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Attorneys for Jeffrey E. Brandlin,
Receiver

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants,

and

MAI DO,

Relief Defendant.

Case No. 8:19-cv-01174-SVW-KES

**NOTICE OF MOTION AND
MOTION OF RECEIVER, JEFFREY
E. BRANDLIN, FOR ORDER
AUTHORIZING THE RECEIVER
TO DISTRIBUTE FUNDS ON
HAND USING THE RISING TIDE
METHODOLOGY, AND FOR
RELATED RELIEF**

[Memorandum of Points and
Authorities with Declaration of
Jeffrey E. Brandlin submitted
concurrently herewith]

DATE: October 2, 2023

TIME: 1:30 p.m.

CTRM: 10A

350 W. 1st Street

Los Angeles, CA 90012

JUDGE: Hon. Stephen V. Wilson

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1 **TO THE HONORABLE STEPHEN V. WILSON, UNITED STATES**
 2 **DISTRICT JUDGE, AND ALL PARTIES AND THEIR COUNSEL OF**
 3 **RECORD:**

4 **PLEASE TAKE NOTICE THAT** unless appearances are excused prior
 5 to the hearing, on **October 2, 2023, at 1:30 p.m.** in Courtroom 10A of the
 6 above-captioned Court, located at 350 W. 1st Street, Los Angeles, CA
 7 90012, Jeffrey E. Brandlin, the Court-appointed Receiver (the "Receiver") of
 8 NTV Financial Group, Inc. ("NTV Financial"), bank and brokerage accounts
 9 through which defendant Richard Nguyen's and NTV Financial's investors
 10 funds flowed and property acquired in whole or in part with investor funds
 11 (collectively, the "Receivership Entity"), will and hereby does move this
 12 Court for an order authorizing the Receiver to distribute funds on hand using
 13 the rising tide methodology, and for related relief. Investors and creditors do
 14 not need to attend the hearing on September 25, 2023, unless they have
 15 filed written objection to the relief sought in the Motion. Please consult with
 16 Kyra Andrassy or Michael Simon, counsel for the Receiver, before attending
 17 the hearing to make sure it is going forward.

18 **PLEASE TAKE FURTHER NOTICE** that any opposition to the relief
 19 sought in the Motion must be filed with the Court and served on counsel for
 20 the Receiver no later than twenty-one (21) days before the hearing on the
 21 Motion. Failure to timely file a written opposition may be deemed by the
 22 Court to be consent to the granting of the relief sought in the Motion.

23 This Motion is based on this Notice of Motion and Motion, the
 24 concurrently submitted Memorandum of Points and Authorities and
 25 Declaration of Jeffrey E. Brandlin, and any argument or evidence presented
 26 to the Court at any hearing on the Motion.

1 **If an investor has a question about the status of the receivership,**
2 **they should contact the undersigned counsel by phone or e-mail. In**
3 **addition, there is information available on the Receiver's website,**
4 **which is located at www.donlinrecano.com/NTVFinancial.**

5 **SUMMARY OF THE RELIEF BEING SOUGHT**

6 The Receiver requests authority to distribute \$650,000 such that each
7 investor will have received at least 40.66% of their original investment back.
8 The claims submission process is complete and the Receiver has
9 consensually resolved all disputes with non-insiders regarding the amounts
10 of their claims. In the interest of equity and in accordance with the rising tide
11 distribution methodology detailed in the concurrently filed memorandum of
12 points and authorities, investors who have already received more than
13 40.66% of their investment back will not participate in the distribution, and
14 investors who received distributions pre-receivership of less than 40.66%
15 will receive a smaller distribution than investors who did not receive
16 distributions pre-receivership so that all non-insider investors will have
17 received 40.66% of their original amount invested back. Attached to the
18 concurrently-filed memorandum of points and authorities as Exhibit "1" is a
19 spreadsheet with the timely-filed claims, the allowed amount of each claim,
20 any withdrawals received during the scheme, and the proposed amount to
21 be distributed in this distribution. The investor names and addresses are not
22 included in order to protect their privacy. Instead, the only identifying
23 information is their account number and the claim number. Investor claim
24 numbers are on the mailing label affixed to the envelopes with the pleadings
25 being served on investors. Investors with questions about their proposed
26 distribution can call or email the Receiver's office for assistance.

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1 The Receiver also requests that the Court impose a constructive trust
2 against the Receivership Estate's assets for the benefit of investors, and
3 subordinate all unsecured creditor claims against the Receivership Estate to
4 all investor claims against the Receivership Estate. The Receivership
5 Entity's sole source of income was funds traceable to investors. Even
6 though no alleged creditors submitted claims, because of the hypothetical
7 possibility of an alleged creditor asserting a claim in the future, out of an
8 abundance of caution, the Receiver believes it is appropriate to impose a
9 constructive trust.

10 For the four investors who have more than one account with the
11 Receivership Entity, the Receiver requests authority to consolidate the
12 accounts for purposes of calculating the distribution to the investor. Often,
13 investors with multiple accounts received one or more distributions from at
14 least one of their accounts but no distributions from the other, or a much
15 smaller distribution. For example, assume that there is an investor who had
16 one account where they had received 90% of their original \$100,000
17 investment and another account into which they invested another \$100,000
18 and received no distributions. If the accounts are consolidated, then the
19 investor would not participate in this distribution because they have already
20 received \$90,000 on account of the \$200,000 they invested, or 45%.
21 However, if the accounts are not consolidated, then the investor would
22 participate in the distribution for the account on which they received no
23 distributions, receiving approximately \$41,140 for the account where there
24 were no distributions, in addition to having already received \$90,000 for the
25 other account. The Receiver believes that this would be inequitable. The
26 Receiver seeks to avoid this result by consolidating the accounts of
27 investors with two accounts, whether or not the accounts were closed. This
28

1 ensures that each investor has one account that accurately represents the
2 amount that they invested and the amount that was distributed to them.

3 Once the distributions to investors clear and the Receiver and his
4 professionals are paid any allowed balance of their approved fees and costs,
5 the Receiver believes that the administration of the Receivership Estate will
6 be substantially complete. At that time, the only remaining asset will be the
7 judgment against relief defendant Mai Do in the amount of \$372,380.90.
8 The Receiver believes this judgment is unlikely to be collectible, although an
9 abstract of judgment was recorded. If by the time the remaining settlement
10 is paid in full there has been no collection on the Mai Do judgment, then the
11 Receiver believes that the Receivership Estate should nonetheless be
12 concluded, with the judgment considered an unadministered asset as it
13 would in a chapter 7 bankruptcy case. If a recovery is obtained in the future,
14 the Receiver can seek to reopen this case and to be reappointed solely for
15 the purpose of making a further distribution to investors.

16 Therefore, upon the clearing of the investor distributions and the
17 payment of any allowed balance of fees and costs to the Receiver and his
18 professionals, the Receiver believes it would be appropriate to discharge the
19 Receiver. Procedurally, the Receiver requests that he be discharged upon
20 his filing of a Notice of Discharge and Exoneration of Bond once investor
21 distributions and the payments to the Receiver and his professionals are
22 made. This notice will not be filed for some time, so the Receiver will file
23 semi-annual reports with the Court regarding the progress of collection of
24 the settlement.

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Respectfully submitted,

DATED: August 31, 2023

SMILEY WANG-EKVALL, LLP

By: /s/ Kyra E. Andrassy

Kyra E. Andrassy

Michael L. Simon

Counsel for Jeffrey E. Brandlin,
Receiver

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On 9/1/2023, I served true copies of the following document(s) described as

NOTICE OF MOTION AND MOTION OF RECEIVER, JEFFREY E. BRANDLIN, FOR ORDER AUTHORIZING THE RECEIVER TO DISTRIBUTE FUNDS ON HAND USING THE RISING TIDE METHODOLOGY, AND FOR RELATED RELIEF on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")). Pursuant to United States District Court, Central District of California, Local Civil Rule 5-3, the foregoing document will be served by the court via NEF and hyperlinked to the document. On 9/1/2023, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

(X) (BY U.S. MAIL). I enclosed the document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

() (BY E-MAIL). By scanning the document(s) and then e-mailing the resultant pdf to the e-mail address indicated above per agreement. Attached to this declaration is a copy of the e-mail transmission.

() (BY FACSIMILE). I caused the above-referenced documents to be transmitted to the noted addressee(s) at the fax number as stated. Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission. Executed on _____, at Costa Mesa, California.

() STATE I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

(X) FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 1, 2023 at Costa Mesa, California.

/s/ James Chung

James Chung

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BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):

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BY U.S. MAIL:

Richard Nguyen & Mai Do

12632 Jerome Lane

Garden Grove, CA 92841

All NTV Financial Investors per the Receiver's investor list.

SMILEY WANG-EKVALL, LLP

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Attorneys for Jeffrey E. Brandlin,
Receiver

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants,

and

MAI DO,

Relief Defendant.

Case No. 8:19-cv-01174-SVW-KES

**[PROPOSED] ORDER GRANTING
MOTION OF RECEIVER, JEFFREY
E. BRANDLIN, FOR ORDER
AUTHORIZING THE RECEIVER
TO DISTRIBUTE FUNDS ON
HAND USING THE RISING TIDE
METHODOLOGY, AND FOR
RELATED RELIEF**

DATE: October 2, 2023

TIME: 1:30 p.m.

CTRM: 10A

First Street Courthouse
350 W. 1st Street,
Los Angeles, California

JUDGE: Hon. Stephen V. Wilson

The Court, having reviewed the motion filed on August 31, 2023, by
Jeffrey E. Brandlin, the Court-appointed receiver (the "Receiver") of NTV
Financial Group, Inc. ("NTV Financial") and bank accounts held by or for the

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benefit of defendant Richard Nguyen and relief defendant Mai Do, and property acquired in whole or in part with investor funds (collectively, the "Receivership Entity"), for an order authorizing the Receiver to distribute funds on hand using the rising tide methodology, and for related relief (the "Motion"), all papers and evidence filed in support of and response to the Motion, and the arguments presented at the September 25, 2023 hearing, and having found good cause, orders as follows:

IT IS ORDERED:

(1) The Motion is granted in its entirety;

(2) A constructive trust is imposed over the assets of the Receivership Estate for the benefit of the investors in the Receivership Entity;

(3) Unsecured creditor claims against the Receivership Estate are subordinated to the claims of the investors against the Receivership Estate;

(4) The Receiver is authorized to make a distribution of \$650,000 from the *res* of the constructive trust to non-insider investors who timely filed claims with the Receiver, utilizing the rising tide methodology, as set forth in detail on Exhibit "1";

(5) The consolidation of multiple accounts held for the benefit of a single investor is approved; and

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1 (6) The Receiver shall be discharged and his bond exonerated upon
2 his filing of a Notice of Discharge of Receiver and Exoneration of Bond,
3 which he will file after the distributions authorized hereto clear the Receiver's
4 accounts and payments to the Receiver and his professionals are made.

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6 IT IS SO ORDERED.

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8 Dated: _____

STEPHEN V. WILSON

United States District Judge
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