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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants; and

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

Relief Defendants.

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

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S RESPONSE TO DEFENDANT JEFFREY JUDD'S MOTION FOR RELEASE OF FUNDS FOR ATTORNEY'S FEES

Plaintiff Securities and Exchange Commission (the "SEC") respectfully opposes Defendant Jeffrey Judd's ("Judd's") motion for release of attorneys' fees. (Dkt. No. 142, herein, "Motion" or "Mot.") The Court's preliminary injunction and asset freeze order set forth a process by which a defendant or third-party could request a carve-out for necessary expenses, including attorney's fees. That order provides, in relevant part, that "any allowance for necessary and reasonable living expenses will be granted only upon good cause shown by application to the Court with notice to and an opportunity for the Commission to be heard." (*See* Dkt. No. 56, Order § VII.) Judd's Motion does not provide any "good cause" or other rationale for the Court's release of the requested attorneys' fees; nor is there any law supporting Defendant's extraordinary request.

I. THERE IS NO RIGHT TO COUNSEL IN SEC ENFORCEMENT ACTIONS.

As an initial matter, the law is clear that Judd does not have a right to counsel in an SEC enforcement action. The Supreme Court has repeatedly recognized that there is no right to counsel in civil proceedings. *See*, *e.g.*, *Lassiter v. Dep't of Social Services*, 452 U.S. 18, 24–27 (1981) ("The pre-eminent generalization that emerges from this Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation."); *see also SEC v. Prater*, 296 F. Supp. 2d 210, 218 (D. Conn. 2003) (defendants in a SEC enforcement proceeding "have no right to counsel in the non-criminal context"); *SEC v. Current Fin. Servs.*, 62 F. Supp. 2d 66, 67 (D.D.C. 1999) (rejecting claim that an asset freeze violated constitutional right to counsel in SEC action because "the Sixth Amendment provides defendants the right to counsel only in criminal, not civil, proceedings."). Thus, any suggestion that Judge Mahan's asset freeze "deprive[s] Judd" or his attorneys "of significant rights" (*see* Dkt. No. 142, Mot. at 18) is of no moment.

Applying these principles, in civil enforcement proceedings brought by federal regulatory agencies courts have routinely denied requests to unfreeze assets to pay for a defendant's legal defense. In *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344 (9th Cir. 1989), for example, the Ninth Circuit stated: "Courts regularly have frozen assets and denied attorney fees or limited the

amount for attorney fees" in civil enforcement actions. The Court further explained: "Any doubt as to the constitutionality of freezing assets and precluding entirely their use for payment of attorney fees in circumstances even more extreme than this case ha[s] now been resolved. *Id.* at 347 (citing *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 626 (1989) and *United States v. Monsanto*, 491 U.S. 600, 615 (1989)); *see also SEC v. Cherif*, 933 F.2d 403, 416–17 (7th Cir. 1991) ("A criminal defendant has 'no Sixth Amendment right to spend another person's money for services rendered by an attorney,' …It would be anomalous to hold that a civil litigant has any superior right to counsel than one who stands accused of a crime."). Judd provides no rationale as for why he and his attorneys should be the exception to this general rule.

II. JUDD HAS NO RIGHT TO USE INVESTOR FUNDS FOR HIS ATTORNEYS' FEES.

Moreover, it is well-settled law that Judd has no right to use other people's money to pay for his defense. *See Caplin & Drysdale, Chartered*, 491 U.S. at 626 (a defendant has no right to spend another person's funds for attorney fees even if those funds are the only way a defendant can retain the attorney of his choice); *Monsanto*, 491 U.S. at 615 (a district court may restrain a defendant from using disputed funds to pay attorney fees before a final judgment on the merits has been rendered); *Cherif*, 933 F.2d at 416–417 (neither a criminal defendant nor a civil litigant has the right to pay counsel with another person's money). "It is well established that there is no right to use the money of others for legal services." *SEC v. Grossman*, 887 F. Supp. 649, 661 (S.D.N.Y. 1995), *aff'd sub nom. SEC v. Hirschberg*, 101 F.3d 109 (2d Cir. 1996).

Numerous courts have refused to release frozen assets obtained by illegal means to pay for legal fees. *See*, *e.g.*, *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993) (defendant not entitled to use tainted assets to retain counsel in SEC enforcement proceeding); *CFTC v. Douglas Elsworth Wilson*, Case No. 11-cv-1651, 2011 WL 6398933, at *3 (S.D. Cal. Dec. 20, 2011) (it would frustrate the purpose of regulation to allow a defendant to use funds linked directly to the fraud for attorney's fees); *SEC v. Onyx Capital Advisors, LLC*, Case No. 10-cv-11633, 2011 WL 4528216, at *3 (E.D. Mich. Sept. 29, 2011) (recognizing that a defendant in a securities action

cannot use the victims' assets to hire counsel); *SEC v. Trabulse*, 526 F. Supp. 2d 1008 (N.D. Cal. 2007) (rejecting defendant's claim that asset freeze was imposed to prevent defendant from defending himself); *SEC v. Roor*, No. 99-civ-3372, 1999 WL 553823, at *3 (S.D.N.Y. July 29, 1999) ("A defendant in a case brought by the SEC may not use income derived from alleged violations of the securities laws to pay for legal counsel.") (citation omitted); *Current Fin. Servs.*, 62 F. Supp. 2d at 69 ("A defendant is not entitled to foot his legal bill with funds that are tainted by his fraud.") (internal quotations omitted).

As the Seventh Circuit explained in *Quinn*, while parties to litigation usually may spend their resources as they please to retain counsel, "their" resources is "a vital qualifier." 997 F.2d at 289. Likewise, in *Trabulse*, the court denied defendant's request to use frozen assets of a hedge fund he had managed for his personal legal fees. 526 F. Supp. 2d at 1018. The court reasoned: "Just as a bank robber cannot use the loot to wage the best defense money can buy, so a swindler in securities markets cannot use the victims' assets to hire counsel who will help him retain the gleanings of crime." *Id*. (quoting *Quinn*, 997 F.2d at 290).

Thus, the preliminary question in any inquiry concerning the use of frozen funds to pay for legal expenses are whether they are, in fact, the defendant's property, or instead the property of third parties. *See*, *e.g.*, *SEC v. Lauer*, 445 F. Supp. 2d 1362, 1369–70 (S.D. Fla. 2006) (funds derived from the fraud, and thus "tainted," should not be released from freeze to pay legal fees); *Current Fin. Servs*., 62 F. Supp. 2d at 68 (same). In this Circuit, the *Trabulse* court relied on a two-prong analysis that was previously adopted in *Quinn*, *see* 997 F.2d at 289, such that once the SEC makes a preliminary showing that a defendant's assets could be traced to fraud, the defendant is required to show that the assets were ultimately untainted by fraud (a showing that the defendant in *Quinn* ultimately failed to establish). *See id*.

Here, as Judge Mahan found in granting the SEC's request for a preliminary injunction, "the Commission has made a proper *prima facie* showing that . . . Jeffrey J. Judd [and the J&J Entities] directly and indirectly engaged in the violations alleged in the Complaint" (including violations of the anti-fraud provisions of the securities laws) and that Defendants, "unless

restrained and enjoined by the Court," may "dissipate, conceal or transfer from the jurisdiction of this Court assets that could be subject to an order of disgorgement or an order to pay a civil monetary penalty in this action," and that "entry of a preliminary injunction, asset freeze, and order for other equitable relief as set forth below is necessary and appropriate." (*See* Dkt. No. 56, Order at 2.) These findings—along with the bank records analysis presented by the SEC showing that Judd (and entities he controlled) obtained at least $315.3 million in investor funds (*see* Dkt. No. 2-8, Salimi Decl. ¶¶ 12–13)—are sufficient to meet *Quinn*'s preliminary showing that Judd's extant assets can be traced to fraud. And just as in *Quinn*, here Judd provides no evidence (as opposed to attorney argument) to the contrary, and no basis on which the Court could conclude that the assets at issue are untainted and are not investor funds.

III. JUDD HAS PROVIDED NO FACTUAL BASIS ON WHICH THE COURT COULD RELEASE THE REQUESTED ATTORNEY'S FEES.

Judd has provided no basis on which the Court could determine that the requested attorneys' fees should be released. On May 18, 2022, after Judd asked the SEC to stipulate to the release of the fees, SEC counsel specifically requested that Judd provide documentary evidence supporting his attorneys' contention that Judd had sufficient untainted assets from which to pay those fees.[1] (*See* Dkt. No. 142-1, Anderson Decl. at ¶ 21.) Judd has not provided

[1] Judd spends much of his motion accusing counsel for the SEC of not meeting its obligation to meet and confer. This accusation ignores that on May 18, SEC counsel specifically noted what information would be required for the SEC to agree to release the funds: *i.e.*, at a minimum, documentation sufficient to verify the alleged untainted assets Judd was in possession of prior to the beginning of the Ponzi scheme. (*See* Dkt. No. 142-1, Anderson Decl. at ¶ 21 & Judd's *in camera* submission.) Judd failed to provide that information, and instead asserted, contrary to established law, that it was the ***SEC's*** responsibility to verify Judd's pre-2017 assets. (*See* Dkt. No. 142-1, Anderson Decl. ¶ 22.) SEC counsel continues to await the requested information that Judd apparently is refusing to provide on the basis of his Fifth Amendment invocation.

such information, nor is any such information included in or appended to his Motion. And without that evidence, there is simply no basis on which the Court could conclude that frozen funds should be released to pay for Judd's attorney's fees.

Judd attempts to avoid this fatal omission by switching the burden to the SEC, claiming that "the burden is on the government to establish a dissipation of assets." (Dkt. No. 142, Mot. at 10.) But that is the standard for obtaining an asset freeze, not for modifying an existing freeze to allow payment of attorney's fees with frozen funds. "To succeed on a motion to modify [a] freeze to permit payment of attorneys' fees and other expenses, ***[a] defendant*** 'must establish that such modification is in the interest of the defrauded investors.'" *Richards v. Mountain Capital Management, LLC*, Case No. 10-civ-2790, 2010 WL 2473588, at *2 (S.D.N.Y. June 17, 2010) (emphasis added), (quoting *SEC v. Credit Bancorp Ltd*., Case No. 99-civ-11395, 2010 WL 768944, at *4 (S.D.N.Y. Mar. 8, 2010) (citation omitted)). Accordingly, a defendant must establish that the funds he seeks to release are untainted and that there are sufficient funds to satisfy any disgorgement remedy that might be ordered in the event a violation is established at trial. *See*, *e.g.*, *SEC v. Stein*, No. 07-civ-3125, 2009 WL 1181061, at *1 (S.D.N.Y. Apr. 30, 2009); *Douglas Elsworth Wilson*, 2011 WL 6398933 (ordering return from attorney trust account of tainted funds). And here, the Court's prior order specifies that the burden is Judd's to make such "good cause" showing. (*See* Dkt. No. 56, Order § VII.)

Judd provides no evidence by which he could meet his burden. In fact, since the outset of the case, he has steadfastly resisted all efforts by the SEC to obtain evidence regarding his assets. The SEC's own analysis of relevant bank records, as set forth in its motion for a preliminary injunction and asset freeze, shows that Judd (and the entities he controlled) received at least $315.3 million in likely investor funds through the Ponzi scheme. (*See* Dkt. No. 2-8, Salimi Decl. ¶¶ 12–13.) But it is unclear what, if any, funds Judd has retained (rather than spent on luxury vehicles and real estate, among other things), because Judd has refused to provide the required accounting detailing his current assets, claiming that to do so would violate his "Fifth Amendment privilege against self-incrimination." (*See* Dkt. No. 9, at 2.)

Judd also attempts to avoid his evidentiary burden by claiming that the SEC has not yet proven a disgorgement amount. (*See* Dkt. No. 142, Mot. at 12.) But again, there is no requirement that the SEC first establish Judd's reasonable business expenses or other elements of a disgorgement calculation before obtaining an asset freeze—and to the extent the SEC "does not know whether there are sufficient funds to satisfy any potential disgorgement remedy," (*see* Mot. at 12), that fault is Judd's, not the SEC's. What the SEC has proven is that Judd received over $315 million in likely investor funds, and Judd has not provided any basis on which the Court could conclude that he has sufficient assets to return that amount of funds to investors ***and*** to pay the significant attorneys' fees he has already expended trying to undermine the SEC's case.[2]

In a recent case addressing these issues, *SEC v. King*, the defendants moved to modify the SEC's asset freeze request for a release of funds for attorneys' fees. The court denied the request, noting that "in a civil enforcement action, a 'defendant must establish that the funds he seeks to release are untainted and that there are sufficient funds to satisfy any disgorgement remedy that might be ordered in the event a violation is established.'" No. SACV 20-02398, 2021 WL 3598732, *4 (C.D. Cal. Apr. 27, 2021), quoting *SEC v. Santillo*, No. 18-CV-5491,

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[2] Judd's suggestion that the SEC is not treating him similarly to other defendants, in this regard, is exactly backwards. Judd claims the SEC has allowed other Defendants "to sell assets acquired with 'tainted' funds, and put proceeds from the sale in their attorney's trust account," (Dkt. No. 14, Mot. at ¶ 31), implying that those Defendants have also been authorized to use those proceeds for attorneys' fees. In fact, the SEC agreed that in certain circumstances, requiring a Defendant to cancel a previously scheduled sale of property would reduce the amount of money available to investors at the conclusion of the case, and as such agreed to allow the previously scheduled sale to proceed, under the condition that the proceeds of the sale be transferred to the Defendant's attorney's IOLTA ***and preserved to satisfy any future disgorgement award***. What Judd wants to do is exactly the opposite: ***remove*** frozen funds from his attorneys' IOLTA accounts for his own personal benefit (*i.e.*, the continued retention of his multiple attorneys).

2018 WL 3392881, at *4 (S.D.N.Y. July 11, 2018). Because the defendants "filed almost no evidence that would enable the Court to determine the reasonableness or appropriateness of the legal fees requested, or their ability to obtain access to alternative assets," and "only filed some evidence alongside two declarations concerning the plausibility that the funds they request are untainted," the court held that defendants had failed to meet their burden. *King*, 2021 WL 3598732 at *4 (staying motion and requiring defendants to submit additional evidence in support of the release of fees). Here, Judd has submitted even less evidence than the defendants in *King*, and has furthermore refused to provide the critical accounting that would allow the SEC and the Court to assess whether the release of the requested fees would ultimately dissipate investor assets. Thus, there is no present basis on which the Court could grant the relief Judd requests.

CONCLUSION

For the foregoing reasons, the SEC respectfully requests that the Court deny Judd's request for a modification of the asset freeze and/or receivership orders to release funds for his attorneys' fees. The SEC takes no position on Judd's counsel's request to withdraw if Judd's motion is not granted.

DATED this 20th day of July, 2022.

/s/ Casey R. Fronk
Tracy S. Combs
Casey R. Fronk
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2022, I caused the **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S RESPONSE TO DEFENDANT JEFFREY JUDD'S MOTION FOR RELEASE OF FUNDS FOR ATTORNEY'S FEES** to be served to all parties entitled to service through the Court's ECF system and to the following individuals by the means indicated below:

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

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

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

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

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

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

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

Larry Jeffery
[redacted]
Laguna Beach, CA [redacted]

Jason A. Jenne
[redacted]
Las Vegas, NV [redacted]

Seth Johnson
[redacted]
Gilbert, AZ [redacted]

Mark A. Murphy
[redacted]
Henderson, NV [redacted]

Cameron Rohner
[redacted]
Gilbert, AZ [redacted]

Warren Rosegreen
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By email to the following:

Anthony Michael Alberto, Jr. and Monty Crew, LLC
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/s/ Casey R. Fronk
Casey R. Fronk