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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 REPLY IN SUPPORT OF MOTION TO AMEND RECEIVERSHIP ORDER

INTRODUCTION

Plaintiff Securities and Exchange Commission (the "SEC") submits this reply in support of its motion to amend the Court's prior receivership order to include the personal assets of eight defendants added to the SEC's Amended Complaint—Larry Jeffery, Jason Jenne, Seth Johnson, Christopher Madsen, Richard Madsen, Mark Murphy, Cameron Rohner, and Warren Rosegreen (together herein, the "New Defendants"). (Motion, Dkt. No. 120.) New Defendants Christopher Madsen ("C. Madsen") and Richard Madsen ("R. Madsen") oppose the SEC's requested amendment as to them. (*See* Dkt. Nos. 159, 161.) Defendant Jeffrey Judd ("Judd"), whose interests are not affected by the motion, nevertheless filed an opposition to it, asking the Court to reconsider the original receivership order that was entered by Judge Mahan on June 3, 2022. (*See* Dkt. No. 162.) No other Defendant has submitted an opposition.

The factual arguments on which C. Madsen and R. Madsen rely in opposition to the SEC's motion to extend the receivership are the same they raise in opposition to the SEC's motion to extend the preliminary injunction and asset freeze. As discussed at length in the SEC's reply in support of the extension of the preliminary injunction and asset freeze (herein, "P.I. Reply"), none of those arguments are sufficient to rebut the SEC's *prima facie* case. Those facts, notwithstanding C. Madsen's creatively worded declaration, show the Madsens violated the securities laws, received millions of dollars of ill-gotten gains for those violations, and have already dissipated assets. The same facts support the SEC's requested receivership.

Judd's opposition, meanwhile—a procedurally improper motion for reconsideration—rehashes the very arguments Judge Mahan rejected in granting the SEC's request for receivership in early June. Judd's current, procedurally-flawed demand for the Court to unwind the receivership as to him rests on the erroneous assumption that Judge Mahan failed to comply with the Local Rules by holding a hearing. But Judge Mahan held a full hearing on the SEC's motion for preliminary injunctive relief and asset freeze, and Judd provided no evidence at that hearing, or anytime afterwards, that would counsel against the receivership.

I. THE SEC'S REQUESTED RELIEF IS APPROPRIATE AS TO NEW DEFENDANTS CHRISTOPHER MADSEN AND RICHARD MADSEN.

A. The Madsens Misstate Controlling Law.

As an initial matter, the Madsens misstate the controlling law regarding the factors courts may consider in ordering a receivership. Citing *Canada Life Assurance Co. v. LaPeter*, 563 F.2d 837, 844 (9th Cir. 2009), the Madsens argue that "courts ***should*** consider a variety of factors in making the determination of whether to appoint a receiver, including (1) the validity of the plaintiff's claim; (2) whether the plaintiff can establish there is fraudulent conduct or the probability of fraudulent conduct by the defendant; (3) whether the property is in imminent danger of being lost, concealed, or squandered; (4) whether legal remedies are inadequate; (5) whether the harm to plaintiff by denial would outweigh injury to the defendant from appointment; (6) the plaintiff's probable success in the action and the possibility of irreparable injury to plaintiff's interest in the property; and (7) whether the receivership would protect the plaintiff's interests." (Dkt. No. 159, Opp. at 14–15; *see also* Dkt. 161, at 9 (emphasis added).) The Madsens imply that by not separately considering each of these seven factors, the Court errs in granting a receivership. (*See id.*)

But the Ninth Circuit, in *Canada Life*, made clear that there "is no precise formula for determining when a receiver may be appointed." 563 F.3d at 844, quoting *Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir. 1993). The Ninth Circuit noted that it had, in another case, considered factors including "whether the property was of insufficient value to assure repayment, and whether the defendant was of doubtful financial standing," *Canada Life*, 563 F.3d at 844, and that a court might further consider "any circumstance which commends itself to a court of equity as a reason for granting the relief sought." *Id.*, quoting *View Crest Garden Apartments, Inc. v. U.S.*, 281 F.2d 844, 847 (9th Cir. 1960). Thus, it is clear that the Ninth's Circuit's listing of factors "courts consider" was descriptive—not prescriptive—and does not constrain the ability of this Court to consider, or not to consider, those or other factors

in granting or denying the SEC's request to extend the receivership to the New Defendants.[1] Courts in the Ninth Circuit have appointed receivers in SEC cases after considering, among other things, simply whether defendants' assets "require a receiver for management, collection, or revenue, and the proper distribution of investor funds," or whether the receiver is otherwise "necessary for the protection of investors." *See*, *e.g.*, *SEC v. Credit First Fund*, No. CV05-8741, 2006 WL 4729240, *15 (C.D. Cal. Feb. 13, 2006).

Here, as Judge Mahan found in granting the SEC's motion for a receivership over the personal assets of the original Defendants (including Defendants similarly situated to the Madsens), "the [SEC] has made a proper *prima facie* showing that Defendants directly and indirectly engaged in violations of the federal securities laws as alleged in the Complaint;" and "appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Defendants and those assets of certain Relief

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[1] To the extent the Court considers the factors set forth in *Canada Life*, the SEC submits that those factors further counsel in favor of extending the receivership over the New Defendants. As discussed herein, the SEC has set forth a strong *prima facie* case—including by admissions of Beasley, one of the Defendants directly involved in the scheme—that the Madsens were directly involved in an extensive, fraudulent investment scheme; the Madsens have already dissipated assets that could be used to satisfy a disgorgement judgment; the receivership is structured so as to protect any interests the Madsens have in the receivership property; and the harm to investors of allowing the Madsens to continue to dissipate investor funds (and the potential diminution in value of property purchased by those funds, such as the Madsens' vehicles and houses) far outweighs any inconvenience the receivership may impose on the Madsens. Furthermore, the Madsens have provided no evidence that they have sufficient funds to repay the millions of dollars in investor funds they received (in their own and in their companies' accounts) through the operation of this scheme, making the proposed receivership necessary to protect the remaining investor assets in their possession, many of which are real estate and vehicles subject to potential loss, theft, or depreciation.

Defendants that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants." (Dkt. No. 88, Order at 2.) The SEC has made the same showing as to the Madsens.

B. The SEC Presented A *Prima Facie* Case That The Madsens Violated The Securities Laws In Support Of An Extensive Fraudulent Scheme.

As with his opposition to the SEC's request for preliminary injunctive relief, C. Madsen (though not R. Madsen) argues the SEC has not set forth a *prima facie* case that he "offered or sold" securities in violation of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a), (c)], or acted as a broker in violation of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)]. C. Madsen contends that because he—in his lawyer's words—merely "acted as a connection or conduit" between investors (his "family and friends") and Judd, and did not independently "solicit" investors, he cannot be liable for violations of the securities laws. (*See* Dkt. No. 159, Opp. at 9.) As demonstrated in the SEC's P.I. Reply, this argument is belied by C. Madsen's own contemporaneous descriptions of his conduct and his bank transactions. Also, C. Madsen's argument is not at all supported by the sole evidence C. Madsen submits on his behalf: a creatively worded, self-serving declaration. (*See* Dkt. No. 181, P.I. Reply at 2–5.)

The Madsens argue that because they were merely "swept up in" and did not "orchestrat[e]" the "underlying Ponzi scheme," that they should be treated differently than the original Defendants whose personal assets are already under receivership. (*See* Dkt. No. 159, Opp. at 15, *see also* Dkt. No. 161, Opp. at 9–10.) As made clear in C. Madsen's own contemporaneous communications with Judd, and both C. Madsen's and R. Madsen's bank records, the Madsens were hardly innocent "conduits" disconnected from the fraudulent activity at the heart of this case. (*See* Dkt. No. 181, P.I. Reply at 2–5.) For example, C. Madsen texted Judd that he wanted to get rid of a group of investors who were, according to C. Madsen, "***asking too many damn questions***." (Dkt. No. 181-1, Ostler Supp. Decl. ¶ 16 (emphasis added).) And C. Madsen was in direct communication with Beasley the very day the FBI raided

the houses of Judd, Humphries, and later Beasley—leading to the publicized standoff between Beasley and the FBI. (*See id*., Ostler Supp. Decl. ¶ 24 & Ex. 78.) R. Madsen, meanwhile, continued to allow investors to cash checks of fictitious, Ponzi payments ***even after Beasley was arrested***, undermining any suggestion that he did not control payments to investors or was merely a victim who changed his ways once he learned of impropriety. (*See* Dkt. No. 181-4, Salimi Supp. Decl. ¶ 11.) That the SEC has not currently charged C. Madsen with fraud does not in any way diminish his (or his brother and business partner R. Madsen's) central involvement in what C. Madsen concedes was a "Ponzi scheme." (Dkt. No. 159, Opp. at 15.)

The Madsens also cannot contest that their own bank records show they were some of the primary perpetrators of the scheme. Of the approximately $487 million in total known funds disbursed through the investment scheme (*see* Dkt. No. 2-8, Salimi Decl. ¶¶ 12–13), C. Madsen received disbursements of at least $12.3 million and R. Madsen received disbursements of at least $5.8 million. (Dkt. No. 119-4, Salimi Decl. ¶ 11.) The bank records further indicate that C. Madsen brought at least 100 individual investors into the scheme, and that both C. Madsen and R. Madsen made significant commissions from each investment they solicited. (*See* Dkt. No. 181, P.I. Reply at 4–5.) This preliminary analysis likely understates the amount of funds the Madsens received, since it is based on a limited review of only certain bank accounts used in the scheme—but even this preliminary review suggests that the Madsens accounted for a meaningful percentage of the overall scheme. There is no reason to treat the Madsens any differently from the other Defendants in this regard.[2]

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[2] The Madsens' unsupported claims that they may be "net losers" should also be taken in context. For one, the Madsens offer no evidentiary support or accounting showing what or when they purportedly invested in the scheme. Moreover, it is not clear from the Madsens' representations whether they are taking the position that by re-investing amounts they received as ill-gotten gains (i.e., their commissions on others' investments) they should be entitled to recover investment gains or principal as if they were innocent investor victims. Regardless, to

C. The Evidence Further Supports The Extension Of The Receivership To The Madsens' Personal Assets.

The Madsens also contend that the receivership should not be extended to their personal assets because there will be no damage to investors without such remedy. (*See* Dkt. No. 159, Opp. at 15; Dkt. No. 161, Opp. at 10–11.) But, as discussed in the SEC's P.I. Reply, the evidence shows that the Madsens have already dissipated assets from their personal and business accounts; and the Madsens do not contest that they own or control significant real estate assets and vehicles whose value may diminish without a receiver. As with the original Defendants, the Receiver will be able to assess the value of those assets and take possession to the extent necessary to preserve funds for the innocent investors who were harmed by the Madsens' violations of the securities laws. In the absence of a Receiver, those assets (even if subject to the asset freeze) will be subject to loss, theft, and other dilution in value.

Second, and as the SEC noted in response to similar objections by Defendants to the original receivership order, the SEC is not proposing a heavy-handed, draconian receivership order. Instead, Judge Mahan's order includes safeguards to ensure proper Court oversight of the receivership process, including the provision that any proposed sale of receivership assets requires a further "appropriate order of the Court." (*See* Dkt. No. 88, Order at ¶ 38.) The SEC is willing to work with the Madsens and the Receiver regarding living expenses and what personal property makes sense to sell, or retain, to ensure the maximum possible value for investors. The Receiver will not be permitted to sell or dispose of the Madsens' personal property without further court order, and nothing in the receivership order will deprive the Madsens of the ability

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the extent the Madsens believe they may be entitled to some portion of whatever disgorgement may be distributed to investors at the conclusion of this case, they should stand in the same position as any other investor, and not receive special priority because they (unlike many investors) were able to withdraw funds from the scheme.

to provide input into the best course of action as to their real estate, vehicles, and other personal property assets.

II. JUDD'S DISGUISED RECONSIDERATION MOTION SHOULD BE DENIED.

A. Judd's "Opposition" Is Procedurally Improper.

Defendant Judd does not oppose any of the relief requested by the SEC as to the New Defendants. Instead, much like in his opposition to the SEC's request to extend the Court's preliminary injunction and asset freeze to the New Defendants, Judd requests that the Court reconsider Judge Mahan's receivership order and then unwind the receivership (as to him). Once again, Judd provides no new evidence, law, or argument in support of his procedurally improper motion for reconsideration. Indeed, much of his argument is simply copied and pasted from his (and his entities') opposition to the SEC's original motion for receivership. (*Compare* Dkt. Nos. 78 & 79 *with* Dkt. No. 162). Thus, Judd's disguised motion for reconsideration should be denied for the same reasons discussed in the SEC's P.I. Reply. (*See* Dkt. No. 181, P.I. Reply at 8–10.)

Judd's suggestion that Judge Mahan violated Local Rule 66-2 is also misplaced. Judge Mahan held a full hearing, at which both Judd and his entities were represented, on April 21, 2022, for the purpose of addressing the SEC's motion for preliminary injunction and asset freeze. At that hearing, Judd provided no evidence to contradict the SEC's extensive evidentiary record, but instead relied on legal argument. Following the SEC's motion for receivership, Judd again had the opportunity to submit evidence in opposition to the motion. Again, he submitted nothing—making the same legal arguments he makes today. (*See* Dkt. Nos. 78, 79.) Judge Mahan, given this record and the hearing on April 21, was well within his discretion to order a receivership over Judd's personal assets and conclude that further proceedings would not have aided the Court in its ruling. Judd does not and cannot explain the purpose his proposed "evidentiary hearing" would serve when he has had months to submit declarations, documents, or other evidence for the Court's consideration, but has provided nothing other than repeated invocations of the Fifth Amendment.

CONCLUSION

For the foregoing reason, the SEC respectfully requests that the Court enter the SEC's proposed Amended Receivership Order, *see* Dkt. No. 120-1, extending the existing receivership to the personal assets of the New Defendants.

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 REPLY IN SUPPORT OF MOTION TO AMEND RECEIVERSHIP ORDER** 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]

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By email to the following:

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