

**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: Aug. 7, 2023

**NOTICE OF MOTION OF RECEIVER, KEVIN DOOLEY KENT, FOR
APPROVAL OF ELEVENTH INTERIM FEE APPLICATION FOR THE
PERIOD JANUARY 1, 2023 THROUGH MARCH 31, 2023**

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 August 7, 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 Eleventh Interim Fee Application for the Period January 1, 2023 through March 31, 2023.

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: 7/6/2023

s/ Robin S. Weiss

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**RECEIVER, KEVIN DOOLEY KENT'S ELEVENTH INTERIM FEE
APPLICATION, FOR THE PERIOD JANUARY 1, 2023
THROUGH MARCH 31, 2023**

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Dated: 7/6/2023

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Pursuant to the Court's Order Appointing Receiver dated June 29, 2020, Kevin Dooley Kent, Receiver, hereby submits this Eleventh Interim Fee Application for the Period January 1, 2023 through March 31, 2023, and moves for approval of payment of fees and expenses invoiced by the Receiver, the Receiver's Counsel (Conrad O'Brien PC from January 1, 2023 through January 31, 2023 and Clark Hill PLC from February 1, 2023 through March 31, 2023), and the Court-appointed accountant to the Receiver, Alvarez & Marsal Disputes and Investigations, LLC ("the Application").

The balance in the Receivership Accounts as of the close of the quarter was \$7,836,555.30. The Receiver and his Counsel continue to focus their efforts on preserving and maximizing Receivership Assets, with the current foci on 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 eleventh 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 Parties¹ (hereinafter “Receivership Assets” or “Receivership

¹ 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

Estate”). Receivership Order, Whereas ¶ 3; ¶¶ 1–3, 5 (ECF No. 22). The Receivership Order authorized the Receiver to retain the law firm of Conrad O’Brien PC (“Conrad O’Brien”) and Alvarez & Marsal Disputes and Investigations, LLC (“Alvarez” or “Accountant”) as his counsel and accountant, respectively (collectively “Retained Personnel”). *Id.*, ¶ 71. On January 17, 2023, the Court entered an order authorizing the Receiver to change his retained Law Firm to Clark Hill PLC (“Clark Hill”), in light of his counsel’s February 1, 2023 move to Clark Hill. (ECF Nos. 219, 223). Given that the Receiver’s counsel worked at Conrad O’Brien for a portion of the eleventh quarter (January 1, 2023 through January 31, 2023), and Clark Hill for the remainder of the quarter (February 1, 2023 through March 31, 2023), these firms are collectively referred to as “Law Firm” or “Counsel” within this filing, where appropriate.

The Receivership Order 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. Receivership Order, ¶ 72. The Court-approved fee schedules, which provide substantial discounts from the

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

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:

<u>Receiver</u>	
Name	Rate
Kevin Dooley Kent	\$510.00
<u>The Law Firm</u>	
Name/Position	Rate
Andrew Gallinaro, Partner	\$365.00
Associate	\$240.00 - \$330.00
Paraprofessional	\$165.00
<u>The Accountant</u>	
Name/Position	Rate
Michael Shanahan, Managing Director	\$550.00
Managing Director/Senior Director	\$550.00 - \$725.00
Directors/Managers	\$425.00 - \$525.00
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 three 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.² *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 eleventh 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:

	Total Fees	Fees Requested ³	Total Expenses	Expenses Requested ⁴	Status
First Interim Fee Application for the Period June 29, 2020 through September 30, 2020 (ECF No. 43), Filed November 13, 2020					
COB⁵	\$171,760.80	\$137,408.64	\$12,434.25	\$9,947.40	Approved 4/5/21 (ECF No. 70)
Accountant	\$43,577.50	\$34,862.00	\$0.00	\$0.00	
Second Interim Fee Application for the Period October 1, 2020 through December 31, 2020 (ECF No. 50), Filed February 12, 2021					
COB	\$101,076.50	\$80,861.20	\$441.58	\$353.26	Approved 7/6/21 (ECF No. 103)
Accountant	\$155,977.50	\$124,782.00	\$170.00	\$136.00	
Third Interim Fee Application for the Period January 1, 2021 through March 31, 2021 (ECF No. 88), Filed May 28, 2021					
COB	\$210,921.00	\$168,736.80	\$510.87	\$408.70	

² 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.

³ This represents eighty percent (80%) of the total fees.

⁴ This represents eighty percent (80%) of the total expenses.

⁵ The abbreviation “COB” refers to Conrad O’Brien.

Accountant	\$454,867.50	\$363,894.00	\$3,280.70	\$2,624.56	Approved 7/6/21 (ECF No. 104)
Fourth Interim Fee Application for the Period April 1, 2021 through June 30, 2021 (ECF No. 112), Filed August 16, 2021					
COB	\$230,164.50	\$184,131.60	\$7,431.85	\$5,945.48	Approved 9/10/21 (ECF No. 121)
Accountant	\$396,202.50	\$316,962.00	\$4,574.34	\$3,659.47	
Fifth Interim Fee Application for the Period July 1, 2021 through September 30, 2021 (ECF No. 137), Filed November 24, 2021					
COB	\$170,406.50	\$136,325.20	\$551.38	\$441.10	Approved 2/22/22 (ECF No. 166)
Accountant	\$184,725.00	\$147,780.00	\$5,126.90	\$4,101.52	
Sixth Interim Fee Application for the Period October 1, 2021 through December 31, 2021 (ECF No. 174), Filed March 17, 2022					
COB	\$174,076.00	\$139,260.80	\$716.30	\$573.04	Approved 5/5/22 (ECF No. 193)
Accountant	\$239,300.00	\$191,440.00	\$3,236.60	\$2,589.28	
Seventh Interim Fee Application for the Period January 1, 2022 through March 31, 2022 (ECF No. 197), Filed June 2, 2022					
COB	\$152,256.00	\$121,804.80	\$1,401.86	\$1,121.49	Approved 6/15/22 (ECF No. 199)
Accountant	\$142,877.50	\$114,302.00	\$3,415.70	\$2,732.56	
Eighth Interim Fee Application for the Period April 1, 2022 through June 30, 2022 (ECF No. 209), Filed October 17, 2022					
COB	\$115,067.50	\$92,054.00	\$867.81	\$694.25	Approved 1/5/23 (ECF No. 217)
Advertising Expenses On Behalf of Estate⁶			\$6,119.78	\$6,119.78	
Accountant	\$73,652.50	\$58,922.00	\$2,135.40	\$1,708.32	
Ninth Interim Fee Application for the Period July 1, 2022 through September 30, 2022 (ECF No. 119), Filed February 8, 2023					
COB	\$53,462.00	\$42,769.60	\$408.15	\$326.52	Approved 4/27/23 (ECF No. 243)
Accountant	\$47,600.00	\$38,080.00	\$2,947.60	\$2,358.08	
Tenth Interim Fee Application for the Period October 1, 2022 through December 31, 2022 (ECF No. 247), Filed May 16, 2023					
Receiver	\$16,371.00	\$13,096.80	\$25.71	\$20.57	Approved 6/15/23 (ECF No. 250)
COB	\$44,164.00	\$35,331.20	\$177.21	\$141.77	
Accountant	\$76,845.00	\$61,476.00	\$1,955.50	\$1,564.40	

⁶ 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.

II. CASE STATUS

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

As of March 31, 2023, total cash on hand in the Receivership Accounts was \$7,836,555.30. The Receiver brought in \$80,292.74 for the sale of the Lyft shares resulting from a settlement, \$397.00 in auction proceeds, and \$12,693.52 in interest earnings during the eleventh quarter.

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.⁷ Another \$12,821.80 is held in the name of CV International Investments Limited with Cidel Bank in Barbados.

Administrative expenses paid during the eleventh quarter total \$240,049.16 and include (a) \$139.20 in WSFS bank fees, (b) \$153,378.57 in professional fees and expense reimbursement to the Receiver, his Counsel and Accountant pursuant to this Court’s January 5, 2023 Order approving the Receiver’s Eighth Interim Fee Application (ECF No. 217); (c) \$6,119.78 in reimbursement to Conrad O’Brien for advertising expenses pursuant to the same order (ECF No.); and (d) \$80,411.61 in

⁷ These funds are being held pursuant to the Stipulation to Resolve ICBCFS’ Motion to Amend the Amended Order Appointing Receiver. (ECF No. 30).

professional fees and expense reimbursement to the Receiver's Counsel earned in connection with ancillary litigation subject to the contingency fee agreement approved by the Court through its Order Approving the Receiver's Second and Third Motions for Permission to Initiate Litigation on Behalf of the Receivership Estate, (ECF Nos. 161, 167), which attorneys' fees and expenses were deducted pursuant to an Order approving the Receiver's settlement in certain of those cases.

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

B. Administration of Case to Date

1. Litigation-Related Activities

a. Motion Practice

On January 13, 2023, the Receiver filed a Motion for Permission to Change Counsel, in light of Conrad O'Brien's planned February 1, 2023 combination with 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 filed his First Omnibus Motion for Order Resolving Disputed Non-Investor Creditor Claims (“First Omnibus Claims Motion”) on March 14, 2023. (ECF No. 232).

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.):*** 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) On January 23, 2023, Defendants filed a Motion for Protective Order to Quash the Receiver’s Subpoena to Barclays Bank (ECF No. 71), which the Receiver opposed (ECF No. 81), and the Court ultimately administratively terminated without prejudice pending resolution of various discovery disputes. (ECF No. 85). On March 6, 2023, the Court held a hearing with the parties to

resolve the various discovery disputes. Following the hearing, the Court entered an Order stating, *inter alia*, that the Receiver may issue a revised subpoena to Barclays Bank that was limited in scope from January 2017 through the present (ECF No. 88), and on March 8, 2023, the Receiver issued the revised subpoena. As to the Court's ruling on the written discovery disputes, however, the parties filed letters with the Court asking for clarification on the Court's ruling because the parties did not agree on what the Court specifically ordered Defendants to produce to the Receiver. (See ECF Nos. 89, 92). On April 3, 2023, the Court entered a Letter Order directing the Entity Defendants to produce unredacted financial documents to the Receiver from January 2017 through the present. (ECF No. 94).

- 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 two of the defendants have filed for bankruptcy protection. The Receiver submitted a claim on behalf of the Receivership Estate in the bankruptcy action filed by Medical Construction Industrial Training Center, LLC in the District of New Jersey on June 28, 2023.
- 3) ***Kevin D. Kent, in his capacity as Receiver v. Richard C. Galvin, et al., No. 2:21-cv-13105 (D.N.J.):*** Counsel for the corporate defendants re-entered their appearance on May 23, 2023. Accordingly, following a status conference held on June 27, 2023, the Court entered an order directing the clerk to vacate the default entered against them on June 27, 2023. (ECF No. 54). The parties are proceeding with discovery.
- 4) ***Kevin Dooley Kent, in his capacity as Receiver v. Agostinho Calcada, No. 2:21-cv-18396 (D.N.J.):*** Discovery is closed. 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.):*** On April 10, 2023, the Receiver filed a letter with the court regarding a discovery dispute involving Kelly Ulmer's delinquent responses to the Receiver's second set of

discovery requests. (ECF No. 41). A status conference was held on April 13, 2023. Ms. Ulmer was directed to appear for a second deposition, which took place on June 2, 2023. Fact discovery is now closed.

- 6) ***Kevin Dooley Kent, in his capacity as Receiver v. Richard Shawn Ellis, et al., No. 2:21-cv-20754 (D.N.J.):*** On January 4, 2023, the Court entered an Order denying Defendants' Motion to Transfer Venue. (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 entered an order referring the case to mediation and administratively terminating the case pending completion of mediation. The parties elected to proceed with informal settlement discussions before scheduling the mediation. The Court held a status conference on May 23, 2023. (ECF No. 58). Another telephone conference is scheduled for July 6, 2023.
- 7) ***Kevin Dooley Kent, in his capacity as Receiver v. Jordan Denise, et al., No. 2:22-cv-00388 (D.N.J.):*** On January 17, 2023, the Receiver filed a Motion to Compel and for Sanctions (ECF No. 26) 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. After that, counsel entered an appearance for Jordan Denise and provided Ms. Denise's overdue discovery responses. The Motion to Compel was administratively terminated following a status conference held on April 18, 2023. The parties are proceeding with discovery.
- 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.):*** A Rule 16 conference took place on January 18, 2023. (ECF No. 164). The parties are conducting discovery.
- 9) ***Kevin Dooley Kent, in his capacity as Receiver v. Ronald Hightower, et al., No. 2:22-cv-01195 (D.N.J.):*** On January 27, 2023, Defendants filed an Answer with Counterclaims. (ECF No. 31). On February 17, 2023, the Receiver filed a Motion to Dismiss all Counterclaims. (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). The

Receiver's Motion to Dismiss remains pending. Meanwhile, the parties are 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 was 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 of Dismissal 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.):*** 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 sent Brenda Smith's rugs and some additional personal property to Stephenson's Auction in an effort to recover additional funds for the Receivership Estate. The Receiver received two additional payments from Stephenson's Auction during the eleventh quarter, totaling \$397.00. In total, the

Receiver has recovered \$12,208.20 in proceeds from the sale of personal property through seventeen (17) auctions over the course of the Receivership.

The Receiver continues to hold professional equipment and the original books and records of the Receivership Parties. Brenda Smith arranged for the pick-up of personal, sentimental items without significant resale value on April 6, 2023.

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. Receivership Bank Accounts

Pursuant to the permission granted to him by this Court (ECF No. 226), the Receiver opened two additional accounts with WSFS to hold Receivership Assets – a checking account and an interest-bearing trust/savings account. On or about March 7, 2023, the Receiver transferred \$7,524,001.28 out of the Receivership Bank of America Account (“BOA Account”) and into the WSFS Trust/Savings Account (“WSFS Savings”). The Receiver thereafter transferred \$300,000.00 from the WSFS Savings into the WSFS Checking Account (“WSFS Checking”) on March 30, 2023, to enable the Receiver to write checks for expenses of the

Receivership Estate. These bank accounts are hereinafter collectively referred to as the “Receivership Accounts.”

The Federal Deposit Insurance Act provides that the Federal Deposit Insurance Corporation (“FDIC”) will recognize claims for insurance coverage based on a fiduciary relationship if it is expressly disclosed in the deposit account records for the institution. 12 C.F.R. § 330.5 (b)(1). Fiduciary accounts eligible for pass-through FDIC coverage for each beneficiary “include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian pursuant to which funds are deposited.” 12 C.F.R. § 330.5 (b)(1). Where the deposit accounts records disclose the existence of a fiduciary relationship which might provide a basis for additional FDIC insurance coverage, “the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.” 12 C.F.R. § 330.5. (b)(2).

In light of recent events in the banking industry and in order to further protect the interests of the investors and creditors of the Receivership Parties by furthering the likelihood that the Receivership Accounts would be eligible for pass-through FDIC coverage, on March 31, 2023, the Receiver sent letters to Bank of

America and WSFS to remind them that the accounts were created for purposes of a Receivership, and that the Receiver holds the funds as a fiduciary for the investors and trade creditors of the Receivership Parties. These letters attached 2012 guidance from the FDIC regarding potential pass-through treatment for fiduciary accounts, including those involving Qualified Settlement Funds. The Receiver also provided the banks with an accompanying list of the investors and creditors on whose behalf the funds are being held, and requested that the banks keep this information confidential.

7. Investigation of Overseas Bank Accounts

Pursuant to Court Order, Brenda Smith signed a consent directive on January 26, 2023, which directed all financial institutions located outside the territorial United States at which she has or may have had a bank or brokerage accounts to disclose information and documents relating to these accounts to the Receiver.

On February 13, 2023, the Receiver, through counsel, sent copies of the Consent Directive along with document requests to the following overseas banks which previously failed to respond to or cooperate with the Receiver's prior requests: Cidel Bank & Trust Inc. ("Cidel Bank"), National Bank of Fujairah, Barclays Bank PLC, and Al Rayan Bank PLC. Cidel Bank responded and produced responsive account documents on February 22, 2023. The other

remaining banks have not responded to the Receiver's communication and requests.

8. 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 March 31, 2023, valued at over \$3.1 million.

9. 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 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.

10. 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. The Receiver is seeking to have these claims resolved through the creditor claims process.

11. 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 \$69,373,769.53,⁸ and fifteen (15) Non-Investor Creditor claims totaling \$86,921,909.87, for total claims of \$156,295,679.40.⁹ However, the

⁸ For purposes of this filing, this includes investors who invested money in any of the Receivership Parties, not just Broad Reach Capital or TA1.

⁹ 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.

Receiver has since resolved the disputed creditor claim of Southern Minerals Group. The Receiver has now confirmed the creditor claim of Southern Minerals 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.¹⁰

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 March 31, 2023, the balance in the Receivership Accounts was \$7,836,555.30, broken down as follows: \$7,236,678.80 in WSFS Savings, \$299,876.50 in WSFS Checking, and \$300,000.00 in the BOA Account.

2. Settlements

The Receiver's settlement with Jeffrey Bydalek, Credit the Americas LP, FX Algo LLC, Hurricane Holdings, Inc. and M3 Media Group, Inc. ("Bydalek Defendants") (*see* ECF No. 218) was approved by the Court on January 20, 2023.

¹⁰ Southern Minerals Group has represented that it has not assigned its claim.

The Receiver received Bydalek Defendants' first installment payment during the tenth quarter, and the remaining Lyft shares were returned to the Receiver on January 23, 2023. The settlement also resolved the Bydalek Defendants' creditor claims, which have since been withdrawn, and his FINRA Action, which is now dismissed.

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 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 Parties¹¹. The Receiver resolved his claims against MCITC based upon loans memorialized by promissory notes.

¹¹ 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.

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 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 has addressed ICBCFS' claimed security and priority interest in these funds in his First Omnibus Claims Motion.

Further, after receiving the signed Consent Directive and the Receiver's letter, Cidel Bank made a production to the Receiver on February 22, 2023. The documents produced reveal the existence of an account in the name of CV International Investments, Ltd. which currently holds funds with an equivalent market value of approximately \$12,821.80 USD. Cidel has also continued to charge quarterly management fees on the account of between \$11.23 and \$11.34

per quarter since the entry of the Receivership Order. However, to date, Cidel has refused requests to repatriate the funds.

9. Personal Property

The Receiver sent six (6) rugs and additional boxes of clothing, books and appliances not believed to have significant resale value to Stephenson's Auction during the previous quarter, given the burden of continuing to hold and store these materials. Smith arranged for the pick-up of her personal/sentimental belongings on April 6, 2023. 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.) and *Kent v. Hooper, et al.*, No. 2:22-cv-01876 (D.N.J.). Additionally, another lawsuit – *Kent v. Bydalek, et al.*, 2:22-cv-01811 (D.N.J.) – was resolved through settlement and dismissed by Stipulation. However, two of the defendants in the MCITC case, Medical Construction Industrial Training Center, LLC (“MCITC”) and Carol Johnson, with whom the Receiver settled his claims, have failed to fulfill their full payment obligations and have filed for bankruptcy. The Receiver submitted his claim in the MCITC bankruptcy case on June 28, 2023, seeking payment of the remaining \$100,000.00 owed, plus interest, pursuant to the

terms of the settlement agreement approved by this Court. *See In re Medical Construction Industrial Training Center, LLC*, 23-bk-13260-JNP (Bankr. D.N.J.). Ms. Johnston's bankruptcy action is still in its infancy, with a claims deadline of August 31, 2023. *See In re Carol Ford Johnston Olive*, 23-15398-ABA (Bankr. 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:

	Receiver¹²	Conrad O'Brien¹³	Clark Hill¹⁴	Accountant
Total Fees	\$11,373.00	\$21,399.00	\$21,797.00	\$72,020.00
Fees Requested¹⁵	\$9,098.40	\$17,119.20	\$17,437.60	\$57,616.00
Total Expenses	\$0.00	\$64.00	\$0.00	\$1,735.20
Total Expenses Requested¹⁶	\$0.00	\$51.20	\$0.00	\$1,388.16

¹² These amounts relate to the Receiver's fees from January 1, 2023 through March 31, 2023.

¹³ These amounts relate to Conrad O'Brien counsel fees and expenses from January 1, 2023 through January 31, 2023.

¹⁴ These amounts relate to Clark Hill counsel fees from February 1, 2023 through March 31, 2023, and Clark Hill's expenses from January 1, 2023 through March 31, 2023.

¹⁵ This amount applies a twenty percent (20%) holdback.

¹⁶ This amount applies a twenty percent (20%) holdback.

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 the Receiver's time from January 1, 2023 through March 31, 2023;
- Exhibit "C" – Summary of Time and Expenses for Conrad O'Brien, including Legal Professional & Paraprofessional Time of the Receiver's Counsel from January 1, 2023 through January 31, 2023;
- Exhibit "D" – Summary of Time and Expenses for Clark Hill, including Legal Professional & Paraprofessional Time of the by the Receiver's Counsel from February 1, 2023 through March 31, 2023, and Clark Hill expenses from January 1, 2023 through March 31, 2023;
- Exhibit "E" – Summary of Accounting Professional & Paraprofessional Time and Expenses.

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

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

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

Activity Category	Hours	Fee Amount
Asset Analysis and Recovery	2.0	\$1,020.00
Asset Disposition	4.9	\$2,499.00
Case Administration	15.4	\$7,854.00
Totals	22.3	\$11,373.00

The following includes a breakdown of Counsel's hours and fees at Conrad O'Brien from January 1, 2023 through January 31, 2023, as defined by the SEC's billing guidelines:

Activity Category	Hours	Fee Amount
Asset Analysis and Recovery	22.70	\$7,666.00
Asset Disposition	0.8	\$264.00
Case Administration	47.20	\$13,238.00
Claims Administration and Objections	0.7	\$231.00
Totals	71.40	\$21,399.00

The following includes a breakdown of Counsel's hours and fees at Clark Hill from February 1, 2023 through March 31, 2023, as defined by the SEC's billing guidelines:

Activity Category	Hours	Fee Amount
Asset Analysis and Recovery	34.0	\$11,328.00
Asset Disposition	9.5	\$2,920.50
Business Operations	0.7	\$231.00
Case Administration	16.9	\$4,826.50
Claims Administration and Objections	7.4	\$2,491.00
Totals	68.5	\$21,797.00

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

Activity Category	Hours	Fee Amount
Accounting/Auditing	1.40	\$385.00
Data Analysis	24.70	\$11,102.50
Forensic Accounting	1.20	\$570.00
Litigation Consulting	75.40	\$37,155.00
Status Reports	9.80	\$3,355.00
Tax Issues	40.60	\$19,452.50
TOTALS	153.10	\$72,020.00

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

Name/Position	Hourly Rate	Hours	Fee Amount
Kevin Dooley Kent, Receiver	\$510.00	22.30	\$11,373.00

The following is a breakdown of the Receiver's Counsel's hours and fees at Conrad O'Brien from January 1, 2023 through January 31, 2023, broken down by biller:

Name/Position	Hourly Rate	Hours	Fee Amount
Andrew S. Gallinaro, Partner	\$365.00	6.40	\$2,336.00
Robin S. Weiss, Partner	\$330.00	30.00	\$9,900.00
Vanessa L. Huber, Associate	\$275.00	30.80	\$8,470.00
Erika L. Finkernagel, Paralegal	\$165.00	4.20	\$693.00
TOTALS		71.40	\$21,399.00

The following is a breakdown of the Receiver's Counsel's hours and fees at Clark Hill from February 1, 2023 through March 31, 2023, broken down by biller:

Name/Position	Hourly Rate	Hours	Fee Amount
Andrew S. Gallinaro, Partner	\$365.00	11.80	\$4,307.00
Robin S. Weiss, Senior Attorney	\$330.00	45.30	\$14,949.00
Vanessa L. Huber, Associate	\$275.00	6.00	\$1,650.00
Justin Russell, Paralegal	\$165.00	3.30	\$544.50
Erika L. Finkernagel, Paralegal	\$165.00	2.10	\$346.50
TOTALS		68.50	\$21,797.00

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

Name/Position	Hourly Rate	Hours	Fee Amount
Forensic Analysis Team			
Michael Shanahan (Senior Director)	\$550.00	25.50	\$14,025.00
David Medway (Director)	\$475.00	81.20	\$38,570.00
Cody Putterman (Associate)	\$275.00	11.10	\$3,052.50
Forensic Analysis Team Sub-Total		117.80	\$55,647.50
Data Analysis Team			
Bradley Koehler (Senior Director)	\$550.00	8.60	\$4,730.00
James McKenzie IV (Director)	\$475.00	2.30	\$1,092.50
Hannah Mulvihill (Manager)	\$425.00	7.20	\$3,060.00

Curtis Stecke (Manager)	\$425.00	2.70	\$1,147.50
Leo Jones (Associate)	\$275.00	3.90	\$1,072.50
Data Analysis Team Sub-Total		24.70	\$11,102.50
Tax Services Team			
Sean Menendez (Managing Director)	\$550.00	0.70	\$385.00
Jennifer Palacios (Senior Director)	\$550.00	6.70	\$3,685.00
Jadyna Seelye (Senior Associate)	\$375.00	3.20	\$1,200.00
Tax Services Team Sub-Total		10.60	\$5,270.00
OVERALL TOTALS		153.10	\$72,020.00

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, Third and Fourth Motions for Permission to Initiate Litigation, (ECF Nos. 98, 99, 147, 148, 220), 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, Third and Fourth Motions to Initiate Litigation have not been, and will not be,

billed to the Receivership on an hourly basis.¹⁸ 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 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.*

¹⁸ 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).

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 trend downward 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, Third, and Fourth 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 Eleventh Interim Fee Application for the Period January 1, 2023 through March 31, 2023, and thereby authorize the following:

1. Payment to Clark Hill PLC in the amount of \$9,098.40, as compensation for the Receiver's services performed from January 1, 2023 through March 31, 2023, 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 \$17,119.20, as compensation for services performed by the Receiver's Counsel from January 1, 2023 through January 31, 2023, such payment representing eighty percent (80%) of Conrad O'Brien's counsel fees for this quarter;
3. Payment to Clark Hill PLC in the amount of \$17,437.60, as compensation for services performed by the Receiver's Counsel from February 1,

2023 through March 31, 2023, such payment representing eighty percent (80%) of Clark Hill's counsel fees for this quarter;

4. Payment to Alvarez & Marsal Disputes and Investigations, LLC in the amount of \$57,616.00 as compensation for services performed from January 1, 2023 through March 31, 2023, such payment representing eighty percent (80%) of its fees for this quarter;

5. Payment to Conrad O'Brien PC in the amount of \$51.20, for expenses incurred from January 1, 2023 through January 31, 2023, representing eighty percent (80%) of Conrad O'Brien's expenses for this quarter; and

6. Payment to Alvarez & Marsal Disputes and Investigations, LLC, in the amount of \$1,388.16 for expenses incurred from January 1, 2023 through March 31, 2023, representing eighty percent (80%) of its expenses for this quarter.

Respectfully Submitted,

Date: 7/6/2023

s/ Robin S. Weiss

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EXHIBIT “A”

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STANDARDIZED FUND ACCOUNTING REPORT

CIVIL – RECEIVERSHIP FUND

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 01/01/2023 TO 03/31/2023

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 01/01/2023 TO 03/31/2023

FUND ACCOUNTING (See Instructions):		Current Reporting Period - 01/01/23 to 03/31/23			06/29/20 - 03/31/23
		Detail	Subtotal	Period Total	Case to Date
Line 1	Beginning Balance (As of 01/01/23)			\$ 7,983,221.50	\$ -
<i>Increases in Fund Balance:</i>					
Line 2	Business Income			-	-
Line 3	Cash and Securities			80,550.00	8,320,567.58
Line 4	Interest/Dividend Income			12,694.06	12,699.73
Line 5	Business Asset Liquidation			-	700.00
Line 6	Personal Asset Liquidation			965.00	548,219.02
Line 7	Third-Party Litigation Income			-	1,949,990.17
Line 8	Miscellaneous - Other			-	-
Total Funds Available (Lines 1 – 8):				\$ 8,077,430.56	\$ 10,832,176.50
<i>Decreases in Fund Balance:</i>					
Line 9	Disbursements to Investors/Claimants			-	258,776.99
Line 10	Disbursements for Receivership Operations			234,755.48	2,718,024.43
Line 10a	Disbursements to Receiver or Other Professionals			234,047.98	
Line 10b	Business Asset Expenses			-	
Line 10c	Personal Asset Expenses			568.00	
Line 10d	Investment Expenses			139.50	
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			-	
Total Disbursements for Receivership Operations				\$ 234,755.48	\$ 2,976,801.42
Disbursements for Distribution Expenses Paid by the Fund:					
Line 11	Distribution Plan Development Expenses:			6,119.78	18,819.78
Line 11a	1. Fees:				
	Fund Administrator			-	
	Independent Distribution Consultant (IDC)			-	
	Distribution Agent			-	
	Consultants			-	
	Legal Advisers			-	
	Tax Advisers			-	
	2. Administrative Expenses			6,119.78	
	3. Miscellaneous			-	
	Total Plan Development Expenses			6,119.78	
Line 11b	Distribution Plan Implementation Expenses:				
	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			-	
Total Disbursements for Distribution Expenses Paid by the Fund				\$ 6,119.78	\$ 18,819.78
Line 12	Disbursements to Court/Other:				
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			-	-
Line 12b	Federal Tax Payments			-	-
Total Disbursements to Court/Other				\$ -	\$ -
Total Funds Disbursed (Lines 9 – 11):				\$ 240,875.26	\$ 2,985,621.20
Line 13	Ending Balance (As of 12/31/22):			\$ 7,836,555.30	\$ 7,836,555.30
Line 14	Ending Balance of Fund – Net Assets:				
Line 14a	Cash & Cash Equivalents			7,836,555.30	7,836,555.30
Line 14b	Investments			-	-
Line 14c	Other Assets or Uncleared Funds			-	-
Total Ending Balance of Fund – Net Assets				\$ 7,836,555.30	\$ 7,836,555.30

[1]

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 01/01/2023 TO 03/31/2023

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	Report of Items NOT To Be Paid by the Fund:				
	Disbursements for Plan Administration Expenses Not Paid by the Fund:			\$ -	\$ -
<i>Line 15a</i>	<i>Plan Development Expenses Not Paid by the Fund:</i>				
	1. Fees:				
	Fund Administrator			-	
	IDC			-	
	Distribution Agent			-	
	Consultants			-	
	Legal Advisers			-	
	Tax Advisers			-	
	2. Administrative Expenses			-	
	3. Miscellaneous			-	
	Total Plan Development Expenses Not Paid by the Fund			\$ -	
<i>Line 15b</i>	<i>Plan Implementation Expenses Not Paid by the Fund:</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. FAIR Reporting Expenses			-	
	Total Plan Implementation Expenses Not Paid by the Fund			\$ -	
<i>Line 15c</i>	<i>Tax Administrator Fees & Bonds Not Paid by the Fund</i>			-	
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			-	-
Line 16	Disbursements to Court/Other Not Paid by the Fund:				
<i>Line 16a</i>	<i>Investment Expenses/CRIS Fees</i>			-	-
<i>Line 16b</i>	<i>Federal Tax Payments</i>			-	-
	Total Disbursements to Court/Other Not Paid by the Fund:			-	-
Line 17	DC & State Tax Payments			\$ -	\$ -
Line 18	No. of Claims:				
<i>Line 18a</i>	<i># of Claims Received This Reporting Period</i>				-
<i>Line 18b</i>	<i># of Claims Received Since Inception of Fund</i>				52
Line 19	No. of Claimants/Investors:				
<i>Line 19a</i>	<i># of Claimants/Investors Paid This Reporting Period</i>				-
<i>Line 19b</i>	<i># of Claimants/Investors Paid Since Inception of Fund</i>				1

Notes

[1] 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: April 24, 2023

NOTES TO THE STANDARDIZED FUND ACCOUNTING REPORT**Receivership Cash Accounts**

As of March 31, 2023, the Receiver's cash balance of \$7,836,555.30 was maintained in checking and savings accounts at Bank of America and WSFS Bank with the following balances.

Receivership Cash Account Balances - March 31, 2023

Financial Institution	Account Type	Balance
Band of America	Checking	\$300,000.00
WSFS Bank	Checking	299,876.50
WSFS Bank	Savings	7,236,678.80
Total Cash		\$7,836,555.30

Investments, Real and Personal Property

As described more fully in the Receiver's Eleventh 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 6th day of July, 2023.


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)

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 Eleventh Interim Fee Application for the Period January 1, 2023 through March 31, 2023. 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: 7/6/2023

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: 215-640-8501
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
ELEVENTH INTERIM FEE APPLICATION FOR THE PERIOD
JANUARY 1, 2023 THROUGH MARCH 31, 2023**

THIS MATTER having come before this Court upon the Motion of Receiver, Kevin Dooley Kent for Approval of Eleventh Interim Fee Application for the Period January 1, 2023 through March 31, 2023;

It is on this _____ day of _____, 2023,

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

FURTHER ORDERED that Payment to Clark Hill PLC ("Clark Hill") in the amount of \$9,098.40 for the Receiver's services from January 1, 2023 through March

31, 2023, representing eighty percent (80%) of the Receiver's total fee of \$11,373.00 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 ("Conrad O'Brien") in the amount of \$17,119.20 for the Receiver's Counsel's services performed from January 1, 2023 through January 31, 2023 representing eighty percent (80%) of Conrad O'Brien's total counsel fees of \$21,399.00 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 in the amount of \$17,437.60 for the Receiver's Counsel's services from February 1, 2023 through March 31, 2023, representing eighty percent (80%) of Clark Hill's total counsel fees of \$21,797.00 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 \$57,616.00 for services performed from January 1, 2023 through March 31, 2023, representing eighty percent (80%) of the Accountant's total fee of \$72,020.00 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 in the amount of \$51.20 for expenses incurred from January 1, 2023 through January 31, 2023, representing eighty percent (80%) of Conrad O'Brien's total expenses of \$64.00 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 in the amount of \$1,388.16 for expenses incurred from January 1, 2023 through March 31, 2023, representing eighty percent (80%) of the Accountant's total expenses of \$1,735.20 for this quarter, is hereby APPROVED and may be paid by the Receiver at this time.

BY THE COURT:

HONORABLE MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

**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 6th day of July, 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 Eleventh Interim Fee Application for the Period January 1, 2023 through March 31, 2023 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