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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 MATTHEW WADE BEASLEY, *et al.*,

16 Defendants,

17 THE JUDD IRREVOCABLE TRUST, *et al.*,

18 Relief Defendants.
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Case No. 2:22-cv-00612-CDS-EJY

**RECEIVER GEOFF WINKLER'S
RESPONSE TO WELLS FARGO BANK,
N.A.'S OBJECTIONS TO ORDER
AUTHORIZING RECEIVER TO EMPLOY
SPECIAL LITIGATION COUNSEL**

1 Geoff Winkler (the “Receiver”), as Court-appointed receiver in the above-captioned matter,
2 responds to the March 7, 2023, *Objections to Order Authorizing Receiver [sic] to Employ Special*
3 *Litigation Counsel Under Fed. R. Civ. P. 72* (the “Objection”) [ECF 480], filed by Wells Fargo
4 Bank, N.A. (“Wells Fargo”).

5 INTRODUCTION

6 Wells Fargo banked the nine-figure Ponzi scheme that gave rise to this SEC enforcement
7 action. As explained in the Receiver’s February 3, 2023, Motion for Order Authorizing Receiver to
8 Employ Special Litigation Counsel (the “Motion to Employ Special Counsel”) [ECF 457], the
9 Receiver’s preliminary investigation suggests that Wells Fargo may be liable to the Receivership
10 Estate for knowingly assisting in the movement, diversion and looting of funds. Certain investors
11 who lost money in the Ponzi scheme already brought suit against Wells Fargo in *In re J&J*
12 *Investment Litigation*, Case No. 2:22-cv-00529-GMN-NJK (D. Nev.) (the “Class Action”). The
13 Class Action asserts that Wells Fargo had actual knowledge of the fraudulent investment scheme
14 and assisted in the scheme by accepting investments into Defendant Matthew Beasley’s trust
15 account and executing hundreds of millions of dollars in transfers. (*See* Class Action at ECF 37).

16 To promote efficiency, the Receiver found it prudent and desirable to employ counsel that
17 was already involved in the Class Action to evaluate claims against Wells Fargo and bring such
18 claims. The Receiver selected Levine Kellogg Lehman Schneider + Grossman LLP (“Levine
19 Kellogg”) because of its familiarity with the facts of this case and its experience serving as receiver
20 or counsel to receivers in prosecuting similar claims. The Receiver also found it prudent to formalize
21 a common interest and joint prosecution agreement with the plaintiffs in the Class Action to facilitate
22 discovery and other matters.

23 Through the February 3, 2023, Motion to Employ Special Counsel, the Receiver explained
24 the foregoing to the Court and asked the Court to approve the arrangement. [ECF 457]. No
25 objections or responses to the motion were filed. Thus, on February 21, 2023, Magistrate Judge
26 Youchah entered an order (the “Order”) [ECF 471] granting the Motion to Employ Special Counsel.

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1 The Order approves the Receiver’s arrangement with Levine Kellogg and permits cooperation going
2 forward.

3 Wells Fargo now contends that the Receiver cannot retain Levine Kellogg to prosecute
4 claims against Wells Fargo because of a purported conflict and because Wells Fargo has “concerns
5 regarding class counsel’s adherence to the Protective Order.” [ECF 480 at 5]. Neither of these
6 arguments has merit.

7 Wells Fargo—the sole defendant in the Class Action—is not an investor in the J&J scheme
8 and thus has no standing to complain about a purported conflict on behalf of investors. In any event,
9 Wells Fargo points to no actual conflict. The bank’s theory is that the Receiver and investors are at
10 odds because (i) the Receiver may have claims against “net winners” and (ii) investors may have
11 claims against the Receivership Estate. [ECF 480 at 6]. But Levine Kellogg is not engaged to pursue
12 any “net winner” investors. None of the named plaintiffs in the Class Action are “net winners.”
13 (Class Action at ECF 37 ¶¶ 37, 44, 45, 52, 53, 59, 60, 67, 68, 75, 76, 83, 84, 91). *In fact, the class*
14 *definition in the Class Action expressly excludes net winners. (Id. ¶ 191).* In arguing otherwise,
15 Wells Fargo relies on an inoperative pleading that has since been superseded by the Consolidated
16 Class Action Complaint. [ECF 480 at 2 (citing Class Action at ECF 22)]. There is no “net winners”
17 conflict.

18 Wells Fargo’s argument also misunderstands the Receiver’s role. The Receiver’s role, as a
19 Court-appointed fiduciary, is to discharge his duties for the ultimate benefit of defrauded investors.
20 *See SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). To the extent investors have theoretical
21 claims against the Receivership Estate, that is why the Receiver is directed by the Court to preserve
22 and maximize the assets of the Receivership Estate, including its choses in action against third
23 parties. [ECF 88 § I, IX].

24 As its second argument, Wells Fargo cites to a “concern” that the class plaintiffs or their
25 counsel may violate the protective order in the Class Action while cooperating with the Receiver.
26 [ECF 480 at 5-6]. Wells Fargo’s speculative concerns cannot preclude engagement of the Receiver’s
27 selected counsel, and Wells Fargo cites no authority suggesting otherwise. Regardless, and as a
28 practical matter, much if not all of the material Wells Fargo has produced in the Class Action will

1 be discoverable in any action the Receiver may file, and the Receiver already is subject to a
2 protective order with Wells Fargo *in this action*, [ECF 425]. Any confidentiality concerns of Wells
3 Fargo could thus be resolved through good faith cooperation.

4 Finally, the Court should disregard Wells Fargo’s Objection because it was improperly
5 submitted. Wells Fargo—a self-described “interested party” in *this* case—consented to entry of the
6 Order when it failed to file a timely opposition to the Motion to Employ Special Counsel, which
7 was duly served on Wells Fargo’s counsel. *See* LR 7-2(h). Any concerns it had about conflicts or
8 confidential material were thus waived, and the Court should not entertain argument made for the
9 first time in an objection. *See McNair v. Berg*, No. 316CV00487MMDWGC, 2018 WL 2943439, at
10 *3 (D. Nev. June 12, 2018). The Objection is also improper because it is signed by an out-of-state
11 attorney who has not been admitted *pro hac vice* or even appeared in this case. This alone requires
12 that the Objection be stricken. And, despite representing to the contrary, Wells Fargo failed to
13 confer with Levine Kellogg about the Objection despite an invitation to do so.

14 The Court should therefore overrule the Objection.

15 ARGUMENT

16 **I. Wells Fargo Must Show Clear Error or Misapplication of Law Sufficient to** 17 **Disqualify Levine Kellogg**

18 With its Objection, Wells Fargo essentially attempts to disqualify Levine Kellogg. [ECF 480
19 at 5 (relying on decision disqualifying counsel)]. In addition to the high standard of error Wells
20 Fargo must show under Rule 72, the Court should be mindful that disqualification “is often a tactic
21 used to delay or harass the opposing party” and interferes with “a party’s ability to choose their own
22 representation.” *Flynn v. Love*, No. 319CV00239MMDCLB, 2020 WL 8373399, at *3 (D. Nev.
23 July 31, 2020). That is why this Court places the burden on the party seeking disqualification and
24 requires the submission of admissible evidence. *See id.*

25 Wells Fargo’s burden is thus twofold. It must convince this Court that, in authorizing the
26 engagement of Levine Kellogg, Magistrate Judge Youchah violated the “more deferential abuse of
27 discretion standard” in a manner that leaves the Court with “a definite and firm conviction that a
28 mistake has been committed.” *Grimsley v. Charles River Lab'ys*, No. 3:08-CV-00482-LRH, 2010

1 WL 3238950, at *2 (D. Nev. Aug. 13, 2010) And, Wells Fargo must overcome the “[p]articularly
2 strict judicial scrutiny” designed to control gamesmanship. *See Fid. & Deposit Co. of Md. v.*
3 *Travelers Cas. & Sur. Co. of Am.*, No. 213CV00380JADGWF, 2017 WL 6520912, at *2 (D. Nev.
4 Dec. 19, 2017). Wells Fargo does not meet this standard with its arguments based only on attenuated
5 claims of conflict and speculation about future discovery violations.

6 **II. Wells Fargo Lacks Standing to Complain About Purported Conflicts Between the**
7 **Receiver and the Investors**

8 “As a general rule, courts will not disqualify an attorney for a conflict of interest unless the
9 client, whether former or current, moves for disqualification.” *Russel Rd. Food & Beverage, LLC*
10 *v. Galam*, No. 2:13-CV-0776-JCM-NJK, 2014 WL 3779078, at *2 (D. Nev. July 31, 2014); *accord*
11 *United States v. Walker River Irr. Dist.*, No. 3:73CV127ECR (RAM), 2006 WL 618823, at *4 (D.
12 Nev. Mar. 10, 2006); *Kelly v. CSE Safeguard Ins. Co.*, No. 2:08-CV-00088-KJD-RJ, 2010 WL
13 3613872, at *4 (D. Nev. Sept. 8, 2010). Courts require that the movant have standing to ensure
14 “non-clients will not abuse the state rules of professional responsibility by using them as tactical
15 measures to harass the opposition or cause delay.” *Russel Rd. Food & Beverage, LLC*, 2014 WL
16 3779078, at *2 (quotations omitted).

17 The purported conflict here involves the Receiver and investors. [ECF 480 at 5]. Wells
18 Fargo is not an investor and does not have interests aligned with investors—it is, in fact, directly
19 adverse to investors given its role in the investment fraud. Wells Fargo therefore lacks standing to
20 raise the purported conflict as a basis to preclude Levine Kellogg’s representation.¹ *See, e.g., Kelly*,
21 2010 WL 3613872, at *5.

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25 ¹ While the Court recognizes a narrow exception for non-client standing to seek disqualification,
26 *Russel Rd. Food & Beverage, LLC*, 2014 WL 3779078, at *2, Wells Fargo does not even attempt to
27 argue the exception (and likely cannot in good faith). The issue is waived because Wells Fargo
28 cannot raise it in a reply. *See* LR IB 3-1 (precluding replies in support of Rule 72(a) objections
absent leave of Court); *Eruchalu v. U.S. Bank, Nat’l Ass’n*, No. 2:12-CV-1264-RFB-VCF, 2014 WL
12776845, at *2 (D. Nev. Sept. 30, 2014) (prohibiting new arguments for the first time in a reply
brief).

1 **III. There is No Conflict Between Investors and a Court-Appointed Receiver Who**
2 **Operates for the Benefit of Aggrieved Investors**

3 Wells Fargo bases its conflict theory on potentially diverging interests of the Receiver and
4 the investors. [ECF 480 at 5]. Wells Fargo suggests Levine Kellogg cannot represent the Receiver
5 because (i) “the Receiver has claims against the proposed class members who are net winners to
6 recover assets for the receivership” and (ii) “if the SEC proves fraud (a fact that Plaintiffs’ counsel
7 must also prove in the Class Action), the proposed class members who suffered losses will have
8 claims against the receivership estate.” [*Id.*].

9 The Court may dispense with the first assertion because it is false. As indicated above, Wells
10 Fargo cites a prior, superseded pleading in the Class Action. The operative pleading states
11 unambiguously that net winners (*i.e.*, those who received more from the investment than they put
12 in) are excluded from the class. (Class Action at ECF 37 ¶ 191).²

13 Regarding the class members’ potential claims against the Receivership Estate, a basic
14 understanding of a Court-appointed receiver’s role puts this concern to rest. First, the Receiver, as
15 “an arm of the Court, represents the interests of all the investors.” *SEC v. TLC Invs. & Trade Co.*,
16 147 F. Supp. 2d 1031, 1037 (C.D. Cal. 2001). “[A] primary purpose of equity receiverships is to
17 promote orderly and efficient administration of the estate by the district court for the benefit of
18 creditors.” *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). Accordingly, any wrongdoing by
19 the Receivership Entities or Defendants is not attributable to the Receiver. [ECF 373 at 13 (“With
20 respect to the *in pari delicto*, the doctrine would frustrate the purposes of a receivership to impute
21 to the appointed receiver the wrongful conduct of the entities to be taken over.”) (citing *FDIC v.*
22 *O’Melveny & Myers*, 61 F.3d 17, 19 (9th Cir.1995))]. The same is true in this case. The Receiver
23 was appointed to maximize and preserve the assets of the Receivership Entities, not for himself or
24 for the Defendants, but to later pay out claims. [ECF 88 § 1].

25 Finally, these claims of conflict are refuted by the express scope of Levine Kellogg’s
26 engagement. The Order does not appoint Levine Kellogg to, for example, bring clawback claims

27 ² Specifically, the Consolidated Class Action Complaint provides that “[e]xcluded from the class
28 are . . . persons who received back more from the J&J enterprise in connection with their investments
 than they put in.” (*Id.*).

1 against net winners or otherwise assist in administering the claims process. [ECF 471]. All it does
2 is permit Levine Kellogg’s engagement to evaluate and assert claims against Wells Fargo.

3 **IV. Wells Fargo’s Concern About the Protective Order in the Class Action is**
4 **Speculative and Likely Moot**

5 Wells Fargo cites no authority holding that a “concern[.]” about a “potential violation” of a
6 protective order is grounds to block a party’s choice of counsel. [ECF 480 at 4, 6-7]. Case law from
7 this District suggests the opposite. *See Flynn*, 2020 WL 8373399, at *5 (holding that attorney’s
8 possession of confidential information from prior representation that may give new client tactical
9 advantage is insufficient to justify disqualification). The Court may summarily reject this argument.

10 As Wells Fargo acknowledges, Levine Kellogg confirmed that it will abide by the protective
11 order in the Class Action. [ECF 480 at 7]. Despite this assurance, Wells Fargo expresses—but does
12 not articulate—a lingering concern about the Receiver’s common interest and joint prosecution
13 agreement in connection with the Class Action. In other words, Levine Kellogg confirmed what
14 Wells Fargo wanted, but Wells Fargo still has a concern over something it cannot describe.

15 In addition, Wells Fargo’s vague concerns about information sharing between the Receiver
16 and the class are likely to be mooted. Nowhere does Wells Fargo claim that the Receiver is somehow
17 prohibited from obtaining similar discovery, either in connection with the Receiver’s administration
18 of the estate or in a subsequent action against Wells Fargo. Put differently, the Receiver is likely
19 entitled to the same or similar discovery from Wells Fargo. To the extent Wells Fargo is concerned
20 that confidential information will be made public, such information may be dealt with through the
21 protective order in the Class Action, a protective order in any subsequent action, or the current
22 protective order between the Receiver and Wells Fargo *in this case*. [ECF 425]. The solution is
23 therefore to expand, supplement, or clarify the scope of the protective order(s), not preclude Levine
24 Kellogg’s representation.

25 **V. The Court Should Disregard the Objection for Procedural Reasons**

26 **A. Wells Fargo Consented to the Order by Failing to Submit an Opposition**

27 The Court should find that Wells Fargo consented to entry of the Order because it failed to
28 file an opposition within the time permitted by the Local Rules. LR 7-2(a), (d). The Receiver filed

1 the Motion to Employ Special Counsel on February 3, 2023. [ECF 457]. Wells Fargo, through
2 counsel, has been receiving this Court’s electronic filing notifications since as early as June 2022,
3 when its counsel entered an appearance for Wells Fargo. [ECF 98, 150]. Thus, when the Receiver
4 filed his Motion to Employ Special Counsel, Wells Fargo received immediate notice of the
5 Receiver’s request. [ECF 457].

6 Wells Fargo claims it is an “interested party” for purposes of the Motion to Employ Special
7 Counsel. [ECF 480 at 1]. As such, Wells Fargo had 14 days within which “to file and serve any
8 points and authorities in response to the [Motion to Employ Special Counsel].” LR 7-2(a). Wells
9 Fargo chose not to do so. Accordingly, Wells Fargo consented to entry of the Order, entered on
10 February 21, 2023. *See* LR 7-2(d).

11 Having failed to present its argument to Magistrate Judge Youchah, the Court should not
12 consider Wells Fargo’s Objection. *See McNair*, 2018 WL 2943439, at *3 (disregarding issues raised
13 for the first time in an objection); *see also Blevins v. Jacquez*, No. C20-0485JLR, 2021 WL 2206470,
14 at *1 (W.D. Wash. June 1, 2021) (“Issues raised for the first time in objections to the magistrate
15 judge’s recommendation are deemed waived.”). While the Court has discretion to consider certain
16 matters raised for the first time in a Rule 72(a) objection, *United States v. Howell*, 231 F.3d 615,
17 621 (9th Cir. 2000), Wells Fargo chose not to ask the Court to exercise that discretion and cannot
18 now do so on reply.³ The should therefore overrule the Objection based on Wells Fargo’s failure to
19 submit a response to the Motion to Employ Special Counsel.

20 **B. The Objection Should be Stricken Because It is Signed by a Foreign Attorney**
21 **Not Admitted *Pro Hac Vice* in this Case**

22 Any paper filed with the Court “must be signed by at least one attorney of record in the
23 attorney’s name.” Fed. R. Civ. P. 11(a). Relatedly, and like most other courts, this Court requires
24 permission for foreign attorneys to “appear in a particular case.” LR IA 11-2. Despite these rules,
25 Wells Fargo’s Objection is signed by K. Issac de Vyver, as “(*pro hac vice*).” [ECF 480 at 1, 6]. Mr.
26 de Vyver is not counsel of record in this case. He has not requested or been granted permission to

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28 ³ *See supra* n.1.

1 appear in this case under LR IA 11-2. According to the docket, the only counsel of record for Wells
2 Fargo is Joseph G. Went and Molly M. White. [ECF 98, 150]. Accordingly, the filing is
3 unauthorized and should be stricken. LR IA 11-2(h) (“Failure to comply timely with this rule may
4 result in the striking of any and all documents previously filed by the attorney, the imposition of
5 other sanctions, or both.”).

6 **C. Wells Fargo Did Not Attempt to Confer with the Receiver Prior to Filing the**
7 **Objection**

8 The Court’s local rules do not require a conferral before a party objects to a Magistrate
9 Judge’s order. *See* LR IB 3-1. Nonetheless, Wells Fargo assumed the conferral obligation by
10 representing to the Court that it “attempted to meet and confer” with the Receiver’s counsel about
11 the bases for the Objection but received only a limited answer. [ECF 480 at 2, 5-6].

12 Wells Fargo does not attach to its Objection the communications its counsel sent or
13 otherwise describe any attempt to speak with the Receiver’s counsel about the specific grounds
14 underlying the Objection. These communications, attached to this Response,⁴ demonstrate that on
15 February 24, 2023, before filing its motion to withdraw in the Class Action, Levine Kellogg asked
16 for Wells Fargo’s position on that issue. (Ex. A-1).

17 Wells Fargo did not provide a substantive response until March 2, 2023, when it advised that
18 it took “no position concerning Levine Kellogg’s withdrawal as counsel.” (Ex. A-2). Wells Fargo
19 also took the opportunity to “caution and remind Plaintiffs and their counsel” about the protective
20 order in the Class Action and suggest that Levine Kellogg had a conflict of interest, for which it
21 “reserve[d] all rights to seek disqualification of Levine Kellogg in the SEC Action.” (*Id.*). Nowhere
22 in that letter did Wells Fargo ask for a call to discuss the Objection or even ask for a response.

23 About 25 hours later, on a Friday afternoon, Wells Fargo’s counsel sent an email “requesting
24 confirmation that Levine Kellogg will abide by the protective order entered in the J&J class action.”
25 (Ex. A-3). While Wells Fargo’s counsel suggested a “meet and confer,” his communication

26 _____
27 ⁴ Attached as **Composite Exhibit A** are the February 27, 2023, email from Levine Kellogg to
28 Wells Fargo (Ex. A-1), the March 2, 2023 letter from Wells Fargo’s counsel (Ex. A-2), the March
3, 2023 email from Wells Fargo’s counsel (Ex. A-3), and Levine Kellogg’s March 6, 2023 letter
responding to Wells Fargo’s requests (Ex. A-4).

1 indicated the issue was limited to the protective order. (*Id.*). The following Monday, Levine Kellogg
2 confirmed via letter that it would abide by the protective order. (Ex. A-4). As for Wells Fargo’s
3 reference to a call, Levine Kellogg responded that it did “not believe a telephone conference is
4 necessary, although if you are asking for one as a condition precedent to filing a motion to disqualify
5 LKLSG (your March 3 email is unclear), then we of course will make ourselves available.” (*Id.*).
6 Wells Fargo’s counsel did not respond to that letter. It filed its Objection the next day.

7
CONCLUSION

8 For the foregoing reasons, the Court should overrule the Objection.

9
10 Dated: March 13, 2023

SEMENZA KIRCHER RICKARD

11
12 */s/ Jarrod L. Rickard*

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14 *Attorneys for Receiver Geoff Winkler*

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CERTIFICATE OF SERVICE

I am employed by the law firm of Semenza Kircher Rickard in Clark County. I am over the age of 18 and not a party to this action. The business address is 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

On the 13th day of March, 2023, I served the document(s), described as:

**RECEIVER GEOFF WINKLER'S RESPONSE TO WELLS FARGO BANK, N.A.'S
OBJECTIONS TO ORDER AUTHORIZING RECEIVER TO EMPLOY SPECIAL
LITIGATION COUNSEL**

by serving the original a true copy of the above and foregoing via:

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18 b. **BY U.S. MAIL.** I deposited such envelope in the mail at Las Vegas, Nevada. The
19 envelope(s) were mailed with postage thereon fully prepaid. I am readily familiar with
20 Semenza Kircher Rickard's practice of collection and processing correspondence for
21 mailing. Under that practice, documents are deposited with the U.S. Postal Service on the
22 same day which is stated in the proof of service, with postage fully prepaid at Las Vegas,
23 Nevada in the ordinary course of business. I am aware that on motion of party served,
24 service is presumed invalid if the postal cancellation date or postage meter date is more than
25 one day after the date stated in this proof of service.

26 c. **BY PERSONAL SERVICE.**

27 d. **BY DIRECT EMAIL.**

28 e. **BY FACSIMILE TRANSMISSION.**

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

/s/ Olivia A. Kelly
An Employee of Semenza Kircher Rickard

EXHIBIT A-1

EXHIBIT A-1

From: Jason Kellogg
Sent: Friday, February 24, 2023 5:20 PM
To: deVyver, K. Issac; 'afoss@mcguirewoods.com'
Cc: Marcelo Diaz-Cortes; Jeffrey C. Schneider
Subject: Withdrawal as Interim Class Co-Counsel
Attachments: 2023-0221 (#471) nvd ORDER Granting [457] Motion for Order Authorizing Receiver to Employ Special Litigation Counsel. Sig.pdf

Issac, the Court in the SEC Action entered the attached order earlier this week granting the Receiver's request to appoint LKLSG as special counsel. Please let us know if Wells Fargo will stipulate to LKLSG's withdrawal as interim class co-counsel in the class action.

Thank you,

Jason Kellogg
Partner



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EXHIBIT A-2

EXHIBIT A-2



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Tel 412.667.6000
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K. Issac deVyver
Direct: 412.667.7988
kdevyver@mcguirewoods.com
Fax: 412.667.7976

March 2, 2023

VIA EMAIL

jcs@lklsg.com

jk@lklsg.com

md@lklsg.com

Jeffrey C. Schneider
Jason K. Kellogg
Marcelo Diaz-Cortes
Levine Kellogg Lehman Schneider &
Grossman LLP
100 SE 2nd Street
36th Floor
Miami, FL 33131

Re: *In re J&J Investment Litigation*
Case No. 2:22-cv-00529-GMN-NJK

Dear Counsel:

In light of the Court's order appointing Levine Kellogg Lehman Schneider & Grossman LLP ("Levine Kellogg") as special litigation counsel for the Receiver Geoff Winkler in the case entitled *Securities and Exchange Commission v. Beasley et al.*, Case No. 2:22-cv-00612-CDS-EJY, pending in the United States District Court District of Nevada ("SEC Action") (ECF No. 471), we write to caution and remind Plaintiffs and their counsel of their obligations under of the Protective Order in place in the above captioned action. Further, while we take no position concerning Levine Kellogg's withdrawal as counsel in this action, Levine Kellogg has a conflict of interest such that it would be improper for Levin Kellogg to represent the Receiver in the SEC Action.

First, pursuant to the Protective Order entered by the Court (ECF No. 56), the parties and their counsel are prohibited by Court order from sharing confidential information with others except for a limited number of exceptions. These Court ordered exceptions are limited to:

- (a) the Parties to this Lawsuit and representatives, officers, directors, insurers, and employees, including in-house counsel, of the Parties who have agreed to be bound by and to comply with this Order;
- (b) attorneys and legal staff of law firms who are counsel of record in this Lawsuit;
- (c) the Court and its personnel, including any special master appointed by the Court, and members of the jury;

March 1, 2023

Page 2

- (d) court reporters, recorders, and videographers engaged for depositions in this Lawsuit and their employees;
- (e) any mediator appointed by the Court or jointly selected by the Parties, and their supporting personnel;
- (f) any expert or consultant retained specifically in connection with this Lawsuit, but only after such persons have completed the certification contained in the “Acknowledgement and Agreement to be Bound” (Exhibit A);
- (g) independent providers of document reproduction, electronic discovery, or other litigation services retained or employed by one or more of the Parties specifically in connection with this Lawsuit, and only after such persons have completed the certification contained in the “Acknowledgement and Agreement to be Bound” (Exhibit A”); and
- (h) any potential, anticipated, or actual third-party fact witness and his or her counsel, but only after such persons have completed the certification contained in the “Acknowledgement and Agreement to be Bound” (Exhibit A);
- (i) the author or intended recipient of the document (not including a person who received the document in the course of the Lawsuit);
- (j) other persons only upon consent of the producing party and on such conditions as the Parties may agree.

ECF No. 56 at ¶ 6.2.

The Protective Order does not permit Plaintiffs or their counsel to share with the Receiver or his counsel information and documents that Wells Fargo has designated as confidential. This prohibition follows those counsel from Levine Kellogg who have elected to work for the Receiver. We assume that to date the Plaintiffs and their counsel have abided by the Protective Order and will continue to do so. You are reminded that both the Protective Order and Federal Rule of Civil Procedure 11 require a party or counsel who have violated the Protective Order to disclose the violation in writing. *See* ECF No. 56 ¶ 9; Fed. R. Civ. P. 11. Wells Fargo intends to enforce its rights under the Protective Order.

We remind Plaintiffs and their counsel of their obligations under the Protective Order particularly in light of the Receiver’s representation that it will enter into a common interest and joint prosecution agreements with this Action’s counsel. *See* SEC Action, ECF No. 471 at p. 2. Such an agreement does not eliminate Plaintiffs’ or their counsel’s obligations under the Protective Order nor does such an agreement fall into one of the Court ordered exceptions. *See* ECF No. 56 at ¶ 6.2.

Lastly, we believe there is a conflict of interest between the Receiver and the putative class in this Action that has been highlighted by the SEC Action’s recent Order regarding Levine Kellogg. Specifically, the proposed class members in this Action have interests that are distinct from, and conflict with, the Receiver who stands in the shoes of the alleged fraudulent entities in the SEC Action. Wells Fargo reserves its rights to seek disqualification of any counsel based on this conflict of interest, including Levine Kellogg. Wells Fargo takes no position on Levine Kellogg’s

March 1, 2023

Page 3

withdrawal from this Action but reserves all rights to seek disqualification of Levine Kellogg in the SEC Action.

Regards,

/s/ K. Issac deVyver

K. Issac deVyver

cc: abaiardo@mcguirewoods.com
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ewingk@gtlaw.com

EXHIBIT A-3

EXHIBIT A-3

From: deVyver, K. Issac <KdeVyver@mcguirewoods.com>
Sent: Friday, March 3, 2023 5:48 PM
To: Jason Kellogg
Cc: Marcelo Diaz-Cortes; Jeffrey C. Schneider; Baiardo, Alicia A.; Le, Anthony Q.; White, Molly M.; Foss, Anita M.; Haines, Kelsey D.; jgwent@hollandhart.com; Adam Polk; rlbrace@rusty.lawyer; miles.clark@knepperclark.com; Daniel Girard; Makenna Cox; Jordan Elias; Eric H.. Gibbs; David Stein; Emily Beale; dzaro@allenmatkins.com; jdelcastillo@allenmatkins.com; hendricksk@gtlaw.com; klc@skrlawyers.com; mpham@allenmatkins.com; jlr@skrlawyers.com; jason.hicks@gtlaw.com; ewingk@gtlaw.com
Subject: RE: Withdrawal as Interim Class Co-Counsel
Attachments: 2023-03-02 deVyver to Kellogg re Information Sharing.pdf

Counsel,

We write in follow-up to our letter sent below (and attached again for your reference) and to request a meet and confer. Having not heard from you, we are requesting confirmation that Levine Kellogg will abide by the protective order entered in the J&J class action. If we do not hear from you on this issue, then Wells Fargo will reserve its right to object to the SEC Court's February 21, 2023 Order (Dkt. 471) concerning this issue. If you like to have a call to meet and confer, we are available on Monday.

Thank you,
Issac

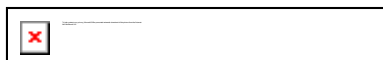
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From: deVyver, K. Issac
Sent: Thursday, March 2, 2023 4:16 PM
To: 'Jason Kellogg' <jk@lklsg.com>
Cc: Marcelo Diaz-Cortes <md@lklsg.com>; Jeffrey C. Schneider <jcs@lklsg.com>; Baiardo, Alicia A. <ABaiardo@mcguirewoods.com>; Le, Anthony Q. <ALE@mcguirewoods.com>; White, Molly M. <MWhite@mcguirewoods.com>; Foss, Anita M. <AFoss@mcguirewoods.com>; Haines, Kelsey D. <KHaines@mcguirewoods.com>; 'jgwent@hollandhart.com' <jgwent@hollandhart.com>; Adam Polk <apolk@girardsharp.com>; rlbrace@rusty.lawyer; miles.clark@knepperclark.com; Daniel Girard <dgirard@girardsharp.com>; Makenna Cox <mcox@girardsharp.com>; Jordan Elias <jelias@girardsharp.com>; Eric H..

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Subject: RE: Withdrawal as Interim Class Co-Counsel

Jason,

Please see the attached.

Issac

K. Issac deVyver

Partner

McGuireWoods LLP

Tower Two-Sixty

260 Forbes Avenue

Suite 1800

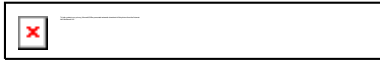
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From: Jason Kellogg <jk@lklsg.com>

Sent: Thursday, March 2, 2023 10:46 AM

To: deVyver, K. Issac <KdeVyver@mcguirewoods.com>; Foss, Anita M. <AFoss@mcguirewoods.com>

Cc: Marcelo Diaz-Cortes <md@lklsg.com>; Jeffrey C. Schneider <jcs@lklsg.com>; Baiardo, Alicia A.

<ABaiardo@mcguirewoods.com>; Le, Anthony Q. <ALe@mcguirewoods.com>; White, Molly M.

<MWhite@mcguirewoods.com>; Haines, Kelsey D. <KHaines@mcguirewoods.com>

Subject: RE: Withdrawal as Interim Class Co-Counsel

****EXTERNAL EMAIL; use caution with links and attachments****

Hello Issac, we'd like to get this filed. Any update? If none, we'll file at the end of the day and Wells can provide its position in the coming days.

Thank you,

Jason K. Kellogg P.A.

Partner



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From: deVyver, K. Issac <KdeVyver@mcguirewoods.com>
Sent: Tuesday, February 28, 2023 7:03 PM
To: Jason Kellogg <jk@lklsg.com>; Foss, Anita M. <AFoss@mcguirewoods.com>
Cc: Marcelo Diaz-Cortes <md@lklsg.com>; Jeffrey C. Schneider <jcs@lklsg.com>; Baiardo, Alicia A. <ABaiardo@mcguirewoods.com>; Le, Anthony Q. <ALe@mcguirewoods.com>; White, Molly M. <MWhite@mcguirewoods.com>; Haines, Kelsey D. <KHaines@mcguirewoods.com>
Subject: RE: Withdrawal as Interim Class Co-Counsel

Jason,

We are considering your request. We will be back to you promptly.

Thanks,
Issac

K. Issac deVyver

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From: Jason Kellogg <jk@lklsg.com>
Sent: Friday, February 24, 2023 5:20 PM
To: deVyver, K. Issac <KdeVyver@mcguirewoods.com>; Foss, Anita M. <AFoss@mcguirewoods.com>
Cc: Marcelo Diaz-Cortes <md@lklsg.com>; Jeffrey C. Schneider <jcs@lklsg.com>
Subject: Withdrawal as Interim Class Co-Counsel

****EXTERNAL EMAIL; use caution with links and attachments****

Issac, the Court in the SEC Action entered the attached order earlier this week granting the Receiver's request to appoint LKLSG as special counsel. Please let us know if Wells Fargo will stipulate to LKLSG's withdrawal as interim class co-counsel in the class action.

Thank you,

Jason Kellogg
Partner



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EXHIBIT A-4

EXHIBIT A-4



JASON K. KELLOGG, P.A.
Email: jk@lklsg.com
Direct Line: 305.722.8891

March 6, 2023

VIA E-MAIL

K. Issac deVyver
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kdevyver@mcguirewoods.com

Re: In re J&J Inv. Litig., No. 2:22-cv-00529-GMN-NJK (D. Nev.) (the “Class Action”)

Dear Issac:

I write in response to your March 2, 2023, letter and your March 3, 2023, follow-up email. Levine Kellogg Lehman Schneider + Grossman LLP (“LKLSG”) confirms that it has and will continue to abide by the terms of the Protective Order entered into between Class Plaintiffs and Wells Fargo N.A. (“Wells Fargo”) in the Class Action.

We do not believe a telephone conference is necessary, although if you are asking for one as a condition precedent to filing a motion to disqualify LKLSG (your March 3 email is unclear), then we of course will make ourselves available.

In the meantime, nothing herein constitutes a waiver or relinquishment of any rights or arguments, legal or equitable.

Best regards,

LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP

/s/ Jason K. Kellogg

Jason K. Kellogg, P.A.