UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

1 GLOBAL CAPITAL LLC, and
CARL RUDERMAN,

UNDER SEAL

Defendants, and

1 WEST CAPITAL LLC,
BRIGHT SMILE FINANCING, LLC,
BRR BLOCK INC.,
DIGI SOUTH LLC,
GANADOR ENTERPRISES, LLC,
MEDIA PAY LLC,
PAY NOW DIRECT LLC, and
RUDERMAN FAMILY TRUST,

Relief Defendants.
_____/

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S EMERGENCY *EX PARTE* MOTION AND MEMORANDUM OF LAW FOR ASSET FREEZE AND OTHER RELIEF

I. INTRODUCTION

The Commission brings this action as the result of a four-year-long unregistered securities offering fraud conducted by Defendant 1 Global Capital LLC, and overseen by Defendant Carl Ruderman, that victimized thousands of investors nationwide, many of whom used their retirement savings to invest. From no later than February 2014 until July 27, 2018, 1 Global (also referred to as "the Company"), a private, South Florida firm, fraudulently raised more than $287 million from more than 3,400 investors to fund its business of offering short-term financing to small and medium-sized businesses.

1 Global used a network of barred brokers, registered and unregistered investment advisers, and other sales agents – to whom they paid millions in commissions – to offer and sell

unregistered securities to investors in no fewer than 25 states. The Company, through its marketing materials distributed to sales agents and the sales agents themselves, promised investors a high-return, low-risk investment in which 1 Global would use investor money to make short-term cash advances called Merchant Cash Advances ("MCAs") to businesses that could not obtain more traditional financing such as bank loans. The Company touted a rigorous underwriting process through which it purportedly approved only one in ten merchants who applied for a loan, and an electronic collection process that would allow investors to make a profit.

In reality, the Company used substantial investor funds for purposes other than the cash advances, including paying operating expenses and purchasing already-distressed, long-term credit card debt. In addition, 1 Global and Ruderman misappropriated at least $35 million of investor money, at least $28 million of which was paid: (1) directly to Ruderman, Relief Defendant Ruderman Family Trust, and other entities he owned or controlled; (2) to companies owned or operated by Ruderman's relatives and acquaintances that had nothing to do with 1 Global's cash advance business; and (3) to fund Ruderman's lavish expenses such as a luxury vacation to Greece and monthly payments for his Mercedes Benz.

1 Global and its sales representatives also made numerous material misrepresentations and omissions to investors, including: (1) deceptively claiming the Company would only use investor money to fund MCAs; (2) falsely representing the amount of investor money the Company would take for its own use; (3) sending monthly account statements to investors that falsely represented their portfolio balances, rates of return and the amount of their cash 1 Global had in the bank to fund merchant loans; and (4) falsely representing the Company had an independent auditor that had endorsed certain aspects of the Company's business model.

Largely as a result of 1 Global and Ruderman's misappropriation and improper use of investor funds, by no later than October 2017 1 Global experienced a shortage of investor funds approximating $23 million that should have been in the Company's bank accounts and available for merchant loans. This shortfall continued and increased with time, so that by June 30, 2018, 1 Global's financial records showed approximately $50 million in missing investor funds. Less than a month later, 1 Global and a sister company, Relief Defendant 1 West Capital LLC (which 1 Global used to make merchant loans in California), filed for Chapter 11 bankruptcy protection.

Although an independent management team is now operating 1 Global and 1 West and

Ruderman no longer is associated with those two companies, exigent circumstances remain. Ruderman's misappropriation of investor funds has necessitated this emergency motion and the relief we request, including an asset freeze and the appointment of a Receiver over several Relief Defendants that collectively received tens of millions of dollars of investor funds.

Ruderman continues to have an ownership interest in 1 Global. He also controls Relief Defendants Bright Smile Financing, LLC, through Bright Smile Trust (his lawyer is the trustee and his wife and children are beneficiaries of Bright Smile Trust) and, Ganador Enterprise, LLC through Relief Defendant Ruderman Family Trust (a family trust he created of which his brother-in-law is the trustee and his wife and children are beneficiaries, which received at least $4 million of investor funds). He has refused to give up control of Bright Smile Financing to 1 Global's new management, and recently removed 1 Global's former operations manager as the manager of Bright Smile Financing. Combined, these two companies and the Ruderman Family Trust (also a Relief Defendant) received more than $25 million of investor funds, which are currently beyond the control of the bankruptcy court or the independent management that now run 1 Global and 1 West. Without emergency relief, investor funds are at significant risk of loss.

Other Relief Defendants controlled by Ruderman's relatives received additional funds, as did Ruderman himself. In fact, the day before 1 Global filed for bankruptcy, Ruderman ordered the transfer of approximately $81,000 in investor funds to the Ruderman Family Trust. When subpoenaed to testify during the Commission's investigation of this matter so, in part, we could question him about the disposition of funds held by himself and the Relief Defendants, Ruderman would not appear. Thus, without this Court's intervention, there is a great risk that Ruderman will dissipate significant amounts of investor funds.

As discussed in the rest of this memorandum, 1 Global and Ruderman violated Sections 5(a) and (c) and Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) and (c) and 77q(a), and Sections 10(b) and 15(a)(1) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78j(b) and 78o(a)(1) and 17 C.F.R. §240.10b-5. Additionally, Ruderman aided and abetted 1 Global's violations of Section 10(b) and Exchange Act Rule 10b-5. As 1 Global's control person, Ruderman also violated Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act.

The Commission asks the Court to impose an asset freeze against Ruderman, the Ruderman Family Trust, and all other Relief Defendants except 1 West. In a separate motion,

the Commission asks the Court to appoint a Receiver over all Relief Defendants except 1 West and the Ruderman Family Trust.

II. DEFENDANTS AND RELIEF DEFENDANTS

A. Defendants

1 Global is a Florida limited liability company headquartered in Hallandale Beach and formed in 2013. *Exhibit ("Ex.") 1, 1 Global Florida Corporate Filing.* Corporate records show the Company is owned entirely by the Ruderman Family Trust. *Ex. 2, 1 Global Organizational Chart.* Until July 27, 2018, Ruderman was its Chairman and CEO. *Ex. 3, 1 Global Bankruptcy Petition.* The Company had about 100 employees at the time it filed for bankruptcy. *Ex. 4, 1 Global Employee Roster.* The Company never registered any of its securities with the Commission and did not have any publicly traded stock. *Ex. 5, SEC Certification.* From February 2014 until July 27, 2018, 1 Global raised more than $287 million from more than 3,400 investors who were located in at least 25 states. Ex. 11, ¶¶ 7-9, Declaration of Mark Dee.

Ruderman, is the sole owner of 1 Global through the Ruderman Family Trust. Ex. 2. Until July 27, 2018, when he resigned from 1 Global, he was 1 Global's Chairman and CEO. *Ex. 3.* He controlled the Company's operations until he resigned. *Ex. 7, ¶¶ 3-7 & 15, Lyn Sohun Declaration; & Ex. 8, ¶¶ 11-12, Richard Samuels Declaration.* Ruderman continues to have ownership interests in Relief Defendants Bright Smile Financing LLC and Ganador Enterprises, LLC. *Ex. 2.* As part of the Commission's investigation into this matter, the staff subpoenaed Ruderman for sworn testimony, but he refused to appear. *Ex. 47, Certificate of Non-Appearance for Carl Ruderman.*

B. Relief Defendants

1 West is a Florida limited liability company formed in April 2014 and headquartered at 1 Global's Hallandale Beach address. *Ex. 9, 1 West Florida Corporate Filing.* It is owned entirely by the Ruderman Family Trust. *Ex. 2.* Corporate records list 1 Global's former operations manager as its manager. *Ex. 28, Letter dated July 7, 2017, pp. 3.* 1 West received approximately $50 million of investor funds from 1 Global. *Ex. 11, ¶ 8.* 1 West also filed for Chapter 11 bankruptcy protection on July 27, 2018, and is now under the control of the same independent management as 1 Global. *Ex. 3.*

Bright Smile Financing is a Florida limited liability company formed in March 2017.

Ex. 12, Bright Smile Florida Corporate Filing. Bright Smile loans individuals money to finance cosmetic or dental procedures. *Ex. 8, ¶ 15.* Corporate records show Bright Smile Financing is 100% owned by Ruderman's wife and their six children through the Bright Smile Trust. *Ex. 37, Bright Smile Trust, dated November 15, 2017.* The entity until recently listed 1 Global's former operations manager as its manager, and uses the same address as 1 Global. *Exs. 4, 12, & 28.* From May 16, 2017 through June 2018, Bright Smile received approximately $15.3 million in investor funds from 1 Global at Ruderman's direction for no consideration or legitimate services. *Ex. 8, ¶ 15 & Ex. 11, ¶ 16(c), ¶ 17, & ¶ 20.*

Ganador is a Florida limited liability company formed on March 3, 2016. *Ex. 13, Ganador Florida Corporate Filing.* Corporate records show the Ruderman Family Trust owns 50% of Ganador, with two other individuals who are unrelated to 1 Global owning the other 50%. *Ex. 14, Ganador Enterprises LLC Operating Agreement.* Ganador lists 1 Global's former chief operating officer and Ruderman's brother-in-law as its manager. *Ex. 13.* Ganador makes individual consumer loans, including payday loans. Ex. 8, ¶ 16. It uses the same address as 1 Global. *Ex. 13.* From April 28, 2016 through June 2018, Ganador received approximately $5.6 million in investor funds from 1 Global at Ruderman's direction for no consideration or legitimate services. *Ex. 8, ¶ 16, & Ex. 11, ¶ 16(c), ¶ 17, & ¶ 20.*

BRR Block Inc. is a Florida corporation based in Boca Raton and incorporated in January 2018. *Ex. 15, BRR Florida Corporate Filing.* Corporate records show one of Ruderman's sons is BRR Block's sole officer and director. *Ex. 11, ¶ 16(c), & Ex. 15.* In January 2018, BRR Block received at least $1 million in investor funds from 1 Global for no consideration or legitimate services. *Ex. 8, ¶ 20 & Ex. 11 ¶ 16(c).*

Digi South, LLC is a Florida limited liability company formed in November 2012. *Ex. 16, Digi South Florida Corporate Filing.* Digi South is owned by the Ruderman Family Trust. *Ex. 2 & Ex. 8, ¶ 17, & Ex. D.* Corporate records show that until 2017, its manager was Ruderman's sister-in-law. *Ex. 16.* Since 2017, the company has listed 1 Global's former operations manager as its manager. *Id., & Ex. 28.* Among other things, Digi South used to own Playgirl and other adult magazines. Ex. 8, ¶ 17. Through April 2018, Digi South received approximately $805,000 in investor funds from 1 Global for no consideration or legitimate services. *Ex. 8, ¶ 17 & Ex. D, & Ex. 11, ¶ 16(c).*

Media Pay LLC is a Florida limited liability company based in North Miami, Florida

and formed in January 2015, and administratively dissolved in September 2016. *Ex. 18, Media Pay LLC Florida Corporate Filing.* Corporate records show its manager is Ruderman's sister-in-law. *Id.* Through April 2018, Media Pay received approximately $647,000 in investor funds from 1 Global. *Ex. 11, ¶ 16(c).*

Pay Now Direct LLC is a Florida limited liability company formed in April 2015 that was administratively dissolved in September 2017. *Ex. 19, Pay Now Direct Florida Corporate Filing.* The entity listed 1 Global's former operations manager as its manager. *Id.* Pay Now Direct is an entity Ruderman uses to pay his expenses, and it uses the same address as 1 Global. *Ex. 11, ¶ 16(c); & Ex. 19.* Through June 2018, Pay Now Direct received approximately $5.3 million in investor funds from 1 Global and the Ruderman Family Trust. *Ex. 11, ¶ 16(c).*

The **Ruderman Family Trust** is a Florida trust instrument dated June 2, 2014, created to administer certain Ruderman assets. Id, ¶ 16(c) & Ex. D. Ruderman is the grantor, his brother-in-law is the trustee, and Ruderman's wife and children are the beneficiaries. *Id.* Through April 2018, the Trust received approximately $4 million in investor funds from 1 Global for no consideration or legitimate services. *Id.*

III. JURISDICTION AND VENUE

The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act, 15 U.S.C. §§77t(b), 77t(d), and 77v(a), and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§78u(d), 78u(e), and 78aa. The Court has personal jurisdiction over the Defendants and Relief Defendants and venue is proper in the Southern District of Florida as Ruderman resides in the District and 1 Global and all of the Relief Defendants used addresses in this District and conducted their business in this District. *Exs. 1; 9; 12; 13;15; 16; 18; & 19.* In particular, 1 Global's operations were located in the Southern District, and Ruderman and other Company officers conducted, supervised, and managed all aspects of 1 Global's fundraising and MCA business at 1 Global's Hallandale Beach headquarters. *Ex. 21 Due Diligence Site Visit June 19, 2017; Ex. 22 Due Diligence Site Visit January 15-16, 2018; Ex. 23, Memorandum of Indebtedness dated March 7, 2018; & Ex. 24, Email dated February 6, 2017, at 10.*

IV. 1 GLOBAL'S MERCHANT CASH ADVANCE BUSINESS

Ruderman founded 1 Global in 2013, purportedly seeking "a better growth opportunity

for his family's funds." *Ex. 25, Email dated January 2, 2018, at 4.* By 2018, the Company had grown to more than 100 employees in sales, underwriting, collections, finance, technology and lawyers. *Ex. 4.* Ruderman was a hands-on Chairman and CEO, personally overseeing the Company's operations. *Ex. 7, ¶¶ 3-6 & 15;* & Ex. *26, Carl Ruderman email dated Dec. 24, 2016.* Ruderman knew at all times how much 1 Global had raised from investors and received a daily report showing how many cash advance transactions the Company had funded. *Id.* Ruderman signed 1 Global's agreements with third-party sales agents to allow them to offer and sell 1 Global's unregistered securities. *Ex. 27, Letter dated April 11, 2017 & Ex. 52, Affiliate Agreement signed by Ruderman.* He thus was responsible for the terms of those agreements, which specified the sales agents' compensation and required 1 Global to approve all marketing materials and sales brochures the agents used. *Id.*

Ruderman also directed or approved all of the Company's major transactions, including an approximate $40 million loan to a California automotive firm and the $50 million purchase of distressed credit card debt, the latter of which was not an allowed use of investor funds. *Ex. 7, ¶¶ 3-6.* He carefully monitored account statements the Company sent to investors each month, approved sending them, and knew they contained false statements about the value of investors' portfolios and rates of return. *Id., ¶¶ 3-6 & 11-15 & Ex. 8, ¶¶ 8-11.* He directed bad debt reserve amounts, ordered investor funds sent to himself and companies his family owned, and told one employee who questioned those transactions it was his company and he could do what he wanted with investor money. *Ex. 8, ¶¶ 8-23.* In fact, Ruderman was so involved that he bragged in an email to an executive of a hedge fund that gave 1 Global a line of credit in 2016 that "I'm personally on top of all operations from 8am thru 6:30pm everyday!" *Ex. 26.*

Until it ceased operations on July 27, 2018, 1 Global was in the business of funding MCAs - short-term loans to small and medium-sized businesses. *Ex. 3; Ex. 25, p. 4; & Ex. 29, 1 Global's Website with Declaration.* According to its marketing materials and website, 1 Global provided these businesses with an alternative source of funding to traditional bank loans and other financing methods, which it touted as insufficient to meet the short-term needs of smaller businesses. *Exs. 25 & 29.*

1 Global contracted with 100 to 200 third-party vendors to find merchants interested in applying for cash advances. *Ex. 30, List of 1 Global third-party vendors.* Through April 2018, 1 Global paid third parties who solicited merchants approximately $15 million in finder's fees for

their efforts. *Ex. 11, ¶ 15.*

Once a finder located an interested merchant, the merchant would apply directly to 1 Global for a cash advance. *Ex. 32, Merchant Application dated July 8, 2016.* In marketing materials 1 Global sent to sales agents to use in soliciting investors, 1 Global touted a comprehensive underwriting process and stressed that it only approved loans to one out of every ten merchants who applied. *Ex. 25, p. 3.* The Company indicated in its marketing materials that it used a variety of methods to weed out risky loan candidates, including internet research, credit checks, specific programs for background checks and business analysis, a review of bank records and other documents, and, most importantly, personal contact with every merchant before the Company made an advance. *Id., pp. 3 & 9.*

The Company's materials also said 1 Global's MCAs were typically small, averaging $68,000. *Id. at 3.* The usual repayment term was anywhere from four months to one year. *Id. at 16.* The MCAs were purportedly made against a business' future cash receivables, and merchants agreed to make daily payments via electronic (ACH) debiting from their business operating bank accounts as they received payments from their customers or vendors. *Id. at 3, 9.* 1 Global's materials also touted a consistently low default rate, specifically stating that its average annual loan write-off rate was only 4%. *Id. at 2.* In addition, the Company told investors and others that approximately 30% of the merchants it loaned money to refinanced their loans. *Id. at 3.*

In reality, the Company's MCA process was not nearly so rigorous and its cash advance business functioned much differently. In contrast to its claim that its average loan amount was $68,000, 1 Global often made loans of hundreds of thousands or even millions of dollars. In one instance, 1 Global made an MCA of millions of dollars to a single California automobile dealership – a transaction Ruderman personally directed. *Ex. 7, ¶ 4.* The Company also had far more difficulty collecting from merchants than it publicly disclosed. For example, in 2016, 210 of the 1,166 MCAs 1 Global funded, a total of 18%, were the subject of collection lawsuits. *Ex. 25, pp.* 23 of 34, *& Ex. 33, Magaly Ordaz Declaration.* In 2017, 328 of 1 Global's 2,092 MCAs, a total of 15%, were the subject of collection lawsuits. *Id..*

Additionally, the Company's website told a far different story than the thorough underwriting process 1 Global touted to investors and elsewhere. The website stressed how simple and quick it was for merchants to obtain loans, noting that the MCAs were *unsecured*

business cash advances. *Ex. 29.* The website consistently promised merchants they could execute an MCA and "have your money in as little as 24 hours." *Id.*

The website also promised merchants that "If you own a business and need cash fast, we're the company to call," going on to promise "We can provide the money you need without the hassles and hoops other financial institutions put you through . . . You do not have to come to us hat in hand with scads of paperwork proving your credit worthiness only to have your application denied. *We fund 90% of the businesses that apply without basing it on their credit scores* . . . We have the resources and the commitment to get you that unsecured advancement you need immediately." Emphasis added. *Id.*

Through April 2018, 1 Global and 1 West made about $348 million in merchant cash advances. *Ex. 11, ¶ 11.* As of that same date, merchants had repaid approximately $241 million of that amount. *Id., ¶ 12.* As of April 2018, due to collectability issues and the Defendants' misappropriation of investor funds, 1 Global owes investors at least $272 million but only had $27.5 million in its bank accounts. *Id., ¶¶ 7 & 10.* 1 Global does not currently have enough funds to repay investors and filed for bankruptcy. *Ex. 3 & Ex. 8, ¶ 23.*

V. 1 GLOBAL'S SOLICITATION OF INVESTOR FUNDS

A. The Network Of Sales Agents

1 Global funded its MCA business and its operations almost entirely with money from investors, whom the Company referred to alternately as "Lenders" or "Syndicate Partners." *Ex. 25, p. 3 of 34.* The only non-investor source of funds for 1 Global came from a $10 million line of credit the Company obtained from a hedge fund in 2016 and all or nearly all of these funds have been paid back. *Ex. 11, ¶ 8.* The remainder of 1 Global's MCA business derived entirely from investors' contributions. *Id.*

1 Global found its investors through a second network of sales agents consisting in large part of registered and unregistered investment advisers and former (and in some cases barred) brokers. *Ex. 34, List of Sales Agents; Ex. 35, Barry Kornfeld; & Ex. 36 Gregory Langsett CRD.* The Company had dozens of sales agents, to whom it paid commissions usually ranging from .75% to 3% of the amount of investor funds they brought to 1 Global. *Ex. 34, & Ex. 39, 1st Global Capital Affiliate Agents Commission Structure.* For example, many sales agents received 3% of every new investment amount they brought in to the Company. *Ex. 39.* If the investment rolled over into another term, most sales agents received an additional .75%. *Id.* In addition,

some sales agents who brought other sales agents into the Company received an additional .75% of every amount their recruited sales agents sold. Id. Through April 2018, 1 Global paid sales agents nearly $9 million in commissions for getting investors to put money into 1 Global. *Ex. 11, ¶ 16 (a).*

Sales agents signed an Affiliate Agreement with 1 Global outlining their rights and responsibilities in, and compensation for, selling the 1 Global investment. Ruderman signed at least two of these Affiliate Agreements on behalf of the Company, allowing sales agents to market the 1 Global investment. *Exs. 27 & 52.* The Agreements specified that 1 Global had to provide or approve all marketing materials the sales agents provided to prospective investors. Id.

In the Agreements and in meetings and telephone calls, 1 Global stressed that its minimum investment amount was $25,000, and that the investment opportunity was for a limited number of sophisticated investors. *Ex. 25, pp. 16 and 25 of 34.* In practice, however, 1 Global placed no restrictions on who sales agents could solicit to invest in the Company, and frequently waived the $25,000 minimum investment requirement. *Ex. 21, p. 3, Ex. 10, Kenneth Riewerts Investigative Testimony, July 26, 2018, pp. 64-66, ll: 25-1 & pp. 88-89, ll: 24-8.* Sales agents regularly solicited large numbers of their existing clients to invest. *Ex. 40, K. Riewerts email dated October 13, 2017.*

As 1 Global's owner, Chairman, and CEO, Ruderman substantially participated in the offer and sale of 1 Global's unregistered securities to the investing public and paying transaction-based compensation to the sales agents by: (1) hiring sales agents; (2) attending due diligence meetings with sales agents; (3) executing at least two Affiliate Agreements; and (4) directing 1 Global to pay the sales agents' commissions. *Exs. 21, 27, & 52.*

From February 2014 through April 2018, 1 Global received at least $287 million from 3,400 investors located in at least 25 states, with at least 100 investors each located in California, Florida, Illinois, Ohio, and Tennessee. *Ex. 11, ¶ 9.* More than one-third of the money came from those who invested through IRAs. Id. In the months after April 2018, 1 Global continued to receive millions of dollars from investors. The funds 1 Global raised were commingled or pooled together into one or more of 1 Global's bank accounts. Id., ¶ 8. No registration statement was filed or in effect for 1 Global's offer and sale of securities to investors. *Ex. 5.*

B. 1 Global's Sales And Marketing Efforts

1 Global regularly provided sales materials to its agents for use in marketing the investment. *Ex. 25.* Those materials included a list of Frequently Asked Questions, a history of the Company, and a description of the MCA program and the investment process. *Id.* Sales agents used the materials in soliciting clients to invest, attaching them to emails in at least one case and other times using the information in them when they spoke to prospective investors. *Ex. 40.* The marketing materials contained the statements about the purportedly rigorous MCA loan approval and repayment process. *Ex. 48, Sales Brochure, at 14.* In addition, the marketing materials consistently touted 1 Global's alleged consistently high returns for investors. *Ex. 24, Email dated February 6, 2017 with attachment at 3.* The Frequently Asked Questions claimed 1 Global investors had historically generated "[l]ow double digit" annual returns. *Id.*, & *Ex. 25 at 2.*

In addition, 1 Global sent copies of actual monthly investor account statements to sales agents to show investors. *Ex. 17, p. 40, ll: 6-24.* Those account statements showed returns ranging from 8% to 17% a year. *Id., pp. 40-44 & Ex. 51.* Starting in January 2018, 1 Global changed its marketing materials to tell investors that they would earn a guaranteed minimum of 3% a year, with the possibility of much higher returns. *Ex. 10, pp. 45-48.* The marketing materials, including the Frequently Asked Questions, also stated that 1 Global collected an average of $1.30 to $1.35 on each dollar it advanced in an MCA. *Ex. 25 at 10.*

Using this information, sales agents usually told investors 1 Global could earn them high single digit to low double digit returns a year. *Ex. 10, pp. 106, 116 & 155.* Both the Company and sales agents stressed that 1 Global offered better returns than fixed instruments, and was a safe, short-term alternative to more risky stock market investments. *Ex. 10, p. 50, ll: 6-24;& Ex. 17, pp. 126-127.*

Both sales agents and investors were attracted by these allegedly high profits, with many investors deciding to send money on the basis of them. For example, based on the promised high returns, one investor gave almost $1 million from a 401K retirement plan to 1 Global for MCAs. *Ex. 45, ¶ 6.* Another investor invested $135,000 after his sales agent showed him one of the sample client statements that reflected double digit annual returns. *Ex. 43, ¶ 5.* That same investor sent in another more than $150,000 in the ensuing months based on receiving his own monthly account statements showing annual returns of at least 8%. *Id. at ¶¶ 7-9.* Another

investor contributed approximately 20% of her net worth in two investments in September 2017 and May 2018 based on the promised high rates of return and the profits being shown on her monthly account statements. *Ex. 42, ¶¶ 6-7.*

Although 1 Global told sales agents and investors that it was not selling securities because the notes it gave to investors were allegedly only for nine months, at least one early version of the Company's marketing materials called the opportunity to put money into 1 Global an investment. *Ex. 48.* The cover read "Putting cash to work for merchants while earning high returns on your investment." *Id.* In addition, 1 Global's marketing materials touted the Company as an investment alternative to stocks. *Ex. 24 at 8.* At least one sales agent repeatedly told clients in emails that he was offering them an investment in 1 Global. *Ex. 40.*

C. The Memorandum Of Indebtedness

For the vast majority of the four-plus years 1 Global offered and sold its investment, it used an instrument entitled a MOI as the note or contract between the Company and investors. *Exs. 6, Memorandum of Indebtedness ("MOI") & Ex. 53, MOI (Automatic Rollover).* The MOI termed the investor a "Lender," and identified the Company as the "Borrower." *Ex. 6 at 1, & Ex. 53 at 1.* The MOI specifically stated that an investor was providing money to 1 Global so the Company could expand its business activities, which it termed the "Covered Activities." Ex. 6 at 2, ¶ 7, & Ex. 53 at 2 ¶ 7. The only specific Covered Activity identified in the MOI was the MCAs. *Id.* And the only use of investor money the Company identified in its marketing materials was the MCAs. *Ex. 48, at 3-6 and 14, Sales Brochure.* After 1 Global received investor funds, it pooled and commingled them together in non-segregated 1 Global bank accounts. *Ex. 11, ¶ 8.*

While the MOI stated that it was a nine-month note, for most of the four-plus years 1 Global raised money from investors, the MOI also stated the note would automatically roll over into a new nine-month term unless the investor expressly informed the Company in writing at least 30 days before the end of the nine months that he or she did not want the note to roll over. *Ex. 6 at 2, ¶ 6.* For a brief period in early 2018, 1 Global changed the MOI to provide that the note would mature after nine months unless an investor specifically informed the Company that he or she wanted to renew the investment. *Ex. 53 at 2 ¶¶ 6 & 12.* However, 1 Global reinstated the automatic rollover provision about two months later as a result of the "paperwork nightmare" the revised opt-in procedure was causing. *Ex. 17, Michael Pellegrino Testimony Transcript*

dated August 2, 2018, p. 217.

In fact, the overwhelming majority of investors allowed their investments to automatically roll over. Id., *p. 165.* One sales agent estimated only six to eight of the hundreds of investors he solicited redeemed their investments after nine months. Id. Company bank records show that as of April 30, 2018, investors had sent more than $287 million to 1 Global, but 1 Global had returned only about $16 million of those funds through redemptions or other payments. *Ex. 11 ¶ 7.*

Even if an investor redeemed his or her investment after nine months, the note extended beyond nine months because it took 1 Global several months to fully pay out an investor's principal and interest. 1 Global called this period "the unwinding" and "the grace period" in the MOIs. *Ex 6 at 4, ¶ 11; Ex. 17, pp. 198-200.* The unwinding period was caused by the way 1 Global used investor money to fund MCAs. *Ex. 31, Michael Latson Testimony Transcript dated August 9, 2018, pp. 127-128.* Rather than use investor funds on a single MCA or a small number of MCAs, the Company gave each investor a small, fractionalized interest in up to hundreds of MCAs. *Ex 53 at 3, ¶ 8.3; Ex. 17, p. 226; & Ex. 31, pp. 80 & 127-128.* A Company computer system would assign the investor's funds automatically, based on the amount of MCAs that came in daily in the weeks following an investment. *Ex. 31, pp.81-82.* Under this system, one MCA would be funded with dozens or hundreds of investors' funds pooled together. Id., *pp. 80-83.* Using this process often resulted in the Company taking months to place all of an investor's funds into MCAs. Id., *p.83.* Thus, if an investor elected to redeem his or her investment after nine months, it could take months after that for the merchants who received the investor's money to repay the MCAs. Id., *pp. 127-128.* Often the Company would not generate enough funds from the MCAs to fully repay redeeming investors, forcing the Company to use new investor funds to pay off redeeming investors. Id.

1 Global did not pay investors the interest or the increase in valuation of their portfolio the Company told them they were earning until the investor cashed out some or all their investment. Id., *p. 83.* Although 1 Global sent investors monthly account statements purporting to show each investor's account credited with the interest the investor had earned on MCA repayments, investors did not receive those payments right away. Id. Rather, 1 Global simply commingled all those investor funds into its various bank accounts and frequently reinvested the investor money into new MCAs. Id. This also allowed 1 Global to misappropriate investor

funds. *Ex. 8, ¶ 23.*

1 Global eventually memorialized the unwinding period into specific timetables at the beginning of 2018. *Id., pp. 199-201.* It informed investors through marketing materials sent to sales agents that if an investor who redeemed had placed less than $250,000 with 1 Global, he or she would be fully repaid in 12 months, three months after the end of the nine-month term. *Id.* For investments of greater than $250,000, the repayment would take six additional months, making the MOI a 15-month note. *Id.*

Another key provision of the MOI provided that it was within 1 Global's sole discretion how to use investor money to make MCA loans. *Ex. 6 at 3, ¶¶ 8.1 and 8.3; Ex. 53 at 3 ¶¶ 8.1 and 8.3.* In fact, investors had no say in how 1 Global used their money. *Ex. 31, pp. 83-84; Ex. 45 ¶ 8; Ex. 42 ¶ 8; Ex. 43 ¶ 12;& Ex. 55, Donald Stec Declaration, ¶ 10.* Investors could not and did not manage their MCA loan portfolios; it was solely up to 1 Global whether and when to use an investor's money to fund MCAs and which MCAs to fund. *Id.* The success of the investment and whether an investor earned profits was solely dependent on 1 Global's decisions on MCA funding and other uses of funds, as well as repayment and collection efforts. *Ex. 45 ¶ 8; Ex. 42 ¶ 8; Ex.43 ¶ 12; & Ex.55 ¶ 10.*

The MOI contained a paragraph stating the investor was sophisticated and was "qualified," meaning he or she had a certain income level or net worth. *Ex. 6 at 5, ¶ 13.4; & Ex. 53 at 5 ¶ 12.3.* However, 1 Global never enforced this provision, did not restrict who sales agents could offer the investments to, and accepted investments from anyone who wanted to invest, regardless of their net worth, income, or sophistication. *Ex. 7, ¶ 7; Ex. 17, pp. 64-65, Ex. 10, p. 52; Ex .42 ¶ 15; Ex. 43 ¶ 18; & Ex. 55 ¶ 14, Donald Stec.*

Finally, the MOI disclosed 1 Global would charge investors in two ways. The first was a 13% management fee that 1 Global would take from the amount collected from MCA repayments. *Ex. 53 at 3 ¶ 8.4.* The second way 1 Global said it would charge investors was to have them reimburse the Company the finders' fees it paid to third parties for finding merchants to take MCAs. *Ex. 53 at 4 ¶ 10.* The MOI contained only those two ways 1 Global could charge investors. However, in truth 1 Global took far greater amounts from investor funds to pay its operating expenses, and for its misappropriation to Ruderman and his related businesses. *Ex. 11, ¶¶ 14-17.*

VI. MISREPRESENTATIONS AND OMISSIONS TO INVESTORS

A. False Claims About Use Of Investor Funds

1 Global falsely represented to investors that it would use their money to fund MCAs. *Ex. 6, Ex. 20, Composite MOI Automatic Rollover, & Ex. 53.* In reality, 1 Global used a substantial amount of investors' funds for purposes other than making MCAs. *Ex. 11, ¶¶ 16-18.*

First, 1 Global used significant investor funds on the Company's operations. 1 Global spent approximately $53 million in operating expenses through April 2018. *Id.*, ¶ 16(a). However, the total investor funds available to 1 Global to use for operating expenses from the two ways it could collect money from investors, as described more fully below, was about $46.6 million. *Id., ¶ 18.* Thus, 1 Global spent about $6.4 million more in investor funds on operating expenses than it told investors it would. *Id., ¶¶ 16-18.*

Ruderman also authorized 1 Global to spend tens of millions of dollars of investor money to purchase bad credit card debt from an entity called Travis Portfolio. *Ex. 7, ¶ 4, Ex. 31, pp. 65-66.* 1 Global began making the payments for this purchase on September 28, 2017. *Ex. 11, ¶ 17.* Buying the credit card debt was not an MCA, and thus not an allowed use of investor funds. *Ex. 31, p. 65, ll: 1-21 & Ex. 53.*

Last, 1 Global, authorized and directed by Ruderman, misappropriated at least $28 million in investor funds to pay Ruderman personally as well as several companies in which he or his family members had a direct interest. *Ex. 11, ¶ 16(a)-(b).* This included, as described more fully below, money to help fund a family vacation to Greece, monthly payments for a Mercedes Benz Ruderman leased, his monthly American Express credit card bill, payments for Ruderman's chef and housekeeper, and $4 million to his family trust. *Id., & Ex. 8, ¶¶ 14 & 19-20.* It also included payments to two companies that Ruderman controlled, Bright Smile Financing and Ganador, that funded consumer and individual loans that had nothing to do with MCAs. *Ex. 8, ¶¶ 15-16.* The first payment by 1 Global to Bright Smile occurred on May 6, 2017, while 1 Global made its first payment to Ganador on April 28, 2016. *Ex. 11, ¶ 17.* The misappropriation also included a $1 million payment on January 16, 2018 from 1 Global to BRR Block, a company owned by one of Ruderman's sons that also had nothing to do with MCAs. *Id., ¶ 16(c), & Ex. 8, ¶ 20.* Ruderman's misappropriation led directly to the shortage of investor

funds. *Ex. 8, ¶ 23.*

Notably, investors said they would not have invested in 1 Global's MCA program, if they had known 1 Global was misrepresenting how it used investor funds. *Ex. 42, Mary Buraczewski Declaration, ¶ 10, Ex. 43, Bryan McDuffie Declaration, ¶ 14, Ex. 45, Frank Rimi Declaration, ¶ 11, & Ex. 46, Thomas Moore Declaration, ¶ 9.*

B. False Claims About Fees And Expenses 1 Global Could Take From Investors

As previously described, 1 Global disclosed one fee and one expense it could take from investors in the MOIs. The first was a management fee of 13% of merchants' MCA repayments. *Ex. 11, ¶ 14.* Through April 2018, 1 Global's bank records show it collected $240 million in MCA repayments. *Id., ¶ 12.* 1 West, 1 Global's sister company, collected an additional $1 million. *Id.* Furthermore, the Company collected about $2.1 million from Travis Portfolio, for a total of $243.1 million in collections. *Id.* Taking 13% of that total, 1 Global could have taken a maximum of $31.6 million in management fees from those repayments through April 2018. *Id., ¶ 14.* The expense 1 Global told investors about in the MOI was the finder's fee it was paying third parties to find merchants to enter into MCAs. *Id., ¶ 15 & Ex. 20, ¶10.* 1 Global paid those third parties approximately $15 million in fees through April 2018. *Ex. 11 ¶ 15.* Thus, the maximum amount of fees and expenses 1 Global could have taken from investors through April 2018 was $46.6 million. *Id., ¶ 16.*

However, through April 2018, Ruderman and 1 Global actually used about $81.3 million in investor funds. *Id., ¶ 18.* This consisted of $53 million in operating expenses, and at least $28 million in misappropriated funds sent to Ruderman and numerous Ruderman-related entities (as further described below). *Id., ¶ 18.* Thus, the statements that 1 Global would take a 13% management fee and get reimbursed for only one expense from investor funds were false. *Id., ¶ 18.* Ruderman knew 1 Global had used these excess investor funds because he personally authorized most, if not all, of the $28 million in misappropriated funds transferred, and closely monitored the Company's finances, sometimes receiving daily reports. *Ex. 7, ¶ 11-15, & Ex. 8, ¶¶ 12-23.* Investors said they would not have invested in 1 Global's MCA program, if they had known 1 Global was misrepresenting how it used investor funds. *Ex. 42, ¶ 11, Ex. 43, ¶ 15, Ex. 45, ¶ 12, & Ex. 46, ¶ 10.*

C. False Monthly Account Statements

1 Global provided investors with a monthly account statement that showed all of the individual MCAs in which an investor's money was spent – frequently numbering into the hundreds of contracts. *Ex. 50, Composite of an Investor's Account Statements, & Ex. 51, Composite of an Investors' Account Statements.* The monthly statements at first showed the individual merchants who received each MCA, then were changed to show only contract numbers, then changed again to show only the type of business that had received each MCA. *Id.*

Early versions of the account statements added up the dollar amount in each MCA to reflect "total net current account receivables" – i.e., how much each investor could expect to receive in repayment from the outstanding MCAs. *Ex. 50.* Below that figure, the account statement contained a total alternatively called "cash not yet deployed," "cash to be deployed," or "cash for future receivables." *Id.* Regardless of the terminology used, the figure represented the amount of the investment that 1 Global had not yet put into MCAs and was purportedly sitting in 1 Global's bank accounts available for MCA funding. *Ex. 31, p. 82, ll: 2-10.*

The early versions of the account statement added up the two totals to represent what the investor's portfolio was then purportedly worth. *Ex. 50.* Investors could plainly see on these monthly statements how much their investment had allegedly increased in value, which directly correlated to the rate of return each investor was allegedly earning. *Id.* In addition, on the first page of each monthly statement, 1 Global expressly told investors the value of their portfolio, the increase in the valuation of their portfolio since they invested, and what rate of return their investment had earned to date. *Exs. 50-51.*

Ruderman received and reviewed the client statements before 1 Global sent them to investors. *Ex. 7, ¶ 15.* The Company's Chief Financial Officer signed the account statements, and its Director of Business Development sent them out. *Exs. 50-51.* However, Ruderman had to approve sending out the statements before they could be given to investors. *Ex. 7, ¶ 15 & Ex. 31, pp. 103-04, ll: 9-10.*

Starting no later than October 2017, the monthly account statements were false because they misrepresented the amount of "cash not yet deployed" available in 1 Global's bank accounts on every investor's account statement. *Ex. 7, ¶¶ 11-15; Ex. 8, ¶¶ 8 & 23; Ex. 11, ¶ 21; Ex. 31, pp. 109-111, ll: 14-1; 7 & Ex. 41, Spreadsheet.* That month, due in large part to the Ruderman-authorized misappropriation and misuse of investor funds, the company's financial analysts

discovered that the total of "cash not yet deployed" on all the account statements was approximately $23 million higher than the actual cash in 1 Global's bank accounts. *Id.*

As of October 31, 2017, investor account statements in the aggregate showed approximately $89 million in "cash not yet deployed." *Ex. 7, ¶¶ 11-15; Ex. 11, ¶ 21; Ex. 31, & Ex. 41, Spreadsheet.* Yet 1 Global's bank accounts held only about $65.7 million in cash, a difference of $23.3 million. *Id.* Thus, every account statement showed a false amount of "cash not yet deployed." *Ex. 7, ¶¶ 11-15; Ex. 8, ¶¶ 8 & 23; Ex. 11, ¶ 21; Ex. 31, pp. 109-111, ll: 14-1; & Ex. 41, Spreadsheet.* Because that amount was false, the total value of each investor's portfolio, the increase in the valuation since they had invested, and the rate of return each account statement showed for each investor were all overstated. *Ex. 31, pp. 109-111, ll: 14-1.*

When financial analysts brought this cash shortfall to Ruderman's attention, he falsely claimed they did not include all the Company's bank accounts, and his only action was to order the "total net current account receivables" and "cash not yet deployed" removed from future account statements so that investors could not easily tell how much of their investment remained in cash or how their total portfolio value was determined. *Ex. 7, ¶ 13.*

Despite Ruderman's attempt to hide the cash shortfall from investors, the monthly account statements that he reviewed and approved continued to be false every month because the cash shortage continued every month. Despite knowing that the "cash not yet deployed" number was inaccurate, he continued to use overstated amounts of cash to overstate the total value of investors' portfolios, the increase in the valuation of investors' portfolios, and the investors' rates of return on all subsequent monthly account statements. *Exs. 50-51.*

The cash shortfall not only continued, but increased over time. As of November 30, 2017, the combination of all investors' account statements showed 1 Global should have had approximately $100.3 million in its bank accounts as "cash not yet deployed." *Ex. 31, & Ex. 41.* Yet the bank accounts held only approximately $75.5 million, a difference of $24.8 million. *Id.* Thus the rates of return, the value of the portfolio, and the increase in valuation of the portfolio since inception for each investor on each monthly account statement were overstated. *Ex. 31, pp. 109-111, ll: 14-1.* For December 2017, when according to the total of all monthly statements 1 Global should have had $97.7 million in "cash not yet deployed" in its bank accounts, the Company had only $72.4 million in its accounts, a difference of $25.3 million. *Ex. 11, ¶ 21; & Ex. 41.* So again the rates of return and other financial metrics described above were false for

each investor. *Ex. 31, pp. 109-111, ll: 14-1; 7.*

This pattern continued through at least June 2018, when at month's end the combination of all investor account statements showed the Company should have had approximately $70 million in its bank accounts, while the accounts held only about $20 million, a difference of $50 million. *Ex. 7, ¶¶ 11-15; Ex. 8, ¶¶ 8 & 23; Ex. 11, ¶ 21; & Ex. 41, Spreadsheet.* As a result, the rates of return and other financial metrics described above were false on each investor's account statement.

Investors receiving these account statements often based their decision to allow their investment to automatically roll over on the profits and rates of return 1 Global represented they were making. *Ex. 42, ¶ 14 & Ex. 43, ¶ 16.* Investors said they would not have invested with 1 Global, if they had known 1 Global was misrepresenting the amount of investor cash it had on hand and the rates of return investors were earning. *Ex. 42, ¶ 13, Ex. 43, ¶ 16, & Ex. 46, ¶ 11.*

D. False Claims About Daszkal Bolton's Work

Each investor's monthly account statement falsely claimed that "Our independent audit firm, **Daszkal Bolton L.L.P.**, has endorsed and agrees with the rate of return formula." Emphasis in original. *Ex. 50.* However, Daszkal Bolton never audited 1 Global's financial statements, and never endorsed or agreed with 1 Global's rate of return formula. *Ex. 44, Sharon Bradley Testimony Transcript dated July 30, 2018, pp. 48-51, ll: 13-15.* While 1 Global did hire Daszkal Bolton, the firm's work was limited to drafting a set of agreed-upon procedures for evaluating investors' accounts. *Id., pp. 62-63, ll: 20-18.* Furthermore, the audit firm stopped doing work for 1 Global after 2016. *Id., p. 47, ll: 7-10.* Thus, every account statement containing the representation about Daszkal Bolton was false. Investors said they would not have invested in 1 Global, and sales agents said they would not have solicited investors, if they had known 1 Global was misrepresenting the work Daszkal Bolton performed for 1 Global. Ex. *42, ¶ 9, Ex. 43, ¶ 13, Ex. 45, ¶ 9, & Ex. 46, ¶ 8.*

In addition to misrepresenting Daszkal Bolton's status on the monthly account statements, numerous versions of 1 Global's Frequently Asked Questions provided to sales agents and in some cases to investors stated that "An external accounting firm validates [investor] loan balances quarterly." *Ex. 25 at 3.* This statement was also false because Daszkal Bolton never validated the amounts listed on investor account statements or any other document showing the amounts in an investor portfolio. *Ex. 44, pp. 45-46, ll: 16-2.*

Investors said they would not have invested in 1 Global, and sales agents said they would not have solicited investors, if they had known 1 Global was falsely representing the work Daszkal Bolton performed for the Company.

E. Misappropriation Of Investor Funds

Beginning no later than 2016, Ruderman regularly instructed 1 Global accountants and other employees to transfer investor funds to benefit himself, his family, and other close acquaintances, either directly or through entities they owned. *Ex. 8, ¶ 17.* When one accountant repeatedly questioned these transfers as improper, Ruderman told the accountant 1 Global was his company and he could do what he wanted with its money. *Id. at ¶13.*

As of June 30, 2018, 1 Global at Ruderman's direction had transferred about $15.3 million to Bright Smile, a company that loaned individuals money for cosmetic dental procedures. *Ex. 8, ¶ 15 & Ex. 11, ¶¶ 16(c) & 20.* There was no agreement between 1 Global investors and Bright Smile for 1 Global to provide that funding, and 1 Global investors have no ownership interest in Bright Smile. *Ex. 8, ¶ 15.* Bright Smile provided no consideration or services in exchange for the money. Corporate records show Bright Smile is 100% owned by the Bright Smile Trust and its beneficiaries are Ruderman's wife and Ruderman's six children. *Ex. 37.*

Also as of June 30, 2018, 1 Global had sent approximately $5.6 million to Ganador, a consumer/payday loan service, at Ruderman's direction. *Ex. 8 at ¶16.* 1 Global investors do not have an ownership interest in Ganador, but the Ruderman Family Trust owns 50% of the firm. Ganador provided no consideration or services for the $5.6 million. *Id.; Ex. 14 at p. 18 [and exhibit A thereto.]*

Ruderman authorized or ordered 1 Global to send investor funds to family members as well. For example, on January 10, 2018, one of Ruderman's sons incorporated BRR Block. *Ex. 15.* Six days later, 1 Global funded BRR Block with $1 million of investor funds for no consideration or services. *Ex. 8 at ¶ 20 & Ex. E.* Ruderman also had more than $4 million of 1 Global investor money sent to the Ruderman Family Trust, of which his wife and children are beneficiaries. *Ex. 11, ¶ 16(b) & Ex. D.* Ruderman had the Company pay the Trust approximately $81,283 a month (slightly less than $1 million a year) in investor funds, purportedly to compensate Ruderman for his interest in entities that had nothing to do with 1 Global's business. *Ex. 8 ¶17; & Ex. 54, Declaration of Nancy Zapata, ¶ 5.* The last of these

payments occurred on July 26, 2018, one day before 1 Global filed for bankruptcy. Id. at ¶18. The Trust provided no services or consideration for the money. Id. at ¶17.

1 Global paid Ruderman's current wife a $116,000 annual salary, although she had no listed job with the Company and no office or desk there. *Ex. 49, 1 Global's Payroll at 2*; Ex. *8 at ¶21; & Ex. 54, ¶ 5.* 1 Global employees never saw her do any work for the Company. *Ex. 8 at ¶21; Ex. 31, p. 147, ll: 5-11.* In addition, Ruderman received a $240,000 annual salary. *Ex. 49 at 2.*

Ruderman's pilfering of investor funds did not stop there. He used significant amounts to fund a lavish lifestyle that included:

- Monthly lease payments for a Mercedes Benz; *Ex. 11, 16(b); Ex. 8, ¶19; & Ex. 31, pp. 153-54 ll: 14-13.*
- Payment for a luxury family vacation to Greece; Id., *& Ex. 8 at ¶ 22.*
- Payments to a housekeeper and a chef; Id.
- Monthly payments on an American Express credit card and a Bank of America credit card; *Id.; & Ex. 8, ¶ 19.*
- Payment for his son's auto insurance; *Ex. 8*, ¶22.
- Payment to a company where his wife's sister was listed as the manager; Id.. *at p. 8; & Ex. 31, p. 150, ll: 4-19;* and
- Payments to his ex-wife. Id. *at p. 7; & Ex. 31, p. 149, ll: 6-19.*

None of these payments were disclosed to investors, and the fleecing of investor funds from 1 Global directly inhibited 1 Global's ability to make MCA loans and placed investor funds at risk. *Ex. 8, ¶ 23; & Ex. 54, ¶ 7-8.*

Furthermore, as noted above, Ruderman has recently taken actions that show investor funds are at high risk of being dissipated. He refused a request from 1 Global's new management to give managers access to Bright Smile Financing's books and records and bank accounts. *Ex. 38, Declaration of Bradley Sharp, ¶ 4.* He subsequently removed 1 Global's former operations manager as Bright Smile Financing's manager. Id., *¶ 5.* Thus, he is in complete control of the $15.3 million in investor funds Bright Smile received from 1 Global, with no oversight. Id., *¶ 3.*

VII. MEMORANDUM OF LAW

A. The Court Should Exercise Its Equitable Powers And Order An Asset Freeze

A district court may exercise its full range of equitable powers, including an asset freeze, to preserve sufficient funds for the payment of a disgorgement award. *FTC v. United States Oil & Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984); *see also Levi Strauss & Co. v. Sunrise Int'l Trading Co.*, 51 F.3d 982, 987 (11th Cir. 1995). Freezing assets is a well-accepted equitable remedy employed to "preserve the status quo" and is proper in actions arising under the federal securities laws. *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734-35 (11th Cir. 2005), (citing with approval *United States v. Oncology Assoc.*, 198 F.3d 489, 494-99 (4th Cir. 1999)); equitable powers to order preliminary relief, including an asset freeze).[1]

It is well recognized that an asset freeze is sometimes necessary to ensure a future disgorgement order will not be rendered meaningless. *SEC v. Lauer*, 478 Fed. Appx. 550, 554 (11th Cir. 2012) ("The district court may freeze assets in order to preserve funds while a party seeks an equitable remedy such as disgorgement."); *CFTC v. Levy*, 541 F.3d 1102, 1114 (11th Cir. 2005) ("[A] district court may freeze a defendant's assets to ensure the adequacy of a disgorgement remedy"); *ETS Payphones, Inc.*, 408 F.3d at 734 ("[T]he asset freeze is justified as a means of preserving funds for the equitable remedy of disgorgement.").

The Court has the authority to enter an asset freeze even in the absence of a request from the Commission to enter a temporary restraining order or preliminary injunction ordering the Defendants not to violate the securities laws. *SEC v. Grossman*, 1987 U.S. Dist. Lexis 1666 at *35-*36 (S.D.N.Y. Feb. 17, 1987) ("[a]n order freezing assets may be imposed even in the absence of a preliminary injunction"); *SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2nd Cir. 1990) (entering order freezing assets and stating that court may grant ancillary relief such as asset freeze "even in

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[1] *See also SEC v. Cavanagh*, 155 F.3d 129, 136 (2nd Cir. 1998) (federal courts may order equitable relief against a person who is not accused of wrongdoing in a securities enforcement action); *SEC v. Posner*, 16 F.3d 520, 521-22 (2nd Cir. 1994) (courts have "broad equitable power in securities cases to fashion appropriate ancillary remedies necessary to grant full relief"); *SEC v. Brooks*, 1999 WL 493052 at *1 (N.D. Tex. July 12, 1999) (same); *SEC v. Manor Nursing Ctrs.*, 458 F.2d 1082, 1103 (2nd Cir. 1972) (district court's entry of asset freeze as ancillary relief to effectuate the purpose of the securities laws was proper exercise of its equity powers); *SEC v. Householder*, 2002 WL 1466812 (N.D. Ill. July 8, 2002) (federal courts have the power to freeze a defendant's assets to ensure that the defendants will not secrete or dissipate assets).

circumstances where the elements required to support a traditional SEC injunction have not been established"); *SEC v. Thorn*, 2001 WL 1678787 at *2 (S.D. Ohio Nov. 16, 2001) (asset freeze may be granted even where elements for an injunction have not been established). The Court need only find some basis for inferring a violation of the federal securities laws to impose an asset freeze. *Unifund SAL*, 910 F.2d at 1041-42.

The Commission's "burden for showing the amount of assets subject to disgorgement (and, therefore available for freeze) is light: a reasonable approximation of a defendant's ill-gotten gains" is all that is required. "Exactitude is not a requirement . . . ." *ETS Payphones*, 408 F.3d at 735 (citation and quotation omitted); *FTC v. IAB Marketing Associates, LP,* 746 F.3d 1228, 1234 (11th Cir. 2014). The Commission's burden to demonstrate the potential for dissipation of funds is even lighter. *FTC v. IAB Marketing Associates, LP,* 972 F. Supp. 2d 1307, 1313 n.3 (S.D. Fla. 2013) ("There does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze") (citing *ETS Payphones*, 408 F.3d at 734, and *SEC v. Lauer*, 445 F. Supp. 2d 1362, 1367-70 (S.D. Fla. 2006)); *SEC v. Gonzalez de Castilla*, 145 F. Supp. 2d 402, 415 (S.D.N.Y. 2001) ("the SEC must demonstrate only . . . a concern that defendants will dissipate their assets . . . .").

Under its broad equitable power, the Court can and should enter an *ex parte* order freezing the assets of Ruderman, the Ruderman Family Trust, Bright Smile, Ganador, Media Pay, Pay Now Direct, Digi South, and BRR Block. The facts in this memorandum demonstrate Ruderman and each of the entities received large amounts of investor funds as a result of Ruderman's systematic pilfering of those funds from 1 Global. In total Ruderman and the entities received more than $28 million. The facts also demonstrate that notwithstanding the bankruptcy case of 1 Global and 1 West, all of the Relief Defendants other than 1 West are currently outside the jurisdiction of the bankruptcy court and this Court, and that an asset freeze is necessary to preserve those investor funds for potential disgorgement judgments that would help compensate defrauded 1 Global investors.

The Court's power to freeze assets extends to Relief Defendants. *CFTC v. Walsh*, 618 F.3d 218, 225 (2nd Cir. 2010); *CFTC v. International Berkshire Group Holdings, Inc.,* 2006 WL 3716390 at *10 (S.D. Fla. Nov. 3, 2006). A Relief Defendant is a party not charged with wrongdoing who nevertheless "possesses illegally obtained profits but has no legitimate claim to them." *Huff*, 758 F. Supp. 2d at 1362. To obtain a freeze over a Relief Defendant's assets, the

Commission "most demonstrate only that [it] is likely ultimately to succeed in disgorging the frozen funds." *Walsh*, 618 F.3d at 225.

Ruderman has demonstrated control over Bright Smile, Ganador, and the Ruderman Family Trust. His recent actions: transferring funds to himself and his family trust literally on the eve of bankruptcy; refusing to cede control over Bright Smiles to 1 Global's new management; and in continuing to defraud investors even after 1 Global went into bankruptcy by using investor money to enrich himself and his family, prove the need for the broad and immediate freeze the Commission requests. The only way to stop Ruderman's wanton disregard for investor losses is for the Court to freeze both his funds and those of the Relief Defendants other than 1 West.

As shown in the ensuing sections, the Court has more than an adequate basis to infer that Ruderman and 1 Global violated the federal securities laws in fraudulently offering and selling 1 Global's unregistered securities to investors.

B. The Defendants Violated The Federal Securities Laws

1. 1 Global Offered and Sold Securities to Investors

The Commission's claims against 1 Global and Ruderman require the Court to make a threshold finding that the MOIs 1 Global offered and sold to investors were securities. The facts easily demonstrate that they were.

a. The MOIs were Notes that were Securities

(i) The *Reves* Test

1 Global and its sales agents consistently referred to the MOI as a note. Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act define "security" to include "any note." A "note" is presumed to be a security under the Supreme Court's opinion in *Reves v. Ernst & Young*, 494 U.S. 56 (1990). This presumption can be rebutted if the note is an instrument the Court specifically said was not a security. *Id.* at 65; *SEC v. R.G. Reynolds Enterprises, Inc.*, 952 F.2d 1125, 1131-33 (9th Cir. 1991). A note that is not among the list identified in *Reves* is a security unless it bears a "strong family resemblance" to the non-security notes identified in the opinion. *Reves*, 494 U.S. at 64-65. *Reves* established a four-factor "family resemblance test" to determine whether a note is a security: (1) the motivations of the buyer and seller; (2) the plan of distribution; (3) the reasonable expectations of the investing

public; and (4) the existence of an alternate regulatory regime. *Id.* at 66-67. If a note fails the family resemblance test, it is deemed a security and subject to federal securities regulation.

(ii) The MOIs were Not Nine-Month Notes

Section 3(a)(3) of the Securities Act exempts from the *registration* requirements of Section 5 of the Securities Act "any note . . . which has a maturity at the time of issuance of not exceeding nine months . . ." 1 Global company representatives told sales agents and others that because the MOIs had an initial term of nine months, they were not considered securities under Section 3(a)(3) of the Securities Act. However, the nine-month exemption is inapplicable here for three reasons. First, because of the automatic rollover provision and the way 1 Global paid out the notes, they were not truly nine-month notes. Second, the exemption is only applicable to short-term, high-grade commercial notes, not investment notes such as the MOIs in this case. Third, the exemption only applies to the registration requirements, not to the anti-fraud provisions of the Securities and Exchange Acts.

As to the first reason, as discussed above, the vast majority of the MOIs automatically and continuously rolled over into new nine-month terms unless the investor specifically opted out of the automatic renewal. The rollover provision in reality transformed the note into a longer investment than nine-months. *SEC v. Wallenbrock*, 313 F.3d 532, 539 (9th Cir. 2002) (Holding that the nine-month exemption did not apply to notes that had automatic renewal provisions and stating that "A reasonable investor sending funds to Wallenbrock for a guaranteed return of 20% and an automatic rollover every three months would expect that the funds were an investment"); *SEC Release No. 33-4412*, 1961 WL 61632 at *2 (Sept. 20, 1961) (Commission guidance is that "in light of [legislative] background, the staff of the Commission has interpreted Section 3(a)(3) to exclude as not satisfying the nine-month maturity standard, obligations . . . having provision for automatic 'roll over'").

In addition, even without the rollover provision, the MOIs did not end after nine months. Depending on the size of the investment, it took 1 Global from 12 to 15 months to pay on the note if an investor redeemed. Accordingly, because the notes were not actually for nine-month terms, the nine-month exemption in Section 3(a)(3) did not apply to the MOIs.

(iii) The MOIs were Investments, Not Commercial Paper

Numerous courts have held that the nine-month provision of Section 3(a)(3) "applies only to commercial paper, defined by the Supreme Court as 'short-term, high quality instruments

issued to fund current operations and sold only to highly sophisticated investors.'" *Wallenbrock*, 313 F.3d at 541. *See also Bellah v. First Nat'l Bank of Hereford, Tex.*, 495 F.2d 1109, 1112 (5th Cir. 1974); *Holloway v. Peat, Marwick, Mitchell & Co.*, 900 F.2d 1485, 1489 (10th Cir. 1990) (the "exception for short-term notes is limited to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public"); *R.G. Reynolds*, 952 F.2d at 1132:

> While the short-term note exceptions are not explicitly limited to short-term commercial paper, the literal words of the statutes are not dispositive. In defining the coverage of the Securities Acts, Congress in each case prefaced the definitions with the phrase "unless the context otherwise requires." Furthermore, the Supreme Court has emphasized that in interpreting the Securities Acts "we are not bound by legal formalisms, but instead take account of the economics of the transaction under investigation."

Wallenbrock, Reynolds, and numerous other cases have used the four-part *Reves* test to determine whether a short-term note is commercial paper exempt from registration under the Securities Act, or is actually an investment that qualifies as a security. Under the *Reves* test as described below, not only is the MOI a security, it is an investment not exempt from registration under Section 3(a)(3) of the Securities Act.

The first *Reves* factor examines the transaction "to assess the motivations that would prompt a reasonable seller and buyer to enter into it." *Reves*, 494 U.S. at 56. The inquiry is whether the motivations are to make an investment (suggesting a security) or commercial or consumer purposes (suggesting a non-security). *Pollack v. Laidlaw Holdings, Inc.*, 27 F.3d 808, 812 (2nd Cir. 1994) (holding that mortgage participations were securities under *Reves*); *Wallenbrock*, 313 F.3d at 538 ("buyers seeking to make a significant profit provided Wallenbrock with cash for its business of buying accounts receivable").

Here both the 1 Global sales agents and investors unequivocal that investors were motivated by the high rate of return that 1 Global offered. 1 Global induced investors by offering "high single digit" or "low double-digit" returns. The Company's sales materials described 1 Global as an alternative to both fixed income investments offering lower rates of return as well as more risky stock market investments. *Reves* recognized that if the buyer is primarily interested in the profit the note is expected to generate, it is likely to be a security. 494 U.S. at 66.

In addition, raising money "for the general use of a business enterprise or to finance substantial investments" is indicative of an investment motivation. *Reves*, 494 U.S. at 66;

Pollack, 27 F.3d at 812-13. Here, 1 Global investors did not loan money directly to merchants. Rather, they invested their money with 1 Global, which in turn put their money into fractionalized interests in hundreds of MCAs. Furthermore, the MOIs expressly stated that it was within 1 Global's sole discretion of how to use investor funds, and that 1 Global would keep the 13% management fee from investor funds to use for working capital. These facts are indicative of an investment, rather than a commercial loan, because investors were giving money to 1 Global to use the funds, not making a direct business loan themselves. *Thompson*, 732 F.3d at 1163-64 (investors understood they were giving their money to Thompson to invest in Chinese projects and earn them money, not to make loans).

Last, the fact that 1 Global misspent and misappropriated significant portion of investor funds for non MCA purposes (i.e., the purchase of Travis Portfolio's distressed debt and sending money to Ruderman-related entities), showed 1 Global was raising funds for general business purposes. That also makes the MOI a security. *Wallenbrock*, 313 F.3d at 538.

The second factor is whether there is "common trading for speculation or investment," which is satisfied when the notes are "offered and sold to a broad segment of the public." *Reves*, 494 U.S. at 68. *See also Reynolds*, 952 F.2d at 1128 (notes sold to 148 investors in several states were offered to a broad segment of the investing public); *Wallenbrock*, 313 F.3d at 539 (notes were held by 1,000 investors in 25 states). Here, 1 Global sold its notes to more than 3,400 investors in at least 25 states, who collectively invested at least $287 million. Such a widespread distribution to an extremely large number of holders is more typical of a securities offering than of a borrower/lender relationship. *Wright v. Downs*, 972 F.2d 350, 1992 WL 168104 at *3 (6th Cir. July 17, 1992) (notes sold to 200 investors constituted broad segment). 1 Global also put no limitations on who could purchase the notes, offering them to any member of the public that could come up with the required investment funds (often even waiving its required $25,000 minimum investment). *Thompson*, 732 F.3d at 1165 (noting that seller "sought to expand its distribution to anyone interested who had $100,000 to invest . . . and made its instruments available to anyone willing to pay.").

The third factor is the "reasonable expectations of the investing public," which involves such traits as the return on the investment and the length and characteristics of the note. *Stoiber v. SEC*, 161 F.3d 745, at 751 (D.C. Cir. 1998) ("Whether notes are reasonably perceived as securities generally turns on whether they are reasonably viewed by purchasers as

investments."); *Wallenbrock*, 313 F.3d at 539 ("A reasonable investor sending funds to Wallenbrock for a guaranteed return of 20% and an automatic rollover every three months would expect that the funds were an investment"). This analysis is quite similar to that required by the first *Reves* factor. Here, 1 Global's investors invested because of the Company's promised high rates of return. 1 Global left no doubt how *it* viewed the MOIs in its marketing materials: "Putting cash to work for merchants while earning high returns on your investment." 1 Global also advertised its investment as "an alternative to fixed income," "appropriate for qualified plans" and "safe." These facts would lead a reasonable investor to believe that the MOIs were investments and, in fact, investors stated they viewed these as passive investments generating safe returns.

The final factor is whether there are any alternative regulatory schemes or other risk-reducing factors indicating that the notes are not in fact securities. *Reves*, 494 U.S. at 69. An alternative regulatory regime would need to be quite comprehensive, such as FDIC or ERISA regulations, to keep the notes from "escap[ing] federal regulation entirely." *Reves*, 494 U.S. at 69. Here, there was no alternative regulatory regime. 1 Global's sales agents emphasized that factor to potential investors. One noted in a marketing brochure that the notes were not regulated by any other federal agency such as the FDIC, or any other regulatory scheme, such as insurance law.

No matter whether the 1 Global MOIs are weighed against each of the four *Reves* factors individually, or all four collectively, they are properly categorized as securities and thus subject to federal securities regulation.[2]

(iv) Section 3(a)(3) Does Not Apply to the Anti-Fraud Provisions of the Securities Act

The nine-month exemption defined in Section 3(a)(3) of the Securities Act does not preclude the Commission from bringing an enforcement action for fraud against the sellers of nine-month notes under Section 17(a) of the Securities Act. *See* Section 17(c) of the Securities Act: "The exemptions provided in section 3 shall not apply to the provisions of this section." *See also SEC v. Better Life Club of America*, 203 F.3d 54, 1999 WL 236885 at *3 (D.C. Cir. March

[2] Within the last few days, a Southern District of Florida court applying the *Reves* analysis involving a similar instrument as the MOIs in this case, had "no trouble concluding that the [promissory notes and similar instruments] are securities" *See Honig, et al.*, Case No: 18-80019-CV-Middlebrooks, DE 137, August 20, 2018, at p. 12, attached hereto as Ex. A.

24, 1999) (unpublished) ("The exemption in § 3(a)(3) excepts the short-term instruments it covers solely from the registration requirements of the 1933 Act. The same instruments are not exempted from the 1933 Act's antifraud provisions"). Accordingly, even if 1 Global's MOIs were exempt from registration under Section 5 (and they are not for the reasons described above), the Commission could still bring an action alleging violations of Section 17 in the offer and sale of the MOIs.

b. The MOIs were Also Investment Contracts

Even if the MOIs did not qualify as securities under the *Reves* test (and they do), they would qualify as securities because they are investment contracts. Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act define "security" to include, among other things, "investment contracts." Although the term "investment contract" is not defined in these statutes, the Supreme Court has defined the term to mean: (1) an investment of money; (2) in a common enterprise; (3) with the expectation of profits to come solely from the efforts of others. *SEC v. W. J. Howey Co.*, 328 U.S. 293, 298-99 (1946).

Here, the investments satisfy all three elements of the *Howey* test. First, money was invested. The second element, a common enterprise, is also satisfied by the existence of either horizontal commonality (a pooling of investor funds and interests) or vertical commonality (the fortunes of the investor are linked with those of the promoter). The Eleventh Circuit requires only a showing of "broad vertical commonality." *SEC v. Unique Financial Concepts*, 196 F.3d at 1195, 1199-1200 (11th Cir. 1999). Here, a common enterprise existed under both horizontal and vertical commonality. Horizontal commonality was met because 1 Global pooled all investor funds into non-segregated bank accounts and placed dozens and sometimes even hundreds of investors into the same MCA. Broad vertical commonality existed because the investors were entirely dependent for their profits on 1 Global's efforts to find successful MCAs into which they could place investor funds.

The final element of the *Howey* test requires that the investors' returns be derived solely from the entrepreneurial or managerial efforts of others. *Howey,* 328 U.S. at 298. The Eleventh Circuit traditionally looks at "the amount of control that investors retain[ed over their investment] under their written agreements," as well as the actual ability of the investors to manage their investments, in determining whether the investment meets the third prong of the *Howey* test. *Unique Financial Concepts*, 196 F.3d at 1201.

Here, 1 Global and Ruderman had exclusive control over how investors' funds were used. The MOI expressly stated that it was within 1 Global's sole discretion of how to use investor funds. 1 Global determined which MCAs an investor's money would be used for, when the money would be invested in MCAs, and how many MCAs each investor's funds were used for. Moreover, investors were entirely dependent on 1 Global's collection efforts to ensure enough money was collected from all MCAs to make the investor profitable. In short, investors had no role in the MCA process. Therefore, this element of the *Howey* test is met. Because these investments satisfy the elements of an investment contract, they are securities.

2. 1 Global And Ruderman Violated Sections 5(a) and 5(c) of the Securities Act

Absent an exemption from registration, Section 5(a) of the Securities Act makes it unlawful for any person to use any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security for which a registration statement is not in effect. Similarly, Section 5(c) makes it unlawful to offer for sale a security for which a registration statement has not been filed with the Commission. A prima facie case for a violation of Section 5 is established by showing that: (1) the defendant sold or offered to sell securities; (2) no registration statement covered the securities; and (3) the sale or offer was made through the use of interstate facilities or mails. *SEC v. Randy*, 38 F. Supp. 2d 657, 667 (N.D. Ill. 1999). Scienter is not required to establish a violation of Section 5. *SEC v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1256 (9th Cir. 2013); *SEC v. Holschuh*, 694 F.2d 130, 137 n.10 (7th Cir. 1982). The defendant need not have personally sold securities as long as "the defendant was a 'necessary participant' or 'substantial factor' in the sale." *SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004) Once the Commission establishes a prima facie case for a violation, the defendant assumes the burden of proving that the securities offering qualified for an exemption from registration. *SEC v. Ralston Purina Co.*, 346 U.S. 199, 126 (1953). The courts narrowly construe the exemptions from the registration provisions to provide full and fair disclosure and to prevent frauds. *SEC v. Murphy*, 626 F. 2d 633, 641 (9th Cir. 1980); *Quinn and Co., Inc. v. SEC*, 452 F.2d 943, 946 (10th Cir. 1971).

In this case, the Commission can establish a *prima facie* case against 1 Global and Ruderman for violations of Sections 5(a) and 5(c) of the Securities Act. 1 Global clearly offered and sold securities in the form of the MOIs to at least 3,400 investors in at least 25 states over more than four years through its network of sales agents. 1 Global communicated with sales

agents and investors via email, mail, telephone the internet, and other instruments of interstate commerce. No registration statement was in effect or had been filed with the Commission in connection with the securities. As a result, 1 Global violated Securities Act Sections 5(a) and 5(c) by engaging in the unregistered offering of securities.

Ruderman violated Sections 5(a) and 5(c) for the same reasons and because he was "substantial factor" and "necessary participant" in 1 Global's offer and sale of the MOIs. Ruderman signed Affiliate Agreements enabling sales agents to offer 1 Global's investment to the general public. He also closely oversaw the solicitation process, receiving regular reports on the number of investors in the company and the amount of their investments. Ruderman also attended due diligence meetings with sales agents and directed 1 Global to pay the sales agents' commissions.

No exemptions were available for 1 Global's offering. The exemptions from registration pursuant to Section 4(a)(2) of the Securities Act and Rules 504, 505,[3] and 506(b) of Regulation D thereunder were unavailable to 1 Global and Ruderman because of the general solicitation. There were offers to investors in multiple states so the intrastate offering exemptions of Section 3(a)(11) of the Securities Act and Rule 147 are not available. At least one investor was unaccredited and unsophisticated and as such, Rule 506(c) of Regulation D was not available. Indeed, 1 Global never had investors fill out an accredited investor certification. Nor did the Company disclose what reasonable steps, if any, it undertook to verify whether these investors were in fact "accredited," such as by completing any of the verification methods set forth in Rule 506(c) of Regulation D. As a result, 1 Global and Ruderman violated Securities Act Sections 5(a) and 5(c).

3. *Ruderman and 1 Global Violated Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act*

Section 10(b) of the Exchange Act and Rule 10b-5 render it unlawful, in connection with the purchase or sale or securities, to: (a) employ any device, scheme, or artifice to defraud; (b) make any untrue statement or omission of material fact; or (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person, in connection with the purchase or sale of any security. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. The Commission must also establish scienter and that the violations were made while using any

[3] The exemption under Rule 505 was repealed as of May 22, 2017.

means or instrumentality of interstate commerce. *SEC v. Corporate Relations Group*, No. 6:99-cv-1222, 2003 WL 25570113 at *7 (M.D. Fla. March 28, 2003). For the Commission's case, reliance, damages, and loss causation are not required elements. *SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1244 (11th Cir. 2012).

Section 17(a) of the Securities Act makes it unlawful to engage in certain conduct "directly or indirectly" in "the offer or sale of securities." 15 U.S.C. § 77q(a). Specifically, Section 17(a)(1) prohibits "employ[ing] any device, scheme, or artifice to defraud; Section 17(a)(2) prohibits "obtain[ing] money or property by means of any untrue statement of a material fact or any [material] omission;" and Section 17(a)(3) prohibits "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(1)-(3). A showing of scienter is required under Section 17(a)(1), but Sections 17(a)(2) and (a)(3) only require a showing of negligence. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

The antifraud provisions reach beyond misrepresentations or omissions and encompass any wrongdoing by any person that rises to the level of a deceptive practice. *Superintendent of Insurance v. Bankers Life and Casualty Co.*, 404 U.S. 6, 10 (1971). A defendant engages in a fraudulent scheme in violation of the antifraud provisions of the securities laws and violates Sections 17(a)(1) and (3) of the Securities Act and Rules 10b-5(a) and (c) of the Exchange Act when he commits any manipulative or deceptive act or acts that are part of a fraudulent or deceptive course of conduct, or are in furtherance of a scheme to defraud. *SEC v. Huff*, 758 F. Supp. 2d 1288, 1347-48 (S.D. Fla. 2010). To state a claim based on conduct violating these provisions, the Commission must establish: (1) the defendant committed a deceptive or manipulative act; (2) in furtherance of the alleged scheme to defraud; (3) with scienter. *In re Alstom SA Securities Litigation,* 406 F. Supp. 2d 433, 474 (S.D.N.Y. 2005) (citing *In re Global Crossing*, 322 F. Supp. 2d 319, 336 (S.D.N.Y. 2004)).

a. Misrepresentations and Omissions

As discussed above, for purposes of Section 17(a)(2) of the Securities Act and Rule 10b-5(b) of the Exchange Act, 1 Global and Ruderman made numerous material misrepresentations and omissions to investors, including: (1) deceptively claiming the Company would only use investor money to fund MCAs; (2) falsely representing the amount of investor money the Company would take for its own use; (3) sending monthly account statements to investors that

falsely represented their account balances, rates of return, and the amount of their cash 1 Global had in the bank to fund merchant loans; and (4) falsely representing the Company had an independent auditor that had endorsed certain aspects of the Company's business model.

Through these misrepresentations and omissions, Ruderman and 1 Global violated Section 17(a)(2) of the Securities Act in that they "obtain[ed] money or property by means of any untrue statement of a material fact or any [material] omission." 15 U.S.C. § 77q(a)(2). The misrepresentations and omissions listed above each enabled Ruderman and 1 Global to persuade investors to invest in 1 Global's MOIs. Furthermore, the four misstatements and omissions listed above violated Section 10(b) and Rule 10b-5(b) of the Exchange Act in that they constituted untrue statements of material fact or material omissions.

Under *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011), only the "maker" of a misstatement is may be directly liable under Section 10(b) and Rule 10b-5(b).[4] "The maker" is "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Id.* More than one person or entity may have authority over a statement and therefore may be considered the maker of a false statement or responsible for a material omission. *City of Pontiac Gen. Employees' Retirement Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 374 (S.D.N.Y. 2012) (*Janus* "has no bearing on how corporate officers who work together in the same entity can be held jointly responsible on a theory of primary liability. It is not inconsistent with *Janus* to presume that multiple people in a single corporation have the joint authority" to "make" a misstatement). *See also In re Pfizer Inc. Secs. Litig.*, 936 F. Supp. 2d 252, 268–69 (S.D.N.Y. 2013).

Here Ruderman and 1 Global were both the "maker" of the false statements set forth above, and therefore violated Rule 10b-5(b).[5] The Company's marketing materials and its MOIs falsely stated 1 Global would only use investor money for MCAs, when, in reality, the company also used investor funds to pay its operating expenses, purchase distressed credit card debt from

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[4] *Janus* does not apply to Section 17(a)(2) of the Securities Act, which merely requires that a person use a misstatement or omission to obtain money or property, not make it. *SEC v. Big Apple Consulting USA, Inc.*, 783 F.3d 786, 795–98 (11th Cir. 2015); *SEC v. Monterosso*, 756 F.3d 1326, 1334 (11th Cir. 2014).

[5] As further described below, Ruderman also aided and abetted 1 Global's violations of Rule 10b-5.

Travis Portfolio, and send money to Ruderman and the Relief Defendants. The MOIs only disclosed two ways in which 1 Global would use investor funds, when, in truth, the company also misappropriated significant amounts of funds for Ruderman and the Relief Defendants. The Company's marketing materials also contained false statements about investors' balances being verified by an external accountant. Ruderman controlled nearly every aspect of the Company so no documents would have gone out without his approval. In addition, Ruderman reviewed and approved the false and misleading account statements that 1 Global sent to investors each month that contained misrepresentations about the value of investors' accounts and Daszkal Bolton. Hence, given that he reviewed and approved these false statements before they went to investors, Ruderman was clearly the maker of these false statements, and therefore, directly violated Rule 10b-5(b).

b. Materiality

A false statement or omission must be material for a Defendant to be liable for it. The test for materiality is "whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action." *SEC v. Merchant Capital, LLC,* 483 F.3d 747, 766 (11th Cir. 2007) (citation omitted). Put another way, information is material if a reasonable investor would consider it significant to making an investment decision. *Basic v. Levinson,* 485 U.S. 224, 230 (1988). A false statement or omission need not be outcome determinative for it to be considered material; rather it simply must be significant to the investor's decision. *SEC v. City of Miami,* 988 F. Supp. 2d 1343, 1357 (S.D. Fla. 2013) ("to be material, a fact need not be outcome-determinative, that is, it need not be important enough that it would necessarily cause a reasonable investor to change his investment decision") (quoting *SEC v. Meltzer,* 440 F. Supp. 2d 179, 190 (E.D.N.Y. 2006)).

Under this standard, the Defendants' false statements and omissions were clearly material. Almost all of the Defendants' misrepresentations and omissions concerned the use of investors' funds. Clearly, any reasonable investor would want to know that a Defendant was not using his or her money in the way the Defendant promised – to invest in a specific type of investment – but instead for the Defendant's own financial gain. *U.S. v. Lochmiller*, 521 Fed. Appx. 687, 691-92 (10th Cir. April 15, 2013) (upholding conspiracy to commit securities fraud conviction because, among other things, Defendant made material misrepresentations when he told investors he would use money for low-income housing but instead used it for personal gain); *SEC v. Smart*,

678 F.3d 850, 857 (10th Cir. 2012) (the fact that defendants were not using money as represented would be material to a reasonable investor).

In addition, the investors in 1 Global were clearly motivated by their desire to earn high returns. The fact that 1 Global was overstating the rates of return and the value of investors' portfolios would clearly have been important to any reasonable investor.

c. Scheme Liability

Both Ruderman and 1 Global violated Sections 17(a)(1) and (3) of the Securities Act, and Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c), by participating in a scheme to defraud and engaging in a fraudulent course of conduct. As discussed above, to state a claim based on conduct violating these provisions, the Commission must establish: (1) the Defendant committed a deceptive or manipulative act; (2) in furtherance of the alleged scheme to defraud; (3) with scienter (except as to Section 17(a)(3), which requires only a showing of negligence). *Alstom,* 406 F. Supp. 2d at 474; *Huff,* 758 F. Supp. 2d at 1347-48. *See also SEC v. Fraser*, 2010 U.S. Dist. LEXIS 7038 at *23 (D. Ariz. Jan. 28, 2010), quoting *Cooper v. Pickett*, 137 F.3d 616, 624 (9th Cir. 1997). The 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." *Fraser*, 2010 U.S. Dist. LEXIS 7038 at *23.

The false statements and omissions described above alone provide a basis for scheme liability under Sections 17(a)(1) and (3), and Rules 10b-5(a) and (c). *Affiliated Ute Citizens of Utah v. U.S.* 406 U.S. 128, 153 (1972) (liability under Rule 10b-5(a) and (c) established even though the case was one "involving primarily a failure to disclose" to investors); *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 158-59 (2008) (defendants' "deceptive acts" and "course of conduct included both oral and written statements, such as the backdated contracts").

However, in this instance, 1 Global and Ruderman committed additional deceptive acts, particularly misappropriating investor funds. *SEC v. Boock*, 2011 WL 3792819 at *23 (S.D.N.Y. Aug. 25, 2011) (scheme liability extends to misappropriated assets). *See also SEC v. U.S. Envtl., Inc.*, 155 F.3d 107, 111-12 (2nd Cir. 1998) ("a primary violator is one who participated in the fraudulent scheme"); *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1471-72 (2nd Cir. 1996) (scheme liability extends to those "who had knowledge of the fraud and assisted in its perpetration"). The misappropriation of at least $28 million of investor funds by Ruderman and

1 Global more than meets the requirements for committing deceptive acts.

d. Scienter

Courts have defined scienter as a state of mind embracing intent to deceive, manipulate or defraud. *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 193 (1976). The Commission may establish scienter for violations of Sections 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act by "a showing of knowing misconduct or severe recklessness." *SEC v. Monterosso*, 756 F.3d 1326, 1335 (11th Cir. 2014) (quoting *SEC v. Carriba Air, Inc.,* 681 F.2d 1318, 1324 (11th Cir. 1982)).

As demonstrated above, Ruderman acted knowingly or extremely recklessly while making the misrepresentations and omissions and committing the deceptive acts. As Ruderman himself bragged, he was on top of every aspect of 1 Global's operations "from 8 a.m to 6:30 p.m. every day!" 1 Global employees also said Ruderman oversaw nearly every aspect of the company's operations, knew exactly how much the company had raised from investors, and how much it advanced and received in MCA repayments from merchants. Clearly Ruderman knew 1 Global told investors it would use their money to make MCAs. But he knowingly misappropriated investor money for his own use, and personally approved the purchase of credit card debt from Travis Portfolio, which was not an MCA transaction.

Moreover, 1 Global analysts told Ruderman that the Company had a shortage of cash, but Ruderman ignored them, and continued approving investor account statements every month that falsely represented the amount of cash in investors' accounts, the rate of return investors were earning, and the value of investors' portfolios. Indeed, Ruderman's scienter can best be summed up in his reaction to being questioned about his personal expenses: 1 Global was his company and he could do what he wanted with the money.

Ruderman's scienter can be imputed to 1 Global. *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d 1326, 1340 (S.D. Fla. 1999) (the scienter of corporate officers is properly imputed to the corporation). Therefore, 1 Global also acted with the requisite scienter.

e. The "In Connection With" Requirement

Because 1 Global and Ruderman made their misrepresentations and omissions and participated in a fraudulent scheme in connection with in the offer, purchase, and sale of their MOIs, the "in connection with" requirement of Section 10(b) and Rule 10b-5 is met. *SEC v. Zandford*, 535

U.S. 813, 819 (2002) (courts should interpret the "in connection with" requirement broadly to effectuate the remedial purpose of the federal securities laws); *SEC v. Merkin,* 2012 WL 5245561 *8 (S.D. Fla. Oct. 3, 2012) (the "in connection with" requirement is satisfied if the SEC shows that the material misrepresentations were relayed to the public in a way that a reasonable investor would rely on them).

f. Interstate Commerce

The Defendants offered and sold the MOIs using the means and instrumentalities of interstate commerce. They attracted investors nationwide through 1 Global's website, and routinely used telephone calls, emails, and mail in connection with the offer and sale of the MOIs.

g. Ruderman Aided And Abetted 1 Global's Violations of Rule 10b-5

Ruderman aided and abetted 1 Global's violations of Exchange Act Section 10(b) and Rule 10b-5. To establish aiding and abetting liability, the Commission must show: (1) a primary violation; (2) the aider and abettor provided "substantial assistance" to the violator; and (3) the aider and abettor acted with scienter. *SEC v. BIH Corp.*, 2011 U.S. Dist. LEXIS 97821 (S.D. Fla., Aug. 31, 2011). The scienter requirement can be satisfied by extreme recklessness, which can be shown by "red flags," "suspicious events creating reasons for doubt," or "a danger . . . so obvious that the actor must have been aware of" the danger of violations. *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2008).

Here, Ruderman aided and abetted 1 Global's established violations of Exchange Act Rule 10b-5. Nothing happened at 1 Global without Ruderman's approval. In approving the false monthly account statements, making the improper Travis Portfolio deal with investor funds, and in misappropriating investor funds slated for MCAs, Ruderman clearly provided substantial assistance to 1 Global – indeed his actions made 1 Global's conduct illegal. Thus, he played a substantial role in making 1 Global's statements to investors false and misleading.

As discussed in above, Ruderman acted knowingly in all of his actions. Therefore, he satisfies the knowledge requirement for aiding and abetting, and the Commission has demonstrated he aided and abetted 1 Global's misrepresentations and omissions.

h. Ruderman is Liable as a Control Person

To establish Ruderman's liability as a control person under Section 20(a) of the

Exchange Act, the Commission must show: (i) a primary violation of the securities laws, and (ii) that Ruderman had 'control' over the primary violator. *Financial Acquisition Partners LP v. Blackwell*, 440 F.3d 278, 288 (5th Cir. 2006). Section 20(a) requires only "some indirect means of discipline or influence short of actual direction." *Lane v. Page*, 649 F. Supp.2d 1256, 1306 (D.N.M. 2009) (quoting *Richardson v. Macarthur*, 451 F.2d 35, 41 (10th Cir. 1971)).

In the Eleventh Circuit, a Defendant is liable as a control person where the Defendant "had the power to control the general affairs of the entity primarily liable at the time the entity violated the securities laws ... [and] had the requisite power to directly or indirectly control or influence the specific corporate policy which resulted in the primary liability." *Brown v. The Enstar Group, Inc.*, 84 F.3d 393, 397 (11th Cir.1996) (citation and quotation marks omitted).

The evidence amply establishes that Ruderman exercised complete control over 1 Global's operations. He was the company's founder, sole owner, Chairman, and CEO, and made every major operating decision as described above. He strictly controlled 1 Global's finances and directed the use of investor funds. It has hard to imagine a person more in control of a company than Ruderman was of 1 Global. Accordingly, he is liable as a control person for 1 Global's violations of the Section 10(b) and Rule 10b-5 of the Exchange Act.

4. 1 Global And Ruderman Violated Section 15(a)(1) of the Exchange Act

Section 15(a)(1) of the Exchange Act makes it unlawful for a broker or dealer to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission, or in the case of a natural person, is associated with a registered broker-dealer or is eligible for an exemption or safe harbor. It is not necessary to prove scienter to establish a violation of Section 15(a)(1). *SEC v. United Monetary Servs.*, Inc., [1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,284 at 96,302 (S.D. Fla. May 18, 1990). Section 3(a)(4)(A) of the Exchange Act defines "broker" as "any person engaged in the business of effecting transactions in securities for the accounts of others." The terms "engaged in the business" and "effecting transactions" are not defined by statute; however, the courts and the Commission have considered a number of factors to determine whether a person is a broker. A person may be found to be acting as a broker if he participates with a "certain regularity of participation" in securities transactions "at key points in the chain of distribution." *Mass. Fin. Serv., Inc. v. Sec. Inv. Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd* 545 F.2d 754 (1st Cir. 1976), *cert. denied*, 431 U.S. 904 (1977).

Among the activities that demonstrate acting as a broker are (1) solicitation of investors to purchase securities; (2) receipt of transaction-based compensation; (3) involvement in negotiations between the issuer and the investor; (4) provision of advice or valuations as to the merits of the investment; (5) active rather than passive location of investors; (6) whether the individual or entity was an employee of the issuer; and (7) whether the individual or entity was selling, or had previously sold, the securities of other issuers. *SEC v. Pension Trust Corp.*, 2010 WL 3894082, at *21 (S.D. Fla. Sept. 30, 2010) (citations omitted). The factors listed above are not exclusive, and not all of them, or any particular number of them, must be satisfied for a person to be a broker. *SEC v. Benger*, 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010)

1 Global and Ruderman acted as unregistered brokers by orchestrating this fraudulent offering using false statements and omissions to solicit investor funds through the MOIs. 1 Global was the operating company responsible for the MOIs and, along with Ruderman, as the company's Chairman and CEO, controlled all of the misrepresentations and omissions to investors. 1 Global and Ruderman contracted with a vast force of sales agents across the nation to solicit investors for 1 Global. 1 Global provided the sales agents with sales materials for investors and told the sales agents how to market the 1 Global investment. Ruderman signed at least two of the Affiliate Agreements with these sales agents, and sat in on sales presentation meetings, also called due diligence meetings, with the sales agents, in which 1 Global told the sales agent how to sell 1 Global to their clients. Finally, 1 Global and Ruderman paid the sales agent transaction-based compensation of almost $9 million.

1 Global and Ruderman have never been associated with a registered broker-dealer and cannot avail themselves of an exemption or safe harbor from the broker registration requirements.[6] By engaging in the conduct described above, they each violated Exchange Act 15(a)(1).

C. The Court Should Enter The Requested Emergency Relief

1. The Asset Freeze

As discussed in Section III.A above, the Court has the power to enter an asset freeze against Defendants and Relief Defendants as an equitable remedy to preserve the status quo and

[6] Section 15(a)(1) exempts brokers from having to register if their business is exclusively intrastate or involves exempted securities. The securities here were not exempted securities and were offered to investors located in many states.

preserve funds for disgorgement that will compensate defrauded investors. The evidence demonstrates that Ruderman and 1 Global violated the federal securities laws, that Ruderman received investor funds as a result of his violations, and that Ruderman transferred investor funds that he and 1 Global obtained through their violations to all of the Relief Defendants.

In fact, the evidence shows that Ruderman and his family members received $7 million in investor funds. In addition, each of the Relief Defendants received significant funds for no consideration or legitimate services: (1) Bright Smile received approximately $15.3 million; (2) Ganador received approximately $5.6 million; (3) BRR Block received at least $1 million; (4) Digi South received approximately $805,000; (5) Media Pay received approximately $647,000; (6) Pay Now Direct received approximately $4.2 million;[7] and (7) the Ruderman Family Trust received approximately $4 million. The Court should, therefore, freeze their assets to preserve the status quo during the pendency of this litigation, which will preserve funds for the payment of disgorgement that will be used to compensate defrauded investors.

Moreover, there is ample evidence that Ruderman is a threat to continue to dissipate investor funds if all of these assets are not frozen. As demonstrated above, he ordered payments to himself on the eve of bankruptcy, refused to appear for questioning regarding what he has done with the investor funds he has misappropriated, and refused a request from 1 Global's new management to give managers access to Bright Smile's books and records and bank accounts. Accordingly, for those reasons and the reasons set forth in Section III.A, the Court should enter an asset freeze against Ruderman and all of the Relief Defendants except 1 West in the form of the Order accompanying this memorandum.[8] The Court should further set a hearing within 14 days ordering Ruderman and the Relief Defendants to show cause why the asset freeze and other emergency relief in the accompanying order should not be extended for the pendency of the litigation.

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[7] Pay Now Direct received investor funds directly from 1 Global and it also received a portion of the investor funds that 1 Global sent to the Ruderman Family Trust.

[8] The Commission is not requesting an asset freeze over 1 Global and 1 West because they are under the protection and supervision of the bankruptcy court, as well as the management of the same individual whom the Commission is asking the Court to appoint as a Receiver over several of the Relief Defendants in a separate motion. Furthermore, the accompanying Order and the Order accompanying the Commission's motion for appointment of a Receiver specifies that the asset freeze will not apply to any entities under the control of the Receiver.

2. A Sworn Accounting

The Commission seeks disgorgement orders against Ruderman and the Relief Defendants. Sworn accountings by Ruderman and the same Relief Defendants over whom the Commission seeks an asset freeze are necessary to enable the Commission and the Court to more precisely determine the amounts the Defendants have received, spent, and misappropriated in furtherance of the fraud, and to better identify the amount of any unjust enrichment and the assets available for disgorgement. *SEC v. Lybrand*, 2000 WL 913894 at *12 (S.D.N.Y. July 6, 2000). The Commission asks the Court to order sworn accountings within 7 days from Ruderman and all Relief Defendants except 1 West.[9]

3. An Order Prohibiting The Destruction Of Records

The Commission also seeks an Order prohibiting the destruction of records against Ruderman and all the Relief Defendants except 1 West to prevent the altering or destruction of evidence before this Court can hear and adjudicate the Commission's claims. Such an Order is also necessary to ensure that whatever equitable relief that might be appropriate is not compromised. *SEC v. Shiner*, 268 F. Supp. 2d 1333, 1345-46 (S.D. Fla. 2003). Consequently we ask the Court to enter an order prohibiting the destruction of records pending the outcome of this case.

4. An Expedited Deposition Of Ruderman

Under the Federal Rules of Civil Procedure, the parties in a civil case may not ordinarily conduct discovery before they hold their Rule 16 scheduling conference and Rule 26(f) discovery meeting. However, because of the emergency nature of this action, Ruderman's refusal to appear for testimony, and the imminent threat that he will dissipate assets, the Commission asks the Court to allow us to notice Ruderman for deposition immediately upon the signing of the Order accompanying this memorandum on two business days' notice.

As described throughout this memorandum, Ruderman has transferred investor funds to himself and a number of related entities, and has actively thwarted the attempts of 1 Global's new management to find out more information about those transfers and where the funds are now. The Commission attempted to learn this and other information from Ruderman by serving

[9] The sworn accounting will not be required of any Relief Defendant under the control of the Receiver.

him with an administrative subpoena for sworn testimony. After agreeing to postpone the testimony so Ruderman could obtain counsel, the Commission set the date for the testimony on August 15, 2018. However, Ruderman refused to appear, thus blocking our efforts to learn more about 1 Global's business and financial affairs, and the location of investor funds.

For the further preservation of investor funds and because Ruderman would not honor a valid administrative subpoena, the Commission asks the Court to allow the Commission to set Ruderman's expedited testimony immediately, as set forth in the accompanying Order.

IV. CONCLUSION

For all of the reasons set forth in this memorandum, the Commission asks the Court to enter the emergency relief requested.

Respectfully submitted,

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