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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

RICHARD VU NGUYEN, A/K/A NGUYEN THANH VU, and NTV FINANCIAL GROUP, INC.,

Defendants,

and

MAI DO,

Relief Defendant.

SA CV19-1174 AG (KESx)

Case No.

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS *EX PARTE* APPLICATION FOR A TEMPORARY RESTRAINING ORDER, ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT BE GRANTED AND A PERMANENT RECEIVER SHOULD NOT BE APPOINTED, AND ORDERS (1) FREEZING ASSETS; (2) REQUIRING ACCOUNTINGS; (3) PROHIBITING THE DESTRUCTION OF DOCUMENTS; (4) GRANTING EXPEDITED DISCOVERY; AND (5) APPOINTING A TEMPORARY RECEIVER

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I. INTRODUCTION

Plaintiff Securities and Exchange Commission brings this emergency action to halt an ongoing securities fraud by defendant NTV Financial and its founder, defendant Richard Vu Nguyen (collectively "Defendants"). According to their website, brochures, and radio and television advertisements on Vietnamese language stations, Defendants, were model investment advisers. Nguyen claimed to have an impeccable background and extensive experience managing investments, including receiving an MBA in finance, working for Goldman Sachs for over 20 years, and never suffering any trading losses—thus he could *guarantee* potential investors or clients that they would not lose any of their principal investment and redeem it at any time. This made Defendants and the investments they offered very attractive, and within less than two years, between February 2018 and March 2019, they had raised an estimated $2.4 million from over 80 investors. What those investors did not know, however, was that none of it was true.

The truth is that Nguyen never received an MBA, never worked for Goldman Sachs, and spent just two years at two small broker-dealer firm in April 1994 through May 1996. Since then, he has racked up an extensive criminal history that Defendants never disclosed to their clients. For example, they never disclosed that, in 2009, the United States Attorney's Office for the Central District of California ("USAO") prosecuted Nguyen for wire fraud, and that Nguyen admitted he participated in a scheme to use the internet to intentionally mislead his victims into giving him money for an investment fund. They also never disclosed that, in 2011, Nguyen was convicted of felony dependent adult in California State Court, and has been sanctioned twice by the California Department of Corporations ("CDC") for securities related misconduct. Perhaps more importantly, and contrary to his assertions, Nguyen has suffered trading losses, which have made it impossible for Defendants to make good on their promise that they could redeem investors' funds at any time.

None of this stopped Defendants from relying on Nguyen's phony credentials and track record to offer what they claimed were two safe investment opportunities. The first, the Nguyen Tran Le Fund ("the NTLF Fund" or "Fund"), purported to be a fund that pooled investors' money to buy and sell options. Defendants promised investors the Fund would pay a guaranteed return of 12% or more annually. The second investment opportunity was for Nguyen to personally manage clients' individual brokerage accounts by providing Nguyen with the password and login information, as well as between $50,000 and $100,000 to invest in securities.

It did not take long for the reality of Nguyen's track record and the nature of these investments to play out. By the end of the very first quarter – and ever since – the net principal that investors invested in the Fund had exceeded the market value of the Fund's assets. In other words, the Fund was – and always has been – worth less than what the investors initially invested into the fund, sometimes as much 69% under-funded. This meant that if all the investors exercised the right of redemption they were promised, Defendants would not have enough money, even if they emptied all of their accounts, to honor those requests. Similarly, many of the investors who allowed Nguyen to personally manage their brokerage accounts have suffered significant losses in those accounts. Of the 30 individual accounts Nguyen managed between August 2018 and March 2019, 17 have suffered trading losses.

Defendants have had profitable options trades, including realized gains, which allowed them to pay many existing investors. However, Nguyen's trading has resulted in significant losses, which Defendants have concealed when soliciting new investors. Moreover, the losses have made it impossible for Defendants to honor the "guaranteed" right of redemption that they promised – and continue to promise – to investors. The Fund's undercapitalization has existed pretty much since inception, and continues today. As of March 31, 2019, the overall market value of the Fund's assets was only approximately $1.6 million, while the net principal invested in the NTLF Fund up to that point was an estimated $2.4 million.

As set forth below, the evidentiary record establishes a *prima facie* case for violations of the federal securities laws. Because defendants are reasonably likely to repeat those violations, the SEC seeks a temporary restraining order and preliminary injunction. Furthermore, because the NTLF Fund remains undercapitalized, and because Defendants have also misappropriated more than $600,000 in investor funds—including funds provided to relief defendant Mai Do, Nguyen's girlfriend, there is a likelihood that any remaining investor funds are going to be dissipated. Accordingly, the SEC is also seeking an asset freeze to protect any remaining assets. Defendants cannot be trusted to do this. Not only have they misappropriated investor funds, but Nguyen has said repeatedly that he does not believe the SEC has any jurisdiction over his conduct and has endeavored to obstruct the SEC's investigation by refusing to produce subpoenaed documents and by refusing to appear for testimony. The SEC further seeks, *inter alia*, that the Court appoint an equity receiver over NTV Financial to marshal and preserve its existing assets and records, organize and produce records that Defendants have refused to produce, ensure that Defendants do not further misappropriate assets, and attempt to undue any fraudulent transactions that have taken place involving investor funds.

II. STATEMENT OF FACTS

A. Defendants Nguyen and NTV Financial

From April 1994 through May 1996, Nguyen was employed at two small broker-dealers. (Declaration of Kelly C. Bowers ("Bowers Dec.") ¶ 14, Ex. 15.) However, in 1999, the California Department of Corporations ("CDC") named Nguyen in a Desist and Refrain Order for securities related misconduct. (Bowers Dec. ¶ 11, Ex. 12.) In 2007, the CDC named Nguyen in a second Desist and Refrain Order. (Bowers Dec. ¶ 12, Ex. 13.)

Things got worse for Nguyen on August 24, 2009, when he entered a guilty plea to wire fraud charges in the matter of *United States v. Richard V. Nguyen*, Case No. CR 08-796(A)-ABC, a criminal case filed in United States District Court in the

Central District of California. (Bowers Dec. ¶ 10, Ex. 10.) As part of his guilty plea, Nguyen admitted that he had created a scheme to use the internet to intentionally mislead his victims into giving him their money by claiming he would invest that money in genuine investment funds. (*Id.* at 4-5) Nguyen said he created and controlled the website www.bhshfunds.com, where he purportedly offered for sale shares in investment funds and promised investors they could redeem their investment upon request. (*Id.*) Nguyen also created electronic mail and webpages that led his victims to believe they had purchased shares in the funds, when, in fact, he had not invested their money in the funds. (*Id.*) On November 24, 2009, Nguyen was sentenced to 15 months imprisonment and ordered to pay $104,981 in restitution to his victims. (Bowers Dec. ¶ 10, Ex. 11.)

Then, on June 4, 2012, while still on supervised release, a jury in the matter of *People v. Richard V. Nguyen,* Case No. 11WF0913, Orange County Superior Court, convicted Nguyen of felony infliction of injury on a dependent adult, in violation of California Penal Code Section 368(b)(1). (Bowers Dec. ¶ 13, Ex. 14.)[1] On August 17, 2012, Nguyen was sentenced to two years in prison for the dependent adult and assessed a $240 fine. On October 29, 2013, the California Fourth Appellate District, Division Three, affirmed Nguyen's conviction and sentence. (*Id.* at 5.)

In February 2018, after serving two prison sentences, Nguyen began marketing new investment opportunities to investors, including the NTLF fund, which was not unlike the investment fund he admitted was a fraud in 2009. (Bowers Dec. ¶ 20, Ex. 21, pp. 1-3.) (*Id.* at 1.) Nguyen offered his investment services through his company, NTV Financial, which he did not formally incorporate until May 29, 2018, when he filed articles of incorporation with the State of California. (Bowers Dec. ¶ 17, Ex. 18.) However, Nguyen did not file the articles of incorporation under the name

[1] According to court documents, Nguyen physically abused a 45-year-old, four-foot-tall, 75-pound woman, who suffered from severe Down syndrome and was unable to care for herself. (*Id.* at 1.)

Richard V. Nguyen, the name listed on his criminal convictions and his CDC administrative records. (*Id.*) Instead, Nguyen filed the articles of incorporation under the name "Vu Thanh Nguyen" and began promoting himself and NTV Financial as having extensive investment experience. (*Id.*)

B. Defendants' Investments Offerings

The NTLF Fund. One of the investment opportunities defendants offered to investors while touting Nguyen's credentials and track record as an investment adviser was the NTLF Fund. (Bowers Dec. ¶ 20, Ex. 21.) According to representations Defendants made to investors on the NTV Financial website, during talk shows, and during meetings with investors, the NTLF Fund had several key components: (1) Nguyen would pool investor funds and invest it in stocks and options (Bowers Dec. ¶ 31(a), Ex. 31.) ; (2) Nguyen would be the "Fund Manager" and be responsible for all trading in the fund (Bowers Dec. ¶ 31(b), Ex. 31.) ; (3) the price of an investment in the fund was $10 per share and the minimum investment was $5,000 and, later, $10,000 (Bowers Dec. ¶ 31(c), Ex. 31; ¶ 25, Ex. 26, p. 2.); (4) the annual rate of return for the fund was guaranteed to be 16% and, later, 12% (Bowers Dec. ¶ 31(d), Ex. 31; ¶ 25, Ex. 26, p. 6); (5) the returns (or dividends) would be paid to investors from Nguyen's profits from trading (Bowers Dec. ¶ 31(e), Ex. 31; Kassabgui Dec. ¶ 8.); (6) investors were permitted to withdraw their money at any time (Bowers Dec. ¶ 31(f), Ex. 31); (7) NTV Financial was entitled to any profits that exceed the amounts paid to investors (Bowers Dec. ¶ 31(g), Ex. 31); and (8) no commissions would be charged on investments commission (Bowers Dec. ¶ 31(h), Ex. 31, Ex. 17, p. 7.).

The individually managed accounts. Another investment opportunity defendants offered to investors while touting Nguyen's credentials and track record as an investment adviser was having Nguyen manage investors' individual brokerage accounts. (Bowers Dec. ¶ 22, Ex. 23, pp. 7-8.) According to representations Defendants made to prospective clients, during talk shows, and during meetings with

investors, the individually managed accounts worked as follows: Nguyen would have each client open his or her own brokerage account ((Bowers Dec. ¶ 25, Ex. 26, pp. 6-7.); tell them to fund the account with at least $50,000 and, later, $100,000 (Bowers Dec. ¶ 22, Ex. 23, pp. 6-7.; ¶ 26, Ex. 26, pp. 9.); and tell the clients to give Nguyen their username and password information so Nguyen could trade securities, including options, in the client's account (Law Dec. ¶ 18; ¶ 23, Ex. 24, pp. 2). In exchange, clients agreed to pay Defendants 50% of the trading profits. (Bowers Dec., ¶ 23, Ex. 24, pp. 2).

C. Defendants' Solicitations of Investors and Clients

Defendants have primarily targeted investors in the Vietnamese-American community by purchasing radio and television spots on Vietnamese language stations, and by offering brochures written in Vietnamese on the NTV Financial website. (Bowers Dec. ¶ 20, Ex. 21; ¶ 25, Ex. 26; ¶ 18, Ex. 19, p. 11.) One of the ways Defendants reached investors was by having Nguyen co-host a weekly talk show called "Kim Tien Sat Phat," which when translated in English means "Golden Money – Winning at All Costs." (Bowers Dec. ¶ 20, Ex. 21, p. 1.) This show aired several times a week on a nationwide Vietnamese-language station on DirecTV and a location station in Southern California. (Declaration of Kevin Le, ¶ 3, Ex. A) In the videos, Nguyen and his co-hosts regularly touted Nguyen credentials and track record as an investment adviser. (Bowers Dec. ¶¶ 20-22, Ex. 21-23, p. 1.)

For example, Nguyen was described as a former Goldman Sachs "investment banker" and "underwriter," who has "a long history of cutthroat experience in the stock market in the past two decades with Goldman Sachs." (Bowers Dec. ¶ 20-21, Ex. 21-22, p. 1.) Nguyen also described himself as someone who "way back … managed hedge funds with Goldman Sachs." (Bowers Dec. ¶ 20, Ex. 21, p. 5.) Nguyen even led investors to believe that Goldman Sachs was still relying on his investment experience, saying "we have a contract with the Global Goldman Sachs organization, currently formulation our [trading] formulas, very successful and

repeatable." (Bowers Dec. ¶ 22, Ex. 23, p. 3.) Nguyen also boasted about his track record, telling investors during an October 2018 talk show "to this date, … never, never, none of our accounts have not made money." (*Id.* at 6.)

Defendants made similar claims during face-to-face and telephonic meetings with investors and on the NTV Financial website. Nguyen told one investor that he had worked for Goldman Sachs for 15-20 years and another that he had received his Masters' in Business Administration from Cal Poly Pomona before going to work on Wall Street. (Declaration of Ramy Kassabgui ("Kassabgui Dec."), ¶ 6.) The website for NTV Financial described Nguyen as a fund manager with "extensive experience in the areas of investment, start up, and corporate governance," and described NTV Financial as a company that provided "strategic guidance on a wide variety of operational improvements, including revenue growth, procurement, leadership, lean process and IT optimization, energy sustainability, and employee health care." (Bowers Dec. ¶ 18, Ex. 19, p. 12-13.) The website also claimed to have "deposited a 'Net Capital' reserve… equal to 35% of [the] Fund, in a segregated account to protect investors' capital," which Defendants claimed would "guarantee against losses of shareholders" and would make sure that a shareholder's initial investment capital was "100%" guaranteed and there would be "No Loss." (*Id.* at 2.) At no time during these talk shows, meetings with investors, or on the NTV website did Defendants reveal Nguyen's criminal history or the fact that he had been sanctioned twice by the CDC for securities related misconduct.

D. Defendants' Misstatements and Scheme to Defraud

Nguyen's criminal history. Defendants never disclosed that Nguyen had been convicted of two felonies, including one federal conviction for fraud involving an investment fund. (Law Dec., ¶¶ 12, 22-24; Kassabgui Dec., ¶ 11.) They also never disclosed that Nguyen had been sanctioned twice by the CDC for securities related misconduct. (Kassabgui Dec., ¶ 11.) Nguyen admitted that he never disclosed most of things to investors and did not feel it was his obligations to do so. (Bowers Dec., ¶

16, Ex. 17, pp. 62-63.) However, investors have said that knowing about Nguyen's criminal background would have been important to them and that they would not have invested with Defendants if they knew Nguyen was a convicted felon. (Law Dec., ¶¶ 12, 22; Kassabgui Dec., ¶ 11.)

Nguyen's experience. Defendants misrepresented Nguyen's credentials and investment experience. Nguyen has never worked for Goldman Sachs and has never managed one of its investment funds. (Bowers Dec., ¶ 15, Ex. 16.) As explained earlier, Nguyen worked for two small brokerage firms for just a couple of years and that was way back in 1994 and 1996. Furthermore, Nguyen never received his MBA from Cal Poly Pomona, and Goldman Sachs does not have a contract with Defendants to use Nguyen's trading formulas at Goldman Sachs. (Bowers Dec., ¶ 16, Ex. 17, pp. 18, 50-51, 53, 55, 69].) Nguyen admitted that none of these statements about Goldman Sachs and about him having an MBA were true, even though investors have said it was important to them when investing and they would not have invested had they known it was not true.[2] (*Id.*; Law Dec., ¶ 17.)

Defendants' trading record. Defendants failed to disclose their actual track record investing on behalf of their clients. It was false and misleading when Nguyen told viewers on his talk show in October 2018 that "to this date, … never, never, none of our accounts have not made money." (Bowers Dec., ¶ 22, Ex. 23, p. 6.) Although many of the trades Nguyen executed on behalf of the fund and on behalf of individual investors resulted in significant realized gains, which allowed Defendants to pay most of their investors the 4% to 3% return Defendants promised for each quarter, Nguyen's trading has also resulted in significant realized and unrealized losses, sometimes over $1 million worth in a single quarter. (Declaration of Maria D. Rodriguez ("Rodriguez Dec."), ¶ 39.)

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[2] Although no investor relied on it when investing, the statements regarding NTV Financial providing strategic guidance to companies and having investments in a wide range of industries was taken verbatim from the website of Blackstone, a large private equity firm. (Bowers Dec., ¶ 28, Ex. 28.)

The Fund's performance and capitalization. Defendants falsely "guaranteed" that investors could redeem their investment at any time. From as early as June 2018, Defendants made this representation repeatedly during talk shows and during meetings with investors, and even posted on the NTV Financial website that investor capital was "100%" guaranteed. (Bowers Dec., ¶ 18, Ex. 19, p. 2.) However, by April 2018 – and ever since then – the net principal that investors invested in the fund has exceeded the market value of the fund's assets. (Rodriguez Dec., ¶ 43-44.) In other words, since that time the fund has always been worth less than what the investors initially invested into the fund (*i.e.*, undercapitalized), sometimes by as much 69%. (*Id*.) This means that if all the investors were to exercise the right of redemption they were promised, Defendants would not have enough money, even if they emptied all of their investment and bank accounts, to honor those requests. And Defendants' representation about setting aside a "Net Capital" reserve equal to 35% in a segregated account to protect investors' capital was also false and misleading. (Bowers Dec., ¶ 18, Ex. 19, p. 2.) No such segregated account exists. (Rodriguez Dec., ¶ 30.) To the contrary, investor funds have moved around extensively between brokerage and bank accounts, and have been commingled with non-investor funds. (Rodriguez Dec., ¶¶ 30-42.)

Uses of investor funds. Defendants misled investors about how their money would be used. Investor money was moved around between bank and brokerage accounts held in the name of Nguyen, Do, and NTV Financial, and was not separated from other funds, but instead commingled with money from other businesses Nguyen operated. Thus, even claiming that the NTLF Fund was a "fund" was misleading, because it suggested there was some separate legal entity holding the investors' money when there was none. Furthermore, during a talk show in February 2018, Nguyen told investors their money would be "bundled into one account or one fund" that he would manage. (Bowers Dec., ¶ 20, Ex. 21, p. 11.) To make matters worse, Defendants misappropriated more than $600,000 of investors' funds and used it for

the benefit of NTV Financial, Nguyen, and Nguyen's fiancé, Relief Defendant Mai Do. (Rodriguez Dec., ¶ 45.) Although the misappropriation of these investor funds has not been traced to particular purchases or expenditures, it is clear Defendants spent $600,000 more than they were entitled to receive. Approximately $335,000 of comingled funds were used for the purchase of jewelry, a car and a motorcycle, to make payments to the Defendant's children, make mortgage payments and used to make approximately $354,000 in payments towards the purchase of a $1 million home in the name of Relief Defendant Mai Do. (Rodriguez Dec., ¶ 35.)

E. Defendants' Efforts to Obstruct the SEC's Investigation

The SEC began investigating Defendants for possible violations of federal securities laws and, on August 27, 2018, the SEC issued an investigative subpoena to Defendants asking for, among other things, "[a]ll documents concerning any investment offered by NTV Financial." (Bowers Dec., ¶ 5, Ex. 1, p. 4.) On October 19, 2018, Defendants, through their counsel at the time, produced just 18 pages of documents in response to the SEC's subpoena. (Bowers Dec., ¶ 6, Ex. 2, pp. 8-9.) The documents produced related to investor accounts with NTV Financial, which suggested there were seven investors in NTV Financial. (Bowers Dec., ¶ 6, Ex. 3.) In a cover letter to the production, Defendants' counsel wrote that Defendants had represented to their counsel that the list showed "all investors" and that "all of these accounts have been closed and NTV Financial Group has caused the money to be returned to the investors." (Bowers Dec., ¶ 6, Ex. 2, p. 8.) According to NTV Financial's bank account statements, however, there appeared to be additional investors who were not included in the seven investors for whom NTV Financial had produced records. (Bowers Dec., ¶ 7, Ex. 4, p. 42)

On March 22, 2019, the SEC issued an investigative subpoena to Nguyen, requiring him to appear for testimony at the SEC's offices. (Bowers Dec., ¶ 9, Ex. 7.) On April 3, 2019, Nguyen left counsel for the SEC a voicemail indicating that he would not appear for testimony and indicated he would be closing all investor

accounts and refunding all investor money. (Bowers Dec. ¶ 9, Ex. 9.) On March 22, 2019, the SEC also issued an investigative subpoena to Relief Defendant Mai Do, requiring her to appear for testimony at the SEC's offices. (Bowers Dec., ¶ 9, Ex. 8.) Nguyen's April 3, voicemail to counsel for the SEC indicated that Do also would not be appearing for testimony. (Bowers Dec. ¶ 9, Ex. 9.)

In early April 2019, as a part of a separate criminal investigation, the USAO and the Federal Bureau of Investigation ("FBI") temporarily froze several of Defendants' known brokerage and bank accounts. (Bowers Dec., ¶ 25, Ex. 26, p. 2.) On April 8, 2019, while the temporary freeze was still in effect, Nguyen met with the FBI and was voluntarily interviewed about his involvement with NTV Financial. (Bowers Dec., ¶ 16, Ex. 17.) Defendant made several admissions during that interview, including that he (1) is the president of NTV Financial, a private trading firm, and that he runs the company; (2) promised investors, of which he estimated there were 30-40, a minimum return of 16% a year and a dividend every quarters; (3) guaranteed investors their principal and no loss of capital; (4) commingled investor funds with his own personal funds; (5) never received his MBA from Cal Poly Pomona; (6) never worked at Goldman Sachs, was never a hedge fund manager there, and has no current contracts with Goldman Sachs; and (7) never told his investors about his criminal background. (Bowers Dec., ¶ 17, Ex. 17, pp. 3, 7, 9-10, 18, 50-53, 55, 61-63, 69, 100.)

Nguyen also made false and misleading statements to the FBI, which were similar to the ones he made to investors. For example, Nguyen told the FBI he makes almost 100% a quarter just in trading, that NTV Financial has enough capital to cover 100% of the principal invested, and at all times they have more money than what their clients gave them. (*Id.* at 31, 38-39.) Nguyen also made clear his dislike for the SEC and claimed that his business was not under its jurisdiction. (*Id.* at 24.) Nguyen told the FBI that because he believed the SEC had no jurisdiction over his conduct he was not going to give the SEC any of his records. (*Id.* at 43.) Nguyen then showed

the FBI a brokerage account statement that he claimed contained "service money" he received from clients for trading. (*Id.* at 37-38.) Nguyen told the FBI he used this account as part of the money he had to backup all of his investors' funds and claimed to have assets worth over 200% of the investors' principal investment. (*Id.* at 47.) Towards the end of his meeting with the FBI, Nguyen said he would take steps to "fix" things, like no longer promising investors things. (*Id.* at 107.) Nguyen followed up in a subsequent telephone call with the FBI, saying Defendants were not taking any more money for the NTLF Fund and were going to give everyone back their money. (Bowers Dec., ¶ 16, Ex. 17, pg. 167 [*4/15/19 Nguyen Call to* FBI].) After this conversation, the FBI allowed the temporary freeze to expire. (Bowers Dec., ¶ 25, Ex. 26, p. 4.)

On April 19, 2019, Defendants aired another talk show on Radio Bolsa, posting a recording of it on the internet. (*Id.*) The co-host introduced Nguyen as "an investment banker and an underwriter with two decades of experience working in securities investments with one of the leading financial giants, Goldman Sachs." (*Id.* at 1.) Without correcting the introduction, Nguyen acknowledged that the FBI had frozen the assets of NTV Financial, but blamed the SEC for the freeze. (*Id.* at 2.) Nguyen told listeners the FBI was no longer freezing Defendants' assets because "they could not find any errors." (*Id.* at 3.) Nguyen introduced someone he identified as NTV Financial's "Compliance Officer," who told listeners that NTV Financial was not operating under the authority of the SEC and that "the SEC ended it there with NTV and simply could not investigate [it] any further." (*Id.* at 2-3.) The Compliance Officer said he wanted to "send a message to all investors, that you could refuse to respond to the SEC or the FBI based on the law, it's called the Privacy Act." (*Id.* at 9.) Nguyen then referenced his meeting with the FBI, saying "even if I were to go to jail, or if they indict me, I would never turn over any of your records." (*Id.*)

III. ARGUMENT

A. The SEC Is Seeking a TRO in the Public Interest

Section 20(b) of the Securities Act and Section 21(d) of the Exchange Act authorize the SEC to obtain a restraining order without a bond. *See* 15 U.S.C. §§ 77t(b), 78u(d) & 80b-9. In the Ninth Circuit, emergency injunctive relief may be ordered if "either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips in the applicant's favor." *U.S. v. Nutri-Cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992) (quotations and citations omitted). The SEC, however, appears before the Court "not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws." *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975). Because this enforcement action is brought in the public interest, the Court's "equitable powers assume an even broader and more flexible character than when only a private controversy is at stake." *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989) (*quoting FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982)); *see also U.S. v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 174-75 (9th Cir. 1987) ("The function of a court in deciding whether to issue an injunction authorized by a statute of the United States to enforce and implement Congressional policy is a different one from that of the court when weighing claims of two private litigants.")

Several district courts in the Ninth Circuit have interpreted the preliminary injunctive relief standard in SEC emergency actions to require that the SEC make only a two-prong showing: (1) a *prima facie* case that the defendants have violated the federal securities laws, and (2) a reasonable likelihood that the defendants will repeat their violations.[3] There is no question the SEC has made this showing here.

[3] Courts have held that it would be "'crucial error'" to "'assum[e] that SEC enforcement actions seeking injunctions are governed by criteria identical to those which apply in private injunction suits'" *SEC v. Schooler*, 902 F. Supp. 2d 1341,

B. The SEC Has Established a *Prima Facie* Case

1. Defendants committed fraud in violation of Securities Act, Section 17(a) and Exchange Act, Section 10(b)

The record ably establishes a *prima facie* case that Defendants are violating the antifraud provisions of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Section 17(a) prohibits fraud in the offer or sale of securities, and Section 10(b) and Rule 10b-5 prohibit fraud in connection with the purchase or sale of any security. *See* 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 855 (9th Cir. 2001). Defendants have violated both antifraud provisions.[4]

a. Defendants engaged in a scheme to defraud

Defendants have engaged in a scheme to defraud NTV's investors. Sections 17(a)(1) and 17(a)(3) of the Securities Act prohibits any person, "in the offer or sale of any securities," from employing "any device, scheme, or artifice to defraud," 15 U.S.C. § 77q(a)(1), or from engaging in "any transaction, practice, or course of

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1344 (S.D. Cal. 2012) (*quoting SEC v. Management Dynamics, Inc*., 515 F.2d 801, 808 (2d Cir. 1975)). In SEC enforcement actions, "[a] *prima facie* case of the probable existence of fraud … is sufficient to call into play the equitable powers of the court." *SEC v. United Financial Group, Inc.*, 474 F.2d 354, 358 (9th Cir. 1973); *see also Nutri-Cology*, 982 F.2d at 398 ("In statutory enforcement cases where the government has met the 'probability of success' prong of the preliminary injunction test, we presume it has met the 'possibility of irreparable injury' prong because the passage of the statute is itself an implied finding by Congress that violations will harm the public.").

[4] As a threshold matter, investments in the Fund, and through the individually managed accounts, are securities under the *Howey* test because (1) the investors invested money (2) that was pooled in a common enterprise to trade stock and options (3) with an expectation that any trading profits would be derived solely from the efforts of Nguyen. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-299 (1946). In the Ninth Circuit, the common enterprise element is satisfied by the existence of either horizontal commonality (a pooling of investor funds and interests) or strict vertical commonality (the fortunes of the investor are linked with those of the promoter). *See SEC v. R.G. Reynolds Enters., Inc.*, 952 F.2d 1125, 1130 (9th Cir. 1991). The evidence submitted by the SEC establishes a common enterprise under both tests. *See id.* at 1134 (narrow vertical commonality can be shown by an "arrangement to share profits on a percentage basis" between an investor and a promoter).

business which operates, or would operate, as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). Likewise, Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder make it unlawful for any person, "in connection with the purchase or sale of any security," "[t]o employ any device, scheme or artifice to defraud," or "[t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(a), (c).[5] To be liable for a scheme to defraud, a defendant "must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme." *Simpson v. AOL Time Warner, Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006), *vacated on other grounds sub nom.*, *Avis Budget Group Inc. v. Cal. State Teachers' Ret. System*, 552 U.S. 1162 (2008); *see also SEC v. Sells*, No. C-11-4941, 2012 WL 3242551, at *7 (N.D. Cal. Aug. 10, 2012). The language of these provisions is "expansive" such that those who knowingly disseminate false statements, even if they did not make the false statements themselves, can also be held liable under Rule 10b-5(a) and (c) and Section 17(a)(1). *Lorenzo v. SEC*, 139 S. Ct. 1094, 1101-02 (2019).

The evidence that Defendants were making and disseminating materially false and misleading statements to investors, which reasonable investors would find important in making an investment decision, is overwhelming. Defendants (1) never disclosed Nguyen's criminal background to investors or the fact that he had been sanctioned by the CDC twice for securities-related misconduct; (2) falsely claimed that Nguyen had an MBA from Cal Poly Pomona and had worked at Goldman Sachs for over a decade; (3) overstated Nguyen's investing track record by claiming that his

[5] Defendants' conduct must also occur "in the offer or sale," and "in connection with the purchase or sale" of securities and in interstate commerce, which are the case here. The phrase "in connection with the purchase or sale" of a security is met when the fraud alleged "coincides with a securities transaction." *Merrill Lynch, Pierce, Fenner & Smith Inc., v. Dabit*, 547 U.S. 71, 85 (2006). Moreover, "in connection with" requires only that there be "deceptive practices touching" the purchase or sale of securities. *See Superintendent of Ins. v. Bankers Life & Casualty Co*., 404 U.S. 6, 12-13 (1971); *see also SEC v. Zandford*, 535 U.S. 813, 819 (2002).

accounts "never, never" failed to make money and by overstating his past trading performance; (4) "guaranteed" investors they could redeem their Fund investment at any time when, in fact, the Fund had suffered undisclosed losses and Defendants lacked sufficient capital to honor redemption; and (5) misled investors about how their money would be used, by commingling it with non-investors' funds instead of keeping it "bundled into one account or one fund," and by misappropriating over $600,000 and using it for their and other's personal benefit. Indeed, Nguyen *admitted* that several of these representations were false during his voluntary interview with the FBI; the rest are evident from Defendants' bank and brokerage account records.

b. Defendants made materially false statements

For many of the same reasons, the record also establishes that defendants made or profited from false and misleading statements and omissions, in violation of both Section 17(a) and Section 10(b). To establish these violations, the SEC must show that the defendants, with the requisite state of mind, made material misrepresentations or omissions in connection with the purchase or sale of a security, or obtained money by means of these false statements in the offer or sale of a security. *See SEC v. Platforms Wireless Intern. Corp.*, 617 F.3d 1072, 1092 (9th Cir. 2010).[6]

Materiality. Defendants' misstatements and omissions must concern material facts. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *TSC Industries., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *See TSC Industries*, 426 U.S. at 449; *Platforms Wireless*, 617 F.2d at 1092. Liability arises not only from affirmative representations but also from failures to disclose material information. *SEC v. Dain Rauscher*, 254 F.3d at 855-56. The antifraud provisions impose "'a duty to disclose material facts that are necessary

[6] Nguyen admitted during his voluntary interview with the FBI that he obtained money for trading on behalf of his investors in their individually managed accounts, and the fact that he obtained money in the NTLF Fund is corroborated by Defendants' bank and brokerage account records.

to make disclosed statements, whether mandatory or volunteered, not misleading.'" *SEC v. Fehn*, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996) (*quoting Hanon v. Dataproducts Corp.*, 976 F.2d 497, 504 (9th Cir. 1992)).

Evidence from investors shows that Nguyen's securities experience was important to them, that it would have been important to them to know Nguyen had not worked at Goldman Sachs and had twice been convicted of felonies, and that they would not have invested had they know the truth about these things. Even Nguyen, during a February 2018 talk show, said that it was important for an investor to consider a fund manager's personal life because it effects the probability of his success as a fund manager. (Bowers Dec., ¶ 20, Ex. 21, pp. 4-5.)[7] Defendants' misstatements regarding how they would spend investor money were also material. *SEC v. Research Automation Corp.*, 585 F.2d 31, 35-36 (2d Cir. 1978) (misleading statements and omissions concerning use of money raised from investors material as matter of law); *SEC v. TLC Invs. and Trade Co.*, 179 F. Supp. 2d 1149, 1153 (C.D. Cal. 2001) (reasonable investors would consider information that funds were being misused to be material).

Scienter and negligence. Defendants acted unreasonably and with scienter. While claims under Section 10(b) and Section 17(a)(1) require a showing of scienter, Sections 17(a)(2) and (3) only require a showing of negligence. *See Aaron v. SEC*, 446 U.S. 680, 701-02 (1980); *Vernazza v. SEC*, 327 F.3d 851, 859-60 (9th Cir. 2003). Scienter is proven with "'knowing or reckless conduct,' without a showing of 'willful intent to defraud.'" *Vernazza*, 327 F.3d at 860 (*quoting Nelson v. Serwold*, 576 F.2d

[7] Several courts have agreed with Nguyen. *See SEC v. Prater*, 289 F. Supp. 2d 39, 52-53 (D. Conn. 2003) ("The failure to disclose anywhere on the websites or in other materials any information about [Defendant's] extensive criminal history, including convictions for fraud, would certainly constitute a material omission which a reasonable investor might view as important in deciding whether to trust their money with [Defendant] or his company."); *see also SEC v. Kirkland,* 521 F.Supp.2d 1281, 1303 (M.D. Fla. 2007) (noting that the failure to disclose "desist and refrain" orders entered against management in California were material omissions).

1332, 1337 (9th Cir.1978) . Recklessness is defined as "an extreme departure of ordinary care." *Hollinger*, 914 F.2d at 1569.[8] To establish negligence, the SEC must show that the defendants failed to conform to the standard of care that would be exercised by a reasonable person. *See Dain Rauscher*, 254 F.3d at 856; *SEC v. Hughes Capital Corp.*, 124 F.3d 449, 453–54 (3d Cir.1997).[9]

It is hard to imagine how Defendants could argue their conduct was anything but knowing, since basically all of the misrepresentations and omissions centered on Nguyen's own background and track record investing. After all, Nguyen knew that he never received an MBA from Cal Poly Pomona and that he never worked at Goldman Sachs. He readily admitted that none of this was true when he met with the FBI. Nguyen also knew that he had been convicted of two felonies and sanctioned by the CDC twice, yet he never disclosed any of that information to his investors. Nguyen suggested to the FBI that the burden was on his investors to do their due diligence and find out about his background, but there is at least circumstantial evidence that Nguyen took steps to prevent investors from learning about his checkered past by not using the name "Richard V. Nguyen" on the incorporation documents for NTV Financial or in any of the marketing materials. In addition, Nguyen, as NTV Financial's principal, knew that it was not true when he told investors his accounts "never, never" failed to make money, that he had set aside a net capital reserve, or that investor capital was 100% guaranteed.

2. Defendants violated Advisers Act Sections 206(1)-(2)

Defendants' conduct with respect to the individually managed accounts also violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940

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[8] It "satisfies the scienter requirement only 'to the extent that it reflects some degree of intentional or conscious misconduct.'" *SEC v. Rubera*, 350 F.3d 1084, 1094-95 (9th Cir. 2003) (*quoting In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 977 (9th Cir.1999)).

[9] As NTV Financial's principal, Nguyen's mental state is imputed to it. *See Platforms Wireless Int'l Corp.*, 559 F. Supp. 2d at 1096, *aff'd.*, 617 F.3d 1072 (9th Cir. 2010), citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1089 n.3 (2d Cir. 1972).

("Advisers Act"), which prohibit an investment adviser from (1) employing any device, scheme, or artifice to defraud clients or prospective clients; or (2) engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any clients or prospective clients. As a fiduciary, an investment adviser has a duty of "utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients." *SEC v. Blavin*, 760 F.2d 706, 711-12 (6th Cir. 1985) (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (internal quotation marks omitted)). Thus, Section 206 prohibits misrepresentations as well as failures to disclose material information. *See, e.g.*, *SEC v. Wash. Inv. Network*, 475 F.3d 392, 404 (D.C. Cir. 2007). Materiality is established if a reasonable client would have considered the misrepresented fact important when making an investment decision. *See Steadman v. SEC*, 603 F.2d 1126, 1130 (5th Cir. 1979). Scienter is an element of a Section 206(1) violation, while negligent conduct suffices for Section 206(2). *See id.* at 1134.

As detailed above, Defendants' statements and conduct relating to the individually managed accounts establish their fraud. To further prove a violation of Sections 206(1) and (2), the SEC must also show that Defendants acted as "investment advisers" over clients' individually managed accounts. Section 202(a)(11) of the Advisers Act defines an "investment adviser" as "any person who, for compensation, engages in the business of advising others … as to the value of securities or as to the advisability of investing in, purchasing, or selling securities ...." With respect to compensation, Nguyen admitted to the FBI that he received money from investors in the form of trading profits in exchange for managing investors' individual brokerage accounts. (Bowers Dec., ¶ 16, Ex. 17, p. 37-38.) As for advising clients and prospective clients on investments, Defendants repeatedly held Nguyen out as someone who was in the business of advising others on their investments. During a talk show aired on January, 19 2019, Nguyen's co-host said that the purpose of the program was to "share with you the formulas and concepts

about trading and exchanging in the stock market with the objects to earn the most profit." (Bowers Dec., ¶ 23, Ex. 24, p. 1.) Nguyen offered prospective clients NTV Financial's "current products" including an investment in the individually managed account. (*Id.* at 2.) Nguyen even acknowledged, "We are a direct money manager. We manage your money." (*Id.* at 7.)

3. Defendants violated Advisers Act Section 206(4)/Rule 206(4)-8

The evidence establishing Defendants' violations of Section 17(a)/Section 10(b) also establishes that, as to the NTLF Fund, they violated Section 206(4) and 206(4)-8 of the Advisers Act, which prohibits an investment adviser from, directly or indirectly, engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. Defendants held the NTLF Fund out as a pooled investment vehicle—though they merely pooled the funds in their own accounts. By misleading NTLF Fund investors as to the Fund's capitalization, redemption rights, the use of investors' monies, and the Fund's very existence, Defendants violated Advisers Act Section 206(4)/Rule 206(4)-8.

"Facts showing a violation of Section 17(a) or [Section] 10(b) by an investment adviser will also support a showing of a Section 206 violation." *SEC v. Young,* No. 09-1634, 2011 WL 1376045, at *7 (E.D. Pa. Apr. 12, 2011) (quoting *SEC v. Haligiannis,* 470 F. Supp. 2d 373,383 (S.D.N.Y Jan. 17, 2007)). Scienter is not required for a violation of Section 206(4)/Rule 206(4)-8; mere negligence will suffice. *SEC v. Steadman,* 967 F.2d 636, 641-43 n.5 (D.C. Cir. 1992); *Vernazza v. SEC,* 327 F.3d 851, 860 (9th Cir. 2003).[10] Where, as here, the advisers to a pooled investment vehicle engages in conduct that would violate Section 17(a) of the

[10] Rule 206(4)-8(a)(l) prohibits an investment adviser to "pooled investment vehicles," such as private equity funds, from making an untrue statement of material fact or omitting to state a material fact necessary to make the statements made not misleading to investors or prospective investors in those pools. Rule 206(4)-8(a)(2) provides that it is a fraudulent practice for an investment adviser to a pooled investment vehicle to engage in "fraudulent, deceptive, or manipulative" conduct with respect to any investor or prospective investor in the pooled vehicle.

Securities Act and/or Section 10(b) of the Exchange Act, the advisers also violate Section 206(4) and Rule 206(4)-8(a)(l) and (2) thereunder.

C. Defendants' Violations Are Likely to be Repeated

In addition to making a *prima facie* showing of Defendants' securities law violations, the record also shows a likelihood that these violations will be repeated. Whether a likelihood of future violations exists depends upon the totality of the circumstances. *See SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980); *SEC v. Fehn*, 97 F.3d 1276, 1295-96 (9th Cir. 1996). The existence of past violations may give rise to an inference that there will be future violations. *See Murphy*, 626 F.2d at 655; *SEC v. United Financial Group, Inc.*, 474 F.2d 354, 358-59 (9th Cir. 1973); *see also U.S. v. Odessa Union Warehouse Co-Op*, 833 F.2d 172, 176 (9th Cir. 1987). Courts also consider factors such as the degree of scienter involved, the isolated or recurrent nature of the violative conduct, the defendant's recognition of the wrongful nature of the conduct, the likelihood that, because of the defendant's occupation, future violations may occur, and the sincerity of defendant's assurances (if any) against future violations. *See Murph*y, 626 F.2d at 655. Defendants fail all of them.

First, Nguyen has past violations—namely, his 2009 conviction for fraud relating to an investment fund and two CDC sanctions for securities related misconduct. Second, there is strong evidence that Defendants acted with a high level of scienter. All of the misrepresentations and omissions they made to investors centered on Nguyen's own background and track record investing. Third, the Defendants' conduct is recurring and ongoing. As recently as May 11, 2019, Defendants were continuing to solicit new investors. Unbeknownst to Defendants, one of the individuals they solicited on April 8, 2019 was an undercover agent for the FBI ("UC"). (Bowers Dec., ¶ 30, Ex. 30.) The UC secretly recorded Nguyen falsely claiming to have a track record of earning a 1,000 percent return annually, while, at the same time, concealing from UC Nguyen's criminal history and the losses he suffered in 2018 and beyond. (*Id.* at 3.)

Fourth, Nguyen has shown no recognition of the wrongfulness of his conduct. He is not even willing to admit the SEC has jurisdiction over his conduct, much less admit he did anything wrong. Again, Nguyen is the one who suggested to the FBI that the burden was on his investors to do their due diligence and find out his extensive criminal background, even though there is circumstantial evidence that he took steps to prevent his investors from doing just that by not using the name "Richard V. Nguyen" on the incorporation documents or in any of the marketing materials. Fifth, although the financial records indicate Nguyen operates other businesses, the bulk of the money in Defendants' bank and brokerage accounts came from investor funds, indicating that soliciting investors is Nguyen's primary occupation and that future violations are likely to occur. (Rodriguez Dec., ¶¶ 30-34.)[11]

D. The Other Relief Sought By The SEC is needed

Asset Freezes. In addition to a restraining order, the SEC also seeks an asset freeze. Federal courts have "inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief." *Reebok Int'l, Ltd v. Marnatech Enterprises, Inc.*, 970 F.2d 552, 559 (9th Cir. 1992); *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). These powers include the authority to freeze assets of both parties and nonparties. *See SEC v. Hickey*, 322 F.3d 1123, 1131 (9th Cir.

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[11] Even if Nguyen promises he will not commit future violations, the Court should find any such assurance lacks credibility. Nguyen gave the same sorts of assurances to the SEC and the FBI when he led them to believe he would stop soliciting funds and refund investors' money, yet he did not follow through on any of them. On October 19, 2018, Defendants, through their counsel at the time, represented to the SEC that "all of [its] accounts [had] been closed and NTV Financial Group [had] caused the money to be returned to the investors." (Bowers Dec., ¶ 9, Ex9.) When the FBI temporarily froze Nguyen's accounts in April 2019, he told the FBI that he wanted to "fix" things and, in a follow-up telephone call, told the FBI that Defendants were not taking any more money for the NTLF Fund and were going to give everyone back their money. (Bowers Dec., ¶ 16, Ex. 17, p. 107; ¶ 16, Ex. 17, pg. 167 [*Nguyen Call to FBI 4/15/19*].) Although the SEC does not have all of Defendants' current financial records, brokerage account statements from May 2019 indicate there is still a substantial amount of money in some of Defendants' brokerage accounts. (Rodriguez Dec., ¶ 42.)

2003); *SEC v. Int'l Swiss Invs. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990). The purpose of a freeze order is to prevent the dissipation of assets so that they may be available to be paid as disgorgement for the benefit of victims of the fraud. *See*, *e.g.*, *Hickey*, 322 F.3d at 1132 (affirming asset freeze over nonparty brokerage firm controlled by defendant to effectuate disgorgement order against defendant); *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105-06 (2d Cir. 1972). "A party seeking an asset freeze must show a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages if relief is not granted." *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009).[12] Courts consider a defendant's prior unlawful acts and the location of the assets in considering whether an asset freeze is warranted. *See*, *e.g.*, *id*. at 1085; *Affordable Media*, 179 F.3d at 1236 ("district court's finding regarding the likelihood of dissipation is far from clearly erroneous" where defendant had a "history of spiriting their commissions away to a Cook Islands trust"); *Manor Nursing*, 458 F.2d at 1106 ("uncertainty existed with respect to the total amount of proceeds received and their location," thus asset freeze was warranted). Asset freezes can extend to others where appropriate—here, including Do, who received investor funds. *See*, *e.g.*, *Hickey*, 322 F.3d at 1133 (upholding asset freeze over nonparty, noting that "the inherent equitable power of a district court allows it to freeze the assets of a nonparty when that nonparty is dominated and controlled by a defendant against whom relief has been obtained in a securities fraud").

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[12] In *FSLIC v. Sahni*, the Ninth Circuit held that to obtain an asset freeze, a government agency need only establish that it is likely to succeed on the merits of its claims and that the mere "possibility" of dissipation of assets exists. 868 F.2d 1096, (9th Cir. 1989), *overruled by Winter v. NRDC*, Inc., 557 U.S. 7 (2008). The Ninth Circuit then held that *Sahni* had been overruled in this respect because the Supreme Court held in *Winter* that a private plaintiff must establish a "likelihood of irreparable harm" to obtain a preliminary injunction. *Johnson*, 572 F.3d at 1085 n.11 (9th Cir. 2009). For this reason the Ninth Circuit held that to obtain an asset freeze, a private plaintiff must establish the likelihood of dissipation of assets rather than a mere possibility. *Id*. However, the SEC, unlike a private plaintiff, does not need to establish a likelihood of irreparable harm to obtain interim injunctive relief. *FTC v. Inc21.com Corp.*, 688 F. Supp. 2d 927, 936 n.17 (N.D. Cal. 2010), *SEC v. Cavanagh*, 155 F.3d 129, 132 (2d Cir. 1998). Nevertheless, under either standard, an asset freeze is warranted.

Here, it is likely that defendants will continue to dissipate investors' funds, unless the assets of Defendants are frozen. The investment decisions Nguyen has made on behalf of investors are what caused the Fund to be under-capitalized since its inception and have made it impossible for Defendants to honor the right of redemption they promised investors. Moreover, Defendants are continuing to solicit new investors, and making many of the same misrepresentations. Furthermore, as explained above, Defendants have misappropriated more than $600,000 of investors' funds and have used it for the benefit of NTV Financial, Nguyen, and Nguyen's fiancé, Relief Defendant Mai Do. Bank accounts commingled with investor funds were used to make approximately $335,000 in payments, including, among other things, for the purchase of jewelry, a car and a motorcycle, and used to make approximately $354,000 in payments towards the purchase of a $1 million home in the name of Relief Defendant Mai Do.

Appointment of a Receiver. The SEC also recommends the appointment of Jeffrey E. Brandlin as a receiver in this case. The Court has broad discretion to appoint an equity receiver in SEC enforcement actions. *See Wencke*, 622 F.2d at 1365. The breadth of this discretion "arises out of the fact that most receiverships involve multiple parties and complex transactions." *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (quotation omitted). A receiver plays a crucial role in preventing further dissipation and misappropriation of investors' assets. *Wencke*, 783 F.2d at 836-37 n.9. Courts have found a receivership to be justified where management of an entity, collection of revenue, and/or distribution of investor funds are required. *See*, *e.g.*, *SEC v. Credit First Fund*, 2006 WL 4729240, at *15 (C.D. Cal. 2006); *Fifth Ave. Coach Lines*, 289 F.Supp. at 42.

In this case, it is necessary to appoint a receiver over NTV Financial, to preserve assets and prevent future misappropriation and misuse. Defendants have misappropriated investor funds to the detriment of investors. A court-appointed receiver is therefore critical to take control of the remaining funds to prevent further

misuse and dissipation. A receiver is required to marshal and preserve existing assets, clarify the financial affairs of the entities, and ensure that defendants cannot further misappropriate assets. A receiver will also be able to take steps to liquidate and monetize what assets NTV Financial and any affiliated companies have for the benefit of investors, manage and administer a claims process, and distribute assets to the defrauded investors. In addition, a receiver will be able to conduct a forensic accounting to determine the true state of affairs, and can investigate claims. As stated above, Nguyen once told investors, "even if I were to go to jail, or if they indict me, I would never turn over any of your records." Thus, a receiver is necessary.

Other Relief. The Court's broad equitable powers in SEC enforcement actions include the ability to impose ancillary relief. *See Wencke*, 622 F.2d at 1369. Here, the SEC asks the Court to enter an order prohibiting the destruction of documents, to prevent the defendants from destroying evidence of their violations. The Court should also allow the SEC to obtain discovery on an expedited basis, as authorized by Rules 30, and 34 of the Federal Rules of Civil Procedure and a court's broad equitable powers in SEC enforcement actions to order all necessary ancillary relief. *See id*. The Court should also require accountings from Defendants and Do, so the SEC can identify all available assets to ensure that funds are available to satisfy any future order of disgorgement or civil penalties against the Defendants. *See Int'l Swiss Invs.*, 895 F.2d at 1276.

IV. CONCLUSION

For all the foregoing reasons, the SEC respectfully asks that the Court order the requested relief.

Dated: June 12, 2019

/s/ Douglas M. Miller

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