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15
16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF NEVADA**

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 vs.

22 MATTHEW WADE BEASLEY *et al.*

23 Defendants;

24 THE JUDD IRREVOCABLE TRUST *et al.*

25 Relief Defendants.

Case No. 2:22-CV-00612-CDS-EJY

**RECEIVER GEOFF WINKLER'S
RESPONSE IN OPPOSITION TO
MOTION TO RETAIN EARNED FEES
AND EXPENSES (ECF 164)**

26 Comes now, Geoff Winkler, the Court-appointed Receiver (the "Receiver") for J&J
27 Consulting Services, Inc., an Alaska corporation; J&J Consulting Services, Inc., a Nevada
28 corporation; J and J Purchasing LLC; The Judd Irrevocable Trust; and BJ Holdings LLC, and over

1 the Wells Fargo Interest on Lawyers' Trust Account ending in 5598 and held in the name of
2 Beasley Law Group PC, along with the personal assets of Matthew Wade Beasley; Jeffrey J. Judd;
3 Christopher R. Humphries; Shane M. Jager; Jason M. Jongeward; Denny Seybert; and Roland
4 Tanner (collectively, the "Receivership Defendants"), by and through its counsel of record, the
5 law firm of Greenberg Traurig, LLP, and hereby submits the following Response in Opposition to
6 Oberheiden, P.C.'s Motion to Retain Earned Fees and Expenses (ECF No. 164) (the "Response").

7 This Response is based upon the attached Memorandum of Points and Authorities, the
8 pleadings and papers on file herein, and such other and further arguments and evidence as may be
9 presented to the Court in connection with this matter.

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 I. INTRODUCTION

12 Prior to the commencement of the instant case, Defendant Jeffrey Judd ("Judd") dispersed
13 millions of dollars to multiple law firms, including Oberheiden, P.C. ("Oberheiden"), for
14 representation in the multiple lawsuits he would inevitably face for his role in the Ponzi-scheme
15 alleged in the complaint and subsequent court filings. According to the Motion, prior to the
16 initiation of this case, Judd retained Oberheiden, as out-of-state criminal counsel and deposited
17 funds into the firm's IOLTA account. Oberheiden asserts that it has "earned" \$371,622.40 in
18 attorneys' fees through May and June 2022 which it is entitled to retain and that Oberheiden
19 continued to hold those funds pending a decision by this Court. However, Oberheiden's attempts
20 at self-help violate this Court's order expressly calling for the turnover of all funds held by
21 Oberheiden.

22 The Receiver's role in this matter includes taking custody, control and possession of all
23 Receivership property as set forth in the Order Appointing Receiver (the "Appointment Order").
24 ECF No. 88. Here, it is undisputed that the funds being retained by Oberheiden were provided
25 directly by Defendant Judd and no evidence has been provided indicating the same did not
26 originate from the Ponzi-scheme described in the Amended Complaint. Moreover, there is no
27 court order authorizing legal fees to be paid to Oberheiden and Oberheiden has not provided any
28 evidence demonstrating the work performed or the rate at which any such work was performed.

1 The instant Motion is nothing more than Oberheiden’s conclusion that it is entitled to
 2 retain the funds currently held in their account. Oberheiden has provided this Court with no ground
 3 on which it could justify a modification of the Asset Freeze and Appointment Order. The case law
 4 on this issue is clear. Absent extraordinary circumstances, a defendant cannot use funds derived
 5 from his fraudulent acts to pay for counsel that will assist him in attempting to retain the ill-gotten
 6 funds.

7 II. OVERVIEW AND FACTUAL BACKGROUND

8 The subject Motion concerns the retention of Receivership Funds¹ currently held by Judd’s
 9 out-of-state criminal counsel. More specifically, Oberheiden seeks an order from this Court
 10 permitting it to retain \$371,622.40 which Oberheiden claims was “earned” in May and June 2022.²
 11 Oberheiden seeks to sidestep this Court’s established plan for the preservation of assets by
 12 retaining funds that are unquestionably subject to the asset freeze imposed by the Temporary
 13 Restraining Order and affirmed in the Preliminary Injunction order (ECF No. 56) (the “Asset
 14 Freeze”) and the turnover provisions of the Appointment Order which provides: “All persons and
 15 entities having control, custody or possession of any Receivership Property are hereby directed to
 16 turn such property over to the Receiver” (the “Turnover Provision”). ECF No. 88 at ¶ 15.

17 On June 15, 2022, Oberheiden filed a Certified Statement, pursuant to Paragraph 17C of
 18 the Appointment Order in which Oberheiden advised this Court that Oberheiden was holding
 19 \$2,425,000.00 in trust for Judd’s representation in all criminal investigations or actions to which
 20 Judd may be a party. ECF No. 97. Prior to filing the Motion, Oberheiden partially complied with
 21 the Receiver’s demand for turnover by transferring \$2,053,377.51 to the Receiver. ECF No. 111.
 22 However, Oberheiden chose to withhold the Receivership Funds at issue in this Motion, taking the
 23 position that the Receivership Funds were earned prior to the appointment of the Receiver and are

24 _____
 25 ¹ Pursuant to this Court’s Order Appointing Receiver, “Receivership Property” is defined as “monies,
 26 funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets,
 27 together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind,
 28 which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or
 indirectly.” ECF No. 88 at ¶ 7A. For the purpose of this Response, the funds held by Oberheiden shall be
 referred to as the “**Receivership Funds**” as the money falls within the definition of “Receivership Property”
 established by this Court.

² Prior to the filing of the subject Motion, Oberheiden turned-over \$2,053,377.51 to the Receiver of
 additional funds it received from Judd.

1 therefore not subject to the Turnover Provision of the Appointment Order. Because the Turnover
 2 Provision has not been fully complied with, the Receiver is compelled to oppose the current
 3 Motion.

4 At the outset of this case, the SEC moved, *ex parte*, for the Entry of a Temporary
 5 Restraining Order and Orders: (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting
 6 the Destruction of Documents; (4) Granting Expedited Discovery; and (5) Order to Show Cause
 7 Re: Preliminary Injunction (the “TRO Application”). ECF No. 2. In the TRO Application, the
 8 SEC established for this Court the nature of the Ponzi-scheme giving rise to this case as well as
 9 Judd’s role therein by providing this Court with detailed allegations and credible evidence,
 10 including direct statements from Beasley, implicating Judd for his role in the scheme. *Id.*
 11 Moreover, through the Complaint and the TRO Application, the SEC outlined the extravagant
 12 assets Judd obtained with Ponzi-scheme funds and the defendants’ concerted attempts to liquidate
 13 and dissipate substantial assets. ECF Nos. 1, 2. After considering the Complaint, the TRO
 14 Application and the relevant evidence, the Court entered a Temporary Restraining Order
 15 (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents;
 16 and (4) Granting Expedited Discovery, among other things (the “TRO”).³ ECF No. 3. The terms
 17 of the TRO were later affirmed via this Court’s entry of the Preliminary Injunction. ECF No. 56.
 18 Pertinent to the instant Motion, the Preliminary Injunction provides:

19 “[T]he asset freeze imposed by paragraphs VIII and IX of the Court’s Temporary
 20 Restraining Order...**shall continue in full force and effect, and all such funds**
 21 **and other assets shall remain frozen.** As provided in the Temporary Restraining
 22 Order, any allowance for necessary and reasonable living expenses will be granted
 only upon good cause shown by application to the Court with notice to and an
 opportunity for the [SEC] to be heard.” ECF No. 56 at § VII. (emphasis added)

23 Subsequent to the Preliminary Injunction, this Court issued its Order Appointing Receiver
 24 (the “Appointment Order”) which, among other things, ordered “[a]ll persons and entities having
 25 control, custody or possession of any Receivership property [] to turn such property over to the
 26 Receiver.” ECF No. 88 at ¶ 15. Thus, any person or entity (including Oberheiden) that has
 27
 28

³ The TRO was later sealed following a Motion to Seal by Defendant Shane M. Jager. ECF Nos. 51 and 57.

1 Receivership property is under an express obligation to turn over all monies held in trust on behalf
2 the Defendants (including Judd).

3 As referenced above, prior to the commencement of this case, Judd deposited more than
4 \$2.4 million with Oberheiden to be held in trust as “a retainer for his representation in all criminal
5 investigations or actions to which he may be a party.” ECF No. 111. There can be no dispute that
6 the funds held by Oberheiden are Receivership Property as defined in the Appointment Order and
7 are therefore subject to the Asset Freeze and Turnover Provision. As such, Oberheiden’s request
8 that it be exempt from fully complying with the Turnover Provisions should be denied and an order
9 entered requiring the \$371,622.40 at issue to be provided to the Receiver forthwith.

10 III. LEGAL ARGUMENT

11 This Court should require the turnover of the Receivership Funds held by Oberheiden to
12 the Receiver. Through the Motion, Oberheiden argues it is entitled to retain the Receivership
13 Funds simply because they were “earned” in May and June 2022. ECF No. 164 at p. 5.
14 Additionally, Oberheiden asserts they conducted “due diligence” to ensure the funds it initially
15 received were “lawfully obtained”. ECF No. 164 at p. 3. However, Oberheiden’s Motion fails to
16 provide this Court with any evidence supporting the same that is sufficient for this Court to permit
17 Oberheiden to retain the Receivership Funds.

18 1. The Asset Freeze and Turnover Provisions of the Appointment Order 19 are Appropriate and Should be Enforced.

20 The Asset Freeze and Turnover Provisions require the funds at issue to be provided to the
21 Receiver. Indeed, “federal courts have inherent equitable authority to issue a variety of ‘ancillary
22 relief’ measures in actions brought by the SEC to enforce the federal securities laws.” *SEC v.*
23 *Hickey*, 322 F.3d 1123, 1131 (9th Cir. 2003). This includes the authority to issue an asset freeze.
24 *SEC v. King*, No. SACV 20-02398JVS(DFMx), 2021 WL 3598732 (C.D. Cal. Apr. 27, 2021)
25 (citing *Hickey*, 322 F.3d at 1131). The determination of whether to issue an asset freeze is in the
26 court’s discretion and is proper where the party seeking the freeze shows “a likelihood of
27 dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not
28 granted.” *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009).

1 As noted above, in the TRO Application the SEC presented a bevy of credible allegations
 2 and supporting evidence. See ECF No. 2. Following consideration of the application, this Court
 3 entered the TRO and later an Order Entering Preliminary Injunction, Asset Freeze and Other
 4 Equitable Relief (the “Injunction Order”), which provides:

5 **“the Court finds that the Commission has made a proper prima facie showing**
 6 **that: (i) Defendants Matthew W. Beasley; Beasley Law Group PC; Jeffrey J.**
 7 **Judd; Christopher R. Humphries; J&J Consulting Services, Inc., an Alaska**
 8 **Corporation; J&J Consulting Services, Inc., a Nevada corporation; J and J**
 9 **Purchasing LLC; Shane M. Jager; Jason Jongeward; Denny Seybert; and Roland**
 10 **Tanner (together herein, “Defendants”) directly and indirectly engaged in the**
 11 **violations alleged in the Complaint;** (ii) there is a reasonable likelihood that these
 12 violations will be repeated; (iii) unless restrained and enjoined by the Court,
 13 Defendants and Relief Defendants The Judd Irrevocable Trust; PAJ Consulting
 14 Inc.; BJ Holdings LLC; Stirling Consulting, L.L.C.; CJ Investments, LLC; JL2
 Investments, LLC; Rocking Horse Properties, LLC; Triple Threat Basketball, LLC;
 ACAC LLC; Anthony M. Alberto, Jr.; and Monty Crew LLC (together herein, the
 “Relief Defendants”) may dissipate, conceal or transfer from the jurisdiction of this
 Court assets that could be subject to an order of disgorgement or an order to pay a
 civil monetary penalty in this action; and (iv) **entry of a preliminary injunction,**
asset freeze, and order for other equitable relief as set forth below is necessary
and appropriate.” ECF No. 56 at p. 2. (emphasis added)

15 Thus, this Court made an express finding that the SEC had met its burden in making the requisite
 16 *prima facie* showing. Accordingly, Oberheiden must comply with the Court’s order and turnover
 17 the Receivership Funds in question.

18 2. Oberheiden’s Request to Retain the Funds Should be Denied.

19 Although Oberheiden presents the Motion as a request to “retain” earned fees, what
 20 Oberheiden truly seeks is a modification of the Asset Freeze and Turnover Provisions to permit
 21 Judd to utilize Receivership Funds for his own defense. However, Oberheiden has failed to
 22 provide this Court with any valid grounds to modify the Asset Freeze to permit Judd to use the
 23 Receivership Funds for his defense.

24 The determination of whether to modify an asset freeze to release funds falls squarely
 25 within the court’s discretion. The Ninth Circuit has expressly found a district court “may, within
 26 its discretion, forbid or limit payment of attorney fees” from frozen assets. *Commodity Futures*
 27 *Trading Comm’n v. Noble Metals, Inc.*, 67 F.3d 766, 775 (9th Cir. 1995). Indeed, courts of the
 28 Ninth Circuit have regularly denied requests for payment of attorneys’ fees out of frozen assets.

1 See e.g. *FTC v. Digital Altitude, LLC*, No. LA CV18-00729 JAK (MRWx), 2018 WL 4944419, at
2 *6-9 (C.D. Cal. July 26, 2018) (denying request for payment of attorneys’ fees out of frozen assets
3 finding the evidence presented did not support directing the Receiver to release additional frozen
4 funds to pay for the defendant’s legal fees); *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347
5 (9th Cir. 1989); *Commodity Futures Trading Comm’n v. Co Petro Mktg. Grp., Inc.*, 700 F.2d 1279,
6 1282 (9th Cir. 1983) (affirming the district court’s order requiring a law firm to return \$60,000 to
7 a receiver). “In considering a request to release seized asserts [*sic*], it is appropriate to consider
8 what other assets the movant has that could be used for the payment of attorney’s fees. As to a
9 defendant with substantial assets, there is less force to the need to grant the request, particularly
10 where the disbursement of funds would reduce what is available for potential restitution to alleged
11 victims.” *Digital Altitude*, 2018 WL 4944419, at 9.

12 In determining whether to unfreeze assets for the payment of attorneys’ fees, the Court is
13 to consider the likelihood of success on the merits of the claims and balance the equities. *FTC v.*
14 *Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999). With respect to the balance of equities,
15 “public interests are generally entitled to stronger consideration than private interests.” *Digital*
16 *Altitude*, 2018 WL 4944419, at *7 (quoting *FTC v. Merch. Servs. Direct, LLC*, No. 13-CV-0279-
17 TOR, 2013 WL 4094394, at *2 (E.D. Wash. Aug. 13, 2013)).

18 In this case, the public interest far outweighs the interests of Oberheiden and therefore
19 warrants the denial of Oberheiden’s request. As set forth in the Amended Complaint, from 2017
20 to March 2022, over 600 investors invested in the scheme resulting in at least \$449 million in
21 investor funds flowing through the Beasley Law Group’s IOLTA account. ECF No. 118 at ¶ 3.
22 Although the exact number of investors and victims has not yet been determined, based on the
23 information presently in the record, it is readily apparent that the number of victims and amount
24 needed to make each victim whole will be substantial. Thus, given the breadth of the fraud in this
25 case, the public’s interest in being made whole is the paramount concern. It is for this purpose the
26 Court appointed the Receiver.

27 The primary purpose of a receiver is to “promote orderly and efficient administration of
28 the estate by the district court for the benefit of the creditors.” *SEC v. Hardy*, 803 F.2d 1034, 1038

1 (9th Cir. 1986). In so doing, receivers are tasked with preserving the status quo while arranging a
 2 defendant’s complicated business records. *SEC v. Path Am., LLC*, No. C15-1350JLR, 2016 U.S.
 3 Dist. LEXIS 53075, at *18-21 (W.D. Wash. Apr. 20, 2016). “A receiver is particularly necessary
 4 in instances where defendants have allegedly defrauded members of the investing public to avoid
 5 the continued diversion or dissipation of corporate assets.” *Id.* (citing *SEC v. First Fin. Grp. of Tex.*,
 6 645 F.2d 429, 438 & n.14 (5th Cir. 1981)). In instances such as this, the court may appoint
 7 receivers with a variety of tools and broad authority “to help preserve the status quo while various
 8 transactions [a]re unraveled” and “to obtain an accurate picture of what transpired.” *Id.* (quoting
 9 *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1973) (approving the appointment
 10 of a receiver to unravel complicated transactions and trace investors)).

11 Here, the Court appointed the Receiver to marshal and preserve all assets of the Defendants
 12 and the Relief defendants that: (a) are attributable to funds derived from investors or clients of the
 13 Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred
 14 by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the
 15 Defendants. ECF No. 88 at p. 2. Thus, the Receiver’s role is to gather and protect the assets,
 16 including the money currently held by Oberheiden, that were derived from the Ponzi-scheme and
 17 marshal said assets as directed by this Court.⁴

18 **a. Oberheiden Has Not Established That the Receivership Funds**
 19 **are Untainted**

20 Oberheiden argues that it conducted “all necessary and beyond-expected due diligence to
 21 ensure that the funds it initially received from Mr. Judd were lawfully obtained.” ECF No. 164 at
 22 p. 3. In support of this argument, Oberheiden outlines the steps it apparently took to investigate
 23 the source of the funds provided by Judd. *Id.* However, such information, including the expert

24 _____
 25 ⁴ One factor this Court may consider with respect to a request to retain Receivership Funds is whether there
 26 are sufficient funds to satisfy a potential disgorgement award. *See Noble Metals Int’l*, 67 F.3d at 775 (“the
 27 frozen assets fell far short of the amount needed to compensate [the victims]. However, Oberheiden has
 28 not established Judd holds sufficient funds in the event of a potential disgorgement award. The allegations
 in the Amended Complaint and the SEC’s application for the TRO, the SEC’s memorandum of points and
 authorities in support of preliminary injunctive relief (the “Request for Preliminary Injunction”) as well as
 the evidence submitted therewith, establish that Judd could be subject to a disgorgement award far
 exceeding his alleged \$2 million in purported clean assets. This fact alone warrants denial of Judd’s request.
See Noble Metals Int’l, 67 F.3d at 775.

1 analysis of retired federal agents with over a hundred years of service was not provided.
2 Importantly, nothing in the record indicates the funds provided to Oberheiden came from funds
3 Judd held prior to becoming involved in the Ponzi-scheme alleged in the Amended Complaint or
4 that the funds were separate and not commingled with funds related to the Ponzi-scheme. Notably,
5 in other filings, Judd represented to this Court that he had pre-Ponzi-scheme assets of
6 approximately \$1.6 million. *See* ECF No. 142.⁵ Assuming, *arguendo*, if Judd presented to this
7 Court that he had no more than \$1.6 million in untainted assets going into this scheme, how could
8 Judd have deposited \$2,425,000.00 in untainted funds into the Oberheiden trust account?
9 Importantly, information presently available shows that Judd has deposited at least \$7 million
10 across all of his various law firms and attorneys. Simple math and common-sense dictate that, if
11 he truly had \$1.6 million going into the scheme (a contention he still has not proven), then the
12 more than \$7 million he has recently paid to various counsel, including Oberheiden, was
13 necessarily derived from the scheme. Because there is no way to conclusively determine which
14 funds are untainted, or not commingled with investor funds, Oberheiden should be compelled to
15 turn-over the \$371,622.40 to the Receiver.

16 “When funds are linked directly to the fraud, it would frustrate the purpose of the regulation
17 to allow the defendants to use those funds for attorneys’ fees.” *United States CFTC v. Wilson*,
18 No. 11cv1651 WQH (BLM), 2011 U.S. Dist. LEXIS 146153, at *7 (S.D. Cal. Dec. 20, 2011)
19 (citing *CFTC v. Co Petro Marketing Group*, 680 F.2d 573, 584 (9th Cir. 1982)). Thus, in a case
20 such as this, Oberheiden “must establish that the funds he seeks to [retain] are untainted and that
21 there are sufficient funds to satisfy any disgorgement remedy that might be ordered in the event a
22 violation is established.” *SEC v. Santillo*, No. 18-CV-5491 (JGK), 2018 WL 3392881, at *4
23 (S.D.N.Y. July 11, 2018). In other words, “a swindler in securities markets cannot use the victims’
24 assets to hire counsel who will help him retain the gleanings of crime.” *SEC v. Marino*, 29
25 Fed.Appx. 538, 541 (10th Cir. 2002) (quoting *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993).

27 ⁵ On July 6, 2022, Judd filed a Motion to Release Funds for Attorney’s Fees or, Alternatively, For Leave
28 to Withdraw through the law firm of Fabian VanCott. ECF No. 142. In that Motion, Judd asserted that he
had “\$1,604,659.70 in assets pre-Beasley scheme assets are collectively worth more than \$2.0 million in
today’s dollars.”

1 Courts may also look to other factors, like the likelihood of success on the merits of the claims
2 brought and balance the equities, which includes considering the availability of assets available
3 for victim redress, the reasonableness of the fee requests, whether counsel was aware of the
4 possibility that fees might be denied, and the defendant’s access to alternative assets. *Digital*
5 *Altitude*, 2018 WL 4944419, at *7.

6 The onus is on the party seeking to retain Receivership Funds—not the Receiver or the
7 SEC—to establish that the funds are untainted and have not been commingled and Judd has failed
8 to do so. *Id.* (quoting *SEC v. Rosenthal*, 42 Fed. App’x. 1 (2d Cir. 2011) - ““The SEC is not
9 required to trace specific funds to their ultimate recipients’ because ‘[i]mposing such a tracing
10 requirement would allow [a defendant] to escape disgorgement by spending down illicit gains
11 while protecting legitimately obtained assets or...by commingling and transferring such profits””)
12 (quoting *SEC v. Banner Fund Int’l*, 211 F.3d 602, 617 (D.C. Cir. 2000)). Here, Oberheiden has
13 not met the burden required to retain the Receivership Funds.

14 **b. Oberheiden has Presented no Support for its Claimed Fees**

15 Given that Oberheiden’s motion is entirely premised on the assertion that it has “earned”
16 the Receivership Funds in question, the failure to provide any documentation or other support for
17 work performed is surprising. Indeed, Oberheiden does not identify (a) what work was done; (b) in
18 what proceeding the work was performed; (c) the attorneys who performed said work; (d) the rate
19 charged. Additionally, the Motion asserts that the fees retained by Oberheiden relate to Judd’s
20 criminal defense, yet the Receiver is not aware of any criminal charges that have been filed against
21 Judd at this time. Further, in making a valid request for the release of funds for attorneys’ fees,
22 the requesting party must establish the reasonableness of the fee request. *Digital Altitude*, 2018
23 WL 4944419, at *7. However, Oberheiden has not provided this Court any documentation of the
24 fees actually charged nor have they provided any evidence to support the reasonableness of their
25 fee request. Accordingly, Oberheiden’s request should be denied.

26 ///

27 ///

28 ///

IV. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests this Court enter an Order denying Oberheiden’s Motion to Retain Earned Fees and Expenses and order the \$371,622.40 be provided to the Receiver forthwith.

DATED this 27th day of July, 2022.

GREENBERG TRAUIG, LLP

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I hereby certify that, on the 27th day of July, 2022, a true and correct copy of the foregoing **RECEIVER GEOFF WINKLER’S RESPONSE IN OPPOSITION TO MOTION TO RETAIN EARNED FEES AND EXPENSES (ECF 164)** was filed electronically via the Court’s CM/ECF system. Notice of filing will be served on all parties by operation of the Court’s CM/ECF system, and parties may access this filing through the Court’s CM./ECF system.

I further certify that on the 28th day of July, 2022, a true and correct copy of the foregoing was sent via email and United States mail to:

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