

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

KENZLEY RAMOS, a/k/a KENZLEY JACOBS,
a/k/a ANTHONY DAVID “TONY” MCKINNEY,
a/k/a ANTHONY GREEN,

Defendant.

CIVIL ACTION NO. _____

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

Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”), by and through its attorneys, alleges as follows:

I. SUMMARY

1. From at least December 2015 through the present (the “Relevant Period”), Kenzley Ramos—also going by various aliases, including Kenzley Jacobs, Anthony David “Tony” McKinney, Anthony Green, Tony Jacobs, and Tony Lopez (“Defendant”)—has engaged in a fraudulent scheme to solicit and misappropriate money from numerous members of the public (“pool participants”) given to him for the purported purpose of trading binary options and/or off-exchange foreign currency (“forex”). Defendant committed fraud while acting as an unregistered commodity pool operator (“CPO”), by pooling participant funds and purporting to trade those funds in binary options and forex (the “Commodity Pool”).

2. During the Relevant Period, Defendant claimed pool participants would profit from the Coronavirus pandemic and made various material misrepresentations to solicit pool participants, including that: (1) Defendant would use pool participant funds for trading in binary options and forex; (2) pool participants would earn weekly returns of 300%; (3) the pool participants' returns from forex trading were guaranteed; (4) there was no risk of losing money; (5) the Commodity Pool had a balance of about \$500,000 and was growing; and (6) after investing, pool participants would be able to access the Commodity Pool's trading account to verify the trading.

3. These representations were false. Instead of trading binary options and forex as promised, Defendant has not been sending pool participants' funds to a trading firm, and instead has been misappropriating pool participant funds for his personal use, often withdrawing funds as cash from his financial institution.

4. The fraud is ongoing. A pool participant contributed funds to the scheme at least as recently as January 22, 2020. And Defendant has continued placing fraudulent solicitations; doing so as recently as July 8, 2020 on Craigslist. Finally, Defendant has not returned any funds to pool participants.

5. By virtue of this conduct and the conduct further described herein, Defendant has engaged, is engaging, or is about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C), 4c(b), 4m(1), 4o(1), and 2(c)(2)(C)(iii)(I)(cc) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6c(b), 6m(1), 6o(1), 2(c)(2)(C)(iii)(I)(cc) (2018), and Commission Regulations ("Regulation") 4.20(a)(1) and (b), 4.21, 4.22, 5.2(b), 5.3(a)(2)(i), 5.4, and 32.4, 17 C.F.R. §§ 4.20(a)(1), (b), 4.21, 4.22, 5.2(b), 5.3(a)(2)(i), 5.4, 32.4 (2019).

6. Unless restrained and enjoined by this Court, Defendant will likely continue to engage in acts and practices alleged in this Complaint and similar acts and practices, as described below.

7. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), and 7 U.S.C. § 2(c)(2)(C), to enjoin Defendant's unlawful acts and practices, to compel his compliance with the Act and the Regulations promulgated thereunder, and to enjoin him from engaging in in any transactions involving 'commodity interests,' as described herein. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other and further relief as the Court may deem necessary or appropriate.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), authorizes the Commission to seek injunctive and other relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act, or any rule, regulation, or order thereunder. Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2018), subjects the forex solicitations and transactions at issue in this action to, *inter alia*, Sections 4b, 4c(b), and 4o of the Act, 7 U.S.C. §§ 6b, 6c(b), 6o (2018), as further described below.

9. Venue lies properly with this Court pursuant to 7 U.S.C. § 13a-1(e) (2018), because Defendant transacts business in this District, and certain transactions, acts, practices, and courses of business in violation of the Act and Regulations occurred, are occurring, or are about to occur within this District, among other places.

III. THE PARTIES

10. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1-26 (2018), and the Regulations promulgated thereunder, 17 C.F.R. pts. 1-190 (2019). The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581.

11. Defendant **Kenzley Ramos** is an individual who, during the Relevant Period, resided in Georgia. As listed above, Defendant has used various aliases in his solicitations and correspondence with pool participants and potential pool participants. During the Relevant Period, Defendant operated as a CPO by soliciting, accepting, and receiving funds from pool participants to participate in the Commodity Pool. Defendant has never been registered with the Commission in any capacity.

IV. FACTS

A. **Defendant Has Been Fraudulently Soliciting for the Commodity Pool and Misappropriating Pool Participant Funds.**

12. During the Relevant Period, Defendant has been making material misrepresentations and omissions to pool participants and prospective pool participants about the Commodity Pool in Craigslist advertisements and in direct communications and written agreements with pool participants. Defendant has also been misappropriating pool participant funds by using it for his personal use and not trading in binary options and forex as promised.

Defendant has been engaging in this misconduct even after receiving notice of a pending emergency action seeking a cease and desist order against Defendant for such misconduct.

1. Defendant Has Been Making Fraudulent Solicitations via Craigslist Ads Promising Guaranteed Returns.

13. During the Relevant Period, Defendant has been creating the Craigslist ads to solicit and pool funds from U.S. citizens to purportedly trade forex. Defendant targets the Craigslist ads at cities across the country, including several cities within the state of Texas—Houston, Austin, San Antonio, and Dallas.

14. These Craigslist ads have varied titles, *e.g.*, some included a title like “STOCK MARKET IS CRUMBLING, PROFIT OFF THE CORONAVIRUS WITH FOREX,” but the content of the solicitations are substantially the same: Defendant promises to act as the pool participant’s “day trader,” using the pool participant’s funds to trade forex, and guarantees the pool participant’s investment will produce profits without risk. Defendant even goes so far as to guarantee that any pool participant losses will be refunded via Defendant’s personal account. The ads also claim that the pool participant’s funds will be pooled with other pool participants’ funds and that the total balance of the Commodity Pool is \$500,000 and growing.

15. To further support Defendant’s claims in his Craigslist ads, Defendant includes images showing trading gains of 4,433% and profits in excess of \$450,000. These images also show Defendant’s account to hold a balance of nearly \$750,000. Defendant, however, does not have a trading account; and, consequently, has not generated any trading gains or held any pool participant funds in a trading account.

2. Defendant Has Been Making Fraudulent Misrepresentations in Discussions with and Agreements Sent to Pool Participants.

16. After being contacted by potential pool participants in response to his Craigslist ads, Defendant generally has been repeating the misrepresentations from his Craigslist ads, including that: (1) Defendant would use pool participant funds for trading in binary options and forex; (2) the pool participants' returns from binary options and forex trading were guaranteed; (3) there was no risk of losing money; and (4) the Commodity Pool had a balance of about \$500,000 and was growing.

17. To further reassure his victims, Defendant enters into written agreements with pool participants. These agreements vary slightly in their language, but usually promise 300% returns per week in exchange for an investment of at least \$200. According to the agreements, those guaranteed profits will be realized via the Defendant's trading of "FOREX and Binary Options." Purportedly to provide transparency, the agreement also states that Defendant will give the pool participants "view only" access to the Defendant's online trading account.

18. Defendant also pressures potential pool participants to send Defendant money as soon as possible, and requires that it be sent to him in an electronic format. In most cases these money transfers are sent from the pool participant's bank account to Defendant's bank account via a third-party processing service called Zelle (similar in format to PayPal). In other cases, pool participants directly wire their investment across state lines from their bank account to Defendant's bank account. On at least one occasion, a pool participant sent funds to Defendant via Bitcoin.

19. As a result of Defendant's representations in Craigslist ads, discussions, and agreements, numerous pool participants throughout the United States, including at least one

individual residing in this District, sent money to Defendant to participate in the Commodity Pool, with Defendant acting as the Commodity Pool's CPO.

3. Defendant Has Continued To Solicit Pool Participants Despite a Pending Cease and Desist Order.

20. In April 2020, the Texas State Securities Board ("TSSB") conducted an investigation into Defendant's Craigslist ads, including conducting undercover communications with Defendant.

21. In these communications, Defendant—who told TSSB his name was Anthony Green—again represented that investments would have "a guaranteed gain of 300 percent each week," and that even with the coronavirus the investment was safe because "unlike the stock market you can bet both ways."

22. When the TSSB undercover asked about wiring his investment to Defendant, Defendant gave him an account name and routing number that he represented belonged to his "finance guy" Kenzley Ramos, and that Ramos was "part of a larger team that includes IT who help run Skype and finance people."

23. When asked about negative reviews on the internet, Defendant told the TSSB undercover that they were published by competitors and didn't belong to investors, because the investors are satisfied and "have all been paid." Despite this representation by Defendant, TSSB spoke with multiple investors who stated they received no returns on their investment, and that Defendant refused to return their initial investment as well.

24. Based on its investigation, on April 17, 2020, TSSB filed an Emergency Cease and Desist Order ("Cease and Desist") ordering Defendant to immediately cease and desist from his fraudulent activity, and provided Defendant notice of the same.

25. Despite this Cease and Desist, Defendant has continued to post new Craigslist ads—one as recently as July 8, 2020—that contain the same misrepresentations and promised profits and payments as listed above. Defendant also has continued to maintain the fraudulent scheme via multiple email addresses, mailing addresses, and telephone numbers.

4. Defendant Has Been Misappropriating Pool Participant Funds by Not Trading as Promised and by Spending Their Funds on Himself.

26. Defendant promised pool participants that he would use their funds to trade binary options or forex. Despite that promise, Defendant has not traded either binary options or forex in any account at a United States registered entity during the Relevant Period.

27. Pool participants have not been receiving any of the promised returns from Defendant, nor has Defendant returned any investments to pool participants.

28. Instead, Defendant has been using the pool participants' money as his own, by spending it on personal items or withdrawing it as cash.

29. In none of Defendant's Craigslist ads or interactions with pool participants has Defendant disclosed that he would not trade pool participant funds in forex and binary options as promised, or that he would misappropriate pool participant funds for his personal benefit.

5. Defendant's Misappropriation, Misrepresentations, and Omissions Were Intentional or Reckless and Operated as a Fraud on Pool Participants.

30. Defendant knew, or was reckless in not knowing, that by accepting funds from pool participants and using pool funds for personal expenses, he was misappropriating pool funds. Defendant solicited and communicated with full knowledge of how pool funds were being used and that he was not trading binary options and forex with pool participant funds. Thus, there was no reasonable basis for Defendant to believe that the funds he used for personal expenses were derived from trading profits or anywhere besides pool funds.

31. Similarly, Defendant knew, or was reckless in not knowing, that his solicitations, communications, and agreements with pool participants contained the material misstatements and omissions described above. Defendant knew that he was not using pool participant funds for trading in binary options and forex, he was not earning weekly returns of 300%, the Commodity Pool did not have a balance of \$500,000 and was not growing, and pool participants could not access the Commodity Pool's trading account. Additionally, Defendant knew, or was reckless in not knowing, that he could not guarantee returns or promise no risk of loss to pool participants when trading binary options and forex.

32. At minimum, Defendant's misappropriation of pool funds and the material misstatements and omissions in his solicitations, communications, and agreements with pool participants operated as a fraud on pool participants.

B. Proposed Defendant Violated Registration and Other Commodity Pool-Related Requirements.

1. Defendant Failed To Register with the Commission.

33. During the Relevant Period, Defendant has been acting as a CPO in that he used the mails, emails, wire transfers, Internet websites such as Craigslist, and other means or instrumentalities of interstate commerce to solicit, accept, and receive pool participants' funds for the purported purpose of trading binary options and forex. During the Relevant Period, Defendant has never been registered as a CPO and has not been exempt or excluded from registration as a CPO.

2. Defendant Failed To Operate the Commodity Pool as a Separate Legal Entity or Receive Pool Funds in the Commodity Pool's Name.

34. Defendant has not been operating the Commodity Pool as a separate legal entity because no such entity exists. Although he solicited money on behalf the Commodity Pool,

Defendant has failed to open bank or options or forex trading accounts for the Commodity Pool. Defendant received pool funds that were not in the name of the Commodity Pool when he received pool funds in his name and deposited them into bank accounts he personally held, rather than separate trading and bank accounts designated for the Commodity Pool.

3. Defendant Failed to Provide Pool Disclosures and Other Relevant Documents.

35. Defendant, while acting as the CPO of the Commodity Pool, has been failing to provide pool disclosure documents, account statements, and other documents required by Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2019), including but not limited to required cautionary statements, risk disclosures, fees and expenses incurred by the Commodity Pool, past performance disclosures, a statement that the CPO is required to provide to all pool participants with monthly or quarterly account statements, as well as an annual report containing financial statements certified by an independent public accountant.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT ONE

**Violations of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2018),
and Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2019)
(Forex and Binary Options Fraud by Misrepresentations, Omissions,
False Statements, and Misappropriation)**

36. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

37. 7 U.S.C. § 6b(a)(2)(A)-(C) makes it unlawful:

(2) [F]or any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market—

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or]

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person[.]

38. Pursuant to Section 1a(47)(A)(i) of the Act, 7 U.S.C. § 1a(47)(A)(i) (2018), the binary options described herein are swaps.

39. Pursuant to Section 2(c)(2)(C)(i)(I) and (iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(i)(I) and (iv) (2018), 7 U.S.C. § 6b applies to forex transactions described herein “as if” they were a contract of sale of a commodity for future delivery because they were “offered to, or entered into with, a person that is not an” ECP.

40. 17 C.F.R. § 5.2(b) provides, in relevant part, that:

It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction:

(1) To cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

41. By reason of the conduct above, Defendant, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in connection with binary options and retail forex transactions, willfully or recklessly: (1) cheated or defrauded or

attempted to cheat or defraud pool participants; and (2) deceived or attempted to deceive pool participants by any means.

42. By reason of the foregoing, Defendant violated 7 U.S.C. § 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b)(1) and (3).

43. By reason of the conduct described above, Defendant knowingly or recklessly made or caused to be made false reports or account statements in the form of images posted to Defendant's Craigslist ads.

44. By reason of the foregoing, Defendant violated 7 U.S.C. § 6b(a)(2)(B) and 17 C.F.R. § 5.2(b)(2).

45. Each misrepresentation, omission of material fact, false statement, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3).

COUNT TWO

Violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2018), and Regulation 32.4, 17 C.F.R. § 32.4 (2019) (Commodity Option Fraud by Misrepresentations, Omissions, False Statements, and Misappropriation)

46. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

47. 7 U.S.C. § 6c(b) provides, in relevant part:

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

48. 17 C.F.R. § 32.4 provides:

In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful for any person directly or indirectly:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) To deceive or attempt to deceive any other person by any means whatsoever.

49. By reason of the conduct above, Defendant, in connection with offers to enter into, entry into, or confirmation of the execution of commodity option transactions, directly or indirectly, and knowingly or recklessly: (1) cheated or defrauded or attempted to cheat or defraud pool participants; and (2) deceived or attempted to deceive pool participants by any means by, among other things, misappropriating pool participant funds; making material misrepresentations about Defendant's trading experience, track record, profitability; and representing that he would actually trade binary options.

50. By reason of the foregoing, Defendant violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(a) and (c).

51. By reason of the conduct described above, Defendant knowingly or recklessly made or caused to be made false reports or account statements in the form of images posted to Defendant's Craigslist ads.

52. By reason of the foregoing, Defendant violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(b).

53. Each misappropriation, misrepresentation, omission of material fact, and false statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(a)-(c).

COUNT THREE

**Violations of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2018)
(Fraud and Deceit by CPOs)**

54. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

55. Section 1a(10) of the Act, 7 U.S.C. § 1a(10) (2018) defines a commodity pool as “any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests.”

56. Section 1a(11)(A)(i) of the Act, 7 U.S.C. § 1a(11)(A)(i) (2018), defines a CPO, in relevant part, as any person:

[E]ngaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

- (I) commodity for future delivery, security futures product, or swap;
[or]
- (II) agreement, contract, or transaction described in [S]ection 2(c)(2)(C)(i) [of the Act] or [S]ection 2(c)(2)(D)(i) [of the Act].

57. Under Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2019), and subject to certain exceptions not relevant here, any person who operates or solicits funds, securities, or property for a pooled investment vehicle and engages in retail forex transactions is defined as a retail forex CPO.

58. Pursuant to Section 2(c)(2)(C)(vii) of the Act, 7 U.S.C. § 2(c)(2)(C)(vii) (2018), “the Commission shall have jurisdiction over, an account or pooled investment vehicle that is

offered for the purpose of trading, or that trades, any agreement, contract, or transaction in [retail forex].”

59. Under 7 U.S.C. § 2(c)(2)(C)(ii)(I), “[a]greements, contracts, or transactions” in retail forex and accounts or pooled investment vehicles in retail forex “shall be subject to . . . [7 U.S.C. §] 6o,” except in circumstances not relevant here.

60. During the Relevant Period, Defendant engaged in a business, for compensation or profit, that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including in relevant part transactions in binary options and forex; therefore, Defendant acted as a CPO, as defined by 7 U.S.C. § 1a(11).

61. During the Relevant Period, Defendant solicited funds, securities, or property for a pooled investment vehicle and engaged in retail forex transactions; therefore, Defendant acted as a retail forex CPO, as defined by 17 C.F.R. § 5.1(d)(1).

62. During the Relevant Period, Defendant was not registered with the Commission as a CPO or retail forex CPO.

63. 7 U.S.C. § 6o(1) prohibits CPOs, whether registered with the Commission or not, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, from employing devices, schemes or artifices to defraud any client or participant or prospective client or participant, or engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon any client or participant or prospective client or participant.

64. By reason of the conduct described above, Defendant, through use of the mails or any means of instrumentality of interstate commerce: (1) knowingly or recklessly employed devices, schemes or artifices to defraud pool participants and prospective pool participants, or (2) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon pool participants or prospective pool participants, by misappropriating pool participant funds; making material misrepresentations about Defendant's trading experience, track record, profitability; and representing that he would actually trade forex and binary options.

65. By reason of the foregoing, Defendant violated 7 U.S.C. § 6o(1).

66. Each misappropriation, misrepresentation, and omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6o(1).

COUNT FOUR

**Violations of Sections 2(c)(2)(C)(iii)(I)(cc), 4m(1) of the Act,
7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1) (2018),
and Regulation 5.3(a)(2), 17 C.F.R. § 5.3(a)(2) (2019)
(Failure to Register as a CPO and Retail Forex CPO)**

67. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

68. Subject to certain exceptions not relevant here, 7 U.S.C. § 6m(1) states that it shall be "unlawful for any . . . [CPO], unless registered under this chapter, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such . . . [CPO]"

69. Subject to certain exceptions not relevant here, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) states, in part, that:

A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 21 of this title, shall not— . . .

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with [retail forex agreements, contracts, or transactions]

70. For the purposes of retail forex transactions, a CPO is defined in 17 C.F.R. § 5.1(d)(1) as any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an ECP, as defined in 17 U.S.C. § 1a(18), and who engages in retail forex transactions.

71. Except in circumstances not relevant here, 17 C.F.R. § 5.3(a)(2)(i) requires those that meet the definition of a retail forex CPO under 17 C.F.R. § 5.1(d) to register as a CPO with the Commission.

72. By reason of the foregoing, Defendant engaged in a business, for compensation or profit, that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including the binary options and retail forex described herein; therefore, Defendant acted as a CPO, as defined by 7 U.S.C. § 1a(11).

73. Likewise by reason of the foregoing, Defendant operated or solicited funds, securities, or property for a pooled investment vehicle from pool participants who were not ECPs, as defined by 7 U.S.C. § 1a(18), for the purpose of trading in retail forex transactions, as defined by 17 C.F.R. § 5.1(m); thus, Defendant acted as a CPO engaged in retail forex transactions, as defined by 17 C.F.R. § 5.1(d)(1).

74. Defendant, while using the mails or means of interstate commerce in connection with his business as a CPO, was not registered with the Commission as a CPO or as a CPO engaged in retail forex transactions.

75. By reason of the foregoing, Defendant acted as an unregistered CPO in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6m(1), and 17 C.F.R. § 5.3(a)(2)(i).

76. Each instance that Defendant acted as a CPO or retail forex CPO but failed to register with the Commission as such is alleged as a separate and distinct violation.

COUNT FIVE

Violations of Regulation 4.20(a)(1) and (b), 17 C.F.R. § 4.20(a)(1), (b) (2019) (Failure to Operate Pool as a Separate Entity and Failure to Receive Pool Participants' Funds in Pool's Name)

77. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

78. Regulation 5.4, 17 C.F.R. § 5.4 (2019), states that Part 4 of the Regulations, 17 C.F.R. pt. 4 (2019), applies to any person required to register as a CPO pursuant to Part 5 of the Regulations, 17 C.F.R. pt. 5 (2019), relating to forex transactions.

79. 17 C.F.R. § 4.20(a)(1) requires a CPO, whether registered or not, to operate its pool as a legal separate from that of the CPO.

80. 17 C.F.R. § 4.20(b) prohibits CPOs, whether registered or not, from receiving pool participants' funds in any name other than that of the pool.

81. By reason of the foregoing, Defendant, while acting as a CPO for the Commodity Pool, failed to operate the Commodity Pool as a legal entity separate from himself as an individual; and received pool participants' funds in his own name rather than the name of a legally cognizable commodity pool.

82. By reason of the foregoing, Defendant violated of 17 C.F.R. § 4.20(a)(1) and (b).

83. Each act of failing to operate the Commodity Pool as a separate legal entity and improperly receiving pool participants' funds, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 17 C.F.R. § 4.20(a)(1) and (b).

COUNT SIX

**Violation of Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2019)
(Failure to Provide Pool Disclosures and Other Required Documents)**

84. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

85. 17 C.F.R. § 4.21, in relevant part, provides that:

[E]ach [CPO] registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool

86. 17 C.F.R. § 4.22 requires, in relevant part, that CPOs (registered or required to be registered) provide periodic account statements to investors—presented and computed in accordance with generally accepted accounting principles—itemizing, among other things, the total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; the total amount of unrealized net gain or loss on commodity interest positions during the reporting period, and the total amount of net gain or loss from all other transactions in which the pool engaged during the reporting period.

87. 17 C.F.R. § 5.4 states that 17 C.F.R. pt. 4 applies to any person required to register as a CPO pursuant to 17 C.F.R. pt. 5, relating to forex transactions.

88. By reason of the foregoing, Defendant failed to provide prospective pool participants with pool disclosure documents in the form specified in Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24, 4.25 (2019).

89. By reason of the foregoing, Defendant violated 17 C.F.R. § 4.21.

90. By reason of the foregoing, Defendant failed to provide pool participants account statements and annual reports required by 17 C.F.R. §4.22.

91. By reason of the foregoing, Defendant violated 17 C.F.R. §4.22.

92. Each failure to furnish the required disclosure documents and account statements and reports to prospective pool participants and pool participants, including, but not limited to, those specifically alleged herein, is a separate and distinct violation of 17 C.F.R. §§ 4.21 and 4.22.

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), and pursuant to its own equitable powers:

A. Find that Defendant violated Sections 4b(a)(2)(A)-(C), 4c(b), 4m(1), 4o(1)(A)-(B), and 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6c(b), 6m(1), 6o(1)(A)-(B), 2(c)(2)(C)(iii)(I)(cc) (2018), and Regulations 4.20(a)(1) and (b), 4.21, 4.22, 5.2(b)(1)-(3), 5.3(a)(2)(i), 5.4, and 32.4, 17 C.F.R. §§ 4.20(a)(1), (b), 4.21, 4.22, 5.2(b)(1)-(3), 5.3(a)(2)(i), 5.4, 32.4 (2019);

B. Enter an order of permanent injunction enjoining Defendant and any other person or entity in active concert with him, from engaging in the conduct described above, in violation of 7 U.S.C. §§ 6b(a)(2)(A)-(C); 6c(b); 6m(1); 6o(1)(A)-(B); 2(c)(2)(C)(iii)(I)(cc) and 17 C.F.R. §§ 4.20(a)(1), (b); 4.21; 4.22; 5.2(b)(1)-(3); 5.3(a)(2)(i); 5.4; and 32.4;

C. Enter an order of permanent injunction restraining and enjoining Defendant and any other person or entity in active concert with him, from directly or indirectly:

- 1) Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));

- 2) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for accounts held in the name of Defendant or for accounts in which Defendant has a direct or indirect interest;
- 3) Having any commodity interests traded on Defendant’s behalf;
- 4) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- 5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
- 6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and
- 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9).

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

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

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

G. Enter an order directing Defendant to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty prescribed by 7 U.S.C. § 13a-1(d)(1), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, tit. VII, § 701, 129 Stat. 584, 599-600; *see* Regulation 143.8, 17 C.F.R. § 143.8 (2019), for each violation of the Act and Regulations, as described herein;

H. Enter an order directing that Defendant, and any successors thereof, make an accounting to the Court of all of his assets and liabilities, together with all funds he received from and paid to investors and other persons in connection with commodity interests and all disbursements for any purpose whatsoever of funds received from commodity interests, including salaries, commissions, interest, fees, loans, and other disbursement of money or property of any kind from at least January 1, 2015 to the date of such accounting;

I. Enter an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920, 2413(a)(2) (2018); and

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

Dated: September 28, 2020

Respectfully submitted,

**COMMODITY FUTURES TRADING
COMMISSION**

By: /s/ Jeff Le Riche

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ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Commodity Futures Trading Commission

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeff LeRiche, J. Alison Auxter, Brett Shanks - CFTC Division of Enforcement, 4900 Main St., Suite 500, Kansas City, MO 64112, (816) 960-7700

DEFENDANTS

Kenzley Ramos, a/k/a Kenzley Jacobs, a/k/a Anthony David "Tony" McKinney, a/k/a Anthony Green

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (This State, Another State, Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 7 U.S.C. § 6b(a)(2)(A)-(C), 7 U.S.C. § 6c(b), 7 U.S.C. § 6o(1)(A)-(B), 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1)

Brief description of cause: Solicitation fraud, misappropriation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/28/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Jeff Le Riche

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

Date and Attorney Signature. Date and sign the civil cover sheet.