

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

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

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

**Defendants.**

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

**Motion Day: June 20, 2023**

**NOTICE OF MOTION OF RECEIVER, KEVIN DOOLEY KENT, FOR  
APPROVAL OF TENTH INTERIM FEE APPLICATION FOR THE  
PERIOD OCTOBER 1, 2022 THROUGH DECEMBER 31, 2022**

**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 June 5, 2023, or as soon thereafter as the Court permits, at a date and time to be determined by the Court, for Approval of the Receiver's Tenth Interim Fee Application for the Period October 1, 2022 through December 31, 2022.

**PLEASE TAKE FURTHER NOTICE THAT**, in support of this Motion, the undersigned will rely upon the accompanying Interim Fee Application with exhibits attached thereto, which incorporates and is in lieu of a more formal brief, and which is incorporated herein by reference.

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

Respectfully submitted,

Dated: 5/16/2023

*s/ Robin S. Weiss*  
\_\_\_\_\_  
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**RECEIVER, KEVIN DOOLEY KENT'S TENTH INTERIM FEE  
APPLICATION, FOR THE PERIOD OCTOBER 1, 2022  
THROUGH DECEMBER 31, 2022**

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Dated: 5/16/2023

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Pursuant to the Court's Order Appointing Receiver dated June 29, 2020, Kevin Dooley Kent, Receiver, hereby submits this Tenth Interim Fee Application for the Period October 1, 2022 through December 31, 2022, and moves for approval of payment of fees and expenses invoiced by the Receiver, prior counsel for the Receiver, Conrad O'Brien PC, and the Court-appointed accountant to the Receiver, Alvarez & Marsal Disputes and Investigations, LLC ("the Application").

The balance in the Receivership Account as of the close of the quarter was \$7,983,221.50. The Receiver and his Counsel continue to focus their efforts on preserving, locating and maximizing Receivership Assets, pursuing claims informally and through litigation, and identifying, evaluating, negotiating and managing claims asserted against the Receivership Estate. The Receiver's Accountants continue to provide forensic and expert support as needed in connection with the pursuit of affirmative claims, assist with identifying, quantifying and evaluating claims asserted against the Estate, manage the document repository, perform tax-related services for the Receivership, and support the Receiver in his negotiations with the IRS.

This interim fee application focuses on developments during the tenth quarter of the Receivership. The Receiver incorporates by reference his prior interim fee applications with respect to events that took place in prior quarters.

## **I. BACKGROUND**

This action involves an investment advisory fraud in connection with which Defendants, Brenda A. Smith (“Brenda Smith” or “Smith”), Broad Reach Capital, LP, Broad Reach Partners, LLC and Bristol Advisors, LLC, are alleged to have raised in excess of \$100 million from at least forty (40) investors, based upon false representations regarding trading strategies to be implemented when, in reality, the vast majority of these investments were funneled into unrelated companies, used to pay back other investors, or utilized for personal use. (ECF No. 1). It is estimated that investors are still owed over \$60 million in principal. Brenda Smith pled guilty to committing securities fraud in connection with Broad Reach Capital on September 9, 2021, in *USA v. Smith*, No. 2:20-cr-00475-MCA (D.N.J.). Smith was sentenced to 109 months in prison on May 4, 2022.

On June 29, 2020, this Court appointed Mr. Kent as Receiver to assume control of, marshal, pursue and preserve assets of Defendant, Brenda Smith, and the Receivership Parties<sup>1</sup> (hereinafter “Receivership Assets” or “Receivership Estate”). Receivership Order, Whereas ¶ 3; ¶¶ 1–3, 5 (ECF No. 22). The

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<sup>1</sup> The Receivership Parties include Broad Reach Capital, LP, Broad Reach Partners, LLC, Bristol Advisors, LLC, BA Smith & Associates LLC, Bristol Advisors LP, CV Brokerage, Inc., Clearview Distribution Services LLC, CV International Investments Limited, CV International Investments PLC, CV Investments LLC, CV Lending LLC, CV Minerals LLC, BD of Louisiana, LLC, TA1, LLC, FFCC Ventures LLC, Prico Market LLC, GovAdv Funding LLC, Elm Street Investments, LLC, Investment Consulting LLC, and Tempo Resources LLC

Receivership Order authorized the Receiver to retain the law firm of Conrad O'Brien PC ("Conrad O'Brien", "Law Firm" or "Counsel")<sup>2</sup> and Alvarez & Marsal Disputes and Investigations, LLC ("Alvarez" or "Accountant") as his counsel and accountant, respectively (collectively "Retained Personnel"). *Id.*, ¶ 71. The Receivership Order further provides that, subject to the Court's approval, the Receiver and his Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate. *Id.*, ¶ 72.

The Court-approved fee schedules, which provide substantial discounts from the standard rates of the Law Firm and the Accountant, and which hourly fee rates the Court has already found to be reasonable, are as follows:

<b><u>Receiver</u></b>	
<b>Name</b>	<b>Rate</b>
Kevin Dooley Kent	\$510.00
<b><u>The Law Firm</u></b>	
<b>Name/Position</b>	<b>Rate</b>
Andrew Gallinaro, Partner	\$365.00
Associate	\$240.00 - \$330.00
Paraprofessional	\$165.00
<b><u>The Accountant</u></b>	
<b>Name/Position</b>	<b>Rate</b>
Michael Shanahan, Managing Director	\$550.00
Managing Director/Senior Director	\$550.00 - \$725.00
Directors/Managers	\$425.00 - \$525.00

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<sup>2</sup> On January 13, 2023, the Receiver filed a Motion for Permission to Change Counsel, to be effective approximately February 1, 2023, in light of his Counsel's anticipated move to Clark Hill PLC. (ECF No. 219). The Motion was approved on January 17, 2023. (ECF No. 223).



Sr. Associates/Associates

\$275.00 - \$375.00

*Id.*, ¶¶ 79-83. The Receiver, Law Firm and Accountant have not sought increases in these hourly rates since their appointment nearly three (3) years ago, but anticipate seeking approval for a rate increase in the near future.

Pursuant to the Receivership Order and the U.S. Securities and Exchange Commission’s Billing Instructions for Receivers (“Billing Instructions”), the Receiver, Counsel and the Accountant are to be paid their reasonable fees and expenses out of the Receivership Estate. Upon Order of this Court approving such Application, the Receiver may pay up to eighty percent (80%) of the compensation/professional fees and expenses of the applicants.<sup>3</sup> *Id.*, ¶¶ 75, 81, 84.

The Receiver previously submitted this Application to the SEC, in accordance with the Billing Instructions and the Receivership Order. The SEC has advised the Receiver that it does not have any objection to the Application.

This is the tenth interim application for approval of fees and expenses of the Receiver and his Retained Professionals. A summary of the prior interim fee applications is as follows:

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<sup>3</sup> At the close of the Receivership, the Receiver will file a final fee application for reasonable compensation and expense reimbursement, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the Receivership. Although Interim Fee Applications are subject to a twenty percent (20%) holdback, “[t]he total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.” *Id.*, ¶¶ 74-75.

	Total Fees	Fees Requested <sup>4</sup>	Total Expenses	Expenses Requested <sup>5</sup>	Status
<b>First Interim Fee Application for the Period June 29, 2020 through September 30, 2020 (ECF No. 43), Filed November 13, 2020</b>					
<b>Law Firm</b>	\$171,760.80	\$137,408.64	\$12,434.25	\$9,947.40	Approved 4/5/21 (ECF No. 70)
<b>Accountant</b>	\$43,577.50	\$34,862.00	\$0.00	\$0.00	
<b>Second Interim Fee Application for the Period October 1, 2020 through December 31, 2020 (ECF No. 50), Filed February 12, 2021</b>					
<b>Law Firm</b>	\$101,076.50	\$80,861.20	\$441.58	\$353.26	Approved 7/6/21 (ECF No. 103)
<b>Accountant</b>	\$155,977.50	\$124,782.00	\$170.00	\$136.00	
<b>Third Interim Fee Application for the Period January 1, 2021 through March 31, 2021 (ECF No. 88), Filed May 28, 2021</b>					
<b>Law Firm</b>	\$210,921.00	\$168,736.80	\$510.87	\$408.70	Approved 7/6/21 (ECF No. 104)
<b>Accountant</b>	\$454,867.50	\$363,894.00	\$3,280.70	\$2,624.56	
<b>Fourth Interim Fee Application for the Period April 1, 2021 through June 30, 2021 (ECF No. 112), Filed August 16, 2021</b>					
<b>Law Firm</b>	\$230,164.50	\$184,131.60	\$7,431.85	\$5,945.48	Approved 9/10/21 (ECF No. 121)
<b>Accountant</b>	\$396,202.50	\$316,962.00	\$4,574.34	\$3,659.47	
<b>Fifth Interim Fee Application for the Period July 1, 2021 through September 30, 2021 (ECF No. 137), Filed November 24, 2021</b>					
<b>Law Firm</b>	\$170,406.50	\$136,325.20	\$551.38	\$441.10	Approved 2/22/22 (ECF No. 166)
<b>Accountant</b>	\$184,725.00	\$147,780.00	\$5,126.90	\$4,101.52	
<b>Sixth Interim Fee Application for the Period October 1, 2021 through December 31, 2021 (ECF No. 174), Filed March 17, 2022</b>					
<b>Law Firm</b>	\$174,076.00	\$139,260.80	\$716.30	\$573.04	Approved 5/5/22 (ECF No. 193)
<b>Accountant</b>	\$239,300.00	\$191,440.00	\$3,236.60	\$2,589.28	
<b>Seventh Interim Fee Application for the Period January 1, 2022 through March 31, 2022 (ECF No. 197), Filed June 2, 2022</b>					
<b>Law Firm</b>	\$152,256.00	\$121,804.80	\$1,401.86	\$1,121.49	Approved 6/15/22 (ECF No. 199)
<b>Accountant</b>	\$142,877.50	\$114,302.00	\$3,415.70	\$2,732.56	
<b>Eighth Interim Fee Application for the Period April 1, 2022 through June 30, 2022 (ECF No. 209), Filed October 17, 2022</b>					
<b>Law Firm</b>	\$115,067.50	\$92,054.00	\$867.81	\$694.25	

<sup>4</sup> This represents eighty percent (80%) of the total fees.

<sup>5</sup> This represents eighty percent (80%) of the total expenses.

<b>Advertising Expenses On Behalf of Estate<sup>6</sup></b>			\$6,119.78	\$6,119.78	Approved 1/5/23 (ECF No. 217)
<b>Accountant</b>	\$73,652.50	\$58,922.00	\$2,135.40	\$1,708.32	
<b>Ninth Interim Fee Application for the Period July 1, 2022 through September 30, 2022 (ECF No. 119), Filed February 8, 2023</b>					
<b>Law Firm</b>	\$53,462.00	\$42,769.60	\$408.15	\$326.52	Approved 4/27/23 (ECF No. 243)
<b>Accountant</b>	\$47,600.00	\$38,080.00	\$2,947.60	\$2,358.08	

## II. CASE STATUS

### A. Cash on Hand, Administrative Expenses, and Unencumbered Funds

As of December 31, 2022, total cash on hand in the centralized Receivership Account (“Receivership Account”) was \$7,983,221.50. The Receiver brought in nearly \$500,000.00 in settlement proceeds during this quarter.<sup>7</sup> The Receiver anticipates that his ongoing pursuit of claims and litigation will result in financial benefit for the Receivership Estate through settlements or judgments. Additionally, \$444,213.08 remains held in two Industrial and Commercial Bank of China Financial Services (“ICBC”) clearing accounts for CV Brokerage.<sup>8</sup>

<sup>6</sup> These represent reimbursement to Conrad O’Brien at a rate of 100% for Estate-related advertising expenses relating to publication of the Notice of Claims Procedure Bar Date in various states.

<sup>7</sup> A portion of these settlements represents a first installment payment recovered through ancillary litigation pursued by the Receiver. That settlement is governed by the contingency fee agreement approved by the Court through its Orders Approving the Receiver’s Second and Third Motions for Permission to Initiate Litigation on Behalf of the Receivership Estate. (ECF Nos. 161, 167). After the close of the quarter, attorneys’ fees and expenses were deducted from that settlement payment following the Court’s approval of that settlement, which payments will be reflected in the next interim fee application.

<sup>8</sup> These funds are being held pursuant to the Stipulation to Resolve ICBCFS’ Motion to Amend the Amended Order Appointing Receiver. (ECF No. 30).

Administrative expenses paid during this quarter total \$190.97, consisting of property taxes paid to the Tangipahoa Parish Sheriff's Office for 2022.

For further detail, the Receiver has attached the Standardized Fund Accounting Report ("SFAR") for this quarter as Exhibit "A" to this Application.

**B. Administration of Case to Date**

**1. Litigation-Related Activities**

**a. Motion Practice**

On October 14, 2022, the Receiver filed a Motion to Approve a Settlement Resolving the Receiver's Insurance Coverage Claim with the Company (ECF No. 206),<sup>9</sup> the exhibits to which were filed under seal. The Receiver simultaneously filed a Motion to Seal the Exhibits to the Motion (ECF No. 208), which was granted on October 17, 2022 (ECF No. 211). The Court granted the Motion on November 15, 2022. (ECF No. 215).

On October 24, 2022, the Receiver filed a Motion to Enforce the Receivership Order and to Compel Brenda Smith's Compliance Therewith, in connection with Ms. Smith's refusal to sign a consent directive which would enable the Receiver to obtain bank account information from overseas banks. (ECF No. 212). The Court granted the Motion on November 8, 2022. (ECF No. 214).

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<sup>9</sup> "Company" or "the Company" is a pseudonym for an entity whose name was disclosed in supporting materials filed under seal.

Brenda Smith signed and returned the consent directive to the Receiver after the close of the quarter.

On January 13, 2023, the Receiver filed a Motion for Permission to Change Counsel, in light of Conrad O'Brien's anticipated February 1, 2023 move to Clark Hill. (ECF No. 219). The Court granted the Motion on January 17, 2023. (ECF No. 223).

On January 16, 2023, the Receiver filed his Fourth Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate (ECF No. 220), the exhibits to which he filed under seal (ECF No. 221). The Receiver simultaneously filed a Motion to Seal the Exhibits to the Motion (ECF No. 222), which was granted on January 17, 2023. (ECF No. 224).

On January 23, 2023, the Receiver filed a Motion for Permission to Change Banks. (ECF No. 225). The Court granted the Motion on January 24, 2023, authorizing the Receiver to open one or more custodial accounts at WSFS Bank or another federally insured bank with a presence in New Jersey, to receive and hold all cash equivalent Receivership Assets. (ECF No. 226). The Receiver has opened the account with WSFS, and transferred funds into the account after the close of the quarter.

**b. Lawsuits Filed on Behalf of the Receivership Estate**

The Receiver's twelve (12) lawsuits and their current status are as follows:

- 1) ***Kevin D. Kent, in his capacity as Receiver v. Emperor Global Enterprises LLP, et al., No. 2:21-cv-13099 (D.N.J.):*** Oral argument on the Defendants’ Motion to Transfer Venue (ECF No. 37) was held on October 4, 2022. On November 1, 2022, the Court entered an Order denying the Motion to Transfer. (ECF No. 66). A status conference took place on November 16, 2022. The parties have fully briefed Defendants’ Motion to Dismiss Complaint for lack of jurisdiction as to all defendants (except Emperor Global Enterprises LLP) (ECF No. 72) . The Receiver submitted a response to the Motion to Dismiss on December 28, 2022. (ECF No. 74). Defendants submitted a reply brief on January 24, 2023. (ECF No. 73). The Motion to Dismiss has not yet been ruled upon. Meanwhile, the parties are proceeding with written discovery and have brought various discovery disputes to the Court’s attention for resolution. (*See* ECF Nos. 71, 80, 89, 92)
  
- 2) ***Kevin D. Kent, in his capacity as Receiver v. Medical Consultants Instructional Training Center, et al., No. 2:21-cv-13104 (D.N.J.):*** This case was closed following the Court’s approval of the settlement on August 4, 2022. (ECF No. 28). However, the defendants have not satisfied all of their payment obligations under the Settlement Agreement, and one of the defendants has filed for bankruptcy protection. The Receiver anticipates submitting a claim through the bankruptcy proceedings.
  
- 3) ***Kevin D. Kent, in his capacity as Receiver v. Richard C. Galvin, et al., No. 2:21-cv-13105 (D.N.J.):*** On September 23, 2022, counsel for Defendants filed a motion to withdraw as counsel. (ECF No. 33). Following a hearing held on October 11, 2022, the motion to withdraw was granted on October 13, 2022, and the corporate defendants were given until November 30, 2022 to secure replacement counsel. (ECF No. 36). The corporate defendants failed to secure replacement counsel by the November 30, 2022 deadline. A telephone status conference was held on December 7, 2022. Following the status conference, the Court entered an Order (ECF No. 39) staying Galvin Investment Company’s (“GIC”) counterclaim which was the subject of the Receiver’s Motion to Dismiss (ECF No. 25).<sup>10</sup> Following the

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<sup>10</sup> The counterclaims were also submitted through the Receivership claims process and will be litigated in connection therewith.

status conference, the Receiver filed an application to strike GIC's Counterclaims, and the corporate defendants' Answer and Affirmative on December 9, 2022, based upon the corporate defendants' failure to obtain substitute counsel and inability to proceed *pro se*. (ECF No. 40). On December 12, 2022, the Receiver filed a Request for Entry of default against the corporate defendants. (ECF No. 41). The Clerk entered a default against the corporate defendants that same day. Meanwhile, the Receiver is proceeding with discovery with Richard Galvin, who is now representing himself *pro se*.

- 4) ***Kevin Dooley Kent, in his capacity as Receiver v. Agostinho Calcada, No. 2:21-cv-18396 (D.N.J.)***: Fact discovery closed on December 14, 2022. The Receiver filed a Motion for Summary Judgment on April 27, 2023. (ECF No. 34).
- 5) ***Kevin Dooley Kent, in his capacity as Receiver v. Renato Iregui, et al., No. 2:21-cv-20691 (D.N.J.)***: Renato Iregui and Kelly Lynn Ulmer filed Answers to the Receiver's Complaint on April 29, 2022 and July 18, 2022, respectively. (ECF Nos. 12 and 23, respectively). The corporate defendants never responded to the Complaint. On August 1, 2022, the Receiver filed a Request for Entry of Default against the corporate defendants. (ECF No. 25). The Clerk entered a default against the corporate defendants on August 3, 2022. Meanwhile, the Receiver is proceeding with discovery with Renato Iregui and Kelly Ulmer.
- 6) ***Kevin Dooley Kent, in his capacity as Receiver v. Richard Shawn Ellis, et al., No. 2:21-cv-20754 (D.N.J.)***: Oral argument on Defendants' Motion to Transfer Venue (ECF No. 26) was held on September 28, 2022. On January 4, 2023, the Court entered an Order denying the Motion to Transfer. (ECF No. 43). A status conference was held on January 13, 2023, and a settlement conference took place on February 21, 2023. Following the settlement conference, the Court referred the case to mediation and scheduled a status conference for May 23, 2023. (ECF No. 58). The parties are engaging in informal settlement discussions before scheduling the mediation.
- 7) ***Kevin Dooley Kent, in his capacity as Receiver v. Jordan Denise, et al., No. 2:22-cv-00388 (D.N.J.)***: Jordan Denise filed an Answer to the Complaint *pro se* on May 24, 2022 (ECF No. 8). The corporate



defendants never responded to the Complaint. On October 11, 2022, the Receiver filed a Request for Entry of Default against the corporate defendants. (ECF No. 18). The Clerk entered a default against the corporate defendants on October 12, 2022. Further, after Jordan Denise failed to participate in discovery, the Receiver filed a letter with the Court on October 19, 2022, requesting an order compelling her to provide initial disclosures and responses to the Receiver's written discovery requests. (ECF No. 19). Following a telephone status conference held on November 1, 2022, the Court entered a Text Order requiring Ms. Denise to respond to the Receiver's written discovery requests by December 15, 2022. (ECF No. 23). After Ms. Denise failed to provide her discovery responses by the deadline, the Receiver filed a request for leave to file a motion to compel and for sanctions on January 3, 2023. (ECF No. 24). Leave was granted on January 4, 2023. (ECF No. 25). The Receiver filed a Motion to Compel and for Sanctions on January 17, 2023, requesting, *inter alia*, that Ms. Denise's Answer to the Complaint be stricken and a default entered against her due to her failure to participate in discovery. (ECF No. 26). Since then, counsel has entered an appearance for Jordan Denise and has provided Ms. Denise's overdue discovery responses. The Motion to Compel was administratively terminated following a status conference held on April 18, 2023.

- 8) ***Surefire Dividend Capture, LP and Kevin Dooley Kent, Esq., as Receiver v. The Nottingham Company, et al., No. 19-CV-04088-BMS (E.D. Pa.)***: Defendants Nottingham Company and Kip Meadows filed an Answer with Affirmative Defenses to the Receiver's Amended Complaint (ECF No. 143) on September 6, 2022. (ECF No. 161). On October 15, 2022, these defendants filed an Answer with Affirmative Defendant to Plaintiff Surefire Dividend Capture, LP's ("Surefire") Amended Complaint. (ECF No. 163). A Rule 16 conference took place on January 18, 2023. (ECF No. 164). The parties are in the process of conducting discovery.
- 9) ***Kevin Dooley Kent, in his capacity as Receiver v. Ronald Hightower, et al., No. 2:22-cv-01195 (D.N.J.)***: The Court entered an Order denying Defendants' Motion to Dismiss (ECF No. 17) on December 30, 2022. (ECF No. 24). On January 27, 2023, Defendants filed an Answer with Counterclaims. (ECF No. 31). The Receiver filed a Motion to Dismiss the Counterclaims on February 17, 2023. (ECF No.



37). Defendants filed a response in opposition on March 6, 2023. (ECF No. 38). The Receiver filed a Reply in Support of the Motion to Dismiss all Counterclaims on March 13, 2023. (ECF No. 39). Meanwhile, the parties are in the process of proceeding with discovery.

**10) *Kevin Dooley Kent, in his capacity as Receiver v. Jeffrey Bydalek, et al., No 2:22-cv-01811 (D.N.J.):*** The parties reached an agreement to resolve this case, which had been administratively terminated pending the outcome of the parties' settlement discussions. The Receiver filed a letter requesting that the case be reopened on January 5, 2023, so he could seek Court approval of the settlement. (ECF No. 26). The Receiver filed a motion to approve the settlement in that case on January 9, 2013. (ECF No. 28). The exhibits to that motion were filed under seal. (ECF No. 29). The Receiver thereafter filed a motion to seal the exhibits (ECF No. 30), as well as a motion to seal the Redacted Complaint (ECF No. 31). The Receiver filed a notice of the settlement in the main Receivership case on January 9, 2013. (ECF No. 218). The Receiver's motions to seal were granted on January 19, 2023 (ECF Nos. 33, 34), and the court entered an order approving the settlement on January 20, 2023. (ECF No. 35). The Receiver filed a Stipulation to Dismiss on January 27, 2023. (ECF No. 38).

**11) *Kevin Dooley Kent, in his capacity as Receiver v. Larry Hooper, et al., No 2:22-cv-01876 (D.N.J.):*** This case was closed following the Court's approval of the settlement on August 29, 2022. (ECF No. 15).

**12) *Kevin Dooley Kent, in his capacity as Receiver v. Edward C. Britton, et al., No. 2:22-cv-02845 (D.N.J.):*** After the defendants failed to plead or otherwise respond to the Complaint, the Receiver filed a Request for Entry of Default on October 12, 2022. (ECF No. 5). The Clerk entered a default against Defendants on October 14, 2022. The Receiver filed a Motion for Default Judgment against the defendants on January 4, 2023. (ECF No. 6).

## **2. Storage & Sale of Belongings and Data**

The Receiver has sent Brenda Smith's rugs and some additional personal property that was being held in storage to Stephenson's Auction in an effort to

recover additional funds for the Receivership Estate. After the close of the quarter, the Receiver received an additional \$397.00 from Stephenson's Auction, bringing the total proceeds from the sale of personal property to \$12,208.20 through seventeen (17) auctions so far. The Receiver continues to hold professional equipment, some other non-marketable personal property of Smith's, and the original books and records of the Receivership Parties.

### **3. Louisiana Property**

Despite aggressive marketing efforts and numerous price reductions, including a reduction to \$495,000.00 on August 25, 2022, the Receiver has been unable to secure a private buyer for the Louisiana property owned by BD of Louisiana, LLC ("the Property"). Based upon conversations with his real estate broker, the Receiver does not believe he can conduct a private sale of the Property which complies with the minimum requirements 28 U.S.C. § 2001(b). The Receiver is therefore attempting to work out a resolution with the bank holding a mortgage on the Property. In the meantime, the Receiver paid property taxes for the Property for 2022.

### **4. Stock Holdings**

The Receiver took back possession of the 5,000 Lyft shares owned by Prico Market, LLC on January 24, 2023. The Receiver sold the Lyft shares for \$16.11

per share on January 26, 2023, resulting in net proceeds of \$80,292.74, after payment of commissions and fees to Raymond James.

#### **5. Private Investments and Ownership Interests**

The Receiver continues to attempt to resolve and/or liquidate Smith's interest in Bluwater Holdings Corp. through her entity Rocmen Holdings, LLC, as well as a potential interest in a gold mine as a result of payments made to Calais Management Corporation. If these interests cannot be liquidated or bought out to the Receiver's satisfaction, the Receiver may seek to initiate litigation against the entities involved in order to protect the interests of the Receivership Estate.

The Receiver has received distributions totaling \$153,177.52 on Smith's \$100,000.00 investment in OTAF (Holgate) LLC through the close of the tenth quarter.

#### **6. Investigation, Development, Pursuit and Settlement of Claims**

The Receiver has filed a total of twelve (12) lawsuits on behalf of the Receivership Estate so far, and has issued demands and/or continues to negotiate with several others. The Receiver anticipates filing additional lawsuits in the near future if those additional claims cannot be resolved.

In total, ten (10) pre-litigation settlements and three (3) litigation settlements have been reached as of December 30, 2022, valued at over \$3.1 million.

## **7. Insurance Coverage Claim**

The Receiver's settlement of his insurance coverage claim submitted on behalf of CV Brokerage was submitted the Court for approval on October 14, 2022 (ECF No. 206) and approved on November 15, 2022. (ECF No. 215).

## **8. Financial Account Reconstruction and Accounting Support**

The Receiver's Accountants at Alvarez and Marsal continue to support the Receiver's efforts. The Accountants' financial account reconstruction allowed them to make determinations regarding investor capital account activity, and they prepared supporting documentation distributed to investors in connection with the claims process. They continue to support the Receiver in evaluating and quantifying disputed investor and creditor claims.

The Accountants have continued to support the Receivers' demands issued to, and negotiations with, third-party recipients of investor funds, and their work has allowed the Receiver to initiate and pursue litigation against various individuals and entities on behalf of the Receivership Estate. The Accountants remain available to the Receiver, at his request, to provide assistance with specific issues that may arise in connection with certain claims and/or lawsuits the Receiver is pursuing, and to provide necessary litigation and/or expert support.

## **9. Receivership Taxes**

Alvarez and Marsal continues to provide tax-related services to the Receivership Estate. They continue to assist the Receiver in discussions with the IRS about negating or minimizing tax liabilities, and will be preparing a plan for the ultimate dissolution of most, if not all, of the Receivership Parties.

The Receiver and his Accountants maintain that tax returns need not and should not be filed for each Receivership Party for pre-appointment time periods, and continue to dispute the Internal Revenue Service's claim that at a minimum, over \$1.3 million in taxes must be paid to the IRS. To date, these disputes have not been resolved.

## **10. Anticipated Closure of Case**

Given the Receiver's continued investigation and pursuit of litigation, the claims asserted by the IRS, the pendency of the Creditor Claims Proceedings and need for those to conclude before any distribution can be proposed and order of preference adjudicated, and the extended payout schedules associated with certain settlement agreements, the Receiver does not have a projected date by which he expects the Receivership to close.

### **C. Summary of Creditor Claims Proceedings**

The Receiver filed his First Omnibus Claims Motion on March 14, 2023. (ECF No. 232). On March 28, 2023, the Receiver submitted a proposed briefing schedule for the First Omnibus Claims Motion. (ECF No. 234). In response to this request, the Court set a briefing schedule and administratively terminated the First Omnibus Claims Motion without prejudice on March 29, 2023. (ECF No. 235).

Under the adjusted briefing schedule, responses were due by May 3, 2023, and the Receiver is to serve the claimants with reply papers in further support of the First Omnibus Claims Motion by July 10, 2023. The Receiver will thereafter file the moving papers, along with a new notice of motion, the response papers, and the reply papers simultaneously by July 13, 2023.

At the time the Receiver initially filed his First Omnibus Claims Motion, the Receiver had received and processed a total of thirty-seven (37) Investor Creditor Claims totaling \$69,373,769.53,<sup>11</sup> and fifteen (15) Non-Investor Creditor claims totaling \$86,921,909.87, for total claims of \$156,295,679.40.<sup>12</sup> However, the Receiver has since resolved the disputed creditor claim of Southern Minerals Group. The Receiver has now confirmed the creditor claim of Southern Minerals

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<sup>11</sup> For purposes of this filing, this includes investors who invested money in any of the Receivership Parties, not just Broad Reach Capital or TA1.

<sup>12</sup> This includes a claim from the IRS which the Receiver is treating as part of the claims process. These numbers exclude claims that were withdrawn prior to the filing of the First Omnibus Claims Motion.

Group in the amount of \$160,000.00, which negotiated amount represents the claim amount that will be attributed to SMG for purposes of a future distribution process when the Receiver proposes a plan of distribution to the Court.<sup>13</sup>

With the resolution of Southern Minerals Group’s claim—previously asserted in the amount of \$21,929,259.00—the amount of total claims against the Receivership Estate has been reduced to \$134,526,420.40, and the total amount of non-investor creditor claims has been reduced to \$65,152,650.87.

#### **D. Receivership Assets**

##### **1. Receivership Bank Account**

As of the close of the quarter on December 30, 2022, the balance in the Receivership Account was \$7,983,221.50, which represents a nearly \$500,000.00 increase from the close of the prior quarter.

##### **2. Settlements**

On November 15, 2022, the Court entered an order approving a pre-litigation settlement resolving an insurance coverage claim. (ECF No. 215). Those settlement funds were deposited into the Receivership Account during this quarter.

The Receiver also reached a settlement in a litigation matter he filed against Jeffrey Bydalek, Credit the Americas LP, FX Algo LLC, Hurricane Holdings, Inc. and M3 Media Group, Inc. (“Bydalek Defendants”) (*see* ECF No. 218), which was

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<sup>13</sup> Southern Minerals Group has represented that it has not assigned its claim.

approved by the Court on January 20, 2023. The Bydalek Defendants also submitted a creditor claim through the Receivership claims process, and previously filed a FINRA Complaint against Brenda Smith and CV Brokerage, Inc., which was stayed. Without any admission of liability, the parties agreed to resolve all claims between them, in exchange for the return of the 5,000 shares of Lyft stock remaining in Bydalek Defendants' possession to the Receiver,<sup>14</sup> and Bydalek Defendants' payment of \$1,200,000.00 to the Receiver, to be paid through four installment payments over the course of three years.<sup>15</sup> Funds from the first installment payment have been deposited in the Receivership Account, subject to a refund if the settlement is not approved.

In total, nearly \$500,000.00 in settlement proceeds were brought in during the tenth quarter. The Receiver is actively negotiating potential settlements with several other individuals and/or entities. Many of these potential claims are subject to tolling agreements.

### **3. Stock Holdings**

The remaining 5,000 Lyft shares owned and previously held by Prico Market, LLC were returned to the Receiver on January 23, 2023, pursuant to the

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<sup>14</sup> It is the Receiver's position that these Lyft shares were owned by Receivership Party Prico Market LLC.

<sup>15</sup> There are prepayment discounts available for any payment made at least one (1) year before the specified due date.



litigation settlement with the Bydalek Defendants, and sold by the Receiver on January 26, 2023, at a price of \$16.11 per share.

#### **4. Cryptocurrency**

The Receiver has learned that at least some cryptocurrency was distributed to an investor, purportedly as a partial in-kind redemption on their investment. The amount and value of the cryptocurrency transferred is being investigated by the Receiver.

#### **5. Private Investments**

The Receiver is in the process of attempting to liquidate Smith's purported interests in Bluwater Holdings Corp. and the Calais Gold Mine through a buyout and/or negotiated settlement. The Receiver is prepared to initiate litigation if any proposed resolution fails to appropriately compensate the Receivership for Smith's interest and/or the Receivership Assets transferred. The Receivership continues to receive distributions on Smith's \$100,000.00 investment in OTAF (Holgate) LLC. The potential value of Smith's one (1) share in CMCC Development Corp. ("CMCC") is still being investigated.

#### **6. Receivables and Promissory Notes**

The Receiver's continued pursuit of litigation includes (1) a promissory note from Sunny Ocean 699, LLC and Agostinho Calcada, individually, for over \$1.5 million; and (2) a promissory note from Rose & Thorn Cowlitz, LLC ("Rose &

Thorn”), which received nearly \$7.5 million from Receivership Parties<sup>16</sup>. The Receiver has resolved his claims against MCITC based upon loans memorialized by promissory notes.

### **7. Louisiana Properties**

The Receiver believes that the Property owned by BD of Louisiana in Hammond, Louisiana will likely need to be sold through a public sale, because he has been unable to secure a buyer willing to pay the minimum amounts required for a private sale under 28 U.S.C. § 2001. Meanwhile, interest on the mortgage continues to accrue. The Receiver is attempting to work out a resolution with the counsel for the bank holding the mortgage, and anticipates bringing any such resolution to the Court’s attention for approval.

### **8. Additional Bank Accounts and Funds**

ICBCFS continues to hold \$444,213.08 in two clearing accounts for CV Brokerage, pursuant to a Stipulation. (ECF No. 30). The Receiver continues to investigate issues related to ICBCFS’ claims of a security interest and priority to these funds in connection with its creditor claim against the Receivership Estate.

After submitting multiple requests to Brenda Smith for her to sign a consent directive which would authorize the Receiver to obtain information from overseas

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<sup>16</sup> The Receiver’s lawsuit against Richard Shawn Ellis, Rose & Thorn, and other affiliated entities primarily involves fraudulent and voidable transfer claims, but seeks certain relief, in the alternative, under a breach of contract theory.

banks regarding accounts over which Brenda Smith has control, the Receiver therefore filed a Motion to Enforce the Receivership Order against Brenda Smith, seeking to compel her to sign the consent directive, on October 24, 2022. (ECF No. 212). The Motion was granted on November 8, 2022. (ECF No. 214). Smith thereafter returned the signed and notarized consent directive to the Receiver after the close of the quarter. The Receiver has forwarded the signed consent directive, along with a request for records, to overseas banks which previously either refused to cooperate with, or failed to respond to, the Receiver's requests.

#### **9. Personal Property**

The Receiver sent six (6) rugs to Stephenson's Auction, having been unable to locate alternative options for the sale of the rugs. The Receiver is still holding certain personal/sentimental items of Smith's; however, he sent additional boxes of clothing, books and appliances not believed to have significant retail value to Stephenson's Auction, given the burden of continuing to hold and store these materials. The Receiver is in the process of making arrangements with Brenda Smith for the pick-up of her remaining personal/sentimental items. The Receiver has not been able to locate viable options for the sale of computer equipment retrieved from the Equinix data center.

### **E. Liquidated and Unliquidated Claims**

The Receiver has filed twelve (12) lawsuits over the course of the Receivership. Three of those lawsuits are settled and closed – *Kent v. MCITC, et al.*, 2:21-cv-13104 (D.N.J.), *Kent v. Hooper, et al.*, No. 2:22-cv-01876 (D.N.J.), and *Kent v. Bydalek, et al.*, 2:22-cv-01811 (D.N.J.). The Receiver filed a Fourth Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate on January 16, 2023 (ECF No. 220), which was granted on April 27, 2023. (ECF No. 242).

### **III. CURRENT AND PREVIOUS BILLINGS**

The total fees and expenses incurred by the Receiver, Law Firm and Accountant for the period covered by this Application, which are subject to a twenty percent (20%) holdback pending completion of the case, are as follows:

	<b>Receiver</b>	<b>Law Firm</b>	<b>Accountant</b>
<b>Total Fees</b>	\$16,371.00	\$44,164.00	\$76,845.00
<b>Fees Requested (with holdback)</b>	\$13,096.80	\$35,331.20	\$61,476.00
<b>Total Expenses</b>	\$25.71	\$177.21	\$1,955.50
<b>Total Expenses Requested (with holdback)</b>	\$20.57	\$141.77	\$1,564.40

The Receiver's prior fee applications setting forth the history of fees and expenses charged to the Receivership Estate, the amounts requested, and the status of the Court's approval of those applications, are set forth in the table appearing at pages 5-6 of this fee application.

As evidence of the continued substantial time and effort the Receivership has required, and in support of the fee compensation and expense reimbursement

sought herein, the Receiver will submit the following exhibits under seal for the Court's review and consideration:

- Exhibit "B" – Summary of Time and Expenses by the Receiver;
- Exhibit "C" – Summary of Legal Professional & Paraprofessional Time and of Expenses by the Receiver's Counsel; and
- Exhibit "D" – Summary of Accounting Professional & Paraprofessional Time and Expenses.

These exhibits,<sup>17</sup> as well as the narrative descriptions in this Application, evidence the time and labor employed in this matter.

The following includes a breakdown of the Receiver's hours and fees during this quarter, as defined by the SEC's billing guidelines:

<b>Activity Category</b>	<b>Hours</b>	<b>Fee Amount</b>
Asset Analysis and Recovery	5.5	\$2,805.00
Asset Disposition	3.3	\$1,683.00
Case Administration	23.3	\$11,883.00
<b>Totals</b>	<b>32.10</b>	<b>\$16,371.00</b>

The following includes a breakdown of the Law Firm's hours and fees during this quarter, as defined by the SEC's billing guidelines:

<b>Activity Category</b>	<b>Hours</b>	<b>Fee Amount</b>
Asset Analysis and Recovery	73.10	\$24,276.00
Asset Disposition	4.90	\$1,617.00
Case Administration	39.20	\$11,783.50
Claims Administration and Objections	18.80	\$6,487.50
<b>Totals</b>	<b>136.00</b>	<b>\$44,164.00</b>

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<sup>17</sup> These exhibits are being filed under seal pursuant to Paragraph 73 of the Receivership Order.

The following includes a breakdown of the Accountant's hours and fees during this quarter, as defined by the SEC's billing guidelines:

<b>Activity Category</b>	<b>Hours</b>	<b>Fee Amount</b>
Accounting/Auditing	7.30	\$2,847.50
Data Analysis	6.40	\$2,957.50
Forensic Accounting	0.30	\$142.50
Litigation Consulting	116.50	\$55,877.50
Status Reports	14.20	\$5,705.00
Tax Issues	17.30	\$9,050.00
Claims Administration and Objections	0.60	\$265.00
<b>TOTALS</b>	<b>162.60</b>	<b>\$76,845.00</b>

The following is a breakdown of the Receiver's hours and fees for this quarter:

<b>Name/Position</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Fee Amount</b>
Kevin Dooley Kent, Receiver	\$510.00	32.10	\$16,371.00

The following includes a breakdown of the Law Firm's hours and fees, broken down by biller for this quarter:

<b>Name/Position</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Fee Amount</b>
Andrew S. Gallinaro, Partner	\$365.00	34.70	\$12,665.50
Robin S. Weiss, Partner	\$330.00	80.00	\$26,400.00
Vanessa L. Huber, Associate	\$275.00	14.40	\$3,960.00
Brianna L. Dinmore, Paralegal	\$165.00	2.50	\$412.50
Erika L. Finkernagel, Paralegal	\$165.00	4.40	\$726.00

<b>TOTALS</b>		<b>136.00</b>	<b>\$44,164.00</b>
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The following includes a breakdown of the Accountant's hours and fees, broken down by biller for this quarter:

<b>Name/Position</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Fee Amount</b>
<b>Forensic Analysis Team</b>			
Michael Shanahan (Senior Director)	\$550.00	25.90	\$14,245.00
David Medway (Director)	\$475.00	98.20	\$46,645.00
Nichole Lunt (Senior Associate)	\$375.00	12.80	\$4,800.00
Cody Putterman (Associate)	\$275.00	6.90	\$1,897.50
Matthew Ryan II (Paraprofessional)	\$150.00	1.30	\$195.00
<b>Forensic Analysis Team Sub-Total</b>		<b>145.10</b>	<b>\$67,782.50</b>
<b>Data Analysis Team</b>			
Bradley Koehler (Senior Director)	\$550.00	1.90	\$1,045.00
Hannah Mulvihill (Manager)	\$425.00	3.10	\$1,317.50
Curtis Stecke (Manager)	\$425.00	1.40	\$595.00
<b>Data Analysis Team Sub-Total</b>		<b>6.40</b>	<b>\$2,957.50</b>
<b>Tax Services Team</b>			
Sean Menendez (Managing Director)	\$550.00	2.00	\$1,100.00
Jennifer Palacios (Senior Director)	\$550.00	9.10	\$5,005.00
<b>Tax Services Team Sub-Total</b>		<b>11.10</b>	<b>\$6,105.00</b>
<b>OVERALL TOTALS</b>		<b>162.60</b>	<b>\$76,845.00</b>

The fees and expenses included herein were incurred in the best interests of the Receivership Estate. With the exception of the Billing Instructions and the proposed Contingency Fee Agreement for the pursuit of litigation which was

submitted under seal in support of the Receiver's Second and Third Motions for Permission to Initiate Litigation, (ECF No. 98, 99, 147, 148), the Receiver has not entered into any other agreements concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

Significantly, in accordance with the Contingency Fee Agreement, the significant amount of work the Receiver and his Counsel have performed in connection with the lawsuits the Receiver sought permission to file in his Second and Third Motions to Initiate Litigation have not been, and will not be, billed to the Receivership on an hourly basis.<sup>18</sup> Rather, the Receiver and his Counsel will only receive payment in connection with those lawsuits if and when a settlement or judgment is obtained, pursuant to the terms set forth in the Contingency Fee Agreements.

#### **IV. REQUEST FOR COMPENSATION FOR FEES AND EXPENSES**

This Court has the power to appoint a receiver and to award the receiver fees for his services and for expenses incurred by the Receiver in the performance of his duties. *See Donovan v. Robbins*, 588 F. Supp. 1268, 1272 (N.D. Ill. 1984) (“[T]he receiver diligently and successfully discharged the responsibilities placed

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<sup>18</sup> This does not include the lawsuit filed against Nottingham and Kip Meadows as well as against Jordan Denise and her entities, as these lawsuits were the subject of the Receiver's First Motion for Permission to Initiate Litigation and are not subject to a contingency fee agreement (ECF No. 49).



upon him by the Court and is entitled to reasonable compensation for his efforts.”); *see also Securities & Exch. Comm’n v. Elliot*, 953 F. Supp. 1560 (11th Cir. 1992) (noting that the receiver is entitled to compensation for faithful performance of his duties). The case law on equity receiverships sets forth the standards for approving receiver compensation and the fees and expenses for the receiver’s counsel. The District Court has discretion to determine compensation to be awarded to a court-appointed equity receiver and his counsel and “may consider all of the factors involved in a particular receivership in determining the appropriate fee.” *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). Many authorities provide “convenient guidelines,” but in the final analysis, “the unique fact situation renders direct reliance on precedent impossible.” *Securities & Exch. Comm’n v. W.L. Moody & Co.*, 374 F. Supp. 465, 480 (S.D. Tex. 1974), *aff’d*, 519 F. 2d 1087 (5th Cir. 1975).

In allowing counsel fees in Securities Act receiverships, “[t]he court will consider . . . the complexity of problems faced, the benefit to the receivership estate, the quality of work performed, and the time records presented.” *Securities & Exch. Comm’n v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973); *see also United States v. Code Prods.*, 362 F.2d 669, 673 (3d Cir. 1966) (noting that court should consider the time, labor and skill required—but not necessarily expended—the fair value of such time, labor and skill, the degree of activity, the dispatch with which the work is conducted and the result obtained).

“[R]esults are always relevant.” *Securities & Exch. Comm’n v. Elliot*, 953 F.2d 1560, 1577 (11th Cir. 1992) (quoting *Moody*, 374 F. Supp. at 480). However, a good result may take a form other than a bare increase in monetary value. *See id.* (“Even though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation.”).

Another “basic consideration is the nature and complexity of the legal problems confronted and the skill necessary to resolve them.” *Moody*, 374 F. Supp. at 485. Moreover, “[t]ime spent cannot be ignored.” *Id.* at 483. While the Receiver and his Accountants continue to expend significant time locating and recovering assets on behalf of the Receivership Estate in this complex case, the Receiver and his Retained Personnel are now focusing a majority of their efforts in this action on analyzing and resolving claims asserted against the Receivership Estate, in the interest of moving closer to an interim distribution. Further, their fees have decreased significantly from prior quarters, while the Receiver and his Counsel devote increasing amounts of time to ancillary litigation being handled on a contingency fee basis. Additionally, to date the fees for the Receivership have generally continued to decrease with time, consistent with the Receiver’s prediction that fees would be front-loaded. *See Gordon v. Dadante*, 2008 WL 1805787 at \*11 (N.D. Ohio 2008) (recognizing that, with receiverships, as is

“common in cases of this nature, the bulk of the effort—and expense—is frontloaded.”).

Under these standards, the Receiver has adequately demonstrated that the amount of fees requested is appropriate. The Receiver, his Counsel and Accountants acted quickly to take control of the Receivership Entities and to prevent the further dissipation of assets. The liquid cash on hand has increased significantly since the inception of the Receivership, when the existence of substantial valuable assets was in serious question. The amounts at issue in this case are substantial, where the investment scheme involved approximately \$100 million during its operation, at least \$1.5 billion of financial transactions occurred in accounts controlled by Smith over its last several years, and it is currently estimated that investors are still owed approximately \$60 million in principal.

The issues being addressed by the Receiver, his Counsel and Accountants are extremely complex and involve the investigation of widespread, international fraud perpetrated across a complex web of various entities managed or controlled by Smith over a multi-year period. Following numerous bizarre transactions involving restaurants, property development projects, mineral mining, extraction and transport endeavors, and overseas companies—most of which caused material losses to the Receivership Parties—as well as what appear to be substantial “gifts” to friends and/or colleagues of Smith without any known benefit to the

Receivership Parties, the Estate has been left with few assets still in the Receivership Parties' possession. However, the Receiver remains optimistic that additional significant funds can be recovered on behalf of the Receivership Estate, primarily through litigation, or pre-litigation settlement of claims.

This Court has already found that the rates charged by the Receiver and his Counsel and Accountant are reasonable for the experience of the individuals performing the work and in light of the complexity of the work performed, and are consistent with the rates charged for similarly complex work done by other, similarly experienced professionals in this geographic region. Receivership Order, ¶¶ 80, 83. As noted previously, the Receiver and the Law Firm are performing this work at an average discount rate twenty-five percent (25%). The Receiver and his Retained Personnel have not sought to increase their approved hourly rates in 2021 and 2022, thereby resulting in even more significant rate reductions.

The Receiver has attempted to maximize cost savings and administer the Estate as efficiently as possible, by, for example, assigning professionals and paraprofessionals with the lowest billable rate appropriate for the task at issue, which the Accountant has likewise done where appropriate. Additionally, the Receiver and his Counsel have extensively utilized non-billing administrative personnel where appropriate. Most significantly, the Receiver and his Law Firm's willingness to pursue litigation under a contingency fee arrangement as set forth in

his Second and Third Motions for Permission to Initiate Litigation on Behalf of the Receivership Estate, will result in significant cost savings for the Estate.

The Receiver and his Retained Professionals' compensation in this matter is subject to the final approval of this Court. The Court should consider that the Receiver as well as his attorneys and accountants have assumed the risk of non-payment and/or substantial delay in payment in accepting the Court appointment, particularly with so little known regarding the amount and availability of Receivership Assets. The risk is even greater with regard to the pursuit of litigation on behalf of the Receivership Estate on a contingency fee basis, in connection with which the Receiver and his Law Firm risk non-payment entirely if the claims are unsuccessful and/or the prospective defendants are judgment-proof.

Based on the foregoing, the Receiver respectfully submits that the compensation sought by the Receiver and his team is wholly warranted.

WHEREFORE, the Receiver respectfully requests that the Court grant the Receiver's Motion for Approval of the Tenth Interim Fee Application for the Period October 1, 2022 through December 31, 2022, and thereby authorize the following:

1. Payment to Clark Hill PLC in the amount of \$13,096.80, as compensation for the Receiver's services performed from October 1, 2022 through

December 31, 2022, such payment representing eighty percent (80%) of the Receiver's fees for this quarter;

2. Payment to Conrad O'Brien PC in the amount of \$35,331.20, as compensation for services performed from October 1, 2022 through December 31, 2022, such payment representing eighty percent (80%) of its fees for this quarter;

3. Payment to Alvarez & Marsal Disputes and Investigations, LLC in the amount of \$61,476.00 as compensation for services performed from October 1, 2022 through December 31, 2022, such payment representing eighty percent (80%) of its fees for this quarter;

4. Payment to Clark Hill PLC in the amount of \$20.57, for expenses incurred by the Receiver from October 1, 2022 through December 31, 2022, representing eighty percent (80%) of the Receiver's expenses for this quarter;

5. Payment to Conrad O'Brien PC in the amount of \$141.77, for expenses incurred from October 1, 2022 through December 31, 2022, representing eighty percent (80%) of its expenses for this quarter; and

6. Payment to Alvarez & Marsal Disputes and Investigations, LLC, in the amount of \$1,564.40 for expenses incurred from October 1, 2022 through December 31, 2022, representing eighty percent (80%) of its expenses for this

quarter.

Date: 5/16/2023

Respectfully Submitted,

s/ Robin S. Weiss

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*Attorneys for Receiver,  
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# **EXHIBIT “A”**



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# STANDARDIZED FUND ACCOUNTING REPORT

CIVIL – RECEIVERSHIP FUND

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Brenda Smith, Broad Reach Capital, LP, Broad Reach Partners,  
LLC, and Bristol Advisors, LLC  
Civil Action No.: 2:19-cv-17213-MCA-ESK

REPORTING PERIOD 10/01/2022 TO 12/31/2022

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Broad Reach Capital Receivership Entities - Cash Basis**  
 Receivership, Civil Court Docket No. 2:19-CV-17213-MCA-ESK  
 REPORTING PERIOD 10/01/2022 TO 12/31/2022

FUND ACCOUNTING (See Instructions)		Current Reporting Period - 10/01/22 to 12/31/22			06/29/20 - 12/31/22
		Detail	Subtotal	Period Total	Case to Date
Line 1	Beginning Balance (As of 10/01/22)			\$ 7,485,512.47	\$ -
	<i>Increases in Fund Balance:</i>				
Line 2	Business Income			-	-
Line 3	Cash and Securities			-	8,240,017.58
Line 4	Interest/Dividend Income			-	5.67
Line 5	Business Asset Liquidation			-	700.00
Line 6	Personal Asset Liquidation			-	547,254.02
Line 7	Third-Party Litigation Income			497,900.00	1,949,990.17 [1]
Line 8	Miscellaneous - Other			-	-
<b>Total Funds Available (Lines 1 – 8):</b>				<b>\$ 7,983,412.47</b>	<b>\$ 10,737,967.44</b>
	<i>Decreases in Fund Balance:</i>				
Line 9	Disbursements to Investors/Claimants			-	258,776.99 [2]
Line 10	Disbursements for Receivership Operations			190.97	2,483,268.95
Line 10a	Disbursements to Receiver or Other Professionals			-	-
Line 10b	Business Asset Expenses			190.97	-
Line 10c	Personal Asset Expenses			-	-
Line 10d	Investment Expenses			-	-
Line 10e	Third-Party Litigation Expenses			-	-
	1. Attorney Fees			-	-
	2. Litigation Expenses			-	-
	Total Third-Party Litigation Expenses			-	-
Line 10f	Tax Administrator Fees and Bonds			-	-
Line 10g	Federal and State Tax Payments			-	-
	<b>Total Disbursements for Receivership Operations</b>			<b>\$ 190.97</b>	<b>\$ 2,742,045.94</b>
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			-	12,700.00
Line 11a	<i>Distribution Plan Development Expenses:</i>				
	1. Fees:				
	Fund Administrator			-	-
	Independent Distribution Consultant (IDC)			-	-
	Distribution Agent			-	-
	Consultants			-	-
	Legal Advisers			-	-
	Tax Advisers			-	-
	2. Administrative Expenses			-	-
	3. Miscellaneous			-	-
	Total Plan Development Expenses			-	-
Line 11b	<i>Distribution Plan Implementation Expenses:</i>				
	1. Fees:				
	Fund Administrator			-	-
	IDC			-	-
	Distribution Agent			-	-
	Consultants			-	-
	Legal Advisers			-	-
	Tax Advisers			-	-
	2. Administrative Expenses			-	-
	3. Investor Identification:				
	Notice/Publishing Approved Plan			-	-
	Claimant Identification			-	-
	Claims Processing			-	-
	Web Site Maintenance/Call Center			-	-
	4. Fund Administrator Bond			-	-
	5. Miscellaneous			-	-
	6. Federal Account for Investor Restitution (FAIR)			-	-
	Reporting Expenses			-	-
	Total Plan Implementation Expenses			-	-
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			<b>\$ -</b>	<b>\$ 12,700.00</b>
Line 12	Disbursements to Court/Other:			-	-
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			-	-
Line 12b	Federal Tax Payments			-	-
	<b>Total Disbursements to Court/Other</b>			<b>\$ -</b>	<b>\$ -</b>
<b>Total Funds Disbursed (Lines 9 – 11):</b>				<b>\$ 190.97</b>	<b>\$ 2,754,745.94</b>
Line 13	<b>Ending Balance (As of 12/31/22):</b>			<b>\$ 7,983,221.50</b>	<b>\$ 7,983,221.50</b>
Line 14	Ending Balance of Fund – Net Assets:				
Line 14a	Cash & Cash Equivalents			7,983,221.50	7,983,221.50
Line 14b	Investments			-	-
Line 14c	Other Assets or Uncleared Funds			-	-
	<b>Total Ending Balance of Fund – Net Assets</b>			<b>\$ 7,983,221.50</b>	<b>\$ 7,983,221.50</b>

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Broad Reach Capital Receivership Entities - Cash Basis**  
 Receivership; Civil Court Docket No. 2:19-CV-17213-MCA-ESK  
 REPORTING PERIOD 10/01/2022 TO 12/31/2022

OTHER SUPPLEMENTAL INFORMATION:		Current Reporting Period - 10/01/22 to 12/31/22			06/29/20 - 12/31/22
		Detail	Subtotal	Period Total	Case to Date
Line 15	<b>Report of Items NOT To Be Paid by the Fund:</b> Disbursements for Plan Administration Expenses Not Paid by the Fund:			\$ -	\$ -
Line 15a	<b>Plan Development Expenses Not Paid by the Fund:</b>				
	1. Fees:				
	Fund Administrator			-	-
	IDC			-	-
	Distribution Agent			-	-
	Consultants			-	-
	Legal Advisers			-	-
	Tax Advisers			-	-
	2. Administrative Expenses			-	-
	3. Miscellaneous			-	-
	<b>Total Plan Development Expenses Not Paid by the Fund</b>			\$ -	\$ -
Line 15b	<b>Plan Implementation Expenses Not Paid by the Fund:</b>				
	1. Fees:				
	Fund Administrator			-	-
	IDC			-	-
	Distribution Agent			-	-
	Consultants			-	-
	Legal Advisers			-	-
	Tax Advisers			-	-
	2. Administrative Expenses			-	-
	3. Investor Identification:				
	Notice/Publishing Approved Plan			-	-
	Claimant Identification			-	-
	Claims Processing			-	-
	Web Site Maintenance/Call Center			-	-
	4. Fund Administrator Bond			-	-
	5. Miscellaneous			-	-
	6. FAIR Reporting Expenses			-	-
	<b>Total Plan Implementation Expenses Not Paid by the Fund</b>			\$ -	\$ -
Line 15c	<b>Tax Administrator Fees &amp; Bonds Not Paid by the Fund</b>			-	-
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>			-	-
Line 16	<b>Disbursements to Court/Other Not Paid by the Fund:</b>			-	-
Line 16a	Investment Expenses/CRIS Fees			-	-
Line 16b	Federal Tax Payments			-	-
	<b>Total Disbursements to Court/Other Not Paid by the Fund:</b>			-	-
Line 17	<b>DC &amp; State Tax Payments</b>			\$ -	\$ -
Line 18	<b>No. of Claims:</b>				
Line 18a	# of Claims Received This Reporting Period				-
Line 18b	# of Claims Received Since Inception of Fund				56
Line 19	<b>No. of Claimants/Investors:</b>				
Line 19a	# of Claimants/Investors Paid This Reporting Period				-
Line 19b	# of Claimants/Investors Paid Since Inception of Fund				1

**Notes**

- [1] Includes funds derived from settlement of a litigation matter during the current reporting period that is pending Court approval. These funds are subject to a refund if the settlement is not approved by the Court.
- [2] In accordance with the Motion of Receiver, Kevin D. Kent, Esquire, to Approve a Settlement Resolving the Receiver's April 9, 2021 Motion to Determine Ownership of Taylor Trading, LLC Account (ECF No. 130) ("Taylor Trading Motion") and the Order Confirming Ownership of Taylor Trading, LLC Account Proceedings (ECF No. 134), the Receiver arranged for the transfer of 50% of the balance of the Taylor Trading, LLC bank account maintained with PNC Bank ("Taylor Trading Account") to investor Surefire Dividend Capture, LP ("Surefire") on November 19, 2021. Surefire had filed claims against, *inter alia*, Scott Koppenheffer in a lawsuit it filed in the Eastern District of Pennsylvania captioned *Surefire Dividend Capture, LP v. Smith et al.*, No. 2:19-cv-04088 (E.D. Pa.) (the "Surefire Action"). Surefire agreed to resolve its claims against Mr. Koppenheffer in exchange for, *inter alia*, an assignment of Mr. Koppenheffer's rights (if any) to the Taylor Trading Account. The Receiver and Surefire then agreed to resolve the Taylor Trading Motion by splitting the balance in the Taylor Trading Account, which amount will be deducted from any future distribution made by the Receiver to Surefire. This settlement resulted in a meaningful recovery for the Receivership Estate while eliminating the risk and cost of litigating the issue of account ownership with Mr. Koppenheffer and/or Surefire.

Receiver:

By: Kevin Dooley Kent  
 (signature)  
Kevin Dooley Kent  
 (printed name)  
Receiver  
 (title)

Date: January 27, 2023

**NOTES TO THE STANDARDIZED FUND ACCOUNTING REPORT**

**Receivership Cash Accounts**

As of December 31, 2022, the Receiver's cash balance of \$7,983,221.50 was maintained in a checking account at Bank of America.

**Investments, Real and Personal Property**

As described more fully in the Receiver's Tenth Quarterly Status Report, the Receiver is in the process of identifying and liquidating all the investments, real and personal property of the Receivership Parties.

In addition to the transactions reflected within the Standardized Fund Accounting Report, the Receiver anticipates recovering future distributions related to Brenda Smith's personal investment in OTAF LLC.

The Receivership has an interest in two parcels in Tangipahoa Parish, Louisiana, owned by BD of Louisiana, LLC ("BD of Louisiana Property"), which are subject to a mortgage with an outstanding principal balance of approximately \$345,000. Due to an inability to secure a private buyer for the BD of Louisiana Property, the Receiver is attempting to work out a resolution with the bank holding the mortgage.



therein are true and accurate and comply with the Billing Instructions;

- (c) All fees contained in the Application are based on the rates listed in the Applicant's fee schedule attached hereto and such fees are reasonable, necessary and commensurate with the skill and experience for the activity performed;
- (d) I have not included in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay (except to the extent that any such amortization is included within the permitted allowable amounts set forth herein for photocopies and facsimile transmission); and
- (e) In seeking reimbursement for a service which the Applicant justifiably purchased or contracted for from a third party (such as copying, imaging, bulk mail, messenger service, overnight courier, computerized research, or title and lien searches), the Applicant requests reimbursement only for the amount billed to the Applicant by the third party vendor and paid by the Applicant to such vendor. With regard to such services performed by the Receiver or his staff, the Receiver certifies that he is not making a profit on such reimbursable service.

2. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16th day of May, 2023.



\_\_\_\_\_  
Kevin Dooley Kent

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

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

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

**Defendants.**

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

**STATEMENT IN LIEU OF BRIEF PURSUANT TO L.CIV.R. 7.1(d)(4)**

Pursuant to Local Civil Rule 7.1(d)(4), the undersigned, on behalf of the Receiver, Kevin Dooley Kent, hereby submits this Statement in lieu of the submission of a formal brief in support of the Motion for Approval of Tenth Interim Fee Application for the Period October 1, 2022 through December 31, 2022.

Inasmuch as the attached Interim Fee Application complies with the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission and otherwise satisfies the requirements for Interim Fee Applications as set forth in this Court's June 29, 2020 Order Appointing Receiver, and contains all information and documentation required by the SEC as well as legal



argument in support of the Interim Fee Application, and until any opposition to the Motion is filed, it is respectfully suggested that any additional, formal brief in support of the Motion and attached Application would be duplicative and unnecessary at this time.

Respectfully submitted,

Dated: 5/16/2023

*s/ Robin S. Weiss*  
\_\_\_\_\_  
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)**

**ORDER APPROVING THE RECEIVER, KEVIN DOOLEY KENT'S  
TENTH INTERIM FEE APPLICATION FOR THE PERIOD  
OCTOBER 1, 2022 THROUGH DECEMBER 31, 2022**

**THIS MATTER** having come before this Court upon the Motion of Receiver, Kevin Dooley Kent for Approval of Tenth Interim Fee Application for the Period October 1, 2022 through December 31, 2022;

It is on this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

**ORDERED** that the Receiver's Tenth Interim Fee Application is APPROVED; and it is

**FURTHER ORDERED** that Payment to Clark Hill PLC in the amount of \$13,096.80, for the Receiver's services from October 1, 2022 through December 31,

2022, representing eighty percent (80%) of the Receiver's total fee of \$16,371.00 for this quarter, is APPROVED and may be paid by the Receiver at this time; and it is

**FURTHER ORDERED** that Payment to Conrad O'Brien PC ("Law Firm") in the amount of \$35,331.20 for services performed from October 1, 2022 through December 31, 2022, representing eighty percent (80%) of the Law Firm's total fee of \$44,164.00 for this quarter, is APPROVED and may be paid by the Receiver at this time; and it is

**FURTHER ORDERED** that payment to Alvarez & Marsal Disputes and Investigations, LLC ("Accountant") in the amount of \$61,476.00 for services performed from October 1, 2022 through December 31, 2022, representing eighty percent (80%) of the Accountant's total fee of \$76,845.00 for this quarter, is APPROVED and may be paid by the Receiver at this time; and it is

**FURTHER ORDERED** that payment to Clark Hill PLC in the amount of \$20.57 for expenses the Receiver incurred from October 1, 2022 through December 31, 2022, representing eighty percent (80%) of the Receiver's total expenses of \$25.71 for this quarter, is APPROVED and may be paid by the Receiver at this time; and it is

**FURTHER ORDERED** that payment to Conrad O'Brien PC in the amount of \$141.77 for expenses incurred from October 1, 2022 through December 31, 2022, representing eighty percent (80%) of the Firm's total expenses of \$177.21 for this quarter, is APPROVED and may be paid by the Receiver at this time; and it is

**FURTHER ORDERED** that payment to Alvarez & Marsal Disputes and Investigations, LLC in the amount of \$1,564.40 for expenses incurred from October 1, 2022 through December 31, 2022, representing eighty percent (80%) of the Accountant's total expenses of \$1,955.50 for this quarter, is hereby APPROVED and may be paid by the Receiver at this time.

**BY THE COURT:**

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HONORABLE MADELINE COX ARLEO  
UNITED STATES DISTRICT JUDGE

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

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

v.

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

**Defendants.**

---

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

**CERTIFICATE OF  
SERVICE**

I hereby certify, this 16<sup>th</sup> day of May, 2023, that I caused to be served a true and correct copy of the Notice of Motion of Receiver, Kevin Dooley Kent for Approval of Tenth Interim Fee Application for the Period October 1, 2022 through December 31, 2022 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*