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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

TITANIUM BLOCKCHAIN INFRASTRUCTURE SERVICES, INC.; EHI INTERNETWORK AND SYSTEMS MANAGEMENT, INC. aka EHI-INSM, INC.; and MICHAEL ALAN STOLLERY aka MICHAEL STOLLAIRE,

Defendants.

Case No. CV18-4315-DSF(JPRx)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S EX PARTE APPLICATION FOR TEMORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION AND APPOINTMENT OF A PERMANENT RECEIVER

(FILED UNDER SEAL)

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I. INTRODUCTION

Plaintiff Securities and Exchange Commission (the "SEC") has filed this emergency action, under seal, to halt Defendants' ongoing fraudulent offer and sale of unregistered securities under the guise of selling "tokens" or "cryptocurrency." Beginning in November 2017, defendant Michael Stollery, aka Michael Stoller, aka Michael Stollaire ("Stollaire"), orchestrated a fraudulent initial coin offering ("ICO") of a digital asset called "BAR"—raising as much as $21 million from investors in the U.S. and abroad. The ICO purportedly was designed to "crowdfund" a decentralized information technology services platform to be provided by two Stollaire-controlled entities, defendants Titanium Blockchain Infrastructure Services, Inc. ("TBIS") and EHI Internetwork and Systems Management, Inc. ("EHI"). The BAR was useless when sold, but supposedly would be used at some point in the future on a TBIS "platform" that did not yet exist. In reality, the ICO was based on a slew of outright deceptions by Stollaire.

To induce investors, Stollaire hyped TBIS as the world's next Amazon or Microsoft in the field of cloud computing. Stollaire, however, made multiple misrepresentations in soliciting investors in TBIS's ICO.

First, Stollaire falsely proclaimed that nearly thirty well-known corporations — and the U.S. Federal Reserve—were "clients" of EHI and imminent users of TBIS's services, plastering these household brand names and logos throughout TBIS's investment whitepaper and TBIS's and EHI's websites, when in fact they had little to no relationship with Stollaire or EHI and no relationship with TBIS.

Second, Stollaire enhanced this fiction with fabricated or misleading testimonials from employees purportedly at some of these companies, which he featured on EHI's and TBIS's websites alongside the names and logos.

Third, he also claimed that TBIS had intellectual property rights in many of its products, slogans, and services, when it actually had none.

While raising millions of dollars on these false pretenses, Stollaire commingled

some of the ICO investors' funds with his personal funds, using the offering proceeds for expenses unrelated to TBIS, including the payment of bills for Stollaire's Hawaii condominium.

In February 2018, Stollaire began receiving cease-and-desist letters from some of the companies whose names and logos he was using with neither their permission nor any factual basis for doing so. He vowed to several such companies that he would remove their names and logos at once—in effect conceding he had no basis for using them. Shortly thereafter, Stollaire proclaimed an "illegal theft" of 16 million tokens from TBIS's digital wallet, announcing that TBIS would issue a new digital asset, "TBAR," to replace BAR. After this incident, Stollaire suddenly began advertising TBIS's target customers not as household U.S. company names, but instead as "billion dollar companies" in non-U.S. emerging markets, and claiming that TBAR was available for purchase by Chinese citizens only. Stollaire's deceptions about TBIS, EHI, and their business prospects continue to this day, with a significant portion of BAR and TBAR currency under his control, and no protection—absent Court order—against his continued violations.

The SEC's complaint alleges that, based on the foregoing, the defendants are violating the antifraud provisions of the Securities Act of 1933 ("Securities Act") and the Securities Act of 1934 ("Exchange Act"), and that TBIS and Stollaire are violating the registration provisions of the Securities Act. The SEC seeks a temporary restraining order to end this scheme before the defendants can defraud more investors. Given Stollaire's rampant falsehoods and his ownership in the BAR/TBAR digital currency, the SEC also seeks an asset freeze, appointment of a receiver over TBIS, and accountings of the defendants' assets, as well as expedited discovery and an order prohibiting the destruction or alteration of documents.

II. STATEMENT OF FACTS

A. Background on Initial Coin Offerings

An initial coin offering or "ICO" is a fundraising event in which an entity offers

participants a unique digital "coin" or "token" in exchange for consideration (often in the form of virtual currency[1]—most commonly Bitcoin and Ether—or fiat currency). *See* Declaration of David Brown *filed concurrently herewith* ("Brown Decl."), ¶ 5, Ex. 1 [DAO report]. The tokens are issued on a "blockchain" or cryptographically secured ledger. *Id.* at ¶¶ 5-7, Exs. 1-3 [SEC Public Documents].[2]

The token may entitle its holders to certain rights related to a venture underlying the ICO, such as rights to profits, shares of assets, rights to use certain services provided by the issuer, and/or voting rights. These tokens may also be listed on online trading platforms, often called virtual currency exchanges, and tradable for virtual or fiat currencies. *Id.* at ¶¶ 5, 7, Exs. 1, 3. ICOs are typically announced and promoted through online channels. Issuers usually release a "whitepaper" describing the project and the terms of the ICO. To participate, investors are generally required to transfer funds (often virtual currency) to the issuer's address, online wallet, or other account. After the completion of the ICO, the issuer will distribute its unique "tokens" to the participants' unique address on the blockchain. *See, e.g.*, *id*.

B. Defendants' Fraudulent ICO Scheme

Between November 2017 and January 2018, the defendants raised as much as

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[1] The Financial Action Task Force, an inter-governmental agency that promotes laws combating anti-money laundering and in which the United States is a member, describes virtual currency as a "digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status . . . in any jurisdiction." Brown Decl., Ex. 1 at p. 3.

[2] A blockchain is a type of distributed ledger, or peer-to-peer database spread across a network, that records all transactions in the network in theoretically unchangeable, digitally-recorded data packages called blocks. Each block contains a batch of records of transactions, including a timestamp and a reference to the previous block, linking the blocks together in a chain. The system relies on cryptographic techniques for secure recording of transactions. A blockchain can be shared and accessed by anyone with appropriate permissions. The Bitcoin blockchain is an example of a "non-permissioned," or public and open access blockchain. All participants share a single view of the Bitcoin blockchain, which is updated when Bitcoin network participants reach a consensus on the validity of transactions under review. "Permissioned" or private blockchains are modifications to that model and require permissioned servers to be approved to participate on the network or to access particular information on the blockchain.

$21 million through the fraudulent and unregistered TBIS ICO, misleading investors as to TBIS's and EHI's business relationships and prospects in order to prop up the BAR digital currency.

Stollaire runs and completely controls TBIS and EHI. He is TBIS's founder, president, sole director, and CEO, is also the president and sole director of EHI. Brown Decl. at ¶¶ 9, 11, 12, Exs. 5, 7, 8 [incorporation documents]. Though his legal name is Michael Stollery, he commonly uses the aliases Michael Stollaire and Michael Stoller. *Id*., Exs. 5, 7, 8, 14-16. Through March 2018 (when he added the company's CFO as a co-signer for TBIS's account), Stollaire was the sole signatory on the bank accounts of both TBIS and EHI. *Id.* at ¶¶ 31, 32, 34, Exs. 26, 27, 29 [bank documents]. Stollaire registered the websites of both TBIS and EHI, and is the primary author of the TBIS whitepapers. *Id.* at ¶¶ 13, 18-20, Exs. 9 [website registrations], 14-16 [whitepapers].[3] Stollaire describes himself and the TBIS management team as collectively having "over two hundred years" of combined experience in information technology. *Id.*, ¶¶ 18-21, Exs. 14 at p. 11, 15 at p. 10, 16 at p. 10, 17 at p. 5.

1. Stollaire launches the TBIS ICO

In or around October 2017, Stollaire began to market the TBIS ICO aggressively, through TBIS's whitepapers, TBIS's and EHI's websites, and a barrage of social media and online print and video interviews by Stollaire, including on YouTube, Facebook, Twitter, Instagram, Meetup, Telegram, Reddit, and Steemit. *See* Brown Decl. ¶¶ 18-21, 43-69, Exs. 14-17, 42-68. According to the whitepapers, Stollaire founded EHI, which purportedly stands for "Excellence, Honesty and Integrity" – *id.*, Ex. 14 at p. 8, – in 1999 as a technology consulting firm, and it purports today to be "thriving and growing." *Id.*, Ex. 8. Comparing itself to Amazon and Microsoft, TBIS describes its "core competency objective and primary goal" as "the creation and propagation of a shockproof distributed network infrastructure capable of replacing the bloated and

[3] The whitepapers list and track sixteen versions of edits, identifying Stollaire as the first author in each version. *Id.* at Exs. 14 at pp. 3-5, 15 at pp. 2-4, 16 at pp. 2-4.

inefficient hardware foundation upon which the internet of today is based." *Id.*, Ex. 14 at p. 15, Ex. 47 at p. 29, Ex. 48 at p. 24. In addition to its IT services, TBIS would purportedly offer a cryptocurrency exchange and run an "ICO incubator" for cryptocurrency offerings. *Id.*, Ex. 14 at p. 20. TBIS projected that its sales, forecast to reach $25 million in 2018, would exceed $50 million by 2022. *Id.*, Ex. 14 at p. 21.

TBIS's whitepaper portrayed BAR as the source of TBIS's operational funding, labeling the digital asset "functional tokens intended to be used to compensate TBIS for use of its platform" (*id.*, Ex. 14 at p. 29) and the only currency with which to purchase services in the (future) TBIS "ecosystem." *Id.*, Ex. 14 at p. 22. The whitepaper outlined an expected pre-sale, followed by a sixty-day offering, and set a "soft cap" of $1 million and a "hard cap" of $35 million, with the offering price at approximately $1 per BAR token. *Id.*, Ex. 14 at pp. 22-23. Inducements to invest included pre-sale discounts, referral bonuses, and volume incentives. *Id.* TBIS would continue to hold 20% of all BAR sold, according to the whitepaper. *Id.*, Ex. 14 at p. 22. The whitepaper provided little insight as to how TBIS would deploy investors' funds, other than stating that "[p]roceeds of the token sale may be spent as the company sees appropriate, which may change as deemed necessary in the maturation and advancement of TBIS." *Id.*, Ex. 14 at p. 29.

2. Defendants fabricate TBIS's clients and prospects

The heart of TBIS's promotional campaign centered on its purported stable of ready adopters—an impressive list of nearly thirty household name brands, complete with pictures of their logos—that appeared in TBIS's whitepapers and on TBIS's and EHI's websites. TBIS's whitepaper listed by name "a short excerpt of EHI's customers, which Titanium ***will*** leverage immediately," including "Accenture, Apple, Applied Materials, Boeing, Cargill, Citizens Bank, eBay, ERCOT, Exelon, General Electric, Hewlett-Packard, Honeywell, IBM, Intel, Microsoft, PayPal, Pfizer, Santa Barbara Bank and Trust, Synchrony Financial, … The Federal Reserve Bank, The Royal Bank of Scotland, TrueCar.com, Universal Studios, and Walt Disney." *Id.*, Ex. 14 at pp. 8-

10, Ex. 10 at pp. 1-8 (TBIS website). In a later whitepaper, TBIS removed the name list, while maintaining the logos, and describing them as "EHI's customers, which Titanium could potentially leverage immediately." *Id.*, Ex. 15 at pp. 8-9. TBIS's whitepaper also explained that TBIS, as a "sister company" to EHI, "will simply inherit EHI's clientele" (*id.*, Ex. 14 at p. 8, Ex. 10 at pp. 1, 3), although later iterations would couch this as merely the potential that it "could" inherit them. *Id.*, Ex. 15 at p. 8.

Stollaire also touted these relationships frequently in online videos and interviews. Stollaire self-produced several YouTube videos in which he introduced himself as the founder of, and promoted, TBIS and EHI. *Id.*, ¶¶ 53-56, Exs. 52-55. Many other interviews were posted on a variety of websites devoted to the promotion of digital assets, with names such as "P2P Cryptoz," "cryptocentral," and Altcoin Buzz." The website hosts typically purported to interview Stollaire about TBIS and EHI, either in online question-and-answer sessions, or through videotaped interviews. *See, e.g.* Brown Decl. Ex. 45 [Stollaire online interview dated February 12, 2018] at p. 1 ("EHI's clients are household names from the Fortune 500, Government and Education, which is a huge advantage for Titanium. I envisioned Titanium as 'EHI v2.0' that would provide Infrastructure as a Service (Iaas) to EHI's existing clientele, which will be a warm handoff from a known, trusted source…"); Ex. 43 [Stollaire online interview dated January 11, 2018], at p. 27; ("It's the inroad that I previously had with my first company, EHI. These relationships are real. We're in talks with McDonald's, with Walt Disney, with Intel, with Verizon right now….We've got quite a client list.").

However, as evidenced by the twenty-nine declarations filed concurrently herewith, TBIS did not have any such business relationship with these companies at the time of the TBIS whitepapers, nor does it today. *See* Compendium of Non-Party Declarations *filed concurrently herewith*.[4] None of these nearly thirty companies (nor

[4] One of the companies, Hewlett Packard Enterprise Company, contracted EHI as one of over 12,000 authorized resellers of HPE's products, but with no connection to TBIS. *See* Compendium, No. 15 (Declaration of Kay Lee). Another of the companies, McDonald's, used Stollaire, under the name Stollery, as a provider of IT

the U.S. Federal Reserve) authorized Stollaire to use their logos in the TBIS whitepaper or elsewhere. *Id*; Brown Decl., ¶¶ 25-28, Exs. 21-23. Six of the companies—Apple, Disney, PayPal, Santa Barbara Bank and Trust (now Union Bank), Universal Studios, and Verizon—could find no past or present relationship with any of the defendants (except for Stollaire having been a retail customer of Apple). *See* Compendium. Many of the companies were places that Stollaire merely worked as an independent contractor—some as long as ago as the early to mid 2000s. Even his more recent affiliations had ceased by the time Stollaire marketed the TBIS whitepaper, falsely touting these client relationships. *See id.* No. 7 (Declaration of William W. Friedman, Cisco Systems, Inc.) [EHI's reseller status ended in August 2017]; No. 24 (Declaration of John F. Mullen, SAP) [Stollaire's contract work as an independent contractor ended in early 2017]; No. 11 (Declaration of Carter Culver, Exelon Business Services Company, LLC) [Stollaire's IT contractor services through a third party ended in 2016]; No. 12 (Declaration of Ryan P. Doherty, General Electric Company) [same]; No. 22 (Declaration of Edward O. Gramling, Pfizer, Inc.) [same]; No. 25 (Declaration of Daniel Pirolo, Synchrony Financial) [same]).

Thus, notwithstanding Stollaire's claim that "the Titanium project had a huge advantage over other Blockchain start-ups and ICOs, before anyone on the Titanium Team ever lifted a finger" (Brown Decl., Ex. 10 at pp. 3-8)—TBIS had no such clients or prospects. Stollaire knew that TBIS had no such clients or prospects, and he knew that using their logos infringed on the companies' trademarks. For example, in responding to a cease-and-desist letter from Royal Bank of Scotland on March 15, 2018, Stollaire claimed "we were not aware that this constituted infringement," even though he had been notified previously by another company whose logo he had used, Intel, by letter and email dated February 21 and 25, that the use of Intel's trademark infringed. Compendium, No. 17 (Declaration of Lawrence S. Achorn, Intel Corp., at ¶

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services through an independent contractor that is not EHI or TBIS. *See* Compendium, No. 18 (Declaration of Jennifer O'Malley).

10 and Ex. 1), No. 23 (Declaration of Kay L. Lackey, RBS Securities, Inc., ¶ 12).

3. Defendants tout TBIS's relationships with bogus testimonials

In addition to falsely promoting TBIS's and EHI's supposed relationships with corporate America, defendants also fictionalized a series of client testimonials that they used on TBIS's and EHI's websites. Like Stollaire's promotion of TBIS and EHI's client base, these testimonials too were illegitimate. As set forth in more than a dozen of the third-party declarations filed herewith, either the person quoted no longer worked at the company (*e.g.* Acxiom, Cargill, eBay, Disney, and TrueCar); the person's quoted name and/or title was fake (eBay, Santa Barbara Bank & Trust (now Union Bank), and Disney), and/or the company had not authorized the publication of any testimonials (Boeing, Citizens Bank, Synchrony, and TrueCar). *See* Compendium.

For example, one of the fake testimonials was from a purported "Director of Network Engineering" for eBay, Jason Butler, who supposedly said that "EHI is all about doing a quality job and delivering the results without delay. It has been a pleasure working with EHI." Brown Decl., Ex. 11 [TBIS testimonials], at p. 5. In reality, Butler never held the title of Director of Network Engineering, and never gave this testimonial. *See* Compendium, No. 9 (Declaration of Spencer Jones, eBay, Inc., at ¶ 9).

Similarly, a testimonial attributed to a purported operations manager named "Gibson" at TrueCar, states that EHI "installed and managed a sophisticated set of tools" and that TrueCar was "able to better manage and administer the complex system with the help of EHI's expertise." Brown Decl., Ex. 11 at pp. 5-6. But there is no record of any individual with the last name of Gibson having worked at TrueCar or its predecessor since at least September 2015. *See* Compendium, No. 26 (Declaration of Jeffrey J. Swart, TrueCar, Inc., at ¶¶ 9-11). Likewise, a testimonial attributed to a Shawn Duex, "Director of Enterprise Technology" at Santa Barbara Bank and Trust, states that EHI "provided expert level assistance in getting our enterprise management and IT Security installation customized to our requirements….I would definitely use his (sic) services again if I had the opportunity to." Brown Decl., Ex. 11 at pp. 10-11. A

second testimonial attributed to a senior systems administrator at the same bank, Eran Jenkins, stated that "EHI was the lead on some major projects…[h]is professionalism and technical skills were far above what we were used to….[h]e was able to implement and troubleshoot issues far better than anyone I've ever worked with." *Id.* at p. 1. But no one by either name worked at the bank at least as far back as August of 2012, when the bank merged with Union Bank, N.A. *See* Compendium, No. 27 (Declaration of Joseph J. Catalano, MUFG Union Bank, N.A., at ¶¶ 10-13).[5]

Beginning on about February 16, 2018, Stollaire received cease-and-desist letters from nearly twenty of these companies. Compendium, Nos. 4, 5, 7-11, 16-18, 21-26, 28 [Declarations from Applied Materials, Boeing, Cisco, Citizens Bank, eBay, Ercot, Exelon, IBM, Intel, McDonald's, PayPal, Pfizer, Royal Bank of Scotland, SAP, Synchrony, TrueCar, Verizon]. To several, he replied that he would comply with the request—a concession that he had no authority to use the companies' names or logos. Compendium, Nos. 4, 8, 17, 22, 23, 26, 28 [Declarations from Applied Materials, Citizens Bank, Intel, Pfizer, Royal Bank of Scotland, TrueCar, Verizon].

4. Nonexistent intellectual property assets

Beyond falsifying a network of clients TBIS would imminently inherit—complete with illegitimate testimonials—defendants boasted of intellectual property protections for various TBIS slogans and services that, too, were nonexistent. TBIS's December 2017 whitepaper (and other marketing materials) advertised over a dozen trademarks in services and slogans such as "Bring Your Own Cloud" and "Infrastructure as a Service." Brown Decl., Ex. 14 at pp. 13-20. The U.S. Patent and

[5] A testimonial from a purported "service delivery manager" with the Federal Reserve Bank states, "Best enterprise management team I have ever worked with. Talented, conscientious, hard worker, excellent communication skills. The entire package!" Brown Decl., Ex. 13, p. 1. The purported author of the testimonial, however, was not an employee of the Federal Reserve, but rather was a contractor from May 2010 to September 2012. *See* Brown Decl. ¶¶ 26-27, Ex. 21 at p. 2, Ex. 22 at pp. 1-3.

Trademark Office ("PTO"), however, shows no such trademarks held by defendants, and only one slogan—"Company as a Service"—was even under application by EHI. *Id*, Ex. 40 [PTO certification]. Yet TBIS's website continued to feature this illusory trademark and others. *See id.*, Ex. 17 at pp. 2, 3, 9.

5. The BAR token theft and Defendants' new business strategy

On February 22, 2018, right after Stollaire began receiving the cease-and-desist letters from companies whose names, logos, and testimonials he was improperly using, TBIS announced the "theft" of 16 million BAR digital assets from its digital wallets reserve, issuing a notice to the cryptocurrency platforms to halt BAR trading. *Id*., Ex. 24. TBIS announced it would issue a new digital asset, TBAR, to replace the BAR. *Id.*

Like its advertised digital asset, TBIS's advertised business model also underwent an abrupt change following the cease-and-desist letters and the reported BAR theft. Instead of promoting TBIS's connections to U.S. blue-chip companies, Stollaire has begun touting connections to "billion dollar companies" overseas. *Id*., Ex. 49 at p. 37. For example, on April 28, 2018, TBIS announced a "South Korean Liaison" to promote TBIS "in one of the world's largest crypto markets" and to focus on "large South Korean exchanges." *Id*., Ex. ¶ 71, Ex. 70 at p. 5. Stollaire also recently announced that TBAR was listed on a Hong Kong "asset exchange" and "currently only Chinese citizens can purchase TBAR, however they are expecting to be trading globally soon." Supplemental Decl. of David Brown *filed concurrently herewith*, ¶ 2, Ex. 73 at pp. 5-6.

6. Defendants' unregistered offering and commingling of funds

Defendants have raised assets worth as much as $21 million in their fraudulent, unregistered ICO, received in cash and digital assets. The TBIS ICO was not registered with the SEC. *See* Brown Decl. Ex. 4. Though later iterations of the whitepaper claim that the BAR is "not a security" (*id.*, Ex. 15 at p. 17), Stollaire himself recognized that "the SEC will label ICO tokens as securities." *See* Brown Decl., Ex. 45 [Stollaire online interview dated February 12, 2018] at p. 9]. Stollaire himself described ICOs as a "miracle" source of "start-up funding." Brown Decl., Ex. 52.

On December 21, 2017, TBIS announced that it had raised $1 million in its presale, which was scheduled to conclude December 31, 2017. *Id.*, Ex. 19 [TBIS press release dated December 21, 2017]. Subsequently, on January 19, 2018, TBIS announced that it had sold 35 million tokens (*id.*, Ex. 20 [TBIS press release dated January 19, 2018]), while in a YouTube video posted that week, Stollaire announced having raised $10 million. Declaration of Robert J. Grasso *filed concurrently herewith* ("Grasso Decl."), ¶ 7, Ex. 2. TBIS's bank records reflect more than $300,000 in cash received from at least 65 investors, including from disparate states and abroad. Declaration of Magnolia M. Irwin *filed concurrently herewith* ("Irwin Decl."), ¶¶ 3-7, Exs. 1-3. A search of publicly available blockchain ledger data indicates that TBIS received as much as $21 million in digital assets during the ICO. *See* Grasso Decl., ¶¶ 10-11, Exs. 4-5.

Nothing in the whitepaper indicated that investor funds would be commingled with Stollaire's personal accounts or spent on non-company expenses. Yet, of the more than $300,000 defendants received from investors in cash alone, $200,000 went directly to Stollaire's personal bank account, while $50,000 paid credit card bills and $50,000 went to EHI. Irwin Decl. ¶¶ 3-10, Exs. 1-6. Stollaire, as the then-sole signatory on TBIS's and EHI's accounts, commingled ICO investors' funds with other monies in EHI's account, and used them to pay various expenses, including items with no apparent relation to TBIS or EHI, such as bills for his Hawaii condominium. Brown Decl., Ex. 27.

III. ARGUMENT

A. A Temporary Restraining Order Is Needed

1. The SEC is seeking the TRO in the public interest

Section 20(b) of the Securities Act and Section 21(d) of the Exchange Act authorize the SEC to obtain a restraining order without a bond. *See* 15 U.S.C. §§ 77t(b) & 78u(d). In the Ninth Circuit, emergency injunctive relief may be ordered if there is "either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships

tips in the applicant's favor." *U.S. v. Nutri-Cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992) (quotations and citations omitted).[6]

The SEC appears before the Court "not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws." *Management Dynamics, Inc.*, 515 F.2d at 808. Because this enforcement action is brought in the public interest, the Court's "equitable powers assume an even broader and more flexible character than when only a private controversy is at stake." *Sahni*, 868 F.2d at 1097 (*quoting FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982)); *see also U.S. v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 174-75 (9th Cir. 1987) ("The function of a court in deciding whether to issue an injunction authorized by a statute of the United States to enforce and implement Congressional policy is a different one from that of the court when weighing claims of two private litigants.")

District courts in the Ninth Circuit have interpreted the preliminary injunctive relief standard in SEC emergency actions to require that the SEC make only make a two-pronged showing: (1) a *prima facie* case that the defendants have violated the federal securities laws, and (2) a reasonable likelihood that the defendants will repeat their violations. *See, e.g.*, *SEC v. Muehler*, No. 2:18–cv–01677–CAS (SKx) 2018 WL 1665637, at **4-5 (C.D. Cal. Apr. 4, 2018); *SEC v. Schooler*, 902 F. Supp. 2d 1341, 1345 (S.D. Cal. 2012); *SEC v. Capital Cove Bancorp, LLC*, Case No. 8:15-cv-00980-

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[6] Courts have held that it would be "'crucial error'" to "'assum[e] that SEC enforcement actions seeking injunctions are governed by criteria identical to those which apply in private injunction suits'" *SEC v. Schooler*, 902 F. Supp. 2d 1341, 1344 (S.D. Cal. 2012) (*quoting SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975)). In SEC enforcement actions, "[a] *prima facie* case of the probable existence of fraud … is sufficient to call into play the equitable powers of the court." *SEC v. United Financial Group, Inc.*, 474 F.2d 354, 358 (9th Cir. 1973); *see also Nutri-Cology*, 982 F.2d at 398 ("In statutory enforcement cases where the government has met the 'probability of success' prong of the preliminary injunction test, we presume it has met the 'possibility of irreparable injury' prong because the passage of the statute is itself an implied finding by Congress that violations will harm the public."). In any event, the SEC's *prima facie* showing of fraud raises the "serious questions" that warrant injunctive relief under this "sliding scale" approach. *Nutri-Cology*, 982 F.2d at 397; *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989).

JLS-JC, 2015 U.S. Dist. LEXIS 174962, at *16-17 (C.D. Cal. Sept. 1, 2015); *SEC v. Homestead Props., L.P.*, No. SACV09-01331-CJC (MLGx), 2009 WL 5173685, at *2 (C.D. Cal. Dec. 18, 2009); *SEC v. Trabulse*, 526 F. Supp. 2d 1008, 1012 (N.D. Cal. 2007).

The SEC has submitted compelling evidence to establish a *prima facie* case that the defendants have violated, and are continuing to violate, the antifraud provisions of the federal securities laws. The SEC has also established that the fraudulent conduct is likely to continue, given defendants' numerous misrepresentations during the TBIS ICO and their ongoing fraudulent inflation of the value of the BAR and TBAR digital assets.

2. The SEC has made a *prima facie* showing that defendants are violating the federal securities laws

a. Defendants are offering and selling securities

Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act define "security" to include "stock" and "investment contract[s]." As a threshold matter, the interests offered and sold in this particular case—whether termed "cryptocurrencies," "tokens," "coins," "memberships" or whatever else—are "securities" under the seminal test to determine what an investment contract is, as set forth in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The *Howey* test looks to whether there is an investment of money in a common enterprise, with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. *Id.* at 301; *see also SEC v. Edwards*, 540 U.S. 389, 393 (2004); *SEC v. R.G. Reynolds Enters., Inc.*, 952 F.2d 1125, 1130 (9th Cir. 1991). This definition embodies a "flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *Howey*, 328 U.S. at 299.

Here, all three factors are met. First, investors, including in the U.S., invested as much as $21 million in a combination of cash and digital assets such as Ether and Bitcoin to purchase BAR. That some of the investments were in the form of digital

assets does not diminish their significance under the first prong of *Howey*. *See SEC v. Shavers*, No. 13-CV-416, 2013 WL 4028182 (E.D. Tex. Aug. 6, 2013) (denying motion to dismiss fraud claims on subject matter jurisdiction grounds, noting "It is clear that Bitcoin can be used as money"); *United States v. Faiella*, 39 F. Supp. 3d 544, 545 (S.D.N.Y. 2014) ("Bitcoin clearly qualifies as 'money' ...").

In the Ninth Circuit, the second element, a "common enterprise," is satisfied by the existence of either horizontal commonality (a pooling of investor funds and interests) or strict vertical commonality (the fortunes of the investor are linked with those of the promoter). *See R.G. Reynolds Enters*., 952 F.2d at 1130. Here, there is horizontal commonality because TBIS raised funds—at least some of them pooled in TBIS and EHI bank accounts—purportedly to be spent on TBIS's efforts to grow the TBIS "platform." TBIS aimed to raise $1 million from ICO investors to complete and release its platform to the market, and to meet its sales projections of over $25 million beginning in 2018. There is also vertical commonality because BAR owners would purportedly share in the growth of the company through their ownership of the digital assets. Tellingly, Stollaire himself described ICOs as a "miracle" source of "start-up funding."

Relevant to both vertical commonality and to the third prong—the dependence on the efforts of others—TBIS's investors are passive, depending entirely on the efforts of defendants. *See R.G. Reynolds*, 952 F.2d at 1131 (the third element of *Howey* is met if the actions of others are "undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise"). TBIS's whitepapers represented that ICO investors would benefit from the company's (fake) dossier of client relationships, and enjoy the projected astronomical sales returns. The whitepapers also touted the "two centuries of combined" industry experience of the management team. Thus, investors had no choice but to rely on Stollaire's efforts. *See, e.g., SEC v. Glenn W. Turner Enterprises, Inc.*, 474 U.S. 476, 482 (9th Cir. 1973) (issue in assessing efforts of others is "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure

or success of the enterprise").

Stollaire's claims that the digital assets issued in the ICO offering are not securities makes no difference, in light of the economic substance of these transactions. In analyzing whether something is a security, "form should be disregarded for substance," *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967), "and the emphasis should be on economic realities underlying a transaction, and not on the name appended thereto." *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 849 (1975). Even though defendants labeled the BAR a "utility token," it had no functionality at the time of the offering—since TBIS's platform was non-existent. Instead, BAR (and later, their replacement, TBAR) were sold as an investment, and under *Howey*, are clearly securities under the federal securities laws. *See SEC v. PlexCorps*, No. 17 Civ. 7007 (CBA), 2017 WL 6398722, at *2 (E.D.N.Y. Dec. 14, 2017) (issuing preliminary injunction against fraudulent scheme offering digital "tokens," finding *prima facie* showing investments were securities).

b. TBIS's and Stollaire's offer and sale of securities was not registered with the SEC

The SEC has made a *prima facie* showing that TBIS and Stollaire are violating the registration provisions of Sections 5(a) and (c) of the Securities Act. Section 5 prohibits the unregistered offer or sale of securities in interstate commerce, unless an exemption from registration applies. *See SEC v. Eurobond Exchange, Ltd.*, 13 F.3d 1334, 1338 (9th Cir. 1994). A defendant violates Section 5 when (i) the defendant, directly or indirectly, offers or sells securities; (ii) no registration is in effect or filed with the SEC for those securities; and (iii) interstate transportation or communication or the mails are used in connection with the offer and sale. *See* 15 U.S.C. §§ 77e(a), 77e(c); *SEC v. Phan*, 500 F.3d 895, 902 (9th Cir. 2007).

It is beyond dispute that defendants did not register the offer or sale of securities with the SEC. It matters not whether defendants believed the offers and sales of their securities needed to be registered, since the SEC does not have to prove their scienter to

sustain a Section 5 claim. *See SEC v. Holschuh*, 694 F.2d 130, 137 n.10 (9th Cir. 1982) (scienter and negligence not required for Section 5 claims).

TBIS, as the issuer, offered and sold the securities, while Stollaire, as TBIS's control person who actively and publicly promoted the offering, directly and indirectly sold them. *See, e.g., SEC v. Holschuh*, 694 F.2d 130, 140 (7th Cir 1982) (holding that while Section 5 applies to persons selling securities directly to others, "[t]o hold that proof of direct contact is necessary would ignore and render meaningless the language of Section 5, which prohibits any person from 'directly or indirectly' engaging in the offer or sale of unregistered securities" (emphasis in original); *SEC v. Murphy*, 626 F.2d 633, 650-51 (9th Cir. 1980) ("[T]hose who ha[ve] a necessary role in the transaction are held liable as participants") (citations omitted); *Pennaluna & Co. v. SEC*, 410 F.2d 861, 864 n.1, 868 (9th Cir. 1969).

Even if Stollaire had not personally offered and sold the BAR, he would be liable as a necessary participant and a substantial factor. *See SEC v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1255 (9th Cir. 2013) ("With respect to Section 5, a defendant's role in the transaction must be a significant one before liability will attach. Defendants play a significant role when they are both a necessary participant and substantial factor in the sales transaction.") (citation and internal quotations omitted); *SEC v. Rogers*, 790 F.2d 1450, 1456 (9th Cir. 1986) (The "defendant's conduct [must] be both necessary to, and a substantial factor in, the unlawful transaction…While "substantial participation" is a concept without precise bounds, previous cases suggest that one who plans a scheme, or, at the least, is a substantial motivating factor behind it, will be held liable as a seller.").

The SEC having established the registration violations, the burden shifts to defendants to prove that an exemption to registration applies. *See SEC v. CMKM Diamonds, Inc.*, 729 F.3d at1255; *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *SEC v. Murphy*, 626 F.2d at 641. Defendants cannot make that showing here. First, the intrastate exemption under Section 3(a)(11) of the Securities Act does not apply because the offering was made to investors in multiple states. Second, the offering was not a

private placement under Section 4(a)(2); rather, it was a general solicitation to investors in the U.S. and elsewhere, made over the internet. Further, TBIS's whitepapers set no minimum investment—indicative of an offering to unaccredited and unsophisticated investors without access to the kind of information a registration statement would disclose. Brown Decl., Exs. 14-17. *See Western Fed. Corp. v. Erickson*, 739 F.2d 1439, 1442 (9th Cir. 1984); *Ralston Purina*, 346 U.S. at 125-127.

c. Defendants are committing fraud in violation of Section 17(a) and Section 10(b)

The SEC has made a *prima facie* showing that all of the defendants are violating the antifraud provisions of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Section 17(a) prohibits fraud in the offer or sale of securities, and Section 10(b) and Rule 10b-5 prohibit fraud in connection with the purchase or sale of any security. *See* 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 855 (9th Cir. 2001). Defendants have violated both antifraud provisions.

i. Defendants' material misrepresentations

Defendants made a litany of false and misleading statements in the ICO offering, in violation of Section 10(b)/Rule 10b-5 (b) of the Exchange Act and Section 17(a)(2) of the Securities Act. To establish a *prima facie* showing of these violations, the SEC must show: (1) a material misrepresentation, misleading statement, or omission (2) was made in connection with the purchase or sale of a security (for the SEC's Section 10(b) claim), or that money was obtained by means of these misrepresentations or omissions in the offer or sale of a security (for the SEC's Section 17(a)(2) claim); (3) with the requisite state of mind; and (4) in interstate commerce. *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1092 (9th Cir. 2010); *see also SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1364 (9th Cir. 1993).

Under *Janus Capital Group, Inc. v. First Derivative Traders*, the SEC must show that defendants "made" the misleading statements and omissions for liability under

Section 10(b) and Rule 10b-5 (b). *See* 131 S. Ct. 2296, 2302 (2011) ("[f]or purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it"). *Janus*, however, does not apply to the SEC's claim that defendants are liable for misrepresentations in violation of Section 17(a)(2). Rather, it is enough that the SEC has established a *prima facie* case that each obtained money by means of the misleading statements that defendants knew, or should have known, were misleading. *See SEC v. Sells*, No. C-11-4941 CW, 2012 WL 3242551, at *7 ("*Janus* does not apply to claims premised on §17(a)"); *SEC v. Mercury Interactive, LLC*, No. 5:07-CV-02822-WHA, 2011 WL 5871020, at *3 (N.D. Cal. Nov. 22, 2011) (same); *SEC v. Daifotis*, No. C 11-00137 WHA, 2011 WL 3295139, at *5 (N.D. Cal. Aug. 1, 2011) (same).

A misrepresented or omitted fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Platforms Wireless*, 617 F.2d at 1092. Liability arises not only from affirmative representations, but from failures to disclose material information. *Dain Rauscher*, 254 F.3d at 855-56. These provisions impose "'a duty to disclose material facts that are necessary to make disclosed statements, whether mandatory or volunteered, not misleading.'" *SEC v. Fehn*, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996).[7]

Here, defendants' entire offering was premised on a series of material falsehoods. First, defendants represented that they had a readily inheritable client base with some of

[7] Defendants' activities were clearly "in the offer or sale," and "in connection with the purchase or sale" of securities and in interstate commerce. The phrase "in connection with the purchase or sale" of a security is met when the fraud alleged "coincides with a securities transaction." *Merrill Lynch, Pierce, Fenner & Smith Inc., v. Dabit*, 547 U.S. 71, 85 (2006). Moreover, "in connection with" requires only that there be "deceptive practices touching" the purchase or sale of securities. *See Superintendent of Ins. v. Bankers Life & Casualty Co.*, 404 U.S. 6, 12-13 (1971); *see also SEC v. Zandford*, 535 U.S. 813, 819 (2002).

the largest public companies—even though they had no relationship to them. Second, defendants claimed to have testimonials from people who in reality had neither a relationship to defendants, nor the relationship defendants proclaimed to the companies they purportedly represented. Third, defendants advertised intellectual property assets that were in reality empty slogans for services they were not in any way close to providing. These facts were unquestionably material. *See, e.g., SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980) ("Surely the materiality of information relating to financial condition, solvency and profitability is not subject to serious challenge."); *SEC v. CKB168 Holdings, Ltd.*, --F. Supp. 3d--, 2016 WL 6915859, at **14-15, 17 (E.D.N.Y. Sept. 28, 2016) (finding "no doubt that [the] promoters' false claims of [the entities'] legitimacy… were material").

ii. Defendants' scheme to defraud

Defendants are engaged in a scheme to defraud investors. Sections 17(a)(1) and 17(a)(3) of the Securities Act prohibit any person, "in the offer or sale of any securities," from employing "any device, scheme, or artifice to defraud," 15 U.S.C. § 77q(a)(1), or from engaging in "any transaction, practice, or course of business which operates, or would operate, as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). Likewise, Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder make it unlawful for any person, "in connection with the purchase or sale of any security," "[t]o employ any device, scheme or artifice to defraud," or "[t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(a), (c). To be liable for a scheme to defraud, a defendant "must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme." *Simpson v. AOL Time Warner, Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006), *vacated on other grounds sub nom., Avis Budget Group Inc. v. Cal. State Teachers' Ret. System*, 552 U.S. 1162 (2008); *see SEC v. Sells*, No. C-11-4941 CW, 2012 WL 3242551, at *7 (N.D. Cal. Aug. 10, 2012).

Defendants are plainly engaged in a scheme to defraud. Stollaire, operating under more than one alias, created the false appearance that TBIS was a thriving entity poised to displace established blue chip companies in the cloud computing space, on the brink of $25 million in revenues, so that he could raise and then commingle BAR investors' funds. In addition to falsely promoting TBIS's supposed relationships with ready customers, misleading testimonials, and false claims of intellectual property rights, Stollaire commingled the ICO investors' funds with his personal funds and used them to pay personal expenses. *See, e.g., SEC v. Merrill Scott & Associates, Ltd.*, 505 F. Supp. 2d 1193, 1214 (D. Utah 2007) (promoter engaged in scheme to defraud investors when it concealed use of funds for personal expenses). Stollaire also enlisted cryptocurrency enthusiasts who maintain their own YouTube channels to interview him about TBIS, thereby increasing exposure beyond TBIS's own website or channel. All of these actions were designed to convince investors to invest in TBIS.

iii. Defendants' state of mind

While claims under Section 10(b) and Section 17(a)(1) require a showing of scienter, Sections 17(a)(2) and (3) only require a showing of negligence. *See Aaron v. SEC*, 446 U.S. 680, 701-02 (1980); *Vernazza v. SEC*, 327 F.3d 851, 859-60 (9th Cir. 2003). Scienter is proven with "'knowing or reckless conduct,' without a showing of 'willful intent to defraud.'" *Vernazza*, 327 F.3d at 860; *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990). To establish negligence, the SEC must show that the defendants failed to conform to the standard of care that would be exercised by a reasonable person. *See Dain Rauscher*, 254 F.3d at 856; *SEC v. Hughes Capital Corp.*, 124 F.3d 449, 453–54 (3d Cir.1997) (defining negligence in the securities context as the failure to exercise reasonable care).

All of the defendants knowingly or recklessly engaged in a scheme to defraud in violation of Section 10(b) and Rule 10b-5(a) and (c), and Section 17(a)(1) and (3). Stollaire knew, or was reckless or negligent in not knowing, that he did not possess any of the nearly thirty client relationships that he promoted, and that the testimonials and

intellectual property assets he advertised were not real. As TBIS's and EHI's principal, Stollaire's mental state is imputed to them. *See SEC v. Platforms Wireless Int'l Corp*., 559 F. Supp. 2d 1091, 1096 (S.D. Cal. 2008), aff'd., 617 F.3d 1072 (9th Cir. 2010), citing *SEC v. Manor Nursing Ctrs., Inc*., 458 F.2d 1082, 1089 n.3 (2d Cir. 1972).

3. Defendants' violations are likely to be repeated

In addition to making a *prima facie* showing of the defendants' securities laws violations, the record also shows that there is a likelihood that these violations will be repeated. Whether a likelihood of future violations exists depends upon the totality of the circumstances. *See SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980); *Fehn*, 97 F.3d at 1295-96. The existence of past violations may give rise to an inference that there will be future violations. *See Murphy*, 626 F.2d at 655; *SEC v. United Financial Group, Inc.*, 474 F.2d 354, 358-59 (9th Cir. 1973); *see also U.S. v. Odessa Union Warehouse Co-Op*, 833 F.2d 172, 176 (9th Cir. 1987). Courts also consider factors such as the degree of scienter involved, the isolated or recurrent nature of the violative conduct, the defendant's recognition of the wrongful nature of the conduct, the likelihood that, because of the defendant's occupation, future violations may occur, and the sincerity of a defendant's assurances (if any) against future violations. *See Murphy*, 626 F.2d at 655.

Here, the defendants have acted with a high level of scienter. Defendants raised as much as $21 million from investors based on a trifecta of falsehoods: (1) false claims of association with dozens of "household name" brand companies with wildly aggressive financial projections given the true nature of TBIS's business; (2) false testimonials from individuals purportedly at those companies, who either never gave the statements, never held the titles defendants claimed, and/or never authorized their statements to be used as testimonials; and (3) false depictions of a trove of intellectual property assets that were nonexistent.

There is no assurance Stollaire—who does not operate TBIS under his real name—will stop his fraudulent activity absent Court action. When confronted with the

threat of lawsuits for falsely tying his brand to dozens of legitimate companies, Stollaire merely shifted gears and started promoting his ties to a new host of supposedly imminent clients, conveniently located overseas. And despite receiving cease-and-desist letters from numerous companies, Stollaire continued to promote his fabricated connections to the companies on TBIS's and EHI's websites, and to advertise intellectual property assets he does not have.

B. The Other Relief Sought By The SEC Is Needed

In addition to a restraining order, the SEC also seeks an asset freeze, appointment of a receiver over TBIS, an accounting, an order prohibiting the destruction of documents, and expedited discovery, which are well justified here. Federal courts have "inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief." *Reebok Int'l, Ltd v. Marnatech Enterprises, Inc.*, 970 F.2d 552, 559 (9th Cir. 1992); *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). "[O]nce the equity jurisdiction of the district court properly has been invoked, the court has power to order all equitable relief necessary under the circumstances." *SEC v. Materia*, 745 F.2d 197, 200 (2d Cir. 1984).

1. The Court should freeze defendants' assets

The Court's equitable powers include the authority to freeze assets of both parties and nonparties. *See SEC v. Hickey*, 322 F.3d 1123, 1131 (9th Cir. 2003); *SEC v. Int'l Swiss Invest. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990). The purpose of a freeze order is to prevent the dissipation of assets so that they may be available to be paid as disgorgement for the benefit of victims of the fraud and to pay a penalty. *See, e.g.*, *Hickey*, 322 F.3d at 1132 (affirming asset freeze over nonparty brokerage firm controlled by defendant to effectuate disgorgement order against defendant); *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105-06 (2d Cir. 1972); *see also SEC v. Unifund SAL*, 910 F.2d 1028, 1041-42 (2d Cir. 1990) (holding that a freeze order on a brokerage account in an amount equal to the potential disgorgement and civil monetary penalty was appropriate relief). Indeed, the Ninth Circuit has found that "the public

interest in preserving the illicit proceeds [of a defendant's fraud] for restitution to the victims is great." *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1236 (9th Cir. 1999). Courts have similarly recognized that a disgorgement order will often be rendered meaningless unless an asset freeze is imposed prior to the entry of final judgment. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990).

"A party seeking an asset freeze must show a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages if relief is not granted." *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009).[8] Courts consider a defendant's prior unlawful acts and the location of the assets in considering whether an asset freeze is warranted. *See, e.g.*, *id*. at 1085; *Affordable Media*, 179 F.3d at 1236 ("district court's finding regarding the likelihood of dissipation is far from clearly erroneous" where defendant had a "history of spiriting their commissions away to a Cook Islands trust"); *Manor Nursing*, 458 F.2d at 1106 ("uncertainty existed with respect to the total amount of proceeds received and their location," thus asset freeze was warranted). Asset freezes can extend to non-parties under common control with the named defendants. *See, e.g.*, *Hickey*, 322 F.3d at 1133 (upholding asset freeze over nonparty where defendant "dominate[d] the entire management of the [non-party] and [could] use its assets for personal, as well as business, ends" showing "absolute control [that] justified" the freeze, noting that "the inherent equitable power of a district court allows it to freeze the assets of a nonparty when that nonparty is dominated and

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[8] In *FSLIC v. Sahni*, the Ninth Circuit held that to obtain an asset freeze, a government agency need only establish that it is likely to succeed on the merits of its claims and that the mere "possibility" of dissipation of assets exists. 868 F.2d 1096, (9th Cir. 1989), *overruled by Winter v. NRDC*, Inc., 557 U.S. 7 (2008). The Ninth Circuit then held that *Sahni* had been overruled in this respect because the Supreme Court held in *Winter* that a private plaintiff must establish a "likelihood of irreparable harm" to obtain a preliminary injunction. *Johnson*, 572 F.3d at 1085 n.11 (9th Cir. 2009). For this reason the Ninth Circuit held that to obtain an asset freeze, a private plaintiff must establish the likelihood of dissipation of assets rather than a mere possibility. *Id*. However, the SEC, unlike a private plaintiff, does not need to establish a likelihood of irreparable harm to obtain interim injunctive relief. *FTC v. Inc21.com Corp.*, 688 F. Supp. 2d 927, 936 n.17 (N.D. Cal. 2010), *SEC v. Cavanagh*, 155 F.3d 129, 132 (2d Cir. 1998). Nevertheless, under either standard, an asset freeze is warranted.

controlled by a defendant against whom relief has been obtained in a securities fraud").

Here, the proceeds of TBIS's ICO are at risk unless the defendants' assets are frozen. After raising as much as $21 million in investor funds through blatantly false representations about the nature of TBIS's business, its relationships, and its prospects, Stollaire switched to a new business model focused on non-U.S. clientele and has intermixed investor funds with TBIS's and EHI's funds, from which expenses unrelated to TBIS's business have been paid—including bills for Stollaire's Hawaiian condominium. Stollaire announced the theft of BAR, which also generates a risk of dissipation of assets absent a court order. Moreover, most of the funds raised by the ICO are digital assets, which can be transferred and/or secreted almost instantaneously, and which are extremely difficult to trace. Without a freeze, it is likely that defendants will continue their pattern of dissembling, all the while using investors' assets interchangeably with their own.

2. The Court should appoint a receiver

The Court has broad discretion to appoint an equity receiver in SEC enforcement actions. *See Wencke*, 622 F.2d at 1365. The breadth of this discretion "arises out of the fact that most receiverships involve multiple parties and complex transactions." *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (quotation omitted). A receiver plays a crucial role in preventing further dissipation and misappropriation of investors' assets. *Wencke*, 783 F.2d at 836-37 n.9. Factors such as the integrity of management and the likelihood of future misuse of assets are critical in determining whether a receiver should be appointed. *See SEC v. Fifth Ave. Coach Lines, Inc.*, 289 F. Supp. 3, 42 (S.D.N.Y. 1968), aff'd, 435 F.2d 510 (2d Cir. 1970). Courts have found a receivership to be justified where management of an entity, collection of revenue, and or distribution of investor funds are required. *See, e.g., SEC v. Credit First Fund*, No. CV05-8741 DSF (PJWx), 2006 WL 4729240, at *15 (C.D. Cal. 2006); *SEC v. Fifth Ave. Coach Lines, Inc.*, 289 F. Supp. at 42; *SEC v. Arisebank*, Dkt. No. 18-cv-00186-M, 2018 WL 1532152 (N.D. Tex. Jan. 25, 2018) (appointing temporary receiver on *ex*

parte application in case where defendants raised funds from investors through ICO).

The SEC recommends that Josias N. Dewey of the law firm of Holland & Knight be appointed receiver over TBIS. As more fully described in the SEC's Recommendation that Josias N. Dewey be Appointed Receiver, filed concurrently herewith, the SEC bases its recommendation on, among other things, Mr. Dewey's qualifications, experience, and agreement to cap the fees and costs incurred in the initial stages of the receivership.

3. The Court should order accountings, document preservation and expedited discovery

The Court should also require each of the defendants to prepare accountings—including of any digital assets held by defendants—so the SEC can identify all available assets, to help ensure that funds and assets are frozen properly and available to satisfy any future order of disgorgement or civil penalties against the defendants. *See Wencke*, 622 F.2d at 1369; *SEC v. Int'l Swiss Invest. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990) (ordering an accounting). The Court's broad equitable powers in SEC enforcement actions also include the ability to prohibit document destruction. *See Wencke*, 622 F.2d at 1369. Here, the SEC asks the Court to enter an order prohibiting the destruction of documents to prevent the defendants from destroying any evidence of their violations and ongoing fraud. The SEC further requests expedited discovery in support of its application for preliminary injunction.

IV. CONCLUSION

For the foregoing reasons, the SEC respectfully requests that the Court grant the requested relief.

Dated: May 22, 2018

Respectfully submitted,

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