

1 TRACY S. COMBS (California Bar No. 298664)
Email: combst@sec.gov
2 CASEY R. FRONK (Illinois Bar No. 6296535)
Email: fronkc@sec.gov
3 SECURITIES AND EXCHANGE COMMISSION
351 South West Temple, Suite 6.100
Salt Lake City, Utah 84101
4 Tel: (801) 524-5796
5 Fax: (801) 524-3558

6 **UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

7
8 SECURITIES AND EXCHANGE
COMMISSION,

9 Plaintiff,

10 v.

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

18 Defendants; and

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

23 Relief Defendants.
24
25
26
27

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

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
RESPONSE TO NON-PARTY
OBERHEIDEN P.C.'S MOTION FOR
MOTION TO RETAIN EARNED FEES
AND EXPENSES**

1 Plaintiff Securities and Exchange Commission (the “SEC”) respectfully opposes non-
2 party Oberheiden P.C.’s (“Oberheiden’s”) motion to retain attorneys’ fees and expenses. (Dkt.
3 No. 164, herein, “Motion” or “Mot.”) Oberheiden requests that the Court release from the asset
4 freeze \$371,622.40 in attorneys’ fees and expenses Oberheiden obtained from Defendant Jeffrey
5 Judd (“Judd”). Oberheiden requests this relief based on unspecified “due diligence” into Judd’s
6 financials, and vague representations from Judd to Oberheiden that the amounts provided to
7 Oberheiden were not related to the fraudulent investment scheme at the heart of this case. This is
8 not sufficient evidence to support the requested release of funds.

9 **I. OBERHEIDEN DOES NOT HAVE THE RIGHT TO RETAIN INVESTOR**
10 **FUNDS FOR PAYMENT OF ATTORNEYS’ FEES.**

11 “No lawyer, in any case, has the right to accept stolen property, or ransom money, in
12 payment of a fee.” *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 626 (1989)
13 (citation and alterations omitted). Furthermore, the Sixth Amendment does not give a
14 defendant—even in a criminal proceeding, and even before a trial on the merits—the right to
15 spend ill-gotten gains for his defense. *Id.*; *see also U.S. v. Monsanto*, 491 U.S. 600, 615 (1989)
16 (allowing the Government to restrain a defendant from using disputed funds to pay attorneys’
17 fees before a final judgment on the merits); *SEC v. Trabulse*, 526 F. Supp. 2d 1008, 1018 (N.D.
18 Cal. 2007) (quoting *SEC v. Quinn*, 997 F.3d 287, 289 (7th Cir. 1993)) (“Just as a bank robber
19 cannot use the loot to wage the best defense money can buy, so a swindler in securities markets
20 cannot use the victims’ assets to hire counsel who will help him retain the gleanings of crime.”).
21 For example, in *SEC v. Cherif*, the Seventh Circuit reviewed a district court’s refusal to modify
22 an injunction to allow a defendant in an SEC enforcement proceeding who was also “a defendant
23 in a pending criminal case” to withdraw more than \$20,000 in frozen funds to pay attorneys’
24 fees. 933 F.2d 403, 416 (7th Cir. 1991). The Seventh Circuit affirmed, noting that “[a] criminal
25 defendant has ‘no Sixth Amendment right to spend another person’s money for services rendered
26 by an attorney.’” *Id.* at 417, quoting *Caplin & Drysdale*, 491 U.S. at 626. In addition, the Court
27 affirmed the district court’s ability, when considering whether to modify an asset freeze, to

1 “draw adverse inferences” from a defendant’s invocation of the Fifth Amendment and refusal to
2 provide an accounting. *See* 933 F.2d at 417.

3 Thus, the preliminary question in any inquiry concerning the use of frozen funds to pay
4 for legal expenses are whether the funds are, in fact, the defendant’s property, or instead the
5 property of third parties. *See, e.g., SEC v. Lauer*, 445 F. Supp. 2d 1362, 1369–70 (S.D. Fla.
6 2006) (funds derived from the fraud, and thus “tainted,” should not be released from freeze to
7 pay legal fees); *SEC v. Current Fin. Servs.*, 62 F. Supp. 2d 66, 68 (D.D.C. 1999) (same). In this
8 Circuit, the *Trabulse* court relied on a two-prong analysis that was previously adopted in *Quinn*,
9 *see* 997 F.2d at 289, such that once the SEC makes a preliminary showing that a defendant’s
10 assets could be traced to fraud, the defendant is required to show that the assets were ultimately
11 untainted by fraud (a showing that the defendant in *Quinn* ultimately failed to establish). *See*
12 *Trabulse*, 526 F. Supp. 2d at 1018.

13 Here, as Judge Mahan found in granting the SEC’s request for a preliminary injunction,
14 “the Commission has made a proper *prima facie* showing that . . . Jeffrey J. Judd [and the J&J
15 Entities] directly and indirectly engaged in the violations alleged in the Complaint” (including
16 violations of the anti-fraud provisions of the securities laws) and that Defendants, “unless
17 restrained and enjoined by the Court,” may “dissipate, conceal or transfer from the jurisdiction of
18 this Court assets that could be subject to an order of disgorgement or an order to pay a civil
19 monetary penalty in this action,” and that “entry of a preliminary injunction, asset freeze, and
20 order for other equitable relief as set forth below is necessary and appropriate.” (*See* Dkt. No.
21 56, Order at 2.)¹ These findings—along with the bank records analysis presented by the SEC
22
23

24 ¹ At the hearing on July 25, 2022, Judd’s counsel insisted that the SEC has produced “no
25 evidence” that Judd was aware that the business he ran for over five years was a Ponzi scheme.
26 In fact, the SEC has submitted evidence that Judd was aware the Purchase Agreements
27 purportedly supporting the scheme were fake, and that he took steps to conceal that fact from

1 showing that Judd (and entities he controlled) obtained at least \$315.3 million in investor funds
2 (see Dkt. No. 2-8, Salimi Decl. ¶¶ 12–13)—are sufficient to meet *Quinn*’s preliminary showing
3 that Judd’s extant assets can be traced to fraud. As a result, it is Oberheiden’s burden to show
4 that the funds Oberheiden received from Judd for payment of attorneys’ fees are ultimately
5 untainted. Oberheiden’s Motion provides no cognizable evidence to that effect.

6 **II. OBERHEIDEN DOES NOT PROVIDE A SUFFICIENT FACTUAL BASIS TO**
7 **SHOW THAT THE FUNDS AT ISSUE ARE UNTAINTED.**

8 Oberheiden relies on two arguments to support its claim that the funds are untainted or
9 otherwise unconnected to the Ponzi scheme at the heart of this case. Neither is sufficient to
10 support a release of over \$370,000 in likely investor funds, because neither is supported by
11 anything more than the attorneys’, and Judd’s, say so. *Compare SEC v. King*, No. SACV 20-
12 02398, 2021 WL 3598732, *4 (C.D. Cal. Apr. 27, 2021) (denying motion to unfreeze assets for
13 attorneys’ fees where defendant failed to provide sufficient evidence that funds were untainted or
14 that defendant had sufficient untainted funds to pay the requested attorneys’ fees).

15 *First*, Oberheiden states that it performed unspecified “due diligence” of Judd’s
16 “financials, bank records, emails, text exchanges, and other information,” along with an
17 “analysis [by] several retired federal agents,” to “ensure the funds it initially received from Mr.
18 Judd were lawfully obtained.” (Dkt. No. 164, Mot. at ¶ 4.) But Oberheiden does not reveal the
19 specific information it or its representatives reviewed, nor does it disclose the result of whatever
20 due diligence was performed (other than to imply that the firm’s review established that some,
21 unspecified amount of the funds are untainted). That is, there is no representation from
22 Oberheiden in the Motion, or more properly in any declaration under oath in support of the
23 Motion, that whatever due diligence Oberheiden performed established the untainted nature of
24 *all* the funds at issue. Moreover, Oberheiden does not provide any documentation or support,

25 _____
26 investors. (See Dkt. No. 181, SEC Reply in Support of Motion to Amend Preliminary Injunction
27 Order, at 11–12.)

1 either with its filing or *in camera*, to establish such conclusion. Thus, there is no way for the
2 SEC or the Court to verify that the funds at issue are untainted, or that whatever due diligence
3 was performed came to the correct conclusion as to the source of the funds.

4 **Second**, Oberheiden relies on various “written assurances” and representations from Judd
5 to Oberheiden that the funds at issue were “from lawful sources” and not otherwise connected to
6 the fraud. (*See* Dkt. No. 164, Mot. at ¶¶ 5–7.) The only such representations the Motion
7 specifically identifies, however, were not made under oath but as part of standard retention
8 agreements Judd signed when he hired Oberheiden in or around **October 2021**. (*See id.* at ¶ 2
9 (noting “the firm’s October 2021 in-writing engagement contract with Mr. Judd”).)²
10 Remarkably, Judd currently asserts, through his attorneys, that he only learned of Matthew
11 Beasley’s fraud in or about **March 2022**, upon Beasley’s arrest and five months after Judd signed
12 his retention agreement with Oberheiden. (*See, e.g.*, Dkt. No. 163, Judd’s Resp. at 14.) Thus,
13 assuming, counterfactually, the truth of Judd’s argument—*i.e.*, that he was unaware before
14 March 2022 of the Ponzi scheme—any representation he made to Oberheiden in or around
15 October 2021 about the untainted nature of the funds is meaningless. But if, as the facts show,
16 Judd knew long before October 2021 that the Purchase Agreements were fake, it is impossible to
17 credit his self-serving representations to Oberheiden that the funds at issue are not connected to
18 the fraud. Moreover, Judd has now invoked the Fifth Amendment and refused to provide the
19 required accounting or expedited discovery responses that would give clarity to the
20 representations he made to Oberheiden regarding the source of the funds paid to the firm—from
21 which the Court may draw an adverse inference regarding the funds’ ultimate source. *Compare*
22 *Cherif*, 933 F.2d at 417.

23
24
25 ² The Motion vaguely references additional “written assurances” possibly outside of the
26 Oberheiden engagement contract, but does not indicate when Judd made these additional
27 assurances, or in what context. (*See* Dkt. No. 164, Mot. at ¶ 5.)

1 In sum, Oberheiden requests that the Court release over \$370,000 in attorneys' fees and
2 costs for unidentified criminal defense work on behalf of Judd, despite that there is currently no
3 pending criminal case against Judd and despite providing no cognizable evidence that the funds
4 sought to be released are untainted. This is not sufficient, and there is no present basis on which
5 the Court could release the requested funds.

6 **CONCLUSION**

7 For the foregoing reasons, the SEC respectfully requests that the Court deny
8 Oberheiden's request for a modification of the asset freeze and/or receivership orders to release
9 funds for attorneys' fees and expenses.

10
11 DATED this 27th day of July, 2022.

12 /s/ Casey R. Fronk _____
13 Tracy S. Combs
14 Casey R. Fronk
15 Attorney for Plaintiff
16 SECURITIES AND EXCHANGE COMMISSION
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

1 I hereby certify that on the 27th day of July, 2022, I caused the **PLAINTIFF**
2
3 **SECURITIES AND EXCHANGE COMMISSION’S RESPONSE TO NON-PARTY**
4 **OBERHEIDEN P.C.’S MOTION FOR MOTION TO RETAIN EARNED FEES AND**
5 **EXPENSES** to be served to all parties entitled to service through the Court’s ECF system and to
6 the following individuals by the means indicated below:

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

8 BJ Holdings LLC
9 c/o Beasley Law Group PC, c/o Matthew Wade Beasley
10 Nevada Southern Detention Center
11 2190 East Mesquite Avenue
Pahrump, NV 89060

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

15 Jason M. Jongeward and JL2 Investments, LLC
16 [REDACTED]
17 Washington, UT [REDACTED]

18 PAJ Consulting, Inc
19 [REDACTED]
Huntington Beach CA [REDACTED]

20 Triple Threat Basketball, LLC
21 c/o Warren Rosegreen
[REDACTED]
22 Henderson, NV [REDACTED]

23 The Judd Irrevocable Trust
24 c/o Jeffrey Judd
[REDACTED]
25 Henderson, NV [REDACTED]

26 Jason A. Jenne
[REDACTED]
27 Las Vegas, NV [REDACTED]

1 Mark A. Murphy

2 [REDACTED]
3 Henderson, NV [REDACTED]

4 Warren Rosegreen

5 Henderson, NV [REDACTED]

6 *By email to the following:*

7 Anthony Michael Alberto, Jr. and Monty Crew, LLC

8 [REDACTED]
9 Dyke Huish

10 Huish Law Firm

11 huishlaw@mac.com

Counsel for Roland Tanner

12
13
14 /s/ Casey R. Fronk
15 Casey R. Fronk
16
17
18
19
20
21
22
23
24
25
26
27