

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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<b>SECURITIES AND EXCHANGE</b>	)	FILED: JUNE 15, 2009
<b>COMMISSION,</b>	)	09CV3587
	)	JUDGE LEFKOW
<b>Plaintiff,</b>	)	MAGISTRATE JUDGE MASON
	)	BR
<b>v.</b>	)	
	)	
<b>DAVID J. HERNANDEZ, also doing business as</b>	)	
<b>“NEXTSTEP FINANCIAL SERVICES, INC.”</b>	)	
	)	
<b>Defendant,</b>	)	
	)	<b>Civil Action No.</b>
<b>and</b>	)	
	)	
<b>NEXTSTEP MEDICAL STAFFING IL, INC.,</b>	)	
<b>NEXTSTEP HOLDINGS, INC., SPECTRUM</b>	)	
<b>ENTERTAINMENT GROUP, INC., THE</b>	)	
<b>ILUMINA GROUP, INC., AND</b>	)	
<b>GINA M. HERNANDEZ,</b>	)	
	)	
<b>Relief Defendants.</b>	)	
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**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (“SEC”), alleges as follows:

**NATURE OF THE ACTION**

1. The SEC brings this securities law enforcement action to halt an ongoing fraudulent investment scheme run by David J. Hernandez (“Hernandez”), a convicted felon. From at least February 2008 to the present, Hernandez, who also did business under the name NextStep Financial Services, Inc. (“NextStep Financial”), offered and sold securities in the form of “Guaranteed Investment Contracts” (“GICs”) to investors in unregistered and fraudulent

transactions that violate federal securities law. Hernandez told investors that GICs were an investment in his successful financial services company, NextStep Financial, and that investors would earn a high, guaranteed rate of return of 10% to 16% per month with no risk. Hernandez's sale of GICs raised more than \$11 million dollars from investors in at least 12 states.

2. In connection with his offer and sale of GICs, Hernandez made numerous materially false and misleading statements about himself, about NextStep Financial, and about the investment he wanted them to buy. Specifically, Hernandez told investors:

- a. That he had an extensive background in banking and business, including having business and law degrees from specific universities, when in fact, he did not have these degrees and his "banking experience" included a prior federal conviction for wire fraud arising out of Hernandez's employment at a bank.
- b. That NextStep Financial was a successful Chicago financial services firm for which he was "President and CEO," when in fact, NextStep Financial was a defunct corporation that conducted no financial services operations at all, other than running the scheme described herein.
- c. That NextStep Financial had a highly profitable business funding loans made by Check 'N Go stores and that NextStep Financial owned a number of Check 'N Go stores. In fact, Hernandez and NextStep Financial have no business relationship with Check 'N Go at all.
- d. That their investments in GICs were completely safe because they were covered by two levels of insurance, one provided by Check 'N Go for the loans it made to its customers, and another purchased by Next Step from

certain specified insurance companies. This was also false, as Check 'N Go has nothing to do with Hernandez or NextStep Financial and therefore, does not insure the GICs. In addition, the SEC's review of the known Hernandez-related bank accounts shows no payments to purchase insurance from the companies Hernandez identified as providing insurance to NextStep Financial's investors.

3. After obtaining their funds, Hernandez deposited investors' funds into bank accounts of other companies that he created and controlled, including relief defendants NextStep Medical Staffing IL, Inc. ("NextStep Medical") and NextStep Holdings, Inc. ("NextStep Holdings").

4. From those accounts, Hernandez operated a Ponzi scheme, using some of the investor funds to pay existing investors their promised returns, and diverting and misappropriating the rest for himself, his family, and other business ventures that were unrelated to the stated purpose of the GIC investment program. Hernandez diverted investor funds to himself, to his wife, relief defendant Gina M. Hernandez ("Gina Hernandez"), to pay off the mortgage on their home, to purchase cars, jewelry, a piano, and for other non-investment related purposes. Hernandez also transferred investor funds to the bank accounts of two other companies he created and controlled, relief defendants Spectrum Entertainment Group, Inc. ("Spectrum") and The Ilumina Group, Inc. ("Ilumina"). The Spectrum and Ilumina accounts funded, among other things, a Chicago sports-talk website associated with Hernandez called "Chicago Sports Webio."

5. By virtue of his conduct as alleged herein, Hernandez has engaged in transactions, acts, practices, and courses of business that constitute violations of Sections 5(a), 5(c), and 17(a)

of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), e(c), and q(a)]; Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder; and unless permanently enjoined, Hernandez is likely to engage in future violations of these provisions.

6. The Commission, in the interest of protecting the public from further fraudulent activity, brings this civil enforcement action for a judgment: (a) permanently enjoining Hernandez from future violations of the antifraud and registration provisions of the federal securities laws; (b) requiring Hernandez and the relief defendants to disgorge their ill-gotten gains, plus prejudgment interest thereon; (c) imposing an appropriate civil penalty against Hernandez, (d) appointing a Receiver to marshal the assets of Hernandez and the relief defendants and return funds to injured investors; and (e) such other relief as the Court deems appropriate.

7. In light of the continuing and serious risk of harm to current and prospective investors, including the possible dissipation of remaining investor assets and the risk that Hernandez may be soliciting further investments, the SEC is seeking immediate, emergency relief at the outset of this lawsuit, including the an entry of a temporary restraining order, the imposition of an asset freeze, and other ancillary relief.

#### **JURISDICTION**

8. The Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

#### **DEFENDANT**

9. **David J. Hernandez**, age 48, lives in Downers Grove, Illinois. Hernandez told

investors that he was President and CEO of NextStep Financial, an Illinois corporation he incorporated in 2001, but which was involuntarily dissolved in May 2003. In 1998, Hernandez was convicted in federal district court of wire fraud arising from his previous employment at a bank in the case of *U.S.A. v. David J. Hernandez*, Case No. 97cr591. In 2004, 2005 and 2006, Hernandez and his wife, Gina Hernandez, filed bankruptcy petitions under Chapter 13 of the Bankruptcy Code.

#### **RELIEF DEFENDANTS**

10. **NextStep Medical Staffing IL, Inc.** is an Illinois corporation with its principal place of business at 225 W. Washington Street, Suite 1600, Chicago, Illinois. Hernandez incorporated NextStep Medical in February 2008. According to its website, NextStep Medical is a medical staffing business. During the relevant period, Hernandez controlled NextStep Medical's bank account, into which he deposited more than \$10.5 million of investor funds.

11. **NextStep Holdings, Inc.** is an Illinois corporation incorporated by Hernandez in October 2008. NextStep Holdings has no known place of business and its bank account shows no receipts from operations. Hernandez controlled its only known bank account, into which he deposited more than \$900,000 in investor funds.

12. **Spectrum Entertainment Group, Inc.** is an Illinois corporation incorporated by Hernandez in December 2008. Spectrum appears to fund a Chicago sports-talk website related to Hernandez. However, Hernandez controls its only known bank account into which he diverted more than \$160,000 of investor funds.

13. **The Ilumina Group, Inc.** is an Illinois corporation incorporated by Hernandez in October 2008. Ilumina also appears to fund a Chicago sports-talk website related to Hernandez.

Hernandez controls its only known bank account into which he diverted more than \$380,000 of investor funds.

14. **Gina M. Hernandez** is Hernandez's wife and a resident of Downers Grove, Illinois. Gina Hernandez is or was an elementary school teacher. Hernandez diverted at least \$90,000 of investor funds to Gina Hernandez. In addition, Hernandez used more than \$300,000 of investor funds to pay off a mortgage on the house that Hernandez and Gina Hernandez live in and jointly owned at the time of the payment.

### **THE FRAUDULENT SCHEME**

15. Beginning by at least February 2008, Hernandez began offering and selling GICs to investors.

16. Hernandez incorporated NextStep Financial as an Illinois corporation in 2001, but it was involuntarily dissolved in May of 2003.

17. Despite its earlier dissolution, Hernandez told prospective investors that NextStep Financial was a successful, Chicago financial services company, and created an elaborate website for NextStep Financial to give the appearance that it was a real business. Hernandez also told investors that he had an extensive background in banking and business and that he was NextStep Financial's President and CEO.

18. When describing NextStep Financial's business, Hernandez told investors that NextStep Financial owned a number of Check 'N Go stores and provided funding for a number of others.

19. Check 'N Go stores provide various services to its customers, including check cashing, short-term consumer lending, deferred deposits and payroll advancements. Check 'N Go stores are sometimes referred to as payday lenders.

20. Hernandez told investors that NextStep's payday lending was highly profitable and that investors could invest in NextStep Financial through its GICs, which would pay them a high, guaranteed rate of return, generally 10% to 16% per month, with no risk.

21. Hernandez told investors that the GICs were safe because they were covered by two types of insurance, one provided by Check 'N Go for the loans it made to its customers and another by Next Step, which insured the GICs through certain specified "national" insurance companies such as Axiom, Nationwide Insurance Group, National Fidelity, and Equitable Insurance.

22. Hernandez also used NextStep Financial's website ([www.nfsillinois.com](http://www.nfsillinois.com)) to sell GICs and on at least one occasion, offered the GICs to a group at a meeting in Michigan.

23. The website touted Hernandez's banking and business experience and represented that he had received a B.S. in Finance and an M.B.A. from the University of Wisconsin and a law degree from the "John Marshall Law School at DePaul University - Chicago."

24. The website also provided information about the GICs, included a sample GIC and discussed NextStep Financial's payday lending relationship with Check 'N Go. The website included sections entitled "FAQ" and "definitions" and discussed the alleged insurance coverage over any investments. The website also contained several charts that purported to show the rapid growth of an investment in NextStep Financial that was "rolled over" (i.e., not withdrawn) over time. For example, one chart purported to show that a \$10,000 investment would be worth \$31,958 after one year.

25. After deciding to invest, investors typically sent Hernandez a check or cashier's check payable to NextStep Financial and signed a GIC entitled: "NextStep Financial Services, Inc. Guaranteed Investment Contract (G.I.C.)."

26. The GIC purported to be a contract between the investor and NextStep Financial. The GIC stated that investors were investing in NextStep Financial and that “said funds are fully secured in a High Yield Investment Program, (hereinafter called “The Program”) and insured by one of several National Insurance Groups, which include Fidelity, Nationwide and Equitable Insurance.”

27. The GIC stated a fixed rate of return of 10% to 16% per month and provided that NextStep Financial guaranteed the distribution of the investor’s principal and interest payments. The GICs stated that they had a term of three months and automatically renewed unless the investor directed otherwise.

**False and Misleading Statements to Investors**

28. When offering and selling the GIC investments to investors, Hernandez made a number of false statements of material fact, and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which there were made, not misleading.

29. Hernandez made the following false and misleading statements to investors:

a. When telling investors about his extensive banking and business experience, Hernandez failed to disclose that in 1998 he was convicted for wire fraud arising from his employment at a bank. In 1997, Hernandez was indicted in *U.S.A. v. David J. Hernandez*, Case No. 97cr591, in the United States District Court for the Northern District of Illinois. The four-count indictment filed against Hernandez alleged, among other things, that while employed as a vice-president at Columbia National Bank in Chicago, he diverted money that investors sent to the bank for investment purposes to accounts under his personal control. Hernandez pled guilty to one count of wire fraud



and was sentenced in October 1998 to 34 months in prison followed by 5 years of supervised release. In addition, the court ordered Hernandez to make restitution of \$590,533.67.

b. When telling investors about his banking and business experience, Hernandez failed to disclose that he filed for bankruptcy under Chapter 13 of the Bankruptcy Code in 2004, 2005 and 2006.

c. Hernandez misrepresented his educational background to investors, telling them he had a B.S. in Finance, an M.B.A and a J.D., when he did not. Each of the universities from which he claimed a degree has denied that he attended their school.

d. Hernandez told investors NextStep Financial was a successful financial services company with a profitable payday lending relationship with Check 'N Go, when in fact, NextStep Financial was a defunct company with no operations at all, other than the fraudulent scheme alleged in this complaint. In addition, neither NextStep nor Hernandez has any business relationship with Check 'N Go or any of its related companies.

e. Hernandez told investors he would invest their funds in NextStep Financial and use those funds for its payday lending operations with Check 'N Go. This statement was false as Hernandez used no investor funds for this purpose. Instead, Hernandez placed investor funds into bank accounts of other companies that he controlled, including NextStep Medical and NextStep Holdings. From there, Hernandez paid existing investors their promised returns, transferred investor funds to himself, to Gina Hernandez, to pay off the mortgage on their family home, to purchase cars, jewelry, a piano, and for other non-investment related purposes. In addition, Hernandez diverted

investor funds to two other companies he controlled – relief defendants Spectrum and Ilumina. From those accounts, Hernandez also spent investor funds to start up a Chicago sports-talk website called “Chicago Sports Webio” featuring well-known Chicago area sports figures and reporters ([www.chicagosportswebio.com](http://www.chicagosportswebio.com)).

f. In addition, the bank records obtained by the SEC show that Hernandez made no payments to the insurance companies purportedly insuring the investors GICs. Based upon these facts, it is clear that Hernandez also misrepresented the safety of the GIC investments.

#### **Uses of Investor Funds**

30. During the period from February 18, 2008 to the present, Hernandez raised more than \$11.5 million from more than 100 investors in at least 12 states.

31. Hernandez deposited these investor funds into bank accounts of other companies that he controlled, including relief defendants NextStep Medical and NextStep Holdings. Hernandez deposited more than \$10.5 million of investor funds in NextStep Medical’s bank accounts, and more than \$900,000 in NextStep Holdings’ bank account. Hernandez may have deposited additional investor funds into other accounts not yet known to the SEC.

32. Hernandez used the majority of these investor funds to pay investors their promised investment returns. He diverted, misappropriated, and dissipated the remaining investor funds.

33. Hernandez pumped substantial amounts of investor funds into new business ventures of his that were completely unrelated to the payday loan business. For example, he spent more than \$630,000 on NextStep Medical’s payroll expenses, and spent more than \$350,000 on the rental for the NextStep Medical’s offices. Notwithstanding these expenditures,

the NextStep Medical account does not show *any* receipts of revenues whatsoever since its creation in early 2008.

34. Hernandez also diverted investor funds to finance Chicagosportswebio.com, a new online sports-talk website owned by Spectrum. Hernandez diverted at least \$165,500 of investor funds directly to the Spectrum account, and made other payments for the benefit of Spectrum's online sports talk station business, including compensation in excess of \$100,000 to various well-known Chicago sports talk personalities for their participation in Hernandez's online sports talk station.

35. Hernandez expended at least \$275,000 of investor funds to pay for advertising and promotion for Chicagosportswebio.com and Medical Staffing.

36. Hernandez also diverted at least \$381,000 of NextStep investor funds relief defendant Ilumina.

37. Hernandez also diverted investor funds for the benefit of himself and his spouse, relief defendant Gina Hernandez. Hernandez wrote checks to Gina Hernandez totaling at least \$91,000. Hernandez also diverted more than \$318,000 to pay off the mortgage on their residence in Downer's Grove. Hernandez also diverted and spent investor funds for various luxury and vanity items and events, including: \$25,879 for the purchase of an Audi Quattro automobile, \$16,684 for the purchase of a Steinway piano, \$34,000 in jewelry purchases from Tiffany's, more than \$23,000 for a holiday party at the Ritz-Carlton in December 2008, more than \$10,000 for dinners at Nine Chicago.

38. Recently, Hernandez has stopped paying most of the investors and stopped responding to most investor calls.

**Failure to file a registration statement for the GIC securities transactions**

39. Hernandez never filed a registration statement with the SEC covering the GIC securities transactions alleged in this complaint.

**COUNT I**

**Violations of Section 17(a)(1) of the Securities Act  
[15 U.S.C. § 77q(a)(1)]**

40. Paragraphs 1 through 39 are incorporated herein by reference.

41. As is set forth more fully herein, Hernandez, in the offer or sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes or artifices to defraud.

42. Hernandez knowingly or recklessly engaged in the fraudulent conduct described above.

43. By reason of the foregoing, Hernandez violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**COUNT II**

**Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act  
[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]**

44. Paragraphs 1 through 39 are incorporated herein by reference.

45. Hernandez, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly have obtained money or property by means of untrue statements of material fact 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; or engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon purchaser of securities.

46. By reason of the foregoing, Hernandez violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

**COUNT III**  
**Violations of 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]**

47. Paragraphs 1 through 39 are realleged and incorporated by reference.

48. Hernandez, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails: (a) used or employed a device, scheme, or artifice to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) and engaged in acts, practices, or courses of business which operated or would operate as a fraud and deceit upon the purchasers and prospective sellers of such securities.

49. Hernandez acted knowingly or recklessly when they engaged in the fraudulent conduct described above.

50. By reason of the foregoing, Hernandez violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5]

**COUNT IV**  
**Violations of Section 5(a) and (c) of the Securities Act**  
**[15 U.S.C. § 77e(a) and (c)]**

51. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

52. Hernandez directly and indirectly, and notwithstanding that there was no applicable exemption: (i) made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement was in effect; (ii) for the purpose of

sale or delivery after sale, carried and/or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities as to which no registration statement was in effect; and (iii) made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed.

53. No valid registration statement was filed with the Commission in connection with Hernandez's sales of, and offers to sell, securities in the issuer identified in this complaint.

54. By reason of the foregoing, Hernandez violated Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

**COUNT V**  
**Equitable Claim against the Relief Defendants for Disgorgement**

55. Paragraphs 1 through 39 are incorporated herein by reference.

56. NextStep Medical, NextStep Holdings, Spectrum, Illumina and Gina Hernandez, directly or indirectly, received funds or benefited from the use of such funds, which are the proceeds, or are traceable to the proceeds, of the unlawful activity alleged above.

57. NextStep Medical, NextStep Holdings, Spectrum, Illumina and Gina Hernandez have no legitimate claim to such funds that they received or from which they otherwise benefited, directly or indirectly.

58. Based upon the allegations set forth above, NextStep Medical, NextStep Holdings, Spectrum, Illumina and Gina Hernandez have been unjustly enriched by their direct or indirect receipt of or benefit from investor funds.

59. The Commission is entitled to an order, pursuant to common law equitable principles and also pursuant to Section 21(d)(6) of the Exchange Act [15 U.S.C. §u(d)(5)], requiring NextStep Medical, NextStep Holdings, Spectrum, Illumina and Gina Hernandez to

disgorge all of the proceeds of investor funds they received or from which they benefited, either directly or indirectly.

**RELIEF REQUESTED**

WHEREFORE, the Commission requests that this Court enter a judgment:

A. Finding that the Defendant Hernandez committed the violations alleged against him herein;

B. Permanently enjoining and restraining Defendant Hernandez from further violations of Sections 5(a), 5(c) and 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §§ 77e(a) and (c), 77q(a)(1), (2) and (3)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];

C. Ordering Defendant Hernandez to pay as disgorgement the full amount of the all funds raised through his offering, less amounts previously returned to investors, plus prejudgment interest thereon;

D. Ordering Relief Defendants NextStep Medical, NextStep Holdings, Spectrum, Illumina and Gina Hernandez to disgorge all funds they received from Defendant's ill-gotten gains or by which they have been unjustly enriched, including without limitation all investor funds transferred to them or used, directly or indirectly, for their benefit, plus prejudgment interest thereon;

E. Ordering Defendant Hernandez to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

F. Appointing a Receiver over Defendant Hernandez and Relief Defendants NextStep Medical, NextStep Holdings, Spectrum, Illumina and Gina Hernandez, and other

entities they own or control, for the purposes of identifying and marshaling their assets, and distributing to injured investors funds collected by the Receiver or paid into the registry of the Court.

G. Establishing a Fair Fund, pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, into which all disgorgement, prejudgment and post judgment interest, and civil penalties obtained through this action will be deposited and then distributed to injured investors pursuant to a plan of distribution to be submitted by the Plaintiff (and/or Receiver, if a Receiver is appointed) and approved by the Court;

H. Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered and to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

I. Granting such other and additional relief as this Court deems just and proper.

Respectfully Submitted,



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