

**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: July 15, 2024

**RECEIVER'S REPLY 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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Dated: 6/27/2024

On June 14, 2024, the Receiver filed a Joint Motion of the Receiver and the Internal Revenue Service (“IRS”) for Order Resolving the IRS Claims Asserted Against the Receivership Estate (the “Motion”). (ECF No. 322). As previously reported, the IRS declined to formally participate in the Receivership claims process. (ECF No. 322-1, p. 4). Accordingly, the Receiver and the IRS separately negotiated a resolution of the IRS claim, and submitted that resolution to the Court for approval. As part of that settlement, the Receiver and IRS agreed that the IRS will share in a pro-rata distribution with unsecured non-investor creditors. *Id.* p. 5. The IRS will also agree to subordinate its claim to investor creditors. *Id.*

On June 26, 2024, disputed non-investor creditor Industrial and Commercial Bank of China Financial Services LLC (“ICBCFS”) submitted a Limited Objection and Reservation of Rights in response to the Motion. (ECF No. 323). ICBCFS correctly notes that the Receiver has not yet filed a plan of distribution, and that no determination has been made yet with respect to the priority to be given between investor and non-investor creditors. ICBCFS, therefore, expresses concern that the Motion is seeking a *de facto* or implicit subordination of all non-investor creditor claims. But that is not the intent of the Motion, and that will not be its effect.

The resolution of the IRS claim provides the certainty needed for the Receiver to submit a proposed distribution plan. The Receiver has no intention of attempting to bind other non-investor creditors to subordination through the Motion, without giving them the opportunity to litigate the issue. While there are other issues relating

to the ICBCFS claim that will need to be resolved in the future (*see* ECF Nos. 30, 254, 256, 258, 305), the Receiver will soon be proposing a distribution plan to this Court which will include a proposal regarding priority of claims, and *all creditors*, including ICBCFS, will receive notice and a full and fair opportunity to respond to that proposed distribution plan before a ruling is made. The rights of ICBCFS and all creditors are reserved.

Respectfully submitted,

Date: 6/27/24

s/ Robin S. Weiss

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*Attorneys for Receiver,
Kevin Dooley Kent*

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**CERTIFICATE OF
SERVICE**

I hereby certify, this 27th day of June, 2024, that I caused to be served a true and correct copy of the Reply 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 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 Reply on all Investor and Non-Investor Creditors which have asserted active claims against the Receivership Estate, directly and/or through their counsel, by first class and/or electronic 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