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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KENT R. E. WHITNEY, et al.,

Defendants,

and

HA T. "KELLY" HOANG, et al.

Relief Defendant.

Case No. 8:19-cv-499-JVS-KES

***EX-PARTE* APPLICATION OF
DEFENDANT NGOC HA T. NGUYEN
FOR AN ORDER TO VACATE,
MODIFY, OR CLARIFY AMENDED
ORDER APPOINTING RECEIVER
(DOCKET ENTRY NO. 85); AND
ORDER FREEZING ASSETS OF
DEFENDANTS ICARE AND HA
NGUYEN AND REQUIRING
ACCOUNTINGS (DOCKET ENTRY NO.
86), ENTERED EX PARTE ON
SEPTEMBER 12, 2019**

**FILED CONCURRENTLY WITH
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION
OF STANLEY C. MORRIS**

EMERGENCY RELIEF IS REQUIRED

Amended Complaint Filed:
September 11, 2019

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF**
 2 **RECORD:**

3 Defendant, Ngoc Ha. T. Nguyen, by and through undersigned counsel, will
 4 and hereby does move, on an emergency basis, for an order to vacate, modify, or
 5 clarify two orders: (1) ORDER APPOINTING RECEIVER (DOCKET ENTRY
 6 NO. 85) (the “Receivership Order”) and (2) ORDER FREEZING ASSETS OF
 7 DEFENDANTS ICARE AND HA NGUYEN AND REQUIRING
 8 ACCOUNTINGS (DOCKET ENTRY NO. 86) (the “Freeze and Accountings
 9 Order” and, collectively, the “Emergency Orders”), on the following grounds:

- 10 **1. No Due Process.** No emergency existed sufficient to warrant depriving
 11 Ms. Nguyen an opportunity to respond to the motion, made six months
 12 after the case was filed (DE 1), and more than six months after Ms.
 13 Nguyen’s deposition had been taken by the SEC. See (DE 1, 79-1). The
 14 Emergency Orders were sought by *ex-parte* applications filed
 15 September 11, 2019, and granted by the Court without a single
 16 modification to the extremely lengthy proposed orders only hours after
 17 the completed papers were supplemented by the Plaintiff on September
 18 12, 2019. While the Court’s published “Judge’s Procedures” number 6
 19 regarding *ex-parte* applications mandates that oppositions to *ex-parte*
 20 motions are to be filed within 24 hours, this Defendant was not even
 21 afforded 24 hours to oppose or seek an extension of time to file her
 22 opposition papers. Indeed, the SEC had informally agreed to give Ms.
 23 Nguyen’s counsel two extra days to file her opposition, but that
 24 stipulation was interrupted by the unexpected issuance of the
 25 Emergency Orders before that stipulation had been signed and
 26 submitted to the Court. Ms. Nguyen was denied any due process
 27 whatsoever before Plaintiff was handed immediate plenary control over
 28 all of her assets, from the most intimate personal undergarments, to her

attorney-client privileged communications, to the most critical private financial information necessary for her defense (including all funds necessary to pay professionals to defend herself and assist her to comply with the Emergency Orders), including her computers and computer files, books and records. These are the very records Ms. Nguyen would need to hand over to professionals so that they could assist her in complying with the remainder of the draconian provisions of the Emergency Orders. Not only were these Emergency Orders entered without due process of law, but they were patently designed to make it impossible for Ms. Nguyen to comply with the Emergency Orders, prejudice her before the Court, and prevent her from accessing the necessary resources to defend herself on the merits of the action against her. She would not enjoy the due process of law throughout these proceedings unless the Emergency Orders are vacated or substantially modified.

2. Substantive Defenses to Draconian Provisions of the Emergency Orders. Ms. Nguyen is a victim, not a co-conspirator. She invested and lost her earnings with Whitney, caused her mother, the person she loves most, other close family members, and friends to invest hundreds of thousands of dollars with Whitney, and she stands to lose more than any other victim from Whitney's fraud. Ms. Nguyen is an immigrant to this country who speaks English as a second language with some difficulty. She was introduced to Whitney by his father, her long-time certified public accountant and trusted advisor. She relied on Whitney's general counsel lawyer, a seemingly experienced and capable 57-year general counsel with offices at CHS, to ensure compliance with all laws. (DE 75 ¶¶96). And, she was led to believe that Whitney's auditing firm, KPMG, had audited and verified all the books and records. (DE

75, ¶¶ 8, 53, 68, 112) (DE 79-1, ppg 57-58). Whitney also provided Ms. Nguyen with the name of his CPA, Kelly Florek (DE 79-1, ppg 57-58). Whitney claimed that CHS was FDIC and SIPC insured (DE 79-1, pg 72-73). Ms. Nugyen had no other financial investments herself, except for her investment in CHS (DE79-1, pg 80). She lost her life's savings and the savings of her mother, other close family members and friends. In sum, Ms. Nguyen, like everyone who invested, fell under the spell of a charismatic con man, and she had little or no reason to doubt him. In psychology and cognitive science, this is called confirmation bias (or confirmatory bias), which is a tendency that virtually everyone has to search for or interpret information in a way that confirms one's preconceptions, leading to common errors. In fact, this confirmation bias may be driving the Plaintiff's allegations in the FAC. Ms. Nguyen, who has a previously unblemished record as an insurance agent, trusted her long-time CPA, Whitney's father, and his strong support for his son. She has a strong cultural deference toward professionals and is not inclined to challenge their authority. Ms. Nguyen's cultural deference and lack of sophistication, made her easy prey for the exceptionally persuasive powers of Whitney, especially when supported by the credibility of his CPA father, his in-house counsel, and other professionals surrounding him. Those circumstances constitute a far more plausible explanation for her participation, personal and family investments with Whitney, than that she intentionally participated in Whitney's scheme. She does not deserve to have her assets frozen, to be stripped of the funds necessary to engage professionals to defend herself and ordered to comply with impossible tasks on impossible timelines. She deserves to continue to live her life free of demands by the Court that the Court's other orders that prevent her from

competently complying with the Emergency Order. The Emergency Orders should be vacated, and the process restarted on regular notice.

3. Receivership Order Should be Modified and/or Clarified (DE 85):

The Receivership Order goes too far when it compels the receiver to seize *immediately* all of Ms. Nguyen's real and personal property, including her residence, phone, computer, mail, food, clothes, household goods, personal papers, and permits the receiver to invade her attorney-client privilege, and terminate her counsel. (DE 85, pg 3 ¶ 5; pg. 9, lines 9-20).

a. Ms. Nguyen Requests the Receivership Order be modified as follows:

- i. Provide that the Reciever shall not invade Ms. Nguyen's, or any other individual defendant's attorney-client privilege communications, and establish procedures, including employing a taint lawyer, to preserve and protect all attorney-client privilege or work product privileges when seizing electronic files, mail, and documents.
- ii. Provide that after all of Ms. Nguyens's electronics, mail, personal documents, books and records are returned to her that were seized six months ago as part of the March 2019 TRO and under the Emergency Orders, Ms. Nguyen shall have 90 days to prepare a detailed accounting (detailing and providing summaries of since September 12, 2015, rather than January 1, 2014, six years of financial transactions).
- iii. Provide that Ms. Nguyen shall be permitted to employ professionals to assist her with the accounting.
- iv. Provide that Ms. Nguyen may retain all of her personal property having a market value of less than \$1,000, per item,

1 including her clothes, food, and personal items and those
 2 items, of any value, that were acquired before Ms. Nguyen met
 3 Whitney, or otherwise that are not traceable to the alleged
 4 violations.

5 v. Allow for reasonable and necessary living expenses.

6 vi. Allow budget for professionals, including attorneys fees and
 7 costs, and accounting fees, necessary to provide a defense and
 8 respond to oppressive accounting and other disclosures under
 9 extraordinary time deadlines (10 days from the 12th is the
 10 22nd).

11 vii. Limit assets seized and frozen to assets traced to wrongdoing
 12 within the proceeding five years of the First Amended
 13 Complaint, under 28 U.S.C § 2462.

14 viii. Unfreeze Wells Fargo Accounts ending 8949 and 5001 that
 15 were funded solely with commission earned by Ms. Nguyen as
 16 a California licensed insurance broker unrelated to CHS and
 17 Defendant Whitney.

18 b. Ms. Nguyen Requests the Receivership Order be Clarified to ensure
 19 that the Receiver employs proper procedures to prevent the access
 20 and waiver of Ms. Nguyen's attorney-client communication, doctor-
 21 patient, and other privileges.

22 c. The Receivership Order could be construed to terminate Ms.
 23 Nguyen's counsel, prevent her counsel from taking any action on
 24 her behalf, and compel her counsel to reveal attorney-client
 25 privilege communications and work product to the Receiver.¹ (DE
 26

27 ¹ The trustees, directors, officers, managers, employees, investment advisors, accountants,
 28 **attorneys** and other agents of the Receivership Defendants **are hereby dismissed** and the powers
 of any general partners, directors and/or managers are hereby suspended. Such persons and
 entities **shall have no authority with respect to the Receivership Defendants'** operations or

85, pg 3, ¶ 5). Clarification is sought with respect to the impact of the order on the attorneys that continue to represent Ms. Nguyen in this case. Ms. Nguyen seeks a clarification that the Court's Order does not terminate her attorneys and that they are not compelled to reveal privileged information to the receiver. Further, clarification regarding the attorney-client privilege should be stated in the Order to govern all files from her seized records, including data on her phone and computer that will likely contain privileged information.

d. Ms. Nguyen seeks clarification of paragraph 7(B) of the Receivership Order that instructs the Receiver to "take custody, control and possession of Receivership Property and records relevant thereto from Receivership Defendants." Ms. Nguyen seeks clarification on how Ms. Nguyen will be able to comply with the Court's Accounting Order requiring to produce and account for every single financial transaction she engaged in over the last six years without access to her mail, computer, and personal records. Indeed, she cannot access her relevant bank accounts that were frozen under the TRO entered by the Court in March of 2019 of which the Receiver has exclusive and sole access, that are listed in DE 86. Is she required to recall every transaction from memory alone, without the aid of professionals, books or records? The Order should be clarified to exclude the accounts listed at DE 86 and/or any accounts that the receiver has already assumed control. And, the Order should mandate the return of all of her books, records and all financial records, after imaging such records, as appropriate.

assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Receivership Defendants and shall pursue and preserve all of their claims. Ct Dk 85; ¶ 5. (emphasis added)

- 1 e. Similar to paragraph 7(B), paragraph 8 of the Amended Receiver
2 Order directs and orders Ms. Nguyen to “turn over” all paper and
3 electronic information relating to the Receivership Defendants
4 and/or Receivership Property. As written, the scope is
5 impermissibly broad and the Order would compel Ms. Nguyen to
6 produce privileged information and prevent her from completing an
7 accounting, let alone in ten days. Ms. Nguyen seeks clarification on
8 the scope and breadth of the order.
- 9 f. Paragraph 10(A) of the Receivership Order requires complete
10 documentation from January 1, 2014 to the present of all securities
11 and investment funds, real estate, automobiles, bank accounts,
12 brokerage accounts, etc. Ms. Nguyen seeks clarification that such an
13 order does not require her to produce any financial account
14 information that has been listed in the Asset and Accounting Order
15 (DE 86) and or with respect to which the Receiver has already taken
16 possession of the assets and/or books and records related thereto.
17 Ms. Nguyen also seeks clarification as to how she is to perform such
18 work without her books and records, without means to engage
19 professionals, and with all of her assets frozen.
- 20 g. Paragraph 12 of the Receivership Order compels Ms. Nguyen’s
21 “past and/or present” attorneys to “answer under oath to the
22 Receiver all questions which the receiver may put to them and
23 produce all documents as required by the Receiver.” Ms. Nguyen
24 requests that the Court clarify that paragraph 12 of the Amended
25 Receivership Order only pertains to the Receivership entities, not
26 individuals and, in particular, not her. She cannot afford to pay
27 counsel to engage in that exercise with the Receiver, and such
28 counsel would, in any event, be duty-bound not to reveal attorney-

1 client privileged communications or counsel's work product.

- 2 h. Paragraph 15 of the Amended Receiver Order directs the Receiver
3 to take "immediate possession" of "financial accounts, books and
4 records and all other documents or instruments relating to the
5 Receivership Defendants." Ms. Nguyen seeks clarification on how
6 she is to comply with this Order and still provide the accounting
7 directed at paragraph 9 of the Receivership Order (DE 85) and
8 Section IV of the Freeze and Accountings Order (DE 86) that
9 obligates her to produce a detailed accounting of every financial
10 transaction she ever entered into since January 1, 2014, while the
11 receiver is in sole possession of the records necessary to do so.
- 12 i. Paragraph 18 of the Receivership Order directs the Receiver to take
13 "immediate possession of all personal property" of Ms. Nguyen. Ms.
14 Nguyen seeks clarification of the scope and breadth of this order.
15 Ms. Nguyen will seek an exemption of any items having a value of
16 less than \$1,000 and not to include her computer, phone, and other
17 electronics. In the alternative, Ms. Nguyen seeks clarification of the
18 order on how the Court proposes to protect attorney-client
19 communications and relief from the accounting obligation.
- 20 j. Paragraph 19 of the Receivership Order directs the Receiver to take
21 immediate possession of Real Property. Ms. Nguyen seeks
22 clarification of how her attorney-client privilege will be guarded and
23 her personal possessions will be maintained. Ms. Nguyen also seeks
24 to have the Receivership Order clarified that it is not designed to
25 include real or personal property that is *unrelated to the alleged*
26 *fraud and cannot instructions that it cannot exceed what the*
27 *Plaintiff can prove is reasonably subject to disgorgement.*
28

1 **4. Freeze and Accountings Should Be Clarified Or Modified (DE 86)**

2 The Court's Freeze and Accountings Order (DE 86) under Section IV p. 8,
3 lines 18-21, orders Ms. Nugyen to produce all books and records and other
4 documents supporting her accounting.

5 Ms Nguyen seeks a modification of the Freeze and Accountings Order to
6 provide Ms. Nguyen 90 days after the Receiver allows her to utilize her financial
7 resources to engage professionals, and returns her financial records, computers,
8 mail, and other documents, to comply with the accounting obligations; and limit
9 such accountings to financial transactions exceeding \$5,000 since September 12,
10 2015, rather than January 1, 2014. six years of financial transactions).

11 Ms. Nguyen seeks modification of the Asset Freeze and Accountings Order to
12 allow Ms. Nguyen reasonable and necessary living expenses of \$10,000 per month.
13 And clarification that any new money earned by Ms. Nugyen is not subject to the
14 asset freeze entered on September 12, 2019. Ms. Nguyen further seeks a
15 modification of the Asset Freeze to provide that she may access her assets to pay
16 professionals to assist her with her defense and preparation of the accountings up to
17 \$20,000 per month.

18 Ms. Nguyen further seeks a modification and clarification that the Asset
19 Freeze and Accountings Order is limited to assets traced to wrongdoing within the
20 proceeding five years of the Amended Complaint and not to items under \$1,000.

21 This motion is based on this Ex Parte Motion, and the concurrently filed
22 Memorandum of Points and Authorities, Declaration of Stanley C. Morris, and such
23 other evidence and arguments as may be presented at any hearing on this matter.

24 Local Rule 7-19: As set forth in the Declaration of Stanley C. Morris,
25 counsel for Ms. Nguyen has advised the Plaintiff and the Receiver, through their
26 counsel, of the substance of the Application, and that opposition papers are due
27 within 24 hours of the filing of the ex parte motion. Plaintiff indicated that it is
28 opposed to the relief requested.

1 Dated: September 23, 2019

2 /s/ Stanley C. Morris

3 Corrigan & Morris LLP

4 Counsel for NGOC HA T. NGUYEN

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