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Attorney for Defendants Richard Vu Nguyen a/k/a Nguyen Thanh Vu and Mai Do

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

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

**Civil Action No.: 8:19-cv-01174-AG-
KES**

**Honorable Andrew J. Guilford
Courtroom 10D**

**OPPOSITION TO EX PARTE
APPLICATION FOR AN OSC RE:
CIVIL CONTEMPT BY
DEFENDANTS RICHARD NGUYEN
AND MAI DO**

**DECLARATIONS OF RICHARD
NGUYEN AND MAI DO FILED
HEREWITH**

**Complaint Filed: 6/13/18
Trial Date: None Set**

1 Defendants Richard Nguyen and Mai Do (“Defendants”) hereby submit the
2 following Opposition to Ex Parte Application for an OSC Re: Civil Contempt by
3 Richard Nguyen and Mai Do.
4

5 **MEMORANDUM OF POINTS AND AUTHORITIES**
6

7 **I. INTRODUCTION.**
8

9 Plaintiff Securities and Exchange Commission’s (“Plaintiff”) ex parte
10 application for an Order to Show Cause why Nguyen and Do should not be held in
11 civil contempt is factually one-sided and fails to provide this Court with crucial
12 background information necessary for determination of the instant motion. The
13 crux of Plaintiff’s motion is that Defendants’ intentionally violated the Court’s
14 Order concerning asset freeze. Defendants, however, could not have knowingly
15 violated the Court’s Order when they were unaware of any such Order and, as a
16 matter of fact, had not even been served with the summons and complaint when the
17 alleged improper activities took place. Moreover, the funds which Plaintiff takes
18 issue with are from the refinance of Defendant Do’s personal residence which she
19 purchased in 2003, over 15 years before any of the activities alleged in the
20 Complaint, a point which Plaintiff does not dispute. Plaintiff also asserts without
21 basis that Defendants violated their disclosure obligations by intentionally
22 withholding additional accounts that were subject to disclosure. As further
23 explained in the Declarations of Nguyen and Do, Defendants identified accounts
24 they believed were subject to disclosure and any failure to identify other accounts
25 were based on a good faith belief it was not required. At no time did Defendants
26 ever knowingly act to violate the Court’s Order. Based thereon, the Court should
27 deny the ex parte relief requested by Plaintiff.
28

II. SALIENT FACTS.

Defendant Do purchased her personal residence located at 12632 Jerome Lane, Garden Grove, California, in July 2003 (“Jerome Property”). (Decl. Do ¶3.) Over the years, Do had built up equity in the home. (Id.) In early June 2019, Do refinanced the loan and took cash out of the home. (Decl. Do ¶4.) Do requested that cash from the refinance be wired to her account at Cathay Bank and she subsequently used the funds to pay credit cards, property tax, a home remodel and withdrew a portion in cash from the bank. (Decl. Do ¶4.) At the time Do refinanced the Jerome Property, she was not aware of any lawsuit or court order.

On June 24, 2019, the Court issued a temporary restraining order freezing Defendants’ assets. (Dkt. 15.) At the time, Defendants had not yet even been served with any lawsuit or court order, and purposefully denied by Plaintiff any opportunity to oppose such extraordinary measures. On June 26, 2019, Nguyen and Do were served with the summons and complaint. (Decl. Nguyen ¶3 and Do ¶5.) On June 3, 2019, the Court issued a Preliminary Injunction Order. (Dkt 25.) The Order stated that:

[T]here shall be a continuation freeze place on all monies and assets... in all accounts at any bank, financial institution, brokerage firm, third-payment (sic) payment processor, held in the name of, for the benefit of, or over which account authority is held by Defendants NTV Financial and/or Nguyen and/or by Relief Defendant Do....

Paragraph VII Preliminary Injunction Order (Dkt 25.)

Pursuant to the Preliminary Injunction Order, on July 15, 2019, Defendants submitted their List of Assets. (Dkt 38.) The Asset List identified real property and accounts that Defendants believed were obligated to report.

On August 9, 2019, the Court issued a Minute Order in response to Plaintiff's Ex Parte Application to Amend the Preliminary Injunction Order and placed a temporary freeze over the additional assets identified in the List of Assets. (Dkt 54.) On August 15, 2019, the Court issued an Order Temporarily Amending the Preliminary Injunction Order to freeze the additionally identified assets pending Defense counsel's review of the financial records and filing of an Opposition to the Ex Parte. (Dkt 58.)

III. DEFENDANTS WERE NOT AWARE OF THE INSTANT LAWSUIT OR ANY COURT ORDER WHEN THEY REFINANCED THEIR PERSONAL RESIDENCE AS THEY HAD NOT EVEN BEEN SERVED WITH THE SUMMONS AND COMPLAINT.

Defendants' activities connected to the refinance of Do's Jerome Residence is wholly unrelated to any of the events alleged in the Complaint, a point which Plaintiff does not dispute. The only reason why the Jerome Residence is even mentioned at this point in the litigation is that Defendants complied with their obligations under the Preliminary Injunction Order and listed all of their real properties and now Defendants are being penalized for complying with the Court's Order.

Notwithstanding the fact that the Jerome Residence was purchased over 15 years before any of the alleged events, Do's refinancing of the property and her use of the cash out from the refinance were all done prior to any knowledge of the instant lawsuit or any court order. (Decl. Do ¶4, 5.) When the Preliminary

1 Injunction was issued on July 3, 2019, it applied to monies held in institutional
 2 accounts. Defendants, however, had already used the funds from the Jerome
 3 Property refinance to pay credit card debts, living expenses and withdrew a portion
 4 in cash. As such, there was no violation of the Preliminary Injunction Order.

5
 6 **IV. DEFENDANTS COMPLIED WITH THEIR ASSET DISCLOSURE**
 7 **REQUIREMENT AND ANY OMISSION WAS BASED ON**
 8 **DEFENDANTS' GOOD FAITH BELIEF THEY HAD NO**
 9 **OBLIGATION TO DISCLOSE.**

10 Plaintiff's ex parte motion attempts to portray Defendants as having
 11 knowingly and intentionally violated the Court's disclosure obligations. Nothing
 12 could be further from the truth. The Preliminary Injunction Order, Section IX,
 13 required Defendants to disclose all real and personal property and all accounts held
 14 at any financial institution. (Dkt 25.) As further stated in the declarations of
 15 Nguyen and Do, Defendants believed that they in fact disclosed all required
 16 accounts and any accounts not disclosed was due to Defendants' good faith belief
 17 that it was not required because: 1) the accounts were either closed or effectively
 18 inactive with minimal funds or 2) were unrelated to any of the allegations in the
 19 Complaint. (Decl. Nguyen ¶¶5-7, and Decl. Do ¶¶6-10.) Further, any additional
 20 accounts identified by the Receiver were either closed before the lawsuit or opened
 21 after Defendants made their disclosures. Any accounts opened after Defendants'
 22 disclosures was funded by the monies Do obtained through the refinance and cash
 23 out of the Jerome Property, which are unrelated to the claims asserted herein.
 24 (Decl. Do ¶10.)
 25
 26
 27
 28

V. CONCLUSION.

Based upon the foregoing, Defendants respectfully request that the Court deny the ex parte application in its entirety, or in the alternative, continue the deadline for Defendants to file a fully briefed Opposition.¹

Dated: August 30, 2019

LAW OFFICES OF MIKE N. VO, APLC

/Mike N. Vo/

Mike N. Vo

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and Mai Do

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¹ Plaintiff filed its ex parte on August 29, 2019, at 5:43 p.m. The Ex Parte Application, Declarations of Miller and Brandlin and supporting exhibits total 146 pages. Per Judge Guilford's courtroom rules, all opposition to ex parte must be filed by noon the following day.

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2019, I electronically filed the foregoing
“**OPPOSITION TO EX PARTE APPLICATION FOR AN OSC RE: CIVIL
CONTEMPT**” with the Clerk of the Court using the CM/ECF system which will
send notification of such filing via electronic mail to all counsel of record.

/s/ Mike N. Vo

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