UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

COMMODITY FUTURES TRADING COMMISSION, **Plaintiff,** v. **RENE LARRALDE, JUAN PABLO VALCARCE, BRIAN EARLY, ALISHA ANN KINGREY, and FUNDSZ,** **Defendants.**	**Case No: 6:23CV1445** **District Judge Berger** **Magistrate Judge Irick**

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY PENALTIES AND OTHER EQUITABLE RELIEF

The Commodity Futures Trading Commission ("CFTC" or "Commission"), an independent federal agency, by and through its attorneys hereby alleges as follows:

I. INTRODUCTION

1. From at least October 2020 through August 8, 2023 ("Relevant Period"), Defendants Rene Larralde, Juan Pablo Valcarce, Brian Early, and Alisha Ann Kingrey (collectively, the "Individual Defendants"), individually and as principals and agents of an unincorporated entity called Fundsz, have fraudulently solicited, accepted, and pooled potentially millions of dollars of contributions from, as claimed by Defendants, more than 14,000 members of the general public ("participants") to purportedly trade cryptocurrencies and precious metals in the Fundsz "passive income platform" they operated.

2. As described in detail below, each Individual Defendant has made misrepresentations of material fact when soliciting funds from existing and prospective participants, such as falsely claiming that they profitably traded cryptocurrency and precious metals, earning on average more than 3% per week with the participants' money, when in fact they made no such profits and in many weeks they did not trade at all. Each Individual Defendant also made other misrepresentations of material fact, including that Fundsz had made on time and accurate payments to participants for over seven years, and that the prices of cryptocurrencies like bitcoin and ether, also known as digital asset commodities, were increasing dramatically during periods in which the prices of those coins had actually fallen. And upon receiving subpoenas from the Commission, each Individual Defendant halted participant withdrawals, took down their social media presence, and began a campaign to eliminate Fundsz's presence on Facebook and YouTube.

3. Additionally, Defendant Larralde has misappropriated millions of dollars from Fundsz participants and spent the money on himself, including buying a more than $1.9 million personal residence and several jet skis with money deposited by Fundsz participants.

4. By engaging in this conduct and the conduct further described herein, each Defendant has engaged, is engaging, or is about to engage in violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26, and CFTC Regulations ("Regulation"), 17 C.F.R. pts. 1-190 (2022), including, but not limited to: the employment, or attempted employment, of manipulative or deceptive devices and

contrivances, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022).

5. Unless immediately restrained and enjoined by this Court, Defendants are likely to continue engaging in the acts and practices alleged in this Complaint, and funds they fraudulently obtained are likely to be misappropriated or otherwise dissipated. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. The CFTC also seeks civil monetary penalties and remedial ancillary relief, including restitution to defrauded participants, disgorgement, pre- and post-judgment interest, and such other equitable relief as this Court may deem necessary.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), provides that U.S. district courts have jurisdiction to hear actions brought by the Commission for injunctive and other relief or to enforce compliance with the Act whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants transacted business in this District,

Defendants Valcarce and Larralde reside in this district, and certain of the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

III. PARTIES

8. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing the Act and CFTC Regulations.

9. Defendant **Rene Larralde**[1] resides in Rockledge, Florida. Larralde has never been registered with the CFTC in any capacity. Larralde has served as a member of the Fundsz Advisory Board throughout the Relevant Period. Larralde is identified as the founder of Fundsz, and is identified as a "co-owner" of Fundsz.

10. Defendant **Juan Pablo Valcarce** resides in West Melbourne, Florida. Valcarce has never been registered with the CFTC in any capacity. Valcarce has served as the Chairman of the Fundsz Advisory Board during the Relevant Period. Valcarce also served as a spokesperson for Fundsz.

11. Defendant **Brian Early** resides in New Orleans, Louisiana. Early has never been registered with the CFTC in any capacity. Early has served as a member of

[1] The CFTC has been informed that Defendant Larralde passed away on or about September 6, 2023, and a death certificate reflects his passing. However, no formal suggestion of death has been filed, nor has Defendant Larralde's personal representative been identified. *See Diamond Resorts Int'l, Inc. v. US Consumer Attorneys, P.A.*, No. 18-80311, 2020 WL 11423190, at *3 (S.D. Fla. Oct. 13, 2020) (holding that "a deceased party's personal representative is a 'nonparty' who must be identified in the Suggestion of Death and personally served, pursuant to Rule 4 before the ninety-day deadline for substitution is triggered"). When the CFTC is able to identify Defendant Larralde's personal representative, through a suggestion of death or otherwise, it expects to move to substitute that individual pursuant to Fed. R. Civ. P. 25(a)(1).

the Fundsz Advisory Board throughout the Relevant Period. Early served as a moderator on Fundsz's Telegram group, which was its primary method of communicating with participants.

12. Defendant **Alisha Ann Kingrey** resides in Franklin, Arkansas. Kingrey has never been registered with the CFTC in any capacity. Kingrey has served as a member of the Fundsz Advisory Board throughout the Relevant Period. Kingrey also served as a moderator on Fundsz's Telegram group, which was its primary method of communicating with participants.

13. Defendant **Fundsz** is an unincorporated entity that began operation in or about October 2020. During the Relevant Period, Fundsz was operated by the Individual Defendants out of their various residences. Fundsz has never been registered with the CFTC in any capacity.

IV. FACTUAL ALLEGATIONS

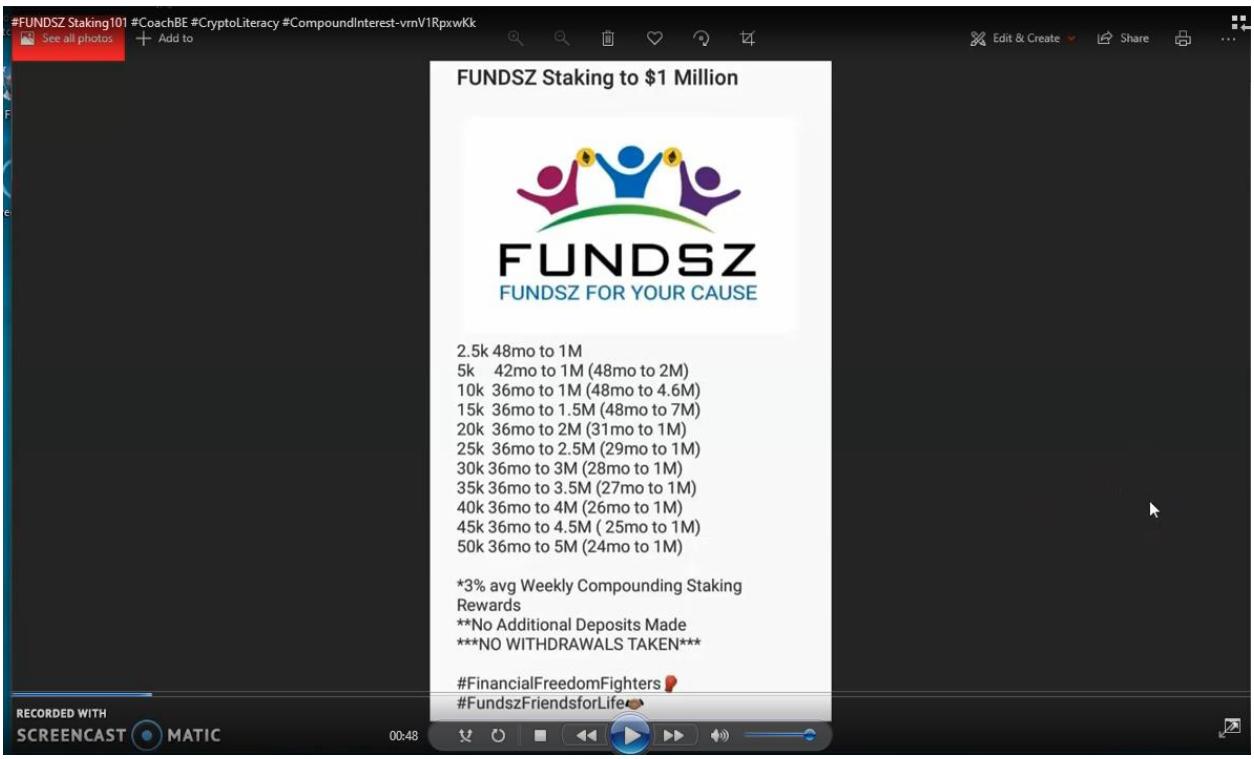
14. In October 2020, Fundsz began operation using the website fundsz.com. On the website, Fundsz is described as a platform that "utilizes revolutionary blockchain technology that empowers individuals, charities and organizations to raise recurring, unrestricted and sustainable income." Defendant Larralde founded Fundsz, and the content of the Fundsz website was created by Larralde or at his direction.

15. Fundsz used the tagline "Fundsz For Your Cause," and implies that it promotes charitable donations. On its website, Fundsz states that "[t]ogether we can help millions of people across the globe improve their finances and their quality of life." Fundsz's website further describes the ways in which Fundsz supports "community

unity," including by supporting clean water, humanitarian aid, health aid, education, and disaster relief.

16. In reality, Fundsz is not a charitable organization, but rather is a get-rich-quick scheme operated by each Defendant that preys on its participants by falsely suggesting that they will receive, on average, enormous returns of over 3% per week. According to marketing materials, which on information or belief were created by or at the direction of Defendant Larralde and were shared with prospective participants by Defendants Valcarce, Early, and Kingrey, Fundsz's "weekly performance" consisted of steady profits of between approximately 2.90% and 3.55% each week. Each Defendant claims that Fundsz has been able to attain such consistent profits by trading in digital asset commodities and precious metals.

17. As detailed below, Defendants Valcarce, Early, and Kingrey explained how these returns could cause participants' initial contributions to Fundsz to balloon into huge gains. For instance, on October 25, 2021, Defendant Early told prospective participants that a $2,500 stake could be expected to grow to $1 million within 48 months without any additional deposits.



18. On or about July 26, 2022, Defendant Kingrey used an online interest calculator to show potential participants that $589 contributed to Fundsz would become over $300,000 in four years, and that a $10,000 contribution would increase in value to more than $5 million within four years. Defendant Valcarce, who also appeared in the webinar, then assured potential participants that "this is all 100% real," and explained that historically Fundsz has achieved these returns. Valcarce recommended that participants "not withdraw[] anything" or "minimize withdrawals" in order to "maximize their earnings." In a separate video, on or about October 31, 2022, Early represented that Fundsz participants would receive a passive return of 365% per year.

19. Fundsz marketing materials created by or at the direction of Defendant Larralde made clear that participants needed only to send them their money in order to achieve these massive profits. The marketing materials advertised: "We do the work, you get paid a share of the Profits 3% weekly average 12% monthly average." This

was, according to the marketing materials, "Passive Income with ZERO Effort on Your Part." And participants were advised that they could "Make Money While You Sleep."

20. On or about November 21, 2022, Defendant Valcarce explained the Fundsz mechanics as follows:

> Let's get into how this works. What this is, so the passive component that we were mentioning earlier, we also call it staking, it's nothing else but you bringing your crypto assets or digital currency, right, that you probably have in a wallet somewhere and depositing it into your Fundsz account, you let us take care of it, we do the work, zero effort on your part, you literally make money while you sleep, and we're averaging three percent a week. Three percent a week, absolutely, you heard correctly. And we pay that every Friday.

21. Fundsz marketing materials created by or at the direction of Defendant Larralde stated that the returns came from "cryptocurrency" and "precious metals." In one video from on or around July 30, 2022, Defendant Early explained that participant funds are pooled and traded together. He went on to explain:

> There is a variety of different methods that are employed in that trading. And so it's a proprietary algorithm that is put together. And so its actually

> not just trading, its arbitrage, its forex, its long term, its short term, its a lot of different characteristics are put into this proprietary algorithm. And so a lot of people want to know the secret to the sauce. And folks, on this video I'm letting you know right now that that's just not something we're going to give up. The secret to our sauce. Its one of the reasons we have been able to be sustainable for six plus years.

22. The secret to the Fundsz "sauce" is fraud.

23. Similarly, Defendant Kingrey, at the direction of Defendant Larralde, explained how Fundsz is able to payout 3% weekly as follows, on June 24, 2023 in the Fundsz Telegram group—which is essentially an online message board that serves as the primary method for Fundsz to communicate with participants—by stating:

- Fundsz never uses more than 20% of the liquidity pool which allows consistency
- Fundsz does not rely solely on the cryptocurrency market due to its volatility
- Fundsz has developed a proprietary algorithm to participate in the crypto industry
- Fundsz also buys precious metals that generate income
- Fundsz has multiple healthy and sustainable sources of income

24. All of these statements regarding trading were false or misleading. And Fundsz recently attempted to walk back Defendants' prior false statements by admitting on the Fundsz Telegram group that "[w]e do not trade."

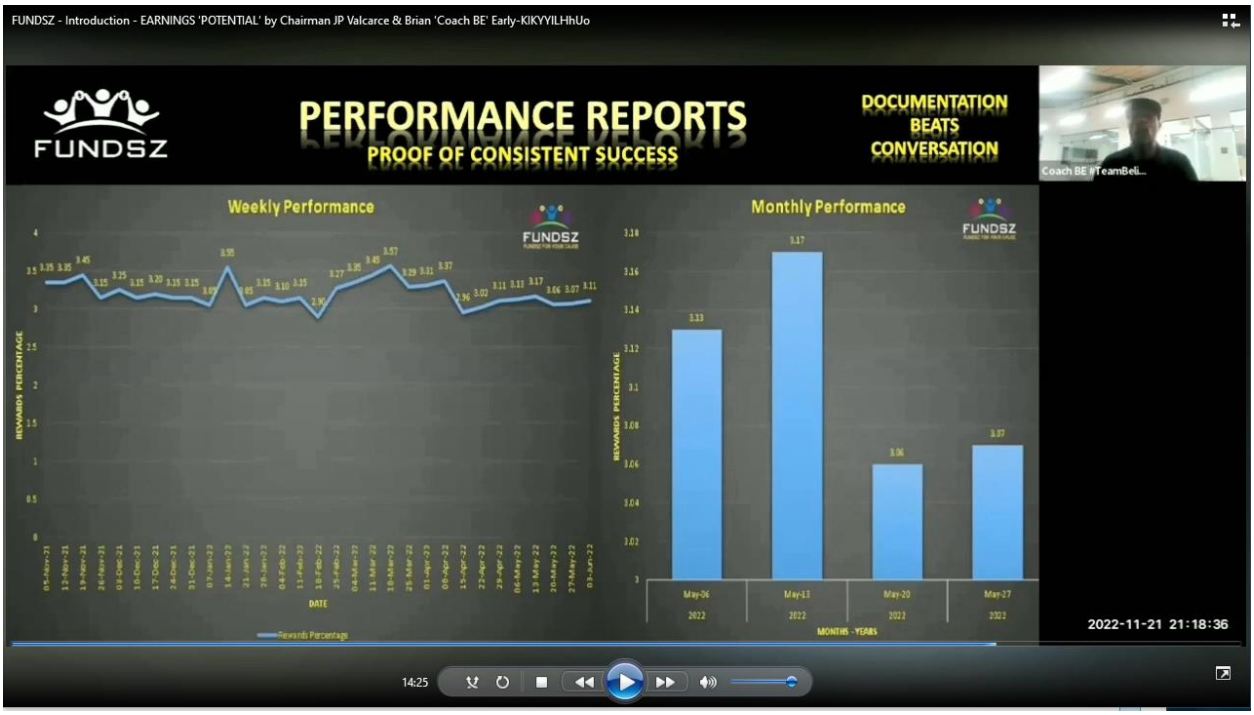
25. The Fundsz website offered more details about the additional rewards that participants could receive (in addition to the already unbelievable 3% return on investment each week) by referring other new participants as part of Fundsz's multi-level marketing scheme. For personal referrals, participants could obtain 10-13% referral bonuses, and particularly successful recruiters were told they could obtain "car bonuses" or even "house bonuses." This compensation structure was designed and approved by Defendant Larralde.

26. Defendants' marketing efforts have been successful, and according to their website they have attracted more than 14,000 participants. According to Fundsz internal records, more than 10,000 of those participants deposited (or "staked") money with Fundsz.

Misrepresentations, Omissions and False Statements

27. Throughout the Relevant Period, Defendants Larralde, Valcarce, Early, and Kingrey each solicited prospective participants to contribute to Fundsz through the fundsz.com website, and in frequent Zoom webinars, in-person meetings and events, and through solicitations on YouTube and social media posted by a network of promoters.

28. Defendant Larralde informed Defendants Valcarce, Early, and Kingrey that participants should expect to achieve returns of at least 3% per week on average. In turn, Defendants Valcarce, Early, and Kingrey each told participants and potential participants that they expected Fundsz to achieve returns of at least 3% per week on average. Defendants Larralde, Valcarce, Early, and Kingrey also represented to participants and potential participants that Fundsz had, throughout the Relevant Period, actually achieved historical returns of more than 3% per week on average. Defendants Larralde, Valcarce, Early, and Kingrey each claimed that Fundsz's returns were remarkably consistent on a week-to-week basis, generally between about 2.90% and 3.55% each and every week, regardless of whether prices in the market were rising or falling.



29. After participants joined Fundsz and contributed to accounts, the participants were able to log into their accounts to check the account balance. Each Friday, Fundsz announced the supposed returns for the week, and adjusted the participants' supposed account balances accordingly. For instance, on June 30, 2023, at Defendant Larralde's direction, Fundsz announced that it had returned 3.07% over the preceding week, and it adjusted the account balances for all participants upward by 3.07%.

30. The participants' increasing account balances gave the impression that Fundsz was profitably trading the participants' contributions. This was false, and Fundsz did not actually achieve trading returns in excess of 3% per week (or any other extraordinary return they claim, such as 365% per year).

31. The returns that Fundsz projected and reported were not based on actual profits from trading participant funds. Rather, each week Defendant Larralde simply made up a fictional return for the preceding week to report to participants.

32. During some periods, Defendant Larralde actually suffered trading losses on behalf of Fundsz, and in other periods Defendant Larralde did not trade at all. Overall, Defendant Larralde did not obtain trading returns that were, on average, above (or even close to) 3% per week. Nevertheless, Defendant Larralde reported positive returns around (and usually above) 3% each and every week during the Relevant Period.

33. After Defendants became aware of the Commission's investigation, they told participants that the weekly returns for Fundsz would be lower going forward. On June 27, 2023, Defendant Early announced to participants, at Defendant Larralde's direction, that beginning on July 1, 2023, Fundsz weekly returns would be "up to 3%" rather than the previous returns of above 3% on average. And on July 7, Defendant Early reiterated that "[a]fter July 1st, our weekly percentage will max out up to 3%." This advance announcement about future returns makes clear that Defendants have been simply making up the Fundsz weekly returns, not reporting the actual results of trading over the prior week. On July 7, 2023, at Larralde's direction, Fundsz announced that the returns for the previous week were exactly 3.00%. And later that same day, Fundsz marketing materials admitted that they "do not trade."

34. Although each Defendant had represented that Fundsz traded participant money using a "proprietary algorithm," that statement was also false. Fundsz did not

have any proprietary algorithm. Rather, when Fundsz traded at all, Defendant Larralde made the trading decisions.

35. Each Defendant made additional misrepresentations to participants and potential participants about Fundsz's history. Marketing materials available on the fundsz.com website in 2023 state that Fundsz is "celebrating 7 years of on time and accurate payments." These marketing materials were created by or at the direction of Defendant Larralde, and were used by Defendants Valcarce, Early, and Kingrey in presentations to participants and prospective participants.

36. This statement that Fundsz is "celebrating 7 years of on time and accurate payments" is false for several reasons. First, Fundsz does not have "7 years" of history, as it came into existence in 2020. Second, the returns Fundsz announced each week were not "accurate," or in any way related to actual trading or investment activities; they were fictional returns invented by Defendant Larralde. And third, Fundsz did not make

weekly "payments" from trading profits at all; at Defendant Larralde's direction, Fundsz's agents or employees simply changed the numbers that would appear on each participant's account balance, but those numbers bore no relation to the actual assets held by Fundsz.

37. Defendants Valcarce and Early also falsely misrepresented historical returns Fundsz earned trading digital currency commodities such as bitcoin, ether, and tron in their marketing materials. For example, on or about October 31, 2022, Defendant Valcarce presented a webinar in which he included a visual indicating that the price of bitcoin had increased by 700% over the prior 12 months, and that ether and tron had increased by 400% and 1,600%, respectively, over that same period.

38. This was false. In reality, according to information publicly available from CoinMarketCap, over the period from November 1, 2021, through October 31, 2022, the price of bitcoin had decreased by about 66%, ether had decreased by about 63%, and

tron had decreased by about 37%. On September 26, 2022, Defendant Early used the same visual indicating massive increases in the values of bitcoin, ether, and tron even though each had actually fallen in value.

39. Additionally, each Defendant made false statements about participants' ability to withdraw their funds. The Fundsz website, the content of which was created by or at the direction of Defendant Larralde, stated that "[s]taked funds will be available for withdrawal on the 181st day from the deposit date." Defendants Valcarce, Early, and Kingrey also each told participants and potential participants that they would be able to withdraw their funds—with interest—after 180 days. Instead, on or about June 23, 2023, after the Individual Defendants learned of the Commission's investigation by virtue of having received subpoenas from the Commission, Defendant Larralde halted participant withdrawals and refused to allow participants to withdraw their money. An announcement in the Fundsz Telegram group stated: "[E]ffective immediately all withdrawals have been placed on hold until we are able to address our compliance obligation." The announcement further explained: "As you know we take every matter including paying you very seriously. Rest assured our intentions are always to move forward while we must remain in compliance with our legal and regulatory obligations."

40. After participants apparently complained that they were not able to withdraw money, on June 23, 2023, Defendant Kingrey responded, in the official Fundsz Telegram group: "First of all, watch how you talk to me. Fundsz is my Company and FUD [fear, uncertainty, and doubt] will not be tolerated."

41. After she became aware of the Commission's investigation, Defendant Kingrey also instructed Fundsz members to take down all social media posts or videos about Fundsz, saying "[i]f you find a Fundsz video and you know the person who owns it, contact them and tell them to unlist it." Defendant Early echoed this sentiment, stating "ALL FACEBOOK POSTS WITH THE FUNDSZ LOGO HAVE TO BE DELETED IMMEDIATELY."

42. Most of the Fundsz marketing materials discussed its supposed trading in digital asset commodities and precious metals, as noted above. Defendant Early also at times claimed to trade in foreign currency exchange ("forex"), too. But this was false too; no Defendant traded forex on behalf of Fundsz participants.

43. In summary, and as described in detail with respect to each statement and each Defendant above, Defendants made at least the following false statements to participants and potential participants:

a. Trading would be done through a proprietary algorithm (each Individual Defendant);

b. Historically Fundsz had returned more than 3% per week (each Individual Defendant);

c. Fundsz had been in operation over a period of at least seven years (each Individual Defendant);

d. Participants' account balances were actually growing (each Individual Defendant);

e. Participants would be able to withdraw their funds 180 days after deposit (each Individual Defendant); and

f. Cryptocurrency prices had increased by 400%-1600% during periods when, in reality, the prices had fallen (Defendants Valcarce and Early).

44. Defendants Larralde, Valcarce, Early, and Kingrey each made these misrepresentations and omissions willfully or with reckless disregard for their truth and by use of the mails or other means or instrumentalities of interstate commerce.

45. In particular, because he was responsible for trading, Defendant Larralde knew that no trading was done through a proprietary algorithm. And Defendant Larralde knew that the trading returns and any other revenue obtained by Fundsz did not amount to appreciation of more than 3% per week on average during the Relevant Period. Because Defendant Larralde founded Fundsz, he knew that Fundsz had not been in operation or been making "on time and accurate payments" for over seven years. Because he was in charge of Fundsz finances, Defendant Larralde knew that Fundsz assets were not actually growing commensurate with the returns he reported to participants. And because he retained the ability to shut down withdrawals at any time and for any reason, Defendant Larralde knew that it was not true that participants would be able to withdraw their funds 180 days after deposit.

46. Defendants Valcarce, Early, and Kingrey also either knew that these statements were false, or else were reckless in making the statements without performing any investigation to determine whether they were true.

47. Defendants Larralde, Valcarce, Early, and Kingrey each made these misrepresentations and omissions in order to solicit participants and potential participants to contribute funds to Fundsz.

48. Based on Defendants Larralde, Valcarce, Early, and Kingrey's misrepresentations and omissions discussed in detail above, thousands of participants contributed tens of millions of dollars to Fundsz.

Defendant Larralde Misappropriated Fundsz Money

49. Defendant Larralde misappropriated much of the Fundsz participants' money and used it for his own personal expenses. For example, in approximately April 2023 Larralde used $1,910,000 in money that originated as deposits from Fundsz participants to buy himself a home on an "island-like" 3.5 acre property. Larralde also used Fundsz money to buy multiple jet skis and to lease a BMW automobile.

50. In addition, between approximately September 2021, and October 2022, Defendant Larralde misappropriated more than $200,000 in that had been deposited by Fundsz participants and put it in his personal bank account. During that period, Larralde made 35 deposits of digital asset commodities valued at $216,398 from certain digital asset wallets associated with Fundsz into an account in Larralde's name at Digital Asset Trading Platform A. Next, Larralde made 34 withdrawals of U.S. dollars from that same account at Digital Asset Exchange A, sending $210,388 in fiat currency to his personal account at a separate financial institution, Bank B.

51. In total, Defendant Larralde misappropriated and spent millions of dollars of Fundsz participant money.

Fundsz Was Left With a Massive Accounting Shortfall

52. As of June 22, 2023, at least 10,217 participants had deposited (or "staked") more than $21.3 million with Fundsz. Of those participants, 9,146 had deposited more than they had withdrawn, in the net amount of over $15.7 million. This amount of unwithdrawn deposits does not include the supposed 3% weekly returns that participants purportedly earned.

53. As of July 24, 2023, Fundsz's back office, which Defendant Larralde was responsible for, reported to Fundsz participants that they held, in aggregate, more than $25.3 million in their "staking" wallets that were available to be withdrawn. This amount consisted of deposits made by participants plus the supposed 3% weekly returns that Defendant Larralde had fabricated and Defendants Valcarce, Early, and Kingrey reported to participants.

54. But neither Fundsz nor the Individual Defendants had sufficient assets to pay out anywhere close to the amount that participants had deposited and not withdrawn, much less the amount that Fundsz represented to Fundsz participants as available for withdrawal. In total, as reported by the court-appointed Receiver on August 21, 2023, Defendants held only about $4.7 million in all financial accounts, including individual accounts. And of that $4.7 million, nearly $1.9 million was in cryptocurrency that was reportedly somehow "stolen" and apparently is not available to be returned to Fundsz participants. So, in total, Defendants held only about $2.8 million in actual assets that could be used to pay participant withdrawals, compared to the more than $25.3 million that Fundsz told participants was available for withdrawal and the more than $15.7 million that Fundsz participants had deposited but not yet withdrawn.

55. Due to this shortfall, on June 23, 2023, Fundsz, at Defendant Larralde's direction, halted participant withdrawals and refused to allow participants to withdraw their money. At Defendant Larralde's direction, however, withdrawals continued to be processed for certain favored Fundsz participants, including Defendant Valcarce, Defendant Early, and Defendant Kingrey.

Defendant Larralde Controlled Fundsz

56. In a webinar from on or around February 14, 2022, Defendant Kingrey stated that Defendant Larralde had been the founder of Fundsz, and that "Rene [Larralde] is the one that is in control of our money." Larralde also paid Valcarce, the Fundsz "Chairman of the Board," a bi-weekly salary, through Maxous LLC, a separate company owned and operated by Larralde.

57. Defendant Larralde controlled all Fundsz's bank, trading, and digital asset accounts, which were held in Larralde's name, rather than in the name of Fundsz. Defendant Larralde controlled all Fundsz trading decisions, including when and whether to trade and the method by which Fundsz money would be traded. Defendant Larralde controlled the returns that Fundsz reported to participants each week.

58. Defendant Larralde also controlled how Fundsz participant money would be spent, including by paying for administrative costs and operation expenses. Defendant Larralde also made distributions of Fundsz participant money to himself, as a purported "owner" of Fundsz, to pay for his personal living expenses.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I – AGAINST DEFENDANT LARRALDE

Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1 (a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022): Fraud by material misrepresentations and omissions.

59. 7 U.S.C. § 9(1) makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the

rules of any registered entity, any manipulative or deceptive device or contrivance, including in contravention of 17 C.F.R. § 180.1(a)(1)-(3).

60. 17 C.F.R. § 180.1(a) provides, in relevant part, that it shall be unlawful for any person, directly or indirectly, in connection with any contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

61. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies, such as bitcoin and ether, which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. Certain digital assets are "commodities," including those alleged herein, as defined under Section 1a(9) of the Act, 7 U.S.C. § 1a(9). There are commodity futures contracts on bitcoin and ether that trade on the Chicago Mercantile Exchange, a designated contract market regulated by the CFTC.

62. Precious metals are also "commodities" as defined under 7 U.S.C. § 1a(9).

63. As described in detail above in paragraphs 2, 9, 14-16, 19, 21, 23-36, 39, 44-45, 47-48, and 56-58, which are incorporated herein and which may be

supplemented by additional examples and evidence of misrepresentation uncovered in discovery, Defendant Larralde, directly or indirectly, in connection with contracts of sale of commodities in interstate commerce such as precious metals and digital asset commodities, including bitcoin and ether, intentionally or recklessly: used or employed, or attempted to use or employ, a scheme or artifice to defraud; by making misrepresentations and omissions of material fact to participants and prospective participants, including, among other things, mispresenting the expected profits and risk of loss; reporting false trading profits to participants on a weekly basis; falsely telling participants that their money would be traded according to a proprietary algorithm; misrepresenting the length of Fundsz's history of making payments; falsely assuring participants that they would be able to withdraw their contributions with interest after 180 days; failing to inform participants that Fundsz did not hold nearly enough assets to be able to process their withdrawals; and failing to tell participants that he was using millions of dollars that they had contributed to finance his personal spending, including by buying a personal residence.

64. As a result of the foregoing conduct, Defendant Larralde's fraudulent conduct violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

65. As described in detail above in paragraphs 56-58, which are incorporated herein, Defendant Larralde directly or indirectly controls Fundsz, and did not act in good faith or knowingly induced, directly or indirectly, Fundsz's violations alleged in Count VI, and is thus liable for Fundsz's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

COUNT II – AGAINST DEFENDANT LARRALDE

Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1 (a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022): Fraud by misappropriation.

66. 7 U.S.C. § 9(1) makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, including in contravention of 17 C.F.R. § 180.1(a)(1)-(3).

67. 17 C.F.R. § 180.1(a) provides, in relevant part, that it shall be unlawful for any person, directly or indirectly, in connection with any contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

68. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies, such as bitcoin and ether, which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. Certain digital assets are “commodities,” including those alleged herein, as defined under Section 1a(9) of the Act, 7 U.S.C. § 1a(9). There are commodity futures contracts on bitcoin and ether that

trade on the Chicago Mercantile Exchange, a designated contract market regulated by the CFTC.

69. Precious metals are also "commodities" as defined under 7 U.S.C. § 1a(9).

70. As described in detail above in paragraphs 3, 9, 44, and 49-58, which are incorporated herein and which may be supplemented by additional examples and evidence of misappropriation uncovered in discovery, Defendant Larralde, directly or indirectly, in connection with contracts of sale of commodities in interstate commerce such as precious metals and digital asset commodities, including bitcoin and ether, intentionally or recklessly: used or employed, or attempted to use or employ, a scheme or artifice to defraud; by misappropriating millions of dollars deposited by Fundsz participants and using it to pay for his personal expenses, including the purchase of a personal residence.

71. As a result of the foregoing conduct, Defendant Larralde's fraudulent conduct violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

COUNT III – AGAINST DEFENDANT VALCARCE

Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1 (a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022): Fraud by material misrepresentations and omissions.

72. 7 U.S.C. § 9(1) makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, including in contravention of 17 C.F.R. § 180.1(a)(1)-(3).

73. 17 C.F.R. § 180.1(a) provides, in relevant part, that it shall be unlawful for any person, directly or indirectly, in connection with any contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

74. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies, such as bitcoin and ether, which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. Certain digital assets are "commodities," including those alleged herein, as defined under Section 1a(9) of the Act, 7 U.S.C. § 1a(9). There are commodity futures contracts on bitcoin and ether that trade on the Chicago Mercantile Exchange, a designated contract market regulated by the CFTC.

75. Precious metals are also "commodities" as defined under 7 U.S.C. § 1a(9).

76. As described in detail above in paragraphs 2, 10, 16, 18, 20, 24, 26-28, 30, 34-39, 44, and 46-48, which are incorporated herein and which may be supplemented by additional examples and evidence of misrepresentation uncovered in discovery, Defendant Valcarce, directly or indirectly, in connection with contracts of sale

of commodities in interstate commerce such as precious metals and digital asset commodities, including bitcoin and ether, intentionally or recklessly: used or employed, or attempted to use or employ, a scheme or artifice to defraud; by making misrepresentations and omissions of material fact to participants and prospective participants, including, among other things, mispresenting the expected profits and risk of loss; reporting false trading profits to participants on a weekly basis; falsely telling participants that their money would be traded according to a proprietary algorithm; misrepresenting the length of Fundsz's history of making payments; and falsely assuring participants that they would be able to withdraw their contributions with interest after 180 days.

77. As a result of the foregoing conduct, Defendant Valcarce's fraudulent conduct violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

COUNT IV – AGAINST DEFENDANT EARLY

Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1 (a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022): Fraud by material misrepresentations and omissions.

78. 7 U.S.C. § 9(1) makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, including in contravention of 17 C.F.R. § 180.1(a)(1)-(3).

79. 17 C.F.R. § 180.1(a) provides, in relevant part, that it shall be unlawful for any person, directly or indirectly, in connection with any contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or

attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

80. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies, such as bitcoin and ether, which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. Certain digital assets are "commodities," including those alleged herein, as defined under Section 1a(9) of the Act, 7 U.S.C. § 1a(9). There are commodity futures contracts on bitcoin and ether that trade on the Chicago Mercantile Exchange, a designated contract market regulated by the CFTC.

81. Precious metals are also "commodities" as defined under 7 U.S.C. § 1a(9).

82. As described in detail above in paragraphs 2, 11, 16-17, 21, 24, 26-28, 30, 33-35, 37-39, 41-44, and 46-48, which are incorporated herein and which may be supplemented by additional examples and evidence of misrepresentation uncovered in discovery, Defendant Early, directly or indirectly, in connection with contracts of sale of commodities in interstate commerce such as precious metals and digital asset commodities, including bitcoin and ether, intentionally or recklessly: used or employed, or attempted to use or employ, a scheme or artifice to defraud; by making misrepresentations and omissions of material fact to participants and prospective

participants, including, among other things, mispresenting the expected profits and risk of loss; reporting false trading profits to participants on a weekly basis; falsely telling participants that their money would be traded according to a proprietary algorithm; misrepresenting the length of Fundsz's history of making payments; and falsely assuring participants that they would be able to withdraw their contributions with interest after 180 days.

83. As a result of the foregoing conduct, Defendant Early's fraudulent conduct violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

COUNT V – AGAINST DEFENDANT KINGREY

Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1 (a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022): Fraud by material misrepresentations and omissions.

84. 7 U.S.C. § 9(1) makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, including in contravention of 17 C.F.R. § 180.1(a)(1)-(3).

85. 17 C.F.R. § 180.1(a) provides, in relevant part, that it shall be unlawful for any person, directly or indirectly, in connection with any contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue

or misleading; or (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

86. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies, such as bitcoin and ether, which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. Certain digital assets are "commodities," including those alleged herein, as defined under Section 1a(9) of the Act, 7 U.S.C. § 1a(9). There are commodity futures contracts on bitcoin and ether that trade on the Chicago Mercantile Exchange, a designated contract market regulated by the CFTC.

87. Precious metals are also "commodities" as defined under 7 U.S.C. § 1a(9).

88. As described in detail above in paragraphs 2, 12, 16, 18, 23-24, 26-28, 30, 34-36, 39-41, 43-44, and 46-48, which are incorporated herein and which may be supplemented by additional examples and evidence of misrepresentation uncovered in discovery, Defendant Kingrey, directly or indirectly, in connection with contracts of sale of commodities in interstate commerce such as precious metals and digital asset commodities, including bitcoin and ether, intentionally or recklessly: used or employed, or attempted to use or employ, a scheme or artifice to defraud; by making misrepresentations and omissions of material fact to participants and prospective participants, including, among other things, mispresenting the expected profits and risk of loss; reporting false trading profits to participants on a weekly basis; falsely telling participants that their money would be traded according to a proprietary algorithm;

misrepresenting the length of Fundsz's history of making payments; and falsely assuring participants that they would be able to withdraw their contributions with interest after 180 days.

89. As a result of the foregoing conduct, Defendant Kingrey's fraudulent conduct violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

COUNT VI – AGAINST DEFENDANT FUNDSZ

Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1 (a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022): Fraud by material misrepresentations and omissions.

90. 7 U.S.C. § 9(1) makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, including in contravention of 17 C.F.R. § 180.1(a)(1)-(3).

91. 17 C.F.R. § 180.1(a) provides, in relevant part, that it shall be unlawful for any person, directly or indirectly, in connection with any contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

92. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies,

such as bitcoin and ether, which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. Certain digital assets are "commodities," including those alleged herein, as defined under Section 1a(9) of the Act, 7 U.S.C. § 1a(9). There are commodity futures contracts on bitcoin and ether that trade on the Chicago Mercantile Exchange, a designated contract market regulated by the CFTC.

93. Precious metals are also "commodities" as defined under 7 U.S.C. § 1a(9).

94. The foregoing acts, omissions and failures of Defendants Larralde, Valcarce, Early, and Kingrey, as alleged in Counts I, III, IV, and V, and of all other agents of Fundsz, occurred and are occurring within the scope of their employment, office or agency with Fundsz; therefore, Fundsz is liable for these acts, omissions and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2022).

95. As described in detail above in paragraphs 2, 13-21, 23-42, and 44-48, which are incorporated herein, Defendant Fundsz, directly or indirectly through Defendants Larralde, Valcarce, Early, and Kingrey, in connection with contracts of sale of commodities in interstate commerce such as precious metals and digital asset commodities, including bitcoin and ether, intentionally or recklessly: used or employed, or attempted to use or employ, a scheme or artifice to defraud; by making misrepresentations and omissions of material fact to participants and prospective participants, including, among other things, mispresenting the expected profits and risk of loss; reporting false trading profits to participants on a weekly basis; falsely telling

participants that their money would be traded according to a proprietary algorithm; misrepresenting the length of Fundsz's history of making payments; and falsely assuring participants that they would be able to withdraw their contributions with interest after 180 days.

96. As a result of the foregoing conduct, Defendant Fundsz's fraudulent conduct violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find that all Defendants violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022);

B. Enter an order of permanent injunction restraining, enjoining, and prohibiting the Defendants, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with him, who receive actual notice of such order by personal service or otherwise, from engaging in the conduct described above, in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3);

C. Enter an order of permanent injunction enjoining Defendants, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with them, who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

a. Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40));

b. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2022)), precious metals, or "digital asset commodities," (as that term is described herein), including bitcoin and ether, for accounts held in the name of Defendants or for accounts in which any Defendant has a direct or indirect interest;

c. Having any commodity interests, precious metal, or digital asset commodities traded on Defendants' behalf;

d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests, precious metals, or digital asset commodities;

e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests, precious metals, or digital asset commodities;

f. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2022); and

g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2022)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9).

D. Enter an order directing Defendants, as well as any third-party transferee and/or successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received, including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein, including pre-judgment and post-judgment interest;

E. Enter an order requiring Defendants, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgment and post-judgment interest;

F. Enter an order directing Defendants, as well as any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between, with, or among Defendants and any of the participants whose funds were received by Defendants as a result of the acts and practices that constituted violations of the Act and Regulations, as described herein;

G. Enter an order directing Defendants to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, tit. VII, § 701, 129 Stat. 584, 599–600, see Regulation 143.8,

17 C.F.R. § 143.8 (2022), for each violation of the Act and Regulations, as described herein;

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2); and

I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: September 29, 2023

Respectfully submitted,

COMMODITY FUTURES TRADING COMMISSION

/s/ Douglas Snodgrass

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