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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 SECURITIES AND EXCHANGE
14 COMMISSION,
15 Plaintiff,
16 v.
17 ROBERT NEWELL and BLACK HAWK
FUNDING, INC.,
18 Defendants.
19

Case No.
COMPLAINT

20 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

21 **JURISDICTION AND VENUE**

22 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
23 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C.
24 §§ 77t(b), 77t(d)(1), and 77v(a)]; Sections 21(d), 21(e), and 27 of the Securities
25 Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]; and
26 Sections 209(d), 209(3)(1), and 214 of the Investment Advisers Act of 1940
27 (“Advisers Act”) [115 U.S.C. §§ 80b-9(d), 80b-9(e)(1), and 90b-14].
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1 206(2), and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2), and (4)] and Rule
2 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

3 6. With this complaint, the SEC seeks against the Defendants permanent
4 injunctions prohibiting future violations of the federal securities laws and injunctions
5 prohibiting Defendants from directly or indirectly, including, but not limited to,
6 through any entity owned or controlled by either Defendant, participating in the
7 issuance, purchase, offer, or sale of any securities, with a carve-out as to Defendant
8 Newell that permits trading in his personal accounts. In addition, against Defendant
9 Newell only, the SEC seeks an order requiring Newell to disgorge his ill-gotten gains,
10 along with prejudgment interest, an order requiring Newell to pay civil penalties, and
11 an order barring Newell from serving as an officer or director of a publicly traded
12 company.

13 DEFENDANTS

14 7. **Robert Newell**, age 63, resides in Indio, California. He founded Black
15 Hawk in or about 2011 and, until his resignation in September 2019, was its CEO and
16 control person. During the relevant time period, Newell owned all of Black Hawk's
17 voting shares and almost all of its non-voting common shares.

18 8. **Black Hawk Funding, Inc.** was incorporated in Nevada in 2011 and,
19 from at least November 2016 through approximately October 2019, was dually
20 headquartered in Coeur d'Alene, Idaho and La Quinta, California. Black Hawk
21 managed various private funds and other assets. From 2016 to 2019, Black Hawk
22 raised approximately \$37.7 million from over 200 investors across the United States in
23 three private funds created to invest in the cannabis industry. Black Hawk was the
24 investment adviser to the three private funds and had exclusive control over the funds,
25 determined which investments the funds made, and received compensation for
26 advising and managing the funds.

OTHER RELEVANT ENTITIES

1
2 9. **Verde Ventures, Inc.** (“Verde Ventures”) was a pooled investment
3 vehicle Defendants created and offered to investors beginning in approximately
4 November 2016 for the stated purpose of providing loans and venture capital for
5 “Marijuana emerging markets.” From approximately November 2016 to January 2018,
6 Defendants raised about \$9.8 million for Verde Ventures from over 50 investors by
7 selling securities that purportedly paid ten percent annual returns on a quarterly basis
8 and that purportedly included potential profit sharing of eight percent on the first \$10
9 million of net income.

10 10. **Verde Holdings, Inc.** (“Verde Holdings”) was a pooled investment
11 vehicle Defendants created and offered to investors beginning in approximately
12 December 2017 for the stated purpose of developing “Cannibis [sic] grow facilities,
13 cultivation projects, distribution networks, and manufacturing centers.” From
14 approximately December 2017 to November 2018, nearly \$21.1 million was raised for
15 Verde Holdings from almost 160 investors by selling securities that purportedly paid
16 ten percent annual returns on a quarterly basis and that purportedly included potential
17 profit sharing of eight percent on the first \$20 million of net income.

18 11. **Verde Partners, Inc.** (“Verde Partners”) was a pooled investment vehicle
19 Defendants created and offered to investors from approximately February 2019 to
20 approximately October 2019 to invest in the cannabis industry. Defendants raised
21 nearly \$6.8 million from over 40 investors through the sale of Verde Partners preferred
22 stock. Defendants disclosed in Verde Partners’ offering document that investors would
23 receive a “pro rata cash dividend equal to 10.0% of the Preferred Stock’s purchase
24 price,” with the timing of the payments to be declared by Verde Partners’ Board of
25 Directors. In addition, the preferred shares purportedly included potential profit
26 sharing of eight percent on the first \$40 million of net income. In late 2019,
27 Defendants ceased fundraising from investors for Verde Partners shortly after Newell’s
28 departure from Black Hawk in September 2019.

1 12. **National Asset Valuation Services, LLC** (“NAVS”) was a purported
2 Washington company founded in 2008, which was wholly owned by Newell. But in
3 actuality, Newell used NAVS as a conduit to misappropriate money from Verde
4 Ventures and Verde Holdings for his personal benefit.

5 THE ALLEGATIONS

6 13. In approximately 2011, Newell founded Black Hawk for the primary
7 purpose of providing hard money loans for real estate transactions. By approximately
8 2016, Black Hawk managed or had an ownership interest in dozens of affiliated
9 entities. At all relevant times, Newell controlled Black Hawk.

10 14. By at least early 2016, Defendants’ businesses were struggling and
11 Newell determined that investing in the cannabis industry could be profitable. Newell
12 then shifted Black Hawk’s business to investing in the cannabis industry by raising
13 money through three securities offerings. From about November 2016 through
14 approximately September 2019, Newell through Black Hawk offered to investors three
15 private funds created to invest in the cannabis industry: Verde Ventures, Verde
16 Holdings, and Verde Partners (collectively, the “Verde Funds”).

17 Defendants’ Fraudulent Conduct

18 **A. Defendants’ Materially False and Misleading Statements to Investors**

19 15. In order to raise money for the Verde Funds, Defendants provided
20 offering materials to investors, which for Verde Ventures and Verde Holdings
21 consisted of one-page documents, each entitled “Executive Loan Summary,” and for
22 Verde Partners consisted of a private placement memorandum (“PPM”).

23 16. The Executive Loan Summaries and the PPM stated that the money raised
24 would be invested in the cannabis industry, including a grow facility located in
25 Coachella, California (the “Coachella Campus”). For Verde Ventures and Verde
26 Holdings, the Executive Loan Summaries also stated that investments could include
27 other cannabis-related projects such as cultivation, distribution, extraction, a lab testing
28 facility, and manufacturing. The Verde Partners PPM separately disclosed that investor

1 funds could be used “to finance other opportunities consistent with the Company’s
2 [Verde Partners’] plan of operation,” which were specific to the cannabis industry. The
3 PPM also disclosed that a management fee would be paid by Verde Partners to Black
4 Hawk. No other use of investor funds was disclosed by the Executive Loan Summaries
5 and PPM.

6 17. The Executive Loan Summaries for Verde Ventures and Verde Holdings
7 disclosed that investors’ securities purchases would carry a ten percent annual return,
8 paid quarterly. The PPM for Verde Partners stated that investors would receive a ten
9 percent cash dividend when declared by Verde Partners’ Board of Directors.

10 18. But substantial portions of investor funds were not invested in the
11 cannabis industry and were instead used to make Ponzi-like payments to investors;
12 were used for undisclosed purposes such as for other Black Hawk affiliated/managed
13 entities not in the cannabis industry or to pay salespersons’ commissions; and were
14 misappropriated by Newell. These uses of investor funds were not disclosed to
15 investors or authorized by Verde Ventures’ and Verde Holdings’ Executive Loan
16 Summaries or Verde Partners’ PPM.

17 **B. Defendants Misused Investor Proceeds.**

18 **i. Defendants Paid Returns to Investors Through Ponzi-like**
19 **Payments.**

20 19. From at least November 2016 through approximately September 2019,
21 inflows of capital to Black Hawk consisted primarily of money raised from the Verde
22 Funds’ investors. During this relevant time period, the Verde Funds were not profitable
23 and lacked sufficient revenue to pay the ten percent returns promised to investors.

24 20. Nevertheless, from approximately April 2017 through June 2019, on a
25 quarterly basis, Newell ordered Black Hawk employees to pay the ten percent
26 purported returns to investors. Newell made the ten percent payments to investors even
27 though he knew that the money used to make payments was sourced from other
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1 investors' money—money that Defendants represented to investors would be used to
2 invest in the cannabis industry.

3 21. Defendants knew, or were reckless in not knowing, that these ten percent
4 Ponzi-like payments that were purportedly returns to investors were in fact a misuse of
5 investor money, which created the false impression to new investors and lulled existing
6 investors into believing that the Verde Funds' investments were successful and
7 lucrative. Newell and Black Hawk continued to use the Executive Loan Summaries
8 and the PPM to raise money from investors, even while knowing that they were unable
9 to pay a ten percent return based on the underlying investments of the Verde Funds,
10 which were unprofitable.

11 **ii. Defendants Improperly Commingled and Further Misused**
12 **Investor Funds.**

13 22. At the time of their investments, Black Hawk, through the Verde Funds'
14 offering documents, informed investors that their money would be used for
15 investments in the cannabis industry. But beginning in December 2016, as Black
16 Hawk's other businesses were struggling, Newell commingled funds by first
17 transferring money from Verde Ventures to Black Hawk, and then disbursing that
18 money to other Black Hawk managed or affiliated entities. Once Verde Holdings was
19 established, Newell almost immediately engaged in the same conduct of transferring
20 money out of Verde Holdings to Black Hawk to be disbursed as Newell saw fit. These
21 significant transfers from Verde Ventures and Verde Holdings to Black Hawk resulted
22 in an outstanding balance owed by Black Hawk of at least \$2.5 million by September
23 30, 2019, when Newell was forced out of Black Hawk. These transfers to Black Hawk
24 that were then disbursed to other Black Hawk-affiliated entities provided no benefit to
25 Verde Ventures or Verde Holdings. They were not for the purposes disclosed in the
26 offering documents and did not provide any other financial benefit to the two Verde
27 funds. Thus, these undisclosed transfers were a misuse of the investors' funds.
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1 23. In addition, Newell also misused investor funds by paying undisclosed
2 brokerage commissions. The Executive Loan Summaries did not disclose to investors
3 that their money could be used to pay sales commissions. But starting in or about
4 December 2016 through May 2018, when salespersons sold securities in Verde
5 Ventures and Verde Holdings, Newell paid sales commissions directly from the two
6 Verde funds. These sales commission payments totaled at least \$408,689.

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8 **iii. Newell Misappropriated Investor Funds.**

9 24. From about February 2017 through October 2018, Newell
10 misappropriated at least around \$668,000 of investors' money from Verde Ventures
11 and Verde Holdings by: (a) paying off the second mortgage on a property owned by
12 NAVS, an entity Newell owns, (b) using Verde money to pay himself for purported
13 rent and other business expenses for Verde Ventures and Verde Holdings, and (c)
14 taking profits from selling shares of a startup entity, where the shares belonged to
15 Verde Ventures and Verde Holdings.

16 25. NAVS, an entity wholly owned and controlled by Newell, owned Black
17 Hawk's office in Coeur d'Alene, Idaho (the "Office"). NAVS had a second mortgage
18 on the Office.

19 26. In March 2018, in two separate transactions, money from Verde Holdings
20 was used to pay down \$310,300 on the second mortgage on the Office. In the first
21 transaction, on or about March 2018, Newell directed Black Hawk to transfer \$100,000
22 from Verde Holdings to pay the second mortgage. In the second transaction, on or
23 about March 2018, Newell used approximately \$210,300 ultimately sourced mostly
24 from Verde Holdings to pay the second mortgage. Newell did not use any of his own
25 money in paying down the second mortgage. When Newell sold the Office in June
26 2018, he received \$500,000 in sales proceeds and did not repay the approximately
27 \$310,300 owed to Verde Holdings.

1 27. From approximately February 2017 to October 2018, Newell also
2 misappropriated \$212,000 by charging Verde Ventures and Verde Holdings
3 undisclosed and illegitimate costs in the form of rent for purported use of the Office
4 and for his purported business travel and office expenses. The rent paid by the two
5 Verde funds was purportedly for the Office, but the two funds already paid rent for an
6 office located in La Quinta, California, where the funds' operations were based.
7 During that same period, Newell also transferred money from the two Verde funds to
8 NAVS for his unexplained purported expenses, which were in round thousand dollar
9 amounts and included reimbursements for personal expenses such as spending at
10 casinos, cash withdrawals, making first mortgage payments on the Office, and other
11 personal expenses such as meals. These payments were not disclosed to investors in
12 Verde Ventures and Verde Holdings' Executive Loan Summaries or in any other
13 documents at any time during the relevant time period.

14 28. Newell also misappropriated \$146,000 from Verde Ventures and Verde
15 Holdings when he directed the sale of shares in a cannabis startup, High Desert
16 Management, LLC ("High Desert"), which shares should have belonged to those two
17 funds. The High Desert shares were obtained in a manner that Newell knew resulted in
18 the shares belonging to Verde Ventures and Verde Holdings. Newell provided no
19 money to acquire the shares. Instead, these shares were acquired in part using money
20 from Verde Ventures and Verde Holdings and then sold at a high markup to other
21 investors. Newell profited \$146,000, even though the shares belonged to Verde
22 Ventures and Verde Holdings. Newell also admitted that these shares rightfully
23 belonged to Verde Ventures and Verde Holdings.

24 **C. Newell and Black Hawk Were Investment Advisers.**

25 29. Black Hawk and Newell were investment advisers to the Verde Funds.
26 Newell, as Black Hawk's then CEO, managed the affairs of the Verde Funds,
27 including the investments the Verde Funds made in the securities of cannabis startups.
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1 30. Additionally, Black Hawk received compensation for its services in the
2 form of a four percent management fee paid by Verde Partners as disclosed in its PPM.
3 Black Hawk also received compensation from Verde Ventures and Verde Holdings,
4 because those two funds paid Black Hawk's expenses, such as rent for the La Quinta
5 office, utilities, and salaries that otherwise would have been paid by Black Hawk.

6 31. Newell was compensated in the form of a salary and dividends from
7 Black Hawk.

8 32. As both Newell and Black Hawk provided advice to the Verde Funds
9 regarding investments in securities and were compensated for their advice, they both
10 acted as investment advisers.

11 **D. Newell and Black Hawk Acted With Scienter.**

12 33. Newell drafted, reviewed, and had final authority over the Executive Loan
13 Summaries and PPM provided by Black Hawk to the Verde Funds' investors.
14 Additionally, Newell himself engaged in the misuse of investors' funds. His actions
15 included: making the Ponzi-like payments, which he knew came from investors'
16 capital; transferring Verde Ventures and Verde Holdings investor money at his
17 discretion for other uses unrelated to those funds; and misappropriating investors'
18 money. Newell knew, or was reckless in not knowing, that the Verde Funds' Executive
19 Loan Summaries and PPM contained materially false statements and omissions, and
20 were misleading.

21 34. In addition, Newell engaged in a scheme and deceptive course of business
22 to defraud investors by creating a false impression that the Verde Funds were more
23 successful than they were, which allowed Newell to continue raising funds from
24 investors and to enrich himself at the expense of the investors. Newell knew, or was
25 reckless in not knowing, that he engaged in a scheme to defraud investors and potential
26 investors.

27 35. As Newell was during the relevant period the CEO and control person of
28 Black Hawk, Newell's scienter is imputed to Black Hawk.

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FIRST CLAIM FOR RELIEF

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

36. The SEC realleges and incorporates by reference paragraphs 1 through 35.

37. Newell and Black Hawk, by engaging in the acts and conduct described above, directly or indirectly, in connection with the purchase or sale of securities, by use of means or instrumentalities of interstate commerce, or of the mails, with scienter:

- a. Employed devices, schemes, or artifices to defraud;
- 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
- c. Engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers of securities.

38. By reason of the foregoing, Newell and Black Hawk violated, and unless restrained and enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act

39. The SEC realleges and incorporates by reference paragraphs 1 through 35.

40. Newell and Black Hawk, by engaging in the acts and conduct described above, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails:

- a. With scienter, employed devices, schemes, or artifices to defraud;

FOURTH CLAIM FOR RELIEF

Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder

46. The SEC realleges and incorporates by reference paragraphs 1 through 35.

47. During the relevant time period, the Verde Funds were pooled investment vehicles and Defendants acted as the pooled investment vehicles' investment adviser.

48. By engaging in the conduct described above, Defendants, directly or indirectly, while acting as an investment adviser to a pooled investment vehicle, by use of the mails or means or instrumentalities of interstate commerce: (a) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or (b) engaged in acts, practices, or courses of business that were fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

49. By engaging in the conduct described above, Defendants Newell and Black Hawk have violated, and unless restrained and enjoined, are reasonably likely to continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

FIFTH CLAIM FOR RELIEF AGAINST NEWELL ONLY

In the Alternative, Newell Aided and Abetted Black Hawk's Violations of Antifraud Provisions of the Federal Securities Laws

50. The SEC realleges and incorporates by reference paragraphs 1 through 35.

51. By engaging in the conduct described above, Black Hawk, directly or indirectly, violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Section 17(a) of the Securities; and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

1 | however, that such injunction shall not prevent him from purchasing or selling
2 | securities for his own personal accounts.

3 | **III.**

4 | Order Defendant Newell to disgorge all monies received from his illegal
5 | conduct, together with prejudgment interest thereon, pursuant to Sections 21(d)(3),
6 | 21(d)(5), and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(d)(5), and
7 | 78u(d)(7)].

8 | **IV.**

9 | Order Defendant Newell to pay civil penalties pursuant to Section 20(d) of the
10 | Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. §
11 | 78u(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

12 | **V.**

13 | Order pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 78t(e)] and
14 | Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(a)(d)] that Defendant Newell is
15 | prohibited from serving as an officer or director of any company that has a class of
16 | securities registered with the Commission pursuant to Section 12 of the Exchange Act
17 | [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the
18 | Exchange Act [15 U.S.C. § 78o(d)].

19 | **VI.**

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

24 | **VII.**

25 | Grant such other and further relief as this Court may determine to be just and
26 | necessary.

