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13 **THE UNITED STATES DISTRICT COURT**
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
15 **SACRAMENTO DIVISION**

16 COMMODITY FUTURES
17 TRADING COMMISSION,

18 Plaintiff,

19 v.

20 ESHAQ M. NAWABI, individually
21 and d/b/a, NAWABI
22 ENTERPRISE, and
23 HYPERION CONSULTING INC.,

24 Defendants.

Civil Case No.

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

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

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4 **I. SUMMARY**

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6 1. From at least October 2019 through the present (the “Relevant Period”),
7 Nawabi Enterprise and Hyperion Consulting Inc. (“Hyperion”), by and through Eshaq
8 M. Nawabi (“Nawabi”), and Nawabi, individually, (collectively, “Defendants”)
9 operated a fraudulent scheme in which Defendants, by and through Nawabi, solicited,
10 accepted, and misappropriated funds for a pooled investment in off-exchange
11 leveraged or margined retail foreign currency exchange (“forex”) contracts (“forex
12 pool”).

13 2. Defendants knowingly made fraudulent and material misrepresentations
14 and omissions, in both conversations and written communications, about their forex
15 trading and returns to persuade potential and existing forex pool participants (“Pool
16 Participants”) to transfer funds to Defendants for the purpose of participating in a
17 forex pool. At least seven Pool Participants transferred no less than \$543,000 to
18 Defendants for the purpose of participating in Defendants’ forex pool.

19 3. To entice prospective Pool Participants, Defendants knowingly and
20 falsely represented, among other things, that: (1) Defendants had historically made
21 large profits (between 8–25% per month) for themselves and Pool Participants from
22 trading forex; (2) Pool Participants would realize profits of 8–25% per month on their
23 funds with minimal risk; (3) Defendants would trade forex with the funds deposited
24 by Pool Participants; and (4) upon request, Pool Participants could withdraw their
25 funds at any time.

26 4. Instead of trading as promised, Defendants misappropriated pool funds.
27 While some of the misappropriated funds were used by Nawabi for his own personal
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1 benefit, Defendants used other misappropriated pool funds to pay other Pool
2 Participants in a manner akin to a Ponzi scheme.

3 5. To conceal Defendants' misappropriation, Defendants created and issued
4 false account statements that misrepresented trading returns purportedly earned by
5 Pool Participants. When Pool Participants requested return of their funds, Defendants
6 either ignored the requests, provided bogus promises and excuses, or engaged in
7 conduct designed to delay payouts to Pool Participants for as long as possible.

8 6. Defendants' fraudulent conduct is ongoing. Nawabi has made
9 fraudulent excuses for not returning funds to at least one Pool Participant as recently
10 as November 2021. As recently as March of 2022, Ponzi-like payments were made
11 by Nawabi to another Pool Participant.

12 7. Nawabi Enterprise and Hyperion, are acting as unregistered Commodity
13 Pool Operators ("CPOs"), and Nawabi, is acting as an unregistered Associated Person
14 ("AP") of Nawabi Enterprise and/or Hyperion.

15 8. Defendants also did not set up the forex pool in the manner required by
16 the Regulations, did not receive Pool Participant funds in the name of the forex pool,
17 and commingled Pool Participant funds with their own.

18 9. By virtue of this conduct and the conduct further described herein,
19 Defendants have engaged, are engaging, or are about to engage in acts and practices
20 in violation of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(2)(A)–(C),
21 6k(2), 6m(1), 6o(1)(A)–(B), and 2(c)(2)(C)(iii)(I)(cc), and Commission Regulations
22 ("Regulations"), 17 C.F.R. §§ 4.20(a)(1), (b)–(c), 5.2(b)(1)–(3), and 5.3(a)(2) (2021).

23 10. At all relevant times, Nawabi's acts were committed within the scope of
24 his employment, agency, or office with Nawabi Enterprise and Hyperion. Therefore,
25 pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 (2021), Nawabi Enterprise and
26 Hyperion are liable as principals for Nawabi's actions in violation of the Act and
27 Regulations.

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1 11. At all times during the Relevant Period, Nawabi was the controlling
2 person of Nawabi Enterprise and Hyperion and knowingly induced the underlying
3 violations or failed to act in good faith. Therefore, pursuant 7 U.S.C. § 13c(b),
4 Nawabi is liable as the controlling person for the actions of Nawabi Enterprise and
5 Hyperion in violation of the Act and Regulations.

6 12. Accordingly, pursuant to 7 U.S.C. § 13a-1 and § 2(c)(2)(C), the
7 Commission brings this action to enjoin Defendants' unlawful acts and practices and
8 to compel their compliance with the Act and the Regulations promulgated thereunder.
9 In addition, the Commission seeks civil monetary penalties, restitution, and remedial
10 ancillary relief, including, but not limited to, trading and registration bans,
11 disgorgement, rescission, pre- and post-judgment interest, and such other and further
12 relief as the Court may deem necessary or appropriate.

13 13. Unless restrained and enjoined by this Court, Defendants will likely
14 continue to engage in the acts and practices alleged in this Complaint and similar acts
15 and practices, as described below.

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17 **II. JURISDICTION AND VENUE**
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19 14. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
20 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that U.S.
21 district courts have original jurisdiction over civil actions commenced by the United
22 States or by any agency expressly authorized to sue by Act of Congress). In addition,
23 7 U.S.C. § 13a-1, provides that the U.S. district courts have jurisdiction to hear
24 actions brought by the Commission for injunctive relief or to enforce compliance
25 with the Act whenever it shall appear to the Commission that a person has engaged, is
26 engaging, or is about to engage in any act or practice constituting a violation of any
27 provision of the Act, or any rule, regulation, or order thereunder. 7 U.S.C.
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1 § 2(c)(2)(C), subjects the forex solicitations and transactions at issue in this action to,
2 *inter alia*, 7 U.S.C. §§ 6b, 6o, as further described below.

3 15. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e),
4 because Defendants reside in, transact, or transacted business in this District, and
5 certain transactions, acts, practices, and courses of business alleged in this Complaint
6 occurred, are occurring, or are about to occur in this District. Additionally, some of
7 the defrauded Pool Participants reside in and were solicited in this District.

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9 **III. THE PARTIES**

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11 16. Plaintiff **Commodity Futures Trading Commission** is an independent
12 federal regulatory agency charged by Congress with the responsibility of
13 administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1–26, and the
14 Commission’s Regulations promulgated thereunder, 17 C.F.R. pts. 1–190 (2021).

15 17. Defendant **Eshaq M. Nawabi** is a resident of either Salida, California,
16 or Manteca, California. Nawabi is the Chief Executive Officer of Hyperion. Nawabi
17 also d/b/a Nawabi Enterprise. Nawabi has never been registered with the
18 Commission in any capacity.

19 18. Defendant **Nawabi Enterprise** is an unincorporated California
20 company. During the Relevant Period, Nawabi listed Nawabi Enterprise’s mailing
21 address as a specific location in Salida, California, which, upon information and
22 belief, is also one of Nawabi’s home addresses. Nawabi is Nawabi Enterprise’s
23 control person. Nawabi Enterprise has never been registered with the Commission in
24 any capacity.

25 19. Defendant **Hyperion Consulting Inc.**, was incorporated in California on
26 November 23, 2020. During the Relevant Period, Hyperion’s address was listed as
27 either in Tracy, California, or Manteca, California. Nawabi is both Hyperion’s Chief
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1 Executive Officer (“CEO”) and control person. Hyperion has never been registered
2 with the Commission in any capacity.

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4 **IV. FACTS**

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6 **A. Defendants’ Fraudulent Solicitation**

7 20. During the Relevant Period, Nawabi held himself out both as an
8 unincorporated d/b/a “Nawabi Enterprise” and as the CEO of Hyperion.

9 21. During the Relevant Period, Defendants, through the acts of Nawabi,
10 solicited prospective Pool Participants through telephone calls, emails, text messages,
11 and word of mouth, seeking out individuals who would agree to let Nawabi trade
12 forex on their behalf, ostensibly through his business ventures: Nawabi Enterprise
13 and/or Hyperion.

14 22. Rather than open an account in the name of either or both enterprises, in
15 the fall of 2019, Nawabi opened a joint personal checking account in his name and in
16 the name of a family member at JP Morgan Chase Bank, N.A. (“Chase”), (the “Chase
17 account”). Nawabi subsequently opened two additional personal accounts at (i) Bank
18 of America N.A. in August 2021 and (ii) Wells Fargo Bank, N.A. in August 2021, as
19 well as a business account at (iii) U.S. Bank N.A. in Hyperion’s name in December
20 2020 that Defendants used to receive and/or disburse Pool Participant funds (with the
21 Chase account, collectively, the “Nawabi-controlled bank accounts”). The Nawabi-
22 controlled bank accounts contained funds that were unrelated to Defendants’
23 purported forex pool.

24 23. Throughout the Relevant Period, Defendants, through Nawabi, falsely
25 and fraudulently represented to Pool Participants that: (1) Defendants had
26 historically made large profits (between 8–25% per month) for themselves and Pool
27 Participants from trading forex; (2) Pool Participants would realize profits of 8–25%

1 per month on their funds with minimal risk; (3) Defendants would trade forex with
2 the funds deposited by Pool Participants; and (4) Pool Participants could withdraw
3 their funds within three to five business days of any such request.

4 24. Additionally, Defendants represented to Pool Participants, *inter alia*, that
5 Nawabi:

- 6 (i) pools his clients' funds together and uses an algorithm he
7 created to determine when to make trades on foreign currency;
- 8 (ii) earned 10–12% per month during the prior 24-month period,
9 13–15% per month over the prior 12 months, and 8–9% per
10 month over the prior three months;
- 11 (iii) operates two pooled trading accounts: a “conservative” account
12 and an “aggressive” account, which earns about 20–25% per
13 month;
- 14 (iv) is being advised by an “SEC attorney” on all appropriate legal
15 issues;
- 16 (v) has \$11 million in “his Forex investment fund” of which
17 roughly 85% is of his own money; and
- 18 (vi) would return a Pool Participant’s funds within three to five
19 business days after the Pool Participant notified Nawabi of their
20 intent to withdraw funds from the forex pool.

21 25. The statements described in paragraphs 23 and 24 are false. As set forth
22 more fully below, Defendants did not transfer any Pool Participant funds to a forex
23 trading account. Moreover, Defendants repeatedly failed to timely return Pool
24 Participants’ funds upon their request.

25 26. Defendants also, among other things, failed to disclose that they were
26 not properly registered with the Commission; thus, they were not authorized to trade
27 forex with Pool Participants’ funds.
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1 27. Based upon Defendants’ misrepresentations and omissions, Pool
2 Participants entered into a written “Investment Agreement” with either Nawabi
3 Enterprise or Hyperion, with Nawabi acting as the signatory for both entities.
4 Nawabi provided the Investment Agreement to Pool Participants by email, or through
5 other means or instrumentalities of interstate commerce.

6 28. The Investment Agreement provided that “the Company shall earn profit
7 [sic] for the Investor in a monthly changing APR [sic] until the termination. All
8 profits left in will be compounded monthly.” The Investment Agreement also
9 provided that the sole compensation for Defendants for their forex trading services
10 was to be from “monthly profits” and varied in amount between 10% to 15%. The
11 Investment Agreement included a provision indicating that Pool Participant funds
12 were “secured” by “security equity in the fund,” and the “Minimum balance of
13 equity” was identified as “\$5,237,819.72.”

14 29. Once an “Investment Agreement” was executed, Nawabi deposited Pool
15 Participants’ funds into a Nawabi-controlled bank account, for participation in the
16 purported pooled forex trading.

17 30. Through their misrepresentations and omissions, at least seven Pool
18 Participants deposited no less than \$543,000 into the Nawabi-controlled accounts.

19 **B. Defendants Misappropriated Pool Participants’ Funds**

20 31. During the Relevant Period, rather than using Pool Participants’ funds
21 for trading forex, as Defendants had represented they would, Defendants, through the
22 acts of Nawabi, instead used those Pool Participant funds for Nawabi’s personal
23 benefit and to make Ponzi payments.

24 32. Specifically, Nawabi used Pool Participants’ funds for, among other
25 things, purchases at luxury car dealerships, retail purchases, an Onlyfans.com
26 account, meals, entertainment, travel, and cash withdrawals.

27 33. As one example, on January 24, 2020, a Pool Participant made a \$50,000
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1 deposit into the Chase account and all of the funds were used to pay expenses
2 unrelated to trading forex. Nawabi used the majority of the funds for a \$40,000
3 payment to a car dealer in Redwood City, California, and used the remainder to pay
4 for food, his cell phone expense, and gas.

5 34. To the extent some Pool Participants have received funds back from
6 Defendants, those funds did not originate from any known forex trading firm. In at
7 least one instance, funds paid to a Pool Participant were misappropriated by
8 Defendants from other Pool Participants, in the nature of a Ponzi scheme.

9 35. Further, as recently as March of 2022, Ponzi payments were made by
10 Nawabi to a Pool Participant.

11 36. To date, despite repeated requests to Nawabi for the return of their
12 funds, multiple Pool Participants have not received their funds back from the
13 Defendants.

14 37. For example, in mid-October 2021, one Pool Participant attempted to
15 terminate his Investment Agreement with Defendants, and demanded a return of his
16 funds. However, Nawabi failed to return any of his funds, instead, making numerous
17 implausible excuses regarding his failure to do so.

18 38. In addition, Nawabi has made fraudulent excuses for not returning funds
19 to at least one Pool Participant as recently as November 2021.

20 **C. False Account Statements**

21 39. To conceal their lack of forex trading and misappropriation of Pool
22 Participant money, Defendants, through Nawabi, issued false monthly account
23 statements and made other oral and written misrepresentations to lull Pool
24 Participants into leaving their funds in Defendants' control.

25 40. Defendants routinely failed to send pool participants monthly account
26 statements or when they did send them, they were often sent late. This conduct
27 caused more than one Pool Participant to make repeated requests to Nawabi to send
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1 the monthly account statements.

2 41. When Nawabi did issue account statements to Pool Participants
3 supposedly reflecting forex trading and profits, they were false.

4 42. For example, despite receiving monthly account statements showing
5 gains of roughly 8–9% per month, one Pool Participant began to question the
6 legitimacy of Nawabi’s forex trading because he noticed that his monthly account
7 statements appeared to have been altered, as the columns and rows were aligned
8 differently on different parts of the page, suggesting that the text had been manually
9 shifted (rather than caused by a file conversion error).

10 43. Further, several Pool Participants noted that their statements contained
11 inaccurate/conflicting information, as the stated amount of profit earned from the
12 trading did not match the profit percentage calculated.

13 44. In addition to issuing the monthly account statements, Nawabi advised
14 some Pool Participants, both orally and in written communications, that their funds
15 were making profits.

16 45. The profit representations made by Defendants in the monthly account
17 statements and in other oral and written communications are false. There is no
18 evidence that Defendants transferred any Pool Participant funds to a forex trading
19 account. Rather, Defendants misappropriated Pool Participant funds for Nawabi’s
20 personal use and to make Ponzi payments.

21 **D. Nawabi Enterprise and Hyperion Are Unregistered CPOs, and Nawabi Is**
22 **an Unregistered AP of a CPO**

23 46. During the Relevant Period, Nawabi Enterprise and Hyperion, through
24 Nawabi, each are acting as an unregistered CPO by soliciting funds from individuals
25 who were not Eligible Contract Participants (“ECP”), as defined in 7 U.S.C.
26 § 1a(18)(A)(xi), for a forex pool that was not an ECP, as defined in 7 U.S.C.
27 § 1a(18)(A)(iv), for the purpose of engaging in retail forex transactions.

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1 47. During the Relevant Period, Nawabi is acting as an unregistered AP of
2 two CPOs by soliciting Pool Participants and prospective Pool Participants for
3 participation in a forex pool, while associated with Nawabi Enterprise and Hyperion
4 as a partner, officer, employee, or similar agent.

5 **E. Nawabi Is a Controlling Person of Nawabi Enterprise and Hyperion**

6 48. Nawabi is a controlling person of both Nawabi Enterprise and Hyperion.
7 As stated above, Nawabi was interchangeable with Nawabi Enterprise. In fact,
8 Nawabi did business as Nawabi Enterprise, an unincorporated entity. Nawabi was
9 also Hyperion's CEO. Specifically, Nawabi executed Investment Agreements on
10 behalf of Nawabi Enterprise and Hyperion; represented to Pool Participants that he
11 was personally and solely responsible for trading Pool Participant funds; and was the
12 sole source of information for Pool Participants regarding Nawabi Enterprise and
13 Hyperion, including any information regarding the status of their funds. Nawabi also
14 had control over the Nawabi-controlled bank accounts into which Pool Participants
15 transferred funds for the purported purpose of trading forex.

16 **F. Nawabi Is Acting as an Agent for Nawabi Enterprise and Hyperion**

17 49. Through his solicitation of prospective and existing Pool Participants
18 and his continued communication with Pool Participants regarding their purported
19 trading success on behalf of both Nawabi Enterprise and Hyperion, Nawabi is acting
20 as an agent of both entities.

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

3 **COUNT ONE**

4 **Violations of 7 U.S.C. § 6b(a)(2)(A)–(C) and 17 C.F.R. § 5.2(b) (2021)**
5 **(Forex Fraud by Misappropriation, Misrepresentations and Omissions, and**
6 **False Statements)**
7 **(All Defendants)**

8 50. Paragraphs 1 through 49 are re-alleged and incorporated herein by
9 reference.

10 51. 7 U.S.C. § 6b(a)(2)(A)–(C) makes it unlawful:

11 (2) for any person, in or in connection with any order to make, or the
12 making of, any contract of sale of any commodity for future delivery . . .
13 that is made, or to be made, for or on behalf of, or with, any other
14 person, other than on or subject to the rules of a designated contract
15 market—

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

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

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

28 52. 7 U.S.C. § 1a(18)(A)(xi), defines an ECP, in relevant part, as an
individual who has amounts invested on a discretionary basis, the aggregate of which
exceeds \$10 million, or \$5 million if the individual enters into the transaction to

1 manage the risk associated with an asset owned or liability incurred, or reasonably
2 likely to be owned or incurred, by the individual.

3 53. 7 U.S.C. § 1a(18)(iv), defines a commodity pool as having assets
4 exceeding \$5,000,000 and “formed and operated by a person subject to regulation
5 under this chapter or a foreign person performing a similar role or function subject as
6 such to foreign regulation (regardless of whether each investor in the commodity pool
7 or the foreign person is itself an eligible contract participant) provided, however, that
8 for purposes of section 2(c)(2)(B)(vi) of this title and section 2(c)(2)(C)(vii) of this
9 title, the term ‘eligible contract participant’ shall not include a commodity pool in
10 which any participant is not otherwise an eligible contract participant.”

11 54. Pursuant to 7 U.S.C. § 2(c)(2)(C)(ii)(I), “[a]greements, contracts, or
12 transactions” in retail forex “shall be subject to . . . [7 U.S.C. §] 6b,” except in
13 circumstances not relevant here. Moreover, under 7 U.S.C. § 2(c)(2)(C)(iv), 7 U.S.C.
14 § 6b applies to forex transactions described herein “as if” they were a contract of sale
15 of a commodity for future delivery because they were “offered to, or entered into
16 with, a person that is not an” ECP. Pursuant to 7 U.S.C. § 2(c)(2)(C)(vii), “[t]his Act
17 applies to, and the Commission shall have jurisdiction over an account or pooled
18 investment vehicle that is offered for the purpose of trading, or that trades,” forex
19 agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i).

20 55. 17 C.F.R. § 5.2(b) provides, in relevant part, that:

21 [i]t shall be unlawful for any person, by use of the mails or by
22 any means or instrumentality of interstate commerce, directly
23 or indirectly, in or in connection with any retail forex
transaction:

- 24 (1) To cheat or defraud or attempt to cheat or defraud
25 any person;
- 26 (2) Willfully to make or cause to be made to any person
27 any false report or statement or cause to be entered
28 for any person any false record; or

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

3 56. Defendants, by use of the mails or by any means or instrumentality of
4 interstate commerce, directly or indirectly, in connection with retail forex
5 transactions, knowingly or recklessly: (1) misappropriated Pool Participant funds;
6 (2) made material misrepresentations and omissions with scienter regarding, among
7 other things, the profitability of trading forex with Defendants; and (3) issued false
8 monthly account statements to conceal their fraudulent conduct.

9 57. By reason of the foregoing, Defendants violated 7 U.S.C. § 6b(a)(2)(A)–
10 (C) and 17 C.F.R. § 5.2(b)(1)–(3).

11 58. The foregoing acts, misrepresentations, omissions, and failures occurred
12 within the scope of Nawabi’s employment or office with Nawabi Enterprise and/or
13 Hyperion. Therefore, Nawabi Enterprise and/or Hyperion are liable for his acts,
14 misrepresentations, omissions, and failures in violation of 7 U.S.C. § 6b(a)(2)(A)–(C)
15 and 17 C.F.R. § 5.2(b)(1)–(3), pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

16 59. Nawabi controls Nawabi Enterprise and Hyperion, directly or indirectly,
17 and did not act in good faith or knowingly induced, directly or indirectly, Nawabi
18 Enterprise’s and Hyperion’s conduct alleged in this Count. Therefore, under 7 U.S.C.
19 § 13c(b), Nawabi is liable for Nawabi Enterprise’s and Hyperion’s violations of 7
20 U.S.C. § 6b(a)(2)(A)–(C) and 17 C.F.R. § 5.2(b)(1)–(3).

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

COUNT TWO
Violation of 7 U.S.C. § 6o(1)(A)–(B)
(Fraud and Deceit by CPOs and an AP of CPOs)
(All Defendants)

61. Paragraphs 1 through 49 are re-alleged and incorporated herein by reference.

62. 7 U.S.C. § 1a(11)(A)(i), defines a CPO, in relevant part, as any person: engaged 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].

63. Pursuant to 17 C.F.R. § 5.1(d)(1) (2021), 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 CPO.

64. Pursuant to 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.

65. Regulation 1.3, 17 C.F.R. § 1.3 (2021), defines an AP of a CPO as any natural person associated with:

- (3) A [CPO] as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or

1 performing similar functions), in any capacity which involves
2 (i) the solicitation of funds, securities, or property for a
3 participation in a commodity pool or (ii) the supervision of any
4 person or persons so engaged[.]

5 66. Pursuant to 17 C.F.R. § 5.1(d)(2), any person associated with a CPO “as
6 a partner, officer, employee, consultant or agent (or any natural person occupying a
7 similar status or performing similar functions), in any capacity which involves: (i)
8 [t]he solicitation of funds, securities, or property for a participation in a pooled
9 investment vehicle; or (ii) [t]he supervision of any person or persons so engaged” is
10 an AP of a CPO.

11 67. During the Relevant Period, Nawabi Enterprise and Hyperion solicited
12 funds, securities, or property for a pooled investment vehicle for the purpose of
13 engaging in retail forex transactions; therefore, Nawabi Enterprise and Hyperion are
14 acting as CPOs, as defined by 7 U.S.C. § 1a(11) and 17 C.F.R. § 5.1(d)(1).

15 68. During the Relevant Period, Nawabi was associated with Nawabi
16 Enterprise and Hyperion, both CPOs, as a partner, officer, employee, consultant, or
17 agent in a capacity that involved the solicitation of funds, securities, or property for
18 participation in a commodity pool. Therefore, Nawabi was an AP of two CPOs as
19 defined by 17 C.F.R. § 1.3 and 17 C.F.R. § 5.1(d)(2).

20 69. 7 U.S.C. § 6o(1) prohibits CPOs and APs of CPOs, whether registered
21 with the Commission or not, by use of the mails or any means or instrumentality of
22 interstate commerce, directly or indirectly, from (A) employing devices, schemes or
23 artifices to defraud any client or participant or prospective client or participant, or
24 (B) engaging in transactions, practices, or courses of business which operate as a
25 fraud or deceit upon any client or participant or prospective client or participant.

26 70. Defendants, while acting in an unregistered capacity, through use of the
27 mails or any means or instrumentality of interstate commerce: (1) misappropriated
28 Pool Participant funds; (2) made material misrepresentations and omissions with

1 scienter regarding, among other things, the profitability of trading forex with
2 Defendants; and (3) issued false monthly account statements to conceal their
3 fraudulent conduct.

4 71. By reason of the foregoing, Defendants violated 7 U.S.C. § 6o(1).

5 72. The foregoing acts, misrepresentations, omissions, and failures occurred
6 within the scope of Nawabi's employment or office with Nawabi Enterprise and/or
7 Hyperion. Therefore, Nawabi Enterprise and/or Hyperion are liable for his acts,
8 misrepresentations, omissions, and failures in violation of 7 U.S.C. § 6o(1),

9 73. Nawabi controls Nawabi Enterprise and Hyperion, directly or indirectly,
10 and did not act in good faith or knowingly induced, directly or indirectly, Nawabi
11 Enterprise's and Hyperion's conduct alleged in this Count. Therefore, under 7 U.S.C.
12 § 13c(b), Nawabi is liable for Nawabi Enterprise's and Hyperion's violations of 7
13 U.S.C. § 6o(1).

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

17
18 **COUNT THREE**

19 **Violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), 6m(1),**

20 **and 17 C.F.R. § 5.3(a)(2) (2021)**

21 **(Failure To Register as a CPO**

22 **and as an AP of two CPOs**

23 **(All Defendants)**

24 75. Paragraphs 1 through 49 are re-alleged and incorporated herein by
25 reference.

26 76. 7 U.S.C. § 1a(11)(A)(i), defines a CPO, in relevant part, as any person:
27 engaged in a business that is of the nature of a commodity
28 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

1 through capital contributions, the sale of stock or other forms
2 of securities, or otherwise, for the purpose of trading in
3 commodity interests, including any—

- 4 i. commodity for future delivery, security futures
5 product, or swap; [or]
- 6 ii. agreement, contract, or transaction described in
7 [S]ection 2(c)(2)(C)(i) [of the Act] or [S]ection
8 2(c)(2)(D)(i) [of the Act.]

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

13 78. Subject to certain exceptions not relevant here, 7 U.S.C.
14 § 2(c)(2)(C)(iii)(I)(cc) states that a
15 person, unless registered in such capacity as the Commission by
16 rule, regulation, or order shall determine and a member of a
17 futures association registered under section 21 of this title, shall
18 not—

19

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

24 79. For the purposes of retail forex transactions, a CPO is defined in 17
25 C.F.R. § 5.1(d)(1) as any person who operates or solicits funds, securities, or property
26 for a pooled investment vehicle that is not an ECP, as defined in 17 U.S.C. § 1a(18),
27 and who engages in retail forex transactions.
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1 80. Except in circumstances not relevant here, 17 C.F.R. § 5.3(a)(2)(i)
2 requires those that meet the definition of CPO under 17 C.F.R. § 5.1(d) to register as
3 a CPO with the Commission.

4 81. For the purposes of retail forex transactions, an AP of a CPO is defined
5 in 17 C.F.R. § 5.1(d)(2) as any natural person associated with a CPO as a partner,
6 officer, employee, consultant, or agent (or any natural person occupying a similar
7 status or performing similar functions) in any capacity that involves soliciting funds,
8 securities or property for participation in a pooled investment vehicle or supervising
9 persons so engaged.

10 82. Except in certain circumstances not relevant here, 17 C.F.R.
11 § 5.3(a)(2)(ii) requires those that meet the definition of an AP of a CPO under 17
12 C.F.R. § 5.1(d) to register with the Commission.

13 83. Nawabi Enterprise and Hyperion operated or solicited funds, securities,
14 or property for a pooled investment vehicle from pool participants who were not
15 ECPs, as defined by 7 U.S.C. § 1a(18), for the purpose of trading in retail forex
16 transactions; thus, Nawabi Enterprise and Hyperion are acting as CPOs as define by 7
17 U.S.C. § 1a(11) and 17 C.F.R. § 5.1(d)(1).

18 84. Nawabi Enterprise and Hyperion, while using the mails or means of
19 interstate commerce in connection with their business as a CPO, are not registered
20 with the Commission as a CPO, in violation of 7 U.S.C. §§ 2I(2)(C)(iii)(I)(cc) and
21 6m(1), and 17 C.F.R. § 5.3(a)(2)(i).

22 85. Nawabi associated with CPOs Nawabi Enterprise and Hyperion as a
23 partner, officer, employee, consultant, or agent (or any natural person occupying a
24 similar status or performing similar functions), in a capacity that involved the
25 solicitation of funds, securities, or property for a participation in a commodity pool
26 and/or a pooled investment vehicle in retail forex; therefore, Nawabi acted as an AP
27 of CPOs as defined by 17 C.F.R. §5.1(d)(2).
28

1 86. Nawabi is not registered with the Commission as an AP of either CPO;
2 thus, Nawabi acted as an unregistered AP of CPOs in violation of 17 C.F.R.
3 § 5.3(a)(2)(ii).

4 87. Subject to certain exceptions not relevant here, 7 U.S.C. § 6k(2) states
5 that it shall be

6 unlawful for any person to be associated with a [CPO] as a
7 partner, officer, employee, consultant, or agent . . . in any
8 capacity that involves

9 (i) the solicitation of funds, securities, or property for a
10 participation in a commodity pool or

11 (ii) the supervision of any person or persons so engaged,
12 unless such person is registered with the
13 Commission under this chapter as an [AP] of such
[CPO]

14 88. While associated with Nawabi Enterprise and Hyperion, Nawabi, while
15 acting in an unregistered capacity, solicited Pool Participant funds for the forex pool,
16 in violation of 7 U.S.C. § 6k(2).

17 89. Nawabi Enterprise and Hyperion supervised Nawabi and permitted him
18 to solicit Pool Participants for the forex pool knowing that he was unregistered, in
19 violation of 7 U.S.C. § 6k(2).

20 90. The foregoing acts, omissions, and failures occurred within the scope of
21 Nawabi's employment or office with Nawabi Enterprise and/or Hyperion. Therefore,
22 Nawabi Enterprise and Hyperion are liable for his acts, omissions, and failures in
23 violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), 6m(1), and 17 C.F.R. § 5.3(a)(2)
24 pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

25 91. Nawabi controls Nawabi Enterprise and Hyperion, directly or indirectly,
26 and did not act in good faith or knowingly induced, directly or indirectly, Nawabi
27 Enterprise's and Hyperion's conduct alleged in this Count. Therefore, under 7 U.S.C.
28

1 § 13c(b), Nawabi is liable for Nawabi Enterprise's and Hyperion's violations of 7
2 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), 6m(1), and 17 C.F.R. § 5.3(a)(2) (2021)

3 92. Each instance that Nawabi Enterprise and Hyperion acted as a CPO but
4 failed to register with the Commission as such is alleged as a separate and distinct
5 violation.

6 93. Each instance that Nawabi acted as an AP of a CPO but failed to register
7 with the Commission as such is alleged as a separate and distinct violation.

8
9 **COUNT FOUR**

10 **Violation of 17 C.F.R. § 4.20(a)(1), (b)–(c) (2021)**
11 **(Failure To Operate Pool as Separate Entity; Failure To Receive Pool**
12 **Participant Funds in Pool's Name; Commingling of Pool Funds)**
13 **(All Defendants)**

14 94. Paragraphs 1 through 49 are re-alleged and incorporated herein by
15 reference.

16 95. 17 C.F.R. § 5.4 (2021), states that 17 C.F.R. Pt. 4 applies to any person
17 required to register as a CPO pursuant to 17 C.F.R. pt. 5 (2021).

18 96. 17 C.F.R. § 4.20(a)(1) requires a CPO, whether registered or not, to
19 operate its pool as a legal entity separate from that of the CPO.

20 97. 17 C.F.R. § 4.20(b) prohibits a CPO, whether registered or not, from
21 receiving pool funds in any name other than that of the pool.

22 98. 17 C.F.R. § 4.20(c) prohibits a CPO, whether registered or not, from
23 commingling the property of any pool it operates with the property of any other
24 person.

25 99. Nawabi Enterprise and Hyperion, while acting as CPOs, failed to operate
26 the forex pool as a legal entity separate from Nawabi Enterprise and/or Hyperion;
27 accepted Pool Participant funds into Nawabi-controlled bank accounts; and
28 commingled the property of the forex pool with the property of others.

1 100. By reason of the foregoing, Nawabi Enterprise and Hyperion violated 17
2 C.F.R. § 4.20(a)(1), (b)–(c).

3 101. Nawabi controls Nawabi Enterprise and Hyperion, directly or indirectly,
4 and did not act in good faith or knowingly induced, directly or indirectly, Nawabi
5 Enterprise’s and Hyperion’s conduct alleged in this Count. Therefore, under 7 U.S.C.
6 § 13c(b), Nawabi is liable for Nawabi Enterprise’s and Hyperion’s violations of
7 17 C.F.R. § 4.20(a)(1), (b)–(c).

8 102. Each act of failing to operate a pool as a legal entity separate from that
9 of the CPOs, improperly receiving pool participants’ funds, and commingling the
10 property of the pool with non-pool property, including but not limited to those
11 specifically alleged herein, is alleged as a separate and distinct violation of 17 C.F.R.
12 § 4.20(a)(1), (b)–(c).

13
14 **VI. RELIEF REQUESTED**

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16 WHEREFORE, the Commission respectfully requests that this Court, as
17 authorized by 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

18 A. Find that Defendants violated 7 U.S.C. §§ 6b(a)(2)(A)–(C), 6k(2),
19 6m(1), 6o(1)(A)–(B), 2(c)(2)(C)(iii)(I)(cc), and 17 C.F.R. §§ 4.20(a)(1), (b)–(c),
20 5.2(b)(1)–(3), 5.3(a)(2) (2021);

21 B. Enter an order of permanent injunction permanently restraining,
22 enjoining, and prohibiting Defendants, and any other person or entity associated with
23 them, from engaging in conduct described above, in violation of 7 U.S.C.
24 §§ 6b(a)(2)(A)–(C), 6k(2), 6m(1), 6o(1)(A)–(B), 2(c)(2)(C)(iii)(I)(cc), and 17 C.F.R.
25 §§ 4.20(a)(1), (b)–(c), 5.2(b)(1)–(3), 5.3(a)(2);

26 C. Enter an order of permanent injunction permanently restraining,
27 enjoining, and prohibiting Defendants, and their affiliates, agents, servants,
28 employees, assigns, attorneys, and all persons in active concert with them, from

1 directly or indirectly:

- 2 1) Trading on or subject to the rules of any registered entity (as that term is
3 defined by 7 U.S.C. § 1a(40));
- 4 2) Entering into any transactions involving “commodity interests” (as that
5 term is defined in 17 C.F.R. § 1.3 (2021)), for accounts held in the name
6 of any Defendant or for accounts in which any Defendant has a direct or
7 indirect interest;
- 8 3) Having any commodity interests traded on any Defendants’ behalf;
- 9 4) Controlling or directing the trading for or on behalf of any other person
10 or entity, whether by power of attorney or otherwise, in any account
11 involving commodity interests;
- 12 5) Soliciting, receiving, or accepting any funds from any person for the
13 purpose of purchasing or selling of any commodity interests;
- 14 6) Applying for registration or claiming exemption from registration with
15 the CFTC in any capacity, and engaging in any activity requiring such
16 registration or exemption from registration with the CFTC except as
17 provided for in 17 C.F.R. § 4.14(a)(9) (2021); and
- 18 7) Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a)
19 (2021)), agent, or any other officer or employee of any person registered,
20 exempted from registration, or required to be registered with the CFTC
21 except as provided for in 17 C.F.R. § 4.14(a)(9).

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

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

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

10 G. Enter an order directing Defendants to pay a civil monetary penalty
11 assessed by the Court, in an amount not to exceed the penalty prescribed by
12 7 U.S.C. § 13a-1(d)(1), as adjusted for inflation pursuant to the Federal Civil
13 Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, tit.
14 VII, § 701, 129 Stat. 584, 599–600, *see* 17 C.F.R. § 143.8 (2021), for each violation
15 of the Act and Regulations, as described herein;

16 H. Enter an order requiring Defendants to pay costs and fees as permitted
17 by 28 U.S.C. §§ 1920, 2413(a)(2); and

18 I. Enter an order providing such other and further relief as this Court may
19 deem necessary and appropriate under the circumstances.
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1 Dated: April 26, 2022

Respectfully submitted,

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3 COMMODITY FUTURES
TRADING COMMISSION

4 /s/ James H. Holl

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