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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

COMMODITY FUTURES TRADING
COMMISSION, et al.,

Plaintiffs,

vs.

RED ROCK SECURED, LLC, et al.,

Defendants.

Case No. 2:23-cv-03680-RGK-PVC

**CONSENT ORDER OF
PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY,
AND OTHER STATUTORY AND
EQUITABLE RELIEF AGAINST
ALL DEFENDANTS**

Trial Date: May 14, 2024

I. INTRODUCTION

Plaintiffs Commodity Futures Trading Commission (“CFTC”), California Department of Financial Protection & Innovation (“DFPI”), and State of Hawaii, Department of Commerce and Consumer Affairs, Securities Enforcement Branch (“SEB”) (DFPI and SEB collectively the “States” or the “State Plaintiffs”) filed a Complaint on May 15, 2023 [ECF No. 1] and an Amended Complaint on August 31, 2023 [ECF No. 45] (collectively, “Complaint”) against Defendants Red Rock Secured, LLC (“Red Rock”), Sean L. Kelly (“Kelly”), and Anthony Spencer (“Spencer”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26 and the CFTC’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2023), as well as violations of state laws.

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II. CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Defendants without a trial on the merits or any further judicial proceedings, Defendants specifically acknowledge the following:

1. Consent to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Statutory and Equitable Relief Against All Defendants (“Consent Order”);
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC, the States, or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the Summons and Complaint;
4. Admit to the jurisdiction of this Court over them and the subject matter of this action pursuant to Sections 6c and 6d of the Act, 7 U.S.C. §§ 13a-1, 13a-2;
5. Admit to the jurisdiction of the CFTC and the States over the conduct and transactions at issue in this action pursuant to the Act and the state law violations alleged in the Complaint;
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);
7. Waive
 - a) Any and all claims that Defendants may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and/or the rules promulgated by the CFTC in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this action;
 - b) Any and all claims that Defendants may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L.

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- 1 c) No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as
- 2 amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C
- 3 and 15 U.S.C.), relating to, or arising from, this action;
- 4 d) Any claim of double jeopardy based upon the institution of this
- 5 action or the entry in this action of any order imposing a civil
- 6 monetary penalty or any other relief, including this Consent Order;
- 7 and
- 8 e) Any and all rights of appeal from this Consent Order;

9 8. Agree that the CFTC is the prevailing party in this action for purposes of

10 the waiver of any and all rights under the Equal Access to Justice Act specified in

11 subpart (a) of paragraph 7;

12 9. Consent to the continued jurisdiction of this Court over them for the

13 purpose of implementing and carrying out the terms and conditions of this Consent

14 Order, and for any other purpose relevant to this action, even if Defendants now or in

15 the future reside outside the jurisdiction of this Court;

16 10. Agree that they will not oppose enforcement of this Consent Order by

17 alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil

18 Procedure and waive any objection based thereon;

19 11. Agree that neither Defendants nor any of their agents or employees

20 under their authority or control shall take any action or make any public statement

21 denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact

22 or Conclusions of Law in this Consent Order, or creating or tending to create the

23 impression that the Complaint and/or this Consent Order is without a factual basis;

24 provided, however, that nothing in this provision shall affect Defendants’

25 (a) testimonial obligations; or (b) right to take legal or factual positions in other

26 proceedings to which the CFTC and the States are not a party. Defendants shall

27 comply with this agreement, and shall undertake all steps necessary to ensure that all

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1 of their agents or employees under their authority or control understand and comply
2 with this agreement;

3 12. Consent to the entry of this Consent Order without admitting or denying
4 the allegations of the Complaint or any findings or conclusions in this Consent Order,
5 except as to jurisdiction and venue, which they admit;

6 13. Consent to the use of the findings and conclusions in this Consent Order
7 in this proceeding and in any other proceeding brought by the CFTC or to which the
8 CFTC is a party or claimant, and agree that they shall be taken as true and correct and
9 be given preclusive effect therein, without further proof;

10 14. Consent to the use of the findings and conclusions in this Consent Order
11 in this proceeding and in any other civil or administrative proceeding brought by the
12 States or to which the States are a party or claimant, and agree that they shall be taken
13 as true and correct and be given preclusive effect therein, without further proof;

14 15. Do not consent, however, to the use of this Consent Order, or the
15 findings and conclusions herein, as the sole basis for any other proceeding brought by
16 the CFTC or the States or to which the CFTC or the States is a party, other than a:
17 statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or
18 proceeding to enforce the terms of this Consent Order;

19 16. Do not consent to the use of this Consent Order, or the Findings of Fact
20 or Conclusions of Law herein, by any other party in any other proceeding; and

21 17. Agree that no provision of this Consent Order shall in any way limit or
22 impair the ability of any other person or entity to seek any legal or equitable remedy
23 against Defendants in any other proceeding.

24 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

25 18. The Court, being fully advised in the premises, finds that there is good
26 cause for the entry of this Consent Order and that there is no just reason for delay.
27 The Court therefore directs the entry of the following Findings of Fact, Conclusions
28

1 of Law, permanent injunction, and equitable relief pursuant to Sections 6c and 6d of
2 the Act, 7 U.S.C. §§ 13a-1, 13a-2, as set forth herein.

3 **THE COURT HEREBY FINDS:**

4 **A. Findings of Fact**

5 **1. The Parties to this Consent Order**

6 19. Plaintiff CFTC is an independent federal regulatory agency that is
7 charged by Congress with administering and enforcing the Act and the Regulations.

8 20. The State Plaintiffs are the state regulatory agencies charged with
9 administering and enforcing the commodities and securities laws and regulations of
10 their states. The State Plaintiffs join the claims asserted by the CFTC and have
11 asserted state-specific claims, within their jurisdiction.

12 21. Red Rock Secured, LLC is a Nevada limited liability company formed
13 on January 12, 2010. On November 4, 2016, Red Rock registered with the California
14 Secretary of State as a foreign limited liability company, with its principal office
15 located at 898 N. Pacific Coast Highway, Suite 440, El Segundo, California.

16 22. Defendant Sean L. Kelly f/k/a Shade L. Kelly-Johnson resides in the Los
17 Angeles, California area, is Red Rock's President and CEO, and is a signatory on Red
18 Rock's bank accounts. Kelly held an 80% ownership share in Red Rock, oversaw
19 day-to-day operations, supervised employees, and participated in hiring and firing
20 decisions.

21 23. Defendant Anthony "Tony" Spencer resides in the Los Angeles,
22 California area, and, at points in time while employed by Red Rock, held the titles of
23 Senior Account Executive and Director of Account Services.

24 **2. Red Rock's Precious Metals Business**

25 24. Red Rock is a precious metals retailer, meaning it sells various types of
26 precious metals products (e.g., bars, rounds, and coins) directly to members of the
27 public.

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1 25. Typically, in the metal coins industry coins are produced by a mint
2 which sells them to precious metals distributors. The distributors, in turn, sell the
3 coins to precious metals wholesalers. The precious metals wholesalers then sell the
4 coins to precious metals retailers, such as Red Rock. Each of these transactions
5 includes a mark-up charged by the seller.

6 26. From at least November 2019 through at least June 2022 (“Relevant
7 Period”), Red Rock purchased all of its precious metals products from a single
8 wholesaler, Bayside Metal Exchange (“BME”). [Identified in the Complaint as
9 “Wholesaler 1”]

10 27. For customers using tax-deferred or other retirement funds to purchase
11 precious metals, Red Rock followed a three-step process: First, Red Rock
12 representatives assisted their customers in establishing a self-directed investment
13 retirement account (“SDIRA”) and transferring existing retirement funds into the
14 newly-established SDIRA. Second, Red Rock purchased precious metals for its
15 customers using those SDIRA funds. Third, Red Rock facilitated the transfer of the
16 newly-purchased metals to a depository or, in some cases, directly to the customer.

17 28. Red Rock’s website explained Red Rock’s mission as follows: “Most
18 people are worried about losing money in their retirement accounts. At Red Rock
19 Secured we convert that money into physical gold & silver so they can enjoy a worry-
20 free retirement.” Promotional materials Red Rock provided to prospective
21 customers—often styled as “Guides” or “Playbooks”—touted precious metals IRAs as a
22 means to “protect your retirement” or “preserve or potentially even grow your
23 retirement wealth.”

24 29. Kelly directed Red Rock sales personnel to emphasize these points in
25 speaking with customers:

- 26 a) “At Red Rock Secured we know you want to be worry free. In
27 order to do that, you need to protect your retirement savings. The
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1 problem is you can wake up and half your retirement could be gone
2 which makes you feel powerless.”

3 b) “We believe that you deserve to be confident that everything you
4 have worked for will still be there tomorrow. We understand, in the
5 last recession we saw too many Americans lose too much which is
6 why we for over a decade have worked with our clients to protect
7 their retirement savings by investing in gold and silver.”

8 30. “Trust” was also a common theme that Defendants promoted on Red
9 Rock’s website, in its promotional materials provided to prospective customers, and
10 in its training materials for sales staff. Such statements included:

11 a) “Red Rock is dedicated to protecting your retirement – a company
12 built on trust, expertise, and performance.”

13 b) “All our client relationships are built on trust - this is an integral
14 part of how we do business and informs all of our actions. We trust
15 one another as we build trust with our clients.”

16 31. As part of its sales pitch, Red Rock told prospective customers that
17 certain categories of precious metals products are on the “CUSIP list” (Committee on
18 Uniform Security Procedures) and thus are “trackable” by the government, while
19 other “non-CUSIP” products, including the Canadian Red-Tailed Hawk (“RTH”)
20 coins, are “private and non-trackable.” Red Rock told prospective customers that the
21 CUSIP list allows “financial institutions and government entities to track and identify
22 financial products.”

23 32. Red Rock also told prospective customers that “[b]y tagging, tracking,
24 and identifying precious metals assets, CUSIP enables financial institutions and the
25 government to *monitor* precious metals holdings and, of course, the investors who
26 hold them” (emphasis in original). As such, according to Red Rock, “CUSIP metals
27 are often referred to as ‘public’ gold or silver.”

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1 33. Red Rock told prospective customers that “Non-CUSIP metals act in
2 nearly the opposite fashion—providing the highest levels of security and authenticity
3 while maintaining anonymity.” As such, “Non-CUSIP metals are often called
4 ‘private’ and/or ‘premium’ metals.”

5 **3. Red Rock’s Products**

6 34. Red Rock generally categorized its precious metals products as either
7 “common bullion” products or “premium” products. The “common bullion” category
8 included comparatively less-expensive, lower-commission products such as metal
9 bars and rounds. In contrast, the “premium” category included comparatively more-
10 expensive, higher-commission products such as the RTH coins.

11 35. Promotional material Red Rock provided to prospective customers
12 further categorized its precious metal offerings or “assets” as “common bullion,”
13 “monetized bullion,” or “monetized bullion (limited quantity)” (collectively,
14 “Precious Metals”).

15 36. Red Rock’s promotional material provided to prospective customers,
16 including documents entitled “Precious Metals Categories & Options” and “Red
17 Rock Secured Product Selection – Protect Your Retirement” steered them toward its
18 monetized bullion (limited quantity) products.

19 37. Red Rock told prospective customers that “[b]ars and rounds are the
20 most common form of bullion. Common in that investors who are new to precious
21 metals investing tend to gravitate to bars and rounds based on inexperience and lack
22 of knowledge concerning other available options.”

23 38. Red Rock told prospective customers that bars and rounds offer “no
24 monetary value other than the value of the metal based on weight.” According to Red
25 Rock, “[t]his can affect the long-term profit and growth of the asset and its eventual
26 resaleability since it does not provide the functionality of a currency piece as
27 Monetized Bullion does.”

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1 39. Red Rock told prospective customers that common bullion assets are on
2 the CUSIP list and thus trackable by the government.

3 40. Red Rock told prospective customers that “monetized bullion” refers to
4 coins produced from gold, silver, or other precious metals “that have been or are used
5 as a medium of exchange.”

6 41. Red Rock told prospective customers that monetized bullion provides
7 monetary value beyond the weight of the metal itself: “Because Monetized Bullion
8 provides monetary value and functionality as a currency piece, whereas common
9 bullion assets like bars and rounds do not, long-term growth and profitability can
10 prove much greater as investors seek to acquire assets that enable them to cover all
11 their bases—as an investment as well as a potential crisis instrument should they need
12 to use their metal as an alternative to the dollar.”

13 42. Red Rock told prospective customers that monetized bullion assets, like
14 common bullion assets, are on the CUSIP list and thus trackable by the government.

15 43. Red Rock told prospective customers that “monetized bullion (limited
16 quantity)” assets are similar to monetized bullion assets in that they are produced by
17 government mints, they may be used as media of exchange, and they function “as an
18 investment and a potential crisis instrument.”

19 44. Red Rock told prospective customers that “[w]hile there are many
20 similarities between” standard monetized bullion and monetized bullion (limited
21 quantity), a “key differentiator that contributes to how the assets appreciate in value
22 in the long term is mintage population.” Standard monetized bullion assets “are
23 produced in significantly higher quantities,” as compared to monetized bullion
24 (limited quantity) assets.

25 45. Red Rock told prospective customers that “[w]hereas Standard
26 Monetized Bullion can increase in price based on just two factors—intrinsic value
27 and monetary value—the additional variable of limited supply size can cause
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1 Monetized Bullion (Limited Quantity) to move in value faster.”

2 46. Red Rock told prospective customers that, in contrast to common bullion
3 and standard monetized bullion assets, monetized bullion (limited quantity) assets are
4 *not* on the CUSIP list and thus *not* trackable by the government.

5 47. Red Rock told prospective customers that monetized bullion (limited
6 quantity) was preferable to common bullion and standard monetized bullion: “More
7 often than not, Monetized Bullion (Limited Quantity) is the preferred option when
8 building a precious metals portfolio for long-term profit, growth, and security.” And,
9 “[t]hese assets are for savvy investors who want to protect their portfolios with
10 precious metals through maximizing the value of their investment.”

11 48. Red Rock classified and promoted the RTH coins as monetized bullion
12 (limited quantity).

13 49. Spencer and other sales personnel of Red Rock provided Red Rock’s
14 “Precious Metals Categories & Options” document to clients.

15 50. Red Rock’s “Precious Metals Categories & Options” document was
16 available on its website.

17 **4. Red Rock’s Pricing**

18 51. In its Transaction Agreements with customers for the purchase and sale
19 of precious metals, Red Rock told customers that common bullion products “are
20 priced for the most part in accordance with the value of the precious metal they
21 contain.” In contrast, premium products, including the RTH coins, “are priced at a
22 premium above the value of the precious metals they contain.” And: “This premium
23 is based on various factors, including, but not limited to, speculative interest,
24 collector and investor demand, available supply, industry promotions, perceived
25 value and economic conditions.”

26 52. In its promotional literature provided to prospective customers, Red
27 Rock further explained how its products were priced: “[A]ll orders are based off of
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1 current market prices, also referred to as spot price. Spot price is a common industry
2 wide standard used to determine the value of one ounce of gold or silver. Different
3 assets have different premiums above spot price.”

4 53. In the precious metals industry, the “spot price” refers to the price per
5 ounce of metal available for immediate delivery on any one of a number of exchanges
6 around the world where precious metals, including silver and gold, are traded each
7 day.

8 54. “Melt value” (or “melt”) refers to the price of a given quantity of metal
9 based on the “spot” (or per ounce) price. For example, if the spot price of silver is
10 \$16.00 per ounce, the melt value of a half-ounce silver coin would be \$8.00.

11 55. The prices Red Rock paid BME to acquire the RTH coins were directly
12 tied to the spot prices of gold and silver.

13 56. Internally, Red Rock referred to the prices it paid to BME as its “cost of
14 goods sold.”

15 57. Red Rock based the prices it charged customers on Red Rock’s “cost of
16 goods sold.”

17 58. Red Rock’s mark-up on metals sold to customers was the difference
18 between “its cost of goods sold” and the price Red Rock charged its customers for
19 those same metals.

20 59. Kelly determined what mark-ups Red Rock charged for the assets it sold
21 to customers.

22 60. For “common bullion” products, Red Rock charged its customers mark-
23 ups of between approximately 3% to 5% above its cost of goods sold.

24 61. For “premium” products, including the RTH coins, Red Rock charged its
25 customers mark-ups of up to approximately 130% above its cost of goods sold.

26 62. Red Rock did not tell its customers about the actual mark-ups it charged.
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1 **5. The Canadian Red-Tailed Hawk Coin**

2 63. In late 2019, BME agreed to sell two coins—the half-ounce silver RTH
3 coin and the one-tenth ounce gold RTH coin—to Red Rock exclusively.

4 64. Both the initial silver and gold RTH coins—and later a quarter-ounce
5 gold RTH coin—were produced by the Royal Canadian Mint (“RCM”).

6 65. The RCM sold the RTH coins to one of its U.S. distributors, A-Mark
7 Precious Metals, Inc., which, in turn, sold the RTH coins to BME exclusively.

8 66. BME then then sold the RTH coins to Red Rock exclusively.

9 67. BME advised Red Rock that there was no mintage limit on the RTH
10 coins.

11 68. BME advised Kelly that the RCM would produce as many RTH coins as
12 Red Rock could sell.

13 69. Despite the absence of a mintage limit, Red Rock classified and
14 promoted the silver and gold RTH coins as “monetized bullion (limited quantity).”

15 70. BME sold Red Rock half-ounce silver RTH coins for “\$2.95/coin over
16 melt.” As BME explained to Kelly: “If the silver spot [price] is \$18.00/oz, your cost
17 is $\$9.00 + \$2.95 = \$11.95$ ” per coin.

18 71. BME sold Red Rock one-tenth-ounce gold RTH coins for “15% over
19 melt.” As BME explained to Kelly: “If the gold spot [price] is \$1500/oz, your cost is
20 $\$150.00 \times 1.15 = \172.50 per coin.”

21 72. Red Rock’s mark-up on the silver RTH coins purchased by customers
22 averaged 129.97%.

23 73. Red Rock’s mark-up on the one-tenth and one-quarter ounce gold RTH
24 coin averaged 111.32% and 91.89%, respectively.

25 74. Defendants incentivized Red Rock sales staff to sell its “premium”
26 products, particularly the RTH coins. While sales of common bullion products
27 typically entitled Red Rock’s sales staff to a commission of 1% of the total purchase,
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1 the RTH coin sales carried an 8% commission.

2 75. Beginning in January 2020, Spencer, who was one of Red Rock's top
3 salespersons, was offered up to 10% sales commissions on his sales of the RTH
4 coins.

5 76. The RTH coins were Red Rock's best-selling products.

6 77. Between November 2019 and June 2022, the half-ounce silver RTH coin
7 accounted for 84.2% of Red Rock's total sales.

8 78. Between November 2019 and June 2022, the one-tenth ounce and one-
9 quarter ounce gold RTH coins accounted for 7.76% of Red Rock's total sales.

10 79. Between November 2019 and June 2022, the silver and gold RTH coins
11 accounted for 91.96% of Red Rock's total sales.

12 80. Between November 2019 and June 2022, Red Rock sold 1,925,062
13 million half-ounce silver RTH coins.

14 81. Between November 2019 and June 2022, Red Rock sold 9,575 one-
15 tenth ounce gold RTH coins and 1,774 one-quarter ounce gold RTH coins.

16 82. Between November 2019 and June 2022, customers paid Red Rock
17 \$63,661,800.34 to purchase half-ounce silver RTH coins.

18 83. Between November 2019 and June 2022, customers paid Red Rock
19 \$5,863,078.65 to purchase one-tenth and one-quarter ounce gold RTH coins.

20 84. Between November 2019 and June 2022, Red Rock paid BME
21 \$27,682,391.56 to purchase half-ounce silver RTH coins.

22 85. Between November 2019 and June 2022, Red Rock paid BME
23 \$2,858,173.53 to purchase one-tenth and one-quarter ounce gold RTH coins.

24 86. Red Rock's total profit on sales of the half-ounce silver RTH coins was
25 \$35,979,408.78.

26 87. Red Rock's total profit on sales of the one-tenth and one-quarter ounce
27 gold RTH coins was \$3,004,905.12.

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1 88. Between November 2019 and June 2022, customers paid Red Rock a
2 total of \$69,524,878.99 for RTH coins.

3 89. Between November 2019 and June 2022, Red Rock paid BME a total of
4 \$30,540,565.09 for RTH coins.

5 90. Between November 2019 and June 2022, Red Rock's total profit on
6 sales of all RTH coins was \$38,984,313.90.

7 **6. Defendants Representations and Omissions About Red**
8 **Rock's Mark-Ups**

9 **a. Red Rock's Transaction Agreements**

10 91. Red Rock required its customers to sign a Transaction Agreement in
11 order to purchase precious metals from Red Rock.

12 92. Consistent with a Red Rock sales confirmation script, Red Rock sales
13 staff routinely told customers to refer to their Transaction Agreement to answer any
14 questions the customers might have.

15 93. During the Relevant Period, none of the Transaction Agreements signed
16 by Red Rock's customers disclosed Red Rock's actual mark-ups on the products it
17 sold.

18 94. In fact, for almost the entire Relevant Period, the Transaction
19 Agreements did not even include the term "mark-up."

20 95. The following language appeared in the Red Rock Transaction
21 Agreement, under the heading "Bid/Ask Spread": "The difference between the
22 Purchase Price Client pays for Products under a Purchase Order and the price that
23 Red Rock actually pays for the Products purchased by Client under such Purchase
24 Order is known as the "spread" and it is stated as a percentage of the Purchase Price
25 paid by the Client."

26 96. One version of this "Bid/Ask Spread" provision informed customers that
27 the "spread" on Red Rock's "premium ... coins typically ranges, between 4% and
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1 29%.”

2 97. A second version of this “Bid/Ask Spread” provision noted a typical
3 range of “5% for CUSIP assets and 29% for Premium/non-CUSIP assets.”

4 98. Red Rock characterized the RTH coins as both “premium” and “non-
5 CUSIP.”

6 99. In December 2021, Red Rock revised its Transaction Agreement to
7 include an explicit reference to “mark-up.” The “Bid/Ask Spread and Mark-Up”
8 section in this revised Transaction Agreement included language similar to the
9 opening sentence of the “Bid/Ask Spread” language quoted in SUF No. 71 above:
10 “‘Mark-up’ is the difference between the Purchase Price Clients pay for Products and
11 the price that Red Rock pays for such Products. The mark-up can range anywhere
12 from 5% to 120% depending on the type of coin and the fair market value at the
13 time.”

14 100. None of the Transaction Agreements in use during the Relevant Period
15 specified the actual mark-ups Red Rock charged on any particular product sold by
16 Red Rock, including the approximately 100% to 130% mark-ups on the RTH coins.

17 **b. Representations and Omissions by Red Rock Sales**
18 **Staff**

19 101. Red Rock sales staff told customers that Red Rock charged 1% to 5%
20 “above our costs” on “common bullion assets.”

21 102. Red Rock sales staff were instructed to reference the 1% to 5% mark-up
22 associated with Red Rock’s common bullion products when customers or prospective
23 customers questioned Red Rock’s charges or fees.

24 103. Spencer also told at least one customer that: “Red Rock charges 1-5%
25 above its cost from the mint.”

26 104. On 8/25/2020, Joseph Abrahamson, a resident of Florida, paid Red Rock
27 \$149,705.00 for 3,245 half-ounce silver and 60 one-tenth ounce gold RTH coins.

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1 105. Red Rock paid BME \$66,109.50 for the silver and gold RTH coins sold
2 to Abrahamson.

3 106. Red Rock's mark-ups on the RTH coins Abrahamson purchased were
4 approximately 129% for the silver coins and approximately 115% for the gold coins.

5 107. During an 8/25/2020 telephone call confirming Abrahamson's purchase,
6 Spencer told Abrahamson: "We charge anywhere from 1 to 5 percent above our cost
7 on common bullion assets."

8 108. Abrahamson understood Spencer to mean that Red Rock would charge a
9 fee of 1 to 5 percent above cost on Abrahamson's purchase of RTH coins.

10 109. Paying a fee of one to five percent above cost on his purchase was
11 important to Abrahamson.

12 110. No one from Red Rock told Abrahamson that he, in fact, paid more than
13 twice the cost of the RTH coins he purchased.

14 111. If someone from Red Rock had told Abrahamson that he was, in fact,
15 paying more than twice the cost of the RTH coins he purchased, Abrahamson would
16 not have gone through with the purchase.

17 112. On 5/25/2021, Francis Losecco, a resident of New York, paid Red Rock
18 \$199,680.00 for 5,045 half-ounce silver RTH coins.

19 113. Red Rock paid BME \$87,177.60 for the silver RTH coins sold to
20 Losecco.

21 114. Red Rock's mark-up on the silver RTH coins Losecco purchased was
22 approximately 129%.

23 115. During a 5/25/2021 telephone call confirming Losecco's purchase,
24 Spencer told Losecco: "Because we charge anywhere from one to five percent above
25 our cost, okay, on common bullion assets. Your fee, based on the amount that you
26 moved, was 1.5 percent."

27 116. Being charged a fee of 1.5 percent was significant to Losecco in his
28

1 decision to purchase RTH coins.

2 117. On 11/15/2021, Lloyd Lawrence, resident of Texas, paid Red Rock
3 \$499,690.00 for 13,755 half-ounce silver RTH coins.

4 118. Red Rock paid BME \$217,879.20 for the silver RTH coins sold to
5 Lawrence.

6 119. Red Rock's mark-up on the silver RTH coins Lawrence purchased was
7 approximately 129%.

8 120. During a 10/29/2021 telephone call with Lawrence, Spencer told
9 Lawrence: "We charge anywhere from 1 to 5 percent above our cost on common
10 bullion assets, and that fee structure is adjusted accordingly, based on the investment
11 amount."

12 121. During that same call, Spencer told Lawrence his fee to purchase the
13 RTH coins would be 1 percent.

14 122. During a 11/15/2021 telephone call with Lawrence, Spencer confirmed
15 that Lawrence would pay a fee of 1 percent (\$5,000).

16 123. Paying a lower price was important to Lawrence in deciding to purchase
17 metal from Red Rock.

18 124. On 7/7/2021, William Hoover, a resident of Georgia, paid Red Rock
19 \$149,624.20 for 4,000 half-ounce silver RTH coins.

20 125. Red Rock paid BME \$65,400 for the silver RTH coins sold to Hoover.

21 126. Red Rock's mark-up on the silver RTH coins Hoover purchased was
22 approximately 129%.

23 127. On 5/4/2021, Spencer told Hoover: "As I indicated yesterday, your fee,
24 which is a one time fee, is 1.83%. If you're moving 100k, for example, your fee is
25 1,830 dollars. Red Rock charges 1-5% above its cost from the mint. That range is
26 adjusted accordingly based on the investment amount."

27 128. Spencer knew that Red Rock charged 29%, not 1-5%, on the front end of
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1 transactions for “premium” products, including the RTH coins.

2 **7. Defendants’ Representations About Red Rock’s**
3 **Relationship with the Mints, the RCM’s Role in Pricing**
4 **the RTH Silver Coin, and “Limited Mintage” of the Silver**
5 **RTH Coin**

6 **a. Representations About Red Rock’s Relationship with**
7 **the Mints**

8 129. On 7/16/2021 Spencer told customer Robert Bradley that: “As we
9 discussed previously, Red Rock Secured is not a retail company/coin shop. I would
10 venture to guess that the other companies you've contacted fall more on the retail side
11 of the spectrum. Retail companies do not have a direct relationship with the mints, the
12 metal they provide to you must be secured through a metals distributor, and as a
13 result you end up paying much higher premiums for the same metal you could
14 acquire from Red Rock Secured for substantially less. The benefit to you in working
15 with Red Rock is we are an investment firm, we have a direct relationship with the
16 mints, and therefore we are able acquire the metal we provide to you at wholesale
17 prices.”

18 130. During an 8/4/2020 telephone call with Abrahamson, Red Rock account
19 executive Edward Coupland told Abrahamson: “Because we're a Tier One company
20 we do work with the mints directly, so we are able to [sic] wholesale prices and pass
21 on the savings to you, which is why we can get you good pricing.”

22 131. During that same call, Spencer told Abrahamson: “We have a direct
23 relationship, as a result, with the mints. So we buy our metal at wholesale, pass the
24 savings on to you. We don't go through anyone, in other words, to buy the metal,
25 whereas retail shops typically through a middle guy. So you’re paying three, four,
26 five times more than you should be at that point.”

27 132. During an 8/25/2020 telephone call confirming Abrahamson’s purchase,
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1 Spencer told Abrahamson: “So, we have a direct relationship with the mints. We buy
2 our metal in volume and we buy our metal in wholesale and we pass the savings on to
3 you. We charge anywhere from 1 to 5 percent above our cost on common bullion
4 assets.”

5 133. During a 4/14/2021 telephone call, Spencer told Losecco: “We’re not a
6 retail shop in any way. American Hartford Gold Group, Lear, Rosland, Advantage,
7 Goldco, and the like, tend to fall on the retail side of the spectrum, which means that
8 they have to go through a metals distributor to secure their metal. So you, as an
9 investor, as a consumer, you end up paying five to ten times more for the same metal
10 that you could secure from us. And the reason is that because we’re an investment
11 firm we have a direct relationship with the mints. We buy our metal at wholesale,
12 pass the savings on to you.”

13 134. Spencer telling Losecco “because we’re an investment firm, we have a
14 direct relationship with the mints. We buy our metal at wholesale, pass the savings on
15 to you” was important to Losecco in deciding to purchase metal from Red Rock.

16 135. During his 10/29/2021 telephone call with Lawrence, Spencer stated:
17 “So with us, however, there’s no middleman. We have a direct relationship with the
18 mints, so we're not going through a metals distributor. When you're going through a
19 retail shop that works with a metals distributor you're paying the retail shop's markup,
20 you're paying the metals distributor's markup, and you're paying the Mint's markup.”

21 136. On 11/27/2020, Timothy Rowe asked Spencer about the value of the
22 half-ounce silver RTH coins: “I am not understanding how 111 1/2 oz Canadian red
23 tailed hawks are worth \$4,000 dollars. At about \$27 an ounce that would come to
24 55.5 ounces x 27=\$1498.5. Can you explain? Because I can buy the same thing from
25 [a Red Rock competitor] for 26.7 and [sic] ounce. Please let me know what
26 happened here?”

27 137. On 11/28/2020, Spencer responded to Rowe: “As we discussed, your
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1 assets are not on the CUSIP list and therefore are completely private with no tracking
2 or serial number attached to them. They are also monetized, which means you can
3 use them as legal tender if necessary. You can liquidate these assets privately, which
4 is one of the main reason [sic] they are continuing to appreciate in value very quickly.
5 The version that [the Red Rock competitor] provides is a one ounce coin produced in
6 2015. Anything 1 oz or larger is on the CUSIP list and is not a private asset. [The
7 Red Rock competitor] does not have access to the 1/2 oz Canadian Red Tailed Hawk,
8 as they are a retail company, whereas Red Rock Secured has an exclusive relationship
9 with the Royal Canadian Mint. As a result, your assets are worth considerably more
10 when you liquidate/sell them.”

11 138. In a 2/3/2021 telephone call with customer Stephanie Shein, Red Rock’s
12 Director of Sales, Bayani Ison stated: “The way that we make money is that we have
13 a markup on the coins, so we, essentially, just make money one time and one time
14 only.”

15 139. In a 3/12/2021 telephone call with prospective customer Beverly Lantz,
16 Ison stated: “Well, right now, because of the higher demand, gold is really expensive
17 on the premiums because we’re -- you know, we see that -- this directly because
18 we’re a direct wholesaler to the U.S. Mint, the Canadian Mint, Perth and Swiss
19 Mints.” Ison continued: “And so what -- the way with that we save our clients
20 money is that, you know, there’s no middleman. We buy directly from them and then
21 pass the savings to you, so there’s no additional markup, you know, like a -- for
22 someone in between that we’d have to buy it from.”

23 **b. Representations About the RCM’s Role in Pricing the**
24 **Silver RTH Coin**

25 140. In a 10/28/2020 email message, a prospective customer, Tim McNeil,
26 asked Spencer: “So, are virtually all half-ounce Red Tailed Hawk coins currently
27 owned by Red Rock or Red Rock clients? If that is so, would not the price of that
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1 coin above its bullion weight at any given time essentially be set by Red Rock?”

2 141. Spencer responded to McNeil stating: “The value is set by the mint,
3 which has listed the coin for 49.99 CAD per unit. Therefore, re-saleability and ROI
4 are exceptionally, comparatively, much stronger than the common 1 oz. assets for the
5 reasons we’ve discussed.”

6 142. The RCM categorizes the RTH coins as “bullion” coins.

7 143. The RCM does not list prices for its “bullion coins” because the RCM
8 does not sell them directly to the public.

9 144. Kelly set the value (i.e., the price) of the RTH coins.

10 **c. Representations about Limited Mintage of the Silver**
11 **RTH Coin**

12 145. Bullion coins, including the RTH coins, were not limited mintage coins.

13 146. Red Rock was aware that the RTH coins were not limited mintage coins.

14 147. On 6/25/2020, customer Lynn Vanasse wrote to Spencer: “I am alarmed
15 at the cost of the coins you suggested for my purchase. I have tried to find this exact
16 coin and cannot find it for purchase elsewhere. It is my understanding that it is not a
17 low mintage/scarce coin like some of the other 1/2oz coins I have looked at. Please
18 don't take my sense of alarm personally - the bottom line is that I need some
19 assurance - pricing confirmation that the price you are asking me to pay for these
20 coins is a fair market value.”

21 148. On 6/26/2020, Spencer responded to Vanasse: “You [sic] coins were
22 \$27.09 when you bought them. They are now trading at \$27.35 per coin. In addition
23 to not being on the CUSIP list, the other main reason these coins are priced the way
24 they are is they are part of a limited mintage population - 30k coins will be produced
25 for 2020.”

26 149. Just two weeks earlier, on 6/9/2020, Spencer confirmed purchases of
27 32,705 silver RTH coins by customers James and Dolores Kolody, residents of
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1 Pennsylvania, for a total price of \$885,414.60.

2 150. On the same day Spencer told Vanasse that only 30,000 silver RTH
3 coins would be produced for 2020, BME advised Red Rock that: (i) there was no
4 mintage limit on the RTH coins; and (ii) 446,360 silver RTH coins had been minted
5 between November 2019 and June 26, 2020.

6 151. In September 2021, Kelly asked Fogel to ask the RCM to change the
7 mintage description for the RTH coins on the RCM's website.

8 152. Referring Fogel to links for the RTH coins on the RCM website, Kelly
9 stated: "They all say -Production Limit: NONE or worse Bullion would indicate they
10 are not limited mintage!" Kelly continued: "If we could have them update the pages
11 with the truth that would be optimal!"

12 153. Following up on that message, Kelly told Fogel: "It's really important to
13 us for several reasons." Kelly continued: "Primarily it is misrepresenting that these
14 coins are not limited mintage and even more still could be minted."

15 **8. Representations About Red Rock's Discounts and**
16 **Bonuses Offered to Customers**

17 154. Typically, Red Rock charged customers full price for assets the
18 customers purchased and did not provide discounts.

19 155. This price was known internally at Red Rock as the "retail ask" price.

20 156. Red Rock account executives, including Spencer, had continuous, real-
21 time access at their desks to Red Rock's retail ask prices, as well as the spot prices of
22 silver and gold.

23 157. Trade tickets prepared by Red Rock account executives for each sale
24 showed the spot price(s) of metal at the time of purchase (in the upper-right corner)
25 as well as the price(s) Red Rock charged the customer.

26 158. Some of the trade tickets also showed the "melt value" of the products
27 purchased by the customer.

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1 159. For example, a 12/23/2020 trade ticket showed the spot ask price of
2 silver as \$25.68 per ounce and Red Rock's retail ask price for a half-ounce silver
3 RTH coins as \$36.31 (or \$72.62 per ounce).

4 160. Red Rock offered a limited number of discounts or bonuses when
5 customer purchases reached certain thresholds.

6 161. On 5/4/2021, Spencer told Hoover: "As I indicated yesterday, your fee,
7 which is a one time fee, is 1.83%. If you're moving 100k, for example, your fee is
8 1,830 dollars. Red Rock charges 1-5% above its cost from the mint. That range is
9 adjusted accordingly based on the investment amount. There are no fees when you
10 sell the metal back to Red Rock. You also receive the 15% bonus at 125k, 12-month
11 Price Protection Plan, and No Fees for Life on the account with Strata."

12 162. Red Rock did not offer a 15% discount or bonus on precious metals
13 purchased by customers.

14 163. Spencer promised Abrahamson "a 10 percent metals promotion, which
15 would have been 10 percent of the [\$]150[,000], so an additional [\$]15,000 in
16 metals."

17 164. Receiving 10 percent in additional metals was significant to Abrahamson
18 in deciding to purchase metal from Red Rock.

19 165. When confirming Abrahamson's purchase, Spencer told Abrahamson:
20 "So, in addition to the 12-month price protection plan and the 10 percent in additional
21 metal, you also have no fees for life on the account." Spencer continued: "Your
22 subtotal -- as I mentioned, they took the \$295 out, is \$149,705. However, what you're
23 controlling in metal value is \$165[,000], okay?"

24 166. The invoice Red Rock sent to Abrahamson does not reference any
25 discount, bonus or additional metal.

26 167. Prior to Losecco's purchase, Spencer told him: "So whatever the
27 amount is you're moving, you get up to 10 percent in more metal that we place in the
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1 account for you. Okay?” Losecco responded: “Yeah, that sounds good.”

2 168. Receiving up to 10 percent in additional metal was important to Losecco
3 in deciding to purchase metal from Red Rock.

4 169. The invoice Red Rock sent to Losecco does not reference any discount,
5 bonus or additional metal.

6 170. On 6/24/2020, Vanasse, a resident of Minnesota, paid Red Rock
7 \$20,122.69 for 745 half-ounce silver RTH coins.

8 171. Red Rock paid BME \$8,776.10 for the silver and gold RTH coins sold to
9 Vanasse.

10 172. Confirming Vanasse’s purchase, Spencer told Vanasse that all of the
11 silver RTH coins she bought were “provided at a discounted price.”

12 173. Red Rock’s mark-up on the silver RTH coins Vanasse purchased was
13 approximately 129%.

14 174. The coins Red Rock sold to Vanasse were not provided at a discounted
15 price. Vanasse paid the full retail ask price: Red Rock’s cost of goods sold
16 $(\$8,776.10) + \text{Red Rock’s mark-up (129.2897\%)} = \$20,122.69$.

17 175. The invoice Red Rock sent to Vanasse did not reference any discount,
18 bonus or additional metal.

19 **9. Other Representations by Spencer**

20 176. Spencer told customers he had a PhD in Economics. For example,
21 Spencer told one customer he had a “PhD in Economics International Markets.”
22 Spencer admitted this statement was inaccurate. Spencer testified that he holds a
23 PhD in sociology with an emphasis in economics.

24 177. Spencer’s purported PhD in Economics was significant to customer
25 Losecco in deciding whether to purchase metal or coins from Red Rock.

26 178. Spencer’s purported PhD in Economics was significant to customer
27 Lawrence in deciding whether to purchase metal or coins from Red Rock.

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1 179. Spencer holds a PhD in sociology, not economics.

2 180. Spencer told customers he had been helping customers with “building”
3 and “managing” their metals portfolios for over 20 years.

4 181. Spencer’s purported “over 25 years” of experience in the metals industry
5 was important to Losecco in deciding to purchase metal from Red Rock.

6 182. Spencer’s purported “over 20 years” of experience in the metals industry
7 was important to Lawrence in deciding to purchase metal from Red Rock.

8 183. In fact, Spencer had 11 years of experience working in the metals
9 industry.

10 184. Spencer told customers Red Rock was an “investment firm,” not a “retail
11 shop.”

12 185. Red Rock is, in fact, a precious metals “retail shop.”

13 **10. Defendants’ Representations About the “Retail/Market**
14 **Value” of Customers’ RTH Coins**

15 186. Account statements provided to customers from their SDIRA custodians
16 showed account values below the prices customers originally paid to Red Rock.

17 187. Beginning in at least February 2021, Red Rock’s Transaction Agreement
18 advised customers that: “The ‘melt value,’ which represents the value of metal in its
19 raw and unrefined state prior to it being converted into a finished tangible asset, is not
20 indicative of your asset’s true retail/market value. For example, ‘melt value’ usually
21 represents approximately ½ of your purchase value on Non-CUSIP assets.

22 Conversely, the retail/market value of your assets is typically twice the melt value of
23 Non-CUSIP assets due to the following factors that add additional value to your
24 metals: market demand, investor demand, and supply and demand.”

25 188. When confirming customer purchases over the phone, Red Rock
26 representatives read from a script reiterating to customers that the “melt value” of the
27 RTH coins represented only half of the RTH coins’ “true retail/market” value:

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1 “Please note the retail value of your product is different than its melt value. For
2 example, the ‘melt value’ represents the value of metal in its raw and unrefined state
3 prior to it being converted into a finished tangible asset. Therefore, the melt value is
4 approximately one half of your purchase value on Non-CUSIP assets. The other half
5 is based upon Non-CUSIP investment values such as the value of comparable assets
6 found through the applicable mint: market demand, investor demand, and supply and
7 demand. As such, the ‘melt value’ is not indicative of your asset’s true retail/market
8 value.”

9 189. Spencer sent customers updates about the purported “current retail
10 value” of their metals.

11 190. On 8/20/2021, Spencer sent customer Robert Boudreau a “data
12 overview” purporting to show the “current retail value” of his silver RTH coins.

13 191. Spencer told Boudreau: “As discussed, the following is your overview,
14 including all four factors provided by the Royal Canadian Mint by percentage and
15 corresponding dollar amount.” Spencer continued: “[T]his is baseline data provided
16 by the Royal Canadian Mint, not including the additional bonus metal you received.”

17 192. According to Spencer, the \$100,014.58 “current retail value” of
18 Boudreau’s silver RTH coins broke down as follows:

19 “INVESTOR DEMAND = 28% (28,004.08)

20 SUPPLY AND DEMAND = 26% (26,003.79)

21 MARKET DEMAND = 26% (26,003.79)

22 SPOT = 20% (20,002.92)”

23 193. Contrary to the representations in Red Rock’s Transaction Agreement
24 and confirmation script that melt value accounted for approximately one half of
25 purchase value, Spencer told Boudreau that the spot or melt value accounted for less
26 than one quarter of the “current retail value” of Boudreau’s RTH coins.

27 194. On 9/23/2021, Boudreau, a resident of Rhode Island, asked Spencer
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1 about the disparity between the value of his RTH coins as reported by his SDIRA
2 custodian (\$32,000) and the amount of money he paid to Red Rock (\$100,000):

- 3 a) Boudreau: “Mornin, looking at equity, the balance is only showing
4 32 k As a balance with 0 pending. Looking to see where the rest
5 is?”
- 6 b) Spencer: “Bob, as we’ve discussed, that is the assessed value, not
7 the retail value. Equity and all other custodians can only report the
8 assessed value because they do not buy or sell metal. What I have
9 been sending you weekly is the retail value.”
- 10 c) Boudreau: “I did not buy 32 k assets worth of silver I purchased
11 100 k, worth of silver and feel very cheated at this point in time!
12 Make it right!”
- 13 d) Spencer: “Bob, what you’re seeing is the melt value, what the
14 metal is before it’s been taken out of the ground. Equity and all
15 custodians, under the 1997 Tax Payers Relief Act, can only report
16 melt because custodians do not buy or sell metal. We’ve covered
17 this several times before, which is why I have been sending you the
18 weekly review so you have an accurate accounting of the value of
19 the account.”

20 195. In a 12/18/2020 “current retail value” update for customer Edward Lobo,
21 a resident of Massachusetts, who purchased RTH coins, Spencer stated: “The current
22 retail value is 27,214.29. The data that helps to inform the value of the investment –
23 75% of which -- is provided by the mint.”

24 196. The RCM does not provide information concerning the retail value of
25 the bullion coins it produces to any entities and never provided such information to
26 Red Rock.

27 197. “Melt value” or “Intrinsic value” refers to the market value of a precious
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1 metal coin or bar calculated by multiplying the particular coin's or bar's pure
2 precious metal weight by the market value of its precious metal content.

3 198. "Bullion" refers to precious metal coins or bars consisting primarily of
4 gold, silver, platinum, or palladium that are commonly found in the precious metals
5 marketplace, typically have no material market value above their melt value, and
6 typically are of an unlimited or unfixd mintage.

7 199. The coins Red Rock sold to its customers as "premium," including the
8 RTH coins, were all bullion coins with unlimited or near unlimited mintages and
9 availability, the values of which were determined almost exclusively by their melt
10 value. These coins have no material value above that melt value in the precious
11 metals marketplace.

12 200. The prices that Red Rock charged its customers for "premium" coins,
13 including the RTH coins, significantly exceeded Red Rock's cost to purchase them
14 and vastly exceeded competitive industry pricing.

15 201. Because Red Rock charged inordinately high prices over their cost of
16 purchasing the "premium" coins (including the RTH coins), and above the coins'
17 melt value, the market resale value of its customers' coins immediately after purchase
18 was far below the prices customers paid for them.

19 202. Kelly and Spencer were made aware of silver RTH coins being resold at
20 prices substantially below the prices charged by Red Rock.

21 203. In September 2020, Kelly and Spencer heard that some silver RTH coins
22 were offered for sale by a Canadian website unconnected to Red Rock.

23 204. In response, Kelly wrote to Red Rock's wholesaler: "Eugene, this is
24 freaking me out. What is this?"

25 205. In October 2020, a prospective customer alerted Spencer that Red Rock
26 was charging "more than double what they are selling for in Canada."

27 206. In response, Kelly forwarded the email to Red Rock's controller and the
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1 wholesaler stating: “Guys, this is KILLING our deals. See below..... complete
2 bullshit [sic]. Is there a way we can have the candian [sic] mint reach out to them and
3 tell them they are selling OUR exclusive coin.”

4 **11. Kelly Acted as a Controlling Person of Red Rock**

5 207. During the Relevant Period, Kelly owned an 80% share of Red Rock and
6 served as Red Rock’s CEO. The other two owners only provided capital to Red
7 Rock. Neither of them worked for Red Rock or played any role in Red Rock’s day-
8 to-day operations.

9 208. Kelly was one of two signatories on Red Rock’s bank accounts. The
10 other signatory was Red Rock’s Vice President of Finance who was hired by and
11 reports to Kelly.

12 209. Kelly had discretion to take distributions from Red Rock and Red Rock
13 paid some of his personal expenses directly.

14 210. Kelly was involved in hiring Red Rock staff.

15 211. Kelly hired Spencer at Red Rock.

16 212. Kelly recruited Bayani Ison to join Red Rock as a senior account
17 executive who later served as Red Rock’s sales manager then director of sales.

18 213. In most cases, Kelly led weekly Monday sales meetings with Red
19 Rock’s sales staff; if he was unavailable, Ison or Red Rock’s president, Dave Clemen,
20 would step in for Kelly.

21 214. Kelly determined the mark-ups Red Rock charged for its “premium”
22 coins, including the RTH coins, as well as the commissions Red Rock paid its sales
23 staff.

24 215. On at least some occasions, Kelly reviewed the recorded calls between
25 Red Rock sales staff and customers and provided written guidance about what sales
26 staff could or should tell prospective customers.

27 216. Kelly testified that, “at the end of the day,” he was “responsible for
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1 everything” at Red Rock.

2 **12. Kelly’s and Spencer’s Compensation from Red Rock**

3 217. Kelly’s compensation from Red Rock was approximately \$2.85 million.

4 218. Spencer’s compensation from Red Rock was approximately \$2.25
5 million.

6 **13. Facts Relating to Claims Brought by the State of**
7 **California**

8 219. The laws of the state of California govern the registration of Investment
9 Advisers (“IAs”), Cal. Corp. Code § 25230.

10 220. The laws of the State of California also prohibit: (1) fraud in connection
11 with investment advisory services, Cal. Corp. Code § 25235; and (2) fraud in
12 connection with the offer, purchase, or sale of commodities and commodity contracts,
13 Cal. Corp. Code § 29536.

14 221. During the Relevant Period, Defendants engaged in an aggressive
15 advertising campaign over various channels including phone solicitations, Red
16 Rock’s website, direct marketing emails, and advertisements in third party emails and
17 newsletters. Defendants used scare tactics to convince prospective customers to
18 transfer funds, including funds from liquidating securities, in their tax-deferred
19 retirement accounts, including IRAs, 401(k) plans, and the U.S. Government Thrift
20 Savings Plans (“TSP”) (collectively, “Qualified Retirement Savings”) to purchase
21 precious metals, including the RTH coins, to purportedly preserve and protect
22 customers’ retirement funds.

23 **a. Investment Advice**

24 222. During the Relevant Period, Red Rock, directly or by and through its
25 sales representatives or other agents, including Kelly and Spencer, from California,
26 engaged in the business of providing investment advice to customers and prospective
27 customers nationwide for compensation from the liquidation of customers’ Qualified
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1 Retirement Savings, some of which held securities. As part of the scheme to defraud,
2 Red Rock, directly or by and through its sales representatives or other agents, assisted
3 at least 592 customers in transferring Qualified Retirement Savings into SDIRAs.

4 223. For example, directly or by and through its sales representatives or other
5 agents, Red Rock assisted customers with electronic SDIRA application and transfer
6 forms. In some cases, Red Rock's representatives or other agents facilitated phone
7 calls between customers and the entity holding the customer's Qualified Retirement
8 Savings, which included securities, to arrange the liquidation of the customer's
9 Qualified Retirement Savings and the transfer of their Qualified Retirement Savings
10 into a SDIRA.

11 224. Red Rock, directly or by and through Red Rock's sales representatives
12 or other agents, steered customers to purchase the RTH coins through their SDIRAs.
13 Kelly selected the mark-ups on the RTH coins sold to customers.

14 225. During the Relevant Period, Red Rock, directly or by and through its
15 sales representatives or other agents, for compensation in the form of mark-ups on
16 precious metals sales, commissions, and distributions, engaged in the business of
17 providing investment advice directly and by or through publications, writings, or
18 sales calls including:

- 19 a) Red Rock, directly or by and through Red Rock's sales
20 representatives or other agents, held Red Rock out as an
21 investment adviser. For example, on sales calls and in written
22 correspondence, Spencer told prospective customers that Red
23 Rock was not a retail shop, it was an investment firm and the
24 company's marketing guides state that it "has been in the
25 investment and financial services industry since 2009";
26 b) With Kelly's approval, Red Rock paid third parties and Red
27 Rock staff to prepare marketing materials. These marketing
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1 materials compared the securities market to the precious metals
2 market. Kelly consented to the use of these materials and
3 provided these materials to Red Rock's staff who provided
4 these materials to prospective and existing customers;

5 c) Spencer and Red Rock, directly or by and through Red Rock's
6 sales representatives and other agents, touted the advantages of
7 investing in precious metals as an alternative to stocks, bonds,
8 and the U.S. Dollar. For example, in the late summer or early
9 fall of 2020, Spencer told California Customer 1 that he needed
10 gold and silver in his IRA to protect against market drops or
11 inflation;

12 d) Red Rock, directly or by and through its marketing materials,
13 sales representatives, or other agents, advised about market
14 trends, specifically that the stock market would fall or lose
15 value;

16 e) Red Rock, directly or by and through its sales representatives or
17 other agents, sent emails highlighting articles that would induce
18 fear in the customers about their preexisting Qualified
19 Retirement Savings;

20 f) Red Rock posted charts on its website directly comparing the
21 growth rate of the Dow Jones, S&P 500, and the U.S. dollar to
22 the growth rate of gold and silver. Kelly advised sales staff to
23 refer prospective clients to these charts;

24 g) Red Rock, directly or by and through its sales representatives or
25 other agents, including Spencer, advised and directed customers
26 to sell securities held in Qualified Retirement Savings and
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transfer the proceeds to SDIRAs in order to purchase RTH coins from Defendants;

- h) Spencer advised prospective clients to “be careful what you wish for because, if you want to see gold go to the moon and silver go to the moon -- granted it’s now part of your portfolio - - that means the rest of what you have [in the stock market] has to become worth nothing”;
- i) Red Rock, directly or by and through its sales representatives or other agents, including Spencer, provided asset allocation advice, recommending that clients have 10% to 30% of their retirement savings in precious metals to diversify; and
- j) By way of example, Defendants, directly or by and through Red Rock’s sales representatives or other agents, provided investment advice to the following customers and prospective customers:
 - (i) In the late summer and early fall of 2020, Red Rock provided retirement-aged California Customer 1 with a copy of its TSP Playbook. Spencer told California Customer 1 that he had a Ph.D. in economics and encouraged California Customer 1 to liquidate 20-30% out of his TSP account to purchase precious metals. Spencer recommended the Canadian RTH coins. When California Customer 1 inquired about purchasing non-Canadian coins, Spencer was adamant that the RTH coins would save California Customer 1 the most on taxes. Spencer further told California Customer 1 the importance of gold and silver in his IRA to protect

1 against market drops and inflation. California
2 Customer 1 liquidated \$150,000 worth of securities
3 from his TSP account to purchase RTH coins; and
4 (ii) In August of 2021, a Red Rock sales representative
5 informed prospective California Customer 2 that “silver
6 has a better upside than gold which could be double the
7 profit potential If the stock market has a
8 correction, and we are due for one, that could drive up
9 the price of precious metals so that could drive up those
10 expectations.” The Red Rock sales representative
11 recommended that prospective California Customer 2
12 transfer 10% to 30% of his retirement savings into
13 precious metals to diversify.

14 226. During the Relevant Period, Red Rock advertised in a widely circulated
15 newsletter for federal government employees. These advertisements were aimed at
16 TSP participants. A TSP is a retirement savings and investment plan for federal
17 government employees which offers participants the ability to invest in securities.

18 227. The advertisement invited readers to claim a free copy of the #1 TSP
19 Playbook and noted that inside the document prospective customers would discover:
20 How precious metals can protect [their] retirement savings from
21 inflation, economic uncertainty, stock market crashes and increasing
22 foreign currency manipulation. Why gold and silver are positioned
23 for big gains in the next 2-4 years.

24 228. The advertisement went on to discuss the “Advantages of Rolling Over
25 Your TSP to A Self Directed Gold IRA” including:

26 The current TSP structure could doom you to failure, locking you in
27 to poor investments in your portfolio. If the market crashes, your
28

1 retirement savings could be at risk for major losses. In times of
2 pandemic, tragedy and extreme market crashes, Gold has reached
3 record highs. It is truly the counterbalance investment when things go
4 bad.

5 229. Prospective customers were warned that they need to “Act quickly. For
6 those TSP holders that continue to follow the same path with their investment
7 strategy, things could get a lot worse: there is no stimulus for a loss of your
8 retirement savings. Even losing 50% of your retirement could have implications on
9 you and your family for decades to come.”

10 230. During the Relevant Period, Red Rock, by and through its sales
11 representatives and other agents, routinely provided prospective customers with a
12 copy of the company’s #1 TSP Playbook containing investment advice, including:

13 *In the section titled Market Roller Coasters, Frank’s Big Drop:*

14 “Let’s not fool ourselves, another market down turn is coming. It’s
15 inevitable, like the tide. Markets run in waves, and all waves grow,
16 break and crash, right? So your TSPs total value is tied to whatever
17 market you’re in. . . . As of July, 2019, we’re back where we were a
18 dozen years ago. . . . That’s why when the tide comes, if you’ve
19 moved out of your TSP into a self-directed IRA, you cannot only
20 avoid the pain of market crashes, you can profit by them. Because
21 there’s another market we haven’t talked about in this chapter
22 yet...and that’s precious metals. Typically, when stocks, real estate,
23 and other dollar-denominated assets are up, metals move in the
24 opposite direction. And the reverse is also true.”

25 *In the section titled Where to Go from Here:* “I’ve tried to explain
26 both the reasons we believe that precious metal should be a part of
27 your retirement. I’ve illustrated how moving a percentage of your
28

1 TSP into a self-directed individual retirement account can be a good
2 move in helping to secure your future. We've talked about market
3 trends and how to read them in order to create, grow and preserve
4 your wealth. . . . The one thing that's absolutely certain, however, is
5 that change is coming. As I write this, we're in an unprecedented bull
6 stock market. . . . it's destined to end up crashing on the shore."

7 231. During the Relevant Period, Red Rock, by and through its sales
8 representatives and other agents, routinely provided prospective customers with a
9 copy of the company's 2020 A Case for Silver Investment Guide containing
10 investment advice, including "You Can Protect Your Retirement Savings from a
11 Severe Market Correction." After discussing the worst stock market crashes in U.S.
12 history, the guide states: "Is there something you can do to protect yourself? Yes.
13 You can invest your hard-earned money in gold and silver."

14 232. During the Relevant Period, Red Rock, by and through its sales
15 representatives and other agents, routinely provided prospective customers with a
16 copy of the company's Gold and Silver Guide containing investment advice,
17 including:

18 So how can you diversify into gold, silver, and other precious metals?
19 You could use some of your savings to make a purchase right now.
20 But a better way [is] to use money already in a 401(k) or IRA account
21 to purchase gold and silver. . . .

22 **b. Defendants' Representations About Metals Purchases**

23 233. Defendants, directly or by and through Red Rock's sales representatives
24 or other agents, engaged in a scheme to defraud and made material
25 misrepresentations and material omissions in providing investment advice to
26 customers to transfer their Qualified Retirement Savings, including selling their
27 securities, to purchase commodities and commodity contracts in the form of RTH
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1 coins from Red Rock.

2 234. During the Relevant Period, Defendants directly or by and through Red
3 Rock's sales representatives or other agents, willfully engaged in a scheme to defraud
4 by:

- 5 a) Advising prospective customers that precious metals can
6 protect retirement savings from stock market crashes and severe
7 market corrections, and that customers can profit by purchasing
8 precious metals including the RTH coin;
- 9 b) Steering a majority of all customers into the RTH coin, and
10 counseling sales representatives that were not recommending
11 the RTH coin which carried a high mark-up; and
- 12 c) Misrepresenting the mark-up on its premium coins in its
13 Transaction Agreements, misleading customers about the mark-
14 ups by routinely telling customers that Red Rock "charge[s] one
15 to five percent above our costs on common bullion assets,"
16 despite knowing that the company steered consumers into
17 "premium" coins including the RTH coin, with mark-ups above
18 1% to 5% and failing to disclose the actual mark-ups on the
19 RTH coins.

20 235. Red Rock, directly or by and through its sales representatives or other
21 agents, including Spencer, made material misrepresentations and material omissions
22 regarding Qualified Retirement Savings, including securities, as compared to
23 precious metals which included, but were not limited to, misleading statements to
24 instill fear in retirement-aged customers about their Qualified Retirement Savings to
25 justify the advice to liquidate securities and transfer these funds to Defendants for the
26 purchase of precious metals, while misrepresenting and failing to disclose the mark-
27 ups charged on the RTH coins.

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1 236. Spencer and Red Rock, directly or by and through Red Rock’s sales
2 representatives or other agents, made material misrepresentations and material
3 omissions regarding the company and its sales representatives or other agents’
4 experience and expertise which included, but were not limited to, the following:

- 5 a) Misrepresented to prospective customers that Spencer had a
6 Ph.D. in economics when he did not;
- 7 b) Misrepresented to prospective customers that Spencer had 25
8 years of experience in precious metals when he did not;
- 9 c) Misrepresented that Red Rock’s leadership team, which
10 included Kelly and Spencer, “have worked tirelessly” on the #1
11 TSP Playbook and that they have “spent nights countless [sic]
12 hours pouring over pages of Thrift Savings Plan rules and
13 regulations so as to make your options clear and easy to
14 understand” when they did not.
- 15 d) Represented that Red Rock had 10 years in business, and failed
16 to clarify that it began operating in the precious metals industry
17 in 2016;
- 18 e) Misrepresented that Red Rock was an investment firm as
19 opposed to a “retail company,” when, in fact, it was a retail
20 company; and
- 21 f) Misrepresented to customers and prospective customers that
22 Red Rock had a “direct relationship” with “the mints” and an
23 “exclusive relationship” with the RCM, and as such save their
24 clients’ money on mark-ups and lack of a middleman, when, in
25 fact, no such relationships existed and Red Rock paid the
26 “middleman”—BME—an additional markup.

27 237. Red Rock, directly or by and through its sales representatives or other
28

1 agents, made material omissions regarding their compensation structure. In light of
2 the other statements made regarding transferring funds from Qualified Retirement
3 Savings to purchase precious metals, Red Rock and its agents failed to reveal
4 conflicts of interest arising from Red Rock’s sales representatives’ profit share,
5 commissions, and other compensation being tied to the amount of funds from
6 customers’ Qualified Retirement Savings invested in precious metals including the
7 RTH coins.

8 238. Kelly, Spencer, and Red Rock, directly or by and through Red Rock’s
9 sales representatives or other agents, made material misrepresentations regarding
10 their mark-ups and fees, which included, but were not limited to, the following:

- 11 a) Spencer and other Red Rock staff misled customers about the
12 mark-ups by routinely telling customers that Red Rock
13 “charge[s] one to five percent above our costs on common
14 bullion assets,” despite knowing and failing to disclose that
15 they were steering customers into “premium” products,
16 specifically silver and gold RTH coins, which carried
17 significantly higher mark-ups above 1% to 5%;
- 18 b) Misrepresented how the company makes its money or
19 commissions. For example, in August 2021, when prospective
20 California Customer 2 asked how Red Rock makes its money
21 or commission, a Red Rock sales representative told
22 prospective California Customer 2 about the depository and
23 administrative fees, but did not disclose the mark-up or
24 commissions, even when this prospective customer asked the
25 sales representative to confirm there wasn’t a percentage the
26 company makes on the transaction. The sales representative
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- 1 stated, “No, it’s not like the financial institution that gets a
2 percentage of your whole portfolio if it performs or not”;
- 3 c) Misrepresented, in its Transaction Agreements until December
4 of 2021, that the mark-up on Red Rock’s premium coins
5 typically ranges between 4% and 29% when in reality, the
6 mark-up on the majority of the premium coins it sold, including
7 the silver and gold RTH coins, carried mark-ups of
8 approximately 92% to 130%. Kelly chose the mark-ups on the
9 sale of the RTH coins and had the authority and responsibility
10 for determining what Red Rock told its clients and prospective
11 clients about the mark-ups and fees on the RTH coins;
- 12 d) Misrepresented in its December 2021 revised Transaction
13 Agreement that the mark-up on premium coins can range from
14 5% to 120%, when in reality, the mark-ups on the silver RTH
15 coins routinely exceeded 120%; and
- 16 e) Failed to disclose the mark-up on the gold and silver RTH coins
17 to prospective customers during the Relevant Period.

18 239. Spencer and Red Rock, directly or by and through Red Rock’s sales
19 representatives or other agents, made material misrepresentations regarding the
20 precious metals it sold to customers, which included, but were not limited to, the
21 following:

- 22 a) Misrepresented that the value of the silver RTH coin was set by
23 the RCM when it was not. For example, Spencer
24 misrepresented to at least one customer that the value of the
25 silver RTH coin was set by the RCM, and as such the re-
26 salability and ROI were exceptionally, comparatively much
27 stronger than the common one oz. assets, when it was not;

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- 1 b) Misrepresented there was a limited mintage population of the
2 silver RTH coins when there was not. Spencer under reported
3 the mintage population of the silver RTH coin to at least one
4 customer to make it appear as if the product justified a higher
5 price;
- 6 c) Misrepresented to customers that the metals they bought from
7 Red Rock were discounted when a discount was not applied;
8 and
- 9 d) Misrepresented the retail value of customers' precious metals in
10 its transaction agreements, on confirmation calls, and after the
11 customer purchased the metals, lulling customers to keep their
12 funds invested in the metals. For example, Spencer claimed
13 that the current retail value is based on the metals' spot price
14 plus market demand, investor demand, and supply and demand
15 when it is not.

16 240. Through this scheme to defraud and these material misrepresentations
17 and omissions, Defendants solicited customers to sell securities to ultimately gain
18 access to those funds through the sale of RTH coins. The profits obtained by Red
19 Rock and compensation paid to their sales representatives or other agents were
20 related to the amount of Qualified Retirement Savings, including securities, that
21 convinced customers to liquidate. During the Relevant Period, Red Rock sold more
22 than \$69.5 million worth of the RTH coins to customers nationwide. Customers paid
23 approximately \$39 million more than Red Rock's costs on the RTH coins with
24 average markups ranging from 92-130%.

25 241. The practices discussed in this section resulted in almost immediate
26 substantial losses for customers due to Defendants' scheme to defraud and material
27 misrepresentations and omissions.

28

1 242. The foregoing conduct in relation to all of Red Rock’s offers and sales
2 during the Relevant Period (both cash and SDIRA sales) also violates California state
3 law prohibiting schemes to defraud and material misrepresentations or omissions in
4 connection with the offer, purchase, or sale of commodities.

5 **14. Facts Relating to Claims Brought by the State of Hawaii**

6 243. Under Hawaii Revised Statutes § 485A-501(a)(2), it is unlawful for a
7 person, in connection with the offer, sale, or purchase of a security, directly or
8 indirectly, to make an untrue statement of a material fact or fail to state a material fact
9 necessary to make the statements made, in light of the circumstance under which they
10 were made, not misleading.

11 **a. Defendants’ Representations to Hawaii Customer 1**

12 244. From February 2020 through March 24, 2020, Defendants, directly or by
13 and through Red Rock’s sales representatives or other agents, made material
14 misrepresentations and omissions to Hawaii Customer 1, age 72 at the time, which
15 resulted in Hawaii Customer 1 liquidating a portion of his TSP account that held
16 securities, including his Common Stock Index Investment (C) Fund and Small
17 Capitalization Stock Index Investment (S) Fund, in order to purchase precious metals
18 from Red Rock.

19 245. Defendants, directly or by and through Red Rock’s sales representatives
20 or other agents, misrepresented the mark-ups in Red Rock’s Transaction Agreement
21 provided to Hawaii Customer 1, which states that for certain “premium” precious
22 metals, including the silver and gold RTH coins, “[t]he difference between the
23 Purchase Price Client pays for Products under a Purchase Order and the price that
24 Red Rock actually pays for the Products purchased by Client under such Purchase
25 Order” typically ranges “between 4% and 29%[,]” when in reality, a majority of the
26 premium coins Red Rock sold, including the silver and gold RTH coins, routinely
27 carried mark-ups of approximately 100% to 130%.

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1 246. On February 28, 2020, a Red Rock sales representative told Hawaii
2 Customer 1 that Spencer had a Ph.D. in economics when, in fact, he did not.

3 247. During the same call, Spencer told Hawaii Customer 1 that:

- 4 a) He had been assisting clients with TSP accounts over the “last 25
5 years,” when, in fact, he did not have 25 years of experience in the
6 metals business;
- 7 b) Red Rock “work[s] very closely with the TSP for, gosh, well over a
8 decade at this point,” when, in fact, Red Rock did not begin
9 operating in the precious metals business until 2016; and
- 10 c) “95% of our clients are TSP account holders.”

11 248. Spencer testified in deposition on March 16, 2022, that: (a) he did not
12 know the number of Red Rock’s customers who used TSP assets to purchase coins or
13 metals; (b) any number he provided of TSP customers would be a guess, but the
14 number would not be substantial; and (c) he did not believe the number of TSP
15 customers exceeded one-third of Red Rock’s total customer base.

16 249. On March 5, 2020, Spencer told Hawaii Customer 1 that, with a
17 \$100,000 metals purchase, “you’re also going to get 5% in more metal added to the
18 account, so that’s \$5,000 in additional metal that we are going to factor into the
19 trade.” Hawaii Customer 1 did not receive any additional metal from Red Rock.
20 Spencer did not disclose a 129% mark-up Red Rock charged Hawaii Customer 1 on
21 the silver RTH coins he purchased, which caused Hawaii Customer 1 to immediately
22 suffer a substantial loss on his investment.

23 250. As a result of the foregoing material misrepresentations and omissions,
24 on March 24, 2020, Hawaii Customer 1 paid Red Rock \$84,932.05 for 3,630 silver
25 RTH coins. Red Rock charged a mark-up of approximately 129% on the silver RTH
26 coins Hawaii Customer 1 purchased.

27 251. At no time prior to the sale did Defendants disclose to Hawaii Customer
28

1 1 that Red Rock would charge an approximately 129% mark-up on the silver RTH
2 coins he purchased.

3 252. As a result of the misrepresented and undisclosed mark-up, Red Rock kept
4 \$47,833.45 of the \$84,932.05 Hawaii Customer 1 paid, while paying BME only
5 \$37,098.60 for the RTH coins sold to Hawaii Customer 1.

6 253. Defendants' material misrepresentations and omissions were made in
7 connection with the sale of securities where Red Rock's sales representatives or other
8 agents assisted Hawaii Customer 1 with liquidating the securities held in his TSP
9 account and setting up his SDIRA with a third-party custodian in order to purchase
10 precious metals from Red Rock.

11 254. Hawaii Customer 1 had no experience purchasing precious metals at the
12 time he purchased silver RTH coins from Red Rock.

13 **b. Defendants' Representations to Hawaii Customer 2**

14 255. From late 2019 through March 25, 2020, Defendants, directly or by and
15 through Red Rock's sales representatives or other agents, made material
16 misrepresentations and omissions to Hawaii Customer 2, age 73 at the time, which
17 resulted in Hawaii Customer 2 liquidating a portion of her TSP account that held
18 securities, including her Common Stock Index Investment (C) Fund and Lifestyle
19 Investment (L) Fund, in order to purchase precious metals from Red Rock.

20 256. Defendants, directly or by and through Red Rock's sales representatives
21 or other agents, misrepresented the mark-ups in Red Rock's Transaction Agreement
22 provided to Hawaii Customer 2, which states that for certain "premium" precious
23 metals, including the silver and gold RTH coins, "[t]he difference between the
24 Purchase Price Client pays for Products under a Purchase Order and the price that
25 Red Rock actually pays for the Products purchased by Client under such Purchase
26 Order" typically "ranges between 4% to 29%[,]" when in reality, a majority of the
27 premium coins Red Rock sold, including the silver and gold RTH coins, routinely
28

1 carried mark-ups of approximately 100% to 130%.

2 257. On December 17, 2019, when confirming Hawaii Customer 2's purchase
3 of silver and gold RTH coins, Spencer told Hawaii Customer 2 "we only work with
4 the mints directly" and "we have an exclusive arrangement with all the mints, as a
5 matter of fact." In reality, Red Rock did not work with the mints directly and did not
6 have exclusive relationships with the mints. Rather, Red Rock bought all of the RTH
7 coins that it sold to its customers from BME.

8 258. As a result of the foregoing material misrepresentations and omissions,
9 on December 17, 2019, Hawaii Customer 2 paid Red Rock \$47,618.38 for 1,290
10 silver RTH coins and 40 gold RTH coins. Red Rock charged mark-ups of
11 approximately 120% on both the silver and gold RTH coins Hawaii Customer 2
12 purchased in December 2019.

13 259. At no time prior to the sale did Defendants disclose to Hawaii Customer
14 2 that Red Rock would charge an approximately 120% mark-up on both the silver
15 and gold RTH coins she purchased in December 2019.

16 260. As a result of the misrepresented and undisclosed mark-ups, Red Rock
17 kept \$26,015.98 of the \$47,618.38 Hawaii Customer 2 paid, while paying BME only
18 \$21,602.40 for the RTH coins sold to Hawaii Customer 2.

19 261. Thereafter, on March 25, 2020, Hawaii Customer 2 paid Red Rock
20 \$22,010.69 for 225 silver RTH coins and 40 gold RTH coins. Red Rock charged
21 mark-ups of approximately 134% on the silver RTH coins and approximately 120%
22 on the gold RTH coins Hawaii Customer 2 purchased in March 2020.

23 262. At no time prior to the sale did Defendants disclose to Hawaii Customer
24 2 that Red Rock would charge mark-ups of approximately 134% and approximately
25 120% on the silver and gold RTH coins she purchased in March 2020.

26 263. As a result of the misrepresented and undisclosed mark-ups, Red Rock
27 kept \$12,147.84 of the \$22,010.69 Hawaii Customer 2 paid, while paying BME only
28

1 \$9,862.85 for the RTH coins sold to Hawaii Customer 2 in March 2020.

2 264. Defendants' material misrepresentations and omissions were made in
3 connection with the sale of securities where Red Rock's sales representatives or other
4 agents assisted Hawaii Customer 2 with filling out paperwork to liquidate the
5 securities held in her TSP account and setting up her SDIRA with a third-party
6 custodian in order to purchase precious metals from Red Rock.

7 265. Hawaii Customer 2 had no experience purchasing precious metals at the
8 time she first purchased RTH coins from Red Rock in December 2019.

9 266. As a result of the foregoing acts, misrepresentations, and omissions,
10 Hawaii Customers 1 and 2 were deprived of material information when deciding
11 whether to liquidate their securities to purchase the RTH coins from Red Rock.

12 **B. Conclusions of Law**

13 **1. Jurisdiction and Venue**

14 267. This Court has jurisdiction over this action pursuant to Section 6c(a) of
15 the Act, 7 U.S.C. § 13a-1(a), which provides that whenever it shall appear to the
16 CFTC that any person has engaged, is engaging, or is about to engage in any act or
17 practice constituting a violation of any provision of the Act or any rule, regulation, or
18 order promulgated thereunder, the CFTC may bring an action in the proper district
19 court of the United States against such person to enjoin such act or practice, or to
20 enforce compliance with the Act, or any rule, regulation or order thereunder.

21 268. Section 6d(1) of the Act, 7 U.S.C. § 13a-2(1), authorizes the States to
22 bring a suit in the district courts of the United States to seek injunctive and other
23 relief against any person whenever it appears to the Attorneys General and/or
24 Securities Administrator of a State, or such other official that a State may designate,
25 that the interests of the residents of the State have been, are being, or may be
26 threatened or adversely affected because of violations of the Act or CFTC
27 Regulations.

28

1 269. Venue properly lies with this Court pursuant to Section 6c(e) of the Act,
2 7 U.S.C. § 13a-1(e), because the Defendants reside in this jurisdiction and the acts
3 and practices in violation of the Act occurred within this District.

4 **2. Violations of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and**
5 **Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3)**
6 **(2023)**

7 270. By the conduct described above in paragraphs 91-218, Red Rock, by and
8 through its officers, employees, and agents, including Spencer, and Spencer directly,
9 in connection with contracts of sale of commodities in interstate commerce,
10 intentionally or recklessly: (1) used or employed, or attempted to use or employ,
11 manipulative devices, schemes, or artifices to defraud; (2) made, or attempted to
12 make, any untrue or misleading statements of material fact or omissions of material
13 fact; and/or (3) engaged, or attempted to engage, in acts, practices, or courses of
14 business, which operated or would have operated as a fraud or deceit upon their
15 customers in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

16 271. During the Relevant Period, Kelly controlled Red Rock, directly or
17 indirectly, and did not act in good faith or knowingly induced, directly or indirectly,
18 Red Rock's act or acts in violation of the Act and Regulations. Therefore, pursuant
19 to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Kelly is liable for Red Rock's
20 violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

21 272. The foregoing acts, omissions, and failures of Kelly, Spencer, and other
22 officers, employees, and agents of Red Rock occurred within the scope of their
23 employment, agency, or office with Red Rock. Therefore, pursuant to Section
24 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2
25 (2023), Red Rock is liable for the acts, omissions, and failures of Kelly, Spencer, and
26 other officers, employees, and agents of Red Rock in violation of 7 U.S.C. § 9(1) and
27 17 C.F.R. § 180.1(a)(1)-(3).

28

1 **3. State Law Violations**

2 273. By the conduct described in paragraphs 91-266 above, Defendants
3 violated various State laws prohibiting employing any artifice, or scheme to defraud
4 in connection with the offer, purchase, or sale of commodities, and Defendants Red
5 Rock and Spencer violated various State laws prohibiting: (1) unlicensed investment
6 advice; (2) investment advisers from employing a device, scheme or artifice to
7 defraud or engaging in an act, practice, or course of business that operates or would
8 operate as a fraud or deceit; (3) making material misrepresentations or omissions in
9 connection with the offer, purchase, or sale of securities; (4) making material
10 misrepresentations or omissions in connection with the offer, purchase, or sale of
11 commodities; and (5) financial exploitation of the elderly in violation of the
12 following:

- 13 a) Sections 25230, 25235, and 29536 of the California Corporations
14 Code; and
- 15 b) Sections 485A-501(a)(2) and 485A-603.5 of the Hawaii Revised
16 Statutes.

17 (collectively the “State Law”)

18 274. The facts, misrepresentations, and omissions described above are
19 material because there is a substantial likelihood that a reasonable investor would
20 consider them important in deciding whether to sell securities and/or invest in the
21 coins sold by Red Rock.

22 275. By the conduct described above, Kelly controlled Red Rock, directly or
23 indirectly, and/or induced the violations or substantially or materially assisted Red
24 Rock’s act or acts in violation of the State Law; this conduct was not undertaken in
25 good faith or was willful or knowing. Therefore, Kelly is liable for Red Rock’s
26 violations of the State Law.

27 276. Spencer substantially or materially assisted in Red Rock’s act or acts in
28

1 violation of the State Law; this conduct was not undertaken in good faith or was
2 willful or knowing. Therefore, Spencer is liable for Red Rock's violations of the
3 State Law.

4 277. Unless restrained and enjoined by this Court, there is a reasonable
5 likelihood that Defendants will continue to engage in the acts and practices alleged in
6 the Complaint and in similar acts and practices in violation of the Act and
7 Regulations and the State Law.

8 IV. INJUNCTIVE RELIEF

9 A. Permanent Injunction

10 IT IS HEREBY ORDERED THAT:

11 278. Based upon and in connection with the foregoing conduct, pursuant to
12 Sections 6c and 6d of the Act, 7 U.S.C. §§ 13a-1, 13a-2, Defendants are permanently
13 restrained, enjoined and prohibited from, directly or indirectly, in connection with
14 any contract of sale of any commodity in interstate commerce, intentionally or
15 recklessly: (1) using or employing, or attempting to use or employ, manipulative
16 devices, schemes, or artifices to defraud; (2) making, or attempting to make, any
17 untrue or misleading statements of material fact or omissions of material fact; or (3)
18 engaging, or attempting to engage, in acts, practices, or courses of business, which
19 operate or would operate as a fraud or deceit upon any person, in violation of Section
20 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3)17 C.F.R. §
21 180.1(a)(1)-(3) (2023).

22 279. Based upon and in connection with the foregoing conduct, pursuant to
23 the laws of the States, Defendants are also permanently restrained, enjoined and
24 prohibited from directly or indirectly engaging in any conduct in violation of the
25 State Law described in paragraph 273.

26 280. Defendants are also permanently restrained, enjoined and prohibited
27 from directly or indirectly:
28

- 1 a) Trading on or subject to the rules of any registered entity (as that
- 2 term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40));
- 3 b) Entering into any transactions involving “commodity interests” (as
- 4 that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2023), or
- 5 Precious Metals that are commodities (as that term is defined
- 6 herein), for accounts held in the name of any Defendant or for any
- 7 account in which any Defendant has a direct or indirect interest;
- 8 c) Having any commodity interests, or Precious Metals that are
- 9 commodities, traded on any Defendant’s behalf;
- 10 d) Controlling or directing the trading for or on behalf of any other
- 11 person or entity, whether by power of attorney or otherwise, in any
- 12 account involving commodity interests or Precious Metals that are
- 13 commodities;
- 14 e) Soliciting, receiving or accepting any funds from any person for the
- 15 purpose of purchasing or selling any commodity interests or
- 16 Precious Metals that are commodities;
- 17 f) Applying for registration or claiming exemption from registration
- 18 with the CFTC in any capacity, and engaging in any activity
- 19 requiring such registration or exemption from registration with the
- 20 CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R.
- 21 § 4.14(a)(9) (2023); and/or
- 22 g) Acting as a principal (as that term is defined in Regulation 3.1(a),
- 23 17 C.F.R. § 3.1(a) (2023)), agent or any other officer or employee
- 24 of any person (as that term is defined in 7 U.S.C. § 1a(38)),
- 25 registered, exempted from registration or required to be registered
- 26 with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9).
- 27
- 28

1 **B. State Bar Orders**

2 281. Defendants consent, without admitting or denying the allegations to be
3 contained therein, to the publication of this Consent Order or to the entry of an
4 administrative order by the States that ban or bar Defendants from participation in the
5 commodities or securities industries, including, but not limited to, any position of
6 employment, management, or control of any broker-dealer, investment adviser, or
7 commodity advisor.

8 282. Defendants consent and agree to the issuance of administrative bar
9 orders in the form set forth in Attachment 1 to this Consent Order.

10 283. Defendants consent to waive the right to any notice or hearings, and to
11 any reconsideration, appeal, or other right to review which may be afforded by the
12 applicable laws of the States, with full knowledge of their rights, voluntarily waive
13 the right to an adjudicative hearing in accordance with applicable state laws, as well
14 as any other appeal rights found therein. Defendants waive the issuance, lawful
15 service and receipt of any notice of allegations and charges against Defendants and
16 stipulate to the jurisdiction of the state securities regulators in California and Hawaii.

17 284. After being fully and adequately apprised of the right to appeal as set
18 forth in applicable state laws, Defendants knowingly and voluntarily consent to waive
19 the right to any notice or hearings, and to any reconsideration, appeal, or other right
20 to review which may be afforded by the applicable laws of California and/or Hawaii.
21 Defendants expressly waive any requirement for the filing of a pleading or
22 accusation. By waiving such rights, Defendants consent to the finality of the
23 administrative bar orders issued by the States as referenced herein.

24 **V. STATUTORY AND EQUITABLE RELIEF**

25 **A. Civil Monetary Penalties**

26 **IT IS HEREBY ORDERED THAT:**

27 285. Red Rock shall pay to the Plaintiffs a civil monetary penalty in the
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1 amount of ten million dollars (\$10,000,000) (“Red Rock’s CMP Obligation”) within
2 30 days of the date of entry of this Consent Order. If Red Rock’s CMP Obligation is
3 not paid in full within 30 days of the date of entry of this Consent Order, then post-
4 judgment interest shall accrue on the unpaid portion of Red Rock’s CMP Obligation
5 beginning on the date of entry of this Consent Order and shall be determined by using
6 the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant
7 to 28 U.S.C. § 1961.

8 286. Kelly shall pay to the Plaintiffs a civil monetary penalty in the amount of
9 one million five hundred thousand dollars (\$1,500,000) (“Kelly’s CMP Obligation”) within
10 30 days of the date of entry of this Consent Order. If Kelly’s CMP Obligation
11 is not paid in full within 30 days of the date of entry of this Consent Order, then post-
12 judgment interest shall accrue on the unpaid portion of Kelly’s CMP Obligation
13 beginning on the date of entry of this Consent Order and shall be determined by using
14 the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant
15 to 28 U.S.C. § 1961.

16 287. Spencer shall pay to the Plaintiffs a civil monetary penalty in the amount
17 of seven hundred fifty thousand dollars (\$750,000) (“Spencer’s CMP Obligation”) within
18 30 days of the date of entry of this Consent Order. If Spencer’s CMP
19 Obligation is not paid in full within 30 days of the date of entry of this Consent
20 Order, then post-judgment interest shall accrue on the unpaid portion of Spencer’s
21 CMP Obligation beginning on the date of entry of this Consent Order and shall be
22 determined by using the Treasury Bill rate prevailing on the date of entry of this
23 Consent Order pursuant to 28 U.S.C. § 1961.

24 288. Defendants shall receive a dollar-for-dollar credit against their respective
25 CMP Obligations for any penalties paid in the matter *SEC v. Red Rock Secured, LLC,*
26 *et al.*, Case No. 2:23-cv-03682-RGK-PVC (C.D. Cal. May 15, 2023) (the “SEC
27 Action”). Within ten days of any payment in the SEC Action, the paying Defendant
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1 shall, under a cover letter that identifies the name and docket number of this
2 proceeding, transmit copies of the form of payment to the Chief Financial Officer,
3 Commodity Futures Trading Commission, and Rick Glaser, Deputy Director,
4 Commodity Futures Trading Commission, at 1155 21st Street, NW, Washington,
5 D.C. 20581, and counsel of record in this proceeding for the DFPI.

6 289. If not offset by payments in the SEC Action, any outstanding portions of
7 Defendants' CMP Obligations and any post-judgment interest, shall be paid by
8 electronic funds transfer, U.S. postal money order, certified check, bank cashier's
9 check, or bank money order. If payment is to be made other than by electronic funds
10 transfer, then the payment shall be made payable to the Commodity Futures Trading
11 Commission and sent to the address below:

12 MMAC/ESC/AMK326
13 Commodity Futures Trading Commission
14 6500 S. MacArthur Blvd.
15 HQ Room 266
16 Oklahoma City, OK 73169
17 9-amz-ar-cftc@faa.gov

18 290. If payment by electronic funds transfer is chosen, Defendants shall
19 contact the Federal Aviation Administration at the email address above to receive
20 payment instructions and shall fully comply with those instructions. Defendants shall
21 accompany payment of their respective CMP Obligations with a cover letter that
22 identifies the Defendant and the name and docket number of this proceeding.
23 Defendants shall simultaneously transmit copies of the cover letter and the form of
24 payment to the Chief Financial Officer, Commodity Futures Trading Commission,
25 Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and counsel
26 of record in this proceeding for the DFPI.

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1 **B. Restitution**

2 **IT IS HEREBY ORDERED THAT:**

3 291. Red Rock shall pay restitution in the amount of thirty-eight million, nine
4 hundred eighty-four thousand, three hundred thirteen dollars and ninety cents
5 (\$38,984,313.90) (“Restitution Obligation”). If the Restitution Obligation is not paid
6 within 30 days of the date of entry of this Consent Order, post-judgment interest shall
7 accrue on the unpaid portion of the Restitution Obligation beginning on the date of
8 entry of this Consent Order and shall be determined by using the Treasury Bill rate
9 prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

10 292. Red Rock shall receive a dollar-for-dollar credit against its Restitution
11 Obligation for any restitution or disgorgement paid in the SEC Action. Within ten
12 days of any payment in the SEC Action, Red Rock shall, under a cover letter that
13 identifies the name and docket number of this proceeding, transmit copies of the form
14 of payment to the Chief Financial Officer, Commodity Futures Trading Commission,
15 and Rick Glaser, Deputy Director, Commodity Futures Trading Commission, at 1155
16 21st Street, NW, Washington, D.C. 20581, and counsel of record in this proceeding
17 for the DFPI.

18 293. If not offset by payments in the SEC Action, any outstanding portion of
19 Red Rock’s Restitution Obligation and any post-judgment interest, shall be paid in
20 accordance with the procedures set forth in Section D below.

21 294. The amounts payable to each Red Rock customer shall not limit the
22 ability of any customer from proving that a greater amount is owed from Red Rock or
23 any other person or entity, and nothing herein shall be construed in any way to limit
24 or abridge the rights of any customer that exist under state or common law.

25 295. To the extent that any funds accrue to the U.S. Treasury for satisfaction
26 of Red Rock’s Restitution Obligation, such funds shall be transferred to the Monitor
27 for disbursement in accordance with the procedures set forth in Section D below.

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1 **C. Disgorgement**

2 **IT IS HEREBY ORDERED THAT:**

3 296. Kelly shall pay disgorgement in the amount of two million eight hundred
4 fifty thousand dollars (\$2,850,000) representing the gains he received in connection
5 with the violations described above (“Kelly’s Disgorgement Obligation”) within 30
6 days of the date of entry of this Consent Order. If Kelly’s Disgorgement Obligation
7 is not paid in full within 30 days of the date of entry of this Consent Order, post-
8 judgment interest shall accrue on the unpaid portion of Kelly’s Disgorgement
9 Obligation beginning on the date of entry of this Consent Order and shall be
10 determined by using the Treasury Bill rate prevailing on the date of entry of this
11 Consent Order pursuant to 28 U.S.C. § 1961.

12 297. Spencer shall pay disgorgement in the amount of two million two
13 hundred twenty-five thousand dollars (\$2,250,000) representing the gains he received
14 in connection with the violations described above (“Spencer’s Disgorgement
15 Obligation”) within 30 days of the date of entry of this Consent Order. If Spencer’s
16 Disgorgement Obligation is not paid in full within 30 days of the date of entry of this
17 Consent Order, post-judgment interest shall accrue on the unpaid portion of Spencer’s
18 Disgorgement Obligation beginning on the date of entry of this Consent Order and
19 shall be determined by using the Treasury Bill rate prevailing on the date of entry of
20 this Consent Order pursuant to 28 U.S.C. § 1961.

21 298. Kelly and Spencer shall receive a dollar-for-dollar credit against their
22 respective Disgorgement Obligations for any disgorgement paid in the SEC Action.
23 Within ten days of any payment in the SEC Action, Kelly or Spencer shall, under a
24 cover letter that identifies the name and docket number of this proceeding, transmit
25 copies of the form of payment to the Chief Financial Officer, Commodity Futures
26 Trading Commission, and Rick Glaser, Deputy Director, Commodity Futures Trading
27 Commission, at 1155 21st Street, NW, Washington, D.C. 20581, and counsel of
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1 record in this proceeding for the DFPI.

2 299. If not offset by payments in the SEC Action, any outstanding portions of
3 Kelly's or Spencer's Disgorgement Obligation and any post-judgment interest, shall
4 be paid in accordance with the procedures set forth in Section D below.

5 300. To the extent that any funds accrue to the U.S. Treasury for satisfaction
6 of Kelly's or Spencer's Disgorgement Obligation, such funds shall be transferred to
7 the Monitor for disbursement in accordance with the procedures set forth in Section
8 D below.

9 **D. Payment and Distribution of Restitution and Disgorgement**
10 **Obligations**

11 **IT IS HEREBY ORDERED THAT:**

12 301. To effect payment of Red Rock's Restitution Obligation and Kelly's and
13 Spencer's Disgorgement Obligations (collectively, the "R&D Obligations") and the
14 distribution of any payments to Red Rock's RTH customers, the Court appoints the
15 National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall
16 receive payments on the R&D Obligations from Defendants and make distributions
17 as set forth below. Because the Monitor is acting as an officer of this Court in
18 performing these services, the NFA shall not be liable for any action or inaction
19 arising from NFA's appointment as Monitor, other than actions involving fraud.

20 302. Defendants shall make R&D Obligations payments, and any post-
21 judgment interest payments, under this Consent Order to the Monitor in the name of
22 "Red Rock Secured Restitution Fund" and shall send such payments by electronic
23 funds transfer, or by U.S. postal money order, certified check, bank cashier's check,
24 or bank money order, to the Office of Administration, National Futures Association,
25 320 South Canal Street, 24th Floor, Chicago, Illinois 60606 under cover letter that
26 identifies the paying Defendant and the name and docket number of this proceeding.
27 Defendants shall simultaneously transmit copies of the cover letter and the form of
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1 payment to the Chief Financial Officer, Commodity Futures Trading Commission,
2 Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and counsel
3 of record in this proceeding for the DFPI.

4 303. The Monitor shall oversee the R&D Obligations and shall have the
5 discretion to determine the manner of distribution of such funds in an equitable
6 fashion to Red Rock's RTH customers identified by Plaintiffs or may defer
7 distribution until such time as the Monitor deems appropriate. In the event that the
8 amount of R&D Obligations payments to the Monitor are of a *de minimis* nature such
9 that the Monitor determines that the administrative cost of making a distribution to
10 eligible customers is impractical, the Monitor may, in its discretion, treat such
11 payments as civil monetary penalty payments, which the Monitor shall forward to the
12 CFTC.

13 304. Defendants shall cooperate with the Monitor as appropriate to provide
14 such information as the Monitor deems necessary and appropriate to identify the Red
15 Rock customers to whom the Monitor, in its sole discretion, may determine to include
16 in any plan for distribution of any R&D Obligations payments. Defendants shall
17 execute any documents necessary to release funds that they hold in any repository,
18 bank, investment or other financial institution, wherever located, in order to make
19 partial or total payment toward the R&D Obligations.

20 305. The Monitor shall provide Plaintiffs at the beginning of each calendar
21 year with a report detailing the disbursement of funds to Red Rock's customers
22 during the previous year. The Monitor shall transmit this report under a cover letter
23 that identifies the name and docket number of this proceeding to the Chief Financial
24 Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st
25 Street, NW, Washington, D.C. 20581, and counsel of record in this proceeding for the
26 DFPI.

27 306. The Monitor shall provide Plaintiffs at the beginning of each calendar
28

1 year with a report detailing the disbursement of funds to Red Rock customers. The
2 Monitor shall transmit this report under a cover letter that identifies the name and
3 docket number of this proceeding to the Chief Financial Officer, Commodity Futures
4 Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington,
5 D.C. 20581, and counsel of record in this proceeding for the DFPI.

6 **E. Provisions Related to Monetary Sanctions**

7 307. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Red
8 Rock customer who suffered a loss is explicitly made an intended third-party
9 beneficiary of this Consent Order and may seek to enforce obedience of this Consent
10 Order to obtain satisfaction of any portion of the R&D Obligations that has not been
11 paid by Defendants to ensure continued compliance with any provision of this
12 Consent Order and to hold Defendants in contempt for any violations of any
13 provision of this Consent Order.

14 308. Partial Satisfaction: Acceptance by the CFTC, DFPI, SEB, or the
15 Monitor of any partial payment of the Defendants' R&D Obligations or CMP
16 Obligations shall not be deemed a waiver of their obligation to make further
17 payments pursuant to this Consent Order, or a waiver of Plaintiffs' right to seek to
18 compel payment of any remaining balance.

19 **VI. MISCELLANEOUS PROVISIONS**

20 309. Until such time as Defendants satisfy in full their R&D Obligations and
21 CMP Obligations under this Consent Order, upon the commencement by or against
22 any Defendant of insolvency, receivership, or bankruptcy proceedings or any other
23 proceedings for the settlement of Defendant's debts, all notices to creditors required
24 to be furnished to the Commission under Title 11 of the United States Code or other
25 applicable law with respect to such insolvency, receivership bankruptcy or other
26 proceedings, shall be sent to the address below:

27 Secretary of the Commission
28

1 Office of the General Counsel
2 Commodity Futures Trading Commission
3 Three Lafayette Centre
4 1155 21st Street N.W.
5 Washington, DC 20581

6 All notices required to be sent to the States shall be sent to their counsel of
7 record in these proceedings.

8 310. Notice: All notices required to be given by any provision in this Consent
9 Order, except as set forth in the ¶ 289, shall be sent certified mail, return receipt
10 requested, as follows:

11 a) Notice to CFTC, which shall reference the name and docket number
12 of this action:

13 Rick Glaser
14 Deputy Director
15 1155 21st Street NW
16 Washington, DC 20581
17 rglaser@cftc.gov

18 b) Notice to States is required to be sent to the respective counsel of
19 record for the States in these proceedings via email and certified
20 mail, return receipt requested;

21 c) Notice to Defendant Red Rock:

22 Joseph P. Costa
23 CostaLaw
24 17383 Sunset Boulevard, Suite A-430
25 Pacific Palisades, California 90272
26 joseph.costa@costalaw.com

27 d) Notice to Defendant Kelly:
28

1 Marc S. Williams
2 Cohen Williams LLP
3 724 South Spring Street, 9th Floor
4 Los Angeles, CA 90014
5 mwilliams@cohen-williams.com

6 e) Notice to Defendant Spencer:

7 Rebecca Torrey
8 The Torrey Firm
9 1626 Montana Ave, Suite 647
10 Santa Monica, CA 90403
11 rebecca@torreyfirm.com

12 311. Change of Address/Phone: Until such time as Defendants satisfy in full
13 their R&D Obligations and CMP Obligations as set forth in this Consent Order, the
14 Defendants shall provide written notice to the CFTC by certified mail of any change
15 to their telephone number and mailing address within ten calendar days of the change.

16 312. Entire Agreement and Amendments: This Consent Order incorporates
17 all of the terms and conditions of the settlement among the parties hereto to date.
18 Nothing shall serve to amend or modify this Consent Order in any respect
19 whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and
20 (c) approved by order of this Court.

21 313. Invalidation: If any provision of this Consent Order or if the application
22 of any provision or circumstance is held invalid, then the remainder of this Consent
23 Order and the application of the provision to any other person or circumstance shall
24 not be affected by the holding.

25 314. Waiver: The failure of any party to this Consent Order or of any
26 customer at any time to require performance of any provision of this Consent Order
27 shall in no manner affect the right of the party or customer at a later time to enforce
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1 the same or any other provision of this Consent Order. No waiver in one or more
2 instances of the breach of any provision contained in this Consent Order shall be
3 deemed to be or construed as a further or continuing waiver of such breach or waiver
4 of the breach of any other provision of this Consent Order.

5 315. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction
6 of this action to ensure compliance with this Consent Order and for all other purposes
7 related to this action, including any motion by any Defendant to modify or for relief
8 from the terms of this Consent Order.

9 316. Injunctive and Equitable Relief Provisions: The injunctive and equitable
10 relief provisions of this Consent Order shall be binding upon the following persons
11 who receive actual notice of this Consent Order, by personal service or otherwise:
12 (1) Defendants; (2) any officer, agent, servant, employee, or attorney of any
13 Defendant; and (3) any other persons who are in active concert or participation with
14 any persons described in subsections (1) and (2) above.

15 317. Authority: Defendant Kelly hereby warrants that he is an owner and the
16 CEO of Defendant Red Rock, that this Consent Order has been duly authorized by
17 Defendant Red Rock, and he has been duly empowered to sign and submit this
18 Consent Order on behalf of Defendant Red Rock.

19 318. Counterparts and Facsimile Execution: This Consent Order may be
20 executed in two or more counterparts, all of which shall be considered one and the
21 same agreement and shall become effective when one or more counterparts have been
22 signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise)
23 to the other party, it being understood that all parties need not sign the same
24 counterpart. Any counterpart or other signature to this Consent Order that is
25 delivered by any means shall be deemed for all purposes as constituting good and
26 valid execution and delivery by such party of this Consent Order.

27 319. Contempt: Defendants understand that the terms of the Consent Order
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1 are enforceable through contempt proceedings to the fullest extent of applicable law,
2 and that, in any such proceedings, they may not challenge the validity of this Consent
3 Order.

4 320. Defendants agree that, for the purposes of exceptions to discharge set
5 forth in Sections 523, 1141(d)(6), and 1192 of the Bankruptcy Code, 11 U.S.C.
6 §§ 523, 1141(d)(6), 1192, the findings in this Consent Order are true and admitted
7 and any debt for restitution, disgorgement, civil penalty, or any other amounts due by
8 Defendants under this Consent Order or any other judgment, order, consent order,
9 decree, or settlement agreement entered in connection with this proceeding, is a debt
10 for violation of state securities laws, including but not limited to securities fraud, as
11 set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C §523(a)(19), and
12 Section 523(a)(2) of the Bankruptcy Code, 11 U.S.C. §523(a)(2), and incorporated by
13 reference under Section 1192 of the Bankruptcy Code, 11 U.S.C § 1192.


14 321. Agreements and Undertakings: Defendants shall comply with all of the
15 undertakings and agreements set forth in this Consent Order.

16 Because the parties have resolved this matter in its entirety, the Court
17 VACATES all future dates associated with this case and INSTRUCTS the Clerk to
18 close the case. There being no just reason for delay, the Clerk of the Court is further
19 directed to enter this *Consent Order of Permanent Injunction, Civil Monetary*
20 *Penalty, and Other Statutory and Equitable Relief Against All Defendants.*

21 * * * * *

22 **IT IS SO ORDERED.**

23 Dated: 4/23/2024

24 
25 The Honorable R. Gary Klausner
26 United States District Judge
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1 **CONSENTED TO AND APPROVED BY:**

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RED ROCK SECURED, LLC
By: Sean L. Kelly

Dated: _____, 2024

By: James A. Garcia

COUNSEL FOR COMMODITY
FUTURES TRADING COMMISSION

Dated: April 18, 2024

SEAN L. KELLY f/k/a SHADE L.
KELLY-JOHNSON

Dated: _____, 2024

By: Danielle A. Stoumbos

COUNSEL FOR CALIFORNIA
DEPARTMENT OF FINANCIAL
PROTECTION AND INNOVATION

Dated: April 18, 2024

ANTHONY SPENCER

Dated: _____, 2024

Approved as to form:

By: Rayni M. Nakamura-Watanabe

COUNSEL FOR STATE OF HAWAII,
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS,
SECURITIES ENFORCEMENT
BRANCH

Joseph P. Costa
CostaLaw

COUNSEL FOR DEFENDANT RED
ROCK SECURED, LLC

Dated: _____, 2024

Dated: April 18, 2024

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Marc S. Williams
Cohen Williams LLP
COUNSEL FOR DEFENDANT SEAN
L. KELLY f/k/a SHADE L. KELLY-
JOHNSON

Dated: _____, 2024

Rebecca Torrey
The Torrey Firm
COUNSEL FOR DEFENDANT
ANTHONY SPENCER

Dated: _____, 2024

1 **CONSENTED TO AND APPROVED BY:**


2 [Redacted]
3 [Redacted]
4 **RED ROCK SECURED, LLC**
By: Sean L. Kelly
5 Dated: 4/7/2024, 2024

[Redacted]
By: James A. Garcia
COUNSEL FOR COMMODITY
FUTURES TRADING COMMISSION
Dated: _____, 2024

8 [Redacted]
9 [Redacted]
10 **SEAN L. KELLY f/k/a SHADE L.**
KELLY-JOHNSON
11 Dated: 4/7/2024, 2024

[Redacted]
By: Danielle A. Stoumbos
COUNSEL FOR CALIFORNIA
DEPARTMENT OF FINANCIAL
PROTECTION AND INNOVATION
Dated: _____, 2024

15 **ANTHONY SPENCER**
16 Dated: _____, 2024

19 Approved as to form:
20 
21 [Redacted]
22 **Joseph P. Costa**
23 **CostaLaw**
24 **COUNSEL FOR DEFENDANT RED**
ROCK SECURED, LLC
25 Dated: April 8, 2024

[Redacted]
By: Rayni M. Nakamura-Watanabe
COUNSEL FOR STATE OF HAWAII,
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS,
SECURITIES ENFORCEMENT
BRANCH
Dated: _____, 2024



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Marc S. Williams
Cohen Williams LLP
COUNSEL FOR DEFENDANT SEAN
L. KELLY f/k/a SHADE L. KELLY-
JOHNSON

Dated: April 8, 2024

Rebecca Torrey
The Torrey Firm
COUNSEL FOR DEFENDANT
ANTHONY SPENCER

Dated: _____, 2024

1 **CONSENTED TO AND APPROVED BY:**

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RED ROCK SECURED, LLC
By: Sean L. Kelly

Dated: _____, 2024

By: James A. Garcia

COUNSEL FOR COMMODITY
FUTURES TRADING COMMISSION

Dated: _____, 2024

SEAN L. KELLY f/k/a SHADE L.
KELLY-JOHNSON

Dated: _____, 2024

By: Danielle A. Stoumbos

COUNSEL FOR CALIFORNIA
DEPARTMENT OF FINANCIAL
PROTECTION AND INNOVATION

Dated: _____, 2024

ANTHONY SPENCER

Dated: 07/04/24, 2024

Approved as to form:

By: Rayni M. Nakamura-Watanabe

COUNSEL FOR STATE OF HAWAII,
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS,
SECURITIES ENFORCEMENT
BRANCH

Joseph P. Costa
CostaLaw

COUNSEL FOR DEFENDANT RED
ROCK SECURED, LLC

Dated: _____, 2024

Dated: _____, 2024

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Marc S. Williams
Cohen Williams LLP
COUNSEL FOR DEFENDANT SEAN
L. KELLY f/k/a SHADE L. KELLY-
JOHNSON

Dated: _____, 2024



Rebecca Torrey
The Torrey Firm

COUNSEL FOR DEFENDANT
ANTHONY SPENCER

Dated: April 8, 2024

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Certification Pursuant to Local Rule 5-4.3.4(a)(2)(i)

Pursuant to Civil L.R. 5-4.3.4(a)(2)(i), the filer attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing’s content and have authorized the filing.


JAMES A. GARCIA

Certificate of Service

On April 18, 2024, I served a copy of the foregoing *[PROPOSED]* **CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY PENALTY, AND OTHER STATUTORY AND EQUITABLE RELIEF AGAINST ALL DEFENDANTS** by filing the document electronically via the Court’s CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.


JAMES A. GARCIA

CFTC, et al. v. Red Rock Secured, LLC, et. al. Case No. 2:23-
cv-03680-RGK-PVC

ATTACHMENT 1

TO

PROPOSED CONSENT ORDER OF PERMANENT
INJUNCTION, CIVIL MONETARY PENALTY, AND OTHER
STATUTORY AND EQUITABLE RELIEF AGAINST ALL
DEFENDANTS

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 SEAN M. ROONEY
Assistant Chief Counsel
4 DANIELLE A. STOUMBOS (State Bar No. 264784)
Senior Counsel
5 JARI M. BINDER (State Bar No. 333694)
Counsel
6 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
7 Los Angeles, California 90013
Telephone: (213) 503-2046

8 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

13 In the Matter of:)
14 THE COMMISSIONER OF FINANCIAL)
15 PROTECTION AND INNOVATION,) ORDER BARRING SEAN LOWELL KELLY
16 Complainant.) f/k/a SHADE L. KELLY-JOHNSON
17 v.) FROM ANY POSITION OF EMPLOYMENT,
18 SEAN LOWELL KELLY f/k/a SHADE L.) MANAGEMENT OR CONTROL OF ANY
19 KELLY-JOHNSON,) INVESTMENT ADVISER, BROKER-
20 Respondent.) DEALER OR COMMODITY ADVISER
21) PURSUANT TO CORPORATIONS CODE
22) SECTION 25232.1

23 The Commissioner (Commissioner) of the Department of Financial Protection and
24 Innovation (DFPI) finds that:

- 25 1. The Commissioner has jurisdiction over the licensing and regulation of investment
26 advisers in California under the Corporate Securities Law of 1968 (CSL) (Cal. Corp. Code, §§ 25000
27 - 25707)
28 2. Sean L. Kelly f/k/a Shade L. Kelly-Johnson (Kelly) was the majority owner and sole

1 manager of Red Rock Secured, LLC (Red Rock).

2 3. On May 15, 2023, the DFPI, U.S. Commodity Futures Trading Commission, and
3 State of Hawaii Department of Commerce and Consumer Affairs, Securities Enforcement Branch
4 (collectively, Plaintiffs) filed a civil complaint in federal court against Red Rock, Kelly and Anthony
5 Spencer. The Complaint sought injunctive and other equitable relief, and the imposition of civil
6 penalties, for violations of the federal Commodity Exchange Act, 7 U.S.C. § 9(1) and CFTC
7 Regulation 180.1, 17 C.F.R. § 180.1 as well as violations of state laws, including California
8 Corporations Code sections 25230, 25235, and 29536.

9 4. On [REDACTED], Kelly and Red Rock consented to entry of a Consent Order of
10 Permanent Injunction and Other Statutory and Equitable Relief Against Defendants (Consent Order)
11 to settle the matters alleged in the Complaint, and all amendments to the Complaint, without a trial
12 on the merits. The court approved the Consent Order on [REDACTED].

13 5. Pursuant to the terms of the Consent Order, Kelly and Red Rock consented to the
14 entry of this order barring Kelly. In signing the Consent Order, Kelly waived the filing of an
15 accusation pursuant to Government Code sections 11415.40 and 11415.60, as well as the right to a
16 hearing, any reconsideration, appeal, or other right to review provided by the CSL, the California
17 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law.

18 NOW THEREFORE, GOOD CAUSE SHOWING, IT IS ORDERED that:

19 Sean Lowell Kelly f/k/a Shade L. Kelly-Johnson is barred in the State of California from any
20 position of employment, management or control of any investment adviser, broker-dealer, or
21 commodity adviser pursuant to California Corporations Code section 25232.1.

22 This Order is effective as of the date hereof.

23 Dated: March __, 2024
24 Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



25 By

26 _____
27 MARY ANN SMITH
28 Deputy Commissioner
Enforcement Division

State of California – Department of Financial Protection and Innovation

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 SEAN M. ROONEY
Assistant Chief Counsel
4 DANIELLE A. STOUMBOS (State Bar No. 264784)
Senior Counsel
5 JARI M. BINDER (State Bar No. 333694)
Counsel
6 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
7 Los Angeles, California 90013
Telephone: (213) 503-2046

8 Attorneys for Complainant
9

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:)
)
14 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) ORDER BARRING ANTHONY CHARLES
15) SPENCER FROM ANY POSITION OF
16 Complainant.) EMPLOYMENT, MANAGEMENT OR
) CONTROL OF ANY INVESTMENT
17 v.) ADVISER, BROKER-DEALER OR
) COMMODITY ADVISER PURSUANT TO
18 ANTHONY CHARLES SPENCER,) CORPORATIONS CODE SECTION 25232.1
19)
20 Respondent.)
21)

22 The Commissioner (Commissioner) of the Department of Financial Protection and
23 Innovation (DFPI) finds that:

- 24 1. The Commissioner has jurisdiction over the licensing and regulation of investment
25 advisers in California under the Corporate Securities Law of 1968 (CSL) (Cal. Corp. Code, §§
26 25000–25707)
27 2. Anthony Charles Spencer (Spencer) was a senior account executive for Red Rock
28 Secured, LLC (Red Rock) from at least 2018 to August of 2022.

1 3. On May 15, 2023, the DFPI, U.S. Commodity Futures Trading Commission, and
2 State of Hawaii Department of Commerce and Consumer Affairs, Securities Enforcement Branch
3 (collectively, Plaintiffs) filed a civil complaint in federal court against Red Rock, its owner Sean
4 Kelly, and Spencer. The Complaint sought injunctive and other equitable relief, and the imposition
5 of civil penalties, for violations of the federal Commodity Exchange Act, 7 U.S.C. § 9(1) and CFTC
6 Regulation 180.1, 17 C.F.R. § 180.1 as well as violations of state laws, including California
7 Corporations Code sections 25230, 25235, and 29536.

8 4. On [REDACTED], Spencer consented to entry of a Consent Order of Permanent
9 Injunction and Other Statutory and Equitable Relief Against Defendants (Consent Order) to settle
10 the matters alleged in the Complaint, and all amendments to the Complaint, without a trial on the
11 merits. The court approved the Consent Order on [REDACTED].

12 5. Pursuant to the terms of the Consent Order, Spencer consented to the entry of this
13 order barring Spencer. In signing the Consent Order, Spencer waived the filing of an accusation
14 pursuant to Government Code sections 11415.40 and 11415.60, as well as the right to a hearing, any
15 reconsideration, appeal, or other right to review provided by the CSL, the California Administrative
16 Procedure Act, the California Code of Civil Procedure, or any other provision of law.

17 NOW THEREFORE, GOOD CAUSE SHOWING, IT IS ORDERED that:

18 Anthony Charles Spencer is barred in the State of California from any position of
19 employment, management, or control of any investment adviser, broker-dealer, or commodity
20 adviser pursuant to California Corporations Code section 25232.1.

21 This Order is effective as of the date hereof.

22 Dated: March __, 2024
23 Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



24 By

25 _____
26 MARY ANN SMITH
27 Deputy Commissioner
28 Enforcement Division

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:)	Case No. SEB20200080
)	
RED ROCK SECURED, LLC, SEAN L.)	ORDER BARRING SEAN L. KELLY fka
KELLY fka SHADE L. KELLY-JOHNSON,)	SHADE L. KELLY-JOHNSON
and ANTHONY SPENCER)	
)	
Respondents.)	
)	

ORDER BARRING SEAN L. KELLY fka SHADE L. KELLY-JOHNSON

The Commissioner of Securities of the State of Hawaii (“Commissioner”), as administrator of Chapter 485A of the Hawaii Revised Statutes (“HRS”), known as the Uniform Securities Act (2002) (hereinafter the “Act”), has determined that it is necessary and appropriate in the public interest and for the protection of the investors to issue this Order, and hereby enters this Order, finding that:

1. The Commissioner has jurisdiction over this matter pursuant to the Act.
2. Sean L. Kelly fka Shade L. Kelly-Johnson (“Kelly”) was the majority owner and sole manager of Red Rock Secured, LLC (“Red Rock”).
3. On May 15, 2023, the U.S. Commodity Futures Trading Commission, California Department of Financial Protection and Innovation, and State of Hawaii, Department of Commerce and Consumer Affairs, Securities Enforcement Branch filed a civil complaint (“Complaint”) in the United States District Court for the Central District of California, designated as Case No. 2:23-CV-03680-RGK-PVC, against Red Rock, Kelly and Anthony Spencer alleging they engaged in fraud, in violation of the federal Commodity Exchange Act, as well various state laws, including HRS §§ 485A-501(a)(2) and 485A-603.5. The Complaint sought injunctive relief, the imposition of civil penalties, and other equitable relief.

4. On [REDACTED], Kelly and Red Rock consented to entry of a Consent Order of Permanent Injunction and Other Statutory and Equitable Relief Against Defendants (“Consent Order”) to partially settle the matters alleged in the Complaint, and all amendments to the Complaint, without a trial on the merits. The court approved the Consent Order on [REDACTED].

5. Pursuant to the terms of the Consent Order, Kelly and Red Rock voluntarily consented to the entry of this Order barring Kelly. In signing the Consent Order, Kelly waived any and all rights to a hearing or to otherwise challenge, request reconsideration of, or appeal the Consent Order pursuant to the Act or any other provision of law.

6. This Order does not preclude the imposition of any sanction or other action against Kelly for future violations of the Act.

NOW THEREFORE, IT IS HEREBY ORDERED that:

Sean L. Kelly fka Shade L. Kelly-Johnson is PERMANENTLY BARRED from acting as an issuer, broker-dealer, agent, investment adviser and/or investment adviser representative in Hawaii and applying for registration in Hawaii as an issuer, broker-dealer, agent, investment adviser and/or investment adviser representative, and shall never serve in a position of employment, management, or control with or for any investment adviser, broker-dealer or issuer pursuant to the Act.

This Order is effective as of the date hereof.

DATED: Honolulu, Hawaii _____.

TY Y. NOHARA
Commissioner of Securities
Department of Commerce and Consumer Affairs
STATE OF HAWAII

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:)	Case No. SEB20200080
)	
RED ROCK SECURED, LLC, SEAN L.)	ORDER BARRING ANTHONY SPENCER
KELLY fka SHADE L. KELLY-JOHNSON,)	
and ANTHONY SPENCER)	
)	
Respondents.)	
_____)	

ORDER BARRING ANTHONY SPENCER

The Commissioner of Securities of the State of Hawaii (“Commissioner”), as administrator of Chapter 485A of the Hawaii Revised Statutes (“HRS”), known as the Uniform Securities Act (2002) (hereinafter the “Act”), has determined that it is necessary and appropriate in the public interest and for the protection of the investors to issue this Order, and hereby enters this Order, finding that:

1. The Commissioner has jurisdiction over this matter pursuant to the Act.
2. Anthony Spencer (“Spencer”) was a Senior Account Executive at Red Rock Secured, LLC (“Red Rock”) at all relevant times herein.
3. On May 15, 2023, the U.S. Commodity Futures Trading Commission, California Department of Financial Protection and Innovation, and State of Hawaii, Department of Commerce and Consumer Affairs, Securities Enforcement Branch filed a civil complaint (“Complaint”) in the United States District Court for the Central District of California, designated as Case No. 2:23-CV-03680-RGK-PVC, against Red Rock, Sean L. Kelly fka Shade L. Kelly-Johnson, and Spencer, alleging they engaged in fraud, in violation of the federal Commodity Exchange Act and various state laws, including HRS §§ 485A-501(a)(2) and 485A-603.5. The Complaint sought injunctive relief, the imposition of civil penalties, and other equitable relief.

4. On [REDACTED], Spencer consented to entry of a Consent Order of Permanent Injunction, Civil Monetary Penalty, And Other Statutory And Equitable Relief Against All Defendants (“Consent Order”) to settle the matters alleged in the Complaint, and all amendments to the Complaint, without a trial on the merits. The court approved the Consent Order on [REDACTED].

5. Pursuant to the terms of the Consent Order, Spencer voluntarily consented to the entry of this Order barring Spencer. In signing the Consent Order, Spencer waived any and all rights to a hearing or to otherwise challenge, request reconsideration of, or appeal the Consent Order pursuant to the Act or any other provision of law.

6. This Order does not preclude the imposition of any sanction or other action against Spencer for future violations of the Act.

NOW THEREFORE, IT IS HEREBY ORDERED that:

Anthony Spencer is PERMANENTLY BARRED from acting as an issuer, broker-dealer, agent, investment adviser and/or investment adviser representative in Hawaii and applying for registration in Hawaii as an issuer, broker-dealer, agent, investment adviser and/or investment adviser representative, and shall never serve in a position of employment, management, or control with or for any investment adviser, broker-dealer or issuer pursuant to the Act.

This Order is effective as of the date hereof.

DATED: Honolulu, Hawaii _____.

TY Y. NOHARA
Commissioner of Securities
Department of Commerce and Consumer Affairs
STATE OF HAWAII