

1 KARA B. HENDRICKS, Bar No. 07743  
hendricksk@gtlaw.com  
2 JASON K. HICKS, Bar No. 13149  
hicksja@gtlaw.com  
3 KYLE A. EWING, Bar No 014051  
ewingk@gtlaw.com  
4 **GREENBERG TRAUIG, LLP**  
10845 Griffith Peak Drive, Suite 600  
5 Las Vegas, Nevada 89135  
Telephone: (702) 792-3773  
6 Facsimile: (702) 792-9002

DAVID R. ZARO\*  
dzaro@allenmatkins.com  
JOSHUA A. del CASTILLO\*  
jdelcastillo@allenmatkins.com  
MATTHEW D. PHAM\*  
mpham@allenmatkins.com  
\*admitted *pro hac vice*  
**ALLEN MATKINS LECK GAMBLE**  
**MALLORY & NATSIS LLP**  
865 South Figueroa Street  
Suite 2800  
Los Angeles, California 90017-2543  
Telephone: (213) 622-5555  
Facsimile: (213) 620-8816

8 JARROD L. RICKARD, Bar No. 10203  
jlr@skrlawyers.com  
9 KATIE L. CANNATA, Bar No. 14848  
klc@skrlawyers.com  
10 **SEMENZA KIRCHER RICKARD**  
10161 Park Run Drive, Suite 150  
11 Las Vegas, Nevada 89145  
Telephone: (702) 835-6803  
12 Facsimile: (702) 920-8669

13 *Attorneys for Geoff Winkler Receiver for*  
14 *J&J Consulting Services, Inc., J&J Consulting Services, Inc.,*  
*J and J Purchasing LLC, The Judd Irrevocable Trust,*  
15 *and BJ Holdings LLC*

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 and

25 THE JUDD IRREVOCABLE TRUST, *et al.*

26 Relief Defendants.

CASE NO. 2:22-CV-00612-CDS-EJY

**RECEIVER GEOFF WINKLER'S  
RESPONSE IN OPPOSITION TO  
DEFENDANT CHRISTOPHER  
HUMPHRIES AND RELIEF  
DEFENDANT CJ INVESTMENTS,  
LLC'S MOTION FOR RELEASE OF  
FUNDS FOR ATTORNEY'S FEES  
[ECF NO. 209]**

27  
28 ///

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, NV 89135  
(702) 792-3773  
(702) 792-9002 (fax)

1 **RECEIVER GEOFF WINKLER’S RESPONSE IN OPPOSITION TO DEFENDANT**  
2 **CHRISTOPHER HUMPHRIES AND RELIEF DEFENDANT CJ INVESTMENTS,**  
3 **LLC’S MOTION FOR RELEASE OF FUNDS FOR ATTORNEY’S FEES [ECF NO. 209]**

4 Comes now, Geoff Winkler, the Court-appointed Receiver (the “Receiver”), by and  
5 through counsel of record, the law firm of Greenberg Traurig, LLP, and hereby submits the  
6 following Response in Opposition to Defendant Christopher Humphries and Relief Defendant CJ  
7 Investments, LLC’s Motion for Release of Funds for Attorney’s Fees (ECF No. 209) (the  
8 “Response”).

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

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 Prior to the initiation of this case, Defendant Christopher Humphries (“Humphries”)  
15 retained the law firm of Christiansen Trial Lawyers (“CTL”) and paid an initial retainer of  
16 \$150,000. Following the appointment of the Receiver, and this Court’s direction to turn over all  
17 Receivership Property, CTL transferred a small portion of the \$150,000 and withheld more than  
18 \$132,000 representative of the attorney’s fees incurred by CTL through July 15, 2022. Through  
19 the instant Motion, Humphries not only seeks to retain the funds held by CTL, but also seeks  
20 release of an additional \$250,000 from the funds that have already been seized and/or frozen in  
21 accordance with this Court's prior orders.

22 The Receiver’s role in this matter includes taking custody, control and possession of all  
23 Receivership Property as further set forth in the Order Appointing Receiver (the “Appointment  
24 Order”). ECF No. 88. Here, it is undisputed that the funds CTL has elected to retain in  
25 contravention of the clear language of the Appointment Order were provided directly by Defendant  
26 Humphries and no evidence has been provided indicating the same did not originate from the Ponzi  
27 scheme alleged in the Amended Complaint. Moreover, this Court has issued no orders that  
28 authorize legal fees to be paid to CTL at the rates and amounts requested. Accordingly, the  
Receiver is compelled to respond to the Motion.

1           Although this Court has discretion to modify its orders, Humphries has not provided this  
2 Court with any valid grounds to retain the funds at issue, or to be paid additional funds from already  
3 seized or frozen accounts. Indeed, Humphries has not even established that the money he seeks to  
4 retain is untainted and has not been commingled with ill-gotten funds derived from the alleged  
5 Ponzi scheme in which nearly 600 investors were swindled out of close to \$500 million dollars.  
6 The case law on this issue is clear: Absent extraordinary circumstances, a defendant cannot use  
7 funds derived from his fraudulent acts to pay for counsel that will assist him in attempting to retain  
8 the ill-gotten funds. Humphries has failed to show that any such extraordinary circumstances exist  
9 here.

## 10   **II.    OVERVIEW AND FACTUAL BACKGROUND**

11           As alleged in the Amended Complaint, this case is the result of a long-running fraudulent  
12 Ponzi scheme perpetrated by the Receivership Defendants, including Humphries. ECF No. 118.  
13 At the outset of this case, the SEC moved, *ex parte*, for the Entry of a Temporary Restraining  
14 Order and Orders: (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction  
15 of Documents; (4) Granting Expedited Discovery; and (5) Order to Show Cause Re: Preliminary  
16 Injunction (the “TRO Application”). ECF No. 2. In the TRO Application, the SEC established  
17 for this Court the nature of the Ponzi scheme giving rise to this case including Humphries’ role  
18 therein by providing this Court with detailed allegations and credible evidence, including direct  
19 statements from Beasley, implicating Humphries for his role in the scheme. *Id.* Moreover, through  
20 the Complaint and the TRO Application, the SEC outlined the extravagant assets the Receivership  
21 Defendants acquired with Ponzi scheme funds, and their concerted attempts to liquidate and  
22 dissipate substantial assets. ECF Nos. 1, 2. After considering the Complaint, the TRO Application  
23 and the relevant evidence, the Court entered a Temporary Restraining Order (1) Freezing Assets;  
24 (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents; and (4) Granting  
25 Expedited Discovery, among other things (the “TRO”).<sup>1</sup> ECF No. 3. Despite Humphries’  
26 opposition (ECF No. 13), the terms of the TRO were later affirmed via this Court’s entry of the  
27

28           <sup>1</sup> The TRO was later sealed following a Motion to Seal by Defendant Shane M. Jager. ECF Nos. 51 and 57.

1 Preliminary Injunction. ECF No. 56. Pertinent to the instant Motion, the Preliminary Injunction  
2 provides:

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

9 Subsequent to the Preliminary Injunction, this Court issued its Order Appointing Receiver  
10 (again, the “Appointment Order”) which, among other things, ordered “[a]ll persons and entities  
11 having control, custody or possession of any Receivership property [] to turn such property over  
12 to the Receiver.”<sup>2</sup> ECF No. 88 at ¶ 15. Thus, any person or entity (including CTL) that is in  
13 possession of Receivership Property is under an express obligation to turn over all monies held in  
14 trust on behalf the Defendants (including Humphries).

15 The subject Motion concerns the retention of Receivership Funds<sup>3</sup> currently held by  
16 Humphries’ counsel and Humphries’ request to release additional funds that have already been  
17 seized and/or frozen. More specifically, Humphries’ Motion seeks an order from this Court  
18 allowing funds currently held in trust by CTL to be used to pay \$132,359.22 in attorneys’ fees  
19 already incurred and also requests additional \$250,000 in funds be released from the already frozen  
20 or seized assets for future fees in this and other cases. ECF No. 209 at p. 14. However, the  
21 \$132,359.22 currently held in the CTL IOLTA account is, without question, Receivership Property  
22 subject to the turnover provisions and asset freeze imposed by the Court, and Humphries has not  
23 provided this Court with any ground to deviate therefrom.

24 ///

25 <sup>2</sup> On July 28, 2022, this Court entered an Order Amending Receivership Order through which the  
26 Appointment Order was amended to include within its purview eight (8) new defendants: Larry Jeffrey,  
27 Jason Jenne, Seth Johnson, Christopher Madsen, Richard Madsen, Mark Murphy, Cameron Rohner and  
28 Warren Rosegreen. ECF No. 207. All other terms of the Appointment Order remain in effect.

<sup>3</sup> Pursuant to this Court’s Order Appointing Receiver, “Receivership Property” is defined as “monies,  
funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets,  
together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind,  
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 CTL shall be referred  
to as the “**Receivership Funds**” as the money falls within the definition of “Receivership Property”  
established by this Court.

1 **III. LEGAL ARGUMENT**

2 This Court should deny Humphries’ request and require the turnover of the Receivership  
3 Funds held by CTL to the Receiver. Through the Motion, Humphries argues that the Receivership  
4 Funds held by CTL should be released for payment of attorney fees incurred to date and requests  
5 additional funds be released for fees to be incurred in the future. ECF No. 209 at p. 15. However,  
6 there can be no dispute that the Receivership Funds in question are subject to the asset freeze and  
7 turnover provisions of this Court's prior orders, and Humphries has provided no authority to  
8 modify any controlling term. As such, Humphries’ request that CTL be exempt from fully  
9 complying with these provisions should be denied.

10 **1. Humphries’ Request to Retain the Funds Currently Held By Christiansen**  
11 **Trial Lawyers Should be Denied**

12 According to the Motion, prior to the initiation of the instant case, Humphries retained CTL  
13 to represent him in a “pending federal criminal investigation” and paid an initial retainer of  
14 \$150,000. ECF No. 209 at p. 8. Following the entry of the Appointment Order, CTL transferred  
15 \$17,640.78 to the Receiver and unilaterally withheld \$132,359.22, representing the attorney’s fees  
16 incurred to date, the proper possession of which was to be determined via the instant Motion.<sup>4</sup>

17 **2. The SEC Has Met Its Burden of Demonstrating Humphries’ Role in the**  
18 **Alleged Ponzi Scheme.**

19 Through the Motion, Humphries generally takes issue with his involvement in this case  
20 and seeks to be effectively excluded from this Court’s orders, which were implemented to preserve  
21 the assets of the receivership estate. Humphries argues there is no evidence to establish that he  
22 had any knowledge of the fraudulent Ponzi scheme and goes so far as to say he has been “unfairly”  
23 included in this case. ECF No. 209 at p. 7-8. Humphries attempts to bolster this position by citing  
24 to the transcript of the March 3, 2022 standoff between Beasley and the FBI and by pointing to  
25 alleged deficiencies in the SEC’s Amended Complaint. ECF No. 209 at p. 5-8.

26 \_\_\_\_\_  
27 <sup>4</sup> Attached to the Motion as Exhibit A is an email chain in which Kara Hendricks, counsel for the Receiver,  
28 stated “In regard to the [] \$132,359.22 in attorney’s fees and costs that you represent has been incurred to  
date, please file a motion within the next 7 days seeking Court approval for your firm to retain the same.  
To be clear, the Receiver is not agreeing that you are entitled to keep the \$132,359.22, but will consent to  
the funds remaining in your trust account until a decision is made by the Judge.”

1           However, this is not the first instance in which Humphries has made this argument. On  
 2 April 19, 2022, Humphries filed a “Joint Opposition by Defendant Christopher Humphries and  
 3 JCH Consultants, LLC to Entry of a Preliminary Injunction and alternatively, a Motion to Dissolve  
 4 the Current Asset Freeze” (the “Opposition to Preliminary Injunction”). ECF No. 13. In the  
 5 Opposition to Preliminary Injunction, Humphries argued “the SEC has not pointed to any evidence  
 6 that [Humphries] had knowledge and/or the requisite scienter with respect to the alleged Ponzi  
 7 scheme. *Id.* To the contrary, the SEC failed to include in its brief any discussion of crucial  
 8 exculpatory evidence regarding [Humphries]. The SEC, in essence, mislead the Court.” *Id.* at p.  
 9 3. In making this argument, Humphries cited the exact same quotes from the Standoff Transcript  
 10 he cited in this Motion. *Id.* Following Humphries’ Opposition to Preliminary Injunction, on April  
 11 21, 2022, this Court entered its Order Entering Preliminary Injunction, Asset Freeze, and Other  
 12 Equitable Relief in which the Court expressly found:

13           **“the Court finds that the Commission has made a proper *prima facie* showing**  
 14 **that: (i) Defendants Matthew W. Beasley; Beasley Law Group PC; Jeffrey J. Judd;**  
 15 **Christopher R. Humphries; J&J Consulting Services, Inc., an Alaska**  
 16 **Corporation; J&J Consulting Services, Inc., a Nevada corporation; J and J**  
 17 **Purchasing LLC; Shane M. Jager; Jason Jongeward; Denny Seybert; and Roland**  
 18 **Tanner (together herein, “Defendants”) directly and indirectly engaged in the**  
 19 **violations alleged in the Complaint;** (ii) there is a reasonable likelihood that these  
 20 violations will be repeated; (iii) unless restrained and enjoined by the Court,  
 21 Defendants and Relief Defendants The Judd Irrevocable Trust; PAJ Consulting  
 22 Inc.; BJ Holdings LLC; Stirling Consulting, L.L.C.; **CJ Investments, LLC;** JL2  
 23 **Investments, LLC; Rocking Horse Properties, LLC; Triple Threat Basketball, LLC;**  
 24 **ACAC LLC; Anthony M. Alberto, Jr.; and Monty Crew LLC (together herein, the**  
 25 **“Relief Defendants”) may dissipate, conceal or transfer from the jurisdiction of this**  
 26 **Court assets that could be subject to an order of disgorgement or an order to pay a**  
 27 **civil monetary penalty in this action; and (iv) entry of a preliminary injunction,**  
 28 **asset freeze, and order for other equitable relief as set forth below is necessary**  
 29 **and appropriate.”**

30 ECF No. 56 at p. 2. (emphasis added).

31           Thus, despite Humphries’ argument that he lacked knowledge of the alleged Ponzi scheme  
 32 and that the SEC had no evidence of the same, this Court expressly found the SEC had met its  
 33 burden of making a prima facie showing that the defendants, including Humphries, directly and  
 34 indirectly engaged in the violations alleged in the Complaint. *Id.*

1           Humphries’ argument that the SEC must conclusively establish his liability prior to  
2 freezing and/or seizing his assets runs afoul of well-established precedent on this issue. In fact,  
3 requiring a finding of liability prior to freezing assets turns the equity receivership process (and  
4 the adversarial process in general) on its head. It is incontrovertible that the Government may  
5 seize property based solely on a finding of probable cause to believe the property will ultimately  
6 be proved forfeitable. *United States v. Monsanto*, 491 U.S. 600, 615, 109 S. Ct. 2657, 2666 (1989).  
7 “Indeed, it would be odd to conclude that the Government may not restrain property . . . based on  
8 a finding of probable cause, when we have held that (under appropriate circumstances), the  
9 Government may restrain *persons* where there is a finding of probable cause that the accused has  
10 committed a serious offense.” *Id.* (emphasis in original). This authority is logical as requiring a  
11 finding of liability before freezing assets would allow the defendant to dissipate, transfer or  
12 otherwise hide assets that are subject to the Court’s control.

13           Once again, the SEC needed only to establish a *prima facie* showing. As the Court found,  
14 the SEC easily met its burden. Indeed, the SEC’s application for TRO and subsequent Request for  
15 Preliminary Injunction are replete with credible and substantiated allegations establishing Judd’s  
16 malfeasance including, but not limited to, detailed recitations of Judd’s involvement in obtaining  
17 “investors” and Beasley’s own statements regarding the same. ECF Nos. 2, 21. For this reason,  
18 the Court expressly found that the SEC “made a proper *prima facie* showing that [Judd] directly  
19 and indirectly engaged in the violations alleged in the Complaint.” ECF No. 56 at p. 2.

20           What is more, following the reassignment of this case from Judge Mahan, this Court found  
21 this exact argument made by another defendant unavailing and reiterated that the SEC met its  
22 burden with respect to the Preliminary Injunction. On August 5, 2022, this Court entered an order  
23 denying Defendant Jeffrey Judd’s request to retain funds held in his law firm’s IOLTA account  
24 after his counsel challenged the propriety of this Court’s Temporary Restraining Order and  
25 Preliminary Injunction. ECF No. 235. Therein the Court stated:

26 ///  
27 ///  
28 ///



1 “[t]he SEC has met its burden, which resulted in the granting of the Temporary  
 2 Restraining Order and Preliminary Injunction, entered by Judge Mahan. **Out of an**  
 3 **abundance of caution, I conducted an independent review of the evidence**  
 4 **provided by the SEC and found that the SEC made the proper, requisite**  
 5 **showings warranting issuances of the original TRO and PI.**”

6 ECF No. 235 at FN 3. (emphasis added). Thus, it has been found on at least two separate occasions  
 7 (by two separate Judges), that the SEC met their burden and sufficiently established the defendants,  
 8 including Humphries, participated in the Ponzi scheme set forth in the Amended Complaint.<sup>5</sup>

### 9 3. Humphries’s Request to Retain the Funds Should be Denied

10 Humphries requests to retain two categories of attorneys’ fees—those fees incurred prior  
 11 to the entry of the Preliminary Injunction and those incurred after. Given that there is no order in  
 12 place permitting CTL to be paid from Receivership Property, what Humphries is seeking is a  
 13 modification of the Asset Freeze and Turnover Provision of the Appointment Order. First,  
 14 Humphries argues CTL incurred \$80,389.26 through April 21, 2022 (the date of the Preliminary  
 15 Injunction, although, notably more than a week after the Court issued its initial asset freeze) and  
 16 “these funds do not represent property of Mr. Humphries which is subject to the Receivership order  
 17 because they were earned pursuant to CTL’s contractual agreement with Mr. Humphries, prior to  
 18 the entry of the injunction and certainly prior to the Receiver’s Appointment.” ECF No. 209 at p.  
 19 10. Second, Humphries argues the remainder of his initial \$150,000 retainer should be released to  
 20 compensate CTL for the fees incurred from April 22 through July 15. Additionally, Humphries  
 21 requests additional funds be released “to secure his due process rights with respect to the instant

---

21 <sup>5</sup> Humphries further suggests that under *SEC v. Coates*, this Court “should hold an adversary proceeding  
 22 and require the SEC to make a prima facie case of fraud against Mr. Humphries sufficient to justify the  
 23 continued freeze on the entirety of his assets such that he will be left without the means to pay counsel.”  
 24 ECF No. 209 at p. 14. This argument is based on *SEC v. Coates*, a 1994 case from the Southern District of  
 25 New York. However, *Coates* does not stand for what Humphries proposes. *Coates* was a securities fraud  
 26 action brought by the SEC in which the Defendant moved the Court to modify its order freezing his personal  
 27 assets to allow him access to funds for payment of living expenses and attorney’s fees. *SEC v. Coates*, 94  
 28 Civ. 5361 (KMW), 1994 U.S. Dist. LEXIS 11787, at \*1 (S.D.N.Y. Aug. 19, 1994). Moreover, *Coates* does  
 not stand for the proposition that Humphries is entitled to an adversary proceeding in which the burden is  
 on the SEC to establish that the funds were derived from fraud. Indeed, the Court ultimately denied Coates’  
 request and stated it would “revisit” the issue at the upcoming preliminary injunction hearing. *Id.* at \*12-  
 13. As such, *Coates* is procedurally distinguishable from this case as Coates’ motion to modify the asset  
 freeze came after the entry of the temporary restraining order but before the hearing to determine whether  
 a preliminary injunction was warranted. *Coates*, 1994 U.S. Dist. LEXIS 11787, at \*1. Additionally,  
 Humphries has already had his opportunity to present his position to the Court in an adversary proceeding—  
 the preliminary injunction.



1 matter and the criminal investigation.” ECF No. 209 at pp. 10-14. Despite his arguments,  
2 Humphries has not established sufficient grounds for this Court to modify its previous order and  
3 permit CTL to retain the fees held in the trust account or permit the release of additional frozen  
4 and/or seized funds for Humphries’ future use.

5 The determination of whether to modify an asset freeze to release funds falls squarely  
6 within the Court’s discretion. The Ninth Circuit has expressly found a district Court “may, within  
7 its discretion, forbid or limit payment of attorney fees” from frozen assets. *CFTC v. Noble Metals,*  
8 *Inc.*, 67 F.3d 766, 775 (9th Cir. 1995). Indeed, Courts of the Ninth Circuit have regularly denied  
9 requests for payment of attorneys’ fees out of frozen assets. *See e.g. FTC v. Digital Altitude, LLC,*  
10 No. LA CV18-00729 JAK (MRWx), 2018 WL 4944419, at \*6-9 (C.D. Cal. July 26, 2018)  
11 (denying request for payment of attorneys’ fees out of frozen assets finding the evidence presented  
12 did not support directing the Receiver to release additional frozen funds to pay for the defendant’s  
13 legal fees); *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989); *CFTC v. Co*  
14 *Petro Mktg. Grp., Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983) (affirming the district Court’s order  
15 requiring a law firm to return \$60,000 to a receiver). “In considering a request to release seized  
16 asserts [*sic*], it is appropriate to consider what other assets the movant has that could be used for  
17 the payment of attorney’s fees. As to a defendant with substantial assets, there is less force to the  
18 need to grant the request, particularly where the disbursement of funds would reduce what is  
19 available for potential restitution to alleged victims.” *Digital Altitude*, 2018 WL 4944419, at 9.

20 In determining whether to unfreeze assets for the payment of attorneys’ fees, the Court is  
21 to consider the likelihood of success on the merits of the claims and balance the equities. *FTC v.*  
22 *Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999). With respect to the balance of equities,  
23 “public interests are generally entitled to stronger consideration than private interests.” *Digital*  
24 *Altitude*, 2018 WL 4944419, at \*7 (quoting *FTC v. Merch. Servs. Direct, LLC*, No. 13-CV-0279-  
25 TOR, 2013 WL 4094394, at \*2 (E.D. Wash. Aug. 13, 2013)). In this case, the public interest far  
26 outweighs the interests of Humphries and therefore warrants the denial of Humphries’ request. As  
27 alleged in the Amended Complaint, from 2017 to March 2022, over 600 investors invested in the  
28 scheme resulting in at least \$449 million in investor funds flowing through the Beasley Law

1 Group's IOLTA account. ECF No. 118 at ¶ 3. Although the exact number of investors and victims  
 2 has not yet been determined, based on the information presently in the record, it is readily apparent  
 3 that the number of victims and amount needed to make each victim whole will be substantial.  
 4 Thus, given the breadth of the fraud in this case, the public's interest in being made whole is the  
 5 paramount concern. It is for this purpose the Court appointed the Receiver.

6 The primary purpose of a receiver is to "promote orderly and efficient administration of  
 7 the estate by the district Court for the benefit of the creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038  
 8 (9th Cir. 1986). In so doing, receivers are tasked with preserving the status quo while arranging a  
 9 defendant's complicated business records. *SEC v. Path Am., LLC*, No. C15-1350JLR, 2016 U.S.  
 10 Dist. LEXIS 53075, at \*18-21 (W.D. Wash. Apr. 20, 2016). "A receiver is particularly necessary  
 11 in instances where defendants have allegedly defrauded members of the investing public to avoid  
 12 the continued diversion or dissipation of corporate assets." *Id.* (citing *SEC v. First Fin. Grp. of Tex.*,  
 13 645 F.2d 429, 438 & n.14 (5th Cir. 1981)). In instances such as this, the Court may appoint  
 14 receivers with a variety of tools and broad authority "to help preserve the status quo while various  
 15 transactions [a]re unraveled" and "to obtain an accurate picture of what transpired." *Id.* (quoting  
 16 *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1973) (approving the appointment  
 17 of a receiver to unravel complicated transactions and trace investors)).

18 Here, the Court appointed the Receiver to marshal and preserve all assets of the Defendants  
 19 and the Relief Defendants that: (a) are attributable to funds derived from investors or clients of the  
 20 Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred  
 21 by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the  
 22 Defendants. ECF No. 88 at p. 2. Thus, the Receiver's role is to gather and protect the assets,  
 23 including the money currently held by CTL, that were derived from the Ponzi scheme and marshal  
 24 said assets as directed by this Court.

25 **a. Humphries Has Not Established That the Receivership Funds are**  
 26 **Untainted**

27 Generally, a defendant cannot use tainted and/or ill-gotten funds for their defense. "When  
 28 funds are linked directly to the fraud, it would frustrate the purpose of the regulation to allow the

1 defendants to use those funds for attorney’s fees.” *CFTC v. Wilson*, No. 11cv1651 WQH (BLM),  
2 2011 U.S. Dist. LEXIS 146153, at \*7 (S.D. Cal. Dec. 20, 2011) (citing *CFTC v. Co Petro*  
3 *Marketing Group*, 680 F.2d 573, 584 (9th Cir. 1982)). In other words, “a swindler in securities  
4 markets cannot use the victims’ assets to hire counsel who will help him retain the gleanings of  
5 crime.” *SEC v. Marino*, 29 Fed. Appx. 538, 541 (10th Cir. 2002) (quoting *SEC v. Quinn*, 997  
6 F.2d 287, 289 (7<sup>th</sup> Cir. 1993). Thus, in a case such as this, Humphries “must establish that the  
7 funds he seeks to release are untainted and that there are sufficient funds to satisfy any  
8 disgorgement remedy that might be ordered in the event a violation is established.” *SEC v.*  
9 *Santillo*, No. 18-CV-5491 (JGK), 2018 WL 3392881, at \*4 (S.D.N.Y. July 11, 2018).

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

15 Through the instant Motion, Humphries does not even attempt to establish that the funds  
16 he seeks to release are untainted or that the funds have not been commingled with the ill-gotten  
17 funds at issue in this case—a critical factor in this Court’s decision. *See Wilson*, 2011 U.S. Dist.  
18 LEXIS 146153, at \*7; *see also See King*, 2021 WL 3598732, at \*4 (denying request to release  
19 funds from frozen account for payment of attorneys’ fees in part because the ill-gotten funds were  
20 commingled with other funds). Rather, Humphries attempts to place the burden on the SEC (and  
21 the Receiver) to establish that the funds he seeks to use are tainted. ECF No. 209 at p. 12.  
22 However, as this Court found in its denying a similar request, once the SEC has met its preliminary  
23 showing that the assets in question can be traced to fraud, the burden of establishing whether the  
24 funds are tainted or untainted falls squarely on the defendant. ECF No. 235 at p. 8 (citing *Santillo*,  
25 2018 WL 3392881, at \*4 and *SEC v. Private Equity Mgmt. Group, Inc.*, 2009 WL 2058247, at \*2-  
26 3 (C.D. Cal. July 9, 2009)). In other words, the onus is on Humphries—not the Receiver or the  
27 SEC—to establish that the funds are untainted and have not been commingled, and Humphries has  
28 failed to do so. *King*, 2021 WL 3598732, at \*4 (quoting *SEC v. Rosenthal*, 426 Fed. Appx. 1 (2d

1 Cir. 2011) “‘The SEC is not required to trace specific funds to their ultimate recipients’ because  
2 ‘[i]mposing such a tracing requirement would allow [a defendant] to escape disgorgement by  
3 spending down illicit gains while protecting legitimately obtained assets or . . . by commingling  
4 and transferring such profits’’)). Given that Humphries has not met his burden of establishing the  
5 funds he seeks to use are untainted, Humphries’ request for release of any Receivership Funds  
6 should be denied.

7 **b. This Court Should Deny Humphries’ Request to Retain \$80,389.26**  
8 **Representative of Fees Incurred Prior to the Preliminary Injunction**

9 The first portion of Humphries’ fee request involves the fees incurred by CTL prior to the  
10 entry of the Preliminary Injunction. Specifically, CTL seeks to retain \$80,389.26 from the  
11 \$150,000 it received from Humphries prior to the initiation of the instant case. However, the fact  
12 that the fees were earned prior to the entry of the Preliminary Injunction is of no consequence.

13 Relying on *SEC v. Hardy*, this Court has made clear:

14 “The Receivership Order directs ‘[a]ll persons and entities having control, custody  
15 or possession of any Receivership Property are hereby directed to turn such  
16 property over to the Receiver’ (the “Turnover Provision”). [] There is no exception  
17 included for funds transferred to [the Defendant’s] attorneys before the  
18 Receivership order was entered. Full compliance with the Receivership Order is  
19 required by Judge Mahan’s Order. **It would frustrate the purpose of equity  
20 receiverships, which are designed ‘to promote orderly and efficient  
administration of the estate by the district Court for the benefit of creditors,’  
... if individuals alleged to have violated the Securities Act and the Exchange  
Act could avoid Court orders requiring the freezing or turnover of assets by  
simply moving them into a trust or other account held by their attorney.’**”

21 ECF No. 235 at pp. 9-10. Thus, the fact that CTL’s claimed fees were incurred prior to the entry  
22 of the Preliminary Injunction is of no consequence.

23 Given that Humphries has not established any valid ground on which this Court should  
24 modify its orders and permit CTL to retain the fees at issue, Humphries’ request that \$80,389.26  
25 be released for fees incurred prior to April 21, 2022, should be denied and the funds provided to  
26 the Receiver.

27 ///

28 ///

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, NV 89135  
(702) 792-3773  
(702) 792-9002 (fax)

1                   c.       **This Court Should Deny Humphries’ Request for the Release of**  
 2                   **Additional Funds to Pay Defense Counsel to Secure His Due Process**  
 3                   **Rights With Respect to the Instant Matter and Any Criminal**  
 4                   **Investigation**

5                   In addition to seeking to retain funds, Humphries’ fee request also seeks future fees that  
 6                   have not yet been incurred. Specifically, Humphries requests an order releasing an additional  
 7                   \$250,000.00 of seized/frozen funds in order to pay for attorney’s fees and costs to be incurred  
 8                   moving forward in both the instant matter and a purported criminal investigation. ECF No. 209 at  
 9                   p. 10. However, Humphries’ has not provided this Court with any valid ground to modify the  
 10                  Asset Freeze and permit the use of Receivership Funds for Humphries’ defense.

11                  Humphries’ request is largely based on his Sixth Amendment right to counsel.  
 12                  Specifically, Humphries alleges “[i]t is without dispute that Mr. Humphries is a target of the  
 13                  parallel criminal investigation, implicating his Sixth Amendment right to counsel.” ECF No. 209  
 14                  at p. 10. Thus, Humphries argues that he has a constitutional right to counsel because he is the  
 15                  subject of a “criminal **investigation**”—not a criminal prosecution.

16                  Humphries’ position does not comport with the Sixth Amendment and the established case  
 17                  law regarding a criminal defendant’s right to counsel. The Sixth Amendment provides:

18                         “In all criminal **prosecutions**, the accused shall enjoy the right to a speedy and  
 19                         public trial, by an impartial jury of the State and district wherein the crime shall  
 20                         have been committed,...and to be informed of the nature and cause of the  
 21                         accusation; to be confronted with the witnesses against him; to have compulsory  
 22                         process for obtaining witnesses in his favor, and to have the Assistance of Counsel  
 23                         for his defense.”

24                  U.S. Cont. VI. amend.

25                  The United States Supreme Court has expressly reiterated that the Sixth Amendment  
 26                  guarantees the right to counsel **only** in criminal cases. *Gideon v. Wainwright*, 372 U.S. 335, 344,  
 27                  83 S. Ct. 792, 796 (1963). However, it is well settled that the rights set forth in the Sixth  
 28                  Amendment **do not attach until a criminal prosecution is commenced**. *Rothebery v. Gillespie*  
*Cnty*, 554 U.S. 191, 198, 128 S. Ct. 2578 (2008). In the context of the Sixth Amendment,  
 commencement of a criminal prosecution occurs at the “initiation of adversary judicial  
 proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or  
 arraignment.” *Id.* (quoting *United States v. Gouveia*, 467 U.S. 180, 188, 104 S. Ct. 2292 (1984)).

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, NV 89135  
(702) 792-3773  
(702) 792-9002 (fax)

1 Before the commencement of a criminal prosecution, no Sixth Amendment right attaches. *United*  
2 *States v. Olson*, 988 F.3d 1158, 1162 (9th Cir. 2021) (affirming the “bright-line rule” that the Sixth  
3 Amendment’s right to counsel attaches upon the initiation of formal charges.). The Receiver is  
4 not aware any such proceedings currently pending against Humphries.

5 Critically, a Court’s denial of a defendant’s request to utilize frozen assets for attorneys’  
6 fees neither “arbitrarily interfere[s] with a defendant’s fair opportunity to retain counsel” nor  
7 offends the Fifth or Sixth Amendments, as there is no right to counsel in a civil case. *Fed. Sav. &*  
8 *Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 375 (9th Cir. 1990) (quoting *Monsanto*, 491 U.S. at 616;  
9 *see also Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) (“[T]here is generally no right  
10 to counsel in a civil case.”). Additionally, this case is not linked to any criminal proceeding further  
11 demonstrating Humphries does not possess a Sixth Amendment right to counsel. *See World Wide*  
12 *Factors, Ltd.*, 882 F.2d at 347 (finding that because the FTC action was not linked to any criminal  
13 prosecution, any argument for the right to counsel under the Sixth Amendment fails.). Moreover,  
14 “[a]ny doubt as to the constitutionality of freezing assets and precluding entirely their use for  
15 payment of attorney fees...have now been resolved by the Supreme Court’s [] decision in *United*  
16 *States v. Monsanto*” in which the Supreme Court noted “neither the Fifth nor the Sixth Amendment  
17 to the Constitution requires congress to permit a defendant to use assets adjudged to be forfeitable  
18 to pay that defendant’s legal fees.” *World Wide Factors, Ltd.*, 882 F.2d at 347 (citing *Monsanto*,  
19 491 U.S. 600). Thus, this Court has no obligation to ensure Humphries is represented in this case  
20 and any criminal investigation does not give rise to a right to counsel under the Sixth Amendment.<sup>6</sup>  
21 As such, to the extent Humphries’ seeks release of additional funds to permit him to retain counsel  
22 under the Sixth Amendment, Humphries’ arguments fail, and his request should be denied.

23 ///  
24 ///  
25 ///

27 <sup>6</sup> The Receiver is cognizant of the fact that the criminal prosecution of Humphries is possible, at which  
28 time this Court could conduct an appropriate analysis to determine whether Humphries should be entitled  
to utilize Receivership Funds for his defense. However, given that there is currently no active criminal  
proceeding against Humphries, he has no Sixth Amendment right to counsel.



**d. Humphries Cannot Establish That He Has Sufficient Assets to Satisfy Any Potential Disgorgement Award**

In a further attempt to justify his request for fees, Humphries argues that he has sufficient assets to cover any potential disgorgement award. ECF No. 209 at p. 12-13. Notably, Humphries does not identify what assets he allegedly possesses nor does he attempt to demonstrate any such assets are untainted. Indeed, in making this argument, Humphries presents an improperly myopic interpretation of the facts, pleadings and legal standards at issue in this case. Humphries argues that the Amended Complaint alleges that Humphries claimed to make \$250,000.00 every three months and “[b]ased on the SEC’s own allegations, from August 2019 to March 3, 2022 (the date of the FBI raid), the most Mr. Humphries would have received would be \$2,500,000. Mr. Humphries’ list of assets filed under seal demonstrates he had more than sufficient assets to satisfy this potential disgorgement remedy attributable to him.” ECF No. 209 at p. 13. However, Humphries’ position is misplaced. Humphries fail to provide this Court with any authority demonstrating that the SEC must establish, through its Complaint, the exact dollar amount for which each defendant may be held liable. This is because the SEC is not required to establish all facts and damages at the initial pleading stage. *See e.g. Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964 (2007).

Rather, in support of his argument, Humphries cites to *Liu v. SEC* for the proposition that the SEC may only obtain a disgorgement award equal to the “net profits from wrongdoing”. ECF No. 209 at p. 13. In *Liu*, the Supreme Court considered whether a disgorgement award constituted a permissible equitable remedy available to the SEC under 15 U.S.C. § 78u(d)(5). 140 S. Ct. 1936, 1940 (2020). The Supreme Court ultimately found “a disgorgement award that does not exceed a wrongdoer’s net profits and is awarded for victims is equitable relief permissible under § 78u(d)(5).” *Id.* While the Supreme Court’s analysis in *Liu* may be relevant to this case at a later stage, it is of no consequence to the instant Motion. The matter of disgorgement is not presently before this Court and the total amount Humphries (or any other defendant) fraudulently obtained through the Ponzi scheme alleged in the Amended Complaint has yet to be determined. Thus, given the procedural posture in this case, to make an argument as to the disgorgement award is premature. Moreover, any such analysis would be futile at this stage as Humphries has not

1 established that any of his claimed assets are untainted. Absent evidence that Humphries holds  
2 **any** untainted assets, this Court cannot determine that he holds sufficient assets to satisfy any  
3 potential disgorgement award. As such, Humphries’ argument does not provide this Court with  
4 any ground to release any additional funds for his use.

5 As noted above, Defendant Jeffrey Judd made a similar argument with which this Court  
6 disagreed. ECF No. 235. In response, this Court held:

7 “This Court is steadfastly concerned with fairness and it ‘has an obligation to ensure  
8 the equitable distribution of receivership assets.’ *SEC v. BIC Real Est. Dev. Corp.*,  
9 2017 WL 2463854, at \*7 (E.D. Cal. June 7, 2017). The information provided by  
10 Fabian VanCott lacks critical information for this Court[] to evaluate fairness and  
11 further to meet its obligation of ensuring equitable distribution of receivership  
12 assets. While the firm provides some information regarding what they believe to  
13 be the value of Judd’s financials before involvement in the Beasley scheme, there  
14 is *no* information before the Court regarding if those funds or assets were used to  
invest or further the scheme. **A review of the information also provided to SEC  
reveals the same critical omission. This information is critical because if the  
pre-scheme assets or monies were used to invest in, or further the scheme, then  
they are tainted.** Further, Mr. Anderson’s declaration alone is insufficient to  
establish that the funds he seeks to release are untainted.”

15 ECF No. 235 at p. 9 (emphasis added). Here, Humphries has made the same critical omission  
16 made by Judd’s counsel. Namely, Humphries asserts that he has sufficient assets to cover any  
17 potential disgorgement award but fails to demonstrate that any such assets are untainted or that  
18 they have not been commingled. As such, any evaluation of the amount available to satisfy a  
19 potential disgorgement award would be futile.

20 **d. The Reasonableness of Attorneys’ Fees is Moot**

21 Humphries argues the fees incurred by CTL are reasonable and states “CTL’s fees pale in  
22 comparison to those incurred by other firms representing similarly situated defendants, which  
23 demonstrates the reasonableness of Mr. Humphries’ request.” ECF No. 209 at p. 8. An inquiry  
24 into the reasonableness of the attorneys’ fees proffered in this case is moot as there are no grounds  
25 to release the funds as requested. However, even if an inquiry into the reasonableness of the  
26 attorneys’ fees was necessary, an appropriate response is not possible as Humphries has provided  
27 no evidence of the work performed in this case or the referenced criminal investigation.

28 ///

1           Considering Humphries’ Motion as a whole, Humphries has not even come close to  
2 establishing any of the factors on which this Court could potentially base a modification of the  
3 Asset Freeze currently in place. Moreover, there is no order permitting CTL to be paid from  
4 Receivership Property.

5           When considering the facts of this case and the evidence (or lack thereof) submitted with  
6 the Motion, it is abundantly clear that Humphries has not established that the Receivership Funds  
7 which he seeks to keep are untainted, nor can Humphries overcome this Court’s finding that the  
8 SEC met its burden of establishing a *prima facie* showing that (i) Humphries directly and indirectly  
9 engaged in the violations alleged in the Complaint; (ii) there is a reasonable likelihood that these  
10 violations will be repeated; (iii) unless restrained and enjoined by the Court, Humphries may  
11 dissipate, conceal or transfer from the jurisdiction of this Court assets that could be subject to an  
12 order of disgorgement or an order to pay a civil monetary penalty in this action; and (iv) the entry  
13 of a preliminary injunction and asset freeze is necessary and appropriate. ECF No. 56 at p. 2. As  
14 such, Humphries’ request to release the Receivership Funds should be denied and the funds turned  
15 over to the Receiver forthwith.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, NV 89135  
(702) 792-3773  
(702) 792-9002 (fax)

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Receiver respectfully requests this Court enter an Order  
3 denying Humphries’ Motion for Release of Funds for Attorneys’ Fees and order the \$132,359.22,  
4 currently held in trust be turned over to the Receiver forthwith. Additionally, the Receiver requests  
5 that the \$250,000 requested for future and yet to be incurred attorney fees be denied.

6 DATED this 12th day of August, 2022.

**GREENBERG TRAUERIG, LLP**

7  
8 By: */s/ Kara B. Hendricks*

9 KARA B. HENDRICKS, Bar No. 07743  
hendricksk@gtlaw.com  
10 JASON K. HICKS, Bar No. 13149  
hicksja@gtlaw.com  
11 KYLE A. EWING, Bar No. 01405  
ewingk@gtlaw.com  
12 10845 Griffith Peak Drive, Suite 600  
Las Vegas, Nevada 89135

13  
14 JARROD L. RICKARD, Bar No. 10203  
jlr@skrlawyers.com  
15 KATIE L. CANNATA, Bar No. 14848  
klc@skrlawyers.com  
16 10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
17 **SEMENZA KIRCHER RICKARD**

18 DAVID R. ZARO\*  
dzaro@allenmatkins.com  
19 JOSHUA A. del CASTILLO\*  
jdelcastillo@allenmatkins.com  
20 MATTHEW D. PHAM\*  
mphan@allenmatkins.com  
21 \*admitted pro hac vice  
22 865 South Figueroa Street, Suite 2800  
Los Angeles, California 90017-2543  
23 **ALLEN MATKINS LECK GAMBLE**  
24 **MALLORY & NATSIS LLP**

25 *Attorneys for Geoff Winkler, Receiver for*  
26 *J&J Consulting Services, Inc., J&J*  
27 *Consulting Services, Inc., J and J*  
28 *Purchasing LLC, The Judd Irrevocable*  
*Trust, and BJ Holdings LLC*

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, NV 89135  
(702) 792-3773  
(702) 792-9002 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 12<sup>th</sup> day of August, 2022, a true and correct copy of the foregoing **RECEIVER GEOFF WINKLER’S RESPONSE IN OPPOSITION TO DEFENDANT CHRISTOPHER HUMPHRIES AND RELIEF DEFENDANT CJ INVESTMENTS, LLC’S MOTION FOR RELEASE OF FUNDS FOR ATTORNEY’S FEES [ECF NO. 209]** 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.

/s/ Pamela January  
An Employee of Greenberg Traurig, LLP

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, NV 89135  
(702) 792-3773  
(702) 792-9002 (fax)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28