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16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT CALIFORNIA
 18 SOUTHERN DIVISION

19 UNITED STATES)
 20 COMMODITY FUTURES)
 21 TRADING COMMISISION)

22 Plaintiff,)

23 vs.)

24 FRANK J. COLLINS and)
 25 GERARD SUITE, a/k/a RAWLE)
 26 GERARD SUITE, a/k/a JERRY)
 27 SUITE, a/k/a JERRY SNEAD and)
 STA OPUS NR LLC)

28 Defendants.)

Case No:

**COMPLAINT FOR
 INJUNCTIVE AND OTHER
 EQUITABLE RELIEF AND
 CIVIL MONETARY
 PENALTIES UNDER THE
 COMMODITY EXCHANGE
 ACT**

I. SUMMARY

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2 1. From at least January 2013 to the present (the “relevant period”),
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4 Frank J. Collins (“Collins”) and Gerard Suite, a/k/a Rawle Gerard Suite, a/k/a Jerry
5 Suite, a/k/a Jerry Snead (“Suite”), through STA Opus NR LLC (“STA Opus”)
6 (collectively “Defendants”), fraudulently solicited and accepted at least \$1.6
7 million from at least 30 customers for purposes of operating a commodity pool to
8 trade commodity futures contracts on their behalf. Collins formed STA Opus, a
9 Delaware limited liability company, to operate the pool and receive pool
10 participants’ funds. Defendants traded a portion of the funds they accepted
11 through commodity futures trading accounts carried in the name of STA Opus.
12 Defendants defrauded pool participants by: i) failing to disclose that sanctions
13 were entered against Suite revoking his registration with the U.S. Commodity
14 Futures Trading Commission (“Commission” or “CFTC”), enjoining him from
15 violating the California Corporations Act, and ordering him and entities acting in
16 concert with him to pay \$2.5 million in restitution and fines for conducting
17 business as an unregistered investment advisor in California; ii) falsely
18 representing that STA Opus’ pool had positive annual rates of return during the
19 relevant period, when, in fact, STA Opus’ three commodity futures trading
20 accounts had a negative return, losing virtually all of the funds Defendants
21 committed to trading; iii) issuing false account statements to participants that
22 misrepresented the value of the participants’ respective interests in the pool and
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1 concealed Defendants' misappropriation of their monies; and iv) misappropriating
2 at least \$1.25 million of participants' monies.

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4 2. Additionally, during the relevant period, STA Opus engaged in the
5 forgoing misconduct without benefit of registration with the Commission as a
6 commodity pool operator ("CPO"). Similarly, during the relevant period, Collins
7 and Suite engaged in their misconduct without benefit of registration as associated
8 persons ("APs") of STA Opus, a CPO.

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10 3. By virtue of this conduct and the conduct further described herein,
11 Defendants have engaged, are engaging in, or are about to engage in fraud in
12 violation of Sections 4b(a)(1)(A)-(C), 4o(1) and 6(c)(1) of the Act, 7 U.S.C.
13 §§ 6b(a)(1)(A)-(C), 6o(1) and 9(1) (2012) and Regulation 180.1(a), 17 C.F.R.
14 § 180.1(a) (2015). Moreover, STA Opus acted as a CPO without the benefit of
15 required registration, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1)
16 (2012). Similarly, Collins and Suite acted as APs of a CPO, STA Opus, without
17 the benefit of registration, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2)
18 (2015).

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20 4. Unless restrained and enjoined by this Court, the Defendants are
21 likely to continue to engage in the acts and practices alleged in this Complaint and
22 in similar acts and practices, as more fully described below.
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1 **II. JURISDICTION AND VENUE**

2 5. This Court has jurisdiction over this action pursuant to Section 6c of
3 the Act, 7 U.S.C. § 13a-1 (2012), which authorizes the Commission to seek
4 injunctive relief against any person whenever it shall appear to the Commission
5 that such person has engaged, is engaging, or is about to engage in any act or
6 practice constituting a violation of any provision of the Act or any rule, regulation
7 or order thereunder.
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10 6. Venue properly lies with this Court pursuant to Section 6c of the Act,
11 7 U.S.C. § 13a-1(e) (2012), in that the Defendants transacted business in this
12 District, and the acts and practices in violation of the Act have occurred, are
13 occurring, or are about to occur within this District.
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16 **III. THE PARTIES**

17 **PLAINTIFF**

18 7. Plaintiff Commission is an independent federal regulatory agency that
19 is charged by Congress with responsibility for administering and enforcing the
20 provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2012) and the regulations promulgated
21 thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2015).
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24 **DEFENDANTS**

25 8. Defendant Frank J. Collins is 66 years old and resides in Garden
26 Grove, California. Between December 1999 and November 2008, he was
27 registered with the Commission as an AP of six introducing broker (“IB”) firms
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1 and one futures commission merchant ("FCM"). He is not currently registered
2 with the Commission in any capacity. On bank account, trading account and
3 incorporation documents, Collins is listed as the President, Chief Executive
4 Officer, and Manager of STA Opus.
5

6 9. Defendant Gerard Suite, a/k/a Rawle Gerard Suite, a/k/a Jerry Suite,
7 a/k/a Jerry Snead, is 55 years old and resides in Irvine, California. He was
8 registered as an AP of First Commodity Corp. of Boston, a registered FCM, from
9 January 1, 1982 to April 19, 1983, and as a principal and an AP of Chase
10 Commodities Inc., a registered commodity trading advisor ("CTA") and CPO from
11 December 2, 1985 until May 3, 1990, when his registration was revoked by the
12 Commission.
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16 10. Specifically, on December 30, 1987, the National Futures
17 Association's ("NFA") Membership Committee determined that Suite was
18 disqualified from registration with the Commission pursuant to Section 8a(2)(e) of
19 the Act, 7 U.S.C. § 8a(2)(e), based on the findings of the Arizona Corporation
20 Commission ("ACC") that Suite engaged in fraudulent conduct in violation of the
21 Arizona Securities Laws. In particular, the ACC found that Suite engaged in
22 transactions, practices or courses of business which operated or would operate as a
23 fraud and deceit; offered to sell or sold unregistered securities through material
24 misrepresentations and omissions of material fact; and offered to sell or sold those
25 securities without being registered as a dealer or salesman under the Arizona
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1 Securities Act. The NFA's Membership Committee found that Suite failed to
2 submit any mitigation or rehabilitation evidence to establish that, notwithstanding
3 the existence of his statutory disqualification, his continued registration would be
4 in the public interest. The Membership Committee of the NFA, therefore, issued
5 an order revoking Suite's registration. Suite petitioned the Commission for review
6 of the NFA Membership Committee's order and on April 18, 1990, the
7 Commission issued an opinion and order affirming the NFA's decision to
8 disqualify Suite from registration with the Commission and to revoke his
9 registration.
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13 11. On July 25, 2006, the California Corporations Commissioner issued a
14 Desist and Refrain Order against Suite finding that between June 2004 and January
15 2005, Suite offered and sold securities to an investor, without authorization, and
16 that he did so by means of oral and written communications, including untrue
17 statements of material facts or omitted to state material facts in order to make his
18 statements not misleading.
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21 12. On January 18, 2011, the California Corporations Commissioner filed
22 a Complaint against Suite, and entities acting in concert with Suite, in Los Angeles
23 County Superior Court, Case No. BC452780, alleging that Suite and his related
24 entities, continued to sell unlicensed and unregistered securities as an unlicensed
25 and unregistered Investment Advisor and by so doing, violated the California
26 Corporations Commissioner's Order dated July 25, 2006. On January 4, 2012, the
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1 Los Angeles County Superior Court entered judgment against Suite and the entities
2 acting in concert with him, and ordered them to pay a total of \$2.5 million in
3 restitution and fines. The Superior Court also entered an injunction against Suite,
4 enjoining him from violating the Corporations Code Section 25230, by conducting
5 business as an investment advisor in California without first having applied for and
6 secured a certificate authorizing him to conduct business as an investment advisor.
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9 13. STA Opus NR LLC is a Delaware limited liability company that was
10 formed by Collins on September 19, 2012. STA Opus' current status with the state
11 of Delaware is "Not in Good Standing." STA Opus has never been registered with
12 the Commission in any capacity.
13

14 IV. FACTS

15 A. Statutory Background

16 14. A "commodity pool" is defined in Commission Regulation 4.10(d)(1),
17 17 C.F.R. § 4.10(d)(1) (2015), as any investment trust, syndicate or similar form of
18 enterprise operated for the purpose of trading commodity interests.
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21 15. A "commodity pool operator" is defined in Section 1a(11) of the Act,
22 7 U.S.C. § 1(a)(11) (2012), as any person engaged in a business that is of the
23 nature of a commodity pool, investment trust, syndicate, or similar form of
24 enterprise, and who, in connection therewith, solicits, accepts or receives from
25 others, funds, securities, or property, either directly or through capital
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1 contributions, the sale of stock or other forms of securities or otherwise, for the
2 purpose of trading in commodity interests.

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4 16. An “associated person of a commodity pool operator” is defined in
5 Commission Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2015), in relevant part,
6 as any natural person who is associated with a CPO as a partner, officer, employee,
7 consultant or agent to a CPO (or any natural person occupying a similar status or
8 performing similar functions), in any capacity which involves the solicitation of
9 funds, securities or property for a participation in a commodity pool.
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12 17. A “participant” is defined in Commission Regulation 4.10(c),
13 17 C.F.R. § 4.10(c) (2015), as any person who has any direct financial interest in a
14 commodity pool.
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16 **B. Defendants Fraudulently Solicited Pool Participants**

17 18. During the relevant period, Defendants solicited prospective pool
18 participants through aggressive telephone and email solicitations. Initially, Suite
19 made cold calls to prospective pool participants, soliciting them to invest in STA
20 Opus’ Incubator Fund, which traded various commodities, including soybeans and
21 unleaded gas. In his phone solicitations, Suite touted that STA Opus employed
22 professionals with particular expertise in managed futures products, and that the
23 trading these professionals conducted on behalf of the pool was consistently
24 profitable. Defendants’ sales pitch emphasized that a pool participant would not be
25 subject to margin calls and the risk of losing more than one’s original investment,
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1 while an investor trading for his own account would incur those risks. Typically,
2 Suite telephoned prospective pool participants numerous times, until they
3 expressed some interest in investing in STA Opus' pool.
4

5 19. During his telephone calls, Suite advised prospective pool participants
6 to check the website, www.another-winningtrade.com, which described STA Opus
7 as operating a Fund "utilizing the STA Opus Trading System in conjunction with
8 other trend following Systems managed by a select group of independent trading
9 advisors that engage in the speculative trading of futures and forward contracts,
10 while providing limited liability." The website named Collins as STA Opus'
11 contact person.
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14 20. Additionally, Defendants sent emails from tbtanalysis@cox.net to
15 prospective pool participants and pool participants containing promotional
16 material, including monthly and yearly performance charts for STA Opus' pool.
17 These performance charts falsely represented the pool's trading performance. For
18 example, some of the performance charts represented that the pool had an annual
19 rate of return of 132.77% in 2012, 78.117% in 2013, 64.39% in 2014, and an 11-
20 month rate of return of 60.05% in 2015. Other performance charts represented that
21 the pool had an annual rate of return of 132.77% in 2012, 78.117% in 2013 and
22 57.60% in 2014. In fact, STA Opus' three commodity futures trading accounts
23 carried at a registered FCM had a negative return, losing virtually all of the funds
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28 Defendants committed to trading.

1 21. During Defendants' telephone and email solicitations, Defendants
2 failed to disclose to current and prospective pool participants sanctions entered
3 against Suite by the Commission and the state of California, namely: i) that in
4 May 1990, the Commission revoked Suite's registration as a principal and an AP
5 of Chase Commodities Inc., a registered CTA and CPO, and disqualified him from
6 registration with the Commission because he engaged in fraudulent conduct in
7 violation of the Arizona securities laws; and ii) that in January 2012, the Los
8 Angeles County Superior Court ordered Suite, and entities acting in concert with
9 him, to pay a total of \$2.5 million in restitution and fines for conducting business
10 as an unregistered investment advisor and for violating a previous Desist and
11 Refrain Order issued by the California Corporations Commissioner in July 2006.

12 22. After prospective pool participants expressed an interest in investing
13 in STA Opus' pool, Defendants sent them Account Funding Instructions. These
14 instructions directed prospective pool participants to send wires to a bank account
15 at JP Morgan Chase Bank NY ("Chase") or to issue checks payable to STA Opus
16 NR LLC, at an address in Irvine, CA. STA Opus' bank account at Chase was
17 opened by Collins, who signed bank documents representing that he was STA
18 Opus' Manager.

19 23. After pool participants sent their initial investment to STA Opus,
20 Suite, and sometimes Collins, contacted them by telephone and email, urging them
21 to invest additional funds with STA Opus. Specifically, Suite and Collins told pool
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1 participants that they should upgrade their accounts to an ISTP Swing Trade
2 account (“Swing Trade”), which would “add units” to their current pool accounts
3 and trade different commodities, thus allowing participants to diversify their
4 accounts.
5

6 24. Moreover, after pool participants made their initial investment in the
7 pool, Defendants devised a scheme to further defraud some participants, through
8 the use of unauthorized withdrawals from a participant’s bank account.
9

10 Specifically, Suite and Collins told some pool participants that they could invest
11 additional money with STA Opus, by sending Defendants “voided” personal
12 checks, which provided Defendants with pool participants’ bank account numbers
13 and bank routing information, thereby allowing Defendants to withdraw funds
14 directly from participants’ bank accounts.
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17 25. During the relevant period, some pool participants sent Defendants
18 voided personal checks. Defendants used the bank routing information and
19 account numbers on pool participants’ voided checks, to have “new” checks issued
20 that were payable to STA Opus. The checks Defendants caused to be issued
21 contained a statement on the face of the check that a “signature was not required,”
22 because “customer authorization was obtained,” thereby allowing Defendants to
23 withdraw funds directly from participants’ bank accounts. Defendants utilized this
24 scheme to make unauthorized withdrawals from at least one participant’s bank
25 account.
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1 26. During the relevant period, at least 30 pool participants transferred a
2 total of at least \$1.6 million to STA Opus, for initial investment in the pool and to
3 add additional units to their pool accounts by opening Swing Trade accounts.
4 Participants transferred their funds to STA Opus by either issuing checks to STA
5 Opus, which were then deposited into STA Opus' bank account at Chase, by
6 wiring funds to the Chase bank account, or by providing voided checks to
7 Defendants, which Defendants then used to have checks issued that were payable
8 to STA Opus, as described in Paragraph 25 above.

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12 **C. STA Opus' Actual Commodity Trading Performance Record**

13 27. During the relevant period, Collins opened a total of three commodity
14 trading accounts in STA Opus' name at a registered FCM. During that time,
15 Defendants deposited a total of approximately \$413,350 into the three accounts
16 and withdrew a total of approximately \$56,729 from the accounts. Over the life of
17 these accounts, Defendants lost approximately \$356,081 trading commodity
18 futures. The current net liquidating value of the trading accounts at the FCM is
19 approximately \$540.

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21
22 **D. Defendants Made Material Misrepresentations and Omissions to**
23 **Pool Participants and Caused False Account Statements to Be**
24 **Sent to Them**

25 28. During the relevant period, Defendants made material
26 misrepresentations and failed to disclose material facts to pool participants
27 regarding the profitability of the pool. Specifically, Defendants falsely represented
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1 to participants that STA Opus' pool had positive annual rates of return during the
2 relevant period, when, in fact, STA Opus' three commodity futures trading
3 accounts had a negative return, losing virtually all of the funds Defendants
4 committed to trading. Moreover, as described in detail in Paragraph 21 above,
5 Defendants failed to tell current and prospective pool participants about sanctions
6 entered against Suite by the Commission and the state of California.
7

8
9 29. Defendants also caused false account statements to be sent to pool
10 participants that misrepresented the value of the participants' respective interests in
11 the pool and concealed Defendants' misappropriation of their monies. These
12 misrepresentations lulled pool participants into investing additional funds in the
13 pool.
14

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16 **E. Defendants Misappropriated Pool Participants' Monies**

17 30. At least five pool participants have attempted to withdraw funds from
18 their pool accounts and have been unable to do so. While these pool participants
19 followed Defendants' instructions by executing written Withdrawal Requests,
20 requesting the return of monies invested in Defendants' pool, the Defendants have
21 failed to honor the withdrawal requests. In fact, after receiving pool participants'
22 withdrawal requests, Defendants typically end communication with participants,
23 refusing to accept their telephone calls and ignoring their emails.
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26 31. During the relevant period, Defendants misappropriated
27 approximately \$1.25 million of pool participant monies for their own benefit, using
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1 those funds for personal expenditures, including over \$225,000 spent on travel,
2 dining, shopping excursions and golf.

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4 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

5 **COUNT I**

6 **Violations of Section 4b(a)(1)(A),(C) the Act: Fraud by Misrepresentations**
7 **and Misappropriation**

8 32. The allegations set forth in paragraphs 1 through 31 are re-alleged and
9 incorporated herein.
10

11 33. Sections 4b(a)(1)(A),(C) of the Act, 7 U.S.C. §§ 6b (a)(1)(A),(C)
12 (2012), make it unlawful for any person, in or in connection with any order to
13 make, or the making of, any contract of sale of any commodity in interstate
14 commerce or for future delivery that is made, or to be made, on or subject to the
15 rules of a designated contract market, for or on behalf of any other person – (A) to
16 cheat or defraud or attempt to cheat or defraud the other person; ... or (C) willfully
17 to deceive or attempt to deceive the other person by any means whatsoever in
18 regard to any order or contract or the disposition or execution of any order or
19 contract, or in regard to any act of agency performed, with respect to any order or
20 contract for the other person.
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22 34. During the relevant period, Defendants violated Sections
23 4b(a)(1)(A),(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A),(C) (2012), in that they cheated
24 or defrauded or attempted to cheat or defraud and willfully deceived or attempted
25 to deceive pool participants or prospective pool participants by: i) failing to
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1 disclose that sanctions were entered against Suite revoking his registration with the
2 Commission, enjoining him from violating the California Corporations Act, and
3 ordering him and entities in concert with him, to pay \$2.5 million in restitution and
4 fines for conducting business as an unregistered investment advisor in California;
5 ii) falsely representing that STA Opus' pool had positive annual rates of return
6 during the relevant period, when, in fact, STA Opus' three commodity futures
7 trading accounts had a negative return, losing virtually all of the funds Defendants
8 committed to trading; and iii) misappropriating at least \$1.25 million of
9 participants' monies.
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13 35. Defendants engaged in this violative conduct in or in connection with
14 orders to make, or the making of, contracts of sale of commodities, for future
15 delivery, made, or to be made, on or subject to the rules of a designated contract
16 market, for or on behalf of such other persons.
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18 36. Collins and Suite were acting as agents of STA Opus when they
19 violated the Act with regard to STA Opus' pool participants, therefore, STA Opus,
20 as Collins' and Suite's principal, is liable for Collins' and Suite's acts constituting
21 violations of Sections 4b(a)(1)(A),(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A),(C)
22 (2012), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and
23 Commission Regulation 1.2, 17 C.F.R. § 1.2 (2015).
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27 37. Each material misrepresentation or omission and each
28 misappropriation made during the relevant time period, including but not limited to

1 those specifically alleged herein, is alleged as a separate and distinct violation of
2 Sections 4b(a)(1)(A),(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A),(C) (2012).
3

4 **COUNT II**

5 **Violations of Section 4b(a)(1)(B) of the Act: Fraud by False Statements**

6 38. The allegations set forth in paragraphs 1 through 31 are re-alleged and
7 incorporated herein.
8

9 39. Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b (a)(1)(B) (2012), makes
10 it unlawful for any person, in or in connection with any order to make, or the
11 making of, any contract of sale of any commodity in interstate commerce or for
12 future delivery that is made, or to be made, on or subject to the rules of a
13 designated contract market, for or on behalf of any other person – ... (B) willfully
14 to make or cause to be made to the other person any false report or statement or
15 willfully to enter or cause to be entered for the other person any false record.
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18 40. Defendants violated Section 4b(a)(1)(B) of the Act, 7 U.S.C.
19 § 6b(a)(1)(B) (2012), in that Defendants willfully made or caused to be made false
20 statements to their pool participants that misrepresented the value of the
21 participant's respective interest in the pool and concealed Defendants'
22 misappropriation of their monies.
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25 41. Defendants engaged in this violative conduct in or in connection with
26 orders to make, or the making of, contracts of sale of commodities, for future
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1 delivery, made, or to be made, on or subject to the rules of a designated contract
2 market, for or on behalf of such other persons.

3
4 42. Collins and Suite were acting as agents of STA Opus when they
5 violated the Act with regard to STA Opus' pool participants, therefore, STA Opus,
6 as Collins' and Suite's principal, is liable for Collins' and Suite's acts constituting
7 violations of Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012),
8 pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and
9 Commission Regulation 1.2, 17 C.F.R. § 1.2 (2015).
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12 43. Each false report or statement made during the relevant time period,
13 including but not limited to those specifically alleged herein, is alleged as a
14 separate and distinct violation of Section 4b(a)(1)(B) of the Act, 7 U.S.C.
15 § 6b(a)(1)(B) (2012).
16

17 **COUNT III**

18 **Violations of Section 4o(1) of the Act: Fraud by a CPO and by APs of a CPO**

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20 44. The allegations set forth in paragraphs 1 through 31 are re-alleged and
21 incorporated herein.

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23 45. During the relevant time period, STA Opus acted as a CPO with
24 regard to STA Opus' pool, in that it engaged in a business that is of the nature of
25 an investment trust, syndicate, or similar form of enterprise and in connection
26 therewith, solicited, accepted or received funds, securities or property from others
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1 for the purpose of trading in any commodity for future delivery on or subject to the
2 rules of any contract market or derivatives transaction execution facility.

3
4 46. Similarly, with regard to STA Opus' pool, Collins and Suite acted as
5 APs of a CPO in that they solicited funds for STA Opus' pool.

6
7 47. During the relevant period, STA Opus, Collins and Suite violated
8 Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), in that as a CPO and APs of a
9 CPO, they directly or indirectly employed or are employing a device, scheme, or
10 artifice to defraud their commodity pool participants, or have engaged or are
11 engaging in transactions, practices or a course of business which operated as a
12 fraud or deceit upon commodity pool participants by: i) failing to disclose that
13 sanctions were entered against Suite revoking his registration with the
14 Commission, enjoining him from violating the California Corporations Act, and
15 ordering him and entities in concert with him, to pay \$2.5 million in restitution and
16 fines for conducting business as an unregistered investment advisor in California;
17 ii) falsely representing that STA Opus' pool had positive annual rates of return
18 during the relevant period, when, in fact, STA Opus' three commodity futures
19 trading accounts had a negative return, losing virtually all of the funds Defendants
20 committed to trading; iii) issuing false account statements to participants that
21 misrepresented the value of the participants' respective interests in the pool and
22 concealed Defendants' misappropriation of their monies; and iv) misappropriating
23 at least \$1.25 million of participants' monies.
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1 48. Defendants engaged in such acts, directly or indirectly, by use of the
2 mails and other means or instrumentalities of interstate commerce.

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4 49. Collins and Suite were acting as agents of STA Opus when they
5 violated the Act with regard to STA Opus' pool participants and, therefore, STA
6 Opus as Collins' and Suite's principal, is liable for Collins' and Suite's acts
7 constituting violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012),
8 pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and
9 Commission Regulation 1.2, 17 C.F.R. § 1.2 (2015).
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11
12 50. Each act of making false reports, false statements, and material
13 omissions, and each misappropriation that occurred during the relevant time
14 period, including but not limited to those specifically alleged herein, is alleged as a
15 separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012).
16

17 **COUNT IV**

18 **Violations of Section 6(c)(1) of the Act and Regulation 180.1(a): Fraud by**
19 **Manipulative or Deceptive Devices or Contrivances**

20
21 51. The allegations set forth in Paragraphs 1 through 31 are realleged and
22 incorporated herein.

23 52. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), makes it unlawful
24 for any person, directly or indirectly, to use or employ, or attempt to use or
25 employ, in connection with any swap, or a contract of sale of any commodity in
26 interstate commerce, or for future delivery on or subject to the rules of any
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1 registered entity, any manipulative or deceptive device or contrivance in
2 contravention of any Commission rule or regulation.

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4 53. Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2015), makes it unlawful,
5 *inter alia*, for any person, directly or indirectly, in connection with any swap, or a
6 contract of sale of any commodity in interstate commerce, or for future delivery on
7 or subject to the rules of any registered entity, to intentionally or recklessly use or
8 employ, or attempt to use or employ, any manipulative device, scheme, or artifice
9 to defraud; make, or attempt to make, any untrue or misleading statement of a
10 material fact or to omit to state a material fact necessary in order to make the
11 statements made not untrue or misleading; or engage, or attempt to engage, in any
12 act, practice, or course of business, which operates or would operate as a fraud or
13 deceit on any person.
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17 54. During the relevant period, Defendants violated Section 6(c)(1) of the
18 Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2015),
19 by knowingly employing manipulative or deceptive devices or contrivances in
20 connection with commodities for future delivery on or subject to the rules of a
21 registered entity, including: i) failing to disclose that sanctions were entered
22 against Suite revoking his registration with the Commission, enjoining him from
23 violating the California Corporations Act, and ordering him and entities in concert
24 with him, to pay \$2.5 million in restitution and fines for conducting business as an
25 unregistered investment advisor in California; ii) falsely representing that STA
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1 Opus' pool had positive annual rates of return during the relevant period, when, in
2 fact, STA Opus' three commodity futures trading accounts had a negative return,
3 losing virtually all of the funds Defendants committed to trading; iii) issuing false
4 account statements to participants that misrepresented the value of the participants'
5 respective interests in the pool and concealed Defendants' misappropriation of
6 their monies; and iv) misappropriating at least \$1.25 million of participants'
7 monies.
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10 55. Defendants committed such acts intentionally or recklessly.
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12 56. Collins and Suite were acting as agents of STA Opus when they
13 violated the Act with regard to STA Opus' pool participants, therefore, STA Opus,
14 as Collins' and Suite's principal, is liable for Collins' and Suite's acts constituting
15 violations of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) and Regulation
16 180.1(a), 17 C.F.R. § 180.1(a) (2015), pursuant to Section 2(a)(1)(B) of the Act,
17 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2
18 (2015).
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21 57. Each act of employing a manipulative or deceptive device or
22 contrivance, including, but not limited to, those specifically alleged herein, is
23 alleged as a separate and distinct violation of Section 6(c)(1) of the Act, 7 U.S.C.
24 § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2015).
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COUNT V

Violations of Sections 4m(1) and 4k(2) of the Act: Failure to Register as a CPO and as APs of the CPO

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4 58. Paragraphs 1 through 31 are re-alleged and incorporated herein.

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6 59. With certain specified exceptions and exemptions, not applicable here,
7 all CPOs are required to be registered with the Commission, pursuant to Section
8 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012). Similarly, with certain specified
9 exceptions and exemptions, not applicable here, all APs of CPOs are required to be
10 registered with the Commission, pursuant to Section 4k(2) of the Act, 7 U.S.C.
11 § 6k(2) (2012).
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14 60. STA Opus acted as a CPO during the relevant period in that it
15 accepted and received funds from pool participants for the purpose of trading
16 commodity futures contracts, and Collins and Suite acted APs of a CPO during the
17 relevant period in that they solicited funds for the pool. In connection with such
18 conduct, STA Opus, Collins and Suite used the mails and other means or
19 instrumentalities of interstate commerce, directly or indirectly, to engage in their
20 businesses as a CPO and APs of a CPO.
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23 61. STA Opus engaged in the activities described in Paragraphs 1 through
24 31 and 60, without the benefit of registration as a CPO in violation of Section
25 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), and Collins and Suite engaged in their
26 solicitation activities for STA Opus without the benefit of registration as APs of a
27 CPO in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012).
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1 62. STA Opus violated Section 4k(2) of the Act by allowing Collins and
2 Suite to act as its APs.

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4 63. Each use of the mails or any means or instrumentality of interstate
5 commerce in connection with their business as a CPO or APs of a CPO without
6 proper registration during the relevant time period, including but not limited to
7 those specifically alleged herein, is alleged as a separate and distinct violation of
8 Section 4m(1) of the Act, 7 U.S.C. §§ 6m(1) (2012), and 4k(2) of the Act, 7 U.S.C.
9 § 6k(2) (2012).

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12 **VI. RELIEF REQUESTED**

13 WHEREFORE, the Commission respectfully requests that this Court, as
14 authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own
15 equitable powers, enter:
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17 A. An order finding Defendants liable for violating: Sections
18 4b(a)(1)(A)-(C), 4k(2), 4m(1), 4o(1) and 6(c)(1) of the Act, 7 U.S.C.
19 §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), 6o(1) and 9(1) (2012), and Regulation 180.1(a),
20 17 C.F.R. § 180.1(a) (2015);
21

22 B. An order of permanent injunction prohibiting Defendants, and any
23 other person or entity associated with them, from, directly or indirectly, engaging
24 in conduct in violation of Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), 4o(1) and 6(c)(1)
25 of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), 6o(1) and 9(1) (2012), and
26 Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2015).
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1 C. An order of permanent injunction enjoining Defendants and all
2 persons insofar as they are acting in the capacity of their agents, servants,
3 employees, successors, assigns, and attorneys, and all persons insofar as they are
4 acting in active concert or participation with Defendants who receive actual notice
5 of such order by personal service or otherwise, from engaging, directly or
6 indirectly, in:

- 9 1. Trading on or subject to the rules of any registered entity, as
10 that term is defined in Section 1a(40) of the Act, 7 U.S.C.
11 § 1a(40) (2012);
- 12 2. Entering into any transactions involving “commodity interests”
13 (as that term is defined in Regulation 1.3(yy), 17 C.F.R.
14 § 1.3(yy) (2015), for his own personal account or for any
15 account in which he has a direct or indirect interest;
- 16 3. Having any commodity interests traded on his behalf;
- 17 4. Controlling or directing the trading for or on behalf of any other
18 person or entity, whether by power of attorney or otherwise, in
19 any account involving commodity interests
- 20 5. Soliciting, receiving or accepting any funds from any person for
21 the purpose of purchasing or selling any commodity interests;
- 22 6. Applying for registration or claim exemption from registration
23 with the Commission in any capacity, and engage in any
24 activity requiring such registration or exemption from
25 registration with the Commission, except as provided for in
26 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015); and/or
- 27 7. Acting as a principal (as that term is defined in Regulation
28 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent or any other officer or
employee of any person (as that term is defined in Section
1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered,
exempted from registration or required to be registered with the

1 Commission, except as provided for in Regulation 4.14(a)(9),
2 17 C.F.R. § 4.14(a)(9) (2015).

3 D. An order requiring the Defendants and any third party transferee
4 and/or successors thereof, to disgorge to any officer appointed or directed by the
5 Court all benefits received including, but not limited to, salaries, commissions,
6 loans, fees, revenues and trading profits derived, directly or indirectly, from acts or
7 practices which constitute violations of the Act as described herein, including pre-
8 judgment and post-judgment interest;
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11 E. An order directing the Defendants and any successors thereof, to
12 rescind, pursuant to such procedures as the Court may order, all contracts and
13 agreements, whether implied or express, entered into between them and any of
14 customers whose funds were received by them as a result of the acts and practices
15 that constituted violations of the Act, as described herein;
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18 F. An order requiring Defendants to make restitution by making whole
19 each and every customer whose funds were received or utilized by them in
20 violation of the provisions of the Act or CFTC Regulations as described herein,
21 including pre-judgment interest from the date of such violations, plus post-
22 judgment interest;
23

24 G. An order requiring Defendants to pay civil penalties under the Act, to
25 be assessed by the Court, in amounts of not more than the higher of (1) triple the
26 monetary gain to Defendant for each violation of the Act or (2) \$140,000 for each
27 violation of the Act on or after October 23, 2008;
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H. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and

I. An Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: August 8, 2016

Respectfully submitted,

/s/ Diane M. Romaniuk
Diane M. Romaniuk
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/s/ Robert Howell
Robert Howell
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/s/ Rosemary Hollinger
Rosemary Hollinger
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