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**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

**REPLY IN SUPPORT OF THE RECEIVER'S MOTION TO COMPEL DEFENDANT JEFFREY JUDD OR, ALTERNATIVELY, FOR AN ORDER TO SHOW CAUSE, AND REQUEST FOR FEES AND COSTS**

Receiver Geoff Winkler submits this Reply in Support of his Motion to Compel Defendant Jeffrey Judd or, Alternatively, for an Order to Show Cause.

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## I. Introduction

In the Response, Judd makes much of limited assistance he has provided the Receiver over the course of two years. For example, in the Facts section of his brief, Judd details two meetings with the Receiver and a handful of documents he provided shortly after appointment, and a few other ways in which has assisted the Receiver. Any notion of good faith, however, is shattered by a revelation – buried in the final pages of his Response – that his attorneys have been withholding 300,000 additional documents *since the summer of 2022*. This is not *thousands* of *pages* like Judd boasts that he provided a previous CRO appointed prior to the Commission initiating this action, *see* ECF No. 703 at 5, but *hundreds of thousands* of *documents*. Incredibly, a further concession is buried in the final paragraphs of his counsel's Declaration – but not mentioned in the Response itself. Apparently, Judd's counsel has now determined that 180,000 of those documents *are not privileged*.

The Court should compel Judd to produce those documents *immediately* under the Appointment Order.[1] Section II of the Appointment Order imposes an obligation on the Receivership Defendants – including Judd – to "assist the Receiver in fulfilling his duties and obligations." ECF No. 88, p. 8 ¶ 14. Judd's Response exemplifies his effort to comply as minimally as possible with the letter of this provision while he violates its spirit. And the Receiver does not dispute that Judd has provided *some* assistance. But the fact Judd has complied with some of his obligations is not enough to relieve him of the balance. He concedes that he is the single largest recipient of transfers of investor funds, even compared to Beasley. He also concedes that he held the Enterprise out as his business to investors and promoters.

Indeed, it is what Judd's Response does not say that says the most. The Response does not deny the central role Judd played in the Enterprise or the fact that his and Beasley's communications with investors, bankers, and promoters are, basically, the Enterprise's only real books and records. The Response does not say that Judd lacks responsive materials. Nor does it say he lacked notice of the Subpoena, let alone sufficient notice to respond. The Response

[1] Terms defined in the Motion take on the same meaning in this Reply.

also does not defend Judd's prior, deficient efforts at "claiming" privilege. Nor does it explain the misrepresentations and about-faces he and his attorney have made about his access to the communications at the heart of the Subpoena when they held 300,000 potentially responsive documents.

Further, the Receiver's service of the Subpoena on Judd's counsel was both permissible and appropriate in the context of this Receivership, and the Receiver supplied sufficient notice to parties. Moreover, the Response ignores the Court's Appointment Order. In his apparent haste to advance strained procedural arguments about the Subpoena, Judd neglects that even without the Subpoena, he has been under an obligation to turn over the same documents to the Receiver *for years*. The relief the Receiver seeks is equally available under the Order as the Subpoena. And the Appointment Order, like the Rules that govern discovery, is drafted to be self-executing. It is meant to shepherd efficient information gathering. Yet Judd views both the Order and the discovery rules as tools for laying a procedural minefield for the Receiver to navigate.

Finally, Judd's arguments regarding the scope and relevance of the Subpoena requests lack merit. The requests go to the heart of the Receiver's work trying to unwind the damage wrought by the Enterprise and preserve its assets pending judgment. Judd's attempt to salvage his burden argument is no more convincing. Even now, Judd fails to provide any reliable evidence of burden on which the Court should sustain such an objection. Neither Judd nor Anderson offer anything except bare assertions in their Declarations. Without credible evidence, the Court is unable to conduct the balancing required to sustain a burden objection. Put simply, the Response fails to provide a reason the Court should not compel production.

The only questions remaining are the time for Judd to comply and whether the Court should allow him an opportunity to salvage his deficient privilege claims. Given that Judd's counsel has had these documents *for two years*, subject to both initial disclosure obligations under Rule 26 and production under the Appointment Order, and has failed in those two years to produce a log or otherwise comply, the Court should not do so. To do so would only reward the gamesmanship and lack of candor that occasioned the Motion.

## II. The Documents the Receiver Seeks are Responsive to the Appointment Order

As noted above, Judd fails to address the fact that all of the documents responsive to the Subpoena are also subject to Judd's production obligations under the Court's Appointment Order. *See* ECF No. 698, pp. 6-7, 9, 12-13, 15-16, 20-21. Put differently, Judd concedes that the Subpoena was a procedural step that never should have been necessary. Indeed, Judd is specifically required to turn over "all paper and electronic information of, and/or relating to the Receivership Defendants and/or all Receivership Property …." ECF No. 88, p. 6 ¶ 8. This would include the communications regarding the Enterprise requested in the Subpoena, which are with investors, bankers, and promoters for the Enterprise. That being the case, the Court can and should compel Judd to produce the documents requested in the Subpoena under the Appointment Order.

## III. The Requests Seek Relevant Documents

Having ignored entire swaths of the Motion, including his obligations under the Appointment Order, Judd appears to hang his hat on his supposed burden and relevance objections. Without saying so, he appears to suggest despite his failure to make proper privilege objections the Court should provide him another chance to assert the same. Additionally Judd asks the Court to find the requests overly burdensome despite Judd failing to provide reliable evidence supporting an undue burden argument and relying merely on "conclusions." As an initial matter, however, he has also failed to demonstrate that the requests lack relevance, the first factor in any burden analysis.

In the Motion, the Receiver explained that he seeks the information requested in the Subpoena primarily in connection with four of his duties: (a) conducting a forensic accounting; (b) enforcing Defendants' turnover of books, records, and communications regarding the Enterprise (under the Appointment Order); (c) enforcing turnover of Judd's assets; and (d) investigating/prosecuting third-party claims like the Wells Fargo Claims.[2] *See* ECF No. 698, pp. 20-21.

[2] Capitalized terms defined in the Motion take on the same meaning when used in this Reply.

In his Response, Judd tries to minimize the Receiver's role, powers, and duties, *see* ECF No. 703 at 4-5, but he fails to reckon with the fact that the Appointment Order directs the Receiver to take these actions. *See* ECF No. 698, p. 10 (quoting ECF NO. 88, PP. 15-16, 17-19, ¶¶ 42-45, 54-58) (directing the Receiver to "account for, and report upon the financial affairs of the Receivership entities, including their … liabilities … and obligations to third parties" and "investigate the … financial and business affairs of the Receivership Defendants … and … institute such actions … for … the Receivership Estate, as the Receiver deems necessary ….")

Because the type of communications sought are facially related to the Receiver's duties identified above, Judd has failed to rebut the relevance demonstrated in the Motion.

**IV. The Receiver's Requests are Not Overbroad**

Judd next asserts that, even if the requests seek some relevant documents, they are overbroad because they also seek irrelevant documents. As to the accounting, Judd acknowledges that at least some communications would be relevant, *see* ECF No. 703 at 13, but suggests that the requests would encompass vast swaths of irrelevant communications with these individuals. Judd does not explain what he would be communicating with investors, promoters, and banks of the Enterprise with *other than the business of the Enterprise*. And even Judd concedes that he is obligated to turn over such documents under the Appointment Order. *See id.* at p. 5 (conceding Judd must turn over documents "regarding the business of the Receivership Defendants or ... relevant to the operation or administration of the receivership or collection of funds ….") To that point, Judd also fails to explain how the Subpoena is overbroad when the Court has already ordered him to produce the documents.

Further, Judd does not even mention the Wells Fargo Claims, for which he concedes the Receiver must prove the underlying fraud. The Receiver has repeatedly raised this point, including in the Motion and during conferral. Judd cannot ignore the same.

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Judd also complains that the Subpoena seeks supposedly privileged emails between Beasley and Judd. *See* ECF No. 703, p. 13.[3] Here, however, the Receiver cannot even begin to evaluate the claim of privilege. In the Motion, the Receiver argued that Judd had failed to articulate *any* information about the purported attorney-client relationship between himself and Beasley besides his current attorney saying the relationship existed. Judd did not use his Response to substantiate his claim. Without any evidence of an actual attorney-client relationship, the claim of privilege amounts to nothing. Further, Judd does *not even address* the Receiver's assertion that he has failed to make a sufficient claim of privilege and has thus waived such objections. *See* ECF No. 698, pp. 24-28.

**V. Identification of "Net Winners" is Well-within the Receiver's Ambit**

Finally, Judd persists in a now-hackneyed effort to paint the Receiver's conduct as inappropriate, questioning the Receiver's stated goal of identifying "winners and losers" among the investors. *See* ECF No. 703, pp. 13-14. What Judd fails to grasp – or pretends not to understand – is that determining "net winners" and "net losers" is part of the Receiver's obligation to investigate and pursue litigation claims, no different from the Wells Fargo Claims. He states that determining "winners and losers is something that goes to the heart of the SEC's lawsuit." *Id*. But the Commission did not bring a lawsuit against innocent investors in the Enterprise – i.e., the "winners and losers." This is not the "heart" of the Commission's lawsuit.

Instead, it is the heart of a receiver's work. *Accord Freitag v. Valeiras, Tr. of Valeiras Fam. Tr. Dated July 20, 2007*, 2024 WL 1355146, at *7 (S.D. Cal. Mar. 29, 2024) (granting summary judgment on a Receiver's claim for fraudulent transfer against a "net winner"). A core function of a forensic accounting for a Ponzi scheme is a determination of which investors made money from the scheme (so-called "net winners") and which lost money (so-called "net losers"). *See, e.g.*, *Freitag*, 2024 WL 1355146 at *4-5 (describing a receiver's forensic accounting process). This is so that the Receiver can then recover profits retained inequitably by "net

[3] The Ninth Circuit has held explicitly that "it would not be correct in law to say that there is undue burden every time a subpoena calls for privileged information." *Mount Hope Church v. Bash Back!*, 705 F.3d 418, 427 (9th Cir. 2012).

winners" for the benefit of the "net losers," typically by filing an action for fraudulent transfer against a "winner." As the *Freitag* court put it:

> In a Ponzi scheme, the operator "is the 'debtor,' and each investor is a 'creditor.'" "The profiting investors are the recipients of the Ponzi scheme operator's fraudulent transfer." Generally, if "innocent investors [ ] received payments in excess of the amounts of principal that they originally invested, those payments are avoidable as fraudulent transfers."
>
> …
>
> The policy justification is ratable distribution of remaining assets among all the defrauded investors. The *"winners"* in the Ponzi scheme, even if innocent of any fraud themselves, should not be permitted to "enjoy an advantage over later investors sucked into the Ponzi scheme who were not so lucky."

*Id.* (internal citations and quotations omitted) (emphasis added). Identifying and pursuing "net winners" is thus fundamental to the role of receivers in alleged Ponzi schemes.

## VI. The Receiver was not Required to "Narrow" his Requests

Because the documents the Receiver seeks are subject to turnover under the Appointment Order, there was nothing to "narrow" based on purported burden. Judd's accusation that Receiver's counsel failed to confer in good faith is thus without merit. The obligation to confer in good faith should not be read to mandate concessions by the requesting party in the face of manufactured disputes and obstruction by the responding party. Indeed, "litigants should not expect courts to look favorably on attempts to use the prefiling conference requirements as procedural weapons through which to avoid complying with their discovery obligations." *V5 Techs. v. Switch, Ltd.*, 334 F.R.D. 297, 302 (D. Nev. 2019) (citation omitted). "Gamesmanship by an opposing party that thwarts the meet-and-confer process is not grounds to deny a discovery motion." *See, e.g.*, *Nevada Power v. Monsanto*, 151 F.R.D. 118, 120 (D. Nev. 1993).

Additionally, the Receiver did make attempts to understand Judd's concerns regarding the scope of the request during the meet and confer process and Judd offered no new parameters or suggestions regarding how the requests could be narrowed. It was during such communications that Judd's counsel explained that previous productions were made to the state court CRO and the SEC. However, no efforts were made by Judd to provide such documents directly to the Receiver, a task which should be fairly simple if the documents were previously

gathered for production. Further, as referenced in the Motion, the SEC has indicated they did not obtain documents responsive to the discovery that was previously propounded on Judd and any suggestion that previously produced documents should narrow the Subpoena is deflection.

**VII. Judd has Failed to Support his Supposed Undue Burden Objection**

In the Motion, the Receiver argues that Judd failed to substantiate a burden objection, even if he had asserted it timely and properly. *See* ECF No. 698, pp. 22-24. In response, Judd ignores the relevant legal standards briefed by the Receiver and restates the conclusion that responding to the Subpoena would create "an undue burden on Judd and his counsel." ECF No. 703, p. 17. He asserts that Judd has "virtually no financial resources," and claims it would cost "more than $50,000" to conduct a review for responsive and nonprivileged documents, based only on his counsel's conclusory testimony to that effect. *Id.* at pp. 17-18. Judd's after-the-fact attempt to salvage his burden objection fails for the same reasons set forth in the Motion.

The belated "evidence" Judd provides now is not sufficient. *See generally* ECF No. 703- 2, Judd Decl. With regard to his ability to pay, Judd's Declaration states only that he has "limited resources" and does "not have the resources required to pay the costs and fees required to properly respond to a subpoena." *Id.* at p. 4 ¶ 11. Judd provides no further detail on his income, if any; his expenses, if any; his access to credit or assistance from family or friends; what resources he is living on now; or any other information to help the Court evaluate his actual ability to pay. Supporting evidence would be easy to supply if Judd desired to, and his failure undercuts his credibility. Even if Judd had supplied the information, though, he also failed to provide the Court a reliable cost estimate to compare it to. *See* ECF No. 703-1, p. 9 ¶ 40. As noted above, the statement regarding Anderson's cost estimate of "more than $50,000," as found in his own Declaration, is similarly lacking in detail. *See id.* ("I have estimated the cost to reactivate and maintain the database [sic] review the documents for responsive documents as well as review for privilege to exceed $50,000.")

Moreover, courts have held that the cost of doing a privilege review is not something appropriately considered in evaluating undue burden because the cost is not innate to responding to the subpoena (i.e., collecting and processing documents) but rather ancillary and incurred for

the benefit of the subpoenaed party. *Mount Hope Church*, 705 F.3d 418, 427 (9th Cir. 2012) (explaining that the Circuit's jurisprudence "interprets "undue burden" as *the burden associated with compliance*" and not privilege review) (emphasis added). Further, undue burden arguments are viewed skeptically when the subpoenaed party has an interest in the litigation. *See Mowat Constr. Co. v. Dorena Hydro, LLC*, 2015 WL 13867691, at *2 (D. Or. May 18, 2015). Since Judd is a party, as he is fond of pointing out, and stands accused of perpetrating the alleged Ponzi Scheme, his interest in this litigation cannot be overemphasized. The Estate should not bear the cost of the privilege review of one of the main operators of the alleged scheme.

**VIII. Judd Waived his Objections**

Judd concedes that he never served a proper objection to the Subpoena because his counsel's emails violate several Rules of Procedure and Local Rules, regardless of timeliness. *See* ECF No. 703, p. 14. Even if they were proper, however, the "objections" were also untimely. Judd tries to save his objections by repeating his argument that the Receiver should have served a Rule 34 request instead of the Subpoena. *See* ECF No. 703, p. 12. He argues that his counsel's email was a timely objection under Rule 34, which has a longer response period than the Subpoena, and had the Receiver served such a document, the "objections" would have been timely. *See id.* But the Receiver did not serve a Rule 34 request. As explained in the Motion, the Subpoena was an appropriate discovery tool for the Receiver to select, and Judd's so-called objections were not made timely to the Subpoena.

At best, Judd's argument that the Subpoena was improper can stand only if Judd also shows the Receiver sought to end-run the requirements of a Rule 34 request. *See, e.g.*, *McCall v. State Farm Mut. Auto. Ins. Co.*, 2017 WL 3174914, *6 (D. Nev. 2017). But the Receiver issued the Subpoena in good faith and not to avoid any of the provisions of Rule 34. After receiving Anderson's email inquiring about the use of a subpoena, counsel for the Receiver studied the differences between Rules 34 and 45 to identify why Judd might be objecting to the Subpoena since Anderson's email did not actually articulate any perceived prejudice. *See* ECF 698, pp. 12-13. As stated in the Motion, the only difference identified by the Receiver was timing. *See id.* Foreseeing the gamesmanship currently playing out before the Court, the

Receiver's counsel offered that "[i]f it is an issue of needing additional time that its something we can discuss …." ECF No. 698-2, Ewing-Anderson-Hendricks Emails, pp. 9-10.

In other words, as soon as Judd raised the issue of using a subpoena, the Receiver offered to eliminate the only difference either party has identified in the relevant Rules with respect to Judd's obligations here. Anderson ignored this offer, ignored the one-week courtesy extension counsel provided even without such discussion, and served the objections late. Judd cannot now complain of an issue the Receiver offered to address; an offer Judd's counsel declined – presumably so he could raise the issue now. Even if Judd could, he has not – and cannot – explain why he needed additional time to *object* to the Subpoena or how he was prejudiced by not having that time. The case law and circumstances support the Receiver's use of a subpoena, as does the Appointment Order. Moreover, the Court can compel production of the same documents under the Appointment Order, as noted above. To elevate form over substance on these facts would serve only to reward and incentivize behavior designed to delay and hinder.

## IX. The Receiver Properly Served and Noticed the Subpoena

In the Motion, the Receiver argued that conferring with Judd became a lost cause quickly because when "one of Anderson's contentions was shown to be misplaced or inaccurate, Judd simply switched gears or backtracked." Never one to disappoint, in the Response, Judd articulates for the first time his theory that the Receiver did not properly serve or notice the Subpoena.[4] *See* ECF No. 703, pp. 9-11.

Judd relies principally on a passage from Wright & Miller for his contention that a subpoena must be hand-served on its recipient, even when the subpoenaed party has counsel of record in the proceeding. *See id.* at 9. Judd does not mention that Wright & Miller continues to note that in "recent years a *growing number of cases* have departed from the view that personal service is required and alternatively have found service of a subpoena under Rule 45

[4] For the avoidance of doubt, Anderson did mention a perceived problem with notice during the parties' in-person conferral but did not elaborate. And in the many emails exchanged, Anderson never raised the issue. To the contrary, in his first email, Anderson acknowledged service on Judd, asking "why you *served* a subpoena under Rule 45 *to Mr. Judd* …?" ECF No. 698-2, Ewing-Anderson-Hendricks Emails, p. 11 (emphasis added).

proper absent personal service." § 2454 Service of a Subpoena, 9A Fed. Prac. & Proc. Civ. § 2454 (3d ed.) (emphasis added). Although Wright & Miller cautions personal service is the "safest course," it also cites to *dozens* of decisions reaching the opposite result, and the reasoning in these cases is more persuasive than that in the *Fujikara* case cited by Judd. *See id.*

*SEC v. Pence,* for instance, provides a helpful review of district court decisions on this issue and concludes:

> We are persuaded by the more recent line of cases. By its text, Rule 45 requires only "delivering" the subpoena to the named person, Fed. R. Civ. P. 45(b)(1), and does not dictate the manner in which the delivery must occur. Notably, Rule 45(b)(4) requires that the proof of service of a subpoena,[5] which must be filed with the issuing court, specify the "manner of service" of the subpoena. As noted in *Cordius Trust*, reading Rule 45 to permit only personal service would render this portion of the Rule superfluous. 2000 WL 10268, at *2. Moreover, we agree that permitting service by alternative means in appropriate cases better hews to the interpretive principle in Fed. R. Civ. P. 1 that the Federal Rules of Civil Procedure should be construed to provide for the "just, speedy, and inexpensive" resolution of federal judicial actions. *See id.* at *2. Thus, the Court finds that Rule 45 permits service of subpoenas by means other than personal service under appropriate circumstances.

*SEC v. Pence*, 322 F.R.D. 450, 454 (S.D.N.Y. 2017). The Seventh Circuit, the only Court of Appeals the Receiver has identified that has addressed the issue reached the same conclusion:

> Our conclusion is reinforced by a quick comparison of the language in Rule 45(b)(1) with that in Rule 4(e), which specifies various ways in which an individual within a judicial district of the United States may be served with a summons. Those methods include "delivering a copy of the summons and of the complaint to the individual *personally*." FED.R.CIV.P. 4(e)(2)(A) (emphasis added). Ott persuasively argues that the use of the word "personally" in that part of Rule 4 would be "pure surplusage" if Rule 45(b) were interpreted to require personal delivery by a specially designated agent.

*Ott v. City of Milwaukee*, 682 F.3d 552, 557 (7th Cir. 2012) (emphasis added). In other words, had the drafters intended for Rule 45 to feature the same personal service requirement as

[5] Judd also claims the Receiver was required to file proof of service after making such service, citing Rule 45(b)(4). *See* ECF No. 703, p. 9 n. 5. As Judd's own parenthetical demonstrates, the rule does not require proof of service to be file upon such service. *See id.* Rather, it applies only "when necessary" and specifies which court such proof must be filed with and the form requirements. *See* F.R.C.P. 45(b)(4). Here, the Receiver filed the proof with the Court "when necessary" – i.e., when the Receiver sought to enforce the subpoena.

Rule 4(e), they simply would have included the word "personally" in Rule 45(b). They did not.

Finally, while the Ninth Circuit has not addressed this issue, it did address the opposite situation under comparable procedural requirements of the National Labor Relations Act. *See N.L.R.B. v. Fresh & Easy Neighborhood Mkt.*, Inc., 805 F.3d 1155, 1161 (9th Cir. 2015). In that case, parties complained the subpoenas *were not* served on their attorneys. Relevant here, the Ninth Circuit observed that to allow service on the party and not the attorney, when the party has counsel of record in the same proceeding, as Judd argues, would place the serving party's counsel in an unfair ethical quandary:

> when counsel is involved in an ongoing proceeding, ethical rules as well as established practice support service on the counsel, not the client. *See* MODEL RULES OF PROF'L CONDUCT R. 4.2 (stating that a lawyer shall not communicate with a party represented by another lawyer "unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order") ….

*N.L.R.B. v. Fresh & Easy Neighborhood Mkt.*, Inc., 805 F.3d 1155, 1161 (9th Cir. 2015). In sum, a reading of the Rules' plain language and consideration of the practicalities demonstrate that service on Judd's counsel was not only sufficient but most appropriate.[6]

Judd's relies on a similarly outcome-oriented review of relevant persuasive authority to support his argument that the Receiver violated the notice requirements of Rule 45. Indeed, *Fujikura*, a case Judd relies on elsewhere, observes that "courts in [a sister district] have declined to quash a subpoena on this basis "especially given the extensive briefing and this order on the merits" of the subpoena." *Fujikura Ltd. v. Finisar Corp.*, 2015 WL 5782351, at *4 (N.D. Cal. Oct. 5, 2015) (quoting *Miller v. Ghirardelli Choc. Co.*, No. C 12-4936, 2013 WL 6774072, at *5 (N.D. Cal. Dec. 20, 2013)) (collecting cases). On facts analogous to those here, a district court in Kansas found that plaintiff's receipt of notice allowing them 10 days to object

[6] Judd complains gratuitously in his Response of the Receiver speaking with him without his counsel present, even though the Receiver is neither licensed to practice law, nor a party to the case, nor representing anyone in the case. *See, e.g.,* ECF No. 703, p. 6 ¶ 17. If the Receiver had served the Subpoena on Judd personally, Judd would likely be arguing that the undersigned had violated his ethical obligations by communicating with Judd outside his counsel's presence.

to the subpoena was sufficient. *Biocore Med. Techs., Inc. v. Khosrowshahi*, 181 F.R.D. 660, 667-68 (D. Kan. 1998). Likewise, the Receiver served Judd's Subpoena on the other parties 10 days before objections were due. *See* ECF No. 698-3 (subpoena return date of April 26).

Judd has not articulated any prejudice from the technical procedural deficiencies he argues. Importantly, neither Judd nor anyone else has claimed they lacked sufficient notice of the Subpoena to make objections. Indeed, Judd's counsel acknowledged service of the Subpoena on Judd by email just two days after the Receiver effected such service, as noted above. And conspicuously absent from the Declaration Judd submitted is any claim that he lacked notice of the Subpoena. Put simply, the Receiver served and noticed the Subpoena in a manner "reasonably designed to ensure that a witness actually receives a subpoena." *Pence*, 322 F.R.D. at 454.

**X. Judd Admits his Attorneys have 180,000 Nonprivileged, Responsive Documents**

At a minimum, the Court should order Judd to immediately produce the 180,000 *nonprivileged* documents he concedes are in his attorneys' possession. Apparently, Judd's attorneys have already determined that just 120,000 "require a privilege review." *See* ECF No. 703-1, Anderson Decl., pp. 9-10 ¶ 40. In other words, Judd's attorneys have been sitting on a trove of almost 200,000 nonprivileged documents relevant to this dispute *for over 2 years* despite an affirmative obligation that not just the Defendants, but also their attorneys and other agents, turn over assets and information belonging to the Estate to the Receiver. ECF No. 88, pp. 8-9 ¶ 16. Fabian VanCott is intimately familiar with this obligation. ECF No. 235, pp. 3:1-10; 10 ("The Court further orders Mr. Anderson and his firm, Fabian VanCott, to fully comply with the temporary restraining order (ECF No. 3), the preliminary injunction (ECF No. 56), and the Receivership Order (ECF No. 88) issued by Judge Mahan.")

The cost of producing the 180,000 *nonprivileged* documents is small: the work would consist of a vendor putting the documents on a hard drive and shipping it to the undersigned. There is no reason Judd has not done so yet, given the documents are surely responsive, at a minimum, to the Appointment Order, since they were apparently gathered in connection with the Commission's inquiry into the Enterprise.

## XI. CONCLUSION

The only thing in Judd's Response that changes the analysis the Receiver offered in the Motion is Judd's concession that his counsel is in possession of 180,000 non-privileged documents subject to both Judd and Fabian VanCott's turnover obligations under the Appointment Order. Accordingly, in addition to the relief requested in the Motion, the Receiver respectfully requests that the Court order Judd to produce all documents collected from Judd and in Fabian VanCott's possession, custody, or control and determined to be nonprivileged, as set forth in Anderson's Declaration, *within 2 days* of the Court's order.

DATED this 20th day of September 2024.

**GREENBERG TRAURIG**, LLP

By: */s/ Kyle A. Ewing*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the **20th day of September 2024**, a true and correct copy of the foregoing document was filed electronically via the Court's CM/ECF system. Notice of filing will be served on all parties by operation of the Court's CM/ECF system, and parties may access this filing through the Court's CM./ECF system and by serving via email by United States first class mail, postage pre-paid on the parties listed below:

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