

1 SARAH PREIS (DC Bar No. 997387)  
2 (Admitted *pro hac vice*)  
3 Email: sarah.preis@cfpb.gov  
4 Tel.: (202) 435-9318

5 JESSE STEWART (NY Bar No. 5145495)  
6 (Admitted *pro hac vice*)  
7 Email: jesse.stewart@cfpb.gov  
8 Tel.: (202) 435- 9641

9 N. NATHAN DIMOCK (DC Bar No. 487743)  
10 (Admitted *pro hac vice*)  
11 Email: nathan.dimock@cfpb.gov  
12 Tel.: (202) 435-9198

13 1700 G Street, NW, Washington, DC 20552  
14 Fax: (844) 826-5016

15 LEANNE E. HARTMANN (C.A. Bar No. 264787)  
16 (Local Counsel for the Bureau of Consumer Financial Protection)  
17 Email: leanne.hartmann@cfpb.gov / Fax: (415) 844-9788  
18 301 Howard Street, Suite 1200, San Francisco, CA 94105  
19 *Attorneys for Plaintiff Bureau of Consumer Financial Protection*

20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 Bureau of Consumer Financial  
23 Protection, et al.,  
24  
25 Plaintiffs,  
26  
27 v.  
28  
29 Consumer Advocacy Center Inc., d/b/a  
30 Premier Student Loan Center, et al.,  
31  
32 Defendants.

CASE NO. 8:19-cv-01998 MWF (KS)  
**NOTICE OF PLAINTIFF’S  
RENEWED MOTION FOR ORDER  
TO SHOW CAUSE WHY  
DEFENDANT WEN SHOULD NOT  
BE HELD IN CONTEMPT AND  
FOR RELATED RELIEF**

**REDACTED PURSUANT TO  
ORDER OF THE COURT DATED  
MARCH 24, 2022**

Hearing: May 16, 2022, 10:00 AM  
Court: Hon. Michael W. Fitzgerald  
Courtroom 5A

1 TO THE COURT AND ALL PARTIES:

2 This motion is made following the conference of counsel pursuant to Local  
3 Rule 7-3, which took place on March 21, 2022. Plaintiff the Bureau of Consumer  
4 Financial Protection (Bureau) hereby seeks entry of an order requiring Defendant  
5 Kaine Wen to show cause as to why he should not be held in contempt and for  
6 related relief. The Court entered the *Ex Parte* Temporary Restraining Order with  
7 Appointment of Receiver, and Other Equitable Relief, and Order to Show Cause  
8 Why a Preliminary Injunction Should Not Issue on October 21, 2019, (ECF No.  
9 24), and the Stipulated Preliminary Injunction with Asset Freeze, Appointment of  
10 Receiver, and Other Equitable Relief on November 15, 2019, (ECF No. 103)  
11 (collectively, Preliminary Orders). The Preliminary Orders froze Wen's assets and  
12 required him to disclose the same. The Bureau's evidence shows that Wen has  
13 concealed and transferred or dissipated significant cryptocurrency in direct  
14 violation of the Preliminary Orders.<sup>1</sup>

15 The Bureau therefore respectfully requests that the Court order:

16 1. Wen to show cause why he should not be held in contempt for his  
17 violations of this Court's orders.

18 2. Wen to transfer, to the Receiver or an account in Wen's name at a  
19 cryptocurrency exchange incorporated and headquartered in the United States, the  
20 amount of cryptocurrency that this Court concludes Wen has concealed or  
21 dissipated in violation of the asset freeze, which the Bureau asserts is at least  
22 **Redacted** bitcoin and **Redacted** ether.

23 3. To the extent that he has not already done so, Wen to transfer, to the  
24 Receiver or an account in Wen's name at a cryptocurrency exchange incorporated  
25 and headquartered in the United States, all other cryptocurrency assets that he  
26

27 <sup>1</sup> See ECF No. 24 § VI(A), VIII(A); ECF No. 103 § VI(A).  
28

1 holds as of the date of this Motion, which the Bureau asserts are at least  
2 **Redacted** bitcoin, **Redacted** BitTorrent, and **Redacted** ether.

3 4. Wen to provide to the Bureau a sworn statement attesting to his  
4 compliance with item nos. 2-3 above within seven (7) business days of complying  
5 with those requirements, which statement must also identify the recipient of the  
6 transfers, including the name of the financial institution and account number to  
7 which he transferred the assets described in item nos. 2-3 to the extent those assets  
8 are not transferred to the Receiver.

9 5. If he fails to comply with item nos. 2-4, Wen to pay a fine of \$1,000  
10 each day to coerce his compliance. If Wen is ordered to pay a fine, he should be  
11 ordered to provide a full accounting identifying all sources of funds used to pay the  
12 fine, including the account-holder name, account number, and financial institution  
13 from which the funds derived.

14 On March 21, 2022, Bureau counsel spoke with Wen's counsel, Matthew  
15 Eanet, by phone to discuss the relief requested in the Bureau's Renewed Motion  
16 for an Order to Show Cause Why Defendant Wen Should Not Be Held in  
17 Contempt and for Related Relief. Counsel for Wen stated that he had not been able  
18 to speak with his client about the anticipated motion due to Wen's current  
19 incarceration, and therefore did not have Wen's position on the Renewed  
20 Contempt Motion. Counsel for Wen raised concerns about Wen's ability to comply  
21 with the Bureau's requested relief given his incarceration.

22 Mr. Eanet's contact information is as follows:

23 Matthew Eanet

24 Eanet, PC

25 550 S. Hope Street, Suite 750

26 Los Angeles, CA 90071

27 Tel: (310) 775-2495

28

1 Fax: (310) 593-2589

2 matt@eanetpc.com

3 This motion is supported by the accompanying memorandum of points and  
4 authorities; declarations of Pamela Clegg, Jesse Stewart, and Theresa Ridder; and  
5 the Bureau's supporting exhibits. A proposed order is attached hereto.

6  
7 Dated: April 8, 2022

*/s/ Jesse Stewart* \_\_\_\_\_

8 Jesse Stewart (N.Y. Bar No. 5145495)

9 *Admitted pro hac vice*

10 Email: jesse.stewart@cfpb.gov

11 *Attorney for Plaintiff Bureau of Consumer  
12 Financial Protection*

1 SARAH PREIS (DC Bar No. 997387)

(Admitted *pro hac vice*)

2 Email: sarah.preis@cfpb.gov

3 Tel.: (202) 435-9318

4 JESSE STEWART (NY Bar No. 5145495)

(Admitted *pro hac vice*)

5 Email: jesse.stewart@cfpb.gov

6 Tel.: (202) 435- 9641

7 N. NATHAN DIMOCK (DC Bar No. 487743)

(Admitted *pro hac vice*)

8 Email: nathan.dimock@cfpb.gov

9 Tel.: (202) 435-9198

10 1700 G Street, NW, Washington, DC 20552

11 Fax: (844) 826-5016

12 LEANNE E. HARTMANN (C.A. Bar No. 264787)

(Local Counsel for the Bureau of Consumer Financial Protection)

13 Email: leanne.hartmann@cfpb.gov / Fax: (415) 844-9788

301 Howard Street, Suite 1200, San Francisco, CA 94105

*Attorneys for Plaintiff Bureau of Consumer Financial Protection*

14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA**

16 Bureau of Consumer Financial  
17 Protection, et al.,

18 Plaintiffs,

19 v.

20 Consumer Advocacy Center Inc., d/b/a  
21 Premier Student Loan Center, et al.,

22 Defendants.

CASE NO. 8:19-cv-01998 MWF (KS)

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF’S RENEWED MOTION  
FOR ORDER TO SHOW CAUSE  
WHY DEFENDANT WEN SHOULD  
NOT BE HELD IN CONTEMPT AND  
FOR RELATED RELIEF**

**REDACTED PURSUANT TO ORDER  
OF THE COURT DATED MARCH 24,  
2022**

Hearing: May 16, 2022, 10:00 AM  
Court: Hon. Michael W. Fitzgerald  
Courtroom 5A

TABLE OF CONTENTS

1

2 Table of Authorities ..... iii

3 **I.** Procedural History .....2

4 **II.** Factual Background.....3

5 A. Background on Cryptocurrency .....3

6 B. Wen’s Financial Statements Related to the TRO .....5

7 C. Wen’s Fifth Amendment Invocation .....7

8 D. Wen’s Cryptocurrency Holdings and Transfers .....8

9 1. Wen highly likely controlled about <sup>Redacted</sup> undisclosed BTC at 17 unhosted

10 wallet addresses associated with a transaction funding Wen’s Bittrex

11 exchange account .....9

12 2. Wen most likely controlled about <sup>Redacted</sup> undisclosed BTC at a Bitmex.com

13 exchange account funded by Wen .....10

14 3. Wen most likely controlled about <sup>Redacted</sup> undisclosed BTC at seven unhosted

15 wallet addresses associated with Wen’s exchange accounts ..... 12

16 4. Wen most likely controlled about <sup>Redacted</sup> ETH held at two unhosted wallet

17 addresses funded by Wen’s Poloniex and Bitstamp Accounts ..... 14

18 **III.** Argument .....15

19 A. Legal Standard .....15

20 B. Wen Has Violated This Court’s Orders by Concealing at Least <sup>Redacted</sup> BTC and

21 <sup>Redacted</sup> ETH ..... 16

22 C. Wen Has Violated This Court’s Orders by Transferring or Dissipating at Least

23 <sup>Redacted</sup> BTC and <sup>Redacted</sup> ETH Since Entry of the TRO .....17

24 D. An Adverse Interference and Other Relief Against Wen Is

25 Warranted .....18

26 **IV.** Requested Relief .....22

27 **V.** Conclusion .....24

28

TABLE OF AUTHORITIES

**Cases**

*CFTC v. Driver*,  
877 F. Supp. 2d 968 (C.D. Cal. 2012)..... 19

*FTC v. Affordable Media, LLC*,  
179 F.3d 1228 (9th Cir. 1999)..... 15, 16, 22

*FTC v. Cardiff*,  
No. CV5182104SJO(PLAX), 2020 WL 2084677 (C.D. Cal. Mar. 31, 2020)..... 15, 22

*FTC v. EDebitPay, LLC*,  
695 F.3d 938 (9th Cir. 2012)..... 15, 22

*FTC v. Kutzner*,  
No. SACV1600999BRO(AFMX), 2017 WL 2985397 (C.D. Cal. June 12, 2017) .....  
..... 16, 22

*FTC v. Laptop & Desktop Repair, LLC*,  
No. 1:16-CV-3591-AT, 2016 WL 10805748 (N.D. Ga. Nov. 17, 2016) ..... 22

*FTC v. Marshall*,  
781 F. App’x 599 (9th Cir. 2019)..... 16

*In re Crystal Palace Gambling Hall, Inc.*,  
817 F.2d 1361 (9th Cir. 1987)..... 22

*Int’l Union, UMWA v. Bagwell*,  
512 U.S. 821 (1994) ..... 15, 22

*Nationwide Life Ins. Co. v. Richards*,  
541 F.3d 903 (9th Cir. 2008)..... 19, 21

*SEC v. Current Fin. Servs., Inc.*,  
798 F. Supp. 802 (D.D.C. 1992) ..... 16

*SEC v. Colello*,  
139 F.3d 674 (9th Cir. 1998)..... 19, 21

1 *SEC v. Premier Holding Corp.*,  
2 No. SACV1800813CJC(KESX), 2020 WL 8099514 (C.D. Cal. Nov. 30, 2020) 19, 21  
3 *Stone v. City and County of San Francisco*,  
4 968 F.2d 850 (9th Cir. 1992)..... 15  
5 *United States v. Harding*,  
6 No. 219CV00871WBS(CKD), 2020 WL 838439 (E.D. Cal. Feb. 20, 2020)..... 21  
7 *United States v. United Mine Workers of Am.*,  
8 330 U.S. 258 (1947) ..... 22

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 Plaintiff the Consumer Financial Protection Bureau (Bureau) renews its  
2 motion for an order to show cause why Defendant Kaine Wen should not be  
3 held in contempt for violating this Court’s temporary restraining order (TRO)  
4 and preliminary injunction order (PI Order) (collectively, Preliminary Orders).<sup>1</sup>  
5 Specifically, the evidence submitted in support of this motion shows that Wen  
6 violated the accounting requirements at Section VIII(A) of the TRO by  
7 concealing at least <sup>Redacted</sup> bitcoin (BTC) and other cryptocurrencies that were  
8 worth over \$ <sup>Redacted</sup> at the time of the TRO, and would be worth over \$ <sup>Redacte</sup>  
9 <sup>Redacted</sup> as of March 29, 2022. And Wen violated the asset freeze at Section VI  
10 of the Preliminary Orders by transferring or dissipating at least <sup>Redacted</sup> BTC and  
11 <sup>Redacted</sup> ether (ETH) cryptocurrencies, which were worth over \$ <sup>Redacted</sup> at the  
12 times of the relevant transactions. Compounding his violations of the  
13 Preliminary Orders, Wen made false statements, delayed in correcting them,  
14 and then asserted the Fifth Amendment privilege against self-incrimination in  
15 response to questions about his assets and transactions, including to each  
16 question posed by this Court’s March 16, 2021 order on the Bureau’s original  
17 contempt motion.

18 Accordingly, the Bureau respectfully requests that this Court order Wen  
19 to show cause why he should not be held in contempt for his violations of the  
20 Preliminary Orders. The Bureau further requests that the Court order Wen to  
21 transfer certain cryptocurrency holdings, including concealed and dissipated  
22 holdings, to the Receiver or to a U.S.-based cryptocurrency exchange account  
23 in his name pending resolution of Plaintiffs’ claims against him. If Wen fails to  
24 take these actions, he should pay a daily fine to coerce his compliance, as well  
25 as provide an accounting of assets used to pay any fine.

26  
27  
28  
<sup>1</sup> TRO, ECF No. 24; Stipulated Prelim. Inj., ECF No. 103.

**I. PROCEDURAL HISTORY**

1  
2 Plaintiffs the Bureau, the State of Minnesota, the State of North Carolina,  
3 and the People of the State of California brought this action on October 21,  
4 2019, and sought a temporary restraining order, asset freeze, the appointment of  
5 a receiver over the corporate defendants, and other equitable relief to put an  
6 immediate halt to the defendants’ illegal student loan debt-relief operation,  
7 which has resulted in over \$95 million in redress ordered to thousands of  
8 consumers nationwide.<sup>2</sup> The Court granted Plaintiffs’ motion the same day.<sup>3</sup>  
9 Wen waived service of the complaint and was served with a copy of the TRO  
10 and the complaint through counsel on October 25, 2019.<sup>4</sup> On November 15,  
11 2019, the Court entered the PI Order, which extended the asset freeze  
12 provisions of the TRO until entry of a final judgment.<sup>5</sup>

13 On January 8, 2021, the Bureau filed a motion seeking an order to show  
14 cause why Wen should not be held in contempt (First Contempt Motion).<sup>6</sup> The  
15 Bureau asserted that Wen had dissipated at least <sup>Redacted</sup> ETH worth over \$ <sup>Reda</sup>  
16 <sup>Redacted</sup> and failed to comply fully with his financial accounting obligations in  
17 violation of the Preliminary Orders.<sup>7</sup> After briefing, this Court held a hearing on  
18 February 24, 2021, and issued an order on March 16, 2021 (Disclosure Order).<sup>8</sup>  
19 The Disclosure Order denied without prejudice the Bureau’s request for a  
20 contempt order to show cause, but ordered Wen to respond to detailed questions  
21

22 <sup>2</sup> Compl., ECF No. 2; Memo. in Supp. of TRO, ECF No. 3-3; Stipulated Final J.  
23 and Order as to Def. Tuong Nguyen, ECF No. 210 ¶ 28; Corrected and Am.  
24 Stipulated Final J. and Order as to Def. Prime Consulting LLC, ECF No. 211  
25 ¶ 28. The operative complaint is Plaintiffs’ Third Amended Complaint, ECF  
26 No. 314 (redacted) and 315 (SEALED).

27 <sup>3</sup> ECF No. 24 (SEALED).

28 <sup>4</sup> Preis Decl. of Service on Defendants, ECF No. 88 ¶ 3.

<sup>5</sup> ECF No. 103 at 12-14, 40:22-24.

<sup>6</sup> ECF Nos. 256 (SEALED), and 257 (redacted).

<sup>7</sup> ECF Nos. 256 at 9-11 (SEALED), and 257 at 9-11 (redacted).

<sup>8</sup> ECF No. 277 at 1.

1 about his cryptocurrency assets and transactions.<sup>9</sup> And the Court stated that “if  
2 Defendant Wen fails to comply with the Disclosure Order” or “turns over  
3 information supporting the Bureau’s theory of asset dissipation,”  
4 the Court would have “no hesitation holding Defendant Wen in contempt.”<sup>10</sup>

## 5 II. FACTUAL BACKGROUND

### 6 A. Background on Cryptocurrency

7 Cryptocurrency is a type of virtual currency that uses distributed ledger  
8 technology known as a blockchain.<sup>11</sup> There are a number of varieties of  
9 cryptocurrency, including BTC, Bitcoin Cash (BCH), and ETH.<sup>12</sup> All  
10 cryptocurrency transactions that occur on the blockchain are recorded on the  
11 blockchain as belonging to a certain address.<sup>13</sup>

12 Cryptocurrency addresses are unique strings of numbers and letters that  
13 serve a function similar to bank account numbers, where they are used to direct  
14 transfers to other users.<sup>14</sup> For BTC, BCH, and ETH, each cryptocurrency  
15 address corresponds to a private key, which is also a unique alphanumeric  
16 sequence.<sup>15</sup> Only a person in possession of the private key can move the  
17 cryptocurrency from an address and thus own and control the funds at that  
18 address.<sup>16</sup>

19 In order to send cryptocurrency from one address to another, the user in  
20 control of the sending address creates a transaction, which specifies the amount  
21 of cryptocurrency to be sent and the receiving address where the user wishes to  
22

---

23 <sup>9</sup> ECF No. 277 at 8-10.

24 <sup>10</sup> ECF No. 277 at 10.

25 <sup>11</sup> Decl. of Pamela Clegg, Ex. 1 [hereinafter Clegg Decl.] ¶ 21.

26 <sup>12</sup> Clegg Decl. ¶ 22.

27 <sup>13</sup> Clegg Decl. ¶¶ 23, 35. Ethereum is the platform on which ether (ETH) is a  
28 currency. *Compare* Clegg Decl. ¶ 22, *with* Clegg Decl. ¶ 23.

<sup>14</sup> Clegg Decl. ¶ 25.

<sup>15</sup> Clegg Decl. ¶ 26.

<sup>16</sup> Clegg Decl. ¶¶ 26-27, 33.

1 send the cryptocurrency.<sup>17</sup> The transaction includes a digital signature of that  
2 payment instruction along with the private key that corresponds to the sending  
3 address.<sup>18</sup> The transaction is then verified on the blockchain.<sup>19</sup> The verified  
4 transactions for cryptocurrencies such as BTC, BCH, or ETH are recorded  
5 chronologically, forming an immutable chain.<sup>20</sup>

6 Cryptocurrency holders use one or more “wallets,” which hold the  
7 private key(s) that give access to the cryptocurrency at the respective  
8 addresses.<sup>21</sup> Unlike a bank account, there is no third party to record the proper  
9 owner of a cryptocurrency address.<sup>22</sup> Generally, multiple addresses may be  
10 generated and controlled from a single wallet.<sup>23</sup> The person controlling the  
11 wallet generally controls all the associated addresses and private keys.<sup>24</sup>

12 Wallets may be hosted or unhosted.<sup>25</sup> A hosted wallet is held at a  
13 third-party financial institution, like a cryptocurrency exchange, which allows  
14 the account holder to store, send, and receive cryptocurrency off the blockchain  
15 via the exchange’s digital platform.<sup>26</sup> An unhosted wallet is not hosted by a  
16 third-party financial institution.<sup>27</sup> An unhosted wallet can be software or  
17 hardware that allows a user to hold, store, and transfer cryptocurrency.<sup>28</sup>  
18 Unhosted wallets allow for a certain degree of anonymity and concealment of  
19 illicit financial activity because only a person with access to the unhosted wallet  
20

---

21 <sup>17</sup> Clegg Decl. ¶ 27.

22 <sup>18</sup> Clegg Decl. ¶ 27.

23 <sup>19</sup> Clegg Decl. ¶ 27.

24 <sup>20</sup> Clegg Decl. ¶ 27.

25 <sup>21</sup> Clegg Decl. ¶ 29.

26 <sup>22</sup> Clegg Decl. ¶ 29.

27 <sup>23</sup> Clegg Decl. ¶ 29.

28 <sup>24</sup> Clegg Decl. ¶¶ 26, 29, 31.

<sup>25</sup> Clegg Decl. ¶ 32.

<sup>26</sup> Clegg Decl. ¶ 32.

<sup>27</sup> Clegg Decl. ¶ 33.

<sup>28</sup> Clegg Decl. ¶ 33.

1 can control, and confirm control of, the cryptocurrency held at the address(es)  
2 controlled through the unhosted wallet.<sup>29</sup> Thus, while those addresses are  
3 publicly visible on the blockchain, including the balance at and transactions  
4 associated with the addresses, a person controlling the addresses is not typically  
5 identified on the blockchain and can only be conclusively confirmed by the  
6 person controlling the unhosted wallet, who is typically the same person.<sup>30</sup>

7 **B. Wen’s Financial Statements Related to the TRO**

8 The Court’s Preliminary Orders froze all of Wen’s assets and the TRO  
9 required him to complete a financial statement (Financial Statement) “accurate  
10 as of the date of service of this Order.”<sup>31</sup> As relevant here, Item 23 of the  
11 Financial Statement required Wen to list all assets not identified elsewhere on  
12 that form, including but not limited to “cryptocurrency and other virtual  
13 currencies.”<sup>32</sup>

14 In his November 1, 2019 Financial Statement (Original Financial  
15 Statement), Wen claimed he had no virtual currency or cryptocurrency.<sup>33</sup> Wen  
16 further declared that he had “no assets, owned either directly or indirectly . . . or  
17 income of any nature other than as shown in, or attached to, this statement.”<sup>34</sup>  
18 On multiple occasions from September through November 2020, the Bureau  
19 pressed Wen to amend his Original Financial Statement to address apparent  
20  
21

22 <sup>29</sup> Clegg Decl. ¶¶ 33, 43, 115.

23 <sup>30</sup> Clegg Decl. ¶¶ 28, 33, 43, 115.

24 <sup>31</sup> ECF No. 24 § VIII(A).

25 <sup>32</sup> ECF No. 24, Attachment A, at Item 23. Wen was also required to disclose  
26 certain transfers, sales, or assignments of assets, including virtual currency, and  
27 the participants in such transactions, from January 1, 2015, through the date of  
28 the TRO. *See id.* at Item 31; ECF No. 24 § VIII(D); ECF No. 103 § VIII(D).

<sup>33</sup> Decl. of Jesse Stewart, Ex. 2 [hereinafter Stewart Decl.] ¶ 3; Wen November  
1, 2019 Financial Statement, Ex. 4 at 133 (previously filed as Ex. 1-2 to First  
Contempt Motion, ECF No. 256-3 (SEALED)).

<sup>34</sup> Ex. 4 at 147.

1 inaccuracies.<sup>35</sup> On December 1, 2020, the Bureau issued expedited discovery to  
2 Wen about his **Redacted** holdings and transactions, and certain transfers.<sup>36</sup>  
3 Wen declined to respond to each request, invoking the Fifth Amendment  
4 privilege against self-incrimination.<sup>37</sup>

5 On December 17, 2020, Wen amended his Financial Statement, including  
6 Item 23, and disclosed for the first time unspecified amounts of **Redacted**  
7 **Redacted** that “**Redacted** .<sup>38</sup> On March 1,  
8 2021, just days after the Court held a hearing on the Bureau’s First Contempt  
9 Motion, Wen further amended his Financial Statement, providing additional  
10 details about his **Redacted** holdings and revealing that he also held  
11 additional cryptocurrencies.<sup>39</sup> (Hereinafter, Wen’s December 17, 2020 and  
12 March 1, 2021 amendments to his Financial Statement are referred to  
13 collectively as his Amended Financial Statement.) The Amended Financial  
14 Statement provided that Wen owned or controlled the following  
15 cryptocurrencies as of October 25, 2019, and **Redacted** :

- 16 • **Redacted** held in an “Online Cryptocurrency  
17 Wallet held by [‘Sea’].”

18  
19  
20 <sup>35</sup> Stewart Decl. ¶¶ 4-6; Ex 5 (previously filed as Ex. 4 to First Contempt  
21 Motion, ECF No. 256-5 (SEALED)); Ex. 6 (previously filed as Ex. 6-1 to First  
22 Contempt Motion, ECF No. 256-7 (SEALED)).

23 <sup>36</sup> Decl. of Theresa Ridder, Ex. 3 [hereinafter Ridder Decl.] ¶ 6; Ex. 11  
24 (previously filed as Ex. 8-3 to First Contempt Motion, ECF No. 256-10  
25 (SEALED)).

26 <sup>37</sup> Ridder Decl. ¶ 7; Ex. 12 (previously filed as Ex. 11 to First Contempt  
27 Motion, ECF No. 257-17).

28 <sup>38</sup> Stewart Decl. ¶ 7; Ex. 7 at 177 (previously filed as Ex. 14 to First Contempt  
Motion, ECF No. 256-15). In disclosing this **Redacted** , Wen also stated,  
“I am unable to more fully answer this question due to the unstructured nature  
and volume of transactions during the relevant period, lack of available  
documentation, records, or information, and the volatility of cryptocurrency  
prices.” Ex. 7 at 177.

<sup>39</sup> ECF No. 275-1, Ex. 8.

- 1 • Redacted held at the “Bittrex Online Exchange.”
- 2 • Redacted held at the “Bittrex Online Exchange.”
- 3 • Redacted “Sea” at Wen’s “Binance
- 4 Online Exchange” account (Wen’s Binance Account).<sup>40</sup>

5 At the time of the TRO, these Redacted were worth over \$Redacted.<sup>41</sup>

6 Wen stated that he had transferred about Redacted to “Sea” in 2017 and 2018  
7 so that “Sea” could invest the Redacted in “various Initial Coin Offering . . . pools  
8 and repay various debts on my behalf.”<sup>42</sup> Wen stated that “Sea” was a “friend”  
9 who resides in China and Macau.<sup>43</sup> On the Amended Financial Statement, Wen  
10 again declared that he had “no assets, owned either directly or indirectly . . . or  
11 income of any nature other than as shown in, or attached to, this statement.”<sup>44</sup>

### 12 C. Wen’s Fifth Amendment Invocation

13 At his March 4, 2021 deposition, Wen invoked the Fifth Amendment  
14 privilege against self-incrimination in declining to answer multiple questions,  
15 including questions about the accuracy of his Original Financial Statement,  
16 transfers of his ETH cryptocurrency since the TRO, and his income and  
17 expenses since the TRO.<sup>45</sup> At the deposition, Bureau staff asked whether Wen  
18 currently held “any other cryptocurrency other than the cryptocurrency  
19 identified on [the Amended Financial Statement].”<sup>46</sup> Wen responded, “[n]one  
20 that I am – that I am aware of.”<sup>47</sup> And on March 30, 2021, Wen invoked the  
21 Fifth Amendment privilege against self-incrimination in response to each topic

22 \_\_\_\_\_  
23 <sup>40</sup> Ex. 8 at 188. Redacted are other virtual currencies. *See* Ridder  
24 Decl. ¶ 35, App. C.

25 <sup>41</sup> Ridder Decl. App. C.

26 <sup>42</sup> Ex. 8 at 188-89, n.14.

27 <sup>43</sup> Ex. 8 at 188-89, n.2.

28 <sup>44</sup> Ex. 8 at 190.

<sup>45</sup> Wen Dep. Tr., Ex. 13 [hereinafter Wen Dep. Tr.], at 19:9-21:3, 83:22-84:4,  
125:2-20, 126:2-20, 129:1-130:21, 135:10-137:7, 138:6-139:16.

<sup>46</sup> Wen Dep. Tr. at 118:7-8.

<sup>47</sup> Wen Dep. Tr. at 118:13.

1 that the Disclosure Order required him to address.<sup>48</sup>

## 2 **D. Wen’s Cryptocurrency Holdings and Transfers**

3 Following the Disclosure Order, the Bureau retained Pamela A. Clegg,  
4 Vice President of Financial Investigations for the firm CipherTrace, to help the  
5 Bureau trace and understand Wen’s cryptocurrency holdings and transactions.<sup>49</sup>  
6 Ms. Clegg’s findings show that as of October 25, 2019, Wen most likely  
7 controlled:

- 8 • about <sup>Redacted</sup> BTC (worth nearly \$<sup>Redacted</sup>) at 24 BTC addresses, which  
9 are most likely unhosted wallet addresses;<sup>50</sup>
- 10 • about <sup>Redacted</sup> ETH (worth over \$<sup>Redacted</sup>) at two ETH addresses, which  
11 are most likely unhosted wallet addresses;<sup>51</sup> and
- 12 • about <sup>Redacted</sup> BTC (worth over \$<sup>Redacted</sup>) at a Bitmex.com exchange  
13 account.<sup>52</sup>

14 Wen has not disclosed any of these BTC and only some of the ETH to  
15 Plaintiffs.<sup>53</sup> Finally, Ms. Clegg concluded that as of March 29, 2022, Wen still  
16 most likely controlled at least <sup>Redacted</sup> BTC (worth about \$<sup>Redacted</sup>) and <sup>Redacted</sup>  
17 ETH (worth about \$<sup>Redacted</sup>).<sup>54</sup>

18 Ms. Clegg’s conclusions are based on review of information from  
19 publicly available blockchains, CipherTrace’s proprietary tools for analyzing  
20

21 <sup>48</sup> Stewart Decl. ¶ 9; Ex. 9.

22 <sup>49</sup> Clegg Decl. ¶¶ 3, 9.

23 <sup>50</sup> Clegg Decl. ¶¶ 15, 114, App. E, Figure E-1; Ridder Decl. ¶¶ 35-36, App. C.

24 <sup>51</sup> Clegg Decl. ¶¶ 15, 114, App. E, Figure E-1; Ridder Decl. ¶¶ 35-36, App. C.

25 <sup>52</sup> Clegg Decl. ¶¶ 20, 66; Ridder Decl. ¶¶ 33-36, 40-41, Apps. B-1, E. Note that  
26 Ms. Clegg concludes that Wen most likely controls the Bitmex.com account,  
*see* Clegg Decl. ¶ 66, and Ms. Ridder concludes that that account held about  
<sup>Redacted</sup> BTC as of October 25, 2019, *see* Ridder Decl. ¶¶ 33-34.

27 <sup>53</sup> *See* Exs. 4, 7-9, 12, 17-18. In addition, Wen’s Binance Account holds <sup>Redacted</sup>  
<sup>Redacted</sup>, which he disclosed on March 1, 2020. Ex. 8 at 188. And Wen’s Binance  
28 Account has held <sup>Redacted</sup> BitTorrent. *See* Ridder Decl. ¶ 33, App. B-1.

<sup>54</sup> Clegg Decl. ¶ 16; Ridder Decl. ¶ 37, App. C.



1 blockchain transactions, account records associated with Wen from five distinct  
2 cryptocurrency exchanges, and Wen’s Amended Financial Statement and  
3 deposition transcript as they relate to his cryptocurrency.<sup>55</sup>

4 **1. Wen highly likely controlled about <sup>Redacted</sup> undisclosed BTC at**  
5 **17 unhosted wallet addresses associated with a transaction**  
6 **funding Wen’s Bittrex exchange account**

7 On August 1, 2017, the Bitcoin blockchain split through a “hard fork”  
8 (Hard Fork), resulting in the creation of a new cryptocurrency known as Bitcoin  
9 Cash (BCH).<sup>56</sup> As a result of the Hard Fork, every address on the Bitcoin  
10 blockchain that possessed unspent BTC received an equivalent amount of BCH  
11 on a new Bitcoin Cash blockchain.<sup>57</sup> On August 4, 2017, just three days after  
12 the Hard Fork, Wen’s Bittrex exchange account (Wen’s Bittrex Account) was  
13 sent a deposit of <sup>Redacted</sup> BCH in one transaction funded by 32 distinct BCH  
14 addresses (Consolidating Transaction).<sup>58</sup>

15 As explained in Ms. Clegg’s report, the same person controlled the 32  
16 BTC and 32 BCH addresses as of August 1, 2017, and those same addresses  
17 funded Wen’s Bittrex Account just three days later.<sup>59</sup> Further, Ms. Clegg  
18 explained that 4 of the 32 BTC addresses received “change” from deposits to  
19 Wen’s Poloniex exchange account (Wen’s Poloniex Account), meaning the  
20 same person funding Wen’s Poloniex Account also controlled those 4  
21 addresses.<sup>60</sup> Ms. Clegg also noted that 12 of the 32 BTC addresses transferred

22 \_\_\_\_\_  
23 <sup>55</sup> Clegg Decl. ¶¶ 10-12, App. D. Specifically, Ms. Clegg relied upon public  
24 blockchain information for each cryptocurrency analyzed, including BTC, ETH,  
25 and BCH, and exchange account documents from Bittrex.com, Poloniex.com,  
26 Bitmex.com, Bitstamp.net, and Binance.com. *Id.*

26 <sup>56</sup> Clegg Decl. ¶ 50.

27 <sup>57</sup> Clegg Decl. ¶ 50.

28 <sup>58</sup> Clegg Decl. ¶¶ 50-53, App. E, Figure E-3; Ridder Decl. ¶¶ 22-23; Exs. 24-25.

<sup>59</sup> Clegg Decl. ¶¶ 52-54.

<sup>60</sup> Clegg Decl. ¶¶ 55-59, App. E, Figures E-3, E-4, E-5. *See also* Ridder Decl. ¶¶ 20-21; Ex. 22 at 425-37; Ex. 23.

1 <sup>Redacted</sup> BTC to a cryptocurrency exchange account at Bitmex.com that Ms. Clegg  
2 concluded Wen most likely controlled.<sup>61</sup> As Ms. Clegg explained, these facts  
3 support concluding that Wen controlled the 32 BTC addresses associated with  
4 the Consolidating Transaction.<sup>62</sup>

5 Based on the above transactions and her analysis, Ms. Clegg concluded  
6 that as of October 25, 2019, Wen highly likely controlled over <sup>Redacted</sup> BTC (worth  
7 over \$<sup>Redacted</sup>) at 17 unhosted wallet addresses associated with the  
8 Consolidating Transaction.<sup>63</sup> And Ms. Clegg concluded that Wen highly likely  
9 continues to control the <sup>Redacted</sup> BTC as of the date of her report.<sup>64</sup> Wen has not  
10 disclosed any of these holdings since entry of the TRO, including as required in  
11 response to the Disclosure Order and in response to discovery specifically  
12 asking him about his interest in each one of the 32 BTC addresses associated  
13 with the Consolidating Transaction; rather, he invoked the privilege against  
14 self-incrimination in each instance.<sup>65</sup>

15 **2. Wen most likely controlled about <sup>Redacted</sup> undisclosed BTC at a**  
16 **Bitmex.com exchange account funded by Wen**

17 Ms. Clegg concluded that Wen most likely controls three Bitmex  
18 accounts under aliases “Wen Ding,” “Lie Wen,” and “Dan Dai.”<sup>66</sup> Wen has not  
19 disclosed these accounts.<sup>67</sup>

21 <sup>61</sup> Clegg Decl. ¶¶ 60, 81, App. E, Figure E-6.

22 <sup>62</sup> Clegg Decl. ¶¶ 60-61.

23 <sup>63</sup> Clegg Decl. ¶ 61, App. E, Figure E-3; Ridder Decl. ¶ 35, App. C.

24 <sup>64</sup> Clegg Decl. ¶ 61, App. E, Figure E-3.

24 <sup>65</sup> See Exs. 4, 7-9, 17-18.

25 <sup>66</sup> Clegg Decl. ¶¶ 45-48, 62-66, 90-100. Bitmex did not collect any identifying  
26 documents for these accounts, nor do account documents provide meaningful  
26 identifying information besides email addresses, which were

27 <sup>Redacted</sup> (“Wen Ding”), <sup>Redacted</sup> (“Lie  
28 Wen”), and <sup>Redacted</sup> (“Dan Dai”). Ridder Decl. ¶¶ 26-27, 32,  
App. A; Exs. 28-29.

<sup>67</sup> See Exs. 4, 7-9, 17-18.

1 First, Ms. Clegg concluded that Wen most likely controlled the “Wen  
2 Ding” Bitmex account because Wen’s email address was used to register the  
3 account and because it was funded with <sup>Redacted</sup> BTC by the same source that funded  
4 Wen’s Bittrex Account.<sup>68</sup> Second, Ms. Clegg concluded that Wen most likely  
5 controlled the “Dan Dai” Bitmex account because <sup>Redacted</sup> BTC of all <sup>Redacted</sup> BTC it  
6 received passed through addresses highly likely controlled by Wen.<sup>69</sup> Third,  
7 Ms. Clegg concluded that Wen most likely controlled the “Lie Wen” Bitmex  
8 account because it was primarily funded by BTC from Wen’s Bittrex Account,  
9 the “Wen Ding” Bitmex account, and other sources attributable to Wen.<sup>70</sup> And  
10 the person controlling the “Lie Wen” Bitmex account associated an email  
11 address, **Redacted**, which references a street address that Wen  
12 has used for personal business and listed as a residential address for his mother  
13 and sister.<sup>71</sup>

14 As of October 25, 2019, the Bitmex.com exchange accounts held about  
15 <sup>Redacted</sup> BTC (worth over \$<sup>Redacted</sup>), all held in the “Dan Dai” account.<sup>72</sup> Based on  
16 the most recent information obtained by the Bureau, the above-referenced  
17  
18

19 <sup>68</sup> Clegg Decl. ¶¶ 45-48, App. E, Figure E-2; Ridder Decl. ¶ 32, App. A; Ex. 28  
at 468, 474; Wen Dep. Tr. at 38:23-39:5; Ex. 13 at 297.

20 <sup>69</sup> Clegg Decl. ¶¶ 62-66, App. E, Figures E-3, E-6, E-7.

21 <sup>70</sup> Clegg Decl. ¶¶ 90-100, App. E, Figures E-14, E-15, E-16.

22 <sup>71</sup> Ridder Decl. ¶¶ 18-19, 26-27, 32, App. A; Ex. 7 at 162, 180; Ex. 19 at 394-95;  
23 Ex. 20 at 421; Ex. 21; Ex. 28 at 478. Although Kaine Wen’s mother appears to  
24 have gone by “Lie Wen” as her middle name, *see* Ridder Decl. ¶ 5; Ex. 7 at  
25 180; Ex. 10 at 196, and Wen’s sister’s name is Diana Dai, *see* Ex. 7 at 180,  
26 neither held any cryptocurrency since at least January 1, 2019. Ridder Decl.  
27 ¶¶ 12, 14; Ex. 15 at 333; Ex. 16 at 343-44. And Wen has a history of using  
28 family members as a front for his illicit student loan debt-relief business and  
related assets. *See, e.g.*, Ex. 7 at 166-67 (Judy Dai listed as “nominal owner” of  
Mice and Men LLC “for the benefit of” Wen). Plaintiffs settled with Mice and  
Men LLC. *See* Stipulated Final J. and Order as to Mice and Men LLC, ECF No.  
218.

<sup>72</sup> Ridder Decl. ¶¶ 33-34, Apps. B-1, E.

1 Bitmex.com accounts no longer hold any BTC or other cryptocurrencies.<sup>73</sup> Wen  
2 has never disclosed to the Bureau any of the Bitmex accounts or any BTC held  
3 at them, including as required in response to the Disclosure Order and when  
4 asked about his interest in the accounts through expedited discovery; rather, he  
5 invoked the privilege against self-incrimination in each instance.<sup>74</sup>

6 **3. Wen most likely controlled about <sup>Redacted</sup> undisclosed BTC at**  
7 **seven unhosted wallet addresses associated with Wen's**  
8 **exchange accounts**

9 Ms. Clegg concluded that Wen most likely held an additional  
10 approximately <sup>Redacted</sup> BTC (worth over \$<sup>Redacted</sup>) at seven unhosted wallet  
11 addresses as of October 25, 2019.<sup>75</sup> These holdings include:

- 12 1. <sup>Redacted</sup> BTC at an unhosted wallet address that received the BTC directly  
13 from the Dan Dai Bitmex account in May 2019;<sup>76</sup>
- 14 2. about <sup>Redacted</sup> BTC at an unhosted wallet address that was funded by one of  
15 the 32 BTC addresses associated with the Consolidating Transaction,  
16 which in turn was funded by Wen's Bitstamp.net exchange account  
17 (Wen's Bitstamp Account);<sup>77</sup>
- 18 3. over <sup>Redacted</sup> BTC at an unhosted wallet address from change left over from  
19 a deposit to Wen's Poloniex Account, where Wen testified that he  
20 controlled the BTC address funding his Poloniex account;<sup>78</sup>

21  
22  
23 <sup>73</sup> Ridder Decl. ¶¶ 33-34, App. B-1.

24 <sup>74</sup> See Exs. 4, 7-9, 17-18.

25 <sup>75</sup> Clegg Decl. ¶ 67; Ridder Decl. ¶ 35, App. C.

26 <sup>76</sup> Clegg Decl. ¶¶ 67, 71-72, App. E, Figure E-9 (referring to BTC address  
3Msk).

27 <sup>77</sup> Clegg Decl. ¶¶ 67, 73-76, App. E, Figure E-10 (referring to BTC address  
1JA73).

28 <sup>78</sup> Clegg Decl. ¶¶ 67, 77-79, App. E, Figure E-11 (referring to BTC address  
1kJdt); Wen Dep. Tr. at 96:2-12, 99:10-101:12, 101:23-103:7; Ex. 13 at 285-86.

- 1 4. nearly <sup>Red</sup> BTC at an unhosted wallet address that, together with 12
- 2 BTC addresses associated with the Consolidating Transaction, funded
- 3 the “Dan Dai” Bitmex account;<sup>79</sup>
- 4 5. about <sup>Redacted</sup> BTC at an unhosted wallet address that received those BTC
- 5 directly from Wen’s Bittrex Account;<sup>80</sup>
- 6 6. about <sup>Reda</sup> BTC at an unhosted wallet address that received change from
- 7 a deposit to Wen’s Poloniex Account, where Wen testified that he
- 8 controlled the BTC address funding his Poloniex Account;<sup>81</sup> and
- 9 7. about <sup>Redacte</sup> BTC at an unhosted wallet address that was primarily funded
- 10 by Wen’s Bittrex Account, as well as receiving funds from the same
- 11 person funding Wen’s Bittrex Account and the same person funding
- 12 the “Lie Wen” Bitmex account.<sup>82</sup>

13 Ms. Clegg further concluded that as of the date of her report, Wen most  
14 likely held about <sup>Redacted</sup> BTC at eight unhosted wallet addresses.<sup>83</sup> Wen has not  
15 disclosed any of these holdings or addresses to the Bureau, including in  
16 response to the Disclosure Order and discovery requests specifically asking  
17 about his interests in all but two of the addresses; rather, he invoked the  
18 privilege against self-incrimination.<sup>84</sup>

19

20

21

---

<sup>79</sup> Clegg Decl. ¶¶ 67, 80-81, App. E, Figure E-6 (referring to BTC address 1XSB1).

22

<sup>80</sup> Clegg Decl. ¶¶ 67, 82-83, App. E, Figure E-12 (referring to BTC address 15NEe).

23

<sup>81</sup> Clegg Decl. ¶¶ 67, 84-89, App. E, Figure E-13 (referring to BTC address 1EqME); Wen Dep. Tr. at 96:2-12, 99:10-101:12, 101:23-103:7; Ex. 13 at 285-86.

24

25

<sup>82</sup> Clegg Decl. ¶¶ 67, 91-100, App. E, Figures E-14, E-16.

26

<sup>83</sup> Clegg Decl. ¶ 67. These assessed holdings are in addition to the holdings related to the Consolidating Transaction. *See* Clegg Decl. ¶¶ 61, 67, App. E, Figure E-1.

27

28

<sup>84</sup> *See* Exs. 4, 7-9, 17-18.

1                   **4. Wen most likely controlled about <sup>Redacted</sup> ETH held at two**  
2                   **unhosted wallet addresses funded by Wen’s Poloniex and**  
3                   **Bitstamp Accounts**

4                   Ms. Clegg concluded that Wen most likely owned or controlled about  
5 <sup>Redacted</sup> ETH (worth over \$<sup>Redacted</sup>) at two different addresses as of October 25,  
6 2019, and about <sup>Redacted</sup> ETH (worth over \$<sup>Redacted</sup>) as of the date of her  
7 report.<sup>85</sup> Ms. Clegg’s conclusions as to the first address are based on Wen’s  
8 Poloniex account directly funding that address 86 times for a total <sup>Redacted</sup> ETH  
9 (over 75% of all ETH received to the address), and Wen stating at his  
10 deposition that the address held cryptocurrency for his benefit.<sup>86</sup> With respect to  
11 the second address, Ms. Clegg’s conclusions are based on it being funded by  
12 <sup>Redacted</sup> ETH transferred directly from Wen’s Bitstamp Account (over 67% of all  
13 ETH received to the address) and Wen stating at his deposition that the address  
14 held cryptocurrency for his benefit.<sup>87</sup>

15                   Ms. Clegg further identified 20 withdrawals in 2020 from the two ETH  
16 addresses discussed above, totaling about <sup>Redacted</sup> ETH, leaving about <sup>Redacted</sup> ETH  
17 at those addresses as of her report.<sup>88</sup> When asked at his deposition whether he

18 \_\_\_\_\_  
19 <sup>85</sup> Clegg Decl. ¶ 101, App. E, Figure E-1; Ridder Decl. ¶¶ 35-37, App. C.

20 <sup>86</sup> Clegg Decl. ¶¶ 102, 104-105, 110, App. E, Figure E-17 (address 0x4d5); Wen  
21 Dep. Tr. at 96:2-12, 99:10-100:14, 103:8-105:7; Ex. 13 at 285-88.

22 Approximately <sup>Redacted</sup> ETH sent to the address came from a Poloniex account in  
23 the name of Henry Wen Huang. *See* Clegg Decl. ¶ 102 n. 8; Ridder Decl. ¶ 20-  
24 21, 44; Ex. 22 at 438-39. Defendants’ documents show that a Henry Wen  
25 Huang transacted with Kaine Wen (using the same email address that is  
26 registered with the Huang Poloniex account), was paid by Defendant True  
27 Count Staffing Inc. on multiple occasions, and had a True Count email address.  
28 *See* Ridder Decl. ¶¶ 44-47; Ex. 22 at 438; Exs. 30-32; First Am. Compl., ECF  
No. 134 ¶ 30; True Count Staffing, Inc. Answer to First Am. Compl., ECF No.  
193 ¶ 30 (admitting that True Count Staffing, Inc. did business as SL Account  
Management).

<sup>87</sup> Clegg Decl. ¶¶ 106, 108-110, App. E, Figure E-18; Wen Dep. Tr. at 78:18-  
81:15; Ex. 13 at 283-84.

<sup>88</sup> Clegg Decl. ¶¶ 101, 111, 113, App. E, Figure E-19.

1 caused significant transfers of ETH from these two addresses, Wen declined to  
2 respond and asserted the Fifth Amendment privilege against self-  
3 incrimination.<sup>89</sup> Although the Disclosure Order required Wen to reveal these  
4 transactions, Wen declined to do so and instead Wen invoked the privilege  
5 against self-incrimination.<sup>90</sup>

### 6 III. ARGUMENT

#### 7 A. Legal Standard

8 Federal courts have authority to enforce compliance with an order  
9 through civil contempt.<sup>91</sup> To establish contempt, the moving party must show  
10 by clear and convincing evidence that the contemnors violated a specific and  
11 definite order of the court.<sup>92</sup> The burden then shifts to the contemnors to  
12 demonstrate why they were unable to comply,<sup>93</sup> including by showing that they  
13 “took every reasonable step” to do so.<sup>94</sup> The party asserting inability to comply  
14 with a court’s order “must show categorically and in detail why he is unable to  
15 comply.”<sup>95</sup> Moreover, contempt need not be willful, and there is no good faith  
16 exception for failing to comply with a court order.<sup>96</sup> As relevant here, civil  
17 contempt is appropriate when a party fails to abide by a court-ordered asset  
18 freeze or to make required financial disclosures.<sup>97</sup>

19  
20 <sup>89</sup> Wen Dep. Tr. 126:2-10; 130:8-21.

21 <sup>90</sup> ECF No. 277 at 9; Ex. 9.

22 <sup>91</sup> See *Int’l Union, UMWA v. Bagwell*, 512 U.S. 821, 831-32 (1994); *FTC v.*  
*EDebitPay, LLC*, 695 F.3d 938, 945 (9th Cir. 2012).

23 <sup>92</sup> *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999) (citation  
24 omitted).

<sup>93</sup> *Id.*

25 <sup>94</sup> *Stone v. City and Cnty. of San Francisco*, 968 F.2d 850, 857 (9th Cir. 1992).

26 <sup>95</sup> *Affordable Media*, 179 F.3d at 1241 (internal quotation marks omitted).

<sup>96</sup> See *Stone*, 968 F.2d at 856-57.

27 <sup>97</sup> See, e.g., *FTC v. Cardiff*, No. CV5182104SJO(PLAX), 2020 WL 2084677, at  
28 \*3 (C.D. Cal. Mar. 31, 2020) (finding contempt for dissipating frozen assets in  
violation of temporary restraining and preliminary injunction orders); *FTC v.*

1           **B. Wen Has Violated This Court’s Orders by Concealing at Least**  
2           **Redacted BTC and Redacted ETH.**

3           The evidence shows that Wen concealed at least Redacted BTC and Redacted  
4 ETH, collectively worth over \$Redacted as of October 25, 2019, in violation of  
5 this Court’s orders.<sup>98</sup> Specifically, the October 21, 2019 TRO, through  
6 Attachment A, required that Wen complete a sworn financial statement,  
7 including listing all “cryptocurrency and other virtual currencies,” that was  
8 “accurate as of the date of service of the [TRO].”<sup>99</sup> Wen waived service of the  
9 TRO on October 25, 2019.<sup>100</sup>

10           In completing Attachment A and submitting his Original Financial  
11 Statement, Wen initially claimed that he had no cryptocurrency or virtual  
12 currencies.<sup>101</sup> More than a year after entry of the TRO and after multiple  
13 inquires by the Bureau, Wen revealed that he had Redacted, Redacted, and  
14 other Redacted.<sup>102</sup> But the evidence shows that Wen’s Amended  
15 Financial Statement omitted, at a minimum, over Redacted BTC (worth over \$  
16 Redacted) that Wen held as of October 25, 2019, at 24 unhosted wallet addresses  
17 and the “Dan Dai” Bitmex account.<sup>103</sup> And the evidence shows that in fact Wen

18 \_\_\_\_\_  
19 *Kutzner*, No. SACV1600999BRO(AFMX), 2017 WL 2985397, at \*11 (C.D.  
20 Cal. June 12, 2017) (finding contempt for dissipating frozen assets in violation  
21 of a TRO), *aff’d sub nom.*, *FTC v. Marshall*, 781 F. App’x 599 (9th Cir. 2019);  
22 *SEC v. Current Fin. Servs., Inc.*, 798 F. Supp. 802, 809 (D.D.C. 1992) (finding  
23 contempt for failure to comply with accounting and asset freeze requirements in  
24 temporary restraining and preliminary injunction orders); *see also Affordable*  
25 *Media*, 179 F.3d at 1239-43 (affirming a finding of contempt for failure to  
26 repatriate assets held overseas in violation of a TRO).

24 <sup>98</sup> Compare Clegg Decl. ¶¶ 15, 20, 49-110, App. E, Figure E-1; Ridder Decl.  
25 ¶¶ 34-36, App. C, with Ex. 8.

26 <sup>99</sup> ECF No. 24 § VIII(A); Attachment A at Item 23.

27 <sup>100</sup> ECF No. 88 ¶ 3.

28 <sup>101</sup> Ex. 4 at 133.

<sup>102</sup> See Stewart Decl. ¶¶ 4-6; Ex. 5; Ex. 6; Ex. 7 at 177; Ex. 8.

<sup>103</sup> Compare Clegg Decl. ¶¶ 15, 20, 49-100, 114, App. E, Figure E-1; Ridder  
Decl. ¶¶ 34-36, App. C, E, with Exs. 7-8.



1 held over <sup>Redacted</sup> ETH, not the <sup>Redacted</sup> ETH he disclosed.<sup>104</sup> Thus, Wen failed to  
2 disclose at least <sup>Redacted</sup> ETH (worth over \$ <sup>Redacted</sup> as of October 25, 2019) on his  
3 Amended Financial Statement.<sup>105</sup> Wen has not disclosed these BTC and  
4 additional ETH holdings at any time as required by the TRO and the Disclosure  
5 Order.<sup>106</sup>

6 Accordingly, Wen should be held in contempt for violating the asset  
7 disclosure requirements of this Court's orders.

8 **C. Wen Has Violated This Court's Orders by Transferring or**  
9 **Dissipating at Least <sup>Redacted</sup> BTC and <sup>Redacted</sup> ETH Since Entry of the**  
10 **TRO.**

11 The evidence shows that Wen has violated this Court's asset freeze  
12 orders by dissipating at least <sup>Redacted</sup> BTC and <sup>Redacted</sup> ETH (worth over \$ <sup>Redacted</sup>)  
13 since entry of the TRO.<sup>107</sup> The TRO and PI Orders froze Wen's assets,  
14 including his cryptocurrency, from the time of service of the TRO on October  
15 25, 2019, until entry of a final judgment in this matter.<sup>108</sup>

16 As discussed above, the evidence shows that Wen held over <sup>Redacted</sup>  
17 undisclosed BTC as of October 25, 2019.<sup>109</sup> But as of the date of Ms. Clegg's

18 \_\_\_\_\_  
19 <sup>104</sup> Compare Clegg Decl. ¶¶ 15, 101-110, with Ex. 8 at 188.

20 <sup>105</sup> Compare Clegg Decl. ¶¶ 15, 101-110; Ridder Decl. ¶ 35, App. C, with Ex. 8  
at 188.

21 <sup>106</sup> See Exs. 4, 7-9, 17-18; ECF No. 24 § VIII(A); ECF No. 277 at 8-9.

22 <sup>107</sup> See Clegg Decl. ¶¶ 18, 62-66, 101-113, App. E, Figure E-19; Ridder Decl.  
23 ¶¶ 38-42, Apps. D, E. The total value of these assets at the time of each transfer  
24 was over \$ <sup>Redacted</sup>, based on the low market price on the date of each  
respective transfer from the unhosted wallet address or exchange account that  
Ms. Clegg attributes to Wen. Ridder Decl. ¶¶ 38-42, Apps. D, E.

25 <sup>108</sup> See ECF No. 24 § VI(A); ECF No. 103 § VI(A). Both orders broadly defined  
26 "Asset" as "any legal or equitable interest in, right to, or claim to any real,  
27 personal, or intellectual property owned or controlled by, or held, in whole or in  
part for the benefit of, or subject to access by any Defendant or Relief  
Defendant, wherever located." ECF No. 24 at 4-5; ECF No. 103 at 5-6.

28 <sup>109</sup> See Clegg Decl. ¶¶ 15, 20, 49-100, App. E, Figure E-1; Ridder Decl.  
¶¶ 34-36, App. B-1.

1 report, the evidence shows that he only holds about <sup>Redacted</sup> undisclosed BTC.<sup>110</sup>  
2 Thus, the evidence shows that Wen has dissipated at least <sup>Redacted</sup> BTC, specifically  
3 through over 200 transactions using the “Dan Dai” Bitmex account from  
4 October 27, 2019, through October 2, 2020.<sup>111</sup> Further, the evidence shows that  
5 from March 27 through October 24, 2020, ETH addresses that held Wen’s  
6 cryptocurrency executed 20 transfers totaling over <sup>Redacted</sup> ETH.<sup>112</sup>

7 In response to this Court’s Disclosure Order requiring that he disclose all  
8 cryptocurrency transfers through March 16, 2021, Wen invoked the privilege  
9 against self-incrimination and declined to respond.<sup>113</sup> The Bureau and Ms.  
10 Clegg have not definitively confirmed who received the approximately <sup>Redacted</sup>  
11 BTC and <sup>Redacted</sup> ETH, including because Wen has invoked the self-incrimination  
12 privilege.<sup>114</sup>

13 Accordingly, Wen should be held in contempt for violating the asset  
14 freeze provisions of the PI Order.

15 **D. An Adverse Inference and Other Relief Against Wen Is**  
16 **Warranted**

17 In civil matters, courts may draw adverse inferences against parties who  
18

19  
20 <sup>110</sup> See Clegg Decl. ¶¶ 16, 20, 61, 67-100, App. E, Figure E-1; Ridder Decl.  
21 ¶¶ 33-34, App. B-1. These figures do not include the about <sup>Redacted</sup> Bitcoin that Wen  
22 has held at his account at Binance.com since at least October 25, 2019. Clegg  
23 Decl. ¶ 20; Ridder Decl. ¶¶ 35, 37.

24 <sup>111</sup> See Clegg Decl. ¶¶ 62-66; Ridder Decl. ¶¶ 40-41, App. E.

25 <sup>112</sup> See Clegg Decl. ¶¶ 18, 101-113, App. E, Figure E-19; Wen Dep. Tr. at  
26 78:18-81:15, 96:2-12, 99:10-100:14, 103:8-105:7; Ex. 13 at 283-88.

27 <sup>113</sup> ECF No. 277 at 8-10; Ex. 9.

28 <sup>114</sup> See Clegg Decl. ¶ 112, 114-115; Ridder Decl. 40-41, App. E. The evidence  
suggests that Wen may have used frozen assets to pay his expenses. For  
example, Wen stated that on July 13, 2020, his former attorneys demanded that  
he and Kim pay an additional retainer of \$30,000. ECF No. 206-1 ¶ 23. The  
next day, the person controlling one of the ETH addresses that Wen states held  
his ETH transferred about <sup>Redacted</sup> ETH from that address (worth over \$ <sup>Redacted</sup>  
at the time). Clegg Decl. ¶ 111, App. E, Figure E-19; Ridder Decl. ¶ 38, App. D.

1 assert the Fifth Amendment privilege against self-incrimination where there is:  
2 1) independent evidence of the fact about which the party refuses to testify; 2) a  
3 substantial need for the information; and 3) not another less burdensome way of  
4 obtaining the information.<sup>115</sup> When the court draws an adverse inference, it may  
5 shift the burden of proof to the defendant to disprove the fact at issue.<sup>116</sup>  
6 Further, a court may preclude a party from putting on evidence in support of  
7 positions that he has refused to provide evidence on by invoking the self-  
8 incrimination privilege.<sup>117</sup> Here, there is ample evidence showing Wen’s  
9 contemptuous conduct, but the Court can also draw adverse inferences based on  
10 Wen’s invocation of the privilege against self-incrimination.

11 Specifically, this Court can draw an adverse inference that Wen owned or  
12 controlled about Redacted undisclosed BTC and about Redacted undisclosed ETH as of  
13 October 25, 2019. Wen invoked the privilege against self-incrimination when  
14 asked about his cryptocurrency holdings and transactions leading up to and after  
15 entry of the TRO, including when directed by this Court’s Disclosure Order to  
16 list each virtual currency address that he owned or controlled from January 1,  
17 2014, through March 16, 2021.<sup>118</sup> Wen also invoked the privilege when  
18 specifically asked about his interest in 22 BTC addresses and the exchange  
19 account where Ms. Clegg concluded Wen most likely held cryptocurrency as of  
20 October 25, 2019.<sup>119</sup>

---

22 <sup>115</sup> See *Nationwide Life Ins. Co. v. Richards*, 541 F.3d 903, 911-12 (9th Cir.  
23 2008); see also *CFTC v. Driver*, 877 F. Supp. 2d 968, 976–77 (C.D. Cal. 2012)  
24 (drawing adverse inference with respect to “every question to which [the party]  
asserted his Fifth Amendment privilege.”)

25 <sup>116</sup> See *SEC v. Colello*, 139 F.3d 674, 677-78 (9th Cir. 1998).

26 <sup>117</sup> See *SEC v. Premier Holding Corp.*, No. SACV1800813CJC(KESX), 2020  
27 WL 8099514, at \*5 (C.D. Cal. Nov. 30, 2020) (citing *Colello*, 139 F.3d at 678).

27 <sup>118</sup> See, e.g., ECF No. 277 at 8; Ex. 9.

28 <sup>119</sup> See Ex. 17 at 366-68; Ex. 18 at 377-79, 381-83. As for the remaining two  
BTC addresses where Ms. Clegg concludes Wen held BTC, the Bureau had not

1 This Court can also draw an adverse inference that Wen violated the asset  
2 freeze by dissipating at least <sup>Redacted</sup> BTC and <sup>Redacted</sup> ETH, including by engaging in  
3 over 200 Bitmex.com transactions and causing 20 ETH transfers from entry of  
4 the TRO through October 24, 2020. Wen invoked the privilege against self-  
5 incrimination when asked to list all his cryptocurrency transfers from before the  
6 TRO through March 16, 2021.<sup>120</sup> Also, when Bureau staff specifically asked  
7 Wen during his deposition if he caused over <sup>Redacted</sup> in post-TRO ETH transfers,  
8 Wen declined to answer and invoked the privilege against self-incrimination.<sup>121</sup>

9 The factors that courts consider when drawing an adverse inference are  
10 present here. First, and as discussed above, there is significant evidence that  
11 supports drawing these inferences. Second, there is a substantial need for Wen's  
12 responses to the Disclosure Order, and the above-referenced discovery and  
13 deposition questions, all of which go to whether Wen violated this Court's  
14 Preliminary Orders by concealing and dissipating **Redacted** of  
15 cryptocurrency. Third, the Bureau is not aware of a less burdensome way to  
16

17 \_\_\_\_\_  
18 attributed those addresses to Wen at the time it issued the discovery, so they  
19 were not specifically referenced in the discovery. Nonetheless, an adverse  
20 inference is appropriate because Wen invoked the privilege when asked about  
21 the Bitmex.com account that fully funded one of the addresses (3Mskr) and the  
22 other address (1XSB1) was controlled by the same person controlling 12 of the  
23 addresses identified in the discovery that Wen declined to state his ownership  
24 interest in, instead invoking the self-incrimination privilege. *See* Ex. 17 at  
25 366-68 (listing 12 addresses at Interrogatory 6 and Bitmex.com account at  
26 Interrogatory 9); Ex. 18 at 377-79, 381-83 (Wen's invocation of the Fifth  
27 Amendment in response to questions about his interest in the 12 addresses and  
28 the "Dan Dai" Bitmex.com account); Clegg Decl. ¶¶ 71, 81, App. E, Figure E-6  
(identifying transaction showing control by same person who controlled 12  
addresses), Figure E-9 (showing the address funded by "Dan Dai" Bitmex.com  
account). Further, Wen's invocation of the Fifth Amendment in response to the  
Disclosure Order supports the inference as to the two addresses. *See* ECF No.  
277; Ex. 9.

<sup>120</sup> *See* ECF No. 277 at 8-9; Ex. 9.

<sup>121</sup> *See* Wen Dep. Tr. 125-130.

1 obtain the information, where only the person controlling the unhosted wallet  
2 addresses at issue can conclusively verify ownership.<sup>122</sup> As for the “Dan Dai”  
3 Bitmex account, Bitmex exchange documents show that the account holder  
4 never provided any identifying documents or information beyond a generic  
5 username (Redacted) and email Redacted, presumably because  
6 Wen sought to avoid attribution to him.<sup>123</sup> Nor have searches of available  
7 databases identified a “Dan Dai” associated with the Redacted  
8 email address.<sup>124</sup> And as for the ETH holdings, Wen claimed he did not know  
9 “Sea’s” full name and invoked the privilege against self-incrimination in  
10 response to discovery seeking all documents reflecting his interactions or  
11 transactions with “Sea” involving cryptocurrency.<sup>125</sup>

12 Accordingly, adverse inferences regarding Wen’s cryptocurrency  
13 holdings and dissipation, as set forth above, are warranted.<sup>126</sup> Further, given  
14 Wen’s invocation of the self-incrimination privilege in response to discovery  
15 about his cryptocurrency dealings with “Sea,” including his refusal to turn over  
16 electronic messages with “Sea,” Wen should be precluded from putting on  
17 evidence that “Sea” controls the two ETH addresses that hold his  
18 cryptocurrency or that those addresses have held ETH for anyone but Wen.<sup>127</sup>

20 <sup>122</sup> Clegg Decl. ¶¶ 28, 33, 114-115.

21 <sup>123</sup> See Ridder Decl. ¶ 32, App. A; Ex. 28-29.

22 <sup>124</sup> See Ridder Decl. ¶¶ 30-31.

23 <sup>125</sup> See Ex. 14; Wen Dep. Tr. at 64:13-16, 85:10-21.

24 <sup>126</sup> See *Nationwide Life*, 541 F.3d at 911-13; *Premier Holding*, 2020 WL  
25 8099514, at \*9 (making adverse inferences); *United States v. Harding*, No.  
26 219CV00871WBS(CKD), 2020 WL 838439, at \*4 (E.D. Cal. Feb. 20, 2020)  
27 (noting that when a defendant invoked the self-incrimination privilege, the court  
28 could draw an adverse inference related to the questions that prompted the  
invocation), *report and recommendation adopted*, No. 219CV00871WBSCKD,  
2020 WL 1234633 (E.D. Cal. Mar. 13, 2020).

<sup>127</sup> See *Premier Holding*, 2020 WL 8099514, at \*5; see also *Colello*, 139 F.3d at  
677-78. Wen claimed to have communicated with “Sea” via WeChat, a

1 **IV. REQUESTED RELIEF**

2 Because Wen violated the accounting and asset freeze provisions of the  
3 TRO and PI Order, he should be ordered to show cause as to why he should not  
4 be held in contempt.<sup>128</sup> District courts have broad authority to order appropriate  
5 relief in civil contempt proceedings.<sup>129</sup> Sanctions for civil contempt must either  
6 coerce the contemnor into compliance with a court order or compensate the  
7 moving party for losses sustained.<sup>130</sup> Coercive sanctions may include daily fines  
8 or imprisonment until such time as the contempt is purged.<sup>131</sup> In fashioning a  
9 coercive sanction, courts “consider the character and magnitude of the harm  
10 threatened by continued contumacy, and the probable effectiveness of any  
11 suggested sanction in bringing about the result desired.”<sup>132</sup> Compensatory  
12 awards may “compensate the contemnor’s adversary for the injuries which  
13 result from the noncompliance.”<sup>133</sup> Thus, upon a finding of contempt for  
14 transferring or concealing assets in violation of a temporary asset freeze, courts  
15 have ordered the contemnor to transfer the dissipated or concealed assets to a  
16 court-appointed receiver.<sup>134</sup>

17  
18 \_\_\_\_\_  
19 messaging app, but refused to turn over the messages and invoked the self-  
20 incrimination privilege. *See* Wen Dep. Tr. 64:17-22; Ex. 13 at 297; Ex. 14 at  
21 310-11.

22 <sup>128</sup> *See Affordable Media*, 179 F.3d at 1239, 1243; *Cardiff*, 2020 WL 2084677,  
23 at \*3; *Kutzner*, 2017 WL 2985397, at \*11.

24 <sup>129</sup> *See UMWA*, 512 U.S. at 831; *EDebitPay*, 695 F.3d at 945 (citation omitted).

25 <sup>130</sup> *See UMWA*, 512 U.S. at 829.

26 <sup>131</sup> *See id.*

27 <sup>132</sup> *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947).

28 <sup>133</sup> *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1366 (9th Cir. 1987).

<sup>134</sup> *See, e.g., Cardiff*, 2020 WL 2084677, at \*3 (finding contempt for dissipating frozen assets and ordering assets turned over to a receiver); *Kutzner*, 2017 WL 2985397, at \*11 (finding contempt for dissipating frozen assets and ordering assets turned over to a receiver); *FTC v. Laptop & Desktop Repair, LLC*, No. 1:16-CV-3591-AT, 2016 WL 10805748, at \*5 (N.D. Ga. Nov. 17, 2016)

1 Here, the evidence shows that Wen concealed and transferred **Redacted**  
2 cryptocurrency using unhosted wallet addresses and aliases in  
3 violation of this Court’s asset freeze.<sup>135</sup> Unlike assets held in a bank account,  
4 cryptocurrency held at an unhosted wallet address cannot be frozen by a third  
5 party upon notice of this Court’s Orders.<sup>136</sup> With respect to Wen’s BTC and  
6 ETH most likely held at unhosted wallet addresses, only the person with control  
7 of the private key can ensure compliance with this Court’s orders, and all  
8 evidence indicates that Wen controls or can control the private keys for these  
9 addresses.<sup>137</sup> Wen has demonstrated that he is unwilling to comply with this  
10 Court’s orders and thus should be required to transfer cryptocurrency that he  
11 has concealed to the Receiver or to a third-party cryptocurrency exchange that  
12 is clearly under this Court’s authority and can receive proper notice of, and  
13 ensure compliance with, the asset freeze pending resolution of this case on the  
14 merits.

15 Accordingly, the Bureau respectfully requests that the Court order:

16 1. Wen to show cause why he should not be held in contempt for his  
17 violations of this Court’s orders.

18 2. Wen to transfer, to the Receiver or an account in Wen’s name at a  
19 cryptocurrency exchange incorporated and headquartered in the United States,  
20 the amount of cryptocurrency that this Court concludes Wen has concealed or  
21 dissipated in violation of the asset freeze, which the Bureau asserts is  
22 **Redacted** BTC and **Redacted** ETH.<sup>138</sup>

23  
24 (finding contempt for transferring frozen assets and failing to repatriate other  
25 assets, and ordering that all funds transferred or concealed be remitted to a  
receiver).

26 <sup>135</sup> See Clegg Decl. ¶¶ 15, 20, 49-110, 114, App. E, Figure E-1; Ridder Decl.  
27 ¶¶ 35-36, App. C.

28 <sup>136</sup> See Clegg Decl. ¶¶ 29, 33.

<sup>137</sup> See Clegg Decl. ¶¶ 114-115.

<sup>138</sup> See Clegg. Decl. ¶¶ 15, 111; Ridder Decl. App. C.

1 3. To the extent that he has not already done so, Wen to transfer, to  
2 the Receiver or an account in Wen’s name at a cryptocurrency exchange  
3 incorporated and headquartered in the United States, all other cryptocurrency  
4 assets that he holds as of the date of this Motion, which the Bureau asserts are at  
5 least Redacted BTC and Redacted BitTorrent held at Wen’s Binance  
6 Account, and Redacted ETH held at the 0x4D and 0x664 ETH addresses.<sup>139</sup>

7 4. Wen to provide to the Bureau a sworn statement attesting to his  
8 compliance with item nos. 2-3 above within seven (7) business days of  
9 complying with those requirements, which statement must also identify the  
10 recipient of the transfers, including the name of the financial institution and  
11 account number to which he transferred the assets described in item nos. 2-3 to  
12 the extent those assets are not transferred to the Receiver.

13 5. If he fails to comply with item nos. 2-4, Wen to pay a fine of  
14 \$1,000 each day to coerce his compliance. If Wen is ordered to pay a fine, he  
15 should be ordered to provide a full accounting identifying all sources of funds  
16 used to pay the fine, including the account-holder name, account number, and  
17 financial institution from which the funds derived.

18 **V. CONCLUSION**

19 For the foregoing reasons, the Bureau respectfully requests that this  
20 Court grant the Bureau’s renewed motion and order the requested relief set  
21 forth above and in the Proposed Order attached hereto.

22  
23 Dated: April 8, 2022 /s/ Jesse Stewart  
24 Jesse Stewart (N.Y. Bar No. 5145495)  
25 Admitted pro hac vice  
26 Email: jesse.stewart@cfpb.gov  
27 Attorney for Plaintiff Bureau of  
28 Consumer Financial Protection

<sup>139</sup> See Clegg. Decl. ¶ 101; Ridder Decl. ¶¶ 24-25, 33, App. B-2; Exs. 26-27.