UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE NO. 3-19816

In the Matter of

BITCLAVE PTE LTD.

Respondent.

RESPONDENT BITCLAVE PTE LTD.'S MOTION FOR RELIEF FROM ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

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Justice demands, and equity speaks,
Restoring loss, not bounty seeks.
When victims' hands have felt repair,
What lingers must be handled fair.

For law's true aim is to restore,
Not gather more behind its door.
So, when the scales at last are right,
Return the rest, as is just and bright.

I. INTRODUCTION

On May 28, 2020, the Securities and Exchange Commission ("SEC") instituted and simultaneously settled cease-and-desist proceedings against BitClave PTE Ltd. ("BitClave"), determining that BitClave had violated Sections 5(a) and 5(c) of the Securities Act by conducting an Initial Coin Offering ("ICO") without registering the offering with the SEC. *See BitClave PTE Ltd.*, Exchange Act Release No. 10788, 2020 WL 2791424 (May 28, 2020) (the "Order"). The SEC's Order required BitClave to pay a total of approximately $29.3 million in disgorgement, prejudgment interest, and civil penalties. Following BitClave's remittance of its remaining funds to the SEC, totaling approximately $12 million, a Fair Fund was established to compensate "harmed investors."

On December 1, 2022, the SEC published a proposed distribution plan, which required a Fair Fund Administrator to distribute the Fair Fund to compensate investors for their losses associated with the offer and sale of the unregistered securities. Pursuant to the plan of distribution, on November 19, 2024, the SEC announced that only $4,614,679.81 had been claimed, leaving $7,385,320.19 remaining.

BitClave now respectfully requests relief from the SEC's Order to the extent it requires the leftover disgorged funds be sent to the U.S. Treasury, rather than be returned to BitClave. Less than a month after the SEC issued its Order, the Supreme Court issued its decision in *Liu v. SEC*,

591 U.S. 71 (2020). *Liu*, along with subsequent lower court cases interpreting the *Liu* decision, clarifies that a new standard applies to disgorgement. "[T]o avoid transforming an equitable remedy into a punitive sanction, courts restrict[] the remedy to an individual wrongdoer's net profits **to be awarded for victims**." *Id*. at 79 (emphasis added).

To the extent that any investors were harmed, that harm has now been remedied through the Fair Fund distribution process, and it would contravene the equitable principles articulated in *Liu* for the government to retain the remaining funds. Indeed, the Supreme Court in *Liu* cautioned that, over the years, courts have "test[ed] the bounds of equity practice" by ordering the proceeds of disgorgement to be deposited into the U.S. Treasury instead of disbursing them to victims. *Id.* at 85.

Ultimately, distributing the remaining funds to the U.S. Treasury would not only contradict emerging legal principles and serve as an additional form of punishment, but it would also effectively reward the SEC's unjust actions in aggressively pursuing cryptocurrency regulation through enforcement—something that the SEC's new leadership has now openly acknowledged.

II. FACTUAL BACKGROUND

BitClave was an early-stage blockchain services company that operated through an entity in Singapore and maintained a principal place of operations in San Jose, California. *See* Order at 2. From July 2017 through November 2017, BitClave sold approximately $25.5 million worth of Consumer Activity Tokens ("CAT Tokens") in connection with the development of a blockchain-based search platform for targeted consumer advertising. *Id.*

Since July 2017, the SEC has sent mixed signals regarding the classification of cryptocurrencies and digital assets as securities. In its initial 2017 DAO Report of Investigation, the SEC asserted that certain digital assets could be classified as securities, particularly when sold as part of an investment contract under the Howey Test. SEC, *Report of Investigation Pursuant to*

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Section 21(a) of the Securities Exchange Act of 1934: The DAO (July 25, 2017), https://sec.gov/files/litigation/investreport/34-81207.pdf (last visited Mar. 14, 2025). However, in a 2018 speech by William Hinman, then Director of the SEC's Division of Corporation Finance, he clarified that some digital assets, including Ether (ETH), may not be considered securities if they had become sufficiently decentralized. SEC Dir. William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, SEC.GOV (June 14, 2018), https://sec.gov/newsroom/speeches-statements/speech-hinman-061418 (last visited Mar. 14, 2025). This marked a departure from a blanket assertion that all tokens were securities. Despite this, the SEC continued to pursue enforcement actions against ICOs and digital asset exchanges for violations of securities laws, demonstrating that the regulatory landscape remained unclear. The SEC's April 2019 *Framework for 'Investment Contract' Analysis of Digital Assets* aimed to provide further clarity by outlining factors to determine whether a specific cryptocurrency qualifies as a security, yet the agency still emphasized the need for a facts-and-circumstances approach. SEC Div. of Corp. Fin., *Framework for 'Investment Contract' Analysis of Digital Assets*, SEC.GOV (updated July 5, 2024), https://sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets (last visited Mar. 14, 2025). However, these evolving statements and enforcement actions created uncertainty, as market participants continue to struggle to understand the precise regulatory treatment of digital assets.

In or around 2018, the SEC began investigating BitClave for allegedly violating Sections 5(a) and 5(c) of the Securities Act by offering and selling securities without having a registration filed or in effect with the SEC or qualifying for an exemption from registration. On May 28, 2020, BitClave entered into the Order and agreed to pay disgorgement of $25.5 million, prejudgment interest of $3,444,197, and a civil penalty of $400,000. Notably, the Order solely alleged that

BitClave violated Sections 5(a) and 5(c) of the Securities Act by offering and selling digital asset CAT Tokens. Order at 5. The Order did not contain any allegations of fraud by BitClave.

The Order also specified that the "disgorgement, prejudgment interest, and civil penalty shall be aggregated in [a] Fair Fund. … Any amount remaining in the Fair Fund after all distributions have been made and costs have been paid shall be transmitted to the Commission for transfer to the U.S. Treasury." *Id.*

Following entry of the Order, the SEC created a Fair Fund and appointed a Fund Administrator, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so "the penalty paid, along with the disgorgement and interest, **could be distributed to harmed investors**." *See BitClave PTE, Ltd.*, Exchange Act Release No. 91647, 2021 WL 1580393 (Apr. 22, 2021) (emphasis added). Thereafter, BitClave remitted its remaining funds to the SEC—$12 million—and began to wind down.

On December 1, 2022, the SEC published a Notice of Proposed Plan of Distribution and Opportunity for Comment (the "Notice") and simultaneously posted the Proposed Plan of Distribution. *See BitClave PTE, Ltd.*, Exchange Act Release No. 96423, 2022 WL 17401553 (Dec. 1, 2022). The Notice advised all harmed investors desiring to comment on the Proposed Plan to submit comments. *Id.* No comments were received by the SEC.

On February 9, 2023, the SEC issued an order approving the Proposed Plan and posted the approved Plan of Distribution (the "Plan"). *See BitClave PTE, Ltd.*, Exchange Act Release No. 96869, 2023 WL 1926520 (Feb. 9, 2023). The Plan provided "for the distribution of the … Fair Fund **to compensate investors for their losses relating to the offer and sale of a digital asset security** … issued by BitClave, and purchased from July 25, 2017 and through May 27, 2020." *Id.* (emphasis added).

Pursuant to the Proposed Plan, any investor who suffered a loss as a result of the purchase or sale of the CAT Token during the relevant period of time was deemed to be an "Eligible Claimant," and could submit a claim. The Proposed Plan also established deadlines for harmed investors to submit a claim. *Id.*

After complying with the Proposed Plan, the Fund Administrator submitted a payment file to the SEC seeking authorization to pay the Eligible Claimants based on the claims submitted. On November 19, 2024, the SEC issued an Order Directing Disbursement of the BitClave Fair Fund (the "Disbursement Order"). *See BitClave PTE, Ltd.*, Exchange Act Release No. 101653, 2024 WL 4835295 (Nov. 19, 2024). The Disbursement Order directed the SEC staff to transfer $4,614,679.81 from the Fair Fund to distribute "**to the harmed investors**." *Id.* at 2 (emphasis added). Accordingly, only $4,614,679.81 of the $12,000,000 that BitClave has paid to the SEC has been distributed to "harmed investors." Based on the language contained in the Order, the leftover funds, totaling $7,385,320.19, would be sent to the U.S. Treasury. Order at 8 ("Any amount remaining in the Fair Fund after all distributions have been made and costs have been paid shall be transmitted to the Commission for transfer to the U.S. Treasury").

III. ARGUMENT

A. Permitting the SEC to Retain the Leftover Disgorged Funds Would Be Inequitable and Run Contrary to Supreme Court Precedent

Recent case law developments after the SEC issued the Order have clarified that the SEC does not have the authority to remit excess disgorged funds to the U.S. Treasury, in light of the equitable principles that govern disgorgement. On June 22, 2020, less than one month after the SEC issued its Order against BitClave, the Supreme Court issued its decision in *Liu*, in which the Court held that a disgorgement award is permissible equitable relief under 15 U.S.C. § 78u(d)(5) only if the disgorgement (i) did not exceed a wrongdoer's net profits, and (ii) was awarded to the

wrongdoer's "victims." *Liu*, 591 U.S. at 75. The Court in *Liu* specifically rejected the SEC's central argument that the "primary function of depriving wrongdoers of profits is to deny them the fruits of their ill-gotten gains," and instead explained that disgorgement "**requires the SEC to return a defendant's gains to wronged investors for their benefit**." *Id.* at 88 (emphasis added).

Here, the SEC appointed a Fair Fund Administrator to undertake a publicly noticed process to identify harmed investors, and to then calculate the alleged harm caused to each investor based on information provided. This process yielded total claims of $4,614,679.81, which the SEC approved for distribution from the Fair Fund. No further "victims" of BitClave's alleged wrongdoing exist, and it would be inequitable for the SEC to keep the remaining disgorged funds. Disgorgement serves to restore, not to penalize. In light of *Liu*, once harmed investors have been made whole through a Fair Fund distribution, any remaining funds must be returned, lest disgorgement exceeds its equitable purpose and becomes an impermissible penalty. Retaining excess funds contravenes the very principles that limit disgorgement to its remedial function, ensuring it does not extend beyond compensatory justice.

Following the Supreme Court's decision in *Liu*, Congress enacted legislation within the National Defense Authorization Act (NDAA) that explicitly authorized the SEC to seek disgorgement in federal court. 15 U.S.C. § 78u(d)(7). This legislation effectively codified the SEC's ability to recover disgorgement from wrongdoers in securities law violations, addressing concerns raised by the *Liu* decision. Following this new legislation, the Second Circuit explained that the Supreme Court's holding in *Liu*, and the equitable principles it articulated, applies with equal force to disgorgement awards under 15 U.S.C. § 78u(d)(7). *SEC v. Ahmed*, 72 F.4th 379, 396 (2d Cir. 2023). The Second Circuit also later clarified that under *Liu*, disgorgement **must be awarded for** "**victims**" and that in order to be a victim, the investor **must suffer** "**pecuniary**

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harm." *SEC v. Govil*, 86 F.4th 89, 102 (2d Cir. 2023) (emphasis added). Because the district court in *Govil* failed to find that the alleged victims had suffered pecuniary harm, the Second Circuit vacated the judgment awarding disgorgement. *Id.* at 106.

In an instructive example following *Govil,* the U.S. District Court for the Southern District of New York found that disgorgement was not an appropriate remedy for Section 5 violations alleged against Ripple Labs. *SEC v. Ripple Labs, Inc.*, No. 20 CIV. 10832 (AT), 2024 WL 3730403 at *5 (S.D.N.Y. Aug. 7, 2024). The *Ripple* Court found that the SEC had offered only speculative evidence that Ripple's offer of discounts to institutional clients demonstrated pecuniary harm on behalf of individual investors who had paid sticker price, that this speculative evidence failed to sufficiently demonstrate pecuniary harm to these investors, and that therefore disgorgement was not an appropriate remedy. *Id.* at *6.

Both the *Govil* and *Ripple* decisions are instructive in understanding the implications of the Supreme Court's decision in *Liu* on the appropriateness of the disgorgement relief imposed by the Order. *Govil* reinforces the principle that *Liu* requires disgorgement be for the benefit of "victims," and that victims are those that suffer **pecuniary harm caused by the defendants' alleged violations**. And, as the *Ripple* court explains, where there is no causal link shown between an alleged violation on the one hand and pecuniary harm to investors on the other, then disgorgement is improper.[1] Consistent with this approach, following *Liu,* a number of SEC settlements in matters alleging Section 5 violations for the offer and sale of unregistered digital assets have not included an award of disgorgement. *See, e.g.*, *BlockFi Lending LLC*, Exchange Act Release No. 11029, 2022 WL 462445 (Feb. 14, 2022); *Nexo Capital Inc.*, Exchange Act Release No. 11149, 2023 WL 345200 (Jan. 19, 2023); *TradeStation Crypto, Inc.*, Exchange Act

[1] Indeed, the SEC also has the ability to request other types of relief to punish the wrongdoer, including specifically civil penalties.

Release No. 11269, 2024 WL 473703 (Feb. 7, 2024); *see also SEC v. LBRY, Inc.*, No. 21-CV-260-PB (D.N.H. May 12, 2023) at Dkt. No. 107 (SEC withdrawing request for disgorgement in Section 5 case).

Prior to *Liu*, the SEC acknowledged in several settlements involving ICOs that the primary purpose of disgorgement was to compensate victims who suffered pecuniary harm and applied this principle through a recission process. For example, in 2018, the SEC entered into a settlement with CarrierEQ, Inc., d/b/a Airfox for raising $15 million through an unregistered ICO in 2017. *CarrierEQ, Inc., d/b/a Airfox*, Exchange Act Release No. 10575, 2018 WL 6017664 (Nov. 16, 2018). The settlement required Airfox to pay a civil penalty of $250,000 rather than requiring the disgorgement of profits. *Id.* at *9. Similarly, in a 2019 settlement with Block.one—the company behind the EOS.IO blockchain that raised $4.1 billion in an unregistered ICO—the SEC settlement did not mandate any disgorgement, but rather a $24 million civil penalty was imposed. *Block.one*, Exchange Act Release No. 10714, 2019 WL 4793292 (Sept. 30, 2019). These settlements reinforce the principles established in *Liu* that require disgorgement awards to be returned to victims who can demonstrate pecuniary harm. These settlements also highlight the inequitable nature of the SEC's actions, with some ICO companies being required to disgorge funds, while others were not subjected to the same treatment.

Other courts have recognized that sending funds to the U.S. Treasury does not comport with *Liu* because they are not used for the benefit of investors. *SEC v. Putnam*, No. 2:20-CV-00301-DBB-DAO, 2024 WL 4135684, at *15 (D. Utah Sept. 10, 2024) (stating that "funds may not merely be deposited in the Treasury" because "*Liu* disapproved an approach under which the SEC did 'not always return the entirety of disgorgement proceeds to investors' and instead deposited 'a portion of its collections in a fund in the Treasury….'"); *SEC v. Johnson*, No. 2:20-

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CV-08985-FWS-DFM, 2023 WL 2628678, at *19 (C.D. Cal. Feb. 17, 2023) (declining to award disgorgement, reasoning that "Plaintiff has not sufficiently and adequately addressed how disgorging Defendant's net profits to the United States Treasury is: (1) 'appropriate and necessary for the benefit of investors,' and (2) consistent 'with traditional equitable principles.'") (internal citations omitted).[2]

Here, the Order alleged that BitClave violated Sections 5(a) and 5(c) of the Securities Act by offering and selling securities without having a registration filed or in effect with the SEC or qualifying for an exemption from registration—the SEC did not allege any misrepresentations or fraud by BitClave. The SEC also did not allege that BitClave's failure to register caused any pecuniary harm to investors. Instead, the SEC used the Fair Fund process here to effectively force BitClave to enact a rescission of its securities offering in order to return money to the "harmed investors." Now that the SEC has identified and reimbursed all alleged harmed investors through the Fair Fund process, no further victims exist that can show pecuniary harm, and thus any remaining money should be returned to BitClave because it cannot otherwise be used "for the benefit of investors."

[2] Some courts have found that sending disgorged funds to the Treasury is not precluded by *Liu*. *See, e.g., SEC v. Bronson*, 602 F. Supp. 3d 599, 618 (S.D.N.Y. 2022); *SEC v. Westport Cap. Markets, LLC*, 547 F. Supp. 3d 157, 170 (D. Conn. 2021). However, both *SEC v. Bronson* and *SEC v. Westport Cap. Markets, LLC* were issued pre-*Govil*, and limited the applicability of this rule to instances where it is "infeasible" to identify harmed investors. Particularly instructive is *SEC v. Putnam*, where the court held that: "the SEC need not prove the identities of wronged investors **before** the court orders disgorgement. The SEC, of course, must prove that individuals invested … Nothing further is required at this stage. The court stressed, however, that funds may not merely be deposited in the Treasury." *Putnam*, 2024 WL 4135684, at *15 (emphasis added). Here, the SEC has already identified any allegedly harmed investors and remedied their injuries, such that the retainment of any further funds by the U.S. Treasury would amount to an expanded civil monetary penalty.

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B. Granting Relief Here is Also Appropriate Considering the SEC's Pattern of Over-Enforcement and Arbitrary and Capricious Conduct Towards the Digital Asset Industry

In recent years, the SEC has exhibited a pattern of bringing aggressive enforcement actions against participants in the digital asset industry, while at the same time failing to provide any clarity or guidance as to how industry participants could comply with the federal securities laws in offering their products and services. *See* Aman Saggu et al., *Uncertain Regulations, Definite Impacts: The Impact of the U.S. Securities and Exchange Commission's Regulatory Interventions on Crypto Assets*, 72 FINANCE RESEARCH LETTERS 106413 (2024), https://www.sec.gov/files/ctf-input-arte-2025-02-19.pdf (last visited Mar. 14, 2025) ("The lack of clear, comprehensive regulatory guidelines from the SEC for cryptocurrency projects has created an unpredictable, volatile environment fraught with risk and uncertainty for market participants. … [T]he SEC's unexpected regulatory interventions (i.e., security classification, enforcement actions, advisory opinions, and comments) hamper the achievement of its mandate 'to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation', magnifying systemic risk and regulatory arbitrage.") (internal citation omitted); Jennifer Schulp, *Gary Gensler and the Terrible, Horrible, No Good, Very Bad May*, CATO INSTITUTE (June 10, 2024), https://cato.org/commentary/gary-gensler-terrible-horrible-no-good-very-bad-may (last visited Mar. 14, 2025) (describing how "Gensler's aggressive crackdown has operated as a de facto ban on the industry").

As an early-stage crypto company, BitClave fell victim to the SEC's heavy-handed approach to the industry. To quote SEC Commissioner Hester M. Peirce, the SEC's approach to the digital assets industry "embrace[d] stagnation, force[d] centralization, urge[d] expatriation, and welcome[d] extinction of new technology." SEC Comm'r Hester M. Peirce, *Rendering Innovation Kaput: Statement on Amending the Definition of Exchange*, SEC.GOV (Apr. 14, 2023), https://sec.gov/newsroom/speeches-statements/peirce-rendering-inovation-2023-04-12 (last

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visited Mar. 14, 2025); *see also* SEC Comm'r Hester M. Peirce, *At the SEC: Nothing but Crickets Remarks at SEC Speaks*, SEC.GOV (Apr. 2, 2024), https://sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-040224 (last visited Mar. 14, 2025) (noting the "dwindling of genuine Commission and staff engagement with the public" and how the SEC's actions had made "[s]ome perceive meeting with the Commission [to be] not only unproductive, but inadvisable."); SEC Comm'r Hester M. Peirce, *Overdue: Statement of Dissent on LBRY*, SEC.GOV (Oct. 27, 2023), https://sec.gov/newsroom/speeches-statements/peirce-statement-lbry-102723 (last visited Mar. 14, 2025) (stating how the SEC's litigation against LBRY, Inc. "illustrates the arbitrariness and real-life consequences of the Commission's misguided enforcement-driven approach to crypto."); SEC Comm'rs Hester M. Peirce and Mark T. Uyeda, *Omakase: Statement on In the Matter of Flyfish Club, LLC*, SEC.GOV (Sep. 16, 2024), https://sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-flyfish-091624 (last visited Mar. 14, 2025) ("Leaving crypto to be addressed in an endless series of misguided and overreaching cases has been and continues to be a consequential mistake."); Jennifer Andrus, *SEC Commissioner Speaks Boldly on Cryptocurrency Regulation*, N.Y. STATE BAR ASS'N (Oct. 18, 2024), https://web.archive.org/web/20241114175116/https://nysba.org/sec-commissioner-speaks-boldy-on-cryptocurrency-regulation [archived] (last visited on Mar. 14, 2025) (quoting Commissioner Peirce as saying that "As I learned more about crypto, I understood it was really different. I believe we need to use the regulatory side of the house to make this doable. So few companies have come in and tried to register. It's too expensive and it's like we are trying to jam a round peg into a square hole.").

The courts have duly recognized the SEC's hostility and unreasonable conduct towards the digital assets industry. For example, in *Grayscale Invs., LLC v. SEC*, 82 F.4th 1239, 1242 (D.C. Cir. 2023), the D.C. Circuit found that the SEC's denial of a proposal by Grayscale Investments,

LLC to launch a bitcoin exchange-traded product was arbitrary and capricious because the SEC provided insufficient explanation as to why they would deny Grayscale's proposal when the SEC had recently approved two similar bitcoin futures exchange-traded products. As a result, the D.C. Circuit granted Grayscale's petition for review and vacated the SEC's order. *Id.* In another recent example, *Coinbase, Inc. v. SEC*, 126 F.4th 175, 181-82 (3d Cir. 2025), the Third Circuit found that the SEC's single-paragraph denial of Coinbase Global, Inc.'s petition for the SEC to promulgate rules clarifying how and when the federal securities laws apply to digital assets like cryptocurrencies and tokens was arbitrary and capricious. The Third Circuit found the SEC's denial to be "conclusory and insufficiently reasoned" and remanded to the SEC to provide a "more complete explanation" for its denial. *Id.* at 182.

Under the Trump administration and new SEC leadership, the war on cryptocurrency and the digital asset industry is over. *See* Danny Fortson, *Trump says "war on crypto is over" but leaves tech bros wanting more*, THETIMES.COM (Mar. 8, 2025), https://thetimes.com/business-money/technology/article/donald-trump-the-war-on-crypto-is-over-pcnp3pvdk (last visited Mar. 14, 2025). Indeed, the SEC has now acknowledged the numerous regulatory shortcomings that the agency has made in recent years regarding the digital asset industry. For example, the SEC has created a Crypto Task Force chaired by Commissioner Peirce "to provide clarity on the application of the federal securities laws to the crypto asset market and to recommend practical policy measures that aim to foster innovation and protect investors." *See* Crypto Task Force, SEC.GOV, https://sec.gov/about/crypto-task-force (last visited Mar. 14, 2025). In doing so, the SEC acknowledged the lack of clarity in its earlier enforcement strategy, which resulted in early-stage crypto companies—such as BitClave—facing improper penalties. *See* SEC Comm'r Hester M. Peirce, *The Journey Begins*, SEC.GOV (Feb. 4, 2025), https://sec.gov/newsroom/speeches-

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statements/peirce-journey-begins-020425 (last visited Mar. 14, 2025) (describing how the Commission had previously "refused to use regulatory tools at its disposal and incessantly slammed on the enforcement brakes as it lurched along a meandering route with a destination not discernible to anyone" with regards to regulation of the crypto industry). The SEC also repealed Staff Accounting Bulletin No. 121, which was widely criticized and required institutions holding digital assets for customers to recognize them as holdings on their balance sheets. *See* SEC Staff Accounting Bulletin No. 122, 90 Fed. Reg. 8492 (Jan. 23, 2025); SEC Comm'r Peirce, *Nothing but Crickets* (2024) ("SAB 121 arguably does not protect investors. Its capital implications keep out of the business many banks and broker-dealers that have long years of custody experience. Moreover, as a consequence of being on the balance sheet, if the custodian fails, these assets could be treated as if they belong to the failed entity, not the customers of that entity.").

The SEC has not only acknowledged its prior shortcomings in offering clear guidance on cryptocurrency and digital asset enforcement but is also actively working to clarify the regulatory framework. In 2025, the SEC announced a public roundtable on crypto asset regulation scheduled for March 21, with the stated purpose of aiming to clarify its stance on various digital assets. The SEC's Division of Corporation Finance also recently released a staff statement articulating the circumstances in which on its view "meme coins" do not qualify as securities. *See* SEC Div. of Corp. Fin., *Staff Statement on Meme Coins*, SEC.GOV (Feb. 27, 2025), https://sec.gov/newsroom/speeches-statements/staff-statement-meme-coins (last visited Mar. 14, 2025). The SEC has also announced an end to its litigation against digital asset exchanges Coinbase and Kraken, as well as investigations of Gemini, a crypto exchange; OpenSea, a non-fungible token ("NFT") marketplace; Robinhood, a retail trading app; UniSwap, a decentralized exchange; Yuga Labs, a NFT developer; and Cumberland DRW, a crypto trading firm. *See, e.g.*, Rhodilee Jean Dolor, *SEC*

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Closes Investigation Into Crypto Exchange Gemini Without Recommending Enforcement Action, THE DAILY HODL (Feb. 28, 2025), https://dailyhodl.com/2025/02/28/sec-closes-investigation-into-crypto-exchange-gemini-without-recommending-enforcement-action-cameron-winklevoss/ (last visited Mar. 14, 2025); Jesse Coghlan, *Yuga Labs says SEC has dropped its investigation into the NFT firm*, COINTELEGRAPH (Mar. 3, 2025), https://cointelegraph.com/news/yuga-labs-sec-closed-investigation-nft-platform (last visited Mar. 14, 2025); Cheyenne Ligon, *SEC Agrees to Drop Enforcement Suit Against Cumberland DRW, Firm Says*, COINDESK (Mar. 4, 2025), https://coindesk.com/policy/2025/03/04/sec-agrees-to-drop-enforcement-suit-against-cumberland-drw-firm-says (last visited Mar. 14, 2025). The actions required these companies to spend enormous resources, with Coinbase alone having reported that they spent approximately $50 million dollars on their defense. *See* Julie Bort, *Brian Armstrong says Coinbase spent $50M fighting SEC lawsuit—and beat it*, TECHCRUNCH (Feb. 21, 2025), https://techcrunch.com/2025/02/21/brian-armstrong-says-coinbase-spent-50m-fighting-sec-lawsuit-and-beat-it/ (last visited Mar. 14, 2025). The SEC used this same enforcement strategy against smaller companies like BitClave who lacked the resources to defend themselves in drawn out litigation, forcing them into accepting harsh settlements.

Granting relief to BitClave here would not only be consistent with the Supreme Court's holding in *Liu* but also represents a fair and appropriate equitable remedy, considering (i) the nature of BitClave's alleged violations which did not involve fraud or misrepresentations, (ii) the SEC's previous lack of clear regulatory guidance for the rapidly evolving digital assets industry, and (iii) the inconsistent treatment of similarly situated digital asset participants. If the so-called war on crypto has truly ended, equity demands more than mere acknowledgement of past mistakes—it demands corrective action.

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IV. CONCLUSION

For the foregoing reasons, BitClave respectfully requests that the SEC grant it relief from its May 25, 2020 Order and return the leftover disgorged funds.

Dated: March 18, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Motion contains 4,178 words, exclusive of the Table of Contents and Table of Authorities, and complies with the type-volume limit of 17 C.F.R. § 201.154(c) and the typeface and formatting requirements of § 201.152(b).

DATED: March 18, 2025

/s/ Keith W. Miller
Keith W. Miller