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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES & EXCHANGE COMMISSION v. MATTHEW WADE BEASLEY; *et al.*; Defendants, THE JUDD IRREVOCABLE TRUST; *et al.*; Relief Defendants.	Case No. 2:22-cv-0612-JCM-EJY **DEFENDANT RICHARD R. MADSEN'S MOTION TO CLARIFY ASSET FREEZE AND TO ALLOW ATTORNEYS TO RETAIN EARNED FEES** ORAL ARGUMENT REQUESTED [LR 78-1]

Defendant Richard R. Madsen respectfully requests that the Court order that his attorneys be allowed to retain the fees they were paid and had already earned in this matter before Mr. Madsen was subject to any court order. The Court-appointed Receiver has demanded that Mr. Madsen's attorneys transfer the amounts they have been paid to the Receiver, notwithstanding the fact that the amounts are unquestionably the property of the attorneys, not Mr. Madsen, who has not even been alleged to have engaged in fraud. Moreover, even if the Court were to conclude that earned

funds were subject to the asset freeze entered in this matter, the Court should exercise its discretion to allow Mr. Madsen's attorneys to retain the funds and continue to represent Mr. Madsen in this matter.

Accordingly, Defendant Richard R. Madsen respectfully requests this Court enter an order declaring that his counsel are entitled to retain the retainers he paid them.

DECLARATION OF DAVID A. O'TOOLE IN SUPPORT OF DEFENDANT RICHARD R. MADSEN'S MOTION TO CLARIFY ASSET FREEZE AND TO ALLOW ATTORNEYS TO RETAIN EARNED FEES.

I, David A. O'Toole, declare and state as follows:

1. I am an attorney with Bragança Law LLC, and have been licensed to practice as an attorney since 1992. I am one of the attorneys representing Richard R. Madsen in this matter. (*See* ECF No. 170, Endorsed Verified Petition for Permission to Practice in this Case Only By Attorney Not Admitted to the Bar of this Court and Designation of Local Counsel).

2. Mr. Madsen engaged Bragança Law LLC on May 14, 2022, pursuant to a "fixed fee" or "advanced payment retainer," which explicitly provides that the payment was earned when received. (A copy of the agreement is attached as Ex. 1, "Confidential Engagement Letter".) A subsequent agreement was executed on July 5, 2022. (A copy of the agreement is attached as Ex. 2, "Second Confidential Engagement Letter".) Mr. Madsen entered into a similar engagement agreement with Howard & Howard on or about July 11, 2022. (A copy of the agreement is attached as Ex. 3, "Engagement for Performance of Legal Services".) All of the agreements between Mr. Madsen and his attorneys pre-date by weeks or months the entry of any order freezing Mr. Madsen's assets. (*See* ECF Nos. 206-207 (dated July 28, 2022).) Pursuant to those engagement agreements, Mr. Madsen has paid his counsel $250,000 to ensure their availability to represent him in this matter through at least July 2023.

3. On or about August 8, 2022, counsel for the Receiver in this matter, Kara B. Hendricks of Greenberg Traurig, LLP, sent a letter to counsel for Mr. Madsen requesting that they contact her to discuss the July 28, 2022 Order of this Court (ECF No. 207, Amended Receivership Order) amending the June 3, 2022 Order Appointing Receiver (ECF No. 88) to include Mr. Madsen in the Receivership.

4. On August 18, Celiza P. Bragança of Bragança Law LLC and Cami M Perkins of Howard & Howard, counsel for Mr. Madsen, held a telephone conference with Ms. Hendricks. On August 26, 2022, Ms. Perkins and I had a follow-up conversation with Ms. Hendricks. During those calls, Ms. Hendricks refused to discuss whether we could retain some or all of the funds Mr. Madsen had provided us pursuant to his engagement agreements, stating that the Receiver did not view its role as making any determination as to the reasonableness of the defendants' attorney's fees in this matter. Accordingly, Ms. Hendricks declined to review the terms of our engagement or our bills. Ms. Hendricks merely confirmed that the Receiver would follow any order of this Court regarding attorney's fees.

5. During the August calls, counsel also discussed what property owned by Mr. Madsen would be subject to the asset freeze. In particular, we informed Ms. Hendricks that the only funds identified in the evidence submitted by the SEC involving Ms. Madsen (*see* ECF No. 119-5 at 5-6, Ex. B, Declaration of Amir Salimi in Support of Motion to Extend Preliminary Injunction and Receivership Order) described payments to Battle Born Funding, LLC, as being payments to Mr. Madsen, although he never had control of, or even access to, any account for that entity. Although no precise definition of the term was discussed, Ms. Hendricks stated that the Receiver considered any financial account that included any funds that could be traced to the alleged Ponzi scheme, regardless of the percentage of such funds in the account, to be "commingled" and fully subject to the asset freeze. Similarly, any real or personal property for which any portion was paid

for with funds relating to the alleged scheme would be considered "tainted" and subject to the asset freeze. This includes real property purchased well before Mr. Madsen's involvement with the alleged Ponzi scheme if any mortgage payments or any upkeep was paid with so-called "tainted" funds, according to Ms. Hendricks. We expressed the view that the Receiver's position made no sense since there is not even an allegation that Mr. Madsen engaged in fraud. In summary, the Receiver's position is that all of Mr. Madsen's assets are subject to the asset freeze despite the fact that (1) the SEC has alleged only that Mr. Madsen violated nonfraud provisions of the federal securities laws – being involved in an unregistered securities offering and acting as an unregistered broker-dealer; and (2) a substantial portion of those assets were purchased with, or are comprised of, wages and commissions earned by Mr. Madsen and his spouse from sources completely unrelated to the alleged scheme. Ms. Hendricks responded that if Mr. Madsen does not have assets greater than the amount he might ultimately be ordered to disgorge in this matter, the SEC and Receiver considered all of his property to be frozen under the Court's orders. We told Ms. Hendricks that we do not believe that position is supported by either the orders of this Court or applicable law.

6. On or about September 9, 2022, Ms. Hendricks again wrote to counsel for Mr. Madsen, seeking information regarding any funds counsel had received from Mr. Madsen and demanding that such funds be turned over to the Receiver unless Mr. Madsen could establish that such funds "were untainted and/or were not commingled with funds from the alleged Ponzi-scheme (sic)." (A copy of the letter is attached as Ex. 4, Hendricks September 9 Letter.)

7. Mr. Madsen's detailed financial information, including information relating to funds he paid to counsel, was provided to the Receiver (and SEC) on September 13, 2022. (*See* ECF No. 304, Defendant Richard R. Madsen's Certification of Compliance.) I reviewed the information provided by Mr. Madsen. His tax returns, bank statements, and other records indicate that since the

beginning of the events described in the Amended Complaint, Mr. Madsen and his spouse earned substantially more than $1 million that had no connection whatsoever to that conduct. More than $500,000 of the assets of Mr. Madsen and his spouse were either purchased prior to Mr. Madsen's involvement, or were purchased using the proceeds from selling assets purchased prior to his involvement with the events alleged in the SEC Amended Complaint.

8. On September 19, 2022, I wrote Ms. Hendricks in response to her September 9 Letter. (A copy of the letter is attached as Ex. 5, O'Toole September 19 Letter.) In that letter, I specifically referenced the engagement agreements Mr. Madsen had entered into with Bragança Law and Howard & Howard (which had already been produced in the September 13 submission described in the previous paragraph), pointing out that as fixed fee agreements, Mr. Madsen's ownership interest in the funds had terminated prior to the Amended Receivership Order extending the receivership to cover Mr. Madsen. I also referred her to the records Mr. Madsen had provided establishing the substantial amounts he earned that could not be considered "tainted," and explained that since there was no allegation that Mr. Madsen engaged in any fraudulent conduct, it would be unprecedented for the Receiver to treat all of Mr. Madsen's assets as being either "tainted" or "commingled" based on orders and case law which necessarily applied only to individuals personally engaged in fraud. The letter concluded by seeking times that Ms. Hendricks would be available to meet and confer if she disagreed with any of the views expressed in the letter.

9. Ms. Hendricks chose not to continue this discussion, however, and instead responded by letter on or about October 5, 2022. (A copy of the letter is attached as Ex. 6, Hendricks October 5 Letter.) In that letter, Ms. Hendricks demanded the turnover of all funds held by Mr. Madsen's counsel by October 14, 2022, stating that failure to do so would result in the Receiver filing a motion to compel, but alternatively inviting Mr. Madsen to file his own motion relating to his attorney's fees.

I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated: October 17, 2022

/s/ David A. O'Toole
David A. O'Toole

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Richard R. Madsen respectfully requests that the Court enter an order that funds paid to his attorneys under fixed fee retainer agreements be declared not subject to the asset freeze and receivership orders, as these fees were paid and had already been earned by both firms before Mr. Madsen was subject to any court order. Accordingly, they were never subject to the asset freeze and receivership orders. The Court-appointed Receiver has demanded that Mr. Madsen's attorneys transfer the amounts they have been paid by Mr. Madsen to the Receiver, notwithstanding the fact that there is no precedent for freezing assets of a defendant who has not been accused of engaging in fraud, and where those funds were lawfully earned by attorneys before any order of the Court. What the Receiver seeks is unprecedented. Moreover, even if the Court were to adopt this unprecedented view of the scope of the asset freeze entered in this matter and conclude that the funds are subject to the asset freeze, the Court should exercise its discretion to allow Mr. Madsen's attorneys to retain the funds and continue to represent Mr. Madsen.

Accordingly, Defendant Richard R. Madsen respectfully requests this Court to enter an order declaring that the fees he paid his counsel are not subject to the Court's asset freeze and receivership orders.

1. Background.

The SEC commenced this action on April 12, 2022. Although it named eleven Defendants and eleven Relief Defendants in its Complaint (ECF No. 1), Richard Madsen was not one of those named. More than two months after the case was filed and nearly four months after Mr. Beasley was arrested, the SEC filed an Amended Complaint naming Richard Madsen (*see* ECF No. 11). At the same time, the SEC filed motions to amend the preliminary injunction and receivership orders to include Mr. Madsen. (*See id.*) Over the objection of Mr. Madsen (*see* ECF No. 161), the Court granted the SEC motions on July 28, 2022. (*See* ECF No. 206-207.)

More than six weeks before the SEC filed its Amended Complaint naming Richard Madsen, Mr. Madsen engaged Bragança Law LLC on May 14, 2022, pursuant to a "fixed fee" or "advanced payment retainer," which explicitly provides that the payment was earned when received. (*See* Declaration of David A. O'Toole ¶ 2, Ex. 1, "Confidential Engagement Letter".) The purpose of such an engagement agreement is to secure an attorney's availability over a given period of time, distinguishing it from a retainer given as a deposit against future fees. *See SEC v. Interlink Data Network of L.A. Inc.*, 77 F.3d 1201, 1205 (9th Cir. 1996). A subsequent amended agreement containing the same provisions was executed on July 5, 2022. (*See id*. ¶ 2, Ex. 2, "Second Confidential Engagement Letter".) Mr. Madsen entered into a similar fixed fee engagement agreement with Howard & Howard on or about July 11, 2022. (*See id*. ¶ 2, Ex. 3, "Engagement for Performance of Legal Services".) All of the agreements between Mr. Madsen and his attorneys and payments were made before the entry of any order freezing Mr. Madsen's assets. (*See* ECF Nos. 206-207 (dated July 28, 2022).)

After receiving correspondence from counsel for the Receiver in mid-August 2022, counsel for Mr. Madsen had two telephone conversations with the Receiver's counsel on August 18, 2022 and August 26, 2022. (*See* O'Toole Decl. ¶¶ 3-5.) The parties exchanged further correspondence on September 9, 2022, September 19, 2022, and October 5, 2022. (*See id*. ¶¶ 6, 7-8, Exs. 4-6.) Although Receiver's counsel rejected even discussing the terms of Mr. Madsen's counsels' engagement or the reasonableness of their fees, Mr. Madsen provided copies of the engagement agreements to the Receiver and SEC, along with all of the financial information required by this Court's Order Amending Receivership Order (ECF No. 207) on September 13, 2022. (*See* ECF No. 304, Defendant Richard R. Madsen's Certification of Compliance.) Despite the clear terms of the engagement agreements, the timing of the payments, and the fact that Mr. Madsen's financial data demonstrated that he had substantial "untainted" income during the

relevant time period (*see* O'Toole Decl. ¶ 7), Receiver's counsel insisted that Mr. Madsen's counsel turn over all funds they had been paid unless they could demonstrate that none of the funds had ever been "commingled" with funds "tainted" by the alleged Ponzi scheme operated by Mr. Beasley and other defendants in this action. Although the parties met and conferred on the issue, Receiver's counsel rejected further discussion and indicated that the Receiver would raise the matter with the Court if Mr. Madsen did not file a motion seeking relief from the Court. (*See id.* ¶ 9, Ex. 6.)

2. The Court Should Enter a Declaration that Mr. Madsen's Defense Counsel's Property is not Subject to the Asset Freeze.

As this Court has previously recognized, the determination of whether to modify an asset freeze to release funds, including for attorney's fees, is within the court's discretion. *See* ECF No. 244 (citing, inter alia, *CFTC v. Noble Metals, Inc.*, 67 F.3d 766, 775 (9th Cir. 1995)). The Court has noted that "the more common approach is to allow access to some portion of [the defendant's] assets to be used for specific needs of the defendant." (ECF No. 318 at 5, Order Denying Defendant's [Humphries & CJ Investments, LLC] Motion for Release of Funds) (citing *FTC v. Inc21.com Corp.*, 475 Fed. Appx. 106, 110 (9th Cir. 2012); *FTC v. Osborne*, 69 F.3d 543 (9th Cir. 1995); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1032 (7th Cir. 1988)). Indeed, releases from asset freezes for attorney's fees are typical in this circuit and elsewhere. *See, e.g., FTC v. Health Formulas, LLC*, No. 2:14-cv-01649-RFB-GWF, 2015 U.S. Dist. LEXIS 101026, at *3 (D. Nev. Aug. 3, 2015); *FTC v. Universal Premium Services, Inc.* No. CV 06-0849, 2006 U.S. Dist. LEXIS 111121, at *29 (C.D. Cal. March 15, 2006); *FTC v. Data Med. Capital, Inc.*, No SA CV 99-1266, 2010 U.S. Dist. LEXIS 148468, at **3-4 (C.D. Cal. Feb. 5, 2010). *See also FTC v. Think Achievement Corp.*, 312 F.3d 259, 262 (7th Cir. 2002); *FTC v. Amy Travel Service, Inc.*, 875 F.3d 564, 570, 575-76 (7th Cir. 1989); *FTC v. Ragingbull.com, LLC*, No. GLR-20-3538, 2021 U.S. Dist. LEXIS 67035, at ** 9-10 (D. Md. Jan. 25, 2021); *FTC v. Vylah Tec LLC*, No. 2:17-cv-228,

2017 U.S. Dist. LEXIS 95560, at **2-3 (M.D. Fla. June 17, 2017); *FTC v. Circa Direct LLC*, 912 F. Supp. 2d 165, 168, 177-78 (D.N.J. 2012); *FTC v. U.S. Mortgage Funding, Inc.*, No. 11-CV-80155, 2011 U.S. Dist. LEXIS 65071, at *5 (S.D. Fla. June 9, 2011) (ordering Receiver to pay defendants' counsel); *FTC v. Central Coast Nutraceuticals, Inc.*, No. 10 C 4931, 2011 U.S. Dist. LEXIS 55350 (N.D. Ill. May 19, 2011); *FTC v. American Tax Relief LLC*, No. 10 C 6123, 2010 U.S. Dist. LEXIS 148152, at * 5 (N.D. Ill. Dec. 22, 2010); *FTC v. QT, Inc.*, 467 F. Supp. 2d 863, 866 (N.D. Ill. 2006); *FTC v. Windermere Big Win International*, No. 98 C 8066, 1999 U.S. Dist. LEXIS 12259 (N.D. Ill. Aug. 5, 1999).

A. There is no precedent for including previously paid fully earned retainer funds in an asset freeze in the absence of fraud allegations.

The SEC alleges that Mr. Madsen violated the federal securities laws by being involved in an unregistered offering of securities and acting as an unregistered broker-dealer. Neither of these alleged violations constitutes fraud.

Neither the SEC nor the Receiver has identified a single case in which any court limited a conduct defendant's use of their own funds for attorney's fees in the absence of fraud allegations.[1] While the SEC and Receiver have opposed other defendants' requests for attorney's fees in this matter (*see* ECF No. 254 at 8, Plaintiff Securities and Exchange Commission's Response to Defendant Christopher Humphries and Relief Defendant CJ Investments, LLC's Motion for

[1] Cases involving relief defendants do not support the unlimited scope of relief the SEC and Receiver seek against Mr. Madsen. The rationale for allowing an asset freeze as to a relief defendant, as explained in the cases cited by the SEC (*see* ECF No. 181 at 8, Plaintiff Securities and Exchange Commission's Reply in Support of Motion to Amend Preliminary Injunction Order), is that the relief defendant obtained assets, *without consideration*, from a defendant engaged in fraud, and thus the relief defendant was, or should have been well aware that they were not entitled to the transferred assets. *See, e.g., SEC v. Cavanaugh*, 155 F.3d 129, 136-37 (2nd Cir. 1998) (no consideration given for transferred proceeds and thus were received as a gift). But the SEC and Receiver cannot rely on such an assumption here – the Amended Complaint explicitly alleges that Mr. Madsen provided consideration for the commissions he received. (*See* ECF No. 118, Amended Complaint, at ¶¶ 5, 28, 43, 75-78, 89, 92, 99-100.)

Release of Funds for Attorney's Fees; ECF No. 255 at 11, Receiver Geoff Winkler's Response in Opposition to Defendant Christopher Humphries and Relief Defendant CJ Investments, LLC's Motion for Release of Funds for Attorney's Fees [ECF No. 209];) citing *CFTC v. Wilson*, No. 11cv1651 WQH (BLM), 2011 U.S. Dist. LEXIS 146153, at *7 (S.D. Cal. Dec. 20, 2011), in that case the defendant was accused of engaging in fraud. It is undisputed that there is no charge of fraud against Mr. Madsen. Nor do the other cases cited by the SEC and Receiver support an order that a fully earned retainer paid by a defendant charged with nonfraud securities law violations be included in an asset freeze, particularly an asset freeze entered *after* the fees were paid and earned. In particular, *CFTC v. Co Petro Marketing Group*, 680 F.2d 573, 584 (9th Cir. 1982) does not even address the question of releases for attorney's fees or any other expenses, merely holding that CFTC is *entitled* to seek ancillary relief including asset freezes. Similarly, *CFTC v. Noble*, 67 F.3d at 768, not only involved fraudulent conduct, but reviewed relief granted only *after* summary judgment had been entered. *See also SEC v. Onyx Capital Advisors, LLC*, No 10-cv11633, 2011 U.S. Dist. LEXIS 111427, at *8 (E.D. Mich. Sept. 29, 2011); *SEC v. Roor*, No. 99-civ-3372, 1999 U.S. Dist. LEXIS 1527 (S.D.N.Y. July 29, 1999).

Indeed, the SEC has not met the first prong of the "two-prong" test cited by the SEC and Receiver requiring defendants to prove the assets they seek to use for attorneys fees are not tainted once the SEC makes a preliminary showing of fraud (*see, e.g.*, ECF No. 180 at 3-4, Plaintiff Securities and Exchange Commission's Response to Defendant Jeffrey Judd's Motion for Release of Funds for Attorney's Fees; ECF No. 183 at 9-10, Receiver Geoff Winkler's Response in Opposition to Judd's Motion for Release of Funds for Attorney's Fees, or, Alternatively, for Leave to Withdraw), with respect to Mr. Madsen. In every case cited by the SEC and Receiver, the SEC had made a preliminary showing that the defendant seeking the release had engaged in fraud. *See Wilson*, 2011 U.S. Dist. LEXIS 146153; *SEC v. Trabulse*, 526 F. Supp. 2d 1008, 1009 (N.D. Cal.

2007); *SEC v. Lauer*, 445 F. Supp. 2d 1362, 1364 (S.D. Fla. 2006). For example, in *SEC v. Current Fin. Servs.*, 62 F. Supp. 2d 66, 69 (D.D.C. 1999), the court quoted *SEC v. Coates*, No. 94 Civ. 5361, 1994 U.S. Dist. LEXIS 11787, at 8 (S.D.N.Y. Aug. 23, 1994) for the proposition that a "defendant is not entitled to foot his legal bill with funds that are tainted by his fraud." (emphasis added.) Similarly, *SEC v. Quinn*, 997 F2d 287 (7th Cir. 1993) (citing *U.S. v. Monsanto*, 491 US. 600 (1989) and *Caplin & Drysdale, Chartered v. U.S.*,491 U.S. 617 (1989)) compared the denial of a release for attorney's fees in an SEC case to the principle that "a bank robber cannot use the loot to wage the best defense money can buy." But Mr. Madsen is not analogous to a bank robber. No allegation of fraud has been made as to Mr. Madsen, and thus his funds should not be unavailable to pay his attorneys.

B. **The Court should exercise discretion to exclude the retainer payments from the asset freeze and receivership estate**.

The Court should exercise its discretion to exempt the amounts that Mr. Madsen paid to his attorneys before the July 26 Orders from the asset freeze and receivership. Mr. Madsen was not named as one of the original defendants in this action. Richard Madsen is the only individual named as a defendant in this action, including among the New Defendants, who is not included in the opening paragraph of the SEC's Amended Complaint, which explains the basis of the case and describes who the SEC alleges "perpetrated" and/or "acted as promoters" of the alleged fraudulent scheme. (ECF No. 118 at ¶ 1). Nevertheless, the SEC and Receiver have lumped Mr. Madsen in with all other defendants by seeking the same relief from Mr. Madsen as from the defendants the SEC has alleged actually engaged in fraudulent conduct. The SEC and Receiver simply ignore that Richard Madsen is accused of only two things in the Amended Complaint: selling unregistered securities and failing to register as a broker or dealer. (*See* ECF No. 118 at 23-24, First Claim for Relief, ECF No. 118 at 27, Fifth Claim for Relief.) The Amended Complaint alleges that Richard Madsen violated "strict liability" statutes. (*See id.*) Neither the SEC nor the Receiver allege that

Mr. Madsen committed fraud, knowingly made any false statements, exercised any control over the alleged illegal conduct, or even had any knowledge of the alleged Ponzi scheme.

Indeed, prior to this case, no court has ever ordered the relief sought by the SEC and Receiver against a defendant who was not accused of fraud. For example, the SEC and Receiver have repeatedly cited *SEC v. Hickey*, 322 F.3d 1123, 1131 (9th Cir. 2003) (*see, e.g.*, ECF No. 119 at 11, Plaintiff Securities & Exchange Commission's Motion and Memorandum of Points and Authorities to Amend Preliminary Injunction Order; ECF No. 183 at 6, Receiver's Response to Judd), but that court merely affirmed freezing assets of a brokerage to secure *post-judgment relief* already entered against the defendant. Similarly, in *SEC v. Keller Corp.*, 323 F.2d 397, 399, 401-3 (7th Cir. 1963) (*see, e.g.*, ECF No. 120 at 4, Plaintiff Securities & Exchange Commission's Motion and Memorandum of Points and Authorities to Amend Receivership Order to Include Newly Added Defendants), the receivership was limited to corporations that admitted fraud, not individual defendants. *See also SEC v. Current Fin. Servs.*, 783 F. Supp. at 1443 (receivership over corporation after showing of fraud); *SEC v. Manor Nursing Ctrs. Inc.*, 458 F.2d 1082, 1103-5 (2d Cir. 1972) (*post-judgment* receivership to distribute investor losses from fraudulent scheme). And in the rare cases cited by the SEC in which courts have imposed receiverships over individuals prior to the instant case (*see, e.g.*, ECF No. 120 at 3-4, SEC Motion to Amend Receivership Order), they have always been over individuals who not only engaged in fraud, but were the acknowledged ringleaders of the alleged fraud. *See SEC v. Stanford Int'l Bank, Ltd., et al.*, No. 09-CV-0298, 2009 WL 8707814, at *1 (N.D. Tex. Oct. 9, 2009) (receivership over *individuals who controlled and managed* alleged fraudulent Ponzi scheme); *In re Sanctuary Belize Litigation*, 408 F. Supp. 3d, 650, 654, 663 (D. Md. 2019) (court ordering *individuals who orchestrated fraudulent scheme* to turn over to receiver assets with values of $1,000 or more; no relief as to other individual defendant); *FTC v. Business Card Experts, Inc.*, No. 06-CV-4671, 2007 U.S. Dist. LEXIS 31366,

at **22-24 (D. Minn. Apr. 27, 2007) (ordering individual defendants to make financial disclosures and transfer foreign assets only to receiver in case of fraud).

The presence of fraud allegations in the cases cited by the SEC and Receiver is not incidental – it was integral to the holdings in each and every one of these cases. This is highlighted by the positions taken by the SEC and Receiver in the recent briefing relating to Defendant Humphries's request for attorney's fees. In response to Mr. Humphries's argument that the SEC had not sufficiently proven that he possessed the requisite scienter to be liable for fraud, neither the SEC nor the Receiver argued that a finding of fraud was not necessary to deny Humphries' request. If either the SEC or Receiver believed that the simple fact that Mr. Humphries was a defendant in a case involving an alleged fraudulent Ponzi scheme was sufficient to deny him relief from the asset freeze and receivership order to allow any release for attorney's fees – like Mr. Madsen – they would have said so, even if only in a footnote. But they made no such argument, instead arguing at length about the *quality of evidence establishing his fraud*. (*See* ECF No. 255 at 1-6, 7-8, SEC Response Humphries' Motion for Release of Funds for Attorney's Fees; ECF No. 254 at 5-8, Receiver's Response to Humphries' Motion for Release of Funds for Attorney's Fees). Indeed, the Court adopted the arguments made by the SEC and Receiver, expressly rejecting Humphries' argument that the SEC had failed to present evidence establishing his knowledge of the fraudulent Ponzi scheme, with no suggestion that such a showing was unnecessary. *See* ECF No. 318 at 7.

C. Possibility of final relief does not support pre-judgment asset freeze.

Moreover, the Receiver has indicated in the discussions via counsel that one basis for it seeking such a broad asset freeze is that the Receiver is seeking to freeze assets sufficient to cover a possible disgorgement award that could eventually be entered against Mr. Madsen. (*See* O'Toole Decl. ¶ 6.) Such a possibility does not justify the Receiver's position.

The fact that Mr. Madsen is not accused of engaging in fraud is critical: if the possibility of future disgorgement were enough to support such an asset freeze, the SEC -could seek to freeze the assets of every defendant in virtually every case it brings, even when the defendants are not accused of any fraudulent conduct. That would include the hundreds of cases it brings every year under the Exchange Act against broker-dealers for failing to register with the SEC or against companies for making delinquent filings.[2] The vast majority of these cases do not involve fraud and yet the SEC could, in the future, cite this case as authority for seeking an asset freeze preventing those parties from using their own funds to hire attorneys to represent them.

There is simply no statutory or case support for such a result and neither the SEC nor the Receiver has cited a single case endorsing such an expansive view of the SEC's authority. (*See, e.g.*, ECF No. 180 at 2-3, SEC's Response to Judd; ECF No. 183 at 9-10, Receiver's Response to Judd.) For example, the defendants were allegedly engaged in fraud in *SEC v. Santillo*, No. 18-CV-5491 (JGK), 2018 WL 3392881, at *4 (S.D.N.Y. July 11, 2018) (allegation that defendant engaged in fraud), *SEC v. Marino*, 29 Fed. Appx. 538, 541 (10th Cir. 2002) (defendant engaged in fraud), *SEC v. Quinn*, 997 F.2d 287, 289 (7th Circ. 1993) (defendant engaged in fraud), *FTC v. Digital Altitude, LLC,* No. LA CV18-00729 JAK (MRWx), 2018 WL 4944419, at *7 (C.D. Cal. July 26, 2018) (defendant allegedly engaged in alleged fraudulent conduct), and *SEC v. King*, No. SACV 20-02398JVS(DFMx), 2021 WL 3598732 (C.D. Cal. Apr. 27, 2021) (defendants allegedly engaged in alleged fraudulent conduct). In fact, many of the cases cited by the SEC and Receiver were post-judgment wherein fraud had already been adjudicated on the merits. *See SEC v. Marino*, 29 Fed. Appx. 538, 541 (10th Cir. 2002) (summary judgment already entered); *SEC v. Quinn*, 997

[2] In its most recent annual report, the SEC advised Congress that in FY 2021, it had brought 110 cases against 132 individual broker-dealers for failing to register with the SEC and 120 cases against corporations for making delinquent filings. *See* https://www.sec.gov/news/press-release/2021-238.

F.2d at 289 (summary judgment already entered); *SEC v. Rosenthal*, 426 Fed. App'x. 1, 3-4 (2d Cir. 2011) (post-judgment); *SEC v. Banner Fund* Int'l, 211 F.3d 602, 617 (D.C. Cir. 2000) (post-judgment).

D. The Receiver's interpretation of "commingling" is too broad.

In making its demand to Mr. Madsen's lawyers, the Receiver asserted that any funds earned by Mr. Madsen that were deposited in the same financial account as what it considers "tainted funds," or funds which were used to pay expenses that could otherwise have been paid by "tainted funds," were "commingled" and thus subject to the asset freeze. (*See* O'Toole Decl. ¶¶ 5-6.) That is not the law, however, and does not follow from the text of the orders entered in this matter. If that were true, it would essentially eliminate any tracing requirement in any SEC case seeking disgorgement.

Indeed, neither the SEC nor the Receiver have cited any authority for this expansive view of commingling, except in post-judgment cases or where the defendants allegedly engaged in fraud. For example, in its response to Defendant Judd's motion for release of funds for attorney's fees, (ECF No. 183 at 10), the Receiver cited three cases to support its argument that Judd needed to establish that any funds he sought to be released for attorney's fees had not been commingled with "ill-gotten funds." The reasoning in those cases has no application to Mr. Madsen. In *SEC v. King*, 2021 WL 3598732, the SEC alleged the defendants engaged in fraudulent conduct. Moreover, the court did not deny the request for attorney's fees, but merely stayed the request for fees to allow further evidence. *Id.*[3] And both *SEC v. Rosenthal*, 426 Fed. App'x. at 3-4 and *SEC v. Banner Fund* Int'l, 211 F.3d at 617 were post-judgment cases, only addressing the question of whether the defendants were required to disgorge the funds, not freeze them prior to judgment.

[3] The request in *King* became moot because the court entered a final settlement less than a month later.

To constitute commingling, a defendant must do something more than simply deposit money into an account that also contains tainted funds. Indeed, courts have uniformly rejected the broad approach of the Receiver in other contexts. For example, in interpreting a criminal forfeiture statute applying to "any property . . . traceable" to a criminal transaction, 18 U.S.C. § 981(a)(1)(A), in *US v. $448,342.85, et al.*, 969 F.2d 474 (7th Cir. 1992), the court rejected the government's argument that all money in an account which had been "involved in" the criminal transactions if other innocent proceeds were commingled in the same account:

> This approach treats the accounts as the criminals, taking the concept of deodands one step further (an account is not even a tangible object). Bank accounts do not commit crimes; people do. It makes no sense to confiscate whatever balance happens to be in an account bearing a particular number, just because proceeds of crime once passed through that account . . . An "account" is a name, a routing device like the address of a building; the money is the "property." Once we distinguish the money from its container, it also follows that the presence of one illegal dollar in an account does not taint the rest—as if the dollar obtained from fraud were like a drop of ink falling into a glass of water.

Id. at 476. The Seventh Circuit emphasized that "[o]nly property used in or traceable to the 'specified unlawful activity'" is subject to forfeiture, not every penny that passes through a particular account. *Id.* at 477. The court explained that to constitute "commingling" the funds either must have derived from, or been used to, facilitate the fraud. *Id.; see also US v. Ritchie, et al.*, No.: 2:15-CR-0285-APG-GWF, 2019 U.S. Dist. LEXIS 112121, at *3-4 (D. Nev. July 5, 2019) (citing *US v. $448,342.85*) (holding that "the Government must trace proceeds of the criminal activity to the seized accounts, or prove that the funds in the accounts were used to facilitate the crimes"); *US v. Salvagno, et al.*, No. 5:02-CR-51, 2006 U.S. Dist. LEXIS 61471 at **47-48, 77 (N.D.N.Y. July 21, 2006) (rejecting forfeiture of $200,000 paid to attorneys where money came from account including untainted funds, including gains and earnings).

To be clear, Mr. Madsen is not seeking a release of all of his assets that did not originate from the illegal activities carried out by Defendant Beasley and the other defendants allegedly engaged in fraudulent activity. Calculating that amount might not be a prudent use of resources for

the Receiver or for Mr. Madsen (particularly when he may lose his legal representation depending on the result of this motion). But that does not justify the Receiver's approach of simply throwing up its hands and deeming everything "commingled." The financial records Mr. Madsen produced to the SEC and Receiver clearly demonstrate that his "untainted" income was at least an order of magnitude greater than the amount he paid his attorneys, making unnecessary a precise determination of the amount that should be exempt from turnover to the Receiver.

3. Funds Received and Already Earned By Mr. Madsen's Counsel Are not Receivership Property.

The Receivership has no property interest in the funds Mr. Madsen paid to his attorneys. Mr. Madsen's agreements with his counsel explicitly provide that the fees are earned upon receipt. A "fixed fee agreement," also known as an "availability fee" or "classic retainer," exists where:

> "a sum of money [is] paid by a client to secure an attorney's availability over a given period of time," so that "the attorney is entitled to the money regardless of whether he actually performs any services for the client." The "classic" definition of "retainer" is also set forth in Black's Law Dictionary 1479 (4th ed. 1968) and 7A C.J.S. *Attorney & Client* § 282 (1980).

In re McDonald Bros. Constr., Inc., No. 90 B 884, 114 B.R. 989, 998,1990 Bankr. LEXIS 1242, at *19 (N.D. Ill. Bankr. June 11, 1990). In *McDonald*, the court held that a bankruptcy estate held no property interest in a prepetition "classic retainer" paid to the debtor's attorney and therefore counsel could treat the retainer as its own property without needing to file a fee petition. Indeed, courts have routinely held that such agreements divest the clients of any interest in the paid fees, other than the right to be represented. *See, e.g., Ulrich v. Schian Walker, P.L.C. (In re Boates)*, 551 B.R. 428, 438 (B.A.P. 9th Cir. 2016) (under terms of retainer agreement, funds paid to attorney before filing for bankruptcy "never became property of his bankruptcy estate"); *Stephens v. Bigelow (In re Bigelow)*, 271 B.R. 178, 188 (B.A.P. 9th Cir. 2001) (affirming bankruptcy court's determination that payment to attorney was a nonrefundable prepaid retainer, even in absence of written agreement); *In re Heritage Mall Assocs*., No. 694-64711, 184 B.R. 128, 134 1995 Bankr.

LEXIS 972, at *20 (D. Ore. Bankr. July 11, 1995) ("classic retainer" earned upon receipt); *In re Production Assocs., Ltd.*, No. 00 B 3644, 264 B.R. 180, 190, 2001 Bankr. LEXIS 814, at *23 (N.D. Ill. Bankr. July 11, 2001) (attorney does not need to even apply to court to use funds paid in "classic retainer"); *In re Gray's Run Techs., Inc.*, No. 5-96-02395, 217 B.R. 48, 52-53, 1997 Bankr. LEXIS 2182, at *7-10 (M.D. Pa. Bankr. Nov. 19, 1997) ("availability fee" or "classic retainer" earned when paid).

Mr. Madsen engaged and paid Bragança Law before he was even named in this matter and Howard & Howard before any order was entered impacting his assets. Both engagements were "fixed fee" agreements and, unlike the retainers paid by the other defendants in this matter, the retainers paid by Mr. Madsen were not designed to serve as security for his future payments for services rendered but were fully earned upon payment. *See SEC v. Interlink Data Network of L.A. Inc.*, 77 F.3d 1201, 1205 (9th Cir. 1996). Further, the retainers paid by Mr. Madsen were reasonable in light of the circumstances – a $200,000 retainer to Bragança Law (the law firm performing the bulk of the services and the law firm with extensive SEC experience and experience in cases involving asset freezes and receiverships), and a $50,000 retainer to Howard & Howard to serve as local counsel. Accordingly, the funds paid are the property of Mr. Madsen's counsel, not subject to any applicable order, and not required to be turned over.

4. Conclusion

For the foregoing reasons, Defendant Richard R. Madsen respectfully requests a declaration from the Court that Bragança Law and Howard & Howard may retain the amounts he has paid to them pursuant to Mr. Madsen's engagement agreements with both firms, as they were not and are not subject to the asset freeze and receivership orders previously entered by this Court.

Date: October 17, 2022

/s/David A. O'Toole
Celiza P. Bragança (IL Bar No. 6226636)
David A. O'Toole (IL Bar No. 6227010)
Bragança Law LLC

5250 Old Orchard Rd., Suite 300
Skokie, IL 60077
Tel: (847) 906-3460
Email: lisa@secdefenseattorney.com
david@secdefenseattorney.com

Cami M. Perkins (NBN 9149
John J. Savage, Esq (NBN 11455
Howard & Howard
Wells Fargo Tower
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169-5980
Tel: (702) 667-4855
Email: cperkins@howardandhoward.com

Attorneys for Defendant Richard R. Madsen

CERTIFICATE OF SERVICE

I, David A. O'Toole, hereby certify that on October 17, 2022, I electronically filed **DEFENDANT RICHARD R. MADSEN'S MOTION TO CLARIFY ASSET FREEZE AND TO ALLOW ATTORNEYS TO RETAIN EARNED FEES,** along with supporting papers, with the Court using the CM/ECF system, which will automatically send copies to any attorney of record in the case.

Respectfully Submitted,

/s/ David A. O'Toole
DAVID A. O'TOOLE

INDEX OF EXHIBITS

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EXHIBIT 1. Confidential Engagement Agreement (May 14, 2022)

CONFIDENTIAL ENGAGEMENT AGREEMENT
BRAGANÇA LAW LLC & RICHARD MADSEN

July 5, 2022

This engagement letter revises and supersedes the May 14, 2022 engagement letter of Braganca Law to represent Richard Madsen. We are pleased you have selected Bragança Law LLC to represent you and your wholly-owned companies. The purpose of this letter is to set forth the terms of your engagement of Bragança Law to advise you and represent you in the *SEC v. Matthew Wade Beasley, et al*, No. 2:2022cv612 (D. Nev. April 12, 2022) and SEC investigation captioned, *In the Matter of J&J Consulting Services, Inc*., SL-02855.

I. Scope of Representation

You are retaining Bragança Law to represent you in defending you in the above-captioned litigation and related SEC investigation only. On June 29, 2022, the SEC filed amotion to add you as defendants in the *SEC v Beasley* case. This representation will focus on defending you in the SEC enforcement action and responding to requests from the SEC in connection with its investigation of J&J Consulting Services. *This engagement will no longer include any other matters that were included in the May 14 engagement including but not limited to other government agency investigations and any potential civil actions that may be brought against you by investors.*

In the event of we expect criminal charges to be brought against you, it will be necessary to retain a criminal defense attorney in the jurisdiction where we believe those charges would be brought. While we will advise you concerning a parallel criminal investigation, we do not appear in criminal cases. We will assist you in obtaining an attorney to represent you if necessary, but we are unable to appear and represent you in a filed criminal case.

II. Attorney's Fees –Fixed Fee Engagement

We agree to represent you in above-captioned SEC enforcement action and related SEC investigation for a total fixed fee of $200,000 for the next 12 months.

You have already paid $100,000 to us as an advance payment retainer for the May 14 engagement. You made that payment to induce us to appear to represent you and your companies in the SEC federal court enforcement action. That payment was earned fully and completely at the time of receipt and deposited into this firm's operating account.

In return for your payment of an additional $100,000, we agree to represent you in the *SEC v Beasley* case and the SEC investigation re J&J Consulting for the next 12 months. At the

end of the 12 month period, we may, at our sole discretion, decide to continue to represent you in the *SEC v Beasley* case or seek to withdraw.

At the conclusion of this engagement, we will determine whether the amount you paid to us was reasonable in accordance with the Nevada and Illinois Rules of Professional Conduct.

III. Expenses

All expenses incurred for this matter are to be paid by you when possible. Expenses in engagements like this can include document processing fees, document management system fees, copy/print charges, court reporter fees, deposition transcript fees, postage and express mail fees, travel expenses, retained expert fees, and trial presentation expenses.

IV. Cooperation

In order to enable us to render effectively the legal services contemplated, you agree to disclose fully and accurately all material facts and keep us informed of all material developments relating to this engagement. You agree to cooperate with us and to make yourself reasonably available to attend meetings, discovery proceedings, depositions, conferences and hearings as appropriate.

V. Preservation of Data

The law sometimes imposes duties on parties aware of investigations to preserve information that may be subpoenaed or requested. In connection with this engagement, you understand that **we have asked you to preserve all electronic and physical documents and data that could potentially be related to this matter.** You agree to inform us of any documents or information that may have been destroyed since you became aware of any government investigation or action as well as those that may have been deleted before that time.

You agree to modify settings on your electronic devices, email accounts, and other electronic files to ensure that documents are not being automatically deleted – including preserving documents that may be in a "recycled" or "deleted" folder. If you need assistance in doing this, we are available to help.

VI. Withdrawal or Termination

You may terminate this engagement at any time, provided you do so in writing and pay outstanding fees and expenses. The writing may be an email if you ensure that the email was delivered through a return receipt or other acknowledgement.

We may withdraw from this engagement if we determine that to continue representation would be unethical, constitute abusive litigation, or if you do not provide sufficient cooperation to allow us to represent you. Any withdrawal by us will be in writing.

Upon withdrawal or termination, we will determine whether the amount paid is reasonable in light of the work done and make such adjustment as we believe is required to comply with the applicable Rules of Professional Conduct.

VII. Joint Representation

Pursuant to the Illinois Rules of Professional Conduct, attorneys are not allowed to represent a client if the representation may be adverse to the interests of another client or if the representation may be materially limited by the attorney's responsibilities to another client. In this case, where multiple clients are represented by the same attorneys, a conflict of interest may arise creating adverse interests. The Illinois Rules of Professional Conduct require that we apprise you of this potential conflict and that all clients consent to this representation. It is our opinion that the benefits of Richard Madsen and his wholly-owned companies (the Madsen companies) and Michael Cyrkiel being represented by the same law firm outweigh any potential conflicts that may arise.

If a conflict of interest arises that may require us to withdraw from representing the Madsen companies, Madsen, and Cyrkiel, we will apprise all. You agree that we may elect to withdraw from representing one or more of you and continue to represent the other going forward.

VIII. Applicable Law

Illinois law will apply to this agreement and govern its interpretation. If you wish to resolve a dispute regarding this engagement via arbitration, we will do so. Otherwise, you agree to resolve any dispute that may arise in state or federal courts in the State of Illinois.

If a conflict of interest arises that may require us to withdraw from representing both Madsen and Cyrkiel, we will apprise both. You agree that we may elect to withdraw from representing one or the other of you and continue to represent the other going forward.

VIII. Applicable Law

Illinois law will apply to this agreement and govern its interpretation. If you wish to resolve a dispute regarding this engagement via arbitration, we will do so. Otherwise, you agree to resolve any dispute that may arise in state or federal courts in the State of Illinois.

IX. Acceptance

You understand that this agreement constitutes the entire and complete agreement between Bragança Law and you. This agreement may not be modified except in writing signed by all parties.

If this proposal is acceptable, please sign this letter in the space below and return it with the retainer. Should you have any questions regarding this engagement agreement, please do not hesitate to review it with other counsel or contact me at 847-906-3460.

Very truly yours,

Celiza P Braganca

Celiza P. Bragança

Accepted:

Richard Madsen

Richard Madsen

Richard Madsen
2975 N. Browning Road
Duck Creek Village, UT 84762

Date: 5/14/22

Joint Representation Acknowledgement

I have been apprised by Bragança Law that there is a potential conflict of interest between Michael Cyrkiel and me and I consent to this joint representation despite the potential conflict. I understand that as part of this representation, Bragança Law may receive privileged attorney-client communications and information from me that it may use for the benefit of all parties in this matter. I acknowledge that if a conflict of interest arises, Bragança Law may withdraw from representing me or Michael Cyrkiel. I agree that in the event that Bragança Law withdraws from representing me, Bragança Law may continue to represent Michael Cyrkiel.

Accepted as of this 14 day of May, 2022

Richard Madsen
Richard Madsen (May 14, 2022 17:40 MDT)

Richard Madsen

Proposed Engagement Letter APR

Final Audit Report 2022-05-14

Created:	2022-05-14
By:	Celiza Braganca (lisabraganca@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAADIrIp0sp0FHIOhxVvQHx34nuDEFs8Rs8

"Proposed Engagement Letter APR" History

Document created by Celiza Braganca (lisabraganca@gmail.com)
2022-05-14 - 10:22:34 PM GMT- IP address: 98.226.246.4

Document emailed to Richard Madsen (richardmlv@yahoo.com) for signature
2022-05-14 - 10:23:36 PM GMT

Email viewed by Richard Madsen (richardmlv@yahoo.com)
2022-05-14 - 11:32:23 PM GMT- IP address: 172.226.6.103

Document e-signed by Richard Madsen (richardmlv@yahoo.com)
Signature Date: 2022-05-14 - 11:40:08 PM GMT - Time Source: server- IP address: 98.97.56.66

Agreement completed.
2022-05-14 - 11:40:08 PM GMT

EXHIBIT 2. Confidential Engagement Agreement (July 5, 2022)

CONFIDENTIAL ENGAGEMENT AGREEMENT
BRAGANÇA LAW LLC & RICHARD MADSEN

July 5, 2022

This engagement letter revises and supersedes the May 14, 2022 engagement letter of Braganca Law to represent Richard Madsen. We are pleased you have selected Bragança Law LLC to represent you and your wholly-owned companies. The purpose of this letter is to set forth the terms of your engagement of Bragança Law to advise you and represent you in the *SEC v. Matthew Wade Beasley, et al*, No. 2:2022cv612 (D. Nev. April 12, 2022) and SEC investigation captioned, *In the Matter of J&J Consulting Services, Inc*., SL-02855.

I. Scope of Representation

You are retaining Bragança Law to represent you in defending you in the above-captioned litigation and related SEC investigation only. On June 29, 2022, the SEC filed amotion to add you as defendants in the *SEC v Beasley* case. This representation will focus on defending you in the SEC enforcement action and responding to requests from the SEC in connection with its investigation of J&J Consulting Services. *This engagement will no longer include any other matters that were included in the May 14 engagement including but not limited to other government agency investigations and any potential civil actions that may be brought against you by investors.*

In the event of we expect criminal charges to be brought against you, it will be necessary to retain a criminal defense attorney in the jurisdiction where we believe those charges would be brought. While we will advise you concerning a parallel criminal investigation, we do not appear in criminal cases. We will assist you in obtaining an attorney to represent you if necessary, but we are unable to appear and represent you in a filed criminal case.

II. Attorney's Fees –Fixed Fee Engagement

We agree to represent you in above-captioned SEC enforcement action and related SEC investigation for a total fixed fee of $200,000 for the next 12 months.

You have already paid $100,000 to us as an advance payment retainer for the May 14 engagement. You made that payment to induce us to appear to represent you and your companies in the SEC federal court enforcement action. That payment was earned fully and completely at the time of receipt and deposited into this firm's operating account.

In return for your payment of an additional $100,000, we agree to represent you in the *SEC v Beasley* case and the SEC investigation re J&J Consulting for the next 12 months. At the

end of the 12 month period, we may, at our sole discretion, decide to continue to represent you in the *SEC v Beasley* case or seek to withdraw.

At the conclusion of this engagement, we will determine whether the amount you paid to us was reasonable in accordance with the Nevada and Illinois Rules of Professional Conduct.

III. Expenses

All expenses incurred for this matter are to be paid by you when possible. Expenses in engagements like this can include document processing fees, document management system fees, copy/print charges, court reporter fees, deposition transcript fees, postage and express mail fees, travel expenses, retained expert fees, and trial presentation expenses.

IV. Cooperation

In order to enable us to render effectively the legal services contemplated, you agree to disclose fully and accurately all material facts and keep us informed of all material developments relating to this engagement. You agree to cooperate with us and to make yourself reasonably available to attend meetings, discovery proceedings, depositions, conferences and hearings as appropriate.

V. Preservation of Data

The law sometimes imposes duties on parties aware of investigations to preserve information that may be subpoenaed or requested. In connection with this engagement, you understand that **we have asked you to preserve all electronic and physical documents and data that could potentially be related to this matter.** You agree to inform us of any documents or information that may have been destroyed since you became aware of any government investigation or action as well as those that may have been deleted before that time.

You agree to modify settings on your electronic devices, email accounts, and other electronic files to ensure that documents are not being automatically deleted – including preserving documents that may be in a "recycled" or "deleted" folder. If you need assistance in doing this, we are available to help.

VI. Withdrawal or Termination

You may terminate this engagement at any time, provided you do so in writing and pay outstanding fees and expenses. The writing may be an email if you ensure that the email was delivered through a return receipt or other acknowledgement.

We may withdraw from this engagement if we determine that to continue representation would be unethical, constitute abusive litigation, or if you do not provide sufficient cooperation to allow us to represent you. Any withdrawal by us will be in writing.

Upon withdrawal or termination, we will determine whether the amount paid is reasonable in light of the work done and make such adjustment as we believe is required to comply with the applicable Rules of Professional Conduct.

VII. Joint Representation

Pursuant to the Illinois Rules of Professional Conduct, attorneys are not allowed to represent a client if the representation may be adverse to the interests of another client or if the representation may be materially limited by the attorney's responsibilities to another client. In this case, where multiple clients are represented by the same attorneys, a conflict of interest may arise creating adverse interests. The Illinois Rules of Professional Conduct require that we apprise you of this potential conflict and that all clients consent to this representation. It is our opinion that the benefits of Richard Madsen and his wholly-owned companies (the Madsen companies) and Michael Cyrkiel being represented by the same law firm outweigh any potential conflicts that may arise.

If a conflict of interest arises that may require us to withdraw from representing the Madsen companies, Madsen, and Cyrkiel, we will apprise all. You agree that we may elect to withdraw from representing one or more of you and continue to represent the other going forward.

VIII. Applicable Law

Illinois law will apply to this agreement and govern its interpretation. If you wish to resolve a dispute regarding this engagement via arbitration, we will do so. Otherwise, you agree to resolve any dispute that may arise in state or federal courts in the State of Illinois.

IX. Acceptance

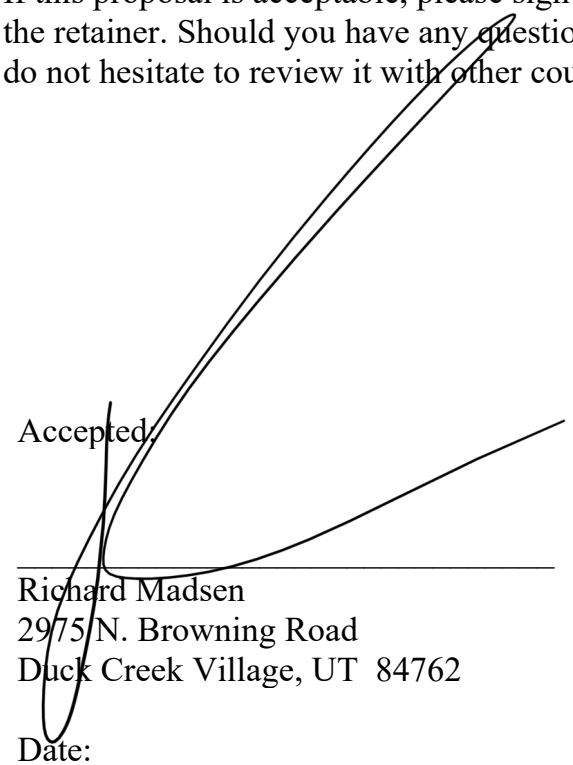
You understand that this agreement constitutes the entire and complete agreement between Bragança Law and you and supersedes the earlier engagement agreement. This agreement may not be modified except in writing signed by all parties.

If this proposal is acceptable, please sign this letter in the space below and return it with the retainer. Should you have any questions regarding this engagement agreement, please do not hesitate to review it with other counsel or contact me at 847-906-3460.

Very truly yours,

Celiza P. Bragança

Accepted:



Richard Madsen
2975 N. Browning Road
Duck Creek Village, UT 84762

Date:

Joint Representation Acknowledgement

I have been apprised by Bragança Law that there is a potential conflict of interest between Michael Cyrkiel and me (any my wholly-owned companies) and I consent to this joint representation despite the potential conflict. I understand that as part of this representation, Bragança Law may receive privileged attorney-client communications and information from me that it may use for the benefit of all parties in this matter. I acknowledge that if a conflict of interest arises, Bragança Law may withdraw from representing me and my companies or Michael Cyrkiel. I agree that if Bragança Law withdraws from representing me and my companies, Bragança Law may continue to represent Michael Cyrkiel.

Accepted as of this ___ day of _____, 2022

_____
Richard Madsen

EXHIBIT 3. Engagement for Performance of Legal Services (July 11, 2022)

Howard & Howard
law for business

Chicago Detroit Las Vegas Los Angeles Peoria

direct dial: 702-667-4855
Cami M. Perkins
Attorney
email: cperkins@howardandhoward.com

July 11, 2022

Via Email
Richard Madsen
2975 N. Browning Road
Duck Creek Village, UT 84762

RE: Engagement for Performance of Legal Services

Dear Richard:

We recognize that the selection of a law firm is a critical and important decision. We are honored that you, Richard Madsen ("**CLIENT**") have asked us to serve as your local legal counsel. We appreciate the trust and confidence you have shown in us with this decision, and we assure you that we will continue to be worthy of that trust and confidence.

We find that there is no substitute for candor in our attorney-client relationships. This need for candor begins even before our formal relationship and continues throughout our attorney-client relationship. Accordingly, the purpose of this letter is to set forth and confirm our understanding with you of the terms and conditions under which you, CLIENT, engages and retains Howard & Howard Attorneys PLLC ("Howard & Howard") to perform-and under which Howard & Howard agrees to perform-legal services for CLIENT**,** including the scope of our engagement and the financial arrangements for payment of the services we provide.

1. **The Parties**. CLIENT engages Howard & Howard to perform legal services for it as set forth in this Engagement Letter and the Standard Terms of Engagement enclosed with this Engagement Letter, which are incorporated and made a part of this Engagement Letter.

2. **Scope of Engagement.**

For the term of this engagement, Howard & Howard agrees to provide you, CLIENT, requested legal services relating to the federal court case captioned *SEC v. Matthew Wade Beasley, et al*, No. 2:2022cv612 (D. Nev. April 12, 2022). You are retaining Howard & Howard to represent you as local Nevada counsel in defending you in the above-captioned litigation only. On June 29, 2022, the SEC filed amotion to add you as defendants in the *SEC v Beasley* case. This representation will focus on defending you in the SEC enforcement action.

The scope of the legal services we provide you may be changed from time-to-time by our mutual agreement in writing.

3. **Designation of a Responsible Lawyer and Your Communications with Us.** We recommend that you designate one of our attorneys to be your principal contact. We suggest Cami M. Perkins, Esq. (tel.: 702-667-4855; email: cp@h2law.com). As your principal contact, Cami M. Perkins, Esq. will be responsible for the relationship between Howard & Howard and you, CLIENT.

It is our policy to respond to e-mails, voicemails and faxes you, as a client, send or leave for us as soon as reasonably possible. If you are dissatisfied with our promptness in doing so, please feel free to contact Jon D. Kreucher, our Chief Executive Officer, to discuss this or any concerns you have.

4. **Payment of Our Fees.** As consideration for our obligations and other agreements in this Engagement Letter and our Standard Terms of Engagement, including the performance of legal services for you, you agree to pay Howard & Howard for our performance of legal services for you as set forth below and in the Standard Terms of Engagement.

5. **Legal Fees**. We agree to represent you in above-captioned SEC enforcement action for a total fixed fee of $50,000 for the next 12 months. In return for your payment of a fixed fee of $50,000, we agree to represent you in the *SEC v Beasley* for the next 12 months. At the end of the 12-month period, we may, at our sole discretion, decide to continue to represent you in the *SEC v Beasley* case or seek to withdraw. At the conclusion of this engagement, we will determine whether the amount you paid to us was reasonable in accordance with the Nevada Rules of Professional Conduct.

6. **Multijurisdictional Law Firm.** It is our practice to have a Nevada licensed attorney review all work that is performed on your file. However, you should be aware that Howard & Howard is a multijurisdictional law firm with offices in Nevada, Illinois, and Michigan. Some of the work on your file may be performed by an attorney, paralegal or staff member who is not located in and is not licensed to practice law in Nevada. In the event an attorney who is not licensed in Nevada works on your matter, we will inform you of that fact.

7. **Termination of this Engagement.** You may terminate our services at any time upon advance written notice to us. Likewise, we reserve the right to resign as counsel at any time, upon advance written notice to you, and to the full extent permitted by the applicable Rules of Professional Conduct ("RPCs") and other applicable court rules. If we resign as counsel of record for you in a litigation or administrative proceeding matter, we will request that you agree to any such withdrawal. Of course, confidential information gained by us in our representation of you will continue to be held in confidence pursuant to the applicable RPCs.

If you do not meet your obligations of timely payments of our legal fees and advanced expenses under this Engagement Letter and our Standard Terms of Engagement, we reserve the right to withdraw from this representation on that basis alone, subject, of course, to the applicable RPCs and any required judicial or administrative approvals. We also reserve the right to withdraw from our representation of you, CLIENT, if you request Howard & Howard take any position or

action that in our good-faith opinion requires or permits our withdrawal because of professional duties imposed upon us by the applicable RPCs or applicable court rules.

Upon termination of Howard & Howard's representation of you, CLIENT, whether by you, CLIENT, or Howard & Howard, you will remain liable for any unpaid legal fees and costs, and we reserve the right to request from you any past due amounts and additional fees and expenses in advance that may be incurred by Howard & Howard in transferring or transitioning any of your legal matters to new legal counsel before doing so.

8. Future Services. Normally, our relationship and this engagement will end when we have completed services on your matter, and we send you a final bill for the matter. However, the above agreements and arrangements set forth in this Engagement Letter will also apply to services rendered for such future matters as we may mutually agree with you, in writing, will be handled by us.

If this Engagement Letter and the enclosed Standard Terms of Engagement, which are attached and are hereby incorporated as part of this Engagement Letter, are acceptable to you as your agreement to engage us as your attorneys, please execute the enclosed copy of this letter, and return it to us. Please note that unless we hear from you immediately to the contrary, we will assume we are entitled to proceed to represent you under the terms of this Engagement Letter and the enclosed Standard Terms of Engagement and that you agree to them.

We appreciate the opportunity to serve as your attorneys. Please call us if you have any questions about this letter or its terms.

Very truly yours,

HOWARD & HOWARD ATTORNEYS PLLC

/s/ Cami M. Perkins

Cami M. Perkins, Esq.

THE UNDERSIGNED HAS READ THE FOREGOING AND HOWARD & HOWARD'S STANDARD TERMS OF ENGAGEMENT AND AGREE THAT THEY ACCURATELY SET FORTH OUR UNDERSTANDING.

_____
Richard Madsen

**PLEASE READ THIS DOCUMENT CAREFULLY.
IT IS PART OF YOUR AGREEMENT TO ENGAGE
HOWARD & HOWARD ATTORNEYS PLLC**

**HOWARD & HOWARD ATTORNEYS PLLC
STANDARD TERMS OF ENGAGEMENT**

Dated: July 11, 2022

As used below, the phrases "we", "our", and "us" refer to Howard & Howard Attorneys PLLC and its attorneys and employees. "You", "your", and "yours" refer to the entity or entities, or person or persons, to which or whom Howard & Howard Attorneys PLLC is providing legal services as set forth in the Engagement Letter of which these Standard Terms of Engagement are a part of and are incorporated by reference.

1. **Legal Fees.** Our rates are reviewed periodically and are subject to adjustment not more than annually, normally December 1 of each year, to account for increases in our cost of delivering legal services and for augmentation of a particular lawyer's legal skill, expertise and experience. Any changes in hourly rates are applied prospectively and will be reflected in our statements of services rendered.

2. **Budget Estimates and Cost Containment.** We are sensitive to our clients' interest in containing legal fees and costs. From time-to-time, we are asked to estimate the amount of legal fees and costs it will take to complete a matter. When we do so, you should understand that it is just an estimate we arrive at based on our experience and professional judgment, is not a guarantee or a cap on fees or expenses. The final cost of a matter is quite often more or less than the estimated amount.

3. **Expenses.** We are not permitted to underwrite your expenses incurred in our representation of you. Therefore, you are responsible for reimbursing us for out-of-pocket expenses that we advance in our representation of you (such as, filing fees, recording, government certificates, travel etc.) and our internal charges (such as long-distance telephone, facsimile transmissions, overnight or other courier service, photocopying, etc.). You are also responsible directly for the expense of third-party service providers hired by us to render services on your behalf (such as court reporters, consulting or testifying experts, investigators, etc.), whether invoiced to us or to you. If we anticipate that we will incur substantial costs and expenses of this type in our representation, we may notify you and require you to make an advance cost deposit in addition to any advance fee deposit required of you.

4. **Statements.** Statements will be provided to you monthly for services rendered by us and costs incurred on your behalf by us during the preceding calendar month. Except for fixed fee arrangements, our monthly statements will include itemized descriptions of all work performed by us and expenses incurred or advanced by us on your behalf during the applicable billing period.

If you have any question about a statement or our fees, you should raise it promptly with us for discussion. If your question relates to only to a portion of a statement, we ask that you pay the remainder, which will not constitute a waiver of your questions or concerns about the portion not paid or in dispute.

5. **Payment of Account.** Our statements for services rendered and costs incurred are due and payable upon receipt. If a statement remains unpaid for more than forty-five (45) days, we reserve the right upon notice to you to withhold further services until the statement is paid and, in addition, we may decline further services following payment unless a satisfactory deposit is made by you towards the payment of future services and costs. You agree that unpaid fees and disbursements/costs will accrue interest at the maximum rate permitted under the laws of the State of Nevada, not to exceed one percent (1%) per month from the beginning of the second month in which they become overdue.

6. **Attorney's Lien.** If a monetary judgment or award is made in your favor, you agree that we shall have a lien on the proceeds to the extent of any unpaid fees, disbursements, or other charges. All payments by way of recovery, award, settlement, or the like to you from third parties shall be made jointly payable to you and us.

7. **Inquiries.** Any questions concerning the terms of your account, statements received, or line items for legal services rendered or costs incurred should be directed promptly to the principal attorney handling your matter, or to our Chief Executive Officer. We will seek to provide the billing information you require and in a format that best suits your needs.

8. **Retention of Client Files.** After our engagement as to this or any matter ends, we will return the file materials provided by you to us upon your request. You agree that we may retain at your expense copies of the file materials. You also agree that any materials left with us after the engagement ends may be retained or destroyed, at our discretion, consistent with our document retention policies. To the extent that you request us to retain any materials, and we agree to do so, you agree to pay all storage costs we incur to retain the files. If you request documents from those files, copies that we generate may be made at your expense.

If we receive a subpoena for your files in any matter in which you are a party, you agree to pay our reasonable and necessary costs and attorneys' fees for compliance, and that such attorney's fees also shall include attorney's fees computed by multiplying the time incurred by the hourly rate regularly charged by Howard & Howard for each Howard & Howard attorney who performs services in connection with complying with the subpoena.

Our own files pertaining to your matter will be retained or destroyed at our discretion. For several reasons, including minimizing storage space, we reserve the right to destroy or otherwise dispose of documents, files, or other materials we keep after seven (7) years, unless we give you notice in advance that we are going to destroy them after a shorter period of time.

9. **Relationship.** Substantive aspects of our representation will be discussed with you and documents will be provided to you in advance, except in cases of emergency or your

unavailability. Your communications with us are protected by our ethical obligation of confidentiality, as well as by the evidentiary rule of attorney-client privilege. Hence, you should be open and forthright with us so that we have all information relevant to our representation. Please note that in instances in which we represent a legal entity (corporation, limited liability company, partnership, etc.), our attorney-client relationship is with the entity alone and, unless otherwise stated in our accompanying engagement letter, is not with its officers, directors, shareholders, partners, members, or affiliates. Similarly, when we represent a party on an insured claim, our attorney-client relationship is with the insured, and not the insurance company, even though we may be approved or paid by the insurance company.

In order for Howard & Howard to effectively represent your interests, it is important for you to understand that you have an affirmative obligation to assist and to cooperate with Howard & Howard during this engagement and representation. Thus, to the extent Howard & Howard needs certain information and documents to represent you effectively, you agree that you have an obligation to provide necessary information and requested documentation promptly to the appropriate firm representative, whether an attorney, paralegal, or secretary. You and your representatives must be available to work with Howard & Howard attorneys in preparation for meetings and other events and to discuss issues as they arise throughout this matter. You agree that your noncooperation will be grounds for Howard & Howard's withdrawal, and thus it is essential that we maintain open communication. . Hence, you should be open and forthright with us so that we have all information relevant to our representation of you.

10. **Electronic Communications.** Facsimile transmission, electronic mail (e-mail), and cellular telephones are commonly used in our communications with clients. It is possible that those means of communication could be misrouted or intercepted and thereby result in an inadvertent disclosure of confidential information to third parties. We will assume that, because of the speed and efficiency of such electronic communications, you consent to our utilizing them unless you instruct us not to do so.

Please be advised that, to the extent you use another person or entity's email system, hardware, server or other system, telephone, smartphone, tablet, or other device to communicate with us, confidentiality of our communications and the protections of the attorney-client privilege or other privileges may be lost. For example, employers often have policies reserving a right of access to employees' e-mail correspondence via the employer's e-mail account, computers, or other devices, such as smartphones and tablet devices, from which their employees may correspond. The employer's policies may allow the employer to access and obtain an employee's communications from the employer's e-mail server if the employee uses a business e-mail address, or from a workplace computer or other employer-owned telecommunications device on which the e-mail is stored, even if the employee has used a separate, personal e-mail account. The confidentiality of electronic communications between you and us may also be jeopardized, or the attorney-client privilege lost as to our communications, in other settings as well. Third parties may have access to your attorney-client e-mails when you receive or send e-mails via a public computer, such as a library or hotel computer, or via a borrowed computer. Third parties also may be able to access our

confidential communications when you use a computer or other device available to others. So, we caution you against using these other email systems, hardware, servers or other systems, telephones, smartphones, tablet, or another device to communicate with us.

Please contact us if, at any time, you have questions or concerns about confidentiality and the protections of the attorney-client privilege or other privileges, or how they may be lost.

11. Relationship with Other Clients. We are a full-service firm with multiple offices. From time-to-time a lawyer in one of our offices may be asked to represent a client in a matter that involves another client we represent in an unrelated matter. The situation occurs, for example, if one of our lawyers represents a borrower in a commercial loan transaction, and another one of our lawyers is asked to represent a client in negotiating a contract with the borrower that is unrelated to the loan transaction. You agree that we are permitted to represent both clients in such situations (whether they are clients as of the date of your engagement letter with us or new clients) if we are satisfied that we can provide independent professional judgment to each client in their distinct matters, the clients' interests in the matter between them are not antagonistic and adversarial, and we do not have any confidential or privileged information related to the new matter. From time-to-time, too, we may be asked to represent clients who are competitors of each other in the same industry or field of business, such as banks, retail merchants, land developers, etc. Just as you may refer a matter to a law firm that competes with us, we are permitted to represent clients who are competitors if they are not directly averse to or opposing each other in the matters in which we represent them, and we are satisfied we can provide independent professional judgment to each client.

12. Forum for Litigation of Disputes, Collection of Fees. You and we agree that the litigation of any dispute or disagreement between you or us arising under, out of, in connection with, these terms, our Engagement Letter, our provision of legal services to you (including malpractice claims), or the relationship between you and us will be brought solely in the state or federal court for Clark County, Nevada. You and we also unconditionally and irrevocably agree to the personal jurisdiction of such courts and agree not to bring any claim in any other forum and not to plead or otherwise attempt to defeat the litigation of such a matter in such court whether by asserting that such court is an inconvenient forum, lacks jurisdiction (personal or other) or otherwise. You further agree that in the event that we are required to institute legal proceedings to collect any unpaid legal fees and or expenses owed by you to us, we will be entitled to collect our costs and attorney fees incurred by us in collecting these unpaid amounts, and that such attorney's fees shall include attorney's fees computed by multiplying the time incurred by the hourly rate regularly charged by us for each of our attorneys who performs services in connection with collecting the amounts owed.

13. Audit Letter Responses. If you request that we provide your auditors certain information in connection with the auditors' examination of your financial statements, you agree that we can charge for our services in doing so. Our responses will only be made in accordance with the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975), including all of the limitations contained therein. You agree not to

request information in addition to that provided for in the ABA Statement of Policy, and consent to our providing responses only in accordance with this ABA Statement of Policy**.**

14. **Confidentiality of Protected Health Information (HIPAA).** If our representation of you requires us to receive and use health information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA), we shall protect this information as required of business associates under the HIPAA privacy and security standards.

15. **Federal Tax Advice.** Unless specifically requested by you and agreed by us in writing, we will not provide any advice that is intended or written to be used, and without such a specific request or agreement, it cannot be used, for the purpose of (a) avoiding federal tax penalties that may be imposed on a taxpayer; or (b) promoting, marketing, or recommending to another party any tax-related matters addressed by us.

EXHIBIT 4. Hendricks September 9, 2022 Letter

GT GreenbergTraurig

Kara B. Hendricks
Tel 702.792-3773
Fax 702.792.9002
hendricksk@gtlaw.com

September 9, 2022

VIA EMAIL and U.S. MAIL
Celiza P. Braganca, Esq.
David O'Toole, Esq.
Braganca Law LLC
5250 Old Orchard Road, Suite 300
Skokie, IL 60077
lisa@secdefenseattorney.com
david@secdefenseattorney.com

Cami Perkins, Esq.
John J. Savage, Esq.
Howard & Howard
3800 Howard Hughes Parkway. Suite 1000
Las Vegas, NV 89169
cperkins@howardandhoward.com
jjs@h2law.com

Re: Securities and Exchange Commission v. Matthew Wade Beasley, et al.
Case No. 2:22-cv-00612 ("SEC Action")
Funds provided to you by Defendant Richard R. Madsen

Dear Counsel:

We understand your office represents Defendant Richard R. Madsen in the above-referenced and/or other legal proceedings.

Our office represents the court appointed receiver, Geoff Winkler of American Fiduciary Services LLC ("Receiver") in the SEC Action. By and through this correspondence, **the Receiver is hereby requesting: 1) information regarding the amount of funds received by you and/or your firm from Defendant Richard R. Madsen; and 2) information establishing the funds received are untainted and/or were not co-mingled with funds from the alleged Ponzi-scheme. Please provide this information within ten days of the date of this letter.** If information cannot be provided that establishes funds received by you were untainted and/or were not co-mingled with funds from the alleged Ponzi-scheme, demand is hereby made for the same to be turned over to the Receiver forthwith consistent with the Turnover Provision referenced below.

By way of background, on April 13, 2022, the Court entered a Temporary Restraining Order ("TRO"), an asset freeze and accounting order, and related relief. ECF No. 3. Thereafter, on April 21, 2022, the Court issued a preliminary injunction, asset freeze, and other equitable relief ("the Injunction Order") ECF No. 56. Subsequently, on

June 3, 2022, the Court granted Plaintiff's motion to appoint a receiver in this action. ("Receivership Order") ECF No. 88. The Receivership Order set forth a plan for the preservation of assets and states that **"[a]ll persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver**" (the "Turnover Provision"). ECF No. 88 at 8, ¶ 15 (emphasis added). The terms of the Injunction Order and the Receivership Order were extended to your client *via* two orders entered in the SEC Action on July 28, 2022 (ECF No. 206 and ECF No. 207). The language within the Receivership Order, including the Turnover Provision, are clear and unambiguous and have been reaffirmed by the Court in subsequent orders relating to attorney requests to retain funds and serve as the basis for this request.

In addition to the foregoing, we request that you remind your client of the reporting obligations set forth in the Receivership Order and ensure compliance with the same.

We hope to avoid the need for additional motion practice and appreciate your cooperation and prompt attention to these matters.

Best regards,

GREENBERG TRAURIG, LLP
Kara B. Hendricks

cc: Geoff Winkler

EXHIBIT 5. O'Toole September 19, 2022 Letter

Bragança Law LLC
5250 Old Orchard Road, Suite 300
Skokie, Illinois 60077

David A. O'Toole
Of Counsel
312.343.8003

September 19, 2022

Kara B. Hendricks
Greenberg Traurig LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
hendricksk@gtlaw.com

Re: *SEC v. Beasley, et al.*, No. 2:22-cv-612 (D. Nev.)
Letter of September 9, 2022

Dear Kara:

This letter is in response to your letter of September 9, 2022, addressing, *inter alia*, funds paid to Bragança Law LLC and Howard & Howard Attorneys PLLC ("Howard & Howard") by our client Richard R. Madsen for representing him in this matter.

On Tuesday, September 13, 2022, we provided you the information requested in your letter. In particular, we included the two Confidential Engagement Letters executed by Bragança Law and Mr. Madsen, dated May 4, 2022, and July 5, 2022, respectively, and the Engagement for Performance of Legal Services executed by Howard & Howard and Mr. Madsen, dated July 11, 2022. The agreements expressly provide that they are "fixed fee" agreements, whereby the firms agreed to represent Mr. Madsen in this matter for a period of twelve months and the amounts paid were earned upon receipt. Inasmuch as the agreements were executed and payments made prior to the court orders extending the preliminary injunction and receivership to Mr. Madsen on July 28, 2022, *see* Dkt. 206 and Dkt. 207, Mr. Madsen no longer had any ownership interest in the amounts paid and thus they did not and do not constitute "Receivership Property." *See* Order Appointing Receiver ¶ 7.A., Dkt. 88, as modified by the Order Amending Receivership Order, Dkt. 207.

In addition, if you review the financial information provided on September 13, 2022, you will note that Mr. Madsen has earned substantial amounts in the past several years that have no connection whatsoever to the conduct alleged in the Amended Complaint, Dkt. 118. These "untainted" funds, including the profit he earned on the sale of property purchased long before he had any involvement with Mr. Beasley, Mr. Judd, or any of the other individuals who allegedly orchestrated the scheme described in the Amended Complaint, are several times greater than the amount he paid our firms. In contrast, you told us during our conversations of August 18, 2022, and August 26, 2002, that many or most of the other defendants in this action had no significant assets which could not be traced directly to the conduct alleged in the Amended Complaint.

As we indicated in our August calls, both Bragança Law and Howard & Howard have and will continue to maintain records of time we have spent on this matter, pursuant to our ethical obligations under both Illinois and Nevada law to ensure that our fees are reasonable. We did not include those records with the financial submission last week, and have not included them with this letter, because you unequivocally informed us that the Receiver does not view its role as making any determination as to the reasonableness of the defendants' attorney's fees in this matter. You stated that the Receiver has no basis to determine whether the attorney's fees or billing rates are reasonable or appropriate and therefore has no interest in reviewing such bills. Your only concession on this matter was that the Receiver was prepared to follow any court order allowing attorney's fees.

Finally, as we explained in the August calls, we believe that your view as to commingling has no support in the text of the amended preliminary injunction order, *see* Dkt. 206, or the receivership orders, *see* Dkt. 88 and Dkt. 207, as discussed above, or in the law. We understand that the Receiver's position is that if any funds not associated with the conduct alleged in the Amended Complaint were deposited in an account that also included funds that are traceable to the alleged conduct – even though there is no allegation that Mr. Madsen had any knowledge that the alleged underlying conduct was fraudulent -- all funds in the account are "tainted." You confirmed that you knew of no authority supporting this view other than the cases cited in your briefs relating to the requests for attorney's fees made by other defendants in this matter, but those cases do not support your expansive view of the law on this subject. We are not aware of (and you have not directed us to any) cases supporting the claim that all funds in a bank account of a defendant not even accused of fraud are subject to a pre-judgment asset freeze merely because some allegedly tainted money is deposited in the same account.

Moreover, as explained in our calls, the Receiver's position would essentially eliminate any tracing requirement in any SEC case seeking disgorgement. In fact, the only thing Mr. Madsen could have done to avoid having all of his assets frozen in this matter would have been to segregate and never spend anything he received from the primary defendants—even though he had no reason to believe the funds were fraudulently obtained. That is not the law and does not follow from the text of the orders entered in this matter. As the court explained in *US v. $448,342.85, et al.*, 969 F.2d 474, 476 (7th Cir. 1992), "the presence of one illegal dollar in an account does not taint the rest—as if the dollar obtained from fraud were like a drop of ink falling into a glass of water."

We expect to have a discussion or discussions with the SEC in the near future regarding an appropriate carve-out from the asset freeze to accommodate Mr. Madsen's ongoing living expenses. Our understanding is that the Receiver will abide by any agreement made by the parties and has no interest in being included in any such discussions. If that is incorrect, please let us know and we will include you in the scheduling of any such call.

Similarly, if you disagree with the views we have expressed in this letter, please let us know when you are available to further meet and confer on any areas of disagreement prior to submitting any filing with the Court so that we do not unnecessarily burden the Court on matters that we, as counsel, should be able to amicably resolve. As always we appreciate your professionalism in this matter.

Sincerely,

/s/David A. O'Toole

cc: Geoff Winkler
Celiza P. Bragança
Cami M. Perkins
John J. Savage

EXHIBIT 6. Hendricks October 5, 2022 Letter

GT GreenbergTraurig

Kara B. Hendricks
Tel 702.792-3773
Fax 702.792.9002
hendricksk@gtlaw.com

October 5, 2022

VIA ELECTRONIC MAIL & FIRST CLASS MAIL

David O'Toole, Esq.
david@secdefenseattorney.com
Celiza P. Braganca, Esq.
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Cami Perkins, Esq.
cperkins@howardandhoward.com
John J. Savage, Esq.
jjs@h2law.com
HOWARD & HOWARD
3800 Howard Hughes Parkway
Suite 1000
Las Vegas, Nevada 89169

Re: ***Securities and Exchange Commission v. Matthew Wade Beasley, et al.***
Case No. 2:22-cv-00612 ("SEC Action")
Subject: Funds provided to you by Defendant Richard R. Madsen

Counsel:

This correspondence will serve as a follow-up to my letter dated September 9, 2022 and will respond to and address concerns raised by your September 19, 2022 letter which did not accurately reflect our prior discussions.

As you are aware, on September 27, 2022, Judge Christina D. Silva issued her second order in relation to a law firm's request for the release of funds provided to counsel by a defendant in this matter (ECF No. 318). In so doing, Judge Silva clearly articulated that counsel for defendants must meet their burden in establishing and/or identifying the source of funds in question and that defendants have an obligation to demonstrate that the assets at issue are not tainted. Further, the order indicates that there is no exception for funds that were transferred to attorneys before the Receivership Order was entered. Accordingly, **demand is hereby made that funds paid to you and/or your firm and the Howard & Howard firm by Mr. Madsen be turned over to the Receiver no later than October 14, 2022.** To facilitate the same, enclosed herein is a copy of the Receiver's wire instructions.

Although we appreciate you providing additional information regarding the engagement letters that Mr. Madsen executed, we are not aware of any binding authority that would allow the funds provided by Mr. Madsen in what you characterize as a "fixed fee agreement" to be deemed anything but Receivership Property. Additionally, as referenced above, Judge Silva's recent order makes it clear that such funds are Receivership Funds, irrespective of when you contend the fees were "earned," even if they were paid to your firm prior to the court order. Further, your analysis and reliance on

United States v. $448,342.85 for the argument that "the presence of one illegal dollar in an account does not taint the rest—as if the dollar obtained from fraud were like a drop of ink falling into a glass of water" takes the case out of context and is inconsistent with Judge Silva's findings in this case. Indeed, *United States v. $448,342.85* does not even provide a holding that supports your position and instead demonstrates that the funds held by your firm are subject to the turnover provision. *See* 969 F.2d 474, 477 (7th Cir. 1992).

In *U.S. v. $448,342.85*, the Seventh Circuit considered whether the United States was entitled to three (3) accounts that were "involved" in a money laundering scheme in a forfeiture proceeding.[1] As you have done here, the defendants argued that the accounts contained funds that were not tied to the fraud, however, the defendants in that case provided eleven affidavits to support their position. *Id.* at 477. Despite this, the Seventh Circuit found defendants' position unavailing and ultimately found that the defendants had not met **their burden** of establishing that the funds in the subject accounts had not come from unlawful activity. *Id.* In other words, the Seventh Circuit decision (to the extent the provisions of 18 U.S.C. § 981 *et seq.* can be interpreted in this context) demonstrates that it is Mr. Madsen's burden, not the SEC or the Receiver, to demonstrate that the funds are untainted, which has not happened here.

The holding in *U.S. v. $448,342.85* falls squarely in line with the court's rulings in this case. Indeed, as referenced above, Judge Silva has issued two separate orders finding funds deposited from defendants into law firm accounts are Receivership Property. Notably, in the order entered last week the Court found:

> "Any challenges to the origin of any frozen assets should be directed to the Receiver, and any unresolved challenges should be raised with the court. There is no exception included for funds transferred to [] attorneys before the receivership order was entered. **Nor is there an exception to the defendant's obligation to demonstrate that the assets at issue are not tainted.**"

ECF No. 318 at p. 8 (emphasis added).

Thus, contrary to the position taken in your correspondence, there is actually an absence of authority supporting the notion that the funds paid to your firm by Mr. Madsen are not Receivership Property. Based on available information it appears the funds provided by

[1] The money laundering scheme in *U.S. v. $448,342.85* involved a scheme in which cheap, poorly made speakers were sold to unsuspecting individuals by way of fraud. The illegally obtained funds were then deposited into local accounts and "pooled for transfer to other accounts, often via cashiers' check of less than $10,000." Ultimately, the Seventh Circuit sided with the Government, finding the subject accounts were subject to forfeit. "Abandoning one deceitful device among a large repertory does not make the operation lawful. Drawing all inference in favor of the persons opposing the motion for summary judgment does nothing to help these claimants. Details of tracing are accordingly irrelevant; the United States is entitled to the entire balances." *United States v. $ 448,342.85*, 969 F.2d 474, 477 (7th Cir. 1992)

Mr. Madsen to the law firms referenced above were comingled with tainted funds and thus your suggestion that Mr. Madsen earned substantial amounts that are not connected to the allegations in the Amended Complaint is irrelevant.

In short, the funds paid to your firm by Mr. Madsen are Receivership Funds and are therefore required to be turned over to the Receiver. Any position to the contrary directly contradicts the repeated findings of the Court and the terms of the Receivership Order. Indeed, the Court emphasized this fact by stating:

> "[f]ull compliance with the receivership order is required. Lack of compliance with the court's orders frustrates the purpose of equity receiverships, which are designed 'to promote orderly and efficient administration of the estate by the district court for the benefit of the creditors.'"

ECF No. 318 at p. 8. Accordingly, if the funds provided to your firm by Mr. Madsen are not turned over to the Receiver on or before October 14, 2022, we will have no choice but to file a motion to compel and we will seek to recover any attorney fees associated with the same.

Lastly, we are compelled to address several misstatements in your September 19th letter. First, the Receiver is a necessary party to any agreement reached with the SEC regarding Mr. Madsen's living expenses. As such, we expect to be advised if you reach an agreement with the SEC for living expenses and the Receiver will need to review and approve the stipulation before it is filed. Second, the statement in your letter referencing purported statements by me regarding assets of other defendants is wholly inaccurate and was not stated. The Receiver's investigation is ongoing as is a forensic accounting that will facilitate the tracing of funds. Third, your letter omitted the fact that we discussed your firm filing a motion with the Court if you disagreed with the Receiver's position regarding attorney fees and I referred you to the existing briefing on the matter. You have taken those discussions out of context.

Best regards,
GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks
Kara B. Hendricks, Esq.

KBH:eeg
Enclosure (as stated)

cc: Geoff Winkler

Incoming Wire Transfer

Please provide this form to the party initiating the wire.

Date: 06/06/2022

Beneficiary Information

Bank Name & Address:

East West Bank

Speciality Deposit Services

135 N. Los Robles Ave. 6 FL.

Pasadena , California 91101

ABA Number (For Domestic Wires)

322070381

SWIFT (For Foregin Wires)

EWBKUS66XXX

NOTE TO SENDER

Please ensure that ABA number listed on this form is used for this wire transfer request.

You may visit the Federal Reserve website to validate

https://www.frbservices.org/EPaymentsDirectory/searchFedwire.html

Account Number: 9701650050

Account Name: J&J Consulting Services, Inc.

Case Number: 22-CV-00612

Reference: Geoff Winkler #570270

Contact Information

Contact Name Geoff Winkler

Contact Phone 855 800-0100