UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

PERRY SANTILLO, CHRISTOPHER PARRIS, PAUL ANTHONY LAROCCO, JOHN PICCARRETO, THOMAS BRENNER, FIRST NATIONLE SOLUTION, LLC, PERCIPIENCE GLOBAL CORPORATION, and UNITED RL CAPITAL SERVICES,

Defendants.

18 Civ. 05491 (JGK)
ECF Case

Plaintiff Securities and Exchange Commission's Memorandum of Law in Support of Its *EX PARTE* Emergency Application for an Order to Show Cause, Temporary Restraining Order, Asset Freeze, Other Relief, and for a Preliminary Injunction

Marc P. Berger
Lara S. Mehraban
Thomas Smith
Dugan Bliss
Dina Levy
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281-1022
(212) 336-0971 (Bliss)

June 19, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Securities Act of 1933

Securities Exchange Act of 1934

Rules

Plaintiff Securities and Exchange Commission ("Commission") respectfully submits this memorandum of law in support of its *ex parte* emergency application, by proposed order to show cause, against defendants Perry Santillo ("Santillo"), Christopher Parris ("Parris"), Paul Anthony LaRocco ("LaRocco"), John Piccarreto ("Piccarreto"), Thomas Brenner ("Brenner"), First Nationle Solution, LLC ("First Nationle"), Percipience Global Corporation ("Percipience"), and United RL Capital Services ("United RL") (collectively "Defendants"). The Commission seeks a temporary restraining order pending a preliminary injunction and then a preliminary injunction: (1) restraining and enjoining Defendants from violating the federal securities laws; (2) freezing Defendants' assets; (3) requiring Defendants to repatriate assets they transferred outside the United States; (4) preventing Defendants from destroying or altering documents; (5) ordering expedited discovery; and (6) ordering Defendants to provide a sworn accounting.

PRELIMINARY STATEMENT

The Commission seeks emergency *ex parte* relief to stop an ongoing fraudulent scheme in which the Defendants have raised more than $102 million from at least 637 investors across the United States since 2011. Of that amount, Defendants have misappropriated at least $20 million, and have paid out at least $38.5 million to earlier investors in Ponzi payments. The Commission seeks an emergency asset freeze, a temporary restraining order and preliminary injunction, a repatriation order, an order preventing document destruction or alteration, expedited discovery, and a sworn accounting.

Defendants' fraud operates as follows: Defendants Santillo and Parris buy or take over books of business of retiring investment professionals from around the country. Then Santillo and Parris, or local sales people, including Defendants Piccarreto, LaRocco, and Brenner, persuade these newly acquired clients – their victims – to withdraw their savings from traditional

investments and invest in issuers controlled by Santillo, Parris, or their associates, including Defendants First Nationle, Percipience, and United RL. Defendants falsely claim that their investors' money will be used to operate businesses in fields such as financial services, insurance, real estate development, and medical laboratories. In fact, any business operations for each issuer appear to be limited or non-existent. After receiving investor funds, Defendants transfer those funds through multiple accounts held in the names of different entities Defendants control, commingling the funds, then transfer the funds elsewhere, with the majority being either misappropriated by Defendants or paid to redeeming investors in classic Ponzi scheme fashion.

Based on Defendants' conduct, the Commission will likely succeed in proving that: (1) Defendants have violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b), and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; (2) Santillo, Parris, LaRocco, Piccarreto, and Brenner (the "Individual Defendants") have violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]; and (3) the Individual Defendants aided and abetted violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b), and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by First Nationle, Percipience, and United RL (the "Entity Defendants").

To preserve the status quo and ensure that Defendants do not further dissipate or expatriate the assets necessary to pay the likely monetary judgment to the Commission, the Commission seeks an order freezing their assets. The Commission also seeks a repatriation order requiring Defendants to repatriate any assets that originated in Defendants' United States accounts but that were transferred abroad. The Commission further seeks an order preventing

Defendants from destroying or altering documents, as well as an order for expedited discovery in advance of the requested preliminary injunction hearing. Finally, the Commission seeks a sworn accounting from Defendants. Given the exigent circumstances, the Commission requests that the Court promptly enter an Order to Show Cause, in the proposed form attached, containing the requested relief.

STATEMENT OF FACTS

The Defendants

Santillo is 38 years old and is or was a resident of Rochester, NY. Declaration of Dina Levy ("Levy Decl.") ¶ 8. He is a founder, member, manager, and CEO of First Nationle. *Id.* Ex. 4 (First Nationle Operating Agreement) at 1-2. Santillo offered and sold securities in First Nationle, Percipience, and United RL to investors and potential investors. *Id.* ¶ 8. Santillo also provided investment advice to those same investors and potential investors. *Id.* Santillo was registered with FINRA from 2003 to 2007. *Id.*

Parris is 38 years old, and is or was a resident of Rochester, NY. Levy Decl. ¶ 9. He is a manager of First Nationle, a founder and owner of Percipience, and a member and owner of United RL. *Id.* Ex. 5 (Lucian Development Form D) at 5; Ex. 6 (First Nationle Promissory Note) at 1; Ex. 7 (Percipience PPM) at 2; Ex. 8 (United RL Operating Agreement) at 1. Parris offered and sold securities in First Nationle, Percipience, and United RL to investors and potential investors. *Id.* ¶ 9. Parris also provided investment advice to those same investors and potential investors. *Id.* Parris was registered with FINRA from 2002 to 2005, and was suspended by FINRA in 2015 from association with any FINRA member. *Id.*

LaRocco is 55 years old and is or was a resident of Ocala, Florida. Levy Decl. ¶ 10. He is a founder, manager, and CEO of United RL. *Id.* Ex. 9 (United RL PPM) at 1, 9, and 15.

LaRocco offered and sold securities in First Nationle and United RL. *Id.* ¶ 10. LaRocco also provided investment advice to those same investors and potential investors. *Id.* LaRocco was registered with FINRA from 2001 to 2010, and was barred by FINRA in 2011 from association with any FINRA member. *Id.*

Piccarreto is 34 years old and is or was a resident of San Antonio, Texas. Levy Decl. ¶ 11. Piccarreto offered and sold securities in First Nationle, Percipience, and United RL. *Id.* Piccarreto also provided investment advice to those same investors and potential investors. *Id.* Piccarreto was registered with FINRA from 2014 to 2015, and was suspended for 24 months by FINRA starting in July 2017 for participating in the unregistered offering of securities and for making misleading statements to FINRA. *Id.*

Brenner is 55 years old and is or was a resident of Orville, Ohio. Levy Decl. ¶ 12. Brenner sold securities in Percipience, United RL, and potentially other issuers. *Id.* Brenner also provided investment advice to those same investors and potential investors. *Id.* Brenner was registered with FINRA from 1986 until 2016, when he was suspended for, among other things, making misrepresentations in connection with selling securities; Brenner was later barred for failing to appear for FINRA-requested testimony. *Id.*

First Nationle is a Michigan corporation. Levy Decl. Ex. 10 (First Nationle Certificate of Incorporation). First Nationle purports to conduct business in areas including leveraged investments, the financial services industry, insurance, and real estate development, among others. *Id.* Ex. 4 (First Nationle Operating Agreement) at 1; Ex. 1 (First Nationle Brochure) at 3. However, the Commission is not aware of evidence that indicates that First Nationle conducts more than some minimal business. *Id.* ¶ 13. Rather, Defendants operate First Nationle primarily as a Ponzi scheme by issuing securities in the form of promissory notes, soliciting and then

misappropriating substantial amounts of investor funds, and using remaining investor funds to pay off redeeming investors. *Id.* Defendant First Nationle represents that it is located in this district and it conducts fraudulent business in this District. *Id.* Ex. 1 (First Nationle Brochure) at 4; Ex. 2 (First Nationle Client Account Statement); Ex. 3 (First Nationle Website Page).

Percipience is a Delaware Corporation. Levy Decl. Ex. 11 (Percipience Certificate of Incorporation). Percipience purports to conduct business by providing loans to borrowers to buy and improve single-family houses. *Id.* Ex. 7 (Percipience PPM) at 3. However, the Commission is not aware of evidence that indicates that Percipience conducts more than some minimal business. *Id.* ¶ 14. Rather, Defendants operate Percipience primarily as a Ponzi scheme by issuing securities in the form of promissory notes, soliciting and then misappropriating substantial amounts of investor funds, and using remaining investor funds to pay off redeeming investors. *Id.*

United RL is a Delaware and Michigan Corporation. Levy Decl. Ex. 12 (United RL Certificate of Incorporation). United RL purports to conduct business by financing physician-owned toxicology laboratories. *Id.* Ex. 8 (United RL Operating Agreement) at 2; Ex.13 (United RL Brochure); Ex. 9 (United RL PPM) at 8. However, the Commission is not aware of evidence that indicates that United RL conducts more than some minimal business. *Id.* ¶ 15. Rather, Defendants operate United RL primarily as a Ponzi scheme by issuing securities in the form of promissory notes, soliciting and then misappropriating substantial amounts of investor funds, and using remaining investor funds to pay off redeeming investors. *Id.*

The Fraudulent Scheme

Santillo and Parris travel around the country and buy books of business from investment professionals such as registered representatives and investment advisors. Levy Decl. ¶ 16. Santillo and Parris, with the help of others, including LaRocco, Piccarreto, and Brenner, then

solicit potential investors from within those newly acquired books of business to withdraw their money from traditional investments such as annuities, and reinvest their funds in issuers controlled by the individual Defendants, including First Nationle, Percipience, and United RL (at least sometimes without disclosing that Defendants control those issuers). *Id.*

With investor victims located throughout the country, Santillo and Parris have relied on individuals with long-established ties to, and trust within, certain communities to defraud investors in those communities. *Id.* ¶ 17. LaRocco has been a central figure in defrauding investors in Florida. *Id.* LaRocco and potentially others appear to have raised at least $26 million from at least 147 investors since August 2012 in Florida. Levy Decl. ¶¶ 17-18; Declaration of Jordan Baker ("Baker Decl.") ¶¶ 16-17 & Ex. 2 thereto. Piccarreto has been a central figure in defrauding investors in Texas, where Piccarreto, Parris and potentially others have raised at least $6.6 million from at least 38 investors since April 2014. *Id.* Brenner has been a central figure in Ohio, where Brenner, Parris and potentially others raised at least $8 million from at least 74 investors since April 2013. *Id.*

Santillo, Parris, and Piccarreto also raised money from investors in other states. For example, Santillo, Parris, Piccarreto and potentially others raised at least $21 million from at least 80 investors in California since May 2012. *Id.* More recently Santillo spearheaded the solicitation of at least $2.2 million from at least 24 investors in Maryland since late 2017. *Id.* Additional investor victims are located in other states. *Id.* In total, Defendants have raised at least $102 million from at least 637 investors since at least July 2011 through their fraudulent offerings. *Id.* Of that $102 million, the vast majority of it was either misappropriated by Defendants or paid to redeeming investors. *Id.*

The Fraudulent Offerings

First Nationle: Santillo, Parris, LaRocco, Piccarreto, and potentially others, have induced at least 318 investors to invest at least $46 million in the First Nationle offering since February 2012. Baker Decl. ¶ 15. A First Nationle brochure provided to investors and potential investors claims that First Nationle is a holding company for "several sales affiliates that represent a group of companies who offer a rich portfolio of premier insurance and impaired risk . . . these subsidiaries manage over $145 million in assets." Levy Decl. Ex. 1 (First Nationle Brochure) at 3. The Commission is not aware of any evidence indicating that First Nationle is a holding company for any subsidiaries, much less subsidiaries with assets of $145 million. *Id.* ¶ 19. First Nationle conducts – at most – only some minimal business functions. *Id.*

First Nationle's website claims that it "is engaged in leveraging investments, holdings, and other assets, while building value for investors." *Id.* ¶ 28, Ex. 3 (First Nationle Website Page). First Nationle's operating agreement claims it engages in businesses including "the acquisition, ownership, development, preservation or operation of . . . stock, mortgages, notes, receivables, securities and realty. . . ." *Id.* ¶ 28, Ex. 4 (First Nationle Operating Agreement) at 1.

The First Nationle subscription agreement provided to investors claims that First Nationle "is a firm engaged in the business of senior market insurance program commerce and the development and management of diverse real property holdings." *Id.* Ex. 14 (First Nationle Subscription Agreement) at 1. The subscription agreement describes the investment as follows: "The debtor plans to apply the proceeds of the offering to help fund the debtor's outlined business model." *Id.* The subscription agreement further claims that "[n]one of the proceeds from the offering will inure to the personal benefit of the Manager." *Id.* The First Nationle operating agreement provided to investors identifies Santillo as the manager of First Nationle,

while the subscription agreement identifies Lucian Global, LLC as manager. *Id.* at 1; Ex. 4 (First Nationle Operating Agreement) at 1. Parris is the manager of Lucian Global LLC, and thus a *de facto* co-manager of First Nationle along with Santillo. *Id.* Ex. 5 (Lucian Development Form D) at 5.

First Nationle offered promissory notes sold by Santillo, Parris, LaRocco, and Piccarreto, which typically contain maturity dates of three years, and provide for interest payments at an annual rate ranging from 3.3% to 6%, as well as bonuses ranging from approximately 10% to 19% to be credited to the investor upon initially investing. *Id.* Ex. 6 (First Nationle Promissory Note) at 1. Santillo, Parris, LaRocco, Piccarreto, and First Nationle do not disclose to investors and potential investors that their "investment" is actually part of a Ponzi scheme. *Id.* ¶ 21.

Percipience: Santillo, Parris, Piccarreto, Brenner, and potentially others, solicited at least 229 investors to invest at least $22 million in the Percipience offering since July 2012. Baker Decl. ¶ 15. The Percipience Private Placement Memorandum ("PPM") claims that Percipience's business is to provide loans to borrowers to buy and improve single-family houses. Levy Decl. Ex. 7 (Percipience PPM) at 3. However, Percipience conducts – at most – only some minimal business functions. *Id.* ¶ 22. The Percipience PPM further claims that in the event of raising a maximum $5 million in the offering, $4.25 million (or 85% of the proceeds) will be used for Percipience's business, with the remainder of the proceeds to be spent on expenses such as brokers fees. *Id.* Ex. 7 (Percipience PPM) at 23.

Percipience's program summary claims that its business includes "(a) short-term property acquisition and resale, (b) purchase of distressed non-preforming bank notes for profitable repositioning, and (c) property rental income." Percipience's operating agreement claims that it "shall purchase . . . stand-alone homes or . . . flats within a multi-family building" and "lease

residences to families supported by governmentally funded rent subsidies. . . ." Percipience's private placement memorandum claims that it will "will own, fund and operate [a] real-estate-financing business. . . ." *Id.* Ex. 15 (Percipience Program Summary) at 4; Ex. 16 (Percipience Operating Agreement) at 1-2; Ex. 7 (Percipience PPM) at 12.

The Percipience PPM explains that Percipience offers preferred stock, specifically Class A and Class B shares. *Id.* Ex. 7 (Percipience PPM) at 2. Class A shares have a one year "lock period," with a claimed annual return of 7%. *Id.* Class B shares have a three year "lock period," with a claimed annual return of 8% and an 8% bonus to be credited to the investor upon initially investing. *Id.* Santillo, Parris, Piccarreto, Brenner, and Percipience do not disclose to investors and potential investors that their "investment" is actually a Ponzi scheme. *Id.* ¶ 23.

United RL: Santillo, Parris, LaRocco, Piccarreto, and potentially others, induced at least 183 investors to invest at least $25 million in the United RL offering since March 2015. Baker Decl. ¶ 15. United RL's Operating Agreement describes Parris and LaRocco as members of United RL. Levy Decl. Ex. 8 (United RL Operating Agreement) at 1. Through the United RL Brochure and United RL PPM, United RL claims that United RL's business is to make loans to physicians or medical practices for the purpose of owning their own toxicology laboratories for medical tests. *Id.* Ex. 13 (United RL Brochure) at 2; Ex. 9 (United RL PPM) at 8. However, United RL conducts – at most – only some minimal business functions. Id. ¶ 24.

United RL's website claims that it "is a singular-disciplined company that specializes in providing Physician's financing, supporting the initial development phases of Physician owned clinical laboratories." United RL's operating agreement claims that its operations "encompass the direct or indirect (i) financing of medical-laboratory acquisitions and/or operations owned by third parties, and (ii) conduct of all commercial operations related thereto or supportive thereof.

The United RL Brochure states that United RL "provide[s] program financing . . . for the following specialties: hospitals, OBGYN's pain management, internist and primary care physicians." *Id.* Ex. 17 (United RL Webpage); Ex. 8 (United RL Operating Agreement) at 2; Ex. 13 (United RL Brochure) at 2.

The structure and terms of investments offered in United RL are explained in the United RL Brochure and United RL PPM. *Id.* Ex. 13 (United RL Brochure) at 4-5; Ex. 9 (United RL PPM) at 1, 6-8. United RL offers promissory notes with maturity dates of either one year ("short term") or three years (either "medium term" or "long term"). *Id.* The terms of the notes include claimed 7% interest payments to be paid semi-annually and claimed bonus payments of 7% on the three-year promissory notes, to be credited to the investor upon initially investing. *Id.* Santillo, Parris, LaRocco, Piccarreto, Brenner, and United RL do not disclose to investors and potential investors that their "investment" is actually a Ponzi scheme. *Id.* ¶ 25.

Other fraudulent offerings: Santillo, Parris, and/or their associates also sold securities in several other fraudulent offerings in which they raise investor funds and then misappropriate those funds. *Id.* ¶ 26. These smaller fraudulent offerings and issuers include but are not limited to: (1) $3.2 million raised in Boyles America, LLC from at least 41 investors; (2) $3.8 million raised in Middlebury Development Corporation from at least 23 investors; (3) $1.1 million raised in Lucian Development Corporation from at least 14 investors; and (4) $758,000 raised in Torr, LLC from at least 13 investors. Baker Decl. ¶ 15.

The Misrepresentations, Omissions, Misappropriations, and Breaches of Fiduciary Duty

Santillo, Parris, LaRocco, Piccarreto, and Brenner misrepresent to investors and potential investors that the money they invest in First Nationle, Percipience, United RL, or other issuers, is used to conduct the purported business of each respective issuer. Levy Decl. ¶ 27. Investors are

not told that – in fact – a significant portion of investor proceeds is used to repay redeeming investors or are misappropriated for personal use by Santillo, Parris, LaRocco, Piccarreto, and Brenner. *Id.* Some of Defendants' fraudulent and misleading statements and fraudulent schemes were made to the public at large in this District. *Id.* ¶ 7.

As a general pattern of conduct, rather than deposit investors' funds with the issuers to be used for purported business purposes, Defendants commingle investors' funds. *Id.* ¶ 29. After receiving investor funds, Defendants regularly transfer those funds through multiple accounts held in the names of different entities Defendants control (including but not limited to First Nationle, Percipience, and United RL) then transfer the funds elsewhere. *Id.* Substantial amounts of these funds are transferred to redeeming investors or to Santillo or the other individual Defendants. *Id.* In some cases, Santillo transferred nearly all of an investor deposit to himself. *See* Baker Decl. Ex. 1. In other cases the transfers were more complex, with Defendants commingling investor funds in different accounts and transferring the money elsewhere, including to themselves and to redeeming investors. *See id.*

Of the at least $102 million that Defendants have raised from investors, Santillo has misappropriated at least $13.4 million. Baker Decl. ¶ 18. In addition to the $13.4 million misappropriated by Santillo, Santillo received additional money transfers totaling at least $12 million, which he did not keep, but rather further commingled by transferring back into the accounts held in the names of different entities Defendants control (including but not limited to First Nationle, Percipience, and United RL). *Id.* ¶ 19. Additionally, Parris has misappropriated at least $1.1 million, LaRocco has misappropriated at least $1.1 million, Piccarreto has misappropriated at least $1.3 million, and Brenner has misappropriated at least $2.9 million. *Id.*

Defendants also misrepresented the ongoing performance – or lack thereof – of investors'

investments. Levy Decl. ¶ 31. Defendants provided account statements to investors falsely stating that their funds were invested, falsely stating investment returns, and in some cases falsely stating that a bonus had been credited to their account. *Id.* In certain cases, Defendants provided investors with purported bonus funds or interest payments, and in other cases Defendants provided redeeming investors with their all or part of their funds, with returns. *Id.* These were Ponzi payments derived from new investor funds rather than actual investment returns. *Id.* Defendants have failed to fulfill the request of other investors to redeem their investments. *Id.*

Of the at least $102 million raised by Defendants, at least $38.5 million was paid to out to earlier investors in Ponzi payments, at least $20 million was transferred to personal bank accounts of the Individual Defendants, and a large portion of the remaining funds was transferred elsewhere in transactions that do not appear related to the issuers' purported businesses. Baker Decl. ¶ 17.

Examples of Defendants' Fraud

Investors 1 and 2:[1] In July 2014, Parris and Piccarreto met with Investors 1 and 2, a husband and wife from Cedar Crest, New Mexico, to discuss investment opportunities. Parris and Piccarreto described two opportunities for investment: (1) First Nationle, which they claimed to be an investment related to commercial real estate; and (2) Percipience, which they claimed to be an investment related to residential real estate. Parris and Piccarreto told Investors 1 and 2 that invested funds would be used to conduct the business of each respective issuer. Parris and Piccarreto also provided written documents related to the offerings. Parris and Piccarreto presented themselves as investment experts and recommended that Investors 1 and 2 invest in

[1] For all facts relevant to Investors 1 and 2, *see* Levy Decl. Ex. 18.

First Nationle and Percipience.

After meeting with Parris and Piccarreto, Investor 1 invested $76,000 in Percipience and Investor 2 invested $125,000 in Percipience. Investor 2 also invested $233,000 in First Nationle. These investments were supposed to be for a three-year term and Parris described them as safe investments. Investors 1 and 2 expected to receive their investments back, with interest, in July 2017. But to date their investments have not been repaid.

An analysis of bank records shows that Investors 1 and 2's investments in Percipience were not used to conduct its purported business. Rather, some of the funds were used to make payments to what appears to be another investor, while other funds were misappropriated by Parris. Investors 1 and 2's investments in Percipience were placed into a Percipience bank account (with a previous balance of about $450), combined with another investor deposit of $20,000, then transferred among a variety of accounts not belonging to Percipience, including the accounts of First Nationle, and a manager of First Nationle. The majority of those funds were then used to pay what appears to be another investor, while Parris received $15,000. *See* Baker Decl. Ex. 1.

Similarly, Investor 2's investment in First Nationle was not used to conduct its purported business. Rather, some of the funds were misappropriated by Santillo while other funds were paid to associates or entities controlled by associates of the Individual Defendants. Specifically, Investor 2's investment in First Nationle was placed into a First Nationle bank account (with a previous balance of about $57,000), combined with other investor deposits of about $530,000, then $480,000 was transferred to Santillo. Santillo misappropriated $100,000 of those funds, and transferred the remaining $370,000 back to the First Nationle account, from which it was used to pay other investors. *See* Baker Decl. Ex. 1.

Investor 3 and his daughter:[2] In February 2015, Piccarreto met with Investor 3 – who suffers from dementia – and his daughter at their home in Austin, Texas to discuss investment opportunities. Piccarreto described an opportunity to invest in Percipience, which he told Investor 3 was an investment in real estate. Piccarreto claimed that invested funds would be used to conduct the business of Percipience. Piccarreto wrote in an e-mail to Investor 3's daughter: "I can generate enough interest (dividend payments) to cover [your father's] rent . . . while not touching the principal. . . . We will not be making double digit returns but we will also not have the risk of the stock market. We will have a fixed guaranteed dividend that will serve as income to take care of expenses." Piccarreto also provided written documents related to the offering.

After meeting with Piccarreto in 2015, Investor 3 invested $250,000 in Percipience under his daughter's name. Later, in June 2017, Piccarreto again met with Investor 3 and his daughter to discuss additional investment opportunities. Subsequently, Piccarreto visited Investor 3 alone and obtained a $60,000 check from him, despite knowing of his dementia. After learning that Piccarreto had done this, Investor 3's daughter asked for written documentation about this new investment. Piccarreto provided a brief document by e-mail, in which he stated "I know this is scary for you and you are just looking out for dad but I promise you I will not let anything happen to any of the money." Investor 3 and his daughter then decided not to go forward with this new investment. However, Piccarreto had already cashed the $60,000 check – which had been made out to United RL, apparently indicating an investment in that entity.

Investor 3 and his daughter asked for a refund of their investment, but most of the money has not been refunded. In late January 2018, Investor 3 received a $10,000 check from

[2] For all facts relevant to Investor 3 and his daughter, *see* Levy Decl. Ex. 19.

Piccarreto. The check was drawn on an account of a third-party company unknown to Investor 3 and his daughter. Investor 3's daughter called Piccarreto to ask where the rest of her father's money was, and Piccarreto said he did not know.

An analysis of bank records shows that Investor 3's investment in Percipience was not used to conduct its purported business. Rather, a large portion of the funds were misappropriated by Santillo and Piccarreto. Investor 3's investment in Percipience was placed into a Percipience bank account (with a previous balance of about $717), combined with another investor deposit of $200,000, then transferred among a variety of accounts not belonging to Percipience, including the accounts of First Nationle and a manager of First Nationle. Santillo received and misappropriated $172,000 of those funds, while Piccarreto received $5,000, and some of the remaining funds were transferred to accounts of other entities controlled by Santillo and his associates. *See* Baker Decl. Ex. 1.

Investors 4 and 5:[3] In July 2016 Investors 4 and 5, a husband and wife from Salinas, California, learned from their financial advisor that he had sold his wealth management business to Santillo. The financial advisor introduced Investors 4 and 5 to Santillo, as well as another individual, who worked with Santillo. In November 2016, Santillo and Piccarreto met with Investors 4 and 5 to discuss investment opportunities. Santillo and Piccarreto described two opportunities for investment: (1) First Nationle, which they claimed to be an investment related to real estate; and (2) United RL, which they claimed was a company related to the medical field. Santillo and Piccarreto claimed the funds Investors 4 and 5 invested would be used to conduct the business of each respective issuer. Santillo and Piccarreto also provided written documents related to the offerings.

[3] For all facts relevant to Investors 4 and 5, *see* Levy Decl. Ex. 20.

After meeting with Santillo and Piccarreto, Investor 4 invested $217,000 in First Nationle and $217,000 in United RL. Investor 4 also invested $233,000 in First Nationle. In February 2017, Investor 5 invested $124,000 in First Nationle. Also in February 2017, Investors 4 and 5 agreed to place an additional approximately $168,000 in their self-directed IRA accounts and decide where to invest that money at a later date. But in August 2017 they learned that the money had been taken from their self-directed IRA accounts and invested without their permission, 50% in First Nationle and 50% in United RL. Thereafter, Investors 4 and 5 requested a refund of their money and Piccarreto claimed they would get their money back in December 2017. To date Investors 4 and 5 have received $75,000 back, but have not received the remainder of their investments.

Investor 6:[4] During 2016, LaRocco met with Investor 6 from Ocklawaha, Florida to discuss investment opportunities. Through LaRocco, Investor 6's father had previously invested approximately $510,000 in First Nationle. After Investor 6's father passed away, LaRocco provided advice and guidance to Investor 6 about her father's assets. LaRocco convinced Investor 6 to maintain her father's investment in First Nationle and also to invest $450,000 of her own money in United RL. LaRocco told Investor 6 that her investment funds would be used for United RL's business of funding medical laboratories. LaRocco also provided written documents related to the offerings.

After several meetings with LaRocco, Investor 6 invested $450,000 in United RL in in several installments between July and September 2016. Since that time, Investor 6 has asked to redeem her investments, but she has only received payments totaling about $89,000.

An analysis of bank records shows that Investor 6's investment in United RL was not

[4] For all facts relevant to Investor 6, *see* Levy Decl. ¶¶ 34-36.

used to conduct its purported business. Rather, some of the funds were used to make payments to other investors, while other funds were misappropriated by Santillo. For example, $100,000 of Investor 6's investment in United RL was placed into a United RL bank account (with a previous balance of about $41,000), combined with approximately $420,000 of other investor funds, and over the course of two days, about $210,000 were paid to what appear to be other investors, and $30,000 to Santillo. *See* Baker Decl. Ex. 1.

Investor 7:[5] Several times since 2013, Brenner met with Investor 7 from Kirtland, Ohio to discuss investment opportunities. Brenner had advised Investor 7 about investments since about 2003. Brenner convinced Investor 7 that Percipience was a better investment that his existing investments and that his investment would be essentially a guaranteed return. Brenner told Investor 7 that United RL was a business involved in drug testing laboratories, that his investment would support that business, and that United RL was a better investment than Investor 7's other investments.

After meeting with Brenner, Investor 7 invested $20,000 in Percipience in August 2013 and $140,000 in United RL in May 2015. Since that time, Investor 7 has received small payments on his investment of less than $1,000 about every six months.

An analysis of bank records shows that Investor 7's investments in Percipience and United RL were not used to conduct legitimate business. Rather, some of the funds were used to make Ponzi payments to other investors, while other funds were misappropriated by Santillo and Brenner. *See* Baker Decl. Ex. 1.

Santillo's Use of Stolen Investor Funds

As detailed above, Santillo misappropriated at least $13.4 million. He used that money to

[5] For all facts relevant to Investor 7, *see* Levy Decl. ¶¶ 37-39.

fund a jet-setting lifestyle. For example, Santillo used investor funds to pay for housing in multiple states, car leases, expenditures on a country club and a Las Vegas resort and casino, credit card payments, and other personal expenses. Baker Decl ¶ 19. At the same time he was misappropriating investor funds, Santillo threw himself a party at a nightclub in Las Vegas for which he commissioned a song about himself to be played. Levy Decl. ¶ 40 & Ex. 21 (Transcript of "King Perry King of the Hyde"). The lyrics to that song refer to (Perry) Santillo as "King Perry" and describe his typical attire: "ten-thousand-dollar suit everywhere he rides." *Id.* The song also depicts his lifestyle as follows: "pop the champagne in L.A., New York to Florida; buy another bottle just to spray it all over ya." *Id.* The song further refers to Santillo as a "hedge fund giant."

ARGUMENT

I. The Court should enter a temporary restraining order and preliminary injunction enjoining Defendants from violating the securities laws, and the Court should freeze Defendants' assets.

a. Showing required for a temporary restraining order and preliminary injunction

Section 20(b) of the Securities Act and Section 21(d)(1) of the Exchange Act empower the Commission, "upon a proper showing," to seek the Court's issuance of a "temporary injunction or restraining order." 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d)(1). To make a proper showing warranting such relief, the Commission must demonstrate: (1) a *prima facie* case that a violation of the securities laws has occurred; and (2) a likelihood that a violation will occur again in the future. *See SEC v. Cavanagh*, 155 F.3d 129, 132, 135 (2d Cir. 1998); *SEC v. Unifund SAL*, 910 F.2d 1028, 1037 (2d Cir. 1990).

Because the Commission appears "not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws," the Commission

faces a lower burden than a private litigant when seeking a temporary restraining order or a preliminary injunction. *SEC v. Mgmt. Dynamics, Inc.*, 515 F. 2d 801, 808 (2d Cir. 1975). Unlike private litigants, the Commission is not required to show irreparable injury or a balance of equities in its favor in order to support the entry of a temporary restraining order or preliminary injunction under the Exchange Act. *See, e.g., Unifund SAL*, 910 F.2d at 1036-37. Courts have emphasized that, in considering the request for emergency injunctive relief, district courts must give special emphasis to the "need to enforce the securities laws." *Management Dynamics, Inc.*, 515 F.2d at 809 n.5.

As demonstrated below, the Commission has established both a *prima facie* case that a violation of the securities laws has occurred and a likelihood that a violation will occur again in the future if the Defendants are not restrained. Accordingly, a temporary restraining order and, subsequently, a preliminary injunction should issue.

b. Showing required for an asset freeze

"A freeze of assets is an ancillary remedy that merely 'assures that any funds that become due can be collected,' . . . including disgorgement of profits, penalties . . . and possibly prejudgment interest." *SEC v. Gonzalez de Castilla*, 145 F. Supp. 2d 402, 416 (S.D.N.Y. 2001) (quoting *SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990)). An asset freeze simply "functions like an attachment." *Unifund*, 910 F.2d at 1041.

To obtain an asset freeze, "the SEC must demonstrate only (1) a concern that defendants will dissipate their assets or transfer them beyond the jurisdiction of the United States, and (2) a basis to infer that they" violated the federal securities laws. *Gonzalez de Castilla*, 145 F. Supp. 2d at 415 (citing *Unifund,* 910 F.2d at 1041); *Smith v. SEC*, 653 F.3d 121, 128 (2d Cir. 2011) ("Where an asset freeze is involved, the SEC must show either a likelihood of success on the

merits, or that an inference can be drawn that the party has violated the federal securities laws.") (internal quotation marks and citations omitted). This standard is lower than the required showing for the Commission to obtain a preliminary injunction against future securities law violations. *See Unifund*, 901 F.2d at 1041 (holding that "an ancillary remedy" of an asset freeze "may be granted, even in circumstances where the elements required to support a traditional SEC injunction have not been established"); *SEC v. Hedén*, 51 F. Supp. 2d 296, 298 (S.D.N.Y. 1999) (holding that an asset freeze requires "a lesser showing" than a preliminary injunction against future securities law violations).

As demonstrated below, the Commission satisfies the requirements for an asset freeze and the Court should therefore freeze Defendants' assets.

c. The Commission has demonstrated a *prima facie* case that a violation of the securities laws has occurred and a likelihood that a violation will occur again in the future.

To establish a primary violation of Exchange Act Section 10(b) and Rule 10b-5, the Commission must show that a defendant: "(1) made a material misrepresentation or a material omission as to which he had a duty to speak, or used a fraudulent device; (2) with scienter; (3) in connection with the purchase or sale of securities." *SEC v. Frohling*, 851 F.3d 132, 136 (2d Cir. 2016) (citations omitted). The elements of a claim under Securities Act Section 17(a), "which prohibits fraud in the 'offer or sale' of a security, 15 U.S.C. § 77q(a), are '[e]ssentially the same' as the elements of claims under § 10(b) and Rule 10b-5."[6] *Id.* (quoting *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999)).

[6] The Commission must establish scienter to prove violations of Securities Act Section 17(a)(1), Exchange Act Section 10(b), and Rule 10b-5. *Aaron v. SEC,* 446 U.S. 680, 685 (1980). A showing of negligence is sufficient to establish a violation of Securities Act Sections 17(a)(2) and 17(a)(3). *Id.* at 696.

The Commission has shown a basis to infer that Defendants' conduct satisfies each of these elements and that Defendants therefore violated Sections 17(a), Section 10(b), and Rule 10b-5, and a likelihood of success on the merits of those claims.[7]

1. Defendants used a fraudulent device or scheme and made material misrepresentations or omissions in violation of Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act.

A misrepresentation or omission "is material 'if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to invest.'" *SEC v. Mayhew*, 121 F.3d 44, 51 (2d Cir. 1997) (quoting, with alteration, *Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988)). To establish materiality, the Commission must demonstrate only "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic*, 485 U.S. at 231–32 (citation omitted).[8]

The Commission must also establish that Defendants "obtain[ed] money or property by means of" material misrepresentations or omissions to prove violations of Securities Act Section 17(a)(2). 15 U.S.C. § 77q(a)(2). Because Defendants obtained over $102 million from investors, and misappropriated over $20 million of it, the Commission will likely succeed in proving that Defendants obtained money or property by means of misrepresentations or omissions.

[7] To establish violations of these antifraud provisions, the Commission must also satisfy the interstate commerce element. Courts have routinely held that telephone usage satisfies this element. Indeed, "if a single telephone is used to call the defendants to a meeting at which they engage in fraudulent activity," this element is satisfied. *Richter v. Achs*, 962 F. Supp. 31, 33 (S.D.N.Y. 1997); *SEC v. Stanard*, 2009 WL 196023, at *25 (S.D.N.Y. Jan. 27, 2009) (a single telephone call met the standard); *see also Heyman v. Heyman*, 356 F. Supp. 958, 969 (S.D.N.Y. 1973) (telephone calls meet the standard); *Fischer v. New York Stock Exchange*, 408 F. Supp. 745, 757 (S.D.N.Y. 1976) (courts typically use an "exceedingly broad interpretation of this requirement"). Internet activity also satisfies the interstate commerce element. *See SEC v. Ramoil Mgmt., Ltd.*, 2007 U.S. Dist. LEXIS 79581, at *22 (S.D.N.Y. Oct. 25, 2007) (use of e-mail, as well as postings to the online EDGAR database, satisfied the element). Here, Defendants' fraud included the use of the internet, email, telephone, and the mails. Levy Decl ¶¶ 7-39. These acts satisfy the interstate commerce requirement.

[8] For purposes of Santillo's liability under Rule 10b-5(b), Santillo made the material misstatements and omissions in the entity Defendants' offering materials because he had "ultimate authority over the statement[s], including [their] content and whether and how to communicate [them]." *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135, 142 (2011). Santillo's control over the entity Defendants, their assets, their offering memoranda, and their bank accounts, as described above in the Statement of Facts, shows that Santillo had ultimate authority over the misstatements and omissions in the entity Defendants' offering materials. *See SEC v. Markusen,* 143 F. Supp. 3d 877, 881, 889 (D. Minn. 2015) (on a motion for a default judgment, the "sole owner and CEO" of investment management firm was liable, along with the firm itself, under Rule 10b-5(b) for statements in the fund's offering

As a general matter, Defendants' fraud at its core is based on one key fraudulent material misrepresentation and one key fraudulent material omission in connection with the offer and sale of securities. Defendants misrepresented to investors and potential investors, orally and in writing, that the money they invest in First Nationle, Percipience, United RL, or other issuers, is used to conduct the purported business of each respective issuer. Levy Decl. ¶¶ 27-39. That is false. *Id.* Defendants omitted that – in fact – a significant portion of investor proceeds is used to repay redeeming investors or are misappropriated for personal use by Santillo, Parris, LaRocco, Piccarreto, and Brenner. *Id.* Misrepresentations and omissions about the use of investor funds are material as a matter of law. *SEC v. Research Automation Corp.*, 585 F.2d 31, 35-36 (2d Cir. 1978).

Additionally, Defendants failed to disclose the commingling of investors' funds and misrepresented the ongoing performance – or lack thereof – of investors' investments. Levy Decl. ¶¶ 27-39. Certain of the Defendants provided false account statements to investors – misrepresenting investment returns – and payments, representing them to be investment returns, when in fact these are Ponzi payments derived from new investor funds rather than actual investment returns. *Id.*

Defendants also operated their entire fraud as a Ponzi scheme, which is a fraudulent device. *Id.* Defendants furthered their scheme by moving money among various accounts and commingling it and quickly transferring investor deposits to themselves or elsewhere. Additionally, Ponzi payments to investors by Defendants are, by definition, an effort to maintain

---

memoranda because he "had the final say on what was communicated to investors and how it was communicated"); *In re Stillwater Capital Partners Inc. Litig.*, 853 F. Supp. 2d 441, 460 (S.D.N.Y. 2012) (allegations that a firm had "no operations and only a few employees" suffice to plead that the defendant officers made the misstatements in the firm's proxy statement).

and hide the scheme from the investors receiving the payments. Ponzi payments are a deceptive act for purposes of Rule 10b-5(a) and (c). *Burnett v. Rowzee*, 561 F. Supp. 2d 1120, 1127-1128 (C.D. Cal., Feb. 11, 2008). Thus, Defendants engaged in an overarching scheme involving deceptive conduct that goes well beyond the misstatements and omissions that they made to investors.

Based on this conduct, Defendants have violated Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act.

2. Defendants violated Sections 206(1) and 206(2) of the Advisers Act by making misrepresentations to investors about the nature of their investments and by misappropriating investor funds.

Sections 206(1) and 206(2) of the Advisers Act prohibit an investment adviser from (1) employing any device, scheme, or artifice to defraud clients or prospective clients; or (2) engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon clients or prospective clients. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 182 n.2 (1963). Scienter is an element of a Section 206(1) violation, but not a Section 206(2) violation, which can rest on a finding of simple negligence. *SEC v. Gruss,* 859 F. Supp. 2d 653, 669 (S.D.N.Y. 2012)*, citing SEC v. DiBella*, 587 F. 3d 553, 567 (2d Cir. 2009) ("[T]he government need not show intent to make out a section 206(2) violation.") Recklessness can satisfy the scienter requirement. *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992); *Gruss,* 859 F.Supp.2d at 669. Misuse of client funds or unauthorized transactions may constitute a violation of Section 206 of the Advisers Act. *See, e.g., SEC v. Olsen*, 243 F. Supp. 338, 339 (S.D.N.Y. 1965).

Section 206 also establishes a fiduciary duty for investment advisers to act for the benefit of their clients. *SEC v. Moran*, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996). As a fiduciary, an

investment adviser owes its clients undivided loyalty, and may not engage in activity that conflicts with a client's interest without the client's consent. Under Section 206, advisers have an affirmative obligation of "utmost good faith and full and fair disclosure of all material facts" to their clients (and prospective clients), as well as "to employ reasonable care to avoid misleading" them. *Capital Gains Research Bureau, Inc.,* 375 U.S. at 194. The duty to disclose all material information is intended to "eliminate, or at least expose, all conflicts of interest which might incline an investment adviser – consciously or unconsciously – to render advice which was not disinterested." *Id*. at 191-92. In particular, courts have found financial conflicts of interest, including undisclosed compensation, to be material facts required for disclosure. *See Gary Plastic Packaging Corp v. Merrill Lynch, Pierce, Fenner, & Smith, Inc.,* 756 F.2d 230 (2d Cir. 1985), *and SEC v. Hasho*, 784 F. Supp. 1059 (S.D.N.Y. 1992).

Each of the Individual Defendants has acted as an investment adviser by providing investment advice about securities. Levy Decl. ¶ 41. Section 202(a)(11) of the Advisers Act defines as an investment adviser, among others, any person who (a) is engaged in the business of (b) advising others regarding securities (c) for compensation. "[M]isappropriation of investor funds is sufficient, by itself, to meet the 'compensation' element." *SEC v. Ahmed*, 2018 WL 1585691 at *16 (D. Conn. March 29, 2018). Santillo purchased at least several investment advisory businesses, and then continued the business of those investment advisers, acting as an investment adviser himself. Levy Decl. ¶ 41. In addition to purchasing investment advisory businesses, Santillo advised clients regarding securities. *Id.* He received compensation through the misappropriation of investor funds. *Id.* Additionally, each of the Individual Defendants advised others regarding securities: they reviewed investors' portfolios; gave investors advice regarding all of the assets in their portfolios; discussed investment strategies; and recommended

certain products. *Id.* Parris, Piccarreto, LaRocco, and Brenner presented themselves to investors as investment advisers who are acting in the interests of individual investors; they provide investment advice regarding investments in securities; and they each received compensation through misappropriated investor funds. *Id.*

For the same reasons that they violated Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act, the Individual Defendants violated Sections 206(1) and 206(2) of the Advisers Act: they made misrepresentations and omissions to investors about the nature of their investments and by misappropriating investor funds. *See* Section I.C.1, *supra*. Additionally, the Individual Defendants also violated those provisions of the Advisers Act by breaching their fiduciary duties owed to the investors when they failed to use investor funds as they represented they would, and when they failed to inform investors that they were misappropriating their funds. *Capital Gains Research Bureau, Inc.,* 375 U.S. at 194. In short, the Individual Defendants failed to put their clients' interests before their own.

Based on this conduct, the Individual Defendants have violated Sections 206(1) and 206(2) of the Advisers Act.

3. Defendants Acted with Scienter.

Scienter is a "mental state embracing the intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193, n. 12 (1976). A defendant's knowledge or recklessness satisfies the scienter requirement. *Novak v. Kasaks*, 216 F.3d 300, 308–12 (2d Cir. 2000). Recklessness is "at the least, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *Id.* at 308 (internal quotation marks and citation omitted). "Representing information as true while knowing it is not, recklessly misstating information, or asserting an opinion on grounds so flimsy

as to belie any genuine belief in its truth, are all circumstances sufficient to support a conclusion of scienter." *SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 424 (S.D.N.Y. 2007) (granting summary judgment to the Commission), *aff'd sub nom. SEC v. Altomare*, 300 Fed. App'x 70 (2d Cir. 2008).

Defendants knew or were reckless is not knowing that they were defrauding investors. Defendants promoted a fraudulent scheme, which is itself sufficient to establish scienter. *See Webster v. Omnitron Int'l*, 79 F.3d 776, 785 (9th Cir. 1996) ("[a] jury could rationally conclude that the promotion of a pyramid scheme demonstrates the necessary fraudulent intent"). Further, Santillo, Parris, LaRocco and Brenner either control or are principals at one or more of the issuers whose securities they sold. Levy Decl. ¶¶ 8-10, 12. Santillo and Parris also control a number of bank accounts through which a substantial amount of investor funds flowed. Levy Decl. ¶¶ 29-30; Baker Decl. ¶ 22 & Exs. 1-3. And LaRocco and Brenner each control at least one bank account respectively for one of the issuers. *Id.* The bank records show that these accounts received investor funds and then shortly thereafter, the funds were commingled and transferred elsewhere, including to Ponzi payments to redeeming investors and to misappropriations by the Individual Defendants. Levy Decl. ¶¶ 8-10, 12. Similarly, Piccarreto received a large payment immediately after inducing an investment in Percipience based on misrepresentations and omissions. Levy Decl. ¶¶ 29-39; Baker Decl. ¶ 22 & Exs. 1-3.

Thus, Defendants acted with scienter because they knowingly misrepresented how they use investor funds while knowingly misappropriating those funds without disclosing that misappropriation to investors. *See also* Section I.C.1, *supra*.

Under principles of *respondeat superior*, courts in the Second Circuit have long attributed the scienter (and conduct) of officers and employees who engaged in the fraud to the

corporate entities for whom they worked. *See, e.g., Suez Equity Investors, L.P. v. Toronto-Dominion Bank*, 250 F.3d 87, 100–01, 105 (2d Cir. 2001) (reversing district court's dismissal of a Section 10(b) primary liability claim against corporate defendants because the complaint adequately alleged fraud by defendants' agent); *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 543 (S.D.N.Y. 2011) ("When the defendant is a corporate entity, the law imputes the state of mind of the employees or agents who made the statement(s) to the corporation.") (citing *Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.*, 531 F.3d 190, 195 (2d Cir. 2008)); *In re Parmalat Sec. Litig.*, 474 F. Supp. 2d 547, 550 (S.D.N.Y. 2007) ("[P]rincipals typically are liable for torts and crimes committed by their agents acting within the scope of their authority. This long has been applied to impose *respondeat superior* liability in federal securities and criminal cases."). Here, Santillo is a founder, member, manager, and CEO of First Nationle. Levy Decl. Ex. 4 (First Nationle Operating Agreement) at 1-2. Parris is a manager of First Nationle, a founder and owner of Percipience, and a member and owner of United RL. *Id.* Ex. 5 (Lucian Development Form D) at 5; Ex. 6 (First Nationle Promissory Note) at 1; Ex. 7 (Percipience PPM) at 2; Ex. 8 (United RL Operating Agreement) at 1. LaRocco is a founder, manager, and CEO of United RL. *Id.* Ex. 9 (United RL PPM) at 1, 9, and 15. Thus, the scienter of Santillo, Parris, and LaRocco is attributed to First Nationle, Percipience, and United RL.

4. Defendants' Fraud Occurred in Connection with the Sale of Securities.

Shares of stock, such as those of Percipience, are securities. *See Landreth Timber Co. v. Landreth*, 471 U.S. 681 (1985) ("'Stock' is considered to be a 'security' within the meaning of the [Securities and Exchange] Acts."). Promissory notes, such as those of First Nationle and United RL, are securities. *See Reves v. Ernst & Young*, 494 U.S. 56, 60–61 & n.1, 65, 67 (1990)

("An instrument denominated a 'note'…is presumed to be a 'security'" because the Exchange Act "define[s] 'security' to include 'any note.'").

"It is enough that the scheme to defraud and the sale of securities coincide." *SEC v. Zandford*, 535 U.S. 813, 822 (2002); *see also Press v. Chem. Inv. Servs. Corp.*, 166 F.3d 529, 537 (2d Cir. 1999) (misrepresentations that "somehow induced the purchaser to purchase the security at issue" satisfy the "in connection with" requirement).[9]

Defendants sold securities in the form of stock and notes in connection with their fraudulent offerings and scheme. *See* Levy Decl. ¶¶ 13-15, 19-26. Thus, Defendants' fraud occurred in connection with the sale of securities.

5. The Individual Defendants Aided and Abetted the Entity Defendants' Fraud.

Securities Act Section 15(b) [15 U.S.C. § 78o(b)] and Exchange Act Section 20(e) [15 U.S.C. § 78t(e)] each provide that "any person that knowingly or recklessly provides substantial assistance to another person in violation of" the Securities or Exchange Act or rules or regulations thereunder "shall be deemed to be in violation of such provision." 15 U.S.C. §§ 77o(b) & 78t. To establish that the Individual Defendants aided and abetted the Entity Defendants' violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5, the Commission must therefore prove: (1) the existence of a securities law violation by one or more of the Entity Defendants; (2) the Individual Defendants' knowledge or recklessness; and (3) the Individual Defendants' substantial assistance in the achievement of the primary

[9] While Section 10(b) prohibits fraud "in connection with the purchase or sale of any security," Section 17(a) prohibits fraud "in the offer or sale of any securities." 15 U.S.C. §§ 77q(a) & 78j(b). No meaningful difference exists between these formulations, at least where the fraud induced the securities' purchase. *See United States v. Naftalin*, 441 U.S. 768, 773 n.4 (1979) (noting, without deciding the issue, that "we are not necessarily persuaded that 'in' is narrower than 'in connection with'" and that "[b]oth Congress…and this Court…have on occasion used the terms interchangeably"); *SEC v. Norton*, 1997 WL 611556, at *3 n.1 (S.D.N.Y. Oct. 3, 1997) ("[T]he Court will treat the two phrases interchangeably.") (citing *Naftalin*, 441 U.S. at 773 n.4).

violation. *SEC v. Apuzzo*, 689 F.3d 204, 206 (2d Cir. 2012); *id.* at 211 n.6 (noting that Congress amended Exchange Act Section 20(e) in 2010 to include recklessness, not just knowledge, as a basis for aiding-and-abetting liability). A defendant substantially assists a securities fraud when "he in some sort associate[s] himself with the venture, …[he] participate[s] in it as in something that he wishe[s] to bring about, [and]…he [seeks] by his action to make it succeed." *Apuzzo*, 689 F.3d at 212 (quoting *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938)).

First, the Entity Defendants have violated Section 17(a), Section 10(b), and Rule 10b-5, as set forth above. The Individual Defendants' actions on behalf of the Entity Defendants (and their scienter, as described above) can and should be imputed to them. *See, e.g., SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 812–13 (2d Cir. 1975) ("Our conclusion is buttressed by the clear holdings of the four circuits which have applied agency principles to hold brokerage firms liable for the acts of their employees."); *SEC v. Tourre*, No. 10 Civ. 3229 (KBF), 2014 WL 61864, at *7 & n.6 (S.D.N.Y. Jan. 7, 2014) (employee could be held liable as aider and abettor of employer's fraud where employee's acts could be imputed to employer under *respondeat superior*).

Further, the Individual Defendants had knowledge of the primary violations by the Entity Defendants because they acted on behalf of the issuers. *See* Levy Decl. ¶¶ 8-12, 16-18, 33-39. Additionally, all of the Individual Defendants provided substantial assistance to those violations. Specifically, they solicited investors, provided investors with the offering documents or account statements that contained the misstatements and omissions, and persuaded investors to invest. *Id.* Furthermore, they each knowingly facilitated the securities violations by the Entity Defendants by making materially false oral statements to individual investors regarding the nature of the investments those individual investors are making, telling them, for example, that

the proceeds from their investor funds would be used to carry out the business of the issuer in which the investment was being made, and assuring the investors that their investments were sound, while facilitating the misappropriation of funds. *Id.*; *see also* Section I.C.1, *supra*

6. Defendants' fraud, unless restrained and enjoined, will continue.

Defendants' fraud is ongoing. The Commission's analysis of bank account statements shows that Defendants' fraudulent activity is ongoing as of the date of the most recently available statements, May 2018. Baker Decl. ¶ 20. Additionally, past illegal conduct is highly suggestive of the likelihood of future violations. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1100 (2d Cir. 1972). Defendants' illegal conduct is not isolated, but is part of a pattern and practice that repeated itself over a period of many years and continues. *See id.* (holding that "factors suggesting that the infraction might not have been an isolated occurrence" are relevant in determining whether the defendant is "likely to repeat the wrong"). Defendants' ongoing fraud must therefore be stopped.

d. The Commission has shown a basis to infer that Defendants violated the federal securities laws and a concern that defendants will dissipate their assets or transfer them beyond the jurisdiction of the United States; the Court should freeze Defendants' assets.

As detailed above, the Commission has shown more than a basis to infer that Defendants violated the federal securities laws, and has made a *prima facie* case that Defendants did so. *See* Section I.C, *supra*; *see also Hedén*, 51 F. Supp. 2d at 298 (holding that an asset freeze requires "a lesser showing" than a preliminary injunction against future securities law violations). The Commission has also demonstrated "a concern that defendants will dissipate their assets or transfer them beyond the jurisdiction of the United States." *Gonzalez de Castilla*, 145 F. Supp. 2d at 415. Defendants have misappropriated at least $20 million in investor funds, and it is unclear how much – if any – of those funds remain. Indeed, Santillo himself has bragged about

his high life, indulging in $10,000 suits and champagne, while using investor funds for housing in multiple states, car leases, expenditures on a country club and a Las Vegas resort and casino, credit card payments, and other personal expenses. Levy Decl. ¶ 41 . So it is clear that Defendants are dissipating assets. Additionally, a bank analysis has shown that Defendants have transferred at least some funds to foreign accounts. Baker Decl. ¶ 21. A concern therefore exists that Defendants are dissipating or transferring assets so that they could not be recovered and returned to investors. Thus, the Court should enter an order freezing Defendants' assets.

The Commission seeks an asset freeze against Defendants**.** The SEC seeks to enforce the asset freeze against each of the Defendants, as there was substantial comingling of assets. *See* Section I.C, *supra.*

II. The Court should order Defendants to repatriate funds transferred abroad.

Exchange Act Section 21(d)(5) [15 U.S.C. § 78u(d)] authorizes the Court to grant equitable relief "that may be appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5). Under this provision, courts routinely order defendants and relief defendants to repatriate assets held in foreign accounts or locations, usually to help effectuate an asset freeze. *See, e.g., SEC v. Compania Internacional Financiera S.A.*, 2011 WL 3251813, at *13 (S.D.N.Y. July 29, 2011) ("[A]n order to bring assets to the United States is appropriate if needed to make effective an asset freeze and preserve assets for potential future relief."); *SEC v. Illarramendi*, 2011 WL 2457734, at *6 (D. Conn. 2011) ("[W]here the Court has the authority to order equitable relief such as an asset freeze in order to preserve particular funds in anticipation of potential future disgorgement, it also has the authority to order repatriation of assets to effectuate that freeze order."). A repatriation order is appropriate here, given that a bank analysis has shown that Defendants have transferred at least some funds to foreign accounts. Baker Decl. ¶ 21.

III. The Court should schedule a Preliminary Injunction hearing.

The Commission requests that, after the temporary restraining order is entered and the asset freeze is in place, the Court schedule this matter for a preliminary injunction hearing. The Commission requests that, at that hearing, the Court extend the asset freeze and enter an order preliminarily finding that the Defendants have violated the securities laws.

IV. The Court should order expedited discovery, and should order Defendants not to alter or destroy documents.

As the Commission requests that the Court schedule this matter for preliminary injunction hearing, the Commission requests that the Court order expedited discovery to allow it to prepare for that hearing. *See Anticevic et al.*, No. 05 Civ. 6991(KMW), 2005 WL 1939946 (KMW) (S.D.N.Y. Aug. 5, 2005) (ordering expedited discovery in connection with an asset freeze and order to show cause). To preserve documents that the Commission may later seek through discovery requests, the Commission seeks an order prohibiting Defendants from altering or destroying documents, including documents concerning the allegations of the Complaint or the assets or finances of Defendants. Such orders are routinely granted "to preserve the status quo until a final resolution of the merits." *SEC v. Spongetech Delivery Sys., Inc.*, 2011 WL 887940, at *5 (E.D.N.Y. Mar. 14, 2011) (citing *Unifund*, 910 F.2d at 1040 n. 11) (upholding an order prohibiting the alteration or destruction of documents).

V. The Court should order Defendants to provide a sworn accounting.

Courts may impose the equitable remedy of a sworn accounting to provide an accurate measure of unjust enrichment and defendants' current financial resources. *See, e.g., SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 n.29 (2d Cir. 1972); *SEC v. Lybrand*, No. 00Civ.1387 (SHS), 2000 WL 913894, at *12 (S.D.N.Y. July 6, 2000); *SEC v. Margolin*, No. 92 Civ. 6307 (PKL), 1992 WL 279735, at *7 (S.D.N.Y. Sept. 30, 1992); *SEC v. Universal Consulting Resources*

LLC, No. 10-cv-02794-JLK-KLM, 2010 WL 4873733, at *4 (D. Colo. Nov. 23, 2010) (ordering defendants and relief defendant to provide a sworn accounting). An accounting is critical to determine the disposition of funds raised from investors, the amount of Defendants' ill-gotten gains, and the assets available for disgorgement.[10] The Court should order one here.

VI. Entry of an *ex parte* Temporary Restraining Order is Appropriate.

Under Federal Rule of Civil Procedure 65(b), an *ex parte* temporary restraining order may be entered if (1) it appears from specific facts shown by affidavit that immediate and irreparable injury, loss or damage will result before the adverse party can be heard in opposition; and (2) the applicant's attorney certifies the reasons supporting the claim that notice should not be required. As explained in the Certification of Dina Levy, filed herewith, the Commission is concerned that if the Defendants become aware of this action before the asset freezes are instituted, they will move their assets. Accordingly, *ex parte* relief is necessary to prevent the Defendants from removing funds from the accounts of which the Commission is aware.

CONCLUSION

For the foregoing reasons, the Court should grant the Commission's emergency application.

[10] An accounting is crucial to determining the complete scope of Defendants' fraud, which appears even more substantial with each new piece of evidence obtained by the Commission. For example, the Commission recently received additional bank records for a First Nationle account that are not included in the accounting described herein. *See* Baker Decl. ¶ 23. A preliminary review of the account shows additional funds transferred to Santillo: from February 2013 through December 2016, Santillo netted an additional $3.2 million in that account. *Id.* The account also reflects $3.9 million of credit card payments noting Perry Santillo in the payment information. *Id.* Preliminary review also shows that through this account, Defendants received approximately $8.1 million of funds from likely investors and paid back approximately $375,000 of funds to likely investors. *Id.*

Dated: June 19, 2018
New York, New York

By: 

Marc P. Berger
Lara S. Mehraban
Thomas Smith
Dugan Bliss
Dina Levy
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281-1022
(212) 336-0971 (Bliss)
Email: BlissD@sec.gov