Celiza P. Bragança (IL Bar No. 6226636)
David A. O'Toole (IL Bar No. 6227010)
Bragança Law LLC
5250 Old Orchard Rd., Suite 300
Skokie, IL 60077
Tel: (847) 906-3460
Email: lisa@secdefenseattorney.com, david@secdefenseattorney.com

Vincent J. Aiello (NV Bar No. 7970)
Spencer Fane, LLP
300 South Fourth Street, Suite 950
Las Vegas, NV 89101
Tel: (702) 408-3400
Email: vaiello@spencerfane.com

Attorneys for Defendant Richard R. Madsen

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES & EXCHANGE COMMISSION, Plaintiff, v. MATTHEW WADE BEASLEY; *et al.*; Defendants; and THE JUDD IRREVOCABLE TRUST; *et al.*; Relief Defendants.	Case No. 2:22-cv-0612-JCM-EJY **DEFENDANT RICHARD R. MADSEN'S RESPONSE TO SECURITIES & EXCHANGE COMMISSION'S MOTION TO EXTEND DISCOVERY SCHEDULE (First Request)**

Defendant Richard R. Madsen opposes the Securities and Exchange Commission's motion to extend the discovery schedule in this case by an additional seven months. *See* SEC Motion to Extend Discovery Schedule (ECF No. 539). The SEC simply asserts that it cannot "completely resolve or otherwise settle" this case "absent the completion of a forensic accounting." This request fails to state why the SEC has not already completed a forensic accounting – or at least made significant progress in doing so. Instead, the SEC takes the position it is entitled to delay this case so the non-party Receiver can prepare a forensic accounting for the SEC at the investors' expense.

This is a delay that is causing Richard Madsen and other defendant's to incur unnecessary attorney's fees and significantly increasing the Receiver's fees – ultimately borne by investors. If completion of a forensic accounting were necessary to settle any part of this case or to "steamline this action," (ECF No. 539 at 3), the SEC would have done one itself. [1]

The only thing that seems to have changed is that two weeks before the SEC raised a discovery extension with the defendants in this action, the court in the related criminal case against Mr. Beasley agreed to delay the trial in that action until February 6, 2024. *See USA v. Beasley*, 2:23-cr-00066-JAD-DJA-1 (ECF No. 31 at 1) (Stipulation entered 5/12/23). This motion seems to be simply an effort to delay this case so the SEC can improperly ride the coattails of the criminal case and/or limit the evidence that must be produced in that case. If criminal prosecutors wish to delay this action, they should appear and explain why they need a stay. As they have not done so, the Court should deny the SEC's motion.[2]

1. **The SEC does not need a forensic accounting to be prepared by the Receiver.**

Other than a bare assertion, the SEC offers no coherent rationale for its supposed need for a forensic accounting prepared by the Receiver. The SEC employs armies of accountants and financial personnel capable of not only preparing a forensic accounting but of providing testimony in court.

[1] The SEC's conduct in this matter belies any notion that it is interested in "streamlining" the discovery process. As detailed in Ex. 1, Declaration of David A. O'Toole in Support of Defendant Richard R. Madsen's Response to Securities & Exchange Commission's Motion to Extend Discovery Schedule, the SEC has repeatedly delayed responding to Richard Madsen's discovery requests in any meaningful way and has still not provided meaningful responses to interrogatories more than three months after they were served.

[2] Critically, although the SEC did not see fit to mention it in its motion, counsel for multiple defendants, including the undersigned, raised numerous objections when the SEC raised the issue several weeks before the SEC filed the motion to extend. *See* Ex. 1 Att. B. The SEC never responded to those emails, and has not in its motion addressed any of the objections raised by defendants' counsel.

When the SEC filed its motion for the appointment of a Receiver in this case, the SEC did not include preparation of a forensic accounting as one of the Receiver's tasks. As the Receiver has stated in refusing to respond to discovery requests, the SEC is the plaintiff in this case – not the Receiver. It is clear that even if the Receiver were to complete a forensic accounting, it does not consider itself under any obligation to produce supporting materials. That would improperly deprive Richard Madsen and other defendants of a fair opportunity to discover the process and assumptions underlying the accounting.

In the year since the SEC sued Richard Madsen, the SEC failed to say it would be unable to litigate or settle any parts of this case without the Receiver conducting (let alone completing) a forensic accounting. The SEC could have said so in its initial motion to appoint a receiver (ECF No. 67), in the Receivership Order itself (ECF No. 88), in its motion to extend the Receivership over the added defendants like Mr. Madsen (ECF No. 120), or in the Order Amending Receivership (ECF No. 207). The SEC did not do so.

As the plaintiff in this case, the SEC has the obligation to make only those allegations it can support and to pursue litigation in a reasonable manner. Here, many Defendants have approached the SEC about possible settlements to avoid the burden of legal costs. SEC counsel repeatedly indicated that it was only waiting for action by the SEC's accountant(s) to move forward with those discussions. *See, e.g.*, Defendant Christopher Madsen's Cross-Motion for a Stay (ECF No. 531); Ex. 1, Att. B at 1, 2 (emails from counsel for Rohner and Johnson, and from the undersigned counsel for Richard Madsen). It appears that was never true. It was simply a tactic to delay this litigation and force Defendants to incur unnecessary attorney's fees and expenses.[3]

[3] At the same time, the SEC and Receiver have aggressively sought to limit Defendants' ability to pay for legal counsel. *See, e.g.,* Amended Minutes of Proceedings of 12/16/22 (ECF No. 399) (ordering turnover to Receiver of "fixed fee" retainers earned prior to asset freeze by Richard Madsen's counsel).

Notably, the SEC does not point to any changed circumstances necessitating this extension. It made no effort to include time to complete a forensic accounting in the scheduling order that it proposed. Nor can the SEC say it has been stymied in discovery and needs the extra time to rely on the Receiver's efforts. The SEC did not send its first discovery requests to Defendants until July 7, 2023 – two weeks after it filed this motion. Further, as described below, it is not as if the Receiver just began his forensic accounting and has encountered unexpected difficulties – the Receiver's invoices show that Receivership has been billing for the forensic accounting since shortly after he was appointed in June 2022.

The Receiver's forensic accounting may be necessary to fully identify the victims and their entitlement to reimbursement, but that process has no bearing on the issue of liability and is independent of what should be the relatively simple process of determining the potential liability of Defendants like Richard Madsen. The amount of potential liability can be determined by analyzing Richard Madsen's bank records and list of investors, which were provided to the SEC, pursuant to the Court's Order Amending Receivership almost a year ago. (ECF No. 207) (July 28, 2022) (requiring defendants to provide the information to both the Receiver ***and the SEC***). *See* Defendant Richard R. Madsen's Certification of Compliance (ECF No. 304) (Sept. 13, 2022).

While a forensic accounting might add some level of precision to the SEC's disgorgement calculations in potential settlements with certain defendants (which the SEC does not allege), that level of precision is unnecessary and does not justify postponing possible disgorgement to the Receivership. As the SEC acknowledged when it first moved the Court for appointment of a Receiver, "Defendants are unlikely to have sufficient assets to satisfy the full value of any judgment in this case" anyway. (ECF No. 67 at 5). Moreover, the SEC consistently argues that the SEC's request for disgorgement "need be 'only a reasonable approximation of profits causally connected to the violation.'" *SEC v. Platform Wireless Int'l. Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010)

(quoting *SEC v. First Pac. Bancorp.*, 142 F.3d 1186, 1192 n.6). *See SEC v. J.T. Wallenbrock & Assocs.*, 440 F.3d 1109, 1113-14 (9th Cir. 2006) (citations omitted); *SEC v Catledge, et al.*, No. 2:12-CV-887 JCM (NJK), 2019 U.S. Dist. LEXIS 215754, at *6 (Dec. 16, 2019) (citing *Platforms Wireless*, 617 F.3d at 1096); *SEC v, Moore*, No. 2:15-cv-1865-LDG-(GWF), 2017 U.S. Dist. LEXIS 5909, at *26 (Apr. 18, 2017) (citing *Platforms Wireless*, 617 F.3d at 1096 and *J.T. Wallenbrock*, 440 F.3d at 1114). The burden then "shifts to the defendants to 'demonstrate that the disgorgement figure was not a reasonable approximation.'" *Id.* (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989)); *SEC v Hackman*, No. 2:21-cv-01234-APG-EJY, 2022 U.S. Dist. LEXIS 78030, at *14 (Apr. 28, 2022) (citing *Platforms Wireless*, 617 F.3d at 1096). Fine-tuning the calculations are thus unlikely to have any impact on the amount available to investors.

2. The SEC should conduct whatever forensic accounting it requires in this case.

If the SEC needs a forensic accounting to be done to litigate this case, it should be done by the SEC accounting staff already assigned to and working on this matter. The SEC has multiple accountants and financial experts already assigned to this case and should not shift the cost of proving its case onto the Receivership Estate, and ultimately, investors. *See* Declarations of Amir Salimi (ECF Nos. 2-8, 24, 119-4 and 181-4) (SEC accountant experienced in forensic accounting); SEC Response to Defendant Christopher Madsen's Cross-Motion for Stay (ECF No. 540) at 3 (describing in the plural the "SEC accounting staff" that reviewed relevant documents). In the unlikely event SEC needs to assign additional personnel to move forward in this case, it has plenty of resources at its disposal.

Calculating the precise liability of each defendant is not the Receiver's responsibility and was never mentioned by the SEC when it moved for the appointment of a Receiver in this action. The SEC argued that appointment of a Receiver was justified because of "the necessity of

marshaling and preserving the assets and clarifying the financial affairs" of the Receivership Defendants. Plaintiff Securities and Exchange Commission's Motion to Appoint Receiver and Related Relief (ECF No. 67) at 5. *See also* Ex. 1, Att. A at 4-5 (Receiver's response to Madsen subpoena stating "The Receiver was appointed to marshal and *preserve* the assets of the Estate for the benefit of the victims of the alleged fraudulent offerings…") (emphasis in original). In fact, the Receiver's own description of its forensic accounting efforts never mentions anything about determining the liability of any Defendants, but merely states that it will allow the Receiver "to evaluate and propose a claims process." Fourth Quarterly Report of Receiver Geoff Winkler (ECF No. 508) at 5 (May 1, 2023).

Regardless, there is little reason to have confidence that the Receiver's forensic accounting will be completed even by January 2024. The SEC merely states that it has been informed that the Receiver's forensic accounting work "will continue until at least January 2024," SEC Motion (ECF No. 539) at 2 (emphasis added), and the Receiver made no mention of its schedule in its most recent report. *See* Fourth Quarterly Report (ECF No. 508) at 5 (May 1, 2023). Thus, we can reasonably expect that the SEC will make additional requests to delay the discovery cutoff.

Indeed, the Receiver has already spent more than a year in this effort. The Receivership reporting billing for its forensic accounting beginning on June 23, 2022, *see* Declaration of Geoff Winkler in Support of Amended First Application (ECF No. 308-1) at 17 (Sept. 14, 2022), and included 141 separate time entries listing "forensic accounting" in its bills for the time period July 1 through September 30, 2022." In total, the Receiver billed more than 368 hours and nearly $100,000 through last September for "Data Analysis" or "Forensic Acc." (the time records for these two categories are indistinguishable). *See* Declaration of Geoff Winkler in Support of Receiver's Second Application for Allowance and Payment of Fees for the Period July 1, 2022 through September 30, 2022 (ECF No. 365-1) at 88-90. The Receiver's more recent bills have sought as

much or more for these efforts. *See* Declaration of Geoff Winkler in Support of Receiver's Third Application for Allowance and Payment of Fees and Costs for Period October 1, 2022 through December 31, 2022 (ECF No. 466-1 at 83); Declaration of Geoff Winkler in Support of Receiver's Fourth Application for Allowance and Payment of Fees and Costs for Period January 1, 2023 through March 31, 2023 (ECF No. 519-1 at 61).

It may be that the SEC's primary motive in wanting to rely on the Receiver's forensic accounting is to prevent Defendants from delving into or questioning any of its conclusions. The Receiver's position has been that he has no obligation to answer any questions by the Defendants about his work, even in formal discovery requests. For example, after the Receiver demanded turnover of personal property from Richard Madsen based on his estimate of Mr. Madsen's potential liability but offered contradictory explanations for the amount, Mr. Madsen sent a subpoena to the Receiver seeking the documents supporting the Receiver's assertions. See Ex. 1 ¶ 2. The Receiver flatly refused to provide any documents whatsoever, asserting, *inter alia*, that it would be "an inequitable use" of Receivership Estate resources to substantively respond to the subpoena. *See* Ex. 1, Att. A at 5, 12. Further, the Receiver asserted that he "is not a party to the proceeding" and that Mr. Madsen would need to turn to other parties and non-parties to get any discovery. *See id.* at 4, 5, 7, 9, 11, 12. Of course, the same would be true as to any documents the Receiver relies on in completing his forensic accounting, and the Receiver has done nothing to suggest that he has reconsidered his intransigence in the wake of the SEC's stated intention of relying on the Receiver's forensic accounting. So short of simply deferring to the "black box" report the Receiver is preparing, delaying discovery including expert reports until after the Receiver completes its accounting will not "streamline" anything.

3. **Conclusion.**

For the foregoing reasons, Defendant Richard R. Madsen respectfully requests that the Court deny the SEC's Motion to Extend Discovery Schedule.

Date: July 10, 2023

/s/David A. O'Toole
Celiza P. Bragança (IL Bar No. 6226636)
David A. O'Toole (IL Bar No. 6227010)
Bragança Law LLC
5250 Old Orchard Rd., Suite 300
Skokie, IL 60077
Tel: (847) 906-3460
Email: lisa@secdefenseattorney.com
david@secdefenseattorney.com

Vincent J. Aiello (NV Bar No. 7970)
Spencer Fane, LLP
300 South Fourth Street, Suite 950
Las Vegas, NV 89101
Tel: (702) 408-3400
Fax: (702) 938-8648
Email: vaiello@spencerfane.com

Attorneys for Defendant Richard R. Madsen

CERTIFICATE OF SERVICE

I, David A. O'Toole, hereby certify that on July 10, 2023, I electronically filed **DEFENDANT RICHARD R. MADSEN'S RESPONSE TO SECURITIES & EXCHANGE COMMISSION'S MOTION TO EXTEND DISCOVERY SCHEDULE,** along with supporting papers, with the Court using the CM/ECF system, which will automatically send copies to any attorney of record in the case.

Respectfully Submitted,

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

EXHIBIT 1

Celiza P. Bragança (IL Bar No. 6226636)
David A. O'Toole (IL Bar No. 6227010)
Bragança Law LLC
5250 Old Orchard Rd., Suite 300
Skokie, IL 60077
Tel: (847) 906-3460
Email: lisa@secdefenseattorney.com, david@secdefenseattorney.com

Vincent J. Aiello (NV Bar No. 7970)
Spencer Fane, LLP
300 South Fourth Street, Suite 950
Las Vegas, NV 89101
Tel: (702) 408-3400
Email: vaiello@spencerfane.com

Attorneys for Defendant Richard R. Madsen

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES & EXCHANGE COMMISSION, Plaintiff, v. MATTHEW WADE BEASLEY; *et al.*; Defendants; and THE JUDD IRREVOCABLE TRUST; *et al.*; Relief Defendants.	Case No. 2:22-cv-0612-JCM-EJY **DECLARATION OF DAVID A. O'TOOLE IN SUPPORT OF DEFENDANT RICHARD R. MADSEN'S RESPONSE TO SECURITIES & EXCHANGE COMMISSION'S MOTION TO EXTEND DISCOVERY SCHEDULE (First Request)**

I, David A. O'Toole, state that this declaration is made on my personal knowledge, and that I am competent to testify as to the matters herein stated:

1. I am an attorney with Bragança Law LLC and one of the attorneys representing Richard R. Madsen in this matter. I have been licensed to practice as an attorney since 1992 and licensed in Illinois since 1995.

2. After Receiver's counsel offered an oral explanation of the amount the Receiver considered to be an estimate of Richard Madsen's ultimate potential liability in this case which

contradicted the written demand we had received from the Receiver a few weeks earlier, I sent a subpoena, including a schedule containing four specific requests for documents to the Receiver in this matter, Geoff Winkler to the care of his counsel, on April 5, 2023. On April 21, 2023, I received a response from his counsel. A copy of the response is attached as Ex. 1-A.

3. Also on April 5, 2023, I sent interrogatories and requests for production of documents to the SEC, responses to which were due on May 5, 2023. SEC counsel sent responses on May 5, but rather than produce any documents, the responses repeatedly said that the SEC would produce responsive documents at some future date. After repeated requests for compliance, the SEC finally on June 7 through June 9 provided nine links approximately 252,000 unorganized pages of documents without reference to any particular interrogatory or document request. After a meet and confer on June 20, 2023, SEC counsel Casey Fronk indicated that the SEC would supplement its responses to the interrogatories to include references to the bates numbers of documents responsive to specific interrogatories within two weeks. As of today – three weeks later – no supplemental responses have been provided.

4. On June 1, 2023, I received an email from Casey Fronk of the SEC, notifying me and certain other Defendants' counsel of the SEC's intent to move the Court for an extension of the discovery schedule in this matter by seven months. I responded to all counsel included in Mr. Fronk's email on June 4, 2023, and an attorney for Cameron Rohner and Seth Johnson similarly responded on June 8, 2023. A copy of that email chain is attached as Ex. 1-B. The SEC did not respond to either of these emails. Similarly, although representatives of the Receiver were copied on the emails and counsel for Rohner and Johnson specifically pointed out that the Receiver had refused to respond to Mr. Madsen's subpoena, Receiver's counsel similarly did not respond or otherwise provide reassurance that they would treat future requests differently. The SEC subsequently filed its motion on June 26, 2023.

I declare, under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on July 10, 2023, in Skokie, Illinois.

/s/ David A. O'Toole

EXHIBIT 1-A

KARA B. HENDRICKS, Bar No. 7743
hendricksk@gtlaw.com
JASON K. HICKS, Bar No. 13149
hicksja@glaw.com
KYLE A. EWING, Bar No 14051
ewingk@gtlaw.com
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

JARROD L. RICKARD, Bar No. 10203
jlr@skrlawyers.com
KATIE L. CANNATA, Bar No. 14848
klc@skrlawyers.com
SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803
Facsimile: (702) 920-8669

DAVID R. ZARO*
dzaro@allenmatkins.com
JOSHUA A. del CASTILLO*
jdelcastillo@allenmatkins.com
MATTHEW D. PHAM*
mpham@allenmatkins.com
*admitted *pro hac vice*
ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
865 South Figueroa Street
Suite 2800
Los Angeles, California 90017-2543
Telephone: (213) 622-5555
Facsimile: (213) 620-8816

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

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

MATTHEW WADE BEASLEY et al.

Defendants;

THE JUDD IRREVOCABLE TRUST et al.

Relief Defendants.

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

RECEIVER GEOFF WINKLER'S OBJECTIONS TO RICHARD MADSEN'S SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

/ / /

/ / /

The Court-appointed Receiver, Geoff Winkler, by and through his counsel of record Greenberg Traurig LLP, hereby provides the following Objections to Richard Madsen's Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action.

OBJECTIONS TO REQUESTS FOR PRODUCTION

Request No. 1: Any and all Documents Relating to any and all compensation Richard Madsen received for his participation in promoting the "fraudulent offering of securities perpetrated by" the Offering Defendants, as described in Plaintiffs Amended Complaint (ECF No. 118 ¶ 1 *et seq*.).

Response to No. 1: The Receiver objects to Document Request No. 1 as overly broad and unduly burdensome. The Request calls for "any and all" documents "Relating to" Madsen's compensation for his participation in the misconduct alleged in the SEC's[1] Amended Complaint. Either of the quoted phrases would render Request No. 1 facially overbroad standing on its own. Used together, they render the Request hopelessly overbroad. Responding to Request No. 1 on its face would require the Receiver to make an exhaustive search of potentially hundreds of thousands of records for any fleeting reference to Madsen and "compensation," a legal term of art at issue in this case, which is not defined in the Subpoena. Worse, the Subpoena purports to further expand the standard definition of "Relating to" so as to include items "in *any way* pertaining to" such compensation. *See* Subpoena, p. 6 § II ¶ 10 (emphasis added). Responding to the Request would require a document-by-document review of every document in the Receiver's possession, custody, or control, including on a continuing basis, which is not reasonable and is thus not proportional to the needs of the case under F.R.C.P. 26(b)(1). Moreover, the Receiver's investigation is ongoing and the extent of "fraudulent offerings of security perpetrated" is unknown.

/ / /

/ / /

[1] Capitalized terms used here and not defined shall have the meaning ascribed to them in the Madsen Subpoena and/or Order of Appointment, ECF No. 88, unless otherwise noted.

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

The undue burden the Receiver objects to is exacerbated by the fact that Madsen makes this request of the Court-appointed Receiver, who is not a party to the proceeding. Madsen has an obligation to take reasonable steps to avoid imposing undue burden and expense on a third party subject to subpoena. As an initial matter, Madsen must try to obtain the documents from a party before imposing the burden and expense of identifying and collecting the documents on a third party. Madsen did not do so. Rather, Madsen served a request for production on the SEC contemporaneously with the Subpoena to the Receiver, seeking the same documents, but did not await the SEC's response to his request before subpoenaing the same records from the Receiver. The Receiver understands the SEC plans to produce its investigative file or portions thereof in response to Madsen's written discovery. The Receiver therefore objects to Request No. 1 on the basis that it is duplicative of Madsen's party discovery, and the Receiver directs Madsen to the SEC's forthcoming responses to his written discovery.

Further, the Receiver objects to Request No. 1 to the extent it requests documents provided to the Receiver from third parties and/or from Madsen. To the Receiver's knowledge, the documents Madsen requests here would consist namely of (i) communications and/or agreements of which Madsen was either a party to, the sender of, or recipient of and (ii) bank records. Madsen already has possession, custody, and/or control of his own agreements and communications. The bank records are either records of Madsen's own accounts, for which he could easily obtain copies, or records for the accounts of the Offering Defendants or others. Madsen could obtain his bank records from the financial institutions that hold them. Indeed, to the extent the Receiver possesses bank records responsive to Request No. 1, they were obtained from the bank itself and could be subpoenaed or requested by Madsen or such records are contained within the SEC investigative file which Madsen has requested directly from the SEC. Simply put, Madsen has other avenues available to obtain the records and to determine whether they "in any way pertain" to his alleged compensation.

By propounding Request No. 1 instead, Madsen seeks to shift the burden of reviewing, organizing, collating, and sifting through numerous bank and other records to the Receiver for the benefit of his own defense. This is improper. The Receiver was appointed to marshal and

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

preserve the assets of the Estate for the benefit of the victims of the alleged fraudulent offerings Madsen is alleged to have promoted. Using Receivership assets to pay the Receiver's staff and professionals to assist Madsen with his trial preparation would be an inequitable use of such assets, and the Receiver objects to Request No. 1 on the basis that it imposes this undue burden on the Receiver and the Estate.

The Receiver also objects to Request No. 1 to the extent it seeks information subject to the Court's January 13, 2023, Stipulated Protective Order (Regarding Production of Documents, Information, and Things by Wells Fargo Bank, N.A.), ECF No. 425, or the Court's March 27, 2023, Stipulated Protective Order (Regarding Production of Documents, Information, and Things by U.S. Bank National Association and U.S. Bancorp Investments, Inc.), ECF No. 488 (together, the "Protective Orders"). The Protective Orders are attached here as **Exhibits 1 and 2**.

Further, the Receiver objects to Request No. 1 to the extent it seeks the Receiver's work product. Request No. 1 requests any documents and communications that pertain "in any way" to Madsen's "compensation," which would include any communications between the Receiver, his team, his professionals and consultants, and others regarding any money or other property that Madsen might consider relevant to his "compensation." The Receiver's work is ongoing, and the Receiver's preliminary impressions, conclusions, opinions, or theories regarding Madsen and his involvement in the alleged Ponzi Scheme described in the Amended Complaint are thus protected from disclosure under F.R.C.P. 26(b)(2)(3) and the common law. Further, given the facially overbroad nature of Request No. 1, preparation of a traditional "log" of the material required by F.R.C.P. 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) would be unduly burdensome, and the Receiver thus instead asserts a categorical claim of work product protection over documents in the following categories: any communications or documents evidencing communications responsive to Request No. 1 between the Receiver and (a) his staff at American Fiduciary Services LLC ("AFS"); (b) his professionals and consultants, including his attorneys and accountants; and (c) others, to the extent documents in any category contain the Receiver's preliminary impressions, conclusions, opinions, or theories regarding the Receivership.

/ / /

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

Finally, the Receiver objects to Request No. 1 to the extent it seeks privileged communications between the Receiver and his counsel. Request No. 1 requests any documents and communications that pertain "in any way" to Madsen's "compensation," which would include any communications between the Receiver and his attorneys that Madsen might consider relevant to his "compensation." Any communications between the Receiver and his attorneys regarding Madsen and his involvement in the alleged Ponzi Scheme described in the Amended Complaint were made for the purpose of facilitating the rendition of legal advice. Further, given the facially overbroad nature of Request No. 1, preparation of a traditional "log" of the material required by F.R.C.P. 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) would be unduly burdensome, and the Receiver thus asserts a claim of work product protection over any communications or documents evidencing communications responsive to Request No. 1 between the Receiver and his attorneys.

Based on these objections, the Receiver will withhold all material responsive to Request No. 1.

Request No. 2: Any and all Documents Relating to any communications between Receiver and any other Person, including but not limited to, SEC, Relating to Richard R. Madsen.

Answer/Response to No. 2: The Receiver objects to Document Request No. 2 as overly broad and unduly burdensome. The Request calls for "any and all" documents "Relating to" the communications between the Receiver and "any other person," including the SEC, "Relating to" Madsen. Any of the three quoted phrases would render Request No. 2 facially overbroad standing on its own. Used together, they render the Request hopelessly overbroad. Responding to Request No. 2 on its face would require the Receiver to make an exhaustive search of numerous emails and other documents for "any and all" fleeting references to communications the Receiver may have had about Madsen with literally *anyone*. Worse, the Subpoena purports to further expand the standard definition of "Relating to" so as to include items "in *any way* pertaining to" such communications. *See* Subpoena, p. 6 § II ¶ 10 (emphasis added). Responding to the Request would require a document-by-document review of every document in the Receiver's possession, custody, or control on a continuing basis, including privileged emails with his counsel, which is not reasonable. Further, Request No. 2 seeks information that is not relevant to the claims or

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

defenses of any party because the Receiver's communications regarding Madsen following the Receiver's appointment are not relevant to allegations regarding Madsen's prior conduct. For this reason, the Request seeks information outside the scope of discoverable information under F.R.C.P. 26(b)(1) and thus presumptively both disproportional to the needs of the case and unduly burdensome.

The undue burden the Receiver objects to is exacerbated by the fact that Madsen makes this request of the Court-appointed Receiver, who is not a party to the proceeding. Madsen has an obligation to take reasonable steps to avoid imposing undue burden and expense on a third party subject to subpoena. As an initial matter, Madsen must try to obtain the documents from a party before imposing the burden and expense of identifying and collecting the documents on a third party. Madsen did not do so. Rather, Madsen served a request for production on the SEC contemporaneously with the Subpoena to the Receiver, seeking some of the same documents, but did not await the SEC's response to his request before subpoenaing the same records from the Receiver. Madsen did not attempt to obtain responsive documents from any other party. The Receiver understands the SEC plans to produce its investigative file or portions thereof in response to Madsen's written discovery. The Receiver therefore objects to Request No. 2 on the basis that it is duplicative of Madsen's party discovery, and the Receiver directs Madsen to the SEC's forthcoming responses to his written discovery.

The Receiver also objects to Request No. 2 to the extent it seeks information subject to the Court's Protective Orders.

Further, the Receiver objects to Request No. 2 to the extent it seeks the Receiver's work product. Request No. 2 requests any documents and communications that pertain "in any way" to the Receiver's communications about Madsen, which would include any such communications between the Receiver, his team, his professionals and consultants, and others regarding Madsen. The Receiver's work is ongoing, and the Receiver's preliminary impressions, conclusions, opinions, or theories regarding Madsen and his involvement in the alleged Ponzi Scheme described in the Amended Complaint are thus protected from disclosure under F.R.C.P. 26(b)(2)(3) and the common law. Further, given the facially overbroad nature of

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

Request No. 2, preparation of a traditional "log" of the material required by F.R.C.P. 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) would be unduly burdensome, and the Receiver thus instead asserts a categorical claim of work product protection over documents in the following categories: any communications or documents evidencing communications responsive to Request No. 2 between the Receiver and (a) his staff at AFS; (b) his professionals and consultants, including his attorneys and accountants; and (c) others, to the extent documents in any category contain the Receiver's preliminary impressions, conclusions, opinions, or theories regarding the Receivership.

Finally, the Receiver objects to Request No. 2 to the extent it seeks privileged communications between the Receiver and his counsel. Request No. 2 requests any documents and communications that pertain "in any way" to the Receiver's communications about Madsen, which would include any such communications between the Receiver and his attorneys regarding Madsen. Any communications between the Receiver and his attorneys regarding Madsen were made for the purpose of facilitating the rendition of legal advice. Further, given the facially overbroad nature of Request No. 2, preparation of a traditional "log" of the material required by F.R.C.P. 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) would be unduly burdensome, and the Receiver thus asserts a claim of work product protection over any communications or documents evidencing communications responsive to Request No. 2 between the Receiver and his attorneys.

Based on these objections, the Receiver will withhold all material responsive to Request No. 2.

Request No. 3: Any and all Documents Relating to any communications between Receiver and any other Person, including but not limited to, SEC, Relating to Battle Born and Relating to the "fraudulent offering of securities perpetrated by" the Offering Defendants, as described in Plaintiff's Amended Complaint (ECF No. 118 ¶ 1 *et seq*.).

Answer/Response to No. 3: The Receiver objects to Document Request No. 3 as overly broad and unduly burdensome. The Request calls for "any and all" documents "Relating to" the communications between the Receiver and "any other person," including the SEC, "Relating to" Battle Born, LLC, an entity allegedly controlled by Madsen, and the allegedly fraudulent

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

securities offerings described in the Amended Complaint. Any of the three quoted phrases would render Request No. 3 facially overbroad standing on its own. Used together, they render the Request hopelessly overbroad. Responding to Request No. 3 on its face would require the Receiver to make an exhaustive search of numerous emails and other documents for "any and all" fleeting references to communications the Receiver may have had about Battle Born with literally *anyone*. Worse, the Subpoena purports to further expand the standard definition of "Relating to" so as to include items "in *any way* pertaining to" such communications. *See* Subpoena, p 6 § II ¶ 10 (emphasis added). Responding to the Request would require a document-by-document review of every document in the Receiver's possession, custody, or control on a continuing basis, including privileged emails with his counsel, which is not reasonable. Moreover, the Receiver's investigation is ongoing and the extent of "fraudulent offerings of security perpetrated" is unknown. Further, Request No. 3 seeks information that is not relevant to the claims or defenses of any party because the Receiver's communications regarding Battle Born following the Receiver's appointment are not relevant to allegations regarding Madsen's prior conduct. For these reasons, the Request seeks information outside the scope of discoverable information under F.R.C.P. 26(b)(1) and thus presumptively both disproportional to the needs of the case and unduly burdensome.

The undue burden the Receiver objects to is exacerbated by the fact that Madsen makes this request of the Court-appointed Receiver, who is not a party to the proceeding. Madsen has an obligation to take reasonable steps to avoid imposing undue burden and expense on a third party subject to subpoena. As an initial matter, Madsen must try to obtain the documents from a party before imposing the burden and expense of identifying and collecting the documents on a third party. Madsen did not do so. Rather, Madsen served a request for production on the SEC contemporaneously with the Subpoena to the Receiver, seeking some of the same documents, but did not await the SEC's response to his request before subpoenaing the same records from the Receiver. Madsen did not attempt to obtain responsive documents from any other party. The Receiver understands the SEC plans to produce its investigative file or portions thereof in response to Madsen's written discovery. The Receiver therefore objects to Request No. 3 on the

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

basis that it is duplicative of Madsen's party discovery, and the Receiver directs Madsen to the SEC's forthcoming responses to his written discovery.

The Receiver also objects to Request No. 3 to the extent it seeks information subject to the Court's Protective Orders as detailed above.

Further, the Receiver objects to Request No. 3 to the extent it seeks the Receiver's work product. Request No. 3 requests any documents and communications that pertain "in any way" to the Receiver's communications about Battle Born and the Amended Complaint, which would include any such communications between the Receiver, his team, his professionals and consultants, and others regarding any money or other property that Madsen might consider relevant to the allegations against Battle Born. The Receiver's work is ongoing, and the Receiver's preliminary impressions, conclusions, opinions, or theories regarding Battle Born and its involvement in the alleged Ponzi Scheme described in the Amended Complaint are thus protected from disclosure under F.R.C.P. 26(b)(2)(3) and the common law. Further, given the facially overbroad nature of Request No. 3, preparation of a traditional "log" of the material required by F.R.C.P. 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) would be unduly burdensome, and the Receiver thus instead asserts a categorical claim of work product protection over documents in the following categories: any communications or documents evidencing communications responsive to Request No. 3 between the Receiver and (a) his staff at AFS; (b) his professionals and consultants, including his attorneys and accountants; and (c) others, to the extent documents in any category contain the Receiver's preliminary impressions, conclusions, opinions, or theories regarding the Receivership.

Finally, the Receiver objects to Request No. 3 to the extent it seeks privileged communications between the Receiver and his counsel. Request No. 3 requests any documents and communications that pertain "in any way" to the Receiver's communications about Battle Born and the Amended Complaint, which would include any such communications between the Receiver and his attorneys. Any communications between the Receiver and his attorneys regarding Battle Born and its involvement in the alleged Ponzi Scheme described in the Amended Complaint were made for the purpose of facilitating the rendition of legal advice. Further, given

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

the facially overbroad nature of Request No. 3, preparation of a traditional "log" of the material required by F.R.C.P. 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) would be unduly burdensome, and the Receiver thus asserts a claim of work product protection over any communications or documents evidencing communications responsive to Request No. 3 between the Receiver and his attorneys.

Based on these objections, the Receiver will withhold all material responsive to Request No. 3.

Request No. 4.: Any and all Documents Relating to any returns, distributions, refunds, or other payments made to any and all Persons for which Battle Born received disbursements from Offering Defendants.

Answer/Response to No. 4: The Receiver objects to Document Request No. 4 as overly broad and unduly burdensome. The Request calls for "any and all" documents "Relating to" payments to "any and all" persons for which Battle Born received disbursements as alleged in the SEC's Amended Complaint. Either of the quoted phrases would render Request No. 3 facially overbroad standing on its own. Used together, they render the Request hopelessly overbroad. Responding to Request No. 4 on its face would require the Receiver to make an exhaustive search of potentially hundreds of thousands of records for any fleeting reference to any "returns, distributions, refunds, or other payments" disbursed to Battle Born. Worse, the Subpoena purports to further expand the standard definition of "Relating to" so as to include items "in any way pertaining to" such transactions regardless of whether the transactions are referenced in the document. See Subpoena, p. 6 § II ¶ 10 (emphasis added). Responding to the Request would require a document-by-document review of every document in the Receiver's possession, custody, or control, , including on a continuing basis, which is not reasonable and is thus not proportional to the needs of the case under F.R.C.P. 26(b)(1). Moreover, the Receiver's investigation into payments and disbursements as alleged in the Amended Complaint is ongoing.

The undue burden the Receiver objects to is exacerbated by the fact that Madsen makes this request of the Court-appointed Receiver, who is not a party to the proceeding. Madsen has an obligation to take reasonable steps to avoid imposing undue burden and expense on a third party subject to subpoena. As an initial matter, Madsen must try to obtain the documents from a

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

party before imposing the burden and expense of identifying and collecting the documents on a third party. Madsen did not do so. Rather, Madsen served a request for production on the SEC contemporaneously with the Subpoena to the Receiver, seeking the same documents, but did not await the SEC's response to his request before subpoenaing the same records from the Receiver. The Receiver understands the SEC plans to produce its investigative file or portions thereof in response to Madsen's written discovery. The Receiver therefore objects to Request No. 4 on the basis that it is duplicative of Madsen's party discovery, and the Receiver directs Madsen to the SEC's forthcoming responses to his written discovery.

Further, the Receiver objects to Request No. 4 to the extent it requests documents provided to the Receiver from third parties and/or from Madsen or Battle Born. To the Receiver's knowledge, the documents Madsen requests here would consist namely of (i) communications and/or agreements of which Madsen or Battle Born was either a party to, the sender of, or recipient of and (ii) bank records. Madsen already has possession, custody, and/or control of his own agreements and communications. The bank records are either records of Madsen or Battle Born's own accounts, for which he could easily obtain copies, or records for the accounts of the Offering Defendants or others. Madsen could obtain his or Battle Born's bank records from the financial institutions that hold them. Indeed, to the extent the Receiver possesses bank records responsive to Request No. 4, they were obtained from the bank itself and could be subpoenaed or requested by Madsen or such records are contained within the SEC investigative file which Madsen has requested directly from the SEC. Simply put, Madsen has other avenues available to obtain the records.

By propounding Request No. 4 instead, Madsen seeks to shift the burden of reviewing, organizing, collating, and sifting through numerous bank and other records to the Receiver for the benefit of Battle Born. This is improper. The Receiver was appointed to marshal and preserve the assets of the Estate for the benefit of the victims of the alleged fraudulent offerings Madsen is alleged to have promoted. Using Receivership assets to pay the Receiver's staff and professionals to assist Battle Born with its trial preparation would be an inequitable use of such

/ / /

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

assets, and the Receiver objects to Request No. 4 on the basis that it imposes this undue burden on the Receiver and the Estate.

The Receiver also objects to Request No. 4 to the extent it seeks information subject to the Court's Protective Orders.

Further, the Receiver objects to Request No. 4 to the extent it seeks the Receiver's work product. Request No. 4 requests any documents and communications that pertain "in any way" to certain transactions involving Battle Born, which would necessarily include any communications between the Receiver, his team, his professionals and consultants, and others regarding any "returns, distributions, refunds, or other payments" associated with Battle Born. The Receiver's work is ongoing, and the Receiver's preliminary impressions, conclusions, opinions, or theories regarding Battle Born and its participation in transactions allegedly part of the Ponzi Scheme described in the Amended Complaint are thus protected from disclosure under F.R.C.P. 26(b)(2)(3) and the common law. Further, given the facially overbroad nature of Request No. 4, preparation of a traditional "log" of the material required by F.R.C.P. 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) would be unduly burdensome, and the Receiver thus instead asserts a categorical claim of work product protection over documents in the following categories: any communications or documents evidencing communications responsive to Request No. 4 between the Receiver and (a) his staff at AFS; (b) his professionals and consultants, including his attorneys and accountants; and (c) others, to the extent documents in any category contain the Receiver's preliminary impressions, conclusions, opinions, or theories regarding the Receivership.

Finally, the Receiver objects to Request No. 4 to the extent it seeks privileged communications between the Receiver and his counsel. Request No. 4 requests any documents and communications that pertain "in any way" to certain transactions involving Battle Born, which would necessarily include any communications between the Receiver and his attorneys that Madsen might consider relevant to Battle Born transactions. Any communications between the Receiver and his attorneys regarding Madsen and his involvement in the alleged Ponzi Scheme described in the Amended Complaint were made for the purpose of facilitating the rendition of

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

legal advice. Further, given the facially overbroad nature of Request No. 4, preparation of a traditional "log" of the material required by F.R.C.P. 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) would be unduly burdensome, and the Receiver thus asserts a claim of work product protection over any communications or documents evidencing communications responsive to Request No. 4 between the Receiver and his attorneys.

Based on these objections, the Receiver will withhold all material responsive to Request No. 4.

DATED this 19th day of April, 2023.

GREENBERG TRAURIG, LLP

By: /s/ Kara B. Hendricks

KARA B. HENDRICKS, Bar No. 7743
JASON K. HICKS, Bar No. 13149
KYLE A. EWING, Bar No. 14051

JARROD L. RICKARDBar No. 10203
KATIE L. CANNATA, Bar No. 14848
SEMENZA KIRCHER RICKARD

DAVID R. ZARO*
JOSHUA A. del CASTILLO*
MATTHEW D. PHAM*
**admitted pro hac vice*
ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

Attorneys for Receiver Geoff Winkler

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2023, I caused the foregoing **RECEIVER GEOFF WINKLER'S OBJECTIONS TO RICHARD MADSEN'S SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION** to be served:

☒ via **First Class Mail.** by mailing a copy of the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

David A. O'Toole
Celiza P. Braganca
BRAGANCA LAW LLC
5250 Old Orchard Road, Suite 300
Skokie, Illinois 60091

☒ via **Electronic Mail.** by e-mailing a copy of the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

David A. O'Toole
david@secdefenseattorney.com

Celiza P. Braganca
lisa@secdefenseattorney.com

Peter S. Christiansen
pete@christiansenlaw.com,

Keely Perdue Chippoletti
keely@christiansenlaw.com,

Jason M. Jongeward
jason.jcd@gmail.com

T. Louis Palazzo
louis@palazzolawfirm.com,

Dyke Huish
huishlaw@mac.com

Fronk, Casey
FronkC@SEC.GOV

Welsh, Michael
WelshMi@SEC.GOV

Furlong, Marlea
furlongm@SEC.GOV

Baddley, David
BaddleyD@sec.gov

Jonathan D. Blum
jblum@wileypetersenlaw.com,

David Clukey
DClukey@jacksonwhitelaw.com

Ross Goodman
ross@rosscgoodman.com

Timothy C. Pittsenbarger
chase@lkpfirm.com

Kamaraju, Sidhardha
SKamaraju@PRYORCASHMAN.com

Aiello, Vincent
vaiello@spencerfane.com

Marc Cook
MCook@bckltd.com

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

Aaron Grigsby
aaron@grigsbylawgroup.com;

Joshua Andrew del Castillo
jdelcastillo@allenmatkins.com,

klc@skrlawyers.com; Pham, Matthew
mpham@allenmatkins.com

Jessica Humphries
jessicahumphrieslaw@gmail.com

Huish Law
huishlaw@mac.com

Stokes22288@icloud.com

Garrett T Ogata
court@gtogata.com

David R. Zaro
dzaro@allenmatkins.com

Jarrod L. Rickard
jlr@skrlawyers.com,

Lance Maningo
Lance@maningolaw.com

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

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135
Telephone: (702) 792-3773 Facsimile: (702) 792-9002

EXHIBIT 1-B

From: David Clukey
To: David O"Toole; Fronk, Casey; pete@christiansenlaw.com; Keely Perdue; louis@palazzolawfirm.com; jason.jcd@gmail.com; Dyke Huish; jblum@wileypetersenlaw.com; jgiardino@pryorcashman.com; Kamaraju, Sidhardha; Ross Goodman; chase@lkpfirm.com; Marc Cook; aaron@grigsbylawgroup.com; court@gtogata.com; Zaro, David; del Castillo, Joshua; klc@skrlawyers.com; Pham, Matthew; jlr@skrlawyers.com; jason.hicks@gtlaw.com; ewingk@gtlaw.com; Jessica Humphries; Lance Maningo; Huish Law; Stokes22288@icloud.com
Cc: hendricksk@gtlaw.com; Geoff Winkler; Welsh, Michael; Lisa Braganca; Aiello, Vincent
Subject: RE: SEC v. Beasley: schedule extension
Date: Thursday, June 8, 2023 3:29:25 PM

Casey,

On behalf of Cameron Rohner and Seth Johnson, we also do not agree to the extension. We join the reasons stated by Mr. O'Toole in the email below. I likewise received representations from you that we were waiting on the SEC's accountants in order to discuss settlement.

Furthermore, the Receiver has indicated in objections to subpoenas issued on behalf of Mr. Madsen that the Receiver "is not a party to the proceeding" and that information about this case should be sought from the SEC. (*See* Receiver Geoff Winker's Objections to Richard Madsen's Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, dated April 19, 2023). It cannot be both ways: the Receiver cannot claim that all information needs to be sought from the SEC and then have the SEC turn around and claim that the Receiver is gathering the information necessary for the SEC to pursue its case.

The Scheduling Order should remain in place.

Regards,

David Clukey

From: David O'Toole <David@SECDefenseAttorney.com>
Sent: Sunday, June 4, 2023 5:21 PM
To: Fronk, Casey <FronkC@SEC.GOV>; pete@christiansenlaw.com; Keely Perdue <keely@christiansenlaw.com>; louis@palazzolawfirm.com; jason.jcd@gmail.com; Dyke Huish <huishlaw@mac.com>; jblum@wileypetersenlaw.com; jgiardino@pryorcashman.com; Kamaraju, Sidhardha <SKamaraju@PRYORCASHMAN.com>; Ross Goodman <ross@rosscgoodman.com>; David Clukey <DClukey@jacksonwhitelaw.com>; chase@lkpfirm.com; Marc Cook <MCook@bckltd.com>; aaron@grigsbylawgroup.com; court@gtogata.com; Zaro, David <dzaro@allenmatkins.com>; del Castillo, Joshua <jdelcastillo@allenmatkins.com>; klc@skrlawyers.com; Pham, Matthew <mpham@allenmatkins.com>; jlr@skrlawyers.com; jason.hicks@gtlaw.com; ewingk@gtlaw.com; Jessica Humphries <jessicahumphrieslaw@gmail.com>; Lance Maningo <Lance@maningolaw.com>; Huish Law <huishlaw@mac.com>; Stokes22288@icloud.com
Cc: hendricksk@gtlaw.com; Geoff Winkler <geoff@americanfiduciaryservices.com>; Welsh, Michael <WelshMi@SEC.GOV>; Lisa Braganca <Lisa@SECDefenseAttorney.com>; Aiello, Vincent <vaiello@spencerfane.com>
Subject: RE: SEC v. Beasley: schedule extension

Casey,

On behalf of Richard Madsen, we do not agree to the proposed extension. While the relevant court orders allow the Receiver to conduct a forensic accounting, the SEC failed to mention anywhere in its initial motion to appoint a receiver (ECF No. 67), the Receivership Order itself (ECF No. 88), the motion to extend the Receivership over newly added defendants, including Mr. Madsen (ECF No. 120), or the Order Amending Receivership (ECF No. 207), that the SEC would be unable to litigate or settle any parts of this case without or until the Receiver completed such a forensic accounting.

If the SEC needs a forensic accounting to litigate or settle any part of this case, then the SEC should conduct such an accounting at its own expense. The SEC has no business dissipating the assets of the Receivership Estate when it has its own accountants on staff who can do this work and whose job it is to do it.

In fact, when we last discussed settlement in April, you indicated that the SEC's accountant would soon be able to evaluate our client's financial records as the basis for settlement. At that time, you said nothing about your need for a forensic accounting completed by the Receiver before those discussions could continue or why your accountant could not perform whatever analysis was necessary. Perhaps this explains why you made no attempt to download the complete set of Mr. Madsen's bank records we provided to you – at your request – last September and again in late April and early May.

Moreover, if the Receiver were conducting its own forensic accounting as diligently as you suggest, we would ask for an explanation as to why two weeks ago the Receiver subpoenaed, *inter alia*, those identical records which the Receiver obtained from us pursuant to court order last September.

The current discovery deadlines are already nearly three months later than the SEC proposed during the Rule 26(f) conference in January. Nothing in your email explains what unforeseeable event(s) support(s) an extension at this time.

David

David A. O'Toole | Bragança Law LLC
Tel: 312.343.8003 | David@SECDefenseAttorney.com

NOTICE: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. It is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, the sender apologizes for the inconvenience and would appreciate if you would delete any electronic and printed copies and notify them by email or telephone so they will not repeat the error.

Tel: 312.343.8003 | David@SECDefenseAttorney.com

NOTICE: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. It is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, the sender apologizes for the inconvenience and would appreciate if you would delete any electronic and printed copies and notify them by email or telephone so they will not repeat the error.

From: Fronk, Casey <FronkC@SEC.GOV>
Sent: Thursday, June 1, 2023 12:46 PM
To: pete@christiansenlaw.com; Keely Perdue <keely@christiansenlaw.com>; louis@palazzolawfirm.com; jason.jcd@gmail.com; Dyke Huish <huishlaw@mac.com>; jblum@wileypetersenlaw.com; jgiardino@pryorcashman.com; Kamaraju, Sidhardha <SKamaraju@PRYORCASHMAN.com>; Ross Goodman <ross@rosscgoodman.com>; David Clukey <DClukey@jacksonwhitelaw.com>; chase@lkpfirm.com; Lisa Braganca <Lisa@SECDefenseAttorney.com>; David O'Toole <David@SECDefenseAttorney.com>; Cami M. Perkins <cperkins@howardandhoward.com>; jjs@h2law.com; Marc Cook <MCook@bckltd.com>; aaron@grigsbylawgroup.com; court@gtogata.com; hendricksk@gtlaw.com; Zaro, David <dzaro@allenmatkins.com>; del Castillo, Joshua <jdelcastillo@allenmatkins.com>; klc@skrlawyers.com; Pham, Matthew <mpham@allenmatkins.com>; jlr@skrlawyers.com; jason.hicks@gtlaw.com; ewingk@gtlaw.com; Jessica Humphries <jessicahumphrieslaw@gmail.com>; Lance Maningo <Lance@maningolaw.com>; Huish Law <huishlaw@mac.com>; Stokes22288@icloud.com
Cc: hendricksk@gtlaw.com; Geoff Winkler <geoff@americanfiduciaryservices.com>; Welsh, Michael <WelshMi@SEC.GOV>
Subject: SEC v. Beasley: schedule extension

Parties and counsel of record,

I've been in contact with several of you regarding potential resolution of this case. In the meantime, the Receiver has been working diligently on a forensic accounting that will hopefully, once completed, provide a framework for those and other potential resolutions. As you may be aware, the Receiver's accounting requires extensive analysis of hundreds of different bank accounts and financial statements, and as such is unlikely to be completed before the parties will need to take depositions and disclose experts under the current litigation schedule.

To facilitate the completion of the Receiver's analysis, and the efficient resolution of the case without expensive discovery and expert work in the near term, the SEC is planning on moving for a seven-month extension of the current case deadlines. This extension will hopefully allow the parties to continue to work toward resolving the case, with the help of the Receiver's analysis.

Please let me know by next Friday, June 9, if you are willing to stipulate to a 7-month extension of the current deadlines. The SEC will continue to respond to discovery requests, and intends to

produce documents within short order.

-Casey

Casey R. Fronk
Trial Attorney
U.S. Securities and Exchange Commission
Salt Lake Regional Office
351 S. West Temple
Suite 6.100
Salt Lake City, UT 84101
(801) 524-6746 | FronkC@sec.gov