

Approved: /s Richard Cooper /s Jared Lenow
RICHARD COOPER/JARED LENOW
Assistant United States Attorneys

Before: HONORABLE KATHARINE H. PARKER
United States Magistrate Judge
Southern District of New York

20 MAG 9794

- - - - -	x	:	<u>SEALED COMPLAINT</u>
UNITED STATES OF AMERICA	:	:	Violations of
- v. -	:	:	15 U.S.C. §§ 77q, 77x,
ADAM ROGAS,	:	:	78j(b) & 78ff; 17 C.F.R.
Defendant.	:	:	§ 240.10b-5; 18 U.S.C. §§
	:	:	1343 & 2.
	:	:	COUNTY OF OFFENSE:
	:	:	New York
- - - - -	X		

SOUTHERN DISTRICT OF NEW YORK, ss.:

NICHOLAS KROLL, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE
(Securities Fraud)

1. From at least in or about September 2019 up to and including in or about September 2020, in the Southern District of New York and elsewhere, ADAM ROGAS, the defendant, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, used and employed in connection with the purchase and sale of securities manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting 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) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, ROGAS, while Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), and a member of the Board of Directors of

cyberfraud prevention company NS8, Inc. ("NS8"), knowingly used falsified bank statements to cause material misrepresentations to be made to investors in connection with two NS8 securities offerings.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5; and
Title 18, United States Code, Section 2.)

COUNT TWO
(Fraud in the Offer or Sale of Securities)

2. From at least in or about September 2019 up to and including in or about September 2020, in the Southern District of New York and elsewhere, ADAM ROGAS, the defendant, willfully and knowingly, in the offer and sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly (a) employed a device, scheme, and artifice to defraud; (b) obtained money and property by means of an untrue statement of a material fact and an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in a transaction, practice, and course of business which operated or would operate as a fraud or deceit upon the purchaser, to wit, ROGAS, while CEO, CFO, and a member of the Board of Directors of NS8, knowingly used falsified bank statements to cause material misrepresentations to be made to investors in connection with two NS8 securities offerings.

(Title 15, United States Code, Sections 77q(a) and 77x;
Title 18, United States Code, Section 2.)

COUNT THREE
(Wire Fraud)

3. From at least in or about January 2019 up to and including in or about September 2020, in the Southern District of New York and elsewhere, ADAM ROGAS, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, ROGAS, while CEO, CFO, and a member of the Board of Directors of NS8, knowingly used

falsified bank statements to cause material misrepresentations to be made to investors, including in connection with two NS8 securities offerings.

(Title 18, United States Code, Sections 1343 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

4. I have been a Special Agent with the FBI for approximately three years. I am currently assigned to a squad that is responsible for investigating violations of the federal securities laws, as well as wire and mail fraud laws and related offenses. I have participated in numerous investigations of these offenses, and I have made and participated in making arrests of numerous individuals for committing such offenses.

5. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including documents provided by others, from speaking with witnesses, and from conversations with representatives of the United States Securities and Exchange Commission (the "SEC"). Because this affidavit is being submitted for a limited purpose, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part unless otherwise noted. Where dates, figures, and calculations are set forth herein, they are approximate.

Summary of the Fraudulent Scheme

6. As set forth below, ADAM ROGAS, the defendant, was a founder and the CEO, CFO, and a member of the Board of Directors of NS8, a cyberfraud prevention company. ROGAS exercised control over the books and records of NS8, and also maintained control over the bank accounts where NS8's revenue was purportedly deposited. From at least in or about 2019 through in or about September 2020, ROGAS operated a fraudulent scheme to deceive NS8's investors by falsely inflating the company's reported revenue and assets by substantial amounts. As part of his fraudulent scheme, ROGAS used falsified bank statements to cause material misrepresentations to be made to investors regarding NS8's assets and revenue, including by showing tens of millions of dollars in assets and revenue that did not exist. Through those material misrepresentations, ROGAS enticed investors to purchase securities in two fundraising rounds which provided NS8 with at least

approximately \$123 million in funds. ROGAS subsequently tendered NS8 shares he owned and otherwise controlled, obtaining at least approximately \$17.5 million as a result.

Background

7. From my review of materials collected from NS8, publicly available sources, and my interviews with NS8 employees and investors, I have learned, among other things, that:

a. NS8 is a cyberfraud prevention company that developed and sold electronic tools to help online vendors assess the fraud risks of customer transactions. NS8 was founded in or about 2016, and is based in Las Vegas, Nevada. NS8's revenues were generated from its customers (online vendors and e-commerce websites) paying subscription fees to NS8 on a periodic basis.

b. At all times relevant to this Complaint until his resignation on or about September 1, 2020, ADAM ROGAS, the defendant, served as the CEO, CFO, and a member of the Board of Directors of NS8, and was primarily responsible for the company's fundraising activities.

c. NS8 engaged in various fundraising rounds, including the following:

i. From in or about September through November 2019, NS8 raised approximately \$61 million from investors through the sale of Series A Preferred Shares (the "Fall 2019 Series A Round").

ii. In or about April 2020, NS8 raised an additional approximately \$73 million from investors through the sale of additional Series A Preferred Shares (the "Spring 2020 Series A Round").¹ Following the Spring 2020 Series A Round, NS8 used a portion of the funds raised from investors to conduct a tender offer through which it purchased stock from NS8's stockholders and option holders (the "Tender Offer"). In connection with the Tender Offer, ROGAS received approximately \$17.5 million by selling shares held by him personally and through

¹ While a total of approximately \$134 million worth of NS8's Series A shares were issued in the Fall 2019 Series A Round and the Spring 2020 Series A Round, \$11 million of that amount was comprised of a previously issued convertible note that was converted into Series A shares. Therefore, the amount of new funds raised between the Fall 2019 Series A Round and the Spring 2020 Series A Round was approximately \$123 million.

an entity he controlled.

d. NS8 collected customer revenue through a particular bank account (the "Revenue Bank Account") maintained at a financial institution referred to herein as the "Bank," and paid its expenses out of a different bank account (the "Expense Bank Account") held at a different bank.

8. From my interviews with employees of NS8, and my review of documents obtained during the investigation, including documents provided by NS8 and the SEC, I have learned, among other things, that:

a. ADAM ROGAS, the defendant, maintained exclusive control over spreadsheets that tracked revenue received from NS8's customers (the "Customer Revenue Spreadsheets"). NS8's finance department used the Customer Revenue Spreadsheets to generate NS8's financial statements, including the company's income statements.

b. ROGAS also maintained exclusive control of and access to the Revenue Bank Account until at or about the time he resigned from NS8. ROGAS was the only individual listed on the account documents, including the signature card, for the Revenue Bank Account until in or about early September 2020. On a periodic basis, ROGAS would provide monthly statements of the Revenue Bank Account in PDF format (the "Fraudulent Bank Statements") to members of the NS8 finance department so that they could create the company's financial statements, including balance sheets. In addition, deposits into the Revenue Bank Account as shown on the Fraudulent Bank Statements reflected customer revenue purportedly received by NS8.

The Fraudulent Scheme

ROGAS Creates Fraudulent Bank Statements and Customer Revenue Spreadsheets

9. Based on the investigation and for the reasons set forth below, I believe that ADAM ROGAS, the defendant, created fraudulent customer revenue statements and bank statements -- in the form of the Customer Revenue Spreadsheets and the Fraudulent Bank Statements -- both of which reflect substantially inflated levels of customer revenue and assets, and both of which caused the financial statements of NS8 to be materially misleading.

10. I have compared the Fraudulent Bank Statements to statements for the Revenue Bank Account that NS8 recently obtained

directly from the Bank, and based on that comparison I believe that the Fraudulent Bank Statements were altered to list substantially inflated deposits into the Revenue Bank Account.

a. For example, an excerpt from a March 31, 2020 statement for the Revenue Bank Account contained in the Fraudulent Bank Statements is depicted below on the left, while an excerpt of a March 31, 2020 statement for the Revenue Bank Account that was recently obtained by NS8 directly from the Bank is depicted below on the right.

for March 1, 2020 to March 31, 2020	
NS8 INC	
Account summary	
Beginning balance on March 1, 2020	\$42,244,565.43
Deposits and other credits	6,434,303.00
Withdrawals and other debits	-1,733,029.00
Checks	-0.00
Service fees	-0.00
Ending balance on March 31, 2020	\$46,945,839.43

for March 1, 2020 to March 31, 2020	
NS8 INC	
Account summary	
Beginning balance on March 1, 2020	\$45,407.75
Deposits and other credits	7,576.03
Withdrawals and other debits	-0.00
Checks	-0.00
Service fees	-0.00
Ending balance on March 31, 2020	\$52,983.78

b. In another example drawn from the same two documents, each version of the statement appears to list the same number, date, and source of deposits, but the version contained within the Fraudulent Bank Statements (Figure A below) appears to have altered deposit amounts for certain transactions compared to the version obtained directly from the Bank (Figure B below), such as replacing a \$522.87 deposit with a fake \$999,999.99 deposit:

Figure A

BANK OF AMERICA  **Your checking account**

NS8 INC | Account # [REDACTED] 329 | March 1, 2020 to March 31, 2020

Deposits and other credits

Date	Description	Amount
03/02/20	STRIPE DES:TRANSFER ID-ST-L90701V2W7V2 INDN:NS8 INC CO ID:1800948598 CCD	701.85
03/02/20	STRIPE DES:TRANSFER ID-ST-Z4A8G4G0Y3D8 INDN:NS8 INC CO ID:1800948598 CCD	57.56
03/03/20	STRIPE DES:TRANSFER ID-ST-P4I9V7T0X2K1 INDN:NS8 INC CO ID:1800948598 CCD	57.56
03/04/20	STRIPE DES:TRANSFER ID-ST-U9Z2Z5C4O9V4 INDN:NS8 INC CO ID:1800948598 CCD	999,999.99
03/04/20	STRIPE DES:TRANSFER ID-ST-I6A9I2R6U6E0 INDN:NS8 INC CO ID:1800948598 CCD	96.80
03/11/20	STRIPE DES:TRANSFER ID-ST-A6T6N5T7F0P8 INDN:NS8 INC CO ID:1800948598 CCD	999,999.99
03/11/20	STRIPE DES:TRANSFER ID-ST-S8Q7U8T9C3X5 INDN:NS8 INC CO ID:1800948598 CCD	193.90
03/12/20	SHOPIFY DES:TRANSFER ID-X INDN:NS8 INC CO ID:XXXXX CCD	500,000.00
03/12/20	STRIPE DES:TRANSFER ID-ST-Z8U7S3V9N2R9 INDN:NS8 INC CO ID:1800948598 CCD	291.00

Figure B

BANK OF AMERICA  **Your checking account**

NS8 INC | Account # [REDACTED] 329 | March 1, 2020 to March 31, 2020

Deposits and other credits

Date	Description	Amount
03/02/20	STRIPE DES:TRANSFER ID-ST-L90701V2W7V2 INDN:NS8 INC CO ID:1800948598 CCD	701.85
03/02/20	STRIPE DES:TRANSFER ID-ST-Z4A8G4G0Y3D8 INDN:NS8 INC CO ID:1800948598 CCD	57.56
03/03/20	STRIPE DES:TRANSFER ID-ST-P4I9V7T0X2K1 INDN:NS8 INC CO ID:1800948598 CCD	57.56
03/04/20	STRIPE DES:TRANSFER ID-ST-U9Z2Z5C4O9V4 INDN:NS8 INC CO ID:1800948598 CCD	522.87
03/04/20	STRIPE DES:TRANSFER ID-ST-I6A9I2R6U6E0 INDN:NET APPLICATIONS CO ID:1800948598 CCD	96.80
03/11/20	STRIPE DES:TRANSFER ID-ST-A6T6N5T7F0P8 INDN:NS8 INC CO ID:1800948598 CCD	245.13
03/11/20	STRIPE DES:TRANSFER ID-ST-S8Q7U8T9C3X5 INDN:NS8 INC CO ID:1800948598 CCD	193.90
03/12/20	STRIPE DES:TRANSFER ID-ST-F2L0Y9Z4V2P1 INDN:NS8 INC CO ID:1800948598 CCD	720.45
03/12/20	STRIPE DES:TRANSFER ID-ST-Z8U7S3V9N2R9 INDN:NET APPLICATIONS CO ID:1800948598 CCD	291.00

11. I have compared the fraudulently inflated balances in the Fraudulent Bank Statements with the NS8 balance sheets that were made available to potential investors and their

representatives in connection with the Fall 2019 Series A Round and the Spring 2020 Series A Round, and based on that comparison I believe that for the period from January 2019 through February 2020, the percentage of total reported assets from the NS8 balance sheet that were fictitious ranged from at least approximately 40% to over 95%.

12. In addition, as set forth above, the deposits in the Revenue Bank Account purportedly reflected revenue received by NS8, and thus were represented in the company's income statement and statement of profit and loss. I have compared the Fraudulent Bank Statements with versions obtained directly from the Bank, and for the period from January 2019 through February 2020, I have identified at least approximately \$40 million in fictitious revenue that appears on the Fraudulent Bank Statements but was not, in fact, received by NS8.

ROGAS Deceives Investors and Auditors

13. As set forth below, the fraudulent scheme of ADAM ROGAS, the defendant, involved efforts both to disseminate fraudulently inflated NS8 financial statements to existing investors, and also to use fraudulently inflated NS8 financial statements to deceive investors into committing over \$123 million to NS8 in the Fall 2019 Series A Round and the Spring 2020 Series A Round.

14. From my review of emails provided by NS8, I have learned that ADAM ROGAS, the defendant, provided fraudulently inflated financial statements to existing NS8 investors. For example:

a. On or about January 14, 2019, in response to a request from an investor for NS8's financial statements, ROGAS sent an email attaching, among other things, a balance sheet and profit and loss statement for 2018, which included fraudulently inflated asset and revenue figures.

b. On or about February 5, 2019, ROGAS emailed to a New York-based investor one of the Customer Revenue Spreadsheets that, as described above, contained fraudulently inflated revenue figures.

15. From my interviews with members of the NS8 finance department and NS8 investors, as well as my review of documents obtained from NS8 and the SEC, I have learned, among other things, that:

Fall 2019 Series A Round

a. During investor due diligence prior to the Fall 2019 Series A Round, NS8 created an online file sharing database that potential investors and their representatives were able to access. That online database included NS8's financial statements reflecting the fraudulent assets and revenue from the Fraudulent Bank Statements.

b. Prior to the Fall 2019 Series A Round, a potential investor ("Investor-1" at "Investment Firm-1") was considering an investment in NS8. Investor-1, who at the time was based in New York, New York, engaged in communications, including telephone calls, with ADAM ROGAS, the defendant, about the business of NS8. During this process, ROGAS made a presentation to Investment Firm-1, which included a discussion of NS8's business and financial condition.

c. Investment Firm-1 engaged a firm to conduct due diligence of NS8 on its behalf. From my review of a copy of the due diligence report that was produced, I have learned that the report incorporated the fictitious assets and revenue that ROGAS caused to be included in NS8's financial statements. Investor-1 reviewed and relied on the due diligence report, including the fictitious financial statements, in making the decision to invest in NS8. Investment Firm-1 thereafter invested approximately \$15 million in NS8 during the Fall 2019 Series A Round.

d. Prior to the Fall 2019 Series A Round, another potential investor ("Investor-2" at "Investment Firm-2") was considering an investment in NS8. Investor-2 engaged an audit firm (the "Audit Firm") to conduct due diligence on NS8. The Audit Firm obtained financial records from NS8, and thereafter produced a report that incorporated the fictitious assets and revenue that ROGAS caused to be included in NS8's financial statements. The report also stated, among other things, that "revenue recognized [by NS8] is supported by actual cash receipts per bank statements." Investor-2 reviewed and relied on this due diligence report, including the fictitious financial information, in making the decision to investment in NS8. Investment Firm-2 thereafter invested approximately \$24.1 million in NS8 during the Fall 2019 Series A Round.

Spring 2020 Series A Round

e. NS8 conducted the Spring 2020 Series A Round in part to raise funds to conduct the Tender Offer.

f. During investor due diligence prior to the Spring 2020 Series A Round, NS8 created an online file sharing database that investors and their representatives were able to access. That online database included NS8's financial statements that reflected the fraudulent assets and revenue from the Fraudulent Bank Statements, as well as one of the Customer Revenue Spreadsheets which, as described above, contained materially inflated revenue figures.

16. As set forth below, ADAM ROGAS, the defendant, furthered his fraudulent scheme during this time period by deceiving auditors conducting due diligence on behalf of potential investors into believing that the Fraudulent Bank Statements were accurate statements of the Revenue Bank Account.

17. From my interviews with Investor-2 and NS8 finance department employees, and my review of documents provided by NS8 and the Audit Firm, I have learned, among other things, that:

a. In connection with a potential further investment in NS8, Investment Firm-2 directed the Audit Firm to conduct additional due diligence procedures with respect to NS8.

b. On or about March 10, 2020, a representative of the Audit Firm sent an email to ADAM ROGAS, the defendant, and others at NS8 containing an agenda of items that the Audit Firm wished to discuss with NS8. One of those items questioned why the "Deposits" total for an August 2019 Revenue Bank Account statement that the Audit Firm had previously obtained was \$3.3 million, while the individual line items under the "Deposits" heading only added up to \$2.3 million.

c. ROGAS responded by email approximately 40 minutes later, writing "I just re-pulled the statements from Aug through Feb for my own sanity." ROGAS attached to that email the Fraudulent Bank Statements. The statement for August 2019 that ROGAS attached falsely listed individual line items under the "Deposits" heading that added up to \$3.3 million. The true and correct statement from the Revenue Bank Account lists \$5,739.81 in deposits for August 2019.

d. As part of its due diligence process, the Audit Firm had an employee (the "Auditor") conduct a physical site visit at NS8's offices in Las Vegas, Nevada. The Auditor was directed by a more senior Audit Firm employee to have someone from NS8 log in to the online portal for each NS8 bank account, display the current account balance, and download monthly bank statements for fiscal year 2019.

e. Based on my interview with a member of the NS8 finance department ("Finance Employee-1"), I have learned, among other things, that on or about March 11, 2020, Finance Employee-1 and ROGAS met with the Auditor in ROGAS's office. The purpose of that meeting was for ROGAS and Finance Employee-1 each to log into the online portals for the bank accounts to which they had access (for ROGAS, the Revenue Bank Account) and download monthly account statements for the Auditor. During that meeting, Finance Employee-1 logged into the online portal for the Expense Bank Account -- to which Finance Employee-1 had access -- and downloaded monthly account statements. Finance Employee-1 understood that ROGAS was doing the same for the Revenue Bank Account during the meeting.

f. Late in the evening on or about March 11, 2020, the Auditor emailed another employee as follows: "Attached please find the bank statements and screenshots that I observed [Finance Employee-1] and Adam [ROGAS] download this afternoon." Attached to that email, among other things, were the Fraudulent Bank Statements for the Revenue Bank Account for the period from January 2019 through February 2020.

g. The Audit Firm thereafter produced a due diligence report that incorporated the fictitious assets and revenue that ROGAS caused to be included in NS8's financial statements. While the report noted the issue with the August 2019 Revenue Bank Account statement described in paragraph 17(b), the report again stated, among other things, that "revenue recognized [by NS8] is supported by actual cash receipts per bank statements."

h. Both Investor-1 and Investor-2 reviewed and relied on this due diligence report prepared by the Audit Firm, including the fictitious financial statements summarized therein, in making their decisions to invest again in NS8. Investment Firm-1 and Investment Firm-2 thereafter each invested approximately \$25 million in NS8 during the Spring 2020 Series A Round.

ROGAS Obtains \$17.5 Million from the Tender Offer

18. As described above, NS8 used some investor funds raised from the Spring 2020 Series A Round to conduct the Tender Offer. From my review of documents obtained during the investigation, I have learned, among other things, that ADAM ROGAS, the defendant, received payments of approximately \$17.5 million, personally and through an entity he controls, in connection with NS8 shares that ROGAS sold through the Tender Offer.

ROGAS's Fraud is Exposed

19. From my interviews with Finance Employee-1 and another NS8 finance department employee ("Finance Employee-2," and collectively, the "Finance Employees") and my review of documents, I have learned, among other things, that:

a. In or about late August 2020, Finance Employee-2 called the Bank's automated customer service system and was able to obtain the balance of the Revenue Bank Account. During that telephone call, Finance Employee-2 learned that the balance of the Revenue Bank Account amounted to only tens of thousands of dollars. Finance Employee-2 had previously believed, based on the Fraudulent Bank Statements that ADAM ROGAS, the defendant, provided to the Finance Employees, that the balance amounted to tens of millions of dollars.

b. After learning that the Revenue Bank Account did not contain the funds reflected in the Fraudulent Bank Statements, Finance Employee-2 reported this discovery to Finance Employee-1. On or about August 28, 2020, Finance Employee-1 engaged in a text message exchange with ROGAS. During that text message exchange, ROGAS claimed the that he was "[o]n the phone with the bank we are ok, appears to be an issue with the way that the sweep works and phone banking."

c. ROGAS agreed to meet the Finance Employees at a branch of the Bank near Las Vegas, Nevada on or about September 1, 2020, purportedly to give them access to the Revenue Bank Account. ROGAS did not show up to that meeting.

d. On or about September 1, 2020, ROGAS resigned from NS8.

