

1 TRACY S. COMBS (California Bar No. 298664)
Email: combst@sec.gov
2 CASEY R. FRONK (Illinois Bar No. 6296535)
Email: fronkc@sec.gov
3 SECURITIES AND EXCHANGE COMMISSION
351 South West Temple, Suite 6.100
4 Salt Lake City, Utah 84101
Tel: (801) 524-5796
5 Fax: (801) 524-3558

6 **UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF NEVADA**

8 SECURITIES AND EXCHANGE
9 COMMISSION,

10 Plaintiff,

v.

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

19 Defendants; and

20 THE JUDD IRREVOCABLE TRUST; PAJ
CONSULTING INC; BJ HOLDINGS LLC;
21 STIRLING CONSULTING, L.L.C.; CJ
INVESTMENTS, LLC; JL2 INVESTMENTS,
22 LLC; ROCKING HORSE PROPERTIES,
LLC; TRIPLE THREAT BASKETBALL,
23 LLC; ACAC LLC; ANTHONY MICHAEL
ALBERTO, JR.; and MONTY CREW LLC;

24 Relief Defendants.

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

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
RESPONSE TO DEFENDANT
RICHARD R. MADSEN'S MOTION
TO CLARIFY ASSET FREEZE**

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

1 Plaintiff Securities and Exchange Commission (“SEC”) opposes Defendant Richard R.
2 Madsen’s (“Madsen’s”) Motion to Clarify Asset Freeze and to Allow Attorneys to Retain Earned
3 Fees (Dkt. No. 332, herein, the “Motion” or “Mot.”). The SEC joins the arguments presented by
4 the Receiver’s opposition to the Motion (*see* Dkt. No. 338) and reiterates the points presented in
5 the SEC’s responses to similar motions for attorneys’ fees by Defendant Jeffrey Judd, non-party
6 Oberheiden P.C., Defendant Christopher Humphries, and non-party Kamille Dean (*see* Dkt. Nos.
7 180, 198, 254, 278). Like the prior parties and non-parties requesting release of attorney’s fees,
8 Madsen does not provide sufficient evidence that the funds at issue are untainted.

9 Madsen makes two primary arguments to distinguish his fees request. In particular,
10 Madsen contends that because he did not personally engage in fraud, and because he provided
11 “consideration” for the funds he received from the fraudulent scheme, his attorneys’ fees request
12 should be evaluated under a less stringent standard. Neither argument has any legal basis.

13 **I. THERE IS NO EXCEPTION TO ASSET FREEZE AND RECEIVERSHIP**
14 **ORDERS FOR “NON-FRAUDULENT” MISCONDUCT.**

15 First, there is no basis for Madsen’s contention that his attorneys’ fees should be
16 evaluated differently than other Defendants because the SEC does not charge him with violations
17 of the anti-fraud provisions of the federal securities laws. Madsen argues that because the SEC
18 does not allege he engaged in fraud, he should not be required to prove that the funds he seeks to
19 use for attorneys’ fees are untainted. (*See* Dkt. No. 332, Mot. at 10–12.) That is not the law.

20 Madsen asserts that the cases the SEC cites in other briefs involved fraudulent conduct,
21 but that is not a distinguishing factor because, as Madsen does not contest, this case equally
22 involves a massive, fraudulent scheme. Madsen may not have knowingly made false statements
23 to investors, but he does not dispute that he distributed to investors false and misleading
24 documentation regarding the basis for Defendants’ investment scheme; that Defendant Beasley
25 invented the purported tort plaintiffs and their attorneys whose settlements were supposedly
26 funding the scheme; and that the money collected from investors was not being loaned or
27 otherwise provided to the purported tort plaintiffs but instead was being used to make Ponzi-type

1 payments and fund Defendants' lavish lifestyles. That is, Madsen does not and cannot dispute
2 any and all investor funds in his possession are traceable to fraud.

3 Madsen has no right to retain for his own defense investor funds obtained by fraud—
4 regardless whether he is personally charged with violating the anti-fraud provisions of the
5 securities laws. Madsen cites no case setting forth his proposed less stringent standard for “non-
6 fraud” defendants, nor is there such a standard. Instead, as here, once the SEC makes a
7 preliminary showing that a defendant's assets could be traced to fraud, a defendant is required to
8 show the assets are ultimately untainted. *SEC v. Trabulse*, 526 F. Supp. 2d 1008, 1018 (N.D.
9 Cal. 2007). Madsen makes no such showing.

10 **II. PROVIDING “CONSIDERATION” FOR ILL-GOTTEN GAINS DOES NOT**
11 **EXEMPT THOSE GAINS FROM AN ASSET FREEZE.**

12 Likewise, there is no basis for Madsen's contention that he should be entitled to unfreeze
13 funds for which he provided “consideration.” Recognizing that there is longstanding, well-
14 reasoned caselaw holding that a court may freeze even the assets of a relief defendant, who is not
15 charged with wrongdoing, where that defendant “(1) has received ill-gotten funds; and (2) does
16 not have a legitimate claim to those funds,” *see Smith v. SEC*, 653 F.3d 121, 128 (2d Cir. 2011),
17 Madsen claims that such caselaw does not apply because “Mr. Madsen provided consideration
18 for the commissions he received.” (Dkt. No. 332, Mot. at 10 & n.1.) But the question is not
19 whether the recipient has provided “consideration,” but whether the recipient has “*a legitimate*
20 *claim to those funds.*” *Id.* (emphasis added).

21 Madsen has no legitimate claim to the payments he received for his efforts soliciting new
22 investors into the scheme—exactly the opposite: as alleged, each and every “commission”
23 Madsen received was the direct result of Madsen's own violations of the federal securities laws.
24 (See Dkt. No. 118, Am. Compl. ¶¶ 75–78, 89, 99–100.) Madsen provides no evidence to the
25 contrary: no evidence that he provided any services to Defendants' scheme other than his illegal
26 solicitation of additional investors; no evidence that any payment he received from Judd,
27 Beasley, or any other Defendant was comprised of anything other than ill-gotten investor funds;

1 and no evidence that he has any entitlement to retain the millions of dollars in investor funds he
2 received as part of the fraudulent scheme. In this regard, Madsen is no differently situated than
3 Judd, Beasley, or Humphries—each of whom could likewise claim they provided
4 “consideration” (in the form of administrative, marketing, or solicitation services) for the funds
5 they received. Put simply, violating the federal securities laws on behalf of a fraudulent
6 investment scheme does not give Madsen any legitimate claim to funds he was paid from the
7 scheme, regardless how he characterizes those payments.

8 **CONCLUSION**

9 For the foregoing reasons, the SEC respectfully requests that the Court deny Madsen’s
10 motion to exempt from the asset freeze and receivership orders funds paid to his attorneys.

11 DATED this 31st day of October, 2022.

12
13 /s/ Casey R. Fronk
14 Tracy S. Combs
15 Casey R. Fronk
16 Attorney for Plaintiff
17 SECURITIES AND EXCHANGE COMMISSION
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2022, I caused the foregoing
**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S RESPONSE TO
DEFENDANT RICHARD R. MADSEN’S MOTION TO CLARIFY ASSET FREEZE** to be
served to all parties entitled to service through the Court’s ECF system and to the following
individuals by the means indicated below:

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

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

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

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

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

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

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

Jason A. Jenne
[REDACTED]

1 Las Vegas, NV [REDACTED]

2 Warren Rosegreen
[REDACTED]

3 Henderson, NV [REDACTED]

4
5 ***By email to the following:***

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

7
8 Dyke Huish
9 Huish Law Firm
10 huishlaw@mac.com
11 *Counsel for Roland Tanner*

12 */s/ Casey R. Fronk*
13 Casey R. Fronk