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8 IN THE UNITED STATES DISTRICT COURT

SEALED

9 DISTRICT OF ARIZONA

10 U.S. Commodity Futures Trading Commission,) No. CV - CV-16-04359-PHX-DGC
11)
12 Plaintiff,) COMPLAINT
13 v.)
14 Draven, LLC, a Delaware corporation,)
and Derek Springfield, an individual)
15)
16 Defendants.)
17 _____)

18 Plaintiff, U.S. Commodity Futures Trading Commission (“CFTC”), by and through its
19 attorneys, alleges as follows:

20 I. SUMMARY

21 1. From at least July 2014 through the present, (the “Relevant Period”), Derek
22 Springfield (“Springfield”) and Draven, LLC (“Draven”), by and through the actions of its
23 employees and agents, including but not limited to Springfield (collectively, “Defendants”),
24 fraudulently solicited and received at least \$1.46 million from at least 86 individuals (“pool
25 participants”) in connection with pooled investments in commodity futures (“futures”) and
26 foreign currency exchange (“forex”). At no time during the Relevant Period was Draven
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1 registered with CFTC as a commodity pool operator (“CPO”); nor was Springfield registered
2 with the CFTC as either an associated person (“AP”) of a CPO or as a CPO.

3 2. Defendants solicit potential pool participants to invest with Draven by telling
4 them that their funds would be placed in segregated accounts and traded on their behalf by
5 “institutional quality traders with extensive experience generating returns on the Futures, Forex
6 and Options markets.”
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8 3. In reality, however, pool participants’ funds were never traded in the manner
9 advertised by Defendants. Rather, Defendants pooled together the funds received from pool
10 participants into two separate commodity pools. Defendants traded only a small percentage of
11 the funds deposited into these pools. What trading was done on behalf of pool participants was
12 executed by Springfield through one or more trading accounts maintained in his name at various
13 registered futures commission merchants (“FCMs”) and retail foreign exchange dealers
14 (“RFEDs”). Defendants also misappropriated some of pool participants’ funds to pay for
15 Draven’s corporate expenses and Springfield’s personal expenses.
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17 4. Springfield was not a successful trader, and, as a result, he incurred substantial
18 losses in the trading accounts which he was trading on behalf of pool participants. To cover up
19 these losses, and the misappropriation of pool participants’ funds, Defendants fabricated and
20 issued false statements to pool participants which purported to show profitable trading results on
21 their behalf.
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23 5. To further perpetuate their fraud, Defendants operated a Ponzi-style scheme in
24 which they used pool participants’ funds to pay returns to other pool participants who requested
25 withdrawals from their accounts. During the Relevant Period, these returns totaled at least
26 \$92,000.
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1 6. By virtue of this conduct and the further conduct described herein, Defendants
2 have violated, and continue to violate 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C), 6k(2),
3 6m(1), 6o(1)(A) and (B) (2012), and 17 C.F.R. § 4.20 and 5.2b(1)-(3) (2016).

4 7. Springfield is an officer, employee, or agent of Draven, and his acts, omissions, or
5 failures which constitute violations of the Act and Regulations occurred within the scope of his
6 office, employment, or agency with Draven. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B) (2012)
7 and 17 C.F.R. § 1.2 (2016), Draven is liable for the acts, omissions, or failures of Springfield that
8 violated the Act and Regulations.
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10 8. Springfield is a controlling person of Draven who has not acted, and is not acting
11 in good faith, or who has knowingly induced, and is knowingly inducing, directly or indirectly,
12 the acts, omissions, and failures constituting Draven's violations of the Act and Regulations.
13 Therefore, pursuant to 7 U.S.C. § 13c(b) (2012), Springfield is liable for Draven's violations of
14 the Act and Regulations.
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16 9. Unless restrained and enjoined by this Court, Defendants will likely continue to
17 engage in the acts and practices alleged in this Complaint, or in similar acts and practices, as
18 described more fully below.
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20 10. Accordingly, pursuant to 7 U.S.C. § 13a-1 (2012), the CFTC brings this action to
21 enjoin Defendants' unlawful acts and practices, to compel their compliance with the Act and
22 Regulations, and to enjoin them from engaging in any commodity-related activity. In addition,
23 the CFTC seeks civil monetary penalties, restitution, and remedial ancillary relief, including, but
24 not limited to, trading and registration bans, disgorgement, pre- and post-judgment interest, and
25 such other and further relief as the Court may deem necessary and appropriate.
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II. JURISDICTION AND VENUE

11. The Court has jurisdiction of this action pursuant to 7 U.S.C. § 13a-1, which provides that, whenever it shall appear to the CFTC that any person has engaged in, is engaging in, or is about to engage in any act or practice that constitutes a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the CFTC may bring an action against such person to enjoin such practice or to enforce compliance with the Act or Regulations.

12. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendants are found in, inhabit, or transact business in this District, or the acts and practices in violation of the Act and Regulations occurred, are occurring, or are about to occur within this District, among other places.

III. THE PARTIES

13. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act and the Regulations promulgated thereunder.

14. Defendant **Derek Springfield** currently resides in Mesa, Arizona. He is a Registered Nurse and is licensed in the state of Arizona. Springfield has never been registered with the CFTC.

15. Defendant **Draven LLC** was formed in Delaware in March 2015. Draven purports to operate out of Mesa, Arizona. Draven has never been registered with the CFTC.

IV. FACTS

16. On or about March 27, 2015, Springfield registered the internet website name www.dravenllc.com (hereinafter “website” or “Draven website”). Springfield is listed as the administrator and the technical contact for the website.

1 17. During the Relevant Period, Defendants used Draven’s website, among other
2 methods, to solicit potential pool participants to invest funds for the purpose of trading in
3 commodity futures and forex.

4 18. At various times during the Relevant Period, Draven’s website claimed that
5 Draven “offers retail clients the opportunity to allocate capital to institutional quality traders with
6 extensive experience generating returns on the Futures, Forex and Options markets.” Draven’s
7 website also claimed that Draven “was founded in 2006” and that “our strategies have been
8 developed by a group of investors through years of testing and thousands of hours of
9 development and running on demo and live accounts.”
10

11 19. Draven offered pool participants what it called “mirror trading” opportunities in
12 futures and forex based on its strategies. According to the Draven website, pool participants’
13 accounts would be set up as a “Mirror Account” based on the balance in the account. Pool
14 participants would open their accounts, fund them with a check made out to Draven or a wire
15 transfer, and grant Draven authority to trade on their behalf. For each \$2,500 in a participant’s
16 account, Draven would place a trade for one (1) futures contract on behalf of the participant each
17 time Draven placed a trade. If a participant wanted to trade in forex, Draven would place a trade
18 for one (1) forex contract for each \$500 in the participant’s account.
19

20 20. Pool participants were charged a 10% monthly fee on profits generated.
21 According to the Draven website, “If Draven LLC doesn’t make you money, we don’t make
22 money!”
23

24 21. Through the Draven website, Defendants told potential pool participants that their
25 funds would be held separately in trust with a third party brokerage in a segregated sub account
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1 and that “Draven LLC does not have direct access to client funds other than for the purpose of
2 trading the clients [sic] sub account within the markets.”

3 22. Pool participants were assigned a private log in protocol with which they could
4 access a members-only section of the Draven website to view their account statements.

5 According to the website, account statements were posted by the fifth (5th) day of each month.
6

7 23. Pool participants could withdraw money from their accounts; however, they could
8 only do so in accordance with certain rules established by Draven and set forth on its website.

9 Pool participants could withdraw up to 10% of their account or \$10,000 at any time.

10 Withdrawals of more than \$10,000 require ninety (90) days’ notice. A minimum of one hundred
11 eighty (180) days’ notice was required to close an account.
12

13 24. During the Relevant Period, Defendants received at least \$1.46 million from at
14 least 86 pool participants.

15 25. Contrary to the representations made on the website, Defendants did not place
16 pool participants’ funds into segregated sub accounts with a third party brokerage and did not use
17 those funds to engage in “mirror trading” on behalf of pool participants. In fact, Draven had no
18 trading accounts in its name and no sub accounts for which it placed trades based on a power of
19 attorney at any registered FCM or RFED. Rather, Defendants pooled all funds received from
20 pool participants into two separate commodity pools, one consisting of a bank account
21 maintained in the name of Draven (the “Draven Pool”) and one consisting of a bank account
22 maintained jointly in the name of Springfield and his wife (the “Springfield Pool”).
23
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25 26. During the Relevant Period, Defendants operated the Draven Pool and the
26 Springfield Pool in a manner that failed to distinguish between themselves as the operators of the
27 pools and the pools they were operating.
28

1 27. Defendants solicited and received approximately \$1.46 million from pool
2 participants during the Relevant Period. More specifically, Draven and Springfield solicited and
3 received approximately \$1.41 million for the Draven Pool, while Springfield solicited and
4 received \$52,900 for the Springfield Pool. In each pool, pool participants' funds were
5 commingled with the proprietary funds of Defendants.
6

7 28. Defendants transferred at least \$316,180 from the Draven Pool to the Springfield
8 Pool, leaving \$1,097,520 in pool participants' funds in the Draven Pool, and raising the amount
9 of pool participants' funds in the Springfield Pool to \$369,080. Springfield then transferred
10 approximately \$164,600 from the Springfield Pool into one or more trading accounts maintained
11 in Springfield's own name with various registered FCMs and RFEDs. Springfield was the sole
12 authorized trader on these trading accounts.
13

14 29. Springfield used the pool participant funds remaining in the Springfield Pool to
15 pay for personal expenses such as mortgage payments, food, shopping, and medical expenses.
16

17 30. Defendants also used the pool participant funds remaining in the Draven Pool to
18 pay for, among other things, Draven's corporate expenses, as well as boat and auto expenses on
19 behalf of Springfield.

20 31. Springfield was not profitable in his trading of the trading accounts into which
21 participant funds were deposited. During the Relevant Period, these accounts have incurred net
22 losses of approximately \$158,550.
23

24 32. To cover up these losses, and the misappropriation of pool participants' funds,
25 Defendants fabricated and issued false monthly statements to pool participants on-line which
26 purport to show profitable trading results on their behalf. The profits shown on these statements
27 bear no relationship to the actual trading results of Springfield's accounts. For example, in
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1 February 2016, Defendants issued statements showing that pool participants' accounts had made
2 overall profits trading a variety of futures contracts and forex, when, in fact, Springfield's trading
3 accounts incurred net losses of \$17,700 during that month. Defendants deducted the 10%
4 management fees, based on profits, despite incurring net losses. Defendants continue to issue
5 account statements falsely representing activity in clients' accounts. Defendants also charged,
6 and continue to charge, pool participants the 10% fee based on these fraudulent claims of profits.
7

8 33. During the Relevant Period, various pool participants received payments from
9 Draven in response to requests for withdrawal of their funds. Because Defendants
10 misappropriated pool participants' funds and did not achieve the profits purported on the account
11 statements issued to pool participants, Defendants used other pool participants' funds to make
12 Ponzi-style payments to those pool participants who requested withdrawals from Draven. To
13 date, Defendants have made at least \$92,000 in such payments.
14

15 34. At all times during the Relevant Period, Springfield was a controlling person of
16 Draven. On his biographical page on the website *www.linkedin.com*, Springfield describes
17 himself as the Chief Executive Officer of Draven. Springfield opened and controls Draven's
18 corporate bank account and described himself in the account application as Draven's "Owner
19 with Control of the Entity." Springfield is also the registrant and administrator for Draven's
20 website.
21

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

23 **COUNT I**

24 **VIOLATION OF 7 U.S.C. §§ 6b(a)(1)(A) and (C): SOLICITATION FRAUD**
25 **AND FRAUD BY MISAPPROPRIATION**

26 35. Paragraphs 1–34 are realleged and incorporated herein by reference.
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1 36. 7 U.S.C. §§ 6b(a)(1)(A) and (C) make it unlawful for any person, in or in
2 connection with any order to make, or the making of, any contract of sale of any commodity in
3 interstate commerce or for future delivery that is made, or to be made, on or subject to the rules
4 of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or
5 attempt to cheat or defraud the person; ...and (C) willfully to deceive or attempt to deceive the
6 other person by any means whatsoever in regard to any order or contract or the disposition or
7 execution of any order or contract or in regard to any act of agency performed, with respect to
8 any order or contract.
9

10 37. As set forth above, Defendants violated 7 U.S.C. §§ 6b(a)(1)(A) and (C) by,
11 among other things: (a) misappropriating client funds to pay for, among other things, Draven's
12 corporate expenses, Springfield's personal expenses, and withdrawal requests of other clients
13 and (b) making material misrepresentations and omitting material information regarding the
14 handling of participant funds invested with Draven.
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16 38. Defendants made these misrepresentations and failed to disclose material facts
17 knowingly or with a reckless disregard as to their truth or falsity.
18

19 39. Each act of misappropriation, and each fraudulent misrepresentation or omission
20 made, including, but not limited to, those specifically alleged herein, is alleged as a separate and
21 distinct violation of 7 U.S.C. §§ 6b(a)(1)(A) and (C).
22

23 40. The acts, omissions, and failures of Springfield were done within the scope of his
24 office, employment, or agency with Draven. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B),
25 Draven is liable as a principal for each act, omission, or failure of Springfield constituting
26 violations of 7 U.S.C. §§ 6b(a)(1)(A) and (C).
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1 41. Springfield, directly or indirectly, controlled Draven, and did not act in good faith
2 or knowingly induced, directly or indirectly, the acts constituting Draven's violations of 7 U.S.C.
3 §§ 6b(a)(1)(A) and (C). Therefore, pursuant to 7 U.S.C. § 13(b), Springfield is liable for each of
4 Draven's violations of 7 U.S.C. §§ 6b(a)(1)(A) and (C).
5

6 **COUNT II**

7 **VIOLATION OF 7 U.S.C. § 6b(a)(1)(B): FALSE REPORTS OR STATEMENTS**

8 42. Paragraphs 1-41 are realleged and incorporated herein by reference.

9 43. 7 U.S.C. § 6b(a)(1)(B) makes it unlawful for any person, in or in connection with
10 any order to make, or the making of, any contract of sale of any commodity in interstate
11 commerce or for future delivery that is made, or to be made, on or subject to the rules of a
12 designated contract market, for or on behalf of any other person, to willfully make or cause to be
13 made to the other person any false report or statement or willfully to enter or cause to be entered
14 for the other person any false record.
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16 44. As set forth above, Defendants violated 7 U.S.C. § 6b(a)(1)(B) by issuing reports
17 and statements to Draven's clients which falsely showed profitable trading results achieved on
18 their behalf and falsely represented the value of their accounts.
19

20 45. Each false report or statement issued to clients, including, but not limited to, those
21 specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. §
22 6b(a)(1)(B).
23

24 46. The acts, omissions, and failures of Springfield were done within the scope of his
25 office, employment, or agency with Draven. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B),
26 Draven is liable as a principal for each act, omission, or failure of Springfield constituting
27 violations of 7 U.S.C. § 6b(a)(1)(B).
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1 47. Springfield, directly or indirectly, controlled Draven, and did not act in good faith
2 or knowingly induced, directly or indirectly, the acts constituting Draven’s violations of 7 U.S.C.
3 §§ 6b(a)(1)(B). Therefore, pursuant to 7 U.S.C. § 13(b), Springfield is liable for each of
4 Draven’s violations of 7 U.S.C. § 6b(a)(1)(B).
5

6 **COUNT III**

7 **VIOLATIONS OF 7 U.S.C. §§ 6b(a)(2)(A) and (C) AND 17 C.F.R. §§ 5.2(b)(1) AND (3):**
8 **SOLICITATION FRAUD AND FRAUD BY MISAPPROPRIATION**
9 **IN CONNECTION WITH FOREX**

10 48. Paragraphs 1 through 47 are re-alleged and incorporated herein by reference.

11 49. 7 U.S.C. §§ 6b(a)(2)(A) and (C) make it unlawful for any person, in or in
12 connection with any order to make or the making of any contract of sale of any commodity for
13 future delivery that is made, or to be made, for or on behalf of, or with, any other person, other
14 than on or subject to the rules of a designated contract market

15 (A) to cheat or defraud or attempt to cheat or defraud the other person...
16 or (C) willfully to deceive or attempt to deceive the other person by any
17 means whatsoever...

18 50. 17 C.F.R §§ 5.2(b)(1) and (3) makes it unlawful

19 for any person, by use of the mails or by any means or instrumentality of
20 interstate commerce, directly or indirectly, in or in connection with any
21 retail forex transaction (1) to cheat or defraud or attempt to cheat or
22 defraud any person;...or (3) willfully to deceive or attempt to deceive any
23 person by any means whatsoever.

24 51. As set forth above, Defendants violated 7 U.S.C. §§ 6b(a)(2)(A) and (C) and 17
25 C.F.R. §§ 5.2(b)(1) and (3) by, among other things: (a) misappropriating client funds to pay for,
26 among other things, Draven’s corporate expenses, Springfield’s personal expenses, and
27 withdrawal requests of other clients and (b) making material misrepresentations and omitting
28 material information regarding the handling of participant funds invested with Draven.

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52. Defendants made these misrepresentations and failed to disclose material facts knowingly or with a reckless disregard as to their truth or falsity.

53. Each act of misappropriation, and each fraudulent misrepresentation or omission made, 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) and (C) and 17 C.F.R. §§ 5.2(b)(1) and (3).

54. The acts, omissions, and failures of Springfield were done within the scope of his office, employment, or agency with Draven. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B), Draven is liable as a principal for each act, omission, or failure of Springfield constituting violations of 7 U.S.C. §§ 6b(a)(2)(A) and (C) and 17 C.F.R. §§ 5.2(b)(1) and (3).

55. Springfield, directly or indirectly, controlled Draven, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Draven's violations of 7 U.S.C. §§ 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b)(1) and (3). Therefore, pursuant to 7 U.S.C. § 13(b), Springfield is liable for each of Draven's violations of 7 U.S.C. §§ 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b)(1) and (3).

COUNT IV

VIOLETION OF 7 U.S.C. § 6b(a)(2)(B) and 17 C.F.R. § 5.2(b)(2): FALSE REPORTS OR STATEMENTS IN CONNECTION WITH FOREX

56. Paragraphs 1-55 are realleged and incorporated herein by reference.

57. 7 U.S.C. §§ 6b(a)(2)(B) (2012) makes it unlawful for 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 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

.... (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...

1 58. 17 C.F.R. § 5.2(b)(2) (2014) makes it unlawful

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3 for any person, by use of the mails or by any means or instrumentality of
4 interstate commerce, directly or indirectly, in or in connection with any
5 retail forex transaction... 2) willfully to make or cause to be made to any
6 person any false report or statement or cause to be entered for any person
7 any false record...

8 59. As set forth above, Defendants violated 7 U.S.C. § 6b(a)(2)(B) and 17 C.F.R. §
9 5.2(b)(2) by issuing reports and statements to Draven's clients which falsely showed profitable
10 trading results achieved on their behalf and falsely represented the value of their accounts.

11 60. Each false report or statement issued to clients, including, but not limited to, those
12 specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. §
13 6b(a)(2)(B) and 17 C.F.R. § 5.2(b)(2).

14 61. The acts, omissions, and failures of Springfield were done within the scope of his
15 office, employment, or agency with Draven. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B),
16 Draven is liable as a principal for each act, omission, or failure of Springfield constituting
17 violations of 7 U.S.C. § 6b(a)(2)(B) and 17 C.F.R. § 5.2(b)(2).

18 62. Springfield, directly or indirectly, controlled Draven, and did not act in good faith
19 or knowingly induced, directly or indirectly, the acts constituting Draven's violations of 7 U.S.C.
20 §§ 6b(a)(2)(B). Therefore, pursuant to 7 U.S.C. § 13(b), Springfield is liable for each of
21 Draven's violations of 7 U.S.C. § 6b(a)(2)(B) and 17 C.F.R. § 5.2(b)(2).
22

23 **COUNT V**

24 **VIOLATION OF 7 U.S.C. §§ 6o(1)(A) and (B): FRAUD AS A COMMODITY POOL**
25 **OPERATOR AND AS AN ASSOCIATED PERSON OF A COMMODITY POOL**
26 **OPERATOR**

27 63. Paragraphs 1-62 are realleged and incorporated herein by reference.
28

1 64. 7 U.S.C. §§ 6o(1)(A) and (B) make it unlawful for a CPO), or an AP of a CPO, by
2 use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:
3 (A) to employ any device scheme, or artifice to defraud any client or participant or prospective
4 client or participant; or (B) to engage in any transaction, practice, or course of business which
5 operates as a fraud or deceit upon any client or participant or prospective client or participant.
6

7 65. 7 U.S.C. § 1(a)(11) (2012) defines a CPO as “any person engaged in a business
8 that is of the nature of a commodity pool, investment trust, syndicate, or other similar form of
9 enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds...
10 for the purpose of trading in commodity interests....”
11

12 66. As set forth above, Draven solicited, accepted, and received the funds invested by
13 multiple pool participants and pooled them together into the Draven Pool for the purpose of
14 trading in commodity interests. Draven therefore has acted as a CPO with respect to the Draven
15 Pool.
16

17 67. As set forth above, Springfield solicited, accepted, and received the funds
18 invested by multiple pool participants and pooled them together into the Springfield Pool for the
19 purpose of trading in commodity interests. Springfield therefore has acted as a CPO with respect
20 to the Springfield Pool.
21

22 68. Commission Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2016), defines an AP
23 of a CPO, in relevant part, as any natural person who is associated with a CPO as a partner,
24 officer, employee, consultant, or agent to a CPO (or any natural person occupying a similar
25 status or performing similar functions), in any capacity which involves the solicitation of funds,
26 securities, or property for participation in a commodity pool.
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1 69. As set forth above, Springfield is an officer, employee, or agent of Draven and
2 has administered the Draven website, which has been used to solicit funds that were then pooled
3 and used to trade commodity futures and forex. Springfield therefore has acted as an AP of a
4 CPO.

5 70. As set forth above, Draven, while acting as the CPO of the Draven Pool, and
6 Springfield, while acting as an AP of a CPO with respect to the Draven Pool, and as the CPO of
7 the Springfield Pool, violated 7 U.S.C. §§ 6o(1)(A) and (B) by, among other things: (a)
8 misappropriating client funds to pay for, among other things, Draven's corporate expenses,
9 Springfield's personal expenses, and withdrawal requests of other clients and (b) making
10 material misrepresentations and omitting material information regarding the handling of client
11 funds invested with Draven;
12

13 71. Defendants made these misrepresentations and failed to disclose material facts
14 knowingly or with a reckless disregard to their truth or falsity.
15

16 72. Each fraudulent misrepresentation or omission made, and each act of
17 misappropriation, including, but not limited to, those specifically alleged herein, is alleged as a
18 separate and distinct violation of 7 U.S.C. §§ 6o(1)(A) and (B).
19

20 73. The acts, omissions, and failures of Springfield were done within the scope of his
21 office, employment, or agency with Draven. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B),
22 Draven is liable as a principal for each act, omission, or failure of Springfield constituting
23 violations of 7 U.S.C. §§ 6o(1)(A) and (B).
24

25 74. Springfield, directly or indirectly, controlled Draven, and did not act in good faith
26 or knowingly induced, directly or indirectly, the acts constituting Draven's violations of 7 U.S.C.
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1 §§ 6o(1)(A) and (B). Therefore, pursuant to 7 U.S.C. § 13(b), Springfield is liable for each of
2 Draven’s violations of 7 U.S.C. §§ 6o(1)(A) and (B).

3 **COUNT VI**

4 **VIOLATION OF 7 U.S.C. § 6m(1): FAILURE TO REGISTER AS A CPO**

5 75. Paragraphs 1-74 are realleged and incorporated herein by reference.

6 76. With certain specified exceptions and exemptions not applicable here, 7 U.S.C. §
7 6m(1) (2012) makes it unlawful for any CPO to make use of the mails or any means or
8 instrumentality of interstate commerce in connection with its business unless it is registered with
9 the CFTC.

10 77. 7 U.S.C. § 1(a)(11) defines a CPO as “any person engaged in a business that is of
11 the nature of a commodity pool, investment trust, syndicate, or other similar form of enterprise,
12 and who, in connection therewith, solicits, accepts, or receives from others, funds... for the
13 purpose of trading in commodity interests....”

14 78. As set forth above, Draven acted as a CPO during the Relevant Period in that it
15 conducted a business that solicited, accepted, and received funds invested by multiple pool
16 participants and then pooled those funds together in the Draven Pool for the purpose of trading in
17 commodity interests.

18 79. In connection with its business, Draven used the mails and other means or
19 instrumentalities of interstate commerce.

20 80. Draven violated 7 U.S.C. § 6m(1) by engaging in these activities without having
21 registered as a CPO.

22 81. Each use by Draven of the mails or any means or instrumentality of interstate
23 commerce in connection with its business as a CPO without proper registration, including, but
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1 not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of 7
2 U.S.C. § 6m(1).

3 82. As set forth above, Springfield acted as a CPO during the Relevant Period in that
4 he conducted a business that solicited, accepted, and received funds invested by multiple pool
5 participants and then pooled those funds together in the Springfield Pool for the purpose of
6 trading in commodity interests.

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8 83. In connection with his business, Springfield used the mails and other means or
9 instrumentalities of interstate commerce.

10 84. Springfield violated 7 U.S.C. § 6m(1) by engaging in these activities without
11 having registered as a CPO.

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13 85. Each use by Springfield of the mails or any means or instrumentality of interstate
14 commerce in connection with his business as a CPO without proper registration, including, but
15 not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of 7
16 U.S.C. § 6m(1).

17
18 **COUNT VII**

19 **VIOLATION OF 7 U.S.C. § 6k(2): FAILURE TO REGISTER AS AN AP OF A CPO**

20 86. Paragraphs 1-85 are realleged and incorporated herein by reference.

21 87. With certain specified exceptions and exemptions not applicable here, 7 U.S.C. §
22 6k(2) (2012) makes it unlawful for any person to be associated with a CPO as a partner,
23 employee, consultant, or agent in any capacity that involves the solicitation of funds for a
24 participation in a commodity pool, or the supervision of any person or persons so engaged,
25 unless such person is registered with the CFTC as an AP of the CPO.
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1 88. 7 U.S.C. § 6k(2) further makes it unlawful for a CPO to permit such a person to
2 become or remain associated with the CPO in any such capacity if the CPO knew or should have
3 known that such person was not so registered.

4 89. 17 C.F.R. § 1.3(aa)(3) defines an AP of a CPO, in relevant part, as any natural
5 person who is associated with a CPO as a partner, officer, employee, consultant, or agent to a
6 CPO (or any natural person occupying a similar status or performing similar functions), in any
7 capacity which involves the solicitation of funds, securities, or property for participation in a
8 commodity pool.
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10 90. As set forth above, Springfield acted as an AP of a CPO during the Relevant
11 Period in that, while acting as an officer, employee, or agent of Draven, he used the Draven
12 website to solicit funds that were then pooled and used to trade commodity interests.
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14 91. Springfield violated 7 U.S.C. § 6k(2) by engaging in these activities without
15 having registered as an AP of a CPO.

16 92. Draven violated 7 U.S.C. § 6k(2) by permitting Springfield to become, and to
17 remain, associated with it as an AP when it knew, or should have known, that Springfield was
18 not registered.
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20 **COUNT VIII**

21 **VIOLATION OF 17 C.F.R. §§ 4.20 (a)-(c): PROHIBITED ACTIVITIES OF A**
22 **COMMODITY POOL OPERATOR**

23 93. Paragraphs 1-92 are realleged and incorporated herein by reference.

24 94. With certain specified exceptions and exemptions not applicable here, 17 C.F.R. §
25 4.20(a) provides that a CPO “must operate its pool as an entity cognizable as a legal entity
26 separate from that of the pool operator.” 17 C.F.R. § 4.20(b) provides that all funds received
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1 by a CPO from an existing or prospective pool participant must be received in the name of the
2 pool. 17 C.F.R § 4.20(c) provides that a CPO may not commingle the property of the pool with
3 the property of any other person.

4 95. As set forth above, Draven, as the CPO of the Draven Pool, and Springfield, as
5 the CPO of the Springfield Pool, violated 17 C.F.R. §§ 4.20(a)-(c) by: (a) not operating their
6 pools as separate legal entities from themselves; (b) failing to receive pool participants' funds in
7 the name of a pool; and (c) commingling pool participants' funds with their own funds.

8 96. Each instance of Draven and Springfield failing to operate their pool as a separate
9 legal entity, accepting pool participants' funds in a name other than that of a pool, and
10 commingling pool participants' funds with their own, including but not limited to those
11 specifically alleged herein, is alleged as a separate and distinct violation of 17 C.F.R. §§ 4.20(a)-
12 (c).

13 97. The acts, omissions, and failures of Springfield were done within the scope of his
14 office, employment, or agency with Draven. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B),
15 Draven is liable as a principal for each act, omission, or failure of Springfield constituting
16 violations of 17 C.F.R. §§ 4.20(a)-(c).

17 98. Springfield, directly or indirectly, controlled Draven, and did not act in good faith
18 or knowingly induced, directly or indirectly, the acts constituting Draven's violations of 17
19 C.F.R. §§ 4.20(a)-(c). Therefore, pursuant to 7 U.S.C. § 13(b), Springfield is liable for each of
20 Draven's violations of 17 C.F.R. §§ 4.20(a)-(c).

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25 **VI. PRAYER FOR RELIEF**

26 WHEREFORE, the Commission respectfully requests that this Court, as authorized by 7
27 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:
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1 a) An order finding that Defendants violated 7 U.S.C. §§ 6b(a)(1)(A)-(C),
2 6b(a)(2)(A)-(C), 6k(2), 6m(1), 6o(1)(A) and (B) (2012), and 17 C.F.R. §§ 4.20 and 5.2(b)(1)-(3)
3 (2016);

4 b) An order of permanent injunction prohibiting Defendants, and any other person or
5 entity associated with them, from engaging in conduct violative of 7 U.S.C. §§ 6b(a)(1)(A)-(C),
6 6b(a)(2)(A)-(C), 6k(2), 6m(1), 6o(1)(A) and (B) (2012), and 17 C.F.R. § 4.20 and 5.2(b)(1)-(3)
7 (2016);

8 c) An order of permanent injunction prohibiting Defendants and any on their agents,
9 servants, employees, assigns, attorneys, and persons in active concert or participation, including
10 any successor thereof, from, directly or indirectly:
11

12 1) trading on or subject to the rules of any registered entity (as that term is
13 defined in 7 U.S.C. § 1a(29) (2012));

14 2) entering into any transactions involving “commodity interests” (as that
15 term is defined in 17 C.F.R. § 1.3(yy) (2016)) for his own personal or
16 proprietary account or for any account in which he has a direct or indirect
17 interest;

18 3) having any commodity interests traded on their behalf;

19 4) controlling or directing the trading for or on behalf of any other person or
20 entity, whether by power of attorney or otherwise, in any account
21 involving commodity interests;

22 5) soliciting, receiving, or accepting any funds from any person for the
23 purpose of purchasing or selling any commodity interests;

24 6) applying for registration or claiming exemption from registration with the
25 CFTC in any capacity, and engaging in any activity requiring such
26 registration or exemption from registration with the CFTC, except
27 as provided for in 17 C.F.R. § 4.41(a)(9) (2016);

28 7) acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2016)),
agent or 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. § 4.41(a)(9) (2016); and

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8) engaging in any business activities relating to commodity interests;

d) An order directing Defendants, as well as any successors thereof, to disgorge all benefits received, directly or indirectly, from acts or practices that constitute violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order requiring Defendants, as well as any successors thereof, to make full restitution to every person or entity whose funds Defendants received from the acts or practices that constitute violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

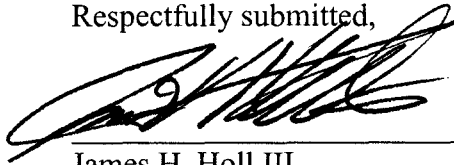
f) An order directing Defendants, as well as any successors thereof, to pay a civil monetary penalty, plus post-judgment interest, in the amount of the greater of (1) \$140,000 for each violation of the Act and Regulations; or (2) triple Defendant's monetary gain from each violation of the Act and Regulations.

g) An order requiring Defendants to pay costs and fees, as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2)(2012); and

h) An order providing such other and further equitable or remedial ancillary relief as the Court may deem appropriate.

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Respectfully submitted,



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Dated: December 8, 2016