

EXHIBIT 9

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 : 19-CV-04625

5 UNITED STATES SECURITIES and
6 EXCHANGE COMMISSION,

7 Plaintiff, :

8 V. : U.S. Courthouse
9 Brooklyn, New York

10 REGINALD MIDDLETON, et al., :

11 Defendants. :

12 August 12, 2019
13 4:00 o'clock p.m.

14 - - - - - X

15 TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE LASHANN DEARCY HALL
17 UNITED STATES DISTRICT JUDGE

18 APPEARANCES:

19 For the Plaintiff: JORGE TENREIRO, ESQ.
20 VICTOR SUTHAMMANONT, ESQ.

21
22 For the Defendants: DAVID KORNBLAU, ESQ.

23 Court Reporter: Anthony M. Mancuso
24 (718) 260-2419

25 Proceedings recorded by mechanical stenography, transcript
produced by CAT.

1 (Case called; both sides ready.)

2 MR. TENREIRO: For plaintiff, Securities and
3 Exchange Commission, Jorge Tenreiro.

4 MR. SUTHAMMANONT: Victor Suthammanont also for the
5 Securities and Exchange Commission.

6 MR. KORNBLAU: For the defendants Mr. Middleton and
7 his company Veritaseum, David Kornblau.

8 THE COURT: We are not proceeding ex parte as I had
9 anticipated when I got on the bench this afternoon. We are
10 here nonetheless so that the court may hear argument with
11 respect to the plaintiff's motion for a Temporary Restraining
12 Order in this matter. I'll hear from plaintiffs.

13 MR. TENREIRO: Your Honor, good afternoon. As
14 stated in our papers, we are here seeking primarily a
15 temporary asset freeze as well as other relief, given the
16 state of affairs between the commission and the defendants.
17 As we show in our brief, and in the documents submitted
18 therewith we have more than an inference that we are likely to
19 succeed on the merits of our claim and if the court wants to
20 even look at the narrowest possible claim that would entitle
21 the commission to full disgorgement of the entire amount that
22 was raised by the defendants, the court would look to the
23 violation of Section 5A and 5C of the Securities Act which do
24 not require a showing of any mental state. The court would
25 simply need to conclude that we are entitled to an inference

1 that there was an offer of unregistered sale of securities. I
2 don't know if Mr. Kornblau is going to dispute that there was
3 no registration statement filed or in effect with the various
4 tokens. The commission entitled to an inference that the very
5 tokens were securities.

6 I don't want to go through the evidence that the
7 court has reviewed in our papers. To put a fine point on it.
8 Mr. Middleton despite attempting to claim that he was not
9 selling securities was very well aware of what he was doing
10 and how he was going to get people to give him money in
11 exchange for these tokens. He made statements touting the
12 potential returns of purchasing, touting the actual increase
13 in Veri after the initial price of the sale. He explained to
14 people they were going to be tendering funds to fund an
15 enterprise. I don't think Mr. Kornblau is going to dispute
16 yet that the products were not available except for what
17 Mr. Middleton claimed were the ability to simply tender the
18 tokens back to him. So given that, I think that we are
19 entitled to an inference of a likelihood of success on the
20 merits which then entitles us to an asset freeze.

21 The other relief that we seek briefly, your Honor,
22 is the order against the destruction of assets and the
23 appointment of a third-party intermediary.

24 THE COURT: Which seems to go beyond the relief that
25 is more liberally granted, which is the asset freeze.

1 MR. TENREIRO: Your Honor, I think that the document
2 preservation is pretty routinely granted.

3 THE COURT: I'm sorry. I'm talking about the
4 third-party intermediary.

5 MR. TENREIRO: On the third-party intermediary, your
6 Honor, we believe this is a situation where because of the
7 nature of the assets at issue, in particular, block chain
8 assets which are inherently difficult to trace, so if
9 Mr. Middleton were to make a transfer to another block chain
10 address, we wouldn't know who controls it.

11 THE COURT: I would have to assume that there's a
12 very real chance, assuming that I granted the asset freeze,
13 that the defendants in this case would choose to violate this
14 court's order and transfer those assets because the assets
15 presumably under the order would have been frozen and any such
16 transfer would be in violation of that order. So I need to
17 believe that there's a likelihood that he would act in
18 contravention of a court order.

19 MR. TENREIRO: I don't think that the court needs to
20 conclude that's a likelihood in order to order an
21 intermediary. The Second Circuit has said that intermediaries
22 or monitors or receivers or something that is a power within
23 the court's equitable discretion in SEC cases is simply to
24 preserve the status quo.

25 THE COURT: The status quo isn't it preferred by an

1 asset freeze alone? I looked at this intermediary that you
2 proposed here, in none of those orders was there a similar
3 intermediary. It stopped in those orders at the asset freeze
4 itself.

5 MR. TENREIRO: We didn't request it in those two
6 cases. I can explain why. In the REcoin case the accounts
7 were bank accounts and in the PlexCoin case, there was a
8 Canadian asset freeze and we had not located the actual -- we
9 had not located what I will say the resting place at that
10 point of the digital assets.

11 In this case, if the court is looking for something
12 that might give rise to a concern that the defendant would not
13 listen to an asset freeze order from this court. I would
14 point out to the court it was after the defendant learned that
15 the commission staff was likely to recommend to the commission
16 that an action be instituted that the defendant began moving
17 these assets in plain view.

18 THE COURT: Does that distinguish this case from the
19 two cases, the orders for which you have offered as precedent?

20 MR. TENREIRO: I think so. This is why in this case
21 we have sought that additional step. This is, again, what's
22 different between a typical say receiver and what I will call
23 traditional cases and what we're proposing in this crypto
24 case. This is not a receivership where all of the assets of
25 the company are being handled by the intermediary. It is only

1 the digital asset, essentially who has the keys. In the world
2 of blockchain the person who controls the key to the address
3 controls the assets. So it's essentially perhaps the
4 intermediary can simply take over the keys that Mr. Middleton
5 has or as we suggest that he put the assets in an address that
6 the intermediary has the keys to so that they are safe while
7 the case is resolved, as opposed to a receiver which is a more
8 drastic remedy that takes control over every single asset of
9 the entity.

10 THE COURT: Give me a moment.

11 (Pause.)

12 THE COURT: Do you by any chance have on hand a copy
13 of the AriseBank case that you cite in your submission, which
14 seems to be at least, as your papers are drafted, the closest
15 to the factual pattern or the request here that you are
16 seeking? Do you by any chance have that on hand?

17 MR. TENREIRO: I don't have that on hand. I also
18 point the court to the Titanium case. Both of those cases
19 involved receivers. They went beyond what we have here.

20 THE COURT: Print that out for me, the two cases
21 they cite on page 28. You can continue.

22 MR. TENREIRO: The only point I would add to the
23 discussion that we're having with respect to the intermediary
24 is that, as we've also stated in our papers, Mr. Middleton has
25 resisted being completely transparent with the commission with

1 respect to all of the addresses that he controls or has
2 controlled on the blockchain.

3 Again, although I hope that the court will see that
4 we have expended some effort and resources into trying to
5 figure out everything, it is the blockchain. So although the
6 advantage is you can see it all, the disadvantage is you can't
7 look through to see who is in control other than by making
8 inferences. Mr. Middleton is completely in control and his
9 behavior so far at least with respect to the commission leaves
10 us with no hope that he's going to necessarily respect an
11 asset freeze by a court unless there's at least somebody there
12 that's watching him and has control.

13 That is the genesis and our reason for the request
14 of the intermediary. We tried to go only as far as we thought
15 was necessary. We didn't seek a receivership for the reasons
16 I state. We don't want to completely take over everything.
17 We think an intermediary is just enough in this case.

18 THE COURT: Thank you.

19 MR. KORNBLAU: Thank you, your Honor.

20 I got a call this morning that the commission was
21 seeking an asset freeze. I came down to court. So they give
22 me the papers about two hours go. So I have been able to flip
23 through them and as you might expect it's one side of the
24 story. It is not both sides of the story. And it has a lot
25 of essential missing facts and I would like to briefly tell

1 your Honor about the matter.

2 So the focus of the SEC's action was the sale over
3 two years ago of digital tokens. This was conduct that
4 occurred over two years ago. These digital tokens enable the
5 holder of the tokens to acquire software -- excuse me --
6 research reports and use software that was in development by
7 Mr. Middleton and his company Veritaseum.

8 THE COURT: So the product, as it were, that the
9 tokens would be used to purchase wasn't available yet?

10 MR. KORNBLAU: Yes, it was, your Honor.

11 THE COURT: It was in development you said.

12 MR. KORNBLAU: I wanted to get to that, your Honor.

13 So the research reports were immediately available
14 and in fact were purchased by a number of the holders of veri
15 tokens around the time of the ICO. And the software product
16 was in beta testing.

17 THE COURT: Right. But beta testing is still a
18 testing phase. The product is not yet available at that
19 point.

20 MR. KORNBLAU: It's being used and several months
21 later we came into the SEC to give a demonstration of the
22 software which involves screen shots and all the functions of
23 the software and we told the SEC how it worked, how you use
24 the tokens. The SEC was not so concerned that it was a real
25 product that was being used that they asked Mr. Middleton to

1 stop making it available in beta because they felt it involved
2 the use of a security. It was a real product and since that
3 time Mr. Middleton has developed it further and it has even
4 more utility today the token holders can take advantage of.
5 That involves the purchase of interests in precious metals
6 over the blockchain. He has special tokens that enable that.

7 THE COURT: Those are advances since the sale that
8 occurred two years ago, correct?

9 MR. KORNBLAU: Those are, yes, advances.

10 THE COURT: Just in terms of the court's inquiry
11 with respect to the plaintiff's claim that there is a
12 violation of section 5A or 5C of the Securities Act, doesn't
13 my inquiry stop at the day of the sale as opposed to any
14 developments with respect to the product that may have
15 occurred thereafter?

16 MR. KORNBLAU: I think that's fair, your Honor. As
17 of the date of the sale these tokens represented no ownership
18 interest in Veritaseum. They received no dividends, no profit
19 sharing, no interest. They were useful to purchase the
20 services and products made available to Veritaseum at the time
21 and in the future. Whether that is a security is a legal
22 issue that I would suggest the court would benefit from
23 briefing from both sides on that issue and if we can focus on
24 what's happening today, the SEC is saying -- they then had a
25 two-year investigation, two years. So we have been

1 investigating for two years on these events that happened
2 spring of 2017, and they notified me about ten days ago that
3 they were concerned about a transfer of assets which was out
4 in the open on the blockchain. They have the address.

5 THE COURT: The asset sale or transfer happened in a
6 short time after the SEC notified your client that there were
7 some concerns regarding a potential SEC violation.

8 MR. KORNBLAU: Your Honor, that's what they told me
9 on the phone. So I said, okay, that's interesting. Let me go
10 check that out.

11 THE COURT: When was the date that the notification
12 was made?

13 MR. KORNBLAU: It was about ten days ago.

14 MR. TENREIRO: We notified Mr. Kornblau on Friday,
15 July 26, that on Tuesday, July 30, we were going to give the
16 official -- what's called the Wells notification. So on
17 Friday over the phone -- prior to Friday the 26 of July we had
18 scheduled a call with Mr. Kornblau on the 30th. On July 26 we
19 called Mr. Kornblau again and said to him please be advised
20 that the call on Tuesday the 30th will be a Wells call. At
21 that point Mr. Kornblau understood we were about to give the
22 Wells notice on Tuesday the 30th.

23 THE COURT: When did the alleged dissipation of
24 assets take place?

25 MR. TENREIRO: The 30th and 31st of July.

1 MR. KORNBLAU: Your Honor may I continue?

2 THE COURT: Yes, you may.

3 MR. KORNBLAU: I heard those allegations. And I
4 thought, okay, let me check that out. So I did check it out
5 and what I found out was that Mr. Middleton transferred these
6 digital assets from his wallet that was holding the largest
7 share of the proceeds from the 2017 ICO. What I found out is
8 roughly six months before he had transferred the same amount
9 and roughly six months before then he had transferred the same
10 amount. And this is how he funds his ongoing business
11 operations and, as I said, I've gone through these papers and
12 listened to Mr. Tenreiro today and I heard not even an
13 allegation that there is anything the slightest bit unlawful
14 about Mr. Middleton's current business operations. And we had
15 this discussion. I told him, guys, this is what's going on.
16 He's funding his operation. They asked me to explain the
17 budget, where money is going. We had that discussion.

18 Obviously, attorneys' fees is significant for him.
19 He's been in a two-year investigation. Here I am facing
20 litigation. He got the Wells notice though he knew that my
21 legal fees were not going to be stopping any time soon. The
22 amount was right in line with the continuing operation of his
23 lawful business. And what the SEC is asking your Honor to do
24 today is sign a piece of paper that will freeze not only
25 Mr. Middleton's personal assets but his business assets. It

1 will essentially destroy an ongoing, innovative, lawful
2 business. There is no exception for attorneys' fees. There
3 is no exception for living expenses. Your Honor, with the
4 stroke of a pen can put the death knell to an ongoing, lawful
5 business and that's what we're here talking about today.

6 What I would suggest -- by the way, it was ten days
7 ago when the SEC called me to say, Hey, we're worried about
8 this transfer. I explained what's going on. Well, if
9 Mr. Middleton wanted to send stuff to Swiss bank accounts or
10 buried in his backyard, he's had ten days to do it. He has
11 not. So the question is why does your Honor need to sign an
12 order freezing assets today rather than schedule a hearing,
13 hear from both sides, because there's a lot more to this story
14 than you get from the SEC's papers.

15 THE COURT: I'm sorry because I'm interrupting you.
16 Your argument now -- and I hear your argument -- isn't that an
17 argument that is more appropriately made when the court must
18 make an inquiry into irreparable harm? Am I correct an
19 irreparable harm is not a showing that the SEC needs to make
20 in these circumstances?

21 MR. KORNBLAU: Balancing of the equities, your
22 Honor. Any asset freeze has to weigh the effect of the
23 equities of that order. Again, why not give Mr. Middleton
24 some due process and ability to brief the other side, let the
25 court understand these securities -- definition of a security.

1 THE COURT: You want to suggest to me that a balance
2 of the equities in this case would support a determination
3 that I shouldn't enter the Temporary Restraining Order in this
4 case because I think you used the death knell language, in
5 let's say fourteen days of an asset set freeze? Anything that
6 I order today you know would only be in place for a period of
7 up to fourteen days. The parties would then have had an
8 opportunity to brief all of these issues and put forth
9 whatever evidence that you may have before the judge that will
10 ultimately decide the preliminary injunction in this case. So
11 are you suggesting that the harm that you are describing that
12 would make an order inequitable here would really occur in say
13 a ten-day period?

14 MR. KORNBLAU: Yes, your Honor. This is an ongoing
15 business. He has fifteen employees, contractors, working for
16 him. Finds out the judge last frozen the at sets of the
17 company. He has overseas business. He he's got relationships
18 with people trying to move his innovative business forward.
19 Freezing the assets, as a finding by the court, the SEC has
20 made a showing of likely violations.

21 THE COURT: An inference.

22 MR. KORNBLAU: I think that will kill it. And I see
23 nothing in this record -- they waited ten days to come in
24 here. They were not that worried in the last ten days about
25 an asset transfer. Let's give it another couple of weeks.

1 Mr. Middleton is not transferring any assets anywhere. It's
2 on the blockchain. They know the big account, where it's
3 coming from. They can see assets. That's one of the features
4 of the blockchain. There's nothing secret, nothing hidden.
5 They sent subpoenas to his banks. They'll get all of his bank
6 records. That's fine. We have no problem with that. I would
7 suggest some due process and fairness is appropriate before
8 your Honor freezes the assets.

9 THE COURT: You do recognize that the bar for an
10 asset freeze is fairly low in these contexts.

11 MR. KORNBLAU: Your Honor, in a Section 5 case it is
12 very unusual to get an asset freeze based on a Section 5
13 violation.

14 THE COURT: Does the law distinguish between which
15 violation is made?

16 MR. KORNBLAU: I think so, your Honor. What you'll
17 see, when you look at SEC action, these are overwhelmingly in
18 fraud cases and they are overwhelmingly in cases where there
19 was ongoing illegal activity or allegedly. There's none of
20 that here.

21 THE COURT: I think I heard from the SEC that they
22 believed the kind of low-hanging fruit of violations for the
23 court to look at was the Section 5 violation. But I don't
24 believe that you had limited the violation to Section 5. I
25 think that they include a fraud allegation; am I correct?

1 MR. TENREIRO: Yes, your Honor, amongst other things
2 as well.

3 MR. KORNBLAU: Right, your Honor. I'm happy to
4 address that well. The fraud allegation, it's a complaint.
5 They have given me all these papers which I barely had a
6 chance to study. But the essence of it, as I see, goes right
7 to the allegation of did he have a product at the time of the
8 ICO. That's most of the alleged misrepresentations go to that
9 point and I would say to your Honor, yes, he certainly did.
10 He sold actual research reports to holders of Veri tokens. He
11 had a product that was in testing and available and ready to
12 be used shortly thereafter until the SEC told him he couldn't.

13 THE COURT: But it was in beta testing at the time.

14 MR. KORNBLAU: That is the way software works.
15 People were using it to see if it had any bugs. It was an
16 operating software. We demonstrated it to the SEC. This is
17 not a figment of someone's imagination. I know there are scam
18 cases where people come out there and represent they invented
19 a better mouse trap and cure for cancer and all the other
20 stuff. This is not that case. This is a real business, real
21 software, real functionality. It was shortly available for
22 use. The SEC shut him down. He has found other ways to try
23 to keep it going that are not subject to the securities
24 clause. There's no suggestion that there's anything wrong
25 with that and an asset freeze will kill it. I respectfully

1 submit.

2 MR. TENREIRO: May I be heard on a couple of points?
3 On the balance of the equities, footnote five of our brief has
4 the cases where the Second Circuit says we do not have to show
5 a balance of the equities. I respectfully disagree with Mr.
6 Kornblau's suggestion that that is something the court should
7 consider. With respect to the fact of how worried we are
8 about the -- we're here. And we had conversations with him
9 last week, at the beginning of last week, about entering into
10 some sort of voluntary freeze with him, some sort of
11 agreement. We didn't rush directly to the court after we saw
12 these movements because we thought perhaps we could talk to
13 him and now it's being held against us that we waited ten
14 days.

15 THE COURT: There was an effort to speak with the
16 defendant to see if you could enter into a voluntary agreement
17 whereby the defendant in this case would not transfer certain
18 assets.

19 MR. TENREIRO: At least without notifying us and
20 telling us how much and things like that isn't. He declined.
21 So we're here because I think they wanted six hundred thousand
22 dollars a month which -- and on the point of ongoing illegal
23 conduct which is not necessary for us to prove, we do have
24 allegation here essentially what he's doing is cashing out of
25 the ICO proceeds by these gold interests, selling them to

1 third parties and then redeeming them so that now there's a
2 whole new class of stakeholders that now has control over
3 these proceeds. We are not saying that the sale itself is
4 illegal. We're not taking a position on that. We are saying
5 there is an ongoing concern that what he's doing now, even if
6 the court assumed his business is legitimate, is going to
7 destroy the court's ability to grant relief in this case. On
8 the factual point which the court does not need to conclude
9 now about the existing research reports, Mr. Kornblau has
10 conceded essentially there was a product that was in
11 development. The research reports, if it's not in our papers,
12 I apologize, I can represent to the court I think maybe 700
13 tokens were tendered for research reports after the ICO of two
14 million sold. We're pretty confident that this token
15 investors understood was an in investment and not to buy
16 Mr. Middleton's research reports.

17 I want to respond to the allegation that we stopped
18 him from using the product when it was developed.
19 Mr. Kornblau and his client did make a presentation to the
20 staff of the SEC in March of 2018. Mr. Middleton was trying
21 to balance the equities and had some sort of unclean hands
22 defense against the SEC which was not proper. What we
23 expressed was the product he was offering at that point was an
24 unregistered investment company where he was charging fees to
25 people to get investment advice. The concern was that and

1 I'll leave it at that. I don't think we should get into the
2 discussion that we had in March and February of 2018, a month
3 after the ICO. I don't think it's relevant in any way to the
4 question the court is about to hear.

5 MR. KORNBLAU: If I may respond, your Honor?

6 THE COURT: Yes.

7 MR. KORNBLAU: So, technology and software which I
8 have learned a fair amount about in this matter. Your Honor
9 is probably familiar with Microsoft Office. It's in
10 development. Software is always in development. There's
11 always a new release. There's always something new. The fact
12 of the matter is it worked. It doesn't mean that there aren't
13 some bugs that could be fixed. It worked. And the reason the
14 SEC was concerned about this investment company issue -- we
15 disagree that it involved a security. Fair enough. They were
16 concerned about it. They were not concerned about it because
17 it was a figment of the defendant's imagination, something
18 that didn't really work, was just in development. They were
19 concerned about it because it was real and it was real at the
20 time of the ICO and shortly thereafter. And the number of
21 people who buy the research reports, again, I don't see how
22 that's relevant. The token offered real utility at the time
23 of the offering, no ownership interest, no dividends, no
24 interest. It was not a security. I would say why don't we
25 brief that before your Honor freezes assets.

1 THE COURT: I thought I just heard you say we could
2 assume that for sake of argument, a moment ago. Did I mishear
3 you?

4 MR. KORNBLAU: What I mean for the sake of argument,
5 that's why the SEC didn't want Mr. Middleton to operate that
6 software because the SEC believed that it involved being a
7 securities company. We did not agree with that. We were
8 under investigation. We wanted to cooperate. Mr. Middleton
9 stood down. He had a business ready to go. But he took it
10 out of commission at the SEC's request because it was real.

11 MR. TENREIRO: I think the parties do not seem to
12 dispute this was in March of 2018. We're talking about an
13 offering that occurred in 2017. Again we disagree with
14 Mr. Kornblau's representations of what was said more
15 importantly of the effect of what was said of whether his
16 product was real. There's a section in the Securities
17 Exchange Act that Mr. Kornblau is undoubtedly familiar with
18 that says that a statement by the commission that this is okay
19 or this is not okay should not and cannot be construed against
20 the commission as some sort of laches defense or some sort of
21 carte blanche for legality. It would be highly improper for
22 the court to say that because the commission was worried that
23 Mr. Middleton was about to violate a different securities
24 statute in March of 2018, that for that reason he gets to
25 violate retroactively the Securities Act in 2017.

1 MR. KORNBLAU: Your Honor, that is not the argument.
2 It has nothing to do with laches. It has to do with the
3 reality of the software. It was real enough in March 2018
4 that the staff of the SEC said we think it creates a problem.
5 So the question is how real was it in April, May, June July of
6 2018? I will tell the court it was real enough that people
7 were actually using it and the SEC didn't like that. So they
8 said stop it a number of months later. So again it's quite
9 relevant to the offering and whether these digital assets
10 really meet the definition of a security at that time. To use
11 that alleged Section 5 violation two years later for an asset
12 freeze I think I heard the SEC counsel say that they are not
13 contending that his ongoing activities are unlawful. I would
14 say give us a shot to be heard, your Honor, before your Honor
15 freezes those assets. I think there are some cases on balance
16 of the equities. I'm happy to go research those for the
17 court. To me it's self-evident that the court in any
18 equitable relief like an asset freeze is going to consider
19 what's fair and right in the circumstances.

20 (Pause.)

21 THE COURT: All right. I'm having some pause with
22 respect to the scope of the relief that you are seeking. I
23 think that the standard with respect to an asset freeze is a
24 fairly low bar. However, my reading of the case law in this
25 area suggests that when you go beyond the asset freeze what I

1 think the SEC admits its request goes beyond the asset freeze.
2 The standard changes and indeed the standard or the bar gets
3 higher for the plaintiff. I have tried to look at the two
4 cases that you cited in your submission, the Titanium and
5 AriseBank cases. However, the citations that were provided
6 are to press releases from the SEC, not to any findings by the
7 court. So it's impossible for me to discern from these press
8 releases the standard against which the court judged the SEC's
9 request.

10 Now, as I look to the Second Circuit decision in
11 Smith vs. SEC, at 653F.3d 121, the court articulates what
12 seems to be a sliding scale of standard and once you move
13 further away from an asset freeze to an asset sale the
14 standard is going to increase. This seems to fall somewhere
15 in the middle. But I can't based on the submissions here,
16 which only offers me these two press releases, make a
17 determination that the independent intermediary, which would
18 require, as I read it, a transfer, it says a defendant's
19 transfer of all digital assets in their possession or control
20 to a blockchain address directed by an independent
21 intermediary within the 24 hours. An asset freeze would keep
22 it all in the same place, clearly status quo. A transfer,
23 it's short of a sale clearly, but it's not a freezing of the
24 assets. It's not the same type of relief that the Second
25 Circuit has looked at with this lower bar. And so perhaps the

1 arguments that the defendant has concerning equities, etcetera
2 are implicated when you move outside of an asset freeze
3 context to the independent intermediary context.

4 I think, again, the bar is low here for an asset
5 freeze. And it seems to me that the plaintiff has made a
6 showing that would allow for an asset freeze. And that is not
7 to say that the court doesn't believe that your arguments
8 concerning the equities may ring true in some respects. I'm
9 not convinced that that's the proper inquiry for the court for
10 the asset freeze.

11 So the court is prepared today to grant an order to
12 freeze the assets, I am not prepared to grant an order that
13 goes and grants the additional relief regarding the transfer
14 of the assets.

15 MR. TENREIRO: Your Honor, may I, just to clarify
16 and I have the court's ruling, we do have a citation to the
17 AriseBank in Westlaw.

18 THE COURT: Is that 2018 Westlaw? That's a press
19 release.

20 MR. TENREIRO: I'm sorry.

21 THE COURT: That's what we pulled.

22 MR. KORNBLAU: I heard your Honor. If I may cite to
23 the court SEC vs. Manor Nursing Centers, Second Circuit 1986,
24 727 and I'll read a quote that my associate sent me while I
25 was standing here in court.

1 Thus, the disadvantages and possible deleterious
2 effect of a freeze must be weighed against the considerations
3 indicating the need for such relief.

4 To me that fits really with what I am saying, that
5 another ten days, two weeks for a hearing is consistent with
6 what's already been going on. It's transparent. They can
7 watch the blockchains. I would respectfully submit that's the
8 fair way to go, your Honor.

9 THE COURT: Can I have that case again?

10 MR. TENREIRO: That's a case from 1975, your Honor,
11 I believe.

12 THE COURT: Is that the SEC Management Dynamics,
13 Inc.?

14 MR. TENREIRO: That's a separate case.

15 THE COURT: Both 1975?

16 MR. TENREIRO: Yes.

17 THE COURT: You cite a 1975 case in your memorandum
18 of law?

19 MR. TENREIRO: That's correct.

20 THE COURT: On this issue as well. 1975 must have
21 been a good year both the plaintiffs and the defense.

22 MR. TENREIRO: The Manor Nursing case ends up
23 granting the relief. I could be wrong. That's my
24 recollection of it. I wasn't around. I briefed it many
25 times.

1 MR. KORNBLAU: 1972 I was around, but pretty young.

2 THE COURT: I was around to in 1975. I don't know
3 how to take that.

4 MR. TENREIRO: It might be helpful, if we're pulling
5 cases, if I were allowed to find the AriseBank order and the
6 Titanium order to have a comprehensive receiver. I'm not sure
7 -- or language with the order appointing the receiver.
8 However it might be. I'm not sure that the order itself
9 addresses the court's concerns directly. The fact is those
10 two cases do end up appointing a receiver.

11 THE COURT: Right. One of them, by the way, was at
12 the preliminary injunction stage. That was the Titanium case.
13 It was not at a Temporary Restraining Order, at least based on
14 my reading of the information that I have. So that's a little
15 different than where we are. The AriseBank case it does seem
16 to be in the context of the a Temporary Restraining Order.

17 MR. TENREIRO: That is correct.

18 THE COURT: The Titanium case is less helpful to me.

19 MR. TENREIRO: Perhaps I can try to find the
20 AriseBank.

21 MR. KORNBLAU: 1975. Your Honor, the SEC has had
22 lots of time to draft their briefs and papers. If your Honor
23 doesn't want to do two weeks, give me overnight. I'll put
24 together some research on this point and send it to the court
25 before you sign a freeze order. It just seems fair to let

1 both sides have an opportunity to brief the issue.

2 MR. TENREIRO: We spoke to Mr. Kornblau last week on
3 a voluntary freeze. We have put all this together, now he
4 wants time. We don't know that his client is not going to do
5 what he started ten days ago in the next 24 hours. By giving
6 the defendants time the court really would be kind of going
7 against what the standard is, which is have we proven an
8 inference of success on the merits. That is what we have to
9 prove and that is the standard that we ask the court to hold
10 us to and not some sort of balancing of the equities.

11 THE COURT: I'm going to pull these cases, because
12 my reading of these cases will inform my decision with regard
13 to the defense request for an additional 24 hours. If, in
14 fact, it is not an appropriate inquiry for the court, then
15 there's no reason for the court to grant the defendant's
16 request. If a balance of the equities, etcetera, is a proper
17 consideration for the court, then I suspect that I will allow
18 this 24 hour briefing period.

19 Let me look at these cases.

20 MR. TENREIRO: SEC vs. Smith, the 2011 case, is in
21 that same footnote.

22 THE COURT: Yes. I'm going to pull that one as
23 well.

24 MR. KORNBLAU: Your Honor, just because I want to be
25 careful here, you already heard my point. We think balance of

1 the equities is an appropriate consideration. But listening
2 to your Honor's statement so far, if your Honor wants to go
3 ahead and sign an asset freeze before giving us more of an
4 opportunity, I would respectfully ask the court to consider
5 the scope of the freeze, which is comprehensive, all personal
6 and business assets, no attorneys' fees, no living expenses.

7 THE COURT: You could last two weeks without getting
8 paid. What firm are you from?

9 MR. KORNBLAU: Covington and Burling.

10 THE COURT: You will all right for two weeks.

11 MR. KORNBLAU: It's not just two weeks. It's a
12 serious issue for our client.

13 THE COURT: In terms of attorneys' fees, as a
14 particular concern for this court, whether Covington gets paid
15 in the next two weeks until a preliminary injunction order was
16 determined you'll forgive me if that's not a particular
17 concern to the court.

18 MR. KORNBLAU: If your Honor could also think about
19 his living expenses and also some amount of ongoing business
20 expenses. Again, I mean --

21 THE COURT: Can I ask a question of the plaintiff,
22 please? I am curious with respect to the difference between
23 business assets and personal assets. Presumably they are
24 separate.

25 MR. TENREIRO: The problem, your Honor, is that

1 there's no indication that they are. Mr. Middleton
2 transferred money freely and --

3 THE COURT: But there are separate accounts.

4 MR. TENREIRO: There are separate accounts. He
5 moved money between them.

6 THE COURT: If I froze the business accounts and
7 said you can't move any of this money that's currently in the
8 accounts as of 5:00 o'clock today, the only direction in which
9 money could flow would be in his personal account to his
10 business account which is less of a concern if he puts money
11 in. Your concern is that money is dissipated or assets
12 rather.

13 MR. TENREIRO: That's certainly one way that we
14 could end up today. But if that is the direction the court is
15 inclined to go I would redouble my request for the
16 intermediary that's controlling the blockchain. If he moves
17 it there's no time -- there's no way for us to stop him.

18 THE COURT: If he moves what?

19 MR. TENREIRO: For example, if he tries to move the
20 blockchain assets -- because the blockchain relies on the
21 internet, the ether, he can ask exchange the tokens on the
22 ether, so he can use a foreign exchange, convert that into
23 currency and from there transfer it to some sort of account.

24 THE COURT: How is that more implicated if I allowed
25 him to use his personal assets for personal reasons?

1 MR. TENREIRO: He would then be able to -- if the
2 personal account is not frozen that's one way in which he
3 could actually convert of the digital assets into money he can
4 use. If both the personal and business accounts are frozen,
5 transferring it into those accounts wouldn't help him. If he
6 has one set of accounts, that is essentially what I call a
7 leak in the ship, and that's the way that the money can move.

8 THE COURT: Only if it moves out of the business
9 account?

10 MR. TENREIRO: No. From the blockchain he could
11 send it directly to the personal accounts is our concern.

12 THE COURT: But it would have to move from the
13 business accounts to the personal. You are saying you would
14 not be able to see that?

15 MR. TENREIRO: The blockchain addresses are I
16 suppose business addresses. The only person who controls that
17 is him. He has the key. It's different than an account at
18 Citibank. There I can go to Citibank and say, hey, the court
19 has issued an order and Citibank will freeze the account. I
20 can't do that with respect to a blockchain address. Nobody
21 controls that other than him.

22 THE COURT: You are saying with other types of
23 accounts when an asset freeze takes place there are external
24 kind of forces that prevent someone from being able to
25 transfer assets outside of their control. Under these

1 circumstances, while there could be as set freeze on paper,
2 there is no third party external forces that would prevent the
3 transfer of assets. So the comfort in other cases is that you
4 have the ability to go to the bank or wherever the money
5 resides and give them a copy of the order and say --

6 MR. TENREIRO: That's why I'm distinguishing REcoin
7 and PlexCoin. In REcoin we didn't do that because he did not
8 have any significant amount of money in his blockchain
9 address. So the order freezing the assets, we were able to
10 serve it on the bank and that was that. In PlexCoin they were
11 abroad and we had to locate those assets and the Canadian
12 authorities and someone had arrested defendant. It was not
13 necessary for us to take an additional step. Here the court
14 can order that the blockchain assets do not move. But the
15 only person who knows whether he will comply with that order
16 and who effects that is him.

17 THE COURT: So that an independent intermediary --
18 explain that again to me how this would work because this
19 would be requiring the assets to be transferred to what sort
20 of account?

21 MR. TENREIRO: So, an account is perhaps --

22 THE COURT: I said account. That may not be the
23 right word.

24 MR. TENREIRO: I'm sorry. We put account in.
25 Essentially the way we think about it is addresses. An

1 address has a public key and a private key. Anybody can see
2 the public key to the address or the public representation.
3 But only the person that has the private key controls whether
4 that address can move or take or do thing with funds.

5 THE COURT: Does it effectively create two keys, one
6 for the defendant and one for the independent intermediary or
7 would the key reside solely with the independent immediate?

8 MR. TENREIRO: Solely with the intermediary with our
9 proposal. Mr. Kornblau suggests an intermediary that IS
10 acceptable to us. That intermediary creates an address using
11 software that creates a blockchain address for you. An
12 intermediary could use an account at a recognized --
13 recognized is the wrong word -- digital asset facility such as
14 the ones Mr. Middleton has used in the past. Mr. Middleton,
15 okay, transfer your assets from that address, from that
16 address that you control, to this address that I control and
17 that effectively freezes the assets.

18 THE COURT: If there's an intermediary put in place
19 here with respect to only the business assets, as opposed to
20 the defendant's personal assets, wouldn't that adequately
21 protect against the concerns that the SEC has with respect to
22 the dissipation of the business assets?

23 MR. TENREIRO: That would, yes, your Honor.

24 MR. KORNBLAU: Your Honor, it was a week ago that I
25 had discussions with the SEC staff where it was quite plain

1 that they were contemplating an asset freeze. We agreed to
2 notify them of transfers above the threshold. A week has gone
3 by. There have been no transfers.

4 THE COURT: But you didn't agree to the voluntary
5 asset freeze.

6 MR. KORNBLAU: They didn't ask for that. They asked
7 us to notify them of transfers and we agreed to notify them of
8 transfers above an amount that represented his ongoing
9 business activity. We agreed to that. They said no thanks.
10 So at that point --

11 THE COURT: This is the 650,000?

12 MR. KORNBLAU: Six hundred for a month, yes. That
13 was a week ago. And so if Mr. Middleton wanted to transfer
14 assets he's had a week to do it. He hasn't. And that's clear
15 on the blockchain, transparent. So where is the great
16 concern? Now we're before this court and your Honor, to now
17 with that he's going to transfer assets today or tomorrow or
18 the next day? It's farfetched.

19 MR. TENREIRO: It sounds to me what Mr. Kornblau is
20 saying Mr. Middleton should have no problem with this asset
21 freeze. Perhaps the personal expenses, if he's not moving
22 anything and he doesn't have any more business expenses that
23 he has had to incur in the last week, I don't see how this
24 balancing of equities is not weighing in his favor. We can
25 come back in two weeks and sue for contempt. The

1 conversations we have had, we didn't spend the last few days
2 preparing this because we thought that this was simply a waste
3 of everybody's time. This is something that the circumstances
4 of this case -- and I believe there's a fairly strong
5 inference of success on the merits -- entitles us to an asset
6 freeze.

7 THE COURT: I need to look at those cases, folks.
8 I'll be back.

9 (Recess.)

10 THE COURT: Thank you for directing the court to
11 cases that at least in some respects have some bearing on the
12 court's inquiry here.

13 I took a look at all of the cases that the parties
14 referred the court to and I looked with particular interest at
15 the Manor Nursing case. I will agree with you -- this is the
16 defense -- that there was in that case some inquiry into the
17 consequences, as it were, of an asset freeze. As I read the
18 case, the reason why the court was looking into the
19 consequences of the asset freeze with respect to the ongoing
20 business and any disruption thereto was because of the effect
21 that the asset freeze would have ultimately on the ability for
22 investors to be compensated.

23 I'm reading from the opinion. It says, freezing
24 assets under certain circumstances, however, might thwart the
25 goal of compensating investors, if the freeze were to cause

1 such disruption of defendant's business affairs that they
2 would be financially destroyed.

3 So the inquiry in that case, as I read it, was not
4 the consequences with respect to the private concerns but the
5 consequences of the asset freeze that they may have on the
6 public interest.

7 I'm reading from footnote five of SEC vs.
8 Management Dynamics, Inc. And in that case the court said, In
9 any event, as we have stated, since the SEC seeks to vindicate
10 the public interest, the need to enforce the securities laws
11 must be given special emphasis in the district court's
12 calculus. In the formulation of its discretion, it should
13 recognize that the public interest, when in conflicts with
14 private interest, is paramount.

15 What I have heard articulated by the defense in this
16 case are only concerns with respect to the private interests
17 of the defendant in this case and that, based on those
18 concerns, the balance of equities tips in favor of the
19 defendant. But the court's concern here, as I think is
20 articulated in both the Manor Nursing case cited by the
21 defense as well as the Management Dynamics, Inc. cited by
22 plaintiff, are public interests. I need to make a
23 determination here -- I need to use my discretion here -- that
24 ensures that the public interest is served. Again, I've only
25 heard an articulation of concerns, even if the court were to

1 decide that a balance of equities analysis were appropriate,
2 as a general matter -- and I'm not altogether clear that
3 that's the case -- it doesn't seem here to me that when I look
4 at the concerns that are raised by the request for the asset
5 freeze that the concerns raised by the defendant are such that
6 should prevent the court from using its discretion to order
7 the temporary asset freeze.

8 Then that takes me to the scope of the asset freeze.

9 MR. KORNBLAU: Your Honor, may I briefly comment on
10 what your Honor just said?

11 THE COURT: Very briefly.

12 MR. KORNBLAU: The public interest would be the
13 interest on the alleged victims of the alleged violation and
14 the ongoing business develops utility in these tokens so that
15 the current holder of those tokens get what they bargained
16 for. Destroying that business -- it's not about Mr. Middleton
17 -- it's about the holders of those tokens. It's the very same
18 people that the SEC is purporting to defend. The damage to
19 the business will harm them.

20 THE COURT: I hear you articulate that now. It was
21 not the way in which it was articulated to me before. You'll
22 appreciate that. There was not an articulation of concern
23 with respect to the investors as your argument was
24 articulated. You mentioned attorneys' fees, paying your firm,
25 clearing not a concern of the public.

1 MR. KORNBLAU: Completely different point. That has
2 to do with the scope the order.

3 THE COURT: It had to do with whether the ordering
4 of the asset freeze somehow, if I balance the equities that
5 have been tipped in the defendant's favor. It was part of the
6 argument. I heard you. It was mentioned a couple of times.
7 That among other things.

8 In any event, the bar for an asset freeze I think,
9 as the parties know, is not exceedingly high. The question
10 then is the scope of the order. I believe that in this case,
11 as it's been articulated, by the plaintiff that in order to
12 effectuate any asset freeze, to ensure that the order can be
13 carried out, that an independent intermediary is necessary
14 with respect to certain digital accounts. I was not convinced
15 that the freeze, by the way, should extend to the personal
16 assets of the defendant in this case. I didn't really hear an
17 argument as to why they were implicated and ultimately I think
18 that the SEC suggested that a narrower asset freeze that only
19 implicates the business accounts would likely serve its
20 purposes.

21 You did, however, say that if I did so you believe
22 that the independent intermediary was all the more necessary.
23 Fair enough.

24 MR. TENREIRO: Yes, that's correct, your Honor.

25 THE COURT: I did not hear from the defense an

1 argument that would suggest that the plaintiff's concerns with
2 respect to those assets that reside in the digital addresses
3 could not be dissipated in the manner that the plaintiff has
4 set out. I didn't hear an argument from the defense that
5 would give the court comfort that the same sort of the
6 external barriers and obstacles that are present in
7 traditional bank account would exist somehow with respect to
8 these digital accounts. So I don't have anything to balance
9 their argument but to accept it as true that, in fact, while
10 the plaintiff has the ability see that the transfer occurred,
11 there is nothing necessarily to prevent the transfer from
12 occurring, which in other cases where you have assets that
13 reside in traditional bank accounts there are necessarily
14 barriers to such transfers.

15 So with respect to the assets that reside -- the
16 digital assets -- are we calling them digital assets?

17 MR. TENREIRO: Yes, your Honor.

18 THE COURT: With respect to the digital assets the
19 court believes that the independent intermediary would be
20 appropriate. So I'm looking at the schedule A to the proposed
21 order and I would like to go through this. There is a Bank of
22 America account ending in 3904 that is a personal account, am
23 I correct, of Mr. Middleton? A personal asset?

24 MR. KORNBLAU: Your Honor, it looks that way. I
25 don't know the account numbers sitting here. I just got this

1 pile of papers this afternoon.

2 THE COURT: Fair enough.

3 MR. TENREIRO: Your Honor, we believe it's in his
4 name. Again what Mr. Middleton is doing with accounts that
5 are in his name, whether he's using that for personal expenses
6 or not is where we don't have necessarily all the
7 transparency. What we might propose, Mr. Suthammanont
8 informed me while the court was in recess one of these
9 accounts in Mr. Middleton's name has over a million dollars.
10 I'm not sure that's needed for two weeks of expense. What I
11 might propose the court do there's some sort of carve out for
12 a certain amount of reasonable living expenses or we can talk
13 about a specific number here. I don't know how much a person
14 needs to live for two weeks.

15 THE COURT: It depends on who that person is.

16 MR. TENREIRO: And where they live, too.

17 THE COURT: Right.

18 Do you have an amount?

19 MR. KORNBLAU: We have not talked about that. I
20 would have to talk to my client to come up with that. I think
21 the division between corporate and personal makes sense.

22 THE COURT: If we can't identify which ones are
23 personal and which ones are corporate, I think it's clear that
24 it's not clear to the parties. I think you said you weren't
25 certain.

1 MR. KORNBLAU: I'm just sitting here today. I'm
2 sure it's clear to Mr. Middleton.

3 THE COURT: I don't know.

4 MR. KORNBLAU: The name of the account would suggest
5 it's a personal asset. The SEC has just subpoenaed the bank
6 records. I have not even seen them. They have the bank
7 records.

8 MR. TENREIRO: Your Honor, we just got the records.
9 But to simplify it, we would be willing to at this moment
10 agree to a Temporary Restraining Order that only covers the
11 accounts that are not in his individual capacity.

12 THE COURT: They are not in his individual name?

13 MR. TENREIRO: His individual name.

14 THE COURT: That's all we have. We don't know from
15 here whether or not the accounts were used for both business
16 and personal?

17 MR. TENREIRO: That's right. So to the extent that
18 I would just seek some clarification, and I have not heard the
19 court to suggest otherwise, if the court is inclined to permit
20 the SEC to conduct expedited discovery on financial assets
21 that we can inquire --

22 THE COURT: I'm going to grant that as part of the
23 order.

24 MR. TENREIRO: So that we may then determine --

25 THE COURT: That they are somehow implicated by the

1 business asset.

2 MR. TENREIRO: The PI motion the court can decide.

3 THE COURT: Fair enough. I think that makes sense.

4 MR. KORNBLAU: Your Honor --

5 THE COURT: You're getting what you want for
6 purposes of the Temporary Restraining Order, which is that all
7 of the accounts that are identified under the name of Reginald
8 Middleton will not be included in the asset transfer. Should
9 the SEC seek to include those as part of a future order, to
10 the extent a future order is granted, you would have the
11 ability to make any argument. But right now they would not be
12 included, so that that's a win.

13 MR. KORNBLAU: We'll abide by the court's ruling.

14 MR. TENREIRO: If for whatever reason Mr. Middleton
15 has kept his personal assets in the business account, if he
16 tells Mr. Kornblau, I can't buy a soda because you froze the
17 wrong account, if Mr. Kornblau showed us, we would come back
18 to the court and lift the freeze. I would be surprised to
19 learn that Mr. Middleton doesn't have enough money to live
20 over the next few hours, especially if the court doesn't
21 freeze an account that has over a million dollars in it.

22 THE COURT: So the accounts that will be implicated
23 or that will be excluded from the court's order is Bank of
24 America account under the name of Reginald Middleton, account
25 ending 3904, will not be included in the order.

1 The Bank of America account under the name of
2 Reginald Middleton account number ending 3914 will not be
3 included in the order.

4 Citibank account under the name of Reginald
5 Middleton account ending 1630 shall not be included in the
6 order.

7 Citibank account -- this is Reginald Middleton LLC?

8 MR. TENREIRO: That's right. I believe that we have
9 to keep it as a business account, your Honor.

10 THE COURT: It doesn't strike me as a personal
11 account and certainly the defendant will be able to ask the
12 court to reconsider that aspect of the order if you are able
13 to establish that it is, in fact, a personal account, but it
14 is Reginald Middleton LLC the J. P. Morgan Chase, account
15 under the name of Reginald Middleton ending in 4783 shall not
16 be included in the order.

17 Now, can someone tell me with respect to the Kraken
18 account, is that a traditional bank account?

19 MR. TENREIRO: It's not a traditional bank account,
20 but it's an account that we can serve a freeze order on.

21 THE COURT: And Gemini.

22 MR. TENREIRO: It's the same. Gemini and Coinbase,
23 essentially digital asset exchanges where there's an
24 individual that we can and do frequently contact and say
25 there's a freeze order, don't let the person take money out of

1 these accounts.

2 THE COURT: Coinbase.

3 MR. TENREIRO: The same, your Honor.

4 THE COURT: The only accounts that might be
5 implicated or that would trigger the independent intermediary
6 are the blockchain addresses that are noted in the last three
7 rows on page 14 of schedule A and all of the blockchain
8 addresses identified on page 16 what is schedule A.

9 MR. TENREIRO: That is correct, your Honor, with the
10 proviso, as we set forth in our papers and the order, these
11 are the ones we know he controls. He has told us he controls
12 hundreds of them, addresses. We would simply request that to
13 the extent he controls an address, and assets on that address,
14 that all of that be subject to the independent intermediary.

15 THE COURT: I'm just curious. What you are asking
16 for is that if you discover or learn in discovery that there
17 are additional blockchain addresses that those addresses are
18 necessarily -- I'm trying to figure out as a practical matter
19 how you would be able to have the asset transferred to the
20 independent intermediary until they are identified.

21 MR. TENREIRO: Mr. Middleton needs to identify them.

22 THE COURT: So you are asking me for an order
23 directing me to identify additional accounts, right? Because
24 that's not currently contemplated, or unless I'm mistaken, by
25 the order.

1 MR. TENREIRO: The order contemplates.

2 MR. KORNBLAU: Where is that?

3 MR. TENREIRO: For example, for the preliminary
4 order on page nine of the proposed order to show cause, which
5 is under paragraph five, it says the defendant shall within 24
6 hours --

7 THE COURT: Where are you at?

8 MR. TENREIRO: Page nine.

9 THE COURT: Proposed Temporary Restraining Order,
10 subparagraph five?

11 MR. TENREIRO: Yes. It's just that the five is at
12 page eight.

13 THE COURT: Oh, Roman numeral heading V. What are
14 you directing me to?

15 MR. TENREIRO: Roman numeral subheading V which is
16 at the bottom of page eight and the text is on page nine.

17 THE COURT: Which paragraph?

18 MR. TENREIRO: Paragraph one.

19 THE COURT: Thank you.

20 (Pause.)

21 THE COURT: I see. So it's written broadly so that
22 it's all digital assets in their possession to the blockchain
23 address that have been identified by the independent
24 intermediary?

25 MR. TENREIRO: That's right.

1 THE COURT: It would be a single blockchain address
2 that could hold the assets for what could be hundreds of
3 blockchain addresses currently held by Mr. Middleton?

4 MR. TENREIRO: That's correct. The intermediary
5 could propose more than one, but I don't see why.

6 THE COURT: I want to make sure the mechanics of
7 this I understood. It would be established one blockchain
8 address by the independent intermediary and that blockchain
9 address could hold the assets of or from hundreds of
10 blockchain addresses held by Mr. Middleton currently?

11 MR. TENREIRO: Yes, your Honor.

12 THE COURT: All right.

13 I've got it. It took me a minute but I got it

14 (Pause.)

15 THE COURT: I intend to execute the proposed order,
16 as schedule A has been modified on the record, to exclude the
17 personal accounts held by Mr. Middleton.

18 Yes, sir.

19 MR. KORNBLAU: Your Honor, one other issue. We
20 would request, if your Honor is inclined to grant the
21 expedited discovery provisions of the order, we would request
22 that the defense be given the same rights to expedited
23 discovery as the SEC.

24 THE COURT: Absolutely. I can't imagine you are
25 going to object to them having the ability to also propound

1 discovery, are you?

2 MR. TENREIRO: So the hearing would be about
3 Mr. Middleton's assets and to the extent -- I'm not sure what
4 they want from us.

5 THE COURT: I don't know what they want either.
6 Certainly the reasonableness of the request objected to and
7 then resolved by the judge who is going to hear the
8 preliminary injunction. But assuming that it's an appropriate
9 request and reasonable and relevant, I don't see why it is
10 that they shouldn't have the ability to get that discovery in
11 advance of the preliminary injunction as well.

12 MR. TENREIRO: Yes, your Honor.

13 THE COURT: All right.

14 MR. KORNBLAU: That would require a revision of the
15 order.

16 THE COURT: Yes.

17 THE COURT: Well, the request, as it's set out on
18 page ten, pending a determination of the commission's
19 application, the commission's application for expedited
20 discovery concerning defendant's assets including any asset
21 transfers is granted. Would you have a proposed request with
22 respect to your discovery? They have tailored their request
23 for expedited discovery as to any assets transferred to any
24 nonparty recipients. What is it that you are seeking
25 expedited discovery on?

1 MR. KORNBLAU: Your Honor, as I understand, the
2 standard for preliminary injunction includes the likelihood of
3 success on the merits. So, again, I have just received these
4 papers. I don't know what discovery we need. But it would
5 just seem like basic fairness it would be a two-way street on
6 the discovery.

7 THE COURT: I agree with you on that. I'm just
8 trying to figure out how it is that I can tailor the scope of
9 this request for discovery.

10 MR. KORNBLAU: I suppose your Honor could put down a
11 provision that says the defendants shall have reasonable
12 rights to discovery on an expedited basis in connection with
13 the preliminary injunction.

14 THE COURT: I'll say reasonable discovery for the
15 defendants. Certainly you always can fight it out before
16 someone else as to what is reasonable under the circumstances.
17 I don't think it can be sorted out here.

18 Anything else from the defense's perspective?

19 MR. KORNBLAU: Nothing for now, your Honor. Thank
20 you.

21 THE COURT: Subparagraph A only allows for
22 depositions by the commission. When you say discovery, are
23 you talking document and deposition discovery,

24 MR. KORNBLAU: Yes, all of it.

25 THE COURT: That would include subparagraph A. I

1 don't know who you would be deposing.

2 MR. KORNBLAU: I don't know either. This large
3 package has been handed to me two hours ago.

4 THE COURT: I think they are trying to preserve
5 their rights. I'm going to include it. You all again can
6 sort out the proper parameters. If it appears to you that a
7 request is out of bounds, you can raise that.

8 MR. TENREIRO: A question -- and perhaps the court
9 is about to get there -- starting on subparagraph eight,
10 there's some dates --

11 THE COURT: I'm getting there right now.

12 This case is assigned to Judge Amon. It is my
13 understanding that Judge Amon will not be available to hear
14 the preliminary injunction within the fourteen-day time frame
15 that it must be heard. As a result I believe that this will
16 be heard before Judge Pamela Chen. So I'm going to schedule
17 the following: The defendants have already been served I'm
18 assuming, you are here?

19 MR. KORNBLAU: Yes, your Honor.

20 THE COURT: So that is moot, as the defendants have
21 already been served. Today is the twelfth. It's been done.

22 I'm going to give the defendants one week. So the
23 defendants will show cause, it will be before Judge Chen, but
24 on August 25, 2:00 o'clock in room 4FN.

25 Defendant's opposition papers are due on August 16

1 by five p.m. and any reply is due by August 19 at five p.m. I
2 have included at page eleven: The defendant shall be granted
3 reasonable discovery on an expedited basis and, subparagraph
4 A, pursuant to the Federal Rules of Civil Procedure 30A the
5 commission and defendant may take depositions upon oral
6 examination on three days notice of any such deposition. I
7 did not modify subparagraph A in any other way. It relates to
8 the requirement of a subpoena and with respect to the
9 defendant their officers, employees, etcetera. I cannot at
10 least at this point modify that paragraph similarly for the
11 defendants. It's not clear to me who would be the subject of
12 the subpoena.

13 MR. KORNBLAU: Me neither, your Honor.

14 THE COURT: So I'm not going to modify that aspect
15 of the order.

16 Anything else, folks?

17 MR. TENREIRO: That's it from us, your Honor. Thank
18 you.

19 I suppose if there's a discovery issue we should
20 direct it to Magistrate Judge Reyes, in the next ten days?

21 THE COURT: Yes, absolutely. There's a magistrate
22 judge on this. Thank you.

23 THE COURT: My clerk makes an excellent point. I
24 think it's prudent for you to direct a courtesy copy of your
25 submissions, your written submissions, to Judge Chen, as she

1 is not the judge on this case, so she would not get it through
2 the bounce, and I think you all want her to have it as soon as
3 possible.

4 MR. TENREIRO: We will, your Honor. May I inquire
5 in terms of the order to show cause, I assume the court will
6 enter that one on the docket so that we may serve it or should
7 we ourselves enter it?

8 THE COURT: We will.

9 Anything else, folks?

10 MR. TENREIRO: Thank you, your Honor.

11 THE COURT: Thank you. I appreciate your argument
12 this afternoon.

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