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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

KENT R.E. WHITNEY, DAVID LEE  
PARRISH, THE CHURCH FOR  
THE HEALTHY SELF A/K/A CHS  
TRUST, AND CHS ASSET  
MANAGEMENT, INC.,

Defendants.

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

**OPPOSITION OF RECEIVER TO  
EX PARTE APPLICATION OF  
DEFENDANT NGOC HA T.  
NGUYEN FOR AN ORDER TO  
VACATE, MODIFY, OR CLARIFY  
AMENDED ORDER APPOINTING  
RECEIVER; AND ORDER  
FREEZING ASSETS OF  
DEFENDANTS ICARE AND HA  
NGUYEN AND REQUIRING  
ACCOUNTINGS**

**[Declaration of Kyra Andrassy  
filed concurrently]**

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**TO THE HONORABLE JAMES SELNA, UNITED STATES DISTRICT  
 JUDGE, AND NGOC HA T. NGUYEN AND HER COUNSEL:**

The U.S. Securities & Exchange Commission (the "SEC") and Robert Mosier, the Receiver (the "Receiver") appointed by the Court over the assets of Kent R.E. Whitney, David Lee Parrish, Church for the Healthy Self a/k/a CHS Trust, CHS Asset Management, Inc. (CHS Trust and CHS Asset Management, Inc. are together referred to as "CHS"), Ngoc Ha T. Nguyen, and iCare Financial Solution, Inc. ("iCare"), jointly oppose Ms. Nguyen's ex parte application (the "Ex Parte Application") for relief from the orders entered by the Court on September 12, 2019. The Ex Parte Application, which is riddled with misrepresentations and not supported by a shred of evidence, should be denied because it is unwarranted under both the law and the evidence in the record to date.

As a threshold matter, the Ex Parte Application tries to paint a picture of an innocent, immigrant victim being subjected to unwarranted legal process. For example, Ms. Nguyen states in her memorandum that she appeared at her SEC deposition without counsel present. To the contrary, as Ms. Nguyen and her current counsel are well aware, she was represented by an experienced attorney who participated in the deposition telephonically and has communicated with the SEC ever since. She also claims in her Ex Parte Application that she had no other investment accounts, but, as shown herein, the SEC and the Receiver have learned since the Court entered its most recent orders of at least one other investment account and one other bank account over which Ms. Nguyen was a signatory. The Ex Parte Application also ignores efforts by the SEC and the Receiver to discuss a compromise before the SEC filed its ex parte application earlier this month. Likewise, while claiming a lack of due process, she now claims that two of the accounts previously frozen in March

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1 2019 were related to prior insurance-related activities, yet she never sought  
2 relief from the existing freezes or provided the Court, the SEC, or the  
3 Receiver with any evidence of that. As demonstrated by the SEC's ex parte  
4 application, the reality is that Ms. Nguyen was a key participant in a scheme  
5 that resulted in investors being defrauded of over \$30 million. The Court's  
6 orders issued in response to the SEC's ex parte application are a proper  
7 exercise of the Court's authority to prevent further harm to those investors.

8 The ex parte application filed by the SEC earlier this month was  
9 supported almost entirely by Ms. Nguyen's own deposition testimony and the  
10 testimony of the Receiver based on his review of the bank records. Ms.  
11 Nguyen is not an innocent victim and her own testimony shows otherwise.  
12 She was involved in the investment scheme from the beginning and was  
13 instrumental in raising between \$8.4 million to \$10 million from investors,  
14 even after she learned that Kent R.E. Whitney had served time in prison for  
15 running a prior investment fraud. If she did not know the extent of the fraud,  
16 she certainly was reckless in not knowing, and yet she took absolutely no  
17 action to protect the investors who were defrauded out of their life savings.  
18 And regardless of whether she knew that Whitney and her other co-  
19 defendants were simply stealing investors' money rather than investing it as  
20 promised, she personally made a variety of material misrepresentations.  
21 Moreover, she profited handsomely from the fraud, receiving at least \$2.486  
22 million which she used to pay off mortgages and to purchase luxury cars.  
23 Even after the SEC filed this action and froze her known accounts, Ms.  
24 Nguyen continued to defraud investors, participating with Mr. Whitney in a  
25 meeting with them in August 2019 in which they lied to investors and told  
26 them that the Receiver has all of the funds that they invested.

27 Based on ample evidence of her involvement and because a  
28 significant amount of funds originating from investors were traced into

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1 accounts in her personal name and in the name of iCare and her restaurant,  
2 Crawfish Lovers and Cajun Cuisine, in March 2019, the Court entered a  
3 preliminary injunction freezing approximately seventeen different accounts  
4 belonging to them. Ms. Nguyen took no action to seek relief from that asset  
5 freeze. Instead, it appears that she embarked on a scheme to divest herself  
6 of her remaining assets. On August 14, 2019, she transferred her  
7 condominium in San Jose to her sister (which she owned without any liens),  
8 purporting to sell it for \$420,000, and transferred title to her house to a third  
9 person whose relationship to Ms. Nguyen remains unclear, allegedly for a  
10 purchase price of \$895,000. She has so far not provided any information  
11 about the circumstances of these transfers, whether any proceeds were  
12 actually received, and if she did receive proceeds, where they are. The  
13 restaurant, which she is the sole owner of, is also in the process of being  
14 sold. These actions, together with the evidence of her role in the fraud,  
15 provided ample grounds for the orders entered on September 12, 2019.

16 Ms. Nguyen has thus far not cooperated with the Receiver, who is  
17 trying to be reasonable in fulfilling the requirements of the *Amended Order*  
18 *Appointing Receiver* (the "Amended Receiver Order"). Other than to notify  
19 the Receiver of the transfers of her home and condominium, she has not  
20 responded to any of the Receiver's requests. The Receiver does not even  
21 know where her books and records or personal property are located,  
22 because she is so far not cooperating. Finally, Ms. Nguyen's demand that  
23 she be given \$30,000 a month—including \$10,000 a month for living  
24 expenses—is shocking. Given her role in the fraud and its scope, her recent  
25 transfers of assets, and her failure to cooperate with the Receiver over the  
26 past eleven days, it is astonishing that she is requesting \$30,000 a month  
27 from funds traceable to the investors she helped to defraud so that she can  
28 pay living expenses and professional fees. For the reasons discussed

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below, she is not entitled to one dime more of the investors' money. She has taken enough already. While the Receiver is amenable to using a measured hand in enforcing the Amended Receiver Order and has conveyed that to her counsel, there is no evidentiary, legal, or equitable basis for the scope of the relief that she is seeking and Ms. Nguyen's Ex Parte Application should be denied.

## **I. FACTUAL BACKGROUND**

### **A. Ms. Nguyen's Own Testimony Formed the Factual Basis for the SEC's Ex Parte Application and Relief Was Sought on an Ex Parte Basis Because of Evidence that Assets Were Being Transferred**

On September 11, 2019, the SEC filed its *Ex Parte* Application for Orders: (1) Expanding the Receivership Order to Include Ngoc Ha T. Nguyen and iCare Financial Solution, Inc.; and (2) Freezing Assets and Requiring an Accounting (the "SEC Application"). The SEC Application was factually supported by Ha Nguyen's extensive deposition testimony and by a declaration from the Receiver regarding the extent of the fraud uncovered so far, evidence of a suspicious transfer of title to a condominium from Ms. Nguyen to her sister in August 2019, and of a meeting that Ms. Nguyen and Mr. Whitney conducted in August 2019 in which they continued to lie to investors. (See Docket Nos. 76 – 80). These documents are incorporated herein by this reference and the facts and evidence set forth in them are not repeated here.

As set forth in the SEC Application and as evidenced by the Receiver's declaration, the SEC sought the relief regarding Ms. Nguyen and iCare on an expedited basis because there was evidence that she was divesting herself of assets that could provide a source of repayment to investors and



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1 because she was perpetuating the fraud by meeting with investors and  
 2 continuing to lie to them. After the filing of the SEC Application, the  
 3 Receiver learned that Ms. Nguyen transferred title to her primary residence  
 4 on the same day that she transferred title to her condominium to her sister,  
 5 and, as the result of a site visit on September 20, learned that Ms. Nguyen is  
 6 in the process of selling a restaurant that she owns. A copy of the grant  
 7 deed transferring title to her residence and showing an alleged purchase  
 8 price of \$895,000 is attached as Exhibit "A" and pictures of the restaurant  
 9 showing that it is closed and that there is an application to transfer the liquor  
 10 license to a new entity are attached as Exhibit "B."

11 **B. Ms. Nguyen's Counsel Was Asked to Stipulate to a**  
 12 **Receivership Several Days Before the Filing of the SEC's Ex**  
 13 **Parte Application**

14 Although the SEC Application was filed on an expedited basis, the  
 15 SEC reached out to Ms. Nguyen's prior counsel on September 6, 2019,  
 16 several days in advance of its filing.<sup>1</sup> The SEC notified him that it intended  
 17 to seek an asset freeze and to include her assets in the receivership, and a  
 18 discussion ensued about whether and on what conditions she would  
 19 stipulate. At that point, she was requesting an allowance of \$4,000 a month,  
 20 presumably from the funds that the Receiver has had frozen since March  
 21 2019 since no other source was identified. A copy of the e-mail exchange is  
 22 \_\_\_\_\_

23 <sup>1</sup> Ms. Nguyen has been represented by counsel since this case began.  
 24 Ms. Nguyen's Application gives the false impression that she was deposed  
 25 without counsel ("[she sat] for a deposition without her attorney present"  
 26 [Doc. 96-1, page 26]) and hasn't heard from the SEC since then. Her  
 27 counsel appeared at the deposition telephonically and appeared on the  
 28 record, and counsel for the SEC has had numerous phone conversations  
 with him, including one the week after her deposition where they discussed  
 her damning testimony and the fact that the SEC intended to add Ms.  
 Nguyen as a defendant in this action.

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1 attached as Exhibit "C." The Receiver and the SEC took issue with using  
 2 funds that were traceable to the defrauded investors to pay for her living  
 3 expenses going forward, so in order to prevent the further transfers of  
 4 assets, the SEC filed the SEC Application, supporting it with Ms. Nguyen's  
 5 own sworn deposition testimony and the Receiver's testimony.

6 The Court granted the SEC Application by orders entered on  
 7 September 12, 2019. On September 13, 2019, the Receiver, through  
 8 counsel, emailed Ms. Nguyen's new attorney, Stanley Morris, to advise him  
 9 of the entry of the Amended Receiver Order and the asset freeze and  
 10 instructing him that Ms. Nguyen was prohibited from transferring or  
 11 dissipating any assets because they were property of the receivership  
 12 estate. A copy of the email, without its exhibits, is attached as Exhibit "D."

13 **C. Ms. Nguyen Is Not Disclosing the Nature or Location of Her**  
 14 **Personal Property Assets**

15 On September 16, 2019, the Receiver's counsel emailed a letter to Mr.  
 16 Morris with some preliminary requests of the Receiver, including a list of her  
 17 bank accounts, a list of assets owned by her or held for her benefit that had  
 18 a value of \$5,000 or more or were purchased for \$5,000 or more,  
 19 information regarding the restaurant, including any listing agreement, a list of  
 20 credit cards, information related to the transfer of her condominium, and a  
 21 list of email addresses she used with passwords. The letter requested that  
 22 the foregoing information be provided by Thursday, September 19, at 5:00  
 23 p.m. The letter indicated that the Receiver wanted voluntary access on  
 24 Friday, September 20, to the two properties that were then believed to be in  
 25 her name and to the restaurant so that he could inspect them and do an  
 26 inventory of their contents. The letter further informed her that although the  
 27 Amended Receiver Order directed the Receiver to change the locks, the  
 28 Receiver hoped that would be unnecessary and that access would instead



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1 be voluntarily arranged. A copy of the email and letter is attached as Exhibit  
2 "E."

3 Ms. Nguyen's only response so far has been to notify the Receiver that  
4 none of the properties is currently owned by her. Although the Receiver's  
5 counsel requested documentation on September 20, 2019, related to the  
6 transfers of the two properties, an accounting of any proceeds paid, and an  
7 update on when the information requested in the letter would be provided,  
8 that email has not even been acknowledged.

9 **D. Ms. Nguyen Lied About Her Bank Accounts at Her**  
10 **Deposition**

11 On March 28, 2019, Ms. Nguyen falsely testified in her deposition that  
12 the asset freeze provision of the temporary restraining order [Doc. 15] was a  
13 complete list of all the accounts she owned, and that all of her accounts had  
14 been frozen. See Ha Nguyen Depo. at 113:17-114:20, attached as Exhibit  
15 "F." After the Court's September 12, 2019 orders, the SEC and the  
16 Receiver learned of two additional accounts in Ms. Nguyen's name that had  
17 not been frozen: (1) Chase account number \*5873; and (2) Charles Schwab  
18 account number \*5003. In the Charles Schwab account, she transferred the  
19 balance of \$98,627.38 to another brokerage account in April 2019, shortly  
20 after her known accounts were frozen, which was after her deposition and  
21 after counsel for the SEC made it clear to her counsel that she would be  
22 added as a defendant in due course. A copy of the statement that was  
23 obtained from Charles Schwab is attached as Exhibit "G." A copy of the  
24 letter from Chase responding to the asset freeze order is attached as Exhibit  
25 "H."

26  
27  
28

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**II. THE EX PARTE APPLICATION IS DEVOID OF ANY EVIDENCE  
 AND HER OWN TESTIMONY SUPPORTS THE RELIEF GRANTED**

Although the Ex Parte Application contains a significant number of statements about Ms. Nguyen's innocence, none of these contentions is supported by an iota of evidence. In fact, while the memorandum of law makes repeated reference to a putative declaration from Ms. Nguyen, no such declaration was actually filed. Accordingly, those statements should be disregarded. Moreover, some of her arguments are contrary to her own sworn testimony. For example, the Ex Parte Application claims Ms. Nguyen was justified in her actions because there was an attorney on the premises (Doc. 96-1, at p. 14). But when testifying under oath, Ms. Nguyen admitted she knew the putative lawyer did no legal work. Specifically, she testified:

3 Q So what was your understanding of what Allen Hsu  
 4 was doing for CHS?

5 A As I understand it, he is more like helping Kent  
 6 do the prayer, and I think he's a pastor too. I just find  
 7 out that he's a pastor, too, and, um, maybe it's like  
 8 helping in the legal services, because Allen Hsu is  
 9 immigrant lawyer, yeah. I really don't understand and  
 10 don't know exactly what he do with the CHS.

11 Q Did he ever call himself CHS's general counsel,  
 12 or anything like that?

13 A I don't talk to him that much, so I don't know,  
 14 yeah, but I saw him sitting in the office, yeah.

Nguyen Depo. at 65:3-14, attached as Exhibit "F."

In contrast, the SEC Application relied heavily on Ms. Nguyen's deposition testimony in which she testified that she started working with Mr. Whitney in 2015 and, despite having a background in finance that included a college degree from San Jose State University, she did not ask Mr. Whitney any questions about how he was investing the funds put in by investors, did not ask to review any statements or books and records, did not understand what he was investing in, and did not become concerned after she learned that he had served time in jail for stealing money and instead allegedly

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1 chose to blindly believe everything he told her. Even if Ms. Nguyen did not  
 2 actually know that CHS and iCare were operating an investment fraud, she  
 3 was certainly reckless in not knowing. All of counsel's bald statements to  
 4 the contrary in the Ex Parte Application should be stricken because they are  
 5 unsupported by any evidence and are all contradicted by her own sworn  
 6 testimony.

7 While an evidentiary hearing on this matter seems unnecessary,  
 8 neither the SEC nor the Receiver would oppose an evidentiary hearing  
 9 where the many victims of this scheme could hear from Ms. Nguyen directly  
 10 as she is cross-examined, versus the private meetings she has held with  
 11 victims where she has demonstrably lied to them about the actions of the  
 12 Receiver and the state of this case.

13  
 14 **III. EMERGENCY RELIEF WAS WARRANTED ON THE SEC**  
 15 **APPLICATION AND MS. NGUYEN'S RIGHTS WERE NOT**  
 16 **VIOLATED**

17 In the Ninth Circuit, emergency injunctive relief may be ordered if  
 18 "either (1) a combination of probable success on the merits and the  
 19 possibility of irreparable injury or (2) that serious questions are raised and  
 20 the balance of hardships tips in the applicant's favor." *U.S. v. Nutri-Cology,*  
 21 *Inc.*, 982 F.2d 394, 397 (9<sup>th</sup> Cir. 1992)(quotations and citations omitted).  
 22 The SEC, however, appears before the Court "not as an ordinary litigant, but  
 23 as a statutory guardian charged with safeguarding the public interest in  
 24 enforcing the securities laws." *SEC v. Management Dynamics, Inc.*, 515  
 25 F.2d 801, 808 (2d Cir. 1975). Because this enforcement action was brought  
 26 in the public interest, the Court's "equitable powers assume an even broader  
 27 and more flexible character than when only a private controversy is at  
 28 stake." *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9<sup>th</sup> Cir. 1989)(quoting *FTC v.*

1 *H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9<sup>th</sup> Cir. 1981)). Several district  
 2 courts in the Ninth Circuit have interpreted the preliminary injunctive relief  
 3 standard in SEC emergency actions to require that the SEC make only a  
 4 two-pronged showing: (1) a *prima facie* case that the defendants have  
 5 violated the federal securities laws, and (2) a reasonable likelihood that the  
 6 defendants will repeat their violations. *See, e.g., SEC v. Schooler*, 902 F.  
 7 Supp.2d 1341, 1344 (S.D. Cal. 2012).

8 The purpose of the asset freeze is to prevent the dissipation of assets  
 9 so that they can be available to be paid as disgorgement for the benefit of  
 10 the victims of the fraud. *See, e.g., SEC v. Hickey*, 322 F.3d 1123, 1131 (9<sup>th</sup>  
 11 Cir. 2003). "A party seeking an asset freeze must show a likelihood of  
 12 dissipation of the claimed assets, or other inability to recover monetary  
 13 damages if relief is not granted." *Johnson v. Couturier*, 572 F.3d 1067, 1085  
 14 (9<sup>th</sup> Cir. 2009). The purpose of a receivership in this context is to make sure  
 15 that all available assets are brought into the receivership in order to make  
 16 them available for defrauded investors. *See SEC v. Elmas Trading Corp.*,  
 17 620 F.Supp. 231, 234 (D. Nev. 1985), *aff'd* 805 F.2d 10389 (9<sup>th</sup> Cir. 1986).  
 18 In fact, "[t]he Court has a duty to ensure that Defendants' assets are  
 19 available to make restitution to the alleged victims." *SEC v. Dobbins*, 2004  
 20 WL 957715, \*2 (N.D. Tex. April 14, 2004).

21 It bears repeating that the SEC Application was based almost entirely  
 22 on Ms. Nguyen's own deposition testimony. By her own admission, Ms.  
 23 Nguyen began working with Mr. Whitney in 2015, which is the beginning of  
 24 this investment scheme, and she raised \$20 million from investors. Her own  
 25 testimony shows that, at a bare minimum, she was reckless in not knowing  
 26 that CHS was a fraud. The Receiver's review of the books and records of  
 27 CHS and iCare show that Ms. Nguyen received at least \$2,486,000 from the  
 28 investment fraud. She testified that she used some of that money to pay off

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1 the mortgage against her condominium in San Jose. See Tr. of Videotaped  
 2 Depo. of Ngoc-Ha T. Nguyen at 60-61, which was attached to the  
 3 Declaration of Jennifer Reece in support of the SEC Application [Docket 79-  
 4 1]. The Receiver will need to trace the remainder to see how she used the  
 5 funds.

6 Based on her testimony and the evidence of the recent transfer of her  
 7 condominium in San Jose to her sister, the asset freeze was necessary and  
 8 justified and the receivership is necessary to ensure that assets are  
 9 available as a source of recovery for the defrauded investors. This  
 10 conclusion is further supported by the recently-learned facts that Ms.  
 11 Nguyen transferred title to her home, allegedly for \$895,000, on the same  
 12 day she transferred her condominium to her sister, is selling her restaurant,  
 13 and lied during her deposition about her bank accounts. Absent an asset  
 14 freeze and receivership over her assets, it is unlikely there will be any assets  
 15 left for the victims of this \$35 million fraud scheme.

17 **IV. MS. NGUYEN IS NOT ENTITLED TO USE ILL-GOTTEN GAINS TO**  
 18 **PAY FOR HER LIVING EXPENSES AND HER DEFENSE**

19 Ms. Nguyen, who apparently has no job and, according to her counsel,  
 20 is currently out of the country for an extended period of time, is asking the  
 21 Court to pay her from the Receivership Estate \$30,000 a month so she can  
 22 pay “reasonable living expenses” and high-priced attorneys and  
 23 accountants. Under the circumstances, this is an outrageous demand.  
 24 Even if Ms. Nguyen had a source of income that was independent from CHS  
 25 and iCare, which apparently she does not, there would be no basis to  
 26 release the funds currently secured for the victims of her fraud. However, all  
 27 of her income is derived from the fraudulent scheme, and she has not even  
 28 attempted to show otherwise. She is asking to be given \$30,000 a month

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1 from stolen funds, which then would be unavailable to return to the investors  
 2 she helped to defraud. As the Seventh Circuit noted in *SEC v. Quinn*,:

3 Parties to litigation usually may spend their  
 4 resources as they please to retain counsel. "Their"  
 5 resources is a vital qualifier. Just as a bank robber  
 6 cannot use the loot to wage the best defense  
 money can buy, so a swindler in securities markets  
 cannot use the victims' assets to hire counsel who  
 will help him retain the gleanings of crime.

7 997 F.2d 287, 288 (7<sup>th</sup> Cir. 1993). There is no legal, and certainly no  
 8 equitable, basis to elevate Ms. Nguyen's living expenses and attorneys' fees  
 9 above the claims of defrauded investors. Every dollar that she proposes to  
 10 receive is a dollar that is not available to repay her victims. The interests of  
 11 investors are properly placed over the interests of a defendant. See *SEC v.*  
 12 *Forte*, 598 F.Supp.2d 689, 692 (E.D. Pa. 2009). In order to even entertain  
 13 this request, Ms. Nguyen would have to prove that the frozen assets exceed  
 14 possible disgorgement (in this case, the amount of the fraud, or \$35 million),  
 15 plus civil penalties, before any funds should be ordered released. See *SEC*  
 16 *v. Bremont*, 954 F.Supp. 726, 733 (S.D.N.Y. 1997). She has not done so  
 17 and will not be able to do so, so this request must be denied.

18  
 19 **V. THERE IS NO BASIS FOR LIMITING THE ASSETS SEIZED AND**  
 20 **FROZEN TO THOSE TRACEABLE TO THE WRONGDOING**

21 Ms. Nguyen also proposes that the Court modify the asset freeze and  
 22 receivership order to those assets traceable to the wrongdoing and to those  
 23 assets whose value is more than \$1,000. This request should be rejected.  
 24 In *SEC v. Current Fin. Services*, 62 F. Supp. 2d 66 (D.D.C. 1999), for  
 25 example, the court denied a motion to release funds from an asset freeze to  
 26 pay attorney's fees, despite the defendant's argument that a frozen bank  
 27 account contained personal funds unrelated to the fraud. The court stated:  
 28



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"To ensure compensation to the victims in this case, the Court finds it reasonable to maintain the freeze order because plaintiff has demonstrated that the potential disgorgement it could receive in this case far exceeds the amount that is frozen in the account." As set forth in the prior status reports filed by the Receiver, the value of the assets located so far are far exceeded by the amount of investor losses. Now that Ms. Nguyen has transferred two pieces of real property that had substantial equity, the amount available for investors is even less. Every dollar that is allocated to her from the frozen accounts is a dollar that is unavailable to compensate a victim.

Further, although the Receiver does not intend to take possession of assets that he believes would be of negligible value and where the cost to sell them would exceed the benefit, he does not believe it is appropriate to set a minimum value, especially when no inventory of personal property assets has been provided or taken. The Receiver has a duty to administer the estate efficiently and is willing to be reasonable with Ms. Nguyen, but he does not believe that he should be subject to an arbitrary value threshold.

## **VI. THE ADDITIONAL MODIFICATIONS ARE UNNECESSARY**

Ms. Nguyen requests a number of modifications to the orders that do not require immediate judicial resolution because they may be resolved by communication between the parties. The Court should deny the following requests without prejudice.

### **A. The Receiver Will Work with Ms. Nguyen's Counsel Regarding the Privilege Issue**

With respect to the issue of Ms. Nguyen's attorney-client privilege, the Receiver is willing to attempt to work out a resolution of this issue with Ms. Nguyen if she cooperates with the Receiver as required by the Amended Receiver Order. From a legal perspective, there is authority to support the

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Receiver holding the privilege of an individual. *See, e.g., McClarty v. Gudenau*, 166 B.R. 101, 102 (E.D. Mich. 1994). Other courts hold that whether the receiver or trustee can hold the privilege depends on a balancing test where the harm to the defendant is weighed against the duty of the receiver or the trustee to maximize the value of the debtor's estate and represent the interests of the estate. *See Moore v. Eason (In re Bazemore)*, 216 B.R. 1020, 1024 (Bankr S.D. Ga. 1998). The Receiver is amenable to further discussions on the issue of her individual attorney-client privilege and does not believe that judicial resolution on this issue is necessary at this time, much less on an expedited basis.

**B. Ms. Nguyen Is Not Prevented from Providing an Accounting and Reasonable Access to Books and Records Will Be Given**

Ms. Nguyen contends that because the Receiver took possession of a computer from the iCare office in March and her accounts are frozen, she cannot prepare an accounting and the Receiver should be required to return her electronics, mail, personal documents, and books and records. The Receiver is not willing to return documents relevant to the administration of the receivership estate to Ms. Nguyen but is willing to make these items, or copies of them, available to her at her expense. This does not require a Court order, but instead a dialogue with the Receiver and the SEC. The Ex Parte Application has been the first request made for these items. An order is premature and the request should be denied.

**C. A Court Order Extending the Deadline to Provide an Accounting is Premature**

Ms. Nguyen requests that the Court give her ninety days to provide an accounting, after she retains professionals to assist her (at the expense of investors). As explained above, Ms. Nguyen is not entitled to spend

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investors' money on professionals working on her behalf. As to the timing of the accounting, this is something that should first be discussed with the SEC. If Ms. Nguyen cooperates with the Receiver and starts to share information in a truthful manner, then the SEC may be inclined to stipulate to an extension of the deadline to provide an accounting for a reasonable period of time. There have been no such discussions as of yet, so this request is similarly premature. For starters, a complete listing of her accounts and assets would be helpful. This information is entirely within her knowledge, and no lawyers or accountants are needed.

## **VII. CONCLUSION**

The Ex Parte Application should be denied because: (1) it is devoid of any evidence to support the factual allegations it contains; (2) ex parte relief was appropriate under the circumstances given Ms. Nguyen's own testimony about her role in the case and the fact that she has recently been divesting herself of assets; and (3) the modifications she seeks have not yet been presented to the SEC or the Receiver for consideration and, on that basis, do not yet require judicial intervention.

Respectfully submitted,

DATED: September 23, 2019 SMILEY WANG-EKVALL, LLP

By: /s/ Kyra E. Andrassy  
 Kyra E. Andrassy  
 Counsel for Robert P. Mosier, Receiver

DATED: September 23, 2019 /s/ Jennifer D. Reece  
 Jennifer D. Reece  
 Counsel for Plaintiff SEC

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On **09/23/2019**, I served true copies of the following document(s) described as

**OPPOSITION OF RECEIVER TO *EX PARTE* APPLICATION OF DEFENDANT NGOC HA T. NGUYEN FOR AN ORDER TO VACATE, MODIFY, OR CLARIFY AMENDED ORDER APPOINTING RECEIVER; AND ORDER FREEZING ASSETS OF DEFENDANTS ICARE AND HA NGUYEN AND REQUIRING ACCOUNTINGS**

on the interested parties in this action as follows:

**(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"))** – Pursuant to United States District Court, Central District of California, Local Civil Rule 5-3, the foregoing document will be served by the court via NEF and hyperlinked to the document. On **09/23/2019**, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

**( ) (BY E-MAIL).** By scanning the document(s) and then e-mailing the resultant pdf to the e-mail address indicated above per agreement. Attached to this declaration is a copy of the e-mail transmission.

**( ) (BY FACSIMILE).** I caused the above-referenced documents to be transmitted to the noted addressee(s) at the fax number as stated. Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission. Executed on \_\_\_\_\_, at Costa Mesa, California.

**( ) STATE** I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

**(X) FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 23, 2019, at Costa Mesa, California.

/s/ Lynnette Garrett  
Lynnette Garrett

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