SEALED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	
PREIPO CORP., JOHN A. MATTERA and DAVID P. GRZAN,	:	**UNDER SEAL**
Defendants, and	:	
BOSS GLOBAL ADVISORY GROUP, INC.,	:	
Relief Defendant.	:	

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

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I. INTRODUCTION

The Securities and Exchange Commission (the "Commission" or "SEC") moves this Court for a Temporary Restraining Order, Asset Freeze, and other emergency relief pursuant to Rule 65 of the Federal Rules of Civil Procedure ("Emergency Motion") and Local Rule 7.1 to prevent Defendants PreIPO Corp. ("PreIPO"), John A. Mattera ("Mattera"), and David P. Grzan ("Grzan") (collectively, "Defendants"), from continuing to defraud investors in connection with their fraudulent offer and sale of securities, and to prevent them from further misuse and misappropriation of investor funds.

Specifically, from at least March 2022 and continuing through the present, Defendants have raised at least $4.2 million from at least 50 investors residing in various states, including several in Florida, through an unregistered fraudulent securities offering. The securities are in the form of common stock in PreIPO. PreIPO claims to have developed an online platform offering access to shares in private companies before their initial public offerings. The purported purpose of the offering is to fund the development of this platform and the company's business operations.

PreIPO, Mattera, and Grzan have made material misrepresentations and omissions to investors and are engaging in a scheme to defraud and a course of conduct designed to deceive investors. Specifically, Defendants have made misstatements regarding PreIPO's management and have omitted to disclose that Mattera, previously convicted for securities fraud and permanently enjoined from committing securities fraud—charges which included using investor money to sustain a lavish lifestyle—is acting as the *de facto* Chief Executive Officer ("CEO") of the company. Defendants have also made misstatements regarding the use of investor funds. Specifically, investors have not been told that only a small portion of the offering proceeds were used to fund the development of PreIPO's online platform and that the company has generated no

revenues from any of its business ventures. Instead, PreIPO has made undisclosed payments totaling at least $1.7 million—approximately 42% of the investors' money—to Mattera, Grzan, and three other officers of the company out of the $4.2 million of investor funds. And, once again, Mattera is pilfering investor money for his own personal use.

As a result of the conduct alleged in the Complaint, Defendants have violated Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)]; Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act")[15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]. Mattera also, directly and indirectly, violated Exchange Act Section 10(b) and Rule 10b-5 thereunder as a control person of PreIPO under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)]. To halt this ongoing offering fraud, protect investors, and preserve investor assets, the Commission seeks emergency relief, including preliminary injunctive relief, asset freezes, an accounting, and an order prohibiting the destruction of documents.

II. DEFENDANTS AND RELIEF DEFENDANTS

A. Defendants

1. **PreIPO** is a Wyoming corporation formed in March 2021, with its principal place of business in Boca Raton, Florida.[1] PreIPO applied as foreign corporation for authorization to transact business in Florida in September, 2022.[2] PreIPO and its securities have never been registered with the Commission in any capacity.[3] At no point from its incorporation through the present, was Mattera listed as an officer, director, registered agent or otherwise for PreIPO.[4]

[1] Declaration of David P. Staubitz ("Exhibit A"), ¶ 6.b.
[2] *Id.*, ¶ 6.a.
[3] Declaration of Magaly Ordaz ("Exhibit C").
[4] Exhibit A, ¶¶ 6.a., 6.b.

2. **Mattera**, 61, is a resident of Boca Raton, Florida. In August 2010, Mattera was permanently enjoined from violating the registration and antifraud provisions of the Securities Act of 1933 ("Securities Act") and the antifraud provisions of the Securities Exchange Act of 1934 ("Exchange Act") and a permanent penny stock bar was imposed against him in a civil action brought by the Commission alleging that he engaged in a fraudulent scheme involving the issuance of bogus promissory notes and unregistered stock distributions.[5]

3. In June 2013, Mattera was sentenced based on his conviction after pleading guilty to securities fraud, wire fraud, and money laundering charges in a criminal action alleging that he defrauded investors out of $13 million through false claims of ownership of stock in various private companies before their initial public offerings[6]—a very close cousin to the conduct Mattera is engaging in now. He was accused of spending nearly $4 million on personal items for him and his family, such as expensive jewelry, interior decorating, and luxury cars.[7] Mattera was sentenced to 11 years in prison, and an Order of Forfeiture was also thereafter entered against him for $11,800,000.[8] Mattera completed his sentence on March 12, 2021, and is currently in the midst of serving three years of supervised release.[9] Based on that same conduct to which he pled guilty, in December 2013, Mattera was again permanently enjoined from violating the registration and antifraud provisions of both the Securities Act and the Exchange Act in a parallel civil action brought by the Commission.[10]

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[5] *Id.*, ¶ 9.a.
[6] *Id.*, ¶ 7.b.
[7] *Id.*, ¶ 7.a.
[8] *Id.*, ¶¶ 7.b., 7.c.
[9] *Id.*, ¶¶ 7.b., 7.d.
[10] *Id.*, ¶ 7.f.

4. **Grzan**, 62, is a resident of West Palm Beach, Florida. Grzan has held the titles of President, Chairman and CEO of PreIPO since August 2022.[11] Between July 1986 and July 2016, Grzan was previously associated with various registered broker-dealers as a registered representative.[12] From approximately November 2022 through June 2023, Grzan was associated with a registered broker dealer based in Connecticut.[13]

B. Relief Defendant

5. **Boss Global** is a Florida corporation with its principal place of business in Boca Raton, Florida.[14] Mattera owns and controls Boss Global, and he and his wife are its sole officers.[15] Boss Global received at least $859,000 in ill-gotten gains in the form of proceeds from PreIPO's securities offering.[16] Boss Global serves no business function, provides no products or services, and its predominant source of funding is that from PreIPO.[17]

III. VENUE

6. This Court has personal jurisdiction over the Defendants, and venue lies in the Southern District of Florida because most of the transactions and acts constituting violations of the Securities Act and the Exchange Act occurred in this District. Further, Mattera and Grzan reside in the District, and PreIPO—the company through which the Mattera and Grzan defrauded investors—has its principal place of business in the District.[18]

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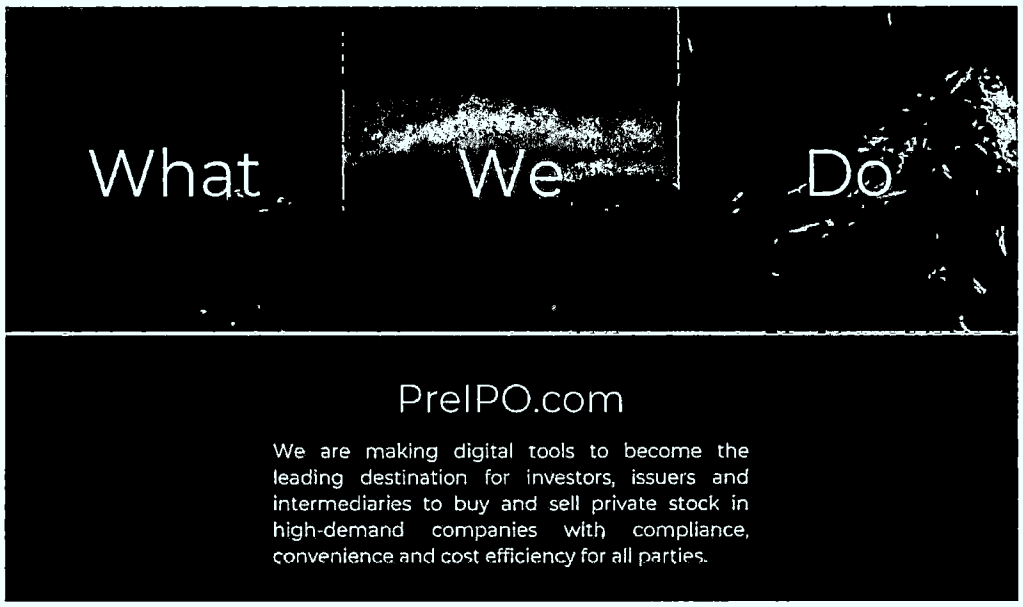
[11] *Id.*, ¶¶ 6.a., 10.
[12] Exhibit C, ¶ 6.
[13] *Id.*
[14] Exhibit A, ¶ 6.c.
[15] *Id.*
[16] Declaration of Mark Dee ("Exhibit B"), ¶9.
[17] Exhibit A, ¶ 13; Exhibit C, ¶ 9.
[18] Exhibit A, ¶¶ 6.a., 6.b., 11.b.

IV. FACTUAL ALLEGATIONS

A. Background

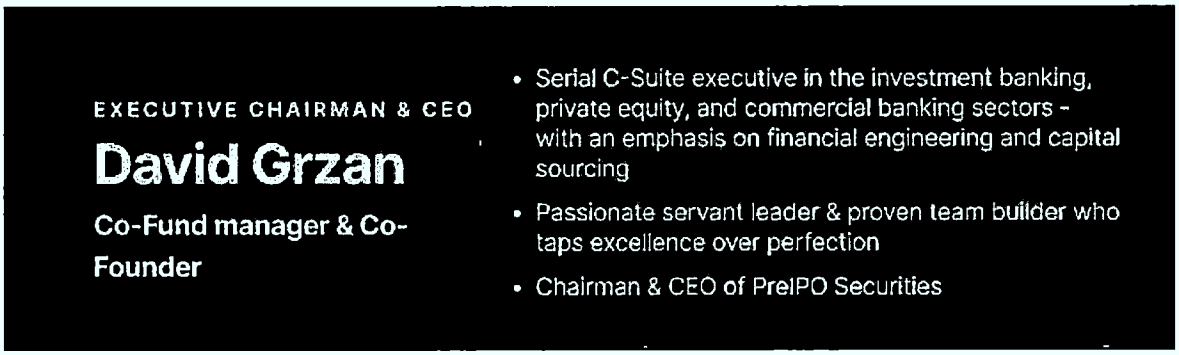
7. PreIPO purports to operate an online platform that offers investors access to shares in private companies before their initial public offerings:[19]



8. In marketing materials, PreIPO claims that it expects to receive revenue in the form of subscription fees paid for use of its trading platform and proprietary rating software by institutional investors and broker dealer firms, as well as from trading the private company shares on the secondary market on PreIPO's own account.[20]

9. Further, on PreIPO's website, on its "Seed Round" tab, PreIPO is actively soliciting investors for its Series A funding as follows:[21]

[19] *Id.*, ¶ 10.
[20] *Id.*, ¶ 11.a.
[21] *Id.*, ¶ 10.



10. Grzan is referenced as CEO in various locations on Pre-IPO's website, for example in recent press releases and its "Company Deck" where it seeks funding as indicated here:[22]

11. Mattera's involvement in PreIPO is not disclosed anywhere on its website nor was it disclosed in any of its offering or marketing materials.[23] Further, no publicly filed incorporation documents or required annual reports filed with either the states of Wyoming or Florida contain Mattera's name.[24] It is impossible for an investor to learn that Mattera is involved with PreIPO.

[22] *Id.*
[23] *Id.*, ¶ 12.
[24] *Id.*, ¶¶ 6.a., 6.b.

B. Mattera Controls PreIPO

12. PreIPO was incorporated in March 2021 which was approximately nine months after Mattera completed an 11 year sentence in federal prison.[25] The indictment alleged that Mattera and his co-conspirators made misrepresentations to investors by offering the chance to invest in special purpose entities controlled by Mattera, which falsely represented they owned shares in the stock of then-private companies such as Facebook and Groupon.[26] However, Mattera knew that the entities he controlled did not own such stock.[27] Instead of holding the investors' money in escrow, Mattera pilfered their funds, spending millions on personal items for himself and his family.[28]

13. Yet, a mere nine months after completing his prison sentence, while still in the midst of his three-years of supervised release period, and also under the constraints of a permanent injunction to not engage in securities fraud again, Mattera created PreIPO.[29] Mattera knew because of his past that he would not be able to attract investors if his name was associated with PreIPO, so he recruited front-men to be the listed founders and public faces of the company.[30]

14. While Mattera's name was hidden from public view, this was only form over substance, as Mattera controls PreIPO, the company he founded. In fact, in PreIPO's Capitalization Table ("Cap Table"), which is a spreadsheet or table showing the equity ownership capitalization for a company, nearly 57% of the pre-financing equity in PreIPO is owned by Testudo Trust LTD ("Testudo Trust"), and 51% of the post-financing equity is owned by Testudo

[25] *Id.*, ¶¶ 6.b., 8
[26] *Id.*, ¶ 7.a.
[27] *Id.*, ¶¶ 7.a., 7.b.
[28] *Id.*
[29] *Id.*, ¶ 7.b.
[30] *Id.*, ¶ 18, pp. 93:25-94:18.

Trust. Testudo Trust is listed as the "Founder" on the Cap Table.[31] Testudo Trust's sole beneficiary is Mattera.[32] The next closest equities for pre-financing and post-financing are 17% and 15%, respectively.[33]

15. Consistent with his equity share of PreIPO, Mattera is responsible for making every major decision of PreIPO, including:

- Having the sole power to hire and fire employees at PreIPO, including its CEO;[34]
- Requiring his approval for any expenditure of funds, including compensation, expense reimbursements, as well as payments to outside vendors;[35]
- Requiring that he be contemporaneously supplied with copies of all company bank statements and financial information for his review;[36]
- Reviewing all marketing materials and offering memoranda prior to them being sent out to investors.[37]

16. PreIPO is Mattera's company—the investing public just does not know it and they are being deceived. To wit, for every dollar that investors give to PreIPO, within 24 hours, at least 13.6% and up to 14.9% of their contribution are wired directly to either Mattera's personal account or to Relief Defendant Boss Global, his alter ego.[38] Grzan and all the other officers each receive at least 4.5%.[39]

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[31] *Id.*, ¶ 11.a.
[32] *Id.*, ¶ 18, pp. 47:23-48:12; 152:15-154:12.
[33] *Id.*, ¶ 11.a.
[34] *Id.*, ¶ 18, pp. 33:1-9; 34:22-35:9.
[35] *Id*¶ 11.c., 11.d., 11.e., 11.f., 11.g.
[36] *Id.*, ¶ 11.h; ¶ 18, pp.76:24-77:23.
[37] *Id.*, ¶ 11.a; ¶ 18, pp.145:16-146:3.
[38] *Id.*, ¶ 11.c., 11.d.; ¶ 18, pp.37:19-40:10.
[39] *Id.*

C. Defendants Raised At Least $4.2 Million from At Least 50 Investors Through an Unregistered Securities Offering

17. From at least March 2022 and continuing through the present, PreIPO, through Mattera and Grzan have raised at least $4.2 million from at least 50 investors residing in various states, including several in Florida, through sales of securities in an unregistered offering.[40] PreIPO describes an investment into it as an offering of shares of common stock in PreIPO, and asserts that these securities being offered are exempt from registration.[41]

18. This offering has not been registered with the Commission.[42] Instead, PreIPO filed a Form D Notice of Exempt Offering of Securities in April 2022 ("Form D") and a slightly amended Form D in October 2022, claiming exemption from registration, with the intent to raise up to $8.75 million from investors.[43] PreIPO offered its common stock to investors at a price of $5.33 per share.[44]

19. Through April 2023, PreIPO has not generated any revenues from its business operations.[45]

20. The offering materials that PreIPO has distributed to investors include a "confidential private placement memorandum," other marketing materials, a "subscription agreement," and a "purchaser questionnaire," which is a "check-the-box" type self-certification accredited investor questionnaire. [46] In reality, Defendants have taken no steps to verify whether

[40] *Id.*, ¶ 11.b., Exhibit B, ¶ 6.
[41] Exhibit A, ¶ 11.b.
[42] Exhibit C, ¶¶ 3-5.
[43] Exhibit C, ¶ 7.
[44] *Id.*
[45] Exhibit B, ¶ 7
[46] Exhibit A, ¶ 11.b.

investors actually qualify as accredited investors and are simply relying on the representations from investors who merely check the box that they are accredited.[47]

21. Grzan held sole responsibility for drafting all offering materials, including the private placement memoranda, business plan, and other marketing materials sent to investors.[48] Grzan provided these documents to Mattera, who confirmed that Grzan had done a "great job," before they were used in soliciting investors.[49]

22. PreIPO has solicited investors through various methods, including an in-house team of sales agents who are "cold calling" prospective investors.[50] Grzan supervised the sales agents and acted as the "closer" on calls with potential investors.[51] Specifically, sales agents have been instructed to pass the phone to Grzan to complete sales of securities to interested investors.[52]

23. In addition to using sales agents, PreIPO has also solicited investors through its website. On the website, investors are told that "[a]fter completing the $8.75M Seed round, PreIPO Corp. will be ideally positioned to fund massive growth through revenue generation" and that the company "is ready to transact its [approximately] $1B of private investment deals for revenue generation."[53]

24. Investors sent their money to PreIPO predominantly via wire transfer, otherwise via check.[54] Investor funds were then deposited into PreIPO's bank accounts, on which Grzan is a signatory.[55] Mattera is not a named as a signatory on any of PreIPO's bank accounts.[56] Yet, in

[47] *Id.*, ¶¶ 11.b, ¶18, pp 158:17-160:3.
[48] *Id.*, *Id.*, ¶ 18, pp 144:11-146:21; 157:24-158:6.
[49] *Id.*, ¶ 11.a.
[50] *Id.*, ¶ 18, pp 78-12-81:5.
[51] *Id.*,
[52] *Id.*,
[53] *Id.*, ¶ 10.
[54] Exhibit B, ¶ 6.
[55] Exhibit A, ¶¶ 14, 15, 17; Exhibit B, ¶ 6.
[56] Exhibit A, ¶¶ 14, 15, 17.

March 2023, Mattera's wife, who had never been an officer or director of PreIPO, was added as a signatory on PreIPO's primary Bank of America account.[57]

D. Defendants Made Material Misrepresentations and Omissions to Investors in Connection with the Offering of PreIPO's Securities

(1) Defendants' Misstatements Regarding PreIPO's Management

25. Defendants PreIPO, Mattera, and Grzan have made misstatements and omissions to investors and prospective investors regarding the identity of PreIPO's highest-ranking executive officer. Specifically, PreIPO's offering materials and website identify Grzan as being the company's CEO and include a biography that touts Grzan's experience as a "Serial C-Suite executive in the investment banking, private equity, and commercial banking sectors."[58] Prior iterations of the offering materials used until August 31, 2022, identified a different individual as the company's CEO.[59]

26. These statements made to investors regarding the company's management are false and misleading. In reality, Mattera, a securities recidivist, is and has been at all times, the *de facto* CEO of PreIPO. Mattera has exercised complete control over all aspects of PreIPO's business and operations and he is responsible for making or approving every major decision for the company. In fact, Mattera fired the former purported CEO of PreIPO after a disagreement and replaced him with Grzan.[60]

(2) Defendants' Misstatements and Omissions Regarding Use of Investor Funds

27. Defendants PreIPO, Mattera, and Grzan have made misstatements and omissions regarding the use of investor proceeds and are misusing investor funds. The private placement

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[57] *Id.*, ¶¶ 6.a., 6.b., 14.
[58] *Id.*, ¶¶ 10, 11.a.
[59] *Id.* ¶ 11.a.
[60] *Id.*, ¶ 18, pp. 33:1-9; 34:22-35:9.

memoranda (PPM) provided to investors include a "Use of Proceeds" section that specifically states:

> Proceeds from the Offering will be used to pay the costs of the Offering, for working capital, including, expansion of the management team development of the operating platform and business-related costs and expenses.[61]

28. This representations are false and misleading. PreIPO's PPM and other offering materials fail to disclose to investors that of the $4.2 million raised from investors, $1.76 million of investor funds—42%—was paid to Mattera, Grzan and three other PreIPO officers.[62] The payments specific to Mattera and Grzan totaled approximately $875,750 and $270,000, respectively.[63] Out of Mattera's $875,750, Boss Global, which has no apparent business function and acts as Mattera's alter-ego, received approximately $859,000 for no apparent legitimate purpose.[64] And, true to Mattera's modus operandi for which he has been criminally convicted and also subject to a permanent injunction from the Commission, Mattera has used investor money for his own personal use, spending at least $450,000 towards credit card bills and also spending toward financing high-end vehicles, amongst other expenditures.[65]

29. Finally, only about $244,000 has been spent on trying to develop PreIPO's online platform, which amounts to less than 6% of investor funds received.[66] Indeed, Mattera's actual business plan appears to be to continue to raise investor money for his own personal consumption while spending minimum amounts on PreIPO's actual functionality.[67]

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[61] *Id.*, ¶ 11.b.
[62] Exhibit B, ¶ 8.
[63] *Id.*
[64] *Id.*, ¶ 9; Exhibit A, ¶ 13.
[65] Exhibit B, ¶ 9.
[66] *Id.*, ¶ 10.
[67] *Id.*, ¶ 18, pp 61:7-65:7.

V. MEMORANDUM OF LAW

A. Standard for Obtaining a Temporary Restraining Order

Section 20(b) of the Securities Act, 15 U.S.C. § 77t, and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), provide that in Commission actions the Court shall grant injunctive relief upon a proper showing. *SEC v. Shiner*, 268 F. Supp. 2d 1333, 1340 (S.D. Fla. 2003). This "proper showing" has been described as "a justifiable basis for believing, derived from reasonable inquiry or other credible information, that such a state of facts probably existed as reasonably would lead the SEC to believe that the defendants were engaged in violations of the statutes involved." *SEC v. Gen. Int'l Loan Network, Inc.*, 770 F. Supp. 678, 688 (D.D.C. 1991).

The Commission is entitled to a temporary restraining order if it establishes (1) a *prima facie* case showing the Defendants have violated the securities laws, and (2) a reasonable likelihood they will repeat the wrong. *Shiner*, 268 F. Supp. 2d at 1340. The Commission appears "not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws." *SEC v. Lauer*, No. 03-80612-CIV-MARRA, 2008 WL 4372896, at *24 (S.D. Fla. Sept. 24, 2008), *aff'd*, 478 Fed. Appx. 550 (11th Cir. 2012). The Commission, therefore, faces a lower burden than a private litigant when seeking an injunction, and need not meet the requirements for an injunction imposed by traditional equity jurisprudence. *Hecht Co. v. Bowles,* 321 U.S. 321, 331 (1944); *SEC v. J.W. Korth & Co.*, 991 F. Supp. 1468, 1472 (S.D. Fla. 1998). Unlike private litigants, the Commission need not demonstrate irreparable harm or the unavailability of an adequate remedy at law. *Hecht*, 321 U.S. at 331; *J.W. Korth*, 991 F. Supp. at 1473. Nor is it required to show a balance of equities in its favor. *SEC v. U.S. Pension Trust Corp.*, No. 07-22570-CIV-MARTINEZ, 2010 WL 3894082, at *22 (S.D. Fla. Sept. 30, 2010) *aff'd sub nom.*; *SEC v. U.S. Pension Trust Corp.*, 444 Fed. Appx. 435 (11th Cir. 2011).

The Commission's evidence in this case warrants entry of the requested injunctive relief on all applicable grounds. The declarations and their supporting exhibits attached to this Emergency Motion demonstrate that Defendants are violating the anti-fraud and registration provisions of the federal securities laws, and will continue to violate them if the Court does not immediately restrain and enjoin them.

B. The SEC has Established *Prima Facie* Violations of the Securities Laws

The Commission has met its burden of establishing a *prima facie* showing of violations of the antifraud and registration provisions of the securities laws as alleged in the Complaint and this motion. As an initial matter, the alleged violations all require that the investment in question be a "security" and that interstate commerce (or the mails) have been used.

1. Investments in PreIPO are Investment Contracts and are therefore Securities under *Howey*

The investments in PreIPO constitute investment contracts and are, therefore, securities under *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946). Under the *Howey* test, an investment contract exists if there is: (a) an investment of money; (b) in a common enterprise; (c) based on the expectation of profits to be derived from the entrepreneurial or managerial efforts of others. *See SEC v. Friendly Power Co., LLC*, 49 F. Supp. 2d 1363, 1368 (S.D. Fla. 1999).

The investments in PreIPO satisfy all three elements of the *Howey* test. First, investors committed funds to participate in an investment opportunity.[68] *See SEC v. Unique Fin. Concepts, Inc.*, 119 F. Supp. 2d 1332, 1337 (S.D. Fla. 1998), *aff'd*, 196 F.3d 1195 (11th Cir. 1999) ("All that is required is that the investor give up some tangible and definable consideration."). The

[68] Section IV.C ¶¶ 17, 18, 20, 23.

first element is satisfied because investors committed funds to participate in an investment opportunity.

For the second prong, the Eleventh Circuit has held that "broad vertical commonality" is sufficient to satisfy *Howey*'s common enterprise element. *Unique*, 196 F.3d at 1200 n.4. Broad vertical commonality requires only a finding that investors' fortunes are linked to the efforts of the promoter or third parties. *Id.*; *see also SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 732 (11th Cir. 2005).

Here, broad vertical commonality exists because the investors' fortunes were inextricably tied to the success or failure of PreIPO's management. Investors were simply investing in PreIPO's platform, and it was up to PreIPO management to grow the platform and to attract private companies, customers and website traffic.[69] Investors had no input or control. *See Unique*, 196 F.3d at 1199-1200 (finding commonality where defendant's clients "were not in a position to assume or maintain any substantial degree of control over their investment.").

The third *Howey* prong is met because investors were led to expect profits from the investor agreements based on the efforts of Defendants. The inquiry is "whether the efforts made by others are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." *Unique*, 196 F.3d at 1201. Here, investors expected a return on their investment based solely on PreIPO and its management to generate profits. The role of investors here was limited to simply investing money into PreIPO's business venture and expecting a subsequent return.[70]

[69] Section IV.A. ¶¶ 8-11.

[70] Section IV.D ¶¶ 25-29.

2. PreIPO's Offering Materials Identified the Common Shares as Securities

Defendants' own characterization of investments into PreIPO as an offering of shares of common stock in PreIPO being are exempt from registration under the federal securities laws is further indication that PreIPO was offering securities.[71] Where, as here, there are "no countervailing factors that would [lead] a reasonable person to question this characterization," the offering should be considered a security. *Diaz Vicente v. Obenauer,* 736 F. Supp. 679, 693 (E.D. Va. 1990), quoting *Reves v. Ernst & Young,* 494 U.S. 56, 68 (1990).

3. Defendants are using Interstate Commerce

The interstate commerce requirement is satisfied by PreIPO's sale of its investment programs to individuals in several states and their use of the internet to solicit investors. *SEC v. Spinosa*, No. 13-62066-CIV, 2014 WL 2938487, at *4 (S.D. Fla. June 30, 2014) (use of internet satisfied interstate commerce requirement).

4. Defendants are violating Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act

Section 17(a) of the Securities Act and Section 10(b) and Rules 10b-5(a)-(c) of the Exchange Act prohibit essentially the same type of conduct. *U.S. v. Naftalin*, 441 U.S. 768, 773 n. 4 (1979); *Unique*, 119 F. Supp. 2d at 1339. The language of these provisions is "expansive" and "capture a wide range of conduct." *Lorenzo v. SEC*, 139 S. Ct. 1094, 1101-02 (2019). In *Lorenzo*, the Supreme Court recognized that there is "considerable overlap among the subsections of Rule 10b-5 and Section 17(a), and thus the same underlying conduct may establish a violation of more than one subsection.

[71]Section IV.C ¶¶ 17-24.

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

Section 10(b) of the Exchange Act and Rule 10b-5 render it unlawful, "in connection with the purchase or sale" of securities, to: (a) employ any device, scheme, or artifice to defraud; (b) make any untrue statement or omission of material fact; or (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. A showing of scienter is required under Section 10(b) and Rule 10b-5 thereunder. *SEC v. Corporate Relations Group*, No. 6:99-cv-1222, 2003 WL 25570113, at *7 (M.D. Fla. Mar. 28, 2003).

Unlike private securities actions, the SEC need not prove reliance or injury under Section 17(a), Section 10(b), or Rule 10b-5. *SEC v. Morgan Keegan & Co., Inc.*, 678 F.3d 1233, 1244 (11th Cir. 2012).

a) Defendants' Misrepresentations and Omissions

(1) Defendants' Misstatements Regarding PreIPO's Management

Defendants PreIPO, Mattera, and Grzan have made misstatements and omissions to investors and prospective investors regarding the identity of PreIPO's highest-ranking executive officer.[72] Mattera, previously convicted of securities fraud, and under the constraints of a

[72] Section IV.A ¶ 11; Section IV, B ¶ 14; Section IV, D ¶ 25.

permanent injunction, was completely hidden from public view.[73] Front-men such as Grzan indicated to the public that he was the CEO, when in truth and in fact, Mattera was calling all the shots.[74] Mattera, through his trust, owned a majority of the equity in PreIPO.[75] And Grzan perpetuated this fraud, acting as the "closer" on investor calls.[76]

(2) Defendants' Misstatements and Omissions Regarding Use of Investor Funds

Defendants PreIPO, Mattera, and Grzan have made misstatements and omissions regarding the use of investor proceeds and are misusing investor funds. The private placement memoranda (PPM) provided to investors include a "Use of Proceeds" section that specifically made false and misleading representations.

PreIPO's PPM and other offering materials fail to disclose to investors that of the $4.2 million raised from investors, $1.76 million of investor funds—42%—was paid to Mattera, Grzan and three other PreIPO officers.[77] The payments specific to Mattera and Grzan totaled approximately $875,750 and $270,000, respectively.[78] And, true to Mattera's modus operandi for which he has been criminally convicted and also subject to a permanent injunction from the Commission, Mattera has used investor money for his own personal use, spending at least $450,000 towards credit card bills and also spending toward financing high-end vehicles, amongst other expenditures.[79]

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[73] Section II.A., ¶¶ 2, 3; Section IV.B ¶¶ 12-13.
[74] Section IV.B ¶¶ 14-15; Section IV, D ¶ 26.
[75] Section IV.B ¶¶ 14, 16.
[76] Section IV.C ¶21-24.
[77] Section IV.D ¶ 28.
[78] Section IV.D ¶¶ 28, 29.
[79] Section IV.D ¶ 28.

Finally, only about $244,000, a mere 6% of money raised, has been spent on trying to develop its online platform despite representations that investor funds would be dedicated to developing PreIPO's platform.[80]

b) The Misrepresentations and Omissions were Material

A false statement or omission must be material for a defendant to be liable for it. The test for materiality is "whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action." *SEC v. Merch. Capital, LLC*, 483 F.3d 747, 766 (11th Cir. 2007) (citation omitted). In other words, information is material if a reasonable investor would consider it significant to making an investment decision. *Basic v. Levinson*, 485 U.S. 224, 230 (1988).

Mattera's criminal history as someone who was in federal prison for 11 years and is still on supervised release for securities fraud and is subject to an $11.8 million forfeiture, is certainly material. *See, SEC v. Complete Bus. Sols. Grp., Inc.*, 538. F. Supp. 3d, 1309, 1331 (S.D. Fla. 2021) (holding that reasonable minds could conclude that the defendant's criminal history was material to investors) citing *SEC v. Prater,* 289 F. Supp. 3d 39, 52-53 (D. Conn. 2003) ("The failure to disclose anywhere on the websites or in other materials any information about [Defendant's] extensive criminal history, including convictions for fraud, would certainly constitute a material omission which a reasonable investor might view as important in deciding whether to trust their money with [Defendant] or his company."); *SEC v. Cap. Cove Bancorp, LLC,* No. 15-00980, 2015 WL 9704076, at *6 (C.D. Cal. Sept. 1, 2015) (finding that in using an alias, defendant "omitted and never disclosed [his] criminal history when soliciting investments" and that this omission was

[80] Section IV.D ¶ 29.

material); *United States v. Hatfield,* 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010) ("It is well-settled that information impugning management's integrity is material to shareholders.").

Further, "[m]isrepresentations regarding the use of investors' funds are material." *SEC v. LottoNet Operating Corp.*, No. 17-21033-CIV-LENARD/GOODMAN, 2017 WL 6949289, at *13 (S.D. Fla. Mar. 31, 2017) (report and recommendation), *adopted* 2017 WL 6989148 (S.D. Fla. Apr. 6, 2017); *SEC v. Smart*, 678 F.3d.850, 857 (10th Cir. 2012) (the fact money was not being used as represented would be material to a reasonable investor). Misappropriation of funds by the issuer's principal are material. *U.S. v. Lochmiller*, 521 Fed. Appx. 687, 691-92 (10th Cir. Apr. 15, 2013) (upholding conspiracy to commit securities fraud conviction because, among other things, defendant made material misrepresentations when he told investors he would use money for low-income housing but instead used it for personal gain); *LottoNet*, 2017 WL 6949289, at *14 ("Any reasonable investor would want to know that Defendants were not, as Defendants represented, spending investor funds to develop the Company, but were instead using 35 percent of investors' money to pay sales agents for soliciting their investments.").

PreIPO's officers, siphoning 42% of investor money for themselves, including Mattera who took up to nearly 15%, without disclosure they were doing so, is material. Furthermore, Mattera using investors' money as his own personal piggy bank without disclosure is similarly material.

c) Defendants' Scheme to Defraud

Defendants perpetuated their scheme to defraud investors through their material misstatements and omissions discussed above. *See Lorenzo*, 139 S. Ct. at 1101-02 (knowing dissemination of misrepresentations with an intent to deceive violates Rule 10b-5(a) and (c) and

Section 17(a)(1)); *see also Malouf v. SEC*, 933 F.3d 1248, 1260 (10th Cir. 2019) (applying *Lorenzo* to Section 17(a)(3) because it "is virtually identical to Rule 10b-5(c)").

The Defendants' scheme was executed by holding out PreIPO as a legitimate investment with a legitimate and highly qualified executives in place to steer PreIPO's success.[81] However, Defendants schemed to completely hide Mattera's involvement and association with PreIPO.[82] And Mattera's involvement was not peripheral—Mattera was in charge of all major functions of PreIPO and in-fact owned a majority equity share in PreIPO through his trust. Grzan not only allowed this charade to continue to the detriment of investors, but helped secure investors for PreIPO.[83]

Moreover, the Defendants and three other PreIPO officers diverted an exorbitant amount of money for themselves, including Mattera's up to nearly 15%—all done with Grzan's knowledge as the CEO of PreIPO, who had access and was a signatory to PreIPO's bank accounts.[84] *See e.g., SEC v. Zanford*, 535 U.S. 813, 821-22 (2002) (misappropriation of client's securities for personal use states a claim for scheme to defraud).

d) Defendants Acted with Scienter

Scienter is a state of mind embracing intent to deceive, manipulate, or defraud. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). The Commission may establish scienter for violations of Section 17(a)(1) of the Securities Act and Rule 10b-5 of the Exchange Act by "a showing of knowing misconduct or severe recklessness." *SEC v. Monterosso*, 756 F.3d 1326, 1335 (11th Cir. 2014) (quoting *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir. 1982)). As noted above, Section 17(a)(2) and (3) of the Securities Act require a showing of negligence.

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[81] Section IV.A ¶¶ 7-10; Section IV.D. ¶ 25.
[82] Section IV.A ¶¶ 10, 11; Section IV.C ¶¶ 21, 24; Section IV.D. ¶ 25.
[83] Section IV.C ¶¶ 15, 21, 22.
[84] Section IV.C. ¶ 24.

The Defendants knew or were reckless in not knowing that the omissions and representations made (and not made) to investors were false. Grzan prepared all PreIPO offering material to investors, and Mattera reviewed them all before investors received them. [85] Yet *none* of these materials gave investors any indicia that Mattera, previously convicted for securities fraud, was in charge of PreIPO. Grzan was a signatory on all of PreIPO's bank accounts.[86] And Mattera had access to these accounts and reviewed them and his wife was added to PreIPO's primary Bank of America account.[87] All of this was done to enhance the chances that individuals would invest in PreIPO. *See e.g., In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d 1326, 1340 (S.D. Fla. 1999) (finding that the scienter of corporate officers is properly imputed to the corporation). Scienter is present here.

5. Mattera is a Control Person under Section 20(a) of the Exchange Act

A defendant is liable as a controlling person where the controlled person violated the securities laws, if the defendant, "had the power to control the general affairs of the entity primarily liable at the time the entity violated the securities laws. . .[and] had the requisite power to directly or indirectly control or influence the specific corporate policy which resulted in the primary liability." *Brown v. The Enstar Grp.*, 84 F. 3d 393, 397 (11th Cir. 1986). As the Court pointed out in *SEC v. Huff,* 758 F.Supp.2d 1288, 1344 (S.D. Fla.), "[t]he legislative purpose in enacting a control liability provision was to prevent people and entities from using straw parties, subsidiaries, or other agents acting on their behalf to accomplish ends that would be forbidden directly by the securities laws." (citing H.R. Rep. No. 73-152, at 12 (1933). This is precisely what Mattera is doing.

[85] Section IV.C ¶ 21.
[86] Section IV.C ¶ 24.
[87] Section IV.C ¶ 24.

Mattera controls PreIPO from the shadows. He has the majority equity stake in PreIPO, he has the sole power to hire and fire employees, controls all expenditures, has unfettered access to its bank accounts, and reviews all marketing materials and offering memoranda before being sent out to investors, and receives the highest percentage of investors' funds—that being triple any other officer.[88] Yet, he is nowhere to be found in any publicly filed documents, in PreIPO's website, nor in any its marketing materials.[89] Mattera's liability as a control person under Section 20(a) of the Exchange Act is textbook. *See Huff,* 758 F.2d at 1344 (finding control person liability where the defendant, in addition to being described as the 'puppet master' by co-workers, appointed board members, entered into a contract with the company with an entity the defendant controlled that served no business purposes, received weekly reports regarding the company's business, reviewed and approved the company's public filings, and participated in the marketing of the company's securities).

6. Defendants are Violating Section 5 of the Securities Act

Sections 5(a) and Section 5(c) of the Securities Act require that every offer and sale of securities must be either registered or validly exempted from registration. To establish a *prima facie* case for a Section 5 violation, the Commission must prove that the defendant, directly or indirectly, (a) offered or sold a security; (b) using interstate commerce; while (c) no registration statement was filed or in effect as to the transaction. *SEC v. Calvo*, 378 F.3d 1211, 1214 (11th Cir. 2004). The Commission is not required to prove scienter. *Id.* Once the Commission has established a *prima facie* case, the burden of proof shifts to the defendant to show that an exemption or safe harbor from registration is available for the offer or sale of the security. *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953).

[88] Section III.A. ¶¶ 14-16; Section III.D. ¶ 26.
[89] Section II.A. ¶¶ 10, 11, 13, 24.

Defendants are violating this provision because investments in PreIPO are not registered and no exemption from registration is in effect.[90] The exemptions from registration pursuant to Section 4(a)(2) of the Securities Act and Rules 504, 505, and 506(b) of Regulation D thereunder were unavailable to PreIPO for the sale of its securities because of the general solicitation by Defendants through their website and other marketing materials where they advertised PreIPO's business and investors' ability to make money through their investments with PreIPO.[91]

The intrastate offering exemptions of 3(a)(11), Rule 147, and Rule 147A are likewise not available because Defendants sold the securities in several states.[92] Furthermore, the exemption under Rule 506(c) is unavailable because there is no indication that Defendants took reasonable steps to verify that investors were accredited. This exemption from registration requires both that "all purchasers of securities sold [pursuant to this exemption] …are accredited investors" and, separately, that issuers "take reasonable steps to verify that the purchasers of the securities are accredited investors." Rule 506(c) of Regulation D, 17 C.F.R. § 230.506(c). As a result, and as the Commission explicitly indicated in its adoption of Rule 506(c), the exemption is not satisfied if reasonable steps to verify are not taken, even if all investors happen to be accredited. *See Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A*, Rel. No. 33-9415, at 26 and n.101 (Jul. 10, 2013) (adopting release) (explaining that the two requirements are separate and independent and that treating them as such will avoid diminishing the incentive for issuers to undertake the reasonable verification steps envisioned by the statute).

No other exemption from registration was available for investments into PreIPO.

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[90] Section IV.C ¶ 18
[91] Section IV.A ¶¶ 7-9; Section IV.D. ¶ 23.
[92] Section IV.C ¶17.

C. An *Ex Parte* Temporary Restraining Order in Necessary

Based on the facts and law set forth above, the Commission has met its burden of showing: (1) there is *prima facie* evidence the Defendants are violating the securities laws; and (2) there is a reasonable likelihood they will continue to violate the law unless the Court immediately issues an *ex parte* temporary restraining order against Defendants. As the accompanying Certification Under Rule 65 explains in detail, the Commission has concerns the Defendants will dissipate investor assets if notice is provided. Mattera has already misappropriated hundreds of thousands of dollars for his personal use. And, given that the fraud is ongoing, the Commission respectfully requests that the Court enter the attached proposed order granting this temporary restraining order and entering the asset freeze without notice to the Defendants to prevent them from further misappropriating investor funds. The Commission will serve the Defendants with the pleadings and orders expeditiously, and the attached proposed order requests that the Court set a show cause hearing at which time the Defendants can appear and argue why the Court should not enter a preliminary injunction and further extend the asset freeze.

D. An *Ex Parte* Total Asset Freeze is Appropriate

The Court may order an asset freeze to ensure that a disgorgement award can be satisfied and to prevent further dissipation of investor funds. *ETS Payphones*, 408 F.3d at 734; *accord CFTC v. Levy*, 541 F.3d 1102, 1114 (11th Cir. 2008). "The SEC's burden for showing the amount of assets subject to disgorgement (and therefore available for freeze) is light: a reasonable approximation of a defendant's ill-gotten gains is required. Exactitude is not . . . ." *ETS Payphones*, 408 F.3d at 735 (cleaned up); *accord FTC v. IAB Mktg. Assocs., LP.*, 746 F.3d 1228, 1234 (11th Cir. 2014). The Commission's burden to demonstrate the potential for dissipation of funds is even lighter. *See FTC v. IAB Mktg. Assocs., LP,* 972 F. Supp. 2d 1307, 1313 n.3 (S.D. Fla. 2013) ("There

does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze.") (citing *ETS Payphones,* 408 F.3d at 734, and *SEC v. Lauer*, 445 F. Supp. 2d 1362, 1367, 1370 (S.D. Fla. 2006)); *SEC v. Gonzalez de Castilla*, 145 F. Supp. 2d 402, 415 (S.D.N.Y. 2001) ("[T]he SEC must demonstrate only . . . a concern that defendants will dissipate their assets . . . .").

A total asset freeze is warranted when the assets to be frozen are worth less than the likely disgorgement award. *See SEC v. Lauer*, 478 F. App'x 550, 554 (11th Cir. 2012) (unpublished) ("[I]f potential disgorgement is greater than the value of the defendant's assets, the district court can order a full asset freeze"); *ETS Payphones*, 408 F.3d at 735-36 (affirming order that "froze all of [defendant's] assets" when estimated disgorgement and value of frozen assets were comparable); *IAB Marketing*, 972 F. Supp. 2d at 1313 (denying defendants' motion to "unfreeze" funds for living expenses where "Defendants' monetary liability greatly exceeds the frozen funds"). Furthermore, Defendants should not be permitted to use ill-gotten gains they have received to pay attorney's fees or living expenses. *See FTC v. RCA Credit Services, LLC*, No. 8:08-cv-2062-T-27MAP, 2008 WL 5428039, at *4 (M.D. Fla. Dec. 31, 2008) (defendants "may not use their victims' assets to hire counsel to help them retain the fruits of their violations"); *CFTC v. United Investors Group, Inc.*, No. 05-80002-CIV 2005 WL 3747596, at *1 n.1 (S.D. Fla. June 9, 2005) (refusing to except living expenses and counsel fees from asset freeze), *aff'd on other grounds sub nom. Levy*, 541 F.3d at 1102.

Here, the Commission has no information indicating that Defendants have assets in excess of the likely disgorgement award. Therefore, a total freeze is appropriate. If, in fact, Defendants have liquid assets in excess of the disgorgement amount, the freeze can be adjusted accordingly.

E. The Court Should Require Defendants to Provide Sworn Accountings

The Court should require Defendants to provide sworn accountings, which enable the Commission and the Court to determine the Defendants' profits, the present location of proceeds, and the Defendants' ability to repay. *See SEC v. Tannenbaum*, No. 99-CV-6050, 2007 WL 2089326, at *4 (E.D.N.Y. July 19, 2007); *SEC v. Lybrand*, No. 00-Civ.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).

F. The Court Should Prohibit the Destruction of Records

An Order against Defendants prohibiting the destruction of records is appropriate to prevent the destruction of documents before this Court can adjudicate the Commission's claims, and to ensure that whatever equitable relief might ultimately be appropriate is available. *Shiner*, 268 F. Supp. 2d at 1345-46.

VI. CONCLUSION

For the forgoing reasons, the Court should grant the Commission's Emergency Motion.

LOCAL RULE 7.1(d) CERTIFICATION

After reviewing the facts and researching applicable legal principles, I certify that this motion in fact presents a true emergency (as opposed to a matter that may need only expedited treatment) and requires an immediate ruling because the Court would not be able to provide meaningful relief to a critical, non-routine issue after the expiration of seven days. I understand that an unwarranted certification may lead to sanctions.

Dated: August 14, 2023

Respectfully submitted,

By: _____

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INDEX IN SUPPORT

Exhibit A: Declaration of David P. Staubitz, Senior Counsel, SEC, with attachments No. 1 – 24;

Exhibit B: Declaration of Mark Dee, SEC Accountant; and

Exhibit C: Declaration of Magaly Ordaz, SEC Paralegal, with attachments Nos. 1 – 4.