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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MATTHEW WADE BEASLEY; BEASLEY LAW GROUP PC; JEFFREY J. JUDD; CHRISTOPHER R. HUMPHRIES; J&J CONSULTING SERVICES, INC., an Alaska Corporation; J&J CONSULTING SERVICES, INC., a Nevada Corporation; J AND J PURCHASING LLC; SHANE M. JAGER; JASON M. JONGEWARD; DENNY SEYBERT; ROLAND TANNER; LARRY JEFFERY; JASON A. JENNE; SETH JOHNSON; CHRISTOPHER M. MADSEN; RICHARD R. MADSEN; MARK A. MURPHY; CAMERON ROHNER; AND WARREN ROSEGREEN;

Defendants; and

THE JUDD IRREVOCABLE TRUST; PAJ CONSULTING 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 MICHAEL ALBERTO, JR.; and MONTY CREW LLC;

Relief Defendants.

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

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO DEFENDANT CHRISTOPHER HUMPHRIES AND RELIEF DEFENDANT CJ INVESTMENTS, LLC'S MOTION TO DISMISS

INTRODUCTION

Plaintiff Securities and Exchange Commission ("SEC") opposes Defendant Christopher Humphries ("Humphries") and Relief Defendant CJ Investments, LLC's (together herein, the "Humphries Defendants") motion to dismiss the SEC's Amended Complaint (Dkt. No. 199, herein, the "Motion" or "Mot."). The Humphries Defendants argue that the SEC's fraud allegations are not specific enough for purposes of Rule 9(b), and that the SEC's non-fraud claims nonetheless "sound in fraud" and should be dismissed. They are wrong on both counts.

First, the Humphries Defendants' contention that the SEC has not alleged fraud with particularity is premised on their erroneous suggestion that, to violate the federal securities laws, Humphries was required to "know" the Purchase Agreements at the heart of the scheme were fake. In fact, the requisite state of mind for violations of Sections 17(a)(2) and (a)(3) of the Securities Act is negligence; and a defendant can violate Section 17(a)(1) of the Securities Act, and Section 10(b) of the Exchange Act, with knowing or consciously reckless conduct. The Amended Complaint pleads, with particularity, that Humphries was at least consciously reckless by ignoring evidence that the Purchase Agreements were fake and dismissing questions regarding the legitimacy of the investment scheme. Defendant Matthew Beasley's representations about Humphries' mental state are not relevant here and, in any event, have already been considered (and found wanting) by Judge Mahan, who ruled, despite Beasley's highly dubious "confession" about his co-conspirators, that the SEC set forth a *prima facie* case for Humphries' liability under the anti-fraud provisions of the federal securities laws.

Second, the SEC's strict liability claims against Humphries under Section 5 of the Securities Act and Section 15(a)(1) of the Exchange Act do not "sound in fraud" simply because Humphries violated those laws while promoting a Ponzi scheme. The Amended Complaint sets forth factual allegations that Humphries offered and sold unregistered securities and worked as an unregistered broker, and the Humphries Defendants fail to identify any allegation insufficient to plead the elements of those claims. Instead, they vaguely contend the allegations are not "particularized." That is not sufficient to dismiss those claims, under any standard.

BACKGROUND

I. The Amended Complaint

The SEC's Amended Complaint sets forth, in detailed factual allegations, Humphries' role in the fraudulent investment scheme at issue. These allegations, which must be accepted as true for purposes of the Humphries Defendants' motion to dismiss, provide in relevant part:

From at least 2017 until March 2022, Defendants J&J Consulting Services, Inc. (a Nevada corporation), J&J Consulting Services, Inc. (an Alaska corporation), and J and J Purchasing LLC (collectively, the "J&J Entities") offered investments in purported settlement contracts with tort plaintiffs called "Purchase Agreements," which constituted securities. (Dkt. No. 118, Am. Compl. ¶ 2.) Humphries, by himself and through his entity CJ Investments LLC, promoted the scheme to multiple investors. (*Id.* ¶¶ 15, 36.) Starting no later than August 2019, Humphries began promoting the investment to people at his gym and church, as well as through friends and family. (*Id.* ¶ 48.)

Humphries made numerous misrepresentations to investors regarding the Purchase Agreements and the investment at issue. (Dkt. No. 118, Am. Compl. ¶¶ 2–4.) Among other things, Humphries made oral representations to investors that the investment involved funding Purchase Agreements with personal injury plaintiffs who had settlements with insurance companies but wanted to obtain a portion of their money in advance. (*Id.* ¶ 48.) Humphries told investors that Matthew Beasley and his law firm Beasley Law Group managed the relationships with various attorneys to supply the Purchase Agreements to Judd and the J&J Entities. (*Id.*) Humphries told investors that the Purchase Agreements were in amounts of $80,000 or $100,000 and paid returns of 13% every 90 days. (*Id.*) Humphries also told investors that there was little to no risk on the investment. (*Id.*) For example, Humphries told one investor, in April 2021, that J&J had never had a deal fall through. (*Id.*)

In addition, between March 2020 and December 2021, Humphries provided contracts to dozens, if not hundreds, of investors titled "Investor Agreement" that made additional, written representations regarding the purported securities investment. (Dkt. No. 118, Am. Compl. ¶ 49;

see also id. at Ex. B (example of an Investor Agreement).) For example, each Investor Agreement recited that "Jeffrey Judd dba J&J Consulting Services Inc. conducts a business where he enters into Purchase Agreements with attorney's clients once a settlement has been reached and an award has been granted. Jeffrey Judd uses his own money and facilitates . . . other acquaintances to purchase these contracts; that act as a lien on the client's settlement." (*Id*.) These Investor Agreements also included, in addition to the investor's name, the fictitious name of the purported tort plaintiff in whose settlement the investor was investing. (*Id*.) The Investor Agreements, however, which identified Humphries as the "representative" of J&J and further described him as the "Authorized Agent" of J&J Consulting Services, specifically prohibited an investor "from contacting any parties related to the injury settlement or Purchase Agreement without the prior written consent of Jeffrey Judd." (*Id*.) Humphries made the same representations to investors orally, including the instruction to investors that they were not allowed to contact the attorneys or plaintiffs whose names appeared on the Purchase Agreements. (*Id*. ¶ 61.)

Between March 2020 and March 2022, Humphries also repeatedly represented to investors, through email communications, that that their capital would be reinvested in a new Purchase Agreement at the expiration of each prior Purchase Agreement. (Dkt. No. 118, Am. Compl. ¶ 50.) For example, Humphries would send emails to his investors giving the name of the new supposed tort plaintiffs and instructing the investors how much return they should expect. (*Id*.) One such email that Humphries sent to an investor, dated November 23, 2020, stated: "Attached is the Gile deal. This replaces the Gunnare deal. You make $2,600 in 90 days." (*Id*.) Humphries sent dozens, if not hundreds, of these emails to investors from at least as early as March 2020 through March 2, 2022. (*Id*.)

Each of these representations, among others, was false and misleading. The Purchase Agreements were fictitious, and Defendants did not use investor money to purchase interests in personal injury settlements. (Dkt. No. 118, Am. Compl. ¶ 4.) Instead, Beasley, Defendant Jeffrey Judd, and others used a portion of investors' money to make periodic payments of

fictitious "returns" to investors in a Ponzi-like fashion, but used the bulk of investor money to fund their own lavish lifestyles. (*Id.* ¶ 5.)

On or around December 13, 2021, Humphries sent emails to his numerous investors telling them—falsely—that the J&J Entities had "conducted a self-imposed business analysis that took the better part of 2021." (Dkt. No. 118, Am. Compl. ¶ 60.) Humphries further told his investors that, going forward, it was a "requirement . . . that everyone had to be at 12.5% return." (*Id.*) On or around January 5, 2022, Humphries emailed his investors new documentation created by Judd—including a Confidential Private Placement Memorandum ("PPM"), and instructed his investors to sign and return the documentation. (*Id.* ¶ 60 & Ex. D.) These documents contained the same false and misleading representations regarding the investment scheme that Humphries had previously made orally and in his written communications with his investors. (*See id.*)

Humphries received compensation for bringing new investors into the scheme and for raising additional money from existing investors. (Dkt. No. 118, Am. Compl. ¶ 52.) He told one investor that he received 5% of the investor funds he raised and that he made around $250,000 every three months. (*Id.*) His entity CJ Investments received at least $25 million in investor funds over the course of the scheme. (*Id.* ¶ 36.)

Humphries knowingly or recklessly engaged in the fraudulent scheme, including by knowingly or recklessly making these misrepresentations to investors. (Dkt. No. 118, Am. Compl. ¶¶ 63, 68.) Among other things, Humphries was at least aware of indicia that the tort settlements at issue in the investment were fictitious, but nonetheless acted to hide that fact from investors. (*Id.* ¶ 68.) For example, Humphries reacted angrily and dismissively when investors asked questions about the specifics of the purported investments. (*Id.* ¶ 51.) In February 2022, one investor asked Humphries why J&J needed outside investors when the purported returns were so high that J&J could just fund the contracts through a bank loan and still make a profit. (*Id.*) Humphries responded that this question was "loaded" and that the answer would be "loaded" and thus, "I can't possibly answer that." (*Id.*) Likewise, and despite Humphries'

admonitions to investors that they were not allowed to contact the attorneys and purported tort plaintiffs whose names were listed on the Purchase Agreements, some investors contacted the attorneys named in the agreements to inquire whether the Purchase Agreements were real. (*Id.* ¶ 62.) Those investors discovered that the attorneys had no such personal injury clients and no relationship with Beasley or Beasley Law Group. (*Id.*) On information and belief, Humphries was informed about these investors' contact with the attorneys listed on the Purchase Agreements. (*Id.* ¶ 69.)

Despite that Humphries knew, or was reckless in not knowing, that the Purchase Agreements were fake, Humphries nonetheless continued to solicit new investors and additional investments from existing investors—up until at least his house was raided by the FBI on March 3, 2022. (Dkt. No. 188, Am. Compl. ¶¶ 6, 74.)

II. Beasley's Confession and Other Factual Evidence

As if forgetting the entirety of this case's procedural history, the Humphries Defendants accuse the SEC of "mislead[ing] the Court" by not citing certain excerpts from Beasley's March 3, 2022 statement to an FBI negotiator in its Amended Complaint. (Dkt. 199, Mot. at 3.) This accusation is unfounded.

In fact, the SEC submitted to the Court, at the outset of this case, the entirety of the transcript of Beasley's March 3, 2022 statement to FBI negotiators—as an exhibit to the SEC's motion for a temporary restraining order. (*See* Dkt. No. 2-5.) Indeed, the only reason the Humphries Defendants have a copy of that document—and the portions they cite in their Motion—was the SEC's action in submitting it to the Court. The SEC did not omit any portion of the transcript or otherwise attempt to downplay its contents.

Judge Mahan reviewed that same evidence, including the very portions the Humphries Defendants highlight, before ruling on the SEC's motion for a preliminary injunction. Notably, both Defendants Judd and Humphries, in their oppositions to the SEC's preliminary injunction motion, claimed that Beasley's unsupported assertions that he "lied to" Judd, Humphries, and other Defendants about the scheme somehow exonerated them. In fact, the Humphries

Defendants made the very same accusation—that "the SEC, in essence, misled the Court" by not highlighting those passages—in opposition to the SEC's motion for a preliminary injunction (from which the section in their current motion appears to be largely copied and pasted). (*Compare* Dkt. No. 13, Humphries Opp. at 3–4 *with* Dkt. No. 199, Mot. at 4.) But Judge Mahan considered, and rejected, the notion that the "confession" of one Defendant about the purported mental state of his co-conspirators should be read as Gospel truth, and held that the whole of the evidence presented a *prima facie* case that Humphries, like Judd and Beasley, had violated the anti-fraud provisions of the federal securities laws.[1] (*See* Dkt. No. 56.)

ARGUMENT

The Humphries Defendants' Motion should be denied. Dismissal under Rule 12(b)(6) is proper only where there is a "lack of cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare System, LP*, 534 F.3d 1116, 1121–22 (9th Cir. 2008). In reviewing a motion to dismiss under Rule 12(b)(6), a court must accept as true all material allegations in the complaint, as well as all reasonable inferences to be drawn from them, construing the complaint in the light most favorable to the plaintiff. *See, e.g., In re Gilead Sciences Sec. Litig.*, 536 F.3d 1049 1055 (9th Cir. 2008). A "complaint must

[1] The Humphries Defendants' corollary argument that the SEC "relied" on Beasley's statement to the FBI as the sole basis for the preliminary injunction (*see* Dkt. No. 199, Mot. at 7) ignores that the SEC submitted over 1,200 pages of evidence, including, in addition to Beasley's confession: declarations from the SEC's primary investigative attorney and accountant, testimony and declarations of investors, communications between Defendants, and the complete bank records of the IOLTA Beasley used as the financial hub of the scheme. (*See* Dkt. Nos. 2-5, 2-6, 2-7, 2-8, 23, 23-1, 23-2, 23-3, 23-4, 23-5, 24, 24-1, 24-2, 24-3.) The bank records alone establish the Ponzi nature of Defendants' scheme and each Defendant and Relief Defendant's receipt of ill-gotten investor funds. (*See*, *e.g.*, Dkt. No. 2-8, Declaration of Amir Salimi at ¶¶ 12–15.)

contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A claim is facially plausible when the factual allegations permit "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. "Determining whether a complaint states a plausible claim for relief will … be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id*. at 679. "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true." *Ansell v. Laikin*, No. CV 10-9292 PA (AGRx), 2011 WL 3274019, at *2 (C.D. Cal. Aug. 1, 2011) (*quoting Twombly*, 550 U.S. at 555). The SEC's Amended Complaint meets this standard.

A. The Amended Complaint Sufficiently Alleges Fraud Against Humphries Under Rule 9(b).

First, the Amended Complaint sufficiently alleges fraud against Humphries pursuant to Federal Rule of Civil Procedure 9(b). Rule 9(b) provides that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake" but that "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." FED. R. CIV. P. 9(b). "[T]he heightened pleading standard of Rule 9(b) is not an invitation to disregard the requirement of simplicity, directness and clarity of Rule Fed. R. Civ. P. 8." *Wenger v. Lumisys, Inc.*, 2 F. Supp. 2d 1231, 1239 (N.D. Cal. 1998) (*citing McHenry v. Renne*, 84 F. 3d 1172, 1178 (9th Cir. 1996)). Rather, "[i]n a securities fraud action, a pleading is sufficient under Rule 9(b) if it identifies the circumstances of the alleged fraud so that the defendant can prepare an adequate answer." *Fecht v. Price Co.*, 70 F.3d 1078, 1082 (9th Cir. 1995) (*quoting Kaplan v. Rose*, 49 F.3d 1363, 1370 (9th Cir. 1994); *see also Odom v. Microsoft Corp.*, 486 F.3d 541, 553 (9th Cir. 2007) ("Rule 9(b) requires the identification of the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations.") (quotations omitted).

The Amended Complaint satisfies these requirements. The Humphries Defendants make two arguments in support of their contention that the SEC's allegations fail Rule 9(b)'s pleading standard—that the SEC failed to identify the "who, what, when, where, and how" of Humphries' misrepresentations, and that the SEC failed to plead Humphries' scienter with particularity. Neither argument is correct.

1. The SEC's Allegations Regarding Humphries' Participation in a Fraudulent Scheme Are Sufficiently Particularized.

At the outset, it is important to note that the SEC does not merely allege that Humphries made false statements and omissions, but that—in violation of Sections 17(a)(1) and (3) of the Securities Act, and under Rule 10b-5(a) and (c) of the Exchange Act—he engaged with his co-defendants Beasley and Judd in a fraudulent scheme. (*See* Dkt. No. 118, Am. Compl. ¶¶ 108–110, 113, 115.) In relevant part, Sections 17(a)(1) and (3) of the Securities Act and Rule 10b-5(a) and (c) of the Exchange Act impose "scheme liability" by prohibiting defendants from engaging in a "scheme . . . to defraud" or a "course of business which operates . . . as a fraud." 15 U.S.C. §§ 77q(a)(1); 17 C.F.R. §§ 240.10b-5(a)(c).[2]

Under Rules 10b-5(a) and (c) or Sections 17(a)(1) and (3), a defendant is subject to scheme liability if the defendant "engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme." *Simpson v. AOL Time Warner,*

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[2] Specifically, Sections 17(a)(1) and 17(a)(3) prohibit any person, "in the offer or sale of any securities," from employing "any device, scheme, or artifice to defraud," 15 U.S.C. § 77q(a)(1), or from engaging in "any transaction, practice, or course of business which operates, or would operate, as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). Likewise, Rules 10b-5(a) and (c) thereunder make it unlawful for any person, "in connection with the purchase or sale of any security," "[t]o employ any device, scheme or artifice to defraud," or "[t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 17 C.F.R. § 240.10b-5(a), (c).

Inc., 452 F.3d 1040, 1048 (9th Cir. 2006), *vacated on other grounds sub nom.*, *Avis Budget Group Inc. v. Cal. State Teachers' Ret. System*, 552 U.S. 1162 (2008); *see also SEC v. Sells*, No. C-11-4941, 2012 WL 3242551, at *7 (N.D. Cal. Aug. 10, 2012); *Middlesex Retirement Sys. v. Quest Software Inc.*, 527 F. Supp. 2d 1164, 1191 (C.D. Cal. 2007). A defendant can be held liable for engaging in a fraudulent scheme under these provisions if he "'committed a manipulative or deceptive act in furtherance of a scheme,'" which is an act that "create[s] the false appearance of fact." *Simpson*, 452 F.3d at 1048 (*quoting Cooper v. Pickett*, 137 F.3d 616 (9th Cir. 1997)). A direct misrepresentation by the particular defendant is not required. *See SEC v. Monterosso*, 756 F.3d 1326, 1334 (11th Cir. 2014) ("*Janus* only discussed what it means to 'make' a statement for purposes of Rule 10b-5(b), and did not concern 17(a)(1) or (3) or Rule 10b5-(a) or (c)").

Thus, for purposes of alleging a violation of the scheme liability provisions, the SEC need not plead that Humphries made any particular misrepresentation, on any particular date, to any particular investor. Instead, the Amended Complaint sufficiently pleads scheme liability under Rule 9(b) if it alleges "the nature, purpose, and effect of the fraudulent conduct and the roles of the defendants." *ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 102 (2d Cir. 2007); *ScripsAmerica, Inc. v. Ironridge Global LLC*, 119 F.Supp.3d 1213, 1239 (C.D. Cal. 2015); *SEC v. Gordon*, No. 09-CV-0061-CVE-FHM, 2009 WL 1652464 at *4 (S.D.N.Y. June 11, 2009); *SEC v. U.S. Environmental, Inc.*, 82 F. Supp. 2d 237, 240 (S.D.N.Y. 2000). That is why courts have held that Rule 9(b) is "relaxed" for fraudulent or manipulative scheme claims as those here. *See ScripsAmerica*, 119 F. Supp. 3d at 1239 (*citing ATSI Communications*, 493 F.3d at 101–02).

The Rule 9(b) standard Humphries urges the Court to apply indiscriminately here—which asks a plaintiff to identify the misstatement, who made the statement and when the misstatement was made (*see* Dkt. No. 199, Mot. at 7)—is "inappropriate" in a scheme to defraud case because "such claims do not necessarily involve affirmative misrepresentations." *U.S. Environmental*, 82 F. Supp. 2d at 240. Moreover, claims of fraudulent schemes or manipulation

"involve facts solely with the defendant's knowledge; therefore, at the early stages of litigation, the plaintiff need not plead manipulation to the same degree of specificity as a plain misrepresentation claim." *ATSI Communications*, 493 F.3d 87 at 102; *see also Anschutz Corp. v. Merrill Lynch & Co. Inc.*, 785 F. Supp. 2d 799, 811 (N.D.Cal.2011) (describing the pleading burden as "somewhat relaxed"); *Louisiana Pac. Corp. v. Money Mkt. 1 Institutional Inv. Dealer*, No. CV 09-03529 JSW, 2011 WL 1152568, at *5 (N.D. Cal. Mar. 28, 2011) (similar); *In re Bank of America Corp.*, No. 09-MD-02014 JSW, 2011 WL 740902, at *6 (N.D. Cal. Feb. 24, 2011) (similar); *Gordon*, 2009 WL 1652464 at *4 (similar).

Here, even if, counterfactually, the Amended Complaint failed to specify what exact misrepresentations Humphries made, who he made them to, or when or where he made them, that would be no reason to dismiss the SEC's claims under Sections 17(a)(1) and (3) of the Securities Act, and under Rule 10b5(a) and (c) of the Exchange Act. As set forth above, the Amended Complaint identifies a fraudulent scheme (*i.e.*, the Ponzi scheme that even Humphries now concedes was not a legitimate business), alleges Humphries' particular role in the scheme (*i.e.*, as one of the primary promoters of the scheme who directly solicited investors and who worked with Defendant Judd to receive investor monies, make Ponzi payments to investors, and use the "commissions" he obtained for personal expenses), and details the devastating effects of the scheme on its victims. It also alleges that Humphries was involved in several aspects of the scheme that were intended to prevent investors from discovering the truth, including, among other things: distributing Investor Agreements that prohibited investors from contacting the alleged tort plaintiffs or their attorneys and orally instructing investors not to do the same (Dkt. No. 118, Am. Compl. ¶¶ 49, 61); sending numerous documents to investors, including contracts, emails, and a PPM containing misstatements and material omissions regarding the investment scheme (*id*. ¶¶ 49, 50, 60); providing false information to investors about the J&J Entities "business review" (*id*. ¶ 60); and refusing to answer "loaded" questions from an investor about the nature of the purported business (*id*. ¶ 51). These allegations, along with the numerous other factual allegations in the Amended Complaint describing the fraudulent scheme and Humphries'

role in it, are sufficient to state a claim for relief under Sections 17(a)(1) and (3) of the Securities Act, and Rule 10b-5(a) and (c) of the Exchange Act for "scheme liability."

2. The SEC's Allegations Regarding Humphries' Misstatements and Omissions Are Sufficiently Particularized.

The SEC's factual allegations in support of its claims under Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act for making untrue statements and omissions are likewise sufficiently particularized to satisfy Rule 9(b).

The Humphries Defendants contend generally that the Amended Complaint does not identify the "who, what, when, and where" of Humphries' misstatements, but ignore that the Amended Complaint specifically describes multiple oral misrepresentations Humphries made to investors (*see* Dkt. No. 118, Am. Compl. ¶¶ 2, 48); identifies (and attaches as an example to the Amended Complaint) examples of the written communications Humphries and others made to investors containing false statements and material omissions (*see id*. ¶¶ 49, 60 & Exs. B, D); describes specific email communications Humphries sent to investors containing false representations that their money would be invested in "new" contracts with "new" plaintiffs (*see id*. ¶ 50), and identifies at least one situation in which Humphries made a material omission in response to an investor asking him pointed questions regarding the investment (*see id*. ¶ 51). The Amended Complaint also provides dates—even to the day—on which Humphries made those false and misleading representations and omissions. (*See*, *e.g.*, *id*. ¶ 48 (identifying conversation in April 2021); *id*. ¶ 49 (identifying distribution of specific written misrepresentations between March 2020 and December 2021); *id*. ¶ 50 (identifying a specific email sent by Humphries on November 23, 2020); *id*. ¶ 51 (identifying conversation in February 2022); *id*. ¶ 60 (identifying December 13, 2021 emails to multiple investors); *id*. ¶ 60 (identifying January 5, 2022 emails of the false and misleading PPM document).) Finally, while the Amended Complaint does not identify the defrauded investors by name (in part for reasons of confidentiality), the Amended Complaint alleges that Humphries made misstatements to all or nearly all of the investors that he solicited into the scheme—which provides an ample basis for

the Humphries Defendants to answer the allegations regarding Humphries' misstatements and omissions. This is more than sufficient to provide the necessary particularity under Rule 9(b).

3. The Allegations Regarding Humphries' State of Mind Are Sufficiently Particularized.

Finally, the Amended Complaint sufficiently alleges that Humphries acted with the requisite state of mind to violate Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The Humphries Defendants do not identify the state of mind required for the SEC's claims other than to refer to the SEC's "non-scienter based" claims, implying that all other claims require the SEC to plead some form of knowledge. (*See* Dkt. No. 199, Mot. at 8.) That is not the case. For the SEC's claims under Section 17(a)(1) and Rule 10b-5, the requisite state of mind is scienter; for its claims under Section 17(a)(2) and (3), however, the SEC need only plead negligence. *See Aaron v. SEC*, 446 U.S. 680, 697 (1980); *SEC v. Phan*, 500 F.3d 895, 907–08 (9th Cir. 2007). The Humphries Defendants do not appear to seriously dispute that Humphries was at least negligent in failing to notice the multiple red flags regarding the investment scheme; instead, their Motion primarily argues about whether the SEC's allegations are sufficient to plead that Humphries "knew" or had "knowledge" that the scheme was a Ponzi, or otherwise acted recklessly. (*See* Dkt. No. 199, Mot. at 3, 4, 5 ("The crucial missing details required by Rule 9(b) pertains to how Mr. Humphries allegedly knew and when he allegedly knew the investment program was a Ponzi scheme.").)

Scienter, for purposes of Section 17(a)(2) and Rule 10b-5(b),[3] may be alleged through "either 'deliberate recklessness' or 'conscious recklessness'—a 'form of intent rather than a greater degree of negligence.'" *In re Verifone Holdings, Inc. Sec. Litig.*, 704 F.3d 694, 702 (9th

[3] The standard for alleging negligence claims under Section 17(a)(2) and (3), by contrast, is "reasonable prudence." *See SEC v. GLT Dain Rauscher, Inc.*, 254 F.3d 852, 856–57 (9th Cir. 2001).

Cir. 2012), *quoting SEC v. Platforms Wireless Int'l*, 617 F.3d 1072, 1093 (9th Cir. 2010); *see also Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990) (*en banc*); *Vernazza v. SEC*, 327 F.3d 851, 860 (9th Cir. 2003). "Reckless conduct may be defined as a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers … that is either known to the defendant or is so obvious that the actor must have been aware of it." *Id.*, 914 F.2d at 1569. "[T]he ultimate question is whether the defendant knew his or her statements were false, or was consciously reckless as to their truth or falsity." *Gebhart v. SEC*, 595 F.3d 1034, 1042 (9th Cir. 2010). Recklessness may be inferred from circumstantial evidence. *SEC v. Burns*, 816 F.2d 471, 474 (9th Cir. 1987).

The Humphries Defendants also omit that, under Rule 9(b), a defendant's state of mind "may be alleged generally." FED. R. CIV. P. 9(b). The Amended Complaint alleges that Humphries, like Judd and Beasley, "knew or was reckless in not knowing that the purchase agreement investment scheme was a fraud." (Dkt. No. 118, Am. Compl. ¶ 68.) It also describes why Humphries had the requisite scienter: he "was at least aware that the tort settlements at issue in the investment were fictitious, but nonetheless acted to hide that fact from investors." (*Id.*) In support of these general state-of-mind allegations, the Amended Complaint contains detailed factual allegations that can be taken together, circumstantially, to show that Humphries had the requisite scienter. As alleged, in or about February 2022 Humphries was confronted by an investor who questioned how the scheme was profitable or realistic: Humphries refused to answer what he personally described as "loaded" questions—strongly suggesting that he was already aware of the fraud. (*See id.* ¶ 51.) Second, Humphries, both orally and through written representations (in the Investor Agreements he distributed), prohibited investors from contacting the purported counterparties to the Purchase Agreements, again strongly suggesting that he was well aware of the consequences of investors doing so. (*See id.* ¶¶ 49, 61.) Third, when certain investors contacted the attorneys and learned the Purchase Agreements were fake, Humphries, as a principal of the purported business, would have been informed of this fact, yet he continued to

make misrepresentations to investors. (*See id*. at 69.) This is more than sufficient to allege, at a minimum, conscious recklessness.

Finally, that Beasley disclaimed his co-conspirators' knowledge during his standoff with the FBI is in no way "exculpatory," as the Humphries Defendants contend. In fact, to the extent such extrinsic evidence is considered on this motion to dismiss, it is at best a second-hand description by one co-conspirator of another co-conspirator's mental state. It is also highly suspect, given the circumstances: at the time of the standoff, Beasley had been notified that the FBI had already raided Humphries' and Judd's residences, and had every incentive to deflect blame from his co-conspirators unto himself. Beasley repeatedly stated his intention to commit suicide that day. (*See*, *e.g.*, Dkt. No. 2-5, Declaration of Joni Ostler at Ex. 2, Beasley Tr. at 8, 18–19, 25, 31.) Thus, it is reasonable to believe that he saw his "confession" as a way to take the blame and deflect attention from Judd, Humphries, and the other principals in the scheme that he knew the FBI was also investigating. But in any event, Judge Mahan considered this evidence already, and found it insufficient to prevent the SEC from establishing a *prima facie* case for liability for purposes of the preliminary injunction hearing. The Humphries Defendants do not explain why this evidence should be dispositive now when the Court has already weighed and considered it when denying the same argument in opposition to the SEC's request for preliminary injunctive relief. (*See* Dkt. No. Dkt. No. 13, Humphries Opp. at 3–4; Dkt. No. 56.)

B. The Amended Complaint Sufficiently Alleges Violations of Securities Act Section 5 and Exchange Act Section 15(a)(1)

Finally, there is no merit to the Humphries Defendants' argument that the SEC's claims under Section 5 of the Securities Act and Section 15(a)(1) of the Exchange Act should be dismissed because they "sound in fraud."

To be clear, the Humphries Defendants do not seriously contest that the Amended Complaint sufficiently pleads violations of Section 5 of the Securities Act and Section 15(a)(1) of the Exchange Act under Rule 8. They do not contest that the Amended Complaint adequately pleads that the Purchase Agreements at issue were securities, that those securities were not

registered as required, and that Humphries offered and sold the unregistered securities, including through interstate communication and the mails—the elements of a violation of Section 5 of the Securities Act [15 U.S.C. § 77e(a), (c)].[4] Likewise, the Humphries Defendants do not contest that the Amended Complaint adequately pleads that Humphries solicited at least dozens of investors to purchase the securities at issue, that he was paid for that solicitation in the form of transaction-based compensation, and that he did so without being registered as a broker or being associated with a registered broker—the elements of a violation of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].[5] And they do not find fault with the well-established law that each of these is a strict liability offense that does not require proof of scienter.[6]

Instead, the Humphries Defendants argue that because the SEC has alleged a fraudulent scheme, all of its claims necessarily "sound in fraud" and must meet the requirements of Rule 9(b). That is not the law. Rather, while the D.C. Circuit has applied Rule 9(b) to claims under Sections 17(a)(2) and (a)(3) for negligence, *see S.E.C. v. RPM Int'l, Inc.*, 282 F. Supp. 3d 1, 12-

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[4] *See Europe & Overseas Commodity Traders, S.A. v. Banque Paribas London*¸147 F.3d 118, 124 (2d Cir. 1998) (quoting *In re Command Credit Corp.*, No. 3-8674, 1995 SEC LEXIS 989, at *2 (S.E.C. Apr. 19, 1995)) ("The elements of [an] action for violation of Section 5 are (1) lack of a registration statement as to the subject securities; (2) the offer or sale of the securities; and (3) the use of interstate transportation or communication and the mails in connection with the offer or sale.").

[5] *See generally SEC v. RMR Asset Mgmt. Co.*, 479 F. Supp. 3d 923, 926 (S.D. Cal. 2020); *SEC v. Feng*, 935 F.3d 721, 731 (9th Cir. 2019)

[6] *See Aaron v. SEC*, 446 U.S. 680, 714 n.5 (1980) (strict liability for Section 5 violations); *SEC v. Parkersburg Wireless Ltd. Liab. Co.*, 991 F. Supp. 6, 9 (D.D.C. 1997) ("whether [defendant] was an unwitting participant in this complex scheme [is] of no moment"); *See SEC v. Interlink Data Network*, No. 93 3073 R, 1993 WL 603274, *10 (C.D. Cal. Nov. 15, 1993) (Section 15(a)(1) is a strict liability statute, no proof of a defendant's state of mind is required).

13 (D.D.C. Sept. 29, 2017), and a court in the Ninth Circuit has applied Rule 9(b) to Section 206 of the Advisors Act, which specifically requires fraud as an element, *see* 15 U.S.C. § 80b-6; *SEC v. Sztrom*, No. 3:21-cv-00086, 2021 WL 1889758, at *3 (S.D. Cal. May 11, 2021), the Humphries Defendants cite no case, and no other authority, applying the requirements of Rule 9(b) to ***strict liability*** claims that happen to be pled alongside distinct fraud claims.

The SEC does not contend that Humphries engaged in fraud by violating Section 5 of the Securities Act or Section 15(a)(1) of the Exchange Act. Nor is it a necessary element of those claims. But in any event, regardless of the standard, the Humphries Defendants do not identify which element of the strict liability claims the SEC fails to plead with the particularity required under Rule 9(b). (*See* Dkt. No. 199, Mot. at 8–9 (arguing generally that "particularity . . . is lacking as to Mr. Humphries").) As previously noted, there is no serious dispute that the SEC has adequately pled violations of the strict liability claims here, and thus there is no merit to the Humphries Defendants' attempts to dismiss those claims.[7]

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[7] The Humphries Defendants are also silent as to any legal basis to dismiss CJ Investments, LLC from the case as a relief defendant except to add, in their Motion's conclusory paragraph, the statement that "[a]ccordingly, the Complaint must be dismissed as to Mr. Humphries and Relief Defendant CJ Investments, LLC." (Dkt. No. 199, Mot. at 9.) To establish authority to pursue a relief defendant in an enforcement action, however, the SEC must only prove (and at this stage, plead) only two things: that the relief defendant in question received ill-gotten funds, and that the relief defendant does not have a legitimate claim to those funds. *See*, *e.g.*, *Smith v. SEC*, 653 F.3d 121, 128 (2d Cir. 2011), quoting *SEC v. Cavanaugh*, 155 F.3d 129, 136 (2d Cir. 1998) ("Federal courts may order equitable relief against a person who is not accused of wrongdoing in a securities enforcement action where that person (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds."). The Amended Complaint adequately pleads that CJ Investments LLC received "at least $25 million from the Beasley Law Group IOLTA

CONCLUSION

For the foregoing reason, the SEC respectfully requests that the Court deny the Humphries' Defendants motion to dismiss. In the alternative, the SEC requests that the Court grant the SEC leave to amend its complaint and re-plead its factual allegations against the Humphries Defendants.

DATED this 10th day of August, 2022.

/s/ Casey R. Fronk
Tracy S. Combs
Casey R. Fronk
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

account" to which it "has no legitimate claim." (Dkt. No. 118, Am. Compl. ¶ 36; *see also id.* ¶¶ 53, 81.)

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2022, I caused the foregoing **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO DEFENDANT CHRISTOPHER HUMPHRIES AND RELIEF DEFENDANT CJ INVESTMENTS, LLC'S MOTION TO DISMISS** to be served to all parties entitled to service through the Court's ECF system and to the following individuals by the means indicated below:

By U.S. Mail, first class, postage prepaid, to:

BJ Holdings LLC
c/o Beasley Law Group PC, c/o Matthew Wade Beasley
Nevada Southern Detention Center
2190 East Mesquite Avenue
Pahrump, NV 89060

The Judd Irrevocable Trust
c/o Trustee Matthew Wade Beasley
Nevada Southern Detention Center
2190 East Mesquite Avenue
Pahrump, NV 89060

Jason M. Jongeward and JL2 Investments, LLC
[redacted]
Washington, UT [redacted]

PAJ Consulting, Inc
[redacted]
Huntington Beach CA [redacted]

Triple Threat Basketball, LLC
c/o Warren Rosegreen
[redacted].
Henderson, NV [redacted]

The Judd Irrevocable Trust
c/o Jeffrey Judd
[redacted]
Henderson, NV [redacted]

Jason A. Jenne
[redacted]
Las Vegas, NV [redacted]

Warren Rosegreen
[redacted]
Henderson, NV [redacted]

By email to the following:

Anthony Michael Alberto, Jr. and Monty Crew, LLC
[redacted]

Dyke Huish
Huish Law Firm
huishlaw@mac.com
Counsel for Roland Tanner

/s/ Casey R. Fronk
Casey R. Fronk