



solar panel, the “Nanopanel,” does not exist, and the Defendants largely spent their investors’ money on themselves.

2. The Defendants and others made misrepresentations and omitted material facts in filings with the SEC, in a video shown to investors, and in private placement memoranda (“PPM(s)”). The Defendants’ deceptive conduct affirmatively misled investors into believing that the revolutionary solar panel existed and has concealed from investors not only the prior securities fraud conviction of Nanotech’s Chief Financial Officer, Defendant Michael Sweaney, but also the Defendants’ misappropriation of more than \$2.4 million in investor funds – including the Defendants’ purchases of a yacht, several sports cars, and cosmetic surgery.

3. Starting on approximately September 15, 2017 and continuing through December 5, 2019, Defendant Michael Sweaney, masquerading under the pseudonyms “Michael Brooks” and “Michael Hatton,” served as Chief Financial Officer of Nanotech, while his nephew, Defendant David Sweaney, was listed as Chief Executive Officer, and Defendant Jeffery Gange (“Gange”) served as Chief Operations Officer. During this time, Nanotech employees were pressured to, and did, cold-call potential investors from Alaska to Florida, many of whom purchased Nanotech shares.

4. Nanotech filed three separate Forms D with the SEC asserting that this offering of shares was exempt from the registration requirements of the Securities Act of 1933 (“Securities Act”). Those Forms D contained multiple misrepresentations and omissions of material facts, including: (a) the failure to

disclose Michael Sweaney's role with the company and thereby omitting the fact that he had previously been convicted of felony securities fraud, (b) the false statements that Nanotech's executive officers, including the Defendants, would receive only \$15 of investor funds when the Defendants had, in fact, directly and indirectly, received more than \$900,000 by the time the most recent Form D was filed, and (c) misrepresentations regarding the amount of investor money that would be used to pay commissions to Nanotech employees for convincing victims to invest.

5. Nanotech, a Delaware Corporation with operations in Colorado and California, employed numerous "sales agents" (actually unlicensed stockbrokers being paid on a commission basis) in a "boiler-room"-type environment. These sales agents cold-called potential investors across the country. Investors were convinced to invest by false claims of a patent-pending invention that would change the world: the allegedly revolutionary "Nanopanel" solar panel. As stated in Nanotech's PPM:

Solar panels need no longer be large, heavy, fragile, expensive to manufacture and install, with only 20% efficiency. Nanotech Engineering has invented what we believe to be the last generation Solar Panel, thin, lightweight, stronger than steel, yet flexible and three to four times more efficient . . . Also, our panels will allow the use of solar in parts of the world that would otherwise not use solar due to a lack of sunny weather. Even if a customer is only getting 40% efficiency in a non-sunny part of the world, that is still double that of traditional panels.

6. The Nanopanel was the key product discussed in all of the materials that Nanotech and the Defendants distributed to investors. Investors were repeatedly told that the Nanopanel presently existed. In fact, however, the Nanopanel never existed.

7. In furtherance of the Nanotech fraud, in approximately January 2018, Michael Sweaney instructed David Sweaney to create a video that would falsely purport to show the performance of a Nanopanel compared to that of a traditional solar panel. Michael Sweaney said that David Sweaney needed to do this or “we’re all going to jail.” David Sweaney created such a video, which purported to show the out-sized performance of the Nanopanel. Michael Sweaney and Nanotech then used the video to solicit investment in Nanotech. However, the supposedly revolutionary solar panel shown in the video was entirely a fraud – it was a standard solar panel, and the dramatic electricity-generating performance was accomplished by attaching batteries to the underside of the panel.

8. Nanotech solicited investors based on the idea that the Nanopanel existed as a functioning product, stating in their PPM that “Nanotech Engineering has invented the world’s first solar panel based on Nanotechnology.” Among the statements in Nanotech’s PPM about the Nanopanel are that the Nanopanel:

- a. “is about three times more efficient than the best silicon panel on the market.”
- b. “is three to four times less expensive than traditional solar panels,”
- c. “is lightweight and very strong,”
- d. that its cost “is .35-.55 cents a Watt,” and
- e. that it “costs much less and installs more easily than traditional panels.”

All of these statements are materially false and misleading as the Nanopanel did not exist.

9. Potential investors were provided with a PPM, and if they decided to invest, a subscription agreement, which outlined the terms of the investment.

10. Nanotech's website, [www.nanotechengineeringinc.com](http://www.nanotechengineeringinc.com), had this PPM available for potential investors to download. In addition to the false statements about the existence and performance of the Nanopanel, the PPM on Nanotech's website also contained multiple material misrepresentations and omissions, including (a) falsely identifying Nanotech's CFO (Michael Sweaney) as "Michael Hatton," (b) misleading investors about the fact that investor money would be diverted to other entities in which the Defendants and/or other Nanotech employees had an interest, and (c) misleading investors about the fact that certain defendants were misappropriating investor money from Nanotech for their personal use.

11. As of December 4, 2019, Nanotech's website continued to operate and Nanotech continued to solicit additional investor funds.

12. By knowingly or recklessly engaging in the conduct described in this Complaint, the Defendants violated, and unless enjoined will continue to violate, Section 17(a) of the Securities, and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

13. On December 19, 2019, the Court issued a Preliminary Injunction in this case.

14. Through this action, the SEC also seeks:

- a. entry of a permanent injunction prohibiting the Defendants from further violations of the federal securities laws;
- b. orders prohibiting the individual defendants from serving as officers or directors of a public company;
- c. disgorgement of the Defendants' ill-gotten gains, together with prejudgment interest;
- d. disgorgement from the Relief Defendants of all unjust enrichment and/or ill-gotten gains received from the Defendants, together with prejudgment interest; and
- e. orders imposing civil penalties as to each Defendant.

#### **JURISDICTION AND VENUE**

15. The SEC brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act, [15 U.S.C. §§ 77t(b) and 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. §§ 78u(d)] to enjoin such transactions, acts, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil money penalties, and such other and further relief as the Court may deem just and appropriate.

16. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

17. Venue in this District is proper 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]. Defendant Nanotech filed with the SEC in this judicial district three

materially false and misleading Forms D signed by Defendant Gange. Investor victims are located across the country, with addresses in at least 25 states, including Alaska, Washington State, Missouri, Maryland, Florida, and Texas.

18. Additionally, certain of the transactions, acts, practices, and courses of business constituting the violations alleged herein were effected, directly or indirectly, by making use of the means or instruments or instrumentalities of transportation or communication in interstate commerce, or of the mails.

#### DEFENDANTS

19. **Nanotech Engineering, Inc. (“Nanotech”)** is a Delaware corporation formed on August 14, 2017. Nanotech maintains its principal place of business at 2601 Main Street, Suite 370, Irvine, California, and also has a facility located at 140 2nd St. SW, Loveland, Colorado. Neither Nanotech nor its securities have ever been registered with the SEC. Nanotech purports to be in the business of developing revolutionary solar panels. From August 14, 2017 to the present, Nanotech has had no discernable source of income or revenue – virtually all of its funds appear to be investor funds.

20. **Michael James Sweaney, a.k.a Michael Hatton, a.k.a. Michael Brooks**, age 56, is a resident of Irvine, California. Michael Sweaney, operating under the aliases “Michael Brooks” and “Michael Hatton,” served as the Chief Financial Officer of Nanotech. In February 1998, Michael Sweaney pleaded guilty to one count of felony securities fraud in Nevada state court, was ordered to pay restitution to ten investors, and was sentenced to a 12-to-32-month suspended

prison sentence, suspended in favor of two years of probation. Despite efforts to hide his true identity from Nanotech investors, Michael Sweaney has listed his legal name on multiple Nanotech bank forms. During the fraud, as detailed below, Michael Sweaney diverted at least \$550,000 in investor funds for his personal use.

21. **David Sweaney**, age 40, is a resident of Fort Collins, Colorado. David Sweaney was listed as the Chief Executive Officer of Nanotech in multiple documents and is Michael Sweaney's nephew. David Sweaney diverted investor funds for his personal use, including to pay the rent on his personal residence.

22. **Jeffery Gange ("Gange")**, age 57, is a resident of Irvine, California. Gange serves as Nanotech's Chief Operations Officer. Gange signed each of the three materially false and misleading Forms D that Nanotech filed with the SEC. Gange diverted at least \$160,000 in investor funds for his personal use.

#### **RELIEF DEFENDANTS**

23. **Nanotech Finance LLC ("Nanotech Finance")** is a Delaware limited liability corporation, with its principal place of business in Irvine, California. Its single member and manager is Defendant Gange. Nanotech Finance received at least \$650,000 in ill-gotten gains during the scheme.

24. **Omni Golf, LLC ("Omni Golf")** is a California limited liability corporation, with its principal place of business in Irvine, California. Omni Golf's registered address is the same address as Nanotech's address in its May 17, 2018 and June 14, 2018 Forms D, and its sole registered member is Defendant Gange. Omni Golf received at least \$400,000 in ill-gotten gains during the scheme.



25. **3 Dragons LLC (“3 Dragons”)** is a Colorado limited liability corporation, with its principal place of business in Avon, Colorado. 3 Dragons was originally formed by a person who appears to be a relative of David Sweaney, and David Sweaney is listed as an LLC member. 3 Dragons received at least \$480,000 in ill-gotten gains via checks during the scheme.

### THE NANOTECH FRAUD

#### *Nanotech’s Purported “Revolutionary” Business*

26. Nanotech purported to be developing the “Nanopanel,” an innovative solar panel. As described on the Nanotech website, the Nanopanel is “a lightweight, stronger than steel yet flexible Solar Panel that is more than three times more efficient than traditional solar.” Nanotech claimed that its solar products “[s]urpass[] any substance other than reactor-grade uranium regarding energy produced per pound of material.” In Nanotech’s own words, its Nanopanel is nothing short of revolutionary:

Our Nano Solar Panels now give consumers a positive return on investment, making them the ideal choice, and demand for our panels shall be enormous and immediate.

At Nanotech Engineering Inc. we are developing Solar Panels the size of a FedEx Envelope. By layering sheets of Graphene as a substructure, we put a Carbon Nanotube Forest over the top, with our proprietary mineral solution. As the Sun’s rays hit the array, electrons are generated through the forest much faster than Silicon.

Clearly in less than ideal weather this number drops, however the Panels are still more efficient than traditional solar panels in cloudy weather, remember photons still move through clouds, so that we will see panels in places previously unthinkable in the past.

Our solar panels are combined using Graphene sheets into a single structure, from there a Graphene Forest is applied on the surface with

our proprietary minerals, creating a lightweight panel that is stronger than steel yet has pushed the upper limits of the energy that can be received and used by the Sun. In short this is by far the most efficient Solar Panel ever created. Every photon that hits graphene creates three electrons.

Our main market is replacing the old Solar Panels and applications for those that otherwise wouldn't use solar. We also are anticipating applications in parts of the world that have less than ideal weather, if our panel can for example only get 40% in New York, or 20% in Denmark, it will be used, achieving the dream of a solar world!

In fact, as discussed above, the Nanopanel did not exist.

### ***The Commencement of Nanotech's Fraudulent Securities Offering***

27. Beginning in approximately September 2017, Nanotech began selling securities – shares of Nanotech – through a private placement memorandum. These securities were not registered with the SEC. The shares were priced at \$2.80 per share, and the company stated that it planned to sell 24 million shares – a capital raise of \$67.2 million – which, allegedly, represented 25% of the equity of Nanotech. Thus, the Defendants indicated that, if the capital raise was successful, Nanotech would have a valuation of approximately \$268 million. The stated minimum investment amount was \$28,000, though Nanotech sometimes accepted investments of smaller amounts.

28. Broadly speaking, Section 5 of the Securities Act [15 U.S.C. § 77e] makes it unlawful to offer or sell a security in interstate commerce unless there is a registration statement in effect for the security, or unless certain exemptions apply.

29. Regulation D [17 C.F.R. § 230.501, *et seq.*] provides for multiple exemptions to Section 5's registration requirement.

30. Nanotech asserted that its offering of unregistered Nanotech securities was exempt from Section 5's registration requirement pursuant to Regulation D, Section 506(c) [17 C.F.R. § 230.506].

31. If a company is offering and selling securities in reliance on certain provisions of Regulation D, including Section 506(c), it is required to file a Form D with the SEC within 15 days of the first sale of security, and Form D sets forth a list of information that the Company is required to provide, including:

- A list of related persons – defined to include: “Each executive officer and director of the issuer and person performing similar functions . . .” (Item 3);
- The name and address “for each person that has been paid or will be paid directly or indirectly any commission or other similar compensation in cash or other consideration in connection with the sales of securities in the offering . . .” (Item 12);
- The amount of sales commissions paid, or estimated to be paid (Item 15); and
- The “amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3” (Item 16).

32. 17 C.F.R. § 239.500 requires, *inter alia*, that any entity that has filed a Form D must amend that Form D, as soon as practicable, (a) to correct any material mistake of fact, or (b) when there is increase of more than 10% in the amount of commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters.

33. The Nanotech shares that were offered and sold are securities under the federal securities law. Not only are equity shares sold for investment purposes a classic example of a security, but also Nanotech's private placement memorandum refers to the shares as a "Regulation 'D', 506C Covered Security." Additionally, each of the three Forms D that Nanotech filed with the SEC is entitled "Notice of Exempt Offering of Securities" and specifies the type of securities being offered as "Equity."

34. Nanotech employs a team of "telephone sales agents" to cold-call potential investors. These "sales agents" have, at least at times, been paid on a commission basis, meaning that they are actually securities "brokers" within the meaning of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], because receiving transaction-based commissions is one of the hallmarks of a broker.

35. When sales agents call potential investors, they try to get them to view a web-share presentation and, ultimately, to invest. Potential investors are then provided with Nanotech's banking information so that they can transfer / wire funds to Nanotech. Potential investors are also provided with copies of a private placement memorandum, which allegedly provides information about Nanotech.

36. In total, starting in September 2017 and continuing to at least October 22, 2019, Nanotech's bank records reflect that it has raised at least \$9.4 million from investors. One investor alone appears to have sent \$2,000,000 to Nanotech.

37. Bank and shipping records indicate that Nanotech's investors live across the country in at least 25 states.

***Nanotech Solicited Investors Using a Video Falsely Purporting to Show a Nanopanel Outperforming a Traditional Solar Panel***

38. Nanotech's Nanopanel was the key product discussed in all of the materials the Defendants distributed to investors. Investors were repeatedly told that the Nanopanel presently existed, outperformed traditional solar panels, and would be the basis for Nanotech's future success. In fact, the Nanopanel never existed.

39. In early 2018, Michael Sweaney instructed David Sweaney to create a non-functioning mock-up of what the Nanopanel would look like and provided the specifications for what the mock-up should look like. David Sweaney created this mock-up, which did not contain any nanotechnology.

40. After David Sweaney created the mock-up of the Nanopanel, Michael Sweaney directed David Sweaney to create a working Nanopanel and make a video showing it outperforming a traditional solar panel. Michael Sweaney told David Sweaney that he needed to do this or "we're all going to jail."

41. David Sweaney had no education or experience in nanotechnology or solar power prior to attempting to create the Nanopanel. His primary sources of

employment over the course of his career were working construction and managing bars and restaurants.

42. David Sweaney created a smaller solar panel by using materials from a traditional solar panel. This smaller solar panel did not contain any nanotechnology and did not produce as much electricity as a full-sized traditional solar panel.

Michael Sweaney directed David Sweaney to increase the electrical output of the smaller panel by adding batteries to the back of the smaller solar panel, and David Sweaney did so.

43. David Sweaney then created the comparison video at Michael Sweaney's direction. In the video, there are two solar panels. The larger panel is a full-size traditional solar panel. The smaller panel is the smaller solar panel (with concealed batteries) created by David Sweaney. The video purports to show the small panel producing more electricity than the large panel. In fact, this increased output from the small panel was only achieved with the addition of the concealed batteries in the back of the smaller panel. The smaller panel in the video did not contain any nanotechnology.

44. At Michael Sweaney's direction, Nanotech employees showed this comparison video to numerous investors and potential investors. Nanotech employees falsely told investors that the smaller panel in the video was the nanotechnology-based Nanopanel. The Defendants concealed from investors the material fact that the smaller panel's electricity generating capabilities were achieved by the assistance of batteries. Both David Sweaney and Michael Sweaney

knew at the time that this video was created that the Nanopanel did not exist, and that the video was achieved by the use of a misleading battery-powered panel.

45. Following the creation of the comparison video, David Sweaney continued to attempt to create the Nanopanel. Although David Sweaney may have hoped, despite his lack of prior experience in nanotechnology, that he could have created the Nanopanel in the future, that is not relevant, as investors were falsely told it had already been created.

***Nanotech Filed Its First Misleading Form D in May 2018***

46. On May 17, 2018, more than seven months after Regulation D's 15-day deadline had passed, Nanotech filed its first Form D with the SEC regarding this offering. In that Form D, Nanotech proposed offering \$30 million worth of equity shares and indicated that \$1.2 million had already been sold to 41 investors.

47. This May 2018 Form D had multiple misstatements and omissions of material facts that were never corrected by Nanotech.

48. In Item 3, (Related Persons) of its May 2018 Form D, Nanotech listed only David Sweaney.

49. In reality, multiple other persons served as Nanotech's executive officers, including, at least, Michael Sweaney and Gange.

50. The failure to list Michael Sweaney and Gange was not only misleading, but materially so; it was part of a scheme to hide the role of convicted felon Michael Sweaney.

51. Although he was listed as the Chief Financial Officer of Nanotech, Michael Sweaney actually controlled and was in charge of all operations of Nanotech. Listing of David Sweaney as CEO was another materially false and misleading fact, as David Sweaney was not in charge of Nanotech. Indeed, while David Sweaney participated in the fraudulent offering by, *inter alia*, creating the fake Nanopanel video described above, David Sweaney was not even aware that he was identified as Nanotech's Chief Executive Officer until August 2018.

52. In Item 12 (name and address of persons to be paid commission) of its May 2018 Form D Nanotech, again, listed only David Sweaney.

53. In reality, Nanotech paid sales commissions to numerous other people.

54. The failure to list other persons being paid sales commissions was not only misleading, but materially so as it concealed the boiler-room operation Nanotech ran to sell its shares.

55. And again, in Item 16 (amount of proceeds to related persons) of its May 2018 Form D, Nanotech disclosed that David Sweaney would receive only \$15. This was false and misleading for multiple reasons.

56. First, in reality, by May 17, 2018 when Nanotech filed this Form D, David Sweaney had already received substantially more than \$15 of funds raised through this offering.

57. Second, by May 17, 2018, 3 Dragons had already received \$11,000 of funds raised through this offering, and David Sweaney is a one of the three members of 3 Dragons.



58. Third, Item 16 not only requires the issuer to list proceeds that have been or are proposed to be given to people who are listed in Item 3, but to “any of the persons required to be named as executive officers, directors, or promoters in response to Item 3 above.” Thus, Nanotech was required to (but did not) disclose the proceeds given to Michael Sweaney and Gange.

59. By May 17, 2018, Michael Sweaney had received \$82,500 in proceeds from this offering. And, by May 17, 2018, Gange had received \$11,375 in proceeds from this offering.

60. Gange signed this Form D on behalf of Nanotech, which was electronically filed with the SEC in this judicial district. The Form D was and is available to the public through the SEC’s EDGAR system.

***Nanotech Filed Its Second Misleading Form D in June 2018***

61. On June 14, 2018, Nanotech filed a second, amended Form D, which was incorrectly marked as a new notice. In the June 2018 Form D, Nanotech proposed to raise \$67.2 million from selling equity shares, and indicated that \$1.3 million had already been sold to 41 investors.

62. This June 2018 Form D repeated the same material misrepresentations and omissions as the May 2018 Form D, although by then the Defendants had diverted to themselves far more investor money: David Sweaney had received substantially more than \$15 including additional payments since the May 17, 2018 Form D was filed, 3 Dragons had received \$61,000, Michael Sweaney had received \$97,500, and Gange had taken \$14,375.

63. Again, Gange signed the Form D on behalf of Nanotech and electronically filed it with the SEC. This second, false Form D was and is available to the public through the SEC's EDGAR system.

***Nanotech Filed Its Third Misleading Form D in February 2019***

64. On February 11, 2019, Nanotech filed a third Form D, which was again incorrectly marked as a new notice, rather than as an amendment to the previous Form D. In the February 2019 Form D, Nanotech still proposed to raise \$67.2 million by selling equity shares, but now falsely indicated that \$3.6 million in securities had already been sold to 140 investors. An analysis of Nanotech's bank records shows that, in fact, more than \$4.8 million had been raised from investors by that point.

65. This February 2019 Form D also repeated the same material misrepresentations and omissions as Nanotech's prior two Forms D, although by then the Defendants had diverted to themselves even more investor money: David Sweaney had received substantially more than \$15 including additional payments since the June 2018 Form D was filed, 3 Dragons had received \$478,129, Michael Sweaney had received \$234,050, Gange had received \$35,815, and Omni Golf had received \$72,000.

66. Additionally, in Item 15 (amount of commissions), Nanotech stated that the amount of commissions was or would be only \$100. Notably, this was a decrease from the May and June 2018 Forms D, which indicated commission payments in excess of \$100,000.

67. In reality, by February 11, 2019, when Nanotech had filed its third Form D, Nanotech had already paid at least \$103,012 in commissions.

68. The amount of commissions Nanotech listed is not only false, but materially so, as any reasonable investor would want to know how much of their investment was going to pay commissions on sales of Nanotech securities instead of actually being invested in the company.

69. As with the prior false Forms D, Gange signed the filing on behalf of Nanotech and electronically filed with the SEC. Again, the Form D was and is available to the public through the SEC's EDGAR system.

***Nanotech Used a Misleading Private Placement Memorandum***

70. When issuers sell securities pursuant to one of the Regulation D exemptions, they often provide investors, and prospective investors, with a private placement memorandum, which contains key information about the issuer.

71. Nanotech's website has their current PPM available for download by investors Nanotech sales agents have contacted.

72. The PPM has multiple misstatements and omissions of material facts, including (a) falsely stating that the Nanopanel existed and making the false claims about the Nanopanel's performance described above, (b) falsely stating that the CFO's name was Michael Hatton when it was actually Michael Sweaney, and concealing Michael Sweaney's true role as the person running Nanotech, (c) falsely stating that investor money would be used only for overhead expenses and the manufacture of Nanopanel, when executives in fact used a significant portion of

investor money to support their lavish lifestyle, and (d) failing to disclose that investor money was being transferred to other entities owned or controlled by Nanotech executives.

73. Specifically, page 18 of the PPM identifies one of Nanotech's "[k]ey personnel" as "Michael Hatton, Chief Financial Officer." Again, this was false; Nanotech's CFO was, in fact, Michael Sweaney.

74. Misrepresenting the CFO's name in the PPM was part of a scheme to conceal Michael Sweaney's true identity and prior conviction for felony securities fraud. That the CFO of a company engaged in an unregistered offering of securities was previously convicted of felony securities fraud is a fact that any reasonable investor would want to know before deciding whether to invest.

75. The PPM, at page 29, also states that: "Nanotech Engineering and its managers have no lawsuits pending, no legal actions pending, or judgments entered against Nanotech Engineering or its managers and, to the best knowledge of Nanotech Engineering, no legal actions are contemplated against Nanotech Engineering and its managers."

76. In reality, however, Michael Sweaney has multiple civil judgments against him, including a \$46,020 state tax judgment from 2008 that remains outstanding, as well as, again, the judgment of conviction relating to his prior felony securities fraud.

77. Importantly, the PPM also contains numerous representations about the use of investor funds, including:

- a. “Nanotech Engineering will use the proceeds of this offering to complete our solar panel (the Nanopanel™ ), based on Nanotechnology, and bring the Nanopanel™ to market.
- b. A chart listing that of the \$67,200,000 to be raised in the offering, \$11,088,000 will be used for “Operations/syndication cost” and the “Balance of capitol for Nanopanel™ production will be \$56,112,000.”

78. The PPM does not disclose in any fashion that investor funds would be used by executives for personal expenses, but rather indicates that all funds would be used for “Operations/syndication cost” and Nanopanel production.

79. A reasonable investor would want to know that the funds that Nanotech had promised would be used for corporate overhead and/or manufacture of the Nanopanel were, instead, being used by executives for personal purchases.

80. Similarly, the PPM does not disclose in any fashion that investor funds would be transferred to executives.

81. In truth and fact, however, a material percentage of all investor funds were transferred to Michael Sweaney, David Sweaney and Gange.

82. A reasonable investor would want to know about these transfers.

83. The PPM does not disclose in any fashion that investor funds would be transferred to entities in which executives had a beneficial interest.

84. In truth and fact, a material percentage of all investor funds were transferred to entities in which Michael Sweaney, David Sweaney and Gange owned or controlled.

85. The PPM contains only one disclosure about only one of the Relief Defendants, and even that disclosure is misleading:

We have licensed our Graphene Golf Shafts to Omni Golf Inc., a new golf club manufacturer that will be breaking into the market with shafts that are more powerful, and whip back into place faster since the graphene corrects itself quicker than graphite or steel.

86. Even assuming that Nanotech has, in fact, developed “Graphene Golf Shafts” and executed such a licensing agreement, this disclosure still fails to disclose that (a) Omni Golf is controlled by one of Nanotech’s executives, Gange, (b) Omni Golf has not paid any money to Nanotech for this license, and (c) that, in fact, Nanotech sent money to Omni Golf, which is the opposite of the situation suggested by the disclosure.

87. Again, a reasonable investor would want to know that their funds were transferred to entities owned and controlled by Nanotech’s executives.

88. The PPM contained numerous false claims about the Nanopanel, including those described above. In fact, the Nanopanel did not exist, and all claims about its existence, performance and specifications were false.

89. A reasonable investor would want to know that Nanotech’s primary product did not exist.

#### **THE DEFENDANTS’ MISAPPROPRIATION OF INVESTOR FUNDS**

90. The charts and paragraphs 91-129 below identify spending and direct transfers of funds the SEC has traced to the Defendants and Relief Defendants so far, though further investigation may reveal more.

91. Nanotech has received little to no revenue during the course of the scheme, a fact which Nanotech confirmed in its Forms D when Nanotech indicated that it had “no revenues.”

92. An analysis of Nanotech’s bank accounts corroborates Nanotech’s statement in this regard. Nanotech’s various bank accounts received a total of \$10.6 million in incoming funds, but more than \$1 million of that was simply transfers from one Nanotech account to another, resulting in a net of \$9.6 million in incoming funds. Of that, at least \$9.51 million are demonstrably investor funds. Thus, non-investor funds, if any, are limited to approximately \$90,000, and more likely less than that (if any). Yet, as the chart below shows, the three individual Defendants have, either directly to themselves or through the Relief Defendants, diverted to themselves far in excess of that amount, at least \$2,494,029.

Funds misappropriated through the Defendants’ non-business spending	At least \$458,962.13
Funds misappropriated through transfers to the individual Defendants	At least \$498,791.77
Funds misappropriated through transfers to the Relief Defendants	At least \$1,536,275.11
<b>TOTAL:</b>	<b>At least \$2,494,029.01</b>

93. Because Nanotech has virtually no source of funds other than investors, the moneys diverted to the Defendants from Nanotech are entirely or almost entirely investor funds.

***The Defendants Are Using Investor Funds to Pay for a Yacht  
and Other Personal Expenses***

94. In total, Defendants Michael Sweaney, David Sweaney, and Gange have transferred hundreds of thousands of dollars of investor money to themselves, and used hundreds of thousands more for personal purchases.

**Michael Sweaney’s misappropriation of funds**

95. On May 14 and 21, 2019, Nanotech transferred a total of \$208,500 to a yacht company in Dana Point, California.

96. Records from the yacht company show that this \$208,500 was for the purchase of a forty-six foot Sea Ray yacht named the “Bella Vita.” The named purchaser of the yacht was “Michael Hatton,” the alias used by Michael Sweaney.

97. Nowhere in any of Nanotech’s private placement memoranda or filings with the SEC has Nanotech indicated that its CFO would use investor funds to purchase a yacht.

98. Michael Sweaney also received \$301,550 in direct transfers of funds from Nanotech.

99. The chart below shows the total spending and direct transfers of funds the SEC has traced directly to Michael Sweaney. The below figures do not include amounts diverted to Defendant Michael Sweaney through the other Defendants or Relief Defendants.

<b>Funds Transferred to or Used by Michael Sweaney (Hatton)</b>	
Direct Transfers	\$301,550.00
Yacht	\$208,500.00
Cosmetic/Dermatology	\$39,549.17
Dental	\$3,440.00



Other (Medical/Fitness/Fertility/Optomerty)	\$605.00
<b>TOTAL</b>	<b>\$553,644.17</b>

### **David Sweaney's misappropriation of funds**

100. Similarly, David Sweaney received \$133,926.19 in direct transfers of funds from Nanotech. Michael Sweaney required that some of that money be kicked back to him by David Sweaney, but David Sweaney was also able to keep some of those funds for his own personal use.

101. David Sweaney also used Nanotech funds for non-business expenses, including gasoline purchases for his car and some Amazon purchases.

102. The chart below shows the total spending and direct transfers of funds the SEC has traced to accounts in the name of David Sweaney. The below figures do not include amounts diverted to Defendant David Sweaney through the Relief Defendants. Portions of the amounts below were done by, for the benefit of, or ultimately transferred to Michael Sweaney.

<b>Funds Transferred to or Used by Accounts in the Name of David Sweaney</b>	
Direct Transfers	\$133,926.19
Yacht Related Expenses	\$6,166.90
Cosmetic/Dermatology	\$9,754.00
Dental	\$37,557.00
Beauty/Spa	\$1,218.10
Other (Medical/Fitness/Fertility/Optomerty)	\$7,968.68
Luxury Fashions	\$18,643.50
Jewelry	\$25,391.26
<b>TOTAL</b>	<b>\$240,625.63</b>

### **Gange's misappropriation of funds**

103. In October 2018 and February/March 2019 Gange spent over \$100,000 in Nanotech funds to purchase two Maserati sport cars.

104. Gange also received \$63,315.58 in direct transfers from Nanotech.

### **Additional Misappropriation of Funds**

105. In addition to the amounts specified above, more than \$100,000 of investor funds were spent by the Defendants on obviously non-business items such as vaping products. At present, the SEC is not able to determine which individual spent these funds, but regardless, investor funds were misappropriated for the personal use of one or more of the principals of Nanotech. The chart below summarizes the additional spending identified to date:

<b>Other Company Misappropriations (Not Yet Attributed to a Specific Individual Defendant)</b>	
Yacht Related Expenses	\$57,308.33
Cosmetic/Dermatology	\$24,870.00
Vaping/Tobacco	\$7,275.27
Beauty/Spa	\$10,406.00
Other (Medical/Fitness/Fertility/Optometry)	\$2,682.00
Cash withdrawals	\$66,838.98
<b>TOTAL</b>	<b>\$169,380.58</b>

### ***The Defendants Are Improperly Transferring Investor Funds to the Relief Defendants, Which They Own and Control.***

106. Nanotech transferred a total of at least \$1,536,275 to entities in which the Defendants had a beneficial interest.

### **Transfers to Nanotech Finance**

107. Nanotech transferred a total of at least \$650,000 to Nanotech Finance via checks, as summarized in the chart below.

<b>Payments to Nanotech Finance</b>				
<b>Bank and partial account #</b>		<b>Date</b>	<b>Type of payment</b>	<b>Amount</b>
1st Bank	6364	3/28/2019	COUNTER CHECK	\$110,000.00
1st Bank	6364	4/29/2019	Check Paid	\$92,474.00
1st Bank	6364	5/7/2019	Check Paid	\$17,950.00
1st Bank	6364	6/13/2019	Check Paid	\$150,000.00
1st Bank	6364	7/3/2019	Check Paid	\$128,000.00
1st Bank	6364	7/31/2019	Check Paid	\$1,112.00
1st Bank	6364	8/16/2019	Check Paid	\$127,525.00
1st Bank	6364	10/15/2019	Check Paid	\$25,000.00
			<b>TOTAL</b>	<b>\$652,061.00</b>

108. Nanotech Finance only received \$300 in incoming funds from sources other than Nanotech.

109. Nanotech Finance is owned and controlled by Gange.

110. Nanotech Finance's most recent bank records reflect that it is a single member LLC, and that the sole signer on the account is Gange. Gange also signed documents submitted to the bank that identified Gange as the "Secretary / Member / Manager" of Nanotech Finance.

111. Nanotech Finance's bank records indicate that after Nanotech Finance received investor funds from Nanotech, \$5,000 was transferred to Michael Sweaney, \$10,500 was transferred to Gange, and \$12,000 was withdrawn as cash.

112. Additionally, a \$457,394.75 check issued from a Nanotech Finance account on July 23, 2019 remains outstanding and uncashed. This check was found in the residence of Michael Sweaney by the Federal Bureau of Investigations on December 5, 2019.

### Transfers to Omni Golf

113. Nanotech transferred total of at least \$400,000 to Omni Golf via checks as shown by the chart below.

<b>Payments to Omni Golf</b>				
<b>Bank and partial account #</b>		<b>Date</b>	<b>Type</b>	<b>Amount</b>
1st Bank	8930	9/24/2018	Check Paid	\$15,000.00
1st Bank	8930	9/25/2018	Check Paid	\$1,000.00
1st Bank	8930	11/16/2018	Check Paid	\$20,000.00
1st Bank	8930	12/17/2018	Check Paid	\$30,000.00
1st Bank	8930	1/30/2019	Check Paid	\$6,000.00
1st Bank	8930	2/22/2019	Check Paid	\$23,000.00
1st Bank	6364	3/20/2019	Check Paid	\$25,000.00
1st Bank	6364	3/21/2019	Check Paid	\$25,000.00
1st Bank	6364	3/22/2019	Check Paid	\$25,000.00
1st Bank	6364	4/18/2019	Check Paid	\$40,000.00
1st Bank	6364	5/13/2019	Check Paid	\$25,000.00
1st Bank	6364	5/24/2019	Check Paid	\$25,000.00
1st Bank	6364	6/4/2019	Check Paid	\$20,000.00
1st Bank	6364	6/14/2019	Check Paid	\$20,000.00
1st Bank	6364	6/25/2019	Check Paid	\$20,000.00
1st Bank	6364	7/11/2019	Check Paid	\$20,000.00
1st Bank	6364	7/31/2019	Check Paid	\$17,882.00
1st Bank	6364	8/15/2019	Check Paid	\$12,860.00
1st Bank	6364	8/26/2019	Check Paid	\$14,951.00
1st Bank	6364	9/26/2019	Check Paid	\$15,870.00
			<b>Total</b>	<b>\$401,563.00</b>

114. Omni Golf only received \$89,216 from sources other than Nanotech.

115. Omni Golf is controlled by Gange.

116. A Statement of Information for Omni Golf filed with the California Secretary of State on February 28, 2018 lists Gange as the sole member/manager of Omni Golf. Gange signed this Statement of Information.

117. An Articles of Organization for Omni Golf filed with the California Secretary of State on February 6, 2018 was also signed by Gange as the “Organizer” of Omni Golf.

118. In connection with opening a bank account for Omni Golf on September 21, 2018, Gange signed multiple documents on behalf of Omni Golf, including a certification that he was the CEO of Omni Golf and authorized to act on behalf of Omni Golf.

119. Once funds were transferred from Nanotech to Omni Golf, at least \$18,000 was transferred to Gange, and other funds were used to purchase at least \$112,000 in golf equipment, and at least \$146,000 was used for “payroll” to unknown persons.

### **Transfers to 3 Dragons**

120. Nanotech transferred \$480,000 to 3 Dragons via checks and one cash transfer, as shown by the chart below.

<b>Payments to 3 Dragons LLC</b>				
<b>Bank and Partial Account #</b>		<b>Date</b>	<b>Type</b>	<b>Amount</b>
1st Bank	8930	4/27/2018	Check Paid	\$11,000.00
1st Bank	8930	5/23/2018	Check Paid	\$50,000.00
1st Bank	8930	7/6/2018	Check Paid	\$2,500.00
1st Bank	8930	7/25/2018	Check Paid	\$3,729.00
1st Bank	8930	8/7/2018	Check Paid	\$2,500.00
1st Bank	8930	8/13/2018	Check Paid	\$30,000.00
1st Bank	8930	8/31/2018	Check Paid	\$2,500.00
1st Bank	8930	8/31/2018	Check Paid	\$7,500.00
1st Bank	8930	8/31/2018	Check Paid	\$7,500.00
1st Bank	8930	9/6/2018	Cash Withdrawal	\$3,800.00
1st Bank	8930	9/21/2018	Check Paid	\$49,600.00
1st Bank	8930	10/1/2018	Check Paid	\$2,500.00
1st Bank	8930	10/26/2018	Check Paid	\$305,000.00

<b>Payments to 3 Dragons LLC</b>				
<b>Bank and Partial Account #</b>		<b>Date</b>	<b>Type</b>	<b>Amount</b>
1st Bank	8930	2/26/2019	Check Paid	\$3,218.69
1st Bank	6364	5/28/2019	Check Paid	\$1,303.42
			<b>Total</b>	<b>\$482,651.11</b>

121. 3 Dragons is controlled by David Sweaney and two other individuals.

122. 3 Dragons only received \$264,687 from sources other than Nanotech.

123. 3 Dragons' Articles of Organization were filed with the Colorado Secretary of State on September 18, 2015. The documents list a woman with the last name "Sweaney" as 3 Dragons' Organizer, and lists two additional 3 Dragons' members, including David Sweaney. David Sweaney is listed as having the same home address as the Organizer.

124. Documents from 3 Dragons' bank account list David Sweaney as the sole signatory on the account.

125. Once funds were transferred from Nanotech to 3 Dragons, funds were then transferred back to David Sweaney (\$32,410) and Michael Sweaney (\$189,904), plus additional transfers to other persons with the last name Sweaney.

### ***The Fraud Continued Until the Court Took Action***

126. Nanotech continued to solicit and receive investor funds, until the Court issued a Temporary Restraining Order at the request of the SEC, and the Federal Bureau of Investigations executed a search warrant and seized certain materials, all of which took place on December 5, 2019. Nanotech's efforts included the transactions listed below (all of which are in addition to the amounts described above):

- An October 28, 2019 incoming wire for \$112,000 (equal to the purchase price of 40,000 shares);
- A November 15, 2019 check for \$28,000 deposited (with the notation “10,000 shares”);
- A November 15, 2019 deposit for \$28,000 (equal to the purchase price of 10,000 shares); and
- A November 22, 2019 incoming wire for \$27,980 (potentially for the purchase of 10,000 shares minus a wire transaction fee).

127. The Defendants also continued to divert funds through November 2019, including the transactions listed below (all of which are in addition to the amounts described above):

- Spending \$3,160 on dermatology on October 25, 2019;
- Wiring over \$15,000 to two entities with the same address as David Sweaney on November 6, 2019; and
- Spending \$6,849.38 at Ferrari and Maserati of Newport Beach on November 14, 2019.

128. During the course of the scheme, the Defendants and Relief Defendants have engaged in a practice of opening and closing different bank accounts.

129. For example, the cashier’s check for \$457,394.75 of investor money improperly transferred to Nanotech Finance remains outstanding and uncashed.

This check was found in the residence of Michael Sweaney by the Federal Bureau of Investigations on December 5, 2019.

**CLAIMS FOR RELIEF**

**COUNT I**

**Violations of Section 17(a) of the Securities Act  
(All Defendants)**

130. The SEC realleges and incorporates by reference each allegation in paragraphs 1 through 129, inclusive, as if they were fully set forth herein.

131. By engaging in the conduct that is described above, the Defendants knowingly, recklessly, or negligently in connection with the offer or sale of securities, by the use of the means or instruments of transportation, or communication in interstate commerce or by use of the mails, directly or indirectly:

- a. employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of material facts, 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 operated or would operate as a fraud or deceit upon the purchaser.

132. By engaging in the foregoing conduct, the Defendants violated, and unless enjoined will continue to violate, Securities Act Section 17(a) [15 U.S.C. § 77q(a)].



**COUNT II**

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder  
(All Defendants)**

133. The SEC realleges and incorporates by reference each allegation in paragraphs 1 through 129, inclusive, as if they were fully set forth herein.

134. By engaging in the conduct described above, the Defendant knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- a. employed devices, schemes or artifices to defraud; and
- b. 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; and/or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

135. By engaging in the foregoing conduct the Defendant violated, and unless enjoined will continue to violate, 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.

**COUNT III**

**Aiding and Abetting Violations of Section 17(a) of the Securities Act  
(Defendants Michael James Sweaney, David Sweaney and Jeffery Gange)**

136. The SEC realleges and incorporates by reference each allegation in paragraphs 1 through 129, inclusive, as if they were fully set forth herein.

137. As alleged above, Defendant Nanotech and others violated Section 17(a) of the Exchange Act [15 U.S.C. § 77q(a)].

138. Through their deceptive conduct, misstatements, misappropriation of funds and other means alleged above, Defendants Michael Sweaney, David Sweaney and Gange knowingly provided substantial assistance to, and thereby aided and abetted, Defendant Nanotech's violations of the securities laws.

139. By engaging the in the foregoing conduct, pursuant to Securities Act Section 15(b) [15 U.S.C. § 77o(b)], Defendants Michael Sweaney, David Sweaney and Gange violated, and unless enjoined will continue to violate violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**COUNT IV**

**Aiding and Abetting Violations of Section 10(b) of the Exchange Act and  
Rule 10b-5 Thereunder  
(Defendants Michael James Sweaney, David Sweaney and Jeffery Gange)**

140. The SEC realleges and incorporates by reference each allegation in paragraphs 1 through 129, inclusive, as if they were fully set forth herein.

141. As alleged above, Defendant Nanotech and others violated 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.

142. Through their deceptive conduct, misstatements, misappropriation of funds and other means alleged above, Defendants Michael Sweaney, David Sweaney and Gange knowingly provided substantial assistance to, and thereby aided and abetted, Defendant Nanotech's violations of the securities laws.

143. By engaging in the foregoing conduct, pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t], Defendants Michael Sweaney, David Sweaney and Gange violated, and unless enjoined will continue to violate violated 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.

**COUNT V**  
**Unjust Enrichment Liability**  
**(Relief Defendants)**

144. The SEC realleges and incorporates by reference each allegation in paragraphs 1 through 129, inclusive, as if they were fully set forth herein.

145. Relief Defendants Nanotech Finance, Omni Golf, and 3 Dragons have obtained funds as part, and in furtherance, of the securities law violations alleged above, and under circumstances in which it is not just, equitable, or conscionable for these entities to retain the funds. As a result, these Relief Defendants have been unjustly enriched.

**PRAYER FOR RELIEF**

WHEREFORE, the SEC respectfully requests that the Court maintain the existing Preliminary Injunction in this case.

Further, the SEC respectfully requests that the Court enter a final judgment:

**I.**

Permanently restraining and enjoining all Defendants from, directly or indirectly, violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a), and 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];

**II.**

Ordering all Defendants and all Relief Defendants to disgorge all ill-gotten gains or unjust enrichment derived from the activities set forth in this Complaint, together with prejudgment interest thereon;

**III.**

Enter an order requiring the Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

**IV.**

Enter an Order barring Michael Sweaney, David Sweaney, and Jeffery Gange from serving as an officer or director of a public company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

**V.**

Granting such other and further relief as this Court may deem just, equitable, or necessary in connection with the enforcement of the federal securities laws and for the protection of investors.

**VI.**

Retaining jurisdiction of this action for purposes of enforcing any final judgments and orders.

**JURY DEMAND**

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

Respectfully submitted,

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Dated: October 5, 2020