WILLIAM R. URGA, ESQ. # 1195
BRIAN E. HOLTHUS, ESQ. #2720
DAVID J. MALLEY, ESQ. #8171
JOLLEY URGA WOODBURY & HOLTHUS
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
Telephone: (702) 699-7500 / Facsimile: (702) 699-7555
Email: wru@juwlaw.com; beh@juwlaw.com; djm@juwlaw.com

EDWARD W. COCHRAN, ESQ.
(Ohio Bar No. 0032942)
20030 Marchmont Rd.
Shaker Heights, OH 44122-2852
T: (216) 751-5546 / F: (216) 751-5564
Email: edward@edwcochran.com
*(Will comply with LR IA 11-2 within 14 days)*
*Attorneys for Intervenors*

GEORGE W. COCHRAN, ESQ.
(Ohio Bar No. 0031691)
1981 Crossfield Circle
Kent, OH 44240
T: (330) 607-2187 / F: (330) 230-6136
Email: lawchrist@gmail.com
*(Will comply with LR IA 11-2 within 14 days)*

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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.

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

**MOTION TO INTERVENE**

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

Pursuant to Federal Rule of Civil Procedure ("FRCP") 24, and for the reasons set forth herein, Kristie Young and Omid Shahabe ("Intervenors") jointly move to intervene as Plaintiffs in order to obtain a declaratory judgment with the following factual and legal findings:

1. Intervenors invested in personal injury settlement contracts ("PI contracts") promoted through Defendants' Ponzi scheme.
2. According to the PI contracts' express terms, Intervenors acquired all rights held by the purported Buyer through a legally enforceable assignment thereof.
3. One of the contractual rights assigned to Intervenors is the purported Seller's promise to hold all proceeds received "in Trust for Buyer until Buyer has been fully paid its Interest" (the "Express Trust Provision").
4. Equity favors impressing a resulting trust on Intervenors' investment in PI contracts owned by purported Buyers containing the Express Trust Provision.
5. Because all principal invested by Intervenors in the PI contracts is subject to a resulting trust, the funds are exempt from the Receivership Estate.
6. Intervenors have express and/or implied private rights of action against Defendants and Relief Defendants for fraudulently offering, marketing and selling PI contracts that are actually "securities" under applicable law.
7. Intervenors' standing to assert equitable claims for relief exists independently of the Security and Exchange Commission's ("SEC" or "Commission") statutory authority to prosecute this action.
8. The equitable relief available to Intervenors is not limited to SEC's relief.

As explained fully in the following Memorandum of Points and Authorities, Intervenors meet all four criteria for intervention as of right: (1) they have a sufficient interest in the litigation's subject matter, (2) they could suffer an impairment of their ability to protect that

JOLLEY URGA | attorneys at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

interest if they do not intervene, (3) their interest is not adequately represented by existing parties and (4) their motion is timely. FRCP 24(a).

Alternatively, Intervenors invoke the Court's discretion to grant permissive intervention pursuant to FRCP 24(b). Their request for declaratory relief involves questions of fact and law common to SEC's claims, and the proposed intervention will not unduly delay or prejudice the adjudication of the existing parties' rights. Accompanying this Motion to Intervene as Exhibit A is Intervenors' proposed Complaint in Intervention.

DATED this 31st day of August, 2022.

JOLLEY URGA WOODBURY & HOLTHUS

By: */s/ William R. Urga, Esq.*

WILLIAM R. URGA, ESQ. #1195
BRIAN E. HOLTHUS, ESQ. #2720
DAVID J. MALLEY, ESQ. #8171
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
T: (702) 699-7500 / F: (702) 699-7555

EDWARD W. COCHRAN, ESQ.
(Ohio Bar No. 0032942)
20030 Marchmont Rd.
Shaker Heights, Ohio 44122-2852
T: (216) 751-5546 / F: (216) 751-5564
*(Will comply with LR IA 11-2 within 14 days)*

GEORGE W. COCHRAN, ESQ.
(Ohio Bar No. 0031691)
1981 Crossfield Circle
Kent, Ohio 44240
T: (330) 607-2187 / F: (330) 230-6136
*(Will comply with LR IA 11-2 within 14 days)*

*Attorneys for Intervenors*

JOLLEY URGA WOODBURY & HOLTHUS attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

JOLLEY URGA | attorneys at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. FACTUAL AND PROCEDURAL BACKGROUND

On April 12, 2022, the SEC filed a complaint for securities fraud in the federal district of Nevada against the named Defendants and Relief Defendants. (ECF No. 1). A freeze on Defendants' assets to prevent further dissipation of investor funds was ordered on April 21, 2022, along with a preliminary injunction prohibiting the fraud's continuation or destruction of relevant documents and requiring an accounting of Defendants' assets. (ECF No. 56). The Commission is also seeking permanent injunctions, disgorgement of ill-gotten gains, legal interest and appropriate penalties. Specific claims for relief include violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, violations of Sections 10(b) and 15(a)(1) of the Exchange Act, and equitable disgorgement. In support of these claims, the following documents were attached to the complaint: sample fictitious Purchase Agreement, sample Investor Agreement, sample Buyer Agreement, Confidential Private Placement Memorandum.

On June 3, 2022, the Court exercised exclusive jurisdiction and asset control over the named Defendants, Relief Defendants and Individual Relief Defendants (except Beasley Law Group's control is limited to the IOLTA account). (ECF No. 88). The Court also appointed Geoff Winkler of American Fiduciary Services LLC ("Winkler") to serve without bond as SEC's receiver for the estates of the J&J Receivership Defendants, the assets of the Individual Receivership Defendants and the IOLTA account (collectively "Receivership Estate") for the purpose of "marshaling and preserving all assets of the Defendants and those assets of certain Relief Defendants that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants." Finally, the Court made Winkler sole and exclusive officer, director and

managing member of each J&J Receivership Defendant. Consistent with his appointment, the order terminated the bankruptcy defendants' Chief Restructuring Officer.

On June 8, 2022, Winkler notified Bankruptcy Judge Nakagawa of his appointment's superseding effect. In a status report three weeks later, Winkler recommended this Court:

> ...*sua sponte*, withdraw the Bankruptcy Cases from reference to the Bankruptcy Court and thereafter dismiss the cases itself, or, in the alternative, modify the Court's stay in Paragraph 32 of the Appointment Order, as it relates to the Bankruptcy Cases, for the limited purpose of authorizing the Receiver to pursue, and the Bankruptcy Court to grant, the dismissal of the Bankruptcy Cases.

(ECF No. 127 at 3). To that end, Winkler postponed the Debtors' Rule 2004 examinations and asked counsel to transfer all work to his team. (ECF No. 215 at 21). In addition, the U.S. Trustee accommodated his request to continue the §341(a) meeting of creditors. Finally, the Bankruptcy Court withdrew several pending motions and continued others. On August 10, 2022, this Court granted Winkler's request to withdraw the Bankruptcy Cases from reference to the Bankruptcy Court, setting its ultimate dismissal in motion. (ECF No. 231).

Upon concluding this process, Winkler will have exclusive control and authority over all assets of the J&J Receivership Defendants and affiliated entities, along with the ability to pursue any claim permitted. Among his enumerated powers, two are most germane to Intervenors' motion: (1) the ability to "engage and employ persons in his discretion, subject to approval of the Court, to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers" and (2) the right to "pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estate."

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

In the meantime, Winkler continues to marshal assets from the J&J Receivership Defendants. As of August 1, 2022, he had secured property worth $32.3 million—including over 50 real estate parcels and 150 vehicles—along with $11,411,246 in cash. (ECF No. 215). On August 22, 2022, investors were invited to attend a meeting (in-person or by zoom) in which Winkler summarized his activities to date and his future plans. The receiver announced his team has now recovered $50 million of over $500 million contributed by 1200-1600 victims. His proposed allocation plan, however, appeared divisive. The following FAC allegations (ECF No. 118) lay the foundation for Intervenors' motion:

- From 2017 through March 2022, the J&J Entities offered investments in purported settlement contracts with tort plaintiffs through purchase agreements that qualify as securities under federal law (the "PI Contracts").
- Defendants told investors that: (a) Beasley Law Group manages relationships with numerous personal injury attorneys in order to maintain a supply of PI Contracts with the J&J Entities for investor participation; (b) purchasing an interest will fund an advance payment to someone who has settled a tort claim but is willing to pay a premium to receive the proceeds now; (c) investors are guaranteed to earn at least 12.5% every 90 days on their investment.
- Knowing the PI Contracts were fictitious, Defendants instead redirected principal contributions from later investors to fund "returns" owed to earlier investors—all while secretly skimming off the top to fuel Defendants' lavish lifestyles.
- The Relief Defendants were paid to recruit more investors into the scheme (even though none is a registered broker or dealer).
- By the time the fraud was exposed, over 600 investors had funneled at least $449 million into the scheme, primarily through Beasley Law Group's IOLTA account.

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

As alleged in their proposed Complaint in Intervention, one of the named Defendants acted as Intervenors' liaison for acquiring interests in PI contracts purportedly purchased by a J&J entity from a distressed seller at significant discount. The profit on each investment was characterized as "interest in the Proceeds." Within the documents designed to validate this opportunity, one declaration in the standardized purchase agreement stands out:

> ***"Seller agrees and hereby directs that all Proceeds received in connection with the Claim, are held in Trust for Buyer until Buyer has been fully paid its Interest."***

The equitable rights springing from this Express Trust Provision have been overlooked in every action triggered by the FBI's investigation. Nonetheless, the Commission is not willing or able to consent to Intervenors' need to intervene. Through their motion, Intervenors seek a judicial declaration of their right to pursue equitable claims against Defendants and Relief Defendants without being subject to the receivership established by this Court. If the motion is granted and their rights subsequently affirmed, Intervenors stand ready to serve a supporting role in the SEC's enforcement action that will *further*—not impede—its efficient and effective resolution.

## II. ARGUMENT

### A. Obtaining the Commission's Consent Is Not A Statutory Prerequisite For Filing Intervenors' Motion.

Before evaluating FRCP 24(a)'s substantive requirements, Intervenors must address the Commission's statutory authority for enforcing our nation's securities laws. Most relevant is the prohibition set forth in Section 21(g) of the Exchange Act. Some courts interpret this subsection broadly to incorporate interventions by implication. *See, e.g. SEC v. Homa*, No. 99 C 6895, Fed. Sec. L. Rep. (CCH) ¶ 91,223, 2000 WL 1468726, at *2 (N.D.Ill. Sept.29, 2000). Most, however, refuse to treat it like an "impenetrable wall." *See, e.g. Sec. & Exch. Comm'n v. Am. Pension Servs. Inc.*, Case No. 2:14-cv-00309-RJS-DBP (D. Utah Jan 20, 2015) at *5 ("the plain language

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

of the Section 21(g) does not act as an automatic bar to Movant's motion for intervention"); *S.E.C. v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 666 (D. Kan. 2004) ("Section 21(g) does not automatically preclude intervention in S.E.C. enforcement actions."); *S.E.C. v. Novus Technologies, LLC*, 2008 WL 115114 (D. Utah Jan.10, 2008) at *3 ("the legislative history, the plain language of the statute and Rule 24(b) do not support the SEC's position that Section 21(g) is an absolute bar to intervention").

This narrow construction also comports with SEC's own rules on Fair Fund and Disgorgement Plans. (17 CFR 201.1100, et seq.). According to Rule 1106 (Right to Challenge):

> Other than in connection with the opportunity to submit comments as provided in 17 CFR 201.1103, **no person shall be granted leave to intervene** or to participate or otherwise to appear in any agency proceeding or otherwise to challenge an order of disgorgement or creation of a Fair Fund; or an order approving, approving with modifications, or disapproving a plan of disgorgement or a Fair Fund plan; or any determination relating to a plan based solely upon that person's eligibility or potential eligibility to participate in a fund or based upon any private right of action such person may have against any person who is also a respondent in the proceeding. (emphasis added)

It strains credibility to argue that Section 21(g) *requires* a proposed intervenor to secure SEC's consent, knowing full well SEC's own rule *forbids* it. The only circuit to consider the issue left a blueprint for this Court to follow. In *SEC v. Flight Transportation Corp.*, 699 F.2d 943, 950 (8th Cir. 1983), a barred SEC intervention was reversed on appeal because Section 21(g) "does not say that no one may intervene in an action by the SEC [indeed] [i]t does not [even] mention [Rule] 24, nor does Rule 24 contain any clause giving special privileges to the SEC." Id. Instead, the Eighth Circuit found the statute merely exempts an SEC action from the MDL rules.

The same result applies here. Because Section 21(g) does not specifically prohibit "intervention," this Court must examine its legislative history. According to the official record, the section was enacted to curb private actions containing allegations that "closely follow those

JOLLEY URGA | attorneys WOODBURY & HOLTHUS | at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

of the [SEC's] action." S. Rep. No. 94-74, at 74 (1975), 1975 U.S.C.C.A.N. 179, 252. The drafters were concerned that by "merely rid[ing] along on the Government's case," the private actions would delay the enforcement action by "greatly increasing the need for extensive pretrial discovery," particularly with regard to damages (which are not generally required in an enforcement action for injunctive relief). Id. at 76. The Senate also noted that private plaintiffs are often motivated by the prospect of recovering damages from fellow citizens, which is "very different" from the SEC's objective of fulfilling the legislature's "mandated scheme of law enforcement in the securities area." Id. None of these red flags is present here. Intervenors' complaint asserts common factual and legal issues without introducing potential complications like personal damage claims. *See, S.E.C. v. Novus Technologies, LLC, 2008 WL 115114 (D. Utah Jan. 10, 2008) at *4*. To the contrary—granting Intervenors' motion will resolve a major stumbling block that could derail the litigation.

**B. Intervenors Are Entitled to Intervene as of Right.**

Rule 24 traditionally receives liberal construction in favor of applicants for intervention. *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir.1998). As set forth below, Intervenors clearly meet all four criteria for intervention as of right under FRCP 24(a).

**1. Intervenors Have A Sufficient Interest in the Subject Matter.**

Intervenors meet the first criterion for intervention as of right because they have a valuable interest in the litigation's subject matter. A proposed intervenor need not have a specific legal or equitable interest in jeopardy, but simply a "protectable interest of sufficient magnitude to warrant inclusion in the action." *Smith v. Pangilinan*, 651 F.3d 1320, 1324 (9th Cir. 1981). Instead of setting a rigid standard, the interests test serves as "a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Neusse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967); *see also Friends of*

JOLLEY URGA | attorneys
WOODBURY & HOLTHUS | at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

*Animals v. Kempthorne*, 452 F.Supp.2d 64, 69 (D.D.C. 2006) ("Intervenors of right need only an interest in the litigation—not a cause of action or permission to sue").

Intervenors' motion easily passes Rule 24's interests test: (1) both Intervenors were persuaded by a promoter of Defendants' Ponzi scheme to invest in PI Contracts; (2) upon information and belief, their investments were redirected by Defendants either to enrich themselves or to pay interest on other PI Contracts; (3) both Intervenors received less interest from Defendants than what they invested; (4) each Intervenor's interest will be affected by the Commission's action; and (5) many other victims were assigned PI contracts that contain an Express Trust Provision.

**2. Absent Intervention, Disposition of This Case Will Impair Intervenors' Ability to Protect Their Interests.**

Intervenors also meet the second criterion for intervention as of right because the ability to protect their interest will be impaired if their motion is denied. Because the Commission refuses to acknowledge Intervenors' property rights in the Receivership Estate, the presumption of adequate representation does not apply. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). As demonstrated below, Intervenors can only protect their interests by intervening in this action.

**(a) By Placing Defendants' Assets Into Receivership and Giving Winkler Sole Authority to Assert Receivership Claims, SEC Seized Intervenors' Property Without Their Consent and Usurped The Right to Control Their Own Recovery.**

The crux of Intervenors' motion is that the Express Trust Provision confers equitable property rights that are exempt from the Receivership Estate. A ***resulting trust*** applies whenever a person disposes of property under circumstances which raise an inference that he does not intend the person taking or holding the property to have a beneficial interest. *Rest., Trusts 2d*, § 404. The most common example is a transfer of property made to one person when the purchase

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

price is paid by another. Id. In such event, Nevada courts impose a resulting trust in favor of the person who paid the purchase price. *Werner v. Mormon*, 85 Nev. 662, 462 P.2d 42 (1969).

Contrary to popular belief, this equitable theory is *not* limited to real estate transactions. In *Balish v. Farnham*, 92 Nev. 133, 546 P.2d 1297 (1976), an aging father gratuitously assigned the proceeds of a promissory note to his daughter. Because she had exercised undue influence, the Nevada Supreme Court ruled the note proceeds must "spring back" to her father through a resulting trust. Neither is the theory's flexible application a recent development. More than a century ago, Nevada extended its reach to *monetary exchanges*:

> Counsel attempt to make a distinction between the payment of money in cases of this kind and the rendering of services, but we apprehend the distinction is one not recognized in the books nor maintainable on principle. Equity looks to the consideration, and creates a trust in favor of him who furnishes it, regardless of whether such consideration be money or labor, or property given in exchange. Implied trusts are based upon the broad principle that he who furnishes the consideration is entitled to the property, and equity does not permit any unsubstantial distinctions to defeat the operation of its liberal and rational rules.

*White v. Sheldon*, 4 Nev. 280, 287-288 (1868); *see also Cummings v. Tinkle*, 91 Nev. 548, 539 P.2d 1213, 1214 (1975). This longstanding theory is most appropriate when "the acts or expressions of the parties indicate an intent that a trust relation results from their transaction." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 967 P.2d 437, 444 (1998) (citing 76 Am.Jur.2d Trusts § 163 (1992)). A resulting trust may also arise due to the failure of an express trust. Id. (citing *Washburn v. Park East*, 795 F.2d 870, 872 (9th Cir.1986)).

Both indicia are present here. As holders of partial or full interests in contracts ostensibly purchased by the J&J Receivership Defendants, Intervenors possess the same contractual rights as the purported Buyer *by right of assignment.* Most germane is the Seller's promise to hold all proceeds received "in Trust for Buyer until Buyer has been fully paid its Interest." That Intervenors have not received sufficient "interest" to replace their principal can be easily verified. That the express trusts contemplated in their PI contracts were never actually created is

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

equally apparent. This 'one-two punch' provides compelling grounds for impressing Intervenors' investments with a resulting trust. The same can be said for all victims with similar documentation.

Much is at stake with this issue. If Intervenors' property rights are subject to a resulting trust, **the receiver cannot control their principal and the SEC cannot usurp their recovery.** *See Mitsui Mfrs. Bank v. Unicom Comput. Corp. (In re Unicom Comput. Corp.)*, 13 F.3d 321 (9th Cir. 1994) ("[S]omething held in trust by a debtor for another is neither property of the bankruptcy estate under section 541(d), nor property of the debtor for purposes of section 547(b)."); *Airwork Corp. v. Markair Express, Inc. (In re Markair, Inc.)*, 172 B.R. 638, 641-42 (9th Cir. BAP 1994) ("[T]he trustee has no equitable rights in the trust, and the res is not property of the estate pursuant to § 541"); *Jarvis v Technical Land, Inc.*, 172 B.R. 429, fn. 6 (D.C. June 1, 1994) (applying same principle to receivership).

Because Winkler has exclusive control of the Receivership Estate and sole authority to sue the J&J Receivership Defendants, Intervenors' only alternative is to affirm their rights by declaratory judgment in the only case allowed to proceed. Granting Intervenors' motion will resolve three pivotal questions:

1. Do the equities regarding Intervenors' investment in PI contracts justify impressing a resulting trust on their principal?
2. If so, is Intervenors' principal exempt from the Receivership Estate?
3. If so, may Intervenors cooperate with the SEC and receiver in a way that *furthers*—rather than impedes—the enforcement's efficient and effective conclusion?

Fundamental fairness requires answering all three questions affirmatively. As demonstrated below, denying Intervenors a meaningful opportunity to establish their rights will seriously jeopardize their recovery.

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

**(b) The Commission's Enforcement Objective Is At Odds With Intervenors' Right To Maximize Their Recovery.**

The Commission has long described itself as "the investor's advocate," a motto coined in the late 1930s by William O. Douglas, the agency's third chairman (and later Supreme Court Justice). The SEC's bold vision is "to be the standard against which federal agencies are measured." According to its enforcement director: "[a] cornerstone of our enforcement program is ensuring that entities are held accountable for their misconduct."[1] However, the Securities Act stops short of authorizing the SEC to bring direct actions on behalf of individual investors. Instead, the Commission must rely on its *parens patria* authority to deter securities fraud by enforcing equitable remedies "for the benefit of investors". This noble objective, however, does not include a fiduciary obligation to protect investors' personal claims for equitable *restitution*. Neither has avenging private financial losses ever been a part of SEC's mission, for "good reasons that remain pertinent today."[2] One SEC enforcement officer put it this way:

> In the securities-law context, the public cost and burden is considerable, and the SEC's success rate modest. Proving and chasing down every penny of investor loss adds many months (if not years) to SEC enforcement proceedings, diverting limited staff resources from other cases and priorities. **SEC statistics show that these efforts generally return to investors less than a third of the disgorgement amounts the agency is awarded.**[3] * * * **Moreover, SEC disgorgement is limited to the wrongdoer's net gain, which is often just a fraction of investor losses.** To the extent investors are deluded into a false complacency that the SEC will effectively insure them against losses, their vigilance will inevitably wane when evaluating investment risk, as will their incentive to pursue private remedies if fraud occurs, neither of which serves their best interest. (emphasis added)

Id. Nonetheless, the Commission has never been required to distribute all disgorged funds to the defrauded investors. *See, e.g. S.E.C. v. Commonwealth Chemical Securities, Inc.,*

---

[1] 2020 Annual Report, Division of Enforcement, S.E.C., at 1.

[2] https://www.linkedin.com/pulse/how-sec-became-investors-collection-agent-russ-ryan/.

[3] According to the Enforcement Division's 2020 Annual Report, defendants paid $3.589 billion in disgorgement of ill-gotten gains, but only $600 million (17%) of recovered funds was distributed to investors.

JOLLEY URGA | attorneys WOODBURY & HOLTHUS | at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

574 F.2d 90, 102 (2nd Cir. 1978). The real purpose of equitable disgorgement is to prevent the wrongdoer from profiting from his illegal acts—not to reimburse those injured by his conduct. Id. Although disgorged funds are often used to *lessen* fraud victims' losses, such compensation is only a secondary goal. *Securities & Exchange Commission v. Fischbach Corp.,* 133 F.3d 170, 175-76 (2nd Cir. 1997). In reality, the SEC does not always use recovered funds to compensate victims. *S.E.C. v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993). As a "distinctly public-regarding remedy" aimed at deterrence, the Commission need not even *identify* every victim. *F.T.C. v. Bronson Partners, LLC,* 654 F.3d 359, 373 (2d Cir. 2011).

A pair of recent Supreme Court decisions placed additional limits on SEC disgorgement. In 2017, the Court decided a disgorgement order is a penalty without considering whether the SEC is authorized to seek this remedy to begin with.[4] In 2020, the Court clarified that the Commission may seek disgorgement within "the bounds of traditional equity practice."[5] The government had admitted its primary aim is "to deny [fraudsters] the fruits of their ill-gotten gains, not to return the funds to victims as a kind of restitution." Id.[6] In SEC's own words, the very nature of an enforcement action proves it is "appropriate or necessary for the benefit of investors." Id. at 1948. The Supreme Court disagreed, warning that traditional equity practice overrides the Commission's disgorgement authority. However, it still sidestepped whether depositing funds in the Treasury is justified whenever the SEC declares compensating investors "infeasible". Id.

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

[4] *Kokesh v. SEC*, 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017).
[5] *Liu v. SEC* 140 S.Ct. 1936, 1947, 207 L.Ed.2d 401 (2020).
[6] *See also* SEC, Report Pursuant to Section 308(C) of the Sarbanes Oxley Act of 2002, p. 3, n. 2 (2003) (opining that disgorgement is not intended to make investors whole).

The Commission has since openly criticized both decisions. Its enforcement director even places them among the primary "challenges" obstructing the agency's enforcement efforts.[7] In response, Congress overrode a presidential veto to pass the National Defense Authorization Act ("NDAA") on January 1, 2021. This massive funding legislation expressly authorizes the SEC to seek equitable disgorgement for violations of federal securities laws. It also doubles the statute of limitations on disgorgement awards.

However, serious questions remain. While *Liu's* "disgorgement" incorporates the traditional indicia of equitable relief, Congress textually distinguished NDAA's disgorgement from "any equitable remedy." One consequence is that any limitation on equitable disgorgement not explicitly mirrored in the statute—like the general requirement to return disgorged funds to victims—may not apply. As a result, SEC may now have *greater* freedom to deposit funds with the Treasury than before the statute's enactment. Such an interpretation would also alleviate the SEC's concern about compensating victims who are hard to find. Moreover, NDAA's failure to distinguish 'disgorgement' from 'unjust enrichment' could perpetuate the practice of tethering this remedy to "net unlawful profits," which are often much less than the funds invested in a Ponzi scheme. These issues lead to an inescapable conclusion: the Commission's attempt to evade *Liu's* limitations on disgorgement will likely face strong opposition from the Receivership Defendants. Based on this vulnerability alone, denying Intervenors an opportunity to establish their equitable property rights will seriously impair the ability to protect their interest.

[7] Stephanie Avakian, Director, Division of Enforcement, SEC, Remarks at the Institute for Law and Economics, University of Pennsylvania Carey Law School Virtual Program (Sept. 17, 2020), https://www.sec.gov/news/speech/avakian-protecting-everyday-investors-091720.

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

**(c) The Receiver Must Also Overcome The *In Pari Delicto* Defense.**

When called upon to administer the assets of a receivership entity for the benefit of defrauded victims, courts sitting in equity must balance the victims' needs against the accused's defenses. In a regulatory enforcement action for securities fraud, the receiver is charged with preserving and administering receivership assets for the victims' benefit. Typically, that means asserting claims against the receivership entity's attorneys, accountants, financial institutions and others for the *entity*'s harm from the principals' fraud. Common claims include professional negligence, aiding and abetting fraud, and aiding and abetting breach of fiduciary duty.[8] In such cases, a receiver often finds the equitable doctrine of *in pari delicto* poised to thwart his claims.

For good reason: much like a bankruptcy trustee, a federal receiver stands in the place of the entities for which he is appointed. *Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995). *See also S.E.C. v. Holt*, CV03-1825-PHX-PGR, 2007 WL 2332584, at *2-3 (D. Ariz. Aug. 13, 2007); *Stenger v. World Harvest Church, Inc.*, CIV.A.1:04CV00151-RW, 2006 WL 870310, at *5-6 (N.D. Ga. Mar. 31, 2006). *Cf. Eberhard v. Marcu*, 530 F.3d 122 (2d Cir. 2008). Since the receiver does not represent the interests of investors (creditors) of the Receivership Estate, he cannot bring an action for damages on their behalf. If purged of "evil zombies," a victimized corporation may still be able to assert a fraud claim. A receiver will lack standing, however, if the entity *itself* is the perpetrator. *Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995); *O'Halloran v. First Union Nat'l Bank of Fla.*, 350 F.3d 1197, 1203 (11th Cir. 2003).

In the present case, Intervenors expect the evidence will establish that Beasley Law Group, PC was under Defendant Matthew Beasley's exclusive control at all relevant times. Other Defendants face the same issue. If so, the *in pari delicto* doctrine will be waiting in the

[8] See PHELPS & RHODES, note 1, §§ 7.01–7.19 (comprehensively reviewing the potential claims a receiver may assert against third parties).

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

wings. See *FDIC v. O'melveny & Myers,*[9] Winkler believes a federal receiver is less vulnerable to this defense.[10] A careful review of *O'melveny's* history suggests the issue is not so cut and dry. As receiver for an insolvent S&L, FDIC sued their attorneys for professional negligence and breach of fiduciary duty. The law firm claimed that knowledge of the officers' fraudulent conduct must be imputed to the S&L (hence FDIC) because it stood in the S&L's shoes. The district court agreed. On appeal, the Ninth Circuit applied "federal common-law" to reverse. The Supreme Court elected to affirm the district court instead. *O'melveny & Myers v. Fed. Deposit Ins. Corp.*, 512 U.S. 79, 114 S.Ct. 2048, 129 L.Ed.2d 67 (1994). The apparent tension between state and federal law was resolved with this word of caution:

> In answering the central question of displacement of California law, we of course would not contradict an explicit federal statutory provision. Nor would we adopt a court-made rule to supplement federal statutory regulation that is comprehensive and detailed; matters left unaddressed in such a scheme are presumably left subject to the disposition provided by state law. (citations omitted)

Id at 82. With that very objective in mind, FDIC had cited its own comprehensive powers in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). However, the Court noted the same statute mandates FDIC shall "by operation of law, succeed to—all rights, titles, powers, and privileges of the insured depository institution."[11] Since FIRREA applies special federal rules to an FDIC receivership, the Court saw no need to supplement California's rule. Once FDIC stepped into the S&L's shoes, the Ninth Circuit had to apply *California's* imputation rule. Id. While acknowledging the issue is a closer call under state law, the Ninth Circuit adamantly refused to apply O'melveny's equitable defenses to FDIC:

> While a party may itself be denied a right or defense on account of its misdeeds, there is little reason to impose the same punishment on a trustee, receiver or similar innocent entity that steps into the party's shoes pursuant to court order or operation of law. Moreover, when a party is denied a defense under such

[9] 61 F.3d 17, 19 (9th Cir. 1995).
[10] *See* DE 127, p. 20, fn. 10.
[11] 12 U.S.C. § 1821(d)(2)(A)(i) (1988 ed., Supp. IV).

JOLLEY URGA | attorneys WOODBURY & HOLTHUS | at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

> circumstances, the opposing party enjoys a windfall. This is justifiable as against the wrongdoer himself, not against the wrongdoer's innocent creditors.

*F.D.I.C. v. O'melveny & Myers*, 61 F.3d 17, 19 (9th Cir. 1995). A proper application of the imputation rule in the present case, however, hinges on *Nevada* law. The first distinction from California is treating the issues of standing and affirmative defenses separately. *In re Senior Cottages of America, LLC*, 482 F.3d 997, 1004 (8th Cir. 2007). ("The collusion of corporate insiders with third parties to injure the corporation does not deprive the corporation of standing to sue the third parties, though it may well give rise to a defense that will be fatal to the action"). Another distinction is Nevada's version of the *in pari delicto* doctrine, which assumes "there is no societal interest in providing an accounting between wrongdoers." *In re Amerco Derivative Litig. Glenbrook Capital Ltd. P'ship*, 127 Nev. 197, 252 P.3d 681, 694 (2011). Permitting corporations to sue their co-conspirators would not only force courts to apportion blame between wrongdoers, but it would also "diminish[] corporate boards' incentives to supervise their own agents." Rather, *all* relevant factors must be weighed to determine the greater equities in a given case. *See Shimrak v. Garcia–Mendoza*, 112 Nev. 246, 912 P.2d at 826 (1996).

In Nevada, corporate entities are deemed to have constructive knowledge of all material facts acquired by officers or agents while acting within the scope of their employment. *In re Amerco Derivative Litig.*, 127 Nev. 214, 252 P.3d at 695. Only an agent who acts out of self-interest will not impute his actions to the corporation. *Keyworth v. Nevada Packard Co.*, 43 Nev. 428, 439, 186 P. 1110, 1113 (1920). However, his actions must be *completely* and *totally* adverse to invoke the defense. *In re Aerco Derivative Litig.*, 127 Nev. 214, 252 P.3d. at 695. Neither will it apply if he is *sole* agent or shareholder. *In re Mediators, Inc.*, 105 F.3d 822, 827 (2d Cir.1997).

To overcome these hurdles, Winkler may contend a particular Defendant's "evil zombies" have been removed. However, the Seventh Circuit has already limited this exception to

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

fraudulent conveyances. *Knauer v. Jonathon Roberts Fin. Grp., Inc.*, 348 F.3d 230, 235 (7th Cir. 2003). Alternatively, Winkler could try to ride the Commission's statutory coattails. After all, NDAA authorizes the SEC to seek disgorgement "[i]n any action or proceeding brought by the Commission under any provision of the securities laws." (NDAA § 6501(a)(3)). Unlike FIRREA, however, the securities laws leave the rights and powers of an SEC receiver to the discretion of the district court sitting in equity. *SEC v. Wencke*, 622 F.2d 1363 (9th Cir. 1980). Finally, Winkler could attempt to distance himself from the wrongdoers by calling his claims "derivative". In response, Defendants may say the Commission is actually seeking disgorgement and civil penalties to "prevent further harm to *investors*." (emphasis added) (ECF No. 118 at ¶ 7). In light of this additional vulnerability, denying Intervenors an opportunity to establish their equitable property rights will seriously impair the ability to protect their interest.

**(d) The Allocation Method For Distributing Disgorged Funds Will Not Be Fair And Equitable To All Victims.**

Lastly, the Commission's litigation strategy does not address the inter-victim conflicts inherent to Ponzi schemes. Finding the best way to overcome these conflicts is no easy task. Claims sounding in unjust enrichment aim at restitutionary remedies based on gains rather than harms. In the Supreme Court's landmark pronouncement a century ago, the *traceability* of funds was held inviolate by appealing to the maxim: "equality is equity." *Cunningham v. Brown*, 265 U.S. 1, 12 (1924). Decades later, a new paradigm began to emerge that emphasizes a court's broad discretion to adopt a "sharing" solution that allows each victim to recover a pro-rata share of his investment regardless of whether he can trace his property.[12] Fissures in the orthodoxy represented by *Cunningham* did not appear until the 1990s, with the landmark decision of *SEC v. Elliott*, 953 F.2d 1560, 1565 (11th Cir. 1992). The Eleventh Circuit upheld the lower court's

JOLLEY URGA | attorneys WOODBURY & HOLTHUS | at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

refusal to enforce the tracing rules because elevating one victim over another is inherently unfair when both are "similarly victimized." The Fifth Circuit went further four years later, finding it no longer necessary to apply tracing rules since a district court sitting in equity is really a "court of conscience." *United States v. Durham*, 86 F.3d 70, 71 (5th Cir. 1996).

The same judicial conscience should apply to Defendants' Ponzi scheme. Instead of purchasing the agreed contract, the fraudsters used Intervenors' principal to meet financial obligations in other PI Contracts. Since Intervenors did not intend to give any other investor a beneficial interest in their principal, imposing a constructive trust on receivership assets is only *part* of the solution. A constructive trust arises when: (1) a confidential relationship exists between the parties; (2) it would be inequitable to allow the recipient to retain legal title to the property transferred; (3) the existence of a trust is essential to the effectuation of justice. *Schmidt v. Merriweather*, 82 Nev. 372, 375, 418 P.2d 991 (1966). A classic example of the kind of relationship contemplated is that between a father and daughter. *Bemis v. Estate of Bemis,* 114 Nev. 1021, 1027, 967 P.2d 437, 441 (1998). Victims of a Ponzi scheme are not so fortunate. While Intervenors' interaction with a Defendant may satisfy the first prong, they had no prior knowledge of—much less confidential relationship with—the unidentified Ponzi victim who innocently received their principal as "interest" on his own PI contract.

In contrast, equitable ownership in property subject to a resulting trust remains with the transferor even *without* a confidential relationship. This theory applies with special force to Defendants' Ponzi scheme. First, the law presumes their fictitious enterprise was insolvent the day it opened. Second, victims like Intervenors invested principal in exchange for receiving future payments from the PI contracts they were assigned—not from an unknown victim's

[12] *See* Claire Seaton Rosa, Note, *Should Owners Have to Share? An Examination of Forced Sharing in the Name of Fairness in Recent Multiple Fraud Victim Cases,* 90 B.U. L. REV. 1331, 1333 (2010); Andrew Kull, Essay, *Ponzi, Property, and Luck*, 100 IOWA L. REV. 291, 298.

JOLLEY URGA | attorneys at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

investment in a different PI contract. Finally, the victims receiving Intervenors' principal do not qualify as "bona fide purchasers" because they did not give present or reasonably equivalent value at the time of the exchange. In light of this final vulnerability, denying Intervenors an opportunity to establish their equitable property rights will seriously impair the ability to protect their interest. Taken together, the foregoing vulnerabilities compel this Court to conclude that Intervenors' interests are best protected through intervention as of right.

**3. Intervenors' Interests Are Not Adequately Represented by the Existing Parties.**

Intervenors also meet the third criterion for intervention as of right under FRCP 24(a) because their interest are not adequately represented by the existing parties. The Ninth Circuit follows the guidance of the advisory committee: "If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir.2001). More specifically, the Court considers three factors in determining adequacy of representation: (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is willing and able to make the arguments; and (3) whether a proposed intervenor offers any necessary elements other parties will neglect. *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986).

Intervenors satisfy all three elements. The SEC clearly prefers a receivership over investor participation. Neither is the Commission willing or able to assert the resulting trust theory. Only granting Intervenors' motion will add this important theory to the enforcement action. Since the Commission's primary aim is to prevent wrongdoers from profiting from their acts, its obligation to use disgorged funds for investor restitution is also fuzzy. *S.E.C. v. Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 102 (2d Cir. 1978). In fact, the SEC

JOLLEY URGA | attorneys WOODBURY & HOLTHUS | at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

doesn't even have to *identify* the victims. *F.T.C. v. Bronson Partners, LLC*, 654 F.3d 359, 373 (2d Cir. 2011). This "double whammy" is adverse to Intervenors' need to assert all available claims, defeat all possible defenses, maximize their recovery, and ensure the fairest distribution.

Absent intervention, Intervenors' vulnerability will be heightened by the fact that a district court has 'broad powers and wide discretion' to craft appropriate relief in a receivership proceeding. *Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 298-301 (6th Cir. 2009). As a result, relying on Intervenors' right to object to the receiver's recommendations is insufficient. Most obvious is that an objector has no voice in selecting the allocation method or distribution plan until both are already formulated. Attempting to intervene once the objection is overruled could fail on timeliness grounds alone. Even the right of appeal is uncertain. Only non-parties who *fully participate* in receivership proceedings demonstrate sufficient interest in the litigation to exercise that right. *Commodity Futures Trading Comm'n v Topworth Int'l, Ltd.*, 205 F.3d 1107 (9th Cir. 2000). Even if standing were granted, the high burden of showing abuse of discretion may render the appeal "too little, too late". *S.E.C. v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668, 670-71 (6th Cir. 2001). Lastly, Intervenors' theoretical ability to file separate litigation is both risky and counter-productive. In light of these significant obstacles, Intervenors meet the third prong for establishing the right to intervene under Rule 24(a).

**4. Intervenors' Application to Intervene is Timely.**

Finally, Intervenors meet the last criterion for intervention as of right because their application is timely. Factors considered on a case-by-case basis include: (1) length of time applicant knew of his interest (2) prejudice to existing parties (3) prejudice to applicant and (4) unusual circumstances. *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001). An application submitted only weeks after the complaint is filed will be deemed timely without

JOLLEY URGA | attorneys at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

further analysis. *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir.2001).

This low bar is easily met. Intervenors learned of the fraud when the news broke out in March 2022. The Commission filed their complaint one month later. Since the case is still in its initial stages, granting Intervenors' motion will prejudice no one. To the contrary—granting Intervenors a supporting role will resolve a serious issue by allowing the parties to advance the litigation on sure footing instead of derailing it. Therefore, Intervenors meet the fourth prong for establishing the right to intervene under Rule 24(a).

**C. Intervenors Also Qualify For Permissive Intervention.**

Likewise, Intervenors satisfy all three criteria for permissive intervention: (1) their motion is timely; (2) their theory involves common questions of law or fact; and (3) there no undue delay or prejudice will result. *Gerstle v. Continental Airlines, Inc.*, 466 F.2d 1374, 1377-78 (10th Cir. 1972). Because Intervenors seek to further (not prejudice) the Commission's action, permissive intervention is appropriate under FRCP 24(b).

## IV. CONCLUSION

As demonstrated above, Intervenors meet all requirements to intervene as plaintiffs under FRCP 24(a) or to intervene by permission of this Court pursuant to FRCP 24(b). For purposes of their motion, the Court must "accept the movant's motions and pleadings as true, to the extent they are non-conclusory and well-pleaded." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001). Intervenors allege their investments in Defendants' Ponzi scheme qualify for protection under Nevada's resulting trust doctrine. Granting their motion will provide Intervenors a fair opportunity to present probative evidence in support of that claim. If their equitable property rights are affirmed by declaratory judgment, Intervenors stand ready to

JOLLEY URGA | attorneys at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

cooperate with the SEC and receiver in a supportive role that *furthers*—rather than impedes—the enforcement's efficient and effective conclusion.[13]

DATED this 31st day of August, 2022.

JOLLEY URGA WOODBURY & HOLTHUS

By: */s/ William R. Urga, Esq.*
WILLIAM R. URGA, ESQ. #1195
BRIAN E. HOLTHUS, ESQ. #2720
DAVID J. MALLEY, ESQ. #8171
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
T: (702) 699-7500 / F: (702) 699-7555

EDWARD W. COCHRAN, ESQ.
(Ohio Bar No. 0032942)
20030 Marchmont Rd.
Shaker Heights, Ohio 44122-2852
T: (216) 751-5546 / F: (216) 751-5564
*(Will comply with LR IA 11-2 within 14 days)*

GEORGE W. COCHRAN, ESQ.
(Ohio Bar No. 0031691)
1981 Crossfield Circle
Kent, Ohio 44240
T: (330) 607-2187 / F: (330) 230-6136
*(Will comply with LR IA 11-2 within 14 days)*
*Attorneys for Intervenors*

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of Jolley Urga Woodbury & Holthus and that on this 31st day of August, 2022, I caused the document entitled **MOTION TO INTERVENE** to be served on the parties in this action via the Court's CM/ECF System.

*/s/ Linda Schone*
An employee of JOLLEY URGA WOODBURY & HOLTHUS

[13] Based on their experience with class litigation, Intervenors' counsel may recommend amending the Complaint in Intervention at that time in order to add class allegations under FRCP 23(b)(2), since no personal notice to class members is required and no-opt out right is provided.

JOLLEY URGA | attorneys at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

# Exhibit "A"

# [Proposed] Complaint in Intervention

WILLIAM R. URGA, ESQ. # 1195
BRIAN E. HOLTHUS, ESQ. #2720
DAVID J. MALLEY, ESQ. #8171
JOLLEY URGA WOODBURY & HOLTHUS
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
Telephone: (702) 699-7500 / Facsimile: (702) 699-7555
Email: wru@juwlaw.com; beh@juwlaw.com; djm@juwlaw.com

EDWARD W. COCHRAN, ESQ.
(Ohio Bar No. 0032942)
20030 Marchmont Rd.
Shaker Heights, OH 44122-2852
T: (216) 751-5546 / F: (216) 751-5564
Email: edward@edwcochran.com
*(Will comply with LR IA 11-2 within 14 days)*
*Attorneys for Intervenors*

GEORGE W. COCHRAN, ESQ.
(Ohio Bar No. 0031691)
1981 Crossfield Circle
Kent, OH 44240
T: (330) 607-2187 / F: (330) 230-6136
Email: lawchrist@gmail.com
*(Will comply with LR IA 11-2 within 14 days)*



**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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.

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

**[PROPOSED]**
**COMPLAINT IN INTERVENTION**

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

Pursuant to Federal Rule of Civil Procedure ("FRCP") 24, Proposed Intervenors Kristie Young ("Young") and Omid Shahabe ("Shahabe") bring this Complaint in Intervention as intervening Plaintiffs (collectively "Intervenors") against Matthew Wade Beasley, Beasley Law Group PC, Jeffrey J. Judd, Christopher R. Humphries, J&J Consulting Services, Inc. (Alaska), J&J Consulting Services, Inc. (Nevada), 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, Warren Rosegreen (collectively "Defendants") and the Judd Irrevocable Trust, PAJ Consulting, Inc., BJ Holdings LLC, Stirling Consulting LLC, CJ Investments LLC, JL2 Investments LLC, Rocking Horse Properties LLC, Triple Threat Basketball LLC, ACAC LLC, Anthony Michael Alberto, Jr, and Monty Crew LLC (collectively "Relief Defendants"), based on personal knowledge as to Intervenors and their own acts, and otherwise based on the investigations conducted by and through their counsel, including review of Defendants' public statements, Federal Bureau of Investigation's statements, media reports, and social media information, as well as other commentary, analysis, and information.

## I. PARTIES, JURISDICTION AND VENUE

1. Intervenors adopt and incorporate the allegations regarding jurisdiction and venue asserted in the first amended complaint ("FAC") filed with this Court on June 29, 2022 by the Securities and Exchange Commission ("Commission") as if fully rewritten herein.

2. Intervenors have resided in Clark County, Nevada at all relevant times.

3. Intervenors invested in the Ponzi scheme identified in the Commission's FAC.

4. Intervenors were introduced to the investment opportunity by Defendant Denny Seybert, who utilized Defendant Rocking Horse Properties LLC to assist in executing the related transactions.

## II. STATEMENT OF FACTS

5. Intervenors adopt and incorporate the Commission's allegations in the FAC regarding the Defendants and Relief Defendants as if set forth at length herein.

6. Intervenors invested at least $725,000 to purchase PI contracts showing J&J Consulting LLC ("J&J") or J and J Purchasing LLC ("J and J Purchasing") as Buyer.

7. Defendant Seybert introduced Shahabe to the investment opportunity in 2021. Shahabe introduced Young to the same opportunity shortly thereafter.

8. According to Defendants' standardized documents attached as exhibits to the FAC, the typical Ponzi scheme orchestrated upon investors (including Intervenors) proceeded as follows:

a. Purported victim of personal injury claim awaiting disbursement of funds after settlement ("Seller") sells all or a portion of his or her interest in the proceeds ("Interest") at significant discount through a standardized purchase agreement or subscription agreement ("PI Contract") to J&J and/or J and J Purchasing as purported buyer ("Buyer").

b. Seller must pay Buyer's Interest if there are no settlement proceeds due to Seller's fraud.

c. Upon purchasing all or a portion of Buyer's Interest in a PI Contract, Intervenors acquired Buyer's legal and equitable rights thereto by assignment.

d. One right assigned to Intervenors is the right to receive a return on their investment of at least 12.5% every 90 days, for an annualized return of at least 50% ("Return").

e. Another right assigned to Intervenors is Seller's promise to hold all proceeds in trust for Buyer until Buyer's Interest is fully paid ("Express Trust Provision").

9. Instead of using Intervenors' Principal to purchase an interest in the fictitious PI Contract, Defendants typically redirected their funds to satisfy all or part of a Return due another defrauded investor, in furtherance of the Ponzi scheme.

JOLLEY URGA | attorneys WOODBURY & HOLTHUS | at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

10. Prior to January 1, 2022, each investment opportunity offered to Intervenors as a PI contract was memorialized through the following standardized: Confidential Investor Questionnaire, Non-Disclosure Agreement, Non-Compete Agreement, Purchase Agreement, Disclosure Table, Attorney Authorization, Acknowledgement of Authorization and Legal Settlement Acquisition Agreement.

11. Commencing January 1, 2022, Defendants began promoting J and J Purchasing's purported PI contracts as Confidential Subscription Agreements pursuant to a Private Placement Memorandum of unregistered securities. A representative PI contract assigned to Intervenors is attached hereto as Exhibit 1.

12. All PI contracts assigned to Intervenors share the following common features:

a. The Disclosure Table included with the Purchase Agreement contains the following Express Trust Provision for the Buyer's benefit:

"Seller agrees and hereby directs that all Proceeds received in connection with the Claim, are held in Trust for Buyer until Buyer has been fully paid its Interest."

b. The Disclosure Table also includes the following statement of assignability:

"Seller further understands and agrees that Buyer may assign its rights and obligations under this Agreement (and Buyer's Interest) to any party without Seller's prior approval, provided that any such party agrees to be bound by the terms and conditions of this Agreement."

c. Intervenors paid the Purchase Price identified for each investment opportunity to the named Defendant when they executed the PI contract;

d. Upon purchasing an interest in each PI contract, Intervenors were assigned all of Buyer's rights therein (including the right to enforce the Express Trust Provision);

JOLLEY URGA | attorneys at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

e. Intervenors did not intend for the named Defendant or another victim of Defendants' Ponzi scheme to take a beneficial interest in Intervenors' principal investment in any of the PI contracts;

f. Upon information and belief, instead of paying the Purchase Price to the Seller named in Intervenors' PI contracts, Defendants used Intervenors' principal investments either to enrich themselves or to meet financial obligations owed to purchasers of other PI contracts;

g. Defendants' consumption or redirection of Intervenors' principal investments were done without Intervenors' knowledge, consent or ratification;

h. Upon information and belief, the Ponzi victims who received Intervenors' principal investments were unaware of the true source of funds and did not provide valuable consideration in exchange for the payment from Defendants;

i. Upon information and belief, Defendants' records are sufficient to trace the redirection of Intervenors' principal investments either to enrich themselves or to meet obligations to other victims of Defendants' Ponzi scheme.

13. The foregoing features of Intervenors' PI contracts indicate or imply the parties intended a trust relationship to result in Intervenors' favor that continues until Intervenors receive "all interest in the Proceeds" (i.e. all principal invested plus the agreed profit).

14. Given the common facts and circumstances surrounding Intervenors' purchase of the PI contracts, the nature of the foregoing trust relationship indicates or implies by operation of law that Intervenors retain ownership of an equitable interest in the principal invested until they receive all interest in the Proceeds.

JOLLEY URGA | attorneys
WOODBURY & HOLTHUS | at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

15. To that end, Intervenors made the following principal fund transfers (the "Principal Investments") to the named Defendants on the approximate dates in order to purchase Interests in the PI Contracts identified:

a. On or about August 31, 2021, Shahabe wired $100,000 to Beasley Law Group's IOLTA account for the Bodiford contract.

b. On or about August 31, 2021, Young wired $100,000 to Beasley Law Group's IOLTA account for the Bogert contract.

c. On or about September 1, 2021, Young deposited $25,000 to Rocking Horse Properties for a 25% portion of the Bordner contract.

d. On or about October 14, 2021 and October 15, 2021, Shahabe made two deposits of $25,000 each to buy out Destiny Johnson's Arvidson contract.

e. On or about October 14, 2021, Young made a deposit to Rocking Horse for the remaining $50,000 due on the Arvidson contact.

f. On or about October 29, 2021 Shahabe wired $50,000 to Rocking Horse to buy out Denny Bursey's contract.

g. On or about November 30, 2021, Shahabe wired $50,000 and Young wired $50,000 to Rocking Horse for the Barndt contract.

h. On or about January 12, 2022, Shahabe sent Rocking Horse $50,000 to buy out George Davidson's Brockmeier contract.

i. On or about February 12, 2022, Shahabe wired $100,000 to Beasley Law Group's IOLTA account for the Tetters contract.

j. On or about February 12, 2022, Young wired $100,000 to Beasley Law Group's IOLTA account for the Tetterton contract.

16. In some PI contracts, Intervenors have received no Return on the Principal Investments as of the filing date of this complaint (herein defined as "Gross Loser"). In other PI contracts, their total Returns are less than the Principal Investments (herein defined as "Net Loser"). Intervenors have not invested in any PI contract where total Returns have exceeded the Principal Investment (herein defined as "Net Gainer").

JOLLEY URGA | attorneys at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

17. The circumstances surrounding Intervenors' investment in the named PI contracts give rise to a resulting trust whereby the named Defendants continue to hold Intervenors' Principal Investments in trust.

18. As a result, Intervenors' equitable property interest in the Principal Investments is exempt from Defendants' and Relief Defendants' bankruptcy and receivership estates.

## III. CLAIMS FOR RELIEF

### FIRST CAUSE OF ACTION
**Declaratory Relief**

19. Intervenors repeat and reallege every allegation set forth above as though fully set forth herein.

20. Intervenors are entitled to declaratory relief, pursuant to 28 U.S.C. §§ 2201 et seq. and FRCP 57, to declare and construe their rights.

21. Intervenors seek a Declaratory Judgment that:

a. Intervenors invested in personal injury settlement contracts promoted through Defendants' Ponzi scheme ("PI contracts").

b. According to the PI contracts' express terms, Intervenors acquired all rights held by the purported Buyer through a legally enforceable assignment thereof.

c. One of the contractual rights assigned to Intervenors is the purported Seller's promise to hold all proceeds received "in Trust for Buyer until Buyer has been fully paid its Interest" ("Express Trust Provision").

d. Equity favors impressing a resulting trust on Intervenors' investment in PI contracts owned by purported Buyers containing the Express Trust Provision.

e. Because all principal invested by Intervenors in the PI contracts is subject to a resulting trust, the funds are exempt from the Receivership Estate and any bankruptcy proceedings.

f. Intervenors have express and/or implied private rights of action against Defendants and Relief Defendants for fraudulently offering, marketing and selling PI contracts that are actually "securities" under applicable law.

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

g. Intervenors' standing to assert equitable claims for relief exists independently of the Commission's statutory authority to prosecute this action.

h. The equitable relief available to Intervenors is not limited to Commission's relief.

22. As a direct, natural and foreseeable consequence of the Defendants' and Relief Defendants' actions as alleged herein, Intervenors have been required to retain the services of attorneys to prosecute this action and are entitled to recover their reasonable attorneys' fees and costs incurred herein.

**SECOND CAUSE OF ACTION**
**Violation of Federal Securities Laws**

23. Intervenors repeat and reallege every allegation set forth above as though fully set forth herein.

24. To the extent permitted by the Court's jurisdiction, Intervenors adopt and incorporate all equitable theories of recovery asserted in the FAC against the Defendants and Relief Defendants which are based upon the Securities Act of 1933 and Exchange Act of 1934, as if fully rewritten herein.

25. As a direct, natural and foreseeable consequence of the Defendants' and Relief Defendants' actions as alleged herein, Intervenors have been required to retain the services of attorneys to prosecute this action and are entitled to recover their reasonable attorneys' fees and costs incurred herein.

**THIRD CAUSE OF ACTION**
**Equitable Disgorgement**

26. Intervenors repeat and reallege every allegations set forth above as though fully set forth herein.

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

27. To the extent permitted by law, Intervenors adopt and incorporate the equitable theory of disgorgement asserted in the FAC against the Defendants and Relief Defendants, as if fully rewritten herein.

28. As a direct, natural and foreseeable consequence of the Defendants' and Relief Defendants' actions as alleged herein, Intervenors have been required to retain the services of attorneys to prosecute this action and are entitled to recover their reasonable attorneys' fees and costs incurred herein.

**FOURTH CAUSE OF ACTION**
**Equitable Restitution**

29. Intervenors repeat and reallege every allegation set forth above as though fully set forth herein.

30. Defendants and Relief Defendants have been unjustly enriched by the fraud perpetrated upon Intervenors.

31. Defendants' and Relief Defendants' unjust enrichment has been at the expense of Intervenors.

32. Defendants' and Relief Defendants' retention of the foregoing enrichment would be unjust to Intervenors.

33. Justice requires ordering Defendants and Relief Defendants to return their unjust enrichment to Intervenors.

34. As a direct, natural and foreseeable consequence of the Defendants' and Relief Defendants' action as alleged herein, Intervenors have been required to retain the services of attorneys to prosecute this action and are entitled to recover their reasonable attorneys' fees and costs incurred herein.

///

///

JOLLEY URGA WOODBURY & HOLTHUS | attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

## PRAYER FOR RELIEF

**WHEREFORE**, Intervenors respectfully request this Court enter a final judgment:

1. Granting the declaratory relief requested by Intervenors;

2. Granting the equitable disgorgement and restitution requested by Intervenors;

3. Granting Intervenors the costs of bringing this action, including a reasonable sum for investigative fees and a reasonable sum for attorneys' fees as allowed by law;

4. Awarding pre-judgment interest to Intervenors;

5. Awarding any other equitable relief this Court deems proper.

DATED this _____ day of August, 2022.

JOLLEY URGA WOODBURY & HOLTHUS

By: _____

WILLIAM R. URGA, ESQ. #1195
BRIAN E. HOLTHUS, ESQ. #2720
DAVID J. MALLEY, ESQ. #8171
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
T: (702) 699-7500 / F: (702) 699-7555

EDWARD W. COCHRAN, ESQ.
(Ohio Bar No. 0032942)
20030 Marchmont Rd.
Shaker Heights, Ohio 44122-2852
T: (216) 751-5546 / F: (216) 751-5564
*(Will comply with LR IA 11-2 within 14 days)*

GEORGE W. COCHRAN, ESQ.
(Ohio Bar No. 0031691)
1981 Crossfield Circle
Kent, Ohio 44240
T: (330) 607-2187 / F: (330) 230-6136
*(Will comply with LR IA 11-2 within 14 days)*
*Attorneys for Intervenors*

JOLLEY URGA WOODBURY & HOLTHUS attorneys at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

# Exhibit "1"

# Representative PI Contract

# PURCHASE AGREEMENT

This is a Purchase Agreement ("Agreement") dated the 14th day of January, 2022. This Agreement is by and between Charles Brockmeier ("Seller") who is represented by Daniel W. Munley, Esq. of the Munley Law whose address is 1429 Walnut Street, Philadelphia, Pennsylvania 19102 ("Attorney") and J and J Purchasing, LLC, a Florida Limited Liability Company ("Buyer") who is represented by Matthew Beasley, Esq. of the Beasley Law Group, PC ("Buyer's Attorney") whose address is 737 North Main Street, Las Vegas, Nevada 89101.

A. Seller has a claim arising from a slip and fall incident which occurred on January 22, 2020 ("Claim") at The Mall at Robinson which is owned and operated by Queensland Investment Corporation. Seller has hired Attorney to represent Seller in this Claim. Seller has settled the Claim. The entire amount of the settlement is $280,115.00 ("Settlement Amount"), less legal fees, superior medical liens existing on the date of this Agreement, costs and disbursements payable to Attorney under the existing fee agreement between Seller and Attorney ("Proceeds").

B. Seller desires to sell and assign to Buyer an interest in the Proceeds. Buyer desires to purchase the interest in the Proceeds, on the terms and under the conditions set forth in this Agreement.

BUYER AND SELLER AGREE AS FOLLOWS:

1. PURCHASE OF INTEREST

a. Seller hereby sells, transfers, conveys and assigns to Buyer a $116,250.00 interest ("Interest") in the Proceeds for a purchase price of $100,000.00 ("Purchase Price"). Seller acknowledges receipt of the Purchase Price. Seller understands that the amount of Buyer's Interest, or, in other words, the amount to be paid to Buyer, will increase to reflect the date the Buyer is paid its Interest in the Proceeds as set forth in the following Disclosure Table ("Disclosure Table"):

[Intentionally Left Blank]

EXHIBIT A

DISCLOSURE TABLE

| | |
|---|---|
| Purchase Price: | $100,000.00 |
| Administration Fee: | $5,000.00 |

| **Date of Payment to Buyer** | **Amount due to Buyer** |
|---|---|
| On or before April 14, 2022 | $121,250.00 |
| After April 14, 2022 but on or before May 14, 2022 | $133,750.00 |

*Should Seller not pay Buyer from the Proceeds by May 14, 2022 the Buyer's Interest will increase by **$12,500.00 every thirty (30) days thereafter.**

b. Buyer's Interest will be paid by Attorney out of the Proceeds of the Claim and will be deducted directly from the Proceeds of the Claim and will be paid to Buyer prior to any payment to Seller with respect to the Claim. If the Proceeds of the Claim Amount are not enough to pay the full amount due to Buyer, then Buyer shall be entitled to receive 100% of the Proceeds of the Claim. Seller has directed Attorney to, among other things,(i) place an assignment, consensual lien and security interest in favor of Buyer against any and all Proceeds due Seller from the Claim (after payment of any and all legal fees and reimbursable costs) and to protect and satisfy the assignment, consensual lien and security interest in favor of Buyer up to the full amount of Buyer's Interest, (ii) notify Buyer of receipt of Settlement Amount, (iii) pay Buyer from the Proceeds the proper amount due to Seller representing Seller's Interest in the Proceeds at the time of distribution of the Proceeds prior to any payment to Seller with respect to the Claim, (iv) respond to requests for information from Buyer and (v) notify Buyer prior to any disbursements of funds to verify the amount due Buyer. Seller has provided Buyer with an executed Authorization for Attorney to Pay Buyer from Proceeds of Claim/Acknowledgement of Authorization by Seller and Attorney in the form attached as Exhibit "A" ("Authorization and Acknowledgement ").

c. The amount Buyer is entitled to may be more than is listed in the Disclosure Table above if Seller does not honor the obligations in this Agreement. Seller will also be liable to pay Buyer's Interest, even if there are no Proceeds, if Seller has mislead Buyer or Attorney concerning Seller's Claim and will also be liable for Buyer's attorney' s fees or collection costs, as permitted by law.

d. If Seller wants to sell an additional Interest, and if Buyer agrees to purchase an additional Interest, Buyer and Seller will sign an amended Disclosure Table. Seller understands that Buyer is not required to purchase any additional Interest.

e. In the event that the Claim is the subject of more than one lawsuit, claim or cause arising out of more than one incident/accident/transaction, or against one or more defendants, then the amount due Buyer pursuant to this Agreement shall be paid from the Proceeds of the first lawsuit, claim and/or case against any of the defendants, including insurance companies and malpractice claims arising out of the Claim, which results in a monetary recovery. If insufficient funds are available from the first lawsuit, claim and/or case resulting in a monetary recovery to pay the full amount due Buyer pursuant to this Agreement, then the balance due Buyer shall be paid from the Proceeds of the next lawsuit, claim and/or cause, if any.

f. The amount due Buyer shall be withheld from any money collected as a result of the Claim and shall immediately be paid to Buyer (after first deducting Attorney's fees and costs, and any prior liens which exist on the date of this Agreement). Seller agrees and hereby directs that all Proceeds received in connection with the Claim, are held in Trust for Buyer until Buyer has been fully paid its Interest. Seller understands that Seller will not receive any money or payment from the Proceeds of Seller's Claim until Buyer has been paid Buyer's Interest in full. This shall also apply to any structured settlements. If Seller receives payments from several sources, Seller will pay Buyer all monies received from each source until Buyer is paid in full its Interest in the Proceeds of the Claim. Seller acknowledge that receipt or use of any Proceeds of the Claim prior to the full payment to Buyer of Buyer's Interest in the Proceeds of the Claim may constitute an illegal conversion and may be a crime.

2. GRANT OF SECURITY INTEREST

By signing this Agreement, Seller grants to Buyer a security interest and a lien in the Settlement Amount and all Proceeds of the Claim ("Collateral"). Buyer shall have all rights and remedies of a secured party under the Nevada Uniform Commercial Code. Seller authorizes Buyer to file one or more UCC financing statements regarding Buyer's security interest and lien in the Collateral and Seller agrees to take all other steps reasonably required by Buyer to perfect and maintain the perfection of Buyer's security interest.

3. NO TRANSFER OF CLAIM

Seller is not assigning any portion of the Claim to Buyer, and Buyer is not buying any portion of the Claim under this Agreement. Buyer has no right or obligation to take any legal action for Seller in connection with the Claim. Buyer has no right or obligation to advise, direct or instruct Seller or Attorney in how to go forward with Seller's Claim. Buyer will not be involved in the negotiation of any settlement of Seller's Claim. Buyer has no obligations or duties concerning the Claim, or the collection of any settlement, award or verdict from the Claim.

4. SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that:

a. Seller is using the funds received from the Purchase Price for Seller's immediate economic necessities. Seller has been advised that Seller should not sell any portion of the Proceeds of the Claim if Seller has any other alternative to meet my immediate economic necessities. Seller understands that due to the various factors involved that Buyer may make a large profit.

b. Seller acknowledges that Seller has been advised to seek the services of legal, tax, accounting and/or financial advisors in the negotiation and signing of this Agreement. Seller has either received such counsel prior to signing this Agreement or expressly waived such counsel. Seller understands from speaking to Attorney and/or other advisors that the amount of Buyer's Interest as set forth in the Disclosure Table is greater than the Purchase Price Seller is receiving, and that there is a cost to Seller selling Buyer the Interest. Seller understands that Buyer is relying upon Seller's representations in deciding to purchase this Interest and Seller represents and warrants that all statements made by Seller are true and correct as of the date hereof. Seller understands that if any information provided by Seller changes that Seller has an obligation to immediately notify Buyer.

c. Seller is not currently in bankruptcy, there are no pending tax claims or criminal allegations against Seller, and Seller has complied with all laws in connection with the Claim. Seller further represent that Seller is not in violation of any obligations concerning childcare, alimony or support, and Seller has not been convicted of a felony or other crime involving dishonesty. Other than the Claim itself, there is no claim, legal action, lien or any proceeding or order pending or in effect or threatened, against Seller, or which would in any manner affect or impair Buyer's Interest or Buyer's rights under this Agreement. Seller has been truthful in all aspects of the Claim and has provided all information to Attorney in a complete and honest fashion. Seller also confirms that all documents submitted in connection with the investigation and Buyer's evaluation of the Claim are true, whether submitted by Attorney or Seller. Seller understands that Buyer is relying upon these statements in determining whether to enter into this Agreement.

d. Seller agrees to not change the fee agreement between Seller and Attorney in any way that would reduce the amount of Buyer's Interest in the Proceeds of the Claim. Seller further promises to notify Buyer in writing within 72 hours if Seller terminates the services of Attorney, or if Attorney determines not to proceed with the Claim. If new attorneys are retained to represent Seller in the Claim, Seller will notify Buyer within 72 hours of the new attorneys being retained, and will direct the new attorneys to comply with the terms of this Agreement by Seller and the new attorney executing a

new Authorization and Acknowledgement within 14 days after accepting Seller's representation . Seller will also notify Buyer in writing within 72 hours if Seller moves from the address listed above.

e. Seller will not knowingly create or permit any additional liens, charges, security interests, encumbrances, agreements of any kind or other rights of third parties against the Proceeds of the Claim without the prior written consent of Buyer. Seller specifically promises not to sell any additional portion of the Proceeds of the Claim after the date of this Agreement, unless Buyer has given prior written permission. Seller also confirms that neither the Claim nor the Proceeds are subject to any liens, charges, security interests, encumbrances, agreements of any kind or nature (other than this Agreement) or other rights of third parties except for liens previously provided to Seller's medical providers. Seller understands that if these statements are not true, it may be considered as a fraud, as Buyer is relying upon these statements in going forward with this Agreement.

5. EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall be an event of default by Seller under this Agreement (each, an "Event of Default"):

a. The failure by Seller or Attorney to pay Buyer's Interest in the Proceeds within thirty (30) days after the Settlement Amount is received by Seller or Attorney; or

b. Seller's failure to perform or comply with any of the agreements, conditions, provisions or promises contained in this Agreement, including but not limited to if Buyer does not receive a timely response to a request for information from Seller or Attorney or if Buyer does not receive a new Authorization and Acknowledgement by Seller and new attorney within fourteen (14) days after accepting representation, and such failure to perform or comply continues unremedied for a period of ten (10) days after written notice from Buyer to Seller, unless such default, in Buyer's reasonable discretion, is not curable, in which event there shall be no grace period; or

c. If Buyer discovers any material misrepresentation or inaccuracy in any representation or warranty made by Seller to Buyer in this Agreement.

Upon an Event of Default by Seller under this Agreement, Seller agrees that Buyer may contact any insurance company, claims adjuster or attorney then handling the Claim on behalf of any responsible party and advise such insurance company, claims adjuster or attorney about Buyer's Interest in Seller's Claim and to direct that Buyer be included as a payee on settlement checks provided further that nothing herein shall prevent Buyer from exercising any other right or remedy provided under law or equity. If Buyer does

anything stated in this paragraph, Buyer shall not be liable to Seller for any damages which Seller may suffer resulting from Buyer's actions described above.

6. APPLICABLE LAW

This Agreement shall be governed, construed and enforced in accordance with, and all disputes arising out of or in connection with this Agreement shall be governed by, the internal laws of the State of Nevada, without regard to the conflict of law rules of Nevada or any other jurisdiction.

7. ARBITRATION

BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT ALL DISPUTES, CLAIMS, DEFENSES OR CONTROVERSIES (WHETHER IN LAW OR IN EQUITY) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIPS THAT RESULT FROM THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY DISPUTES, CLAIMS OR CONTROVERSIES INVOLVING FEDERAL OR STATE STATUTORY CAUSES OF ACTION OR INJUNCTIVE RELIEF, ANY INVOLVING FEDERAL OR STATE ADMINISTRATIVE REMEDIES, ANY INVOLVING CONSUMER FRAUD AND ANY INVOLVING A CHALLENGE TO THE LEGALITY OF ANY PART OR ALL OF TH IS AGREEMENT ("DISPUTES") SHALL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION UNDER THE COMMERCIAL ARBITRATION RULES ("RULES") OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THE ARBITRATION SHALL TAKE PLACE BEFORE A SINGLE ARBITRATOR TO BE CHOSEN BY AGREEMENT OF THE PARTIES, OR FAILING SUCH, IN ACCORDANCE WITH AAA RULES. THE ARBITRATION SHALL TAKE PLACE IN THE STATE OF NEVADA, COUNTY OF CLARK UNLESS THE PARTIES AGREE TO A DIFFERENT LOCATION. THE PARTIES AGREE THAT THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION IN INTERSTATE COMMERCE AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SHALL BE GOVERN ED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. §1 AND THE SUBSTANTIVE LAWS OF THE STATE OF NEVADA SHALL BE APPLIED IN ALL EVENTS. JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THE PARTIES ALSO AGREE THAT THE AAA OPTIONAL RULES FOR EMERGENCY MEASURES OF PROTECTION SHALL APPLY TO THE PROCEEDINGS.

8. WAIVER OF JURY TRIAL

BUYER AND SELLER, AFTER CONSULTATION WITH THEIR RESPECTIVE ATTORNEYS, EACH HEREBY WAIVE ANY RIGHT WHICH THEY MAY HAVE TO A JURY TRIAL, INCLUDING ANY RIGHT VESTED BY FEDERAL, STATE OR LOCAL STATUTE, IN CONNECTION WITH ANY DISPUTES OR LEGAL PROCEEDING

INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER COMMENCED BY OR AGAINST EITHER PARTY IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR WITH ANY DOCUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT.

9. WAIVER OF CLASS ACTION CLAIMS

SELLER HEREBY AGREES TO WAIVE ANY AND ALL RIGHTS TO (i) ANY DISPUTE WITH BUYER BEING HANDLED AS A CLASS ACTION AND (ii) JOINING AS A PLAINTIFF, CLAIMANT, MEMBER OR PARTICIPANT IN ANY CLASS ACTION AGAINST BUYER. IT IS AGREED THAT ANY ARBITRATION WILL BE LIMITED TO THE DISPUTE BETWEEN BUYER AND SELLER, AND BUYER AND SELLER WAIVE ANY RIGHT TO CONSOLIDATE OR TO HAVE HANDLED AS A CLASS ACTION ANY PROCEEDING ON ANY DISPUTES WITH ANY PROCEEDING ON DISPUTES, CLAIMS, OR CONTROVERSIES INVOLVING ANY PERSON OR ENTITY NOT A PARTY TO THIS AGREEMENT.

10. RECLASSIFICATION OF TRANSACTION

This Agreement represents an investment by Buyer, and not a loan to Seller. However, should a court of law determine that the transaction set out in this Agreement is a loan of money, Seller agrees that interest shall accrue at the maxim um rate permitted by law. Seller agrees that any fees or expenses paid by Buyer in connection with the Claim will not be included as interest. This includes any attorney's fees and costs Buyer has expended to enforce its rights under this Agreement. Seller agrees that these will be considered as a reimbursement to Buyer, rather than as interest.

11. MISCELLANEOUS

a. If any part of this Agreement is deemed invalid or unenforceable, it shall not affect the validity or enforceability of (i) any other part of this Agreement, and the Agreement shall be modified to the extent legally possible to legally carry out the intent of this Agreement and (ii) any agreement between Buyer and any other party. This Agreement and its exhibit make up the entire and only agreement or understanding between Buyer and Seller. It may not be changed unless signed in writing by Buyer and Seller. This Agreement takes precedence over all prior agreements, brochures, negotiations, commitments and representations, whether oral or written, about Seller's Claim and Buyer's purchase of its Interest.

b. Should Buyer retain the services of an attorney to enforce the terms of this Agreement, Seller will be responsible for any costs or expenses (including reasonable legal fees and expenses) in enforcing Buyer's rights under this Agreement and the amount of Buyer's Interest shall be increased in an amount equal to Buyer's costs and expenses.

c. This Agreement will be binding upon Buyer and Seller, and each of their heirs, executors, administrators, successors and assigns. Seller understands and agrees that Seller has no right to assign Seller's rights and obligations under this Agreement. Seller further understands and agrees that Buyer may assign its rights and obligations under this Agreement (and Buyer's Interest) to any party without Seller's prior approval, provided that any such party agrees to be bound by the terms and conditions of this Agreement. It is agreed that if Buyer assigns this Agreement as provided in the prior sentence, Buyer shall have no further obligations under this Agreement and Seller must look solely to the party Buyer assigned the Agreement to for performance under this Agreement. When requested by Buyer or any assignee, Seller will sign and deliver any and all reasonably requested documents as Buyer or such assignee may require to confirm the various rights and obligations of the parties under this Agreement. This Agreement may be signed in separate counterparts. A facsimile signature shall be deemed to be an original signature.

12. RIGHT TO CANCEL

SELLER HAS THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH (5TH) BUSINESS DAY FROM THE DATE SELLER RECEIVES FUNDING HEREUNDER FROM BUYER.

In order for the cancellation to be effective, Seller must return the full amount of disbursed funds to Attorney within five (5) business day of the disbursement of funds who will then return the amount to Buyer's Attorney upon the clearance of the funds in Attorney's Trust Account.

DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACE. BEFORE YOU SIGN THIS AGREEMENT YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT.

| SELLER: | BUYER: |
| --- | --- |
| _____ | _____ |
| CHARLES BROCKMEIER | J AND J PURCHASING, LLC. |

**EXHIBIT A**

AUTHORIZATION FOR ATTORNEY TO PAY J AND J PURCHASING, LLC. FROM PROCEEDS OF CLAIM/ACKNOWLEDGEMENT OF AUTHORIZATION

Pursuant to that certain Purchase Agreement dated January 14, 2022 between Charles Brockmeier ("Seller") and J and J Purchasing, LLC. ("Buyer") (the "Agreement"), I, Charles Brockmeier hereby irrevocably authorize and direct my attorney, Daniel W. Munley, Esq. ("Attorney"), (and any future Attorney representing me in connection with my Claim to, among other things, (i) place an assignment, consensual lien and security interest in favor of Buyer against any and all of the Proceeds due Seller from the Claim (after payment of any and all legal fees, reimbursable costs, statutory liens and liens) and to protect and satisfy the assignment, consensual lien and security interest in favor of Buyer up to the full amount of Buyer's Interest, (ii) pay Buyer's Attorney from the Proceeds the amount due to Buyer representing Buyer's Interest in the Proceeds of the Claim at the time of distribution of the Proceeds prior to any payment to Seller with respect to the Claim, (iii) in the event that the Claim is the subject of more than one lawsuit, claim or cause of action arising out of more than one incident/accident/transaction, or against one or more defendants, pay Buyer's Interest from the Proceeds of the first lawsuit, claim and/or case against any of the defendants, (iv) notify Buyer's Attorney of discontinuance or ending with respect to Attorney's representation, (v) respond to requests for information from Buyer's Attorney and (vi) call Buyer's Attorney prior to any disbursements of funds to verify the amount of Buyer's Interest. Such amounts shall be paid directly to Buyer's Attorney to satisfy Seller's obligations to Buyer under the Purchase Agreement prior to any distribution of Proceeds to Seller. The amount of Buyer's Interest will increase to reflect the date Buyer is paid its Interest in the Proceeds as set forth in the Disclosure Table to the Agreement, as such may be amended from time to time. This Authorization is irrevocable and binding and may only be amended by the mutual written agreement of Seller and Buyer.

Dated this 14th day of January, 2022.

_____

CHARLES BROCKMEIER, Seller

## ACKNOWLEDGEMENT OF AUTHORIZATION

I, Daniel W. Munley, Esq., hereby acknowledge that the Munley Law represent Charles Brockmeier, as his attorney, in connection with the Claim described in the Agreement. I acknowledge that Charles Brockmeier has irrevocably instructed me to comply with the Agreement's terms pursuant to the Authorization set forth above (the "Authorization"). I will honor Charles Brockmeier's Authorization. I agree to pay Buyer's Attorney Buyer's Interest from Charles Brockmeier's Proceeds of the Claim in accordance with the Disclosure Table set forth in the Agreement, as such may be amended from time to time. I agree not to distribute any Proceeds of the Claim to Charles Brockmeier until Buyer's Interest has been paid in full. In the event of a dispute, I agree that only disbursements for attorney's fees, reimbursable costs, statutory liens and medical liens that are in existence prior to the date of the Agreement will be made. All other funds due Charles Brockmeier shall be held in my Trust Account until such dispute is resolved. In the event that I am terminated as Charles Brockmeier's attorney with respect to the Claim, I shall give Buyer's Attorney immediate written notice thereof by certified mail, and state the name, address and telephone number of Charles Brockmeier's new attorney.

All disbursements of funds, including Charles Brockmeier's share of the Proceeds, will be through my Trust Account, and Charles Brockmeier will not receive a settlement check directly from any defendant or insurance company. I agree to verify the amount of Buyer's Interest prior to any disbursement of funds. I have no knowledge of Charles Brockmeier having previously sold, transferred or assigned any interest in the Claim or in the Proceeds of the Claim, and understand that Charles Brockmeier may not further sell, transfer or assign any additional Interest to any party other than Buyer without Buyer's written permission. I warrant and covenant that I am authorized to execute this document on behalf of the Munley Law.

DATED this 14th day of January, 2022.

MUNLEY LAW

_____

By: DANIEL W. MUNLEY, ESQ.