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15 *and BJ Holdings LLC*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 vs.

22 MATTHEW WADE BEASLEY et al.

23 Defendants;

24 THE JUDD IRREVOCABLE TRUST et al.

25 Relief Defendants.
26
27
28

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

**REPLY IN SUPPORT OF MOTION
TO COMPEL OR ALTERNATIVE
MOTION FOR ORDER TO SHOW
CAUSE WHY CHRISTOPHER M.
MADSEN SHOULD NOT BE HELD
IN CONTEMPT FOR FAILURE
TO COMPLY WITH THIS
COURT'S ORDERS (ECF No. 525)
AND RESPONSE TO CROSS
MOTION FOR A STAY OF ALL
ACTIONS AND PROCEEDINGS
OF THE RECEIVER AGAINST
CHRISTOPHER MADSEN
PENDING FINAL SETTLEMENT
OF THIS ACTION (ECF No. 531)**

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1 COMES NOW, Geoff Winkler, the Court-appointed Receiver (the “Receiver”), by and
2 through his counsel of record the law firm of Greenberg Traurig, LLP, and hereby submits the
3 following Reply in Support of Motion to Compel or Alternative Motion for Order to Show Cause
4 Why Christopher M. Madsen Should Not be Held in Contempt for Failure to Comply With this
5 Court’s Orders (ECF No. 525) (the “Motion”) and Response to Cross Motion for a Stay of All
6 Actions and Proceedings of the Receiver Against Christopher Madsen Pending Final Settlement
7 of this Action (ECF No. 531) (the “Cross-Motion”).

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 The Receiver’s Motion should be granted and the Cross-Motion to stay denied.

11 What is evident from the Opposition is Chris Madsen’s (“Madsen”) refusal to
12 acknowledge and comply with this Court’s orders. Indeed, Madsen does not even attempt to
13 explain his lack of compliance with reporting requirements and his obligation to provide records
14 to the Receiver. Instead, he simply attempts to justify his non-compliance with the turnover
15 provisions of this Court’s orders by suggesting that settlement discussions with the Security and
16 Exchange Commission (“SEC”) somehow excuse his complacency and allow him to shield assets
17 from the Receiver. However, not only is there no legal support for his position, but the underlying
18 premise that Madsen has reached an agreement with the SEC to resolve the claims against him is
19 also a farce. Moreover, even if Madsen had reached an agreement with the SEC (which he has
20 not), the Receiver has separate duties and obligations to this Court that he has been unable to
21 fulfill because of Madsen’s gamesmanship. Setting aside Madsen’s unfounded reliance on his
22 settlement negotiations, Madsen’s Opposition fails to counter the points made in the Receiver’s
23 Motion and worse, fails to demonstrate that he has complied with this Court’s orders.

24 Compounding upon Madsen’s misrepresentations regarding the nature of his settlement
25 negotiations with the SEC, Madsen fails to identify any ground upon which this Court could find
26 a stay of the Receiver’s responsibilities appropriate here. The Court orders regarding turnover
27 and cooperation with the Receiver are clear. Yet Madsen, who received significant funds as part

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1 of the alleged Ponzi-scheme and holds significant assets that should be provided to the Receiver
2 for the benefit of the Receivership Estate, has inexplicably refused to comply.

3 The Motion outlines a path of purposeful non-compliance. There is no justification for
4 Madsen's actions and the Receiver's Motion should be granted and no stay imposed.

5 **II. LEGAL ARGUMENT**

6 **A. Madsen's Opposition Fails To Address Madsen's Non-Compliance with** 7 **Reporting Requirements.**

8 The Receiver's Motion makes abundantly clear that Madsen has violated this Court's
9 orders in a number of respects. Specifically, the Receiver demonstrated for the Court that, despite
10 numerous opportunities to cure his non-compliance, Madsen had not provided the sworn
11 statements and federal tax returns required under the Receivership Order. *See* ECF No. 525 at
12 p. 17. Additionally, the Receiver demonstrated that Madsen did not provide even a single
13 statement for the Boulder Dam Checking Account as required by the Living Expense Agreement.
14 *See* ECF No. 525 at pp. 17-18. Madsen does not counter any of these points and in turn
15 acknowledges the same. Moreover, despite assertions in the Opposition otherwise, Madsen has
16 not provided full bank and account records to the Receiver.

17 Local Rule 7-2(d) provides "[t]he failure of an opposing party to file points and authorities
18 in response to any motion...constitutes a const to the granting of the motion." LR 7-2(d). Under
19 this rule, this Court has found a party's failure "to attempt to rebut an argument constitutes consent
20 to the argument as a matter of law." *Vitale & Assocs., LLC v. Lowden*, No. 2:12-cv-1400-JAD-
21 VCF, 2014 U.S. Dist. LEXIS 76065, at *9 (D. Nev. Feb. 3, 2014); *see also Gayle v. Bank of Am.*,
22 *N.A.*, No. 2:18-cv-00913-APG-NJK, 2019 U.S. Dist. LEXIS 52519, at *6 (D. Nev. Mar. 27,
23 2019); *see also St. Clair v. Ienergizer, Inc.*, No. 2:20-cv-01880-GMN-VCF, 2021 U.S. Dist.
24 LEXIS 135773, at *7 (D. Nev. July 21, 2021).

25 Here, the Receiver sought an order compelling Madsen's compliance with the terms of
26 the Receivership Order and the Living Expense Agreement as well as the turnover of the
27 Receivership Property identified as Table 1 in the Motion. ECF No. 525 at pp. 20-21. The
28 Receiver's request was based in large part on Madsen's undeniable failure to produce sworn

1 statements, tax returns, or monthly statements as required. These issues are not addressed in
2 Madsen’s Opposition which seeks to prevent the turnover of assets based on purported settlement
3 negotiations with the SEC. Given that Madsen has failed to address any of the arguments in the
4 Receiver’s Motion, this Court may construe his omission as consent to the granting of the
5 Receiver’s Motion. *See Vitale*, 2014 U.S. Dist. LEXIS 76065, at *9. Thus, an order compelling
6 the same and/or an order to show cause should issue.

7 **b. Madsen Has Not Reached a Settlement nor a “Standstill” Agreement With**
8 **the SEC and Should be Compelled to Turnover Assets to the Receiver.**

9 As noted above, Madsen’s Opposition centers on one argument—that because he purports
10 to have been in settlement negotiations with the SEC, he is somehow exempt from the reach of
11 the Receivership Order, or any other order of this Court. Not only is Madsen’s position unfounded
12 in law, but Madsen’s representations to this Court inaccurately portray the status of his alleged
13 settlement discussions with the SEC.

14 Although Madsen would have this Court believe the only thing left before all claims
15 against him are dismissed, is the swoosh of a pen from the SEC, such is not the case and no
16 tangible evidence of the same was presented to the Court. Rather, Madsen presents an
17 unsupported narrative in which he purports to have fully complied with the SEC and the Receiver,
18 and has reached a “standstill agreement” with counsel for the SEC. ECF No. 530 at 5. Indeed,
19 Madsen’s Opposition is supported only by an “Affirmation of John Giardino” and written
20 correspondence conveying only a settlement offer, none of which shows that a settlement has
21 been reached. *See* ECF No. 530-1. In fact, Mr. Giardino’s affirmation provides little more than
22 a bullet list of purported communications had by Madsen and/or his counsel from August 2022
23 through April 2023 which appear to be in the form of billing entries. ECF No. 530-1. Moreover,
24 the two letters provided as Exhibits A and B to the Opposition, each of which were discussed in
25 the Receiver’s Motion, demonstrate—at best—that Madsen presented a settlement offer, not that
26 a settlement had been reached. *See* ECF No. 525 at p. 12, 525-6, 525-10, 525-11.

27 Settlement negotiations and offers do not equate to settlement agreements. *Fernandez v.*
28 *Nevada*, No. 3:06-cv-00628-LRH (WGC), 2012 U.S. Dist. LEXIS 38052, at *3 (D. Nev. Feb. 9,

1 2012) (citing *Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144-45 (9th Cir. 1977)). Indeed,
2 an enforceable settlement agreement must “be a complete agreement” and “both parties or their
3 authorized attorneys must agree to the terms of the settlement.” *Id.* Here, Madsen has presented
4 this Court with nothing upon which this Court could even begin a determination of whether a
5 valid settlement agreement had been reached. There is no description of any term of the
6 agreement, the amount of settlement, nor is there any evidence demonstrating the SEC has agreed
7 to his purported terms. This is because a settlement has not been reached.

8 It is the understanding of the Receiver that Madsen’s purported “settlement” is not merely
9 awaiting “final approval” within the next thirty (30) days and that no such representation has been
10 made to Mr. Madsen. Rather, the Receiver has been advised that the parties have discussed a
11 framework of how a settlement could be reached but have not agreed upon any material terms,
12 including a dollar amount. Madsen presented the SEC with a settlement offer to which the SEC
13 has taken no position as the SEC is reviewing documents and continues to await the Receiver’s
14 full and complete forensic accounting prior to reaching any settlement.

15 Thus, it is readily apparent that Madsen has materially misrepresented the nature and
16 status of his settlement negotiations with the SEC in an effort to skirt his responsibilities in this
17 case. Moreover, a settlement with the SEC, does not by itself alleviate the Receiver’s duties and
18 responsibilities to marshal assets and pursue recovery for the benefit of investors and creditors.

19 **c. Madsen’s Purported Settlement Negotiations do not Negate the Receiver’s**
20 **Duties**

21 Through the Opposition, Madsen argues that his self-described “settlement” which he
22 purports to be “awaiting final approval” exempts him from the reach of the Receivership Order
23 or any other order of this Court. This is not the case.

24 Even assuming, *arguendo*, that there were an agreement pending “final approval” as
25 Madsen purports (which there is not), a “pending” settlement would not alter or absolve the
26 Receiver’s duties in any respect. This much was made clear in the Receiver’s Motion wherein
27 the Receiver quoted a May 11, 2023 correspondence which stated “...*your discussions with the*
28 *SEC cannot be utilized to delay and prevent the Receiver from marshalling assets as required by*

1 *the Court.*” ECF No. 525 at p. 12. Tellingly, in response to this correspondence, through which
2 the Receiver once again requested an identification of the assets Mr. Madsen would turnover,
3 Mr. Giardino advised that a proposed asset turnover list would be provided on May 24, 2023.
4 ECF No. 525-11. Not only was a proposal not provided, but the representation by Mr. Giardino
5 was made more than two months after Mr. Madsen claims the “final form of the Madsen
6 settlement was delivered.” ECF No. 530 at p. 6.¹ Had Madsen truly believed a binding settlement
7 had been reached with only the proverbial red tape standing in the way, Mr. Giardino would have
8 said so. He did not—because there was no settlement. Thus, Madsen’s position that the
9 settlement is merely awaiting “final approval” and as a result, the Receiver should be prevented
10 from fulfilling his duties under the Receivership Order is disingenuous.

11 Critically, Madsen has presented this Court with no precedent or other authority
12 demonstrating that even if there were to be a pending settlement, a stay of the Receiver’s
13 proceedings against him is warranted and/or appropriate. The mere fact that a party has engaged
14 in settlement discussions or negotiations does not operate as a stay nor does it delay or absolve
15 any duty of the Receiver. *See e.g. SEC v. Faulkner*, Civil Action No. 3:16-CV-1735-D, 2019
16 U.S. Dist. LEXIS 9827, at *7 (N.D. Tex. Jan. 22, 2019) (finding a nonparty in contempt of court
17 order despite settlement negotiations made with receiver); *see also SEC v. Billion Coupons, Inc.*,
18 No. 09-00068 JMS-LEK, 2009 U.S. Dist. LEXIS 61210, at *8-9 (D. Haw. July 10, 2009)
19 (granting receiver’s request to commence litigation to recover fraudulent transfers despite
20 settlement negotiations). Madsen’s Opposition is little more than a self-serving narrative intended
21 to deflect responsibility for his non-compliance. Moreover, although Madsen has engaged in
22 settlement discussions with the SEC and although the parties appear to have established a possible
23 framework of how a settlement could be made, there has been no agreement on terms of a
24 potential settlement.

25 The Receiver’s role in this case is to marshal and preserve the assets of the Receivership
26 Estate and in furtherance of that role, the various defendants, including Madsen have been ordered

27 _____
28 ¹ Madsen states: “the final form of the Madsen settlement [] was executed and delivered to counsel for the SEC on March 9, 2023. That agreement, as revised, is awaiting final approval.”

1 to work with the Receiver and to produce certain information necessary to allow the Receiver to
2 fulfill his Court ordered duties. Although the majority of Defendants in this matter have
3 cooperated with the Receiver in providing documents and turning over assets, Madsen has not.
4 And the purported settlement raised in the Opposition appears to be just a ruse and delay tactic.
5 Taking Madsen's argument at face value would create a scenario where any defendant could
6 ignore obligations under the Receivership Order by communicating with the SEC. However,
7 there is not a provision in the current Court Orders that suggests settlement discussions alleviate
8 a party's obligations to work with the Receiver and/or absolve the Receiver of his obligations to
9 marshal assets for the estate. Furthermore, with the passage of time, there is a risk that the value
10 of assets will dissipate. As set forth in the Motion, the Receiver's review of records to date
11 indicate more than \$12 million may have flowed through Madsen and/or his company's bank
12 accounts. The Receiver needs to start marshalling such assets now.²

13 Additionally, Madsen's proffered position creates a slippery slope for non-compliance.
14 Indeed, after the filing of the Opposition, other Defendants have suggested Madsen is getting
15 special treatment and the Receiver is concerned if Madsen is allowed to ignore requirements to
16 produce documents and turnover assets, other Defendants will attempt to do the same.

17 As such, this Court should not grant Madsen a reprieve from his obligations nor should
18 this Court prevent the Receiver from recovering assets properly belonging to the Receivership
19 Estate.

20 **d. Madsen's Request to Stay Proceedings Against Him Should be Denied**

21 In response to the Receiver's Motion, Madsen moved to stay this case pending approval
22 of the purported settlement agreement. ECF No. 531. Madsen bases his request on two brief
23 paragraphs through which he posits only:

24 "A final dispositive settlement agreement, the 'Madsen Settlement' has been
25 circulated among the parties. The Madsen settlement is awaiting final approval
26 which is expected within the next thirty (30) days. Mr. Madsen has cooperated

27 ² Should the Court want to define the parameters and/or amount of assets the Receiver marshals relating
28 to Madsen, the Receiver will abide by the same. However, at this juncture, the only assets the Receiver
has from Madsen relating to funds that were frozen as a result of this Court's prior orders.

1 with the SEC, has not engaged in litigation over the claims in this matter, and has
2 not withheld information.

3 If the Madsen settlement had received final approval in March, April, or even May,
4 Mr. Madsen should not be subject to the present motion practice by the Receiver.
5 Under these circumstances, a stay of these proceedings should be granted in favor
6 of Mr. Madsen pending final approval of the Madsen Settlement.” ECF No. 531 at
7 p. 8.

8 Madsen’s request to stay suffers from the same critical flaws as his Opposition—namely,
9 that there is no “settlement pending approval” as Madsen suggests. Moreover, even if there were
10 a pending settlement, Madsen has presented this Court with no valid ground upon which it could
11 grant a stay pending finalization of the same. Furthermore, assets should, at a minimum, be
12 immediately provided to the Receiver to cover any purported settlement amount. Madsen has
13 refused to respond to the Receiver’s inquiries regarding turning over assets thus necessitating the
14 need for Court intervention.

15 Requests to stay fall within the district court’s “inherent power to control the disposition
16 of the causes on its docket,” but also require the “exercise of sound discretion.” *SEC v. 3 Eagles*
17 *Research & Dev. LLC*, No. 3:12-cv-01289-ST, 2014 U.S. Dist. LEXIS 41139, at *4-5 (D. Or.
18 Jan. 31, 2014) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir 1962)). “Where it is
19 proposed that a pending proceeding be stayed, the competing interests which will be affected by
20 the granting or refusal to grant a stay must be weighed.” *CMAX*, 300 F.2d at 268. “Among these
21 competing interests are the possible damage which may result from the granting of a stay, the
22 hardship or inequity which a party may suffer in being required to go forward, and the orderly
23 course of justice measured in terms of the simplifying or complicating of issues, proof, and
24 questions of law which could be expected to result from a stay.” *Id.*

25 Here, Madsen has failed to show good cause why a stay of this proceeding is warranted
26 but instead proposes a stay based on the mere fact that he sent a settlement offer to the SEC.
27 ECF No. 531 at p. 8. Looking to the competing interests at issue based on Madsen’s request to
28 stay, it is readily apparent that a stay is not warranted nor is it appropriate in this context. In *SEC*
v. 3 Eagles Research & Dev. LLC, the Court considered a pro-se litigant’s request to stay for 12
months “to allow him to save enough money to afford counsel and conduct depositions.” 2014

1 U.S. Dist. LEXIS 41139, at *4. The SEC countered this position by arguing “[t]he public has a
2 vital interest in the integrity of public markets,’ [] and interest in a speedy resolution of the
3 controversy.’” *Id.* (quoting *SEC v. Nicholas*, 569 F. Supp. 2d 1065, 1072 (C.D. Cal. 2008) and
4 *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 326 (9th Cir. 1995)). The court ultimately
5 agreed with the SEC and found a stay of the proceedings “would be prejudicial to the SEC’s
6 enforcement of federal law and to the allegedly harmed investors.” *Id.* at *5. The same finding
7 should lie here.

8 Madsen is not indigent. Indeed, Madsen is represented by multiple law firms in this action
9 and he possesses a plethora of assets and a vast collection of vehicles. Trial is not imminent and
10 Madsen is not currently facing criminal charges. *See Keating*, 45 F.3d at 324 (a court may decide
11 in its discretion to stay civil proceedings where there are parallel criminal proceedings). Thus,
12 there is very little upon which this Court could find that Madsen’s interests outweigh those of the
13 Receiver and/or the SEC.

14 At present, the Receiver is continuing his efforts to identify and marshal assets properly
15 belonging to the Receivership Estate, including those assets held by Madsen. In other words,
16 apart from being separated from the assets he may have obtained with ill-gotten gains, Madsen
17 stands to suffer very little burden should his request to stay be denied. Conversely, should this
18 matter be stayed as to Madsen based on his unsubstantiated claim of settlement, the detriment to
19 the Receiver and the SEC would be immeasurable. Not only would a stay prejudice the SEC’s
20 ability to enforce securities laws, but a stay would delay resolution of this matter for the harmed
21 investors and complicate matters involving the other defendants. Moreover, a stay as to Madsen
22 would allow Madsen further unfettered use and access to the assets sought by the Receiver which
23 are Receivership Property unnecessarily risking further deterioration of the Receivership Estate
24 compounding the risk that such assets would be lost or diminished. Additionally, allowing
25 Madsen to side-steps reporting requirements and turnover orders will create a slippery slope that
26 other Defendants will try to utilize to shirk this Court’s orders.

27 Madsen is alleged to have been a critical player in the alleged Ponzi-scheme. Whether
28 Madsen settles his claims with the SEC remains to be seen. However, the Receiver should not be

1 handcuffed in his efforts to recoup assets and funds that could be used to make investors whole
2 just because Madsen believes a settlement may be forthcoming. Moreover, the Receiver’s Motion
3 demonstrates that, to date, Madsen has implemented a practice of gamesmanship intended to give
4 the Receiver and the SEC just enough information to keep the ball rolling while not actually
5 complying with his obligations as a Defendant, conduct which should not be rewarded through
6 an unjustified stay.

7 This dispute is straightforward. Madsen and his company are named Defendants alleged
8 to have played a significant role in the Ponzi-scheme at the heart of this case. As a Defendant,
9 Madsen is obligated to comply with this Court’s mandates through the Receivership Order and
10 the subsequent agreement he reached through the Living Expense Agreement. Madsen has not
11 complied. Additionally, the Receiver has been vested with the authority to assume control over
12 all Receivership Property held by Madsen (or ACAC) and despite the Receiver’s efforts to
13 coordinate a voluntary turnover, Madsen has likewise refused to comply but has instead made
14 assurances of forthcoming compliance—each of which have gone unfulfilled. As a result, an
15 order compelling Madsen’s compliance or, in the alternative, an order to show cause why he
16 should not be held in contempt is warranted. Additionally, Madsen’s request that this matter be
17 stayed carries no weight and should be denied.

18 **III. CONCLUSION**

19 Based on the foregoing and for the reasons stated in the Receiver’s Motion, the Receiver
20 respectfully requests this Court grant the Receiver’s Motion to Compel in its entirety.
21 Alternatively, the Receiver respectfully requests this Court enter an order to show cause why
22 Madsen should not be held in contempt for his failure to comply with this Court’s order.
23 Additionally, the Receiver requests this Court deny Madsen’s Motion for a Stay of All Actions

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1 and Proceedings of the Receiver Pending Final Settlement of This Action. Finally, the Receiver
2 requests he be awarded attorneys' fees and costs incurred through the instant proceeding.

3 DATED this 23rd day of June 2023.

4 **GREENBERG TRAUERIG, LLP**

5 By: */s/ Kara B. Hendricks*

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