

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

<b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	<b>Case No.</b>
	)	
<b>GUSTAVO A. GUZMAN</b>	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (“SEC”), alleges as follows:

1. This case concerns a fraudulent scheme perpetrated for more than five years by defendant Gustavo A. Guzman (“Guzman”), an unregistered investment adviser, related to his sale of interests in two unregistered private funds, G2 Asset Management LLC (“G2”) and East Egg Private Equity (“East Egg”). During that time, Guzman raised more than \$2.1 million from at least a dozen investors. Guzman told prospective G2 investors that their investments would be safe and their capital preserved, and that G2 would invest in equity options. Similarly, Guzman represented that East Egg would invest in real estate. In reality, Guzman misappropriated about a third of the investors’ money, which included making Ponzi payments, and lost the remainder through his options trading while misleading existing or prospective investors about G2’s performance. To conceal his scheme and induce investors to invest more money, Guzman sent investors account statements, tax documents, and other communications that falsely inflated their balances and investment performance. The SEC brings this lawsuit to halt Guzman’s fraudulent

securities activity, to prevent further harm to investors, and to obtain disgorgement, civil penalties and such other relief the Court deems appropriate.

### **JURISDICTION AND VENUE**

2. The SEC brings this action pursuant to Section 20(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(b)], Sections 21(d) and 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) ([15 U.S.C. §§ 78u(d) and 78u(e)], and Section 209(d) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-9(d)].

3. The Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

4. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Western District of North Carolina and elsewhere.

5. Guzman transacted business within the Western District of North Carolina.

6. Guzman, directly and indirectly, made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein, and will continue to do so unless enjoined.

### **DEFENDANT**

7. **Gustavo A. Guzman**, age 54, on information and belief, resides in California. From at least 2009 to the present, Guzman has been the founder and managing member of G2 and from at least 2014 to the present, Guzman has been the founder and managing partner of East Egg.

## RELATED PARTIES

8. **G2 Asset Management LLC.** G2 is a Michigan corporation with its principal place of business in Fullerton, California. G2 was formed by Guzman in November 2009.

9. **CAS Creative Options LLC (“CAS”).** CAS is an Arizona corporation with its principal place of business in Fullerton, California. CAS was formed by Guzman in June 2011.

10. **East Egg Private Equity (“East Egg”).** East Egg appears to have been created by Guzman in 2014, but does not appear to have ever been formally incorporated or registered.

## FACTS

11. In 2009, Guzman, an options trading instructor for Company A, with Individual A, a former student of Guzman’s, founded G2, which was an unregistered private fund incorporated in Michigan that purportedly focused on options trading. Guzman and Individual A divided responsibilities for G2 so that Guzman would handle investing and Individual A would perform administrative tasks. Individual A left G2 in February 2011.

12. Throughout the existence of G2, Guzman enjoyed complete control over its operations and investment decisions and retained sole access to G2’s bank and brokerage accounts.

13. Guzman provided potential G2 investors with an operating agreement (“Operating Agreement”) and told them their investments would be safe, minimize risk, and focus on options trading.

14. Among other things, the Operating Agreement stated that: (a) Guzman and Individual A were “managers” of G2; (b) G2 would establish a separate capital account for each member of G2; and (c) the G2 managers would receive a monthly management fee of 1/12 of 2% of G2’s assets under management and 20% of any annual net profit.

15. Guzman vouched for the safety of investments in G2 and offered investors the opportunity to invest in either a program that guaranteed returns of between 4% and 8% or an actively managed program that could return up to 25%. In fact, Guzman commingled all funds despite the fact that not all investors opted for the same program.

16. In June 2011, Guzman founded CAS, which occasionally provided options trading classes to investors. CAS was not identified in the Operating Agreement, however, Guzman sometimes described CAS as a subsidiary of G2, some of the investors' checks were made out to CAS, and some of the investors received quarterly statements that referenced CAS.

17. Guzman regularly disregarded corporate formalities and routinely commingled investor funds between G2 and CAS.

18. Between April 2010 and at least August 2015, Guzman raised more than \$2.1 million from investors located in at least five states (North Carolina, South Carolina, Illinois, Washington, and California).

*Guzman Misappropriated Investor Funds*

19. Of the approximately \$2.1 million Guzman raised, he misappropriated approximately a third of the investors' money, spending it on personal and business expenses.

20. For example, in 2011, Guzman used at least \$130,000 of investor funds for personal expenses. During that time, Guzman paid himself \$23,500, used \$2,000 for apartment rent, and \$1,000 for a loan to CAS. He also transferred \$64,000 of the \$130,000 to his personal brokerage account, from which he paid credit card bills of \$20,697, wrote checks totaling \$35,428, and transferred \$17,474 to another personal bank.

21. During 2012, Guzman paid himself nearly \$58,000 and transferred more than \$160,000 of additional investor funds to a bank account in the name of CAS. Guzman used that

money to, among other things, pay for apartment rent, buy gasoline, pay for services at a resort and spa, and make numerous other unauthorized purchases under \$500.

22. That same year, Guzman also spent at least \$14,500 of investor funds in the G2 bank account at tire stores, the Apple store, on apartment rent, on vehicle registration for a Ferrari, and on numerous debit card transactions.

23. By the end of 2012, only \$758,000 remained of the \$1,850,000 that had been invested in G2. Of the \$1,092,000 that was gone, Guzman had used at least \$235,000 to pay himself, pay his personal expenses, and make approximately \$36,000 in Ponzi payments (i.e., purported returns or redemptions paid to an investor that are actually the principal of other investors). Guzman lost the remainder through trading and other business-related expenses.

24. In June 2013, Investor A invested an additional \$100,000. Guzman used only \$65,000 of that amount for trading and diverted the remainder to pay for personal expenses and more than \$15,000 in Ponzi payments to other investors. Guzman never informed investor A that he had misappropriated G2 assets or used them to make Ponzi payments.

25. In December 2013, Guzman obtained \$100,000 from Investor B. None of Investor B's money was ever used for trading. Instead, Guzman spent the money on personal and business expenses, including apartment rent, credit card bills, travel expenses, cash withdrawals, and \$6,700 paid to a performance car company. Guzman never informed Investor B that he had misappropriated investor funds or used them to make Ponzi payments.

26. In 2014, having spent or lost almost all of the money initially raised for G2, Guzman turned his attention to a new venture, East Egg, a purported real estate hedge fund.

27. Guzman developed a business plan for East Egg and solicited investors through a dedicated website and other venture capital websites, such as AngelList. The business plan

claimed that East Egg was a “fixed-rate, closed-end, non-diversified management investment company” that would “aim to invest in real estate and simultaneously invest in hedges to protect those investments.” The business plan said it would pay investors an annual rate of return of 8.5%, plus an additional 2% for early investors.

28. In February 2015, Guzman received \$25,000 to invest in East Egg from Investor D. Guzman told Investor D that his investment would be safe and invested in real estate.

29. Guzman never invested Investor D’s money in real estate. Instead, Guzman used Investor D’s money for cash withdrawals, apartment rent, and a Ponzi payment to a G2 investor.

*Guzman Made Material Misrepresentations to G2 Investors*

30. Guzman has also made repeated material omissions and misrepresentations to existing and prospective investors about the investment performance of G2, the scope of G2’s operations, and the status of East Egg.

31. For example, Guzman raised approximately \$1,050,000 for G2 from five investors between April 2010 and December 2010. By the end of 2011, Guzman had lost more than 80% of that money through trading; but Guzman never disclosed these losses to investors.

32. Instead, between at least January 6, 2011 through February 6, 2015, Guzman sent communications to existing and prospective investors misrepresenting the performance of their investments and concealing losses by inflating their account balances.

33. For example, in April 2012, Guzman sent e-mails to Investor A and Investor A’s father (“Investor A1”) containing an IRS 1099-MISC and IRS K-1 for Investor A1’s investment reflecting a purported investment gain of almost 19% in 2011. In fact, the 1099-MISC and K-1 misrepresented G2’s performance, which was really an 82.09% loss, and showed an inflated balance that failed to reflect the losses or Guzman’s misappropriation of funds.

34. On April 18, 2012, Guzman sent an e-mail to Investor A and Investor A1 claiming that “G2 has grown quite a bit this year, and we have purchased and merged with some smaller firms. Currently we are working through the process of an IPO of part of our company, and expect to have that project completed Q4 2012.” This was false, as G2 had not grown or merged with any other companies. On information and belief, G2 was also not working on an IPO.

35. On August 24, 2012, Guzman sent an e-mail to Investor A and Investor A1 with an account statement for Investor A1’s investment for the period January 1, 2012 through July 31, 2012. This account statement contained an inflated balance that failed to reflect the losses in 2011 and Guzman’s misappropriation, and also misrepresented that G2 had experienced a 7.3% gross return, when in fact it had a return of 3.05% for that period.

36. After receiving these communications from Guzman containing false and misleading performance information about G2, Investor A invested \$300,000 on December 28, 2012. Based on representations from Guzman, Investor A believed he was investing in a fund managed by Guzman.

37. On March 24, 2013, Guzman sent Investor A and Investor A1 a K-1 for Investor A1’s investment with G2. The K-1 reflected a \$59,139 investment gain for 2012 representing a return of approximately 18.6%. This was false, since the actual investment performance of G2 in 2012 was a loss of 9.42%. Additionally, the K-1 still failed to reflect the losses from 2011 and Guzman’s misappropriation.

38. After receiving these communications containing false and misleading performance information about G2, Investor A invested an additional \$100,000 in June 2013.

39. As in prior years, in 2014, Guzman sent Investor A and Investor A1 false K-1s that reflected false investment performance and balances.

40. Guzman also sent one of the original investors, Investor C, communications that falsely represented G2's investment performance. On April 11, 2012, Guzman sent an IRS 1099-MISC to Investor C showing a profit from the inception of his investment, when in reality most of that money was lost through trading or used by Guzman for personal expenses.

41. In 2012, Guzman represented to Investor C through e-mails that G2 "did pretty well overall," in 2011 and that G2 was working on an initial public offering that would "really boost our returns for the coming year". Guzman also identified 19 people that were supposedly members of the "G2 Asset Mgt. Team." None of this was true. G2's investment performance in 2011 was poor; upon information and belief, G2 was not working on any initial public offering; and G2 did not have a multi-person asset management team. In fact, by this time, Guzman operated G2 mostly as a one-person operation.

42. Furthermore, in 2014, Guzman sent Investor C Form K-1s for 2013, which falsely reflected inflated balances and returns.

43. In December 2013, an independent contractor for CAS told an acquaintance, Investor B, that G2 had been in business for 15 years and averaged a 15% return in all but two years, with a 25% return in 2013. Guzman was the source of this false information. Based on this information, in December 2013, Investor B invested \$100,000. Investor B believed that he was investing in a fund managed by Guzman.

44. By the end of 2014, Guzman had lost or spent nearly all of the investors' money without ever disclosing that information to investors.

45. In 2015, Guzman provided at least one investor, Investor D, with the East Egg business plan and a G2 operating agreement. Guzman told Investor D the investment would be safe and invested in real estate. The business plan also claimed that the fund would invest most



of its assets in a “broad range of physical real estate” and the investor would receive an annual return of 8.5% plus an additional 2% for being an early investor.

46. These representations were false. By this time, G2 was a complete failure and there was no basis for representing that East Egg investors would receive an annual return of 8.5-10.5%. Moreover, East Egg was never established as a formal entity and was simply part of Guzman’s overall scheme to raise money from investors to support himself and his lifestyle.

47. Memberships in G2 were securities because they were investment contracts in which money was invested in a common enterprise. G2 possessed horizontal commonality because Guzman pooled investor funds and each investor expected a pro rata share of profits with the fortunes of the investors tied together. G2 also possessed strict vertical commonality because Guzman’s compensation per the Operating Agreement - 2% of assets under management and 20% of profits – was directly tied to the investment performance of investors’ funds.

48. The partnership interests in East Egg were also securities because they were investment contracts in which money was expected to be invested in a common enterprise. East Egg possessed horizontal commonality because Guzman marketed it as a closed-end fund, which implied to any reasonable investor that it involved pooling, and the investors expected a pro rata share of profits with the fortunes of the investors tied together. East Egg also possessed strict vertical commonality because Guzman’s compensation per the business plan – 1.5% of the value of the portfolio – was directly tied to the performance of investors’ funds.

## COUNT I

### **Violations of Section 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1), (2) and (3)]**

49. Paragraphs 1 through 48 are realleged and incorporated by reference as though fully set forth herein.

50. By virtue of the conduct alleged herein, Guzman, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, has: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

51. In engaging in the conduct described herein, Guzman acted knowingly and/or with reckless disregard for the truth and/or negligently.

52. By reason of the foregoing, Guzman violated, and unless enjoined will likely again violate, Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(1), § 77q(a)(2) and § 77q(a)(3)].

## **COUNT II**

### **Violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder**

53. Paragraphs 1 through 48 are realleged and incorporated by reference as though fully set forth herein.

54. By virtue of the conduct alleged herein, Guzman, directly or indirectly, singly or in concert with others, by use of the means or instrumentalities of interstate commerce, or by the use of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, has: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make statements made, in the light of the circumstances under which

they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities and upon other persons.

55. In engaging in the conduct described herein, Guzman acted knowingly or with a reckless disregard for the truth.

56. By reason of the foregoing, Guzman violated, and unless enjoined will likely again violate, 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].

### **COUNT III**

#### **Violations of Advisers Act Sections 206(1) and 206(2) [15 U.S.C. § 80b-6(1) and (2)]**

57. Paragraphs 1 through 48 are realleged and incorporated by reference as though fully set forth herein.

58. Guzman was solely responsible for managing investments in G2. In exchange for these services, the G2 Operating Agreement entitled Guzman to a management fee. Guzman defrauded G2 – his client – when he paid himself an excessive fee and misappropriated its assets.

59. As more fully described in paragraphs 1 through 46 above and as alleged in this claim, at all times alleged in this complaint, Guzman, while acting as an investment adviser, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud its clients or prospective clients; and (ii) engaged in transactions, practices and course of business which have operated as a fraud or deceit upon its clients or prospective clients.

60. By reason of the foregoing, Guzman violated Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

## COUNT IV

### **Violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 [17 C.F.R. § 275.206(4)-8] thereunder**

61. Paragraphs 1 through 48 are realleged and incorporated herein by reference as though fully set forth herein.

62. Guzman defrauded actual and prospective investors in G2 by making omissions and false and misleading statements regarding G2's performance, the use of funds, and the scope of its operations. Guzman also provided investors with false account statements and tax forms that misrepresented the true performance of the investments and misappropriation of the funds.

63. By his conduct, Guzman, while acting as an investment adviser, directly or indirectly, by use of the mails or means or instrumentalities of interstate commerce, engaged in acts, practices, or courses of business that were fraudulent, deceptive, or manipulative.

64. By his conduct, Guzman, while acting as an investment adviser to a pooled investment vehicle: (a) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to investors or prospective investors in the pooled investment vehicle; or (b) engaged in acts, practices or courses of business that were fraudulent, deceptive, or manipulative with respect to investor or prospective investors in the pooled investment vehicle.

65. By reason of the foregoing, Guzman violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

## **RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that this Court:

### **I.**

Issue findings of fact and conclusions of law that Guzman committed the violations charged and alleged herein.

### **II.**

Enter an Order of Permanent Injunction restraining and enjoining Guzman, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with defendants who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation 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] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

### **III.**

Enter an Order of Permanent Injunction restraining and enjoining Guzman, or any entity he controls, from directly or indirectly participating in the issuance, purchase, offer, or sale of any security, with the exception of purchases and sales for his own personal account.

### **IV.**

Issue an Order requiring Guzman to disgorge the ill-gotten gains received, directly or indirectly, as a result of the violations alleged in this Complaint, including prejudgment interest.

**V.**

With regard to Guzman's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Guzman appropriate civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

**VI.**

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VII.**

Grant orders for such other relief as this Court deems appropriate.

**JURY DEMAND**

Pursuant to Rule 39 of the Federal Rules of Civil Procedure, the Commission demands that this case be tried before a jury.

**UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION**

**/s/ Jonathan I. Katz**

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