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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.

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

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF ITS
MOTION FOR MONETARY
REMEDIES AGAINST DEFENDANT
RICHARD VU NGUYEN AND
RELIEF DEFENDANT MAI DO**

Date: October 16, 2023
Time: 1:30 p.m.
Ctrm: 10A
Judge: Hon. Stephen V. Wilson

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1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission (“SEC”) hereby files its
3 monetary and injunctive relief motion against defendant Richard Vu Nguyen
4 (“Nguyen”) and relief defendant Mai Do (“Do”), the last stage of the SEC’s civil
5 action against them.¹ Nguyen has already consented to the entry of permanent
6 injunctions against him on all claims alleged in the SEC’s complaint. (Dkt. No. 104.)
7 The only issues left for the Court to decide with respect to Nguyen are: (1) the
8 amount of disgorgement and prejudgment interest he should be ordered to pay, (2) the
9 amount of civil penalties he should be ordered to pay, and (3) whether the Court
10 should issue a conduct-based injunction that permanently restrains and enjoins
11 Nguyen from accessing any securities brokerage accounts of any third-party. (Dkt.
12 No. 104.) Do has stipulated that the only issue left for the Court to decide with
13 respect to the SEC’s unjust enrichment claim against her is the amount of
14 disgorgement and prejudgment interest she should be ordered to pay. (Dkt. No. 105.)
15 Nguyen and Do have both agreed that, solely for purposes of the Court ruling on this
16 motion, the allegations in the SEC’s complaint shall be deemed true and, if the Court
17 orders them to pay disgorgement, they shall also be required to pay prejudgment
18 interest. (Dkt. Nos. 104 and 105.)

19 The court-appointed receiver, Jeffrey Brandlin, has submitted his final fee
20 application to the Court (Dkt. Nos. 170) and has prepared a declaration generally
21 explaining his accounting as to investor funds and what he has determined to be a
22 reasonable approximation of Nguyen’s and Do’s ill-gotten gains plus prejudgment
23 interest. *See* Declaration of Jeffrey Brandlin (“Brandlin Decl.”), ¶ 21. Based on the
24 receiver’s calculations, the SEC seeks the following monetary and injunctive relief
25 from the Court: For Nguyen, the SEC seeks a final judgment ordering him to: (1) pay
26 disgorgement in the amount of \$969,210.07, plus prejudgment interest thereon of

27
28 ¹ The Court has already entered a final judgment against the only other defendant in
this action, NTV Financial Group, Inc. (“NTV Financial”). (Dkt. No. 160.)

1 \$164,313.57 (or a total of \$1,133,523.63), (2) pay a civil monetary penalty of
2 \$1,133,523.63, and (3) refrain from accessing any securities brokerage accounts of
3 any third party. For Do, the SEC seeks a final judgment ordering her to pay
4 disgorgement in the amount of \$267,889.64, plus prejudgment interest thereon of
5 \$50,899.12 (or a total of \$318,788.76). The SEC further seeks an order holding
6 Nguyen jointly and severally liable for Do's disgorgement and prejudgment interest
7 amounts (\$318,788.76).

8 As set forth below, the disgorgement and prejudgment interest amounts sought
9 by the SEC represent a reasonable approximation of Nguyen's and Do's illicit gains
10 and unjust enrichment in this case. The penalty amount and conduct-based injunction
11 sought by the SEC reflect the egregiousness of Nguyen's conduct, his high degree of
12 scienter, the fact that his conduct was not isolated, his failure to give assurances
13 against future violations and his likelihood to commit future violations. Accordingly,
14 the SEC respectfully requests that the Court enter the proposed final judgments
15 against Nguyen and Do.

16 **II. STATEMENT OF FACTS**

17 **A. NTV Financial, Richard Nguyen and Mai Do**

18 Between February 2018 and March 2019, NTV Financial claimed to provide
19 companies with a whole range of services designed to improve their profitability,
20 including capital, operational improvements, revenue growth, procurement, and lean
21 processes. (Dkt. No. 1, ¶¶ 4-18, 22.) NTV Financial touted Nguyen as the
22 company's founder, executive director, and president, and Nguyen's girlfriend at the
23 time, Mai Do, as the chief financial officer of NTV Financial. (*Id.* at ¶¶ 23, 24.)

24 What NTV Financial and Nguyen concealed from investors, however, was the
25 fact that Nguyen had an extensive criminal history and several run-ins with
26 authorities. (*Id.* at ¶ 26.) For example, in 1999, the California Department of
27 Corporations named Nguyen in a Desist and Refrain Order for securities related
28 misconduct and did so again in 2007 after he acted as an unregistered broker-dealer.

(*Id.* at ¶ 27.) Things only got worse for Nguyen after these administrative sanctions. In 2009, Nguyen pleaded guilty to wire fraud charges in the Central District of California and was ordered to serve 15 months in prison and to pay \$104,981 in restitution. (*Id.* at ¶ 27 - 29.) On June 4, 2012, while still on supervised release for his federal wire fraud conviction, a state jury convicted Nguyen of felony infliction of injury on a dependent adult, and he was sentenced to two years in state prison. (*Id.* at ¶ 30 – 31.) Nguyen sought to conceal his checkered past from investors, in part, by registering NTV Financial under the name “Vu Thanh Nguyen” and by using this name on its website. (*Id.* at ¶ 32 – 33.)

B. Nguyen’s Fraudulent Scheme

Nguyen used the internet, radio, and television, as well as in-person meetings and brochures, to lure investors into two NTV Financial investments. (*Id.* at ¶ 34.) The first was the “NTLF Fund,” which Nguyen claimed traded in stocks and options. (*Id.*) The second was the chance to have Nguyen manage the investors’ individual brokerage accounts. (*Id.*) Nguyen led investors to believe he had the sort of investment experience that made him qualified to offer these two investments. (*Id.* at ¶ 36.) For example, Nguyen claimed to have worked as investment banker and to have spent more than 20 years working at Goldman Sachs, where he supposedly managed a “few dozen” funds. (*Id.*) Nguyen also led investors to believe that the NTLF Fund offered a 35% return on investment, quarterly dividends and the right to redeem your principal investment at any time. (*Id.* at ¶ 41.) This was not true. (*Id.* at 12.)

Nevertheless, using these and other marketing techniques, Nguyen raised approximately \$2.4 million from at least 80 investors for the NTLF Fund. (*Id.* at ¶ 37.) Nguyen deposited the money he raised into accounts in the name of NTV Financial, Nguyen and Do. (*Id.* at ¶ 38.) Nguyen then commingled investor money with his other non-investor businesses. (*Id.* at ¶ 37-38.) In addition to the NTLF Fund, approximately 30 investors hired Nguyen to manage their individual brokerage account and gave Nguyen access to those accounts by giving him their usernames and

1 passwords. (*Id.* at ¶ 51.) Nguyen told investors they had to deposit \$50,000 into
2 these investment accounts and promised them he would use the funds to execute
3 trades on their behalf. (*Id.* at ¶ 53.) Nguyen charged his clients a 50% performance
4 or advisory fee on any profits he earned trading in their accounts and promised to
5 distribute those profits once they reached 15 to 20 percent of the investors' initial
6 investments. (*Id.* at ¶ 54.) Again, Nguyen led investors to believe that he was
7 qualified to do this sort of trading, saying it was the greatest honor of NTV Financial
8 that its accounts "never, never" failed to make money. (*Id.* at ¶ 55.)

9 **C. Nguyen's Meeting with an Undercover FBI Agent**

10 On April 8, 2019, Nguyen met face-to-face with someone he thought was a
11 prospective client of NTV Financial. (*Id.* at ¶ 78.) Unbeknownst to Nguyen,
12 however, the prospective investor was an undercover FBI agent who secretly
13 recorded his meeting with Nguyen. (*Id.*) During his meeting with the undercover,
14 Nguyen made many of the same promises he had made to other investors about the
15 NTLF Fund. Nguyen told the undercover he could guarantee a fixed return of 16
16 percent annually by trading in stocks and options. (*Id.* at ¶ 79.) Nguyen told the
17 undercover he would receive quarterly statements showing these returns –Nguyen
18 also claimed that a certified public account would prepare the statements. (*Id.*)
19 Nguyen promised the undercover that his investments were safe and could be
20 redeemed at any time. (*Id.* at ¶ 79 – 80.) When the undercover asked Nguyen
21 whether he had been successful trading in the last five years, Nguyen said that he had
22 made a 1,000 percent return annually. (*Id.* at ¶ 81.)

23 Nguyen also offered to personally manage the undercover's investment
24 account. (*Id.* at ¶ 81.) Nguyen told the undercover to open an investment account in
25 the undercover's name and deposit a minimum of \$100,000 into the account. (*Id.*)
26 Nguyen said he would use the undercover's username and password to start trading in
27 the account. (*Id.*) If Nguyen's trades were profitable, the undercover agent would
28 have to take those profits out of the investment account, deposit them into the

undercover's checking account, and then write a check equal to half the profits to Nguyen as his advisory fees. (*Id.*)

D. The Poor Performance of the NTLF Fund and Managed Accounts

Contrary to Nguyen's claims of a 12 - 35 percent return and "never, never" losing money, the NTLF Fund had negative performance results from its inception in February 2018. (*Id.* at ¶ 82.) Nguyen principally traded in margined option trading, resulting in large losses and only some large gains. (*Id.* at ¶ 83.) As a result, the NTLF Fund's overall market value was less than the net principal invested in the Fund, sometimes by as much as 69 percent less. (*Id.* at ¶ 84.) Similarly, the brokerage accounts that Nguyen individually managed for approximately 30 investors also suffered trading losses equal to approximately half of what investors deposited in the individually managed brokerage accounts. (*Id.* at ¶ 86.) For example, 17 clients who deposited a total of about \$1.19 million into their accounts and allowed Nguyen to trade on their behalf suffered trading losses totaling almost \$570,000. (*Id.* at ¶ 86.)

E. Nguyen's and Do's Illicit Gains and Unjust Enrichment from the Fraud

The court-appointed receiver, Jeffrey Brandlin, has analyzed the investor deposits and advisory fee payments that went into accounts controlled by Nguyen, Do and NTV, as well as deposits from unknown sources and deposits from Nguyen's other businesses that were commingled with investor funds. *See* Brandlin Decl., ¶¶ 7-18. The receiver has determined that between February 2018 and June 2019, a total of approximately \$3,925,516 in funds went into these accounts, including approximately \$3,055,201 in investor deposits and \$540,381 in advisory fee payments. (*Id.* at ¶ 15.) The receiver has deducted from this amount the funds Nguyen returned to investors in the form of interest payments. (*Id.* at ¶¶ 16-18.) The receiver has also deducted from this amount what appeared to him to be legitimate business expenses of NTV Financial, and the funds the receiver was able to recover as part of the court-ordered asset freeze. (*Id.*) Similarly, the receiver has deducted

1 the funds that he recovered for the receivership estate through claw-back litigation
2 and through the sale of certain property, including the sale of two properties that
3 Nguyen and Do purchased using investor funds, as well as the proceeds from the sale
4 of jewelry, a watch and a high-end sports car. (*Id.* at ¶ 17.) After making all these
5 deductions and other accounting adjustments, the receiver has determined that a
6 reasonable approximation of the amount of funds illicitly gained by Nguyen is
7 \$969,210 and by Do is \$267,890. (*Id.* at ¶ 18.) The receiver further determined that
8 the prejudgment interest on the \$969,210.07 for Nguyen is \$164,313.57 (for a total of
9 \$1,133,523.63) and the prejudgment interest on the \$267,889.64 for Do is \$50,899.12
10 (or a total of \$318,788.76).² (*Id.* at ¶ 21.)

11 **III. ARGUMENT**

12 **A. Nguyen and Do Cannot Contest the Facts of the Complaint**

13 Nguyen and Do stipulated that the facts in the SEC's complaint shall be
14 accepted as true for this motion and they are precluded from arguing they did not
15 violate the federal securities laws. (Dkt. Nos. 104 and 105.) The Ninth Circuit has
16 recognized the Court's ability to rely on these stipulations when determining the
17 amount of disgorgement, interest and penalties in SEC cases. *See SEC v. JT*
18 *Wallenbrock & Assoc.*, 440 F.3d 1109, 1112 (9th Cir. 2006), *abrogated on other*
19 *grounds by Liu v. SEC*, 140 S. Ct. 1936, 1955 (2020). For example, in *JT*
20 *Wallenbrock*, the defendants were similarly precluded from denying or arguing that
21 they did not violate the federal securities laws in the manner set forth in the
22 complaint. *Id.*; *see also SEC v. Lyndon*, 39 F. Supp. 3d 1113 (D. Haw. 2014)
23 (granting the SEC summary judgment as to disgorgement, prejudgment interest and
24 civil penalties based upon the judgments entered against the defendant pursuant to his
25 consent and the undisputed allegations in the complaint); *SEC v. CMKM Diamonds*,

26
27 ² The receiver has calculated the prejudgment interest from July 2019, the month after
28 the SEC filed its complaint, which is more favorable to Nguyen and Do than the
February 2018 date they both agreed to in their consent and stipulation. (Dkt. Nos.
104 and 105.); *see* Brandlin Decl., ¶ 21.)

1 *Inc.*, 635 F. Supp. 2d 1185, 1189 (D. Nev. 2009) (same).

2 **B. The Court Should Order Disgorgement and Prejudgment Interest**

3 In *Liu v. SEC*, the Supreme Court reaffirmed the Court’s authority to order
4 disgorgement “that does not exceed a wrongdoer’s net profits and is awarded for
5 victims.” *Liu v. SEC*, 140 S. Ct. at 1940; *see SEC v. Janus Spectrum LLC*, Nos. 17-
6 17042, 18-15403, 2020 U.S. App. LEXIS 20710, at *3 (9th Cir. July 1, 2020).
7 Moreover, *Liu* did not disturb the well-established principle that “[d]isgorgement
8 need be ‘only a reasonable approximation of profits causally connected to the
9 violation.’” *SEC v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1096 (9th Cir.
10 2010) (quoting *SEC v. First Pac. Bancorp.*, 142 F.3d 1186, 1191 (9th Cir. 1998));
11 *SEC v. Mizrahi*, No. 19-cv-2284 PA (JEMx), 2020 WL 6114913, at *1 (C.D. Cal.
12 Oct. 5, 2020). Once a reasonable approximation has been presented by the SEC, the
13 burden shifts and the defendant must “demonstrate that the disgorgement figure was
14 not a reasonable approximation.” *Platforms Wireless*, 617 F.3d at 1096, *quoting SEC*
15 *v. First City Financial Corp., Ltd.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989). This
16 burden shifting, as the Ninth Circuit explained, rightfully belongs to the defendants:

17 We place this burden on the defendants because information is not
18 “obtainable at negligible cost.” The defendants are more likely than
19 the SEC to have access to evidence [demonstrating that the SEC’s
20 approximation is not reasonable]. . . . [W]e conclude that “the risk of
21 uncertainty should fall on the wrongdoer whose illegal conduct
22 created that uncertainty.”

23 *Id.*, *quoting First City Financial Corp.*, 890 F.2d at 1231-32.

24 Here, the SEC has submitted a sworn declaration signed by the court-appointed
25 receiver verifying that the disgorgement and prejudgment interest it seeks in this
26 motion represents a reasonable approximation of Nguyen’s and Do’s illicit gains. *See*
27 Brandlin Decl., ¶¶ 18, 21. In other words, the receiver’s disgorgement and
28 prejudgment interest amounts, 1,133,523.63 and \$318,788.76, exclude funds Nguyen

1 returned to investors through interest payments, legitimate business expenses, funds
2 the receiver took possession of as part of the asset freeze and the funds the receiver
3 has recovered through claw-back litigation and through the sale of certain assets in
4 the receivership estate. This figure constitutes Nguyen's and Do's net profits from
5 the scheme. *See SEC v. Mizrahi*, 2020 WL 6114913, at *2 (awarding disgorgement
6 in the amount of net profits the defendant obtained from wrongdoing after deducting
7 amounts returned to investors and business expenses in the form of brokerage
8 commissions and wire transfer fees); *SEC v. Catledge*, No. 2:12-CV-887 JCM (NJK),
9 2020 WL 3621311, at *3 (D. Nev. July 2, 2020) (disgorgement under *Liu* should be
10 of "net profits from wrongdoing after deducting legitimate expenses").

11 The Court should hold Nguyen jointly and severally liable for the \$318,788.76
12 that the SEC seeks to have Do pay in disgorgement and prejudgment interest. *Liu*
13 gave courts the "flexibility" to impose joint and several liability against "partners"
14 engaged in "concerted wrongdoing." *Liu*, 140 S. Ct. at 1949; *see also Janus*, 2020
15 WL 3578077, at *2 (9th Cir. July 1, 2020) ("[T]he imposition of joint and several
16 liability for a disgorgement award is permissible so long as it is 'consistent with
17 equitable principles.'" (quoting *Liu*, 140 S. Ct. at 1949). In this case, although the
18 \$318,788.76 went into accounts affiliated with Do, the evidence shows that Nguyen
19 and Do were acting in concert and as partners in misappropriating investor funds, and
20 thus the Court should order Nguyen jointly and severally liable for this amount.

21 To start, Do was Nguyen's girlfriend at the time of the fraud and thus had a close
22 relationship with Nguyen. (Dkt. No. 1, ¶ 8.) Second, Do contributed to the facade of
23 NTV Financial and its purported legitimacy by holding herself out as NTV's Chief
24 Financial Officer when, in reality, she had no such role at the company. (Dkt. No. 1, ¶
25 21; Brandlin Decl. ¶ 19.) Third, Do allowed Nguyen to deposit investor funds into
26 accounts she controlled and were registered in her name. (Brandlin Decl. ¶ 19.)
27 Fourth, although investor funds were transferred to accounts where Do was the
28 signatory, substantially all of the funds transferred into Do's accounts were used for

1 the benefit of Nguyen. (*Id.*) For example, the 2007 Porsche purchased in Nguyen's
2 name was paid for out of the account where Do was the authorized signatory on the
3 account. (*Id.*) Nguyen, in another example, used \$354,000 of commingled funds to
4 purchase a \$1 million residence in Do's name. (Dkt. Nos. 1, ¶ 15; 48.) "[W]here two
5 or more individuals or entities collaborate or have a close relationship in engaging in
6 violations of the securities laws, they have been held jointly and severally liable for the
7 disgorgement of illegally obtained proceeds." *First Pac. Bancorp*, 142 F.3d at 1191-
8 92; *see also SEC v. Smith*, CV 20-1056 PA (SHKx), 2020 U.S. Dist. LEXIS 194614, at
9 *8 (C.D. Cal. Oct. 19, 2020) (imposing joint and several liability for disgorgement
10 where entities were under principal's common control and principal "used his
11 ownership and common control" to carry out scheme).

12 The record in this case also supports the Court – and Nguyen and Do have
13 already agreed to this – ordering prejudgment interest on both of their disgorgement
14 amounts. (Dkt. Nos. 104 and 105.) Prejudgment interest is designed to ensure Nguyen
15 and Do do not profit from their illicit gains and unjust enrichment. *SEC v. Manor*
16 *Nursing Centers, Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972); *SEC v. Cross Fin. Services,*
17 *Inc.*, 908 F. Supp. 718, 734 (C.D. Cal. 1995). Whether to grant prejudgment interest
18 and the interest rate to be used are generally matters in the district court's broad
19 consideration, taking into consideration the need to fully compensate the wronged
20 party for actual damages suffered, consideration of fairness and the relative equities of
21 the award, the remedial purposes of the statute involved, and such other general
22 principles considered relevant by the court. *See SEC v. Olins*, 762 F. Supp. 2d 1193,
23 1198-99 (N.D. Cal. 2011), as amended (Feb. 25, 2011) (citing *SEC v. First Jersey Sec.,*
24 *Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996)). The SEC is requesting that the Court
25 impose prejudgment interest in the manner that both Nguyen and Do have already
26 agreed it should be calculated – "based on the rate of interest used by the Internal
27 Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. §
28 6621(a)(2)." (Dkt. Nos. 104 and 105.) This method of calculating prejudgment

1 interest on disgorgement has not only been stipulated to by Nguyen and Do, the Ninth
2 Circuit has also affirmed its use. *See Platforms Wireless*, 617 F.3d at 1099. The
3 proposed prejudgment interest for Nguyen and Do was calculated by the receiver, from
4 the date the SEC filed its complaint (June 2019) through the first quarter of this year
5 (April 2023). (Brandlin Decl., ¶¶ 20-21.) For Nguyen, this would total \$163,899.70.
6 (Brandlin Decl., ¶ 21.) For Do, this would total \$44,996.82. (*Id.*)

7 **C. The Court Should Order Nguyen to Pay a Civil Monetary Penalty**

8 Next, the Court should order Nguyen to pay a civil monetary penalty of
9 \$1,133,523.63, which is equal to the amount of his illicit gains plus interest. Civil
10 penalties are designed to punish the individual wrongdoer and to deter him and others
11 from future securities law violations. *SEC v. Jensen*, 2022 U.S. Dist. LEXIS 94893,
12 *19 (C.D. Cal. May 23, 2022); *Lyndon*, 39 F. Supp. 3d at 1123; *SEC v. Kenton*
13 *Capital, Ltd.*, 69 F. Supp. 2d 1, 17 (D.D.C. 1998). Since civil penalties are imposed,
14 in part, to deter the wrongdoer from similar conduct in the future, courts typically
15 apply the factors set forth in *SEC v. Murphy* in assessing civil penalties. *See SEC v.*
16 *Murphy*, 626 F.2d 633, 656 (9th Cir. 1980). The *Murphy* factors look at the degree of
17 scienter involved; the isolated or recurrent nature of the infraction; the defendant's
18 recognition of the wrongful nature of his conduct; the likelihood, because of the
19 defendant's professional occupation, that future violations might occur; and the
20 sincerity of the defendants' assurances, if any, against future violations. *Id.*; *see also*
21 *Lyndon*, 39 F. Supp. 3d at 1123-24.

22 The Securities Act and the Exchange Act further require the Court to assess
23 penalties according to a three-tier system. *See* 15 U.S.C. §§ 77t(d)(2), 78u(d)(3)(B).
24 First-tier penalties may be imposed for any violation of either Act. *See id.* at §§
25 77t(d)(2)(A), 78u(d)(3)(B)(i). Second-tier penalties apply to violations that involved
26 "fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory
27 requirement." *Id.* at §§ 77t(d)(2)(B), 78u(d)(3)(B)(ii). Third-tier penalties apply to
28 violations that (i) involved "fraud, deceit, manipulation, or reckless disregard of a

1 regulatory requirement” and (ii) “directly or indirectly resulted in substantial losses or
2 created a significant risk of substantial losses to other persons.” *Id.* at §§ 77t(d)(2)(C),
3 78u(d)(3)(B)(iii). Each tier provides that a penalty cannot exceed the greater of either
4 a specific statutory amount for that tier, or “the gross amount of pecuniary gain to such
5 defendant as the result of the violation.” *Id.* at §§ 77t(d)(2), 78u(d)(3)(B).

6 Here, Nguyen’s conduct, as alleged in the SEC’s complaint, supports a third-
7 tier penalty that is equal to his pecuniary gain. He engaged in a fraud that directly
8 resulted in substantial losses to his NTV Financial clients and created a significant risk
9 of even more losses through his margined option trading. He acted with a high degree
10 of scienter by knowingly making materially false and misleading statements regarding
11 his investment experience and by misappropriating investor funds to help purchase
12 lavish items like a million-dollar home, jewelry, and a high-end sports car. (Dkt. No.
13 48.) His conduct was recurrent, involving several investors over an extended period
14 of time. To make matters worse, Nguyen showed no signs of recognizing the
15 wrongfulness of his conduct. To the contrary, as the court-appointed receiver reported
16 early on in this case, Nguyen refused to disclose assets to the receiver and forced the
17 receiver to chase down those assets on his own. (Dkt. No. 59-3, pp. 4-5.) The
18 egregiousness and length of Nguyen’s misconduct also indicate that he is very likely
19 to engage future violations. Indeed, the SEC has recently uncovered evidence
20 suggesting that Nguyen is still soliciting some of the victims in this case and that he is
21 doing so using some of the same tactics alleged in the SEC’s complaint. (Brandlin
22 Decl., ¶ 22.) Accordingly, under the *Murphy* factors, the Court should order Nguyen
23 to pay a third-tier civil monetary penalty that is equal to his pecuniary gain.

24 **D. The Court Should Re-Issue the Previously Imposed Permanent**
25 **Injunctions and Issue a Conduct Based Injunction**

26 Finally, the Court should re-issue the previously imposed permanent
27 injunctions against Nguyen, which prohibit him from violating the federal securities
28 laws alleged in the SEC’s complaint in the future. (Dkt. No. 107.) Nguyen has

1 already consented to these permanent injunctions as part of his earlier bifurcated
2 settlement with the SEC and the Court has already issued the injunctions as part of
3 the bifurcated judgment. (Dkt. No. 104.) In addition, the Court should issue a
4 conduct-based injunction that prohibits Nguyen from, directly or indirectly, including
5 through any entity he owns or controls, accessing any securities brokerage account of
6 any third-party, including doing so with the consent of the account holder. Section
7 209(d) of the Advisers Act, 15 U.S.C § 80b-9(d), provides that, upon proper showing,
8 a permanent injunction “shall be granted” in an enforcement action brought by the
9 SEC. Federal securities laws also authorize “any equitable relief that may be
10 appropriate or necessary for the benefit of investors, 15 U.S.C. § 78u(d)(5), which
11 can include conduct-based injunctions ...” *SEC v. Moleski*, Case No. 2:21-cv-01605-
12 SVW-E, 2021 WL 6752254, *5 (C.D. Cal. Oct. 21, 2021).

13 To obtain the injunction, the SEC has the burden of showing there is a
14 reasonable likelihood of future violations of the securities laws. *SEC v. Murphy*, 50
15 F.4th 832, 851 (9th Cir. 2022); *SEC v. Fehn*, 97 F.3d 1276, 1295-96 (9th Cir. 1996);
16 *Murphy*, 626 F.2d at 655 . “The existence of past violations may give rise to an
17 inference that there will be future violations; and the fact that the defendant is
18 currently complying with the securities laws does not preclude an injunction.”
19 *Murphy*, 50 F.4th at 851; *Murphy*, 626 F.2d at 655. Once again, courts look to the
20 *Murphy* factors to determine whether to impose an injunction, including the degree of
21 scienter involved, the isolated or recurrent nature of the infraction, the defendant’s
22 recognition of the wrongful nature of the conduct, the likelihood that future violations
23 might occur in light of defendant’s professional occupation, and the sincerity of
24 assurances against future violations. *Id.*

25 For the same reasons the Court should impose the civil penalty against
26 Nguyen, it should also impose the requested injunctions. Again, Nguyen engaged in
27 a fraud that directly resulted in substantial losses to his NTV Financial clients and
28 created a significant risk of substantially more losses through his margined option

1 trading. He acted with a high degree of scienter by knowingly making materially
2 false and misleading statements regarding his investment experience and by
3 misappropriating investor funds to help purchase homes, jewelry, and high-end sports
4 cars such as Porches. His conduct was recurrent, involving several investors over an
5 extended period of time. Nguyen has also shown no signs of recognizing the
6 wrongfulness of his conduct.

7 In fact, as explained earlier, the need for the Court to impose a specific conduct-
8 based injunction – one that prevents Nguyen from, directly or indirectly, accessing any
9 securities brokerage account of any third-party – is particularly needed in this case
10 because Nguyen appears to be soliciting some of the victim investors in this case. This
11 includes offering to personally manage their investment accounts (“I am managing
12 private accounts globally, buying and selling stocks in most of the world markets. I can
13 help you to open a personal account through Charles Schwab, TD Ameritrade, E-
14 Trade, Tiger Investment, etc. with countries like Vietnam, Singapore, Dubai, France,
15 Germany, Italy, Malaysia, and Thailand. I will give my advice on risk levels with each
16 person before trading.”). (Brandlin Decl., ¶ 22, Ex. 21, pp. 105-106.)

17 **IV. CONCLUSION**

18 For the foregoing reasons, the SEC respectfully requests that the Court grant its
19 monetary and injunctive relief motion and issue the proposed final judgments against
20 Nguyen and Do in the form submitted by the SEC.

21
22 Dated: September 14, 2023

Respectfully submitted,

23 /s/ Douglas M. Miller

24 DOUGLAS M. MILLER

25 Attorney for Plaintiff

26 Securities and Exchange Commission
27
28

L.R. 11-6.2. CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Securities and Exchange Commission, certifies that this brief contains 4,489 words, which complies with the word limit of L.R. 11-6.1

/s/ Douglas M. Miller

Douglas M. Miller

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On September 14, 2023, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR MONETARY REMEDIES AGAINST DEFENDANT RICHARD VU NGUYEN AND RELIEF DEFENDANT MAI DO** on all the parties to this action addressed as stated on the attached service list:

☒ **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

☐ **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

☐ **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

☐ **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

☒ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

☒ **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

☐ **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: September 14, 2023

/s/ Douglas M. Miller

Douglas M. Miller

SEC v. Richard Vu Nguyen, et al.
United States District Court—Central District of California
Case No. 8:19-cv-01174-SVW-KES

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