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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF NEVADA**

16 SECURITIES AND EXCHANGE COMMISSION,

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

17 Plaintiff,

18 vs.

**RECEIVER’S MOTION FOR ORDER
AUTHORIZING RECEIVER TO
EMPLOY LITIGATION SUPPORT
CONSULTANT**

19 MATTHEW WADE BEASLEY *et al.*

20 Defendants,

21 THE JUDD IRREVOCABLE TRUST *et al.*

22 Relief Defendants.
23

24 Geoff Winkler, the Court-appointed Receiver (the “Receiver”) submits this Motion for Order
25 Authorizing Receiver to Employ Litigation Support Consultant (the “Motion”).

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27 ///

28 ///

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1 The Motion is based upon the attached Memorandum of Points and Authorities, the
2 Declaration of Joseph Friend attached as **Exhibit 1**, the pleadings and papers on file, and any oral
3 argument the Court may hear in connection with the Motion.

4 DATED this 31st day of January, 2023.

5 **GREENBERG TRAUERIG, LLP**

6 By: /s/ Kyle A. Ewing

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

29 **MEMORANDUM OF POINTS AND AUTHORITIES**

30 **I. INTRODUCTION**

31 The Court appointed Geoff Winkler of American Fiduciary Services LLC to serve as Receiver
32 in this matter. See ECF No. 88. To assist in the performance of his duties under the Appointment
33 Order, the Receiver seeks to employ Aitheras, LLC (“Aitheras”), pursuant to the Consulting
34 Agreement dated January 2023, (the “Consulting Agreement”), attached as **Exhibit A** to the
35 Declaration of Joseph Friend attached as Exhibit 1, to provide litigation support including, but not

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1 limited to, eDiscovery and related data acquisition, storage, and evaluation; data analytics; case and
2 document management; data and cloud hosting; as well scanning and coding.

3 Considering the breadth of information relevant to this Receivership and the voluminous
4 documents containing that information, as well as the various proceedings and ancillary cases in
5 which the Receiver may use and/or rely on such documents, retention of a litigation support consultant
6 such as Aitheras is in the best interest of the Receivership. The terms and compensation agreed upon
7 for the services to be provided by Aitheras provides a substantial saving over other companies offering
8 similar services. It also provides a level of expertise, efficiency, and cost reduction compared to such
9 tasks being performed by the Receiver, his counsel, or their respective support staff. The employment
10 of Aitheras will thus not only assist the Receiver in carrying out his duties but will mitigate the
11 expense of document processing, handling, review, and production throughout the course of the
12 Receivership.

13 As explained in further detail below, the Receiver undertook a significant effort to identify a
14 litigation consultant and suite of services that would provide appropriate and necessary support to the
15 Receivership at a reasonable cost. That result of that effort was the selection and engagement of
16 Aitheras. Accordingly, the Receiver respectfully requests an order authorizing him to employ
17 Aitheras as a litigation support consultant, pursuant to the Consulting Agreement.

18 **II. RELEVANT BACKGROUND**

19 The Securities and Exchange Commission (“SEC”) filed the complaint in this action on
20 April 12, 2022.¹ On April 13, 2022, the SEC filed an *Ex Parte* Motion for Entry of Temporary
21 Restraining Order and Orders (1) freezing assets; (2) requiring accountings; (3) prohibiting the
22 destruction of documents; (4) granting expedited discovery; (5) order to show cause re: preliminary
23 injunction by the SEC.² On April 21, 2022, this Court issued an order entering the requested
24 preliminary injunction, asset freeze and other equitable relief.³ On May 3, 2022 the SEC filed a
25 Motion to Appoint Receiver and Related Relief requesting Winkler be appointed as the Receiver of
26

27 ¹ (See ECF No. 1).

28 ² (See ECF No. 2).

³ (See ECF No. 56).

1 the Receivership Estate.⁴ On June 3, 2022, this Court granted the SEC’s Motion for Receiver and
2 issued the Appointment Order establishing the terms of Mr. Winkler’s appointment as the Receiver
3 in this case.⁵

4 **III. LEGAL ARGUMENT**

5 **A. Applicable Law and Relevant Terms of Appointment Order**

6 “The power of a district court to impose a receivership ... derives from the inherent power of
7 a court of equity to fashion effective relief.”⁶ The “primary purpose of equity receiverships is to
8 promote orderly and efficient administration of the estate by the district court for the benefit of
9 creditors.”⁷ To accomplish the orderly and efficient administration of a receivership estate, the
10 district court holds broad discretion in determining the appropriate steps to be taken, which would
11 include the receiver’s ability to employ professionals and other persons.

12 “A district court’s power to supervise an equity receivership and to
13 determine the appropriate action to be taken in the administration of
14 the receivership is extremely broad. The district court has broad
15 powers and wide discretion to determine the appropriate relief in an
16 equity receivership. The basis for this broad deference to the district
17 court’s supervisory role in equity receiverships arises out of the fact
that most receiverships involve multiple parties and complex
transactions.”⁸

18 Based on this framework, the Ninth Circuit will “generally uphold reasonable procedures instituted
19 by the district court that serve this purpose.”⁹

20 Accordingly, this Court holds the inherent power to permit the Receiver to employ persons,
21 including a Litigation Support Consultant, to assist him in carrying out his duties and responsibilities.
22 Paragraph 7(F) of the Appointment Order reflects that authority:

23 _____
24 ⁴ (See ECF No. 67).

25 ⁵ (See ECF No. 88).

26 ⁶ *S.E.C. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980).

27 ⁷ *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986).

28 ⁸ *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (internal citations omitted).

⁹ *Hardy*, 803 F.2d at 1038; see also *CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999).

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1 “engage and **employ persons in his discretion**, subject to approval of
2 the Court, to assist him in carrying out his duties and responsibilities
3 hereunder, including, but not limited to, accountants, attorneys,
4 securities traders, registered representative, financial or business
5 advisers, liquidating agents, real estate agents, forensic experts,
6 brokers, traders or auctioneers.”¹⁰

6 The Appointment Order expressly requires the Receiver, in connection with his duty to
7 marshal and preserve the assets of the Receivership Estate, to “take custody, control and possession
8 of all Receivership Property *and records* relevant thereto.”¹¹ Indeed, from the outset of this matter,
9 Defendants have been directed to turn over all documents related to the Ponzi-scheme at issue.
10 Specifically, Paragraph 8 of the Appointment Order provides:

11 The Individual Receivership Defendants and the past and/or present
12 officers, directors, agents, managers, general and limited partners,
13 trustees, attorneys, accountants and employees of the J&J
14 Receivership Defendants, are hereby ordered and directed to preserve
15 and turn over to the Receiver forthwith all paper and electronic
16 information of, and/or relating to, the Receivership Defendants and/or
17 all Receivership Property; such information shall include but not be
18 limited to books, records, documents, accounts and all other
19 instruments and papers.¹²

18 The Receiver has already received copious electronic data. This electronic data reflects the
19 banking, financial activities and communications that will serve as the foundation for the Receiver’s
20 forensic accounting as well as his work to recover assets for the benefit of the investor victims.

21 The Receiver is also required, in connection with his duties regarding pursuing claims of the
22 Receivership Estate under Section IX of the Appointment Order, to investigate “the manner in which
23 the financial and business affairs of the Receivership Defendants were conducted” and report to the
24 Court his findings and recommendations.¹³ This work will require the Receiver to recover, evaluate

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26 ¹⁰ (ECF No. 88 at ¶ 7(F)) (emphasis added).

27 ¹¹ (ECF No. 88 at ¶ 7(B)) (emphasis added).

28 ¹² (ECF No. 88 at ¶ 8).

¹³ (See ECF No. 88, ¶¶ 42-43).

1 and retain large amounts of data. Indeed, the Receiver has already begun requesting and receiving,
 2 both informally and by subpoena, large volumes of documents from financial institutions and others.¹⁴
 3 To discharge his forensic accounting duties, the Receiver is required to process, analyze, and retain
 4 these documents. Thus, a primary responsibility of the Receiver is the discovery, evaluation, and
 5 retention of documents relevant to both (i) the allegations regarding the Ponzi scheme Defendants
 6 allegedly ran and (ii) the Receiver's responsibility to marshal and preserve assets properly belonging
 7 to the Receivership Estate. The Receiver anticipates he will soon be pursuing and/or defending the
 8 litigation contemplated in Section IX of the Appointment Order.¹⁵ The Receiver's counsel will likely
 9 require use of both eDiscovery platforms and digital analysis tools, potentially including cost-saving
 10 technology assisted review capabilities offered by Aitheras.

11 **B. Grounds for Employment of Litigation Support and eDiscovery Consultant.**

12 For all of these reasons, the effective and efficient storage of and access to such documents is
 13 critical to the success of the Receivership. Approval of persons or entities, including a litigation
 14 support consultant, is a matter properly within this Court's power to promote the orderly and efficient
 15 administration of the receivership estate for the benefit of the creditors.¹⁶ Courts in this District and
 16 elsewhere regularly approve of reimbursement for costs for the use of eDiscovery consultants and
 17 experts in complex lawsuits, including receiverships.¹⁷

18 As described above, the Appointment Order here imposes on the Receiver an obligation to
 19 locate and maintain documents relevant to the claims and assets over which this Court is exercising
 20

21 ¹⁴ (See ECF No. 343, Section II.C, p. 5 (describing Receiver's forensic accounting activities); see
 22 also ECF Nos. 425, 435, 437 (stipulated protective orders governing forthcoming productions of
 documents by third parties).

23 ¹⁵ (See *id.*)

24 ¹⁶ See e.g. *SEC v. Capital Cove Bancorp LLC*, No. 8:15-cv-00980-JLS-JCX, 2016 U.S. Dist. LEXIS
 203861, at *3 (C.D. Cal. Aug. 31, 2016) (order granting Receiver's Motion for Approval of Litigation
 Support Fees).

25 ¹⁷ See, e.g., *Small v. Univ. Med. Ctr.*, No. 2:13-cv-0298-APG-PAL, 2018 U.S. Dist. LEXIS 189103,
 26 at *51 (D. Nev. Nov. 5, 2018) (awarding nearly \$200,000 in costs incurred by ESI experts for "data
 27 hosting and access to databases[,] ... project management, coordinating technical support with
 28 plaintiffs' counsel and providing training to plaintiffs' counsel, creation of files at the requests of
 counsel, document review and loading of documents produced by [defendant] ..."); *SEC v. Capital
 Cove Bancorp LLC*, No. 8:15-cv-00980-JLS-JCX, 2017 U.S. Dist. LEXIS 235480, at *7-8 (C.D. Cal.
 Mar. 16, 2017) (authorizing receiver's payment of costs for "data hosting").

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1 jurisdiction, which are likely to be comprised of hundreds – if not thousands – of gigabytes of
2 electronic data. Stated another way, the Receiver is – and will remain for the pendency of this
3 Receivership – responsible for organizing, storing, and preserving an incredible amount of
4 electronically stored information (“ESI”) and therefore requires the assistance of an outside vendor
5 and consultant who can provide storage, consulting, and support with regard to the Receiver’s ESI
6 responsibilities. The employment of Aitheras will provide a cost-effective approach to storing
7 documents and information, as well as an efficient platform for the Receiver and his counsel to
8 evaluate and handle the information contained in the documents as appropriate and necessary.

9 The Consulting Agreement provides that Aitheras will provide, upon the Receiver’s request,
10 “litigation support services, including but not limited to eDiscovery, data analytics, case and
11 document management, data and cloud hosting, scanning and coding.”¹⁸ In the first instance, Aitheras
12 will facilitate the hosting of all of the bank records produced by Wells Fargo, US Bank and the other
13 financial institutions who have turned over our bank records to the Receiver.

14 Engaging Aitheras will allow the Receiver to cost-effectively process, store, and review
15 information, in one secure location, with appropriate access provided to the Receiver’s staff as well
16 as his employed professionals, such as attorneys, expert witnesses/consultants, tax professionals, and
17 others. This will avoid unnecessary duplication, hosting, and transmission of documents between the
18 Receiver, his staff, and his professionals. The Receiver also anticipates receiving a large volume of
19 sensitive and/or confidential information which will need to be maintained and/or transmitted to
20 appropriate outside parties.¹⁹ The Receiver investigated and concluded that Aitheras provides
21 appropriate data security for handling such sensitive data, including any necessary transmission of
22 that data.

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27 ¹⁸ **Ex. 1**, Declaration of Joseph Friend, ¶ 7.
28 ¹⁹ (*See, e.g.*, ECF No. 425, pp. 5-8) (stipulated protective order for information produced to Receiver
by Wells Fargo requiring maintenance of confidentiality requirements by Receiver’s attorneys,
consultants, and others).

C. Selection of Aitheras and Proposed Compensation.

The Receiver has therefore determined, in his reasonable business judgment, that the employment of Aitheras is necessary given the volume, complexity, and criticality of obtaining, processing, reviewing, analyzing, and preserving ESI in this Receivership. The Receiver selected Aitheras based on its skill and experience in data hosting and processing, eDiscovery and related data analytics, as well as its expertise in addressing privilege/privacy issues related to discovery, forensic investigations, and general litigation support.²⁰ Aitheras offers a full range of services and can customize these services to the needs of a particular case, including as needed by the Receiver in ancillary lawsuits pursued or defended by the Receiver. This flexibility from a single vendor maximizes efficiency and avoids productivity loss and expense associated with employing and onboarding different vendors for different aspects of the Receiver’s work.

The Receiver anticipates that the eDiscovery and related litigation support costs in this Receivership will be significant. Accordingly, the Receiver considered several firms capable of providing the broad range of electronic and eDiscovery support offered by Aitheras before selecting Aitheras for employment. In addition, the Receiver specifically sought out a vendor, like Aitheras, who could offer relatively inexpensive “cloud” hosting of the Receiver’s documents. This allows the Receiver and his professionals to host only those documents necessary for specific litigation or Receivership needs on more expensive platforms designed for eDiscovery (such as “Relativity,” “iConnect,” or “CS Disco”), while preserving the overall set of records on an inexpensive ESI platform. In addition to Aitheras’s qualification and expertise, the Receiver selected Aitheras over other similar vendors considered by the Receiver and/or his counsel because of the competitive prices Aitheras offered for the full suite of services.

Aitheras has Agreed to the following rates for their services, which are both (i) discounted from Aitheras’s standard rates²¹ and (ii) competitive with or lower than prevailing rates in the District
///

²⁰ Ex. 1, Declaration of Joseph Friend, ¶ 4.
²¹ Ex. 1, Declaration of Joseph Friend, ¶ 8.

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1 of Nevada for comparable eDiscovery and litigation support services in the undersigned counsel's
 2 experience²²:

| ITEM | UNIT | RATE |
|---|----------|--------------------------|
| Forensic Data Collection | | |
| Data Acquisition- Web-Based Email/Cloud Storage Collection | Hour | \$154.00 |
| Data Acquisition- Laptop, Desktop, Server, Mobile Device Collection | Device | \$440.00 |
| Data Acquisition- On Location | Hour | \$220.00 |
| Social Media Preservation | Hour | \$154.00 |
| E-Discovery Technician Hourlies | Hour | \$154.00 |
| Forensic Imaging & Analysis | | |
| Forensic Analysis, Consultation, Reporting | Hour | \$260.00 |
| Deposition/Expert Testimony | Hour | \$352.00 |
| E-Discovery Technician Hourlies | Hour | \$154.00 |
| Data Processing | | |
| Pre-processing, Keyword filtering, De-duplication | GB | \$ 13.00 |
| Native File Processing, OCR, Load File Creation | GB | \$ 44.00 |
| PDF/TIFF Imaging, Bate Stamping, Load File Creation | GB | \$167.00 |
| E-Discovery Technician | Hour | \$154.00 |
| Document Repository | | |
| Secure Cloud Document Storage- 1 Terabyte Storage | Month | \$220.00 |
| User License- Up to 50 Users | | \$ 0.00 |
| Document Scanning | | |
| B/W Scanning | Page | \$0.09 - .18 per page |
| Color Scanning | Page | \$0.25 - .40 per page |
| Oversize Scanning | Sheet | \$1.00-4.00 per page |
| OCR | Included | \$ 0.00 |

23
 24 ²² The rates agreed upon by the Receiver and Aitheras are also within the range of rates determined
 25 reasonable by other district courts in the Ninth Circuit for similar litigation support tasks. *See e.g.*,
 26 *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG (RAO), 2022 U.S. Dist. LEXIS 210946, at *29 (C.D.
 27 Cal. Nov. 21, 2022) (rates of \$150 to \$208 reasonable for litigation support); *SAS v. Sawabeh Info.*
 28 *Servs. Co.*, No. CV 11-4147 MMM MAN, 2015 U.S. Dist. LEXIS 186838 *71-74, 2015 WL
 12763541, at *22-23 (C.D. Cal. June 22, 2015) (approving hourly rate of \$150 to \$275 for support
 staff); *Mansfield v. Sw. Airlines Co.*, No. 13CV2337 DMS (KSC), 2015 U.S. Dist. LEXIS 197150,
 2015 WL 13651284, at *5 (S.D. Cal. Apr. 21, 2015) (\$146 average rate reasonable for litigation
 support staff); *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 591 (N.D. Cal. 2015) (reasonable rate
 for litigation support staff from \$150 to \$240)).

| ITEM | UNIT | RATE |
|--------------------------------|----------|----------|
| Bate Stamping | Included | \$ 0.00 |
| eDiscovery Data Hosting | | |
| Cloud Hosting (>1 TB) | GB | \$ 8.00 |
| Cloud Hosting (<1 TB) | GB | \$ 12.00 |
| User License | include | \$ 0.00 |
| eDiscovery Technician | Hour | \$175.00 |
| Analytic / AI | GB | \$ 10.00 |

Certain services listed above, such as user licenses for access to hosted data, text recognition (or “OCR”), and Bates stamping, were priced by Aitheras at no cost (\$0.00), even though litigation support consultants – including Aitheras – often charge a per user or per page fee for these services.²³ Aitheras has agreed to provide the Receiver with these services at no further charge, as well as the discounts for other services reflected in the table above, to reduce the cost of the Receiver’s use of Aitheras’s services in this matter.²⁴ Furthermore, Aitheras plans to use the lowest-billing eDiscovery or other technician with the requisite skills, experience, and availability for a given task.²⁵ As an additional safeguard, the Consulting Agreement provides the Receiver the option to request services in written requests and require Aitheras to provide the Receiver with a budget for the Receiver’s approval prior to commencing work. Such budgets will identify particular professional(s) to be assigned by Aitheras and the corresponding rate(s) to be charged for the work from the list above.²⁶

As a term of engagement, Aitheras has evaluated any potential conflicts of interests and affirmatively determined that it could perform the work requested free of any conflict of interest.²⁷ In the interest of full disclosure, however, Aitheras disclosed to the Receiver that the United States Securities and Exchange Commission has previously been a client of Aitheras for services unrelated to this case. The Receiver is not aware of any other connection between Aitheras and any party or

///

²³ Ex. 1, Declaration of Joseph Friend, ¶ 9.

²⁴ *Id.*

²⁵ *Id.* at ¶ 10.

²⁶ *Id.* at Ex. A, pp. 1-2 ¶ 2.

²⁷ Ex. 1, Declaration of Joseph Friend, ¶ 13.

1 professional associated with this case.²⁸ Further, Aitheras understands and agrees that payment of
2 its fees and reimbursement of its expenses will be made only upon the Court granting an application
3 for payment of such fees and reimbursement of such expenses, in accordance with the terms of the
4 Appointment Order and any further orders of the Court.²⁹

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Receiver respectfully requests this Court enter an Order authorizing
7 the Receiver to employ Aitheras, LLC, pursuant to the Consulting Agreement.

8 DATED this 31st day of January, 2023.

9 **GREENBERG TRAUERIG, LLP**

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27 _____
28 ²⁸ *Id.* at ¶ 14.

²⁹ *Id.* at ¶ 11.

CERTIFICATE OF SERVICE

I hereby certify that on **January 31, 2023**, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive such service.

/s/ Evelyn Escobar-Gaddi
An employee of GREENBERG TRAUERIG, LLP

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1 **SECURITIES & EXCHANGE COMMISSION v. MATTHEW WADE BEASLEY,**
2 USDC CASE NO. 2:22-CV-00612-CDS-EJY

3

| EXHIBIT | DESCRIPTION | |
|-----------|------------------------------|----------------------|
| Exhibit 1 | Declaration of Joseph Friend | |
| | Exhibit A | Consulting Agreement |

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EXHIBIT 1

EXHIBIT 1

Declaration of Joseph Friend

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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF NEVADA**

16 SECURITIES AND EXCHANGE COMMISSION,

17 Plaintiff,

18 vs.

19 MATTHEW WADE BEASLEY *et al.*

20 Defendants,

21 THE JUDD IRREVOCABLE TRUST *et al.*

22 Relief Defendants.
23

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

**DECLARATION OF JOSEPH FRIEND
IN SUPPORT OF RECEIVER’S
MOTION FOR ORDER
AUTHORIZING RECEIVER TO
EMPLOY LITIGATION SUPPORT
CONSULTANT**

24 I, Joseph Friend, declare as follows:

25 1. I have personal knowledge of the following facts and am competent to testify to them
26 if necessary.

27 2. I make this declaration in support of the Court-appointed Receiver’s Motion for Order
28 Authorizing Receiver to Employ Litigation Support Consultant (the “Motion”) in the above-captioned

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 Facsimile: (702) 792-9002

1 lawsuit.

2 3. I am a partner at Aitheras, LLC (“Aitheras”).

3 4. Aitheras is an innovative information technology (“IT”) consulting firm which has
 4 delivered timely and cost-effective solutions to federal, state, and commercial clients since 2002. Our
 5 clients have entrusted us with critical IT projects, relying on our services and expertise in data
 6 analytics, cloud computing services, IT engineering and application development, records and data
 7 management, litigation support, and cyber security.

8 5. As an accomplished technology solution provider, we prioritize understanding the
 9 challenges that our clients face, including those typically encountered in receivership litigation like
 10 budgetary, time, or resource-based constraints, and we design custom solutions to find a cost- and
 11 time-efficient solution for each project or activity.

12 6. On January 19, 2023, the Receiver executed a Consulting Agreement outlining the
 13 scope and terms of services Aitheras proposes to provide in this case. A true and correct copy of
 14 which is attached here as **Exhibit A**.

15 7. Under the terms of the Consulting Agreement, and subject to approval from the Court,
 16 Aitheras will assist the Receiver by providing litigation support including, among other things, (a)
 17 eDiscovery and other support related to the acquisition, storage, and/or evaluation of electronically
 18 stored information (“ESI”); (b) related data analytics; (c) case and document management; (d) data
 19 and cloud hosting; (e) large volume scanning/printing; and (f) forensic data investigations.

20 8. Aitheras has agreed to provide its services at the following hourly rates (for services
 21 rendered by technicians), flat rates (for data acquisition on a device-by-device basis), per page rates
 22 (for bulk scanning or printing), and/or monthly rates (for data hosting on a per gigabyte basis), which
 23 are discounted from Aitheras’s standard rates:

| Item | Unit | Rate |
|--|--------|-----------|
| Forensic Data Collection | | |
| Data Acquisition- Web-Based Email/Cloud Storage Collection | Hour | \$ 154.00 |
| Data Acquisition- Laptop, Desktop, Server, Mobile Device | Device | \$ 440.00 |

| | | | |
|----|---|----------|---------------------|
| 1 | Collection | | |
| 2 | Data Acquisition- On Location | Hour | \$ 220.00 |
| 3 | Social Media Preservation | Hour | \$ 154.00 |
| 4 | E-Discovery Technician Hourlies | Hour | \$ 154.00 |
| 5 | Forensic Imaging & Analysis | | |
| 6 | Forensic Analysis, Consultation, Reporting | Hour | \$ 260.00 |
| 7 | Deposition/Expert Testimony | Hour | \$ 352.00 |
| 8 | E-Discovery Technician Hourlies | Hour | \$ 154.00 |
| 9 | Data Processing | | |
| 10 | Pre-processing, Keyword filtering, De-duplication | GB | \$ 13.00 |
| 11 | Native File Processing, OCR, Load File Creation | GB | \$ 44.00 |
| 12 | PDF/TIFF Imaging, Bate Stamping, Load File Creation | GB | \$ 167.00 |
| 13 | E-Discovery Technician | Hour | \$ 154.00 |
| 14 | Document Repository | | |
| 15 | Secure Cloud Document Storage- 1 Terabyte Storage | Month | \$ 220.00 |
| 16 | User License- Up to 50 Users | | \$ 0.00 |
| 17 | Document Scanning | | |
| 18 | B/W Scanning | Page | \$.09-.18 per page |
| 19 | Color Scanning | Page | \$.25-.40 per page |
| 20 | Oversize Scanning | Sheet | \$ 1-4 per page |
| 21 | OCR | Included | \$ 0.00 |
| 22 | Bate Stamping | Included | \$ 0.00 |
| 23 | eDiscovery Data Hosting | | |
| 24 | Cloud Hosting (>1 TB) | GB | \$ 8 |
| 25 | Cloud Hosting (<1 TB) | GB | \$ 12 |
| 26 | User License | include | \$ 0 |
| 27 | eDiscovery Technician | Hour | \$ 175 |
| 28 | | | |

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Suite 600
Las Vegas, Nevada 89135
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| | | |
|---------------|----|-------|
| Analytic / AI | GB | \$ 10 |
|---------------|----|-------|

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9. Certain services listed above, such as user licenses for access to hosted data, text recognition (or OCR), and Bates stamping, were priced by Aitheras at no cost (\$0.00), even though litigation support consultants – including Aitheras in other matters – often charge a per user or per page fee for these services. Aitheras has agreed to provide these services to the Receiver with no further charge, as well as the discounted rates for the other services reflected in the table above, to reduce the cost of the Receiver’s use of Aitheras’s services in this matter.

10. Aitheras plans to use the lowest-billing eDiscovery or other technician with the requisite skills, experience, and availability for a given task based on the foregoing rates.

11. As a term of its engagement, Aitheras has agreed to accept compensation only as approved by this Court. Aitheras has acknowledged that its fees and expenses are governed by any orders entered by this Court with regard to professional compensation, including, but not limited to interim holdbacks on fees and expenses and that Aitheras will be paid only after approval by and authorization from this Court.

12. Aitheras will work with the Receiver to provide him the information and documentation necessary to ensure proper and timely filing of all fee applications.

13. As a term of engagement, Aitheras evaluated any potential conflicts of interests and affirmatively determined that it could perform the work requested free of any conflict of interest.

[Continued on the Following Page]

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Suite 600
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Telephone: (702) 792-3773
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EXHIBIT A

EXHIBIT A

Consulting Agreement

CONSULTING AGREEMENT

This Consulting Agreement (the “Agreement”) is entered into as of the 19th day of January, 2023 (hereinafter referred to as the “Effective Date”) by and between AITHERAS, LLC, a Delaware registered limited liability company, with a principal place of business at 51 Monroe Street Unit 506 Rockville, MD 20850 (“Consultant”), and Geoff Winkler, solely in his capacity as the court appointed Receiver for J&J Consulting Services, Inc., et al. in that action entitled *SEC v. Beasley et al.*, USDC D. Nev. Case No. 2:22-CV-00612 (“SEC Action”) and American Fiduciary Services, a Delaware registered limited liability partnership, with a principal place of business at 715 NW Hoyt #4364, Portland OR 97208 (collectively, “AFS”). Consultant and AFS are occasionally referred to herein from time to time individually as a “Party” and together as the “Parties”.

RECITALS

A. Consultant has substantial skill and experience in data hosting and processing, eDiscovery and related data analytics, privilege/privacy issues related to discovery and litigation support, forensic investigations and general litigation support (the “Subject Matter”); and

B. AFS desires Consultant, upon request, to provide certain services related to the Subject Matter, and Consultant desires to provide such services to AFS upon the terms and conditions herein.

AGREEMENT

1. During the term of this Agreement, Consultant agrees, upon the written request of AFS, to provide litigation support services, including but not limited to eDiscovery, data analytics, case and document management, data and cloud hosting, scanning and coding as reflected on the Schedule attached hereto as Exhibit 1 and incorporated herein by this reference (collectively, the “Services”). This Agreement will define the general terms and conditions applicable to Consultant performing the Services for AFS.

2. The types and timing of deliverables to be requested by AFS of Consultant will be set forth in written requests, based on the specific needs of each project on which Consultant is engaged. Consultant shall promptly provide AFS with a budget for requested Services prior to commencing work. Such budgets will include the identity of individual professional(s) to be assigned by Consultant to perform the Services

for each project hereunder. AFS reserves the right to direct removal and replacement of Consultant's personnel for any reason. If a replacement is requested, Consultant shall promptly replace the identified personnel at no cost to AFS. AFS shall have the right to evaluate each deliverable for a reasonable period of time after receipt, and for any deliverable, or portion thereof, found not to be acceptable, AFS shall provide Consultant with the details necessary for correction of such deliverable, and Consultant shall promptly perform the necessary modifications and resubmit the updated portions to AFS for acceptance.

3. Unless earlier terminated as provided hereunder, the term of this Agreement shall commence on the Effective Date and continue for a period of one year thereafter ("Termination Date"), when this Agreement will automatically expire. To the extent additional Services are requested of Consultant by AFS beyond the Termination Date, the Parties shall agree in writing to extend the term of this Agreement, and any additional Services would be performed in accordance with written agreements to be entered into by the Parties.

4. Payment for Services shall be made as follows:

(a) For Services performed and accepted by AFS, Consultant shall be compensated pursuant to the fee structure as specified on Exhibit 1. Consultant's fee specified on Exhibit 1 shall be the maximum of the total charges of Consultant that may be billed to AFS and Consultant agrees not to exceed such amount without prior written approval from AFS. In the event that travel is required by Consultant to perform the Services and upon written approval by AFS (e-mail shall suffice), such expenses shall be reimbursed by AFS, provided that any travel expenses which AFS has agreed to reimburse must be submitted with supporting documentation and receipts, and must be normal and reasonable in amount. No first class air fares or personal telephone calls on hotel bills or credit cards will be reimbursed by AFS. No multiple shall be applied to the hourly rate specified in Exhibit 1 for services performed on overtime, holidays, or weekends unless explicitly agreed otherwise in writing.

(b) Consultant shall submit an invoice to AFS for Services rendered, and any reimbursable expenses incurred, on a monthly basis commencing one month from the Effective Date. At a minimum, such invoice shall include the tasks performed and the time spent performing the tasks. All expenses or

vendor invoices submitted for reimbursement shall be properly itemized and supported by appropriate documentation. The fees and reimbursable expenses shall be due and payable to the Consultant within thirty (30) days of AFS's receipt of a satisfactory invoice and supporting documentation.

(c) The fees to be paid to Consultant hereunder shall be full consideration and compensation for Consultant's Services.

(d) Consultant agrees to look solely to the assets of the federal equity receivership established pursuant to the Order Appointing Receiver in the SEC Action [Doc No. 88], (the "Appointment Order") for payment of Consultant's Services. Neither AFS nor Geoff Winkler shall be liable to payment of any fees or costs incurred by Consultant or its vendors.

5. Termination.

(a) Either Party (as such the "Terminating Party") shall have the right to terminate this Agreement, or any project hereunder, in whole or in part, without payment of any fees or expenses to the other (as such the "Defaulting Party"), if:

(i) The Defaulting Party breaches or defaults under this Agreement and fails to cure such breach or default within ten (10) business days after receiving notice from the Terminating Party;

(ii) A Defaulting Party assigns this Agreement, or any obligation or right hereunder or thereunder, without the prior written permission of the other Party;

(iii) A Defaulting Party enters with a third party into an arrangement, agreement or understanding which, in the Terminating Party's sole discretion, results in the Terminating Party being unable to comply with applicable professional standards, applicable laws or regulations (e.g., a conflict of interest arises).

(b) Either Party shall have the right to terminate this Agreement, for its convenience, in whole or in part, at any time, three (3) days after giving the other Party written notice of termination. Upon receipt of such notice from AFS, Consultant shall:

(i) immediately stop work unless otherwise directed by AFS, in writing;

(ii) provide AFS with an invoice in accordance with Paragraph 3 (b) for Services performed and reimbursable expenses, if any, incurred up to the date of termination. Upon receiving a satisfactory invoice and supporting documentation, AFS shall pay Consultant any reimbursable expenses incurred, and as fees for the Services performed.

(c) The terms and conditions of paragraphs 5, 6, 7, 9, 10, 13, 15 and 16 shall survive any expiration or termination of this Agreement.

6. Confidential Information. Consultant acknowledges and agrees that in the course of the performance of the Services, Consultant may be given access to, or come into possession of, Confidential Information of AFS or third parties who are involved with the receivership or related litigation, which may consist of, among other things, AFS proprietary data, investor information (i.e., SSN or tax returns). “Confidential Information” as used herein, includes but is not limited to, confidential and proprietary information to the extent not generally known to the public, including: (1) information, materials, products and deliverables developed during, and discoveries and contributions made by Consultant in the performance of this Agreement; (2) the identity of investors, and any addresses and other contact information, tax identification numbers, audited and unaudited annual or interim financial statements, methods of keeping records; all records of accounting, auditing, tax workpapers, income tax returns, audit reports, reports or documents filed with any federal or state or local governmental or quasi-governmental body, or self-regulatory body; attorney/client communications. In instances wherein doubt exists in Consultant’s mind as to whether information is Confidential Information, Consultant shall request an opinion, in writing, from AFS. Consultant shall deliver all tangible embodiments of Confidential Information to AFS upon termination of this Agreement, or upon request by AFS, whichever first occurs. Consultant shall immediately notify AFS in the event of any unauthorized use or disclosure of the Confidential Information. No representations or warranties are being made as to the completeness or accuracy of any of the Confidential Information.

Consultant agrees that it shall keep the Confidential Information in strict confidence, and protect the secrecy and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing,

Consultant shall take at least those measures that it takes to protect its own most highly confidential information, including its personally identifiable information. Consultant shall (i) not use AFS's Confidential Information other than in connection with the performance of this Agreement; (ii) protect AFS's Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care; and (iii) shall not disclose, transfer, use, copy or allow access to AFS's Confidential Information to any third parties without AFS's prior written consent. Notwithstanding the foregoing, Consultant may disclose AFS's Confidential Information to its directors, officers, employees, consultants and agents ("Representatives"), and to entities directly or indirectly controlling, controlled by or under common control with Consultant and its Representatives who (i) have a need to know, for the purpose of this Agreement; and (ii) agree in writing (with terms at least as restrictive as this Section 5) to protect AFS's Confidential Information from unauthorized use and disclosure. Consultant will take appropriate actions by instruction, agreement or otherwise, with their respective Representatives who are permitted access to AFS's Confidential Information or any part thereof in accordance with this Agreement, to inform them of this Agreement and to obtain their compliance with the terms expressed herein. Consultant shall not use any of AFS's Confidential Information for its own purpose or benefit, including without limitation marketing purposes.

Upon written request from AFS or upon termination or expiration of this Agreement (whichever comes first), Consultant will return to AFS all original materials provided to Consultant by AFS and in any event shall destroy any remaining original materials including electronic data, with a secure wipe that conforms with NIST SP 800-88 media erasure guidelines, and shall provide to AFS written notice of completion of destruction.

Consultant agrees that any violation or threatened violation of this Section 5 will cause irreparable injury to AFS, entitling AFS to obtain injunctive relief in addition to all legal remedies.

7. Independent Contractor. It is understood and agreed that Consultant shall provide the Services on a professional basis and as an independent contractor, and that during the performance of the Services under

this Agreement, Consultant shall not be considered an employee of AFS within the meaning or the applications of any federal, state or local laws or regulations, including without limitation, laws or regulations covering unemployment insurance, retirement/pension benefits, worker's compensation, industrial accident, labor or taxes of any kind. Consultant and its personnel shall not be entitled to benefits that may be afforded from time to time to AFS employees, including without limitation, vacation, holidays, sick leave, worker's compensation and unemployment insurance, and Consultant agrees to indemnify AFS for any and all claims of its agents and employees to participate in any such benefits. Further, AFS shall not be responsible for withholding or paying any taxes or social security on behalf of Consultant. Consultant shall be fully responsible for any such withholding or paying of taxes or social security.

8. Representations and Warranties and Covenants.

(a) Consultant warrants and represents that neither the execution, delivery nor performance of this Agreement constitutes a breach or violation of any contract or agreement to which it is a party or by which it is in any manner bound. Consultant further warrants and represents that it has no interests or obligations, nor during the term hereof shall it acquire any interests or obligations, which conflict with or hamper its ability to perform as required hereby.

(b) Consultant warrants and represents that it shall perform any and all Services hereunder in a timely, professional and workmanlike manner by qualified persons and shall conform to the applicable requirements and specifications and to the highest standards applicable in Consultant's industry and that all such work shall be free of errors and defects, except for errors or defects resulting from any error or omission of AFS. Consultant shall immediately correct such error or defect at no additional cost to AFS, including all labor, materials, service, transportation, and other charges. This remedy is in addition to any and all other remedies which AFS may have pursuant to this Agreement. Except for those expressly set forth in this Agreement, Consultant hereby disclaims to the full extent of the law any and all other warranties, express or implied, with respect to the Services and Deliverables.

(c) Consultant warrants and represents that all Services provided are original and shall not infringe any other party's proprietary property rights or interests.

(d) Consultant warrants and represents that it will comply with all applicable U.S. and foreign jurisdictions' national, federal, state and local laws and regulations applicable to its performance under this Agreement.

(e) All warranties and covenants shall survive acceptance and payment by AFS.

9. Restrictive Covenant. Consultant agrees not to publish or use any advertising, sales promotion or publicity matter relating to services, materials, information, products and reports, concerning or furnished by Consultant, wherein the name "AFS" and/or any of AFS's clients' names, trademarks, service marks, tradenames or logos are mentioned or their identity implied.

10. Indemnification.

(a) Consultant, at its own expense, shall save, indemnify, defend and hold AFS and its affiliates, along with their respective members, partners, employees, agents, designees, insurers and assignees, as the case may be (as such, collectively, the "Indemnified Parties" and, individually, an "Indemnified Party"), harmless from and against any and all suits, causes of action, proceedings, loss, damage, liability or expense, including defense costs and legal fees, and claims of any nature, including but not limited to, damage to property, systems and facilities and personal injuries, including death, arising out of or resulting from any breach of this Agreement by Consultant, any negligent act or omission of the Consultant relating to the performance of this Agreement. The Consultant, at its expense, shall defend any suit or dispose of any claim or other proceeding brought against said any Indemnified Party or Parties on account of such damage or injury, and shall pay all expenses, including reasonable attorney's fees, and satisfy all judgments which may be incurred by or rendered against said indemnitees.

11. Privacy and Security. Notwithstanding anything to the contrary in Section 5 of this Agreement, in order to protect Confidential Information of AFS and its clients, Consultant shall comply with the data privacy and security requirements set forth in Exhibit 2 and Exhibit 3 to this Agreement which include the PCI Insert and HIPAA/HITECH Insert.

12. Notice. Any notice, demand, request, statement or other writing required or permitted by this Agreement shall be deemed to have been sufficiently given either when personally delivered, delivered by

received courier service, or mailed, postage prepaid, by registered or certified mail, return receipt requested, or sent by e-mail email (confirmed by return receipt or other acknowledgment of receipt), to the individual representatives identified below at the addresses specified herein, and in any case shall be effective when received. The individuals or entities designated below shall, unless and until otherwise provided in writing by the appropriate party, be eligible to receive any and all written notices under this Agreement.

If to AFS: AFS
715 NW Hoyt
#4364
Portland OR 97208
Attention:
Tel:
Mobile:
Fax:

If to Consultant: AITHERAS, LLC
51 Monroe St
UNIT 506
Rockville, MD 20850
Attention:
Tel:
Mobile:
Fax:

13. Miscellaneous.

(a) This Agreement shall constitute the entire Agreement between the Parties and supersedes any and all prior negotiations, understandings, representations or consulting agreements whether written or oral. This Agreement may only be amended by the mutual written agreement of the Parties.

(b) None of the provisions of this Agreement shall be considered amended or waived by either Party unless such amendment or waiver is made in writing by the persons executing this Agreement, or by other duly authorized agents or representatives of the Parties. The failure of either Party to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of a breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.

(c) Nothing herein contained shall be construed to imply a joint venture, partnership or principal-agent relationship between Consultant and AFS, and neither Party shall have the right, power or authority to obligate or bind the other in any manner whatsoever.

(d) Neither Party shall assign or delegate this Agreement or any rights, duties or obligations hereunder without the express written consent of the other, except that either Party may assign this Agreement to any successor thereto without such consent. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives and assignees of the Parties hereto.

(e) In the event any provision of this Agreement is found to be void, illegal or invalid for any reason whatsoever, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision of this Agreement shall not affect any other provision of this Agreement, and this Agreement, as applicable, will continue in full force and effect, and be construed and enforced, as if such provision had not been included, had been deleted, or had been modified as above provided, as the case may be, it being the intention of the Parties that this Agreement be interpreted and construed so as to render it enforceable.

(f) Dispute Resolution. AFS and the Consultant consent to personal jurisdiction in Nevada and venue in the United States District Court, District of Nevada (“District Court”), including, without limitation, in connection with petitions to compel mediation and any other litigation arising out of or related to this Agreement and to enforce any award. AFS and the Consultant agree that should any dispute or claim arising out of or relating to this Agreement, or involving this engagement, fees or Services (including but not limited to disputes or claims regarding the Consultant’s charges, professional negligence, errors or omissions, breach of contract, breach of fiduciary duty, fraud, or violation of any statute or rules of professional conduct), the Parties shall be required to first attempt to resolve the dispute by attending mediation before the District Court’s Magistrate Judge assigned to the SEC Action or if such Magistrate Judge is not available, then a Magistrate Judge selected by the District Court judge presiding over the SEC Action. The foregoing agreements with regard to jurisdiction and dispute resolution shall survive termination of the Consultant.

(g) Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of Nevada, and, unless otherwise expressly provided for herein, shall be subject to the exclusive jurisdiction of the District Court.

(h) The paragraph headings set forth in this Agreement are for the convenience of the Parties, and in no way define, limit, or describe the scope or intent of this Agreement and are to be given no legal effect.

(i) This Agreement may be executed in counterparts, and such counterparts may be obtained by legible facsimile or electronic mail transmission, each of which shall be deemed an original, and all of which when taken together shall be deemed one Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

American Fiduciary Services, LLP

By: 
Name: Geoff Winkler, Receiver
Title: CEO/Receiver

AITHERAS, LLC

By: 
Name: Joseph Friend
Title: Partner

Exhibit 1

AITHREAS is pleased to provide the following requested pricing for the referenced task.

| Item | Unit | Rate |
|---|----------|---------------------|
| Forensic Data Collection | | |
| Data Acquisition- Web-Based Email/Cloud Storage Collection | Hour | \$ 154.00 |
| Data Acquisition- Laptop, Desktop, Server, Mobile Device Collection | Device | \$ 440.00 |
| Data Acquisition- On Location | Hour | \$ 220.00 |
| Social Media Preservation | Hour | \$ 154.00 |
| E-Discovery Technician Hourlies | Hour | \$ 154.00 |
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| Deposition/Expert Testimony | Hour | \$ 352.00 |
| E-Discovery Technician Hourlies | Hour | \$ 154.00 |
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| Pre-processing, Keyword filtering, De-duplication | GB | \$ 13.00 |
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| E-Discovery Technician | Hour | \$ 154.00 |
| Document Repository | | |
| Secure Cloud Document Storage- 1 Terabyte Storage | Month | \$ 220.00 |
| User License- Up to 50 Users | | \$ 0.00 |
| Document Scanning | | |
| B/W Scanning | Page | \$.09-.18 per page |
| Color Scanning | Page | \$.25-.40 per page |
| Oversize Scanning | Sheet | \$ 1-4 per page |
| OCR | Included | \$ 0.00 |
| Bate Stamping | Included | \$ 0.00 |
| eDiscovery Data Hosting | | |
| Cloud Hosting (>1 TB) | GB | \$ 8 |
| Cloud Hosting (<1 TB) | GB | \$ 12 |
| User License | include | \$ 0 |
| eDiscovery Technician | Hour | \$ 175 |
| Analytic / AI | GB | \$ 10 |

*Travel and accommodations will be an additional cost. Travel is based on government per diem cost.