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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 * * *

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

v.

13 EDWIN YOSHIHIRO FUJINAGA and
14 MRI INTERNATIONAL, INC.,

15 Defendants,

and

16 CSA SERVICE CENTER, LLC
17 THE FACTORING COMPANY,
18 JUNE FUJINAGA, and
THE YUNJU TRUST,

19 Relief Defendants.

Case No.: 2:13-cv-01658-JCM-CWH

**RECEIVER’S APPLICATION FOR
AN ORDER TO SHOW CAUSE WHY
FORMER COUNSEL FOR
DEFENDANT SHOULD NOT BE
COMPELLED TO RETURN ESTATE
FUNDS**

20 Robb Evans & Associates LLC (the “Receiver”), the court-appointed receiver
21 pursuant to the Court’s Order Appointing a Full Equity Receiver to Assume Control Over
22 the Defendants’ Assets and Enforce the Final Judgment (the “Order Appointing
23 Receiver”) entered on May 15, 2015 (ECF No. 226)¹ requests the Court enter an order
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25 ¹ All references to “ECF No.” are to the numbers assigned to the documents filed in the relevant
26 case as they appear on the EM/ECF docket maintained by the clerk of court.

1 requiring the former attorneys for relief defendants June Fujinaga and/or the Yunju Trust
2 (“Former Defense Counsel”)² to show cause why they should not be compelled to return
3 the money they were paid for legal fees to defend June Fujinaga’s personal liability in
4 this case. Neither the engagement of, nor the fees accepted by, Former Defense Counsel
5 was ever approved by the Court or by the Receiver.

6 As set forth in detail below, June Fujinaga improperly and illegally used \$100,000
7 of the estate’s funds to pay her Former Defense Counsel to defend her and her trust in
8 this case. The payment, acceptance, and retention of the estate’s funds was done in
9 violation of several orders of this court, including the Asset Freeze Order (defined
10 below), the Order Appointing Receiver, principles of equity, and the law of receiverships.

11 Former Defense Counsel has refused the Receiver’s demands to return the funds to
12 the estate, and therefore the Receiver respectfully requests the Court enter an order
13 compelling the immediate repayment of these funds to the Receiver for deposit into the
14 estate’s general settlement fund for subsequent distribution during the claims
15 administration phase of this receivership case, and for such other and further relief as the
16 Court deems appropriate under the circumstances.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. Introduction.**

19 By this Motion, the Receiver seeks to recover \$100,000 paid by June Fujinaga to
20 Former Defense Counsel who represented her personal interests in this case. The funds
21 paid by June Fujinaga to these private attorneys consisted of funds held in her own name
22 that were obtained through the MRI Ponzi scheme from defrauded investors.

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² Specifically, Former Defense Counsel are Nevada attorneys Dominic Gentile, Esq. and Michael
26 Cristalli, Esq. See Notices of Appearances at ECF Nos. 249 and 262.

1 These payments were made and received in violation of the Asset Freeze Order
2 entered in this case and during the pendency of the Receiver’s appointment. These
3 payments were made in the form of personal checks made out by June Fujinaga and/or
4 otherwise drawn from her personal funds to her Former Defense Counsel in the total
5 amount of \$100,000 (there were three payments: \$30,000, \$30,000, and \$40,000).
6 According to Former Defense Counsel, the payments were made for legal fees expended
7 in challenging the disgorgement judgment entered against June Fujinaga and the Yunju³
8 Trust. These expenditures are not properly payable from estate assets, these expenditures
9 were highly improper, and these expenditures violated multiple Court orders. Former
10 Defense Counsel’s continuing refusal to return these funds to the estate, simply stated,
11 constitute ongoing and continuing contempt of court.

12 **II. Timeline.**⁴

13 June Fujinaga’s Former Defense Counsel accepted three payments totaling
14 \$100,000 from June Fujinaga’s personal funds (which funds therefore were property of
15 the Estate) after all of the following events had occurred in this case:

- 16 • Temporary and Permanent Injunctions had been entered freezing the
17 Defendants’ and the Relief Defendants’ assets. (ECF Nos. 10, 19).
- 18 • The SEC had amended its complaint to add June Fujinaga and the Yunju
19 Trust as relief defendants by its First Amended Complaint. (ECF No. 11).
- 20 • June Fujinaga had filed two motions to dismiss the claims against her in the
21 First Amended Complaint. (ECF Nos. 140, 141).

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23 ³ On information and belief, June Fujinaga’s first given name is actually Yunju (i.e., Yunju
24 Fujinaga) but that she calls herself “June Fujinaga” for convenience. The “Yunju Trust” could
just as accurately be described as “June’s Trust”.

25 ⁴ The Timeline section summarizes some of the events for ease of reference. Specific references
26 to the record and supporting evidence follow hereinbelow.

- 1 • June Fujinaga’s motions to dismiss the claims against her had been denied
2 (ECF No. 156).
- 3 • Final Judgment had been entered against her husband Edwin Fujinaga and
4 MRI based upon, among other things, this Court’s finding that Defendants
5 had stolen hundreds of thousands of dollars from investors by operating a
6 fraudulent Ponzi scheme. (ECF Nos. 188, 189).
- 7 • The SEC had taken the sworn deposition of June Fujinaga. In response to
8 the SEC’s questions concerning bank records evidencing that June Fujinaga
9 and/or the Yunju Trust personally received over \$2.3 million from her
10 husband and or the other Defendants during the period of operation of the
11 Ponzi scheme, June Fujinaga asserted her Fifth Amendment right against
12 self-incrimination and refused to answer all questions. (ECF No. 219-8).
- 13 • The Court had entered its first (limited) Order appointing the Receiver to
14 take immediate possession, custody, and control of certain real property
15 owned or controlled by Edwin Fujinaga, MRI, the Relief Defendants, and
16 any company under his control.⁵ (ECF No. 194).
- 17 • The SEC had filed its Motion for Summary Judgment against June Fujinaga
18 seeking disgorgement of funds in excess of \$2.3 million against her and her
19 trust. The SEC supported its Motion with evidence she received over \$2.3
20 million in stolen funds from her husband and his companies during the
21 operation of the MRI Ponzi scheme. (ECF No. 219).
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24 ⁵ The first Order appointing receiver required the Receiver to take immediate possession, custody
25 and control over real property owned by Defendants Edwin Fujinaga or MRI International, Inc.,
26 or Relief Defendants CSA Service Center, LLC, or The Factoring Company.

- 1 • In her opposition to the SEC’s Motion, June Fujinaga did not dispute the
2 SEC’s statement of material facts, which included the SEC’s undisputed
3 allegation that she and her trust received \$2.3 million in stolen funds from
4 her husband and his companies. (ECF Nos. 219, 230).⁶
- 5 • The SEC had filed its reply to June Fujinaga’s Opposition to the SEC’s
6 Motion for Summary Judgment against her. (ECF No. 233).

7 All of the foregoing events occurred *before* June Fujinaga’s Former Defense
8 Counsel accepted the first payment from June Fujinaga’s personal funds on July 22, 2015
9 in the amount of \$30,000.

10 Only 7 days after the first payment was made to June Fujinaga’s Former Defense
11 Counsel, on July 29, 2015, the Court entered its written Order granting the SEC’s Motion
12 for Summary Judgment against June Fujinaga, ordering that June Fujinaga disgorge over
13 \$2.3 million in fraudulently generated proceeds she accepted from her husband and his
14 companies. (ECF No. 253).

15 Almost incredibly, the second and third payments in the amounts of \$30,000 and
16 \$40,000 respectively, were accepted by June Fujinaga’s Former Defense Counsel *after*
17 the Court entered its final judgment against June Fujinaga ordering that she disgorge over
18 \$2.3 million in fraudulently obtained proceeds. In total, June Fujinaga paid private
19 defense counsel \$100,000 from her personal funds, which were and are property of the
20 estate because:

- 21 • The Asset Freeze Order had already been entered,

23 ⁶ See also the Order Granting Summary Judgment Against June Fujinaga at ECF No. 253 7:14-
24 17 (this court finding the “SEC contends that [June Fujinaga and the Yunju Trust] improperly
25 obtained \$2,383,382.18 in fraudulent proceeds. (Doc. # 219). Relief defendants do not dispute
26 that they received payments in the amounts argued by the SEC, and do not challenge any points
set forth in the SEC’s statement of undisputed facts. (Doc. # 230).” (ECF No. 253).

- 1 • June Fujinaga had already been named a Relief Defendant,
- 2 • The Court had already appointed the Receiver as the full equitable receiver,
- 3 • Ample evidence was apparent from the public record of this case that June
- 4 Fujinaga had received over \$2.3 million in stolen funds, which is
- 5 overwhelming evidence the money she was using to pay her Former Defense
- 6 Counsel was stolen from investors,
- 7 • With respect to the final two payments to Former Defense Counsel in the
- 8 collective sum of \$70,000, the Court had already entered findings and its final
- 9 judgment that June Fujinaga must immediately disgorge over \$2.3 million in
- 10 fraudulently obtained funds to the estate.

11 Former Defense Counsel were either aware they were accepting stolen funds, or
12 they were intentionally ignorant. Either way, the funds used to pay Former Defense
13 Counsel were stolen from investors, and these funds belong to the estate and must be
14 returned.

15 The Receiver previously and repeatedly demanded that June Fujinaga's Former
16 Defense Counsel return the funds, but all its demands have been flatly refused. The
17 Receiver therefore requests the Court order June Fujinaga's Former Defense Counsel to
18 show cause why an order should not be entered compelling the return of these funds to
19 the estate immediately.

20 **III. Background.**

21 **A. The MRI Ponzi Scheme - Edwin Fujinaga and MRI International, Inc.**

22 The instant case arises from a Ponzi scheme perpetrated by defendants Edwin
23 Fujinaga ("Fujinaga") and MRI International, Inc. ("MRI") (collectively, the
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1 “Defendants”).⁷ Very early in this case, the SEC moved the Court for summary judgment
2 against the Defendants on the issue of liability.⁸ The Court granted summary judgment on
3 liability, finding the Defendants had operated a Ponzi scheme funded by investments
4 obtained by materially and fraudulently misrepresenting the safety of the investments,
5 and then by using the investors’ funds for defendant Fujinaga’s own personal benefit.⁹

6 On January 27, 2015, the Court entered Final Judgment in the SEC’s favor and
7 jointly and severally against the Defendants for disgorgement of proceeds, prejudgment
8 interest, and penalties, in an amount exceeding \$500 million.¹⁰

9 In a parallel criminal case in the United States District Court for the District of
10 Nevada, which case is styled *United States of America v. Edwin Fujinaga*, case no. 2:15-
11 cr-00198-GMN-NJK-1, after a jury found Edwin Fujinaga guilty of all 20 criminal
12 charges against him, the Honorable Chief Judge Gloria M. Navarro sentenced Edwin
13 Fujinaga to serve a total of 50 years in prison for his part in the same MRI Ponzi scheme
14 at issue in this receivership case, and further ordered Edwin Fujinaga to pay restitution in
15 an amount exceeding \$1.1 billion.¹¹

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18 ⁷ See Order entered on January 27, 2015 (ECF No. 188), granting the SEC’s Motion for
19 Summary Judgment Against Defendants Edwin Fujinaga and MRI International, Inc. (ECF No.
20 178).

21 ⁸ See the SEC’s Motion for Summary Judgment against the Defendants on Liability filed on July
22 16, 2014 at ECF No. 113.

23 ⁹ See Order, ECF No. 157 at 14:4-24.

24 ¹⁰ See Order at ECF No. 188; *see also* Clerk’s Judgment against Defendants at ECF 189.

25 ¹¹ See Judgment as to Edwin Fujinaga entered on June 17, 2019 in *United States of America v.*
26 *Edwin Fujinaga*, case no. 2:15-cr-00198-GMN-NJK-1, at ECF No. 338.

1 **B. The Obvious Complicity of June Fujinaga and the Yunju Trust.**

2 On July 24, 2014, shortly after moving for summary judgment against Edwin
3 Fujinaga and MRI on liability, the SEC amended its complaint to add June Fujinaga¹² and
4 the Yunju Trust as relief defendants to the above-captioned civil MRI Ponzi scheme
5 receivership case.¹³ The SEC alleged:¹⁴

6 [June Fujinaga] purportedly received and used investors’
7 funds, also to buy and hold real property. June Fujinaga is
8 defendant Edwin Fujinaga’s wife. She allegedly used investor
9 funds to purchase condominium units in the MGM Grand
10 residential tower, later transferring ownership of these units to
relief defendant “the Yunju Trust.” (Doc. # 118).

11 June Fujinaga filed two motions to dismiss¹⁵ the SEC’s first amended complaint,
12 both of which were denied.¹⁶

13 On February 11, 2015, shortly after Final Judgment was entered against the
14 Defendants, the SEC took the sworn deposition of June Fujinaga.¹⁷ During her
15 deposition, June Fujinaga was asked to explain why she received millions of dollars in

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17 ¹² The term “June Fujinaga” as subsequently used herein shall mean and include both June
18 Fujinaga and/or the Yunju Trust as the context requires. On information and belief, June
19 Fujinaga is the sole trustee of the Yunju Trust, and Final Judgment finding June Fujinaga and the
Yunju Trust case jointly and severally liable to pay disgorgement in the amount of
\$2,333,382.18.

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21 ¹³ See First Amended Complaint at ECF No. 118.

22 ¹⁴ See *id.*; see also Order Denying June Fujinaga’s Motions for Summary Judgment, ECF No.
156 at 2:25—28.

23 ¹⁵ ECF Nos. 140, 141.

24 ¹⁶ See Order at ECF No. 156, filed on October 3, 2014.

25 ¹⁷ See the authenticated Deposition Transcript of June Fujinaga at ECF 219-8, Exhibit G to the
26 Declaration of Richard Simpson, Esq., counsel for the SEC at that time.

1 payments generated by the MRI Ponzi scheme, but in response to each question, she
2 refused to provide any information, she refused to answer the SEC's questions, and chose
3 instead to invoke her Fifth Amendment Privilege against self-incrimination.¹⁸

4 By Order¹⁹ entered in this case on July 29, 2015, the Court granted the SEC's
5 Motion for Summary Judgment Against Relief Defendants June Fujinaga and the Yunju
6 Trust.²⁰ In granting summary judgment against June Fujinaga²¹ and the Yunju Trust, the
7 Court found:²²

8 The instant case arises from a Ponzi scheme perpetrated by
9 defendants Edwin Fujinaga and MRI International, Inc. (the
10 "defendants"). Defendants collected hundreds of millions of
11 dollars for purported investments in medical accounts
12 receivable. Defendants used these funds to repay earlier
13 investments as well as for their own personal expenses. By
14 May 2013, defendants had entirely depleted the invested
15 funds. (Doc. # 118).

16 Relief defendant June Fujinaga, defendant Edwin Fujinaga's
17 wife, received investor funds to buy real estate. Certain real

18 ¹⁸ See SEC's Motion for Summary Judgment at ECF No. 219 pp. 9—11; *see also* June Fujinaga's
19 Deposition Transcript at ECF 219-8.

20 ¹⁹ ECF No. 253.

21 ²⁰ ECF No. 219.

22 ²¹ The term "June Fujinaga" as subsequently used herein shall mean and include both June
23 Fujinaga and/or the Yunju Trust as the context requires. On information and belief, June
24 Fujinaga is the sole trustee of the Yunju Trust, and Final Judgment finding June Fujinaga and the
25 Yunju Trust case jointly and severally liable to pay disgorgement in the amount of
26 \$2,333,382.18.

²² See Order entered on July 29, 2015, at ECF No. 253 at 1:19—2:1.

1 estate purchased with these proceeds is titled in the name of
2 relief defendant the Yunju Trust. (Doc. # 118).

3 On September 11, 2013, the SEC filed a civil enforcement
4 action against defendants and relief defendants. (Doc. # 2).

5 On October 3, 2014, the court granted summary judgment in
6 favor of the SEC on Liability against defendants. (Doc. #
7 156).

8 **C. The Court Appoints a Full Equitable Receiver.**

9 Approximately two weeks after June Fujinaga's deposition, in which she asserted
10 her Fifth Amendment right against self-incrimination and refused to answer all questions
11 concerning the millions she had received, the Court entered its Order Appointing an
12 Equitable Receiver on February 23, 2015,²³ which commanded and authorized the
13 Receiver to, among other things, take and retain immediate possession, custody, and
14 control of certain property owned or controlled by Defendant Edwin Fujinaga and others,
15 including relief defendant CSA.

16 The duties and responsibilities of the Receiver were shortly thereafter enlarged by
17 that certain Order Appointing a Full Equitable Receiver entered on May 15, 2015 (the
18 "Order Appointing Receiver").²⁴ The Order Appointing Receiver supersedes the
19 previous order and directs the Receiver to take and retain immediate possession, custody,
20 and control of "all assets owned or controlled, directly or indirectly, by judgment debtors
21 Edwin Fujinaga and MRI International, Inc., including, but not limited to, Relief
22 Defendants CSA Service Center, LLC, and The Factoring Company, and all of their
23 assets."²⁵

24 ²³ ECF No. 194.

25 ²⁴ ECF No. 226.

26 ²⁵ Order Appointing Receiver, ECF No. 226 at ¶ 1.

1 **IV. LEGAL ARGUMENT.**

2 There are hundreds of creditors and many thousands of investors who have been
3 defrauded by the MRI Ponzi scheme. June Fujinaga accepted over \$2.3 million of
4 proceeds stolen by her husband Edwin Fujinaga and his companies.²⁶ The scope of
5 carnage wrought by Edwin Fujinaga includes defrauding approximately 8,700 individual
6 investors resulting in a criminal monetary penalties against him in excess of \$1.2
7 billion.²⁷ These investors may receive just a few pennies on each dollar lost.

8 It would be a patently inequitable result to allow June Fujinaga's Former Defense
9 Counsel to retain stolen funds in their futile attempt to protect June Fujinaga from having
10 to return these stolen funds. Former Defense Counsel refuses to return these stolen funds
11 despite the fact they were paid and received: (A) during the pendency of this
12 receivership, (B) in violation of this Court's Asset Freeze Order, (C) in violation of the
13 Order Appointing Receiver, and (D) in the face of overwhelming evidence that June
14 Fujinaga had received over \$2.3 million in stolen funds. As noted above, 2 of the 3
15 payments were accepted and retained *even after* the Court formally entered its final
16 disgorgement judgment against June Fujinaga. Former Defense Counsel either knew
17 they were being paid with stolen funds or they were intentionally ignorant of that fact.

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²⁶ In addition to being sentenced to 50 years in prison, Edwin Fujinaga was ordered to pay
22 criminal restitution in an amount exceeding \$1.1 billion for his role in the MRI Ponzi scheme.
23 *See* Judgment as to Edwin Fujinaga entered on June 17, 2019 in *United States of America v.*
Edwin Fujinaga, case no. 2:15-cr-00198-GMN-NJK-1, at ECF No. 338.

24 ²⁷ *See* Judgment in a Civil Case entered on December 12, 2019 in the class-action case styled
25 *Shige Takiguchi et al v. MRI Int'l, Inc. and Edwin Fujinaga et al.*, case no. 2:13-cv-01183-
26 HDM-NJK at ECF 914. (\$1.1 billion / 8,700 =

1 **A. Clark on Receiverships.**

2 It is beyond reasonable argument that the leading treatise on the law of
 3 receiverships is CLARK, RALPH EWING, A TREATISE ON THE LAW AND PRACTICE OF
 4 RECEIVERS (3rd ed. 1992) (hereafter, “Clark on Receiverships”). Many hundreds of
 5 published cases from across this country have specifically cited and adopted the teachings
 6 of Clark on Receiverships.²⁸ The United States Court of Appeals for the Ninth Circuit,
 7 for example, in a case that extensively analyzed federal equity receivership law, cited the
 8 “teachings” of Clark on Receiverships nine (9) times, and specifically found it is the
 9 “leading treatise on the law of receiverships....” *SEC v. Am. Capital Investments, Inc.*, 98
 10 F. 3d 1133, 1144 (9th Cir. 1996). The legal basis for many of the Receiver’s stated
 11 positions in this Motion and the foundation for the relief requested herein substantially
 12 relies upon the bright-line principals of receivership law according to Clark on Receivers.

13 **B. June Fujinaga’s Former Defense Counsel Have Accepted Funds from**
 14 **the Personal Account of June Fujinaga that Rightfully Belong to the**
Estate and Refuse the Receiver’s Demands to Return Said Funds.

15 The Receiver has repeatedly demanded that June Fujinaga’s Former Defense
 16 Counsel return the following payments they accepted from June Fujinaga from her
 17 personal funds in the following amounts on the following dates:

- 18 • \$30,000 on July 22, 2015;
 19 • \$30,000 on August 10, 2015; and
 20 • \$40,000 on October 5, 2015.

21 See the authenticated letter from Michael Lynch to Michael Cristalli dated April 23,
 22 2019, a true and correct copy of which is attached as **Exhibit “1”** to the Declaration of
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24 _____
 25 ²⁸ The undersigned counsel for Receiver searched the Westlaw legal research database on March
 26 12, 2020 and found Clark on Receivers has been cited in 396 published cases, including 273
 state-court cases and 123 federal cases.

1 Michael F. Lynch (the “Lynch Declaration”) filed contemporaneously herewith. Former
2 Defense Counsel admitted that June “Fujinaga and the Yunju Trust retained him^[29] for a
3 flat fee of \$100,000 for the purpose of challenging the summary judgment disgorgement
4 against them.” See the authenticated letter from Michael Cristalli to Michael Lynch dated
5 February 27, 2017, with copies of June Fujinaga’s checks to Former Defense Counsel,
6 starting on page 12 of 16 of the Lynch Declaration.

7 **C. June Fujinaga’s Defense Counsel’s Acceptance of The Funds Violated**
8 **the Asset Freeze.**

9 On October 7, 2013, the Court entered its Order Granting Stipulation, Consented
10 Preliminary Injunction, and Asset Freeze (the “Asset Freeze”) (ECF No. 20).

11 Former Defense Counsel’s acceptance and retention of funds from June Fujinaga
12 from her personal accounts violated the Asset Freeze order, which provides in relevant
13 part:

14 **III.**

15 **IT IS FURTHER ORDERED** that, pending further Order of the Court,
16 Defendants Fujinaga and MRI, and Relief Defendant CSA, and their
17 officers, agents, servants, employees, **family members, attorneys**, and
18 those persons in active concert or participation with them who receive
19 actual notice of this Order by personal service or otherwise, and each of
20 them, shall hold and retain within their control, and otherwise prevent any
21 direct or indirect withdrawal, disposition, sale, transfer, pledge,
22 hypothecation, changing, wasting, encumbrance, assignment, dissipation,
23 conversion, concealment, or other disposal whatsoever of any funds, assets,
24 securities, or other real or personal property, wherever located, of
Defendants, and their subsidiaries and affiliates, whether owned by,
controlled by, managed by or in the possession or custody of any of them,

25 ²⁹ Its is unclear whether Michael Cristalli was acting as June Fujinaga’s sole counsel, as Dominic
26 Gentile of the same firm had also entered an appearance on her behalf.

1 including assets held in business, corporate or partnership accounts in
2 which Defendants Fujinaga and MRI, and Relief Defendant CSA, have an
3 interest, except as otherwise ordered by the Court. This Order expressly
4 includes a prohibition on opening or causing to be opened any safe deposit
5 boxes titled in the name of, or subject to access by, the Defendants or the
6 Relief Defendant; [Emphasis supplied].

7 IV.

8 **IT IS FURTHER ORDERED** that, pending further Order of the
9 Court, and subject to the provisions of Paragraph X, any financial or
10 brokerage institution or other person or entity holding or that has held at
11 any time since January 1, 2008, any funds or other assets, in the name, for
12 the benefit or under the control of Defendants or Relief Defendant, directly
13 or indirectly, held jointly or singly, and wherever located, and which
14 receives actual notice of this Order by personal service or otherwise, shall:

15 A. Hold and retain within its control and prohibit
16 Defendants, Relief Defendant and all other persons from
17 withdrawing, removing, assigning, transferring, pledging,
18 encumbering, disbursing, dissipating, converting, selling or
19 otherwise disposing of any such account or asset except as
20 directed by further Order of the Court.

21 *See* Asset Freeze Order (ECF No. 20) at §§ III and IV (A) (*emphasis added*). As outlined
22 in the Timeline section above, at the time June Fujinaga's Former Defense Counsel
23 accepted the estate's funds from her, she and her trust had been formally named as Relief
24 Defendants and the record was replete with evidence she had personally received over
25 \$2.3 million from the Defendants in fraudulently obtained proceeds. The Asset Freeze
26 therefore applied not only to June Fujinaga and the Yunju Trust as Relief Defendants, but
also to June Fujinaga's Former Defense Counsel. As officers of the Court, they had an
obligation to determine the source of the funds they were paid.³⁰

³⁰ *See FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1144 (9th Cir. 2010) (recognizing in the context of an FTC enforcement action that "an attorney is not permitted to be willfully

1 June Fujinaga was also the wife of Defendant Edwin Fujinaga, and the SEC's
2 allegations, supported by ample evidence, that she had received over \$2.3 million from
3 her husband and his family were part of the record. For the additional reasons set forth
4 below, it was easily apparent that June Fujinaga and/or the Yunju Trust had received over
5 \$2.3 million in tainted funds from other Defendants and Relief Defendants.

6 Former Defense Counsel's acceptance of funds in June Fujinaga's possession
7 violated the Asset Freeze Order and must be returned. As officers of the Court, June
8 Fujinaga's Former Defense Counsel were obligated to ensure the source of any retainer
9 funds was not tainted. They either knew, or were deliberately ignorant of the inescapable
10 fact, that their legal fees were paid with stolen funds that were subject to the Asset Freeze
11 Order, that belonged, and that still belong, to the estate. These stolen funds should be
12 returned to the defrauded investors.

13 **D. Former Defense Counsel's acceptance and retention of estate funds**
14 **may constitute contempt of court.**

15 As shown above and as discussed in further detail below, June Fujinaga's Former
16 Defense Counsel's acceptance and retention of fraudulently obtained funds by June
17 Fujinaga from her husband and his entities violated this Court's lawful orders. This

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19 ignorant of how his fees are paid"). "[W]hen an attorney is objectively on notice that his fees
20 may derive from a pool of frozen assets, he has a duty to make a good faith inquiry into the
21 source of those fees." *FTC v. Assail, Inc.*, 410 F.3d 256, 265 (5th Cir. 2005), *cited with approval*
22 *by Network Servs. Depot, Inc.*, 617 F.3d at 1143-44. "... [I]t makes no difference that [counsel]
23 are not parties to the litigation and that they are not themselves charged with fraud. The rulings
24 in *Assail* and in *Network Services Depot* apply equally to payments made by parties or payments
25 made by non-parties; so long as the payments originate in frozen assets, and so long as counsel is
26 apprised that his fees "may derive from a pool of frozen assets," the duty to inquire is triggered.
FTC v. Johnson, 2013 U.S. Dist. LEXIS 111392 (D. Nev. 2013) Case No. 2:10-cv-02203-MMD-
GWF (citing *Assail, Inc.*, 410 F.3d at 265). "Any suspicion raised concerning the source of assets
that a borrower intends to use to fulfill loan obligations must prompt an attorney to ensure that
her acceptance of the fees does not violate the Court's injunction order." *Id.*

1 behavior supports a finding of contempt of court and/or other discipline. As Clark on
2 Receiver's notes:

3 If the appointing court makes a formal injunction against
4 anyone interfering with the court's control and possession of
5 the property within its territorial jurisdiction, then anyone,
6 whether a party or not, having knowledge of the injunction or
7 even of the appointment and interfering, may be disciplined
by the court.

8 2 Clark on Receivers, § 625.1(b), p. 1026 (citing cases³¹). The fact that time has passed
9 does not excuse this violation, as there is no statute of limitations for violations of court
10 orders because it is considered an ongoing violation. *See United States v. Schine*, 260 F.
11 2d 552, 557 (2d. Cir. 1958) (finding "an order issued by a court with jurisdiction over the
12 subject matter and person must be obeyed by the parties until it is reversed by orderly and
13 proper proceedings." *United States v. United Mine Workers of America*, 330 U.S. 258,
14 293, 67 S.Ct. 677, 696, 91 L.Ed. 884. *See also Worden v. Searls*, 121 U.S. 14, 7 S.Ct.
15 814, 30 L.Ed. 853; *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 450, 31 S.Ct.
16 492, 55 L.Ed. 797, 34 L.R.A., N.S., 874.

17 June Fujinaga's Former Defense Counsel accepted funds from June Fujinaga
18 starting (A) **22 months** after the Asset Freeze was entered, (B) **6 months** after Final
19 Judgment had been entered against her husband Edwin Fujinaga and MRI based upon
20 findings he had stolen hundreds of thousands of dollars by operating a fraudulent Ponzi
21 scheme, (ECF Nos. 188, 189) and (C) **5 months** after June Fujinaga had refused to
22 answer any of the SEC's questions concerning the millions of dollars she had received
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25 ³¹ *Anderson v. Macek*, 350 ILL. 135, 182 NE 745 (1932); *Blaise v. Security Brew. Co.*, 124 La
26 979, 50 S 816 (1909).

1 from her husband during her sworn deposition in this receivership case, choosing instead
2 to assert her Fifth Amendment right against self-incrimination. (ECF No. 219-8).

3 With respect to the first payment, dated one week before final judgment was
4 entered against June Fujinaga for disgorgement of over \$2.3 million, even the most
5 cursory review of the docket or the facts of this case made it readily apparent that June
6 Fujinaga was, almost beyond all doubt, holding funds obtained through fraudulent means.
7 With respect to the second and third payments, dated *after the final disgorgement*
8 *judgment was entered against June Fujinaga*, it was beyond any reasonable argument
9 that any funds in June Fujinaga's possession were stolen funds subject to this Court's
10 disgorgement judgment and property of the estate.

11 Actions for disgorgement of profits are equitable in nature and no statute of
12 limitations applies in this SEC enforcement action. *See SEC v. Rind*, 991 F.2d 1486, 1493
13 (9th Cir. 1993) (citing *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494
14 U.S. 558, 570 (1990) (holding that no statute of limitations applies to disgorgement
15 claims in SEC civil enforcement actions)).

16 **E. June Fujinaga's Former Defense Counsel's Acceptance of The Funds**
17 **Violated the Order Appointing Receiver.**

18 On May 1, 2015, again prior to June Fujinaga's Counsel's acceptance of the
19 Funds, the Court entered its Order Appointing Receiver (ECF No. 226), in which the
20 Court ordered:

21 All persons who receive actual notice of this Order by
22 personal service or otherwise are enjoined from in any way
23 disturbing the assets of the Defendants ... except on leave
having been granted by this Court.

24 *See* Order Appointing Receiver at ¶ 16 (emphasis added).
25
26

1 The Order Appointing Receiver further provides:

2 23. Subject to all rights and privileges available under the
3 law, the Defendants, and their agents, directors, officers,
4 servants, employees, and attorneys-in-fact, and anyone
5 affiliated with, in control of, or under the control of, the
6 Defendants, shall:

7 * * *

8 b. Provide to the Receiver complete, immediate
9 and exclusive possession, custody, and control of all . . . their
10 real or personal property....

11 c. Take no action, directly or indirectly, to delay,
12 hinder, obstruct, delay, or otherwise interfere in any manner
13 with the actions of the Receiver or any other person engaged
14 or employed by the Receiver to assist in carrying out the
15 Receiver's duties herein.

16 *See* Order Appointing Receiver at ¶¶ 23 (a), (b) (*emphasis added*). Former Defense
17 Counsel's acceptance of the Funds from Relief Defendants June Fujinaga and/or the
18 Yunju Trust was improper, and even the most casual review of the docket put them on
19 notice that acceptance of the Funds was in violation of, without limitation (1) the law of
20 receiverships, (2) the Asset Freeze, and (3) the Order Appointing Receiver.

21 **F. June Fujinaga's Former Defense Counsel's Claim Did Not Serve the**
22 **Interests of the Estate, and Even if A Proper Application Were Made**
23 **for Payment of Defense Counsel's Fees, They Should be Disallowed.**

24 Clark on Receivers teaches:

25 **Counsel fees to defendant's counsel.** Allowance of fees to
26 counsel of defendant are rarely allowed.³² The fees of counsel
of defendant for services performed **before** the receivership

³² Culhane v. Anderson, 17 F.2d. 559 (8th Cir. 1927).

1 may be a claim against the defendant and, therefore, a claim
2 against the funds, but under ordinary circumstances, this is
3 not a preferred claim. It is a claim against the fund after the
4 expenses of the receivership for the preservation of the fund
5 have been paid.³³

6 If **after appointment of receiver** the defendant's attorney
7 performs services to protect the property and fund and does in
8 fact protect the fund or bring extra property under the court's
9 jurisdiction, he may be allowed a fee commensurate with his
10 services; otherwise, he has no claim on the fund, even though
11 they may have a claim against the defendant.³⁴

12 Clark on Receivers at § 642(e) p. 1109 (emphasis added).

13 June Fujinaga's Former Defense Counsel was retained and paid well after the
14 Receiver was appointed. June Fujinaga's Former Defense Counsel accepted the first
15 payment from June Fujinaga on July 22, 2015, well after the appointment of the
16 Receiver.³⁵ Accordingly, under well-settled law, Former Defense Counsel has no right to
17 be compensated for work done after the inception of the receivership that served only the
18 selfish interests of June Fujinaga and not the estate in any way.

19 The second paragraph of the Clark treatise cited above makes it abundantly clear
20 that a receivership defendant's counsel shall not, under any circumstances, be paid from
21 the estate's funds after the appointment of a receiver unless his work was in furtherance
22 of protecting the estate's fund, and that the defendant's counsel was successful in
23 bringing assets into the estate. *Id.*; see also *SEC v. Capital Counsellors, Inc.*, 512 F. 2d
24 654, 658 (2nd. 1975)(finding that "[o]rdinarily the services of an attorney employed by

25 _____
26 ³³ Atkinson & Co. v. Aldrich-Clisbee Co., 248 Fed 134 (1915).

³⁴ Barker v. Southern Bldg. & L. Assn., 181 Fed 638 (1910); Culhane v. Anderson, 17 F.2d. 559 (1927).

³⁵ The Order Appointing Full Equitable Receiver was entered on May 15, 2015 (ECF No. 226).

1 defendant to represent him in the receivership proceedings are solely for his benefit and
2 are not to be paid for out of funds brought into court for the benefit of plaintiff and other
3 claimants against the defendant.”) (internal citations omitted)).

4 June Fujinaga’s counsel in this case did neither. Former Defense Counsel allowed
5 and facilitated her disobedience of the Court’s disgorgement Judgment and other orders
6 to dissipate stolen funds for her, and her counsel’s, own selfish interests in funding her
7 personal defense. June Fujinaga’s Former Defense Counsel has no right to accept these
8 funds and has no right to retain these funds that were obtained through the fraudulent
9 MRI Ponzi scheme.

10 Former Defense Counsel must return these funds because the funds were used for
11 representation that was entirely in service to June Fujinaga’s personal self-serving
12 interests. Former Defense Counsel did not serve the interests of the estate in any
13 conceivable way, and the funds paid and retained must be therefore returned.

14 In this instance, June Fujinaga used funds her husband stole from investors in a
15 futile effort to defend herself and resist judgment being entered against her. Not only was
16 there no benefit to the estate (which lack of benefit to the estate bars any claim by Former
17 Defense Counsel for payment of fees expended on behalf of June Fujinaga from estate
18 funds), her Former Defense Counsel’s efforts in this case in defending against the
19 judgment against her merely increased the expenses of the Estate and lessened the
20 amount that will be ultimately available to distribute to creditors. Even if her Former
21 Defense Counsel were to make an application for fees, which they have not, such a claim
22 would be evaluated at the same time all creditors’ claims are determined and should be
23 denied.

1 **G. June Fujinaga’s Former Defense Counsel’s Claim for Payment for**
2 **Legal Services – Even if Such a Claim Were Made and Allowed –**
3 **Would be Determined as an Ordinary Creditor Claim.**

4 Former Defense Counsel cannot show that its services provided a benefit to the
5 estate, and so its claim must be denied. Former Defense Counsel’s work increased the
6 costs of the estate and reduced the amount that will be ultimately available to return to the
7 investors and creditors. Under these circumstances, Clark on Receiverships reveals the
8 law of receiverships is exceptionally clear on this point: even under these circumstances
9 June Fujinaga’s Former Defense Counsel has no more right to payment on its claim for
10 fees than would an ordinary creditor during the final distribution phase of this case.

11 **§ 666.1 Claim for legal services to defendant.**

12 A lawyer representing the defendant, individual or
13 corporation, before and at the time of appointment may have
14 a claim against the receivership funds and rank as an ordinary
15 creditor. One representing defendant, individual or
16 corporation, and opposing receivership may in certain
17 jurisdictions be entitled to a claim and may be entitled to rank
18 as privileged creditor. The criterion in such cases should be
19 an answer to the question whether or not the services of the
20 attorney have or have not been beneficial to the receivership
21 and whether or not the services have really protected the
22 estate from waste and/or have realized funds or brought in
23 assets or funds for the estate.³⁶

24 2 Clark on Receivers, § 642(e), p. 1109.

25 The Asset Freeze Order was available on the CM/ECF docket, and June
26 Fujinaga’s Former Defense Counsel had ample notice she had received millions in stolen
27 funds. Moreover, upon their own admission, June Fujinaga’s Former Defense Counsel

³⁶ *Louque v. Hercules Oil Co.*, 170 La. 355, 127 So. 866 (La. 1930).

1 accepted and is retaining funds that came from June Fujinaga's personal accounts for the
2 purpose of challenging the summary judgment disgorgement against her and her personal
3 trust. *Id.* The costs of defending June Fujinaga from personal liability are not costs
4 payable by the estate.

5 **V. The Record of this Case Provided Ample Notice to June Fujinaga's Former**
6 **Defense Counsel That June Fujinaga's Assets Were the Proceeds of Fraud**
7 **and Therefore Property of the Estate.**

8 Former Defense Counsel was on prior notice that the source of the Payments from
9 June Fujinaga was fraud. The Asset Freeze entered in 2013, which Asset Freeze is still in
10 place, prohibits any party with knowledge of the Asset Freeze from accepting payments
11 from any Defendant or Relief Defendant. *Id.* The Asset Freeze appears on the publicly
12 available CM/ECF Docket, and any attorney entering an appearance in the case would
13 certainly be on actual and/or constructive notice of the terms of the Asset Freeze. *See*
14 fn.30 hereinabove.

15 June Fujinaga's involvement and implication in the MRI Ponzi scheme was
16 apparent not later than July 24, 2014, when the First Amended Complaint was filed,
17 alleging:

18 Relief defendant June Fujinaga, defendant Fujinaga's wife,
19 received investor funds to buy real estate and for other
20 purposes not related to the purchase of MARS. Some of her
21 real estate, which was purchased in whole or in part with
22 funds she received from the defendants, is titled in the name
23 of The Yunju Trust, also a relief defendant. CSA, The
24 Factoring Company, June Fujinaga and the Yunju Trust do
25 not have a legitimate claim to the funds they received,
26 directly or indirectly, from Fujinaga or MRI.

* * *

24 Relief defendant June Fujinaga is defendant Fujinaga's wife.
25 She received funds from the defendants for her own support
26 and other purposes

* * *

1 June Fujinaga and the Yunju Trust do not have a legitimate
2 claim to the funds they received directly or indirectly from
3 Fujinaga or MRI.

4 See First Amended Complaint at ¶¶ 6, 13, 21 (*emphasis added*).

5 The Third Prayer for Relief in the First Amended Complaint requests the Court
6 order “Fujinaga, MRI, CSA, The Factoring Company, June Fujinaga and the Yunju Trust
7 to disgorge all misappropriated investor funds and other ill-gotten gains that they
8 obtained as a result of defendants’ fraudulent misstatements, acts or courses of conduct
9 described in this Complaint, and to pay prejudgment interest thereon[.]” *Id.* at p.18 of 19.

10 (*emphasis added*). These allegations and the Prayer for Relief above were made in the
11 First Amended Complaint against Relief Defendant June Fujinaga and the Yunju Trust,
12 and publicly available via the CM/ECF system on July 24, 2014, approximately a full
13 year before Former Defense Counsel accepted the first of the Payments from June
14 Fujinaga.

15 **VI. Attorneys Must Ensure They Do Not Accept Funds Obtained Through**
16 **Fraud.**

17 Former Defense Counsel, as an officer of the Court, was obligated to ensure the
18 source of any retainer funds was not tainted. In addition to the Asset Freeze, the First
19 Amended Complaint put Counsel on undeniable notice that the source of June Fujinaga’s
20 and the Yunju Trust’s funds and other assets was tainted. By accepting the payments,
21 Counsel did so at its own peril. The payments were proceeds of fraud and are property of
22 the estate, and rightfully belong to the estate. Moreover, two of the three payments were
23 accepted after the final disgorgement Judgment against June Fujinaga was entered.

24 The SEC filed its Motion for Summary Judgment against June Fujinaga and the
25 Yunju Trust on May 1, 2015, in which it set forth sufficient evidence that June Fujinaga
26

1 and the Yunju Trust were subject to disgorgement of approximately \$2.38 million in
2 funds they had received from the Defendants, who in turn had obtained the funds by
3 defrauding investors in the MRI Ponzi scheme.³⁷

4 The Court subsequently granted summary judgment in the SEC's favor, finding
5 "the SEC's statement of undisputed facts sets forth a number of transactions showing that
6 relief defendants [June Fujinaga and the Yunju Trust] received the total amount in
7 question from defendants. (Doc. # 219-9)", which, when "coupled with the adverse
8 inference from relief defendant June Fujinaga's assertion of privilege, warrants summary
9 judgment against relief defendants [June Fujinaga and the Yunju Trust]." *See* Order
10 Granting Summary Judgment entered on July 29, 2015 at 9:14—22 (ECF No. 253).

11 The Order Granting Summary Judgment against Relief Defendants June Fujinaga
12 and the Yunju Trust was entered prior to Former Defense Counsel's receipt of two of the
13 Payments from June Fujinaga. Former Defense Counsel had ample actual notice,
14 therefore, that they were being paid with fraudulently obtained proceeds. Former Counsel
15 has no basis to assert any equitable grounds to be allowed to retain funds obtained
16 through fraud, particularly as at the time the first check was accepted, the docket was
17 replete with evidence that would put anyone on notice that the funds June Fujinaga
18 possessed were the proceeds of fraud. As of the time the second and third checks were
19

20 ³⁷ The Motion for Summary Judgment states: "Bank and corporate financial records conclusively
21 establish that the Relief Defendants received \$2,383,382.18 from Edwin Fujinaga or one of his
22 companies in the course of the fraudulent scheme. These fund transfers were accomplished by
23 check, direct deposit, and e-payment. When questioned about these fund transfers in her
24 deposition on February 11, 2015, June Fujinaga did not dispute any of them or point to any
25 evidence indicating that she had performed legitimate services in exchange for them. Instead, she
26 asserted her Fifth Amendment privilege against self-incrimination and declined to provide any
justification for the fund transfers. Accordingly, there is no genuine dispute that these funds
should be disgorged, and not remain with, or inure to the benefit of, Edwin Fujinaga's spouse."
See Motion for Summary Judgment at 4.

1 accepted, final judgment had already been entered. The final judgment included a
2 finding of fact that June Fujinaga had received over \$2.3 million in fraudulently obtained
3 proceeds from the MRI Ponzi scheme.

4 **VII. Conclusion**

5 For the foregoing reasons, the Receiver therefore request the Court enter an order
6 compelling Michael Cristalli, Dominic Gentile, and/or the person most knowledgeable
7 for the law firm of Gentile Cristalli Miller Armeni Savarese concerning the engagement
8 in question, to show cause why funds received from June Fujinaga should not be returned
9 to the estate. Should June Fujinaga's Former Defense Counsel fail to show sufficient
10 cause, the Receiver further requests the Court determine and enforce the rights of the
11 Receiver against June Fujinaga's Former Defense Counsel and for all other and further
12 relief the Court determines is just under the circumstances.

13 Dated March 31, 2020.

14 LYNCH LAW PRACTICE, PLLC

15 /s/ Michael F. Lynch
16 Michael F. Lynch
17 Nevada Bar No. 8555
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Las Vegas, Nevada 89169
702.684.6000
18 Michael@LynchLawPractice.com

19 Attorney for Receiver Robb Evans
& Associates LLC

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5 *Attorney for the Receiver*
6 *Robb Evans & Associates LLC*

7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 vs.

13 EDWIN YOSHIHIRO FUJINAGA and
MRI INTERNATIONAL, INC.,

14 Defendants,

15 and

16 CSA SERVICE CENTER, LLC
THE FACTORING COMPANY,
17 JUNE FUJINAGA, and
18 THE YUNJU TRUST,

19 Relief Defendants.

Case No.: 2:13-cv-01658-JCM-CWH

**DECLARATION OF MICHAEL LYNCH
IN SUPPORT OF RECEIVER’S
APPLICATION FOR AN ORDER TO
SHOW CAUSE WHY FORMER
COUNSEL FOR DEFENDANT SHOULD
NOT BE COMPELLED TO RETURN
ESTATE FUNDS**

20 I, Michael F. Lynch, declare:

21 1. I am an attorney at law duly licensed and authorized to practice before all
22 courts in the State of Nevada, and before the Ninth Circuit Court of Appeals, and am the
23 managing member of Lynch Law Practice, PLLC (“Lynch Law”), court-appointed
24 counsel for Robb Evans & Associates LLC, the court-appointed equitable receiver (the
25 “Receiver”). If called upon to testify as to the facts set forth in this declaration, I could
26 and would testify competently thereto as the facts are personally known to me to be true.

27
28



Exhibit "1"

LYNCH LAW PRACTICE, PLLC

Michael F. Lynch

Attorney at Law

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Michael@LynchLawPractice.com

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April 23, 2019

**VIA EMAIL AND FIRST
CLASS U.S. MAIL TO:**

Gentile Cristalli Miller Armeni Savarese

Attn: Michael Cristalli

410 S. Rampart, Suite 420

Las Vegas, NV 89145

mcristalli@gcmaslaw.com

Re: *SEC vs. Edwin Fujinaga et al.* (the "Receivership Case"), 2:13-cv-1658-JCM-CWH
The Receiver's Demand for the Immediate Return of Estate Assets Tendered by
Mrs. Fujinaga and/or the Yunju Trust

Dear Mr. Cristalli:

The Receiver again demands that you and/or Gentile Cristalli Miller Armeni Savarese (collectively, "You") return to the estate the funds You accepted from June Fujinaga. Specifically, you cashed checks from June Fujinaga in the amounts of:

- \$30,000 on July 22, 2015;
- \$30,000 on August 10, 2015; and
- \$40,000 on October 5, 2015.

The \$100,000¹ (the "Funds") You deposited belonged and belongs to the receivership estate. Your acceptance of these funds violated, without limitation, the Court's asset freeze and several other court orders, some of which are discussed below. These funds must be returned to the Receiver immediately. The estate is now in its wind-up stages, and this issue must be resolved.

¹ Copies of the checks You accepted drawn on an account in the name of June Fujinaga, and are attached to Your letter dated February 27, 2017, a complete copy of which is attached hereto.

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April 23, 2019

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YOUR ACCEPTANCE OF THE FUNDS VIOLATED THE PRELIMINARY INJUNCTION AND ASSET FREEZE.

On October 7, 2013, the Court entered its Order Granting Stipulation, Consented Preliminary Injunction, and Asset Freeze (the "Preliminary Injunction and Asset Freeze") (ECF No. 20).

You accepted funds from June Fujinaga *22 months after* the Preliminary Injunction and Asset Freeze was entered, which provides:

III.

IT IS FURTHER ORDERED that, pending further Order of the Court, Defendants Fujinaga and MRI, and Relief Defendant CSA, and their officers, agents, servants, employees, **family members, attorneys**, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any direct or indirect withdrawal, disposition, sale, transfer, pledge, hypothecation, changing, wasting, encumbrance, assignment, dissipation, conversion, concealment, or other disposal whatsoever of any funds, assets, securities, or other real or personal property, wherever located, of Defendants, and their subsidiaries and affiliates, whether owned by, controlled by, managed by or in the possession or custody of any of them, including assets held in business, corporate or partnership accounts in which Defendants Fujinaga and MRI, and Relief Defendant CSA, have an interest, except as otherwise ordered by the Court. This Order expressly includes a prohibition on opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by, the Defendants or the Relief Defendant; [Emphasis supplied].

IV.

IT IS FURTHER ORDERED that, pending further Order of the Court, and subject to the provisions of Paragraph X, any financial or brokerage institution or other person or entity holding or that has held at any time since January 1, 2008, any funds or other assets, in the name, for the benefit or under the control of Defendants or Relief Defendant, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this Order by personal service or otherwise, shall:

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A. Hold and retain within its control and prohibit Defendants, Relief Defendant and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such account or asset except as directed by further Order of the Court.

Preliminary Injunction and Asset Freeze at §§ III. and IV (A) (*emphasis added*). At the time of Your acceptance of the Funds from June Fujinaga You (Mr. Gentile) had entered a notice of appearance in the case for June Fujinaga. June Fujinaga and/or the Yunju Trust were formally named as Relief Defendants, and the Preliminary Injunction and Asset Freeze therefore applied to not only You as their attorney, but also directly to both as Relief Defendants. June Fujinaga was also part of Defendant Edwin Fujinaga's family. For the additional reasons set forth below, it was easily apparent that June Fujinaga and/or the Yunju Trust had received over \$2.3 million in tainted funds from other Defendants and Relief Defendants.

Your acceptance of these funds therefore violated the Preliminary Injunction and Asset Freeze and must be returned. Even the most casual review of the Docket would have revealed the Preliminary Injunction and Asset Freeze, and as an officer of the Court, You were obligated to ensure the source of Your retainer funds was not tainted.

JUNE FUJINAGA AND THE YUNJU TRUST BECAME RELIEF DEFENDANTS ALMOST 1 YEAR BEFORE YOU CASHED HER FIRST CHECK TO YOU.

On July 24, 2014, June Fujinaga and the Yunju Trust were named in the First Amended Complaint as relief defendants in the Receivership Case (ECF 118). The First Amended Complaint alleged:

Relief defendant June Fujinaga, defendant Fujinaga's wife, received investor funds to buy real estate and for other purposes not related to the purchase of MARS. Some of her real estate, which was purchased in whole or in part with funds she received from the defendants, is titled in the name of The Yunju Trust, also a relief defendant. CSA, The Factoring Company, June Fujinaga and the Yunju Trust do not have a legitimate claim to the funds they received, directly or indirectly, from Fujinaga or MRI.

* * *

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Relief defendant June Fujinaga is defendant Fujinaga's wife. She received funds from the defendants for her own support and other purposes, including the purchase of condominium units in the MGM Grand residential tower. Ownership of the tower properties was later transferred to relief defendant The Yunju Trust.

* * *

June Fujinaga and the Yunju Trust do not have a legitimate claim to the funds they received directly or indirectly from Fujinaga or MRI.

First Amended Complaint at ¶¶ 6, 13, 21 (*emphasis added*).

The Third Prayer for Relief in the First Amended Complaint requests the Court order “Fujinaga, MRI, CSA, The Factoring Company, June Fujinaga and the Yunju Trust to disgorge all misappropriated investor funds and other ill-gotten gains that they obtained as a result of defendants' fraudulent misstatements, acts or courses of conduct described in this Complaint, and to pay prejudgment interest thereon;” *Id.* at p.18 of 19. (*emphasis added*).

These allegations and the Prayer for Relieve above were brought in the First Amended Complaint, and publicly available via the CM/ECF system on July 24, 2014, approximately a full year prior to Your acceptance of the first payment from June Fujinaga.

Again, as an officer of the Court, You were obligated to ensure the source of Your retainer funds was not tainted, and in addition to the Preliminary Injunction and Asset Freeze, the First Amended Complaint had put You, as an officer of the court, on undeniable notice that the source of June Fujinaga's and the Yunju Trust's funds and other assets was tainted. By accepting the Funds, You did so at Your own peril. You accepted funds that were the proceeds of, among other things, outright fraud.

Neither June Fujinaga nor the Yunju Trust even *disputed* the SEC's allegations against them in the First Amended Complaint. You knew this prior to accepting any of the Funds. You further knew when You accepted the Funds, that those Funds were property of the estate because it is apparent from the check themselves that the Funds came directly from June Fujinaga. It is long-established and widely recognized that an attorney cannot blindly accept retainer funds, without doing enough due diligence to verify the funds were not obtained via illegal means and or otherwise tainted.

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YOUR ACCEPTANCE OF THE FUNDS VIOLATED THE ORDER APPOINTING RECEIVER.

On May 1, 2015, again prior to Your acceptance of the Funds, the Court entered its Order Appointing a Full Equitable Receiver to Assume Control over the Defendants' Assets and Enforce the Final Judgment (the "Order Appointing Receiver") (ECF No. 226). The Court ordered that:

All persons who receive actual notice of this Order by personal service or otherwise are enjoined from in any way disturbing the assets of the Defendants ... except on leave having been granted by this Court.

Order Appointing Receiver at ¶ 16. The Order Appointing Receiver further provides:

23. Subject to all rights and privileges available under the law, the Defendants, and their agents, directors, officers, servants, employees, and attorneys-in-fact, and anyone affiliated with, in control of, or under the control of, the Defendants, shall:

* * *

b. Provide to the Receiver complete, immediate and exclusive possession, custody, and control of all . . . their real or personal property....

c. Take no action, directly or indirectly, to delay, hinder, obstruct, delay [sic], or otherwise interfere in any manner with the actions of the Receiver or any other person engaged or employed by the Receiver to assist in carrying out the Receiver's duties herein.

Order Appointing Receiver at ¶¶ 23 (a), (b) (*emphasis added*). Your acceptance of the Funds from Relief Defendants June Fujinaga and/or the Yunju Trust was improper, and even the most casual review of the docket put You on notice that Your acceptance of the Funds was in violation of, without limitation (1) the law of receiverships, (2) the Preliminary Injunction and Asset Freeze, and (3) the Order Appointing Receiver.

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IT IS BEYOND REASONABLE ARGUMENT THAT YOU KNEW THE SOURCE OF THE FUNDS YOU WERE PAID WERE LIKELY TAINTED AND PROPERTY OF THE ESTATE.

In Your own words, You were engaged for the following purpose:

Mrs. Fujinaga and The Yunju Trust retained our firm for a flat fee of \$100,000 for the purpose of challenging the summary judgment disgorgement against them;

See Your February 27, 2017 letter. You did not even bother to seek leave of court to accept these estate funds despite the facts of this case.

The analysis could start and stop with Your own description of the purpose of Your engagement. It is beyond all doubt that You were aware that judgment would be entered against June Fujinaga and the Yunju Trust for disgorgement of millions of dollars. Not only did You have a duty to inquire as to the precise source of the funds You accepted, You accepted the Funds with actual knowledge that this would shortly occur. There is no mistake that it was patently obvious from the record that all of June Fujinaga and/or the Yunju Trust's real and personal property was property of the estate and subject to an asset freeze.

NINTH CIRCUIT LAW RECOGNIZES THAT THE FUNDS YOU ACCEPTED FROM JUNE FUJINAGA AND/OR THE YUNJU TRUST MUST BE RETURNED TO THE ESTATE.

The Ninth Circuit Court of Appeals² affirmed a District Court's order compelling a law firm to return fees it had accepted from a receivership defendant, which acceptance violated the terms of an order. In that case, the law firm had almost no notice, because the District Court's memorandum of decision and order, which is the order the law firm had violated, appeared on the docket on the same day the firm accepted payment for its fees. *Id.* at 1285.

² *Commodity Futures Trading Commission v. Co Petro Mktg. Group, Inc.*, 502 F.Supp. 806 (C.D. Cal. 1980), *aff'd*, 680 F.2d 566 (9th Cir. 1982).

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The Order that the District Court found the law firm had violated, provided:

- (1) A receiver was appointed to oversee the identification, preservation, management and control of the assets of Co Petro;
- (2) Defendants were enjoined from utilizing, diverting, transferring or dealing in any manner whatsoever with the assets of Co Petro and Goldstein; and
- (3) Defendants were ordered to disgorge all payments received by them from the unlawful activities.

Co Petro Mktg., 502 F.Supp. 820-21.

On appeal, the 9th Circuit affirmed the *Co Petro Mktg.* District Court's finding that the law firm had violated the above-referenced terms of its order, and therefore was required to return the fees it accepted because the law firm had failed to satisfy its duty as officers of the Court, "to inquire as to the exact terms of the district court's decision before depositing the check." Consequently, we agree with the district court that [the law firm] violated the permanent injunction against transfer of Co Petro assets when it deposited the check." *Co Petro Mktg.*, 680 F.2d at 1285 (*emphasis added*).

In contrast, You had ample notice, some entered *years* prior, that You were proscribed from accepting funds from June Fujinaga and/or the Yunju Trust. You had an independent duty to the receivership court in this case to investigate whether funds being used for Your retainer were obtained wrongfully or illegally.³ It is "well established doctrine that [a]n attorney, after being admitted to practice, becomes an officer of the court, exercising a privilege or franchise. As officers of the court, attorneys owe a duty to the court that far exceeds that of lay citizens." *FTC v. Assail, Inc.*, 410 F. 3d 256, 264 (5th Cir. 2005) (internal citations omitted).

³ The substantial likelihood that Mrs. Fujinaga was complicit in Mr. Fujinaga's fraudulent conduct was apparent not later than July 24, 2014. *See* Order Denying June Fujinaga's Motion to Dismiss for lack of subject matter jurisdiction and overruling her statute of frauds defense. In that Order, the Court recognizing that "Plaintiff's complaint alleges that the relief defendants purportedly received and used investors' funds [for personal expenses and luxury cars, and] also to buy and hold real property." The Court went on to find "June Fujinaga is defendant Edwin Fujinaga's wife. She allegedly used investor funds to purchase condominium units in the MGM Grand residential tower, later transferring ownership of these units to relief defendant 'the Yunju Trust.'" (ECF No. 157 at 2:25—28).

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Based on this doctrine, the *Assail* Court further found that attorneys, as officers of the court, has the duty to investigate the source of his fees and the “duty to ensure that he himself is not violating a valid court order.” *Id.*

For ease of reference, the following timeline details events relevant to the impropriety of Your acceptance of retainer funds from Mrs. Fujinaga:

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
9/12/2013	ECF No. 10	<u>Temporary Restraining Order</u>
10/07/2013	ECF No. 20	<u>The Preliminary Injunction and Asset Freeze</u>
7/24/2014	ECF No. 118	<u>First Amended Complaint</u> – the SEC amended its Complaint to include allegations that June Fujinaga received investor funds (which were obtained through a massive Ponzi scheme led by her husband) to purchase unrelated real property and received tainted investor funds to which she has no legitimate claim.
10/13/2014	ECF No. 157	Order Denying June Fujinaga’s Motion to Dismiss for lack of subject matter jurisdiction and her statute of frauds defense.
1/27/2015	ECF No. 188	Order Granting Summary Judgment against Edwin Fujinaga and MRI International, Inc. for well over \$500 million.
5/1/2015	ECF No. 219	The SEC files its Motion for Summary Judgment against June Fujinaga and the Yunju Trust, seeking disgorgement of \$2,383,328.18 that they had received from other Defendants and Relief Defendants.
5/15/2015	ECF No. 226	The Court enters its Order Appointing Full Equitable Receiver.
5/22/2015	ECF No. 230	June Fujinaga and the Yunju Trust file their Response in opposition to the SEC’s Motion for Summary Judgment but do not even <i>dispute</i> that they had improperly obtained millions of dollars in fraudulent proceeds.
7/22/2015	Check #409	You accept June Fujinaga’s First Check to You in the amount of \$30,000
7/27/2015	ECF No. 249	Dominic Gentile of Your firm files an appearance on behalf of June Fujinaga.
7/29/2015	ECF No. 253	<u>Order Granting Summary Judgment</u> against June Fujinaga and the Yunju Trust as you expected.
8/10/2015	Check #418	You accept June Fujinaga’s Second Check to You for \$30,000.
8/11/2015	ECF No. 260	<u>Final Judgment</u> entered against June Fujinaga and/or the Yunju Trust.
8/26/2015	ECF No. 262	Mr. Cristalli files his notice of appearance of counsel for June Fujinaga and/or the Yunju Trust.
10/05/2015	Check #1797	You accept June Fujinaga’s Third Check to You for \$40,000.

3613 S. Eastern Ave., Las Vegas, NV 89169

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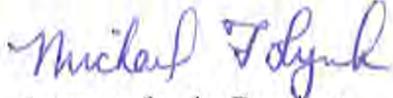
DEMAND

This is the Receiver's final demand that You immediately turn over to the Receiver the \$100,000 You accepted from June Fujinaga.

PLEASE TAKE NOTICE that this Estate is being wound up. The Receiver will promptly seek relief from the Court (a) by any and all means and (b) in any and all forms, it deems necessary or advisable unless You voluntarily return the funds and/or reach mutually satisfactory terms with the Receiver BY OR BEFORE TWO WEEKS FROM THE DATE OF THIS LETTER.

Sincerely,

LYNCH LAW PRACTICE, PLLC



Attorney for the Receiver,
Robb Evans & Associates LLC

cc: M Val. Miller

3613 S. Eastern Ave., Las Vegas, NV 89169

**LAW OFFICE
GENTILE CRISTALLI
MILLER ARMENI SAVARESE**

**Attorneys at Law
410 South Rampart Blvd., Suite 420
Las Vegas, NV 89145
Telephone: (702) 880-0000 · Facsimile: (702) 778-9709
www.gcmaslaw.com**

Michael V. Cristalli, Esq.
mcristalli@gcmaslaw.com

Kory L. Kaplan, Esq.
kkaplan@gcmaslaw.com

February 27, 2017

**VIA EMAIL: michael@lynchlawpractice.com
& REGULAR U.S. MAIL**

Michael F. Lynch, Esq.
Lynch Law Practice, PLLC
3613 S. Eastern Avenue
Las Vegas, NV 89169

Re: Securities and Exchange Commission v. June Fujinaga
Case No.: 2:13-cv-01658-JCM-CWH

Dear Mr. Lynch:

I am in receipt of your letter dated February 15, 2017. Pursuant to your request and as clarified during our telephone conference today, Mrs. Fujinaga has made three (3) payments to my law firm for legal services rendered as follows:

1. \$30,000 deposited on July 22, 2015 (Check #409);
2. \$30,000 deposited on August 10, 2015 (Check #418); and
3. \$40,000 deposited on October 5, 2015 (Check # 0886701797).

See Copies of Checks, true and correct copies of which are attached hereto.

Mrs. Fujinaga and The Yunju Trust retained our firm for a flat fee of \$100,000 for the purpose of challenging the summary judgment disgorgement against them; our billing on this matter has exceeded the flat fee. As you are aware, we are currently preparing for oral argument in the Ninth Circuit on April 21, 2017 relating to our challenge of the disgorgement.

Gentile Cristalli
Miller Armeni Savarese
Attorneys at Law

February 27, 2017
Page 2

We are not, nor have we ever been, in possession, custody or control of any funds and/or assets being held for the benefit of, or at the direction of, any Defendant or Relief Defendant. Further, there is no current balance in our trust account and we will not receive any additional funds from Mrs. Fujinaga and/or The Yunju Trust.

Should you have any additional questions, please do not hesitate to contact me or my associate, Kory L. Kaplan, Esq., at (702) 880-0000 or by email at mcristalli@gcmaslaw.com and kkaplan@gcmaslaw.com.

Very truly yours,

GENTILE CRISTALLI
MILLER ARMENI SAVARESE

MICHAEL V. CRISTALLI, ESQ.
KORY L. KAPLAN, ESQ.

KLK/ad

JUNE FUJINAGA
9009 GREENSBORO LN
LAS VEGAS, NV 89134-0501

409

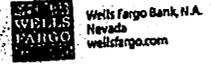
94-7074/3212 2698
5587022913

7/22/15
Date

Pay to the Order of Gentile, Cristalli & Miller PLLC \$ 30,000
Thirty thousand & NO/100 Dollars



© 2015 Wells Fargo Bank, N.A.



For June's SEC. h. fee. June Fujinaga RP

⑆326270742⑆ [REDACTED] 2963⑈ 00409

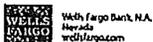
JUNE FUJINAGA
9000 GREENSBORO LN
LAS VEGAS, NV 89134-0501

418

04-7074/3212 2098
6587022013

8/7/15

Pay to the Order of Gentile, Cristall & Miller \$ 30,000⁰⁰
Thirty thousand & no/100 Dollars



Wells Fargo Bank, N.A.
Merada
wellsfargo.com



For June's SEC June Fujinaga MP

⑆321270742⑆ [REDACTED] 29131⑈ 00418

0886701797

CASHIER'S CHECK

0008867 11-24
Office AU # 1210(8)

Remitter: JUNE FUJINAGA
Operator I.D.: rano1724 cu008846

October 05, 2015

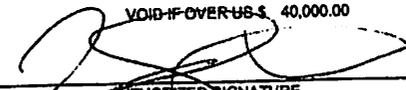
PAY TO THE ORDER OF ***GENTILE, CRISTALLI & MILLER***
RE; JUNE'S SEC FINAL PAYMENT

\$40,000.00

Forty thousand dollars and no cents

Payee Address:
Memo:

WELLS FARGO BANK, N.A.
1900 VILLAGE CENTER CIR
LAS VEGAS, NV 89134
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US \$ 40,000.00

AUTHORIZED SIGNATURE

⑈0886701797⑈



⑈4861 511988⑈

Security Features Included. Details on Back.