

**ROBB EVANS**  
**Receiver of**  
**Ohana International, Inc.,**  
**Financial Solutions, et al.**

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**Securities and Exchange Commission v. Ohana International, Inc., et al.**  
**CASE No. EDCV 04-1386 RJT (SGLx)**

**Plaintiff's Reply in Support of Order to Show Cause Re:**  
**Civil Contempt Against Christiano Hashimoto**

**Dated February 2005**

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**EASTERN DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

OHANA INTERNATIONAL, INC.;  
FINANCIAL SOLUTIONS; AND  
CHRISTIANO HASHIMOTO,

Defendants.

Case No. EDCV 04-01386 RT (SGLx)

**PLAINTIFF'S REPLY IN SUPPORT OF  
ORDER TO SHOW CAUSE RE CIVIL  
CONTEMPT AGAINST CHRISTIANO  
HASHIMOTO**

**Date: February 28, 2005**

**Time: 10:00 a.m.**

**Place: Courtroom 4**

1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission and defendant Christiano  
3 Hashimoto agree that, in order for the Court to hold Hashimoto in contempt, the  
4 Commission must show by clear and convincing evidence that he violated a  
5 specific and definite order of the Court – in this case, the November 3, 2004  
6 Temporary Restraining Order (“TRO”). It is undisputed that Hashimoto made the  
7 comments that are the basis for the Commission’s Application For OSC Re  
8 Contempt (“Application”) – i.e., that he had concealed assets from the Commission  
9 and the Receiver with which he would repay investors in full, and that he did not  
10 trust the Receiver to look out for the investors’ best interests. Thus, the question  
11 before the Court is not, as Hashimoto contends, the truth or falsity of his original  
12 comments. Instead, it is whether those *comments*, whether true or false, constitute  
13 a violation of the TRO’s prohibitions against interfering with the Receiver.<sup>1</sup>

14 At this time, the Commission presents recently discovered evidence that  
15 Hashimoto opened a brokerage account in his name into which he deposited two  
16 million shares of stock that were registered in the name of Financial Solutions.  
17 This raises a second question: Whether Hashimoto’s *conduct* in transferring the  
18 stock violates the December 7, 2004 Preliminary Injunction Order’s prohibitions  
19 against transferring or concealing assets or interfering with the Receiver’s control  
20 thereof.<sup>2</sup>

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22 <sup>1</sup> In the event that Hashimoto was, in fact, concealing assets, then an additional  
23 question before the Court would be whether his conduct violated the TRO’s  
24 prohibition against concealing assets or interfering with the Receiver’s control  
25 thereof.

26 <sup>2</sup> Although the Commission is aware that courts discourage introducing new  
27 evidence in a reply brief, the Commission submits this evidence on the grounds  
28 that (1) the Commission did not learn about the evidence until February 10, 2005,  
after the Commission had filed its Application, (2) it is in the interests of judicial  
economy to include it here as additional grounds for an order of contempt, rather

1 The evidence and the law dictate that each question be answered in the  
2 affirmative. For this reason, the Commission asks the Court to enter an Order of  
3 Civil Contempt against Christiano Hashimoto.

4 **II. ARGUMENT**

5 **A. Regardless Of Whether Hashimoto Was Telling The Truth, His**  
6 **Statements Violated The TRO's Prohibition Against Interference With**  
7 **The Receiver**

8 Hashimoto claims that he was lying on November 16, 2004, when he told  
9 investors that he had assets and interests in joint ventures “all over the country,”<sup>3</sup>  
10 which he had concealed from the Commission and the Receiver, and which he  
11 would use to repay the 1,273 defrauded investors all of their principal and accrued  
12 interest. (*See* Declaration of Christiano Hashimoto In Support Of Defendants’  
13 Opposition To Order To Show Cause (“Hashimoto Dec.”), ¶ 6.) But as noted in  
14 the Commission’s Application, Hashimoto’s comments, *whether true or false*,  
15 violate the prohibition against interfering with the Receiver. Moreover, if his  
16 comments are true, they *also* violate the provisions calling for a freeze of all assets,  
17 a full accounting thereof, their transfer to the receivership estate, and the  
18 prohibitions against concealing or otherwise disposing of them. (TRO ¶¶ VI, VII,  
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20 than requiring the Commission to institute a separate contempt proceeding, and  
21 (3) the evidence serves the additional purpose of impeaching Hashimoto’s  
22 Declaration supporting his Opposition to the OSC Re Contempt (*see* Section  
23 II(C), *supra*). The Commission does not object to giving Hashimoto the  
24 opportunity to file a surreply. *See El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032,  
25 1040-41 (9th Cir. 2003) (considering evidence presented for first time in reply);  
26 *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (implying that district  
27 court may consider new evidence presented in reply if court gives adverse party  
28 opportunity to respond).

<sup>3</sup> Transcript of November 16 meeting at page 3, lines 12-17. A true and correct  
copy of the transcript is attached as Exhibit 1 to the previously-filed Declaration  
of Peter F. Del Greco In Support Of Application For OSC Re Contempt.

1 VII, IX and XVII.)

2 As previously noted, the TRO orders the defendants to cooperate with the  
3 Receiver and expressly prohibits them from taking any action to “hinder, obstruct,  
4 or otherwise interfere with” the Receiver in the conduct of his duties, or “to  
5 interfere in any manner, directly or indirectly,” with the Receiver’s control of the  
6 assets of the receivership. (TRO ¶ XII.) Hashimoto’s comments of November 16  
7 constitute a hindrance of, an obstruction to, and an interference with the Receiver  
8 and his efforts to manage the receivership estate because they undermine the  
9 Receiver’s authority and competence. Hashimoto’s comments at the investor  
10 meeting suggested that investors would best serve their own economic interests by  
11 pledging their allegiance to the man who defrauded them (and claims to have the  
12 money to repay them in full), rather than the man who has informed the public that  
13 there is a \$15 million shortfall between what defendants owe investors and what  
14 they have on hand.

15 Hashimoto’s contention that he lied to investors in order “to assure them that  
16 I intended to find a way to repay their investments,” (Hashimoto Dec. ¶ 4), is  
17 irrelevant. It does not matter that he may not have intended to violate the TRO.  
18 *See, e.g., SEC v. Bilzerian*, 112 F. Supp. 2d 12, 16 (D.D.C. 2000) (in civil  
19 contempt proceeding, defendant’s intent regarding compliance with court order is  
20 irrelevant). The fact is, he did. Hashimoto’s admission constitutes clear and  
21 convincing evidence that he violated both the letter and the spirit of the TRO.

22 **Hashimoto’s Recent Attempt To Conceal Frozen Assets Constitutes**  
23 **Clear And Convincing Evidence That He Violated The Preliminary**  
24 **Injunction Order**

25 On February 8, 2005, Hashimoto opened an account at Linsco Private  
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1 Ledger Corp.<sup>4</sup> and, acting without the knowledge or permission of the Receiver,  
2 deposited into the account two million shares of restricted stock issued by Mobile  
3 Wireless Security, Inc.<sup>5</sup> (*See* Declaration of Peter F. Del Greco (“Del Greco  
4 Dec.”) and Exhibits (“Exs.”) 1, 2 thereto.) The stock was registered in the name of  
5 Financial Solutions. (Del Greco Dec., ¶ 2.) By depositing the stock, Hashimoto  
6 violated the Court’s Preliminary Injunction Order (“PI Order”) which, among other  
7 things: 1) restrains the defendants from “transferring” or “concealing” any assets  
8 (PI Order ¶ VI), 2) places “an immediate freeze” on the defendants’ assets (PI  
9 Order ¶ VII), 3) provides the receiver with “full power” over their assets (PI Order  
10 ¶ VIII), 4) orders any person with control of defendants’ assets to “give access to  
11 and control of such property” to the receiver (PI Order ¶ IX), and 5) prohibits the  
12 defendants from interfering with the receiver’s “custody, possession, management,  
13 or control” of assets (PI Order ¶ XII).

14 Although Hashimoto had previously provided an accounting that disclosed  
15 his possession of the two million shares of Mobile Wireless stock, as well as five  
16 million shares of Broadband Wireless International Corporation stock,<sup>6</sup> he has not  
17 given the Receiver custody of those shares. Nor has Hashimoto sought permission  
18 to place them in a brokerage account. Hashimoto’s attempt to transfer, conceal,  
19 and perhaps dispose of the shares of Mobile Wireless stock, underscores the need  
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22 <sup>4</sup> In opening the Linsco account, Hashimoto certified that he had a liquid net worth  
23 of more than \$1 million. (Del Greco Dec. ¶ 3, Ex. 1.) If true, this representation  
24 is an admission that Hashimoto continues to violate the asset freeze provisions of  
25 the TRO and the Preliminary Injunction Order. If false, it is further evidence of  
Hashimoto’s propensity for making false statements.

26 <sup>5</sup> Mobile Wireless is a pink sheet stock. In other words, the shares are not traded  
27 on a national exchange. On February 8, 2005, the day Hashimoto opened the  
account, the shares closed at \$10 per share.

28 <sup>6</sup> *See* Declaration of Christiano Hashimoto dated December 14, 2004.

1 for the Court to order Hashimoto to immediately turn over all shares of Mobile  
2 Wireless stock and Broadband Wireless stock to the Receiver.

3 **C. Hashimoto’s Attempt To Conceal Frozen Assets Undermines The**  
4 **Truthfulness Of His Declaration And His Credibility With This Court**

5 Hashimoto’s opening of, and transfer of stock into, the Linsco account  
6 undermines the credibility of his declaration. On February 15, 2005, Hashimoto  
7 made the following sworn representations to this Court:

8 The Receiver has, to the best of my knowledge, seized and accounted for all  
9 assets and property belonging to Ohana International, Financial Solutions,  
10 and me personally, except for the household belongings, my personal  
11 residence and 2 motor vehicles that this Court permitted me to retain.

12 *See* Hashimoto Dec. ¶ 7.

13 I have fully complied with the TRO and Preliminary Injunction by having  
14 made full disclosure and surrender of all assets belonging to Ohana  
15 International, Financial Solutions, and me, personally.

16 *See* Hashimoto Dec. ¶ 9.

17 Hashimoto must have known that these assertions were false when he made  
18 them, because just one week earlier, Hashimoto had deposited two million shares  
19 of Mobile Wireless stock into an account at Linsco.<sup>7</sup> (Del Greco Dec. ¶ 4, Ex. 2.)  
20 In light of his proven inclination toward untruthfulness – to investors, to the  
21 Commission, to the Receiver, to Linsco, and to this Court – the Court should not  
22 trust Hashimoto’s representations, sworn or unsworn.

23 **III. CONCLUSION**

24 For the reasons herein, the Commission respectfully asks the Court to issue  
25 an Order of Civil Contempt against Hashimoto, including provisions that he

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27 <sup>7</sup> Hashimoto did not provide the Receiver or the Commission with notice that he  
28 would transfer the shares of Mobile Wireless stock, nor has he notified them of  
his efforts to transfer the stock after doing so.

1 immediately transfer or cause to be transferred to the Receiver all shares of Mobile  
2 Wireless stock and Broadband Wireless stock in his possession, custody, or  
3 control.

4  
5 DATED: February \_\_, 2005

Respectfully submitted,

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9 J. CINDY ESON  
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11 PETER F. DEL GRECO  
12 Attorneys for Plaintiff  
13 Securities and Exchange Commission  
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