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**By Electronic Filing**

Hon. Christian F. Hummel  
United States Magistrate Judge  
James T. Foley U.S. Courthouse  
445 Broadway, Room 441  
Albany, NY 12207

Re: SEC v. McGinn Smith & Co., Inc., 10 Civ. 457 (GLS/CFH)  
**Fee Distribution Opposition**

Dear Judge Hummel:

On behalf of defendant David Smith, we respectfully submit this opposition to the fee applications files on October 20, 2021 (ECF 1211, 1212). For the reasons stated in Mr. Smith's Rule 60(b) motion, which is fully submitted before Judge Sharpe (ECF 1195), the fee applications should be denied, or at least held in abeyance pending a decision on the Rule 60(b) motion.

Defendant David Smith moved on June 7, 2021, to be relieved of his obligations under the disgorgement order imposed against him and for the return of money collected from him as unlawful "disgorgement" in excess of the legal amount. *See* ECF 1195. Smith asked that the Court refrain from permitting the Receiver to disburse funds until after the motion is decided. *Id.* at Notice of Motion; Memo. of Law in Supp. at 2. The SEC and the Receiver argued that the money has been largely distributed, and thus it is impossible, or at least impractical, to restore to Smith the assets taken from him that exceeded permissible disgorgement. In reply, Smith argued that, at the very least, he should be relieved of his obligations under the disgorgement order and the hundreds of thousands of dollars still in the control of the Receiver (ECF 1199) should be returned to him. ECF 1202 at 2 n.1.

This motion is still pending before Judge Sharpe. Mr. Smith therefore opposes the interim fee applications of Phillips Lytle LLP, the Receiver, *see* ECF 1211, and Chiampou, Travis, Besaw & Kershner LLP, *see* ECF 1212, until the Court has ruled on Smith's motion.



If Judge Sharpe grants Smith's motion, then any additional disbursement in the meantime will have irreparably increased the extra-legal penalty extracted from Smith. If Judge Sharpe denies Smith's motion, then Smith will not oppose the fee applications. We therefore request that the Court either deny the fee applications or hold them in abeyance pending a decision by Judge Sharpe.

Respectfully submitted,

A handwritten signature in blue ink that reads 'Justin S. Weddle'. The signature is written in a cursive style with a large initial 'J'.

Justin S. Weddle