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17 Securities and Exchange Commission

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 SECURITIES AND EXCHANGE
21 COMMISSION,

22 Plaintiff,

23 vs.

24 RED ROCK SECURED, LLC, SEAN
25 KELLY, ANTHONY SPENCER,
26 AND JEFFREY WARD,

27 Defendants.

Case No. 2:23-cv-3682

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Securities and Exchange Commission (“Commission” or “SEC”), for
2 its Complaint against Defendants Red Rock Secured, LLC (“Red Rock”), Sean Kelly
3 (“Kelly”), Anthony Spencer (“Spencer”), and Jeffrey Ward (“Ward”) (collectively,
4 “Defendants”), hereby alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. The SEC brings this action pursuant to Sections 21(d) and 21(e) of the
7 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§78u(d) and 78u(e)],
8 and Section 209(d) of the Investment Advisers Act of 1940 (“Advisers Act”) [15
9 U.S.C. § 80b-9(d)].

10 2. This Court has jurisdiction over this action pursuant to Section 27 of the
11 Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C.
12 § 80b-14], and 28 U.S.C. § 1331.

13 3. Venue is proper in this Court pursuant to Section 27 of the Exchange Act
14 [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Acts,
15 practices and courses of business constituting violations alleged herein have occurred
16 within the jurisdiction of the United States District Court for the Central District of
17 California and elsewhere.

18 4. Defendants directly and indirectly made use of the means and
19 instrumentalities of interstate commerce and of the mails in connection with the acts,
20 practices, and courses of business alleged herein, and will continue to do so unless
21 enjoined.

22 **SUMMARY**

23 5. From January 2017 through at least June 2022 (the “Relevant Period”),
24 Red Rock, its Chief Executive Officer, Sean Kelly, and two of its Senior Account
25 Executives, Anthony Spencer and Jeffrey Ward, while acting as unregistered
26 investment advisers, persuaded hundreds of retirement account investors to sell their
27 existing securities, transfer the proceeds into self-directed individual retirement
28 accounts (“SDIRAs”) that Red Rock helped clients establish, and invest the proceeds

1 in gold or silver coins. They did so by making false and misleading statements,
2 including regarding the markups that Red Rock charged on the price of coins, the
3 purported value of “premium” coins, and the performance of the stock market.

4 6. Defendants targeted investors who held securities in retirement accounts,
5 including in the federal government employee Thrift Savings Plan (“TSP”), 401(k)
6 accounts, and individual retirement accounts (“IRAs”). Defendants solicited
7 investors through numerous marketing materials, email campaigns, and telephone
8 calls in which they made dire statements, some of which were false and misleading,
9 warning that the investors’ existing securities holdings faced imminent and serious
10 risk of losses. Defendants told investors that they could protect their assets from the
11 losses posed by stock-market risk through diversification by converting their
12 securities into gold and silver—and, in particular, coins sold by Red Rock—which
13 Defendants misleadingly promoted as tangible assets that would always have value
14 and typically increase in value.

15 7. Red Rock employees, including frequently its top sales executives,
16 Spencer and Ward, regularly advised prospective clients to sell securities and use the
17 proceeds to purchase metal by stating that Red Rock charged one to five percent
18 above its cost for “common bullion” assets. They did not disclose, however, that the
19 “premium” coins that Red Rock advised investors to purchase had a much higher
20 markup: typically 120 to 130 percent above Red Rock’s cost to acquire the coins.
21 Moreover, a transaction agreement that Red Rock provided to clients contained
22 misleading language that indicated Red Rock charged a maximum of 29 percent
23 above its cost for “premium metals.”

24 8. In advising prospective clients and clients to purchase “premium” coins,
25 Red Rock employees, including Spencer and Ward, also falsely and misleadingly
26 stated that such coins had a market value that was substantially higher than the asset
27 value reported by SDIRA custodians and that the market value was determined by
28 purported demand factors. In fact, the purported market value of the “premium”

1 coins was not driven by external demand but instead, was solely determined by the
2 Defendants.

3 9. Thus, directly contrary to Defendants’ representations, Defendants’
4 fraudulent scheme was designed to lure investors away from relatively liquid
5 retirement account investments with well-defined and clearly-reported market values,
6 to invest instead in Red Rock “premium” coins—the value of which, as reported by
7 the SDIRA custodians, was well below the purchase prices clients paid to Red Rock.

8 10. During the Relevant Period, Red Rock sold “premium” coins to at least
9 700 clients, for a total of more than \$50 million. To fund the purchase of those coins,
10 the 700 clients sold securities in their TSPs, IRAs, and other retirement accounts;
11 transferred more than \$50 million in sale proceeds to SDIRAs with Red Rock’s
12 assistance; and purchased the coins from Red Rock through their SDIRAs at Red
13 Rock’s repeated urging and with its advice. Though Red Rock advised prospective
14 clients and clients to sell securities and buy Red Rock coins in order to “protect” their
15 retirement savings and “enjoy a worry free retirement,” Red Rock in fact pocketed
16 more than \$30 million of the funds investors paid for the “premium” coins. This
17 upfront markup, or profit above Red Rock’s cost to acquire the coins, immediately
18 put clients in a hole and significantly depleted the very retirement assets that Red
19 Rock had advised clients to “protect.”

20 11. The SEC brings this lawsuit to protect the investing public and to hold
21 Defendants accountable for their misconduct.

22 **DEFENDANTS**

23 12. Red Rock Secured, LLC is a Nevada limited liability company with its
24 principal place of business in El Segundo, California.

25 13. Sean Kelly, age 46, resides in Porter Ranch, California. He has been the
26 Chief Executive Officer of Red Rock since January 2017. Kelly owns 80% of Red
27 Rock’s Class A voting shares and controls the company’s operations and decision-
28 making. In addition to receiving a salary, Kelly received compensation in the form of

1 distributions from the profits Red Rock made from selling metal to clients.

2 14. Anthony Spencer, age 52, resides in Los Angeles, California. He was a
3 Senior Sales Executive with Red Rock from in or around July 2018 to August 2022.
4 Spencer also held the title of Director of Account Services during that time. In
5 addition to receiving a 3.5% share of Red Rock's profits, Spencer received
6 compensation in the form of commissions.

7 15. Jeffrey Ward, age 44, resides in Playa Vista, California. He was a
8 Senior Sales Executive with Red Rock from in or around January 2017 to September
9 2022. Ward also held the title of Director of IRA Services during that time. In
10 addition to receiving a 3.5% share of Red Rock's profits, Ward received
11 compensation in the form of commissions.

12 **FACTS**

13 **A. Defendants Targeted Investors with Retirement Accounts Holding** 14 **Securities.**

15 15. During the Relevant Period, Red Rock, at Kelly's direction, as well as
16 frequently with the help of Spencer and Ward, solicited business through numerous
17 email campaigns, digital newsletters and advertisements targeting investors who held
18 securities in retirement accounts such as 401(k)s, IRAs and TSPs.

19 16. Red Rock sent emails soliciting business to millions of individuals per
20 month, including to those who had subscribed to stock and mutual fund-related
21 newsletters. Red Rock also advertised in particular media sources, including a media
22 source that provided retirement and TSP-related information to active and retired
23 federal employees and military service members. Red Rock even created guidebooks
24 that discussed TSPs, IRAs, and other securities accounts, which Red Rock provided
25 to prospective clients holding securities accounts.

26 17. Red Rock thus targeted investors holding retirement accounts. As stated
27 in an August 7, 2020 email from a Red Rock employee to a potential provider of
28 advertising space, the company's target demographic was "Right Wing

1 Conservative[,] 59+ years of age[,] male & female[,] Interest in
2 retirement/investments[,] Owns a 401(k)/IRA[,]” and “anyone who works for the
3 government and own [sic] a Thrift Savings Plan)[.]”

4 18. As stated in an internal Red Rock training document for junior
5 salespeople, created during the Relevant Period, soliciting investors to sell assets
6 from retirement accounts was “Red Rock’s bread and butter. The main thing we do.”

7 19. And in marketing materials that Red Rock distributed to prospective
8 clients during the Relevant Period, Red Rock stated that using money already in a
9 securities account was “a better way” to buy metal and diversify one’s investments
10 than using funds from non-securities savings.

11 20. The majority of Red Rock’s clients during the Relevant Period did in
12 fact use assets transferred from retirement accounts to a SDIRA to purchase metal
13 from Red Rock, as Red Rock advised them to do.

14 21. During the Relevant Period, Kelly supervised Red Rock employees who
15 communicated with clients or prospective clients on a regular basis, including by
16 training employees on what they should say about the company and on transaction
17 confirmation calls. From in or around 2017 to 2019, Kelly also supervised Red
18 Rock’s sales floor. Further, he had authority over what Red Rock salespeople should
19 say to prospective clients and clients.

20 22. Kelly’s instructions for salespeople repeatedly emphasized Red Rock’s
21 guidance to investors about selling securities from retirement accounts. For example,
22 on July 13, 2021, Kelly sent an email to Red Rock’s salespeople with the subject
23 “How to talk about us...” Kelly told the salespeople that he had been listening to
24 recordings of their calls with prospective clients and clients, and he provided
25 instructions for what they should say on such calls.

26 23. For example, when prospective clients asked what Red Rock does or
27 why they should do business with Red Rock, Kelly instructed the salespeople to
28 respond: “At Red Rock Secured we know that you want to be worry free. In order to

1 do that, you need to protect your retirement savings. The problem is you can wake up
2 and half your retirement could be gone which makes you feel powerless[,]” and “for
3 over a decade [we] have worked with our clients to protect their retirement savings by
4 investing in gold and silver.” Kelly also instructed the salespeople to tell prospective
5 clients that by converting their investments into gold and silver they “can stop
6 worrying about not having enough money and instead know that no matter what
7 happens with the market you are safe and can afford the retirement you earned.”

8 24. Red Rock employees followed Kelly’s instructions, including by
9 regularly adding the following language that he provided to their emails with
10 prospective clients and clients: “Most people are worried about losing money in their
11 retirement accounts. At Red Rock Secured we convert that money into physical gold
12 & silver so they can enjoy a worry-free retirement.”

13 25. Kelly participated in weekly marketing meetings, signed off on
14 marketing spending, and recommended where Red Rock should advertise. Kelly also
15 had Red Rock hire copywriters to create the Red Rock guidebooks. Kelly further
16 decided that Red Rock would send guidebooks and other marketing materials to
17 prospective clients that contained his signature or that were sent under his name.

18 26. Spencer and Ward contributed information to the drafting of Red Rock
19 guidebooks and sent the guidebooks to prospective clients. When a prospective client
20 responded to Red Rock’s guidebooks and other marketing materials expressing
21 potential interest in purchasing metal, Red Rock salespeople set up a call between the
22 prospective client and a senior sales executive, such as Spencer or Ward, who would
23 inquire as to the nature and amount of the prospective client’s existing retirement-
24 account assets and advise them to convert a portion of those assets into metal.

25 27. Red Rock salespeople referred prospective clients who expressed
26 interest in transferring retirement account assets to a SDIRA to Red Rock’s IRA
27 Services department, of which Ward was the director for several years during the
28 Relevant Period. Ward and others in Red Rock’s IRA Services department assisted

1 clients with setting up a new SDIRA at a third-party custodian with which Red Rock
2 had a relationship, and with transferring the clients' securities sales proceeds out of
3 their existing retirement account. For example, Red Rock employees provided clients
4 with the paperwork required to transfer assets out of their securities accounts and
5 participated in three-way telephone calls with the TSP, IRA, or 401(k) custodians
6 regarding the funds transfers.

7 **B. Defendants Used Often False or Misleading Scare Tactics to Advise**
8 **Investors to Sell Securities.**

9 28. While marketing to retirement-account holders, Red Rock used scare
10 tactics—warning of imminent and serious stock market and economic downturns—to
11 advise prospective clients to take immediate action to move retirement-account assets
12 out of securities and into metal. Red Rock's scare tactics included false and
13 misleading statements made in guidebooks, emails, on its website, and in phone calls.

14 *1. The TSP Guidebook*

15 29. One example of such marketing was a guidebook that Red Rock
16 provided to prospective clients entitled "The #1 TSP Playbook—Little Known IRA
17 Loopholes for Protecting Your TSP" (the "TSP Playbook").

18 30. The TSP Playbook is written in the first person and states "My name is
19 Jeff Ward and I'll be your guide . . ." It then states "Our leadership team, which
20 includes myself, Sean [Kelly] and Tony [Spencer] have worked tirelessly on this
21 project." The "Introduction" section ends with Kelly's signature above his name and
22 title: "Sean Kelly CEO – Red Rock Secured." The end of the TSP Playbook is
23 signed "Jeff Ward and the entire RRS [Red Rock Secured] team." Ward and Spencer
24 contributed information to the drafting of the TSP Playbook and both sent it to
25 prospective clients.

26 31. The TSP Playbook Introduction begins by questioning "the
27 government's ability to manage funds" and further states the TSP Playbook's goal as
28 showing prospective clients "a possible path for you so that you don't end up living a

1 minimal existence after a life of [government] service”; and “so that you can instead
2 secure your future no matter how many years that might be...so that you can enjoy
3 the retirement years in comfort and style without the fear of poverty.” The TSP
4 Playbook further warns, “[A]nother market down turn is coming. It’s inevitable, like
5 the tide . . . your TSP’s total value is tied to whatever market you’re in.”

6 32. The TSP Playbook contained multiple false and misleading statements
7 concerning the investment options available to TSP investors. In its overall message,
8 and in specific false and misleading statements and material omissions, the TSP
9 Playbook created a false and misleading impression that all TSP investments are tied
10 to the “stock market” and, thus, rise and fall with the “stock market.”

11 33. The TSP Playbook falsely and misleadingly states that with the
12 investment options available within the TSP, “you are, in a sense, putting all of your
13 eggs into one basket. Sure, there are six funds to choose from . . . but they’re all
14 stock market funds.” It further states that the TSP is “entirely tied into a single
15 market, or a single type of market, at least. And that market is the stock market.”

16 34. The TSP Playbook omits, however, that certain investment options
17 available in the TSP were not a “stock market fund.” For example, according to the
18 government’s TSP “Fund Information” booklet,¹ the TSP “G Fund” invests only in
19 “nonmarketable U.S. Treasury securities specially issued to the TSP.”

20 35. In addition, the TSP Playbook describes the TSP “L Fund” as
21 “invest[ed] in all of the other [TSP] funds” and as taking “into account how many
22 years you have left until retirement and how much risk you want to take,” but omits
23 the material information that the L Fund regularly “rebalances” the mix of the five
24 TSP funds and reduces over time the TSP account holder’s exposure to the TSP’s
25 stock funds (the C, S, and I Funds) as the account holder nears his or her “target” date
26 (retirement). Thus, for example, the L Fund’s “target date” allocation as of January
27

28 ¹ Available online at www.TSP.gov/publications.

1 1, 2023 was: 70% in the G Fund, a total of 24% allocated among the three TSP stock
2 funds, and 6% in the F Fund, which invests in an index portfolio that tracks a
3 diversified bond index, not a stock index.

4 36. The TSP Playbook also omits other material information regarding the
5 TSP G Fund. The TSP Playbook states only that the G Fund is “another fund that’s
6 attached to bonds. Treasury bond securities in this case. This fund sets out to keep
7 pace with inflation, which is one of the biggest eaters of your returns Obviously,
8 the risks with this fund are also associated with changes in the inflation rate.”

9 37. However, the TSP Playbook misleadingly omits that: (i) the “G Fund is
10 invested in short-term U.S. Treasury securities specially issued to the TSP. Payment
11 of principal and interest is guaranteed by the U.S. government”; (ii) the “[TSP]
12 Board’s investment in the G Fund is redeemable on any business day with no risk to
13 principal”; (iii) the “value of the G Fund securities does not fluctuate; only the
14 interest rate changes”; and (iv) “[o]ver long periods of time, the G Fund has
15 historically outperformed inflation”

16 38. As another example of the TSP Playbook’s misleading statements on the
17 risks of the TSP, the TSP Playbook posits the potential downside if “20% of [an
18 investor’s] TSP is invested in” a single company that goes out of business. This is
19 materially false and misleading because, such concentration in an investor’s TSP
20 would be impossible as none of the investment options, as reflected on the TSP
21 website, contain such high concentrations of any single corporate-issuer stock.

22 39. The TSP Playbook further misleadingly suggests—in describing a
23 hypothetical postal worker who suffers significant intraday TSP losses at age 60,
24 causing he and his wife to delay their retirement—that TSP investors, including those
25 at or near retirement age, have no other option but to invest solely in “the stock
26 market.” This hypothetical is misleading because it fails to include other retirement
27 account investment options (including the TSP G Fund and L Fund) designed to
28 protect investors against stock market downturns.

1 40. After creating the misleading impression for TSP investors that the TSP
2 investments will necessarily decline with the stock market or the performance of a
3 single company that goes out of business, the TSP Playbook then advises that the
4 value of metal typically moves in the opposite direction of stock investments. It
5 states, “if you’ve moved out of your TSP into a self-directed IRA, you can not only
6 avoid the pain of market crashes, you can profit by them.”

7 41. The TSP Playbook omits, however, the material fact that moving
8 retirement account assets into a SDIRA to purchase “premium” coins from Red Rock
9 would typically result in the client losing more than half of the transferred retirement
10 account assets to a hefty markup from which Defendants, not the client, profited.

11 42. Moreover, the TSP Playbook omits the material fact that the total
12 expense ratio for each TSP investment fund was less than .1% per year during the
13 Relevant Period; an amount that was significantly lower than the sizeable markup
14 charged by Red Rock.

15 43. The TSP Playbook also falsely states that Kelly, Spencer, and Ward had
16 “spent countless hours pouring [sic] over pages of Thrift Savings plan rules and
17 regulations so as to make your options clear and easy to understand,” when they had
18 not.

19 2. *Marketing Emails*

20 44. Red Rock’s misleading scare tactics concerning stock market
21 performance was also reflected in its marketing emails. For example, a marketing
22 email repeatedly sent in Kelly’s name between at least August 2018 and May 2019
23 warned that a specific well-known investment firm “just went public saying **we’re**
24 **headed for ‘the biggest market selloff in months’**” (emphasis in original).

25 45. That statement was misleading. Red Rock sent most of those emails to
26 its prospective clients months (not “just”) after the referenced investment firm had
27 made its stock market prediction, and much had changed in the stock market during
28 the intervening months. For example, during the approximately 10-month period in

1 which Red Rock sent the marketing email in Kelly's name, the price of the S&P 500
2 index switched courses multiple times. Red Rock and Kelly, however, failed to
3 assess how the market was currently performing or to otherwise ensure that the
4 investment firm's months-old prediction was still accurate.

5 46. The same marketing email also warned TSP investors that if the major
6 selloff occurred, "then your six standard fund options will get clobbered and you will
7 lose significant money." That statement was misleading because it omitted the fact
8 that, as discussed above, one of the six TSP fund options that Red Rock and Kelly
9 were referring to was the TSP G Fund, which holds only specially issued U.S.
10 Treasury bonds whose value "does not fluctuate; only the interest rate changes."

11 3. *Red Rock's Website*

12 47. During the Relevant Period, Red Rock also published "Real-time Gold
13 Price and Silver Price Charts" on its website that misleadingly indicated to
14 prospective clients and clients that gold and silver historically have always
15 outperformed the S&P 500 and Dow Jones stock indices, when they have not.
16 During the Relevant Period, Kelly told Red Rock employees to refer prospective
17 clients to those price charts, and employees did so, including by providing links to the
18 charts in emails.

19 48. The vertical axis on the right-hand side of Red Rock's price charts
20 purported to show return percentages ranging from -250% to 1000%. However,
21 while the line graphs for gold and silver tracked returns from at least as far back as
22 1991 forward, the line graphs for the stock index tracked returns only from 2009
23 forward. Because the start date differed as between the metal data and the stock
24 index data, Red Rock's price charts misrepresented the relative performance of metal
25 versus the stock index. A truthful comparison—in which both the metal data and the
26 stock index data was compared over the same holding period of 1991 to 2022—
27 would have shown that the stock indices performed better over the long term than
28 either gold or silver.

1 4. *Phone Calls*

2 49. In phone calls, Red Rock employees made similar misleading statements
3 to prospective clients that metal had outperformed stock indices. In a July 14, 2021
4 telephone call, for example, Ward told a prospective client who asked about the price
5 of gold and silver that “[o]ver the last 20 years it’s outbeaten the S&P and Nasdaq . . .
6 printing of money could stop and that’s when the stock market will probably start
7 going down.”

8 50. Ward’s statement was false and misleading because, over the 20 years
9 prior to his statement, the Nasdaq Composite stock index outperformed gold and
10 silver. It was also misleading because he selectively chose a 20-year holding period,
11 and omitted the fact that over other holding periods, such as 10 or 30 years prior to
12 his statement, the S&P 500 index significantly outperformed both gold and silver.

13 **C. Defendants’ Investment Advice was Specific and Regularly Provided**
14 **to Prospective Clients and Clients.**

15 51. In telling prospective clients and clients that their existing securities
16 investments were at imminent risk, Defendants specifically and repeatedly advised
17 that the way to “protect” against such risk was to convert 10 to 30% of those
18 investments into metal purchased from Red Rock.

19 52. For example, in a July 2021 telephone call, Ward advised two
20 prospective clients to move securities investments into precious metal, stating, “You
21 diversify You’re fully vested in the market. Any dip in that market you’re
22 susceptible to You should never have your eggs in one basket and at the moment
23 you do . . . a portion in metals, 20, 30 percent, that’s where you’re winning at that
24 point.”

25 53. Similarly, in a January 2021 telephone call, Spencer stated that the stock
26 market would crash if the country were shut down again due to the pandemic and that
27 if tax cuts were rolled back, the “stock market will drop at least 35 percent.” Spencer
28 stated that “it’s important to make sure not all of your eggs are in the same basket.”

1 He continued, “What we typically recommend is a position in metal between 20 to 30
2 percent of your overall portfolio . . . That 20 to 30 percent has proven throughout
3 history to provide insurance on the other 70 to 80 percent that stays in the market or
4 stays in one way or another connected to the dollar.”

5 54. From at least March to June 2021, Red Rock repeatedly advised and
6 solicited prospective clients through an email attributed to Kelly with the title “TSPs
7 Don’t Have to Be Limiting Diversify and Protect Your Wealth With New, TAX-
8 FREE Options.” In that email, Red Rock and Kelly advised:

9 There’s no mistaking the need to diversify your TSP with the
10 ever decreasing value of the dollar, the uncertainty of the stock
11 market, increased taxes and the fallout of the pandemic, the
12 need to protect your investments and savings could not be more
13 obvious. This is why 1,000s of TSP account holders are turning
14 to time-proven valuable precious metals like Gold and Silver to
15 protect their money. And why you should consider rolling over
16 portions or parts of your TSP funds into a special form of
17 retirement account known as the ‘self-directed’ IRA.

16 55. On a Red Rock web page entitled “TSP Investment Advice,” Red Rock
17 further stated, “Rather than rely on diversification methods that prove to be volatile,
18 choose the better option by investing in gold, silver, platinum, and palladium.”

19 56. Red Rock’s transaction agreement included a “Diversification” section
20 in which the company recommended that metal “constitute no more than 10% - 30%
21 of a well-diversified portfolio.”

22 57. Spencer and Ward also advised prospective clients of purported
23 advantages of investing in metal as compared to metals-based exchange-traded funds,
24 which are securities. For example, Spencer described purported tax benefits of
25 investing in coins as compared to capital gains taxes that would be assessed on
26 exchange-traded fund investments. Ward advised prospective clients that holding a
27 tangible asset such as metal was better than holding an exchange-traded fund, which
28 he called a “paper” asset.

1 58. And after clients had purchased metal from Red Rock, Spencer also
2 advised clients again on selling securities, advising them to take distributions from
3 their securities accounts rather than from the SDIRAs that held their metal, citing
4 such factors as the uncertainty of the stock market or the value of the U.S. dollar.

5 **D. Defendants Made False and Misleading Statements About Red**
6 **Rock’s Charges.**

7 59. Red Rock employees, including Spencer and Ward, regularly and
8 misleadingly told prospective clients that the company charges between one and five
9 percent above its cost for “common bullion” assets, including before the clients had
10 sold securities in their retirement account to purchase metal from Red Rock. While
11 this statement may have been true for certain Red Rock assets, it was materially false
12 regarding Red Rock’s “premium” metal. In fact, Red Rock typically charged an
13 exponentially higher markup (more than 100 percent) above its cost for “premium”
14 coins.

15 60. Spencer and Ward knowingly or recklessly made such statements to
16 prospective clients repeatedly, only to convince them later—after they had sold
17 securities and transferred funds from their retirement accounts—to purchase Red
18 Rock’s “premium” coins. Spencer and Ward engaged in this bait and switch despite
19 knowing that they and Red Rock sold far more “premium” coins than “common
20 bullion,” and that they personally stood to receive higher commissions—eight percent
21 or more of the client’s purchase amount—by selling “premium” coins.

22 61. During the Relevant Period, more than 90% of the SDIRA funds that
23 clients used to purchase metal from Red Rock were used to purchase “premium”
24 coins, not “common bullion.”

25 62. Contrary to their statements to prospective clients, Spencer and Ward
26 knew, at the least, that Red Rock’s markup on its “premium” coins was a minimum
27 of 29 percent. Moreover, the fact that Spencer and Ward received commissions of
28 eight percent or more for selling premium coins further demonstrates that they knew

1 or recklessly disregarded that Red Rock was charging clients more than the one to
2 five percent markup that they falsely and misleadingly stated to prospective clients.

3 63. As an example, in an email dated August 6, 2020, Ward told a
4 prospective client, “Red Rock makes money from the purchase of precious metals.
5 We charge 1-5% above our cost on all our common bullion assets.” Thereafter, in an
6 August 25, 2020 telephone call with that same prospective client, Spencer stated,
7 “[W]e’re not a retail shop, we’re an investment firm. So we have a direct relationship
8 with the mints. We buy our metal in volume and we buy our metal in wholesale and
9 we pass the savings along to you. We charge anywhere from 1 to 5 percent above our
10 cost on common bullion assets and there are no ongoing, re-occurring management,
11 service or maintenance fees whatsoever.”

12 64. However, during that same August 25 telephone call, Spencer knew that
13 he was finalizing the prospective client’s purchase of “premium” coins, not “common
14 bullion.” Moreover, Spencer’s statements were false because, as he knew or was
15 reckless in not knowing, Red Rock did not have a direct relationship with any mint
16 and did not pass along savings to clients.

17 65. Soon after prospective clients sold securities to buy metal, Red Rock
18 provided them with a transaction agreement that, similarly, misleadingly indicated
19 that they would pay a maximum of 29 percent above what Red Rock paid for the
20 “premium” metal and that clients could pay as low as four or five percent above what
21 Red Rock paid for “premium” metal. Though Red Rock, with Kelly’s approval,
22 revised the transaction agreement several times over the years, each version it
23 provided to clients through at least June 2022 contained confusing and misleading
24 language concerning Red Rock’s charges.

25 66. Thus, for example, several versions of Red Rock’s transaction agreement
26 misleadingly stated, “The difference between the Purchase Price Client pays for
27 Products under a Purchase Order and the price that Red Rock actually pays for the
28 Products purchased by Client under such Purchase Order is known as the ‘spread’

1 and it is stated as a percentage of the Purchase Price paid by the client.” These
2 versions of the transaction agreement went on to quantify the “spread,” including by
3 stating that “[t]he spread on Red Rock’s premium, semi-numismatic, and numismatic
4 coins typically ranges between 4% and 29%,” or “[t]he spread on Red Rock’s
5 premium, semi-numismatic, and numismatic coins typically ranges between 5% for
6 CUSIP assets and 29% for Premium/non-CUSIP assets; however, on the rare
7 occasion, this spread may exceed these amounts.”

8 67. Such statements thus falsely indicated that the difference between the
9 price the client paid for “premium” coins and the price that Red Rock had paid for the
10 “premium” coins was between 4 and 29 percent when, in fact, that difference was
11 almost always above 100 percent, and typically 120 percent or more.

12 68. Moreover, each transaction agreement misleadingly indicated that Red
13 Rock clients could pay as low as a 4 or 5 percent markup for “premium” coins when,
14 in fact, the minimum markup Red Rock charged for its premium coins was 60
15 percent, which was only available for a coin that it very rarely sold.

16 69. Red Rock and Kelly thus intended, or recklessly disregarded, that each
17 version of the transaction agreement obfuscate the plain fact that Red Rock almost
18 always charged a markup of over 100 percent, and typically over 120 percent, on its
19 “premium” coins.

20 **E. Defendants Made False and Misleading Statements About the Value**
21 **of “Premium” Coins.**

22 70. Kelly set the markup for all of the types of metal that Red Rock sold,
23 and he also set the commission rates that employees would earn. This included Kelly
24 agreeing to pay his top salesperson, Spencer, an added 2% commission on top of the
25 standard commission employees stood to earn from the sale of “premium” coins.

26 71. Red Rock’s sales executives, including Spencer and Ward, primarily
27 recommended that clients purchase a “premium” coin known as the one-half ounce
28 silver Canadian Red-Tailed Hawk coin (“silver Red Tailed Hawk coin”), minted by

1 the Royal Canadian Mint.

2 72. Of the dozens of types of metals that Red Rock could sell, the silver
3 Red-Tailed Hawk coin had both Red Rock’s highest markup (130%) and the highest
4 sales commission rate (8%). The markup and commission rate gave Red Rock and its
5 employees a strong incentive to sell the silver Red-Tailed Hawk coin, which they did
6 in vast numbers. Over \$40 million of the more than \$50 million that clients used
7 from SDIRAs to purchase “premium” coins from Red Rock was used to purchase
8 silver Red Tailed Hawk coins.

9 73. A California-based metals distributor (the “Metals Distributor”) had an
10 exclusive arrangement to purchase silver Red-Tailed Hawk coins from the authorized
11 distributor for the Royal Canadian Mint. At Kelly’s direction, Red Rock, in turn, had
12 an exclusive arrangement with the Metals Distributor to purchase its silver Red-
13 Tailed Hawk coins.

14 74. As a result, because Red Rock was the only company selling silver Red-
15 Tailed Hawk coins to individual investors, Red Rock controlled the retail market
16 price.

17 75. Moreover, there was essentially no secondary market for silver Red-
18 Tailed Hawk coins, and Red Rock took steps to avoid the creation of any such
19 market, to avoid others underselling Red Rock and revealing the actual, lower market
20 value of those coins.

21 76. Thus, for example, on one occasion, on October 28, 2020, when a
22 prospective client found the silver Red-Tailed Hawk coin available for sale from
23 another company, the prospective client asked Spencer, “So, are virtually all half-
24 ounce Red Tailed Hawk coins currently owned by Red Rock or Red Rock clients? If
25 that is so, would not the price of that coin above its bullion weight at any given time
26 essentially be set by Red Rock?” Spencer replied, falsely, “The value is set by the
27 mint” The prospective client then responded that he could not find the coin on
28 the Royal Canadian Mint’s website, but had found it for sale at another Canadian

1 company at less than half the cost.

2 77. Spencer forwarded his email exchange with the prospective client to
3 Kelly, and Kelly in turn forwarded it to the CEO of the Metals Distributor and to Red
4 Rock's head of accounting. Kelly wrote, "Guys, this is KILLING our deals. See
5 below..... complete bulshit [sic]. Is there a way we can have the candian [sic] mint
6 reach out to [the Canadian company] and tell them they are selling OUR exclusive
7 coin. [sic]"

8 78. On or around October 29, 2020, Kelly told Red Rock's head of
9 accounting that he wanted him to find a way to get the silver Red Tailed Hawk coins
10 off of the Canadian company's website. Kelly instructed Red Rock's head of
11 accounting to buy all of those coins, which totaled approximately 720 coins, which
12 the head of accounting did.

13 79. Red Rock sold more than 1.3 million silver Red Tailed Hawk coins
14 during the Relevant Period. The fact that Kelly quickly moved to ensure that a tiny
15 fraction of the number of silver Red Tailed Hawk coins sold by Red Rock would no
16 longer appear on the Canadian company's website, shows the extent to which he and
17 Red Rock knew, and made certain, that they, and not the market, set the price of
18 silver Red Tailed Hawk coins.

19 80. Consequently, by entering into the exclusive arrangement with the
20 Metals Distributor, and taking steps to ensure that there would be no secondary
21 market for the silver Red Tailed Hawk coins, Red Rock maintained control over the
22 market price of those coins. Kelly and Red Rock employees, including Spencer,
23 knew that the purported value of such coins was solely being assigned by Red Rock
24 and its employees, and not by any external retail or market demand factors.

25 81. Red Rock's practice, as approved by Kelly, was to misleadingly
26 provide—including to clients who asked how much the coins they had purchased
27 were worth—a "retail" value that was not based on the value the client could receive
28 in the market if they sold their coins, but instead was based on what the client would

1 pay if they were to buy the coins from Red Rock again on the particular day on which
2 Red Rock provided the purported “retail” value.

3 82. Red Rock employees, including Spencer and Ward, regularly and
4 misleadingly told prospective clients and clients that its “premium” coins, including
5 the silver Red Tailed Hawk coins, had a retail or market value that was substantially
6 higher than the asset value reported by SDIRA custodians, and higher than the
7 amount the client paid Red Rock to purchase the metal.

8 83. In phone calls and written communications, Red Rock employees,
9 including Spencer and Ward, stated that SDIRA custodians underreported the true
10 value of the coins because they only reported the “melt,” “spot,” or “assessed” value,
11 which was only one component of the asset’s value. They misleadingly stated that
12 factors such as “market demand,” “investor demand,” “supply and demand” or
13 “scarcity” added to the value of the assets. Red Rock employees, including Spencer
14 and Ward, told investors to call them for the “retail” value of their “premium” coins.

15 84. A Red Rock client call script that Red Rock salespeople used during the
16 Relevant Period falsely and misleadingly stated:

17 [T]he melt value is approximately one half of your purchase
18 value on Non-CUSIP assets. The other half is based upon Non-
19 CUSIP investment values such as the value of comparable
20 assets found through the applicable mint: market demand,
21 investor demand, and supply and demand. As such, the ‘melt
22 value’ is not indicative of your asset’s true retail/market value.

23 85. When telling investors what the purported “retail” value of their
24 investments was, Spencer and Ward told investors that the value reported by SDIRA
25 custodians was only the “assessed” value, not the “retail” value. Spencer and Ward
26 also advised that the lower “assessed” value was beneficial to the client or
27 prospective client because they would only pay taxes on the “assessed” value and not
28 on the purportedly higher “retail” or “market” value of their investments.

86. The call script and Spencer’s and Ward’s statements—which asserted

1 that “market demand,” “investor demand,” “supply and demand,” “scarcity” or other
2 such factors determined the “retail” or “market” value of “premium” coins—were
3 false and misleading because it was Defendants, and not external market factors, that
4 assigned the purportedly higher “retail” or “market” value of the investments.

5 87. Spencer also falsely and/or misleadingly ascribed specific percentages
6 and dollar amounts to each of several purported demand factors, without having any
7 quantifiable or documented basis for doing so.

8 88. For example, on July 30, 2021, Spencer falsely told a client that his
9 coins had a “current retail value” of \$156,728.89—almost 140% more than Red Rock
10 had paid to acquire the coins just two weeks prior. Spencer stated, “[h]ere is a
11 breakdown of the data as provided by the Mint” and listed the following values that
12 added up to the purported “current retail value” of \$156,728.89: “Investor Demand:
13 (27%) 42,316.80[;] Supply and Demand: (26%) 40,749.51[;] Market Demand: (25%)
14 39,182.22 [;] Spot: (22%) 34,480.36.”

15 89. Spencer knew or recklessly disregarded that the data that he provided to
16 the client was not provided by any mint, because he did not obtain it from any mint.
17 Moreover, Spencer knew or recklessly disregarded that the percentages and values he
18 listed for the purported “Investor Demand,” “Supply and Demand” and “Market
19 Demand” were not based on any quantifiable or external data point and instead were
20 solely assigned by him and Red Rock.

21 90. Similarly, Ward repeatedly reported “retail value” amounts to clients
22 that were well above the amount reported by SDIRA custodians and the amount paid
23 by Red Rock to obtain the coins that it sold to the clients. In doing so, Ward told
24 investors in emails that SDIRA custodians reported “melt” value which “is
25 significantly less than the retail value of the product as it fails to factor in variables
26 associated with retail pricing. These variables include pricing for comparable
27 products found on the applicable nation’s mint website, scarcity, and supply and
28 demand.” As Ward knew or recklessly disregarded, the purported variables

1 associated with retail pricing were not based on any quantifiable or external data
2 point and instead were solely assigned by him and Red Rock.

3 **F. Spencer Made Additional False and Misleading Statements.**

4 91. In emails and telephone calls with clients and prospective clients,
5 Spencer made a litany of additional material false and misleading statements
6 regarding Red Rock's charges and his personal credentials. Spencer often made these
7 statements in conjunction with dire statements that he made about the performance of
8 stock indices or the stock market more generally, and before convincing prospective
9 clients to sell securities to buy "premium" coins from Red Rock.

10 92. For example, in the same telephone call in which he advised the
11 prospective client discussed above in paragraph 53 to move 20 to 30 percent of their
12 investment portfolio into metal, and cited a potential stock market decline of at least
13 35 percent, Spencer made false and misleading statements that included that he had a
14 PhD in Economics, International Markets, and that he had worked with clients for
15 over 25 years.

16 93. Spencer also falsely stated that Red Rock charged a one to five percent
17 fee, and that the prospective client would pay a fee of 1.83% or \$1,830 exactly if he
18 transferred \$100,000 from his 401(k) account to purchase coins from Red Rock, with
19 the 1.83% fee being offset by 5% in metal that Spencer claimed Red Rock would give
20 the client.

21 94. Contrary to Spencer's statements, that client, who thereafter paid Red
22 Rock \$100,000 (on or around January 18, 2021) to purchase "premium" coins,
23 unwittingly paid a markup or fee of approximately \$66,000, while Red Rock used
24 only approximately \$44,000 of the investor's \$100,000 to acquire the coins.

25 95. In a May 4, 2021 email, Spencer falsely told another prospective client
26 that Red Rock would charge him only a one-time, 1.83% fee, and that he would
27 receive upwards of 15% in "bonus" metal. On or about July 7, 2021, after receiving
28 this information from Spencer, the client used \$150,000 that he had transferred to a

1 SDIRA to purchase from Red Rock 4,000 silver Red-Tailed Hawk coins. In reality,
2 as Spencer knew or recklessly disregarded, but unbeknownst to the investor, Red
3 Rock did not charge the investor a 1.83% fee; instead, Red Rock charged the investor
4 a 130% markup, spending only \$65,400 to acquire the coins for the investor, and
5 taking the remaining \$84,600 as a profit. As Spencer knew or recklessly disregarded,
6 he had no basis for stating that Red Rock charged a 1.83% one-time fee, or that Red
7 Rock provided clients with upwards of 15% in “bonus” metal.

8 96. Spencer often told clients and prospective clients that they would pay a
9 fee of exactly 1.83% to buy metal from Red Rock. As Spencer knew or recklessly
10 disregarded, such statements were false and misleading because he had no basis for
11 stating that clients paid a 1.83% fee.

12 97. Spencer knew that he personally received a commission of as much as
13 10% of the client’s purchase amount and, thus, knew or recklessly disregarded that
14 Red Rock had to be charging clients, at the least, a fee greater than the commission
15 that it paid to him; otherwise, Red Rock would lose money on each such transaction.

16 98. Spencer also knowingly or recklessly told clients and prospective clients
17 falsely that Red Rock had a direct or exclusive relationship with mints—through
18 which it passed savings along to the client—and that clients paid “discounted” prices.
19 In fact, while Red Rock had an agreement with the Metals Distributor regarding
20 silver Red Tailed Hawk coins, it had no direct or exclusive relationship with any
21 mint, and it did not pass along savings or discounts to clients from a direct and
22 exclusive arrangement with a mint. Spencer had no basis for making those false
23 claims.

24 99. Spencer told clients and prospective clients that Red Rock offered
25 promotions whereby it provided clients with “bonus” metal of as much as 10 to 15
26 percent of the total metal purchased by a client. Such statements were false and
27 misleading because any purported “bonus metal” provided by Red Rock was nowhere
28 near 10 to 15 percent, and Spencer had no basis for stating that Red Rock provided

1 “bonus” metal in those amounts.

2 100. Spencer told clients and prospective clients that he held a PhD in
3 Economics and International Markets. Also, when transferring telephone calls with
4 clients or prospective clients to Spencer, Red Rock employees referred to Spencer as
5 “Dr. Tony Spencer” and stated that he had a PhD in Economics. The statements
6 about Spencer having a PhD in Economics and International Markets were false and
7 misleading because he did not hold a PhD in those subjects.

8 101. Spencer told clients and prospective clients that he had over 25-years of
9 experience working with clients. Such statements were false and misleading because
10 as Spencer knew, he had, at most, 11-years of experience.

11 102. Spencer told clients and prospective clients that he had converted his
12 TSP account into a precious metals IRA. Such statements were false and misleading
13 because as Spencer knew, he had not converted his TSP account into a precious
14 metals IRA.

15 103. Spencer knew, or recklessly disregarded, that the statements he made to
16 clients and prospective clients, as detailed above, were false and misleading.

17 **FIRST CLAIM FOR RELIEF**

18 **Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5**
19 **(Against All Defendants)**

20 104. The SEC alleges and incorporates by reference paragraphs 1 through 103
21 above.

22 105. As more fully described in paragraphs 1 through 103 above, Defendants,
23 in connection with the purchase and sale of securities, by the use of the means and
24 instrumentalities of interstate commerce and by the use of the mails, directly and
25 indirectly: used and employed devices, schemes and artifices to defraud; made
26 untrue statements of material fact and omitted to state material facts necessary in
27 order to make the statements made, in light of the circumstances under which they
28 were made, not misleading; and engaged in acts, practices and courses of business

1 which operated or would have operated as a fraud and deceit upon purchasers and
2 sellers and prospective purchasers and sellers of securities.

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

5 **SECOND CLAIM FOR RELIEF**

6 **Violations of Advisers Act Sections 206(1) and 206(2)**

7 **(Against All Defendants)**

8 107. As more fully described in paragraphs 1 through 103 above, at all times
9 alleged in this complaint, Defendants, while acting as investment advisers, by use of
10 the mails, and the means and instrumentalities of interstate commerce, directly or
11 indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or
12 artifices to defraud its clients or prospective clients; and (ii) engaged in transactions,
13 practices and courses of business which have operated as a fraud or deceit upon its
14 clients or prospective clients.

15 108. By reason of the foregoing, Defendants violated Sections 206(1) and
16 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

17 **THIRD CLAIM FOR RELIEF**

18 **Aiding & Abetting Violations of Section 10(b) of the Exchange Act,**

19 **And Exchange Act Rule 10b-5**

20 **(Against Defendants Kelly, Spencer and Ward)**

21 109. The SEC alleges and incorporates by reference paragraphs 1 through 103
22 above.

23 110. Red Rock, in connection with the purchase and sale of securities, by the
24 use of the means and instrumentalities of interstate commerce and by the use of the
25 mails, directly and indirectly: used and employed devices, schemes and artifices to
26 defraud; made untrue statements of material fact and omitted to state material facts
27 necessary in order to make the statements made, in light of the circumstances under
28 which they were made, not misleading; and engaged in acts, practices and courses of

1 business which operated or would have operated as a fraud and deceit upon
2 purchasers and sellers and prospective purchasers and sellers of securities. Red Rock
3 knew, or was reckless in not knowing, of the facts and circumstances described in
4 paragraphs 1 through 103 above.

5 111. Defendants Kelly, Spencer and Ward knowingly or recklessly provided
6 substantial assistance to Red Rock in its violation of Sections 10(b) of the Exchange
7 Act and Rule 10b-5 thereunder. Kelly provided substantial assistance in the
8 violations by, among other things, establishing the business model that incentivized
9 Red Rock and its salespeople to steer investors to “premium” coins with misleading
10 claims of “retail” value, creating the transaction agreement that contained misleading
11 information about Red Rock’s charges, establishing the hefty markups that Red Rock
12 charged for “premium” coins that far exceeded the markups disclosed to investors,
13 and deciding that Red Rock would disseminate scare tactic marketing materials that
14 encouraged the sale of securities and purchase of metal from Red Rock and included
15 false and misleading statements. Spencer and Ward provided substantial assistance in
16 the violations by, among other things making false and misleading statements to
17 clients and prospective clients regarding Red Rock’s charges and various other
18 aspects of its business, and by contributing to and sending the misleading TSP
19 Playbook to prospective clients, as detailed above. Kelly, Spencer and Ward knew or
20 recklessly disregarded that Red Rock was committing violations, and they had a role
21 in furthering them.

22 112. By engaging in the conduct described above, Kelly, Spencer and Ward
23 aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j
24 (b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

25 **FOURTH CLAIM FOR RELIEF**

26 **Aiding & Abetting Violations of Advisers Act Sections 206(1) and 206(2)**

27 **(against Defendants Kelly, Spencer and Ward)**

28 113. The SEC realleges and incorporates by reference paragraphs 1 through

1 103 above.

2 114. As more fully described in paragraphs 1 through 103 above, at all times
3 alleged in this complaint, defendant Red Rock, while acting as an investment adviser,
4 by use of the mails, and the means and instrumentalities of interstate commerce,
5 directly or indirectly, knowingly, willfully or recklessly: (i) employed devices,
6 schemes or artifices to defraud its clients or prospective clients; and (ii) engaged in
7 transactions, practices and courses of business which have operated as a fraud or
8 deceit upon its clients or prospective clients. By reason of the foregoing, Red Rock
9 has violated Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1)
10 and 80b-6(2)].

11 115. Kelly, Spencer and Ward knowingly or recklessly provided substantial
12 assistance to Red Rock in its violation of Sections 206(1) and 206(2) of the Advisers
13 Act.

14 116. By engaging in the conduct described above, Kelly, Spencer and Ward
15 aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. [15
16 U.S.C. §§ 80b-6(1) and 80b-6(2)].

17 **FIFTH CLAIM FOR RELIEF**

18 **Control Person Liability for Violations of Section 10(b) of the Exchange Act and**
19 **Exchange Act Rule 10b-5**
20 **(against Defendant Kelly)**

21 117. The SEC realleges and incorporates by reference paragraphs 1 through
22 103 above.

23 118. Red Rock, in connection with the purchase and sale of securities, by the
24 use of the means and instrumentalities of interstate commerce and by the use of the
25 mails, directly and indirectly: used and employed devices, schemes and artifices to
26 defraud; made untrue statements of material fact and omitted to state material facts
27 necessary in order to make the statements made, in light of the circumstances under
28 which they were made, not misleading; and engaged in acts, practices and courses of

1 business which operated or would have operated as a fraud and deceit upon
2 purchasers and sellers and prospective purchasers and sellers of securities. Red Rock
3 knew, or was reckless in not knowing, of the facts and circumstances described in
4 paragraphs 1 through 103 above.

5 119. When Red Rock violated Section 10(b) of the Exchange Act and Rule
6 10b-5, Kelly directly or indirectly controlled Red Rock. Kelly was therefore a
7 “controlling person” within the meaning of Section 20(a) of the Exchange Act [15
8 U.S.C. § 78t(a)] with regard to Red Rock.

9 120. As alleged above, Kelly was a culpable participant in, and directly or
10 indirectly induced the acts constituting Red Rock’s violations of the Exchange Act,
11 and did not act in good faith.

12 121. By reason of the foregoing, Kelly is jointly and severally liable with and
13 to the same extent as Red Rock for its violations of Section 10(b) of the Exchange
14 Act and Rule 10b-5 and, unless enjoined, will again act as a “controlling person” in
15 connection with such violations.

16 **RELIEF REQUESTED**

17 WHEREFORE, the Commission respectfully requests that this Court:

18 **I.**

19 Permanently enjoin defendants, their officers, agents, servants, employees,
20 attorneys and those persons in active concert or participation with defendants who
21 receive actual notice of the order of this Court, by personal service or otherwise, and
22 each of them from, directly or indirectly, engaging in the transactions, acts, practices
23 or courses of business described above, or in conduct of similar purport and object, in
24 violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j] and Rule 10b-5 [17
25 CFR § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act
26 [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

27 **II.**

28 Order defendants to disgorge the ill-gotten gains received because of the

1 violations alleged in this Complaint, including prejudgment interest, pursuant to
2 Section 21(d)(5) and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(5), and
3 78u(d)(7)].

4 **III.**

5 Order defendants to pay civil penalties pursuant to Section 21(d)(3) of the
6 Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15
7 U.S.C. § 80b-9(e)].

8 **IV.**

9 Order that Kelly be permanently prohibited from serving as an officer or
10 director of a public company, pursuant to Section 21(d) of the Securities Exchange
11 Act of 1934, 15 U.S.C. § 78u(d)(2).

12 **JURY DEMAND**

13 The Commission hereby requests a trial by jury.

14 Dated: May 15, 2023

15 */s/ Stephen Kam*

16

Stephen Kam

17 Attorney for Plaintiff

18 Securities and Exchange Commission

19 Jack Kaufman

Michael Ellis

Pro Hac Vice Applications Pending

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SECURITIES AND EXCHANGE COMMISSION