DISTRICT COURT, DENVER COUNTY, DATE FILED COLORADO November 6, 2024 10:42 AM FILING ID: 8143122898EFC 1437 Bannock Street CASE NUMBER: 2024CV33417 Denver, CO 80202 TUNG CHAN, Securities Commissioner for the State of Colorado, Plaintiff, v. ERIC GEMELLI and MARKET4CASTER, LLC, Defendants, and 3 THIRTY 3, FT; 7 SEVENTY 7, BT; and 10 SEVENS, PT, Relief Defendants. COURT USE ONLY PHILIP J. WEISER, Attorney General Case No.: ROBERT W. FINKE, 40756\* First Assistant Attorney General Courtroom: JANNA K. FISCHER, 44952\* Senior Assistant Attorney General SARAH P.J. DONAHUE, 45212\* Assistant Attorney General II Ralph L. Carr Judicial Building 1300 Broadway, 8th Floor Denver, CO 80203 Tel: (720) 508-6401 Fax: (720) 508-6037 Robert.Finke@coag.gov Janna.Fischer@coag.gov Sarah.Donahue@coag.gov \*Counsel of Record COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Tung Chan, Securities Commissioner for the State of Colorado, by and through her counsel, the Colorado Attorney General and undersigned counsel, alleges as follows in her *Complaint for Injunctive and Other Relief*:

### **JURISDICTION**

- 1. Plaintiff Tung Chan is the Securities Commissioner for the State of Colorado ("Commissioner"). The Commissioner is authorized to bring this action in which she may seek temporary, preliminary, and permanent injunctive relief, along with other equitable relief, against Defendants upon sufficient evidence that the Defendants have engaged in or are about to engage in any act or practice constituting a violation of any provision of the Colorado Securities Act (the "Act"). § 11-51-602(1), C.R.S. Section 11-51-706(4), C.R.S. expressly provides that any violation of the Act is deemed to constitute the transaction of business within this State, thereby conferring jurisdiction pursuant to section 13-1-124(1)(a), C.R.S.
- 2. Venue is proper in the district court for the City and County of Denver, Colorado. § 11-51-602(1), C.R.S.

### SUMMARY OF THE ACTION

- 3. Beginning in 2016 and through April 19, 2022, Defendants Market4Caster, LLC ("M4C") and its owner and manager, Eric Gemelli ("Gemelli"), while withholding material facts and misrepresenting the investments, offered and sold millions of dollars of unregistered securities from Colorado.
- 4. Defendants painted a rosy picture for investors, many of whom were friends, students, or women Defendant Gemelli met through dating apps. Defendant Gemelli assured investors that the investments were good deals that would reap high returns.
- 5. Defendants were also unlicensed to sell securities in Colorado, which Defendants did not disclose to investors.
- 6. Defendant Gemelli had orders against him to cease and desist from selling securities in violation of California laws and disclosed neither to investors. He appears to be in violation of those orders.
- 7. Upon information and belief, Defendants sold the securities to hundreds of investors, more than a hundred of whom reside in Colorado.
- 8. The offerings that Defendants sold included penny stocks issued from a number of different entities as well as investments in contracts for mining operations purportedly owned and operated by Franklin Mining, Inc. ("FMI").
- 9. During their course of business, the Defendants sold directly for the companies issuing the securities; for example, Defendants helped FMI sell their FMI securities to investors.

- 10. Defendants also offered and resold securities in a secondary market. For example, Defendants helped a Texas company named Petty International Development Corporation ("PIDC") sell their holdings of FMI and Zicix Corporation securities to investors. Defendants also sold their own holdings of FMI securities directly to investors.
- 11. During the offers and sales of securities for the issuers, and in the secondary market, Defendants made material misrepresentations and omitted material facts. The misrepresentations, and the omitted facts, would have been significant and material to a reasonable investor and would have altered the total mix of information for each offering.
- 12. For the FMI investments, Defendant Gemelli assured investors that the funds would be used for FMI's operations when in reality the funds were siphoned to a different company, PIDC, and in that way would be "washed clean" for use for personal expenses by the CEO of FMI and Zicix, William Petty.
- 13. Among other omissions, Defendants failed to disclose any financials; an accurate risk level of the investments; that the CEO of FMI and Zicix would use funds for personal expenses; that the FMI funding agreements had never produced returns for any investors in the past; that historically, for FMI, there was a lack of profits; and that Defendants would receive hefty compensation that incentivized them to sell the securities.
- 14. The Defendants sold over \$3 million of securities to the investing public and received over \$1 million in commissions, bonuses and other related compensation.
- 15. Defendants' unlicensed activity, sale of unregistered securities, and material misrepresentations and omissions in the offer and sale of securities in and from Colorado violate the Colorado Securities Act, sections 11-51-301, *et seq.*11-51-401, *et seq.*, and 11-51-501, *et seq.*

### **DEFENDANTS**

- 16. Eric Gemelli is an adult individual who resided in Colorado at the time of the allegations made herein. Gemelli's last known address is 3600 North Hayden Road, Apartment 3401, Scottsdale AZ 85251.
- 17. Market4Caster, LLC is a Colorado limited liability company in good standing. Its registered agent is Gemelli, and its registered mailing address is PO Box 17773, Golden, Colorado 80402.

#### RELIEF DEFENDANTS

- 18. 7 Seventy 7, BT is a trust that is a co-owner of Defendant M4C for which Gemelli is the trustee. It has a last known mailing address of 117 E. 37th St., Suite 377 Loveland, CO 80538. Gemelli transferred funds from M4C to 7 Seventy 7.
- 19. 10 Sevens, PT, is a trust for which Gemelli is the trustee. It is the beneficiary of 7 Seventy 7, PT. Gemelli transferred funds from to M4C to 10 Sevens. It has a last known mailing address of 117 E. 37th St., Suite 377 Loveland, CO 80538.
- 20. 3 Thirty 3, FT, is a trust for which Gemelli is the trustee. It is the beneficiary of 10 Sevens, PT. Gemelli transferred funds from M4C, 7 Seventy 7, and 10 Sevens to 3 Thirty 3. It has a last known mailing address of 569 N. Lincoln Ave., Loveland, CO 80537.

### **AFFILIATED NON-PARTIES**

- 21. William Petty ("Petty") was a Texas-based individual. Upon information and belief, Mr. Petty died in December 2023. Prior to his death, Mr. Petty was the Chief Executive Officer and Director of FMI and he was President and Chief Executive Officer of Zicix Corporation. Mr. Petty permitted Mr. Gemelli to sell FMI funding agreements to investors, as well as FMI and Zicix stock that he held under the name of PIDC. William Petty provided a recorded interview and documents to the Division in this matter prior to his death.
- 22. Sam Podany ("Podany"), a/k/a Banjo Sam, was an individual from Ft. Collins, CO who received millions of shares of stock from Mr. Petty as part of his compensation for assisting in selling stock. Podany held his Zicix and FMI penny stock under the business names of several companies that he had opened, including St. George Projects, Inc., Boca Mining Corporation, Rama Gold, Inc., and Pana Mining, Inc. Subsequently, and in regard to this matter, Mr. Podany paid Gemelli and M4C to sell his shares of Zicix and FMI stock. Podany died on April 30, 2022.
- 23. Carl Hartman ("Hartman") is an individual from Loveland, CO who was employed by Mr. Podany and acted in the capacity as an officer for St. George, Boca Mining Corporation, Rama Gold, Inc., and Pana Mining, Inc. Mr. Hartman introduced Mr. Gemelli to Mr. Podany, aided in completing the stock transfers subsequent to Mr. Gemelli's/M4C's sales of the FMI and Zicix penny stock for Podany's companies and made payments to the Defendants for Podany's companies after the sales of the stock.
- 24. Blake Ward ("Ward") is an individual residing in California that was the Chairman of the Board of Advanced Innovative Recovery Technologies, Inc. ("AIRTech"). Upon information and belief, Mr. Ward asked Mr. Gemelli to sell AIRTech securities for them.

- 25. Franklin Mining, Inc. ("FMI") is a Nevada corporation with a business address of 318 N Carson Street #208, Carson City, Nevada, 89701 and operations in Texas that was owned in part by and operated by William Petty. FMI offered investment units in funding agreements in several mining projects. Defendants sold investments in the funding agreements for these FMI projects.
- 26. Zicix Corporation ("Zicix") is a Texas-based corporation owned in part and operated by William Petty.
- 27. Petty International Development Corp. ("PIDC") is a Texas-based corporation that was owned and operated by William Petty. PIDC held Petty's FMI and Zicix shares and paid M4C and/or Gemelli for selling the stock and the funding agreements.
- 28. St. George Projects, Inc. ("St. George") was a Colorado-based corporation owned by Podany. Its president was Hartman. St. George held shares of FMI and Zicix stock for Podany, which was sold by the Defendants to investors.
- 29. Rama Gold, Inc. ("Rama") was a Colorado-based corporation. Prior to its dissolution in 2022, its CEO and Treasurer was Hartman. Rama held shares of Zicix stock, which were sold by the Defendants to investors.
- 30. Pana Mining, Inc. ("Pana") was a Colorado-based corporation. Prior to its dissolution, its CEO and Director was Hartman. Pana held FMI and Zicix stock, which were sold by the Defendants to investors.
- 31. Boca Mining Corporation ("Boca") was a Minnesota-based corporation. Prior to its dissolution in 2020, its CEO was Hartman. Boca held shares of Zicix stock, which were sold by the Defendants to investors.
- 32. Advanced Innovative Recovery Technologies, Inc. ("AIRTech") is a California-based corporation. AIRTech is controlled by Ward as Chairman of the Board of Directors. The Defendants offered and sold AIRTech stock and promissory notes to investors for AIRTech.

#### **GENERAL ALLEGATIONS**

### I. Gemelli, by and through M4C, offered and sold securities in Colorado.

33. From October 4, 2016 to February 18, 2020, Gemelli offered and sold millions of shares of FMI and Zicix penny stock. Gemelli sold the stock by sending investors documents called "Stock Purchase Agreements" detailing the amount

involved in each transaction. For this period, St. George, Rama, Pana and Boca paid Gemelli to sell their holdings of shares of FMI and Zicix.

- 34. The FMI penny stock was sold for St. George and Pana to 49 investors (including 39 investors from Colorado), for a total sum of approximately \$346,600, and the stock price ranged from \$.001/share to \$.01/share. The sales occurred from October 4, 2016 to August 24, 2018.
- 35. The Zicix penny stock was sold for St. George, Pana, Rama, and Boca to 36 investors (including 30 investors from Colorado), for a sum of approximately \$241,599, and the stock price ranged from \$.005/share to \$.05/share. The sales occurred from April 2, 2017- February 18, 2020.
- 36. From February 10, 2020 to March 16, 2021, PIDC had Gemelli, through M4C, sell PIDC's holdings of FMI and Zicix penny stock. Defendants sold PIDC's FMI penny stock to at least 34 investors (including 23 from Colorado), for a sum of \$152,200, and the stock prices ranged from \$.0015/share to \$.01/share. Defendants sold PIDC's Zicix penny stock to 8 investors (including 5 from Colorado), for a sum of \$33,000, and the stock prices ranged from \$.0015/share to \$.02/share.
- 37. From October 24, 2018 to August 11, 2021, AIRtech had Gemelli, through M4C, sell hundreds of thousands of shares of AIRTech common and preferred stock in Colorado. The stock price ranged from \$.33/share for common stock to \$.665/share for preferred stock and it was sold through subscription agreements from AIRTech and through the issuance of stock purchase agreements. Upon information and belief, the stock was sold to at least eight investors (at least five of whom were from Colorado) for \$443,000. Gemelli also brokered the deal for the sale of a \$40,000 AIRTech note to a Colorado investor in February 2019.
- 38. From February 18, 2020 to December 21, 2021, Gemelli, through M4C, offered and sold FMI funding agreements to investors on FMI's behalf, for \$25,000 per investment unit for FMI's "Tipuani Project," a two-phase funded mining endeavor in Bolivia.
- 39. In addition to the Tipuani Project, Defendants contemporaneously offered investments to Colorado investors to finance FMI's Guanay Project. For this offering, each investment unit offered through a funding agreement could be purchased for \$50,000.
- 40. The individuals the Defendants solicited to invest were Gemelli's former school friends, people who were part of local business or social networking groups in Colorado in which Gemelli was active, women Gemelli met from dating sites, and former students of Gemelli's investment courses offered through M4C.

41. The investors – friends, students, colleagues, and romantic partners of Gemelli – relied upon Gemelli's statements, the financial forecasts he provided, and his assertions that the investments were a good deal that would result in a great return.

### II. Gemelli made material misrepresentations to investors

- 42. Gemelli misled investors about the purposes of their investments. Investors were told that their investments in FMI would go to FMI's business expenses, regardless of whether the shares were bought from FMI directly, or from Gemelli, M4C, PIDC, St. George, or Pana. In reality, investors' funds were not used for FMI business expenses as promised. Instead, investors' funds were diverted for improper use, including but not limited to being retained by Gemelli and/or M4C; being retained by PIDC, St. George and Pana; being used for Gemelli's commissions and/or expenses; or being misdirected to a PIDC account for Petty's personal use.
- 43. Gemelli and M4C also misled investors regarding FMI's Tipuani and Guanay Projects, for which Gemelli and M4C sold "funding agreements."
- 44. FMI authorized M4C and Gemelli to sell investment units in the Tipuani Project beginning in 2020. Despite knowledge that no investor had ever been paid pursuant to the funding agreement, Gemelli, through M4C, offered and sold funding agreements to investors in 2020 and 2021 for \$25,000 per investment unit for FMI's Tipuani Project.
- 45. The FMI agreements stated that money raised was to be used to provide capital to establish FMI's Tipuani Project. Specifically, the funding agreements stated that "funds raised from this agreement [will] be used for the purpose of establishing the [project's] mining operations" including equipment purchases, office expenses, and the costs of processing gold ore.
- 46. For phase 1, FMI was purportedly attempting to raise \$750,000, though the offering raised approximately \$1,525,250. Per the Funding Agreement, an investor in Phase 1 was to receive 1 percent of "the net distributable profits" of FMI's mining operations from mining project per investment unit purchased, which would be disbursed within 60 days of mining operations beginning.
- 47. The funding agreement for phase 2 was substantially similar to the phase 1 agreements and the offering was performed to attempt to raise an additional \$250,000, beginning in December 2021.
- 48. Despite promises that funds would be used for FMI operations, investors' funds in the Tipuani Project and the Guanay Project were paid into an

account for PIDC, where the funds were used to pay commissions to Gemelli and for personal expenses of William Petty, the CEO of FMI and Zicix.

## III. Defendants failed to disclose or omitted material facts from investors

- 49. Defendants were aware that no disbursements had been issued and that mining operations had not begun. Defendants did not disclose the lack of disbursements, lack of profits, or use of prior investors' funds to new investors.
- 50. The utter failure of FMI's investments was abundantly clear by the time Defendants solicited investments in FMI's Guanay Project. For the Guanay Project, Defendants solicited investors for double (\$50,000) for a percent of distributable profits from what was offered in the two rounds of the Tipuani Project (\$25,000).
- 51. Like with the Tipuani Project, the Defendants did not provide FMI's financial statements to investors, or disclose to the investors that that FMI's operations were not paying returns or principal to the investors and that funds were being siphoned to the CEO for his personal expenses.
- 52. Defendants did not disclose that the funds were diverted to an account belonging to PIDC, rather than FMI.
- 53. Funds in the PIDC account were commonly used for paying commissions and personal expenditures. This was not disclosed to investors, either.
- 54. Like with all of the other offerings, Defendants knew that FMI was not using investments for legitimate business expenses, and that investors in FMI had received no benefits. Defendants did not disclose this information.
- 55. In particular, Gemelli failed to disclose that FMI had never been profitable and never provided principal or returns to past investors, that funds would not be used for operations as promised and that some funds were siphoned into PIDC to be used to pay personal expenses of the CEO of FMI and Zicix, William Petty.
- 56. Despite his rosy projections, Defendants failed to make any historical financial disclosures about any of the entities or projects for which Gemelli or M4C was soliciting investments.

# IV. Gemelli failed to disclose past orders barring him from the securities industry

- 57. Gemelli failed to disclose to investors past discipline against him.
- 58. Gemelli was subject to a cease-and-desist order issued by California in 1999 that barred him from offering and selling securities without a broker-dealer license.
- 59. The order also barred Gemelli from offering and selling unregistered securities.

# V. Defendants did not inform investors that they received commissions and incentives for soliciting investors.

- 60. Though FMI did not distribute any profits to investors, Defendants still received commissions for their sales of FMI's securities.
- 61. For his sales of securities, Defendants received commissions that Gemelli testified was anywhere between 10-25%. A review of Defendants' bank records show that the actual range of commissions was between 15% and 50%.
- 62. Gemelli and M4C also frequently failed to disclose that Gemelli and/or M4C were paid commissions for sales of FMI, Zicix, and AIRtech stock. While the fact that commissions were paid was occasionally revealed, Defendants omitted the truth of what percentage was paid to Defendants anywhere between 15% and 50%.
- 63. The Tipuani and Guanay funding agreements also did not fully disclose any commissions or other compensation paid to Defendants Gemelli or M4C, which amounted to 20-30% of the value of the funding agreement sold.
- 64. Some investors were made aware of the fact that Defendants earned commissions on sales of stock and the funding agreements, but investors were not made aware of the size of the commission payment.
- 65. In total, bank records reveal that M4C received commission payments of over \$1 million from FMI, PIDC, Rama, and St. George, the entities that authorized Defendants to sell their stock in FMI and Zicix.
- 66. After the commissions were paid to M4C, the money then went into trust accounts for which Gemelli is the trustee. M4C's bank statements show that M4C ultimately transferred more than \$1 million to three trusts for which Gemelli is the sole trustee: 7 Seventy 7, 3 Thirty 3, and 10 Sevens.

67. In addition to the money received, the Defendants were incentivized with other forms of compensation to sell large quantities of FMI funding agreements. Per an undisclosed contract with Petty, if Defendants sold \$300,000 of funding agreements, Defendants were contractually entitled to additional compensation of a 4 percent ownership interest in the gross profits of the Tipuani Project. Since Defendants did sell over \$300,000 of funding agreements, Defendants were issued 4% interest in any gross profits. Although there have not been any gross profits to date, Defendants were highly incentivized to sell funding agreements for their own gain.

### VI. Defendants are not licensed to sell securities.

- 68. Gemelli admitted during sworn testimony that he is not licensed as an individual to sell securities as a securities sales representative.
- 69. A review of FINRA records verifies that Gemelli and M4C are not licensed to sell securities.
- 70. A review of Colorado records also verifies that Gemelli and M4C are not licensed to sell securities.
- 71. Gemelli admitted during sworn testimony that he did not inform investors that he was not licensed to sell securities.
- 72. He likewise admitted that he did not inform investors that M4C was not a licensed firm to sell securities as a broker-dealer.
- 73. Gemelli did not inform investors that he had been issued two desist and refrain orders by California during his history of violating securities laws including unlicensed sale of securities and selling unregistered securities.

### FIRST CLAIM FOR RELIEF (Misrepresentations and Omissions) Defendants

- 74. Paragraphs 1 through 73 are incorporated herein by reference.
- 75. In connection with offer, sale, or purchase of securities in Colorado, the Defendant, directly or indirectly made untrue written and oral statements of material fact and/ or omitted material facts necessary to make the statements made, in light

of the circumstances under which they were made, not misleading, in violation of section 11-51-501(1)(b), C.R.S.

- 76. In connection with the Offering, Defendants made material misrepresentations to investors, including, but not limited to:
  - a. assuring investors, many of whom were friends, students, or women Defendant Gemelli met through dating apps that the investments were good deals that would reap high returns.
  - b. For the FMI investments, assuring investors that the funds would be used for FMI's operations when in reality funds were diverted for improper use including but not limited to being retained by Gemelli and/or M4C; being retained by PIDC, St. George or Pana; being used for Gemelli's commissions and/or expenses; or being misdirected to a PIDC account for Petty's personal use..
- 77. In connection with the Offering, Defendants omitted or failed to adequately disclose material facts to investors, including, but not limited to:
  - a. That Defendants were receiving inordinately high commissions and other forms of compensation on the sales of investments;
  - b. That FMI was suffering losses and had not paid returns while the Defendants were selling investments in FMI's stock or its funding agreements over multiple years. Defendants knew this and did not disclose it to new investors when Defendants sold investments in FMI's projects;
    - c. That FMI mining operations had not been profitable;
  - d. Historical financial statements showing operating losses, liabilities and accumulated deficits. Defendants failed to provide FMI's historical financial statements, or the financial statements of the other companies, to investors;
  - e. The actual uses of investors' funds which included payments into PIDC so that the CEO of FMI and Zicix could use funds for personal expenses;
  - f. That Defendants were acting as unlicensed broker-dealers and unlicensed sales representatives;
    - g. That Defendants were selling unregistered securities;

- h. That Defendant Gemelli had had orders issued against him and was subject to desist and refrain orders from State of California for selling unregistered securities and effecting transactions in securities without a broker-dealer license.
- 78. Because Defendant offered or sold securities by using untrue statements of material fact or omissions to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading, Defendant is liable to the Commissioner for damages under therefore are liable to the Commissioner for damages under § 11-51-602(2), C.R.S., based on violations of § 11-51-501(1)(b), C.R.S.
- 79. The Commissioner is entitled to an award of damages, interest, costs, and attorneys' fees, restitution, disgorgement and other equitable relief on behalf of persons injured by Defendants' conduct pursuant to § 11-51-602(2) C.R.S. The Commissioner is also entitled to a preliminary and permanent injunction against Defendants, their officers, directors, agents, servants, employees, successors and attorneys-in-fact, as may be; any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Defendants; and all those in active concert or participation with Defendants, enjoining violation of § 11-51-501, C.R.S., by virtue of § 11-51-602, C.R.S.

### SECOND CLAIM FOR RELIEF (Unlicensed Activity – Broker-Dealer and Sales Representative) Defendants

- 80. Paragraphs 1 through 79 are incorporated herein by reference.
- 81. At no time relevant herein were Defendants licensed, or exempt from licensure, as a "broker-dealer" or as a sales representative registered in any capacity with the Commissioner, as required by sections 11-51-401 and 402, C.R.S.
- 82. Accordingly, Defendants acted as an unlicensed broker-dealer and sales representative.
- 83. The Commissioner is entitled to an award of damages, interest, costs, and attorneys fees, restitution, disgorgement and other equitable relief on behalf of persons injured by the conduct of Defendant pursuant to section 11-51-602(2), = C.R.S. The Commissioner is also entitled to a preliminary and permanent injunction against Defendant, their officers, directors, agents, servants, employees, successors and attorneys-in-fact, as may be; any person, who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with

Defendant; and all those in active concert or participation with Defendant, enjoining violation of sections 11-51-401 and 402, C.R.S., by virtue of section 11-51-602, C.R.S.

#### THIRD CLAIM FOR RELIEF

# (Unregistered Securities) Defendants

- 84. Paragraphs 1 through 83 are incorporated herein by reference.
- 85. At no time before sales of the securities did the Defendants register, or file notices of exemption from registration for the securities that they offered and sold to investors with the Division of Securities, as required by section 11-51-301, C.R.S.
- 86. The Commissioner is entitled to an award of damages, interest, costs, and attorneys fees, restitution, disgorgement and other equitable relief on behalf of persons injured by the conduct of the Defendants pursuant to section 11-51-602(2), C.R.S. The Commissioner is also entitled to a preliminary and permanent injunction against the Defendants, their officers, directors, agents, servants, employees, successors and attorneys-in-fact, as may be; any person, who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Defendants; and all those in active concert or participation with the Defendants, enjoining violation of section 11-51-301, C.R.S., by virtue of section 11-51-602, C.R.S.

#### FOURTH CLAIM FOR RELIEF

# (Imposition of Constructive Trust or Equitable Lien) Defendants and Relief Defendants

- 87. Paragraphs 1 through 86 are incorporated herein by reference.
- 88. As a consequence of the fraudulent, wrongful, unlawful and inequitable conduct of Gemelli and M4C, as alleged above, Defendants and Relief Defendants 7 Seventy 7, 10 Sevens and 3 Thirty 3 have obtained property interests and profits therefrom which in justice and equity belong to investors.
- 89. These interests and profits include, but are not limited to, investor assets in 7 Seventy 7's, 10 Sevens' and 3 Thirty 3's bank accounts and all sums derived from the investment of such assets and any assets purchased therewith.
- 90. Defendants and Relief Defendants received these fraudulently obtained funds and/or property without giving a reasonably equivalent value in exchange and, as a result, have no legitimate right or claim to these monies. Defendants and Relief

Defendants will each, therefore, be unjustly enriched if they are allowed to maintain ownership of the funds and/or property fraudulently obtained.

- 91. Defendants and Relief Defendants hold said funds and/or property in constructive trust or in a manner in the nature of a constructive trust for the benefit of the investors and must account to the investors and the plaintiff for all such sums of money, all profits derived from the investment of such money and any assets purchased therewith. Moreover, these property interests, sums of money and assets are impressed with an equitable lien for the benefit of the investors. Accordingly, ownership of all such property interests, sums and assets must be accounted for and adjudicated to be vested in the investors.
- 92. Accordingly, the Commissioner requests that the Court impose a constructive trust and/or equitable lien on all of the bank accounts, and any fraudulently obtained funds received by each of the Defendants and Relief Defendants, and any entity controlled by them, to account for and disgorge all properties and funds received by them.

### WHEREFORE, the Commissioner requests relief as follows:

- 1. For preliminary and permanent injunctive relief against Defendant, his agents, servants, employees, and successors; any person who, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with; and all those in active concert or participation with him, enjoining Defendant from violations of the Colorado Securities Act or successor statute.
- 2. For judgment in an amount to be determined at trial against Defendant for restitution, disgorgement and other equitable relief pursuant to section 11-51-602(2), C.R.S. All of the preceding relief is sought on behalf of the persons injured by the acts and practices of Defendant that constitute violations of the Act.
  - 3. For such other and further relief as the Court deems proper.

Dated this 6th day of November, 2024.

PHILIP J. WEISER Attorney General

/s/ Janna Fischer

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