

**CORRIGAN & MORRIS, LLP**

Stanley C. Morris (Cal Bar No. 183620)

scm@cormorllp.com

Brian T. Corrigan (Cal Bar No. 143188)

bcorrigan@cormorllp.com

12300 Wilshire Boulevard, Suite 210

Los Angeles, CA 90025

Telephone: (310) 394-2800

Facsimile: (310) 394-2825

Attorneys for Defendant, NGOC HA T. NGUYEN

**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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF *EX  
PARTE* APPLICATION OF DEFENDANT  
NGOC HA T. NGUYEN FOR AN ORDER  
TO VACATE, MODIFY, OR CLARIFY  
AMENDED ORDER APPOINTING  
RECEIVER (DE 85); AND ORDER  
FREEZING ASSETS OF DEFENDANTS  
ICARE AND HA NGUYEN AND  
REQUIRING ACCOUNTINGS (DE 86),  
ENTERED *EX PARTE* ON SEPTEMBER  
12, 2019**

**FILED CONCURRENTLY WITH  
DECLARATION OF STANLEY C.  
MORRIS**

**EMERGENCY RELIEF IS REQUIRED**

Amended Complaint Filed:

September 11, 2019

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION:**

On September 11, 2019, the Plaintiff sought *ex-parte* two orders: (1) ORDER APPOINTING RECEIVER (DOCKET ENTRY NO. 85) (the “Receivership Order”) and (2) ORDER FREEZING ASSETS OF DEFENDANTS ICARE AND HA NGUYEN AND REQUIRING ACCOUNTINGS (DOCKET ENTRY NO. 86) (the “Freeze and Accountings Order” and, collectively, the “Emergency Orders”). In fewer than 24 hours, the Court granted the Emergency Orders proposed by the Plaintiff without a single modification.

The judiciary’s role is to ensure the protection of individual rights. *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004). The court cannot assume the wrongdoing before judgment in order to remove the defendants’ ability to defend themselves. *FSLIC v. Dixon*, 835 F.2d at 565 (5<sup>th</sup> Cir. 1987). Where, as here, an individual is up against the overwhelming weight of the United States government, it is crucial that the Court insists on due process of law to allow the individual defendant to tell her side of the story before facing draconian relief proposed by the government.

Not only were these Emergency Orders entered without due process of law, but they were 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 due process of law throughout these proceedings unless the Emergency Orders are vacated or substantially modified.

The SEC concocted an emergency to justify denying Ms. Nguyen due process of law. There is no actual emergency. The so-called emergency motions were brought six months after commencing the case and nearly six months after taking her deposition (DE 1 and 79-1). While the SEC does allege that it “recently” discovered Ms. Nguyen sold her home, it conspicuously omits that she did not

1 violate any court order when she did so, and Plaintiff has no evidence she did so  
2 with the intent to avoid payment to creditors. Ms. Nguyen was not named either as  
3 a defendant or a relief defendant in the Plaintiff's initial complaint filed more than  
4 six months ago on March 13, 2019. (DE 1). After filing the initial complaint,  
5 Plaintiff took Ms. Nguyen's deposition on March 28, 2019 (without her former  
6 counsel being present) (DE 59-1). After taking her deposition, Plaintiff had no  
7 further communications with Ms. Nguyen during the ensuing six months until it  
8 served her with the Emergency Orders at issue here.

9 Plaintiff has failed to articulate any exigent circumstances that would justify  
10 compelling Ms. Nguyen, under contempt of Court, to prepare an accounting of six  
11 years of every financial transaction in **ten days**. Not only would the accounting of  
12 every one of Ms. Nguyen's financial transactions over the last six years in ten days'  
13 time be virtually impossible under any circumstance, but here, as a result of the  
14 Court's TRO (DE 15, ppg 6-7), the Receiver already has exclusive and sole  
15 possession of Ms. Nguyen's relevant bank accounts, computer, and work papers.  
16 Not only does the Receiver not need such an accounting from Ms. Nguyen, because  
17 he has the records, but the SEC knows that Ms. Nguyen does not have the records  
18 that she would need to comply, and that the task is impossible. Indeed, the tactic  
19 seems to smack of bad faith and to put Ms. Nguyen in guaranteed immediate  
20 contempt of court.

21 Ms. Nguyen, if given the opportunity to do so, is prepared to present  
22 substantive defenses to the claims brought by the SEC. As detailed below, Ms.  
23 Nguyen is a victim, not a co-conspirator. Like so many other victims, she believed  
24 Mr. Whitney. (DE 59-1) She invested in his schemes herself, and caused her mother  
25 and other close family members to invest. *Id.* She lost more than perhaps any other  
26 victim. And, now, she faces ultimate financial ruin without due process from the  
27 Court's Emergency Orders. She does not deserve that fate.



1 The Emergency Orders should be vacated, and due process restored. The  
2 SEC should be compelled to seek relief on regular notice, after giving Ms. Nguyen  
3 a full and fair opportunity to present her evidence and arguments.

4 If the Court is not inclined to do so, at the very least the Court should clarify  
5 and modify the orders, as detailed in the motion. The orders, as written, are  
6 intended to apply to business entities capable of complying with the immediate time  
7 deadlines and extensive labor intensive work needed to comply. As against Ms.  
8 Nguyen, a person who speaks English as a second language with difficulty, and  
9 who has been stripped of all of her assets as well as her books and records, the  
10 Orders impose absolutely impossible burdens on Ms. Nguyen. She needs to either  
11 be relieved of all accounting and disclosure obligations, or be provided with  
12 sufficient time, financial resources and books and records to comply with the  
13 obligations imposed by the Order. Among other things, she needs to be allowed to  
14 retain and use her clothes and personal belongings, without the threat of a contempt  
15 of court sanction. And, she needs to be able to hire and speak with her lawyers,  
16 without interference by the Receiver or the Court.

## 17 **II. PROCEDURAL HISTORY**

18 A. March 13, 2019, Plaintiff filed its initial complaint. (DE 1). The  
19 Complaint did not name Ms. Nguyen as a Defendant or Relief Defendant. *Id.*

20 B. March 28, 2019, the Plaintiff took the deposition of Ms. Nguyen on an  
21 expedited basis without her former counsel present. (DE 79-1).

22 C. September 11, 2019, six months after filing its complaint, Plaintiff  
23 filed an *ex-parte* application and supporting documents seeking two emergency  
24 orders unlimited in scope and duration. (DE 76).

25 D. September 12, 2019, Plaintiff supplements its *ex-parte* application.

26 E. September 12, 2019, Ms. Nguyen and Plaintiff reached an oral  
27 agreement for additional time beyond the Court's published procedure at number 6  
28 mandate that oppositions must be filed in twenty-four hours.

1 F. September 12, 2019, in fewer than 24 hours after the Plaintiff finished  
2 filing its *ex-parte* application, and without meaningful notice to Ms. Nguyen, the  
3 Court issued its Receivership Order without modification as proposed (DE 85). That  
4 devastating and catastrophic 21 page Receivership Order, unlimited in scope or  
5 duration, directed the Receiver, among other things, to seize immediately all of Ms.  
6 Nguyen's real and personal property, including her personal computer, phone, mail,  
7 clothes, car, and food (DE 85 pg. 11). The Receivership Order further purports to  
8 dismiss Ms. Nguyen's present attorneys, and to compel said attorneys to testify and  
9 waive privilege (DE 85, pg. 3, 7).

10 G. September 12, 2019, in fewer than 24 hours after Plaintiff completed  
11 filing its *ex-parte* application, the Court issued its Freeze and Accountings Order  
12 (DE 86). The order, unlimited in scope or duration, freezes all of Ms. Nguyen's  
13 assets, *even those demonstrably unrelated to any alleged fraud and obtained by*  
14 *Nguyen well before any alleged fraud*. In addition, to freezing all of her assets, the  
15 order requires Ms. Nguyen in **ten days'** time to submit a detailed accounting with  
16 supporting documents, covering every single financial transaction irrespective of  
17 amount, since January 1, 2014 (six years) (DE 86 pg. 8, lines 4-13).

18 H. September 12, 2019, Ms. Nguyen's counsel contacted the Plaintiff  
19 and requested a copy of the transcript of her deposition, excerpts of which are the  
20 only evidence offered by the SEC in support of the Emergency relief, but the  
21 Plaintiff refused Defense counsel's request. (Morris Dec. at ¶ 8)

22 I. September 12, 2019, Ms. Nguyen's counsel contacted the Court to  
23 request the Emergency Orders be vacated noting that Plaintiff had previously  
24 alerted the Court of Ms. Nguyen's intent to file an opposition and Plaintiff had  
25 agreed orally to additional time, but the Court refused unless Plaintiff would agree.  
26 In light of the Court's Emergency Orders, Plaintiff refused to stipulate to vacate the  
27 orders or grant additional time. (Morris Dec. at ¶ 9)

1 **III. LEGAL ARGUMENT**

2 **A. THE *EX-PARTE* EMERGENCY ORDERS SHOULD BE**  
3 **VACATED FOR LACK OF DUE PROCESS**

4 The Court's orders imposing the appointment of a receiver over Ms. Nguyen,  
5 unlimited in scope and duration, authorizing the Receiver to seize all of her real and  
6 personal property, including privileged information, freezing her assets, terminating  
7 her counsel, and requiring a detailed accountings within 10 days implicates both her  
8 Fourth and Fifth Amendment Constitutional rights. See *U.S. v. James Daniel Good*  
9 *Real Prop.* 510 U.S. 43, 48-49 (1993) (holding that both Fourth Amendment  
10 warrant, and probable cause and Fifth Amendment due process requirements apply  
11 to civil forfeiture proceedings).

12 Courts have held that in forfeiture proceedings due process requires the  
13 government to provide meaningful notice *and a hearing* prior to seizing real  
14 property absent exigent circumstances. *James Daniel Good*, supra, 510 U.S. at 59.  
15 Failure to provide *meaningful* notice is a structural level defect that requires setting  
16 aside the order and the seized property, particularly the attorney-client privilege  
17 material unlawfully obtained, be returned.

18 While courts are generally reluctant to acknowledge that one of the primary  
19 purposes of an SEC asset freeze is its function as a litigation tactic to pressure a  
20 defendant and deny him an adequate defense, it must be conceded that indeed such  
21 is the effect. See, *Bromberg & Lowenfels* on Securities Fraud and Commodities  
22 Fraud, § 12:74 Injunctive Actions - Asset Freezes (found at "SECBROMLOW  
23 12:74" on Westlaw) ("Courts typically acknowledge that the purpose of a freeze is  
24 to assure payment of disgorgement . . . Courts generally do not acknowledge  
25 another purpose of freezes: to apply pressure to defendants and hamper their  
26 defense.") See e.g., *Connecticut v. Doehr*, 501 U.S. 1, 21 (1991) (striking down  
27 state statute permitting prejudgment attachment of real estate without meaningful  
28 prior notice as not satisfying due process requirements and recognizing generally

1 that prejudgment attachments can be used as a "tactical device to pressure an  
2 opponent to capitulate").

3 Here, the Judge's Published Procedures ([www.cacd.uscourts.gov/honorable-](http://www.cacd.uscourts.gov/honorable-james-v-selna)  
4 [james-v-selna](http://www.cacd.uscourts.gov/honorable-james-v-selna)) provide that all *ex-parte* motions must be opposed within 24 hours.  
5 Nevertheless, the Emergency Orders were issued without a single modification to  
6 the orders proposed by the Plaintiff in a matter of hours after Plaintiff filed its  
7 notice of errata (DE 84) on September 12, 2019. Ms. Nguyen was not afforded any  
8 meaningful due process and there were no meaningful procedural safeguards.  
9 Importantly, Plaintiff refused to provide Ms. Nguyen with a copy of her deposition  
10 transcript, excerpts of which appear to be the only evidence offered in support of its  
11 *ex parte* application. (Morris Dec. ¶ 8).

12 The unbridled intrusion here – seizing all of Ms. Nguyen's mail, computer  
13 and other personal and real property for an indefinite period of time – is a far more  
14 substantial intrusion on private interests than "reasonable" or necessary under the  
15 Fifth and Fourth Amendment. The unrestrained seizure of her computers, mail,  
16 phone, and other personal documents that likely contain attorney-client privilege is  
17 intolerable.

18 It is the role of the judiciary, however, to ensure the protection of individual  
19 rights. E.g., *Trop v. Dulles*, 356 U.S. 86, 103 (1958) ("The Judiciary has the duty of  
20 implementing the constitutional safeguards that protect individual rights. When the  
21 Government acts to take away [fundamental rights] . . . , the safeguards of the  
22 Constitution should be examined with special diligence."); *Brill v. Hedges*, 783 F.  
23 Supp. 340, 346 (S.D. Ohio 1991) ("[T]he judiciary's role [is to serve] as a protector  
24 of individual rights and freedoms."). This is true in even the direst of  
25 circumstances. See, *Hamdi v. Rumsfeld*, 542 U.S. 507, 536(2004) ("We have long  
26 since made clear that a state of war is not a blank check for the President when it  
27 comes to the rights of the Nation's citizens."); see also *Home Bldg. & Loan Ass'n v.*

1 *Blaisdell*, 290 U.S. 398, 426 (1934) (holding that “even the war power does not  
2 remove constitutional limitations safeguarding essential liberties”)

3 As Justice Frankfurter noted, “the heart of the matter is that democracy  
4 implies respect for the elementary rights of men, however suspect or unworthy; a  
5 democratic government must therefore practice fairness; and fairness can rarely be  
6 obtained by secret, one-sided determination of facts decisive of rights.” *Joint Anti-  
7 Fascist Refugee comm v. McGrath* 341 U.S. 124 170 (1951).

8 Ms. Nguyen should be afforded due process. The Court should vacate the  
9 Emergency Orders on that basis and, if not, at the very least modify and clarify the  
10 Emergency Orders for the reasons stated below.

11 **B. Ms. NGUYEN HAS SUBSTANTIVE DEFENSES TO THE**  
12 **PLAINTIFF’S UNDERLYING ALLEGATIONS**

13 Ms. Nguyen is an immigrant to this country who speaks English as a second  
14 language with some difficulty, which the Plaintiff appears to be attempting to  
15 exploit. (Nguyen Decl. ¶¶ 4-5.) Ms. Nguyen has no experience, education, or  
16 training with respect to federal or state securities laws. (DE 79-1, pg 19). Prior to  
17 2015, Ms. Nguyen was a California state-licensed insurance salesperson for five  
18 years with a previously unblemished record. (DE 79-1, pg 18-19). Ms. Nguyen sold  
19 insurance through her company iCare Financial Solutions before meeting Whitney,  
20 who later assumed control of that entity. *Id.* At the time Ms. Nguyen sold her house  
21 in August 2019, she had not had any contact with the SEC in six months and had  
22 not been named as a defendant or relief defendant in the action (DE 1, 59-1).

23 The SEC has alleged there was a partnership between Ms. Nguyen and  
24 Whitney. But in reality Whitney just victimized Ms. Nguyen, her mother, and other  
25 close family members, and her pre-existing insurance business customers, just as he  
26 victimized everyone else. Ms. Nguyen testified, under oath at her deposition that  
27 she knew nothing about the Ponzi until the SEC filed its action six months ago. (DE  
28 79-1, pg 26). Indeed, even the Plaintiff does not allege in the First Amended

1 Complaint (“FAC”) that Ms. Knguyen knew there was a Ponzi scheme. (DE 75).

2 Ms. Nugyen’s good faith belief in Whitney is perhaps best evidenced by the  
3 fact that Ms. Nguyen encouraged her own mother, grandfather, uncles, and other  
4 close family, the people she loves most in this world, to invest in Whitney’s  
5 putative investment (the alleged Ponzi scheme). (Nguyen Decl. ¶ 6; Ex.\_). Ms.  
6 Nguyen herself directed much of her compensation to be invested into CHS trust  
7 account (DE 79-1). Ms. Nguyen had no other financial investments other than CHS.  
8 (DE 79-1, pg ). Viewed holistically, this is not the behavior of someone with  
9 knowing and deliberate participation in a Ponzi scheme, as the Plaintiff well knows.

10 Moreover, when viewed under *all* the facts and circumstances, it is difficult  
11 to find that Ms. Nguyen’s conduct was an extreme departure of ordinary care. Ms.  
12 Nguyen, like the niece investors, was unable to penetrate the slick and shiny  
13 “veneer of legitimacy” of Defendant Whitney and Parris (DE 75 at ¶ 6). Plaintiff  
14 admits in its FAC that Defendants Whitney and Parris confirmed in a text message  
15 that Nguyen was not part of CHS. (DE 75 ¶ 46).

16 Whitney controlled brokerage accounts in Nguyen’s name that, as Plaintiff  
17 concedes, Ms. Nyguen could not even access. (DE 75 ¶ 51). Indeed, the Plaintiff  
18 admits that Whitney merged iCare into CHS without Ms. Nguyen’s permission or  
19 consent,(DE 75 ¶ 55), which does not sound like a partnership. Indeed, the SEC  
20 further concedes in the FAC that Whitney dictated what compensation Ms. Nguyen  
21 would receive. (DE 75 ¶ 59). The merger letter sent under Nguyen’s name was  
22 drafted by Whitney and sent at Whitney instruction. (DE 75 ¶56).

23 Ms. Nguyen’s reliance and belief in Whitney was far more reasonable and  
24 plausible than the SEC feigns. First, Whitney’s father, who was Ms. Nguyen’s  
25 long-time Certified Public Accountant before the alleged acts, recommended his  
26 son Whitney and touted his virtues and skills prior to Ms. Nguyen meeting  
27 Whitney. (DEC 79-1, pg 3).

28 CHS and Whitney maintained an in-house general counsel, Allen Hsu, Esq.,



1 an experienced 57-year-old New York State Bar member. (DE 75 ¶¶96). Mr. Hsu's  
2 presence in the office of CHS with the title "General Counsel" left laypersons, such  
3 as Ms. Nguyen, with the impression and understanding, that Whitney and CHS  
4 were in compliance with all laws, including the federal securities laws, and was  
5 being guided by experienced 57-year-old lawyer. (DE 75 ¶¶ 96, 97) (DE 79-1, pg  
6 52, lines 1-10).

7 In furtherance of this appearance of credibility, Whitney and Parrish, touted  
8 to Ms. Nguyen, and others, that the books and records of CHS were audited by  
9 KPMG (DE 75, ¶¶8, 53, 68, 112) (DE 79-1, ppg 57-58). Indeed, Ms. Nguyen  
10 understood from Whitney that KPMG reviewed the payments made to investors to  
11 ensure they were made accurately. (DE 79-1, ppg 57-58). Whitney also provided  
12 Ms. Nguyen with the name of his CPA, Kelly Florek (DE 79-1, ppg 57-58).

13 Whitney also claimed that CHS was FDIC and SIPC insured. (DE 79-1, pg  
14 72-73). Ms. Nugyen had no other financial investment herself except her  
15 investment in CHS (DE 79-1, pg 80).

16 In psychology and cognitive science, Ms. Nguyen's trust is called  
17 confirmation bias (or confirmatory bias), which is a tendency that virtually  
18 everyone has to search for or interpret information in a way that confirms one's  
19 preconceptions, leading to common errors. In fact, this confirmation bias may be  
20 driving the Plaintiff's allegations against Ms. Nguyen in the FAC.

21 Ms. Nguyen never disseminated information to investors except as expressly  
22 directed by Whitney who had ultimate authority over the content of all  
23 communications with investors, as the SEC concedes in the FAC, including the  
24 letter that is attached as an exhibit to the declaration filed with Plaintiff's *ex-parte*  
25 application (79-1). Ms. Nguyen had no understanding of Whitney's, CHS's, or  
26 iCare's trading accounts or any information about the business operations other  
27 than what Whitney told her.

28 As was the case with Bernie Madoff, Ponzi operators carefully guard

1 information and take precautions to avoid suspicion. Indeed, there can be no  
2 argument that Whitney directed all the actions of Ms. Nguyen. It is well settled that  
3 under the federal securities laws that only the person with *ultimate authority to*  
4 *speak* can be liable (make) the alleged misrepresentations at issue. See, e.g. *Janus*  
5 *Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135, 142 (2011). Indeed,  
6 like other investors, the only information Ms. Nguyen had was provided to her by  
7 the alleged confidence man Whitney (DE 79-1).

8 Ms. Nguyen is Vietnamese, and, in her culture, it is extremely impolite to  
9 question the veracity of someone without some hard evidence of untruthfulness.  
10 This made her particularly susceptible to Whitney's deceptions and control.

11 While the Plaintiff cites several misrepresentations and omissions in the  
12 FAC, Plaintiff has not alleged that Ms. Nguyen had ultimate authority over the  
13 alleged misrepresentations and omissions. Instead, to the contrary, Plaintiff  
14 contends that Whitney had ultimate authority and therefore he is the maker under  
15 the Supreme Court ruling in *Janus*, and all such statements must be attributed to  
16 him. See, e.g. *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135,  
17 142 (2011). At (DE 791). Ms. Nguyen testified that the so-called merger letter,  
18 included in Plaintiff's pleading, was written by Whitney, and he instructed Ms.  
19 Nguyen when and where to send it out. (DE 79-1, ppg 50-52, 57).

20 In addition, Ms. Nguyen has statute of limitations defenses to any alleged  
21 conduct that occurred prior to September 11, 2015 under 28 U.S.C. § 2462.

22 The government should not be allowed to use its superior resources to obtain  
23 draconian pre-judgment relief to force Ms. Nguyen into submission as it is  
24 attempting to do here. Instead, there should be a balancing of competing interests,  
25 and due process should leave Ms. Nguyen with sufficient time and resources to  
26 present her substantive defenses, and to comply with all orders compelling her to  
27 provide accountings and otherwise to abide by the rules and rulings of the Court.  
28



1           **C. THE EMERGENCY ORDERS SHOULD BE MODIFIED**  
2           **AND/OR CLARIFIED.**

3           **a. Ms. Nguyen Requests the Receivership Order DE 85 be**  
4           **modified as follows:**

5           **1. Inadvertent invasion of attorney-client privilege and**  
6           **termination of attorney-client relationship.**

7           Ms. Nguyen request the Court clarify its Receivership Order to ensure the  
8           protection of Ms. Nguyen's attorney-client privilege and attorney work product and  
9           other privileges. Recognized for more than four centuries, the attorney-client  
10          privilege is "the oldest of the privileges for confidential communications known to  
11          the common law," *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981), and the  
12          "most revered," *United States v. Bauer*, 132 F.3d 504, 512 (9th Cir. 1997). Nothing  
13          less than the fair and just operation of our legal system depends on the privilege.  
14          Without it, no client could speak freely with counsel, and no attorney could  
15          competently serve her client. The privilege, therefore, must be scrupulously  
16          protected. *See In re von Bulow*, 828 F.2d 94, 98-99 (2d Cir. 1987) (granting writ of  
17          mandamus and vacating district court's discovery order compelling disclosure of  
18          attorney-client communications because "[c]ompliance with the [discovery] order  
19          destroys the right sought to be protected").

20          At paragraph seven of the Receivership Order, the Receiver is authorized to  
21          take possession of all of Ms. Nguyen's real and personal property, including  
22          computers, phone, and other electronics, mail, and personal paper without any  
23          safeguards whatsoever to protect Ms. Nguyen's privileged communications,  
24          including the attorney-client communications contained on those electronic devices.  
25          (DE 85 pg 9). The Receivership Order should be clarified that it only pertains to the  
26          corporate entities or to provide detailed procedures to safeguard Ms. Nguyen's  
27          privileged communications and documents from disclosure and compelled waiver.  
28

Perhaps even more alarming, the Receivership Order could be construed to terminate Ms. Nguyen's counsel and appears to compel them to reveal attorney-client privileged communications and attorney work product to the Receiver. (DE 85, pg 3, ¶ 5).<sup>1</sup> Ms. Nguyen asks the Court to clarify if this provision of the Receivership Order was directed at the individual defendants or solely to the corporate entities. Similarly, paragraph six of the Receivership Order directs that Ms. Nguyen's attorneys may no longer take any action on her behalf. Again, while that appears to be unintentional, Ms. Nguyen seeks clarification on the Court's order.

## 2. The Court's TRO and Receivership Order Prevent Ms. Nguyen from Preparing an Accounting

In March 2019, the Court issued a TRO that froze all of Ms. Nguyen's bank accounts that are relevant to the FAC, and some that were not. In addition, the Receiver took possession of Ms. Nguyen's computer that she used in connection with iCare. Accordingly Ms. Nguyen can no longer access those frozen accounts, which are listed in the Asset Freeze and Accountings Order. Then, the Court issued the two Emergency Orders on September 12, 2019 that freeze all of Ms. Nguyen's assets that were not frozen by the TRO and grant *immediate* possession of all of Ms. Nguyen's assets, including her computer, phone, mail, and personal documents to the Receiver. Under those circumstances it is impossible for Ms. Nguyen to prepare an accounting of six years of all of her financial transactions in ten days' time or ever.

The Emergency Orders should be clarified and/or modified to provide that

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<sup>1</sup> The trustees, directors, officers, managers, employees, investment advisors, accountants, **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 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 after all of Ms. Nguyens's electronics, mail, personal documents, books and records  
2 are returned to her that were seized as part of the March 2019 TRO, and under the  
3 Emergency Orders, then Ms. Nguyen shall have 90 days to prepare a detailed  
4 accounting (detailing and providing summaries of since September 12, 2015, rather  
5 than January 1, 2014, six years of financial transactions).

6 The Emergency Orders should also be modified to provide that Ms. Nguyen  
7 may expend upto \$20,000 per month to employ professionals to help her prepare  
8 the onerous and detailed accounting of all of her finacial transactions over a six  
9 year period.

10 The Receivership Order should be modified to provide that Ms. Nguyen may  
11 retain all of her personal property having a market value of less than \$1,000, per  
12 item, including her clothes, food, and personal items and those items, of any value,  
13 that were acquired before Ms. Nguyen met Whitney, of any value, or otherwise that  
14 are not traceable to the alleged violations.

15 The Receivership order should be modified to allow Ms. Nguyen \$10,000 per  
16 month in reasonable and necessary living expenses.

17 The Receivership Order should be limited in scope to assets traced to  
18 wrongdoing within the proceeding five years of the First Amended Complaint,  
19 under 28 U.S.C § 2462. Along those lines, the Receivership Order should not  
20 include Ms. Nguyen's Wells Fargo Accounts ending 8949 and 5001 that were  
21 funded solely with commission earned by Ms. Nguyen as a California licensed  
22 insurance broker unrelated to CHS and Defendant Whitney.

23 Ms. Nugyen seeks clarification of paragraph 7(B) of the Receivership Order  
24 that instructs the Receiver to "take custody, control and possession of Receivership  
25 Property and records relevant thereto from Receivership Defendants." Ms. Nguyen  
26 seeks clarification on how Ms. Nguyyen will be able to comply with the Court's  
27 Accounting Order requiring to produce and account for every single financial  
28 transaction she engaged in over the last six years without access to her mail,

1 computer, and personal records. Indeed, she cannot access her relevant bank  
2 accounts that were frozen under the TRO entered by the Court in March of 2019 of  
3 which the Receiver has exclusive and sole access, that are listed in DE 86. Is she  
4 required to recall every transaction from memory alone, without the aid of  
5 professionals, books or records? The Order should be clarified to exclude the  
6 accounts listed at DE 86 and/or any accounts that the receiver has already assumed  
7 control. And, the Order should mandate the return of all of her books, records and  
8 all financial records, after imaging such records, as appropriate.

9       Similar to paragraph 7(B), paragraph 8 of the Amended Reciever Order  
10 directs and orders Ms. Nguyen to “turn over” all paper and electronic information  
11 relating to the Receivership Defendants and/or Receivership Property. As written,  
12 the scope is impermissibly broad and the Order would compel Ms. Nguyen to  
13 produce privileged information and prevent her from completing an accounting, let  
14 alone in ten days. Ms. Nguyen seeks clarification on the scope and breadth of the  
15 order.

16       Paragraph 10(A) of the Receivership Order requires complete documentation  
17 from January 1, 2014 to the present of all securities and investment funds, real  
18 estate, automobiles, bank accounts, brokerage accounts, etc. Ms. Nugyen seeks  
19 clarification that such an order does not require her to produce any financial  
20 account information that has been listed in the Asset and Accounting Order (DE 86)  
21 and or with respect to which the Receiver has already taken possession of the assets  
22 and/or books and records related thereto. Ms. Nguyen also seeks clarification as to  
23 how she is to perform such work without her books and records, without means to  
24 engage professionals, and with all of her assets frozen.

25       Paragraph 12 of the Receivership Order compels Ms. Nguyen’s “past and/or  
26 present” attorneys to “answer under oath to the Receiver all questions which the  
27 receiver may put to them and produce all documents as required by the Receiver.”  
28 Ms. Nugyen requests that the Court clarify that paragraph 12 of the Amended

1 Receivership Order only pertains to the Receivership entities, not individuals and,  
2 in particular, not her. She cannot afford to pay counsel to engage in that exercise  
3 with the Receiver, and such counsel would, in any event, be duty-bound not to  
4 reveal attorney-client privileged communications or counsel's work product.

5 Paragraph 15 of the Amended Reciever Order directs the Receiver to take  
6 "immediate possession" of "financial accounts, books and records and all other  
7 documents or instruments relating to the Receivership Defendants." Ms. Nguyne  
8 seeks clarification on how she is to comply with this Order and still provide the  
9 accounting directed at paragraph 9 of the Receivership Order (DE 85) and Section  
10 IV of the Freeze and Accountings Order (DE 86) that obligates her to produce a  
11 detailed accounting of every financial transaction she ever entered into since  
12 January 1, 2014, while the receiver is in sole possession of the records necessary to  
13 do so.

14 Paragraph 18 of the Receivership Order directs the Receiver to take  
15 "immediate possession of all personal property" of Ms. Nguyen. Ms. Nguyen seeks  
16 clarification of the scope and breadth of this order. Ms. Nguyen will seek an  
17 exemption of any items having a value of less than \$1,000 and not to include her  
18 computer, phone, and other electronics. In the alternative, Ms. Nugyen seeks  
19 clarification of the order on how the Court proposes to protect attorney-client  
20 communications and relief from the accounting obligation.

21 Paragraph 19 of the Receivership Order directs the Receiver to take  
22 immediate possession of Real Property. Ms. Nguyen seeks clarification of how her  
23 attorney-client privilege will be guarded and her personal possessions will be  
24 maintained. Ms. Nguyen also seeks to have the Receivership Order clarified that it  
25 is not designed to include real or personal property that is *unrelated to the alleged*  
26 *fraud and cannot instructions that it cannot exceed what the Plaintiff can prove is*  
27 *reasonably subject to disgorgement*  
28

1                   **3. The Receivership Order Is Unnecessary Given the Asset**  
2                   **Freeze.**

3           Under the great weight of authority which governs the appointment of  
4 receivers in SEC civil enforcement actions, imposition of a receivership is a  
5 “drastic” and “extraordinary” remedy that should be imposed *only where no lesser*  
6 *relief will be effective*. *Ferguson v. Tabah*, 288 F.2d 665, 674 (2d Cir. 1961);  
7 *Citibank v. Nyland (CF8) Ltd.*, 839 F.2d 93, 97 (2d Cir. 1988). (“extraordinary”  
8 remedy); *Rosen v. Siegel*, 106 F.3d 28, 34 (2d Cir. 1997) (no abuse of discretion in  
9 refusal to appoint receiver). Here, the SEC attempts to justify the imposition of a  
10 receiver appointment over Ms. Nguyen under the guise that she may dissipate  
11 assets, but that concern is extinguished by the asset freeze. (DE 86). The  
12 appointment of a receiver “should not follow requests by the SEC as a matter of  
13 course.” *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972);  
14 see also *SEC v. American Board of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987)  
15 (quoting *Manor Nursing*); *SEC v. FTC Capital Markets, Inc.*, No. 09 Civ. 4755  
16 (PGG), 2010 U.S. Dist. LEXIS 65417, at \*17 (S.D.N.Y. June 30, 2010) (noting, in  
17 the context of a Ponzi scheme, that “[t]he appointment of a receiver is not automatic  
18 upon the Commission’s request”).

19           Here, the SEC fails to explain how the imposition of a receivership is  
20 justified over an individual relief defendant or why the Court granting an asset  
21 freeze would not accomplish the same objective. In *SEC v. Republic National Cf.*  
22 *SEC v. Friedlander*, No. 01-6273, 2002 U.S. App. LEXIS 22564, at 6 (2d Cir. Oct.  
23 29, 2002) (even though SEC made out prima facie case of securities law violations,  
24 district court granted receiver only after declining to do so initially and only when  
25 hedge fund manager defendant, who had been entrusted with liquidating the fund,  
26 failed to act in accordance with his commitments to the court). Ms. Nguyen has not  
27 failed to meet any commitment to the Court, or otherwise.

28           Not only is the the expansion of the receivership to include Ms. Nguyen



1 unnecessary, it also could be construed to remove the undersigned as counsel to Ms.  
2 Nguyen and order the undersigned to testify under oath, presumably pertaining to  
3 attorney-client privileged matters. The scope and overreach of the Amended  
4 Reciever Order reveals the SEC and the Reciever's true intentions about the  
5 improper purpose of such an order. That is to make run roughshod over Ms.  
6 Nguyen's due process rights and force her into an early submission – the  
7 government knows best.

#### 8 **4. The Freeze and Accountings Order Must Be Modified**

9 A pre-judgment asset freeze-order is an “extraordinary remedy.” *Grupo*  
10 *Mexicano de Desarrole, S.A. v. Alliance Bond Fund, Inc.* 527 U.S. 308, 340 (1999).  
11 The effect, and undoubtedly the SEC's intent, of the overbroad Freeze and  
12 Accounting Order and Receivership Order is to cut off Nguyen's ability to fund her  
13 living expenses, and retain and pay legal counsel to defend against the SEC's  
14 unfounded allegations to force her into submission. Accordingly, Ms. Nguyen  
15 respectfully requests that the asset freeze order be modified as follows:

16 **a. The Court should Provide Ms. Nguyen 90 days after the**  
17 **Receiver allows her to utilize her financial resources to**  
18 **engage professionals, and returns her financial records,**  
19 **computers, mail, and other documents, to comply with the**  
20 **accounting obligations; and limit such accountings to**  
21 **financial transactions exceeding \$5,000 since September 12,**  
22 **2015, rather than January 1, 2014. six years of financial**  
23 **transactions).**

24 Under the current Freeze and Accountings Order, Ms. Nguyen has been  
25 ordered, under penalty of contempt, to produce within **10 days**:

26 an accounting to the SEC and the Reciever detailing by  
27 amount, date, method and location of transfer payee and payor  
28 purpose of payment of transfer of: (a) all investor monies and

1 other benefits received, directly and indirectly, from or as a  
2 result of the activities alleged in the Amended Complaint or  
3 thereafter transferred; (b) all monies and other assets  
4 received, directly or indirectly, from investors; (c) all of their  
5 current assets wherever they may be located and by  
6 whomever they are being held, and their current liabilities;  
7 and (d) all accounts with any bank, credit union, trust  
8 company, financial or brokerage institution maintained for the  
9 Defendant at any point during the period from **January 1,**  
10 **2014,** to the present. (emphasis added)

11 Defendant has no ability to provide a sworn accounting in ten days, or even  
12 ten years, of six years of financial transactions without access to professionals, her  
13 computers, her phone, any assets, and her mail

14 Fundamental fairness dictates that the Asset and accounting Order be  
15 modified so that the Receiver first be obligated to give Ms. Nguyen the funds she  
16 would need to engage professionals to do this work and access to her frozen  
17 accounts, and her computers, and papers, and records, to provide the necessary  
18 records to her professionals to complete the work competently. Then, the Asset and  
19 Accounting Order should be narrowed to account for transactions over \$5000, so  
20 that the fees expended are limited to material disclosures. And, those professionals  
21 should have 90 days after having been engaged, funded and provided the requisite  
22 documentation to complete their work.

23 Under the Court's TRO, the Receiver already has taken exclusive and sole  
24 possession of Ms. Nguyen's relevant bank accounts, computer, books and records,  
25 and computer (DE 15, pg 6-7), 2). Second, the Receivership Order authorized the  
26 Receiver to take *immediate* possession of all financial accounts, books and records,  
27  
28



1 computers, mail, and other documents. (DE 85 p. 8, ¶¶ 15, 18). The task is  
2 impossible.

3           **b. Allow for reasonable and necessary living expenses of**  
4           **\$10,000 per month to provide for her and her expected twin**  
5           **newborns. Permit payments to professionals of \$20,000 per**  
6           **month to provide a defense and respond to accounting and**  
7           **other disclosures obligations.**

8           Because of the all-encompassing nature of the Freeze and Accountings  
9 Order, without immediate modification, Ms. Nguyen remains unable to pay her  
10 everyday living expenses, including feeding her expected twin children, the  
11 purchase of health insurance, rent, food, gasoline, electric, or water expenses.  
12 (Nguyen Decl. ¶ 14). Courts routinely allow individuals to expend funds from their  
13 otherwise frozen assets for ordinary, reasonable, and necessary living expenses.  
14 See, e.g., *CFTC v. Noble Medals International*, 67 F. 3rd 766, 775, n8 (9th Cir.  
15 1995) (court may allow ordinary living expenses to be paid notwithstanding asset  
16 freeze); *SEC v. Grossman*, 2003 U.S. Dist. LEXIS 317 (S.D.N.Y 2003) (asset  
17 freeze modified to permit payment of attorneys' fees); *S.E.C. v. Asset Recovery &*  
18 *Management Trust, S.A.*, 340 F. Supp. 2d 1305, 1312 (M.D. Ala. 2004) (observing  
19 that a district court has the discretion to release funds from an asset freeze so the  
20 Defendant may pay for living expenses and attorneys' fees). Such an order is  
21 particularly appropriate where, as in this case, there are no alternative sources of  
22 income for the defendant.

23           This Court has broad discretionary power to decide the level of such requests  
24 for payment of reasonable living expenses and attorneys' fees from frozen assets.  
25 *SEC v. Dowdell*, 175 F. Supp. 2d 850 (W.D. Va. 2001) (holding that courts have the  
26 authority, in an SEC enforcement action, "to release frozen personal assets, or  
27 lower the amount frozen" and modifying an asset freeze to permit the defendant  
28 funds for personal expenses and for the payment of attorney's fees).

1 Ms. Nguyen, who to date has attempted to cooperate with the SEC (both by  
2 making herself available to the Receiver and sitting for a deposition without her  
3 attorney present) should be allowed to pay for her and her twin babies' (expected  
4 any day) necessary living expenses including food, water, gas, electricity, and other  
5 utilities, car payments, rent, health insurance, and, debts. Yet because of the  
6 draconian nature of the freeze currently in effect, defendant cannot pay for anything  
7 from her assets, including her everyday necessities.

8 Under controlling Ninth Circuit precedent, this court also has the authority to  
9 modify its standing order to permit payment of attorneys' fees. *CFTC v. Noble*  
10 *Medals International*, 67 F. 3rd at 775. See also *FTC v. Worldwide Factors*, 882 F.  
11 2nd 344, 348 (9th Cir. 1989). This is especially true in the current case because  
12 there has been no finding of wrongdoing against Ms. Nguyen - the orders obtained  
13 by the SEC to date are based solely on the court's initial finding of a likelihood of  
14 success on the merits. In similar situations, other courts have granted modification  
15 of asset freezes to permit the retention of counsel by defendants. *SEC v.*  
16 *International Loan Network, Inc.*, 770 F. Supp. 678, 680 (D.D.C. 1991) (freeze  
17 modified to permit defendants to retain counsel); see also, *SEC v. Grossman*, 2003  
18 U.S. Dist. LEXIS at 316. Similarly, in *SEC v. Pinez*, 989 F. Supp. 325 (D. Mass.  
19 1997) the court allowed an asset freeze subject to modifications to pay attorneys'  
20 fees and essential household expenses. An overriding concern for this and any court  
21 in this situation is fundamental fairness. *SEC v. Dowdell*, 175 F. Supp 2nd 850, 856  
22 (W.D. Va. 2001) (amending an asset freeze permitting payment of attorneys' fees  
23 and commenting that the "courts central concern is the fairness of proceedings"). To  
24 refuse to permit Ms. Nguyen the ability to pay for competent counsel to present her  
25 defense to the very serious allegations asserted by the SEC would, on its face, be  
26 fundamentally unfair and lead to depriving her of due process.

27 Ms. Nguyen is not an attorney and thus subjecting her to representing herself  
28 against highly skilled government attorneys schooled in the intricacies of securities

1 law is, on its face, fundamentally inequitable. Indeed, this reason alone causes  
2 courts in many jurisdictions to permit the amendment of an asset freeze to allow  
3 payment of attorneys' fees. See, e.g., *Dowdell*, 175 F. Supp. 2nd 856; see also *U.S.*  
4 *v. Petters*, 2009 U.S. Dist. LEXIS 23968 (D. Minn. March 25, 2009); *FTC v. QT,*  
5 *Inc., et. al.*, 2008 U.S. Dist. LEXIS 28395 (N.D. Ill. April 8, 2008); *FTC v.*  
6 *Windermere Big Win Intl.*, 1999 U. S Dist. LEXIS 12259 (N.D.Ill. Aug. 5, 1999).

7 As this court considers authorization of attorneys' fees, the Ninth Circuit has  
8 given guidance on twelve factors relevant to the determination of the amount of  
9 funds that should be released for fees. *Worldwide Factors*, 882 F 2nd at 348  
10 (adopting considerations outlined in *Kerr v. Screen Actors Guild*, 526 F 2nd 67, 70  
11 (9th Cir. 1975), (cert. denied, 425 U.S. 951 (1976)).

12 The relevant factors are as follows:(1) the time and labor required, (2) the  
13 novelty and difficulty of the questions involved, (3) the skill requisite to perform  
14 the legal service properly, (4) the preclusion of other employment by the attorney  
15 due to the acceptance of the case, (5) the customary fee, (6) whether the fee is fixed  
16 or contingent, (7) time limitations imposed by the client or the circumstances,  
17 (8)the amount involved and the results obtained, (9) theexperience, reputation and  
18 ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and  
19 length of the professional relationship with the client, and (12) awards in similar  
20 cases. *Kerr v. Screen Actors Guild*, 526 F 2nd 67, 70 (9th Cir. 1975), (cert. denied,  
21 425 U.S. 951 (1976)).

22 In light of these factors, Ms. Nguyen requests permission to pay twenty  
23 thousand dollars (\$20,000) per month toward legal fees and expenses. The  
24 complexity of the case is manifest in the thousands of pages of documents,  
25 numerous and varied assets invested in by the defendants' former companies,  
26 multiple years of transactions potentially at issue, dozens of potential witnesses, a  
27 likely need for forensic accountants to counter the allegations of the SEC and its  
28 Receiver, and so on.

1 The case will take up a substantial amount of time by counsel. Undersigned  
2 counsel estimates that a minimum of 50 hours per month at an average rate of  
3 \$400.00 per hour will be required to get up to speed and begin building and  
4 asserting the defenses to the SEC's allegations. As for expertise of counsel, one of  
5 the undersigned counsels is a former SEC Senior Counsel (Los Angeles office)  
6 familiar with trying securities cases of this type in federal courts throughout the  
7 country and California. The co-lead counsel is an established lawyer with thirty  
8 years of litigation experience and a former PriceWaterhoue CPA. Given the  
9 aggressiveness of the SEC in its initial decision to suddenly bring this case as an ex  
10 parte application for the Freeze and Accountings Order in tandem with the overly  
11 broad Receivership Order relief after six months of litigation, counsel anticipates  
12 the need for extensive motion practice, discovery, and utilization of outside expert  
13 resources. Accordingly, the request for a total of \$20,000 per month is reasonable  
14 under these circumstances.

15 In addition, Ms. Nguyen requests funds to sustain her during the pendency of  
16 these proceedings to feed herself, feed her expected children, pay rent, or even to  
17 purchase necessary medical insurance. Accordingly, Ms. Nguyen has requested a  
18 total of \$10,000 per month to provide for living expenses to care for herself.

19 **c. Limit the assets seized and frozen to assets traced to**  
20 **wrongdoing within the proceeding five years of the**  
21 **Amended Complaint and Not to Items Under \$1,000.**

22 The Supreme Court has held that “pretrial restraint of a criminal defendant's  
23 legitimate, untainted assets (those not traceable to a criminal offense) needed to  
24 retain counsel of choice violates the Fifth and Sixth Amendments.” *Luis v. U.S.*,  
25 136 S. Ct. 1083 (2016). In distinguishing its prior cases, *Caplin & Drysdale*,  
26 *Chartered v. United States*, 491 U.S. 617, 631 (1989) and *United States v.*  
27 *Monsanto*, 491 U.S. 600, 616 (1989), based on the distinction between tainted and  
28 untainted assets of the defendant, the Supreme Court stated:

1 [C]ases such as *Caplin & Drysdale* and *Monsanto* permit the  
2 Government to freeze a defendant's assets pretrial, but the opinions  
3 in those cases highlight the fact that the property at issue was  
4 “tainted,” i.e., it did not belong entirely to the defendant. We have  
5 found no decision of this Court authorizing unfettered, pretrial  
6 forfeiture of the defendant's own “innocent” property —property  
7 with no connection to the charged crime. Nor do we see any  
8 grounds for distinguishing the historic preference against  
9 preconviction forfeitures from the preconviction restraint at issue  
10 here. As far as Luis' Sixth Amendment right to counsel of choice is  
11 concerned, a restraining order might as well be a forfeiture; that is,  
12 the restraint itself suffices to completely deny this constitutional  
13 right. *Id.* at 1094 (emphasis added).

14 Thus, the asset freeze must be modified, at a minimum, to carve out assets  
15 unrelated to the violations alleged in the FAC. See, e.g., *SEC v. Quinn* 997 F.2d  
16 287, 289 (7th Cir. 1993) (affirming district court’s procedure of requiring the SEC  
17 to make a preliminary showing that assets can be traced to fraud, followed by an  
18 opportunity for a defendant to demonstrate that he possessed assets untainted by the  
19 fraud).

20 The Receivership Order should be limited in scope to assets subject to  
21 disgorgement, which in this case are only those assets obtained from conduct that  
22 occurred after September 12, 2015, not January 1, 2014. Ms. Nguyen respectfully  
23 submits that this Court does not have the power grant pre-judgment relief  
24 restraining Ms. Nguyen’s use of all of her assets in order to preserve fungible funds  
25 to satisfy a potential *money* judgment. See, e.g., *Grupo Mexicano de Desarrollo,*  
26 *S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19, 322-27 (1999) (district  
27 courts do not have equitable authority to freeze assets prior to entry of final  
28 judgment for money damages).

1        Aside from the question of whether the Court had the equitable authority to  
2        impose an asset freeze unlimited in both scope and duration, numerous courts have  
3        held that a freeze can only be imposed on assets causally related to the alleged  
4        wrongdoing. *See SEC v. Dobbins*, 2004 WL 957715 at 4 (N.D. Tex. April 14, 2004)  
5        (SEC is not entitled to freeze assets unrelated to its investigation); *SEC v. Bremont*,  
6        954 F. Supp. 726, 733 (S.D.N.Y. 1997) ("the Commission is not entitled to freeze  
7        assets unrelated to its investigation"); *SEC v. Coates*, 1994 WL 455558 at \* 3  
8        (S.D.N.Y. Aug. 23, 1994) (SEC must demonstrate that frozen assets are traceable to  
9        fraud to maintain preliminary injunction through trial).

10       In sum, the asset freeze cannot be more than the disgorgement claim, *and*  
11       even then, the asset freeze may only be imposed upon assets causally connected to  
12       the alleged wrongdoing since the Court has *no equitable jurisdiction* over property  
13       not related to the alleged wrongdoing. *See, e.g., SEC v. Gane*, 2005 WL 90154 at  
14       \*19 (S.D. Fla. 2005) (refusing to enter disgorgement judgment and noting that a  
15       court "may exercise its equitable power *only over property causally related to the*  
16       *wrongdoing.*" (emphasis in original).

17       On the plain face of its own pleadings, the SEC has failed to provide the  
18       court and the parties with any reasonable estimation of the disgorgement it is  
19       seeking against Ms. Nguyen. In the FAC, Plaintiff alleged that between 2015 and  
20       2017, Ha Nguyen received between \$10,000 and \$15,000 per month. (DE 75 ¶ 52),  
21       or a total of no more than \$360,000. During 2018, Ms. Nguyen was paid 5%  
22       commission of the \$10 million alleged funds she raised for CHS, or no more than  
23       \$500,000. (DE 75 ¶ 59). Accordingly, the FAC alleged a total of approximately \$1  
24       million of ill-gotten gain. However, the SEC then wildly speculates she received  
25       \$2,486,000 (FAC ¶ 60). Accordingly, the SEC has not provided a reasonable  
26       estimate, and the alleged amount in paragraph 60 is belied by the Plaintiff's earlier  
27       allegations in the FAC at paragraphs 52 and 59.

28       In addition, Ms. Nguyen requests that the Court unfreeze Wells Fargo



1 Accounts ending 8949 and 5001 that were funded solely with commission earned  
2 by Ms. Nguyen as a California licensed insurance broker unrelated to CHS and  
3 Whitney. Notwithstanding six months of discovery, the Plaintiff has not, because it  
4 cannot, provide any evidence that its is entitled to a pre-judgment freeze the assets  
5 in those accounts that are entirely unrelated to the allegations.

6 After *Grupo*, the Supreme Court is clear, absent express statutory authority,  
7 this Court cannot reach into its bag of *equitable* powers to freeze assets unrelated to  
8 the lawsuit to ensure that relief related to disgorgement traceable directly to a  
9 violation is collectible, even where there is proof that the defendant is likely to  
10 dissipate his assets and thereby avoid having to pay such legal remedy.

11 While the SEC's burden in demonstrating the amount of assets subject to  
12 disgorgement may be "light," it still bears the burden of making some showing and  
13 that showing was entirely absent here. For example, in the present case, Ms.  
14 Nguyen's Wells Fargo accounts ending in 8949 and 5001 seized without notice by  
15 the SEC as part of the Court's TRO (DE 15) even though she was not a defendant,  
16 relief defendant, and received no notice whatsoever, exceeds the bounds of the law  
17 under *Grupo Mexico*. None of the funds have been shown to have any causal  
18 connection to the allegations of wrongdoing set forth in the FAC. These funds were  
19 solely from Ms. Nguyen's California licensed insurance business and should be  
20 released immediately.

#### 21 **IV. CONCLUSION**

22 For the foregoing reasons, Defendant respectfully requests that the Court  
23 vacate, clarify, and/or modify the Receivership Order and the Freeze and  
24 Accountings Order as detailed above and to grant such further relief as the Court  
25 deems just and proper.

26  
27 Dated: September 23, 2019

/s/ Stanley C. Morris

Corrigan & Morris LLP