

**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: July 15, 2024**

**NOTICE OF JOINT MOTION OF RECEIVER, KEVIN DOOLEY KENT,  
AND INTERNAL REVENUE SERVICE (“IRS”) FOR ORDER  
RESOLVING THE IRS CLAIM ASSERTED AGAINST  
THE RECEIVERSHIP ESTATE**

**PLEASE TAKE NOTICE** that the undersigned 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 July 15, 2024 or as soon thereafter as the Court permits, at a date and time to be determined by the Court, for Approval of the Joint Motion of Receiver, Kevin Dooley Kent, and Internal Revenue Service (“IRS”) for an order resolving the IRS claim asserted against the Receivership Estate.

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

**PLEASE TAKE FURTHER NOTICE** that Counsel for the Securities and Exchange Commission has advised that they do not oppose this motion.

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

Respectfully submitted,

Dated: 6/14/2024

s/ Robin S. Weiss  
Robin S. Weiss, Esquire  
Clark Hill PLC  
Two Commerce Square  
2001 Market Street, Suite 2620  
Philadelphia, PA 19102  
Phone: 215-864-8086  
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[rsweiss@clarkhill.com](mailto:rsweiss@clarkhill.com)  
*Attorneys for Receiver, Kevin Dooley  
Kent*

s/ Gokce T. Yurekli  
Gokce T. Yurekli  
U.S. Dept. of Justice, Tax Division  
P.O. Box 227  
Washington, DC 20044  
[Gokce.T.Yurekli@usdoj.gov](mailto:Gokce.T.Yurekli@usdoj.gov)  
*Trial Attorney, U.S. Dept of Justice,  
Civil Trial Section, Eastern Region*

**IN THE UNITED STATES DISTRICT COURT  
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**SECURITIES AND EXCHANGE  
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**C. A. No. 2:19-cv-17213 (MCA)**

**Motion Day: July 15, 2024**

**MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION OF  
RECEIVER, KEVIN DOOLEY KENT, AND INTERNAL REVENUE  
SERVICE (“IRS”) FOR ORDER RESOLVING THE IRS CLAIM  
ASSERTED AGAINST THE RECEIVERSHIP ESTATE**

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2001 Market Street, Suite 2620  
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Facsimile: (215) 640-8501  
E-mail: rsweiss@clarkhill.com

Dated: 6/14/2024

Pursuant to the Court's Order Appointing Receiver dated June 29, 2020, the Receiver, Kevin Dooley Kent, and the Internal Revenue Service ("IRS"), hereby move this Court for an order resolving the IRS claim asserted against the Receivership Estate. In support of this Motion, the Receiver states as follows.

## **I. STATEMENT OF FACTS**

On June 29, 2020, this Court appointed the Receiver, Kevin Dooley Kent, to assume control of, marshal, pursue and preserve assets of Defendant, Brenda Smith, and Receivership Parties Broad Reach Capital, LP ("Broad Reach Capital"), 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 Investments"), CV Lending LLC, CV Minerals LLC, BD of Louisiana, LLC, TA1, LLC ("TA1"), FFCC Ventures LLC, Prico Market LLC, GovAdv Funding LLC, Elm Street Investments, LLC (ECF No. 96), Investment Consulting LLC ("Investment Consulting"), and Tempo Resources LLC (assets hereinafter "Receivership Assets" or "Receivership Estate"). Receivership Order, Whereas ¶ 3; ¶¶ 1–3, 5 (ECF No. 22).

The Receivership Order provides, *inter alia*:

The Receiver is authorized to take all actions to manage, maintain, and/or wind-down the business operations of the Receivership Parties, including making legally required payments to pre-appointment creditors, employees, and agents of the Receivership Estate and

communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate. Any debts or amounts owed by Receivership Parties that pre-date this Order, including for services rendered before that date, shall not be paid absent order of the Court. The Receiver will consult with the SEC and recommend a claims procedure to the Court at the appropriate time, and stake holders will have an opportunity comment on the proposed claims procedure.

Receivership Order, ¶ 48.

Pursuant to the Receivership Order, the Receiver filed a Motion for Order Setting Claims Bar Date, Establishing Claims Procedure, and Approving Notification Process on January 14, 2022. (ECF No. 160). The Motion was granted on February 22, 2022. (ECF No. 168). The claims process thereafter began in earnest, in accordance with the deadlines set forth by the Court for notification and submission of claims.

On March 14, 2023, the Receiver filed his First Omnibus Motion for Order Resolving Disputed Non-Investor Creditor Claims (“First Omnibus Claims Motion”). (ECF No. 232). That Motion was administratively terminated by the Court on March 29, 2023, with the issuance of a modified briefing schedule, and the Receiver was directed to re-file the Motion and all responses and replies simultaneously by July 13, 2023. (ECF No. 235).

The Receiver re-filed his First Omnibus Claims Motion on July 13, 2023. (ECF No. 254). In that Motion, the Receiver detailed the history of his discussions and negotiations with the IRS. *See id.* at pp. 61-69. The Receiver reported that on

September 10, 2021, the IRS sent a Notice of Tax Obligations to the Receiver, asserting that the Receivership Parties owe approximately \$1,331,807.00 to the IRS, that is comprised of penalties for late and/or unfiled tax returns of \$416,020, estimated corporate income taxes of \$899,050, and estimated unpaid payroll taxes of \$26,737 for various tax years ranging from 2010 to 2020. *Id.* at pp. 62-63.<sup>1</sup>

The Receiver took the position that (1) the filing of returns for periods prior to the Receiver's appointment is neither appropriate nor practical and will result in significant expense and cost to the Receivership at the expense of victim investors, (2) any arguable tax obligations should be subordinated to victim claims, (3) completing returns for the Receivership Parties for pre-appointment time periods would add substantial expense to the Receivership and would be extremely difficult, (4) that paying late filing penalties conflicts with the objectives set forth in the IRS Penalty Handbook when victims are not expected to be made whole, and (5) that there was no supportable basis for taxes asserted for 2019 and 2020, given Brenda Smith's arrest and the shutdown of CV Brokerage. *Id.* at pp. 63-66. At the same time, the Receiver acknowledged the existence of caselaw from other circuits involving the IRS and, absent consent or waiver, the arguably limited scope of District Court jurisdiction over tax claims in receivership matters. *See, e.g., SEC v. Credit Bancorp,*

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<sup>1</sup> The IRS subsequently clarified that it made a mistake in calculating the claim, and that the correct claim amount is \$1,340,737.00.

297 F.3d 127 (2d Cir. 2003) (addressing interplay between Receiver claims motions and jurisdiction over IRS). The Receiver also acknowledged that to the extent the IRS' claims cannot be determined through the claims process, and there are substantial open questions about the scope of potential liability, it may lead to substantial delay of material distributions to investors and/or trade creditors. *Id.* at pp. 67-69.

In his Omnibus Reply in Support of the First Omnibus Claims Motion, dated July 10, 2023 and filed on July 23, 2023 (ECF No. 258), the Receiver reported as follows:

The Internal Revenue Service ("IRS"), represented by Gokce T. Yurekli, a trial attorney in the tax division for the United States Department of Justice, has indicated that it does not wish to formally participate in the Receivership claims process. However, the Receiver is in the process of attempting to negotiate a resolution of the IRS' claims with Ms. Yurekli, which will likely address both the amount of the claim and any potential distribution rights. The Receiver will notify the Court of any material developments.

*Id.* at pp. 44-45.

The Receiver continued to negotiate with the IRS during this time period, and on July 11, 2023, the Receiver submitted a settlement proposal to the IRS. The IRS ultimately agreed to certain aspects of the Receiver's settlement proposal, and the parties have reached a tentative agreement resolving the IRS' claim ("Proposed Resolution"). A copy of the June 12, 2024 Offer Letter from the IRS, setting forth the terms of the Proposed Resolution, is attached hereto as Exhibit "A." A copy of

the Attorney General's June 13, 2024 acceptance of the Offer Letter is attached hereto as Exhibit "B."

The general terms of the Proposed Resolution are as follows:

- The IRS has agreed to remove all failure-to-file penalties and estimated tax and employment tax liabilities for the 2019 and 2020 tax years, thereby reducing the assessed claims from approximately \$1,340,737 to \$515,984.00;
- The IRS has confirmed that it has not asserted or attempted to assert any other claims against the Receivership Parties, and that it has not expressed any intention to assess any other claims against the Receivership Parties; meanwhile, the Receiver will continue to file 1120-SF Tax Returns for the Receivership Estate as a Qualified Settlement Fund while the Receivership Parties remain under his control;
- The IRS will agree to subordinate its claim to investor creditors and will share in a pro-rata distribution with other unsecured non-investor claims;
- Following the Court-approved distribution of funds, and the distribution of funds to the IRS, if any, the IRS will not seek to enforce the outstanding penalties against the Receiver or the Receivership Parties against whom penalties have been assessed.

*See* Ex. "A." The IRS will not formally accept the Proposed Resolution unless and until this Court enters the attached proposed Order. *See* Ex. "A," ¶ 7.

## **II. ARGUMENT**

The Receiver submits that the Proposed Resolution is a fair and equitable resolution and is in the best interest of the Receivership Estate for several reasons.



First, the IRS has agreed to remove penalties for 2019 and 2020, i.e. covering the time period between Smith's FINRA bar and incarceration and the Receiver's appointment, effectively cutting the penalties owed by over sixty percent (60%).

Second, the Proposed Resolution provides certainty regarding the amounts owed to the IRS, which obviates concerns regarding the need to hold back funds for unknown and uncertain future liabilities.

Third, the looming IRS claim presented a significant hurdle and impediment to the Receiver making a distribution to Smith's investor victims, out of concern for the potential liabilities of the Receiver and Receivership Parties to the IRS that could arise from the distribution of funds.

Fourth, the IRS' willingness to subordinate its claim to those of Brenda Smith's investor victims, and to participate pro-rata in any distributions made to unsecured non-investor creditors, allows the Receiver to prioritize maximizing recoveries for the defrauded investors.

Fifth, once an order approving the Proposed Resolution is entered (and the IRS accepts the Proposed Resolution), the Receiver can proceed with presenting a proposed distribution model and proposed first interim distribution for the Court's approval.

Counsel for the Securities and Exchange Commission has advised that they do not oppose this Motion.

### III. CONCLUSION

In light of the foregoing, the Receiver respectfully requests that this Court enter the attached Order Resolving the IRS Claim Asserted Against the Receivership Estate.

Respectfully submitted,

Date: 6/14/2024

s/ Robin S. Weiss

Robin S. Weiss, Esq.  
Clark Hill PLC  
Two Commerce Square  
2001 Market Street, Suite 2620  
Philadelphia, PA 19103  
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E-mail: rsweiss@clarkhill.com

*Attorneys for Receiver,  
Kevin Dooley Kent*

# **EXHIBIT “A”**



**U.S. Department of Justice**

**Tax Division**

*Civil Trial Section, Eastern Region*

DAH:DSM:GTYurekli  
DJ 5-48-23286  
CMN 2023100387

P.O. Box 227  
Washington, D.C. 20044

Telephone: 202-598-0581  
Fax: 202-514-6866  
Gokce.T.Yurekli@usdoj.gov

June 12, 2024

**Via Email**

Robin S. Weiss, Esq.  
Clark Hill PLC  
Two Commerce Square  
2001 Market Street, Suite 2620  
Philadelphia, PA 19102  
[rsweiss@clarkhill.com](mailto:rsweiss@clarkhill.com)

Re: *SEC v. Brenda Smith, et al.*  
2:19-cv-17213-MCA-ESK (D.N.J.)

Dear Ms. Weiss:

I write regarding our efforts to settle the dispute in the above-captioned case between the Receivership and the Internal Revenue Service. Based on the email/letter dated July 11, 2023 and our subsequent conversations, I understand the terms of the offer as follows:

1. The parties agree that the IRS shall have an allowed claim in this Receivership of \$515,984 for the years 2010 to 2018, based on the failure-to-file penalties against Defendants Broad Reach Capital, LP; Broad Reach Partners, LLC; and Bristol Advisors, LLC, and affiliated companies owned or controlled by one or more Defendants, BA Smith & Associates LLC; BD of Louisiana LLC; CV Brokerage, Inc.; Clearview Distribution Services LLC; CV Investments LLC; CV Lending LLC; CV Minerals LLC; Elm Street Investments LLC; FFCC Ventures LLC; Govadv Funding LLC; Investment Consulting LLC; PriCo Market LLC; TA 1 LLC; and Tempo Resources (collectively "Receivership Entities," and together with Bristol Advisors LP, CV International Investments Limited and CV International Investments PLC, "Receivership Parties"), penalties for late-filed returns against CV Investments, LLC, and the estimated tax and payroll tax liabilities against CV

Brokerage, Inc.<sup>1</sup> This agreed-upon claim amount will not accrue any interest for distribution purposes.

2. The IRS agrees not to assess any failure to file penalties, or assert any estimated tax or employment tax liabilities against the Receivership Entities for 2019 and 2020 tax years.
3. The IRS has not asserted or attempted to assert any other claims against the Receivership Entities other than those described and resolved in Paragraphs 1 through 2, above. The IRS likewise has not notified the Receiver of any intention to assess any other claims against the Receivership Entities.
4. The Receiver represents that the Receivership Entities are no longer operational businesses, and that he will continue to file 1120-SF Tax Returns for the Receivership Estate, as a Qualified Settlement Fund, while the Receivership Entities remain under his control.
5. The IRS will agree to subordinate its claim in paragraph 1, above, to investor creditors and will share in a pro-rata distribution with other unsecured non-investor creditors as the terms “investor” and “non-investor creditors” are defined in the *First Omnibus Motion of Receiver, Kevin Dooley Kent, for Order Resolving Disputed Non-Investor Creditor Claims* (ECF No. 232, and re-filed at ECF No 254) (“First Omnibus Motion”).<sup>2</sup>
6. Following the Court-approved distribution of funds in the SEC v. Smith Matter, and the distribution, if any, to the IRS in accordance with paragraph 5, above, the IRS will not seek to enforce the outstanding penalties and tax liabilities via any action against the Receiver or the Receivership Entities, and will not seek to recover any additional assets from the Receivership Estate, as that term is defined in the Order Appointing Receiver (ECF No. 22), aside from what is agreed to herein. Nothing in this settlement shall constitute a release or discharge of Brenda Smith’s obligations under the Internal Revenue Code; however, the IRS will not seek to collect from the Receivership Estate any potential tax liabilities or penalties for Brenda Smith.

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<sup>1</sup> The Receivership Order also identifies Bristol Advisors LP; CV International Investments Limited; and CV International Investments PLC as Receivership Parties. (ECF No. 22). However, no tax identification numbers have been located for these entities, and no tax penalties have been assessed.

<sup>2</sup> This acknowledges that certain non-investor creditors have taken the position in their response to the First Omnibus Motion that they have a secured claim and thus have a priority right to certain funds. *See* ECF No. 256. In the event this creditor receives some priority over other non-investor creditors due to this alleged secured interest, the IRS will share in a pro-rata distribution with the remaining non-investor creditors.

7. Upon acceptance of this offer, the parties will file the attached Joint Motion and Order resolving the IRS's claims against the Receivership Entities and any potential objection of the Receiver to the IRS's claim. Acceptance of this offer is contingent upon the Order being entered by the Court.
8. The Proposed Order shall not discharge or release the Defendants from any tax liabilities or any other obligations they may have under the Internal Revenue Code, aside from the discharges and releases agreed to herein. Nor shall it discharge or release (a) the Receiver, (b) the Receiver's agents, servants, successors, assigns, administrators, employees, attorneys, advisors, and legal representatives, (c) the Receivership Estate, or (d) Investor Creditors of the tax liabilities that may arise from any distribution or other payments from the Receivership, except to the extent set forth herein.
9. The parties agree to bear their own costs and attorney's fees in this action.

If the foregoing does accurately reflect the terms of the offer, please sign the acknowledgement contained below of this letter and return the entire letter to me by email at [Gokce.T.Yurekli@usdoj.gov](mailto:Gokce.T.Yurekli@usdoj.gov).

Unless you receive from an authorized delegate of the Attorney General, a formal written acceptance of your offer, the United States is in no way committed to a settlement.

Sincerely

/s/ Gokce T. Yurekli  
GOKCE T. YUREKLI  
Trial Attorney  
Civil Trial Section, Eastern Region

I agree this accurately reflects the terms of the Receiver's offer.



Robin S. Weiss, Esq.  
*Attorney for Receiver, Kevin Dooley Kent*

Date: 6/12/2024

# **EXHIBIT “B”**



**U.S. Department of Justice**

**Tax Division**

Please reply to: Office of Review  
P.O. Box 310  
Washington, D.C. 20044

DJ 5-48-23286  
CMN 2023100387

June 13, 2024

**Via Email**

Robin S. Weiss, Esq.  
Clark Hill PLC  
Two Commerce Square  
2001 Market Street, Suite 2620  
Philadelphia, PA 19102  
[rsweiss@clarkhill.com](mailto:rsweiss@clarkhill.com)

Re: *SEC v. Brenda Smith, et al.*  
2:19-cv-17213-MCA-ESK (D.N.J.)

Dear Ms. Weiss:

This refers to the Receiver's settlement offer set forth in our letter dated June 12, 2024, which you acknowledged on that same date. The offer has been accepted on behalf of the Attorney General.

Sincerely yours,

DAVID H. HUBBERT  
Deputy Assistant Attorney General

By: JAMES  
WILKINSON  
Digitally signed by  
JAMES WILKINSON  
Date: 2024.06.13  
10:17:31 -04'00'  
JAMES J. WILKINSON  
Chief, Office of Review



**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)

**ORDER RESOLVING INTERNAL REVENUE SERVICE CLAIM  
ASSERTED AGAINST THE RECEIVERSHIP ESTATE**

**THIS MATTER** having come before this Court upon the Joint Motion of Receiver, Kevin Dooley Kent and Internal Revenue Service (“IRS”) for Order Resolving the IRS Claims Asserted Against the Receivership Estate;

It is on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,

**ORDERED** that the Joint Motion for Order Resolving the IRS Claims Asserted Against the Receivership Estate is GRANTED; and it is

**FURTHER ORDERED** that the Receiver is permitted to enter into a resolution with the Internal Revenue Service pursuant to the terms proposed in the Offer Letter attached as Exhibit “A” to the Motion, and that the Court will recognize the terms set

forth in the Offer Letter in connection with any distribution order made in this matter;  
and it is

**FURTHER ORDERED** that nothing in this Order shall discharge or release defendants from any tax liabilities or any other obligations they may have under the Internal Revenue Code, aside from the discharges and releases agreed to in the proposed Offer Letter attached as Exhibit “A” to the Motion. Nor shall this order discharge or release (a) the Receiver, (b) the Receiver’s agents, servants, successors, assigns, administrators, employees, attorneys, advisors, and legal representatives, (c) the Receivership Estate, or (d) Investor Creditors of the tax liabilities that may arise from any distribution or other payments from the Receivership, except to the extent set forth in the Offer Letter.

**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,**

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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 14<sup>th</sup> day of June, 2024, that I caused to be served a true and correct copy of the Notice of Joint Motion of Receiver, Kevin Dooley Kent, and Internal Revenue Service (“IRS”) for Order Resolving the IRS Claim Asserted Against the Receivership Estate 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

I further certify that I will serve a copy of this Motion on all Investor and Non-Investor Creditors which have asserted active claims against the Receivership Estate, directly and/or through their counsel, by electronic and/or first class mail. I will also post this Motion on the Receivership website at <https://broadreachreceiver.com>.

s/ Robin S. Weiss  
Robin S. Weiss, Esq.  
Attorney for Receiver, Kevin Dooley Kent