BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the DESIST AND REFRAIN ORDER Issued To: STEVEN MICHAEL FERGUSON and GLOBAL VENTURE GROUP, Respondents.	Agency Case No.: 38300 OAH No. L2004060054 DECISION

The attached proposed decision of the administrative law judge is adopted by the Department of Corporations as its decision in the above-entitled matter pursuant to Government Code Section 11517(c)(2)(A).

This decision shall become effective on 5/27/05.

Dated: 5/27/05

WAYNE STRUMPFER
Acting California Corporations Commissioner

By: _____
JANICE LUMSDEN
Acting Chief Deputy Commissioner

State of California - Department of Corporations

BEFORE THE DEPARTMENT OF CORPORATIONS

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In the Matter of the DESIST AND REFRAIN ORDER Issued To:	**Case No. 38300**
STEVEN MICHAEL FERGUSON and GLOBAL VENTURE GROUP,	**OAH No. L2004060054**
Respondents.	

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on June 28, June 29, September 14 and September 17, 2004.

William P. Wood, the Commissioner of the Department of Corporations of the State of California (Complainant or Commissioner) was represented by Karen L. Patterson, Senior Corporations Counsel.

Steven Michael Ferguson (Ferguson) and Global Venture Group were represented by David Alan Cooper, Attorney at Law.

Oral and documentary evidence was received. The record was left open to permit Complainant to obtain leave from the Superior Court and to subsequently take the out-of-state deposition of witness, Wardell Davis. Thereafter, the record was held open to and including March 11, 2005 for the parties to submit final written argument in accordance with a specified briefing schedule. Complainant's Post-Hearing Brief was received four days late. However, its tardiness was due to four timely but failed facsimile transmission attempts Complainant's counsel had made on the due date. Respondent did not object to the late submission, and the Administrative Law Judge found the reason for the late submission to be reasonable. Complainant's Post-Hearing Brief was therefore marked as Complainant's Exhibit 18 for identification. Respondent's "Post Hearing Brief in Support of Challenge to Desist and Refrain Order" was timely received and marked as Respondent's Exhibit "G" for identification. Complainant failed to timely serve and file a reply brief. On March 11, 2005, the record was closed and the matter was deemed submitted for decision.

The parties subsequently stipulated to an extension of time to and including March 21, 2005, for Complainant to serve and file a reply brief. That extension of time was due to the fact that Complainant had not received Respondent's post-hearing brief, and that, upon learning so, Respondent's counsel had faxed a copy of his brief to Complainant's counsel on March 15, 2005.

On March 21, 2005, Complainant filed his Post-Hearing Reply Brief and a cover letter from Complainant's counsel advising the Administrative Law Judge of counsels' stipulation. Based on that stipulation, the record was re-opened. The March 21, 2005 cover letter from Karen L. Patterson was marked as Complainant's Exhibit 19 for identification. Complainant's Post-Hearing Reply Brief was marked as Complainant's Exhibit 20 for identification. The record was then closed and the matter was deemed submitted for Decision. Following the closing of the record, the parties stipulated to the admission of a copy of Exhibit 10K (a photograph of a group of men in front of an aircraft) as a substitute for the misplaced original.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. In his Post-Hearing Brief (Complainant's Exhibit 18), Complainant presented an extensive and accurate recitation of the facts relating to this case. Those facts are repeated verbatim below and are incorporated as factual findings herein. Headings within the Post-Hearing Brief are eliminated herein. All other deletions, including Complainant's references to pages and lines in the hearing transcript[1], are marked by ellipses. Sub-paragraph numbers are added for ease of reference. All other insertions/additions are contained within brackets.

> 1. On April 11, 2003, the California Corporations Commissioner issued an order to respondents Steven Michael Ferguson and Global Venture Group pursuant to Corporations Code section 25532, finding that they had engaged in violations of Corporations Code sections 25110 and 25401 by offering and selling non-exempt unregistered securities by means of misrepresentations and omissions of material fact, and requiring them to desist and refrain from engaging in further similar conduct. (Exhibit 1.) By letter dated April 5, 2004 the respondents made a timely request for a hearing pursuant to Corporations Code section 25532(d). (Exhibit 2.)

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[1] The transcript references are omitted because, as a matter of course, an Administrative Law Judge who hears a case, does not receive a transcript of the hearing. Therefore, the Administrative Law Judge in this case is unable to verify the accuracy of the transcript references.

2. The hearing began in Los Angeles on June 28, 2004 and continued thereafter on June 29 and September 14, 2004. [A brief hearing session also took place on September 17, 2004.] The testimony of witness Wardell Davis was then taken by deposition on November 2, 2004 and a status conference was held in Los Angeles on December 13, 2004 at which a post-hearing briefing schedule was established. Complainant was ordered to file his closing brief in sixty days, i.e., on or before February 11, 2004. Respondents were ordered to file their opposing brief within three weeks thereafter, i.e., on or before March 4, 2005. Complainant was ordered to file any reply brief within a week thereafter, on or before March 11, 2005.

¶ . . . ¶

3. The Respondent Global Venture Group is a purported "venture capital" firm incorporated in Nevada. (Exhibit 6.) At all times relevant to this hearing it operated from its principal business office in California, located at 345 North Maple Drive in Beverly Hills, California. (Id.) Respondent Steven Michael Ferguson . . . was the founder of Global Venture Group and at all relevant times held himself out to potential investors as its principal, president, chairman and CEO. . . . He was listed as its president and CEO in a filing with the Secretary of State on March 12, 2001. (Exhibit 6.)

4. At the times relevant to this hearing Ferguson resided primarily in Marina del Rey, California, though the testimony of witness Phillip Horton also established that during the 1999 time period Ferguson undertook efforts to move to a suburb of Atlanta, Georgia.

5. Ferguson has a criminal record which includes a 1994 felony conviction resulting from a plea of nolo contendere in a prosecution involving charges of grand theft and securities law violations. (Exhibit 9.) Ferguson entered his pea [*sic*] [to violation of Penal Code section 487 (Grand theft)] in October of 1994 and was ordered to pay restitution to his three victims in the total amount of approximately $357,000. (Id.)

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6. The administrative order that is the subject of this hearing was issued in response to an . . . aggressive campaign of investment fraud Ferguson undertook and perpetrated through Global Venture Group during the period of approximately January of 1999 through February of 2002. Claiming to be a wealthy investment broker and the principal of a highly successful venture capital firm, Global Venture Group, Ferguson initiated social relationships which developed into purported friendships with a series of victims. Ferguson's victims included: (1) Philip Horton of Atlanta; (2) a group of Swiss friends who came into contact with Ferguson in approximately late 1999 after one of them, Nicolas Weidmann, met Ferguson on a first-class commercial air flight from Los Angeles to Zurich, and (3) Wardell Davis, a Marina del Rey resident who met Ferguson through golf in early 2001.

7. After initiating social contact with each victim, Ferguson proceeded to flaunt a carefully-calculated flashy lifestyle involving regular travel by private jet, a handsome residence in Marina del Rey staffed with a cook and a butler, expensive cars, hand-tailored Italian suits, frequent parties at high-priced restaurants and hotels, and exotic vacations at luxury destinations including Pebble Beach and Napa Valley in California as well as St. Moritz, the Isle of Crete and Maui. As long as they had additional money to invest victims were showered with invitations from Ferguson for meals, trips and travel that he insisted on paying for himself, and each was the recipient of expensive gifts offered by Ferguson in the name of the strong bond of friendship he claimed to feel for each of them. Ferguson even urged two of the victims to introduce him to their single women friends after which he became engaged to one of them and married to another.

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8. After "chumming the water" with such grand overtures of generous friendship for a period of months Ferguson would begin to talk about the lucrative investment opportunities he had the means of offering his friends. Ferguson claimed to be able to earn returns of 20% to 50% and more from short-term investments (a year or less) involving real estate, jet leasing and purchasing, and purported "bridge loans." He provided victims tours of his Beverly Hills offices, assured his investors that the investments he was offering were legal, and claimed that they were also completely safe because each was secured by property or assets whose value exceeded the amount invested. Ferguson frequently emphasized that he was offering the investments out of friendship and affection. In the case of another investor (Reto Feller) Ferguson claimed to be accepting an unusually "small" investment amount of $100,000 only as a favor because of his close friendship with Reto's friend Nic Weidmann (a fellow "Musketeer"). [Emphasis omitted.] In some cases Ferguson neglected to provide the investors any documents to evidence their investments. In other cases he provided them promissory notes issued by Global Venture Group from its office in Beverly Hills.

9. A short time after the first investment of each victim, Ferguson would typically inform them that the investment had yielded a sizable profit. In some cases he even made payments of purported profit back to the victims. But the victims' initial investments were accompanied by or quickly followed by solicitations for larger subsequent investments, involving the rollover of the first investment and the payment of additional funds. As the number of investments mounted Ferguson started telling his Swiss investors that it took up too much of his time to deal with them separately, so he urged them to create an "investment pool" of $5 million that he could invest regularly on their collective behalf. [Emphasis omitted.] Returns on the second and subsequent investments failed ever to materialize. As the repayment obligations began to mount, Ferguson became elusive and unreachable, putting his investors off with excuses, evasions and disappearances until they gradually realized that they had been victims of a fraud.

10. None of the victims was informed of Ferguson's criminal past or of his failure to make principal and profit repayments to earlier investors. Nor were they told that Ferguson lacked a license to sell securities or that the securities he was offering were not qualified in accordance with the requirements of the Corporate Securities Law. (Exhibits 7 and 8.) Ferguson called his victims "brothers," referred to himself and two of the Swiss investors as "the Three Musketeers" and had t-shirts printed for the three of them with that legend on them. [Emphasis omitted.]

A. Philip Horton

11. Philip Horton met Ferguson in late 1997 at a Christmas party given by a mutual friend in Atlanta, Georgia; Horton was living and working in New Jersey at the time. . . . They engaged in social conversation and Ferguson said that he would call Horton up the next time he was in New York. A month or two later Horton got a call from Ferguson who said he was in New York and invited Horton out to dinner. . . . Horton did not join him on that occasion but continued to get calls and invitations from him to join him during his visits to New York thereafter. . . . Horton brought answering machine tapes of some of the calls with him to the hearing, where they were recorded into evidence. Ferguson spoke of his Los Angeles office on those tapes. . . . Ferguson told Horton about a California investment club that would require a $100,000 investment. Ferguson said that the club bought foreclosed medical buildings, cleaned them up and resold or "flipped" them in 90 days, generating a 50% return on investor money. Ferguson said there were 10 or 15 members of the investment group and that Ferguson wanted to get more black people into it "so we could make some money." Such discussions went on for a period of six to eight months because Horton did not have the kind of money that was required but "was eager to get information about the California investment group." . . . Horton also met socially with Ferguson in New York on two occasions in mid-1998. . . . One involved a celebration of a supposed business deal. Ferguson said it was the kind of business he was in: "We go around buying businesses, and we're just constantly making big money." . . .

12. Ferguson continued to talk to Horton about the investment club, but Horton told him he did not feel comfortable with the amount of money needed. . . . Horton retired in December of 1998 and as he approached retirement he received severance pay of $76,000. . . . Ferguson and Horton discussed the investment club once again when Ferguson was in New York in November of 1998 and Horton said he was going to give it serious consideration. . . .

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13. Ferguson and Horton met again in January, 1999, at the Four Seasons in New York. Horton showed Ferguson photographs of family holiday events in Atlanta. One photo included a young woman whom Ferguson expressed interested [*sic*] in meeting. Ferguson also offered to put up half of the cost of Horton's $100,000 membership in the investment club. . . . Ferguson told Horton that he would get his money back (his $50,000 plus $25,000 in profits) in approximately 90 days "because we're going to flip this company." . . . Horton invested the $50,000 in transactions of $10,000 and $40,000. (. . . Exhibits 10A and 10B.) In approximately 90 days Horton received a check for $75,000. Ferguson told him to send that money back to him with another $25,000 and that Horton would then be a full member of the California investment club. . . . Horton did, on April 27, 1999, and believed he was a full-fledged member about to make big-time money. (. . . Exhibit 10C.)

14. Around Easter of 1999 Ferguson flew to Atlanta, Horton's post-retirement home, and met the young woman to whom he had sought the introduction. . . . Ferguson flew to Atlanta on what he said was one of his six private jets . . . and the young woman was excited about meeting such a big-time guy. . . . Ferguson started talking about moving to Georgia and set up an apartment residence with the young woman in Alpharetta, Georgia. Ferguson said "This is going to be my East Coast. I'll do my business that I do in California out of Atlanta" and started talking about having a million-dollar house built next to a golf course. . . .

15. Ferguson also started talking about a vacation at Pebble Beach and a new deal, but Horton told him he was not going into any new deals until he started getting money back from the investment club. Ferguson told him not to worry and tried to interest him in a new deal involving purchase of a financially-troubled company called Calumet. . . . He said he was seeking investors of $1 million each, most of whom were Swiss, that it was going to be Ferguson, Horton, and the Swiss guys. He told Horton he was not even telling Johnny Cochran, famous as O.J. Simpson's attorney, because then Cochran would want in on the deal. Ferguson frequently claimed that he and Cochran were confidants. . . . . Horton said he could not come up with $1 million, but might be able to raise $200-300,000. Ferguson told him that "If you can do $350,000, I'll put in the balance of it for you. That will bring you up to a full member of $1 million." . . . This was at the end of June, 1999.

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16. During the same time period, Ferguson hosted a "big-time vacation" trip to Pebble Beach in California for Horton, Horton's wife, Ferguson, his new girlfriend Carol and a couple from Zurich, Switzerland. They traveled by private jet and stopped in Los Angeles to pick up the Swiss couple. Ferguson insisted on paying all expenses for everyone, including golf, a trip to the wine country and a birthday party for Horton's wife. . . . Ferguson told Horton that when he got into the million-dollar money-venture club that was the kind of lifestyle he could experience all the time. . . . The Swiss man on the trip told Horton he had met Ferguson on a first class flight between Switzerland and the United States. . . . They returned to Atlanta by private jet in late June, 1999. . . .

17. Ferguson and his new girlfriend Carol hosted a surprise birthday party for Horton on July 2, 1999. At the party Ferguson wrote out a check for $51,000. (Exhibit 10T.) Ferguson gave it to Horton at Ferguson's apartment, but told [Horton] not to open it until he got home. The check represented slightly more than a 50% return on Horton's $100,000 investment in the investment club, and was given to Horton while Ferguson was attempting to obtain his additional investment of $350,000. . . . They proceeded to celebrate Horton's birthday with dinner at a plush restaurant. Ferguson gave Horton a $1500 Italian suit and a cigar box that Ferguson said he had taken out of his Bentley just for Horton. . . .

18. Horton proceeded to raise the money for the new investment by selling investments in his 401K retirement plan and liquidating the account, thereby incurring a tax liability of about 33%. . . . He ultimately raised $338,000 not quite $350,000, and Ferguson told him to send it to his account, which Horton did on July 28, 1999. . . . Horton made up the additional $12,000 by an additional payment in early September, 1999. . . . The investment was made under Global Venture, and in connection with it Ferguson told Horton that he was making him an officer of Global Venture Group. . . . He brought Horton a box of business cards for Global Venture Group with Horton's name on them on one of his visits to Georgia from California. (. . . Exhibit 10R.) Horton came out to California several times after his investment and was shown plush offices of Global Venture Group. He was told he was going to have an office there, but he was never given access to the books or records of Gobal [*sic*] venture [*sic*] Group and never undertook any duties. . . .

19. In October of 1999 Ferguson called Horton from California and said he was in a pinch and needed $10,000 for an unexplained purpose. Horton sent him the money by wire transfer on October 27, 1999. . . .

20. Ferguson had initially told Horton that the [*sic*] could expect the return on his $350,000 investment within ninety days, so by this time Horton was in anxious daily expectation of it. . . . Instead of returning Horton's investment, Ferguson contacted Horton in mid-December of 1999 with a plea that he transfer an additional $10,000 to him, in installments of $2,000 and $8,000, to cover expenses relating to construction of his new Georgia house, which Horton did. . . .

21. At Christmas time in 1999 Ferguson pressed Horton to serve as mediator in a domestic dispute he was involved in with his girlfriend Carol. . . . Horton's discussions with Carol alerted him to information about Ferguson which caused Horton great concern about Ferguson's real financial situation and the safety of Horton's invested funds. . . . Horton learned, in particular, that Ferguson was behind in payments to his house builder and was threatened with loss of his $280,000 investment in the property if he did not come up with the additional $220,000 that was due. . . . That information was soon confirmed by Ferguson, who approached Horton and began to pressure him to lend Ferguson $220,000 by means of cashier's check, so that he could make the required payment to his builder. . . . Horton talked to the builder who showed him a schedule of Ferguson's payments to that point; the schedule gave rise to concern that money given by Horton to Ferguson as an investment had actually gone into the house. . . . By that time Horton had no intention of providing Ferguson additional money, but was fearful of relaying that information to Ferguson directly. Meanwhile, Ferguson continued to press for Horton to provide him the $220,000.

22. The situation reached its climax on January 24-25, 2000. On the evening of January 24, 2000, Ferguson arrived at Horton's house with his "bodyguard" to pick up the cashier's check. Horton suggested meeting the following morning at the bank parking lot. . . . Instead, on the morning of January 25, 2000, Ferguson showed up at Horton's house, with the bodyguard, and proceeded to put a hole in Horton's door with a hammer. (Exhibits 10N and 10O.) In reaction to the noise Horton retrieved his .22 pistol before confronting Ferguson. . . . Ferguson denied any intent to hurt Horton and agreed to provide Horton an IOU for his invested funds, which he did, on a piece of cardboard. (Exhibit Q.) At that point Horton called the police.

23. In total, Victim Philip Horton gave Ferguson approximately $488,000 for investments during the period January to July of 1999, of which approximately $125,000 was repaid, suffering a net investment loss of approximately $363,000. Horton . . . has no knowledge of legal requirements for selling securities in California, and no knowledge of the different [*sic*] between registered and non-registered securities.

B. The Swiss Investors

24. Ferguson's Swiss victims came into contact with him after one of them, Nic ("Nic") Weidmann, met Ferguson on a first class flight from Los Angeles to Zurich, Switzerland in late 1999. Declaration of Nicolas Weidmann, Exhibit 13.) Swiss victim Reto Feller testified in person at the hearing. Three other Swiss victims, including Nic Weidmann, Stephan Schmidweber and Marc Possa, provided declaration testimony (Exhibits 13-15[2]). . . .

25. Nic Weidmann states in his declaration that after meeting Ferguson on the flight to Switzerland he visited Ferguson several times and stayed at his apartment in Marina del Rey. He relied on visits he made to Ferguson's office in Beverly Hills where he was introduced to members of the staff and had lunch with people who were introduced to him as Ferguson's lawyers. He joined Ferguson on on [*sic*] the trip to Pebble Beach and Napa that included Phil Horton, and the trip to Maui that included Wardell Davis and his wife. Horton's testimony makes it clear that the trip to Pebble Beach occurred in late June, 2000. Weidmann['s] . . . initial investment with Ferguson occurred after Ferguson called him to solicit him to for [*sic*] an investment in the renovation of the Hotel L'Ermitage in Beverly Hills, which Ferguson claimed he had purchased with a group of investors. Weidmann declined at first, but Ferguson followed up with numerous calls, stating that he wanted Weidmann to participate as his friend in the great opportunity whose security he would guarantee personally. Weidmann finally agreed to an initial investment of $50,000 for a six month period. . . . [H]e made transfers of approximately $62,000 to Ferguson in addition to his initial investment of $50,000. Weidmann['s] . . . prior investments were through the stock market "into funds" and that his investments in Global Venture Group, which he understood to be "bridge loans," were his first investments "of that kind."

26. Marc Possa . . . and Stephan Schmidweber were introduced to Ferguson by Nic Weidmann in Surich [*sic*] in the spring of 2000. (Declaration of Marc Possa, Exhibit 14.) His declaration sets forth a list of vacations he spent with Ferguson in the course of what he considered a personal relationship with him, including a visit to Los Angeles in spring of 2001 during which he stayed with Ferguson at his Marina del Rey apartment. Possa . . . [documented] total transfers to Ferguson of $1.39 million during the period September of 2000 to February of 2002.

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[2] Exhibits 13, 14 and 15 were admitted in evidence pursuant to Evidence Code section 11513, subdivision (d) to support and explain the testimony of witness Reto Feller.

27. Stpehan [*sic*] Schmidweber . . . was introduced to Ferguson by Nic Weidmann in Zuich [*sic*] at the same time as Marc Possa; he gives the date of that event as August, 2000. . . . [H]is investment opportunities were introduced to him by personal emails he received from Ferguson when the latter was in Los Angeles. He . . . [established] total transfers to Ferguson of $732,000 during the period September of 2000 to February of 2002.

28. Reto Feller ("Feller") . . . first learned of Ferguson from his friend Nic Weidmann while Feller was working in London. The two friends, Feller and Weidemann [*sic*] talked frequently, and Ferguson became a frequent topic of conversation between them because of the friendship that was developing between Weidemann [*sic*] and Ferguson, and because they shared an interest in golf. . . . Feller first met Ferguson in approximately May of 2001 at L'Ermitage, a restaurant and one of the nicest places on the Lake of Zurich. . . . He felt that he was meeting the good friend of a good friend. . . . He talked to Ferguson about the investments of the other Swiss investors at that time, asking particularly about the legality of the rates of return he was promising. . . . Ferguson described examples of the bridge loan transactions he was offering, with assurances of their safety. . . . Feller was aware of Ferguson's office in Beverly Hills and of the visits the other Swiss investors had made both to that office and to Pebble Beach. . . .

29. Feller made an initial investment of $100,000 in June of 2001. . . . It was definitely understood between Feller and Ferguson that this amount represented a "small" investment. Ferguson indicated that he was accepting it as a favor to a "friend of a friend" in order to try to get him on board. . . . As confirmation of his investment Feller received a promissory note from Global Venture Group in Beverly Hills, with a cover letter. (Exhibits 11F and 11G.) Feller had no specific understanding as to how the money was going to be invested apart from the examples Ferguson had provided of the types of transactions he engaged in. . . . He understood the term of the investment to be six months, with payoff scheduled for December of 2001. . . .

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30. Subsequent to his first investment Feller engaged in regular contact by email and phone, building up a relationship which Feller considered to be hearing [*sic*] toward friendship. . . . He also met Ferguson again in Switzerland in about August of 2001. On that occasion Ferguson and the other Swiss investors had dinner at the hotel where Ferguson was staying, Baur au Lac, one of the top hotels in Zurich. The following day Feller had breakfast with Ferguson. At that time Ferguson offered other short-term investment opportunities. This was at a time when Feller believed that his initial investment was heading smoothly toward maturity. . . .

31. In approximately November of 2001 Feller received an email from Ferguson offering him the opportunity to invest $300,000 for one month at 20%. He transferred the money on November 6, 2001, but never received a promissory note to confirm his investment, a matter that was the subject of several discussions between them. . . .

32. Around December of 2001 Ferguson proposed that the Swiss investors create a pool of investment funds so that he didn't have to deal with their "small amounts" each time. . . . Ferguson suggested a target of $5 million. The Swiss investors actually put in $3.5 million. . . . Feller, who was expecting a total return of $480,000 from his investments of $400,000, told Ferguson that he wanted to receive $280,000 back and to invest the other $200,000 in the pool . . .

33. When Feller's money was not returned to him promptly in December he was not initially worried; he knew that his friends were spending Christmas with him at the time. But when January came and there was no money they spoke again and it began to become harder to reach Ferguson. Then he claimed to need Feller's wire address again. Then he claimed transfer restrictions in the wake of 9/11. (Exhibit 11K.) Feller left numerous messages on Ferguson's answering maching [*sic*] and ultimately received a return of $100,000 in March of [2002]. His numerous messages to Ferguson thereafter elicited no return of funds, but a nasty email warning. (Exhibit 11L.)

34. In sum, victim Reto Feller gave Ferguson $400,000 during the period June to November of 2001, of which $100,000 was repaid, resulting in a net investment loss of $300,000.

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C. Wardell Davis

35. Victim Wardell Davis ("Davis") . . . first came into contact with Ferguson in approximately February of 2001 when Ferguson came into his golf shop in Culver City. Ferguson described himself as a venture capitalist, talked about living in a $1.1 million apartment in Marina del Rey and owning four Gulf Stream jets, and purchased two sets of golf clubs. (Deposition of Wardell Davis ("Davis Depo"), page 11, 15-17.) Ferguson also talked about his fondness for golf, which he said he played mostly at country clubs rather than public courses. (Davis Depo, page 13.) Davis was not sure he believed the tale initially, but proceeded to arrange a social golf outing at Oxnard Country Club about a week later. (Davis Depo, page 18). Ferguson then invited Davis and his wife to dinner at his Marina del Rey apartment, a meal that was "like a five-star restaurant" (Davis Depo, page 26) served by both a butler/valet and a cook. (Davis Depo, pages 23-26). Two more golf trips to Oxnard followed. Then in April of 2001 (Davis Depo, page 23) Ferguson flew a party including Davis to Pinehurst, North Carolina, for a four-day golf trip, leaving on a Thursday and returning on a Sunday. (Davis Depo, beginning at page 23.) Ferguson paid all the transportation expenses of the trip which included limousine transport to and from the airport (Davis Depo, pages 35-40, 60) and air travel by private G-3 jet, which Ferguson claimed to own. (Davis Depo, page 39.) During the flight the travelers were served their favorite drinks with crab legs and lobster tails as appetizers. (Davis Depo, page 40.) Ferguson also paid for the first night's dinner in Pinehurst. Ferguson rejected the wine served at the restaurant in favor of his own, paying a $25.00 fee to have it served to the party at the restaurant and after the meal he provided Cuban cigars to the members of the party. (Davis Depo, page 41.)

36. There was no discussion of investments on the trip; Davis viewed it as purely social. (Davis Depo, page 58.) They flew home on Sunday and Davis noticed that a different jet picked them up on that occasion. Ferguson told him that it was Merv Griffin's jet and that they were using it because Ferguson's jet was being used for somebody else. (Davis Depo, page 59.)

37. After the party returned from Pinehurst Davis continued to see Ferguson regularly on a social basis to play golf at Oxnard, Mountain Gate and Palos Verdes. Ferguson also continued to drop by Davis's golf shop. Ferguson also invited Davis to another dinner at his house. (Davis Depo, pages 60-61.)

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38. Ferguson first brought up the subject of a possible investment by Davis on one of their trips home from Oxnard Country Club in approximately October of 2001 (Davis Depo, pages 63-64, 74-75.) Ferguson told Davis that he could make him more money than he was currently earning on his IRA. Ferguson said that the two of them could invest the money in a medical building that Ferguson was purchasing. He told Davis that a $100,000 investment would yield a return of 20% in a period of six months to a year. (Davis Depo, pages 76-81.) Davis withdrew the money from his IRA by a check written to himself which he signed over to Ferguson. (Exhibit 12A.) Davis received no other documentation of the transaction. (Davis Depo, page 80.) The investment involved about half of Davis's retirement savings at the time. (Davis Depo, page 84.)

39. About two weeks after Davis's first investment Ferguson told him he had a better deal for him, an "airplane" deal requiring an investment of $300,000. Davis told Ferguson, "I don't have no $300,000." (Davis Depo, page 81.) Ferguson said that he could use the $100,000 he had already invested, plus the $20,000 in anticipated profits, toward the new deal, so that he "only" had to come up with an additional $180,000, which happened to be all the "cash money" Davis had. (Davis Depo, page 88.) Ferguson indicated that the investment would involve a plane that basketball players like Kobe Bryant would pay $6,000 per hour to use. (Davis depo, page 82.)

40. The airplane investment was supposed to provide Davis a monthly payment of $5,000 for a period of a [*sic*] three years, at which point the plan [*sic*] was to be sold and Davis was to receive his principal back. (Davis Depo, page 92.) Davis paid Ferguson the additional $180,000 on November 26 or 27, 2001, and as evidence of the investment Ferguson provided Davis a promissory note from Global Venture Group dated December 1, 2001. (Davis Depo, page 93; Exhibit 12-B).

41. During November of 2001 Ferguson also visited Davis in Las Vegas where Davis owned a second house. During that trip they played golf. One day Ferguson told Davis he wanted to stop playing early. They then went to look at houses on the gold [*sic*] course and Ferguson committed to buy one for $800,000 in cash. (Davis Depo, pages 67-71.)

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42. On December 26, 2001 to January 7, 2002, Davis traveled with Ferguson to Maui. The trip was on one of the jets Ferguson claimed to own. (Davis Depo, page 107.) Ferguson invited him on what he said was his annual trip around the time of his birthday to attend that [*sic*] Mercedes Open golf tournament. (Davis Depo, page 99.) In addition to Ferguson, Ferguson's girlfriend Tina, and Ferguson's cook and butler, the trip included Davis and his wife and two Swiss couples, Marc Possa and his fiancée and another Swiss man with his fiancée. (Davis Depo, pages 98-99.) Ferguson said that they would be staying in a house that he had just sold for $2.1 million. Ferguson said that he was getting another home of 14,000 square feet on top of a hill over by Kapalua Golf Course. (Davis Depo, page 99.)

43. Ferguson told Davis that he had flown in his G-4 jet over to Switzerland and met the Swiss people there. He said that "they were investing over there in Switzerland and they was his employees." Ferguson told Davis not to talk to them about business. (Davis Depo, page 100-101.) The two Swiss couples stayed with Ferguson in the house. Davis stayed in a hotel because there was not enough room in the house. He and Ferguson played golf each day while the Swiss couples went sightseeing. (Davis Depo, pages 104-106.)

44. Upon their return from the Maui trip Ferguson and Davis continued to socialize, primarily through golf, as before. (Davis Depo, 107-108.) In early 2002 Ferguson came to Davis and said "I need $100,000 right quick." (Davis Depo, page 95.) [Davis] withdrew his remaining IRA savings of $100,000 and gave the money to Ferguson. (Davis Depo, pages 95, 139.) Davis told Ferguson, though, that he needed the money back in six weeks so that it could be redeposited in his IRA. Ferguson said he could not provide Davis a return of 20% for a period of just six weeks, but said that he would give Davis 10%. 139-142. Davis gave Ferguson the money by check on February 5, 2002. (Davis Depo, page 145; Exhibit 121C.)

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45. In January of 2002 Ferguson started expressing a romantic interest in meeting Yumi, a Japanese friend of Davis and his wife. (Davis Depo, page 108.) They met during a trip Yumi made to the United States in January of 2002, and married on February 28, 2002. Within a few days after the wedding Yumi told the Davises that Steve Ferguson had told her not to talk to them too much about what was going on in the Ferguson house. (Davis Depo, page 109-113.) Davis thought that was very strange, but did not mention it to Ferguson. (Davis Depo, page 113.) Ferguson soon started talking about a trip to Japan to meet Yumi's family, who were also in the investment business and were financially well-off. Davis was reluctant to make the trip in Ferguson's small jet, and thought it was odd that Ferguson was insisting on traveling by private jet rather than a commercial airline, but Yumi talked him into going along. (Davis Depo, pages 114-116.) He and his wife made the trip in mid-March, 2002. (Davis Depo, page 116.) When they reached Japan Davis and his wife spent a couple days visiting her relatives. (Davis Depo, page 118.) They then joined Ferguson at his Tokyo [s]uite at the Imperial Hotel. Davis began to be suspicious. Ferguson was staying in a $1500 per night suite. [Davis] could see no reason why the two of them needed such large an[d] expensive lodgings. (Davis Depo, page 119.)

46. While they were in Japan, Ferguson offended Yumi's uncle by cheating at golf, and became strangely angry over a golf game with Davis. 122-129. Upon their return home to the United States in late March, 2002, Davis learned that Ferguson was attempting to borrow $1 million from Yumi's uncle. (Davis Depo. Page 129-130.) Meanwhile, Davis was witnessing expensive and seemingly pointless renovations that Ferguson was making to his new house in Las Vegas. (Davis Depo, page 135-137.)

47. Davis received the $5,000 monthly payments for the plane investment for a period of five months. (Davis Depo, page 138.) He noticed some of the monthly payment money was the same money he had given to Ferguson for the investment; he identified it by some red dye that was on it. (Davis Depo, pages 94-95.) Davis received the last $5,000 monthly payment in May of 2002. Around that same time Ferguson beat Yumi up in Las Vegas and threatened to kill her, an incident that resulted in his arrest. (Davis Depo, pages 146-150.) He was apologetic thereafter, and she reconciled with him in an effort to be a good wife and save the marriage. (Davis Depo, pages 150-151.) Ferguson then sent her back to Japan to obtain money from her family. He threw her out of the house when she returned home without it. (Davis Depo, page 175.)

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48. In total, Davis gave Ferguson a total of $380,000 during the period October, 2001 to February of 2002. He has received no return of principal or payment of purported profit apart from the five payments of $5,000 per month on the purported plan[e] investment. (Davis Depo, pages 158-160.) Davis is a high school graduate who attended some trade school. (Davis Depo, page 43.) He spent a 26-year career as an aircraft mechanic with United Airlines from 1969 to 1995. He and his wife jointly owned and operated a golf shop in Culver City for about fifteen years, beginning in 1987. (Davis Deposition, pages 42-43.)

49. All of Davis's financial transactions with Ferguson occurred in Los Angeles, where he was living at the time. 143. Prior to the Maui trip Ferguson had never told Davis of his Swiss investors or Phil Horton, nor did he tell him that he had failed to make promised to [*sic*] payments to prior investors. (Davis Depo, pages 101-102.)

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

Cause exists to affirm the Desist and Refrain Order of April 11, 2003 against Respondents, pursuant to Corporations Code sections 25110, 25401 and 25532, as set forth in Finding 1, subparagraphs 3 through 49.

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The Commissioner issued the Desist and Refrain Order against Respondents pursuant to Corporations Code[3] section 25532, which states in pertinent part:

> (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.
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> (b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.
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> (c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

The issuance of the Desist and Refrain Order was justified under the circumstances of this case. Section 25110 addresses the issues of securities qualification and exemption from qualification. That statute states:

> It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120), whether or not by or through underwriters, unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale.

[3] All statutory references are to the Corporations Code unless otherwise indicated.

Section 25401 addresses the issue of misrepresentation in the sale of securities, be they qualified or not. That statute states:

> It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits 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.

The investments made by Philip Horton, the Swiss investors and Wardell Davis were investment contracts, and therefore "securities" as defined in section 25019. Additionally, in certain cases, Global Venture Group issued unsecured promissory notes to the investors as proof of their investment. Promissory notes are among the securities referenced in Section 25019.

Thus, the securities Ferguson sold to the investors referenced herein were required to meet the qualification requirements unless exempted from them. (Section 25110.) Respondents bore the burden of proving the existence of an exemption (Section 25163; See also, Evid. Code §500.) They failed to do so.

Respondents made the following arguments.

1. The transactions between Ferguson on the one hand, and Philip Horton, Reto Feller and Wardell Davis on the other hand, were exempted pursuant to section 25102, subdivision (f).

2. Complainant failed to prove that Ferguson made any misrepresentation or material omission.

3. Complainant failed to prove that Respondents' actions were not exempted.

4. Complainant failed to prove that any relevant activity occurred in California.

5. The Desist and Refrain Order should be redacted to omit sections relating to Ferguson's life-style.

6. The witnesses who testified on behalf of Complainant were not credible.

7. The declarations of witnesses who did not testify at the hearing should be afforded little weight.

8. Complainant failed to establish an alter-ego relationship between Ferguson and Global Venture Group.

Each of Respondents' arguments is rejected for the reasons set forth below.

The Investors and Section 25102, subdivision (f)

Section 25102, subdivision (f) provides for an exemption from the qualification requirements of section 25110. That subdivision states in pertinent part:

> Any offer or sale of any security in a transaction (other than an offer or sale to a pension or profit-sharing trust of the issuer) that meets each of the following criteria:
>
> (1) Sales of the security are not made to more than 35 persons, including persons not in this state.
>
> (2) All purchasers either have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors or controlling persons, or managers (as appointed or elected by the members) if the offeror is a limited liability company, or by reason of their business or financial experience or the business or financial experience of their professional advisers who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.
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> (3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

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(4) The offer and sale of the security is not accomplished by the publication of any advertisement. The number of purchasers referred to above is exclusive of any described in subdivision (i), any officer, director, or affiliate of the issuer, or manager (as appointed or elected by the members) if the issuer is a limited liability company, and any other purchaser who the commissioner designates by rule. For purposes of this section, a husband and wife (together with any custodian or trustee acting for the account of minor children) are counted as one person and a partnership, corporation, or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person. The commissioner may by rule require the issuer to file a notice of transactions under this subdivision.

¶ . . . ¶

The nature of the "preexisting personal or business relationship" and sophistication test referenced in Section 25102, subdivision (f)(2) was explained in *People v. Graham* (1985) 163 CalApp.3d 1159, 1171-1172, as follows:

> The "preexisting relationship" test under former rule 260.102.2 requires the nature and duration of the offeree's personal or business relationship with the offeror or related persons to be "such as would enable a reasonably prudent purchaser to be aware of the character, business acumen and general business and financial circumstances of the person with whom such relationship exists." [Citations.] The "sophisticated investor" test, on the other hand, "focuses on the purchaser's ability to evaluate the risks of purchasing the securities offered." [Citations.] The test seeks to identify those purchasers "that have the type of business or financial experience which should put them in a separate category from the gullible members of the general public, whom the statute is primarily designed to protect. . . ." [Citation.] Taken together, the purpose of the rule's two qualitative requirements is "to separate those private, negotiated transactions between persons who should be able to 'fend for themselves' (in the language of the Supreme Court) from an offering at random to the general public without regard to any relationship to the offeror or the ability of the offeree to evaluate the risk in the transaction for himself." [Citations.]

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As is more fully set forth above, neither Philip Horton, Reto Feller, nor Wardell Davis had the kind of "pre-existing personal relationship" with Ferguson, or the type of financial sophistication, contemplated by Section 25102, subdivision (f)(2). On the contrary, Philip Horton was a retired, former engineer with Exxon; Reto Feller was a Swiss national with no experience investing in the type of securities offered by Ferguson; and Wardell Davis was a retired mechanic with United Airlines. All three were unsophisticated investors who knew nothing about Ferguson or California securities law when Ferguson made his initial offers to them. Ferguson persuaded them to invest by promising fast and substantial returns on his investments. Horton, Feller and Davis were not individuals who could "fend for themselves" in relation to Ferguson's sales strategies and techniques, or the type of investments with which he was purportedly involved.

Material Misrepresentations/Omissions

Ferguson made numerous material misrepresentations and/or omissions to the various investors. Most of those misrepresentations involved claims that the investors would rapidly make "big" money; that they would earn specific amounts of return within specified time periods, and, at least in Davis's case, that the investor would earn a specific monthly income, for a specific period of time, from his investments. He also concealed his criminal conviction record of grand theft involving violations of the securities law from the investors and promised them that their money would be completely safe if they invested with him. In addition, he failed to disclose to the investors that he was not licensed as a broker-dealer, that qualification was required for the investments he was offering, and that the investments were neither qualified nor exempt from qualification.

Exemption from Qualification

The issues of whether the securities Ferguson offered the investors were subject to qualification and, if so, whether they were exempted from the qualification requirement, is addressed above and need not be reiterated here. Suffice it to say that Respondents bore the burden of proving an exemption. They failed to make any offer of proof on that issue.

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Relevant Activity in California

In order for California jurisdiction to attach to Ferguson's activities, the offers or sales of securities must have occurred "in this state." That term is addressed in Section 25008 which states:

> (a) An offer or sale of a security is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or (if both the seller and the purchaser are domiciled in this state) the security is delivered to the purchaser in this state. An offer to buy or a purchase of a security is made in this state when an offer to buy is made in this state, or an offer to sell is accepted in this state, or (if both the seller and the purchaser are domiciled in this state) the security is delivered to the purchaser in this state.
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> (b) An offer to sell or to buy is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state; and acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed. A security is delivered to the purchaser in this state when the certificate or other evidence of the security is directed to the purchaser in this state and received at the place to which it is directed.
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> (c) An offer to sell or to buy is not made in this state merely because (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which has had more than two-thirds of its circulation outside this state during the past 12 months, or (2) a radio or television program originating outside this state is received in this state.

An offer to sell securities is defined in Section 25017, subdivision (b), which states:

> "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

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In *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036 [80 Cal.Rptr.2d 828] the Court discussed the meaning of the term "in this state" in determining the issue of whether a civil remedy was available to out-of state purchasers of stock, purchased or sold outside of California, when the price of the stock had been affected by the seller's market manipulation. The Court stated:

> Section 25008 provides, inter alia, that a sale of a security is made in California when the offer to sell is made "in this state" or an offer to buy is accepted in California. (§ 25008, subd. (a).) An offer to sell is made "in this state" if the offer originates from California. (§ 25008, subd. (b).) Thus, a sale occurs "in this state" even if the purchaser is in, and communicates acceptance of the offer to sell from, New York. Thus, while aftermarket out-of-state purchases and sales might not qualify as purchases and sales induced "in this state," a California corporation which offered its shares for sale on a nationwide basis would be liable to out-of-state purchasers who accepted the offer. This follows because under section 25008, a sale occurs in California if the offer emanates from this state. . . .
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> The definition of "in this state" is not restrictive . . . and does not operate to confine liability for violation of section 25400 to intrastate transactions. (*Id.* at 1050-1051.)

In *B.C. Turf and Country Club, Ltd. V. Daugherty* (1949) 94 Cal.App.2d 320, the Court discussed the scope of section 25008[4] with respect to the requirement that a foreign corporation obtain a permit before offering to sell securities in California. The Court acknowledged that, although a permit is necessary for a foreign corporation to solicit a sale of securities or to engage in preliminary negotiations toward a sale, certain initial discussions regarding the organization and/or financing of a new corporation in connection with such sales are permitted to take place absent the issuance of a permit. Nonetheless, the Court cautioned:

> If it is apparent or reasonably inferable that there is fraud or exploitation present, or that the so-called preliminary negotiations are a sham, or that there is an intent to evade the California statute, there can be no doubt that the commissioner has the power to interfere and that the statute is applicable. (*Id.* at 331.)

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[4] The language of section 25008, as it reads today, has changed since 1949 when the case was decided. However, the difference in the statute's language does not alter the analysis or its applicability to the instant case.

The Court's cautionary words are applicable to the instant case. Fraud and exploitation were indeed present, and the offer to sell securities to the various investors did not involve simple arms-length proposals, but rather elaborate schemes designed to entice the investors into giving Respondents increasing sums of money in the belief that Ferguson would make them rich. It was those schemes that meet the definition of "offer" or "offer to sell" in section 25017, subdivision (b) as "every attempt or offer to dispose of, or solicitation of an offer to buy. . . ."

In Philip Horton's case, Ferguson telephoned Horton numerous times relating to the "California investment club." Part of the glamour Ferguson portrayed to Horton in his attempt to get Horton to continually invest was the trip to Pebble Beach by private jet, and Ferguson's plush office in Beverly Hills. As part of the scheme, Ferguson even gave Horton a position (albeit undefined) in Global Venture Group, and provided him with business cards bearing the Beverly Hills address and an office in the Beverly Hills suite.

In the case of the Swiss investors, Ferguson lured them into investments with trips to California including a stay in his plush Marina Del Rey apartment, visits to his Beverly Hills office and the golf trip to Pebble Beach. The Swiss investors also received emails and telephone calls from Ferguson in California.

The most clear cut case for a California nexus was that of Wardell Davis. Both Davis and Ferguson were California residents at the time the investments were made and the investments were made in California.

In addition, the sale of unregistered securities within California was established by the issuance of promissory notes to various investors from Global Venture Group's Beverly Hills office.

Requested Redactions to the Desist and Refrain Order

Respondents argued that the Desist and Refrain Order is "facially improper" in that it amounts to an "*ad hominum*" attack, and that certain portions of the order, relating to Ferguson's life-style, should be redacted. However, Respondents offered no authority to support their position. Further, there is nothing in the Desist and Refrain Order that is either untruthful or irrelevant to this proceeding. Respondents' request is denied.

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Credibility of the Testifying Witnesses

Respondents offered a number of arguments aimed at discrediting witnesses Philip Horton, Reto Feller and Wardell Davis. However, regardless of whether those witnesses harbored bitter feelings toward Ferguson in light of their having been victimized by him, nothing in their testimony, including Horton's Georgia conviction relating to the incident in which he was armed with a firearm and Ferguson was armed with a hammer, raised any concerns regarding the witnesses' truthfulness or ability to recall. Further, their answers to cross-examination questions were essentially consistent with their direct testimony, and nothing asked or answered during cross-examination tended to discredit any of them.

The fact that the witnesses, none of whom were familiar with California securities law, may have been unable to specify "how" Ferguson misled them is of no import. They testified as to what occurred. That testimony, coupled with the other evidence in this case, enabled the trier of fact to make the determination of material misrepresentation and/or omission.

Declarations of the Non-Testifying Witnesses

Respondents argued that the declarations of witnesses who did not testify should be given little weight. As referenced above, those declarations were admitted as "administrative hearsay" pursuant to Government Code section 11513, subdivision (d). As such, they were admitted only to supplement or explain other admissible evidence.

Respondent's "Alter Ego" Argument

Respondents argued that Complainant failed to offer any evidence to establish an alter-ego relationship between Ferguson and Global Venture Group. Complainant was not required to do so. This was not a case of vicarious liability. Thus, liability is not being imposed against Ferguson, as a shareholder of Global Venture Group, for the corporation's wrongdoing. In this case, Ferguson is responsible for his own wrongdoing, in his individual capacity.

Complainant established that Respondents violated sections 25110 and 25401 by offering and selling, via misrepresentations and omissions of material fact, unqualified and non-exempted securities.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Desist and Refrain Order of April 11, 2003, against Steven Michael Ferguson and Global Venture Group, is affirmed.

DATED: April 8, 2005

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings