

1 JAMES HOLL (CA Bar No. 177885)
2 jholl@cftc.gov
3 COMMODITY FUTURES TRADING COMMISSION
4 1155 21st Street, N.W.
5 Washington, DC 20581
6 (202) 418-5311 / (202) 818-3117 (fax)

7 LOCAL COUNSEL:
8 DANIELLE A. STOUMBOS (CA Bar No. 264784)
9 Danielle.Stoumbos@dfpi.ca.gov
10 CALIFORNIA DEPARTMENT
11 OF FINANCIAL PROTECTION & INNOVATION
12 320 West Fourth Street, Suite 750
13 Los Angeles, California 90013
14 (213) 503-2046 / (213) 576-7181 (fax)

15 **THE UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 COMMODITY FUTURES
18 TRADING COMMISSION,
19 CALIFORNIA DEPARTMENT OF
20 FINANCIAL PROTECTION &
21 INNOVATION, and STATE OF
22 HAWAII, DEPARTMENT OF
23 COMMERCE AND CONSUMER
24 AFFAIRS, SECURITIES
25 ENFORCEMENT BRANCH,

26 Plaintiffs,

27 v.

28 RED ROCK SECURED, LLC, and
SHADE JOHNSON-KELLY a/k/a
SEAN KELLY, and ANTHONY
SPENCER,

Defendants.

Civil Action No. 2:23-CV-03680

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

DEMAND FOR JURY TRIAL

1 Plaintiffs Commodity Futures Trading Commission (“CFTC” or
2 “Commission”), California Department of Financial Protection & Innovation
3 (“DFPI”), and State of Hawaii, Department of Commerce and Consumer Affairs,
4 Securities Enforcement Branch (“SEB”) (hereinafter the DFPI and SEB are referred
5 to collectively as “the States”), by and through their undersigned attorneys, hereby
6 allege as follows:

7 **I. SUMMARY**

8 1. From at least November 2019 and continuing through at least February
9 2022 (“Relevant Period”), Red Rock Secured, LLC (“Red Rock”), Shade Johnson-
10 Kelly a/k/a Sean Kelly (“Kelly”), and Anthony Spencer (“Spencer”) (collectively
11 “Defendants”) engaged in a scheme to defraud people throughout the United States,
12 including in this District, in California, and in Hawaii.

13 2. Defendants made knowing or reckless misrepresentations and omissions
14 to prospective and existing customers intended to induce them to purchase precious
15 metals from Red Rock, in particular silver and gold Canadian Red-Tailed Hawk
16 (“RTH”) coins. Defendants knowingly or recklessly misled these customers into
17 believing that Red Rock’s mark-up on these coins—i.e., the difference between what
18 Red Rock paid to acquire the RTH coins and the price Red Rock charged its
19 customers for those coins—would fall between either 4% to 29% or, in some
20 instances, 1% to 5%. In reality, Red Rock routinely and repeatedly charged mark-ups
21 ranging from approximately 100% to 130% on the RTH coins, and did not tell
22 customers the actual mark-ups charged.

23 3. Defendants’ misrepresentations and omissions also pertained to, among
24 other things: Red Rock’s relationship with various mints, in particular the Royal
25 Canadian Mint (“RCM”) which produced the RTH coins; pricing and mintage of the
26 RTH coins; “bonuses” and “discounts” purportedly offered to Red Rock’s customers;
27 and the purported “retail/market value” of the customers’ RTH coin purchases.

1 4. During the Relevant Period, Defendants convinced hundreds of
2 customers to transfer funds in their tax-deferred retirement accounts, including
3 individual retirement accounts (“IRAs”), 401(k) plans, and the U.S. Government
4 Thrift Savings Plan (“TSP”), and use those funds to purchase precious metals from
5 Red Rock through self-directed IRAs (“SDIRAs”). Defendants also solicited and
6 accepted funds from hundreds of customers to purchase precious metals from Red
7 Rock using non-retirement funds.

8 5. As a result of the misrepresented and undisclosed mark-ups Red Rock
9 charged on the RTH coins, customers generally and almost immediately suffered
10 substantial losses on their purchases. During the Relevant Period, Defendants
11 fraudulently solicited approximately \$61.8 million from approximately 959
12 customers for the purchase of RTH coins. Red Rock charged its customers
13 approximately \$34.4 million in mark-ups on those purchases, as part of Defendants’
14 fraudulent scheme.

15 6. In an effort to conceal and perpetuate Red Rock’s fraud, Defendants also
16 misled customers about the value of the RTH coins they purchased by falsely
17 claiming, *inter alia*, that the “retail/market value” of the coins was far higher than
18 their precious metal content. In addition, Spencer provided customers with periodic
19 updates in which he represented that the “current retail value” of the customers’
20 precious metal was based on data provided to Red Rock by the RCM when, in fact,
21 the RCM did not provide any such data to Red Rock.

22 7. By virtue of this conduct, and as more fully set forth below, Defendants
23 have engaged, are engaging, and/or are about to engage in violations of: Section
24 6(c)(1) of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 9(1), and CFTC
25 Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022); Sections 25230,
26 25235, and 29536 of the California Corporation Code; and Sections 485A-501(a)(2)
27 and 485A-603.5 of the Hawaii Revised Statutes.

1 8. The acts, misrepresentations, omissions, and failures of Kelly, Spencer,
2 and other officers, employees, and agents of Red Rock occurred within the scope of
3 their employment, agency, or office with Red Rock. Therefore, Red Rock is liable
4 for all of these acts and practices pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C.
5 § 2(a)(1)(B), and CFTC Regulation 1.2, 17 C.F.R. § 1.2 (2022).

6 9. During the Relevant Period, Kelly served as Red Rock's chief executive
7 officer. In that role, Kelly controlled Red Rock, directly or indirectly, and did not act
8 in good faith or knowingly induced, directly or indirectly, Red Rock's conduct
9 alleged in this complaint. Therefore, Kelly is liable for the acts of Red Rock
10 described herein pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b).

11 10. Accordingly, pursuant to Sections 6c and 6d(1) of the CEA, 7 U.S.C.
12 §§ 13a-1, 13a-2(1), the CFTC and the States bring this action to enjoin Defendants'
13 unlawful acts and practices, to compel their compliance with the CEA and CFTC
14 Regulations, and to enjoin them from engaging in any commodity-related activity, as
15 set forth below. The States separately allege violations of state law based on the
16 conduct described herein. Plaintiffs also seek civil monetary penalties and remedial
17 ancillary relief, including, but not limited to, restitution, disgorgement, rescission,
18 pre- and post-judgment interest, and such other relief as the Court may deem
19 necessary and appropriate.

20 II. JURISDICTION AND VENUE

21 11. This Court has subject matter jurisdiction over this action under 28
22 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1345 (district courts
23 have original jurisdiction over civil actions commenced by the United States or by
24 any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the
25 CEA, 7 U.S.C. § 13a-1(a), authorizes the CFTC to seek injunctive and other relief
26 against any person whenever it appears to the CFTC that such person has engaged, is
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1 engaging, or is about to engage in any act or practice constituting a violation of any
2 provision of the CEA or any rule, regulation, or order thereunder.

3 12. Section 6d(1) of the CEA, 7 U.S.C. § 13a-2(1), authorizes the States to
4 bring a suit in the district courts of the United States to seek injunctive and other
5 relief against any person whenever it appears to the Attorney General and/or
6 Securities Administrator of a State, or such other official that a State may designate,
7 that the interests of the residents of the State have been, are being, or may be
8 threatened or adversely affected because of violations of the CEA or CFTC
9 Regulations. The acts and omissions in violation of the CEA occurred within each of
10 the States. Customers from both States were materially and substantially harmed by
11 Defendants' violations of the CEA, CFTC Regulations, and various provisions of
12 California and Hawaii state law.

13 13. This Court has supplemental and pendent jurisdiction over the State-law
14 claims of the States pursuant to 28 U.S.C. § 1367(a).

15 14. Venue lies properly in this District pursuant to Section 6c(e) of the CEA,
16 7 U.S.C. § 13a-1(e), because Defendants transacted business in this District, and
17 certain transactions, acts, practices, and courses of business in violation of the CEA
18 and CFTC Regulations occurred, are occurring, or are about to occur within this
19 District, among other places.

20 III. PARTIES

21 A. Plaintiffs

22 15. **Commodity Futures Trading Commission** is the independent federal
23 regulatory agency charged by Congress with the administration and enforcement of
24 the CEA and CFTC Regulations promulgated thereunder. The CFTC maintains its
25 principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, D.C.
26 20581.

1 **16. California Department of Financial Protection and Innovation:**
2 Headed by a Commissioner, the DFPI has jurisdiction over (i) the offer and sale of
3 commodities and commodity contracts in California under the California Commodity
4 Law of 1990 (“CCL”) (Cal. Corp. Code § 29500-29567); (ii) investment advisers
5 under the Corporate Securities Law of 1968 (“CSL”) (Cal. Corp. Code § 25000-
6 25707); and (iii) the offer and sale of securities under the CSL. The Commissioner of
7 the DFPI is the California securities administrator. The DFPI maintains its principal
8 office at 2101 Arena Boulevard, Sacramento, California 95834.

9 **17. State of Hawaii, Department of Commerce and Consumer Affairs,**
10 **Securities Enforcement Branch:** The Commissioner of Securities, by and through
11 the Securities Enforcement Branch, is vested with the authority to administer and
12 enforce the provisions of Chapter 485A of the Hawaii Revised Statutes, known as the
13 Uniform Securities Act (2002), and the rules adopted and orders issued
14 thereunder. The SEB’s office is located at 335 Merchant Street, Room 205,
15 Honolulu, Hawaii 96813.

16 **B. Defendants**

17 **18. Red Rock Secured, LLC** is a Nevada limited liability company formed
18 on January 12, 2010. On November 4, 2016, Red Rock registered with the California
19 Secretary of State as a foreign limited liability company, with its principal office
20 located at 898 N. Pacific Coast Highway, Suite 440, El Segundo, California. Red
21 Rock has never been registered in any capacity with the Commission, the DFPI, or
22 the Hawaii Commissioner of Securities.

23 **19. Shade Johnson-Kelly a/k/a Sean Kelly** is Red Rock’s President and
24 Chief Executive Officer (“CEO”). Kelly is one of two signatories on Red Rock’s
25 bank accounts. During the Relevant Period, Kelly held an 80% ownership share in
26 Red Rock, controlled its day-to-day operations, supervised (directly and indirectly) its
27 employees and agents, and made hiring and firing decisions on behalf of the
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1 company. Kelly has never been registered in any capacity with the Commission, the
2 DFPI, or the Hawaii Commissioner of Securities. Kelly resides in Los Angeles,
3 California.

4 20. **Anthony “Tony” Spencer** was a Senior Account Executive at Red
5 Rock during part of the Relevant Period. During at least a portion of the Relevant
6 Period, Spencer served as Red Rock’s Director of Account Services. Spencer has
7 never been registered in any capacity with the Commission, the DFPI, or the Hawaii
8 Commissioner of Securities. Spencer resides in Los Angeles, California.

9 **IV. FACTS**

10 **A. Overview: Red Rock Defrauded Customers Through**
11 **Misrepresentations and Omissions About the RTH Coins**

12 21. As alleged in detail in Sections G through J below, Defendants
13 defrauded customers through a series of misrepresentations. Most egregiously,
14 Defendants grossly misrepresented to customers the mark-up Red Rock would charge
15 on the RTH coins, while omitting to tell them the actual mark-ups Red Rock charged.
16 Defendants also misrepresented Red Rock’s relationship with the RCM, as well as
17 the pricing and mintage of the silver RTH coin. In addition, Spencer misrepresented
18 discounts and bonuses purportedly granted to customers. Finally, Defendants
19 misrepresented the “retail/market value” or “current retail value” of customers’ RTH
20 coins.

21 22. Language in the “Transaction Agreement” Red Rock provided to
22 customers advised that for certain “premium” precious metals, including the RTH
23 coins, “[t]he difference between the Purchase Price Client pays for Products under a
24 Purchase Order and the price that Red Rock actually pays for the Products purchased
25 by Client under such Purchase Order” ranged from 4% to 29%. In reality, Red Rock
26 routinely charged mark-ups of between approximately 100% and 130% on the RTH
27 coins.

1 23. At Defendants’ suggestion, the vast majority of its customers purchased
2 RTH coins, which Red Rock advertised as “premium products” rather than “common
3 bullion” products. Despite this fact, when asked about Red Rock’s charges or mark-
4 up, Red Rock sales personnel, including Spencer, routinely told customers that Red
5 Rock charges 1% to 5 % “above our costs on common bullion” products. In reality,
6 as noted above, Red Rock charged vastly higher mark-ups on the RTH coins.

7 24. To create the illusion of a pricing advantage to the customers, Red Rock
8 sales personnel routinely told customers that Red Rock had a “direct relationship”
9 with the RCM and could, therefore, “pass the savings” on to Red Rock’s customers.
10 Spencer also told customers that the RCM set the price of the RTH coins. These
11 statements were false. Red Rock did not have a direct relationship with the RCM and
12 it was Kelly, not the RCM, who determined the prices of the RTH coins. In addition,
13 Spencer also routinely told customers that they were paying “discounted” prices or
14 receiving “bonus” metal. In reality, most customers received no or minimal discounts
15 or bonuses.

16 25. To further foster the illusion of value in the RTH coins, Spencer told at
17 least one customer that the RTH coins were of limited mintage. In fact, there was no
18 mintage limit. To that same end, Defendants represented that the RTH coins
19 possessed value substantially beyond their metal content. In reality, both the “true
20 retail/market value” touted by Red Rock and, to an even greater degree, the “current
21 retail value” updates provided by Spencer, substantially overstated the actual value of
22 the RTH coins.

23 26. Immediately below, the allegations of Sections B through F put
24 Defendants’ fraudulent misrepresentations and omissions in context by detailing Red
25 Rock’s precious metals business, sales pitch, products, pricing, and the origin of the
26 RTH coins, as well as Red Rock’s RTH commission and sales figures.

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1 **B. Red Rock’s Precious Metals Business**

2 27. Red Rock is a precious metals retailer, meaning it sells various types of
3 precious metals products (e.g., bars, rounds, and coins) directly to members of the
4 public.

5 28. Precious metals are commodities under Section 1a(9) of the CEA, 7
6 U.S.C. § 1a(9).

7 29. Typically, coins are produced by a mint which sells them to precious
8 metals distributors. The distributors, in turn, sell the coins to precious metals
9 wholesalers. The precious metals wholesalers then sell the coins to precious metals
10 retailers, such as Red Rock. Each of these transactions includes a mark-up charged
11 by the seller.

12 30. During the Relevant Period, Red Rock purchased all of its precious
13 metals products from a single wholesaler (“Wholesaler 1”). Red Rock has never
14 purchased coins or other precious metals products directly from the RCM or any
15 other mint.

16 31. For customers using tax-deferred or other retirement funds to purchase
17 precious metals, Red Rock followed a three-step process: First, Red Rock
18 representatives assisted their customers in establishing a SDIRA and transferring
19 existing retirement funds into the newly-established SDIRA. Second, Red Rock
20 purchased precious metals for its customers using those SDIRA funds. Third, Red
21 Rock facilitated the transfer of the newly-purchased metals to a depository or, in
22 some cases, directly to the customer.

23 **C. Red Rock’s Sales Pitch**

24 32. Red Rock’s website explained Red Rock’s mission as follows: “Most
25 people are worried about losing money in their retirement accounts. At Red Rock
26 Secured we convert that money into physical gold & silver so they can enjoy a worry-
27 free retirement.” Promotional materials Red Rock provided to prospective
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1 customers—often styled as “Guides” or “Playbooks”—touted precious metals IRAs as a
2 means to “protect your retirement” or “preserve or potentially even grow your
3 retirement wealth.”

4 33. Kelly directed Red Rock sales personnel to emphasize these points in
5 speaking with customers:

6 At Red Rock Secured we know you want to be worry free. In
7 order to do that, you need to protect your retirement savings.
8 The problem is you can wake up and half your retirement could
be gone which makes you feel powerless.

9 We believe that you deserve to be confident that everything you
10 have worked for will still be there tomorrow. We understand,
11 in the last recession we saw too many Americans lose too much
which is why we for over a decade have worked with our
clients to protect their retirement savings by investing in gold
and silver.

12 34. “Trust” was also a common theme that Defendants promoted on Red
13 Rock’s website, in its promotional materials, and in its training materials for sales
14 staff. Such statements included:

15 “Trust Comes First.”

16 “We are committed to building relationships. All our client
17 relationships are built on trust.”

18 “Red Rock is dedicated to protecting your retirement – a
company built on trust, expertise, and performance.”

19 “All our client relationships are built on trust - this is an integral
20 part of how we do business and informs all of our actions. We
trust one another as we build trust with our clients.”

21 35. In reality, Red Rock’s sales practices did not, in fact, “protect”
22 customers’ retirement savings. Instead, by virtue of the various repeated
23 misrepresentations alleged below, Red Rock betrayed the “trust” it repeatedly touted
24 as integral to its business and informing all of Red Rock’s actions.

25 36. As part of its sales pitch, Red Rock also emphasized to prospective
26 customers that certain categories of precious metals products are on the “CUSIP list”
27 (Committee on Uniform Security Procedures) and thus are “trackable” by the
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1 government, while other “non-CUSIP” products, including the RTH coins, are
2 “private and non-trackable.” Red Rock told prospective customers that the CUSIP
3 list allows “financial institutions and government entities to track and identify
4 financial products.”

5 37. Red Rock also told prospective customers that “[b]y tagging, tracking,
6 and identifying precious metals assets, CUSIP enables financial institutions and the
7 government to *monitor* precious metals holdings and, of course, the investors who
8 hold them” (emphasis in original). As such, according to Red Rock, “CUSIP metals
9 are often referred to as ‘public’ gold or silver.”

10 38. According to Red Rock, “Non-CUSIP metals act in nearly the opposite
11 fashion—providing the highest levels of security and authenticity while maintaining
12 anonymity.” As such, “Non-CUSIP metals are often called ‘private’ and/or
13 ‘premium’ metals.”

14 **D. Red Rock’s Products**

15 39. Red Rock generally categorized its precious metals products as either
16 “common bullion” products or “premium” products. The “common bullion” category
17 included comparatively less-expensive, lower-commission products such as metal
18 bars and rounds. In contrast, the “premium” category included comparatively more-
19 expensive, higher-commission products such as the RTH coins.

20 40. Promotional material Red Rock provided to prospective customers
21 further categorized its precious metal offerings or “assets” as “common bullion,”
22 “monetized bullion,” or “monetized bullion (limited quantity).”

23 41. Red Rock’s promotional material steered customers toward its
24 monetized bullion (limited quantity) products.

25 **1. “Common Bullion”**

26 42. According to Red Rock’s promotional material, “[b]ars and rounds are
27 the most common form of bullion. Common in that investors who are new to
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1 precious metals investing tend to gravitate to bars and rounds based on inexperience
2 and lack of knowledge concerning other available options.”

3 43. Red Rock told prospective customers that bars and rounds offer “no
4 monetary value other than the value of the metal based on weight.” According to Red
5 Rock, “[t]his can affect the long-term profit and growth of the asset and its eventual
6 resaleability since it does not provide the functionality of a currency piece as
7 Monetized Bullion does.”

8 44. Red Rock emphasized to prospective customers that common bullion
9 assets are on the CUSIP list and thus trackable by the government.

10 2. “Monetized Bullion”

11 45. According to Red Rock’s promotional material, “monetized bullion”
12 refers to coins produced from gold, silver, or other precious metals “that have been or
13 are used as a medium of exchange.”

14 46. Red Rock told prospective customers that monetized bullion provides
15 monetary value beyond the weight of the metal itself: “Because Monetized Bullion
16 provides monetary value and functionality as a currency piece, whereas common
17 bullion assets like bars and rounds do not, long-term growth and profitability can
18 prove much greater as investors seek to acquire assets that enable them to cover all
19 their bases—as an investment as well as a potential crisis instrument should they need
20 to use their metal as an alternative to the dollar.”

21 47. Red Rock emphasized to prospective customers that monetized bullion
22 assets, like common bullion assets, are on the CUSIP list and thus trackable by the
23 government.

24 3. “Monetized Bullion (Limited Quantity)”

25 48. According to Red Rock’s promotional material, “monetized bullion
26 (limited quantity)” assets are similar to monetized bullion assets in that they are
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1 produced by government mints, they may be used as media of exchange, and they
2 function “as an investment and a potential crisis instrument.”

3 49. Red Rock advised prospective customers that “[w]hile there are many
4 similarities between” standard monetized bullion and monetized bullion (limited
5 quantity), a “key differentiator that contributes to how the assets appreciate in value
6 in the long term is mintage population.” Standard monetized bullion assets “are
7 produced in significantly higher quantities,” as compared to monetized bullion
8 (limited quantity) assets.

9 50. According to Red Rock: “Whereas Standard Monetized Bullion can
10 increase in price based on just two factors—intrinsic value and monetary value—the
11 additional variable of limited supply size can cause Monetized Bullion (Limited
12 Quantity) to move in value faster.”

13 51. Red Rock emphasized to its customers that, in contrast to common
14 bullion and standard monetized bullion assets, monetized bullion (limited quantity)
15 assets are *not* on the CUSIP list and thus *not* trackable by the government.

16 52. Red Rock told customers that monetized bullion (limited quantity) was
17 preferable to common bullion and standard monetized bullion: “More often than not,
18 Monetized Bullion (Limited Quantity) is the preferred option when building a
19 precious metals portfolio for long-term profit, growth, and security.” And, “[t]hese
20 assets are for savvy investors who want to protect their portfolios with precious
21 metals through maximizing the value of their investment.”

22 53. Red Rock classified and promoted the RTH coins as monetized bullion
23 (limited quantity).

24 **E. Red Rock’s Pricing**

25 54. Red Rock advised its customers that common bullion products “are
26 priced for the most part in accordance with the value of the precious metal they
27 contain.” In contrast, premium products, including the RTH coins, “are priced at a
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1 premium above the value of the precious metals they contain.” According to Red
2 Rock, “[t]his premium is based on various factors, including, but not limited to,
3 speculative interest, collector and investor demand, available supply, industry
4 promotions, perceived value and economic conditions.”

5 55. In its promotional literature, Red Rock further explained how its
6 products were priced: “[A]ll orders are based off of current market prices, also
7 referred to as spot price. Spot price is a common industry wide standard used to
8 determine the value of one ounce of gold or silver. Different assets have different
9 premiums above spot price.”

10 56. In the precious metals industry, the spot price refers to the price per
11 ounce of metal available for immediate delivery on any one of a number of exchanges
12 around the world where precious metals, including silver and gold, are traded each
13 day.

14 57. “Melt value” (or “melt”) refers to the price of a given quantity of metal
15 based on the “spot” (or per ounce) price. For example, if the spot price of silver is
16 \$16.00 per ounce, the melt value of a half-ounce silver coin would be \$8.00.

17 58. The prices Red Rock paid Wholesaler 1 to acquire the RTH coins were
18 directly tied to the spot prices of gold and silver. Internally, Red Rock referred to the
19 prices it paid to Wholesaler 1 as its “cost of goods sold.”

20 59. In contrast, the prices Red Rock charged its customers for the RTH coins
21 were not based directly on the spot price. Rather, Red Rock based the prices it
22 charged customers on Red Rock’s “cost of goods sold.”

23 60. Red Rock’s mark-up on metals sold to customers was the difference
24 between “its cost of goods sold” and the price Red Rock charged its customers for
25 those same metals.

26 61. Kelly determined what mark-ups Red Rock charged for the assets it sold
27 to customers. For “common bullion” products, Red Rock charged its customers
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1 mark-ups of between approximately 3% to 5% above its cost of goods sold. For
2 “premium” products, including the RTH coins, Red Rock charged its customers
3 mark-ups of up to approximately 130% above its cost of goods sold.

4 **F. Red Rock’s Exclusive Premium Coin: The Canadian Red-**
5 **Tailed Hawk**

6 62. In late 2019, Wholesaler 1 offered Red Rock an opportunity.
7 Wholesaler 1 agreed to sell two coins—the half-ounce silver RTH coin and the one-
8 tenth ounce gold RTH coin—to Red Rock exclusively.

9 63. Both the initial silver and gold RTH coins—and later a quarter-ounce
10 gold RTH coin—were produced by the RCM and sold to one of its U.S. distributors.
11 That distributor, in turn, sold the RTH coins to Wholesaler 1 exclusively. Wholesaler
12 1 then sold them to Red Rock exclusively.

13 64. Wholesaler 1 advised Red Rock that there was no mintage limit on the
14 RTH coins. Effectively, the RCM would produce as many RTH coins as Red Rock
15 could sell.

16 65. Despite the absence of a mintage limit, Red Rock misleadingly classified
17 and promoted the silver and gold RTH coins as “monetized bullion (limited
18 quantity).”

19 66. Wholesaler 1 sold Red Rock half-ounce silver RTH coins for
20 “\$2.95/coin over melt.” As Wholesaler 1 explained to Kelly: “If the silver spot
21 [price] is \$18.00/oz, your cost is $\$9.00 + \$2.95 = \$11.95$ ” per coin.

22 67. Wholesaler 1 sold Red Rock one-tenth-ounce gold RTH coins for “15%
23 over melt.” As Wholesaler 1 explained to Kelly: “If the gold spot [price] is \$1500/oz,
24 your cost is $\$150.00 \times 1.15 = \172.50 per coin.”

25 68. As noted above, Red Rock routinely and repeatedly charged mark-ups of
26 between approximately 100% to 130% on the RTH coins.

1 69. During the Relevant Period, Defendants incentivized Red Rock sales
2 staff to sell its “premium” products, particularly the RTH coins. While sales of
3 common bullion products typically entitled Red Rock’s sales staff to a commission of
4 1% of the total purchase, the RTH coin sales carried an 8% commission.

5 70. Beginning in January 2020, Spencer, who was consistently Red Rock’s
6 top salesperson, received 10% sales commissions on his sales of the RTH coins.

7 71. Consistent with Red Rock steering customers toward “monetized bullion
8 (limited quantity),” the RTH coins were Red Rock’s bestselling products. The silver
9 RTH coin was by far Red Rock’s single best seller during the Relevant Period,
10 accounting for approximately 72% of Red Rock’s total sales, while the second-best-
11 selling gold RTH coins accounted for approximately 7% of total sales. Together the
12 silver and gold RTH coins accounted for approximately 79% of Red Rock’s total
13 sales during the Relevant Period.

14 72. During the Relevant Period, Red Rock sold more than 1.8 million RTH
15 coins (1,799,404 silver RTH coins and 10,470 gold RTH coins).

16 73. In total, approximately 959 customers paid Red Rock approximately
17 \$61.8 million to purchase RTH coins.

18 **G. Defendants Misrepresented and Omitted Material Information**
19 **About Red Rock’s Mark-Ups**

20 **1. Red Rock’s Transaction Agreement Misrepresented Its**
21 **Mark-Ups**

22 74. Red Rock required its customers to sign a Transaction Agreement in
23 order to purchase precious metals from Red Rock.

24 75. Red Rock sales staff, including Spencer, routinely told customers to
25 refer to their Transaction Agreement to answer any questions the customers might
26 have.

1 76. During the Relevant Period, none of the Transaction Agreements signed
2 by Red Rock's customers disclosed Red Rock's actual mark-ups on the products it
3 sold.

4 77. In fact, for almost the entire Relevant Period, the Transaction
5 Agreements did not even include the term "mark-up."

6 78. Rather, prior to December 2021, the only apparent reference to Red
7 Rock's mark-ups in Red Rock's Transaction Agreements consisted of the following
8 language under the heading "Bid/Ask Spread":

9 The difference between the Purchase Price Client pays for
10 Products under a Purchase Order and the price that Red Rock
11 actually pays for the Products purchased by Client under such
12 Purchase Order is known as the "spread" and it is stated as a
13 percentage of the Purchase Price paid by the Client.

14 79. One version of this "Bid/Ask Spread" provision informed customers that
15 the "spread" on Red Rock's "premium ... coins typically ranges, between 4% and
16 29%." A second version noted a typical range of "5% for CUSIP assets and 29% for
17 Premium/non-CUSIP assets." As noted above, Red Rock characterized the RTH
18 coins as both "premium" and "non-CUSIP."

19 80. In December 2021, Red Rock revised its Transaction Agreement to
20 include an explicit reference to "mark-up." The "Bid/Ask Spread and Mark-Up"
21 section in this revised Transaction Agreement included language strikingly similar to
22 the opening sentence of the earlier "Bid/Ask Spread" language quoted above:

23 "Mark-up" is the difference between the Purchase Price Clients
24 pay for Products and the price that Red Rock pays for such
25 Products. The mark-up can range anywhere from 5% to 120%
26 depending on the type of coin and the fair market value at the
27 time.

28 81. None of the Transaction Agreements in use during the Relevant Period
specified the actual mark-ups Red Rock charged on any particular product sold by
Red Rock, including the approximately 100% to 130% mark-ups on the RTH coins.

1 **2. Spencer and Other Red Rock Sales Staff Misled**
2 **Customers about the Mark-Ups**

3 82. Accounting for approximately 79% of Red Rock’s total sales during the
4 Relevant Period, sales of the RTH coins, which carried Red Rock’s highest mark-ups,
5 vastly outstripped Red Rock’s “common bullion” product sales, which carried Red
6 Rock’s lowest mark-ups.

7 83. Despite this fact, Red Rock sales staff, including Spencer, misleadingly
8 told some customers that Red Rock charged 1% to 5% “above our costs on common
9 bullion assets,” even though the vast majority of customers purchased RTH coins, not
10 common bullion assets.

11 84. In fact, Red Rock sales staff were instructed to reference the 1% to 5%
12 mark-up associated with Red Rock’s common bullion products when customers or
13 prospective customers questioned Red Rock’s charges or fees.

14 85. For example, responding to questions raised by Customer A in August
15 2020, Senior Account Executive X wrote: “Red Rock makes money from the
16 purchase of the precious metals. We charge 1-5% above our cost on all our common
17 bullion assets. The price includes free shipping and free insurance.”

18 86. A few weeks later, Spencer used the same language when confirming
19 Customer A’s purchase:

20 **Customer A:** Okay. Yeah, I remember asking [Senior
21 Account Executive X], you know, how you guys make your
22 money and I guess you do it by your discounts you get from the
mints. Is that –

23 **Spencer:** We charge anywhere from – yeah, from the mints,
24 exactly. Because we’re not a retail shop. We’re an investment
firm.

25 **Customer A:** Mm-hmm.

26 **Spencer:** So, we have a direct relationship with the mints. We
27 buy our metal in volume and we buy our metal in wholesale
and we pass the savings on to you. We charge anywhere from
28 1 to 5 percent above our cost on common bullion assets.

1 87. Spencer referred to Red Rock’s “common bullion” mark-up of 1% to 5%
2 despite knowing, as he confirmed later in the same conversation, that Customer A
3 purchased only “premium” products, specifically silver and gold RTH coins, which
4 carried mark-ups of approximately 129% and 115%, respectively.

5 88. Customer A paid Red Rock \$149,705.00 for 3,245 silver and 60 gold
6 RTH coins. Red Rock charged mark-ups of approximately 129% on the silver RTH
7 coins and approximately 115% on the gold RTH coins Customer A purchased.

8 89. Spencer did not disclose to Customer A the actual mark-ups Red Rock
9 charged Customer A on his silver and gold RTH coins.

10 90. As a result of its misrepresented, undisclosed mark-up, Red Rock kept
11 \$83,595.50 of the \$149,705.00 Customer A paid, while paying Wholesaler 1 only
12 \$66,109.50 for the RTH coins sold to Customer A.

13 91. In February 2021, Senior Account Executive X referred to Red Rock’s
14 “common bullion” mark-up in response to a question from Customer B:

15 **Customer B:** Ok. What’s your mark-up on, when you buy the
16 gold?

17 **Senior Account Executive X:** Markup on gold, we charge
18 between one to five percent above our cost on all our
19 common bullion coins and bars, that's really
20 aggressive, and it's free shipping and free insurance as well to
21 the depositories.

22 **Customer B:** One to five. How do you get the one?

23 **Senior Account Executive X:** I mean, it all
24 depends on the assets themselves and the mints.
25 Because obviously, supply and demand, if the mint’s running
26 out of something, they put out their price, so
27 that's why we say one to five percent. You can go
28 with five percent being the worst on the common bullion
assets.

92. During the same conversation, Senior Account Executive X quoted
prices for two one-ounce silver coins (the Canadian Maple Leaf and American Eagle)
and silver rounds.

1 93. Red Rock classified the one-ounce silver Canadian Maple Leaf, the one-
2 ounce silver American Eagle, and one-ounce silver rounds as “bullion.” Red Rock
3 charged a mark-up of 5% on the silver Canadian Maple Leaf, a 4% mark-up on the
4 silver American Eagle, and a 4% mark-up on silver rounds.

5 94. Customer B did not, however, purchase any of the “bullion” products
6 referenced by Senior Account Executive X, and Red Rock did not charge a mark-up
7 of 4% or 5%. Instead, Customer B paid Red Rock \$74,680.00 for 2,015 silver RTH
8 coins. Despite Senior Executive X quoting a mark-up of 1% to 5%, Red Rock
9 charged a mark-up of approximately 129% for the RTH coins Customer B
10 purchased.

11 95. Customer B’s spouse, Customer C, likewise paid Red Rock \$74,680.00
12 for 2,015 half-ounce silver RTH coins. Red Rock charged a mark-up of
13 approximately 129% on the RTH coins Customer C purchased.

14 96. When Spencer called Customers B and C to confirm their purchases, he
15 compared the half-ounce silver RTH coin which Customers B and C were purchasing
16 to the one-ounce silver Canadian Maple Leaf:

17 **Customer B:** Just to be clear ... what coins are you buying?

18 **Spencer:** These are the half-ounce silver Canadian Red Tail
19 Hawk, non-CUSIP list assets ...

20 **Spencer:** So, if you’re familiar with the Canadian Maple Leaf,
21 for example –

22 **Customer B:** Yes, I showed that out of your book to her.

23 **Spencer:** Ok, good. Yeah, because *these assets are exactly*
24 *the same as those*, except the one-ounce – you know, and as we
25 discussed, anything one ounce or larger is on the CUSIP list.
26 So, if you prefer to stay with assets that are not on the CUSIP
27 list you’re not taxed twice for the same investment. (Emphasis
28 added.)

Customer B: Right, that’s what we prefer.

1 97. Spencer did not disclose the approximately 129% mark-up Red Rock
2 charged Customers B and C. Nor did Spencer explain why two assets that he
3 described as “exactly the same” (save for their CUSIP status) carried such different
4 mark-ups, i.e., 5% for the silver Canadian Maple Leaf versus 129% for the half-ounce
5 silver RTH coin.

6 98. As a result of its misrepresented, undisclosed mark-ups, Red Rock kept
7 \$84,235.20 of the \$149,360.00 Customers B and C paid, while paying Wholesaler 1
8 only \$65,124.80 for the RTH coins sold to Customers B and C.

9 99. In May 2021, Spencer again invoked Red Rock’s “common bullion”
10 mark-up of 1% to 5% when communicating with Customer D, this time omitting the
11 “on common bullion assets” qualifier:

12 As I indicated yesterday, your fee, which is a one-time fee, is
13 1.83%. If you’re moving 110k for example, your fee is \$1,830.
14 Red Rock charges 1-5% above its cost from the mint. That
range is adjusted accordingly based on the investment amount.

15 100. Customer D paid Red Rock \$149,624.20 for 3,990 silver RTH coins
16 (excluding 10 silver RTH coins provided at no charge). Contrary to Spencer’s earlier
17 assertion, Red Rock charged a mark-up of approximately 129%, not a “fee” of
18 1.83%.

19 101. When Spencer called Customer D to confirm his purchase, Defendant
20 Spencer did not disclose the 129% mark-up Red Rock charged Customer D.

21 102. As a result of its misrepresented, undisclosed mark-up, Red Rock kept
22 \$84,224.20 of the \$149,624.20 Customer D paid, while paying Wholesaler 1 only
23 \$65,400.00 for the RTH coins sold to Customer D.

24 103. In February 2021, Customer E asked Senior Account Executive Y:
25 “How does your ... fee thing work? I noticed in that book it says there is no fees
26 [sic], but you guys [have] got to make money somewhere, somehow.” Senior
27 Account Executive Y responded:

1 You are absolutely right, we are not a non-profit. We are
2 definitely a for-profit company. The way that we make money
3 is that we have a mark-up on the coins. So, we essentially just
4 make money one time, and one time only. So, what will
5 happen is that just like any business, we're buying at wholesale.
6 So, for example, let's just use a Silver American Eagle, for
7 example. We're buying it at, let's say, \$25.00; we're selling it at
8 \$26.50. So, that \$1.50 markup on that coin is where we make
9 our money.

10 104. As noted above, Red Rock classified the Silver American Eagle coin as
11 "bullion," carrying a 4% mark-up. Red Rock sold only 1,307 Silver American Eagle
12 coins in 2020, and 249 in January 2021. As a point of comparison, Red Rock sold
13 more than 69,000 silver RTH coins in January 2021 alone.

14 105. Following her conversation with Senior Account Executive Y, Customer
15 E paid Red Rock \$19,679.85 for 505 half-ounce silver RTH coins. Put differently,
16 Customer E paid Red Rock \$38.97 per coin, while Red Rock purchased those same
17 coins from Wholesaler 1 for \$16.98 per coin.

18 106. In contrast to the \$1.50 mark-up example cited by Senior Account
19 Executive Y, Red Rock charged a mark-up of \$21.99 per coin, or approximately
20 129%, on the RTH coins Customer E purchased.

21 107. When Spencer called to confirm Customer E's purchase, he did not
22 disclose the 129% mark-up that Red Rock charged.

23 108. As a result of its misrepresented, undisclosed mark-up, Red Rock kept
24 \$11,104.95 of the \$19,679.85 Customer E paid, while paying Wholesaler 1 only
25 \$8,574.90 for the RTH coins sold to Customer E.

26 109. In total, as a result of Red Rock's misrepresented, undisclosed mark-ups,
27 Red Rock kept approximately \$34.4 million of the approximately \$61.8 million paid
28 by customers for RTH coins, while paying Wholesaler 1 only approximately \$27.4
million for RTH coins.

110. Defendants knew, or were reckless in not knowing, that their
communications with customers about Red Rock's mark-ups on RTH coins—

1 including the examples above—contained material misrepresentations, half-truths,
2 and omissions.

3 **H. Defendants Misrepresented Red Rock’s Relationship with the**
4 **Mints, the RCM’s Role in Pricing the RTH Silver Coin, and**
5 **“Limited Mintage” of the Silver RTH Coin**

6 **1. Misrepresentations About Red Rock’s Relationship with**
7 **the Mints**

8 111. Spencer and other Red Rock representatives routinely told customers
9 and prospective customers that Red Rock had a “direct relationship” with “the
10 mints,” when, in fact, no such relationships existed.

11 112. In addition, Spencer repeatedly told customers and prospective
12 customers that Red Rock was not a “retail company,” when, in fact, it was a retail
13 company.

14 113. For example, in a July 2021 follow-up email to Customer F, Spencer
15 touted the purported benefits of Red Rock’s “direct relationship” with the mints:

16 As we discussed previously, Red Rock Secured is not a retail
17 company/coin shop. I would venture to guess that the other
18 companies you’ve contacted fall more on the retail side of the
19 spectrum. Retail companies do not have a direct relationship
20 with the mints, the metal they provide to you must be secured
21 through a metals distributor, and as a result you end up paying
22 much higher premiums for the same metal you could acquire
23 from Red Rock Secured for substantially less.

24 The benefit to you in working with Red Rock Secured is we are
25 an investment firm, we have a direct relationship with the
26 mints, and therefore we are able to acquire the metal we provide
27 to you at wholesale prices.

28 Our fee structure, as we discussed previously, is between 1%
and 5% on common bullion assets. Comparatively, retail
companies will charge upwards of 25% to 30%.

When acquiring metal through a retail company, investors pay
the retail company’s markup, the metals distributor’s markup,
and the mint’s markup. You end up with substantially less
metal in your portfolio as a result.

1 114. Spencer's email to Customer F above is riddled with false and
2 misleading statements: Red Rock never had a direct relationship with any mint; Red
3 Rock was in fact a "retail company;" Red Rock had to secure its metals through a
4 "metals distributor" just like other retail precious metals dealers; and all of the
5 various "markups" referenced by Spencer were in fact paid by Red Rock's customers.

6 115. Spencer also invoked Red Rock's purported "direct relationship" with
7 "the mints" when confirming Customer A's purchase of silver and gold RTH coins:
8 "So, we have a direct relationship with the mints. We buy our metal in volume and
9 we buy our metal in wholesale and we pass the savings on to you."

10 116. Spencer also told at least one customer, Customer G, that Red Rock had
11 "an exclusive relationship" with the RCM.

12 117. Later that month, Customer G contacted Spencer to inquire about the
13 price/value of his silver RTH coins:

14 **Customer G:** I am not understanding how 111 1/2 oz Canadian
15 red tailed hawks are worth \$4,000 dollars. At about \$27 an
16 ounce that would come to 55.5 ounces x 27=\$1498.5. Can you
17 explain? Because I can buy the same thing from [a Red Rock
18 competitor] for 26.7 and [sic] ounce. Please let me know what
19 happened here?

20 118. In responding to Customer G, Spencer invoked Red Rock's purported
21 "exclusive relationship" with the RCM, among other purported benefits of the RTH
22 coins:

23 **Spencer:** As we discussed, your assets are not on the CUSIP
24 list and therefore are completely private with no tracking or
25 serial number attached to them. They are also monetized, which
26 means you can use them as legal tender if necessary. You can
27 liquidate these assets privately, which is one of the main reason
28 [sic] they are continuing to appreciate in value very quickly.
The version that [the Red Rock competitor] provides is a one
ounce coin produced in 2015. Anything 1 oz or larger is on the
CUSIP list and is not a private asset. [The Red Rock
competitor] does not have access to the 1/2 oz Canadian Red
Tailed Hawk, as they are a retail company, *whereas Red Rock
Secured has an exclusive relationship with the Royal Canadian
Mint. As a result, your assets are worth considerably more
when you liquidate/sell them. Please let me know if you have
any additional questions. (Emphasis added).*

1 119. Contrary to Spencer’s assertions, Red Rock did not have “a direct
2 relationship with the mints” or an “exclusive relationship” with the RCM. Rather,
3 Red Rock bought all of the metal it sold to customers from Wholesaler 1.

4 120. As another example, Senior Account Executive Y, responding to
5 questions from a prospective customer, also referred to Red Rock’s “direct”
6 relationship with the mints:

7 We see that directly because we’re a direct wholesaler to the
8 US Mint, the Canadian Mint, Perth, and Swiss Mints. The way
9 that we save our clients money is that there is no middleman.
10 We buy directly from them and then pass the savings to you, so
there’s no additional markup ... for someone in between that
we have to buy it from.

11 121. This statement was false. Red Rock does not “buy directly from the
12 mints.” Rather, Red Rock buys all of its metal from a “middleman”—Wholesaler
13 1—and pays that “middleman” an “additional markup.”

14 **2. Misrepresentations About the RCM’s Role in Pricing the**
15 **Silver RTH Coin**

16 122. Spencer told at least one prospective customer that “the value of” the
17 silver RTH coin was “set by the [Royal Canadian] mint, which has listed the coin for
18 49.99 CAD. Therefore, re-salability, and ROI [Return On Investment] are
19 exceptionally, comparatively much stronger than the common one oz. assets for the
20 reasons we discussed.”

21 123. In fact, the RCM did not set the value of the RTH coins and did not list
22 prices for them. Rather, Kelly set the “value” (i.e., the price) at which Red Rock sold
23 the RTH coins.

24 **3. Misrepresentations about Limited Mintage of the Silver**
25 **RTH Coin**

26 124. Spencer misrepresented the mintage population of the silver RTH coin to
27 at least one customer.

1 125. On June 24, 2020, Customer H paid Red Rock \$20,122.69 for 745 silver
2 RTH coins. Customer H paid Red Rock \$27.09 per coin for the first 720 coins and
3 somewhat lower prices for the remaining 25 coins.

4 126. During a telephone conversation confirming Customer H's purchase,
5 Spencer described the half-ounce silver RTH coins as "monetized bullion, limited
6 quantity."

7 127. The next day, Customer H contacted Spencer after she discovered one-
8 ounce silver RTH coins selling for \$16.46 each and various other half-ounce silver
9 coins selling for \$19.99 or \$22.69 each, prices substantially lower than what
10 Customer H paid Red Rock for almost all of the half-ounce silver RTH coins she
11 purchased.

12 128. Responding to Customer H, Spencer falsely suggested that there was a
13 mintage limit for Red Rock's silver RTH coin which enhanced its value: "Your coins
14 were \$27.09 when you bought them. They are now trading at \$27.35 per coin. In
15 addition to not being on the CUSIP list, the other main reason these coins are priced
16 the way they are is *they are part of a limited mintage population—30k coins will be*
17 *produced for 2020.*" (Emphasis added).

18 129. In fact, just over two weeks earlier, Customers I and J purchased a total
19 of 32,705 silver RTH coins from Red Rock. Spencer confirmed both sales in a single
20 confirmation call on June 9, 2020.

21 130. Moreover, on the same day Spencer told Customer H that only 30,000
22 silver RTH coins would be produced for 2020, Wholesaler 1 advised Red Rock that:
23 (i) there was no mintage limit on the RTH coins; and (ii) 446,360 silver RTH coins
24 had been minted between November 2019 and June 26, 2020.

25 131. Contrary to Spencer's representation to Customer H, 632,163 silver RTH
26 coins were minted in 2020.

1 132. Spencer and other Red Rock representatives knew, or were reckless in
2 not knowing, that their communications with customers concerning Red Rock’s
3 relationship with the mints, the RCM’s role in pricing the RTH coins, and limited
4 mintage of the RTH coins, including those described above, contained material
5 misrepresentations, half-truths, and omissions.

6 **I. Spencer Misrepresented Red Rock’s Purported Discounts and**
7 **Bonuses Offered to Customers**

8 133. Spencer routinely misrepresented to customers that the metals they
9 bought from Red Rock were “discounted.”

10 134. Typically, Red Rock charged customers full price for assets the
11 customers purchased. This price was known internally at Red Rock as the “retail
12 ask” price. Red Rock account executives, including Spencer, had continuous, real-
13 time access at their desks to Red Rock’s retail ask prices, as well as the spot prices of
14 silver and gold.

15 135. Red Rock account executives could, in their discretion, offer discounts
16 from the retail ask price, with any such discounts coming out of their sales
17 commission. In addition, Red Rock offered a limited number of discounts when
18 customer purchases reached certain thresholds.

19 136. In confirming customers’ purchases, Spencer routinely referred to the
20 prices paid as “discounted” even when customers, including, for example, Customers
21 D, H, and K, were charged the full retail ask price.

22 137. On May 4, 2021, Spencer told Customer D:

23 As I indicated yesterday, your fee, which is a one time fee, is
24 1.83%. If you’re moving 110k for example, your fee is 1,830
25 dollars. Red Rock charges 1-5% above its cost from the mint.
26 That range is adjusted accordingly based on the investment
27 amount. There are no fees when you sell the metal back to Red
28 Rock. You also receive the 15% bonus at 125k, 12-month Price
Protection Plan, and No Fees for Life of the account with [the
SDIRA custodian].

1 138. As noted above, Customer D purchased 3,990 silver RTH coins from
2 Red Rock, packaged in sixteen 240-coin boxes, seven 20-coin tubes, and one 10-coin
3 tube. Red Rock also provided Customer D with one 10-coin tube free of charge.

4 139. Red Rock's full retail ask price for the silver RTH coins sold to
5 Customer D was \$37.58 per coin.

6 140. Confirming the purchase, Spencer told Customer D that the sixteen
7 boxes, seven 20-coin tubes, and one 10-coin tube he purchased were provided at a
8 "discounted price."

9 141. In fact, Red Rock charged its full retail ask price of \$37.58 on all 3,990
10 of the silver RTH coins Customer D purchased. None of those coins were sold to
11 Customer D at a "discounted price."

12 142. In addition, contrary to Spencer's representation, Customer D did not
13 receive a "15% bonus." In fact, the retail ask price for the ten coins Customer D
14 received free of charge (\$375.80) represents a "bonus" of less than one-half of one
15 percent of the total Customer D paid Red Rock (\$149,624.20).

16 143. Customer H paid Red Rock \$20,122.69 for 745 silver RTH coins,
17 packaged in three 240-coin boxes, one 20-coin tube, and one 5-coin tube.

18 144. Red Rock's full retail ask price for the 745 silver RTH coins sold to
19 Customer H was \$27.09 per coin.

20 145. Confirming the purchase, Spencer told Customer H: "Each box is
21 provided at a discounted price of \$6,502.56, subtotal \$19,507.68."

22 146. In fact, Red Rock charged Customer H its full retail ask price (\$27.09
23 per coin) on every coin in each of the three 240-coin boxes. Contrary to Spencer's
24 representation, no discount was provided on the boxes of coins sold to Customer H.

25 147. Customer K paid Red Rock \$99,680.00 for 2,520 silver RTH coins,
26 packaged in ten 240-coin boxes, five 20-coin tubes, one 10-coin tube, and two 5-coin
27 tubes.

28

1 148. Red Rock’s full retail ask price for the silver RTH coins sold to
2 Customer K was \$39.58 per coin.

3 149. When confirming the purchase, Spencer told Customer K that each box
4 and tube of coins that he purchased was provided at a “discounted price.” In fact,
5 Red Rock charged Customer K its full retail ask price of \$39.58 per coin on 99.8%
6 (2,515 of 2,520) of the silver RTH coins he purchased. Contrary to Spencer’s
7 representation, only the last *five* coins were sold at a “discounted” price of \$27.26 per
8 coin.

9 150. Spencer also told Customer K: “As I mentioned to you before the fee
10 was 1.83%, the discount was 5%, so you’re clearing an additional 3100, so the
11 amount of metal that you’re controlling in the account right now is” \$103,117.

12 151. In fact, contrary to Spencer’s representation, Red Rock did not charge
13 Customer K a 1.83% fee. Rather, Red Rock charged a mark-up of approximately
14 130%. Nor did Red Rock apply a 5% discount to Customer K’s purchase. Instead,
15 the discount offered on only five of the 2,520 coins Customer K purchased totaled
16 only \$61.60. As a percentage of Customer K’s \$99,680.00 purchase, \$61.60
17 represented a discount of less than 0.1%.

18 152. Spencer knew, or was reckless in not knowing, that his communications
19 with customers regarding purported discounts and bonuses, including the examples
20 discussed above, contained material misrepresentations, half-truths, and omissions.

21 **J. Defendants Misrepresented the “Retail/Market Value” of**
22 **Customers’ RTH Coins**

23 153. As part of the scheme to defraud, Defendants misrepresented the “retail
24 value” of the RTH coins purchased by customers.

25 154. Customers who used retirement assets to purchase the RTH coins
26 received account statements from their SDIRA custodians showing account values
27 significantly below the prices customers originally paid to Red Rock. The SDIRA
28

1 account statements reflected significantly lower values for the RTH coins because the
2 SDIRA custodians assessed the value of the accounts based on the melt value of the
3 coins.

4 155. Defendants rejected the lower valuations assessed by the SDIRA
5 custodians and instead provided to customers what Defendants considered to be the
6 actual “retail value” of the RTH coins at any given point in time.

7 156. For example, beginning in at least February 2021, Red Rock’s
8 Transaction Agreement advised customers that:

9 The “melt value,” which represents the value of metal in its raw
10 and unrefined state prior to it being converted into a finished
11 tangible asset, is not indicative of your asset’s true retail/market
12 value. For example, “melt value” usually represents
13 approximately ½ of your purchase value on Non-CUSIP assets.
14 Conversely, the retail/market value of your assets is typically
15 twice the melt value of Non-CUSIP assets due to the following
16 factors that add additional value to your metals: market
17 demand, investor demand, and supply and demand.

18 157. When confirming customer purchases over the phone, Red Rock
19 representatives, including Spencer, read from a script reiterating to customers that the
20 “melt value” of the RTH coins represented only half of the RTH coins’ “true
21 retail/market” value:

22 [T]he retail value of your product is different than its melt
23 value. For example, the “melt value” represents the value of
24 metal in its raw and unrefined state prior to being converted
25 into a finished tangible asset. Therefore, the melt value is
26 approximately one half of your purchase value on non-CUSIP
27 assets. The other half is based on non-CUSIP investment
28 values such as the value of comparable assets found through the
applicable mint: market demand, investor demand, and supply
and demand. As such, the “melt value” is not indicative of your
asset’s true retail/market value.

1 158. Spencer routinely addressed the purported distinction between “melt” or
2 “assessed” value on the one hand and “retail/market” value on the other hand with
3 Red Rock customers.

1 159. In at least one instance, Spencer addressed the issue as part of regular
2 updates he provided to customers purporting to show the current “retail value” of
3 their precious metals.

4 160. For example, on August 18, 2021, Customer L paid \$99,740.00 to Red
5 Rock. Two days later, Spencer sent Customer L a “data overview” stating that the
6 “current retail value” of his silver RTH coins had risen to \$100,014.58.

7 161. According to Spencer, the \$100,014.58 “current retail value” of
8 Customer L’s silver RTH coins broke down as follows:

9 INVESTOR DEMAND = 28% (\$28,004.08)

10 SUPPLY AND DEMAND = 26% (\$26,003.79)

11 MARKET DEMAND = 26% (\$26,003.79)

12 SPOT = 20% (\$20,002.92)

13 162. Contrary to the representations in Red Rock’s Transaction Agreement
14 and confirmation script that melt value accounted for approximately one half of
15 purchase value, Spencer told Customer L that the spot or melt value accounted for
16 less than one quarter of the “current retail value” of Customer L’s RTH coins.

17 163. Spencer also stated that the overview incorporates “all four factors”—
18 investor demand, market demand, supply and demand, and spot (i.e., melt value)—
19 “provided by the Royal Canadian Mint by percentage and corresponding dollar
20 amount.”

21 164. In this overview and at least four others provided to Customer L,
22 Spencer referred to the purported current retail account information as “baseline data
23 provided by the Royal Canadian Mint.”

24 165. The following month, Customer L inquired about the disparity between
25 the value of his RTH coins as reported by his SDIRA custodian (\$32,000) and the
26 amount of money he paid to Red Rock (\$99,740,00):
27
28

1 **Customer L:** Mornin, looking at [my SDIRA custodian
statement], the balance is only showing 32 k As a balance with
2 0 pending. Looking to see where the rest is?

3 **Spencer:** [A]s we've discussed, that is the assessed value, not
the retail value. [Your SDIRA custodian] and all other
4 custodians can only report the assessed value because they do
not buy or sell metal. What I have been sending you weekly is
5 the retail value.

6 **Customer L:** I did not buy 32 k assets worth of silver I
purchased 100 k, worth of silver and feel very cheated at this
7 time! Make it right!

8 **Spencer:** [W]hat you're seeing is the melt value, what the
metal is before it's been taken out of the ground. [Your SDIRA]
9 and all custodians, under the 1997 Tax Payers Relief Act, can
only report melt because custodians do not buy or sell metal.
10 We've covered this several times before, which is why I have
been sending you the weekly review so you have an accurate
11 accounting of the value of the account.

12 166. In similar messages to other Red Rock customers, Spencer provided
13 retail account values purportedly attributable to the "four factors provided by the
14 Royal Canadian Mint." For example:

15 In an "account update" for Customer D: "Here is a breakdown
of the data as provided by the Mint."

16 In a "weekly overview" for Customer M: "Your current retail
17 value (baseline data provided by the Royal Canadian Mint) is
199,254.26."

18 In a "current retail value" update for Customer N, who
19 purchased silver RTH coins: "The current retail value is
20 27,214.29. The data that helps to inform the value of the
investment—75% of which—is provided by the mint."

21 167. In reality, both the "true retail/market value" touted by Red Rock and, to
22 an even greater degree, the "current retail value" updates provided by Spencer
23 substantially overstated the actual value of the RTH coins.

24 168. In fact, on at least two occasions, Kelly and Spencer were made aware of
25 silver RTH coins being resold at prices substantially below the prices charged by Red
26 Rock. In September 2020, Kelly and Spencer learned that some silver RTH coins
27 were offered for sale by a Canadian website unconnected to Red Rock. In October
28

1 2020, a prospective customer alerted Spencer that Red Rock was charging “more than
2 double what they are selling for in Canada.”

3 169. Reacting to RTH coins being offered for substantially lower prices in
4 September 2020, Kelly told Wholesaler 1: “[T]his is freaking me out. What is this?”
5 In October 2020, Kelly told Wholesaler 1 and Red Rock’s vice president of finance:
6 “Guys, this is KILLING our deals.” (Emphasis in original.)

7 170. Moreover, contrary to Spencer’s repeated representations, the RCM did
8 not provide data concerning the purported “current retail value” of the RTH coins.

9 171. Defendants knew, or were reckless in not knowing, that their
10 communications with customers regarding purported “true retail/market value” and
11 “current retail value,” including those described above, contained material
12 misrepresentations, half-truths, and omissions.

13 **K. Kelly Acted as a Controlling Person of Red Rock**

14 172. During the Relevant Period, Kelly owned an 80% share of Red Rock and
15 served as Red Rock’s CEO. The other two owners only provided capital to Red
16 Rock. Neither of them worked for Red Rock or played any role in Red Rock’s day-
17 to-day operations.

18 173. Kelly was one of two signatories on Red Rock’s bank accounts. The
19 other signatory was Red Rock’s Vice President of Finance who was hired by and
20 reports to Kelly.

21 174. Kelly had discretion to take distributions from Red Rock and Red Rock
22 paid some of his personal expenses directly.

23 175. Kelly was responsible for hiring Red Rock staff, including Red Rock’s
24 director of sales, as well as Spencer and at least one other long-tenured senior account
25 executive. Kelly also led Red Rock’s weekly sales meetings.

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1 176. Kelly determined the mark-ups Red Rock charged for its “premium”
2 coins, including the RTH coins, as well as the commissions Red Rock paid its sales
3 staff.

4 177. Kelly was responsible for determining what Red Rock sales staff told
5 customers or prospective customers about mark-ups and fees.

6 178. On at least some occasions, Kelly reviewed the recorded calls of Red
7 Rock sales staff and provided written guidance about what sales staff could or should
8 tell prospective customers.

9 179. Kelly did not act in good faith or knowingly induced Red Rock’s
10 fraudulent acts.

11 **L. Allegations Specific to Claims Brought by the State of**
12 **California: Red Rock Acted from the State of California as an**
13 **Unregistered Investment Adviser and Defendants Engaged in**
14 **Fraud**

15 180. The laws of the state of California govern the registration of Investment
16 Advisers (“IAs”).

17 181. The laws of the State of California also prohibit (1) fraud in connection
18 with investment advisory services, and (2) fraud in connection with the offer,
19 purchase, or sale of commodities and commodity contracts.

20 182. During the Relevant Period, Defendants engaged in an aggressive
21 advertising campaign over various channels including phone solicitations, Red
22 Rock’s website, direct marketing emails, and advertisements in third party emails and
23 newsletters. Defendants used scare tactics to convince prospective customers to
24 transfer funds, including funds from liquidating securities, in their tax-deferred
25 retirement accounts, including IRAs, 401(k) plans, and the U.S. Government TSP
26 (“Qualified Retirement Savings”) to purchase precious metals, including the RTH
27 coins, to purportedly preserve and protect customers’ retirement funds.

1 **1. Red Rock Acted in the State of California an**
2 **Unregistered Investment Adviser**

3 183. During the Relevant Period, Red Rock, directly or by and through its
4 sales representatives or other agents, including Kelly and Spencer, from California,
5 engaged in the business of providing investment advice to customers and prospective
6 customers nationwide for compensation from the liquidation of customers' Qualified
7 Retirement Savings, some of which held securities. As part of the scheme to defraud,
8 Red Rock, directly or by and through its sales representatives or other agents, assisted
9 at least 592 customers in transferring Qualified Retirement Savings into SDIRAs.

10 184. For example, directly or by and through its sales representatives or other
11 agents, Red Rock assisted customers with electronic SDIRA application and transfer
12 forms. In some cases, Red Rock's representatives or other agents facilitated phone
13 calls between customers and the entity holding the customer's Qualified Retirement
14 Savings, which included securities, to arrange the liquidation of the customer's
15 Qualified Retirement Savings and the transfer of their Qualified Retirement Savings
16 into a SDIRA.

17 185. Spencer and Red Rock, directly or by and through Red Rock's sales
18 representatives or other agents, steered customers to purchase the RTH coins through
19 their SDIRAs. Kelly selected the mark-ups on the RTH coins sold to customers.

20 186. During the Relevant Period, Red Rock, directly or by and through its
21 sales representatives or other agents, for compensation in the form of mark-ups on
22 precious metals sales, commissions, and distributions, engaged in the business of
23 providing investment advice directly and by or through publications, writings, or
24 sales calls including:

- 25 a. Spencer and Red Rock, directly or by and through Red Rock's sales
26 representatives or other agents, held Red Rock out as an IA to customers.
27 For example, on sales calls and in written correspondence, Spencer told
28 prospective customers that Red Rock was not a retail shop, it was an
investment firm and the company's marketing guides state that it "has been
in the investment and financial services industry since 2009";

- 1 b. With Kelly's approval, Red Rock paid third parties and Red Rock staff to
2 prepare marketing materials. These marketing materials compared the
3 securities market to the precious metals market. Kelly consented to the use
4 of these materials and provided these materials to Red Rock's staff who
5 provided these materials to prospective and existing customers;
- 6 c. Kelly, Spencer, and Red Rock, directly or by and through Red Rock's sales
7 representatives and other agents, touted the advantages of investing in
8 precious metals as an alternative to stocks, bonds, and the U.S. Dollar. For
9 example, in the late summer or early fall of 2020, Kelly and Spencer told
10 California Customer 1 that he needed gold and silver in his IRA to protect
11 against market drops or inflation;
- 12 d. Red Rock, directly or by and through its marketing materials, sales
13 representatives, or other agents, advised about market trends, specifically
14 that the stock market would fall or lose value;
- 15 e. Red Rock, directly or by and through its sales representatives or other
16 agents, sent emails highlighting articles that would induce fear in the
17 customers about their preexisting Qualified Retirement Savings;
- 18 f. Red Rock posted charts on its website directly comparing the Dow Jones,
19 S&P 500, and value of the U.S. dollar to the value of gold and silver. Kelly
20 advised sales staff to refer prospective clients to these charts;
- 21 g. Red Rock, directly or by and through its sales representatives or other
22 agents, including Spencer, advised and directed customers to sell securities
23 held in Qualified Retirement Savings and transfer the proceeds to SDIRAs
24 in order to purchase RTH coins from Defendants;
- 25 h. Spencer advised prospective clients to "be careful what you wish for
26 because, if you want to see gold go to the moon and silver go to the moon -
27 - granted it's now part of your portfolio - - that means the rest of what you
28 have [in the stock market] has to become worth nothing";
- i. Red Rock, directly or by and through its sales representatives or other
agents, provided asset allocation advice, recommending that clients transfer
10% to 30% of their retirement savings into precious metals to diversify;
and
- j. By way of example, Kelly, Spencer, and Red Rock, directly or by and
through Red Rock's sales representatives or other agents, provided
investment advice to the following customers and prospective customers:
- (i) In the late summer and early fall of 2020, Red Rock provided
retirement-aged California Customer 1 with a copy of its TSP
Playbook. Spencer told California Customer 1 that he had a Ph.D. in
economics and encouraged California Customer 1 to liquidate as much
as possible out of his TSP account to purchase precious metals.
Spencer recommended the Canadian RTH coins. When California
Customer 1 inquired about purchasing non-Canadian coins, Spencer
stated that he knew best and was adamant that the RTH coins would
save California Customer 1 the most on taxes. Kelly and Spencer
further told California Customer 1 the importance of gold and silver in
his IRA to protect against market drops or inflation. California

1 Customer 1 liquidated \$150,000 worth of securities from his TSP
account to purchase RTH coins; and

2 (ii) In August of 2021, a Red Rock sales representative informed
3 prospective California Customer 2 that “silver has a better upside than
4 gold which could be double the profit potential If the stock
5 market has a correction, and we are due for one, that could drive up the
6 price of precious metals so that could drive up those expectations.”
The Red Rock sales representative recommended that prospective
California Customer 2 transfer 10% to 30% of his retirement savings
into precious metals to diversify.

7 187. During the Relevant Period, Red Rock advertised in a widely circulated
8 newsletter for federal government employees. These advertisements were aimed at
9 TSP participants. A TSP is a retirement savings and investment plan for federal
10 government employees which offers participants the ability to invest in securities.

11 188. The advertisement invited readers to claim a free copy of the *#1 TSP*
12 *Playbook* and noted that inside the document prospective customers would discover:

13 How precious metals can protect [their] retirement savings from
14 inflation, economic uncertainty, stock market crashes and
15 increasing foreign currency manipulation. Why gold and silver
are positioned for big gains in the next 2-4 years.

16 189. The advertisement went on to discuss the “Advantages of Rolling Over
17 Your TSP to A Self Directed Gold IRA” including:

18 The current TSP structure could doom you to failure, locking
19 you in to poor investments in your portfolio. If the market
20 crashes, your retirement savings could be at risk for major
21 losses. In times of pandemic, tragedy and extreme market
crashes, Gold has reached record highs. It is truly the
counterbalance investment when things go bad.

22 190. Prospective customers were warned that they need to “Act quickly. For
23 those TSP holders that continue to follow the same path with their investment
24 strategy, things could get a lot worse: there is no stimulus for a loss of your
25 retirement savings. Even losing 50% of your retirement could have implications on
26 you and your family for decades to come.”

1 191. During the Relevant Period, Red Rock, by and through its sales
2 representatives and other agents, routinely provided prospective customers with a
3 copy of the company's *#1 TSP Playbook* containing investment advice, including:

4 *In the section titled Market Roller Coasters, Frank's Big Drop:*
5 "Let's not fool ourselves, another market down turn is coming.
6 It's inevitable, like the tide. Markets run in waves, and all
7 waves grow, break and crash, right? So your TSPs total value
8 is tied to whatever market you're in. . . . As of July, 2019,
9 we're back where we were a dozen years ago. . . . That's why
10 when the tide comes, if you've moved out of your TSP into a
11 self-directed IRA, you cannot only avoid the pain of market
12 crashes, you can profit by them. Because there's another
13 market we haven't talked about in this chapter yet...and that's
14 precious metals. Typically, when stocks, real estate, and other
15 dollar-denominated assets are up, metals move in the opposite
16 direction. And the reverse is also true."

17 *In the section titled Where to Go from Here:* "I've tried to
18 explain both the reasons we believe that precious metal should
19 be a part of your retirement. I've illustrated how moving a
20 percentage of your TSP into a self-directed individual
21 retirement account can be a good move in helping to secure
22 your future. We've talked about market trends and how to read
23 them in order to create, grow and preserve your wealth. . . .
24 The one thing that's absolutely certain, however, is that change
25 is coming. As I write this, we're in an unprecedented bull stock
26 market. . . . it's destined to end up crashing on the shore."

27 192. During the Relevant Period, Red Rock, by and through its sales
28 representatives and other agents, routinely provided prospective customers with a
copy of the company's *2020 A Case for Silver Investment Guide* containing
investment advice, including "You Can Protect Your Retirement Savings from a
Severe Market Correction." After discussing the worst stock market crashes in U.S.
history, the guide states: "Is there something you can do to protect yourself? Yes.
You can invest your hard-earned money in gold and silver."

193. During the Relevant Period, Red Rock, by and through its sales
representatives and other agents, routinely provided prospective customers with a
copy of the company's *Gold and Silver Guide* containing investment advice,
including:

1 So how can you diversify into gold, silver, and other precious
2 metals? You could use some of your savings to make a
3 purchase right now. But a better way [is] to use money already
4 in a 401(k) or IRA account to purchase gold and silver. . . .

5 **2. Defendants Engaged in Investment Adviser and**
6 **Commodities Fraud**

7 194. Kelly, Spencer, and Red Rock, directly or by and through Red Rock’s
8 sales representatives or other agents, engaged in a scheme to defraud and made
9 material misrepresentations and material omissions in providing investment advice to
10 customers to transfer their Qualified Retirement Savings, including selling their
11 securities, to purchase commodities and commodity contracts in the form of RTH
12 coins from Red Rock.

13 **a. Defendants’ Scheme to Defraud**

14 195. During the Relevant Period, Kelly, Spencer, and Red Rock, directly or
15 by and through Red Rock’s sales representatives or other agents, willfully engaged in
16 a scheme to defraud by:

- 17 a. Advising prospective customers that precious metals can protect retirement
18 savings from stock market crashes and severe market corrections, and that
19 customers can profit by purchasing precious metals including the RTH coin;
- 20 b. Steering approximately 79% of all customers into the RTH coin, and
21 counseling sales representatives that were not recommending the RTH coin
22 which carried a high mark-up. For example, Kelly and Spencer, on behalf
23 of Red Rock, admonished senior sales representatives who sold bullion with
24 low commissions to customers. Between October 2019 through September
25 2020, Kelly and Spencer consistently admonished and counseled Senior
26 Account Executive Z, claiming that the company would go out of business
27 if he continued to recommend selling bullion with low commissions to
28 customers. Defendants Kelly and Spencer did not admonish or counsel
Senior Account Executive Z when he recommended selling the RTH coins
to customers; and
- c. Misrepresenting the mark-up on its premium coins in its Transaction
Agreements, misleading customers about the mark-ups by routinely telling
customers that Red Rock “charge[s] one to five percent above our costs on
common bullion assets,” despite knowing that the company steered
consumers into “premium” coins including the RTH coin, with mark-ups
above 1% to 5% and failing to disclose the actual mark-ups on the RTH
coins.

1 198. Red Rock, directly or by and through its sales representatives or other
2 agents, made material misrepresentations and material omissions regarding their
3 compensation structure which included, but were not limited to, the following:

- 4 a. Misrepresented how Red Rock's sales representatives or other agents were
5 compensated; and
6 b. In light of the other statements made regarding transferring funds from
7 Qualified Retirement Savings to purchase precious metals, failed to reveal
8 conflicts of interest arising from Red Rock's sales representatives' profit
share, commissions, and other compensation being tied to the amount of
9 funds from customers' Qualified Retirement Savings invested in precious
10 metals including the RTH coins.

11 199. Kelly, Spencer, and Red Rock, directly or by and through Red Rock's
12 sales representatives or other agents, made material misrepresentations regarding
13 their mark-ups and fees, which included, but were not limited to, the following:

- 14 a. Spencer and other Red Rock staff misled customers about the mark-ups by
15 routinely telling customers that Red Rock "charge[s] one to five percent
16 above our costs on common bullion assets," despite knowing and failing to
17 disclose that they were steering customers into "premium" products,
18 specifically silver and gold RTH coins, which carried significantly higher
19 mark-ups above 1% to 5%;
20 b. Misrepresented how the company makes its money or commissions. For
21 example, in August 2021, when prospective California Customer 2 asked
22 how Red Rock makes its money or commission, a Red Rock sales
23 representative told prospective California Customer 2 about the depository
24 and administrative fees, but did not disclose the mark-up or commissions,
25 even when this prospective customer asked the sales representative to
26 confirm there wasn't a percentage the company makes on the transaction.
The sales representative stated, "No, it's not like the financial institution
27 that gets a percentage of your whole portfolio if it performs or not";
28 c. Misrepresented, in its Transaction Agreements until December of 2021, that
the mark-up on Red Rock's premium coins typically ranges between 4%
and 29% when in reality, the mark-up on the majority of the premium coins
it sold, including the silver and gold RTH coins, carried mark-ups of
approximately 100% to 130%. Kelly chose the mark-ups on the sale of the
RTH coins and had the authority and responsibility for determining what
Red Rock told its clients and prospective clients about the mark-ups and
fees on the RTH coins;
d. Misrepresented in its December 2021 revised Transaction Agreement that
the mark-up on premium coins can range from 5% to 120%, when in reality,
the mark-ups on the silver RTH coins routinely exceeded 120%; and
e. Failed to disclose the mark-up on the gold and silver RTH coins to
prospective customers during the Relevant Period.

1 200. Spencer and Red Rock, directly or by and through Red Rock's sales
2 representatives or other agents, made material misrepresentations regarding the
3 precious metals it sold to customers, which included, but were not limited to, the
4 following:

- 5 a. Misrepresented that the value of the silver RTH coin was set by the RCM
6 when it was not. For example, Spencer misrepresented to at least one
7 customer that the value of the silver RTH coin was set by the RCM, and as
8 such the re-salability and ROI were exceptionally, comparatively much
9 stronger than the common one oz. assets, when it was not;
- 10 b. Misrepresented there was a limited mintage population of the silver RTH
11 coins when there was not. Spencer under reported the mintage population of
12 the silver RTH coin to at least one customer to make it appear as if the
13 product justified a higher price;
- 14 c. Misrepresented to customers that the metals they bought from Red Rock
15 were discounted when they were not; and
- 16 d. Misrepresented the retail value of customers' precious metals in its
17 transaction agreements, on confirmation calls, and after the customer
18 purchased the metals, lulling customers to keep their funds invested in the
19 metals. For example, Spencer claimed that the current retail value is based
20 on the metals' spot price plus market demand, investor demand, and supply
21 and demand when it is not.

22 201. Through this scheme to defraud and these material misrepresentations
23 and omissions, Defendants solicited customers to sell securities to ultimately gain
24 access to those funds through the sale of RTH coins. The profits obtained by Red
25 Rock and compensation paid to their sales representatives or other agents were
26 related to the amount of Qualified Retirement Savings, including securities, that
27 convinced customers to liquidate.

28 202. The practices discussed in this section resulted in almost immediate
substantial losses for customers due to Defendants' scheme to defraud and material
misrepresentations and omissions.

 203. The foregoing conduct in relation to all of Red Rock's offers and sales
during the Relevant Period (both cash and SDIRA sales) also violates California state

1 law prohibiting schemes to defraud and material misrepresentations or omissions in
2 connection with the offer, purchase, or sale of commodities.

3 **M. Allegations Specific to Claims Brought by the State of Hawaii:**
4 **Defendants Engaged in Fraud**

5 204. In February 2020, Hawaii Customer 1, age 72 at the time, was convinced
6 by Red Rock's sales representatives or other agents to liquidate a portion of his TSP
7 account that held securities in order to purchase precious metals from Red Rock.

8 205. Red Rock's sales representatives or other agents assisted Hawaii
9 Customer 1 with liquidating said securities and setting up a SDIRA with a third-party
10 custodian.

11 206. On March 24, 2020, Hawaii Customer 1 paid Red Rock \$84,932.05 for
12 3,630 silver RTH coins. Red Rock charged a mark-up of approximately 129% on the
13 silver RTH coins Hawaii Customer 1 purchased.

14 207. At no time prior to the sale did Red Rock disclose to Hawaii Customer 1
15 that Red Rock would charge an approximately 129% mark-up on the silver RTH
16 coins he purchased.

17 208. As a result of its undisclosed mark-up, Red Rock kept \$47,833.45 of the
18 \$84,932.05 Hawaii Customer 1 paid, while paying Wholesaler 1 only \$37,098.60 for
19 the RTH coins sold to Hawaii Customer 1.

20 209. Hawaii Customer 1 had no experience purchasing precious metals at the
21 time he purchased silver RTH coins from Red Rock.

22 210. In late 2019, Hawaii Customer 2, age 73 at the time, was convinced by
23 Red Rock's sales representatives or other agents to liquidate a portion of her TSP
24 account that held securities in order to purchase precious metals from Red Rock.

25 211. Red Rock's sales representatives or other agents assisted Hawaii
26 Customer 2 with filling out paperwork to liquidate said securities and setting up a
27 SDIRA with a third-party custodian.

1 212. On December 17, 2019, Hawaii Customer 2 paid Red Rock \$47,618.38
2 for 1,290 silver RTH coins and 40 gold RTH coins. Red Rock charged mark-ups of
3 approximately 120% on both the silver and gold RTH coins Hawaii Customer 2
4 purchased in December 2019.

5 213. At no time prior to the sale did Red Rock disclose to Hawaii Customer 2
6 that Red Rock would charge an approximately 120% mark-up on both the silver and
7 gold RTH coins she purchased in December 2019.

8 214. As a result of its undisclosed mark-ups, Red Rock kept \$26,015.98 of the
9 \$47,618.38 Hawaii Customer 2 paid, while paying Wholesaler 1 only \$21,602.40 for
10 the RTH coins sold to Hawaii Customer 2.

11 215. Thereafter, on March 25, 2020, Hawaii Customer 2 paid Red Rock
12 \$22,010.69 for 225 silver RTH coins and 40 gold RTH coins. Red Rock charged
13 mark-ups of approximately 134% on the silver RTH coins and approximately 120%
14 on the gold RTH coins Hawaii Customer 2 purchased in March 2020.

15 216. At no time prior to the sale did Red Rock disclose to Hawaii Customer 2
16 that Red Rock would charge mark-ups of approximately 134% and approximately
17 120% on the silver and gold RTH coins she purchased in March 2020.

18 217. As a result of its undisclosed mark-ups, Red Rock kept \$12,147.84 of the
19 \$22,010.69 Hawaii Customer 2 paid, while paying Wholesaler 1 only \$9,862.85 for
20 the RTH coins sold to Hawaii Customer 2 in March 2020.

21 218. Hawaii Customer 2 had no experience purchasing precious metals at
22 the time she first purchased RTH coins from Red Rock in December 2019.

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1 223. The acts, misrepresentations, omissions, and failures of Kelly, Spencer,
2 and other officers, employees, and agents of Red Rock occurred within the scope of
3 their employment, agency, or office with Red Rock. Therefore, Red Rock is liable
4 for all of these acts and practices pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. §
5 1.2 (2022).

6 224. During the Relevant Period, Kelly controlled Red Rock, directly or
7 indirectly, and did not act in good faith or knowingly induced, directly or indirectly,
8 Red Rock's violations alleged in this count. Therefore, Kelly is liable for Red Rock's
9 conduct described herein pursuant to 7 U.S.C. § 13c(b).

10 225. Each use or employment or attempted use or employment of any
11 manipulative device, scheme, or artifice to defraud; untrue or misleading statement of
12 fact, omission of material fact necessary to make statements not untrue or misleading;
13 or act of engaging, or attempting to engage, in acts, practices or courses of business
14 that operated or would have operated as a fraud or deceit on Red Rock's customers is
15 alleged as a separate and distinct violation of 7 U.S.C. § 9(1) and 17 C.F.R.
16 § 180.1(a)(1)-(3).

17
18 **VI. VIOLATIONS OF THE CALIFORNIA CORPORATION CODE**

19 *(Brought by Plaintiff California Department of Financial Protection & Innovation)*

20 **COUNT 2**

21 **Commodities Fraud**

22 **Violations of Cal. Corp. Code § 29536**

23 226. The allegations in the preceding paragraphs are re-alleged and
24 incorporated herein by reference.

25 227. California Corporations Code section 29536 provides:

26 It is unlawful for any person, directly or indirectly, in
27 connection with the purchase or sale of, the offer to sell, the
28 offer to purchase, the offer to enter into, or the entry into, a

1 commodity, commodity contract, or commodity option to do
2 any of the following:

3 (a) To willfully employ any device, scheme, or artifice to
4 defraud.

5 (b) To willfully make any false report, enter any false record,
6 make any untrue statement of a material fact, or omit to state a
7 material fact necessary in order to make the statements made, in
8 the light of the circumstances under which they were made, not
9 misleading.

10 (c) To willfully engage in any transaction, act, practice, or
11 course of business which operates or would operate as a fraud
12 or deceit upon any persons.

13 (d) To willfully misappropriate or convert the funds, security,
14 or property of any other person.

15 228. California Corporations Code section 29552 provides:
16 Any person who materially assists in any violation of this law,
17 or any rule or order of the commissioner under this law, is
18 jointly and severally liable with any other person liable under
19 this law for the violation.

20 229. Under California Commodity Law of 1990 (CCL) (Cal. Corp. Code, §
21 29500-29567) sections 29504 and 29515, precious metals including gold and silver
22 coins are “commodities.”

23 230. Under CCL section 29505, a “commodity contract” means “any account,
24 agreement, or contract for the purchase or sale, primarily for speculation or
25 investment purposes and not for consumption by the offeree or purchaser”

26 231. During the Relevant Period, Red Rock, by and through its sales
27 representatives and other agents, including Kelly and Spencer, offered to sell and
28 sold, and offered to purchase and purchased, commodities and entered into
commodity contracts from its principal place of business in California.

232. CCL section 29536 applies to the transactions, agreements, or contracts
Defendants offered and sold.

233. At all relevant times Defendants violated CCL section 29536 by the
conduct described in this complaint including willfully employing a scheme to
defraud customers out of their retirement savings by providing unlawful investment

1 advice to retirement aged customers stating that precious metals can protect
2 retirement savings from stock market crashes and severe market corrections and
3 customers can profit by transferring funds from their retirement accounts into
4 SDIRAs to purchase precious metals. Kelly, Spencer, and Red Rock, directly or by
5 and through Red Rock's sales representatives and other agents, deceptively steered
6 approximately 79% of all customers' purchases to RTH coins, with undisclosed
7 mark-ups (and customer losses) between approximately 100% and 130% on each
8 sale. Defendants willfully misrepresented the mark-ups in the Transaction
9 Agreements, on phone calls, and in emails, and failed to disclose the mark-ups.

10 Alternatively:

- 11 a. Red Rock violated CCL section 29536 and Kelly as Red Rock's CEO
12 knowingly controlled and induced, or knowingly substantially assisted Red
13 Rock's violations of 29536, by the conduct described in this complaint
14 including: (1) hiring, training, and supervising sales representatives or other
15 agents, (2) supervising the marketing department and approving Red Rock's
16 marketing materials disseminated to the public, (3) overseeing the
17 transaction agreements Red Rock offered prospective customers, (4)
18 choosing the metals that Red Rock sold to the public and the mark-up on
19 the precious metals, (5) admonishing and counseling sales representatives
20 who did not recommend the RTH coins with high commissions and mark-
21 ups to prospective customers, and (6) misrepresenting and failing to
22 disclose Red Rock's approximately 100% to 130% mark-up on the RTH
23 coins.
- 24 b. Red Rock violated CCL section 29536 and Spencer as a Red Rock Senior
25 Account Executive knowingly substantially assisted Red Rock's violations
26 of 29536, by the conduct described in this complaint including: (1) training
27 and assisting sales representatives or other agents, (2) advising prospective
28 customers of the importance of gold and silver in their IRAs to protect
against market drops or inflation, (3) steering clients into the RTH coins
with undisclosed mark-ups ranging from approximately 100% to 130%; (4)
misrepresenting that Red Rock had a direct relationship with the RCM
when it did not; and (5) misleadingly informing customers that the markup
on common bullion products was 1% to 5% when the markup on the coins
Spencer recommended to these same clients were considered by Red Rock
to be premium coins with marks-ups disclosed in the Transaction
Agreement to be 5% to 120%, that in reality were approximately 100% to
130%.

COUNT 3

**Unlicensed Investment Advice
Violations of Cal. Corp. Code § 25230**

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3 234. The allegations in the preceding paragraphs are re-alleged and
4 incorporated herein by reference.

5 235. An “investment adviser” is defined under the Corporate Securities Law
6 of 1968 (CSL) (Cal. Corp. Code, § 25000-25707) section 25009 in relevant part as
7 “any person who, for compensation, engages in the business of advising others . . . as
8 to the value of securities or as to the advisability of . . . selling securities”

9 236. Corporations Code section 25230 provides, in relevant part:

10 (a) It is unlawful for any investment adviser to conduct business
11 as an investment adviser in this state unless the investment
12 adviser has first applied for and secured from the commissioner
13 a certificate, then in effect, authorizing the investment adviser
14 to do so or unless the investment adviser is exempted by the
provisions of Chapter 1 (commencing with Section 25200) of
this part or unless the investment adviser is subject to Section
25230.1.

15 237. California Corporations Code section 25403 provides:

16 (a) Every person who with knowledge directly or indirectly
17 controls and induces any person to violate any provision of this
18 division or any rule or order thereunder shall be deemed to be in
violation of that provision, rule, or order to the same extent as
the controlled and induced person.

19 (b) Any person that knowingly provides substantial assistance
20 to another person in violation of any provision of this division
21 or any rule or order thereunder shall be deemed to be in
violation of that provision, rule, or order to the same extent as
the person to whom the assistance was provided.

22 (c) It shall be unlawful for any person directly or indirectly to
23 do any act or thing which would be unlawful for that person to
24 do under any provision of this division or any rule or order
thereunder through or by any other person.

25 (d) Nothing in this section shall be construed to limit the power
26 of the state to punish any person for any conduct which
27 constitutes a crime under any other statute.
28

1 238. At all relevant times, Red Rock working from California conducted
2 business as an investment adviser without a certificate from the Commissioner of the
3 DFPI, or a valid exemption, in violation of CSL section 25230 by the conduct
4 described in this complaint including comparing the stock market to the precious
5 metals market, warning retirement-aged individuals that the stock market was volatile
6 and due for a crash, and advising potential customers to purchase precious metals to
7 preserve wealth and protect their investment because precious metals will profit.
8 Defendants profited, and customers lost, when customers sold securities and
9 purchased precious metals from Red Rock. Additionally:

- 10 a. Red Rock violated CSL section 25230 and Kelly as Red Rock's CEO
11 knowingly controlled and induced, or knowingly substantially assisted, Red
12 Rock's violations of 25230, by the conduct described in this complaint
13 including: (1) hiring, training, and supervising sales representatives or other
14 agents, (2) supervising the marketing department and approving Red Rock's
15 marketing materials disseminated to the public, (3) overseeing the
16 transaction agreements Red Rock offered to prospective customers, (4)
17 advising potential clients of the importance of gold and silver in their IRAs
18 to protect against market drops or inflation, (5) choosing the metals that Red
19 Rock sold to the public and the mark-up on the precious metals, (6)
20 admonishing and counseling sales representatives who did not recommend
21 the RTH coins with high commissions and mark-ups to prospective
22 customers, and (7) misrepresenting and failing to disclose Red Rock's
23 approximately 100% to 130% mark-up on the RTH coins.
- 24 b. Red Rock violated CSL section 25230 and Spencer as a Red Rock Senior
25 Account Executive knowingly substantially assisted Red Rock's violations
26 of 25230, by the conduct described in this complaint including: (1) training
27 and assisting sales representatives or other agents, (2) providing Red Rock's
28 marketing materials to prospective customers, (3) advising prospective
customers of the importance of gold and silver in their IRAs to protect
against market drops or inflation, (4) steering clients into the RTH coins
with undisclosed mark-ups ranging from approximately 100% to 130%, (5)
misrepresenting that Red Rock had a direct relationship with the RCM
when it did not, and (6) misleadingly informing customers that the markup
on common bullion products was 1% to 5% when the markup on the coins
Spencer recommended to these same customers were considered by Red
Rock to be premium coins with marks-ups disclosed in the Transaction
Agreement to be 5% to 120%, that in reality carried mark-ups ranging from
approximately 100% to 130%.

COUNT 4
Investment Adviser Fraud
Violations of Cal. Corp. Code § 25235

1
2
3 239. The allegations in the preceding paragraphs are re-alleged and
4 incorporated herein by reference.

5 240. California Corporations Code section 25235 provides, in relevant part:

6 It is unlawful for any investment adviser, directly or indirectly,
7 in this state:

8 (a) To employ any device, scheme, or artifice to defraud any
client or prospective client.

9 (b) To engage in any transaction, practice, or course of business
10 which operates or would operate as a fraud or deceit upon any
client or prospective client.

11 241. At all relevant times, Red Rock, directly or by and through its sales
12 representatives, violated CSL section 25235 by the conduct described in this
13 complaint including operating a scheme to defraud customers out of their retirement
14 savings by comparing the stock market to the precious metals market, warning
15 retirement aged individuals that the stock market was volatile and due for a crash, and
16 advising potential customers to purchase precious metals to preserve wealth and
17 protect their investment because precious metals will profit. Red Rock, directly or by
18 and through its sales representatives or other agents, deceptively steered
19 approximately 79% of all customers' purchases to RTH coins, with undisclosed
20 mark-ups (and customer losses) between approximately 100% to 130% on each sale.
21 Red Rock, directly or by and through its sales representatives or other agents,
22 willfully misrepresented the mark-ups in the Transaction Agreements, on phone calls,
23 and in emails, and failed to disclose the mark-ups. Defendants profited, and
24 customers lost, when customers sold securities and purchased precious metals from
25 Red Rock. Additionally:

26 a. Red Rock violated CSL section 25235 and Kelly as Red Rock's CEO
27 knowingly controlled and induced, or knowingly substantially assisted, Red
28 Rock's violations of 29536, by the conduct described in this complaint
including: (1) hiring, training, and supervising sales representatives or other

agents, (2) supervising the marketing department and approving Red Rock’s marketing materials disseminated to the public, (3) overseeing the transaction agreements Red Rock offered to prospective customers, (4) advising prospective customers of the importance of gold and silver in their IRAs to protect against market drops or inflation, (5) choosing the metals that Red Rock sold to the public and the mark-up on the precious metals, (6) admonishing and counseling sales representatives who did not recommend the RTH coins with high commissions and mark-ups to prospective customers, and (7) misrepresenting and failing to disclose Red Rock’s approximately 100% to 130% mark-up on the RTH coins.

b. Red Rock violated CSL section 25235 and Spencer as a Red Rock Senior Account Executive knowingly substantially assisted Red Rock’s violations of 29535, by the conduct described in this complaint including: (1) training, and assisting sales representatives or other agents, (2) providing Red Rock’s marketing materials to prospective customers, (3) advising prospective customers of the importance of gold and silver in their IRAs to protect against market drops or inflation, (4) steering clients into the RTH coins with undisclosed mark-ups ranging from approximately 100% to 130%, (5) misrepresenting that Red Rock had a direct relationship with the RCM when it did not, and (6) misleadingly informing customers that the markup on common bullion products was 1% to 5% when the markup on the coins Spencer recommended to these same clients were considered by Red Rock to be premium coins with marks-ups disclosed in the Transaction Agreement to be 5% to 120%, that in reality carried mark-ups ranging from approximately 100% to 130%.

VII. VIOLATIONS OF THE HAWAII REVISED STATUTES

(Brought by Plaintiff State of Hawaii, Department of Commerce and Consumer Affairs, Securities Enforcement Branch)

**COUNT 5
Material Misrepresentations & Omissions
in Connection with the Sale of a Security
Violations of Hawaii Revised Statutes § 485A-501(a)(2) (2022)**

242. The allegations in the preceding paragraphs are re-alleged and incorporated herein by reference.

243. Hawaii Revised Statutes § 485A-501(a)(2) makes it unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to make an untrue statement of a material fact or to fail to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

1 244. During the Relevant Period, Defendants, in connection with the sale of
2 securities to Hawaii Customers 1 and 2, directly or indirectly, by and through their
3 sales representatives or other agents, made untrue statements of material fact and
4 failed to state material facts necessary in order to make the statements made, in light
5 of the circumstances under which they were made, not misleading, as contained in the
6 complaint. As a result of the material misrepresentations and omissions by
7 Defendants, Hawaii Customers 1 and 2 liquidated the securities held in their
8 respective retirement accounts, and used those funds to purchase precious metals
9 from Defendants. The material misrepresentations and omissions resulted in
10 Defendants converting a majority of the investment funds for their own benefit
11 without the knowledge of Hawaii Customers 1 and 2.

12 245. As a result of their conduct, Defendants violated Hawaii Revised
13 Statutes § 485A-501(a)(2).

14
15 **COUNT 6**
16 **Financial Exploitation of the Elderly**
17 **Violations of Hawaii Revised Statutes § 485A-603.5 (2022)**

18 246. The allegations in the preceding paragraphs are re-alleged and
19 incorporated herein by reference.

20 247. Pursuant to Hawaii Revised Statutes § 485A-603.5, if a person commits
21 a violation under this chapter and the violation is directed toward, targets, or is
22 committed against a person who at the time of the violation is sixty-two years of age
23 or older, a court, in addition to any other civil penalty, may impose a civil penalty not
24 to exceed \$50,000.00 for each violation; provided that this section shall not apply to
25 registered broker-dealers for violations of § 485A-412(d)(9).

26 248. Hawaii Customers 1 and 2 were both 62 years of age or older at the time
27 Defendants committed violations against them, as described in Section M and Count
28 5, above.

1 249. As a result of Defendants’ violations of Hawaii Revised Statutes §
2 485A-501(a)(2), Defendants may be assessed and held liable for any additional
3 penalties imposed against them by this Court pursuant to, and in accordance with,
4 Hawaii Revised Statutes § 485A-603.5.

5
6 **VIII. RELIEF REQUESTED**

7 The CFTC and the States respectfully request that this Court, as authorized by
8 Sections 6c and 6d(1) of the CEA, 7 U.S.C. §§ 13a-1, 13a-2(1), and pursuant to its
9 own equitable powers:

- 10 A. Find that Defendants violated Section 6(c)(1) of the CEA, 7 U.S.C.
11 § 9(1), and CFTC Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-
12 (3) (2021);
- 13 B. Find that Defendants violated the laws of the States as set forth above;
- 14 C. Enter an order of permanent injunction enjoining Defendants and their
15 affiliates, agents, servants, employees, successors, assigns, attorneys,
16 and all persons in active concert with them, who receive actual notice of
17 such order by personal service or otherwise, from engaging in the
18 conduct described above, in violation of 7 U.S.C. § 9(1) and 17 C.F.R.
19 § 180.1(a)(1)-(3) and the laws of the States;
- 20 D. Enter an order of permanent injunction restraining and enjoining
21 Defendants and their affiliates, agents, servants, employees, successors,
22 assigns, attorneys, and all persons in active concert with them, from
23 directly or indirectly:
- 24 1) Trading on or subject to the rules of any registered entity (as that term
25 is defined by Section 1a(40) of the CEA, 7 U.S.C. § 1a(40));
 - 26 2) Entering into any transactions involving “commodity interests” (as
27 that term is defined in CFTC Regulation 1.3, 17 C.F.R. § 1.3 (2022)),
28 or precious metals that are commodities, as that term is defined
herein, for accounts held in the name of any Defendant or for
accounts in which any Defendant has a direct or indirect interest;
 - 3) Having any commodity interests or precious metals that are
commodities, as that term is defined herein, traded on any
Defendant’s behalf;
 - 4) 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 or precious metals that are
commodities, as that term is defined herein;

- 1 5) Soliciting, receiving, or accepting any funds from any person for the
2 purpose of purchasing or selling of any commodity interests or
precious metals that are commodities, as that term is defined herein;
- 3 6) Applying for registration or claiming exemption from registration
4 with the CFTC in any capacity, and engaging in any activity
5 requiring such registration or exemption from registration with the
6 CFTC except as provided for in CFTC Regulation 4.14(a)(9),
7 17 C.F.R. § 4.14(a)(9) (2022);
- 8 7) Acting as a principal (as that term is defined in CFTC Regulation
9 3.1(a), 17 C.F.R. § 3.1(a) (2022)), agent, or any other officer or
10 employee of any person registered, exempted from registration, or
11 required to be registered with the CFTC except as provided for in
12 17 C.F.R. § 4.14(a)(9);
- 13 8) Acting or associating with an investment adviser or investment
14 adviser representative or broker-dealer, in violation of the laws of
California; and
- 15 9) In connection with offer, sale or purchase of any security, employing
16 any device, scheme, or artifice to defraud another person, making any
17 untrue statement of a material fact or omit to state a material fact
18 necessary in order to make the statement made, in the light of the
19 circumstances under which they were made, not misleading; or
20 engaging in any act, practice, or course of business which operates or
21 would operate as a fraud or deceit upon any person, in violation of
the laws of the States.
- 22 E. Enter an order directing Defendants as well as any third-party transferee
23 and/or successors thereof, to disgorge, pursuant to such procedure as the
24 Court may order, all benefits received including, but not limited to,
salaries, commissions, loans, fees, revenues, and trading profits derived,
25 directly or indirectly, from acts or practices that constitute violations of
the CEA or CFTC Regulations or the laws of the States, as described
26 herein, including pre-judgment and post-judgment interest;
- 27 F. Enter an order requiring Defendants, as well as any successors thereof,
28 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;
- G. Enter an order directing Defendants to rescind, pursuant to such
procedures as the Court may order, all contracts and agreements,
whether implied or express, entered into between Defendants and any of
the customers whose funds were received by Defendants as a result of
Defendants' violations of the CEA or CFTC Regulations or the laws of
the States as described herein;
- H. 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 CEA, 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* CFTC Regulation 143.8, 17 C.F.R. § 143.8 (2022), for

each violation of the CEA or CFTC Regulations, and pay civil monetary penalties and/or damages pursuant to the laws of the States during the Relevant Period, described herein;

- I. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2) and the laws of the States; and
- J. Enter an order providing such other and further relief as the Court deems proper.

IX. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing.

Dated: May 15, 2023

Respectfully submitted,

COMMODITY FUTURES
TRADING COMMISSION

By: /s/ James Holl
JAMES HOLL
California Bar No. 177885
jholl@cftc.gov
(202) 418-5311

JAMES A. GARCIA, *pro hac vice pending*
(Attorney-In-Charge)
DC Bar No. 458085
jgarcia@cftc.gov
(202) 418-5362

DANIEL C. JORDAN, *pro hac vice pending*
VA Bar No. 36382
djordan@cftc.gov
(202) 418-5339

Attorneys for Plaintiff
COMMODITY FUTURES
TRADING COMMISSION

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1155 21st Street, N.W.
Washington, DC 20581

FOR THE STATE OF CALIFORNIA

By: /s/ Danielle Stoumbos

CLOTHILDE V. HEWLETT

Commissioner

MARY ANN SMITH

Deputy Commissioner

AMY J. WINN

Assistant Chief Counsel

DANIELLE A. STOUMBOS

California Bar No. 264784

Telephone: (213) 503-2046

Danielle.Stoumbos@dfpi.ca.gov

JARI BINDER

California Bar No. 333694

Telephone: (415) 471-0919

Jari.Binder@dfpi.ca.gov

Attorneys for Plaintiff

STATE OF CALIFORNIA

DEPARTMENT OF FINANCIAL

PROTECTION AND INNOVATION

320 West Fourth Street, Suite 750

Los Angeles, California 90013

FOR THE STATE OF HAWAII

By: /s/ Keola Fong

KEOLA FONG, *pro hac vice pending*

Hawaii Bar No. 9855

Telephone: (808) 586-2740

kfong@dcca.hawaii.gov

Attorney for Plaintiff

STATE OF HAWAII

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DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
SECURITIES ENFORCEMENT BRANCH
335 Merchant Street, Room 205
Honolulu, Hawaii 96813