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12 *Attorneys for B. and J. Kovar*

8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 SECURITIES AND EXCHANGE  
11 COMMISSION,

12 Plaintiff,

13 vs.

14 PROFIT CONNECT WEALTH SERVICES,  
15 INC.; JOY I. KOVAR; and BRENT CARSON  
16 KOVAR,

17 Defendants.

Case Number:  
2:21-cv-01298-JAD-BNW

**HAYES WAKAYAMA’S MOTIONS**  
**TO (1) WITHDRAW AND (2) BE**  
**REMOVED FROM ECF SERVICE**  
**LIST**

18 **HAYES WAKAYAMA’S MOTIONS TO (1) WITHDRAW AND (2) BE REMOVED**  
19 **FROM THE ECF SERVICE LIST**

20 The law firm of Hayes Wakayama, counsel of record for Brent Kovar and Joy Kovar,  
21 hereby respectfully submits this Motions to (1) Withdraw and (2) be Removed from the ECF  
22 Service List (the “Motion”). This Motion is made and based upon the pleadings and papers  
23 on file herein, the following memorandum of points and authorities and the Declaration of  
24 Dale A. Hayes, Jr., Esq.  
25

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION.**

3 Plaintiff Security and Exchange Commission (“SEC”) filed a Complaint and, amongst  
4 other motions, a Motion for Preliminary Injunction and Motion to Appoint Receiver [ECF  
5 Nos. 7, 8] on July 8, 2021. Defendants were served with the Complaint and Plaintiff’s  
6 Motions late on Thursday, July 15, 2021. Upon being served, Defendants contacted their local  
7 general counsel, Hayes Wakayama.<sup>1</sup> Attorney Dale Hayes, Jr., Esq. (“Hayes”) informed  
8 Defendants that Hayes Wakayama did not have experience defending against civil SEC  
9 charges but also informed Defendants that Hayes would confer with SEC consultants to secure  
10 Defendant’s experienced SEC counsel. Time was of the essence as there were very imminent  
11 time deadlines.

12 Defendants agreed to pay Hayes Wakayama for their services. After conferring with  
13 numerous SEC consultants and attorneys, it was decided that it would be best to retain SEC  
14 counsel from out of State as there were few, if any, Nevada attorneys with experience  
15 defending against civil SEC charges. Hayes then connected Defendants with a highly  
16 experienced and competent SEC lawyer based in Los Angeles. Defendants indicated they  
17 would be hiring the SEC lawyer who would then appear in this matter *pro hac* by associating  
18 into the case with Hayes Wakayama. Up until recently, Hayes Wakayama and the SEC lawyer  
19 provided Defendants with sound legal advice and representation. During this timeframe, only  
20 Hayes Wakayama made a formal appearance in the case.

21 Recently, the SEC lawyer withdrew from being involved with the case. On August 9,  
22 2021, counsel for Receiver Geoff Winkler informed Hayes Wakayama that Profit Connect  
23 was terminating Hayes Wakayama’s representation in this matter due to a perceived conflict  
24

25  
26 \_\_\_\_\_  
27 <sup>1</sup> The facts of the instant Motion are supported by the Declaration of Dale A. Hayes, Jr., Esq., attached as **Exhibit A**.

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1 of interest.<sup>2</sup> Accordingly, as of the date of filing this Motion, Hayes Wakayama only  
2 represents the Kovars in this matter.

3 Defendants, *and now the Kovars*, failed to retain an SEC lawyer as they agreed to.  
4 Hayes Wakayama never would have appeared in this case had Defendants not promised to  
5 retain SEC counsel to appear as co-counsel. Moreover, Hayes Wakayama recently learned  
6 that Defendants, *and now the Kovars*, are unable to pay Hayes Wakayama for both past and  
7 future legal services. Brent and Joy Kovar's last known address for service of future  
8 pleadings, orders and other court papers in this matter is:

9 7043 Calvert Cliffs Street  
10 North Las Vegas, Nevada 89084

11 Withdrawal of Hayes Wakayama from this matter will not result in the delay of discovery,  
12 trial or any other proceeding. Currently, there is no substantive hearing or trial scheduled.  
13 There is only a Status Hearing scheduled for September 21, 2021, which is only meant to  
14 address the Receiver's report. Although the Receiver has propounded requests upon Hayes  
15 Wakayama, Hayes Wakayama has certified that it has been in contact with the Receiver's  
16 counsel and that all such requests will be addressed *barring privilege defenses*. Finally, Hayes  
17 Wakayama submits that there is no just cause to delay ruling on the instant Motion given the  
18 ongoing litigation (absent SEC defense counsel). Further, Hayes Wakayama has been  
19 informed that neither Brent nor Joy Kovar object to Hayes Wakayama's withdrawal.

20 **II. LEGAL ARGUMENT.**

21 **A. HAYES WAKAYAMA SHOULD BE PERMITTED TO WITHDRAW  
22 AS BRENT AND JOY KOVAR'S ATTORNEYS IN THIS MATTER.**

23 Pursuant to LR IA 11-6, an attorney may seek withdraw as counsel of record by  
24 motion. LR IA 11-6(b). As the foregoing Local Rule requires, the instant Motion is being  
25 served upon both the SEC, the Receiver as well as Brent and Joy Kovar. *See id.* Brent and  
26

27 <sup>2</sup> See August 9, 2021, correspondence from Ballard Spahr to Hayes Wakayama attached as **Exhibit B**.

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1 Joy Kovar’s last known address for service of future pleadings, orders and other court papers  
2 in this matter is:

3 Brent Kovar  
4 Joy Kovar  
5 7043 Calvert Cliffs Street  
6 North Las Vegas, Nevada 89084

6 Withdrawal of Hayes Wakayama from this matter will not result in the delay of discovery,  
7 trial or any other proceeding. *See* LR IA 11-6(e). Currently, there is no substantive hearing  
8 or trial scheduled. There is only a Status Hearing scheduled for September 21, 2021, for the  
9 limited purpose of reviewing the Receiver’s report. Although the Receiver has propounded  
10 document requests upon Hayes Wakayama, Hayes certifies that he has been in contact with  
11 the Receiver’s counsel and that all such requests will be addressed.<sup>3</sup>

12 Local Rule 11-7(a) states, in pertinent part, that attorneys who are admitted to practice  
13 before the U.S. District Court for the District of Nevada:

14 must adhere to the standards of conduct prescribed by the Model Rules of  
15 Professional Conduct as adopted and amended from time to time by the  
16 Supreme Court of Nevada, except as these standards may be modified by this  
17 court. LR IA 11-7(a).

17 Nevada Rules of Professional Conduct (NRPC) Rule 1.16 states, in pertinent part:

18 (b) . . . a lawyer may withdraw from representing a client if:

19 (5) The client fails substantially to fulfill an obligation to the lawyer  
20 regarding the lawyer’s services and has been given reasonable warning that the  
21 lawyer will withdraw unless the obligation is fulfilled;

22 (6) The representation will result in an unreasonable financial burden  
23 on the lawyer or has been rendered unreasonably difficult by the client; or

24 (7) Other good cause for withdrawal exists.

25 As established by the Declaration of Hayes in support of this Motion,<sup>4</sup> withdrawal is  
26 appropriate in this case. Brent Kovar and Joy Kovar, *and Profit Connect up until August 9,*

26 <sup>3</sup> *See Ex. A.*

27 <sup>4</sup> *See id.*

2021, have failed to secure SEC counsel and further failed to pay for the legal services provided by Hayes Wakayama. Moreover, Defendants currently owe Hayes Wakayama a balance for attorney’s fees for services that were rendered even before the instant action was filed. Withdrawal is appropriate at this stage in order to let Brent Kovar and Joy Kovar find other counsel to continue their representation in this case. Moreover, the receiver is actively engaging in discovery. There are daily court filings. The Kovars are in need of an SEC attorney to handle this matter moving forward. The Kovars promised Hayes Wakayama such co-counsel and therefore failed to honor a substantial obligation which “has [] rendered [the representation] unreasonably difficult by the client.” *See* NRPC Rule 1.16(b)(5)-(6). Hayes Wakayama warned the Kovars that it would move to withdraw if this failure was not cured on numerous occasions.<sup>5</sup> Finally, Hayes Wakayama has been working, for free, for over five weeks. Hayes Wakayama is a small firm. Forcing Hayes Wakayama to continue working under such circumstances would “result in an unreasonable financial burden.” *See* NRPC Rule 1.16(b)(6). After considering all relevant factors, withdrawal is appropriate in this case.

**B. HAYES WAKAYAMA’S ATTORNEYS AND STAFF SHOULD BE REMOVED FROM THE ECF SERVICE LIST.**

Hayes Wakayama respectfully moves this Court for removal of all Hayes Wakayama attorneys and staff and their email addresses from the ECF Service List for Case No. 2:21-cv-01298-JAD-BNW. Assuming this Court grants Hayes Wakayama’s accompanying motion to withdraw, there will be no need for the attorneys or staff from Hayes Wakayama to receive notification of filings in this matter. The specific names and addresses that Hayes Wakayama is requesting to be removed are as follows:

Dale Hayes, Jr., Esq.	dhayes@hwlawNV.com
Jeremy Holmes, Esq.	jholmes@hwlawNV.com
Emmanuel Hernandez	ehernandez@hayeslawNV.com
Julia Rodionova	julia@hwlawNV.com

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<sup>5</sup> *See* Ex. A at ¶ 15.

1 **III. CONCLUSION.**

2 Accordingly, the law firm of Hayes Wakayama respectfully requests that this Court  
3 grant its motion to withdraw as counsel of record for the Kovars and further remove its  
4 attorneys and staff from the ECF service list. Finally, Hayes Wakayama submits that there is  
5 no just cause to delay ruling on the instant Motion given the ongoing litigation (absent SEC  
6 defense counsel). Further, Hayes Wakayama has been informed that neither Brent nor Joy  
7 Kovar object to Hayes Wakayama's withdrawal.

8 DATED this 12<sup>th</sup> day of August 2021.

9  
10 **HAYES | WAKAYAMA**

11 By /s/ Dale A. Hayes, Jr., Esq.  
12 DALE A. HAYES, JR., ESQ.  
13 Nevada Bar No. 9056  
14 JEREMY D. HOLMES, ESQ.  
15 Nevada Bar No. 14379  
16 4735 S. Durango Drive, Suite 105  
17 Las Vegas, Nevada 89147  
18 *Attorneys for Defendants Brent and*  
19 *Joy Kovar*

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **HAYES WAKAYAMA'S MOTIONS TO (1) WITHDRAW AND (2) BE REMOVED FROM THE ECF SERVICE LIST** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 12<sup>th</sup> day of August, 2021.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system; and

I further certify that Defendants Brent Kovar and Joy Kovar were e-served with this Motion on August 12, 2021, at the following email addresses: brentkovar@gmail.com and joykovar.gmail.com.

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/s/ Julia Rodionova  
An employee of HAYES WAKAYAMA

Exhibit A  
Declaration of  
Dale A. Hayes, Jr., Esq.

**DECLARATION OF DALE A. HAYES, JR., ESQ. IN SUPPORT OF HAYES WAKAYAMA'S EMERGENCY MOTION TO WITHDRAW AND TO BE REMOVED FROM ECF SERVICE LIST**

Dale A. Hayes, Jr., Esq., declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am a partner at the law firm of Hayes Wakayama, counsel for Defendants Joy I. Kovar and Brent Carson Kovar (the "Kovars") in the matter of *Securities and Exchange Commission v. Profit Connect Wealth Services, Inc., et al.*, Case No. 2:21-cv-01298-JAD-BNW (hereinafter the "Lawsuit"). Up until August 9, 2021, I was also counsel of record for Defendant Profit Connect.

3. Plaintiff Security and Exchange Commission ("SEC") filed a Complaint and, amongst other motions, a Motion for Preliminary Injunction and Motion to Appoint Receiver [ECF Nos. 7, 8] on July 8, 2021. Defendants were served with the Complaint and Plaintiff's Motions late on Thursday, July 15, 2021.

4. Upon being served, Defendants contacted their local general counsel, Hayes Wakayama.

5. I informed Defendants that Hayes Wakayama did not have experience defending against civil SEC charges but also informed them that I would confer with SEC consultants to secure them experienced SEC counsel. All parties were operating under very imminent time deadlines.

6. Defendants agreed to pay Hayes Wakayama for their services.

7. After conferring with SEC consultants and attorneys, it was decided that it would be best to retain SEC counsel from out of State as there were few, if any, Nevada attorneys with experience defending against civil SEC charges.

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1           8.       I then connected Defendants with a highly experienced and competent SEC lawyer  
2 based in Los Angeles.

3           9.       Defendants indicated they would be hiring the SEC lawyer who would then appear  
4 in this matter *pro hac* by associating into the case with Hayes Wakayama.

5           10.      Up until recently, Hayes Wakayama and the SEC lawyer provided Defendants with  
6 sound legal advice and representation. During this timeframe, only Hayes Wakayama made a  
7 formal appearance in the case.

8           11.      Recently, the SEC lawyer withdrew from being involved with the case.

9           12.      On August 9, 2021, counsel for Receiver Geoff Winkler informed Hayes  
10 Wakayama that Profit Connect was terminating Hayes Wakayama's representation in this matter  
11 due to a perceived conflict of interest.

12          13.      Accordingly, as of the date of filing this Motion, Hayes Wakayama only represents  
13 the Kovars in this matter.

14          14.      Defendants, *and now the Kovars*, failed to retain an SEC lawyer as they agreed to.  
15 Hayes Wakayama never would have appeared in this case had Defendants not promised to retain  
16 SEC counsel to appear as co-counsel.

17          15.      I warned the Kovars that Hayes Wakayama would move to withdraw if this failure  
18 was not cured on numerous occasions.

19          16.      Moreover, Hayes Wakayama recently learned that Defendants, *and now the*  
20 *Kovars*, are unable to pay Hayes Wakayama for both past and future services.

21          17.      Brent and Joy Kovar's last known address for service of future pleadings, orders  
22 and other court papers in this matter is:

23                               7043 Calvert Cliffs Street  
24                               North Las Vegas, Nevada 89084

25          18.      Withdrawal of Hayes Wakayama from this matter will not result in the delay of  
26 discovery, trial or any other proceeding. Currently, there is no substantive hearing or trial  
27 scheduled. There is only a Status Hearing scheduled for September 21, 2021, which is only meant  
28 to address the Receiver's report.



Exhibit B  
August 9, 2021  
Correspondence from Ballard  
Spahr to Hayes Wakayama



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One Summerlin  
1980 Festival Plaza Drive, Suite 900  
Las Vegas, NV 89135-2958  
TEL 702.471.7000  
FAX 702.471.7070  
www.ballardspahr.com

Maria A. Gall  
Tel: 702.868.7535  
Fax: 702.471.7070  
GallM@ballardspahr.com

August 9, 2021

*By FedEx and E-Mail*

Dale Hayes, Jr.  
HAYES WAKAYAMA, ATTORNEYS AT LAW  
4735 South Durango Drive, Suite 105  
Las Vegas, Nevada 89147  
dhayes@hwlawNV.com

Re: Profit Connect Wealth Services, Inc.

Dear Mr. Hayes:

I am counsel of record for Geoff Winkler, receiver of Profit Connect Wealth Services, Inc. As you know, on August 6, 2021, the Court appointed Mr. Winkler as permanent receiver of Profit Connect and its subsidiaries and affiliates, with full power of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises, choses in action, books, record, papers, and other property belonging to Profit Connect. Accordingly, this letter is to advise that Mr. Winkler now acts on Profit Connect's behalf, including as its duly authorized constituent under Nevada Rule of Professional Conduct ("RPC") 1.13(a).

In that capacity, Mr. Winkler terminates your and your firm's representation of Profit Connect, while reminding you and your firm of its continuing duties to former clients, including without limitation, your obligations under RPC 1.6 to maintain Profit Connect's information as confidential and your obligations under RPC 1.9 to not represent another person in the same or substantially related matter in which the person's interests are adverse to Profit Connect. At this juncture, it is Mr. Winkler's position that Profit Connect's interests are adverse to Joy and Brent Kovar's interests and would be adverse to the interests of any other person who was or is affiliated with Profit Connect.

Mr. Winkler further requests:

1. That you and Hayes Wakayama preserve all documents, communications, and information, whether in paper, electronic, or some other form, related to your representation of Profit Connect. Mr. Winkler anticipates that he will be requesting Profit Connect's full file in the near future.

Dale Hayes, Jr.  
August 9, 2021  
Page 2

2. A copy of all prior invoices you and/or Hayes Wakayama issued to Profit Connect.
3. An account statement showing all payments made by or on behalf of Profit Connect to you and/or Hayes Wakayama, along with a current account balance, including the balance of any trust funds held in your IOLTA account.

We would appreciate your prompt attention to these matters. If you have any questions, please feel free to contact me. My contact information is at the top of this letter. Thank you.

Warm regards,

A handwritten signature in blue ink that reads "Maria A. Gall". The signature is written in a cursive style with a large initial "M".

Maria A. Gall

MAG/akc