,480.33	$ 235,055.21
Sep-17	$ 189,543.98	$ (48,059.46)	$ 141,484.52	$ 21,222.68	$ 120,261.84
Oct-17	$ 209,889.89	$ (40,961.08)	$ 168,928.81	$ 25,339.32	$ 143,589.49
Nov-17	$ 422,131.63	$ (43,416.56)	$ 378,715.07	$ 56,807.26	$ 321,907.81
Total	$ 1,522,202.78	$ (264,837.68)	$ 1,257,365.10	$ 188,604.76	$ 1,068,760.34

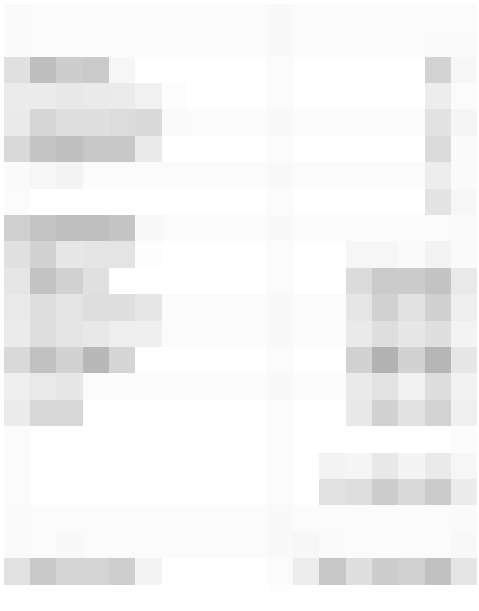
Exhibit 2

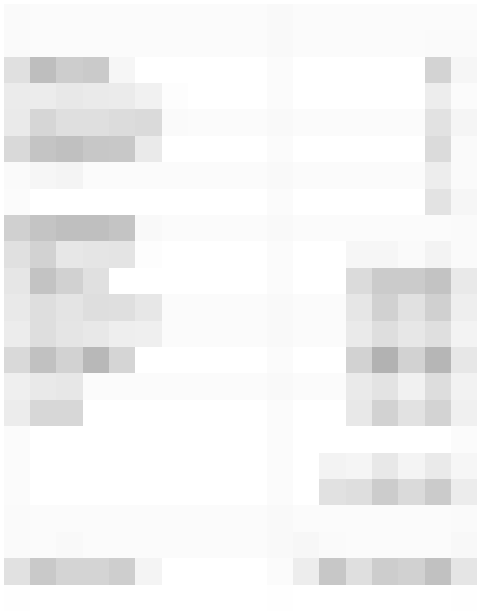
CV Brokerage Inc
Account # [redacted]-2682

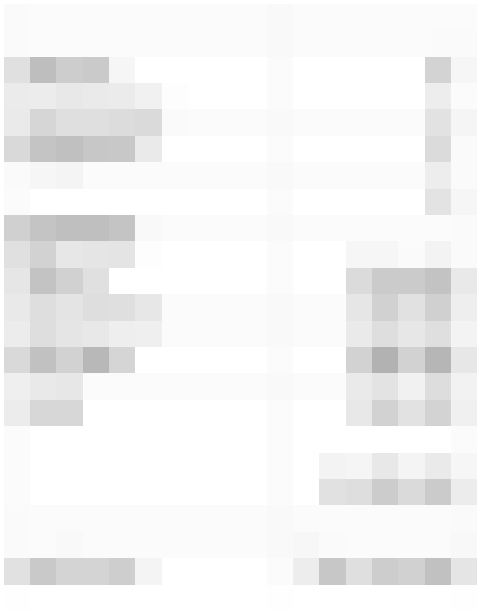
End of Month	Date	Remote Deposits	Month Total	Verified Remote Capture
4/28/2017				
	4/3/2017	$ 6,790.00		No
	4/17/2018	$ 9,077.50		No
	4/18/2017	$ 35,983.22	$ 51,850.72	No
5/31/2017				
	5/8/2017	$ 47,567.47		No
	5/9/2017	$ 27,567.47		No
	5/30/2017	$ 43,744.20	$ 118,879.14	Yes
6/30/2017				
	6/1/2017	$ 9,543.25		No
	6/19/2017	$ 123,514.57		Yes
	6/22/2017	$ 64,524.78		Yes
	6/26/2017	$ 76,560.75	$ 274,143.35	Yes
7/31/2017				
	7/7/2017	$ 17,284.30		No
	7/12/2017	$ 29,708.75		Yes
	7/20/2017	$ 12,425.55		No
	7/21/2017	$ 19,447.80		??
	7/31/2017	$ 32,873.30		Yes
	7/31/2017	$ 7,102.50	$ 118,842.20	Yes
8/31/2017				
	8/9/2017	$ 32,211.80		No
	8/14/2017	$ 4,367.00		Yes
	8/15/2017	$ 6,977.00		Yes
	8/15/2017	$ 5,940.00		Yes

	8/23/2017	$ 23,463.00			Yes
	8/28/2017	$ 36,905.09			No
	8/30/2017	$ 3,307.60	$	113,171.49	Yes
9/29/2017					
	9/18/2017	$ 55,930.35			Yes
	9/18/2017	$ 65,561.75			Yes
	9/28/2017	$ 139,867.75	$	261,359.85	Yes
10/31/2017					
	10/2/2017	$ 67,304.75			Yes
	10/10/2017	$ 15,772.65			No
	10/18/2017	$ 30,829.98			Yes
	10/23/2017	$ 3,540.00			Yes
	10/30/2017	$ 54,591.10	$	172,038.48	Yes
11/30/2017					
	11/3/2017	$ 33,542.48			Yes
	11/20/2017	$ 57,813.00	$	91,355.48	Yes
Total			$	1,201,043.71	









CV BROKERAGE INC

200 Four Falls, Suite 211
1001 Conshohocken State Rd
West Conshohocken, PA 19428

Brokerage Invoice

Bill To:
Legal Entity Name: **Curnon Trading**
Legal Entity Address:
City, State, Zip:

Invoice Date: **04/30/2017**
Invoice Period: **April 2017**

Total Due:	**$7,279.25**

Contact Information

Billing Contact: **Nicole McCormack**
Email: nmccormack@cvinv.com
Telephone Number: **609-617-3778**

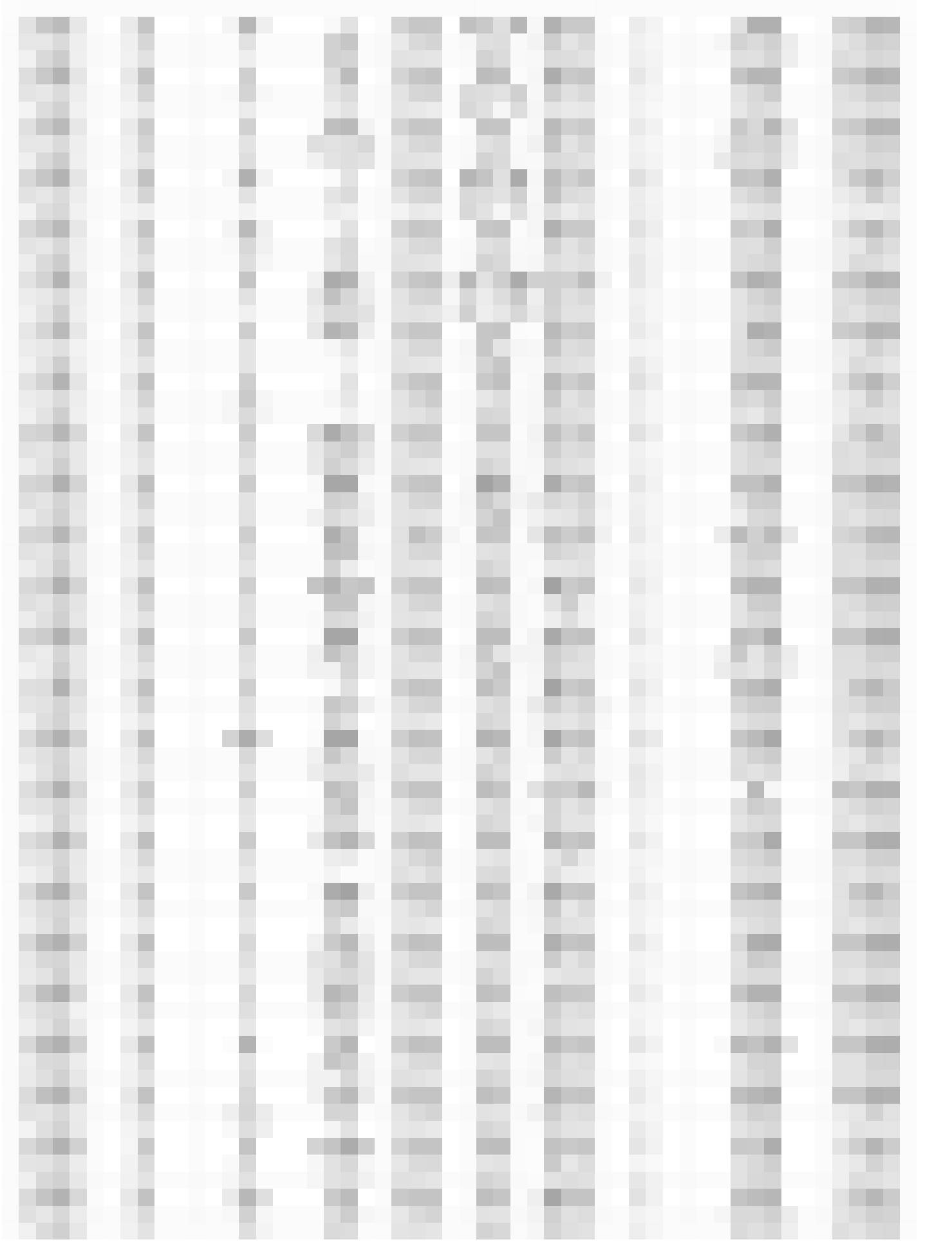
Please Remit Payment To

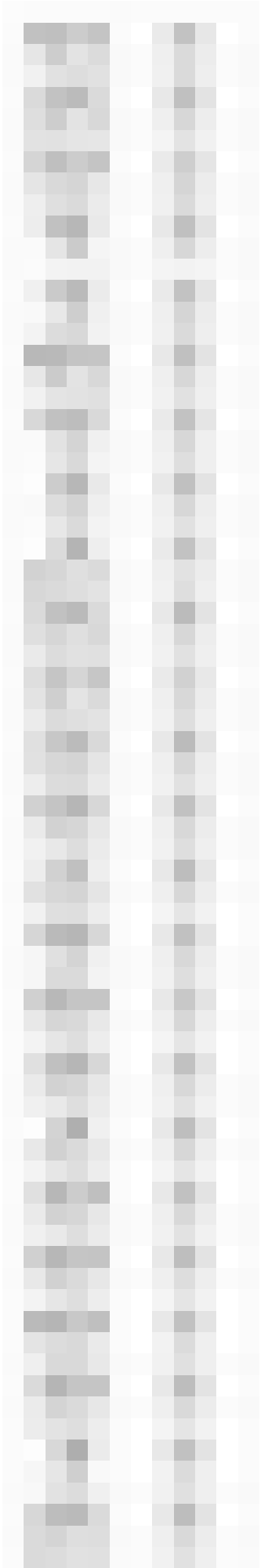
Name: **CV Brokerage, Inc**
Attention: **Brenda Smith**
Address: **200 Four Falls, Suite 211 - 1001 Conshohocken St. Rd. - West Conshohocken, PA 19428**

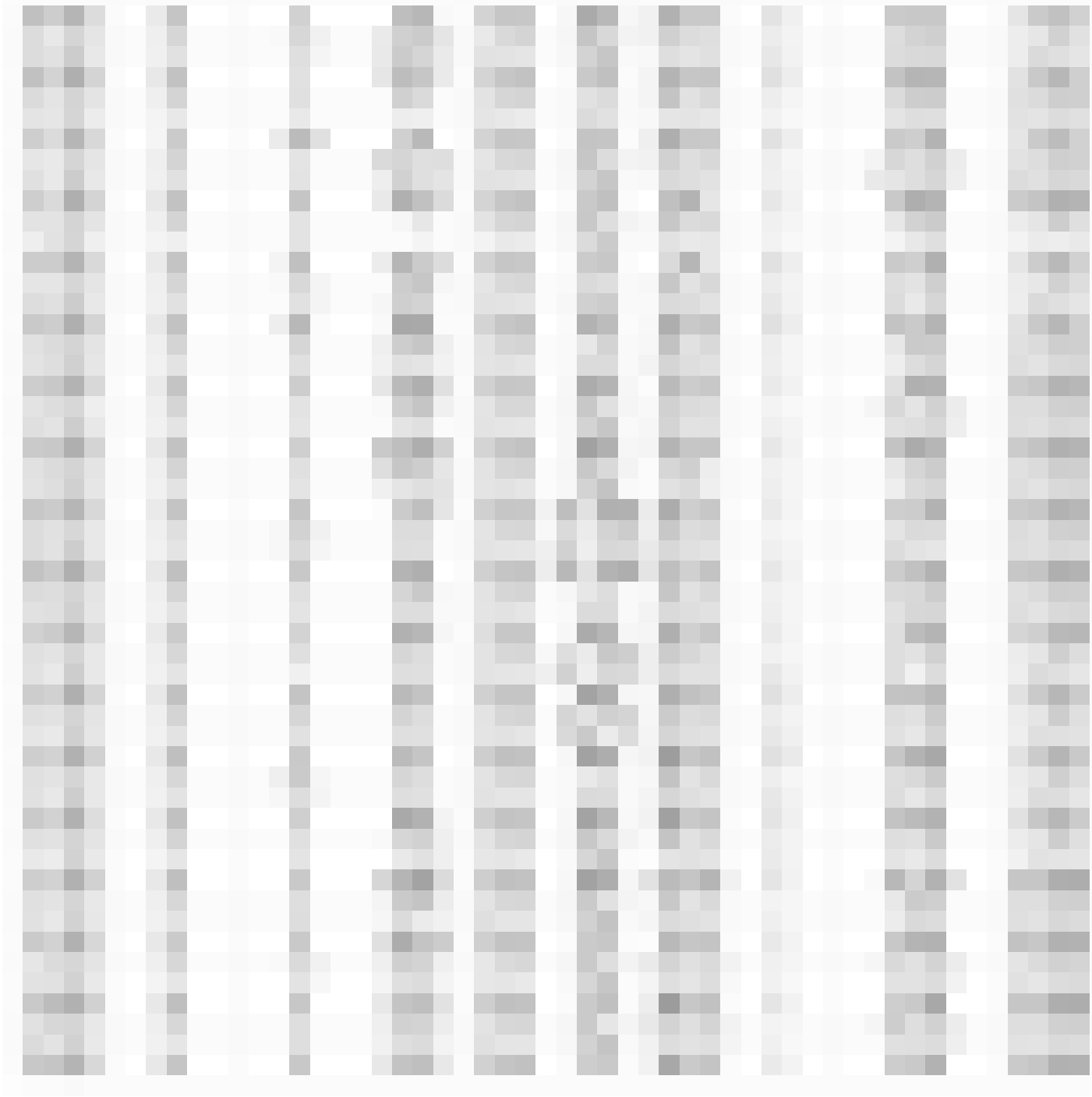
ACH / Wire Instructions

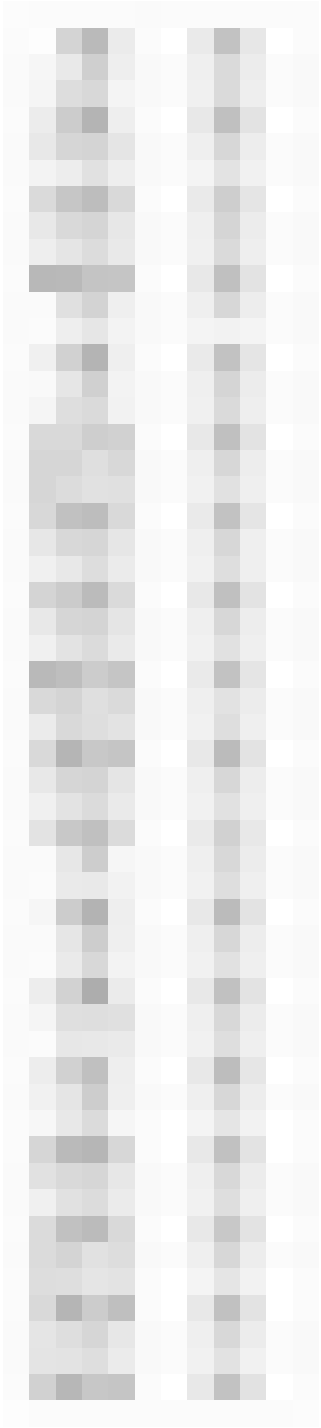
Account Title: **CV Brokerage, Inc**
Account Number: [redacted]
ABA Routing Number: [redacted]
Bank Name: **PNC Bank**
Bank Address: **1000 Westlakes Dr. West Conshohocken, PA 19428**

Date	B/S	QTY	Code	Year	Month	Strike	P/C	Prem	Comm









Henry R. Ferguson, CAMS
HRFerguson Financial Consultants, LLC hrfin@gmail.com

PROFESSIONAL EXPERIENCE

Sept 2020 – Present

Wyoming Deposit & Transfer (WDT) – Advisor

Wyoming Deposit & Transfer (WDT) was recently awarded a Bank Charter (the 3rd in Wyoming) as a Special Purpose Depository Institution for Digital Assets by the Wyoming Division of Banking. The Bank Charter enables WDT to provide commercial banking together with custodial services for a wide range of tokenized assets, digital and fiat currencies. My Advisory role has concentrated in several significant areas including BSA, KYC, and AML, as well as others.

1984 – Present

H.R. Ferguson Financial Consultants LLC – President

Provides consultation and expert testimony in Court or Arbitration on behalf of broker-dealers, investment advisers and financial institutions in areas of litigation, compliance, sales and product knowledge. Product expertise includes securities, financial derivatives including stock options, financial futures, options, foreign exchange, and other capital market instruments. Additionally, Mr. Ferguson is a Certified Anti-Money Laundering Specialist (CAMS) and has consulted on several AML cases.

March 2017 – June 2021

Capital Forensics, Inc. Director

Capital Forensics provides expert analysis and expert testimony in securities and ERISA related matters. To date, Capital Forensics has been retained by respondents and claimants as either a consultant or expert in legal matters with issues that include: churning, compliance, ERISA, employment, fiduciary duty, annuities and life insurance, limited partnerships, market manipulation, options, over-concentration, suitability, supervision, unit trusts, and damages.

Henry R. Ferguson, CAMS
HRFerguson Financial Consultants, LLC hrfin@gmail.com

January 2000 – March 2010

Ferguson Kern LLC (Formerly Ferguson Pollack Kern Consulting, LLC) - Managing Partner
Managing Director and founder of litigation consulting partnership. Provided consultation and expert testimony in areas of litigation, arbitration and mediation of disputes involving broker-dealers and investment advisors. Also, provided assistance in the area of continuing education programs directed to broker-dealers and investment advisors.

1983 – 1984

New York Futures Exchange - Vice President, Market Development
Designed and executed national marketing and advertising campaign for the then newly created New York Futures Exchange. Created educational and marketing materials and presented seminars on futures and options for financial consultants, investment associations and individual investors. Made guest appearances on televised financial programs and at international investment conferences.

1980 – 1983

Oppenheimer & Co., NYC - Vice President & Manager Options / Index Futures Department
Managed options and futures trading desk and supervised trading activities of trading staff. Also, responsible for devising and executing daily strategies on stock equity options and index futures for customer portfolios and the firm's capital account. Conducted in-house seminars to qualify investment professionals for a variety of regulatory examinations.

1978 – 1980

Blythe Eastman Dillon & Co., NYC - Vice President & Manager Options / Trading
Managed options trading desk. Responsible for education and training of the firm's investment professionals regarding security and option knowledge. Promoted and supervised a discretionary Money Management department for high net-worth individuals and institutional clients.

Henry R. Ferguson, CAMS
HRFerguson Financial Consultants, LLC hrfin@gmail.com

1977 1978

Dean Witter & Co, NYC - Associate Procuct Manager Option Department
Developed marketing program for national sales force. Provided education and training for Account Executives in options and securities markets. Presented public seminars nationally on the benefits of options as a derivate and hedging technique.

1972 -1977

Sutro & Co., San Francisco, CA - Registered Rep and Associate Director of Options Department Responsible for customer accounts and trading desk. Provided training and education of Registered Representatives. Co-founder of the Listed Options Department.

Other Affiliations & Experience

ACAMS (Association of Certified Anti Money Laundering Specialists)

Arbitrator (FINRA Disputes Resolution)

Arbitrator (National Futures Association)

Series 65 (Uniform Investment Adviser Law (RIA)

Series 3 (National Commodities Futures Contracts

SIFMA Compliance and Legal Division

- Member since 1985 - 2021

New York Institute of Finance

- Instructor securities courses: Equities, Equity Options, Futures, & Futures Options.

Henry R. Ferguson, CAMS
HRFerguson Financial Consultants, LLC hrfin@gmail.com

- American Institute of Banking, NYC & Boston Presented numerous investment courses on Securities, Futures, Options, Mutual Funds, Fixed Income Investments, & Other Capital Markets Products

New York Futures Exchange

- Member 1980-1998

Florida County Court Certified Mediation Training

Florida Notary Public

Previous Security Registration

- Registered Representative Series 7
- Registered Options Principal Series 3 General Securities Principal Series 24
- Options Principal Floor Trader CFTC
- NCFE Series 3
- Interest Rate Options Series
- USALE Series 63
- Branch Office Manager

Education

Bachelors of Science & Business Administration California State University Hayward, CA

Securities Litigation Consulting

Since 1985, we have provided expert consultation and independent expert testimony for clients including law firms, broker dealers, investment advisers, financial firms, regulatory agencies and individuals. In addition to expert litigation consulting and testimony, we have been retained by financial firms to conduct internal investigations; We also have testified in

Henry R. Ferguson, CAMS
HRFerguson Financial Consultants, LLC hrfin@gmail.com

Disciplinary Proceedings at the New York Stock Exchange, National Association of Securities Dealers and the Securities and Exchange Commission.

Qualified as an Expert Before the Following Forums.

- Federal Court NYC
- State Court, Florida
- State Court, Massachusetts State Court, Pennsylvania
- CFTC/SEC
- NASD / FINRA
- NYSE
- NFA
- PSE
- PHLX
- AAA

Qualified as an Expert in the Following Areas:

- Churning
- Excessive Trading
- Damages
- Margins and Margin Liquidations
- Mutual Funding Switching
- Suitability
- Supervision
- Unauthorized Trading
- Anti-Money Laundering

Henry R. Ferguson, CAMS
HRFerguson Financial Consultants, LLC hrfin@gmail.com

Product Areas Qualified as Expert

- Anti-Money Laundering
- Alternative Investments and Private Placements
- Asset Allocation
- Debt Securities
- Equity Securities
- Equity / Index Options
- Futures / Forwards and Options
- Municipal Securities
- Mutual Funds
- Ponzi Schemes
- Structured Products

Local Organizations:

- The Rotary Club of Boca Raton President, (2017-2018)
- RCBR Executive Board Member (2015-2019)
- RCBR Scholarship Fund Board-Member (2015-2019)
- Toastmasters International — Distinguished Toast Master (2017)
- Toastmasters District 47 Division C Director (2015-2016)
- Landmark Forum Graduate

Exhibit J

SEC v. Brenda Smith, et al.

William McCormack Claim

	Summary of McCormack Claim and Uses of Receivership Assets	Total	
1	CVBR Net Brokerage Revenue per "Invoice Totals" Spreadsheets (June - October 2017)	$878,650.03	
2	15% Commission Split - CVI	$131,797.50	
3	**85% Commission Split - William McCormack**	**$746,852.53**	
4	Awootton Deposits - McCormack Claim	$776,244.45	
5	CVBR Payments to McCormack (June - October 2017)	($237,724.23)	[1]
6	**Net - Excluding All Awootton Uses**	**$338,520.22**	
7	Third-Party Withdrawals from Awootton	($267,044.95)	
8	**Net - Excluding Receivership Awootton Uses**	**$71,475.27**	
9	Transfer from Awootton to Broad Reach	($300,000.00)	[2]
10	Transfer from Awootton to Taylor Trading	($15,000.00)	[2]
11	**Net McCormack Sources / (Uses)**	**($243,524.73)**	

Notes:

[1] CVBR made additional payments to McCormack totaling $136,848.61 between November and December 2017, which may relate to commissions earned during prior months.

[2] Funds transferred from Awootton to an account held by a Receivership Party or an account which was defined as a Receivership Asset in the Receivership Order. Reason for transfers currently unknown.

Exhibit K

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

CREDITOR CLAIM FORM

Name of Creditor: Scott Koppenheffer

Name and Address Where Notices Should be Sent: c/o Robert V Cornish Jr., 1701 Pennsylvania Ave NW, Suite 200, Washington, DC 20006

Email Address: rcornish@rcornishlaw.com

Telephone No.: 307-264-0535

Date(s) of Claim: 10/19 through 3/22

Amount of Claim: 141,052.56 which are legal fees for which Koppenheffer is entitled to indemnification under Michigan law.

Please attach copies of all invoices relating to your claim. Do not send original documents. Copies of the documents provided to the Receiver will not be returned to the creditor. You must maintain the original documents as the Receiver may ultimately request them for verification.

$	19,283.75
$	4,637.09
$	297.50
$	59.50
$	1,952.50
$	1,606.50
$	2,737.00
$	23,745.00
$	18,050.25
$	4,491.00
$	11,660.00
$	14,009.37
$	7,947.00
$	7,828.00
$	6,296.00
$	17,052.50
$	141,052.96

total 141,052.96

Exhibit L

LAW OFFICES OF
ROBERT V. CORNISH, JR., P.C.

32 Mercer Street, 3rd Floor
New York, NY 10013
Office: (212) 988-6800
Fax: (571) 290-6052
kstanislawczyk@rcornishlaw.com

June 15, 2022

Andrew S. Gallinaro, Esq.
Conrad O'Brien PC
Center Square, West Tower
1500 Market Street, Suite 3900
Philadelphia, PA 19102-2100

Re: *SEC v. Smith*, Civ. No. 2:19-cv-17213-MCA (D.N.J.) and
Surefire v. Broad Reach Capital, Civ. No. 2:19-cv-04088-BMS (E.D. Pa.)

Dear Mr. Gallinaro,

This letter is in response to your letter dated May 25, 2022, regarding Mr. Koppenheffer's request for indemnity of $141,052.56 in legal fees that he sustained defending himself and his company, Taylor Trading, in *SEC v. Smith* and *Surefire v. Broad Reach Capital*. Mr. Koppenheffer's request for indemnification is proper under Pennsylvania common law.

As you noted in your letter, under Pennsylvania law, a party has a claim for common law indemnity where: (1) there is a legal obligation that compels indemnification, and (2) there are damages occasioned by the initial negligence of the party that owes indemnity. *Builders Supply Co. v. McCabe*, 77 A.2d 368, 370 (Pa. 1951); *see also Morris v. Lenihan*, 192 F.R.D. 484, 489 (E.D. Pa. 2000). The classic example of such a legal relationship is that of principal and agent or employer and employee. *City of Wilkes-Barre v. Kaminski Bros.*, 804 A.2d 89, 92 (Pa. Commw. Ct. 2002); 18 P.L.E. *Indemnity* § 2 (1988); RESTATEMENT (SECOND) OF TORTS § 886B (1979).

Mr. Koppenheffer satisfies both requirements for common law indemnity under Pennsylvania law: (1) Koppenheffer can easily show that there is an agent/principal relationship between himself and Brenda Smith/CV Brokerage; and (2) Koppenheffer has established damages in the amount of $141,052.56 for legal fees that were created at the fault of Brenda Smith/CV Brokerage.

Mr. Koppenheffer was an agent and employee of Brenda Smith/CV Brokerage, a fact recognized by plaintiffs in the *Surefire* action. Plaintiffs there pleaded that Ms. Smith, not Mr. Koppenheffer, directed CV Brokerage's activities: "Unlike Ms. Smith, the bank records do not lie. Those records show Plaintiff's investments being immediately transferred to earlier investors and other entities owned/ controlled by Ms. Smith."[1] While the complaint alleged that Mr. Koppenheffer prepared "fear sheets,"[2] it did not allege that Mr. Koppenheffer prepared those fear sheets of his own accord or used them to represent anything to potential investors. Moreover, the complaint's allegation that Mr. Koppenheffer attended a single meeting does nothing to establish that Mr.

[1] *Surefire v. Smith*, Case: 2:19-cv-01088-BMS (E.D. Pa. Sept. 6, 2019), at 2 ¶ 1.
[2] *Id.* at ¶ 51.

Koppenheffer was anything other than an agent of Ms. Smith/CV Brokerage, particularly as it contained no allegations that Mr. Koppenheffer made *any* representations to the Surefire analysts in that meeting.[3]

The common law rule that indemnity is unavailable to intentional tortfeasors, *Canavin v. Naik*, 648 F. Supp 268, 269 (E.D. Pa. 1986), is not a bar to indemnification here. First, the court in *Surefire v Broadreach* and *SEC v Smith* never made a decision as to whether Mr. Koppenheffer was an intentional tortfeasor, as the cases settled as to him prior to judgment. Your letter refers solely to allegations of wrongdoing made against Mr. Koppenheffer in the *Surefire* complaint. However, unadjudicated allegations of wrongdoing do not preclude indemnification where the parties reach a settlement and notice is given to the indemnitor. *Fowler v. Borough of Jersey Shore*, 17 Pa. Super. Ct. 366, 372 (1901) ("When notice is thus given, the judgment, if obtained without fraud or collusion, will be conclusive against him whether he has appeared or not."); *Pramaulcyka v. Johns Manville Sales Corp.*, 116 N.J. 505, 516, 562 A.2d 202, 208 (1989) (granting common law indemnity and remanding to appellate division). Here, Mr. Koppenheffer reached a settlement in both cases, and the settlements were reviewed and accepted by the court. Thus, the Receiver had notice of the settlements, and indemnification is proper under *Fowler*. If you are aware of controlling authority that holds that unadjudicated allegations of wrongdoing bar indemnification under Pennsylvania law, please forward them to me.

Second, the court in *SEC v Smith* held that Brenda Smith was the mastermind and head of the Ponzi scheme that harmed Surefire, and she left many employees and third parties in the dark as to her illegal activities.[4] Finally, although Mr. Koppenheffer was originally named as a party in the SEC case because his company, Taylor Trading, was one of the companies through which Ms. Smith operated her Ponzi scheme, the Receiver agreed to a settlement dismissing Mr. Koppenheffer and Taylor Trading from that case. Koppenheffer was never an intentional tortfeasor in the matter for which he is claiming indemnification; if he were, the SEC would have held him to the same standards as Ms. Smith.

Therefore, Mr. Koppenheffer meets the requirements for common law indemnity under Pennsylvania law and requests $141,052.56 in legal fees.

Very truly yours,

/s/ Kristy L. Stanislawczyk
Kristy L. Stanislawczyk

[3] *Id.* at ¶ 85.
[4] *SEC v Smith*, No. 2:19-cv-17213-MCA, (D.N.J. August 27, 2019); *U.S. v Smith*, No. 2:20-cr-475 (D.N.J. June 2, 2020).

Exhibit M

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

CREDITOR CLAIM FORM

Name of Creditor: Industrial and Commercial Bank of China Financial Services LLC

Name and Address Where Notices Should be Sent: See attached

Email Address: See attached

Telephone No.: See attached

Date(s) of Claim: See attached

Amount of Claim: See attached

Please attach copies of all invoices relating to your claim. Do not send original documents. Copies of the documents provided to the Receiver will not be returned to the creditor. You must maintain the original documents as the Receiver may ultimately request them for verification.

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

ADDENDUM TO CREDITOR CLAIM FORM FILED BY INDUSTRIAL AND COMMERCIAL BANK OF CHINA FINANCIAL SERVICES LLC

The claimant, Industrial and Commercial Bank of China Financial Services LLC ("ICBCFS"), states as follows in support of its claim against CV Brokerage, Inc. ("CV Brokerage"), one of the Receivership Entities (as such term is defined in the Trade Creditor Notice of Claims Procedure and Claims Bar Date (the "Claims Procedure Notice"):

1. On August 27, 2019, the SEC filed a complaint against the Receivership Entities in the United States District Court for the District of New Jersey (the "Court") and on June 29, 2020, the Court appointed the Receiver as the receiver for the Receivership Entities.

2. Prior to the receivership, ICBCFS and CV Brokerage were parties to that certain Fully Disclosed Clearing Agreement dated as of March 18, 2013 (as amended, supplemented or otherwise modified, the "Clearing Agreement"). A true and correct copy of the Clearing Agreement is attached hereto as exhibit A.

Basis for the Claim

3. Under Section 19.2 of the Clearing Agreement, CV Brokerage agreed to indemnify, defend and hold harmless ICBCFS and any controlling person of ICBCFS from and against all claims, demands, proceedings, suits, actions, and all liabilities, expenses, and reasonable attorney's fees (including fees and costs incurred in enforcing ICBCFS' right to indemnification), and costs in connection therewith arising out of one or more of CV Brokerage's or any employee's negligent, reckless, dishonest, fraudulent, or criminal act or omission. As of the date hereof, ICBCFS has liquidated and non-contingent indemnity claims against CV Brokerage for legal fees and expenses incurred by it in the amount of not less than $1,429,174 (the "Liquidated Indemnity Claim"). The

legal fees and expenses were incurred by ICBCFS in defending against claims asserted against it in each of the actions identified on Exhibit B attached hereto (the "CV Brokerage Related Actions"), each of which arises out of CV Brokerage's or one or more CV Brokerage employees' negligent, reckless, dishonest, fraudulent, or criminal act or omission. Attached hereto as Exhibit C are documents evidencing the Liquidated Indemnity Claim.

4. None of the CV Brokerage Related Actions have been resolved and all remain pending as of the date hereof and other indemnifiable actions or claims may still be asserted against ICBCFS. Therefore, ICBCFS' claim also includes any and all legal fees and expenses incurred by ICBCFS after the date hereof in connection with the CV Brokerage Related Actions or any new indemnifiable action commenced after the date hereof and any other amounts paid by ICBCFS in connection with the CV Brokerage Related Actions or any new indemnifiable action commenced after the date hereof (together, the "Unliquidated Indemnity Claim" and together with the Liquidated Indemnity Claim, the "Indemnity Claim").

5. Upon the Receiver's request, ICBCFS will provide updates with respect to any new indemnifiable claims or actions asserted against ICBCFS and any accounts that have become liquidated after the date hereof.

Security for the Claim and Right of Setoff

6. To secure CV Brokerage's obligations to ICBCFS under the Clearing Agreement, including the Indemnity Claim, CV Brokerage granted ICBCFS a lien on, and right of offset as to, any CV Brokerage accounts at ICBCFS (the "Accounts"), any balance in the Account (the "Balance") and all money, securities, financial assets and other investment property, and rights with respect to such Account and Balance and all proceeds thereof and accommodations thereto,

at any time deposited with, or otherwise within the possession or control (whether credited to the Account or otherwise) of ICBCFS, its agents, or affiliated persons. Clearing Agreement, § 9.1.

7. There are two Accounts, which hold a collective Balance in the amount of $644,213.08. ICBCFS' lien on the Accounts and the Balance is perfected by ICBCFS' possession and control of the Accounts, which are maintained at ICBCFS, and the Balance.

8. Pursuant to the Stipulation Between the Receiver, Industrial and Commercial Bank of China Financial Services LLC, and the Securities and Exchange Commission to Resolve Motion to Amend the Amended Order Appointing Receiver dated September 8, 2020, ICBCFS has maintained the Balances in the Accounts since the commencement of the receivership subject to its right to set off the Balance against the Indemnity Claim, which right of setoff is expressly provided for in the Brokerage Agreement. Section 8.5 of the Clearing Agreement provides that when a payment obligation of CV Brokerage "in favor of ICBCFS arises, whether pursuant to an indemnity or otherwise, ICBCFS shall be entitled to apply against such Reimbursement Obligation or other obligation all or any part of the Balance."

The Bar Date

9. The general deadline to file claims against the Receivership Entities is April 25, 2022 (prevailing Eastern Time) (the "Bar Date").

General Claim Provisions

10. The consideration for the claims described by the Indemnity Claim consists of services rendered to or for the benefit of CV Brokerage by ICBCFS.

11. The amounts of all payments by CV Brokerage on the Indemnity Claim have been credited and deducted for the purpose of making this claim.

12. All notices and distributions in respect of this claim should be forwarded

to:

Industrial and Commercial Bank of China Financial Services LLC
c/o Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
(212) 756.2000
Attn.: Kelly Kosciuszka, Esq.
Abbey Walsh, Esq.
Email: abbey.walsh@srz.com
Kelly.Kosciuszka@srz.com

13. This Indemnity Claim is filed under compulsion of the deadline set in this case and is filed to protect ICBCFS from forfeiture of its claims by reason of said deadline. Filing of this Indemnity Claim is not and should not be construed to be: (a) a waiver or release of ICBCFS' rights against any other entity or person liable for all or part of any claim described herein; (b) a waiver of any right to the subordination, in favor of ICBCFS, of indebtedness or liens held by creditors of the Receivership Entities; or (c) an election of remedies that waives or otherwise affects any other remedy of ICBCFS.

14. ICBCFS reserves the right to amend, modify or supplement this Indemnity Claim in any respect, including with respect to the filing of additional or amended claim for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, including the Unliquidated Indemnity Claim. ICBCFS further reserves the right to amend, modify, or supplement this Indemnity Claim, including without limitation, the right to: (a) specify (and quantify) costs, expenses, and other charges or claims incurred by or owed to ICBCFS, (b) file any separate or additional claim with respect to the claim set forth herein or otherwise (which claim, if so filed, shall not be deemed to supersede this Indemnity Claim); (c) file any additional claim (including the right to assert any portion of this claim is entitled to priority); and (d) assert claims against third parties.

EXHIBIT A

Industrial and Commercial Bank of China Financial Services, LLC
1633 Broadway, 28th Floor
New York, NY 10019
Growth Through Processing – Experience Customer Servicing

FULLY DISCLOSED CLEARING AGREEMENT

THIS AGREEMENT is made and entered into this 18th day of March, 2013 by and between Industrial and Commercial Bank of China Financial Services LLC ("ICBC"), a Limited Liability Company, and CV Brokerage, Inc. ("Broker"), a Corporation.

1.0 APPROVAL

This Agreement shall be subject to approval by the Financial Industry Regulatory Authority ("FINRA") and by any other self-regulatory organization vested with the authority to review or approve it. ICBC shall submit this Agreement to the FINRA and Broker shall submit the Agreement to any other such organization from which Broker is required to obtain approval. In the event of disapproval, the parties shall bargain in good faith to achieve the requisite approval.

2.0 AGREEMENT

From the date of this Agreement until the termination of this Agreement as provided in Section 24 hereof, ICBC shall carry the proprietary accounts of Broker and the cash and margin accounts of the customers of Broker introduced by Broker to ICBC, and accepted by ICBC, and shall clear transactions on a fully disclosed basis for such accounts, in the manner and to the extent set forth in this Agreement.

ICBC shall also provide the processing and servicing of Broker's customer accounts opened on the ICBC platform, communication and content services, access to account and financial information and other incidental or related technology services, as set forth under this Agreement (the "Services"), to Broker only to the extent explicitly required by specific provisions contained in this Agreement, including any applicable amendments, schedules or statements of work hereto, (collectively, this "Agreement") and shall not be responsible for any duties or obligations not specifically allocated to ICBC pursuant to this Agreement.

3.0 ALLOCATION OF RESPONSIBILITY

3.1 Responsibilities of the Parties.

Pursuant to FINRA Rule 4311, responsibility for compliance with applicable federal and state laws, rules and regulations of the Securities and Exchange Commission ("SEC"), FINRA and any other regulatory or self-regulatory agency or organization (collectively the "Rules") shall be allocated between ICBC and Broker as set forth in this Agreement. Also, in compliance with the Rules, Broker agrees to be responsible for processing and verifying all customer account change of address information. To the extent that a particular function is allocated to one party under this Agreement, the other party shall supply that party with any necessary or required information in its possession pertinent to the performance and supervision of such function.

3.2 Provision of Reports and Exception Reports.

Beginning on or before the effective date of this Agreement and before July 31 of each calendar year thereafter, ICBC shall provide to Broker, pursuant to FINRA Rule 4311, and any successor FINRA rule, a list of all reports (e.g. exception-type reports) it offers to Broker. Broker shall promptly advise ICBC, in writing, of those specific reports it elects to receive. ICBC and Broker each represent that their

obligations relative to exception reports, pursuant to FINRA Rule 4311 or any successor FINRA rule, have been completed.

3.3 Relationship with Customers.

3.3.1 Broker shall enter into appropriate contractual arrangements with its customers on its own behalf, and such arrangements shall make Broker, and not ICBC, responsible to its customers for the provision of services. Broker shall not be deemed to be an agent of ICBC for any purpose, nor shall ICBC be deemed to have a fiduciary relationship with the Broker or any of Broker's customers. Broker acknowledges that ICBC is not responsible for the control or supervision of the business or operations of Broker.

3.3.2 SIPA; Rule 15c3-3. All introduced customers are the customers of Broker except as provided under the Securities Investor Protection Act ("SIPA") and SEC financial responsibility rules where the customers shall be considered customers of ICBC. Nothing in this section will otherwise change or affect the provisions of this Agreement which provide that the customer account remains Broker's customer account for all other purposes, including but not limited to, supervision, suitability, privacy notifications and indemnification.

3.4 Execution Away from ICBC

Broker may either direct ICBC to place Broker's customers' orders for execution with firms other than ICBC, or may place such orders directly with other firms itself to the extent Broker determines that such action is necessary to meet Broker's duty to obtain best execution for customer orders. ICBC will have no responsibility for the execution of any such orders directed away from ICBC, including any obligation to provide best execution. Further, ICBC will have no responsibility for the transmission of those orders placed directly with firms other than ICBC. Broker agrees to assume full responsibility for resolving any disputes and for bearing any and all losses resulting from transactions with firms with which Broker executes, giving up ICBC for clearance. Broker also agrees that, with respect to any such orders, it will report executions promptly to ICBC for clearance in accordance with ICBC's procedures. ICBC also agrees that, with respect to any such orders reported to ICBC, it will act in good faith to provide custody service for such transactions, if requested by Broker and to the extent possible, clear and settle such transactions.

4.0 REPRESENTATIONS AND WARRANTIES

4.1 Broker. Broker represents and warrants that:

4.1.1 Limited Liability Company. Broker is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of its filing and organization. Or Corporation Duly Organized. Broker is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation.

4.1.2 Registration. Broker is duly registered and in good standing as a broker-dealer with the SEC and member firm is in good standing with FINRA or other such regulatory entities or Exchanges.

4.1.3 Authority to Enter Agreement. Broker has all requisite authority, whether arising under applicable federal or state law or the rules and regulations of any regulatory or self-regulatory organization to which Broker is subject, to enter into this Agreement and to retain the services of ICBC in accordance with the terms of this Agreement.

4.1.4 Material Compliance with Rules and Regulations. Broker and each of its employees is in material compliance with, and during the term of this Agreement shall remain in material compliance with, the registration, qualification, capital, financial reporting, customer protection, and other requirements of every self-regulatory organization of which Broker is a member, of the SEC, and of every state to the extent that Broker or any of its employees is subject to the jurisdiction of that state.

4.1.5 Broker Responsibility. Broker shall be responsible for all internal operations related to its business including without limitation (i) all accounting, bookkeeping, record-keeping, cashiering, commodity transactions, or any other transactions not involving securities; or any matter not contemplated by the Agreement; (ii) preparation of Broker's payroll records, financial statements, or any analysis thereof; (iii) preparation or issuance of checks in payment of Broker's expenses, other than expenses incurred by ICBC on behalf of Broker pursuant to this Agreement; and (iv) payment of commissions to Broker's sales personnel;

4.1.6 No Pending Action, Suit, Investigation or Inquiry. Broker has disclosed to ICBC every material action, suit, investigation, inquiry, or proceeding (formal or informal) pending or threatened against or affecting Broker, any of its affiliates, or any officer, director, or general securities principal or financial and operations principal of Broker, or their respective property or assets, by or before any court or other tribunal, any arbitrator, any governmental authority, or any self-regulatory organization of which any of them is a member. Broker shall notify ICBC promptly, of the initiation of any such action, suit, investigation, inquiry, or preceding that may have a material impact on the capital of Broker.

4.1.7 Broker shall ensure that all such money, securities, and documents are (as appropriate) genuine, in good deliverable form, free of liens, charges, and unencumbered by any rights, claims or interests of any third person except the rights of Broker's customer in securities that ICBC shall hold by entering same on its books in a segregated account pursuant to instructions from Broker;

4.1.8 Broker shall ensure that all instructions or information to be passed to ICBC, customers or third parties in relation to transactions or the services are complete and accurate and not misleading and passed on promptly. The Broker shall also obtain ICBC's prior written consent to any communication relating to ICBC and its performance of the services;

4.1.9 Broker shall on a reasonably regular basis verify the status of instructions passed to ICBC by the Broker on behalf of any of Broker's customer and notify ICBC immediately on becoming aware of any failure or delay on its part or the part of any customer in effecting execution or settlement (as the case may be) pursuant to any such instructions or any actual or suspected error or fraud in or affecting the sending or receiving of any such instructions and shall use its best endeavors to assist in any steps ICBC may propose to remedy the same;

4.1.10 Broker shall promptly review all confirmations, reports, and advice provided to the Broker by ICBC and advise ICBC of any error, omission or inaccuracy in the transactions positions or other information reported to the Broker. Unless the Broker notifies ICBC within a reasonable time of all mistakes or discrepancies in the above described reports and information, ICBC shall not be liable under any circumstances for any expense, claim, loss or damage suffered by the Broker, customer or any third person arising out of or caused by any errors, failures or omissions that shall have been reported by ICBC in reports, statements or other advice to the Broker, which errors, failures or omissions the Broker shall not have promptly advised ICBC to remedy or correct.

4.2 ICBC. ICBC represents and warrants that:

4.2.1 Duly Organized. ICBC is a Limited Liability Company duly organized, validly existing, and in good standing under the laws of the state of Delaware.

4.2.2 Registration. ICBC is duly registered and in good standing as a broker-dealer with the SEC and is a member firm in good standing of the FINRA.

4.2.3 Authority to Enter Agreement. ICBC has all requisite authority, whether arising under applicable federal or state law, or the rules and regulations of any regulatory or self-regulatory organization to which ICBC is subject, to enter into this Agreement and to provide services in accordance with the terms of this Agreement.

4.2.4 Compliance with Registration. ICBC and each of its employees is in material compliance with, and during the term of this Agreement shall remain in material compliance with the registration, qualification, capital, financial reporting, customer protection, and other requirements of every self-regulatory organization of which ICBC is a member, of the Securities and Exchange Commission ("SEC"), and every state if required.

5.0 ESTABLISHING AND ACCEPTING NEW ACCOUNTS

5.1 Acceptance of New Accounts.

Broker shall be responsible for establishing, monitoring, and approving new accounts in compliance with the Rules.

5.1.1 ICBC reserves the right to reject any account that the Broker may forward to ICBC as a potential new account. ICBC also reserves the right to terminate any account previously accepted by it as a new account.

5.1.2 At the time of the opening of any new account, the Broker must obtain sufficient information from its customer to satisfy itself as to the identity of its client and the source of its funds to satisfy itself that opening the account would not violate the provisions of various Executive Orders and regulations issued thereunder by the Office of Foreign Assets Control (OFAC), which enforces economic and trade sanctions against foreign countries and their agents, terrorism sponsoring agencies and organizations and international narcotics traffickers.

5.2 Maintenance of Account Information.

ICBC may rely without inquiry on the validity of all customer information furnished to it by Broker. Possession of any such documents or information, however provided, concerning Broker's customers does not create a duty on the part of ICBC to review or understand the content of those documents.

6.0 SUPERVISION OF ORDERS AND ACCOUNTS

6.1 Responsibility for Compliance.

Broker shall be solely responsible for compliance with suitability, "Know Your Customer" rules, and other requirements of federal and state law and regulatory and self-regulatory rules and regulations governing transactions and accounts. Possession by ICBC of surveillance records, exception reports, or other similar data shall not obligate ICBC to review or be aware of their contents. ICBC shall not be required to make any investigation into the facts surrounding any transaction that it may execute or clear for Broker or any customer of Broker.

6.2 Compliance Procedures.

Broker agrees to supervise compliance with Rules. Broker shall review transactions and accounts to assure compliance with prohibitions against manipulative practices, insider trading, market timing and late trading of mutual fund shares and other requirements of federal and state law and applicable regulatory and self-regulatory rules and regulations to which Broker or its customer are subject. Without limiting the above, Broker shall be responsible for compliance with the supervisory requirements in Section 15(b)(4) of the Securities Exchange Act of 1934, as amended, NASD Rule 3010, FINRA Incorporated Rules 324, 351 and 431, and similar rules adopted by any of these or other regulatory or self-regulatory agency or organization, to the extent applicable.

6.3 Knowledge of Customer's Financial Resources and Investment Objectives.

Broker shall comply with FINRA Rule 2090 or other comparable requirements of similar rules of any other regulatory or self-regulatory organization to which Broker is subject. Broker shall obtain all essential facts relating to each customer, each cash and margin account, each order, and each person holding a power of attorney over any account, in order to assess the suitability of transactions (when required by applicable rules), the authenticity of orders, signatures, endorsements, certificates, or other documentation, and the frequency of trading. Broker warrants that, to the best of its knowledge, Broker will not open or maintain accounts for persons who are minors or who are otherwise legally incompetent and that Broker will comply with FINRA Rule 2090 or other laws, rules, or regulations that govern the manner and circumstances in which accounts may be opened or transactions authorized.

6.4 Furnishing of Investment Advice.

Broker shall be solely responsible for any recommendation or advice it may offer to its customers.

6.5 Discretionary Accounts.

Broker shall be solely responsible for obtaining customer approval for and supervising discretionary accounts.

6.6 Obligations Regarding Certain Disclosures.

Broker shall make any disclosures and obtain any agreements or consents from its customers which are required by applicable law or regulation, including, without limitation, any disclosures or agreements required for margin, listed options, IPO's, mutual funds, penny stocks, derivative securities, account transfers or conversions. The cost of making such disclosures or obtaining such agreements or consents shall be borne by Broker.

7.0 EXTENSION OF CREDIT

7.1 Presumption of Cash Account.

ICBC may, but is not required to, permit customers of Broker to purchase securities on margin, but all transactions for a customer will be deemed to be cash transactions, and payment for those transactions will be required in the manner applicable to cash transactions, unless, on or prior to settlement, broker has furnished ICBC with an executed margin agreement and consent to loan of securities.

7.2 Margin Requirements.

Margin accounts introduced by Broker shall be subject to ICBC's margin requirements as in effect from time to time. ICBC reserves the right to refuse to accept any transaction in a margin account without the actual receipt of the necessary margin and to impose a higher margin requirement for a particular account when, in ICBC's discretion, the past history or nature of the account or other factors or the securities held in it warrant such action. In all instances, Broker may require higher margin than imposed by ICBC for any particular account, group of accounts or all accounts introduced by Broker to ICBC. In any case where Broker requests ICBC to extend credit upon control or restricted securities, pursuant to Rule 144 under the Securities Act of 1933, as amended ("Rule 144"), or otherwise, Broker shall submit to ICBC such documentation, agreements and information as shall be reasonably required by ICBC to decide to extend such credit. Any extension of credit so approved shall be subject to ICBC's credit policies as shall be in effect from time to time.

7.3 Margin Maintenance and Compliance with Regulation T and SEC Rule 15c3-3(m).

7.3.1 Margin Calls. After the initial margin for a transaction has been received, subsequent margin calls may be made by ICBC at its discretion. ICBC shall calculate the maintenance requirement and notify Broker of any amounts due. Broker shall be responsible for forwarding the margin call to its customer and obtaining the amount due directly from Broker's customer. If Broker fails to take the appropriate action, ICBC reserves the right to collect the amount due directly from Broker's customer. Broker agrees to cooperate with ICBC in complying with and obtaining margin in response to such calls.

7.3.2 Actions upon Failure to Meet Margin Calls or Deliver Securities. In the event that satisfactory margin is not provided within the time specified by ICBC, or securities sold are not delivered as required, ICBC may take such actions as ICBC deems appropriate, including, but not limited to, entering orders to buy-in or sell-out. Broker shall cooperate with ICBC by entering orders to buy-in or sell-out securities. Compliance with a request to withhold or delay action shall not be deemed a waiver by ICBC of any of its rights under this Agreement.

7.3.3 Actions Upon Failure to Meet Underlying Collateral Calls or Deliver Securities. In the event that satisfactory underlying collateral is not provided within the time specified by ICBC, or securities sold are not delivered as required, ICBC may take such actions as ICBC deems appropriate, including, but not limited to, entering orders to buy-in or sell-out. Broker shall cooperate with ICBC by entering orders to buy-in or sell-out securities. Compliance with a request to withhold action shall not be deemed a waiver by ICBC of any of its rights under the Agreement.

7.3.4 Charging of Interest and Disclosures Pursuant to Rule 10b-16 and FINRA Rule 2264. Interest charges by ICBC to Broker's clients with respect to debit balances in customers' accounts shall be determined in accordance with Schedule A attached to this Agreement. Broker shall send each margin customer a written Margin Disclosure Statement and other written disclosures, in a form acceptable to ICBC, at the time of the opening of a margin account as required by SEC Rule 10b-16 and FINRA Rule 2264. If not already delivered to each margin customer by ICBC in connection with the delivery of the written new account disclosure statement in accordance with

FINRA-incorporated NYSE Rule 152, Broker agrees to deliver a written disclosure statement to its customer as required by SEC Rule 10b-16.

7.3.5 Unsecured Debits or Unsecured Short Positions. ICBC shall charge against the account of Broker an amount equal to the value of any unsecured debit or short position (on a "mark to market" basis) in a customer account if that position has not been promptly resolved by payment or delivery. Any remaining debits will be charged against Broker.

8.0 THE ACCOUNT

8.1 ICBC shall open an account in its books in the name of the Broker (the "Account") to which there shall be credited:

a) An Initial Security Deposit and, where appropriate, on demand from ICBC any further amounts notified by ICBC to the Broker as being required to ensure that the amount of money in the Account is not less than the capital charges as calculated by SEC rule 15c3-1 which would result from transactions for capital adequacy purposes;
b) Any cash balance resulting from clearance activity or money transfers;
c) On demand from ICBC such other amounts as represent ICBC's total financial exposure in relation to transactions outside any dealing limit or other limit or consent; and
d) From time to time, such other amounts (if any) as may be agreed between ICBC and the Broker.

Any balance standing to the credit of the Account at any relevant time, including any interest credited thereto in accordance with clause 7.2, is herein called the "Balance". The Account and the Balance shall secure the obligations to ICBC, as described below. The Account shall not represent an ownership interest by Broker in ICBC.

8.2 Interest will be credited to the Account at the ICBC account rate.

8.3 The Account and the Balance shall be available only for the purposes described in clauses 7 and 8 and not for any other purpose. The Initial Security Deposit in clause 8.1(a) of the Account shall not be capable of being withdrawn or assigned or otherwise dealt with or encumbered by the Broker, except as specified in clauses 7 and clause 8.

8.4 It is acknowledged that, without prejudice to the obligations of any of Broker's customers, the Broker is required, on each occasion on which ICBC is to settle any transaction, or incur any expenditure in relation to the services, or suffers any losses, debits or liabilities in relation to the services, to reimburse ICBC for the relevant amount paid or to be paid by ICBC, or for the losses, debits or liabilities incurred by ICBC if not previously reimbursed by Broker's customer. As between ICBC and the Broker, each such reimbursement obligation on the part of the Broker (a "Reimbursement Obligation") shall be considered to be a primary obligation.

8.5 As and when a Reimbursement Obligation arises, or any other payment obligation of the Broker in favor of ICBC arises, whether pursuant to an indemnity or otherwise, ICBC shall be entitled to apply against such Reimbursement Obligation or other obligation all or any part of the Balance.

8.6 ICBC shall take reasonable steps to recover any amounts payable by any of Broker's customers to ICBC in respect of which a Reimbursement Obligation may arise provided that the Broker shall, to the

extent not reasonably recoverable from any customer, Broker or other third party, pay any costs incurred by ICBC in taking such reasonable steps.

8.7 It is acknowledged that the Balance may be increased from time to time by receipt into the Account of sums from a Broker's customer in respect of which a Reimbursement Obligation has arisen and been settled in accordance with clause 8.5.

8.8 Within thirty (30) days after termination of this Agreement, ICBC shall pay and deliver to Broker, the funds and securities in the Account, less any amounts to which it is entitled under Paragraph 8.4; provided, however that ICBC may: (i) retain the Account for such period of time until transfer of all customer and proprietary accounts of Broker has been completed and (ii) retain in the account such amount for such period as it deems appropriate for its protection from any claim or proceeding of any type, then pending or threatened, until final determination of such claim or proceeding is made. If threatened claim or proceeding is resolved or if a legal action or proceeding is not instituted within a reasonable time after the termination of this Agreement, any amount retained with respect to such claim, proceeding, or action shall be paid or delivered to Broker.

8.9 With reference to clause 8.1, ICBC shall agree to the return of part of the Balance to the Broker if the remainder of the Balance at such time (the "Relevant Date") is at least equal to the aggregate of:

(a) The amount equal to the aggregate of 8.1(a), (c) and (d), or such other amount as may then have been agreed between ICBC and the Broker;

(b) Any additional amount required on the Relevant Date to ensure that the amount of money in the Account is not less than the financial exposure on all unsettled transactions.

8.10 ICBC shall keep a record of all deductions and additions to the Account and shall supply the Broker with a statement of account of any such transactions following the end of the month in which any such transactions occur.

9. GRANT OF SECURITY INTEREST AND USE OF COLLATERAL

9.1 To secure the timely discharge of all the Broker's obligations to ICBC, the Broker grants to ICBC a security interest in, lien upon, and right of offset as to the Account, the Balance, and all money, securities, financial assets and other investment property, and rights with respect to such Account and Balance and all proceeds thereof and accommodations thereto, now or thereafter held by, deposited with, or otherwise within the possession or control (whether credited to the Account or otherwise) of ICBC, its agents, or affiliated persons (as defined by the Securities Exchange Act of 1934, as amended) ("Collateral"); provided, however, that the security interest and lien granted hereunder shall not extend to securities as long as they are carried on ICBC's books, pursuant to Broker's instructions, in a safekeeping or segregation account for securities to be held free from ICBC's lien.

9.2 ICBC need not release any Collateral from the lien of ICBC, including by transferring such collateral to an account free from ICBC's lien or by effecting the delivery of such collateral free of payment, if after giving effect to such instructions, ICBC would deem itself less than adequately secured or the Broker or any of its customers would not be in compliance with ICBC's Margin Requirements then in effect.

9.3 ICBC shall have the right to dispose of Collateral in any manner permitted under the New York Uniform Commercial Code or other applicable law. Disposition of the Collateral will be deemed to be in a commercially reasonable manner if ICBC

a) Retains the services of a "broker's broker" or other broker or securities dealer,
b) Sells the Collateral for settlement on the same business day as the day of sale or next business day after sale (cash sale).
c) ICBC or its affiliates may purchase the Collateral at any sale at the publicly quoted ask price on the date of sale or at the publicly quoted ask price at the open of business on the next business day if the sale is not held during business hours.

9.4 Regarding Collateral in ICBC's possession or control, ICBC shall use reasonable care in the custody and preservation of such Collateral, but need not take any steps necessary to preserve rights against prior parties, unless instructed by the Broker and then only at the Broker's expense.

9.5 ICBC may grant a security interest in, pledge, re-pledge, hypothecate, re-hypothecate, enter into, and perform repurchase and reverse repurchase agreements and securities loan and securities borrow agreements with the Collateral, separate or together with Collateral of other Brokers, without retaining possession or control of a like amount of Collateral and without notice to the Broker. ICBC may use and deal with the Collateral and bear the risk and benefit thereof; ICBC's only obligation being to return the Collateral upon the Broker's satisfaction in full of its obligations to ICBC or the deposit with ICBC of Collateral satisfactory to ICBC in substitution for the Collateral being returned or a combination of the foregoing.

9.6 At such time as ICBC deems itself unsecured with respect to the Broker's ability to perform its obligations, ICBC may request and the Broker shall promptly deliver additional Collateral to ICBC in an amount satisfactory to ICBC. As to the additional Collateral, ICBC shall have all the same rights as to additional Collateral as are granted it with respect to the Collateral in clauses 8.1 through 8.5 above.

9.7 The Broker specifically agrees that

a) To promptly honor all appropriate demands for payment of funds
   i. Fulfilled not later than 6:00 p.m. New York time if such request is made before 10:00 a.m. New York Time or on the business day immediately following request if such request is made after 10:00 a.m. New York time. All demands made hereunder may be made orally if promptly confirmed in writing;
   ii. In immediately available funds;
b) Securities deposited by the Broker as Collateral in which the Broker makes a market or has a significant position be valued at a discount (which may be significant), as determined by ICBC in its sole discretion; and

All demands made hereunder may be made orally if promptly confirmed in writing.

10.1 MAINTENANCE OF BOOKS AND RECORDS

10.1 Stock Records

ICBC shall maintain stock records and other prescribed books and records of all transactions executed or cleared through it. Unless otherwise required by law, ICBC shall have no obligation to maintain, or make available to Broker, such books and records after termination of this Agreement. If,

however, ICBC does make such books and records available to Broker after the termination of this Agreement. Broker shall reimburse ICBC for its costs and expenses in retrieving such books and records.

10.2 Regulatory Reports and Records.

Broker shall prepare, submit, and maintain copies of all reports, records, and regulatory filings required of Broker by any entity that regulates it, including, but not limited to, copies of all account agreements and similar documentation obtained pursuant to Paragraph 5 of this Agreement and any reports and records required to be made or kept under the Currency and Foreign Transactions Reporting Act of 1970, (the "Bank Secrecy Act"), and any rules and regulations promulgated pursuant thereto.

10.3 ANTI-MONEY LAUNDERING, OFFICE OF FOREIGN ASSETS CONTROL, AND ANTI-TERRORIST FINANCING OBLIGATIONS

Broker and ICBC wish to assure each other that each party to this Agreement is performing its anti-money laundering obligations as required by law and regulation and otherwise set forth the responsibilities that each party will undertake to prevent money laundering and terrorist financing as contemplated by the USA PATRIOT Act and other laws and regulations.

At the time of the opening of any new account, the Broker must obtain sufficient information from its customer to satisfy itself as to the identity of its client and the source of its funds as more fully set forth in this Paragraph 9.3.

Broker acknowledges it has the primary relationship with the customer which Broker introduces to ICBC and therefore Broker is in the best position to know: (1) the client's identity; (2) the client's source of funds; (3) the client's intention for those funds; and (4) whether any particular transaction is unusual or suspicious for that particular client based on Broker's interaction with the client.

ICBC acknowledges it: (1) will use all reasonable efforts to combat money laundering and terrorist financing; (2) cooperate as necessary with Broker to detect money laundering and terrorist financing.

10.3.1 Broker's Responsibilities:

a) Anti-Money Laundering Obligations. Broker hereby agrees and acknowledges that it is obligated to and hereby represents and warrants that it now does and will continue to comply with anti-money laundering law and regulations, including any future obligations that may be imposed on Broker by law or regulation, to know its customers, their source and use of funds, and to monitor for and identify suspicious activity.

b) Anti-Money Laundering Program. Broker has established and maintains an anti-money laundering program, consisting of, at a minimum, written internal policies, procedures and controls including a means for monitoring and identifying suspicious activity, the designation of an anti-money laundering compliance officer (whose identity shall be made known to ICBC and to the FINRA), an ongoing employee training program, an independent audit function to test such programs annually, and any additional requirements set forth in the rules of any self-regulatory organization of which Broker is a member. Broker will allow ICBC access to such information as ICBC deems necessary in order for ICBC to test Broker's adherence to Broker's anti-money laundering program.

c) USA PATRIOT ACT. Broker hereby agrees and acknowledges that it is obligated to and hereby represents and warrants that it now does and will continue to comply with applicable

requirements of the USA PATRIOT ACT and the rules promulgated thereunder including, but not limited to §§ 312, 313, and 319.

d) "Travel" Rule. Broker hereby agrees and acknowledges that it is obligated to and hereby represents and warrants that it now does and will continue to comply with applicable requirements of the Bank Secrecy Act Rule 31 CFR 103.33(g) — the so called "Travel" rule.

10.3.2 Broker to File CTRs and Provide Copies to ICBC. Broker is responsible for filing currency transaction reports ("CTRs") and will provide a copy of all such reports to ICBC at the same time as they are filed in accordance with applicable regulations.

a) Suspicious Activity Reports. Broker shall be primarily responsible for filing suspicious activity reports on Form SAR-SF and shall coordinate such filing with ICBC. Broker shall, as soon as practical, after identifying a suspicious activity and in any event prior to filing a suspicious activity report on SAR-SF, notify ICBC's Anti-Money Laundering Compliance Officer and shall, provided Broker and ICBC have made the filings contemplated by Paragraph 9.3.5 hereof, communicate with ICBC about the transaction for purposes of sharing information about the transaction and determining whether Broker or ICBC shall file the SAR-SF, unless such sharing of information is prohibited by law. Broker will provide ICBC with copies of all SAR-SFs and other communications it files with respect to accounts held at ICBC, unless prohibited by law. In addition, Broker shall promptly notify ICBC regarding any account activity Broker reasonably believes to be suspicious, not legitimate, not having a reasonably apparent explanation, or could support the filing of a Form SAR-SF.

b) Other Transaction Reports. Prior to filing any report with the Treasury Department, the IRS, the U.S. Customs Service or any regulatory body or organization relating to the reporting of currency transactions or the transfer of currency or monetary instruments into or outside of the United States, including, but not limited to, CTRs, CMIRs and SAR-SFs, Broker shall notify ICBC's Anti-Money Laundering Compliance Officer (unless such notification is prohibited by law) and cooperate with ICBC as ICBC may deem appropriate. Broker will provide ICBC with copies of all reports and other communications with respect to accounts held at ICBC that Broker files with the Treasury Department, the IRS, the U.S. Customs Service, or any regulatory body or organization relating to the reporting of currency transactions, the transfer of currency or monetary instruments into or outside of the United States, or in regard to any suspicious activity, including, but not limited to, CTRs, CMIRs and SAR-SFs, unless the provision of such reports or communications is prohibited by law.

c) Reports by ICBC. ICBC reserves the right to make and file such suspicious activity or other reports as listed in Paragraph 10.3.2 when it deems it necessary or appropriate; and Broker recognizes that when ICBC does so, ICBC does not thereby assume any responsibility for making and filing reports on behalf of Broker and/or relieve Broker of its own responsibility for making and filing reports as necessary under U.S. or other laws and regulations. ICBC will provide Broker a copy of any such report that relates to an account for the Broker or a customer of the Broker, unless prohibited by law from doing so.

d) Restrictions and Conditions on Certain Accounts. Broker hereby agrees and acknowledges that it is obligated to comply with restrictions and conditions on opening and accepting certain accounts, including but not limited to, the following:

(i) Know Your Customer and Government List Obligations, Including OFAC. At the time of the opening of any new account, Broker must obtain sufficient information from its customer to satisfy itself as to the identity of its client and the source of the client's funds. Broker also must satisfy itself that opening the account would not violate the provisions of various Executive Orders and regulations administered by the U.S.

Treasury Department's Office of Foreign Assets Control ("OFAC") or be subject to other restriction based on such relevant government lists as may be published from time to time. Broker will immediately inform ICBC of the existence of any account subject to an OFAC or government list restriction.

(ii) Non-Resident Alien Accounts Carried Directly or Through an Investment Adviser. For any account opened for a non-resident alien, Broker must record the customer's passport number and obtain a copy of the government document used to verify the individual's identity at the time the account is opened. Broker must also obtain a copy of a passport or other governmental identification for any of the following: the grantor/settlor of a foreign trust; and any beneficial owner of an offshore corporate account if: (1) the account is a personal holding company or private investment company; or (2) the beneficial owner of the entity which maintains the account holds more than a 10% interest in the entity. Broker may not open any introduced account for a personal holding company or private investment company if one or more beneficial owners are U.S. persons. With respect to those accounts involving investment advisers, Broker will conduct a sufficient inquiry to obtain and record information as outlined above about the adviser's customer, including ascertaining the identity of each beneficial owner, of any such account prior to opening the account.

e) Restrictions on Numbered Accounts. Broker will not establish or maintain specially coded or numbered accounts.

f) Source and Use of Funds. Broker shall undertake reasonable efforts to ascertain that the customer is not engaged in unlawful activities, the assets being invested have been legitimately obtained, and any disbursements to a customer or third party are for legitimate purposes.

g) Transaction Reports and Transaction Monitoring Systems. In order to detect suspicious activity, Broker shall avail itself of the transaction reports and transaction monitoring systems provided by ICBC or shall otherwise perform its own transaction monitoring in order to detect suspicious activity.

h) CIP. In order to induce reasonable reliance by ICBC on Broker with respect to Broker's customer identification program ("CIP"), Broker represents and warrants (1) it has a written CIP consistent with Section 326 of the USA PATRIOT Act and the rules thereunder; (2) it is subject to a rule implementing 31 U.S.C. §5318(h), (3) it is regulated by a federal functional regulator as that term is defined under 31 C.F.R. § 103.120(a)(2); and (4) it will certify annually to ICBC that it has implemented an anti-money laundering program and will perform the requirements set forth in Broker's written CIP.

10.3.3. ICBC's Responsibilities:

a) Anti-Money Laundering Obligations. ICBC hereby agrees and acknowledges that it is obligated to comply with anti-money laundering law and regulation, including any future obligations that may be imposed on ICBC, and that it is responsible to combat money laundering and terrorist financing. ICBC shall (1) make available to Broker such information as it may from time to time recognize as potentially useful through use of ICBC's various interdiction monitoring tools to help Broker detect possible money laundering and terrorist financing schemes, and (2) conduct various manual and systematic screenings to assist Broker in order to detect suspicious activity and OFAC and other government list violations. The actual systems and tools used for these purposes may vary from time to time, at ICBC's discretion.

b) Anti-Money Laundering Program. CBC has established and will continue to maintain an anti-money laundering compliance program in accordance with § 352 of the USA PATRIOT Act as well as FINRA rules. ICBC further represents and warrants: (1) it has written anti-money laundering policies and procedures consistent with its role as a clearing broker; (2) it has a

designated Anti-Money Laundering Compliance Officer (whose identity has been made known to Broker and the FINRA); (3) it provides continuous anti-money laundering training to its employees; and (4) its anti-money laundering program is independently audited on an annual basis.

c) Transaction Reports. ICBC shall make available to Broker anti-money laundering and other useful activity reports which can be used to detect suspicious activity in order to assist Broker to meet it's obligations. ICBC will offer training in the use of such reports. ICBC will also, upon request, provide Broker with relevant information in ICBC's possession that the Broker needs in order to file various required reports, including Forms CTR, CMIR, and SAR-SF and will provide such further assistance as may be reasonably required in the filing of such reports.

d) Notification if ICBC Detects Prima Facie Suspicious Activity. Through its trained employees and automated systems, ICBC may detect suspicious activity. In such circumstances, ICBC will contact Broker about the transaction for purposes of sharing information about the transaction, unless ICBC believes that Broker itself may be engaged in suspicious activity and/or ICBC would be prohibited by law from sharing with Broker information about the suspicious transaction. Nothing in this Paragraph is to be read to prohibit ICBC from filing its own suspicious activity and other reports, as it believes necessary or appropriate. Broker shall take such steps as ICBC may reasonably request in connection with any potential suspicious activity in an account, including closing the account.

e) Incoming FedWires. For all incoming federal fund wires ("FedWires"), ICBC or ICBC's clearing institution shall initially scan relevant information, including the remitter's name, address, and account number, and the originating bank's name and address (to the extent provided on an incoming wire) to detect possible OFAC restrictions.

f) Outgoing FedWires for Third Parties. As a general rule, ICBC will not process third party wires for the Broker. If requested in writing by the Broker, third-party wires are processed by ICBC on an exception basis. When allowed, for outgoing FedWires ordered to the delivery of a person or entity other than the account holder, ICBC shall review relevant information, including the payee's name, address, purpose, and account number, and the recipient bank's name and address, to detect possible violations of OFAC restrictions.

g) Incoming Securities. For Securities received, ICBC shall review the names of the specified holder of the securities to detect possible violations of OFAC restrictions in those circumstances when the registration on the security received is different than the name on the account into which the securities are deposited.

h) Systematic Daily Screening, Government Lists Including OFAC. On a daily basis, Broker shall compare all new accounts opened on its systems and all substantial changes made to account data resident on its systems to determine if any such new or changed account may be subject to an OFAC or other designated government list. In addition, Broker shall compare its existing customer database to added restrictions as may be published by the Federal Government from time to time. Further, periodically Broker shall compare its existing customer database to the existing OFAC government lists. In the event that Broker's comparisons indicate that an account may be subject to an OFAC or government list restriction, Broker will notify ICBC if it believes there is a match. ICBC shall cooperate fully with Broker to determine whether, in fact, the account is subject to any such restriction. ICBC will cooperate fully with Broker in implementing any such action as may be determined by Broker to be necessary or appropriate.

i) Electronic Funds Transfer. ICBC represents it has systems designed to comply with the Electronic Funds Transfer rule when processing disbursements on behalf of Broker. ICBC shall comply with the Electronic Funds Transfer rule based on information provided by Broker.

j) USA PATRIOT ACT. ICBC hereby agrees and acknowledges that it is obligated to and hereby represents and warrants that it now does and will continue to comply with applicable requirements of the USA PATRIOT ACT and the rules promulgated thereunder including, but not limited to §§ 312, 313, and 315.

k) "Travel" Rule. Broker hereby agrees and acknowledges that it is obligated to and, hereby represents and warrants that it now does and will continue to comply with applicable requirements of the Bank Secrecy Act Rule 31 CFR 103.33(g) -- the so called "Travel" rule.

10.3.4 Bulletins and Other Informational Memoranda. ICBC may from time to time issue Bulletins or other informational memoranda to Broker setting forth ICBC's policies and procedures regarding anti-money laundering and terrorist financing. Broker agrees to become familiar with such Bulletins and informational memoranda and to abide by them.

10.3.5 Cooperation. Broker and ICBC shall cooperate with each other and exchange information to assist each other in detecting money laundering and terrorist financing. ICBC and Broker agree to consult with each other from time to time on the allocation of anti-money laundering responsibilities between them.

10.3.6 No Party to Cause Violation by the Other. Neither party to this Agreement shall knowingly take any action to cause the other party to be in violation of any anti-money laundering laws or regulations.

11.0 RECEIPT AND DELIVERY OF FUNDS AND SECURITIES.

11.1 Receipt and Delivery of Funds and Securities.

11.1.1 Cashiering Functions. ICBC shall perform cashiering functions for accounts introduced by Broker. These functions shall include receipt, delivery and transfer of securities purchased, sold, borrowed and loaned; receipt and payment of funds owed by or to customers; provision of custody and safekeeping for securities, funds and cash so received; handling of margin accounts; receipt and distribution of dividends and other distributions; and the processing of exchange offers, rights offerings, warrants, tender offers and redemptions. Broker shall provide ICBC with the data and documents that are necessary or appropriate to permit ICBC to perform its obligations under this Section 10.1.1, including but not limited to copies of records documenting receipt of customers' funds and securities received directly by Broker in accordance with the Rules.

11.1.2 Purchases and sales. Broker shall be responsible for purchases and sales (including transactions on a "when issued" basis) made for customers until actual and complete payment has been received by ICBC. Broker shall not introduce accounts requiring settlement on a "delivery versus payment" or "receive versus payment" basis unless such account utilizes the facilities of a securities depository or qualified vendor as defined in FINRA Rule 11860, for all depository eligible transactions. Broker shall be responsible for sales (including those on a "when issued" basis), until ICBC has received, in acceptable form, the securities involved in the transaction. If ICBC does not receive delivery of securities in an acceptable form, ICBC may buy-in all or part of the securities.

11.1.3 Failure to Settle or Pay. In the event of a failure to timely deposit required funds or securities, ICBC may take appropriate remedial action. Without waiving or otherwise limiting its right to take other remedial action, ICBC may at its option charge interest at rates as agreed in Schedule A ("Fully Disclosed Pricing Schedule") to this Agreement. Broker may pass such charges on to its customers but Broker remains responsible therefor until actually paid.

11.1.4 Check Writing Authority. ICBC does not offer any check writing facilities and services.

11.1.5. Restricted and Control Stock Requirements. Broker shall be responsible for determining whether any securities held in Broker's or its customer accounts are restricted or control securities as defined by applicable laws, rules, or regulations. Broker is responsible for assuring that orders and other transactions executed for such securities comply with such laws, rules, and regulations.

11.1.6 Corporate Action Requests/Soliciting Dealer Agreements. Broker requests and authorizes ICBC to execute as Broker's agent-in-fact any and all Soliciting Dealer Agreements for corporate actions involving securities or other interests held by Broker's customers on the books of ICBC. ICBC agrees to provide notice of the pending corporate action to Broker at its designated locations. ICBC further agrees to collect and submit corporate action requests from Broker and submit them to the soliciting party in accordance with the instructions received from the soliciting party. ICBC agrees to use its best efforts to communicate corporate action information to Broker and, where applicable, Broker's customers, but shall not be liable for a) any delays in the communication of corporate action information or b) delays in the transmission of collected corporate action requests to the soliciting party unless caused by ICBC's gross negligence. All fees received from the soliciting party will be credited to Broker. In consideration of providing this service to Broker, Broker agrees to indemnify and hold harmless ICBC, its affiliates, officers, agents and employees from all claims, suits, investigations, damages and defense costs (including reasonable attorney's fees) that arise in connection with this Paragraph.

12.0 SAFEGUARDING OF FUNDS AND SECURITIES

Except as otherwise provided in this Agreement, ICBC shall be responsible for the safekeeping of all money and securities received by it pursuant to this Agreement. However, ICBC will not be responsible for any funds or securities delivered by a customer to Broker until such funds or securities are actually received by ICBC or deposited in bank accounts maintained by ICBC. From time to time ICBC utilizes various sub-custodians around the world to custody securities on behalf of itself and its clients and their customers. ICBC shall not be held liable for any misfeasance or malfeasance of such custodian, including the loss of securities or the inability to buy or sell or obtain securities in the event of such sub-custodian's insolvency, unless ICBC has not exercised commercially reasonable judgment in selecting such sub-custodian. As required by the Securities Exchange Commission, a reserve account for the exclusive benefit of customers has been set up for the purpose of safeguarding customer funds.

13.0 CONFIRMATIONS AND STATEMENTS

13.1 Preparation and Transmission of Confirmations and Statements.

ICBC shall prepare confirmations and summary periodic statements and shall, to the extent required by the Rules, transmit them to customers and Broker in a timely fashion except to the extent the parties agree in writing that Broker may transmit confirmations to customers. Confirmations and statements shall be prepared on forms disclosing that the account is carried on a fully-disclosed basis for the Broker in accordance with applicable rules, regulations, and interpretations. Broker will have the ultimate regulatory responsibility for compliance with the prospectus delivery requirements of the Securities Act of 1933, as amended, regardless of its retention of a prospectus fulfillment service to perform delivery of same.

13.2 Examination and Notification of Errors.

Broker shall examine all confirmations, statements, and other reports in whatever medium provided to Broker by ICBC. Broker must notify ICBC of any error claimed by Broker in any account as

to purchase and sales transactions prior to settlement date and as to all other transactions within the time in which ICBC is able to, without violating applicable law, reverse the transaction. If Broker fails to do so, Broker shall be deemed to have waived its right to make any claim against ICBC with respect to such error.

14.0 ACCEPTANCE OF EXECUTED TRANSACTIONS

14.1 Responsibility to Accept or Reject Trades.

ICBC shall settle transactions in customers' accounts and release or deposit money or securities to or for accounts only upon Broker's instructions.

14.2 Responsibility for Errors in Execution.

Broker shall be responsible for transmission to ICBC of all orders and for any errors in the Broker's recording or transmission of such orders.

15.0 OTHER OBLIGATIONS AND RESPONSIBILITIES OF BROKER

15.1 Other Clearing Agreements.

During the term of this Agreement, Broker shall not enter into any other similar agreement or obtain the services contemplated by this Agreement from any other party or supply the services contemplated by the Agreement without prior written consent of ICBC.

15.2 Provision of Financial Information.

Broker shall furnish ICBC copies of FOCUS Reports, financial statements for the current fiscal year, the executed Forms X-17a-5 (Parts I and IIA) filed with the SEC, any amendments to Broker's Form BD, and any other regulatory or financial reports ICBC may from time to time require. Broker shall provide such reports to ICBC at the time Broker files such reports with its primary examining authority.

15.3 Disciplinary Action, Suspension, or Restriction.

If Broker or any of its affiliates, or any officer, director, or general securities principal or financial and operational principal of Broker, becomes subject to disciplinary action, suspension, or restriction by a federal or state agency, stock exchange, or regulatory or self-regulatory organization having jurisdiction over Broker or Broker's securities or commodities business, Broker shall give notice to ICBC immediately, orally and in writing, and provide ICBC a copy of any decision relating to such action, suspension, or restriction. ICBC may take any action it reasonably deems to be necessary (i) to assure that it will continue to comply with all applicable legal, regulatory, and self-regulatory requirements, notwithstanding such action, suspension, or restriction; and (ii) to comply with any requests, directives, or demands made upon ICBC by any such federal or state agency, stock exchange, or regulatory or self-regulatory organization.

15.4 Executing Broker.

If Broker wishes to act as an "Executing Broker" as such term is understood in that certain letter dated January 25, 1994, from the Division of Market Regulation of the Securities and Exchange Commission, as the same may be amended, modified or supplemented from time to time (the "No-Action

Letter"), then all terms herein shall have the same meaning as ascribed thereto either in the Agreement or in the No-Action Letter as the sense thereof shall require. Broker may, from time to time, execute trades for Prime Brokerage Accounts in compliance with the requirements of the No-Action Letter. (The No-Action Letter requires, inter alia, that a contract be executed between ICBC and Prime Broker and between Broker and Prime Brokerage Customer prior to the transaction of any business hereunder.) Broker shall promptly notify ICBC, but in no event later than 5:00 p.m. New York time, of trade date in a mutually acceptable fashion, of such trades in sufficient detail for ICBC to be able to report and transfer any trade executed by Broker on behalf of a Prime Brokerage Account to the relevant Prime Broker. Broker understands and agrees that if Prime Broker shall disallow or "dk" any trade executed by Broker on behalf of a Prime Brokerage Account, Broker shall open an account for such Prime Brokerage Account in its range of accounts and shall transfer or deliver the trade to such account at the risk and expense of Broker to the same extent as for any account introduced by Broker pursuant to this Agreement. Broker understands and agrees that all Prime Brokerage Accounts shall be conducted in accordance with the requirements of the No-Action Letter and any relevant agreement between Broker and a Prime Brokerage Customer or between ICBC and relevant Prime Broker. Broker further agrees to supply ICBC with such documents, papers and things, which from time to time are reasonably required by ICBC to carry out the intention of this Paragraph. Broker agrees that it shall know its customer, obtain appropriate documentation, including new account form, conduct its own credit check and determine the availability of shares as required for processing of any short sales. Broker shall maintain facilities to clear any disallowed trades.

15.5 Currency Fluctuation.

If Broker directs ICBC to enter into any transaction to be effected on any securities exchange or in any market on which transactions are settled in a foreign currency, (i) any profit or loss arising as a result of a fluctuation in the rate of exchange between such currency and the United States Dollar shall be entirely for Broker's account and risk, (ii) all initial and maintenance margin deposits required or requested by ICBC shall be in the currency required by the applicable marketplace or clearing agency in such amounts as ICBC in its sole discretion may require, and (iii) ICBC is authorized to convert funds in the Account into and from such foreign currency at rates of exchange prevailing at the banking or other institutions with which ICBC normally does business.

15.6 Protection of Intellectual Property.

Broker shall use all reasonable efforts to preserve and protect ICBC's and its affiliates' patent, trade secret, copyright and other proprietary rights in ICBC's or its affiliates' products, services, trademarks and tradenames, at least to the same extent used by Broker to preserve and protect its own proprietary data or information and to notify ICBC of any action by any third party known by Broker to constitute an infringement of ICBC's or any of its affiliates' proprietary rights and to cooperate with ICBC in protecting such rights. Without limiting the foregoing, and subject to the permission required by Paragraph 20 hereof, Broker shall note ICBC's or its affiliates' patent, trade secret, copyrights, trademarks and trade names when Broker makes reference to or distributes products or services provided by ICBC or its affiliates, as applicable.

15.7 Mutual Fund Shares.

Broker shall be responsible for obtaining and executing dealer agreements with any principal underwriter for mutual funds from which Broker seeks to purchase mutual fund shares for its customers' accounts. Broker shall provide copies of such agreements to ICBC upon ICBC's request.

15.8 Customer Address Changes.

Broker shall be responsible for customer change of address verification and updating such information on ICBC's new account records. Broker shall perform all written verification of address changes.

16.0 TRANSMISSION OF ORDERS TO ICBC AS PRIME BROKER

16.1 General Broker Functions.

Broker may, from time to time, collect and transmit to ICBC orders and other instructions to ICBC from Broker's prime brokerage customers ("Prime Brokerage Orders") and provide ICBC with such reports, data and services as ICBC requires in order to act as prime broker with respect to such Prime Brokerage Orders, consistent with the SEC No-Action Letter dated January 25, 1994 ("No-Action Letter") and applicable rules and regulations.

16.2 Trading Activity Functions.

Broker shall perform the following functions as introducing firm for its prime brokerage customers:

a) Report all trading activity for the accounts of Broker's prime brokerage customers (whether executing with ICBC or away) to ICBC via ICBC Systems, as defined in Section 23 herein (or other agreed upon method) on trade date by a time to be determined by ICBC and Broker from time to time.
b) Assure access to the ICBC System is limited to authorized persons only.
c) Accept, via electronic mail (or telephone) on T+1, information regarding all trade breaks and respond to the ICBC regarding resolution of such trade breaks by 12:00 noon (NYC time) on T+1.
d) Obtain pre-approval from ICBC for any short sales directed by Broker's prime brokerage customers.
e) Provide all information to ICBC related to the eligibility of any of Broker's customers to receive or to continue to receive prime brokerage services.

16.3 Other Prime Brokerage Functions.

Broker shall perform the following additional functions as introducing firm for its brokerage customers:

a) Obtain and deliver to ICBC an executed Prime Brokerage Client Agreement in substantially the form provided by ICBC to Broker, for each prime brokerage customer of Broker.
b) Obtain and deliver to ICBC an executed Prime Brokerage Investment Advisor Agreement in substantially the form provided by ICBC to Broker, for any investment adviser with discretion over an account of a prime brokerage customer of Broker (the "Investment Advisor").
c) Deliver to ICBC for acceptance or rejection the name of, and any information requested by ICBC regarding, each Executing Broker that Broker proposes to utilize to execute prime brokerage trades. Broker acknowledges that ICBC does not select any Executing Broker.
d) Perform any other functions reasonably requested by ICBC to facilitate ICBC's performance of the prime brokerage services hereunder and as contemplated by the No-Action Letter.

16.4 Broker Acknowledgements Regarding Prime Brokerage.

Broker acknowledges that ICBC may disaffirm or DK transactions of any prime brokerage customers of Broker. Broker will be responsible for resolving all unmatched items, and advising ICBC of their status in a timely manner. Broker acknowledges that ICBC shall monitor the net equity of accounts of Broker's prime brokerage customers carried by ICBC, and shall notify Broker who in turn shall notify the relevant prime brokerage customers on Broker's letterhead whenever such customers net equity falls below the minimum required by ICBC. If an account falls below the minimum net equity set by ICBC, the account will not be permitted to place any further Prime Brokerage Orders until the new equity is increased to the level required by ICBC. Broker agrees to provide access to its personnel and records, and submits to the supervision of ICBC for the purpose of complying with ICBC's obligations as Prime Broker under the No-Action Letter and applicable laws, rules and regulations in relation to the provision of the prime brokerage services.

16.5 Compensation.

In consideration of ICBC acting as Prime Broker, Broker agrees to pay the amounts set forth in Schedule A hereto.

16.6 Limitation of Liability for Prime Brokerage Orders.

In addition to the provisions of Section 24 of this Agreement and not in limitation thereof, Broker acknowledges and agrees that:

a) ICBC accepts no responsibility for the Prime Brokerage Orders received from the Broker via ICBC Systems (or other agreed upon method) except in the event of gross neglect or willful misconduct by ICBC or its employees.
b) ICBC accepts no responsibility and disclaims all liability for any communication linkage failure associated with the transmittal of Prime Brokerage Orders except in the event of gross negligence or willful misconduct by ICBC or its employees.
c) ICBC is not responsible for fraudulent or unauthorized access to ICBC Systems that may cause any loss, damage or liability to Broker, ICBC, Broker's prime brokerage customers or a third party.
d) Any notice by ICBC hereunder or as required to perform prime brokerage services to prime brokerage customers of Broker shall be made to Broker, whether on Broker's behalf or on behalf of such customers. Any notice made to Broker shall be deemed to be made to, or done for, Broker's prime brokerage customers, as applicable. Broker shall be responsible for all communication with Broker's prime brokerage customers regarding all services to be performed hereunder. ICBC is not responsible for communication failure between Broker and Broker's prime brokerage customers.
e) In connection with this section 16.6, ICBC disclaims liability not only for direct damages to the Broker, ICBC, Broker's prime brokerage customers or a third party, but in addition disclaims any and all liability for special, indirect or consequential or incidental damages whether in tort or in contract even if ICBC has been advised of the possibility of such damage except in the event of gross negligence or willful misconduct by ICBC or its employees.

16.7 Representations and Warranties.

In addition to, and in no way in limitation of, Broker's representations and warranties as contained elsewhere in this Agreement, Broker represents and warrants that:

a) Broker has been duly appointed and authorized by Broker's prime brokerage customers to transmit Prime Brokerage Orders to ICBC; and

b) All Broker's customers whose accounts will participate in prime brokerage activities have been advised, via client agreements or otherwise, that their accounts will engage in prime brokerage activities, ICBC will act as Prime Broker for their accounts, and said customers or the investment Advisor thereof may place orders for the execution of trades for their accounts at Executing Brokers, all in conformity with applicable provisions of the No-Action Letter.

17.0 OTHER OBLIGATIONS AND RESPONSIBILITIES OF ICBC

17.1 Use of Third-Party Services.

Subject to Paragraph 19.1 hereof, ICBC may, at its reasonable option, and consistent with common industry practice, retain one or more independent data processing or other service bureaus to perform functions (including, but not necessarily limited to, pricing services or proxy mailing services) assigned to ICBC under this Agreement.

17.2 Tax Withholding.

Broker hereby agrees to take necessary measures to comply with the income tax withholding requirements of Section 3406 and Sections 1441 through 1456 (the nonresident alien withholding requirements) of the Internal Revenue Code of 1986, as amended ("IRC") with respect to its customer accounts. Broker agrees to furnish to ICBC any tax information, e.g., taxpayer identification numbers and certifications provided by the customer on IRS Forms W-8, W-8BEN, W-8IMY, W-8EXP, W-8ECI, W-9, or any acceptable substitute in its possession relating to each customer account transferred to ICBC and to each future customer account opened. Broker acknowledges that ICBC will rely on such information for purposes of determining ICBC's obligation to withhold federal income tax pursuant to Sections 1441 through 1446 and 3406 of the Internal Revenue code. Broker hereby authorizes ICBC to employ any procedures permitted under applicable law or regulation to achieve compliance with its withholding obligations under federal income tax law.

18.1 DAMAGES

As between the parties, neither party shall be liable for special, indirect, incidental, consequential or punitive damages, whether such damages are incurred or experienced as a result of entering into or relying on this Agreement or otherwise, even if the parties have been advised of the possibility of such damages. Broker and ICBC each agrees not to assert any claim for punitive damages against the other.

19.0 LIABILITY

19.1 Liability of ICBC.

19.1.1 ICBC Indemnification. In addition to any other obligations it may possess under other provisions of this Agreement, ICBC shall indemnify, defend, and hold harmless Broker from and against all claims, demands, proceedings, suits, actions, liabilities, expenses, and reasonable attorney's fees, and costs in connection therewith arising out of any grossly negligent, reckless, dishonest, fraudulent, or criminal act or omission on the part of any of ICBC's officers or employees with respect to the services provided by ICBC under this Agreement.

19.1.2 ICBC shall not be liable for any expense, claim, loss or damage that the Broker, Broker's customer, or any third person may suffer by reason of any delay the Broker or ICBC may experience in obtaining:

a) Securities from any clearing agent, transfer agent, Federal Reserve book entry system, issuer, broker, dealer, Broker or third person; or
b) Moneys from Broker's customer, bank, clearing agent, the Federal Reserve wire transfer system or third person.

19.1.3 ICBC shall not be liable for any expense, claim, loss or damage suffered by the Broker, Broker's customer, or any third person due to ICBC's failure to follow any special terms or conditions on receipts from or deliveries to one or more persons imposed by the Broker at its discretion from time to time.

19.1.4 ICBC shall not be liable for any expense, claim, loss or damage the Broker, Broker's customer, or any third person may suffer because any security received or delivered by ICBC shall be invalid or fraudulent by reason of

a) Any failure of signature by an unauthorized person on a written instrument;
b) Forgery or wrongful alteration of a written instrument; or
c) Inaccuracy, incompleteness or falsity of data transmitted by computer tape, terminal or other computer facilities or in a written instruction
d) If ICBC shall have had reason to believe that such instrument, instruction or data was for the account or benefit of the Broker or that the writing was signed by or the data or computer tape was transmitted by an appropriately authorized person.

19.1.5 ICBC may act on oral instructions from a person ICBC reasonably believes to be authorized to give such instructions, and the Broker will be so bound except as to instructions given after the opening of business on the second Business Day after receipt by ICBC of a signed written notice from the Broker that such person is not so authorized. ICBC shall not be liable for any expense, claim loss or damage the Broker, Broker's customer, or any third person may suffer by reason of ICBC acting upon any instructions (whether written or oral or via computer facilities) or any notice, request, waiver, consent receipt or other document which ICBC reasonably believes to be genuine or transmitted by authorized persons.

19.1.6 In performing its obligations pursuant to this Agreement, ICBC may use such agents, clearing agents, correspondents, custodians, and securities depositories as ICBC, in its discretion, deems necessary, appropriate or desirable, including, but not limited to

a) DTC,
b) Midwest Securities Trust Corporation,
c) National Securities Clearing Corporation,
d) International Securities Clearing Corporation,
e) Fixed Income Clearing Corporation,
f) Clearstream,
g) Euroclear, and
h) Federal Reserve Book Entry System.

ICBC shall not be liable for any expense, claim, loss or damage the Broker, Broker's customer, or any third person may suffer by reason of any action or omission to act on the part of such agents, clearing agents, correspondents, custodians or securities depositories except that ICBC shall pay the Broker an allocable portion of any recovery by ICBC from such agents, clearing agents, correspondents, custodians or securities depositories with respect to such action or omission to act.

19.1.7 ICBC shall not be liable to the Broker for any loss of profits or other consequential damages for any reason.

19.1.8 All releases and indemnities provided for in this Section 19 shall survive termination of this Agreement. This shall remain the case notwithstanding any notification by the Broker, Broker or any third-person to ICBC of any such loss, injury or damage.

19.1.9 ICBC's liability (whether in contract, tort or otherwise) to the Broker for any failure, delay or error shall in no circumstances exceed the sum of:

(a) Any interest the Broker may fail to earn or any interest the Broker may incur as a result of such failure, delay or error; and

(b) The Clearing Fee payable in respect of the relevant transaction less any fee or interest received by the Broker which the Broker would not have been entitled to receive if the failure, delay or error had not occurred.

19.1.10 ICBC shall be under no obligation to pay, on behalf of the Broker, any taxes or governmental charges that may be assessed against the Broker in connection with the sale, transfer or exchange of any security or other assets, or any withholding taxes imposed by law upon the sale of any security or other assets held by ICBC under this Agreement unless the Broker shall have advanced to ICBC funds sufficient for any such payment and unless the Broker shall have delivered to ICBC written instructions to make such payment.

19.1.11 No claim may be made under this Agreement against ICBC unless notice of such claim, giving reasonable details thereof, shall have been received by ICBC within three months after the act or omission giving rise to such claim.

19.1.12 The parties acknowledge that the exclusions and limitations contained in this Section 19 are fair and reasonable having regard to all the circumstances of this Agreement.

19.2 Liability of Broker

19.2.1 Broker Indemnification. In addition to any other obligations it may possess under other provisions of this Agreement, Broker shall indemnify, defend, and hold harmless ICBC and any controlling person of ICBC from and against all claims, demands, proceedings, suits, actions, and all liabilities, expenses, and reasonable attorney's fees (including fees and costs incurred in enforcing ICBC's right to indemnification), and costs in connection therewith arising out of one or more of Broker's or any employee's negligent, reckless, dishonest, fraudulent, or criminal, act or omission or any of the following:

19.2.2 Broker's Failure to Perform. Failure of Broker to perform any duty, obligation, or responsibility with respect to customer accounts as set forth in this Agreement. Broker's indemnification obligation under this subparagraph shall not be affected by the participation of ICBC or any person controlling it or controlled by it within the meaning of the Securities Exchange Act of 1934, as amended, in any transaction giving rise to such an obligation, unless such participation constitutes recklessness, fraud, or criminal conduct.

19.2.3 Improper Conduct by Agents. Any negligent, dishonest, fraudulent, or criminal act or omission on the part of any of Broker's officers, directors, employees, or agents.

19.2.4 Failure of a Customer to Perform Obligations. Any failure by any of Broker's customers to perform any commitment or obligation with respect to a transaction carried by ICBC under this Agreement, whether or not such failure was under the control of Broker.

19.2.5 Customer Claims and Disputes. Any claim or dispute between Broker and a customer with respect to services provided under this Agreement, including, but not limited to, any claim or dispute concerning the validity of a customer order in the form the order was transmitted to ICBC by Broker and any claim arising in connection with ICBC's guarantee of any signature of any customer of Broker or at the request of Broker.

19.2.6 Warranties. Any adverse claim with respect to any security delivered or elected by ICBC, including a claim of a defect in title with respect to securities that are alleged to have been forged, counterfeited, raised or otherwise altered, or if they are alleged to have been lost or stolen. The parties agree that ICBC shall be deemed to be an intermediary between Broker and customer and shall be deemed to make no warranties other than as provided in Section 8-108 of the Uniform Commercial Code.

19.2.7 Default of Third-Party Broker. Any default by a third-party broker with whom the Broker deals on a principal or agency basis in a transaction either not executed by ICBC or not cleared by ICBC even if permitted by ICBC as provided herein.

19.2.8 Prior Self Clearing Arrangements. Any guarantee, indemnification, or hold harmless agreement in connection with Broker's business or customers that ICBC may provide to the National Securities Clearing Corporation, the Depository Trust Company, or any other clearing, depository, or self-regulatory organization with respect to transactions self-cleared by Broker prior to transfer of such functions to ICBC.

19.2.9 Breach of Warranty by Broker. Any breach by Broker of any representation or warranty made by it under this Agreement.

19.2.10 Assets Not Held in Brokerage Account. Any claim asserted against ICBC alleging the inaccuracy of any information appearing on Broker's customer brokerage account statements with respect to assets not held in the brokerage account, regardless of whether such information was provided by Broker, customer or a third-party.

19.2.11 Infringement of Intellectual Property Rights. Any act or omission of Broker, its agents, employees or customers which infringes on any patent, trade secret, copyright, trademark, or other intellectual property right of ICBC or any violation of the terms set forth in paragraph 15.6 hereof.

19.2.12 Systems and Software and Unauthorized Access. Broker expressly agrees that Broker's use of ICBC's Services, including the systems and software products is at Broker's sole risk. The Broker must use due care and not misuse, lose or allow unauthorized access to the systems and software products provided to Broker.

19.2.13 Injunctive Relief. In the event of a breach or threatened breach of any of the provisions of this Agreement by Broker or any employee or representative of Broker, Broker acknowledges that ICBC shall be entitled to seek preliminary and permanent injunctive relief to enforce the provisions hereof. In addition, Broker acknowledges that a breach of the terms regarding confidentiality of information and ownership of ICBC's intellectual property would cause

irreparable and incalculable damage to ICBC. Nothing herein shall preclude the parties from pursuing any action or other remedy for any breach or threatened breach of this Agreement, all of which shall be cumulative.

20.0 FEES AND SETTLEMENTS FOR SECURITIES TRANSACTIONS

20.1 Commissions.

ICBC shall charge each of Broker's customers the commission, mark-up and any other charge or expense that Broker instructs it to charge for each transaction. If instructions are not received with respect to a transaction in the time period required by ICBC to implement those instructions, ICBC shall charge the customer the commission, mark-up or other charge or expense prescribed in the basic commission schedule delivered to ICBC by Broker. This basic schedule may be amended from time to time by Broker by written instructions delivered to ICBC. ICBC shall only be required to implement such amendments to the operations systems and only within such reasonable time limitations as ICBC may deem necessary to avoid disruption of its normal operating capabilities.

20.2 Fees for Clearing Services.

As compensation for services provided pursuant to this Agreement, ICBC shall deduct from the commissions, mark-up, mark-down, or fees charged Broker's customers the amounts set forth in the fully-disclosed pricing schedule attached hereto as Schedule A.

20.3 Miscellaneous Charges.

Broker agrees to pay ICBC the fees and charges described in Schedule A hereto. Notwithstanding the foregoing, Broker may instruct ICBC to pass through such fees to Broker's customers. Broker further agrees to notify its customers of all fees and charges in accordance with the Rules.

21.0 DEPOSIT ACCOUNT

21.1 Establishment of Deposit Account.

To further assure the Broker's performance of its obligations under this Agreement, including but not limited to its indemnification obligations hereunder, Broker shall, on or before the execution of this Agreement, establish an account at ICBC to be designated as the Broker's deposit account (the "Deposit Account"). The Deposit Account shall not represent an ownership interest by Broker in ICBC. The Deposit Account shall at all times contain cash, securities, or a combination of both, having a market value of at least the amount set forth in Schedule A. The securities placed in the Deposit Account shall consist only of direct obligations issued by or guaranteed as to the principal and interest by the United States Government. In the event of a substantial change in the nature and extent of broker's business operations, ICBC may require that an additional amount be deposited promptly in the Deposit Account. If such a deposit is not made in the amount specified, whether or not the Broker agrees that the amount is justified, ICBC may terminate this Agreement forthwith.

21.2 ICBC's Right to Offset.

If (i) ICBC shall have any claim against Broker or a customer of Broker which has not been resolved within five business days after ICBC presents such claim to broker, or (ii) if ICBC shall suffer any loss or incur any expense for which it is entitled to be indemnified pursuant to this Agreement, and Broker shall fail to make such indemnification within five business days after being requested to do so, ICBC may deduct the amount of such claim, loss or expense from any account of broker. ICBC may withdraw cash or securities (or both) having the market value equal to the amount of such claimed deficiency. If these funds are withdrawn from the Deposit Account, then the Broker shall be obligated to make an immediate deposit in the Deposit Account of cash or securities sufficient to bring the Deposit Account back to a value of at least the amount required by Schedule A.

2.3 Termination of Deposit Account.

Within thirty (30) days of termination of this Agreement, which, for Broker's net capital purposes such 30 day period shall commence five (5) business days after the date of the initial transfer of Broker's customer accounts out of ICBC after termination, ICBC shall pay and deliver to Broker, the funds and securities in the Deposit Account, less any amounts to which it is entitled under the preceding section; provided; however, that ICBC may (i) retain the Deposit Account for such period of time until transfer of all customer and proprietary accounts of broker has been completed and (ii) retain in the Deposit Account such amount for such period as it deems appropriate for its protection from any claim or proceeding of any type, then pending or threatened, until the final determination of such claim or proceeding is made. If a threatened claim or proceeding is not resolved or if legal action or proceeding is not instituted within a reasonable time after the termination of this Agreement, any amount retained with respect to such claim, proceeding, or action shall be paid or delivered to Broker.

22.0 PROPRIETARY ACCOUNTS OF INTRODUCING BROKERS AND DEALERS (PAIB)

22.1 ICBC shall establish a separate reserve account for proprietary assets held by Broker so that Broker can treat these assets as allowable assets under SEC Rule 15c3-1. ICBC agrees to perform the required computation on behalf of Broker in accordance with the following provisions, procedures, and interpretations set forth in the SEC's No-Action Letter regarding Proprietary Accounts of Introducing Brokers and Dealers (PAIB) dated November 3, 1998:

22.2 ICBC will perform a separate computation for PAIB assets (PAIB reserve computation) of Broker in accordance with the customer reserve computation set forth in SEC Rule 15c3-3 (customer reserve formula) with the following modifications.

a) Any credit (including a credit applied to reduce a debit) that is included in the customer reserve formula will not be included as a credit in the PAIB reserve computation;
b) Note E(3) to Rule 15c3-3a, which reduces debit balances by one percent under the basic method and subparagraph (a)(1)(ii)(A) of Rule 15c3-1, which reduces debit balances by three percent under the alternative method will not apply; and
c) Neither Note E(1) to Rule 15c3-3a nor NYSE Interpretation /04 to Item 10 of Rule 15c3-3a, regarding securities concentration charges is applicable to the PAIB reserve computation.

22.3 PAIB reserve computation will include all the proprietary accounts of Broker. All PAIB assets will be kept separate and distinct from customer assets under the customer reserve computation set forth in SEC Rule 15c3-3.

22.4 PAIB reserve computation will be prepared within the same time frames as those prescribed by Rule 15c3-3 for the customer reserve formula.

22.5 ICBC will establish and maintain a separate "Special Reserve Account for the Exclusive Benefit of PAIB Customers" with a bank in conformity with the standards of Rule 15c3-3(f) (PAIB Reserve Account). Cash and/or qualified securities as defined in the Rule will be maintained in the PAIB Reserve Account in an amount equal to the PAIB reserve requirement.

22.6 If the PAIB reserve computation results in a deposit requirement, the requirement can be satisfied to the extent of any excess debit in the customer reserve formula of the same date. However, a deposit requirement resulting from the customer reserve formula cannot be satisfied with excess debits from the PAIB reserve computation.

22.7 Within two business days of entering into this Agreement, Broker must notify its designated examining authority ("DEA") in writing that it has entered into a PAIB agreement with its clearing broker-dealer.

22.8 Upon discovery that any deposit made to the PAIB Reserve Account did not satisfy its deposit requirement, ICBC will immediately notify its DEA and the SEC. Unless a corrective plan is found to be acceptable by the SEC and the DEA, ICBC will provide written notification within five business days of the date of discovery to Broker that PAIB assets held by ICBC will not be deemed allowable assets for net capital purposes.

22.9 To the extent applicable, commissions receivable and other receivables of Broker from ICBC (excluding clearing deposits) that are otherwise allowable assets under the net capital rule are not to be included in the PAIB reserve computation, provided the amounts have been clearly identified as receivables on the books and records of the Broker and as payables on the books of ICBC.

22.10 ICBC does not have guaranteed subsidiaries.

23.0 COMMUNICATION

23.1 Notice to Customers.

Broker shall, upon the opening of an account pursuant to Paragraph 5 of this Agreement, mail to each customer a copy of the notice to customers required by FINRA Rule 4311(d).

23.2 Customer Complaint Reporting and Customer Notification.

Broker authorizes and instructs ICBC to forward promptly any written customer complaint received by ICBC regarding Broker and/or its associated persons relating to functions and responsibilities allocated to Broker under this Agreement to a) Broker and b) Broker's DEA designated under Section 17 of the Securities and Exchange Act of 1934, as amended, or, if none, to Broker's appropriate regulatory agency or authority. Further, Broker authorizes ICBC to notify the customer, in writing, that ICBC has received the complaint, and the complaint has been forwarded to Broker's DEA, or, if none, to the appropriate regulatory agency).

23.3 Restriction on Advertising.

Neither ICBC nor Broker shall utilize the name of the other in any way without the other's prior written consent except to disclose the relationship between the parties. Neither party shall employ the other's name in such a manner as to create the impression that the relationship between them is anything other than that of clearing broker and introducing broker.

23.4 Linking Between Sites.

Without express written authorization, neither party may provide or allow an electronic hyperlink directly from its service or site on the Internet or another site over which that party has control to the service or site on the Internet of the other party.

24.0 TERMINATION OF AGREEMENT

This Agreement shall have a contract term as detailed in Schedule A and continue until terminated as hereinafter provided:

24.1 Termination upon 90-Day Notice.

This Agreement may be terminated by either party without cause upon ninety days prior notice.

24.2 Immediate Termination.

This Agreement may be terminated by ICBC or Broker immediately in the event that (a) the other party is enjoined, disabled, suspended, prohibited, or otherwise becomes unable to engage in the securities business or any part of it by operation of law or as a result of any administrative or judicial proceeding or action by the SEC, any state securities law administrator, or any regulatory or self-regulatory organization having jurisdiction over such party or (b) the other party (i) becomes or is declared insolvent; (ii) voluntarily files or is the subject of a petition commencing a case under any chapter of Title 11 of the United States Code; (iii) makes a general assignment for the benefit of its creditors; (iv) admits in writing its inability to pay its debts as they mature; (v) sells or enters into negotiations to sell all or substantially all of its assets, (vi) files an application or consents to the appointment of, or there is appointed, any receiver, or a permanent or interim trustee of that party or any of its subsidiaries, as the case may be, or all or any portion of its property, including, without limitation, the appointment or authorization of a trustee, receiver or agent under applicable law or under a contract to take charge of its property for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of its creditors; (vii) files a petition seeking a reorganization of its financial affairs or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute or files an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or statute or (viii) takes any corporate action for the purpose of effecting any of the foregoing.

24.3 Early Termination.

The Broker shall be responsible for all costs and expenses incurred by ICBC as a result of Termination of services and any necessary consequent services provided by ICBC. If Termination occurs, the Broker shall pay an amount equal to three times the monthly minimum fee.

24.4 Default.

If either party defaults in the performance of its obligations under this Agreement, or otherwise violates the provisions of this Agreement, the non-defaulting party may terminate this Agreement by delivering Notice to the defaulting party (i) specifying the nature of the default; and (ii) notifying the

defaulting party that makes the default is cured within a period of ten days from receipt of the Notice, this Agreement will be terminated without further proceedings by the non-defaulting party.

24.5 Conversion of Accounts.

In the event that this Agreement is terminated for any reason, Broker shall arrange for the conversion of Broker's and its customer accounts to another clearing broker or to Broker if it becomes self-clearing. Broker shall give ICBC Notice (the "Conversion Notice") of: (i) the name of the broker that will assume responsibility for clearing services for Customers and Broker; (ii) the date on which such broker will commence providing such services; (iii) Broker's undertaking, in form and substance satisfactory to ICBC, that Broker's agreement with such clearing broker provides that such clearing broker will accept on conversion all Broker and customer accounts then maintained by ICBC; and (iv) the name of an individual or individuals within new clearing broker's organization whom ICBC may contact to coordinate the conversion. The Conversion Notice shall accompany Broker's notice of termination given pursuant to this Paragraph.

24.6 Survival.

Termination of this Agreement in any manner shall not release Broker or ICBC from any liability or responsibility with respect to any representation or warranty or transaction effected on the books of ICBC.

25.0 CONFIDENTIALITY

25.1 "Confidential Information" of a party shall mean all data and information submitted to the other party or obtained by the other party in connection with the services, including information relating to a party's customers (which includes, without limitation, Non-Public Personal Information as that term is defined in Securities and Exchange Commission Regulation S-P), technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information.

25.2 All Confidential Information relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Neither party shall disclose, publish, release, transfer or otherwise make available Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party's consent. Each party shall, however, be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, agents, subcontractors and employees to the extent such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement and such disclosure is not prohibited by Gramm-Leach-Bliley Act of 1999 ("GLBA"), which amends the Securities and Exchange Act of 1934, as it may be amended from time to time, the regulations promulgated by the Securities and Exchange Commission thereunder or other applicable law; provided, however, that such party shall take all reasonable measures to ensure that Confidential Information of the other party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and employees. The obligations in this Paragraph shall not restrict any disclosure by either party pursuant to any applicable law, or by order of any court or government agency (provided that the disclosing party shall give prompt notice to the non-disclosing party of such order) and shall not apply with respect to information which (i) is developed by the other party without violating the disclosing party's proprietary rights; (ii) is or becomes publicly known (other than through unauthorized disclosure); (iii) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (iv) is already known by such party without an

obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements entered into between the parties before the effective date of this Agreement; or (v) is rightfully received by a party free of any obligation of confidentiality. If the GLBA, the regulations promulgated by the Securities and Exchange Commission thereunder or other applicable law now or hereafter in effect imposes a higher standard of confidentiality to the Confidential Information, such standard shall prevail over the provisions of this Paragraph.

25.1 Paragraphs 22.1 through 22.2 shall survive the termination of this Agreement.

26.0 ACTION AGAINST CUSTOMERS BY ICBC

ICBC may, in its sole discretion and at its own expense and, upon written notice to Broker, institute and prosecute in its name any action or proceeding against any of Broker's customers in relation to any controversy or claim arising out of ICBC's transactions with Broker or with Broker's customers. Nothing contained in this Agreement shall be deemed either (a) to require ICBC to institute or prosecute such an action or proceeding; or (b) to impair or prejudice its right to do so, should it so elect, nor shall the institution or prosecution of any such action or proceeding relieve Broker of any liability or responsibility which Broker would otherwise have had under this Agreement. Broker assigns to ICBC its rights against its customer as necessary to effectuate the provisions of this Paragraph.

27.0 NOTICES

Any Notice required or permitted to be given under this Agreement shall be sufficient only if it is in writing and sent by hand or by certified mail, return receipt requested, to the parties at the following address:

BROKER:
CV Brokerage, Inc.
300 Conshohocken State Road, Suite 200
West Conshohocken, PA 19428
Attn: Chief Compliance Officer

ICBC:
Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway
New York, NY 10019
Attn: Chief Compliance Officer

28.0 ARBITRATION

28.1 **Arbitration Requirement.**

Any dispute between Broker and ICBC that cannot be settled shall be taken to arbitration as set forth in Paragraph 28.3 below.

28.2 ARBITRATION DISCLOSURE.

- ARBITRATION IS FINAL AND BINDING ON THE PARTIES.
- THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL.

- PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS.
- THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED.
- THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.

28.3. ARBITRATION AGREEMENT.

ANY CONTROVERSY BETWEEN US ARISING OUT OF YOUR BUSINESS OR THIS AGREEMENT SHALL BE SUBMITTED TO ARBITRATION CONDUCTED BEFORE FINRA REGULATION INC. (OR THEIR SUCCESSOR FIRMS), AND IN ACCORDANCE WITH THE THEN RULES OBTAINING OF THE SELECTED ORGANIZATION AND SHALL BE CONDUCTED AS A BROKER TO BROKER OR MEMBER VS MEMBER DISPUTE. ARBITRATION MUST BE COMMENCED BY SERVICE UPON THE OTHER PARTY OF A WRITTEN DEMAND FOR ARBITRATION OR A WRITTEN NOTICE OF INTENTION TO ARBITRATE, THEREIN ELECTING THE ARBITRATION TRIBUNAL.

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION AND WHO IS A MEMBER OF A PUTATIVE CLASS AND WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (i) THE CLASS CERTIFICATION IS DENIED; (ii) THE CLASS IS DECERTIFIED; OR (iii) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

29.0 GENERAL PROVISIONS

29.1 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of Broker and ICBC. No assignment of this Agreement or any rights, including those to indemnification hereunder by Broker shall be effective unless ICBC's written consent shall be first obtained.

29.2 Severability

If any provision of this Agreement shall be held to be invalid or unenforceable, the validity or enforceability of the remaining provisions and conditions shall not be affected thereby.

29.3 Counterparts.

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute a single agreement.

29.4 Entire Agreement Amendments and Duties Not Specifically Enumerated Herein.

This Agreement represents the entire agreement between the parties with respect to the subject matter contained herein and all prior discussions, agreements, and promises, written or oral, are merged herein. This Agreement may not be changed orally, but only by an agreement in writing signed by the parties. ICBC shall not be responsible or liable for failure to perform any duties not specifically enumerated herein.

29.5 Captions.

Captions herein are for convenience only and are no of substantive effect.

29.6 Choice of Law.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to the conflicts of laws or principles thereof. This Agreement shall not be governed by the United Nations Convention on the International Sale of Goods.

29.7 Citations.

Any reference to the rules or regulations of the SEC, FINRA, the NYSE, or any other regulatory or self-regulatory organization are current citations. Any changes in the citations (whether or not there are any changes in the text of such rules or regulations) shall be automatically incorporated herein.

29.8 Construction of Agreement.

Neither this Agreement nor the performance of the services hereunder shall be considered to create a joint venture or partnership between ICBC and Broker or between Broker and other brokers for whom ICBC may perform the same or similar services.

29.9 Third-Parties.

This Agreement is between the parties hereto and is not intended to confer any benefits on third-parties including, but not limited to, customers of Broker.

29.10 Non-Exclusivity of Remedies.

The enumeration herein of specific remedies shall not be exclusive of any other remedies. Any delay or failure by a party to this Agreement to exercise any right, power, remedy, or privilege herein contained, or now or hereafter existing under any applicable statute or law, shall not be construed to be a waiver of such right, power, remedy, or privilege. No single, partial, or other exercise of any such right, power, remedy, or privilege shall preclude the further exercise thereof or the exercise of any other right, power, remedy, or privilege.

29.11 SEC Release 34-31511 Provision.

Pursuant to the interpretation of Introducing Accounts on a Fully-Disclosed Basis contained in SEC Release 34-31511, it is hereby agreed between Broker and ICBC that, insofar as the "financial responsibility rules" of the SEC and Securities Investor Protection Act only are applicable, the accounts Broker introduces to ICBC on a fully-disclosed basis shall be considered to be accounts of ICBC and not

Broker's accounts. Nothing in this Paragraph will otherwise change or affect the provisions of this Agreement which provide that the customer account remains Broker's customer account for all other purposes, including but not limited to, supervision, suitability and indemnification.

29.12 Provision of Reports and Exception Reports.

On or before the effective date of this Agreement and annually thereafter, ICBC shall provide to Broker, pursuant to FINRA Rule 4311(h), a list of all reports it offers to Broker. Broker shall promptly advise ICBC, in writing, of those specific reports it elects to receive. ICBC and Broker each represent that their obligations relative to exception reports, pursuant to FINRA Rule 4311(h) have been completed.

29.13 Force Majeure.

Neither party shall be liable for any loss caused, directly or indirectly, resulting from any circumstances beyond its reasonable control, including without limitation, labor disputes, riots, sabotage, insurrection, fires, flood, storm, explosions, earthquakes, electrical power failures, acts of God or nature, war, both declared or undeclared, or acts of terrorism.

29.14 Audio Taping of Telephone Conversations.

Each party understands that for quality control, dispute resolution or other business purposes, the parties may record some or all telephone conversations between them. Each party hereby consents to such recording and will inform its employees, representatives and agents of this practice. It is further understood that all such conversations are deemed to be solely for business purposes.

IN WITNESS WHEREOF the parties have hereto affixed their hands and seals by their duly authorized officers on the day and date first above written.

This Agreement contains a pre-dispute arbitration clause in Paragraph 28. The parties acknowledge receiving a copy of this Agreement.

CV BROKERAGE INC

By: [signature]

Title: President & CCO

INDUSTRIAL AND COMMERCIAL BANK OF CHINA FINANCIAL SERVICES LLC

By: [signature]

Title: Joseph N. Spillane
Chief Executive Officer

Yi Lu
Deputy Chief Executive Officer

Industrial and Commercial Bank of China Financial Services, LLC.
1633 Broadway, 38th Floor
New York, NY 10019
Straight Through Processing - CLEARANCE>CUSTODY>FINRYC 38

CV Brokerage Inc.
Fee Schedule A
March 18, 2015

For services to be performed under the Fully Disclosed Clearing Agreement effective "Date" by and between Industrial and Commercial Bank of China Financial Services, LLC.("Clearing Broker") and CV Brokerage Inc("Introducing Broker"). Introducing Broker agrees to pay Clearing Broker in accordance with the schedule of fees set forth below.

Clearing Services

US Equities & Options – Domestic[1]	
Customer	$10.00/Ticket
Firm	$8.00/Ticket
Average Price trades	No Charge
US Options	
Customer	$10.00/Ticket
CMTA[2]	$.10/Contract
US Fixed Income	
Customer	
Muni's, Corporates, Govt's -	$15.00/Ticket
Mortgage Backed, CMO's -	$20.00/Ticket
Principal –	
All Bonds	$10.00/Ticket
Global Securities (Non-US)[4]	
Customer	$25.00/Ticket
Firm	$25.00/Ticket
FX Trades	$25.00/Ticket
Mutual Funds	$20.00/Ticket

[1] *Unexecuted Sweet Side by Symbol, Side & Broker*
[2] *Accounts will be held in separate range within Introducing Broker and reviewed/approved by ICBCFS.*
[3] *CMTA charges are for "Inbound" options only.*
[4] *Agent Bank Fees Passed Through (See Schedule B)*

Execution Services

US Equities – Direct Routing	
SmartRoute	$.0008/Share
SuperTicks[1]	$.0008/Share
Algorithms	$.0020/Share
US Options – Direct Routing	
SmartRoute	$.10/Contract
SmartRoute 360[2]	$.20/Contract
Designated Exchange[3]	$.25/Contract
Index Options	$.20/Contract
Buy Rights	$.015/Share

[1] *Rebate Charges will be credited/charged to Introducing Broker. Applicable Exchange fees will be passed through to Introducing Broker. Current Rebate and Charges are listed below and are subject to change from each Market.*

	Rebate/Profit Equalizer[1]	Charge/Value Limiting
NASDAQ	0.0029	0.0030
AMEX	0.0029	0.0030
BOSX	0.0032	0.0030
BATS	0.0027	0.0029

[1] Rebate/Charges will be credited/charged to Introducing Broker and can be estimated upon request
[2] Applicable Exchange fees will be passed through to Introducing Broker.

Trading Systems

ICBCFS OMS

User Fee	$500/User/Month
Routing Fee	$.0005/Share
Fix Connections	$150/Month/Connection
BATS	$200/Month

[1] Charged only if not executed through source outlined under Execution Services section above.

Financing

Debit Balances[1] - On margin debit balances, interest is charged at the Fed Funds rate plus 100 basis points.

Credit Balances - On free credit balances, interest is paid at the Fed Funds rate less 50 basis points.

Short Interest Rebate – Short Credit Rebate will be credited to Introducing Broker at Fed Funds less 50 basis point and adjusted for Hard to Borrow Securities

[1] Debit above $10 million must be approved by ICBCFS

Other Items

DK Interest (Domestic)	Fed Funds plus 200 bps
DK and Fail Interest (Foreign)	Determined by each agent bank
Cancel and Corrects (Post S/D)	$8.00
Wire Fees	$10 per wire
Legal Transfers	$50 per issue plus pass through[1]
Conversions	$50 per item plus ticket charges
DWAC	$60 per item
IRA Trustee Fees[1]	$50/Account/Year
Opening Fee	No Charge
Closing Fee	$75/Account.
Bad Client Web Access	$10 per user ID per month
Escrow deposit	$250,000
Minimum Clearing Charge[2]	$8,000/Month

[1] Other fees may apply for unlisted services
[2] Minimum fee will be waived for the first 6 months.

Signatures

Introducing Broker hereby acknowledges that, under certain circumstances, additional costs and expenses for clearing services may be incurred by Clearing Broker on behalf of Introducing Broker, which are not included in the fee schedule set forth above. These fees may include, but are not limited to, FINRA Trade Activity Fee, NSCC Illiquid Security Fees and other such fees. Clearing Broker will use its best efforts to advise Introducing Broker of these additional costs and expenses as soon as possible after Clearing Broker becomes aware of them.

CV Brokerage Inc

By: [signature]

Date: 3-18-13

Industrial and Commercial Bank of China Financial Services, LLC.

By: [signature]
Joseph M. Spiteri
Chief Executive Officer

Date:

[signature]
Yi Li
Deputy Chief Executive Officer

FULLY DISCLOSED CLEARING AGREEMENT

This Amendment to Fully Disclosed Clearing Agreement (the "Amendment") is entered into this [illegible] day of November, 2017 by and between Industrial and Commercial Bank of China Financial Services LLC ("ICBCFS"), and CV Brokerage, Inc. ("Broker").

WHEREAS, the parties entered into that certain Fully Disclosed Clearing Agreement on March [illegible], 2016 (the "Agreement"); and

WHEREAS, the parties wish to amend the existing terms and conditions of the Agreement.

Now, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Add the following paragraph 14.S to section 14.0 OTHER OBLIGATIONS AND AGREEMENTS OF THE BROKER as follows:

14.S FINRA Rule 4210(g)(3)(A)(ii) Requirements to Establish Margin Requirements for Covered Agency Transactions. If Broker engages in Covered Agency Transactions, as defined in FINRA Rule 4210, it will be the sole responsibility of the Broker to make all margin calls and to inform its customer to post the required margin directly to ICBCFS. In accordance with Rule 4210, if the Broker fails to collect required margin as defined by Rule 4210 for the Broker, ICBCFS will be required to take all required capital charges. In accordance with the Brokers instruction, ICBCFS will collect the margin deposit on behalf of the Brokers customer.

ACKNOWLEDGED AND AGREED TO:

Industrial and Commercial Bank of China Financial Services LLC:

By: [illegible] Industrial & Commercial Bank of China Financial Services LLC

Its: Managing Director

Broker: CV Brokerage, Inc.

By: [illegible]

Its: [illegible]

Joseph M. Sullivan
Chief Executive Officer

EXHIBIT B

1. *Jeffrey Bydalek v. CV Brokerage, Inc, Industrial and Commercial Bank of China Financial Services LLC and Brenda A. Smith* (FINRA Arbitration No. 18-03955)

Bydalek, an investor in a fund operated by Brenda Smith, brought claims for fraud, breach of fiduciary duty, breach of contract, fraudulent transfers, and unlawful conversion against Brenda Smith and CV Brokerage. ICBCFS was initially named as a relief respondent, but was later named as a respondent in the amended statement of claim. Bydalek alleged that ICBCFS aided and abetted Smith and CV Brokerage's aforementioned fraud and breach of fiduciary duty.

2. *Alpha Capital Trading Group, LLC v. CV Brokerage, Inc. et al* (FINRA Arbitration No. 19-03157)

Alpha Capital Trading Group, LLC ("Alpha") alleged that respondents failed to protect its investments in Broad Reach, a fund operated by Brenda Smith, from her fraud. Alpha alleged that ICBCFS should have investigated suspicious activities in Broad Reach, a hedge fund operated by Brenda Smith.

3. *SureFire Dividend Capture LP v. Industrial and Commercial Bank of China Financial Services LLC*, Docket No. 652507/2021 (N.Y. Sup Ct. Apr 15, 2021).

SureFire filed suit against ICBCFS in New York state court, alleging two aiding and abetting claims of fraud and breach of fiduciary duty in connection with ICBCFS's provision of clearing services for Broad Reach.

EXHIBIT C

Legal Fees Incurred in Connection With:	Fees	Costs	Total Paid
Bydalek Claim	403,200.64	816.74	404,023.38
Alpha Capital Claim	44,243.80	0.00	44,243.80
Surelore Litigation	684,914.05	6,741.99	691,384.04
CV Brokerage Investigation	288,514.75	1,011.75	289,526.50
TOTALS	**1,420,879.24**	**8,570.48**	**1,429,174.72**

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. 3R 486474

Invoice Date 11/19/2019
Client No. 042205
Matter No. 0013

EIN 13-2633993

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212 [illegible]
212 [illegible]

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through September 30, 2019

Total Fees	$169.00
15% Discount	(28.35)
Net Fees	160.65
Total Due on Current Invoice	$160.65

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 488602

Invoice Date 11/19/2019
Client No. 042205
Matter No. 0013

EIN 13-2633996

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through September 30, 2019

Total Fees	$5,159.50
15% Discount	(773.93)
Net Fees	4,385.57
Total Due on Current Invoice	$4,385.57

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul Way

Invoice No. JR 467043

Invoice Date 12/07/2019
Client No. 042205
Matter No. 0013

EIN 13 2633886

Schulte Roth&Zabel L.L.P.

919 Third Avenue
New York, NY 10022
212 756 2000
212 593 5955 fax

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through October 31, 2019

Total Fees	$3,941.50
15% Discount	(591.23)
Net Fees	3,350.27
Total Due on Current Invoice	$3,350.27

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 405007
Invoice Date 12/19/2019
Client No. 042205
Matter No. 0013

FIN 13 2633995

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through November 30, 2019

Total Fees	$14,287.00
15% Discount	(2,143.05)
Net Fees	12,143.95
Total Due on Current Invoice	$12,143.95

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 488936

Invoice Date 01/14/2020
Client No. 042205
Matter No. 0013

EIN 13-2633056

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
Tel +1 212 756 2000
Fax +1 212 593 5955

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through December 31, 2019

Total Fees	$103,800.00
15% Discount	(15,570.00)
Net Fees	88,230.00
Disbursements and other client charges	512.74
Total Due on Current Invoice	$88,742.74

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 492102

Invoice Date 02/20/2020
Client No. 042205
Matter No. 0013

EIN 13-2633995

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through January 31, 2020

Total Fees	$20,873.00
15% Discount	(3,130.95)
Net Fees	17,742.05
Disbursements and other client charges	4.00
Total Due on Current Invoice	$17,746.05

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 20th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 485422

Invoice Date 03/31/2020
Client No. 042205
Matter No. 0013

EIN 13-2633996

Schulte Roth & Zabel LLP
[illegible] Third Avenue
New York, NY 10022
[illegible]
[illegible] fax
www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through February 29, 2020

Total Fees	$11,232.00
Less 15% Discount	(1,684.80)
Net Fees	9,547.20
Total Due on Current Invoice	$9,547.20

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 497160
REVISED

Invoice Date 04/30/2020
Client No. 042205
Matter No. 0013

EIN 13-2633993

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212 756 2000
212 593 5955 fax
www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through March 31, 2020

Total Fees	$56,969.50
15% Discount	(8,545.43)
Net Fees	48,424.07
Total Due on Current Invoice	48,424.07
Less Write off	(14,947.00)
Total Due	$33,477.07

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio
Patrick Brake

Invoice No. JR 531094

Invoice Date 06/18/2020
Client No. 042205
Matter No. 0013

EIN 13-2633993

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2020

Total Fees	56,885.50
15% Discount	(8,532.83)
Net Fees	48,352.67
Total Due on Current Invoice	$48,352.67

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio
Patrick Brake

Invoice No. JR 501908
REVISED

Invoice Date 06/18/2020
Client No. 042205
Matter No. 0013

EIN 13 2633996

Schulte Roth&Zabel LLP
[illegible] Avenue
New York, NY 10022
212.756.2000
212.[illegible]5959 fax
[illegible]

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through May 11, 2020

Total Fees	$53,868.50
15% Discount	(8,090.48)
Net Fees	45,778.02
Total Due on Current Invoice	$45,778.02

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 20th Floor
New York, NY 10019
Attention: Robert Virgilio
Patrick Brako

Invoice No. JR 505572

Invoice Date 06/18/2020
Client No. 042205
Matter No. 0013

EIN 13-2633993

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2020

Total Fees	$56,240.50
15% Discount	(8,436.08)
Net Fees	47,804.42
Total Due on Current Invoice	$47,804.42

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 29th Floor
New York, NY 10019
Attention: Robert Vigilio
Patrick Drake

Invoice No. JR 503302
REVISED

Invoice Date 07/20/2020
Client No. 042205
Matter No. 0013

EIN 13-2623990

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through June 5, 2020

Total Fees	$56,458.00
15% Discount	(8,468.70)
Net Fees	47,989.30
Total Due on Current Invoice	$47,989.30

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio
Patrick Drake

Invoice No. JR 505575
REVISED

Invoice Date 07/20/2020
Client No. 042205
Matter No. 0013

EIN 13-2630996

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2020

Total Fees	$51,211.50
15% Discount	(7,681.73)
Net Fees	43,529.77
Total Due on Current Invoice	$43,529.77

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio, Patrick Brake

Invoice No. JR 508394

Invoice Date 09/28/2020
Client No. 042205
Matter No. 0013

FIN 13-2633996

Schulte Roth&Zabel LLP
[illegible] Third Avenue
New York, NY 10022
[illegible]
[illegible]
www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through August 31, 2020

Total Fees	$642.00
15% Discount	(96.30)
Net Fees	545.70
Total Due on Current Invoice	$545.70

Industrial and Commercial Bank of China Financial Services
LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 522620

Invoice Date 03/31/2021
Client No. 042205
Matter No. 0013

EIN 13-2633995

Schulte Roth & Zabel LLP

919 Third Ave
New York, NY 10022
212 756 2000
212 593 5955 fax

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through February 28, 2021

Total Fees	$69.00
Less 15% Discount	(10.35)
Net Fees	58.65
Total Due on Current Invoice	58.65

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 26th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 531440

Invoice Date 07/31/2021
Client No. 042205
Matter No. 0013

FIN 13-2633996

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fx

www.srz.com

Re: Bydalek Claim

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2021

Total Fees	$131.00
15% Discount	(19.65)
Net Fees	111.35
Total Due on Current Invoice	$111.35

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 489089

Invoice Date 12/19/2019
Client No. 042205
Matter No. 0017

EIN 13-2633996

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through November 30, 2019

Total Fees	$1,310.00
15% Discount	(196.50)
Net Fees	1,113.50
Total Due on Current Invoice	$1,113.50

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 489938

Invoice Date 01/14/2020
Client No. 042205
Matter No. 0017

EIN 13 2633996

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through December 31, 2019

Total Fees	$7,859.00
15% Discount	(1,176.85)
Net Fees	6,682.15
Total Due on Current Invoice	$6,682.15

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 492184

Invoice Date 02/20/2020
Client No. 042205
Matter No. 0017

EIN 13-2633996

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
+1.212.756.2000
+1.212.593.5955 fax
www.srz.com

Re. Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through January 31, 2020

Total Fees	$1,149.50
15% Discount	(172.43)
Net Fees	977.07
Total Due on Current Invoice	$977.07

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 495424

Invoice Date 03/31/2020
Client No. 042205
Matter No. 0017

FIN 13-2633866

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 Fax

www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through February 29, 2020

Total Fees	$8,777.00
Less 15% Discount	(1,316.55)
Net Fees	7,460.45
Total Due on Current Invoice	$7,460.45

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 26th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 497161

Invoice Date 04/23/2020
Client No. 042205
Matter No. 0017

EIN 13-2633995

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through March 31, 2020

Total Fees	$14,186.50
15% Discount	(2,127.98)
Net Fees	12,058.52
Total Due on Current Invoice	$12,058.52

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 500238

Invoice Date 05/28/2020
Client No. 042205
Matter No. 0017

EIN 13-2633896

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2020

Total Fees	$9,325.00
15% Discount	(1,398.75)
Net Fees	7,926.25
Total Due on Current Invoice	$7,926.25

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 501395

Invoice Date 06/22/2020
Client No. 042205
Matter No. 0017

EIN 13 2633095

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
212 756 2000
212 593 5955 fax
www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2020

Total Fees	$4,336.50
15% Discount	(650.48)
Net Fees	3,686.02
Total Due on Current Invoice	$3,686.02

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 26th Floor
New York, NY 10019
Attention: Robert Virgilio
Patrick Drake

Invoice No. JR 503597

Invoice Date 07/20/2020
Client No. 012205
Matter No. 0017

FIN 13-2633996

Schulte Roth & Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2020

Total Fees	$2,378.50
15% Discount	(356.78)
Net Fees	2,021.72
Total Due on Current Invoice	$2,021.72

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio
Patrick Brake

Invoice No. JR 506051

Invoice Date 08/31/2020
Client No. 012205
Matter No. 0017

EIN 13-2633995

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through July 31, 2020

Total Fees	$1,963.00
15% Discount	(294.45)
Net Fees	1,668.55
Total Due on Current Invoice	$1,668.55

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Vitglio

Invoice No. JR 525406

Invoice Date 04/30/2021
Client No. 012205
Matter No. 0017

EIN 13-2633996

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through March 31, 2021

Total Fees	$69.00
10% Discount	(6.90)
Net Fees	62.10
Total Due on Current Invoice	$62.10

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 531439

Invoice Date 07/31/2021
Client No. 042206
Matter No. 0017

EIN 13-2633996

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
[illegible]
[illegible]

www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2021

Total Fees	$578.50
15% Discount	(86.78)
Net Fees	491.72
Total Due on Current Invoice	$491.72

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 535315

Invoice Date 09/30/2021
Client No. 042205
Matter No. 0017

EIN 13-2833998

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: Alpha Capital Claim

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2021

Total Fees	$115.00
15% Discount	(17.25)
Net Fees	97.75
Total Due on Current Invoice	$97.75

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Revised Invoice No. JR 528995

Invoice Date 06/30/2021
Client No. 042205
Matter No. 0027

EIN 13-2633993

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fa.

www.srz.com

Re: SunEdison Litigation

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2021

Total Fees	$126,139.00
Discount for S. L. Gonyea's time	(9,143.25)
Total Fees	116,995.75
15% Discount	(17,549.36)
Total Fees	99,446.39
Disbursements and other client charges	275.00
Total Due on Current Invoice	$99,721.39

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 531431

Invoice Date 07/31/2021
Client No. 042205
Matter No. 0027

FIN 13-2633056

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: SureFire Litigation

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2021

Total Fees	$100,905.00
15% Discount	(15,135.75)
Net Fees	85,769.25
Total Due on Current Invoice	$85,769.25

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 536319

Invoice Date 09/30/2021
Client No. 042205
Matter No. 0027

EIN 13-2633006

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: SureFire Litigation

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2021

Total Fees	$126,249.50
15% Discount	(18,937.43)
Net Fees	107,312.07
Disbursements and other client charges	797.98
Total Due on Current Invoice	$108,110.05

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 537723

Invoice Date 10/28/2021
Client No. 012205
Matter No. 0027

EIN 13-2633995

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: SureFire Litigation

FOR PROFESSIONAL SERVICES RENDERED through July 31, 2021

Total Fees	$183,539.50
15% Discount	(27,530.93)
Net Fees	156,008.57
Disbursements and other client charges	5,968.47
Total Due on Current Invoice	$161,977.04

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 26th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 539647

Invoice Date 11/16/2021
Client No. 042205
Matter No. 0027

EIN 13-2838006

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212-756-2000
212-593-5955 fax
www.srz.com

Re: SureFire Litigation

FOR PROFESSIONAL SERVICES RENDERED through October 31, 2021

Total Fees	$278,091.50
15% Discount	(41,713.73)
Net Fees	236,377.77
Disbursements and other client charges	190.54
Total Due on Current Invoice	$236,568.31

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 483159

Invoice Date 10/16/2019
Client No. 042265
Matter No. 0014

EIN 13-2633993

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through August 31, 2019

Total Fees	$35,242.00
15% Discount	(5,286.30)
Net Fees	29,955.70
Total Due on Current Invoice	$29,955.70

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 486475

Invoice Date 11/19/2019
Client No. 042205
Matter No. 0014

EIN 13-2633996

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through September 30, 2019

Total Fees	$14,693.50
15% Discount	(2,204.03)
Net Fees	12,489.47
Total Due on Current Invoice	$12,489.47

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 497844

Invoice Date 12/07/2019
Client No. 042205
Matter No. 0014

EIN 13 2633998

Schulte Roth&Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: CV Brokerage investigation

FOR PROFESSIONAL SERVICES RENDERED through October 31, 2019

Total Fees	$5,240.00
15% Discount	(786.00)
Net Fees	4,454.00
Total Due on Current Invoice	$4,454.00

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 26th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 489083

Invoice Date 12/19/2019
Client No. 042205
Matter No. 0014

EIN 13-2633995

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through November 30, 2019

Total Fees	53,013.00
15% Discount	(451.95)
Net Fees	2,561.05
Total Due on Current Invoice	$2,561.05

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 489937

Invoice Date 01/14/2020
Client No. 042205
Matter No. 0014

EIN 13-2633998

Schulte Roth&Zabel LLP
[illegible]
New York, NY [illegible]
[illegible]
[illegible]
www.[illegible]

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through December 31, 2019

Total Fees	$1,635.00
15% Discount	(245.25)
Net Fees	1,389.75
Total Due on Current Invoice	$1,389.75

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 452183

Invoice Date 02/20/2020
Client No. 042205
Matter No. 0014

EIN 13-2633996

Schulte Roth & Zabel LLP

919 Third Avenue
New York, NY 10022
212 756 2000
212 593 5955 fax

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through January 31, 2020

Total Fees	$5,998.00
15% Discount	(899.70)
Net Fees	5,098.30
Total Due on Current Invoice	$5,098.30

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 495423

Invoice Date 03/31/2020
Client No. 042205
Matter No. 0014

EIN 13-2633998

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through February 29, 2020

Total Fees	$6,154.00
Less 15% Discount	(923.10)
Net Fees	5,230.90
Disbursements and other client charges	33.27
Total Due on Current Invoice	$5,264.17

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 20th Floor
New York, NY 10019
Attention: Paul May

Invoice No. JR 600237

Invoice Date 05/28/2020
Client No. 042205
Matter No. 0014

EIN 13-2633996

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2020

Total Fees	$3,491.00
15% Discount	(523.65)
Net Fees	2,967.35
Total Due on Current Invoice	$2,967.35

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio
Patrick Blake

Invoice No. JR 506950

Invoice Date 08/31/2020
Client No. 042205
Matter No. 0014

EIN 13-2633996

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through July 31, 2020

Total Fees	$637.00
15% Discount	(95.55)
Net Fees	541.45
Total Due on Current Invoice	$541.45

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 20th Floor
New York, NY 10019
Attention: Robert Virgilio, Patrick Drake

Invoice No. JR 508355

Invoice Date 05/28/2020
Client No. 042205
Matter No. 0014

EIN 13-2633995

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through August 31, 2020

Total Fees	$59,368.50
15% Discount	(8,905.28)
Net Fees	50,463.22
Total Due on Current Invoice	$50,463.22

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio, Patrick Brake

Invoice No. JR 510621

Invoice Date 10/19/2020
Client No. 042205
Matter No. 0014

EIN 13-2633985

Schulte Roth&Zabel LLP

[redacted]

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through September 30, 2020

Total Fees	$24,655.00
15% Discount	(3,698.25)
Net Fees	20,956.75
Total Due on Current Invoice	$20,956.75

Industrial and Commercial Bank of China Financial Services
1633 Broadway, 26th Floor
New York, NY 10019
Attention: Robert Virgilio Patrick Drake

Invoice No. SR 513413
REVISED

Invoice Date 11/17/2020
Client No. 042205
Matter No. 0014

EIN 13-2633996

Schulte Roth&Zabel LLP

[redacted]

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through October 31, 2020

Total Fees	$16,725.50
15% Discount	(2,508.98)
Net Fees	14,217.52
Total Due on Current Invoice	$14,217.52

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 20th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 515489

Invoice Date 12/11/2020
Client No. 042205
Matter No. 0014

EIN 13-2633998

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through November 30, 2020

Total Fees	$2,780.00
Less 15% Discount	(417.00)
Net Fees	2,363.00
Total Due on Current Invoice	$2,363.00

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 20th Floor
New York, NY 10019
Attention: Robert Virgilio

Revised Invoice No. JR 520355

Invoice Date 02/28/2021
Client No. 072205
Matter No. 0011

EIN 13-2633996

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
Tel +1 212 756 2000
Fax +1 212 593 5955

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through January 31, 2021

Total Fees	$184.00
15% Discount	(27.60)
Net Fees	156.40
Total Due on Current Invoice	$156.40

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Revised Invoice No. JR 520521

Invoice Date 02/28/2021
Client No. 042205
Matter No. 0014

EIN 13-2633893

Schulte Roth & Zabel LLP

919 Third Avenue
New York, NY 10022
212 756 2000
212 593 5955 fax

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through February 28, 2021

Total Fees	$496.00
15% Discount	(74.40)
Net Fees	421.60
Total Due on Current Invoice	$421.60

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 26th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 525405

Invoice Date 04/30/2021
Client No. 042205
Matter No. 0014

EIN 13-2633998

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
[illegible]

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through March 31, 2021

Total Fees	$317.00
10% Discount	(31.70)
Net Fees	285.30
Total Due on Current Invoice	$285.30

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 531434

Invoice Date 07/31/2021
Client No. 042265
Matter No. 0014

EIN 13-2633993

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax
www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2021

Total Fees	$143,921.50
15% Discount	(21,588.23)
Net Fees	122,333.27
Disbursements and other client charges	497.31
Total Due on Current Invoice	$122,830.58

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 20th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. JR 535314

Invoice Date 06/30/2021
Client No. 042205
Matter No. 0014

EIN 13-2633956

Schulte Roth&Zabel LLP
919 Th[illegible] Avenue
New York, NY 10022
212.7[illegible]
Fax 212.593.[illegible]
www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2021

Total Fees	$12,294.50
15% Discount	(1,844.18)
Net Fees	10,450.32
Disbursements and other client charges	481.17
Total Due on Current Invoice	$10,931.49

Industrial and Commercial Bank of China Financial Services LLC
1633 Broadway, 28th Floor
New York, NY 10019
Attention: Robert Virgilio

Invoice No. IR 542852

Invoice Date 12/21/2021
Client No. 042205
Matter No. 0014

EIN 13-2603998

Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
Telephone
Facsimile

www.srz.com

Re: CV Brokerage Investigation

FOR PROFESSIONAL SERVICES RENDERED through October 31, 2021

Total Fees	$2,564.00
15% Discount	(384.60)
Net Fees	2,179.40
Total Due on Current Invoice	$2,179.40

Exhibit N

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

CREDITOR CLAIM FORM

Name of Creditor: CMCC Development Group, LLC

Name and Address Where Notices Should be Sent: Edmond R. Shinn, Esquire
353 W. Lancaster Ave, Suite 300
Wayne, PA 19087

Email Address: EShinn@erslawfirm.com

Telephone No.: 610-308-6544

Date(s) of Claim: March 1, 2018 (Breach of January 28, 2018 Agreement)

December 3, 2018 – February 19, 2020 (Depreciated Sale of Stock to meet Company's obligations following CV Investments, LLC's Breach of January 28, 2018 Agreement)

Amount of Claim: $5,000,000 (Breach of January 28, 2018 Agreement)

$500,000 in direct damages and $2,400,000 in consequential damages (Depreciated Sale of Stock to meet Company's obligations following CV Investments, LLC's Breach of January 28, 2018 Agreement)

Please attach copies of all invoices relating to your claim. Do not send original documents. Copies of the documents provided to the Receiver will not be returned to the creditor. You

must maintain the original documents as the Receiver may ultimately request them for verification.

Curaçao-Multi Commodities Centre
WORLDWIDE SOLUTIONS

October 12, 2020

Robin S. Weiss, Esq.
CONRAD O'BRIEN
1031 W. 8th Avenue
King of Prussia, PA 19406

Re: SEC v. Smith, et al. Civ. No. 2:19-cv-17213-MCA (D.N.J.)
NOTICE OF APPOINTMENT OF RECEIVER

Dear Ms. Weiss:

I am writing in response to your written correspondence regarding the above referenced matter to provide a certified statement setting forth CMCC Development Group, LLC's ("CMCC") business dealings with Brenda Smith.

On December 22, 2017, Ms. Brenda Smith purchased one (1) share of stock in CMCC and transferred $75,000 as payment therefore.

On January 29, 2018, Ms. Smith, on behalf of CV Investments, LLC ("CVI"), entered into an agreement with CMCC to obtain assignment of an agreement to purchase the outstanding shares of DataPlanet, N.V. for a price of $16,500,000. In consideration for CMCC assigning its rights to this transaction to CVI and for cooperating with CVI in connection with the transaction, CVI agreed to pay CMCC total consideration of $5,000,000, which included $75,000 upon execution of that Agreement on January 29, 2018, and $375,000 upon DataPlanet, N.V.'s parent company, United Telecommunication Services, N.V.'s ("UTS") acceptance of the assignment, which occurred shortly thereafter. Thirty days after UTS's acceptance, CVI was to pay an additional $250,000 to CMCC. However, despite UTS's acceptance of the assignment and the passage of thirty days, CVI failed and refused to pay CMCC $500,000 in accordance with the agreement, despite due demand.

Curaçao Mul. Communities Center
WORLDWIDE SOLUTIONS

As a result of Ms. Smith's breach of this agreement, CMCC was required to lower its stock price from $250,000 to $50,000 per share in order to sell 12 shares of CMCC stock in rapid fashion in order to meet its obligations. Accordingly, Ms. Smith's breach resulted in CMCC incurring $500,000 in direct damages and $2,400,000 in consequential damages.

Since learning about her arrest and the subsequent receivership, we realize that we are likely never going to recover any of this money from Ms. Smith. While we are consulting with legal counsel to make a claim against Ms. Smith's estate, it is also our intention to move against her one share in CMCC to mitigate our damages.

I make the foregoing certified statement in compliance with Paragraph 23(C) of the Court's Order Appointing Receiver and under penalty of perjury.

Sincerely,

George H. Kearns, III
Chairman and CEO
CMCC Development Group, LLC

January 29, 2018

CV Investments, LLC
200 Four Falls, Suite 210
West Conshohocken, PA 19428

Mr. George Kasaris
CMCC Development Group, LLC
6 Dickenson Drive, Suite 120
Chadds Ford, PA 19317

Re: Amended Letter of Intent

Mr. Kasaris

As you know, we previously entered into a Letter of Intent on or about January 17, 2018 (the "Existing Agreement"). Additionally, we have discussed our need to amend the Existing Agreement in order to facilitate the assignment of the purchase agreement of the DataPlanet shares and to reconcile some of the consideration payable to CMCC. Therefore, we hereby desire to amend the Existing Agreement as set forth in this amended Letter of Intent.

Based on our conversations and the information supplied to us, the general terms of our proposal regarding the proposed transaction (the "Transaction") in which CMCC Development Group, LLC ("CMCC") would assign, sell and transfer its right to purchase 75% of the outstanding shares of DataPlanet, N.V. ("DataPlanet") to CV Investments, LLC or an affiliate thereof ("CVI") for a purchase price of $1,650,000.00. Such assignment would consist of those rights currently held by CMCC as more fully set forth in the attached letter from GTS and proposed Stock Purchase Agreement.

We would like to proceed subject to the following terms:

1. CVI and CMCC intend to negotiate, execute and deliver a definitive agreement (the "Definitive Agreement") with respect to the Transaction based on the principal terms set forth herein. The Definitive Agreement will be prepared by CVI's counsel. In lieu of a Definitive Agreement, CVI and DataPlanet may enter into negotiations directly to execute a purchase agreement (the "Purchase Agreement") for the purchase of 75% of the outstanding DataPlanet shares. The execution of a Purchase Agreement will satisfy the requirement for a Definitive Agreement.

2. In consideration of the mutual covenants set forth herein, the willingness of CVI to pursue a Transaction and the time and resources that CVI shall devote in pursuit of the Transaction and ultimate purchase of the DataPlanet shares, from the date of this letter until the earlier of (i) the execution and delivery of the Definitive Agreement or Purchase Agreement and (ii) the Expiration Date (as defined below), each of CMCC and its members and officers, agrees

that none of CMCC, any director, officer, employee, member, stockholder or agent of any of them, will solicit, participate in any discussions or negotiations regarding, or enter into any agreement or understanding or otherwise accept, any proposals or offers from any third party relating to any sale, merger, acquisition, restructuring, reorganization, consolidation or dissolution of, or investment in, DataPlanet or the acquisition of all or any material portion of DataPlanet's business (whether by way of acquisition of equity interests or assets of DataPlanet). The covenants in this paragraph 2 apply to any and all discussions in which CMCC is currently involved with third parties. For purposes hereof, "Expiration Date" means 60 days following the date hereof.

3. Between the date of this letter and the Expiration Date, CMCC shall provide all information regarding its business and financial affairs relating to DataPlanet reasonably requested by CVI and shall cooperate fully with CVI, and CVI's representatives, attorneys and representatives, in connection with a due diligence review by CVI of DataPlanet and the business of DataPlanet. Satisfactory completion of such review is a condition to CVI's negotiation and execution of any Definitive Agreement or Purchase Agreement.

4. Each of the parties understands its own and maintain in strict confidence all discussions concerning and information supplied in connection with this letter ("Confidential Information") in a less the same manner and with the same protections as such party maintains for its own confidential and proprietary information, but in no event less than with reasonable care. Neither party shall disclose the Confidential Information to any person or body, except to its affiliates and its and their respective employees, consultants and services (collectively, "Representatives") to the extent necessary to carry out its evaluation of a Transaction, provided that such disclosure shall be made in such manner as ensures that any such Representative shall comply with the terms of this Agreement.

5. As compensation for consummating a purchase of 75% of the outstanding shares of DataPlanet, CVI shall pay CMCC $5,000,000 (the "Consideration"). The Consideration shall be paid as follows: $5,000,000 due upon closing of the purchase of the DataPlanet shares, less any payments made to CMCC prior to closing. Payment of the Consideration is expressly conditioned upon (i) CVI obtaining financing for the Transaction, (ii) negotiation of the Definitive Agreement or Purchase Agreement and (iii) strict adherence to all terms set forth in this Letter of Intent by CMCC, its members and its principal, George Kearns. CVI shall provide proof of funds within 30 days of the date of this agreement. Notwithstanding the foregoing, CVI shall pay to CMCC the following: (i) $75,000 upon execution of this Agreement, $175,000 upon United Telecommunication Services N.V.'s acceptance of the assignment of a Purchase Agreement for the exclusive right to purchase 75% of the outstanding shares of DataPlanet for a purchase price of $16,500,000 and (iii) an additional $250,000 paid sixty (60) days thereafter, provided, however, in the event that CVI fails to obtain financing for the Transaction or fails to close the Transaction, all monies paid to CMCC shall be applied to equity in CMCC on behalf of CVI at the rate of $250,000 per unit. In the event CVI closes the Transaction, all monies paid to CMCC shall be credited against the Consideration.

6. CMCC and its principal, George Kearns, shall assist in the negotiation of the following with United Telecommunication Services N.V.:

(i) approval of the assignment of CMCC's exclusive right to purchase the DataPlanet Stock

(ii) assist in extending the exclusivity period for the purchase of the DataPlanet stock for a period of 60 days. Consummation of the transaction and payment of the Consideration is expressly conditioned on CVI obtaining an extension of the exclusivity period.

(iii) assist in due diligence of DataPlanet.

3. THIS LETTER AND THE DEFINITIVE AGREEMENT SHALL CREATE BINDING COMMITMENTS AND LEGALLY ENFORCEABLE AGREEMENTS.

4. The parties intend the agreements contained in paragraphs 1 through 3 of this letter to be binding upon and enforceable against each of them and their respective rights and obligations contained in such paragraphs shall inure to the benefit of the parties' successors and assigns.

5. This letter (i) shall be governed by the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of laws, (ii) may only be modified by a writing executed by each of CMCC and CVI, (iii) sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior agreements and (iv) may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. This letter and any dispute arising hereunder or relating to the obligations and/or rights of the parties hereunder shall be subject to the non-exclusive jurisdiction of any Pennsylvania State court or Federal court of the United States of America sitting in Pennsylvania, and any appellate court serving therefrom. Each of the parties hereto irrevocably waives, to the fullest extent such party may effectively do so under applicable law, trial by jury and any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in such court and any claim that any such suit, action or proceeding brought in such court has been brought in an inconvenient forum.

If the foregoing meets with your approval, please indicate your assent hereto and agreement by signing at the space provided below and returning the same to me.

Very truly yours,

CVI INVESTMENTS, LLC

By: Brenda A. Smith
Brenda A. Smith

ACCEPTED AND AGREED

C-MCC DEVELOPMENT GROUP, LLC

By: _____
Name: Gary Kerns

Exhibit O

OWNERSHIP INTEREST PURCHASE AGREEMENT

This Ownership Interest Purchase Agreement ("Agreement") is entered into as of December 22, 2017 (the "Effective Date") by and between George S. Kaiser, III with a business address of 6 Dickinson Drive, Suite 110, Chadds Ford, PA 19317 ("Seller") and Brenda Snell, a Pennsylvania resident with a principal address of 200 4 Falls, Suite 211, 1001 Conshohocken State Road, West Conshohocken, PA 19428 ("Buyer"). Buyer and Seller may collectively be referred to as the "Parties."

WHEREAS, Buyer acknowledges that Seller is the record owner of a certain interest in CMCC DEVELOPMENT GROUP, LLC (the "Company"), a Pennsylvania limited liability company with a principal business address of 6 Dickinson Drive, Suite 110, Chadds Ford, PA 19317; and

WHEREAS, the Parties desire to enter into this Agreement pursuant to which Buyer will purchase 1/2% ownership interest in the Company from Seller.

NOW, THEREFORE, for valuable consideration, including the promises set forth herein, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **PURCHASE AND SALE:** Subject to the terms and conditions set forth in this Agreement, Buyer hereby agrees to purchase from Seller, and Seller hereby agrees to sell, transfer and convey to the Buyer an ownership interest in Company representing One (1%) ownership, being One (1) unit (the "Units") out of a total of 100 Units as currently issued in the company records.

2. **PURCHASE PRICE:** The purchase price for the Units shall be TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00 US) (the "Purchase Price"), to be paid to the Seller in cash as described herein.

3. **PAYMENTS:** Notwithstanding other requirements contained herein, the transfer of Seller's 1% interest is wholly contingent upon the complete satisfaction of the Purchase Price through the following payments being made from Buyer to Seller: Seventy Five thousand dollars ($75,000.00).

4. **TRANSFER:** Seller's ownership interest in Company shall transfer to Buyer upon payment of the payment above. Seller shall also be necessary reasonable documents evidencing this transfer and the transfer shall be recorded in the Company records effective as of the date of the final payment.

5. **AUTHORITY:** Parties each acknowledge that it is authorized to enter into this Agreement and other related documents on behalf of any respective company. Furthermore, each Party recognizes the other is relying on this acknowledgment of authority in agreeing to the terms of this Agreement and related documents.

6. **DEFAULT:** In the event Buyer defaults on its obligations in this Agreement or the Note, without limiting any other legal rights and remedies of Seller, Seller shall be entitled to retain any amounts paid to date as well as its full ownership interest in the Company.

7. **SEVERABILITY:** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if

limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

8. **BINDING EFFECT:** The covenants and conditions contained in this Agreement shall apply to and bind the parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

9. **BROKER'S / ATTORNEY'S FEES:** The Parties represent that there has been no act in connection with the transactions contemplated in this Agreement that would give rise to a valid claim against either party for a broker's fee, finder's fee or other similar payment. In the event of any litigation and/or court proceeding relating to this Agreement, the substantially prevailing party shall be entitled to recover from the other party its costs of litigation, including attorney's fees.

10. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other provisions, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both the Seller and Buyer.

11. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

12. **DISPUTE RESOLUTION:** Any disputes arising under this Agreement shall be resolved in a court of competent jurisdiction in the Commonwealth of Pennsylvania.

13. **NOTICE:** Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service:

(a) If to Buyer:
c/o Brenda Smith,
280 4 Falls, Suite 2.1
1801 Conshohocken State Road
West Conshohocken, PA 19428

(b) If to Seller:
c/o Donald J. Weiss
6 Dickinson Drive
Suite 110
Chadds Ford, PA 19317

14. **WAIVER:** The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

BUYER:

By: _____ 12 / 22 / 2017
Brenda Smith Date

SELLER:

By: _____ / 2017
George T. Norris, III: Member Date
GMCO Development Group, LLC

Exhibit P

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

CREDITOR CLAIM FORM

Name of Creditor:

Alpha Capital Trading Group, LLC

Name and Address Where Notices Should be Sent:

David B. Rothrock

[redacted]

Email Address:

[redacted]

Telephone No.:

David B. Rothrock [redacted]

James R. Bell [redacted]

Date(s) of Claim:

2018

Amount of Claim:

Approx. $250,000.00

Please attach copies of all invoices relating to your claim. Do not send original documents. Copies of the documents provided to the Receiver will not be returned to the creditor. You must maintain the original documents as the Receiver may ultimately request them for verification.

Alpha Capital Trading Group- Funding & Withdraw Activity Detail to CV Brokerage Inc

---

Funding-- Alpha Capital Trading Group [from third-party affiliate entity] to CV Brokerage Inc- c/o Alpha Capital Trading Group Account:

Deposits

Date	Amount	Funding Source/ Recipient Entity Name	From Bank Entity	To Bank Entity	Funding Status
10/10/18	$4,020,000	OPM Investments, LLC c/o David B. Rothrock	TD Ameritrade account		Completed
10/10/18	$4,020,000	OPM Investments, LLC c/o David B. Rothrock		PNC Bank	Completed
10/19/18	-$4,000,000	OPM Investments LLC	PNC Bank		Completed
10/19/18	**+$4,000,000**	CV Brokerage Inc- c/o Alpha Capital Trading Group Account		PNC Bank	Completed

---

Funding-Withdraw- Alpha Capital Trading Group [to third-party affiliate entity] from CV Brokerage Inc- c/o Alpha Capital Account:

Date	Amount	Funding Source/ Recipient Entity Name	From Bank Entity	To Bank Entity	Funding Status
10/27/18	**-$1,000,000**	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
10/27/18	+$1,000,000	Rock Real Estate Family Partners		PNC Bank	Completed
12/31/18	**-$1,000,000**	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
12/31/18	+$1,000,000	Rock Real Estate Family Partners		PNC Bank	Completed
01/23/19	**-$1,000,000**	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
01/23/19	+$1,000,000	Cedar Crest Professional Park LP		Wells Fargo	Completed
07/03/19	**-$750,000**	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
07/03/19	+$750,000	Limestone Partners, LP		PNC Bank	Completed
07/23/19	**-$250,000**	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		In-Complete
07/23/19	$250,000	Limestone Partners, LP		PNC Bank	In-Complete

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

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **BRENDA SMITH, BROAD REACH CAPITAL, LP, BROAD REACH PARTNERS, LLC, and BRISTOL ADVISORS, LLC,** **Defendants.**	**C. A. No. 2:19-cv-17213 (MCA)**

ORDER

THIS MATTER, having come before the Court on the filing of the Receiver, Kevin Dooley Kent's First Omnibus Motion for Order Resolving Disputed Non-Investor Creditor Claims, and upon consideration of all submissions filed in response thereto, IT IS HEREBY ORDERED as follows:

A. Richard Galvin/Galvin Investment Company, LLC

The creditor claim submitted by Richard Galvin and Galvin Investment Company, LLC, as set forth in Exhibits A and B to the Receiver's Motion, is hereby **DENIED** in its entirety.

B. Southern Minerals Group

The creditor claim submitted by Southern Minerals Group, as set forth in Exhibit E to the Receiver's Motion, is hereby **DENIED** in its entirety.

C. William McCormack

The creditor claim submitted by William McCormack, as set forth in Exhibits H and I to the Receiver's Motion, is hereby **DENIED** in its entirety.

D. Scott Koppenheffer

The creditor claim submitted by Scott Koppenheffer, as set forth in Exhibits K and L to the Receiver's Motion, is hereby **DENIED** in its entirety.

E. Industrial and Commercial Bank of China Financial Services LLC ("ICBCFS")

The creditor claim submitted by ICBCFS, as set forth in Exhibit M to the Receiver's Motion, is hereby **DENIED** in its entirety.

F. CMCC Development Group, LLC

The creditor claim submitted by CMCC Development Group, LLC, as set forth in Exhibit N to the Receiver's Motion, is hereby **DENIED** in its entirety.

G. Alpha Capital Trading Group

The creditor claim submitted by Alpha Capital Trading Group, as set forth in Exhibit P to the Receiver's Motion, is hereby **DENIED** in its entirety.

H. Internal Revenue Service

The Receiver's request for an order requesting the Internal Revenue Service ("IRS") to make a determination as to whether its claims for taxes and penalties

will be submitted through the Receiver's claims process is hereby **GRANTED.** The IRS is requested to serve upon the Receiver its position regarding whether it intends to pursue any and all claims against Receivership Entities[1] within fourteen (14) days of its receipt of this Order. The Receiver is hereby directed to serve this order on the IRS within five (5) days.

BY THE COURT:

DATE:_____ _____

, J.

[1] "Receivership Parties" refers to the entities identified and placed into Receivership in this Court's June 29, 2020 Receivership Order (ECF No. 22), as amended by Order dated June 24, 2021 (ECF No. 96).

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

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **BRENDA SMITH, BROAD REACH CAPITAL, LP, BROAD REACH PARTNERS, LLC, and BRISTOL ADVISORS, LLC,** **Defendants.**	**C. A. No. 2:19-cv-17213 (MCA)** **CERTIFICATE OF SERVICE**

I hereby certify, this 14th day of March, 2023, that I caused to be served a true and correct copy of the Notice of First Omnibus Motion of Receiver, Kevin Dooley Kent, for Order Resolving Disputed Non-Investor Creditor Claims upon Plaintiff, Securities and Exchange Commission, through counsel of record, and upon counsel of record for all other parties, by electronic filing pursuant to Fed.R.Civ.P. 5 (b), and upon Defendant, Brenda A. Smith, on behalf of all defendants, via first-class mail, postage prepaid, as follows:

Brenda A. Smith
Register No. 72832-050
FCI Danbury
Federal Correctional Institution
Route 37
Danbury CT 06811

s/ Robin S. Weiss
Robin S. Weiss, Esq.
Attorney for Receiver, Kevin Dooley Kent