

Asset Freeze Order issued on December 2, 2021 (ECF No. 14). The SEC has not served the Asset Freeze Order on the bank that holds IGroup Enterprises and Ikey bank accounts. Those bank accounts are not, and have not been, frozen as a result of this case. After receipt of his motion, the undersigned promptly communicated this to Ikey in a telephone call and by email. Ikey's motion as it pertains to IGroup Enterprises should therefore be denied as moot.

Relief Defendant Encypher Bastion, LLC ("Encypher Bastion") is an Asset Freeze Party. (*See* ECF No. 14, p. 2 at ¶ A, p. 4-7). Its account at Wells Fargo Bank ending in x0313 is enumerated as an account to be frozen in the Asset Freeze Order. (*Id.* at p. 7). Accordingly, the SEC served the Asset Freeze Order on Wells Fargo Bank, and the Encypher Bastion account ending in x0313 has since been frozen. Ikey's motion as it pertains to Encypher Bastion should be denied. As further detailed below, Encypher Bastion performed no work for Heartland, but Ikey received hundreds of thousands of dollars in compensation through it. What remains of those ill-gotten gains should be preserved for future disgorgement purposes. Additionally, Ikey has not provided any support for his claimed living expenses.

In its Complaint, the SEC alleged that Encypher Bastion has owned 85% of the Heartland Defendants since September 13, 2019, and that Ikey received Heartland compensation derived from investor funds through Encypher Bastion. (ECF No. 1 at ¶ 31). The SEC further alleged that between

November 2019 and September 2021, at Ikey's direction, Defendant The Heartland Group Ventures, LLC paid \$40,000 per month, for a total of about \$908,000, to Encypher Bastion, which performed no work for Heartland. (*Id.* at ¶ 133). The SEC alleged that these payments served no apparent purpose other than to enrich Ikey at investors' expense and were in addition to approximately \$11 million that Heartland paid another Ikey entity, Defendant Alternative Office Solutions, LLC ("AOS") (*id.* at ¶¶ 133-134), which managed Heartland investor accounts.

Courts are empowered to freeze defendants' assets to preserve the status quo and prevent dissipation of ill-gotten gains so that they remain available to fund subsequent disgorgement orders and civil penalties. *SEC v. Faulkner*, No. 3:16-CV-1735-D, 2017 WL 4238705, at *3 (N.D. Tex. Sept. 25, 2017); *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D, 2007 WL 2192632, at *2 (N.D. Tex. July 31, 2007). Asset freeze orders may also be properly directed to non-defendant parties who hold funds on a defendant's behalf. *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998) ("Federal courts may order equitable relief against a person who is not accused of wrongdoing in a securities enforcement action where that person: (1) has received ill-gotten gains; and (2) does not have a legitimate claim to those funds."); *see also Smith v. SEC*, 653 F.3d 121, 128 (2d Cir. 2011). It was therefore proper to freeze the bank account of Encypher Bastion, which the SEC alleged received ill-gotten gains. What

remains should be protected from further dissipation and preserved for future disgorgement purposes.

The SEC opposes any modification to the Asset Freeze Order, but if the Court determines a modification is necessary to allow for payment of Ikey's living expenses, further information is required to evaluate his request, and any modification should be limited to reasonable and supported living expenses for Ikey, his wife, and any minor dependents. "The defendant's interest in having access to funds needed to pay ordinary and necessary living expenses ... must be balanced against the government's interest in preventing the depletion of potentially forfeitable assets." *SEC v. Dobbins*, No. 3:04-CV-0605-H, 2004 WL 957715, at *3 (N.D. Tex. Apr. 14, 2004) (quoting *U.S. v. Thier*, 801 F.2d 1463, 1474 (5th Cir. 1987)). Denial of a request to use frozen assets for living expenses is appropriate where a defendant fails to provide enough information to evaluate the request, including information about other available assets not derived from alleged fraud and the number of supported dependents. *See Dobbins*, 2004 WL 957715, at *3.

Ikey's stated monthly living expenses of \$21,208 appear to encompass living expenses of not just Ikey, but also three of his adult sons and their families. Ikey has provided only cursory descriptions of his living expenses, no itemization or supporting documentation, and no information regarding other

potential assets that are not frozen or were not derived from the alleged fraud.¹ He has not established why Heartland investor funds should be unfrozen for use by his adult sons and their families. His motion should therefore be denied as it pertains to Encypher Bastion.

WHEREFORE, Plaintiff United States Securities and Exchange Commission respectfully requests that the Court deny defendant James Ikey's Motion to Release Bank Accounts (ECF No. 47) and grant such other and further relief as this Court deems just and proper.

¹ Likewise, Ikey has not provided the SEC with interim accountings for himself, IGroup Enterprises, Encypher Bastion, or AOS pursuant to the Order for Temporary Restraining Order and Other Emergency Relief (ECF No. 12 at p. 14, ¶ XIII), which would also be useful in evaluating whether Ikey has access to other assets for living expenses. The undersigned reiterated the interim accounting requirement to Ikey in a telephone call and by email on December 13, 2021, and Ikey has stated that he will provide the accountings on December 14, 2021.

Dated: December 14, 2021

Respectfully submitted,

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

By: /s/ Stephanie L. Reinhart
Stephanie L. Reinhart

Jonathan S. Polish (IL Bar No. 6237890)
Stephanie L. Reinhart (IL Bar No. 6287179)

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

175 W. Jackson Blvd., Suite 1450
Chicago, Illinois 60604
(312) 353-6884 (Polish)
PolishJ@SEC.gov
(312) 886-9899 (Reinhart)
ReinhartS@SEC.gov

Keefe Bernstein (Texas Bar No. 24006839)

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

801 Cherry Street, Suite 1900
Fort Worth, Texas 76102
(817) 900-2607
BernsteinK@sec.gov

CERTIFICATE OF SERVICE

On **December 14, 2021**, I caused the foregoing filing to be transmitted to the following attorneys and *pro se* defendant by email at the email addresses reflected below.

/s/ Stephanie L. Reinhart

Theodore M. Grannatt (tgrannatt@mccarter.com)
Joseph C. Donahue (jdonahue@mccarter.com)
McCarter & English
(attorneys for Defendants Muratore and Pearsey)

Alex More (amore@ccsb.com)
Carrington Coleman
(attorney for Defendant Brunson)

Kevin Edmundson (Kevin@eswpllc.com)
Jesse Weiss (Jesse@eswpllc.com)
Edmundson Shelton Weiss PLLC
(attorney for Sahota Defendants)

Deborah Williamson (dwilliamson@dykema.com)
Danielle Rushing (drushing@dykema.com)
(Receiver and attorney for Receiver)

James Ikey (James.ikeyrcg@gmail.com)
(defendant James Ikey)