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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

BLOCKVEST, LLC and REGINALD BUDDY RINGGOLD, III a/k/a RASOOL ABDUL RAHIM EL,

Defendants.

Case No. 3:18-cv-02287-GPC-MSB

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TERMINATING SANCTIONS

Date: February 21, 2020
Time: 1:30 p.m.
Place: United States Courthouse
221 West Broadway
Courtroom 2D (Schwartz)
San Deigo, CA 92101

Judge: Hon. Gonzalo P. Curiel

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I. INTRODUCTION

As the Ninth Circuit has explained, "[t]here is no point to a lawsuit, if it merely applies laws to lies." *Valley Engineers Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998). Plaintiff Securities and Exchange Commission ("SEC") requests that the Court exercise its inherent authority to enter default judgments against Defendants Blockvest, LLC ("Blockvest") and Reginald Buddy Ringgold, III a/k/a Rasool Abdul Rahim El ("Ringgold"), based on their knowing submission of false and forged declarations, which has imposed on this Court just such an untenable task of applying the securities laws to defendants' lies.

Defendants' primary argument in opposition to the SEC's request for a preliminary injunction in this matter was that there had not been any actual investors in Blockvest's sale of digital "BLV" tokens. Instead, defendants argued that dozens of "friends and family" paid money: (1) to an affiliated entity without expecting to receive Blockvest tokens (the "Rosegold investors"), or (2) to help develop the Blockvest platform without expecting to receive real tokens (the "testers"). To support these contentions, defendants submitted declarations from individuals supposedly in both categories. As the SEC will detail in its upcoming Motion for Summary Judgment ("MSJ"), judgment is warranted because discovery in this matter has shown beyond dispute that the Rosegold investors included strangers solicited by Blockvest's commissioned sales agents, and that both the Rosegold investors and testers expected to profit from the purchase of real BLV tokens based on defendants' fraudulent promotional materials.

This motion provides a separate and threshold basis for judgment—defendants' willful and bad faith deception of the Court. During discovery, the SEC learned that the declaration of at least one supposed Rosegold investor, Christopher Russell ("Russell"), was filed with a forged signature. Ringgold also asked at least two supposed testers, Quintin Dorsey ("Dorsey") and Jacqueline Wartanian ("Wartanian"), to sign knowingly false declarations concealing that they had trusted

him with their money based on being his former Online Trading Academy students, and that they expected a return from real Blockvest tokens that they purchased after reviewing Blockvest's promotional materials he provided. Finally, Ringgold directed his affiliate Amanda Vaculik ("Vaculik") to lie during an SEC interview and then to submit a false declaration to support a fabricated story about a $147,000 payment supposedly for Blockvest's development. Because this deception impacted the adjudication of a central legal issue in this matter and caused irreparable prejudice, the SEC requests that the Court impose liability against defendants on the SEC's claims prior to considering the upcoming MSJ. These false materials so tainted the credibility of any defense evidence, that there is no reason for the Court to review this evidence for a triable issue of fact.

In the alternative, the SEC requests that the Court preclude defendants from relying on any of the investor declarations and draw adverse inferences concerning whether defendants sold these investors Blockvest securities.

II. SUMMARY OF FACTS

A. Procedural History

The SEC filed this action for violations of the securities registration and antifraud provisions of the federal securities laws on October 3, 2018. Dkt. No. 1. The complaint alleged that Defendants planned a fraudulent $100 million sale of Blockvest digital tokens called "BLVs," and that defendants already had raised millions through pre-ICO sales. *Id.* With its complaint, the SEC filed an application for a TRO to halt the upcoming offering, which the Court granted on October 5, 2018. Dkt. Nos. 3, 5-6.

On November 27, 2018, following briefing (including the contested declarations) and a hearing (where the declarations were referenced), the Court denied the SEC's request for a preliminary injunction, concluding that the SEC had not shown, as part of its *prima facie* case, that the BLV tokens offered during the pre-ICO sales were securities. Dkt. No. 41 at 6-7. The Court's opinion cited the investor

declarations to conclude that it could "not make a determination, at this stage of the proceedings, whether the BLV token offered to the 32 test investors was a 'security,'" nor "whether the 17 individuals who invested in Rosegold purchased 'securities.'" *Id.* at 13-14. As a consequence, the opinion also found that the SEC had failed to show a reasonable likelihood that defendants would repeat their violations because "it is disputed whether there have been past violations." *Id.* at 15-16. Thereafter, on February 14, 2019, the Court granted in part the SEC's motion for reconsideration and issued an order preliminarily enjoining defendants' violations of the antifraud provisions of the Securities Act. Dkt. No. 61. In that order, the Court continued to cite defendants' evidence concerning the Rosegold investors and testers to conclude that there was a factual dispute about whether these individuals purchased securities, concluding "[t]he Court denies Plaintiff's motion for reconsideration as to the offers or promises made to the 32 test investors and 17 individual investors." Dkt. No. 61 at 14. The order did not impose an asset freeze or enjoin violations of the antifraud provisions of the Exchange Act or the registration provisions of the Securities Act. Dkt. No. 61.

Also on February 14, 2019, the Court also granted defense counsel's motion to withdraw, due to asserted "malicious attacks" by defendants and attempts to file documents without counsel's knowledge or signature. Dkt. No. 62.[1]

B. The Deceptive Declarations

As will be extensively detailed in the SEC's forthcoming MSJ, discovery has shown that defendants' investor declarations obscured critical details, namely that these were unaffiliated individuals who were provided Blockvest's fraudulent promotional materials by defendants and their commissioned sales agents in advance of their investments. At issue here, the discovery also revealed that at least four of

[1] The SEC is unaware whether the false declarations at issue were related to counsel's withdrawal request. Defendants have never withdrawn these declarations, even after the SEC inquired about them during discovery.

the declarations were knowingly deceptive or forged.

Christopher Russell: On November 13, 2018, defendants filed 17 Rosegold investor declarations attached to Ringgold's declaration. *See* Declaration of Brent W. Wilner in Support of Motion for Terminating Sanctions ("Wilner Decl."), *filed concurrently herewith*, Ex. 1. One was for Russell. *Id*. Ex. 3. According to Russell's Court-filed declaration, Russell was a "sophisticated" investor who learned of the investment opportunity in Rosegold, not Blockvest, from a friend with a "long" relationship with Sheppard, and who prior to sending $3,000 to Rosegold "did not review or rely on the Blockvest Website or Whitepaper or anything else on the internet about Blockvest" and did not make his investment decision based on any such materials. *Id.* Ex. 3.

Russell never authorized Blockvest to make these statements to the Court. Rather, on November 13, 2018 (the date Russell's declaration was filed), Russell's friend, Blockvest sales agent Chase Pfohl, emailed Russell a declaration drafted by defendants. Wilner Decl. Ex. 4; Ex. 22 at 136, 142-43, 145. Later on November 13, Blockvest's CFO Michael Sheppard directly implored Russell to sign the declaration because "[o]ur defense attorney is almost certain we will receive a settlement offer if we advise that we have 100% of all investors with a signed declaration. The only one we need is yours to be 100% complete." *Id*. Ex. 5. Sheppard further promised that "[w]e will get 100% of your investment back to you when this is over." *Id*. Ex. 5.

Rather than wait for Russell to respond, still on November 13, defendants filed a declaration with an electronic signature bearing Russell's name. *Id*. Ex. 3. But Russell testified that he never authorized defendants to sign the declaration on his behalf, and that the version filed with the Court was "false." *Id*. Ex. 22 at 156, 160-164. Instead, on November 14—*the day after Russell's declaration had already been filed*—Russell emailed an entirely different signed version of the declaration to Sheppard, stating "I just found out about this from Chase yesterday afternoon. I have signed and attached the declaration for you. Been a busy morning playing catch up as

my wife and I just a baby, and today is my first day back to work." *Id*. Ex. 5; Ex. 22 at 156-59. Russell had made extensive edits to the version defendants had drafted for him, including omitting the description of Russell as a "sophisticated" investor (he was not) and deleting that Pfohl had a "long" relationship with Sheppard (he did not), which appear in the filed version. *Id*. Ex. 6; Ex. 22 at 118-119, 125-129. Moreover, in the filed version, defendants *added* statements Russell had never seen, claiming that Russell had never reviewed or relied on Blockvest's promotional materials or website—he would not have authorized these claims because he *had* reviewed Blockvest's materials and they were influential in his decision to purchase, he believed, $3,000 of Blockvest tokens. *Id*. Exs. 3, 4 & 6; Ex. 22 at 165-168. Russell made a "Blockvest" notation on his check to Rosegold, which he understood to be essentially a holding company for Blockvest. *Id*. Ex. 7; Ex. 22 at 137-140; Ex. 26 at 444-445.[2] After his investment, he continued to believe he had acquired BLV tokens based on his account statement available on Blockvest's website. *Id*. Ex. 22 at 70-72. Based on Blockvest's promotional materials and other representations by the company's personnel, Russell expected to profit from those tokens based on the efforts of Ringgold and Blockvest's management to make the company successful. *Id*. Ex. 22 at 77-78, 140-142.

Despite knowing that Russell had sent a different version of his declaration to them *after* filing his unauthorized version, *see* Wilner Decl. Ex. 5, defendants have never withdrawn the forged version nor filed his actual signed version. *Id*. Ex. 28 at 519-530. This is so, even though Ringgold admitted having concerns that Russell's declaration had been forged, although both he and Sheppard denied responsibility for the forgery. *Id*. Ex. 26 at 444-448; Ex. 28 at 519-530.

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[2] Unlike for other declarants, defendants did not file Russell's check with his declaration. *See* Wilner Decl. Ex. 1. The signature on Russell's check is similar to electronic signature on the unauthorized declaration filed with the Court. *Compare id.* Ex. 6 *with id.* Ex. 7. The only Blockvest personnel with access to the company's online banking account were Sheppard, Ringgold, and his mother. *Id*. Ex. 26 at 445-47.

Quintin Dorsey and *Jacqueline Wartanian*: Defendants also filed 9 declarations of supposed Blockvest platform testers, attached to Ringgold's declaration in opposition to a preliminary injunction. Wilner Decl. Ex. 2. This included declarations of Dorsey and Wartanian, both former students of Ringgold at the Online Trading Academy. *Id*. Exs. 8 & 9; Ex. 23 at 37; Ex. 24 at 27. Both declarations included representations that "I never intended to make an investment and made no investment decision, but wanted to help test the exchange for future use and believed I would get my money back, less the transaction fees charged by third-parties." *Id*. Exs. 8 & 9. This was false as to both of these investors.

With respect to Dorsey, defendants solicited his $5,000 investment by sending him Blockvest promotional emails and materials. In a March 1, 2018 email, Sheppard sent Dorsey promotional materials providing "an overview of the Blockvest cryptocurrency token," which Sheppard claimed was a "[g]reat investment opportunity to make a quick 100% return on your investment." Wilner Decl. Ex. 10. And in an April 22, 2018 email, Ringgold wrote to Dorsey "thank [him] personally for [his] investment interest in the project," attaching links to Blockvest's materials, including the website, whitepaper, ICO video, and Form D notice of exempt offering of securities filed with the SEC. *Id*. Ex. 11. Ringgold added, "[f]or your investment you will receive 10,000 BLV tokens." *Id*. Ex. 11. Four days later, Dorsey made a $5,000 credit card purchase for a "BlockVest ICO-Order" (an amount he said was significant amount to him). *Id*. Ex. 12; Ex. 23 at 36. Consistent with these representations, Dorsey testified that he made the purchase expecting to receive BLV tokens from which he would profit. *Id*. Ex. 23 at 71-74, 81-83, 107-08. As with Russell, he viewed his apparent BLV token balance on the Blockvest website. *Id*. Ex. 23 at 125-127. Contrary to his declaration, Dorsey never believed his investment was for a "test," *Id.* Ex. 23 at 93, 152, 161, and he never "saw that word 'test'" until after his declaration had been filed. *Id*. Ex. 23 at 190-192. Dorsey only agreed to sign the declaration after "pressure" from Ringgold, including numerous text messages and

emails, which were sent in the midst of Dorsey's wife's recovery from pregnancy complications. *Id*. Exs. 13 & 14; Ex. 23 at 169-175. He was not aware of the purpose of the declaration, or even aware of the SEC's lawsuit. *Id*. Ex. 23 at 175-178. Ringgold did not give Dorsey the opportunity to edit the declaration. *Id*. Ex. 23 at 187. Only after it had been filed, Dorsey read the declaration and realized it was entirely false: "it's basically all a complete lie except for my name. That's—I mean, that's the only thing that's true is my name. Otherwise, almost every word on here is a lie." *Id*. Ex. 23 at 197. During his deposition, Ringgold claimed that he never solicited Dorsey to invest, never sent the April 22, 2018 email, and even claimed that Dorsey was a "sophisticated" "Rosegold" investor contradicting the declaration that Dorsey was a tester. *Id*. Ex. 28 at 450-455, 539-545.

Similarly, for Wartanian, contrary to her declaration, Wilner Decl. Ex. 9, she was not just a tester, but also sought a profit by investing approximately $3,000 in dollars and cryptocurrencies between April and September 2018, including a portion on behalf of her mother. *Id*. Ex. 16; Ex. 24 at 15-16, 69-70, 113-118. Prior to her initial investment, Wartanian discussed Blockvest with Ringgold and reviewed the company's Website and social media accounts. *Id*. Ex. 24 at 49-52, 83. Certain of the company's claims in its promotional materials, including its representations concerning Deloitte, were persuasive to her. *Id*. Ex. 24 at 85-89. She expected to make a profit from her investment once the company launched its ICO, and considered herself a presale investor. *Id*. Ex. 24 at 58-60. She invested on behalf of her mother "[f]or her medical bills and she's 79. So I figured, you know, the investment will help pay for that." *Id*. Ex. 24 at 69-70. Wartanian also helped test the functionality of the Blockvest platform, but that was separate from her investment. *Id*. Ex. 24 at 60. Wartanian's belief that she had invested in Blockvest securities was supported by her subsequent communications with Blockvest, including Sheppard who told her "[r]est assured we have a ledger for all users that has the exact balance due. We will deposit the BLV to each account accordingly," to

which Wartanian responded "I look forward for BLV to take off soon." *Id*. Ex. 15; Ex. 24 at 109-111. And, as with the preceding investors, she believed that she had purchased Blockvest tokens based on her account statement on the Blockvest website. *Id*. Ex. 16; Ex. 24 at 113-118. According to Wartanian, Ringgold drafted her declaration; she only "skimm[ed]" it and did not make any changes or review the SEC's complaint before signing it. *Id*. Ex. 24 at 149-152. During her deposition, Wartanian acknowledged that her declaration had numerous inaccuracies, including that it wrongly claimed that she only performed testing services, when in reality she made investments expecting to profit from the purchase of BLV tokens. *Id*. Ex. 24 at 152-165. When confronted with her testimony, Ringgold claimed that he did not remember who Wartanian was, and continued to maintain that she was just a tester. *Id*. Ex. 28 at 548-551. He also denied any role in drafting Wartanian's declaration and speculated she may have submitted a separate declaration regarding her investment (she did not). *Id*. Ex. 28 at 608-609.

Amanda Vaculik: In the briefing regarding a preliminary injunction, defendants also filed a declaration from Ringgold's affiliate Vaculik, attesting that her "boyfriend" "[Christopher] Black told me that Mr. Reginald Ringgold agreed to pay Mr. Black $147,000 in exchange for Mr. Black's software development services. Mr. Black told me that he asked Mr. Ringgold to make payment for Mr. Black's services to my landlord, '5th ST LLC'" on April 18, 2018. Wilner Decl. Ex. 17; *see also* Exs. 18, 19 & 20.[3] Vaculik had made these same claims during an earlier interview with the SEC on November 15, 2018, as she attested in her declaration, "I told the above information to the SEC during that call that occurred prior." *Id*. at ¶¶ 23-24; Exs. 17, 21. The interview statements and declaration were lies made at Ringgold's direction.

The genesis of this fiction was Ringgold's initial deposition during expedited discovery on November 6, 2018. Ringgold then testified that a $147,000 payment

[3] Vaculik's declaration was ultimately stricken and not considered by the Court in its initial denial of the preliminary injunction. Dkt. No. 41 at 17.

from his personal account for a Santa Monica apartment for Vaculik was compensation to "Chris" and his company for "development" of Blockvest's platform, and that the source of funds was cash he had in a safe (not from Blockvest investors). Wilner Decl. Ex. 27 at 357-363. On November 15, 2018, the SEC interviewed Vaculik regarding the transaction. *Id*. at ¶¶ 23-24; Ex. 21. After initially answering our call, Vaculik requested that the SEC interviewers call her back in 30 minutes. *Id*. at ¶ 23. During the subsequent call, Vaculik told SEC interviewers that Black was her boyfriend, that he was involved with technology, and that the payment was to pay for Black's services for an apartment in which Vaculik would live, *id*. at ¶ 24, which she then repeated in her declaration. *Id.* Ex. 17.

During a proffer by Vaculik to the Department of Justice that the SEC attended on April 24, 2019, Vaculik admitted that this entire story was a lie—Black was not her boyfriend, she did not live in the apartment, she did not know the source or purpose of the funds, and she became involved because Ringgold and his affiliates paid her $10,000 to put the apartment application in her name. Wilner Decl. at ¶ 25. Moreover, Vaculik admitted that she had spoken to Ringgold during the intervening 30 minutes between calls with the SEC on November 15, 2018, who instructed her to tell these lies to the SEC staff. *Id*. ¶ 25.

Thereafter, during a deposition in this matter on September 9, 2019, Vaculik asserted her Fifth Amendment right as to all questions concerning the transaction, the declaration, and the SEC interview. Wilner Decl. Ex. 25 at 18-61. For his part, during his October 22, 2019 deposition, Ringgold claimed not to know Vaculik or Black, or to recall any transaction with her or Black related to supposed development services or the apartment. *Id*. Ex. 28 at 394-99, 610-631.

III. ARGUMENT

Defendants willfully misled the Court concerning a critical legal issue in this case through the submission of knowingly false and forged declarations. Under

Ninth Circuit precedent, such conduct warrants the entry of default judgment against defendants under the Court's inherent authority.

"It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (internal quotation and alteration marks omitted). The "courts have inherent power to [enter sanctions] . . . when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice." *Fjelstad v. Am. Honda Motor Co., Inc.*, 762 F.2d 1334, 1338 (9th Cir. 1985); *see Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.*, 982 F.2d 363, 368 (9th Cir.1992) (The "[c]ourts are invested with inherent powers that are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'") (quoting *Chambers*, 501 U.S. at 43). "This inherent power is not limited by overlapping statutes or rules. The Supreme Court explained 'that the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.'" *Haeger v. Goodyear Tire & Rubber Co.*, 793 F.3d 1122, 1131-32 (9th Cir. 2015) (quoting *Chambers*, 501 U.S. at 49).

In the exercise of its inherent power, a court "may impose sanctions including, where appropriate, default or dismissal." *Thompson v. Hous. Auth. of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986), *cert. denied Thompson v. Hous. Auth of Los Angeles*, 479 U.S. 829 (1986); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987) ("Courts have inherent equitable powers to dismiss actions or enter default judgments[.]"); *CrossFit, Inc. v. Nat'l Strength & Conditioning Ass'n*, No. 14-CV-1191 JLS (KSC), 2019 WL 6527951, at *5, 17 (S.D. Cal. Dec. 4, 2019) (same). In deciding whether to impose "severe" terminating sanctions, *see Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007), a court considers the following factors: "(1) the public's interest in expeditious resolution of

litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006) (*citing Anheuser–Busch, Inc. v. Natural Beverage Distribs*., 69 F.3d 337, 348 (9th Cir. 1995)). While a court need not make explicit findings regarding each of the five factors, a finding of "willfulness, fault, or bad faith" is required for imposition of terminating sanctions. *See Leon*, 464 F.3d at 958; *Carl Zeiss Vision Int'l GmbH v. Signet Armorlite, Inc*., No. 07-CV-0894 DMS (POR), 2009 WL 10668689, at *3 (S.D. Cal. Mar. 17, 2009) ("Bad faith, however, is not a prerequisite to the imposition of dismissal sanctions. It is sufficient that the conduct was either willful or the fault of the offending party.")

A. The Court Should Issue Judgment Against Blockvest and Ringgold

Defendants' egregious deceptive conduct warrants terminating sanctions.

1. Defendants' Misconduct Was Willful and in Bad Faith

As a threshold matter, the misconduct at issue was willful and bad faith, because defendants knew the declarations were false or forged and yet they took no steps to correct them; on the contrary, defendants attempted to conceal the wrongdoing with further false deposition testimony. "It is well settled that dismissal is warranted where . . . a party has engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings." *Anheuser-Busch*, 69 F.3d at 348.

Defendants knew that the declaration of Russell they filed with the Court was not a version he authorized, because he did not send the signed version to Blockvest's CFO until the *day after* defendants *already* had filed a materially different version with the Court. Defendants never took any steps to file the authorized version of Russell's declaration with the Court. And while Ringgold testified that he did not forge Russell's signature, he admitted that he suspected the declaration had been forged, and took no actions to withdraw it. With respect to the false tester declarations from Wartanian and Dorsey, Ringgold had direct communications with

these individuals, sending them Blockvest's promotional materials, and he knew they were expecting to profit from their BLV purchases. Nevertheless, Ringgold directed Dorsey and Wartanian to sign declarations containing the false "testing" narrative. Ringgold compounded matters by falsely claiming during his deposition not to know Dorsey or Wartanian, while also falsely claiming they are somehow "sophisticated" or "Rosegold" investors—they are not. Finally, Ringgold coached Vaculik to lie to the SEC about her relationship with a supposed developer and about a $147,000 payment for an apartment she never in fact lived in, and then submitted her declaration repeating those falsehoods. Ringgold's bad faith was further demonstrated by his later testimony that he did not even recall who Vaculik or her boyfriend were nor the transaction, further obfuscating expenditure of funds supposedly used on Blockvest's behalf.

2. Factors Warranting Dismissal

The other relevant factors also weigh in favor entering default judgments.

Public's Interest in Expeditious Resolution of Litigation: While "[o]rderly and expeditious resolution of disputes is of great importance to the rule of law," the Ninth Circuit has emphasized that "delay in reaching the merits, whether by way of settlement or adjudication, is costly in money, memory, manageability, and confidence in the process." *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006). Here, the false declarations influenced the Court's evaluation of the SEC's request for a preliminary injunction. This, in turn, resulted in the need for a reconsideration motion, and has necessitated protracted litigation to adjudicate whether defendants sold Blockvest securities to presale investors—an issue that was only in dispute due to defendants' fraud on the Court.

Court's Need to Manage its Dockets: "District courts have an inherent power to control their dockets," and to that end "'dismissal must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such

conduct in the absence of such a deterrent.'" *Phenylpropanolamine Litig.*, 460 F.3d at 1227 (quoting *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) (per curiam)). Defendants' conduct undermined the integrity of these proceedings, and any remedy short of default would not adequately deter future fraudsters from producing false declarations to manufacture contested issues in litigation.

Risk of Prejudice to Party Seeking Sanctions: The prejudice inquiry turns on whether the misconduct impaired the SEC's "ability to go to trial or threatened to interfere with the rightful decision of the case." *Leon*, 464 F.3d at 959 (internal citations omitted). Here, the investor declarations were the primary evidence cited by the Court in determining that there were factual disputes precluding a finding that there had been presale investors in the Blockvest offering. As a result, the Court denied the preliminary injunction, and on reconsideration imposed a subset of the relief requested by the SEC. Thus for the past year, defendants have not been enjoined from all of the charged misconduct (including Exchange Act antifraud violations and Securities Act registration violations), exposing investors to an ongoing risk of harm, and defendants' assets have not been frozen, making any recovery of lost investor funds unlikely. Defendants' fraudulent evidence has thereby exacted meaningful and lasting prejudice on the SEC and the investors it seeks to protect. And, given the scope of misconduct, any evidence defendants present in response to the SEC's forthcoming summary judgment motion or at any trial also will not be credible. *See, e.g.*, *CrossFit*, 2019 WL 6527951, at *19 (finding prejudice warranting terminating sanctions where "[g]iven the extensive perjury to date, the evidence supplied by the [defendant] will also be inherently untrustworthy.'").

Public Policy Favoring Disposition of Cases on Their Merits: The presumption in favor of disposition on the merits is outweighed where, as here, defendants have engaged in a pattern of fraud. *See Valley Engineers Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998). As one court found in dismissing an action where the

plaintiff submitted a false declaration, "while public policy favors disposition on the merits and therefore weighs against dismissal, it is Plaintiff's own misconduct which is at issue here and which has stalled the case." *Uribe v. McKesson*, No. 08-CV-01285-SMS PC, 2011 WL 3925077, at *5 (E.D. Cal. Sep. 7, 2011). While even one forged declaration would be shocking enough, defendants' dishonest filings and witness interference pervaded the defenses they raised during the preliminary injunction briefing, and have persisted through their failure to acknowledge or remedy these issues throughout discovery.

Availability of Less Drastic Sanctions: The Ninth Circuit has made clear "that it is not always necessary for the court to impose less serious sanctions first, or to give any explicit warning." *Valley Engineers*, 158 F.3d at 1057. Courts have found terminating sanctions are particularly warranted where, as here, there is deception that is directly pertinent to the legal issues being litigated. *TeleVideo*, 826 F.2d at 917 (affirming dismissal in light of perjured because "it infected all of the pretrial procedures and interfered egregiously with the court's administration of justice."). Moreover, such sanctions are especially appropriate in cases like this one where no alternative sanctions will fully remedy the prejudice or deter continued abuses. *See CrossFit*, 2019 WL 6527951, at *20 ("Because there can no longer be assurance of proceeding on the true facts, termination is appropriate."). Accordingly, in the context of entering terminating sanctions against a *pro se* litigant who submitted a false declaration, one court explained that monetary sanctions would be insufficient because the party simply would not pay them. *Uribe*, 2011 WL 3925077, at *5. And the court reasoned that precluding the false declaration would not be sufficient, because "allowing Plaintiff to continue this action would not deter repetition of such conduct or comparable conduct. Such a course would simply place Plaintiff back in the same position he was in, without the false declaration." Defendants are unlikely to pay any monetary sanction, and simply precluding these specific declarations would not deter them from further deception going forward.

B. Absent Default Judgments, the Court Should Issue Evidentiary Sanctions

If the Court is not inclined to issue default judgments, defendants should, at a minimum, be precluded from introducing any testimony or declarations from the investors in this case and be subjected to an adverse inference that they in fact sold Blockvest securities to investors. These remedies should be imposed in connection with the SEC's forthcoming MSJ and apply to any trial of this matter.

The inclusion of knowingly fabricated declarations infected the Court's evaluation of this central legal question. Rejecting the basis for the purported factual dispute and ruling against them on this issue would minimize the taint of defendants' misconduct. With the utter disingenuousness of their "Rosegold" and "tester" defenses revealed, defendants should not be permitted to continue these fictions in their continued defense of this action. Courts have precluded parties from introducing evidence where, as here, the misconduct exacts prejudice. *Lewis v. Ryan*, 261 F.R.D. 513, 522 (S.D. Cal. 2009) ("The court's inherent authority to impose sanctions for the wrongful destruction of evidence includes the power to exclude evidence that, given the spoliation, would 'unfairly prejudice an opposing party.'") (internal citation omitted). Similarly, courts have determined that an adverse inference on the subject of a party's prior falsely submitted evidence is an appropriate remedy. *See Compass Bank v. Morris Cerullo World Evangelism*, 104 F. Supp. 3d 1040, 1060 (S.D. Cal. 2015) (entering non-rebuttable adverse inference based on party's willful disregard of discovery obligations and court order).

IV. CONCLUSION

For the reasons stated above, the SEC respectfully requests that the Court issue an order entering default liability against defendants Blockvest and Ringgold, or in the alternative, enter an order of preclusion and adverse inference.

Dated: January 10, 2020

/s/ Amy Jane Longo
Amy Jane Longo
David S. Brown
Brent W. Wilner
Attorneys for Plaintiff
Securities and Exchange Commission

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On January 10, 2020, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TERMINATING SANCTIONS** on all the parties to this action addressed as stated on the attached service list:

☐ **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

☐ **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

☐ **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

☒ **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

☒ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

☐ **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

☐ **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 10, 2020

/s/ Amy Jane Longo
Javier Delgadillo

SEC v. Blockvest LLC, et al.
United States District Court—Southern District of California
Case No. 3:18-cv-02287-GPC-MSB

SERVICE LIST

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Defendant

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