

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

EMPOWER OVERSIGHT )  
WHISTLEBLOWERS & RESEARCH, )  
601 King Street, Suite 200 )  
Alexandria, VA 22313-3151 )

Plaintiff, )

Case No. 1:21-cv-01370-RDA-TCB

v. )

U.S. SECURITIES AND EXCHANGE )  
COMMISSION, )  
100 F Street NE )  
Washington, DC 20549 )

Defendant. )

**AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff Empower Oversight Whistleblowers & Research brings this civil action against Defendant U.S. Securities and Exchange Commission (SEC) to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, including obtaining access to records maintained by the agency.

2. The records concern potential conflicts of interest by former high-level officials at the SEC relating to cryptocurrencies. In particular, the circumstances of certain former SEC officials’ declarations as to whether particular cryptocurrencies are securities—and thus are subject to SEC regulation—raise significant questions regarding potential conflicts of interest.

3. For example, public reports indicate that William Hinman, previously a partner at the law firm Simpson Thacher & Bartlett LLP, worked as the Director of the Division of Corporate Finance at the SEC from May 2017 to December 2020. *See William Hinman Named Director of Division of Corporation Finance*, U.S. SEC (May 9, 2017), <https://www.sec.gov/news/press->

[release/2017-97](#). Hinman reportedly continued to receive millions of dollars from Simpson Thacher while at the SEC. *See, e.g.,* Jack Newsham, *A top SEC Official Was Receiving a \$1.6 Million Law-firm Pension from Simpson Thacher That Was 7 Times His Government Salary*, BUS. INSIDER (Jan. 29, 2021), <https://www.businessinsider.com/sec-simpson-partner-pay-biden-golden-parachutes-2021-1>.

4. At all relevant times in this complaint, Simpson Thacher had been a member of the enterprise Ethereum Alliance, an industry organization aiming to “drive the use of Enterprise Ethereum.” *About*, ENTER. ETHERUM ALL., <https://entethalliance.org/about/>. In a June 2018 speech in his official capacity as an SEC official, Hinman declared that the Ethereum cryptocurrency, Ether, was not a security. *See* Speech, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, U.S. SECS. & EXCH. COMM’N (June 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>. After his declaration, Ether’s value rose significantly. Aul Vigna, *Crypto Market Rallies on SEC Official’s Ether Stance*, WALL ST. J. (June 14, 2018), <https://www.wsj.com/articles/crypto-market-rallies-on-secs-officials-ether-stance-1529007646>. After departing the SEC in late 2020, Hinman rejoined Simpson Thacher as a partner. *See Former SEC Division of Corporation Finance Director Bill Hinman Returns to Simpson Thacher*, Simpson Thacher & Bartlett LLP (Jan. 12, 2021), [https://www.stblaw.com/docs/default-source/related-link-pdfs/bill-hinman-rejoins-simpson-thacher\\_2021.pdf](https://www.stblaw.com/docs/default-source/related-link-pdfs/bill-hinman-rejoins-simpson-thacher_2021.pdf).

5. That same month, SEC filed a lawsuit against one of Ethereum’s rivals, Ripple, alleging that its XRP cryptocurrency was a security, such that the offering and sales of XRP was in violation of federal securities law. Press Release, *SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering*, U.S. SECS. & EXCH. COMM’N (Dec. 22,

2020), <https://www.sec.gov/news/press-release/2020-338>. The value of XRP fell 25% immediately after the SEC's announcement of the lawsuit. See Bilal Jafar, *XRP Plummets 25% after SEC's \$1.3 Billion Lawsuit against Ripple* (Dec. 23, 2020), <https://www.financemagnates.com/cryptocurrency/news/xrp-plummets-25-after-secs-1-3-billion-lawsuit-against-ripple/>. Shortly after filing the lawsuit, the leader of the SEC Enforcement Division, Marc Berg, left the SEC and joined Hinman as a partner at Simpson Thacher. Marc P. Berger, *Former Acting Director of the SEC's Enforcement Division, to Join Simpson Thacher*, SIMPSON THACHER & BARTLETT LLP (Apr. 15, 2021), [https://www.stblaw.com/docs/default-source/related-link-pdfs/marc-berger-to-join-simpson-thacher\\_2021.pdf](https://www.stblaw.com/docs/default-source/related-link-pdfs/marc-berger-to-join-simpson-thacher_2021.pdf).

6. As another example, former SEC Chairman Jay Clayton publicly stated, while at the SEC, that Bitcoin was not a security. *SEC Chairman: Cryptocurrencies Like Bitcoin Are Not Securities*, CNBC (June 6, 2018), <https://www.cnbc.com/video/2018/06/06/sec-chairman-cryptocurrencies-like-bitcoin--not-securities.html>. Thereafter, the value of Bitcoin significantly rose. Olga Kharif & Eric Lam, *Cryptocurrency Rally Builds Steam as Bitcoin Surpasses \$7,500*, BLOOMBERG (July 17, 2018), <https://www.bloomberg.com/news/articles/2018-07-17/bitcoin-surges-after-breaking-back-through-7-000-level>. Shortly after he left the SEC, Clayton joined One River Asset Management, a cryptocurrency hedge fund that focuses exclusively on Bitcoin and Ether. Emily Graffeo, *Former SEC chair Jay Clayton will advise digital asset hedge fund One River on crypto*, MARKETS INSIDER (Mar. 29, 2021), <https://markets.businessinsider.com/news/currencies/bitcoin-hedge-fund-sec-chair-jay-clayton-one-river-crypto-2021-3>.

7. It is in the public's interest that the government's regulation of the emerging cryptocurrency market is based on objective legal principles. As a result, potential conflicts of

interest in this space are of significant public importance. Accordingly, Empower Oversight filed the FOIA Request described herein.

### **JURISDICTION AND VENUE**

8. The Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

9. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

### **PARTIES**

10. Plaintiff Empower Oversight is a nonprofit, nonpartisan educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. Empower Oversight has its principal place of business at 601 King Street, Suite 200, Alexandria, VA 22313-3151. Empower Oversight works to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and it works to hold authorities accountable to act on such reports.

11. Defendant SEC is a federal administrative agency within the meaning of 5 U.S.C. § 552(f)(1), located at 100 F Street NE, Washington, DC, 20549. Upon information and belief, the SEC has possession, custody, and control of the records, within the meaning of 5 U.S.C. § 552(f)(2), to which Empower Oversight seeks access.

### **LEGAL STANDARD**

12. FOIA requires a federal administrative agency to promptly make available requested, non-exempt agency records in response to a request that (a) reasonably describes such

records and (b) “is made in accordance with published rules stating the time, place, fees, . . . and procedures to be followed[.]” 5 U.S.C. § 552(a)(3)(A); *see also* 17 C.F.R. § 200.80(b)(3).

13. FOIA requires an agency to make reasonable efforts to search for records reasonably calculated to locate all records responsive to a FOIA request. *See* 5 U.S.C. § 552(a)(3)(C). An agency must show that it has conducted a good faith, reasonable search of all platforms likely to possess the requested records, and agencies are prohibited from intentionally excluding from their searches a platform or location that may contain responsive records.

14. In making available such records, fees applicable to processing requests shall be limited to reasonable standard charges for document duplication when records are sought by a “representative of the news media,” defined as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(ii); *see also* 17 CFR § 200.80(g)(2)(vi). In contrast, other than those requests by representatives of the news media, educational institutions, or noncommercial scientific institutions, the SEC charges fees for processing (*i.e.*, document search and/or review) FOIA requests. 17 C.F.R. § 200.80(g)(3)(ii)(A).

15. FOIA requires an agency to respond to a valid request within twenty days (exempting Saturdays, Sundays, and legal public holidays) (*i.e.*, “working days”) upon receipt of a request, including notifying the requestor of its determination, the reasons therefor, and the right to appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i); *see also* 17 C.F.R. § 200.80(d)(2).

16. In certain circumstances, an agency may instead provide notice to the requester that “unusual circumstances” merit additional time—up to an additional ten working days—to respond to the request. 5 U.S.C. § 552(a)(4)(viii)(II)(aa); *see also* 17 C.F.R. § 200.80(d)(5). In the event

that the agency provides notice to the requester of “unusual circumstances,” and that it is not able to respond to the records request within the statutory deadline, the agency must provide the requester “an opportunity to arrange with the agency an alternative time frame for processing the request.” 5 U.S.C. § 552(a)(6)(B)(ii); *see also* 17 C.F.R. § 200.80(d)(5).

17. If an agency does not respond to a FOIA request by the statutory deadline, the requester is deemed to have exhausted administrative remedies and may immediately pursue judicial review. 5 U.S.C. § 552(a)(6)(C)(i).

### **FACTS**

18. On August 12, 2021, Empower Oversight submitted to the SEC a FOIA request focused on: (1) Messrs. Hinman, Berger, and Clayton’s (hereinafter “the former officials” or “the officials”) communications with potential employers that held financial interests in particular cryptocurrencies that the SEC was evaluating for purposes of federal supervision; and (2) whether the officials sought advice from the SEC’s Office of Ethics concerning such communications. *See* Exhibit A (attached).

19. Specifically, Empower Oversight sought access to:

- a. All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from Simpson Thacher, including calendar entries, notes, or emails between Mr. Hinman and any email address from the domain “[@stblaw.com](mailto:stblaw.com)”;
- b. All records relating to communications from May of 2017 through December of 2020 between Mr. Hinman and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Hinman and any email address from the domain “[@entethalliance.org](mailto:entethalliance.org)”;
- c. All records relating to communications, including calendar entries, notes or emails between Mr. Hinman and any personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Hinman’s continued payments from Simpson Thacher while employed at SEC, his potential recusals or conflicts related to his prior or future employment at Simpson Thacher, as well as his discussions and negotiations with Simpson Thacher regarding rejoining the firm;

- d. All records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from Simpson Thacher, including calendar entries, notes or emails between Mr. Berger and any email address from the domain “[@stblaw.com](mailto:stblaw.com)”;
- e. All records relating to communications from May of 2017 through January of 2021 between Mr. Berger and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Berger and any email address from the domain “[@entethalliance.org](mailto:entethalliance.org)”;
- f. All records relating to communications, including calendar entries, notes, or emails between Mr. Berger and any personnel in the SEC’s Office of the Ethics Counsel, regarding Mr. Berger’s discussions and negotiations with Simpson Thacher, including all communications regarding potential recusals or conflicts related to his potential employment with Simpson Thacher;
- g. All records relating to communication from May of 2017 through December of 2020 between Jay Clayton and personnel from One River Asset Management, including calendar entries, notes or emails between Mr. Clayton and any email address from the domain “[@oneriveram.com](mailto:oneriveram.com)”; and
- h. All records of communications, including calendar entries, notes or emails between Mr. Clayton and personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Clayton’s discussions and negotiations with One River Asset Management, including all communications regarding potential recusals or conflicts related to his potential employment with One River Asset Management.

20. On August 13, 2021, the SEC—via eight separate letters corresponding to each request (*i.e.*, items “a” through “h” in the immediately preceding paragraph)—acknowledged receipt of the August 12, 2021 FOIA request, assigned eight tracking numbers to the request matching the eight enumerated items above, and advised that the request “will be assigned to a Research Specialist for processing and you will be notified of findings as soon as possible.”<sup>1</sup> Exhibit B (attached).

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<sup>1</sup> The eight tracking numbers the SEC assigned to the Requests are as follows: 21-02531-FOIA (*see supra* ¶ 18(a)), 21-05232-FOIA (*see supra* ¶ 18(b)), 21-02533-FOIA (*see supra* ¶ 18(c)), 21-02534-FOIA (*see supra* ¶ 18(d)), 21-02535-FOIA (*see supra* ¶ 18(e)), 21-02536-FOIA (*see supra* ¶ 18(f)), 21-02537-FOIA (*see supra* ¶ 18(g)), 21-02538-FOIA (*see supra* ¶ 18(h)). However, as noted below, *infra* n. 2, tracking numbers 21-02536-FOIA (¶ 18(f)), and 21-02538-FOIA (¶ 18(h)) are not at issue in this lawsuit, and are thus not attached as part of Exhibit B.

21. In each letter, without identifying an “unusual circumstance” permitting a 10-day extension of the 20-working day deadline for rendering a “determination” on the August 12, 2021 request, the SEC stated, “If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS).”

22. On August 16, 2021, the SEC advised in a letter that it had classified Empower Oversight as an “other use” requester, which Empower Oversight appealed. On September 23, 2021, the SEC granted Empower Oversight’s appeal and clarified that Empower Oversight was a “news media” requestor for purposes of determining processing fees. Exhibit C at 2 (attached).

23. In that same September 23, 2021 letter, the SEC also stated: “The FOIA. . . precludes agencies from assessing duplication fees to news media requesters if the agency fails to meet the 20-day time limit for complying with a request and where no unusual or exceptional circumstances exist. Because the FOIA Office *has not complied* with the 20-day time period for responding to your request (September 13, 2021) and because it *has not informed you* that unusual circumstances exist in processing your request, you cannot be assessed duplication fees at this juncture.” *Id.* (emphasis added).

24. Thus, the SEC admitted that it failed to comply with the 20-day statutory time period and that the agency did not inform Empower Oversight that “unusual circumstances” exist, such that a delay may be warranted. 5 U.S.C. § 552(a)(4)(viii)(II)(aa); 17 C.F.R. § 200.80(d)(5).

25. As of December 8, 2021, the SEC had not provided determinations with respect to six of the eight tracking numbers (the “Six Requests”),<sup>2</sup> despite the requirement of 5 U.S.C.

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<sup>2</sup> As to just two of the eight Requests, 21-02536-FOIA and 21-02538-FOIA (in deferring to the eight separate tracking numbers assigned by the SEC upon receipt of Empower Oversight’s August 12, 2021 Request), the SEC did reply to Empower Oversight in November 2021, indicating that the SEC had no responsive records. Therefore, this action focuses solely on the remaining Six Requests.

§ 552(a)(6)(A) that an agency respond within twenty working days, including by providing detail as to the scope of the records that the agency intends to produce or withhold, the reasons for making that determination, and an explanation of the process by which a requester administratively can appeal that determination.

26. Accordingly, on December 8, 2021, Empower Oversight filed this action against the SEC for failure to comply with FOIA's statutory deadlines, in violation of 5 U.S.C. § 552(a)(6), and for unlawful withholding of agency records, in violation of 5 U.S.C. § 552(a)(3). *See* Dkt. No. 1.

27. On December 10, 2021, the SEC issued a "no records" response to the first and second items of Empower Oversight's August 12th FOIA request, which the SEC had designated as Request Numbers 21-02531-FOIA and 21-02532-FOIA. The SEC stated:

Based on the information you provided in your letter, we conducted a thorough search of the SEC's various systems of records, but did not locate or identify any records responsive to your requests.

If you still have reason to believe that the SEC maintains the type of records you seek, please provide us with additional information, which could prompt another search. Otherwise, we conclude that no responsive records exist and we consider this request to be closed.

28. On December 21, 2021, the SEC issued a "no records" response to the seventh item of Empower Oversight's August 12th FOIA request, which the SEC had designated as Request Number 21-02537-FOIA. With the exception of revising the plural "requests" to a singular "request" at the end of the first paragraph, the operative text of the SEC's December 21st response is identical to the operative text of its December 10th "no records" response, quoted above.

29. On January 5, 2022, the SEC issued a "no records" response to the fifth item of Empower Oversight's August 12th FOIA request, which the SEC had designated as Request Number 21-02535-FOIA. With the exception of revising the plural "requests" to a singular

“request” at the end of the first paragraph, the operative text of the SEC’s January 5th response is identical to the text of its December 10th “no records” response, quoted above.

30. On January 19, 2022, Empower Oversight appealed the SEC’s “no records” responses to Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA. *See* Exhibit D (attached).

31. In its administrative appeal, Empower Oversight emphasized that FOIA requires the SEC to conduct its search in a manner reasonably calculated to uncover all relevant documents. However, in these circumstances, Empower Oversight explained that it was unable to determine whether the SEC performed searches that were reasonably calculated to uncover all non-exempt, responsive documents—as FOIA demands. For example, in its response to Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA, the SEC included no information concerning how it interpreted the Empower Oversight’s FOIA request or how it designed its searches to implement its interpretation of the request.

32. On January 28, 2022, Empower Oversight participated in a conference call with representatives of the SEC and the Office of the United States Attorney for the Eastern District of Virginia. During the call, the SEC explained that the agency had reviewed its records searches, identified an error with them, and—after correcting for the error—had located more than 1,000 pages of records responsive to Request Number 21-02531-FOIA, and that the agency was still working on its review of Request Number 21-02532-FOIA, but claimed that the SEC’s “no records” responses to Request Numbers 21-02535-FOIA and 21-02537-FOIA were accurate.

33. Following up on the assertions from the SEC, Empower Oversight asked about the actual search terms (*e.g.*, the actual names of the Simpson Thatcher, Enterprise Ethereum Alliance, and One River Asset Management personnel) used to accomplish the SEC’s searches. The SEC

advised Empower Oversight that the agency had confined its searches to emails with the domain names @stblaw.com, @entethalliance.org, or @oneriveram.com. Consistent with its arguments in the January 19th administrative appeal, Empower Oversight pointed out that the scope of its FOIA requests extends beyond emails from the three aforementioned domain names (i.e., the requests also sought records of any other types of communications) and beyond merely emails (i.e., the requests also sought calendars and notes). One SEC representative disagreed with Empower Oversight’s interpretation of its own FOIA request. The representative rejected, or seemed not to comprehend, the plain meaning of the word “including” (i.e., comprising part of, but not being limited to, the whole) as used in the request. Rather, the agency representative suggested that Empower Oversight’s FOIA request limited its scope only to the “including” phrase. Nonetheless, the parties agreed that Empower Oversight would provide a list of names for the SEC to search in connection with Request Numbers 21-02531-FOIA, 21-02532-FOIA, Request Numbers 21-02534-FOIA, 21-02535-FOIA, and 21-02537-FOIA. Empower Oversight—through its then-counsel—provided the list of names to the agency on February 24, 2022. Empower Oversight also published a press release online, <https://empowr.us/sec-releases-e-mails-to-empower-oversight-in-crypto-conflicts-lawsuit-still-searching-for-more/>, that includes a link to the list of names that it provided to the agency. *See* Exhibit E (PDF of press release and names) (attached).

34. On February 22, 2022, the SEC amended its response to Request Number 21-02531-FOIA, and forwarded 1,053 pages of responsive records that the agency purported to redact under FOIA Exemption 6. *See* 5 U.S.C. § 552(b)(6).

35. On April 4, 2022, via four separate letters, the SEC denied Empower Oversight’s administrative appeal; confirmed that the SEC’s search of emails between Messrs. Hinman,

Berger, and Clayton, was limited to emails with the domain names @stblaw.com, @entethalliance.org, or @oneriveram.com; and—in spite of the list of names that Empower Oversight previously had provided to the agency on February 24, 2022—told Empower Oversight that it had not specifically identified relevant personnel from Simpson Thacher, Enterprise Ethereum Alliance, or One River Asset Management, or otherwise advised the SEC to contact it for such information.

36. Empower Oversight has been forced to expend resources to prosecute this action as to the Six Requests.

### **CLAIMS FOR RELIEF**

#### **Count I**

#### **Failure to Comply with Statutory Deadlines in Violation of FOIA, 5 U.S.C. § 552(a)(6)**

37. Plaintiff realleges and incorporates by reference each of the foregoing allegations, contained in paragraphs 1-36, as if fully set forth herein.

38. As of December 8, 2021, Defendant had failed to respond to the Six Requests identified above.

39. More than 20 working days had passed since each of the Six Requests was received by the SEC, as confirmed in the August 13, 2021, letter. *See supra* ¶ 19; *see also* Ex. B.

40. FOIA requires the SEC to have provided a final determination within twenty working days of each of the requests. The SEC may extend this twenty-day period in the event of “unusual circumstances,” as defined by 5 U.S.C. § 552(a)(6)(B)(iii), for a maximum of ten working days, but must provide Empower Oversight with notice to do so. *See* 5 U.S.C. §§ 552(a)(4)(A)(viii)(II)(aa), 552(a)(6)(B)(ii); *see also* 17 C.F.R. §§ 200.80(d)(2), (d)(5).

41. The SEC failed to provide a final determination within twenty working days of the Request. *See* 5 U.S.C. § 552(a)(6). Indeed, the SEC acknowledged that “the FOIA Office has not

complied with the 20-day time period for responding to your request (September 13, 2021) and . . . has not informed you that unusual circumstances exist in processing.” Ex. C at 2.

42. The SEC has failed to timely make the required determination as to Empower Oversight’s Requests, in violation of FOIA. *See* 5 U.S.C. § 552(a)(6).

43. Empower Oversight’s mission was adversely affected by the SEC’s continued failure to render a timely final determination as to the Requests.

44. Empower Oversight has constructively exhausted all administrative remedies required by FOIA as to each of the Requests. *See* 5 U.S.C. § 552(a)(6)(C)(i).

45. Empower Oversight is entitled to declaratory and injunctive relief in connection with the SEC’s unlawful failure to make a timely determination as to the Requests. *See* 5 U.S.C. § 552(a)(6).

### **Count II**

#### **Unlawful Withholding of Agency Records in Violation of FOIA, 5 U.S.C. § 552(a)(3)**

46. Plaintiff realleges and incorporates by reference each of the foregoing allegations, contained in paragraphs 1-45, as if fully set forth above.

47. FOIA requires Defendant to process records requests and to promptly provide the requested records or the reasonably segregable portion of records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3)(B).

48. The SEC has withheld responsive records from Empower Oversight because the agency failed to conduct a reasonable search for records for Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA, in violation of FOIA. *See supra* ¶¶ 27-35; *see infra* ¶¶ 50-54.

49. Empower Oversight is entitled to declaratory and injunctive relief in connection with the SEC's unlawful failure to timely produce responsive records as to its requests. 5 U.S.C. § 552(a)(3)(B).

**Count III**  
**Failure to Conduct a Search Reasonably Calculated to Locate All Responsive Records, in Violation of FOIA, 5 U.S.C. § 552(a)(3)**

50. Plaintiff realleges and incorporates by reference each of the foregoing allegations, contained in paragraphs 1-49, as if fully set forth herein.

51. FOIA requires the SEC to process records requests and to promptly provide the requested records or the reasonably segregable portion of records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3)(B).

52. However, upon information and belief, the SEC has not provided Empower Oversight all responsive, non-exempt records in response to the requests. This failure to adequately conduct searches informed the SEC's final determination letters as to the Requests, including the "no records" responses to Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA.

53. When responding to a FOIA request, an agency cannot intentionally exclude from its searches a platform or file that may contain responsive records. The SEC appears to have done precisely that.

54. For example, in contrast to a clarification from Empower Oversight that the email communications sought by Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA were not limited to emails with the domain names @stblaw.com, @entethalliance.org, or @oneriveram.com, and in spite of Empower Oversight's provision of a list of names to search for in connection with the Request Numbers 21-02531-FOIA, 21-02532-

FOIA, 21-02534-FOIA, 21-02535-FOIA, and 21-02537-FOIA, the SEC advised that the agency had confined its search in response to Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA to emails with the domain names @stblaw.com, @entethalliance.org, or @oneriveram.com.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff prays that this Court:

- A. Declare that the SEC failed to make timely determinations on each of Empower Oversight's Six Requests, in violation of FOIA, 5 U.S.C. § 552(a)(6)(A)(i);
- B. Declare that the SEC failed to conduct a reasonable and adequate search as to SEC FOIA Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA in violation of FOIA, 5 U.S.C. § 552(a)(3);
- C. Order the SEC to immediately conduct a reasonable search for all responsive records, as required by FOIA, 5 U.S.C. § 552(a)(3)(C);
- E. Order the SEC to promptly disclose to Empower Oversight all responsive, non-exempt records, as required by FOIA, 5 U.S.C. § 552(a)(3);
- F. Award Empower Oversight its costs and reasonable attorneys' fees incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- G. Grant such other relief as the Court may deem just and proper.

August 2, 2022

Respectfully submitted,

/s/ Jeffrey S. Beelaert

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