

COPY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

Civil Action No. 8:23w408

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JON PATRICK KUBLER, AKSARBEN  
EVOLUTION, L.L.C., AV BHILL, L.L.C., CFH  
TEXAS, L.L.C., GREEN SADDLE, L.L.C., and  
KUBLER CONSULTING, L.L.C.,

Defendants,

and

KUBLER FINANCIAL, INC. and MIDWEST PEG,  
L.L.C.,

Relief Defendants.

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA  
2023 SEP 14 PM 2:22  
OFFICE OF THE CLERK

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**FILED UNDER SEAL**

**COMPLAINT AND JURY DEMAND**

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Plaintiff Securities and Exchange Commission (“SEC”) alleges for its Complaint against Defendants Jon Patrick Kubler (“Kubler”), Aksarben Evolution, LLC (“Aksarben”), AV Bhill, LLC (“AV Bhill”), CFH Texas, LLC (“CFH Texas”), Green Saddle, LLC (“Green Saddle”), and Kubler Consulting, LLC (“Kubler Consulting”) (collectively, “Defendants”), and Relief Defendants Kubler Financial, Inc. (“Kubler Financial”) and Midwest PEG, LLC (“Midwest PEG”) (collectively, “Relief Defendants”) as follows:

## INTRODUCTION

1. The SEC brings this emergency enforcement action to stop an ongoing multi-million-dollar Ponzi scheme and offering fraud being carried out by Defendants Kubler and Kubler Consulting, and Kubler's companies, Defendants Aksarben, AV Bhill, CFH Texas, and Green Saddle (collectively, "Kubler Companies").

2. From at least 2016 and continuing through the present, Defendants raised approximately \$5.6 million from at least 56 investors by promising investors that they would use their money for investment "opportunities," most of which were purportedly associated with commercial real estate. In fact, Defendants engaged in a complete fraud. Of the approximately \$5.6 million raised, Defendants invested only \$227,500, and fraudulently used the rest – approximately 96% of the money – by making approximately \$3.7 million of Ponzi payments (*i.e.*, using new investor funds to repay earlier investors) to prop up the scheme, running a shell game by comingling funds among the Defendants and Relief Defendants, and misappropriating at least \$1,028,376 of investor funds for the benefit of Kubler, Kubler Consulting, and the Relief Defendants and by paying various of Kubler's personal expenses. Defendants also misled investors by concealing that the Kubler Companies' nearly non-existent assets were insufficient to pay investors back, that Kubler did not actually invest their funds, instead using them primarily for Ponzi payments, and that the supply of new investors needed to keep Kubler's Ponzi scheme going inevitably would be exhausted, causing the scheme to implode while leaving existing investors with millions of dollars of losses.

3. During the scheme, Kubler also directed the Kubler Companies to transfer approximately \$685,000 in investor funds to Relief Defendants Kubler Financial and Midwest PEG, two companies that Kubler owned and controlled. As a result, Kubler Financial and

Midwest PEG each received illicit proceeds from the fraud of the Defendants to which they have no legitimate claim and for which they provided no consideration and were unjustly enriched.

4. As a result of the conduct described herein, Defendants violated, and on an ongoing basis are still violating, the antifraud provisions of the federal securities laws: Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Unless restrained and enjoined, Defendants will continue to violate the federal securities laws.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v(a)] and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e), and 78aa(a)].

6. The Court has personal jurisdiction over Defendants and Relief Defendants, and venue is proper in the District of Nebraska (“District”) pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)], because many of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and Exchange Act occurred in this District, including the offering and selling of securities, and the Ponzi payments and misappropriation of investor funds through transactions at banks located in this District. In addition, Defendants transacted business within this District, the principal place of business of each of the Kubler Companies, Kubler Consulting, and the Relief Defendants are in this District, and a majority of the defrauded investors reside in this District.

7. Defendants, directly or indirectly, singly and in concert, made use of the means or instruments of transportation or communication in interstate commerce, the means or

instrumentality of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint, certain of which occurred within this District.

8. On or about January 5, 2022, Kubler, Aksarben, AV Bhill, CFH Texas, Green Saddle, and Kubler Financial tolled the statute of limitations from January 5, 2022, through January 4, 2023.

### DEFENDANTS

9. **Jon P. Kubler**, age 51, is a resident of Redondo Beach, California. Kubler controls and is the manager of AV Bhill and CFH Texas and the managing member of Green Saddle. Through Kubler Consulting, which Kubler solely owns and controls, he also controls Aksarben. Kubler sells insurance products to individuals – some of whom also invested in his fraudulent scheme. From 2002 to 2009, Kubler was registered as a Nebraska-state investment adviser and was associated with a dually registered investment adviser and broker-dealer. In addition, Kubler owns and controls Relief Defendants Kubler Financial and Midwest PEG.

10. **Kubler Consulting, LLC** is a Nebraska limited liability company formed in 2009, with its principal place of business in Omaha, Nebraska. Kubler Consulting is the managing member of Aksarben. Kubler solely owns and controls Kubler Consulting and is its registered agent. Kubler Consulting was administratively dissolved on June 21, 2023, but has had an active bank account during 2023.

11. **Aksarben Evolution, LLC** is a Nebraska limited liability company formed in 2009, with its principal place of business in Omaha, Nebraska. The sole managing member of Aksarben is Kubler Consulting, through which Kubler solely controls Aksarben. Also, Kubler is Aksarben's registered agent and is a signatory on its bank accounts and controlled those

accounts. Aksarben was administratively dissolved on June 21, 2023, but has had an active bank account during 2023.

12. **AV Bhill, LLC** is a Nebraska limited liability company formed in 2016, with its principal place of business in Omaha, Nebraska. Kubler is the manager and solely controls AV Bhill. AV Bhill was administratively dissolved on June 21, 2023, but has had an active bank account during 2023.

13. **CFH Texas LLC** is a Nebraska limited liability company formed in 2011, with its principal place of business in Omaha, Nebraska. Kubler is the manager and registered agent and solely controls CFH Texas. CFH Texas was administratively dissolved on June 21, 2023, but has had an active bank account during 2023.

14. **Green Saddle, LLC** is a Nebraska limited liability company formed in 2014, with its principal place of business in Omaha, Nebraska. Kubler is the managing member and registered agent and solely controls Green Saddle. Green Saddle was administratively dissolved on June 21, 2023, but has had an active bank account during 2023.

#### **RELIEF DEFENDANTS**

15. **Kubler Financial, Inc.** is a Nebraska corporation formed in 2002 with its principal place of business in Omaha, Nebraska. Kubler Financial is a financial consulting and wealth management firm that sells insurance products. Kubler is the sole owner and president, secretary, treasurer, and director of Kubler Financial. Kubler is a signatory on the bank accounts of Kubler Financial.

16. **Midwest PEG, LLC** is a Nebraska limited liability company formed in 2008, with its principal place of business in Omaha, Nebraska. Kubler controls, is the majority owner of Midwest PEG and sole signatory on Midwest PEG's bank account. Midwest PEG was administratively dissolved as of June 21, 2023.

## FACTS

### **I. SUMMARY OF THE COMPLETE FRAUD CARRIED OUT BY KUBLER AND HIS COMPANIES**

17. From 2009 through 2013 – before the fraudulent scheme began – Kubler raised money from investors to invest in Defendants Aksarben and CFH Texas. Although this money was invested, those investments did not generate enough returns, so by 2017 (for CFH Texas) and 2019 (for Aksarben) both companies were left owing their initial investors millions of dollars and had little to no assets. Instead of winding down these entities, Kubler caused Defendants to fraudulently raise approximately \$5.6 million of additional funds by falsely promising investors, among other things, that Defendants would invest their funds in investment “opportunities,” and by getting some investors to transfer their interests in Aksarben and CFH Texas to Defendant Green Saddle, which Kubler also controlled.

18. However, Kubler did not invest the \$5.6 million; instead, he only invested a small portion of this amount (only approximately 4% was invested) and has been engaging in a fraudulent investment scheme with the remaining 96% (or approximately \$5.4 million). In classic Ponzi scheme fashion, he used approximately \$3.7 million of new investments to pay principal or profits owed to old investors, payments that could not have been made but for the new investor money as the underlying value of the assets were inadequate and the profits generated were insufficient to pay off the old investors (hereinafter “the Ponzi Scheme”). During the Ponzi Scheme, the Kubler Companies’ bank account balances were often very low (sometimes even zero or negative). When new investments came in, Kubler would typically deposit the new investor money into these bank accounts, and then very shortly thereafter

(oftentimes the same day) Kubler would use the new investor funds to make Ponzi payments to old investors.

19. From investor funds, Kubler also misappropriated at least \$1,028,376 of investor funds by transferring at least \$915,677 to himself, Kubler Consulting, and the Relief Defendants and having the Kubler Companies pay at least \$112,699 for his personal expense payments, such as paying the rent on his house. Kubler's total fraud has caused investors to lose millions of dollars while allowing him and the companies he controls to misappropriate more than \$1 million of investor funds.

## **II. KUBLER, KUBLER CONSULTING, AND AKSARBEN FRAUDULENTLY RAISED \$2.1 MILLION FOR AKSARBEN**

### **A. Background Regarding Kubler, Kubler Consulting, and Aksarben Prior to Aksarben First Fraudulent Offering.**

20. In May 2009, Kubler formed Aksarben to raise money to invest in commercial real estate companies that were purportedly going to develop, own, lease, and operate commercial real estate in Aksarben Village in Omaha, Nebraska.

21. Between 2009 and at least 2012, Kubler, Kubler Consulting, and Aksarben offered and sold limited liability company membership interests ("Units") in Aksarben. During this timeframe, Aksarben raised approximately \$7 million from at least 130 investors by selling Units in Aksarben.

22. Investors were told their funds would be used to make equity and debt investments in at least three other operating companies that would develop, own, lease, and operate commercial real estate in Aksarben Village in Omaha, Nebraska.

23. By the end of 2013, Aksarben had only one remaining investment in a company conducting business. This company owned and leased real estate (hereinafter "Real Estate

Operating Company”), in which Aksarben continued to hold a 50% equity interest as of the end of 2013.

24. Starting in 2016, Aksarben began selling its equity interest in the Real Estate Operating Company, and by the end of 2018, Aksarben had sold all its equity interest in the Real Estate Operating Company. By no later than 2019, Aksarben no longer owned any investments or business assets, and produced no income.

25. As of 2019, Aksarben still had approximately 120 investors from the initial 2009 to 2012 offering and owed these investors millions of dollars.

**B. Kubler, Kubler Consulting, and Aksarben Fraudulently Raised Approximately \$2.1 Million from 2019 to 2021, While Using More than \$2 Million of the Funds Raised for Ponzi Payments.**

26. Despite having little to no assets, from 2019 to 2021, Aksarben, Kubler, and Kubler Consulting offered and sold Aksarben Units to at least 14 investors, raising approximately \$1.5 million. Acting on behalf of Kubler Consulting and Aksarben, Kubler orally represented to prospective investors that he was raising funds for an investment opportunity. In fact, none of the investor funds were invested, and were instead used primarily to carry out the Ponzi Scheme.

27. In addition, in February 2021, Aksarben took \$655,000 from an elderly investor, who had also previously purchased Aksarben Units described in the above paragraph, in exchange for a purported 5% interest in the Units of the Real Estate Operating Company. This investor deposited \$500,000 and \$155,000 on February 4 and April 29, 2021, respectively, into Aksarben’s bank account. As explained further below, at the time of this sale, Aksarben no longer owned any interest in the Real Estate Operating Company.

28. Kubler testified that he was not entitled to take any compensation from this offering.



**1. Aksarben, Kubler, and Kubler Consulting Carried Out the Ponzi Scheme Using the \$2.1 Million Aksarben Raised from 2019 to 2021.**

29. Investor funds were not used for an investment opportunity, as Kubler represented. Indeed, Kubler, Kubler Consulting, and Aksarben did not invest any of the funds raised between 2019 and 2021. Instead, Aksarben used \$2 million of the \$2.1 million raised between 2019 and 2021 to carry out the Ponzi Scheme by making Ponzi payments to investors who had previously invested in Aksarben. Kubler also misappropriated at least \$78,850 of the remaining investor funds.

30. Examples of Kubler's use of investor funds to carry out the Ponzi Scheme by making Ponzi payments and misappropriating investor funds, include:

- a. On or about August 27, 2019, Aksarben, Kubler, and Kubler Consulting sold Aksarben Units to an investor for \$48,500, and the same day made a Ponzi payment of \$31,835 and misappropriated \$16,500 to Kubler Consulting.
- b. On or about September 6, 2019, Aksarben, Kubler, and Kubler Consulting sold Aksarben Units to another investor for \$75,000, and the same day made a Ponzi payment of \$33,038 and misappropriated \$41,975 to Kubler Consulting.
- c. On or about December 10, 2019, Aksarben, Kubler, and Kubler Consulting sold Aksarben Units to another investor for \$275,000, and shortly thereafter made Ponzi payments of approximately \$127,000 to nine different investors and misappropriated funds by paying \$6,200 for rent on Kubler's home.
- d. Aksarben, Kubler, and Kubler Consulting used the \$500,000 initially received for selling the non-existent interest in the Real Estate Operating Company to, among other things, make more than \$400,000 of Ponzi payments on February 8 and 9,

2021 and misappropriated approximately \$20,375 by paying that money to Kubler Financial between February 5 and 22, 2021.

- e. Aksarben, Kubler, and Kubler Consulting used the second payment of \$155,000 that it received for selling the non-existent interest to, among other things, make Ponzi payments.

31. The Ponzi Scheme created a false appearance that investor money was being used to invest in real investments or assets that generated profits and that Aksarben, Kubler, and Kubler Consulting were not misappropriating investor money.

32. Some investors invested additional money in Aksarben after having received Ponzi payments. For example, an investor invested \$48,500 in Aksarben on August 27, 2019. He received a Ponzi payment on September 17, 2019, of \$17,250, which came from funds from a different investor who had invested \$25,000 just four days earlier. The investor then invested an additional \$10,000 on September 30, 2019, and another \$10,000 on March 13, 2020.

33. Aksarben, Kubler and Kubler Consulting's scheme to defraud was also perpetuated by making the below materially misleading statements that omitted material facts.

**2. Aksarben, Kubler, and Kubler Consulting Made Materially Misleading Representations to Investors that Omitted Material Facts Regarding the \$2.1 Million Aksarben Raised from 2019 to 2021.**

34. In addition to the deceptive acts in furtherance of the Defendants' scheme to defraud described above, Aksarben, Kubler, and Kubler Consulting made at least three materially misleading statements to investors that omitted material facts necessary to render those statements not misleading.

35. First, Kubler, acting on behalf of Kubler Consulting and Aksarben, orally told at least one investor at the time he bought his Aksarben Units starting in July 2019 that his money

would be used for an investment “opportunity” to make profits through “equity redemptions” in Aksarben, or, possibly down the line, in Green Saddle.

36. Second, in January 2020, at least one investor signed an Aksarben subscription agreement from 2009 (“Aksarben 2009 Subscription Agreement”) with that date crossed out and the date “Jan 24<sup>th</sup>, 2020” hand-written in. The Aksarben 2009 Subscription Agreement represented that the investor was buying Units in Aksarben “in accordance with the terms and conditions of this Subscription Agreement . . . and the Company’s Operating Agreement,” which stated that Aksarben is organized to make equity and debt investments in other business entities in the Aksarben Village development in Omaha, Nebraska. However, when this agreement was signed, those other companies had completed their development of the real estate in Aksarben Village.

37. Kubler made the statements in the Aksarben 2009 Subscription Agreement and Aksarben’s Operating Agreement as he had ultimate authority over the content of these documents.

38. Third, Aksarben, Kubler, and Kubler Consulting entered into a February 1, 2021 purchase agreement with the investor who bought Aksarben’s (non-existent) 5% interest in the Real Estate Operating Company.

39. That purchase agreement made the following representations, among others:
- a. “WHEREAS, Seller [Aksarben] is the owner of a 7.0% Membership Percentage Interest in the Company [Real Estate Operating Company].”
  - b. “WHEREAS, Buyer has agreed to purchase and Seller has agreed to sell 71.428% of its above-referenced Membership Percentage Interest of the Company, which

will result in a 5.0% Membership Interest in the Company, pursuant to the terms and provisions set forth herein.”

- c. “Representations, Warranties and Covenants of Seller. Seller represents, warrants and covenants to Buyer as follows, each of which shall be true and correct as of the date of this Agreement and as of the date of Closing: . . . Seller has good and marketable title to the Membership Percentage Interests and, as of the date of Closing, will transfer and convey same to Buyer free and clear of all liens, security interests, adverse claims or encumbrances.”

40. Each of these three statements were materially false and misleading because Kubler, Kubler Consulting, and Aksarben omitted to state material facts necessary to render their representations not misleading. Kubler, Kubler Consulting, and Aksarben failed to disclose, among other things, that:

- a. none of the investor funds would be used to make investments or for any investment purpose;
- b. Aksarben was insolvent, owed substantial sums to existing investors, and did not own any assets or investments with which to pay back investors;
- c. Aksarben and Kubler would use investor funds to carry out the Ponzi Scheme and they would misappropriate their money; and
- d. Aksarben did not own any interest in the Real Estate Operating Company and it had transferred of all its interest to Green Saddle by the end of 2018.

41. Kubler, as the sole owner of Kubler Consulting, which was the sole manager of Aksarben, acted as an agent of Aksarben and Kubler Consulting, and had ultimate authority over

these three statements. Statements and representations Kubler made are also attributed to Kubler Consulting and Aksarben.

**C. Aksarben, Kubler, and Kubler Consulting Fraudulently Induced Investors to Sell Their Aksarben Units in Exchange for Units or a Promissory Note from Green Saddle Knowing Green Saddle Lacked Sufficient Assets to Pay Them.**

42. Kubler decided to wind down Aksarben at the end of 2021. Instead of winding down Aksarben and informing investors that Aksarben did not have any assets, Aksarben, Kubler, and Kubler Consulting offered the remaining approximately 85 Aksarben investors a choice to sell their Units back to Aksarben in exchange for either: (i) Units in Green Saddle, or (ii) a promissory note from Green Saddle that was to be paid off over the following few years. Neither option contributed any capital to Green Saddle.

43. Kubler told investors that he managed Green Saddle.

44. Aksarben, Kubler, and Kubler Consulting made this offer knowing that Green Saddle lacked sufficient assets to pay these investors back. As of the end of 2021, Green Saddle owned only a 10% equity interest in the Real Estate Operating Company valued at approximately \$209,000, which in 2021 paid no earnings (and paid only \$20,000 in 2019 and \$36,000 in 2022).

45. By 2022, approximately 50 Aksarben investors had selected one of these options; at that time, they were owed more than \$3.7 million from Green Saddle. The remaining approximately 40 Aksarben investors who did not pick an option and remained invested in Aksarben are owed more than \$1 million.

**1. Aksarben, Kubler, and Kubler Consulting Carried Out a Fraudulent Scheme by Inducing Some Investors to Divest from Aksarben and Invest in Green Saddle.**

46. Aksarben, Kubler Consulting, and Kubler's offer to purchase the Aksarben Units in exchange for Units or promissory notes of Green Saddle were deceptive acts because Kubler knew Green Saddle lacked sufficient assets to pay these investors back. Instead of dissolving

Aksarben and informing investors that there were not any assets remaining to distribute, Aksarben, Kubler, and Kubler Consulting made it appear that investors could exchange their investment in Aksarben for an investment in Green Saddle that would be able to pay profits. In reality, nearly all the payments that these investors later received from Green Saddle were not from profits from Green Saddle's investments; instead, they were Ponzi payments or were paid by another one of the Kubler Companies from an asset that company owned.

47. Aksarben, Kubler, and Kubler Consulting perpetuated this scheme to defraud by making the below materially misleading statements that omitted material facts.

**2. Aksarben, Kubler, and Kubler Consulting Made Materially Misleading Representations to Investors in the Aksarben-Green Saddle Option Letter that Omitted Material Facts.**

48. Kubler met with at least 50 Aksarben investors to offer them the option to transfer their interest to Green Saddle. During those meetings, Kubler gave the investors a letter (the "Aksarben-Green Saddle Option Letter"), dated November 1, 2021, that set forth the option of transferring their Units to Green Saddle or receiving a promissory note. Kubler also emailed the Aksarben-Green Saddle Option Letter to other Aksarben investors.

49. Kubler made the statements in this letter. He reviewed and approved, and had ultimate authority over the content in, the Aksarben-Green Saddle Option Letters.

50. The representations that Aksarben, Kubler, and Kubler Consulting made in the Aksarben-Green Saddle Option Letter include:

Aksarben is terminating effective December 31, 2021. This is due to a multitude of factors and that the original purpose of the company being no longer viable to continue. In addition, it has been determined by management that it is best to liquidate due to post pandemic conditions. Aksarben Evolution, LLC will be officially terminated as of December 31, 2021.

50. These statements in the Aksarben-Green Saddle Option letter omitted material information because Kubler, Aksarben, and Kubler Consulting omitted to state material facts necessary to render these representations to investors not misleading, including that:

- a. in reality, Aksarben was being dissolved since it had little to no assets;
- b. the value of investors current equity in Aksarben was zero or negative;
- c. future payments would primarily not come from legitimate assets or investments;
- d. Green Saddle was raising new investor money and not using it to invest; and
- e. Green Saddle lacked sufficient assets to repay the approximately 50 investors who selected an equity option and were owed approximately \$3.7 million, since its only asset was its 10% interest in the Real Estate Operating Company valued at only \$209,000 and that only generated between \$0 to \$36,000 a year in earnings.

**D. Aksarben, Kubler, and Kubler Consulting Acted with Scienter Regarding the \$2.1 Million Aksarben Raised from 2019 to 2021 and the Aksarben Green-Saddle Option Letter.**

51. Kubler knew or was reckless in not knowing, and should have known, that he was engaging in the deceptive conduct and misstatements alleged above and that the conduct worked to defraud investors. Examples include the following:

- a. Kubler had authority over and controlled Aksarben's bank accounts, he knew investor funds were deposited into those accounts and that investor funds were not being invested, and he directed the payments from those accounts to make Ponzi payments and to misappropriate investor funds;
- b. Kubler controlled Aksarben and thus knew that it had sold its interest in the Real Estate Operating Company in 2018 and held no interest that Aksarben could sell to an investor in 2021;

- c. Kubler also controlled Green Saddle and thus knew Green Saddle did not have sufficient assets to repay Aksarben investors who exchanged their securities for Units or promissory notes of Green Saddle; and
- d. Kubler provided false account statements to an Aksarben investor that showed the value of her Aksarben Units was \$820,625 and \$576,875 in December 2022 and February 2023, respectively, when Aksarben owned no assets.

52. Kubler, as the sole owner of Kubler Consulting, which was the manager of Aksarben, acted as an agent of Aksarben and Kubler Consulting, and his scienter and conduct is imputed to Aksarben and Kubler Consulting.

### **III. KUBLER AND CFH TEXAS FRAUDULENTLY RAISED \$1.1 MILLION FOR CFH TEXAS**

#### **A. Background Regarding Kubler and CFH Texas Prior to CFH Texas First Fraudulent Offering.**

53. In or around 2009, Kubler formed CFH Texas to invest in commercial real estate companies.

54. Starting in 2011 or 2012, Kubler and CFH Texas offered and sold Units in CFH Texas to at least 13 investors and raised approximately \$640,000. Each of these investors had also invested in Aksarben.

55. CFH Texas used investor funds to invest in two companies that either operated restaurants or owned the real estate in which the restaurants operated.

56. In late 2016, CFH Texas sold its interest in one of the restaurant companies.

57. By the start of 2017, CFH Texas's only asset was a 5% interest in a commercial real estate company that leased space to a sports bar ("Restaurant Leasing Company"). This interest was valued at approximately \$70,000 and provided approximately \$3,700 a year in earnings.



58. By the end of 2016, 13 investors remained invested in CFH Texas and were owed more than \$600,000.

**B. From 2017 Through the Present, CFH Texas and Kubler Fraudulently Raised at Least \$1.1 Million.**

59. From 2017 to present, CFH Texas and Kubler offered and sold Units in CFH Texas to at least 18 investors, raising approximately \$1.1 million. Kubler raised these funds by falsely promising investors that he would use their funds for investments, and he would distribute returns of capital or profits on a pro rata basis. In fact, however, none of those funds were invested, and were instead used to, among other things, carry out the Ponzi Scheme, fund the misappropriation of investor funds, and make distributions on a non-pro rata basis.

60. Kubler testified he received no compensation from CFH Texas.

**1. CFH Texas and Kubler Engaged in a Scheme to Defraud in Connection with the CFH Texas' Offering that Began in 2017.**

61. Acting on behalf of CFH Texas, CFH Texas and Kubler did not make any investments with the \$1.1 million raised from investors and did not make distributions on a pro rata basis. Instead, CFH Texas and Kubler made Ponzi payments of approximately \$380,000 and misused the remaining approximately \$700,000, including misappropriating approximately \$79,000.

62. Kubler committed numerous deceptive acts in connection with the CFH Texas' offering that began in 2017 by not using these funds as promised, including, among other things:

- a. On or about October 27, 2017, CFH Texas and Kubler sold an investor \$125,000 worth of CFH Texas Units. The same day, CFH Texas and Kubler made a \$1,731 Ponzi payment to one CFH Texas investor, which was made on a non-pro rata basis because no other investors received a payment, and among other thing,

improperly transferred \$45,000 to another Kubler-affiliated entity for no legitimate business purposes or investment.

- b. On or about November 13, 2019, CFH Texas and Kubler sold another investor \$150,000 worth of CFH Texas Units. The same day, Kubler and CFH Texas misappropriated \$2,500 to Kubler Financial and paid \$6,100 for Kubler's rent. The same day, CFH Texas and Kubler also transferred \$60,000 to Aksarben, which immediately made a \$58,880 Ponzi payment to an Aksarben investor on a non-pro-rata basis because no other Aksarben investors received a payment. Over the next two days CFH Texas made an \$11,550 Ponzi payment and a \$2,000 Ponzi payment to CFH Texas investors. These payments were made on a non-pro-rata basis because no other CFH Texas investors received a payment.
- c. On or about February 13, 2020, CFH Texas and Kubler sold another investor \$39,500 worth of CFH Texas Units. Over the next few days, Kubler and CFH Texas, among other things, misappropriated investor funds by paying approximately \$6,250 for Kubler's rent.
- d. On or about March 26, 2020, CFH Texas and Kubler sold an investor \$25,000 worth of CFH Texas Units. The same day, CFH Texas and Kubler made a \$1,678 Ponzi payment to one CFH Texas investor, which was made on a non-pro rata basis because no other investors received a payment, and transferred \$17,000 to Aksarben, which Aksarben used to make a Ponzi payment of \$16,654.
- e. On or about March 31, 2020, CFH Texas and Kubler sold an investor \$40,000 worth of CFH Texas Units. The same day, CFH Texas and Kubler misappropriated \$1,750 to Kubler Financial. The next day, CFH Texas and

Kubler transferred \$36,900 to Aksarben, which made a Ponzi payment of \$31,835 to one investor, which was made on a non-pro rata basis because no other investors received a payment.

63. The Ponzi payments made by CFH Texas and Kubler created a false appearance of profitability, that investor money was being used for investments, that CFH Texas had sufficient investments or assets to pay back investors, and that CFH Texas and Kubler were not misappropriating investor money.

64. CFH Texas and Kubler's scheme to defraud was also perpetuated by making the below materially misleading statements that omitted material facts.

**2. CFH Texas and Kubler Made Materially Misleading Statements that Omitted Material Facts in Connection with the Fraudulent Offering Where CFH Texas Raised at Least \$1.1 Million.**

65. CFH Texas and Kubler also made at least two materially misleading statements to investors that omitted material facts in connection with the fraudulent offering where CFH Texas raised at least \$1.1 million from investors.

66. First, Kubler orally told an investor at the time he bought his CFH Texas Units in March 2021 that his money would be used for an investment "opportunity" to make profits through "equity redemptions" in CFH Texas, or possibly, down the line in another Kubler Company, Green Saddle.

67. Second, investors who bought CFH Texas Units signed a CFH Texas operating agreement dated March 1, 2020 ("CFH Texas Operating Agreement") that provided, in part, that "Company's profits or losses for any fiscal year shall be allocated among the Members in accordance with their respective cumulative capital contributions" and to "the extent that the Company's assets exceed its liabilities . . . the Company, as reasonably determined by the Manager, may make nonliquidating distributions of cash . . . on a pro rata basis in accordance

with the Members' respective Percentage Interests." For example, an investor who bought \$25,000 worth of CFH Texas Units in March 2020, signed a CFH Texas Operating Agreement dated March 1, 2020. Other CFH Texas investors signed identical operating agreements, dated around the time they bought CFH Texas Units.

68. Each of these statements were materially false and misleading because Kubler and CFH Texas omitted to state material facts necessary to render the representations not misleading. Kubler and CFH Texas failed to disclose, among other things, that:

- a. none of the investor funds would be used to make investments or for any investment purpose;
- b. they would use investor money to carry out the Ponzi Scheme and to fund their misappropriation of investor funds;
- c. CFH Texas was insolvent, owed substantial sums to investors, and did not own any assets or investments with which to pay back existing or new investors; and
- d. CFH Texas and Kubler would not make distributions on a pro rata basis because not all investors received payments at the same time other investors received payments.

69. CFH Texas and Kubler made the above statements. Kubler, as the sole manager of CFH Texas, acted as an agent of CFH Texas, and had ultimate authority over the statements. The statements and representations Kubler made are also attributed to CFH Texas.

**C. Kubler Fraudulently Induced Investors to Sell Their CFH Texas Units in Exchange for Units in Green Saddle or Promissory Notes From Green Saddle, Knowing Green Saddle Lacked Sufficient Assets to Pay Them.**

70. Kubler authored or drafted a letter to investors dated November 10, 2022, stating that he planned to terminate CFH Texas by the end of 2023 ("CFH Texas-Green Saddle Option Letter"). In the CFH Texas-Green Saddle Letter, the remaining CFH Texas investors were

given a choice to sell their Units back to CFH Texas in exchange for: (i) Units in Green Saddle, or (ii) a promissory note from Green Saddle that was to be paid off over the next few years.

Neither option contributed any capital to Green Saddle.

71. Kubler represented to investors that he was managing Green Saddle.

72. Kubler and CFH Texas made this offer knowing that Green Saddle lacked sufficient assets to pay these investors back. As of the end of 2021, Green Saddle owned only a 10% interest in the Real Estate Operating Company (formerly owned by Aksarben) valued at approximately \$209,000, that in 2020 and 2021 paid no earnings (and only \$20,000 in 2019 and \$36,000 in 2022).

73. By June 2023, at least two CFH Texas investors selected one of these options and were collectively owed approximately \$225,000 from Green Saddle; approximately 25 CFH Texas investors, as of June 2023, had not yet picked an option and remain invested in CFH Texas and are owed over \$1.5 million by CFH Texas.

**1. CFH Texas and Kubler Engaged in Deceptive Acts to Induce Investors to Sell Their CFH Texas Units in Exchange for Units or Promissory Notes from Green Saddle.**

74. CFH Texas and Kubler's offer to purchase CFH Texas Units in and exchange them for Units or promissory notes from Green Saddle were deceptive acts because Kubler knew Green Saddle lacked sufficient assets to pay these investors back. Instead of winding down CFH Texas and informing investors that they would receive a minimal final distribution since CFH Texas had little to no assets, CFH Texas and Kubler made it appear that investors could exchange their investment in CFH Texas for an investment in Green Saddle that would be able to pay profits. In reality, nearly all of payments that these investors later received from Green Saddle were not from profits; instead, these payments were Ponzi payments or were paid by another one of the Kubler Companies from an asset that company owned.

75. CFH Texas and Kubler perpetuated this scheme to defraud by making the below materially misleading statement that omitted material facts.

**2. CFH Texas and Kubler Made Materially Misleading Representations to Investors in the CFH Texas-Green Saddle Option Letter.**

76. Kubler planned to wind down CFH Texas by the end of 2023 and offer CFH Texas investors the option to transfer their interests to Green Saddle. To facilitate this effort, Kubler used the CFH Texas-Green Saddle Option Letter, which is nearly identical to the Aksarben-Green Saddle Option Letter. Kubler met with at least two CFH Texas investors and showed them the CFH Texas-Green Saddle Option letter. These two investors each signed the CFH Texas-Green Saddle Option Letter after picking an option.

77. In addition to the representation about being able to convert their interests into Units in Green Saddle or a promissory note from Green Saddle, CFH Texas and Kubler made the following representations, among others, in the CFH Texas-Green Saddle Option Letter:

CFH Texas LLC is terminating effective in 2023, due to a multitude of factors. In addition, it has been determined by management that it is best to liquidate due to post pandemic conditions. CFH Texas, LLC will be officially terminated as of before December 31, 2023.

78. The statements in the CFH Texas-Green Saddle Option Letter were materially false and misleading because Kubler and CFH Texas omitted to state material facts necessary to render the representations not misleading. Kubler and CFH Texas failed to disclose that:

- a. in reality, CFH Texas was being dissolved since it had little to no assets;
- b. the value of investors current equity in CFH Texas was zero or negative;
- c. future payments would primarily not come from legitimate assets or investments;
- d. the value of the promissory note or equity value in Green Saddle was not connected to any actual value of the member's equity interest in CFH Texas; and

- e. Green Saddle lacked sufficient assets to pay the two CFH Texas investors who selected an option to obtain Units or promissory notes from Green Saddle since Green Saddle had little to no assets.

79. CFH Texas and Kubler made the above statements. The CFH Texas-Green Saddle Option letter states, “Dear CFH Texas LLC Investor” and is written to indicate it is from CFH Texas and Kubler. Kubler, as the sole manager of CFH Texas, acted as an agent of CFH Texas, and had ultimate authority over the statements. The statements and representations Kubler made are also attributed to CFH Texas.

**D. CFH Texas and Kubler Acted with Scienter Regarding the \$1.1 Million CFH Texas Raised and the CFH Texas-Green Saddle Option Letter.**

80. Kubler knew or was reckless in not knowing, and should have known, that he was engaging in the deceptive conduct and misstatements alleged above and that the conduct worked to defraud investors. Examples include the following:

- a. Kubler had authority over and controlled CFH Texas’s bank accounts, he knew investor funds were deposited into those accounts and that investor funds were not being invested, and he directed the payments from those accounts to make Ponzi payments and to make distributions on a non-pro rata basis;
- b. Kubler also controlled Green Saddle and thus knew Green Saddle did not have sufficient assets to repay CFH Texas investors who exchanged their securities for Units in or promissory notes from Green Saddle; and
- c. Kubler provided fabricated and false account statements to a CFH Texas investor in December 2022 and February 2023, showing her investment in CFH Texas was worth \$764,570 in the December statement and \$802,799 in the February statement, when CFH Texas lacked sufficient assets to represent to this single

investor that her investment in CFH Texas were worth these purported amounts.

In reality, CFH Texas's only assets were valued at approximately \$70,000.

81. Kubler, as the sole manager of CFH Texas, acted as an agent of CFH Texas, and his scienter and conduct are imputed to CFH Texas.

#### **IV. KUBLER AND GREEN SADDLE FRAUDULENTLY RAISED \$600,000 FOR GREEN SADDLE**

##### **A. The Background and History of Green Saddle Prior to Its Fraudulent Offering.**

82. Kubler formed Green Saddle in January 2014. Green Saddle did not engage in any business operations before 2017 and did not file a tax return until 2021.

83. In or around 2017, Kubler began to consolidate the Kubler Companies, and he used Green Saddle as a purported exit strategy for some Aksarben and CFH Texas investors.

84. Green Saddle had no assets or investments until the end of 2018, when Aksarben transferred its remaining interest in the Real Estate Operating Company to Green Saddle. This interest was worth less than \$350,000 in the 2017 to 2018 timeframe. In 2019 and 2020, the Real Estate Operating Company only paid Green Saddle \$20,000 and \$0 in earnings, respectively.

85. As alleged above, certain of the Aksarben and CFH Texas investors' interests were converted to Green Saddle Units between 2021 and 2023. After converting Aksarben and CFH Texas investors' interests into Green Saddle Units or promissory notes, Green Saddle owed these investors more than \$3.7 million.

##### **B. From 2021 to the Present, Kubler and Green Saddle Fraudulently Raised More Than \$600,000 for Green Saddle From At Least Six Investors.**

86. From 2021 to the present, Green Saddle and Kubler offered and sold Green Saddle Units to at least 6 investors, raising approximately \$645,000. Kubler raised these funds by falsely promising investors that he would use their funds to generate profits and he would



distribute returns of capital or profits on a pro rata basis. However, from 2021 to present, Green Saddle and Kubler did not use investor money that he fraudulently raised to make investments, generate profits, or make distributions on a pro rata basis. Instead, he used investor funds to make Ponzi payments and to fund his misappropriation.

87. Kubler was not entitled to any compensation as the manager of Green Saddle, and he testified that he received no compensation from Green Saddle.

**1. Green Saddle and Kubler Engaged in Deceptive Acts in Furtherance of a Scheme to Defraud Investors.**

88. Green Saddle and Kubler committed numerous deceptive acts in connection with the Green Saddle offering by not using these funds as promised, including, among other things:

- a. On or about October 8, 2021, Green Saddle and Kubler sold an investor \$50,000 worth of Green Saddle Units. The same day, Green Saddle and Kubler misappropriated those funds by transferring \$16,650 to Kubler Financial and \$3,700 to Kubler, and, about a week later, continued to misappropriate funds by paying Kubler Financial \$13,500 and withdrawing \$1,500 of cash.
- b. On or about January 4, 2022, Green Saddle and Kubler sold another investor \$385,000 worth of Green Saddle Units. A week later, Green Saddle and Kubler misappropriated \$30,475 of this amount to Kubler Financial and made a Ponzi payment of \$347,269.
- c. On or about February 23, 2023, a different investor deposited \$75,000 into Green Saddle's bank account, likely for the purchase of a Green Saddle Unit or a promissory note. The same day Green Saddle and Kubler wrote checks to at least five investors, making over \$10,000 in Ponzi payments. These payments were not made on a pro-rata basis because no other investors received a payment at this

time. Three days after this investor's deposit, Kubler misappropriated \$15,250 of these funds by making a cash withdrawal.

89. The Ponzi payments made by Kubler and Green Saddle created a false appearance of profitability, that investor money was used to invest, that Green Saddle had sufficient investments or assets to pay back investors, and that Green Saddle and Kubler were not misappropriating investor money.

90. Green Saddle and Kubler's scheme to defraud was also perpetuated by making the below materially misleading statements that omitted material facts.

**2. Green Saddle and Kubler Made Materially Misleading Representations to Investors that Omitted Material Facts in Connection with the Offering.**

91. In addition to the deceptive acts in furtherance of the scheme to defraud described above, Green Saddle and Kubler also made materially misleading statements to investors that omitted material facts necessary to render those statements not misleading.

92. In January 2022, at the time an investor bought her Green Saddle Units, Kubler told the investor that her money would be used to make profits through Green Saddle because it was an operating business and owned Units in a real estate company.

93. In addition, investors who bought Green Saddle Units signed a Green Saddle operating agreement ("Green Saddle Operating Agreement") evidencing the purchase of those Units. Kubler reviewed and approved the Green Saddle Operating Agreement.

94. The Green Saddle Operating Agreement provided, in part, that "[a]s their initial Capital Contributions to the Company, the Members will contribute all of their right, title, and interest in and to the property described on the Schedule of Members."

95. The Green Saddle Operating Agreement defined Membership Interest: "Membership Interest means the ownership interest and rights of a Member in the Company,

including the Member's right to a distributive share of the profits and losses, the distributions, and the property of the Company.”

96. The Green Saddle Operating Agreement provided that “[d]istributions will be made on a *pro rata* basis in accordance with the Members’ Membership Interests.” [Emphasis in the original].

97. These statements were materially false and misleading because Kubler and Green Saddle omitted to state material facts necessary to render his oral representations to the investor and the statements in the Green Saddle Operating Agreement not misleading. The material information that Kubler and Green Saddle failed to disclose included, among other things:

- a. none of the investor funds would be used to make investments or for any investment purpose;
- b. Green Saddle was insolvent and owed substantial sums to existing investors and lacked sufficient assets or investments with which to pay back investors;
- c. Green Saddle and Kubler would use investor funds to fund the Ponzi Scheme and they would misappropriate their money; and
- d. that distributions would not be made on a pro-rata basis because not all investors received payments at the same time other investors received payments.

98. Green Saddle and Kubler made the above statements. Kubler, as the sole manager of Green Saddle, acted as an agent of Green Saddle, and had ultimate authority over the statements. The statements and representations Kubler made are also attributed to Green Saddle.

**C. Green Saddle and Kubler Acted with Scienter.**

99. Kubler knew or was reckless in not knowing, and should have known, that he was engaging in the deceptive conduct and misstatements alleged above and that the conduct worked to defraud investors. Examples include the following:

- a. Kubler had authority over and controlled Green Saddle's bank accounts, he knew investor funds were deposited into those accounts and that investor funds were not being invested, and he directed the payments from those accounts to make Ponzi payments, to misappropriate investor money, and to make distributions on a non-pro rata basis; and
- b. Kubler also controlled Green Saddle and thus knew Green Saddle did not have sufficient assets to repay Aksarben and CFH Texas investors who exchanged their securities for Units in or promissory notes from Green Saddle.

100. Kubler, as the sole manager of Green Saddle, acted as an agent of Green Saddle, and his scienter and conduct are imputed to Green Saddle.

**V. KUBLER AND AV BHILL FRAUDULENTLY RAISED \$1.8 MILLION FOR AV BHILL**

**A. Background Regarding Kubler and AV Bhill Prior to AV Bhill Fraudulent Offering.**

101. Kubler formed AV Bhill in April 2016 to invest in the Restaurant Operating Company and raised money from investors to do so.

102. In September 2016, the Restaurant Operating Company issued a promissory note to AV Bhill ("the Restaurant Note"), whereby the Restaurant Operating Company promised to pay the principal sum of \$550,000, along with interest-only quarterly payments at an annual rate of 7.95% for 48 months.

103. The note was modified in 2018 to extend the maturity date to August 31, 2022.

104. From January 2017 through January 2019, the Restaurant Operating Company made interest-only payments totaling \$96,893 and then stopped, until 2022, when it began paying back-interest owed, as well as principal payments.

105. By the time the Restaurant Operating Company had made a final payment on the note in October 2022, it had paid AV Bhill, in total, \$767,198 in interest and principal.

**B. Kubler and AV Bhill Fraudulently Raised Approximately \$1.8 Million From at Least 18 Investors from 2016 to the Present.**

106. From 2016 to the present, AV Bhill and Kubler raised approximately \$1.8 million from at least 18 investors through the sale of Units and promissory notes. Kubler raised these funds by falsely promising investors that he would use their funds for investment opportunities, and he would allocate returns of profits on a pro rata basis. However, from 2016 to the present, AV Bhill and Kubler only used approximately \$227,500 of the funds raised for an investment, while the remaining funds were not used for investment opportunities or distributed on a pro rata basis. Instead, these funds were used to make Ponzi payments and were misappropriated.

107. Kubler testified that he received no compensation from AV Bhill.

**1. AV Bhill and Kubler Engaged in Deceptive Acts in Furtherance of a Scheme to Defraud Investors.**

108. AV Bhill and Kubler committed numerous deceptive acts in connection with the AV Bhill offering by not using these funds as promised, including:

- a. On or about June 2, 2016, an investor deposited \$150,000 into AV Bhill's bank account and on June 6, 2016, another investor deposited \$50,000 into AV Bhill's account. Kubler then misappropriated all these funds by sending more than \$200,000 to Midwest PEG.
- b. On or about August 31 and October 13, 2016, a different investor loaned money to AV Bhill in the amounts of \$260,000 and \$140,000, respectively, as evidenced by promissory notes. Of this amount, Kubler misappropriated \$159,000 by sending this amount to Midwest PEG.

- c. On or about April 29, 2020, AV Bhill and Kubler sold an investor \$80,000 worth of AV Bhill Units. Over the next two days, Kubler and AV Bhill made three Ponzi payments totaling more than \$60,000 on a non-pro-rata basis because no other AV Bhill investors received payments at this time.
- d. On or about December 30, 2022, AV Bhill issued a \$50,000 promissory note to another investor, for her deposits to AV Bhill of \$25,000 and \$25,000 on December 13, and 30, 2022, respectively. AV Bhill and Kubler improperly used these funds to cover approximately \$10,000 in bank overdrafts that AV Bhill incurred and misappropriated approximately \$13,000 by paying two months of Kubler's rent. From the December 30, 2022 deposit, among other things, Kubler also misappropriated \$7,830.
- e. On or about March 28, 2023, an investor deposited \$45,000 into AV Bhill's bank account, likely for the purchase of Units or a promissory note. The same day, AV Bhill and Kubler transferred \$21,000 to CFH Texas for no consideration. Over the next week, AV Bhill and Kubler made a \$7,778 Ponzi payment on a non-pro-rata basis because no other AV Bhill investors received a payment at this time and made transfers totaling \$33,500 to CFH Texas and Green Saddle for no consideration.
- f. On or about May 15, 2023, the same investor who invested in paragraph e, deposited \$30,000 into AV Bhill's bank account, likely for the purchase of Units or a promissory note. Over the next two weeks, among other things, Kubler and AV Bhill transferred more than \$16,000 to CFH Texas, misappropriated more than \$1,800 in cash, and transferred \$6,750 to Green Saddle.

109. The Ponzi payments made by Kubler and AV Bhill created a false appearance of profitability, that investor money was used to invest, that AV Bhill had sufficient investments or assets to pay back investors, and that AV Bhill and Kubler were not misappropriating investor money.

**2. AV Bhill and Kubler Made Ponzi Payments and Misappropriated Proceeds from the Restaurant Operating Company's Repayment of the Note.**

110. AV Bhill and Kubler also made Ponzi payments and misappropriated the monies received from the Restaurant Operating Company's repayment of the note.

111. After the Restaurant Operating Company made back-interest payments and principal payments on its note throughout 2022, including making a final payment on the note, Kubler and AV Bhill used the vast majority of those funds to make Ponzi payments and misappropriated these funds by, among other things:

- a. On or about August 31, 2022, after receiving funds from the Restaurant Operating Company, Kubler misappropriated \$50,000 and made payments to Kubler Financial totaling \$40,000, when Kubler was not entitled to compensation and Kubler Financial provided no consideration for the transfer; and
- b. On or about October 12, 2022, after the Restaurant Operating Company made a final payment of \$134,303, Kubler and AV Bhill misappropriated the money by sending a total of \$59,150 to Kubler Financial. Kubler and AV Bhill also made Ponzi payments totaling \$40,000 and \$34,550 to another AV Bhill investor in non-pro-rata fashion.

112. Green Saddle and Kubler's scheme to defraud was also perpetuated by making the below materially misleading statements that omitted material facts.

### **3. AV Bhill and Kubler Made Materially Misleading Statements that Omitted Material Facts in Connection with the Offering**

113. In addition to the deceptive acts in furtherance of the scheme described above, AV Bhill and Kubler also made at least two materially misleading statements to investors that omitted material facts.

114. First, investors who bought AV Bhill Units signed an AV Bhill operating agreement (“AV Bhill Operating Agreement”), dated July 1, 2020, evidencing the purchase of those Units. For example, the investor in paragraph 119 who bought \$65,000 worth of CFH Texas Units in July 2020, signed an AV Bhill Operating Agreement and dated it July 1, 2020, in the signature. Other AV Bhill investors signed identical operating agreements, dated around the time they bought AV Bhill Units.

115. The AV Bhill Operating Agreement provided, in part, that the “Company is established and operated to make a profit.” It further provided that “[a]s their Initial Capital Contributions to the Company, the Members shall contribute all of their right, title, and interest in and to the property described in Exhibit A.” However, there was no Exhibit A attached to the AV Bhill Operating Agreement.

116. The AV Bhill Operating Agreement defined Membership Interest: “Membership Interest means the ownership interest and rights of a Member in the Company, including the Member’s right to a distributive share of the profits and losses, the distributions, and the property of the Company.”

117. The AV Bhill Operating Agreement further provided, in part, that all “items of income, gain, loss, deduction, and credit, whether resulting from the Company’s operations or in



connection with its dissolution, must be allocated. . . in proportion to their respective Membership Interests.”

118. Second, Kubler told one investor at the time he bought \$65,000 worth of AV Bhill Units around July 1, 2020, that his money would be used for an investment “opportunity” to make profits through the promissory note from the Restaurant Operating Company.

119. These statements were materially false and misleading because Kubler and AV Bhill omitted to state material facts necessary to render his oral representations to the investor and the statements in the AV Bhill Operating Agreement not misleading. The material information that Kubler and Kubler failed to disclose included, among other things:

- a. they would not use most of the investor funds to make investments or for any investment purpose;
- b. AV Bhill was insolvent and owed substantial sums to investors and lacked sufficient assets or investments with which to pay back investors;
- c. AV Bhill and Kubler would use investor funds to fund the Ponzi Scheme and they would misappropriate their money; and
- d. they would not make allocations of profits on a pro-rata basis because not all investors received payments at the same time other investors received payments.

120. AV Bhill and Kubler made the above statements. Kubler, as the sole manager of AV Bhill, acted as an agent of AV Bhill, and had ultimate authority over the statements. The statements and representations Kubler made are also attributed to AV Bhill.

**C. AV Bhill and Kubler Acted with Scienter.**

121. Kubler knew or was reckless in not knowing, and should have known, that he was engaging in the deceptive conduct and misstatements alleged above and that the conduct worked to defraud investors. A few examples:

- a. Kubler had authority over and controlled AV Bhill's bank accounts, he knew investor funds were deposited into those accounts and that investor funds were not being invested (except for a small portion in 2016), and he directed the payments from those accounts to make Ponzi payments, to misappropriate investor money, and to make distributions on a non-pro rata basis; and
- b. Kubler provided fabricated and false account statements to an AV Bhill investor in December 2022 and February 2023, showing her investment in AV Bhill was worth \$697,545 in the December statement and \$767,300 in the February statement, when AV Bhill no longer had any assets and its Restaurant Note had been paid back in full.

122. Kubler, as the sole manager of AV Bhill, acted as an agent of AV Bhill, and his scienter and conduct are imputed to AV Bhill.

## **VI. THE ABOVE OFFERINGS WERE OFFERINGS OF SECURITIES**

123. Defendants' conduct took place in connection with the offer, purchase, and sale of securities, including Units in Aksarben, AV Bhill, CFH Texas, and Green Saddle, and promissory notes issued by AV Bhill and Green Saddle. The Kubler Companies offered and sold investments in securities as defined in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act [15 U.S.C. §§ 77b(a)(1) and 78c(a)(10)].

124. Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act define "security" to include, among other things, any "note" or "investment contract."

125. The Units offered in Aksarben, AV Bhill, CFH Texas, and Green Saddle are securities as defined by the federal securities laws as each of them are investment contracts.

126. Investors who purchased Units in Aksarben, AV Bhill, CFH Texas, and Green Saddle, had their funds pooled in Kubler-controlled bank accounts, and invested with an

expectation of profits through the efforts of Kubler, Kubler Consulting, and the Kubler Companies. The financial success or failure of the investors' investment was inextricably tied to the efforts of Kubler, Kubler Consulting, and the Kubler Companies. Investors had no role in the management of these companies and relied exclusively on Kubler to manage these companies and conduct their business affairs.

127. In addition, the \$655,000 an investor spent to purportedly purchase a 5% interest in the Real Estate Operating Company was in connection with and in the offer and sale of a security. The equity interest that the investor purportedly bought were Units, which Aksarben previously owned.

128. The AV Bhill and Green Saddle promissory notes are securities in the form of notes. Investors purchased notes issued by AV Bhill and Green Saddle to earn profits in the form of a payment that was for more than what they loaned. The notes offered by Kubler, AV Bhill, and Green Saddle, were offered and sold to investors specifically for investors to make a return. These notes were an investment transaction, not a consumer or commercial transaction.

## **VII. KUBLER'S KEY ROLE IN THE FRAUD**

129. Kubler carried out and orchestrated this fraud. He used multiple entities under his control to carry out the Ponzi Scheme, make Ponzi payments, and to misappropriate investor funds.

130. Kubler personally benefitted, directly or indirectly, from the investor funds that were misappropriated by transferring money to himself, Kubler Consulting and the Relief Defendants.

131. Kubler also personally benefitted from misappropriation that occurred by having the Kubler Companies pay his personal expenses, including, but not limited to, payments for rent

on his California home, payment to a winery, payments to purchase antiques, and payments for an on-line dating services.

132. Kubler directly interacted with investors and was the maker of the misleading representations that omitted material information.

133. Kubler controlled each of the other Defendants and Relief Defendants, and his knowledge and actions should be imputed to each of them.

134. Kubler had a very close relationship and acted in concert with the other Defendants and Relief Defendants.

135. Both Kubler and the other Defendants engaged in securities laws violations and Kubler was a necessary and substantial factor in the violations of the federal securities laws by the other Defendants.

#### **VIII. RELIEF DEFENDANTS RECEIVED PROCEEDS FROM DEFENDANTS' FRAUD TO WHICH THEY HAVE NO LEGITIMATE CLAIM**

136. Kubler Financial received approximately \$295,166 in misappropriated investor funds. Kubler Financial has no legitimate claim to the misappropriated investor funds that it received.

137. Midwest PEG received approximately \$389,450 in misappropriated investor funds. Midwest PEG has no legitimate claim to the misappropriated investor funds that it received.

138. Each of the Relief Defendants received proceeds from Defendants' fraud for which they provided no goods or services and to which they have no legitimate claim. The Relief Defendants should return the proceeds they received from Defendants' fraud to defrauded investors.

**FIRST CLAIM FOR RELIEF**  
**Section 10(b) and Rule 10b-5 of the Exchange Act**  
**(All Defendants)**

139. The SEC realleges and incorporates by reference in this claim for relief all the allegations set forth above.

140. Defendants, directly or indirectly, in connection with the purchase or sale of a security, and by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, knowingly and recklessly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

141. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

**SECOND CLAIM FOR RELIEF**  
**Section 17(a) of the Securities Act**  
**(All Defendants)**

142. The SEC realleges and incorporates by reference in this claim for relief all the allegations set forth above.

143. Defendants, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, acting with the requisite state of mind: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by means of untrue statements of a material fact or by

omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (3) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

144. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act. 15 U.S.C. §§ 77q(a).

### **THIRD CLAIM FOR RELIEF**

#### **Disgorgement from Relief Defendants – Pursuant to Section 6501 of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, and Equitable Principles (Relief Defendants Kubler Financial and Midwest PEG)**

145. The SEC realleges and incorporates by reference in this claim for relief the allegations set forth above.

146. Each Relief Defendant obtained money, property, and assets that are the proceeds, or are traceable to the proceeds, of the fraud and violations of the securities laws by Defendants.

147. Each Relief Defendant has no legitimate claim to these illicit proceeds or assets, having obtained the funds under circumstances in which it is not just, equitable, or conscionable for it to retain the funds or assets, and therefore each of them has been unjustly enriched.

### **PRAYER FOR RELIEF**

WHEREFORE, the SEC seeks the following relief:

1. Find that the Defendants committed the violations alleged in this Complaint;
2. Enter an injunction, in a form consistent with Rule 65 of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendants and their agents, servants,

employees, attorneys, and accountants, and those persons in active concert or participation with them, who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 17(a) of Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder;

3. Enter an injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Kubler from, directly or indirectly, including, but not limited to, through any entity owned or controlled by him, participating in the issuance, purchase, offer, or sale of any security, provided, however, that such injunction shall not prevent Kubler from purchasing or selling securities for his own personal account;

4. Order Defendants and Relief Defendants to disgorge ill-gotten gains received from the conduct alleged in the Complaint and pay prejudgment interest on such ill-gotten gains, on a joint-and-several basis between Kubler and each Defendant and each Relief Defendant;

5. Order Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

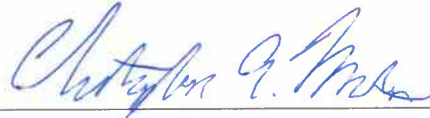
6. Grant such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

The SEC demands a trial by jury on all claims so triable.

Dated: September 14, 2023.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Christopher E. Martin", is written over a horizontal line.

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