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10 **THE UNITED STATES DISTRICT COURT**
 11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 12 **EASTERN DIVISION**

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 14 U.S. COMMODITY FUTURES
 15 TRADING COMMISSION,
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 17 Plaintiff,
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 19 v.
 20 CAPITOL EQUITY FX LLC,
 21 ROBERT LELAND JOHNSON IV,
 22 and MARISA ELENA JOHNSON,
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 24 Defendants.
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Civil Action No.

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

1 Plaintiff, U.S. Commodity Futures Trading Commission (“Commission”),
2 alleges as follows:

3
4 **I. SUMMARY**

5 1. From at least May 2012, through May 2015 (the “Relevant Period”),
6 Robert Leland Johnson IV (“Johnson”) and Marisa E. Johnson (“Marisa Johnson”),
7 individually and as principals and agents of Capitol Equity FX LLC (“Capitol
8 Equity”), (collectively, “Defendants”), without being registered with the
9 Commission, fraudulently solicited, and misappropriated, at least \$1,735,750 in total
10 funds from at least 10 individuals and entities (“pool participants”) to participate in a
11 purported hedge fund that operated as a pooled investment vehicle trading
12 commodity futures and off-exchange leveraged or margined foreign currency
13 exchange (“forex”) contracts, in violation of the Commodity Exchange Act (“Act”)
14 and its implementing regulations (“Regulations”).

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18 2. To perpetuate and conceal their fraud, Defendants made material
19 misrepresentations and omissions to pool participants and fabricated sham documents
20 that falsely reflected significant trading returns and soaring account balances. In
21 reality, Defendants did not trade commodity futures or forex for the benefit of pool
22 participants, participants did not have their own accounts, no profits were generated,
23 and Defendants misappropriated participants’ funds for their own use.

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26 3. Accordingly, pursuant to 7 U.S.C. §§ 2(c)(2)(C) and 13a-1 (2012), the
27 Commission brings this action to enjoin Defendants’ unlawful acts and practices, to
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1 compel their compliance with the Act and the Regulations, and to enjoin them from
2 engaging in any commodity-interest related activity, as set forth below. In addition,
3 the Commission seeks civil monetary penalties for each violation of the Act and
4 Regulations, and remedial ancillary relief, including, but not limited to, trading and
5 registration bans, restitution, disgorgement, rescission, an accounting, pre- and post-
6 judgment interest, and such other relief as the Court deems necessary and appropriate.
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9 4. Unless restrained and enjoined by this Court, there is a reasonable
10 likelihood that Defendants will continue to engage in the acts and practices alleged in
11 this Complaint, and similar acts and practices, as more fully described below.
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13 II. JURISDICTION AND VENUE

14 5. This Court possesses jurisdiction over this action pursuant to 7 U.S.C. §
15 13a-1 (2012), which authorizes the Commission to seek injunctive and other relief
16 against any person whenever it appears to the Commission that such person has
17 engaged, is engaging, or is about to engage in any act or practice constituting a
18 violation of any provision of the Act or any rule, regulation, or order thereunder, and
19 7 U.S.C. § 2(c)(2)(C) (2012), which provides the Commission with jurisdiction over
20 the forex solicitations and transactions at issue in this action.
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24 6. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e)
25 (2012), because Defendants reside in this District, Defendants transact or transacted
26 business in this District, and certain transactions, acts, practices, and courses of
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1 business alleged in this Complaint occurred, are occurring, or are about to occur
2 within this District.

3 4 III. PARTIES

5 7. Plaintiff **U.S. Commodity Futures Trading Commission** is an
6 independent federal regulatory agency charged by Congress with the administration
7 and enforcement of the Act and Regulations. The Commission maintains its principal
8 office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

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10 8. Defendant **Capitol Equity FX LLC** is a limited liability company
11 organized in California on April 14, 2014, with its principal place of business located
12 in Chino, California 91710. Capitol Equity has never been a United States financial
13 institution, registered broker or dealer, insurance company, financial holding
14 company, or investment bank holding company, or any associated person of such
15 entities, as defined by the Act. On October 15, 2015, Capitol Equity filed for Chapter
16 7 bankruptcy protection in the United States Bankruptcy Court for the Central District
17 of California, *In re Capitol Equity FX LLC*, Case No. 6:15-bk-20057-MJ (Bankr.
18 C.D. Cal. 2015). Capital Equity's bankruptcy case was closed, without discharge, on
19 September 2, 2016. Capitol Equity has never been registered with the Commission in
20 any capacity.

21 9. Defendant **Robert Leland Johnson IV** is an individual who resides in
22 Chino, California. Johnson held himself out at various times as the "President," the
23 "Investment Manager," and a "Managing Member" of Capitol Equity, as well as its
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1 primary trader. Johnson's Capitol Equity email account signature identified him as
2 the "President/CEO" of Capitol Equity. When Capitol Equity filed for Chapter 7
3 bankruptcy protection, Johnson held himself out as the "Managing Member" of
4 Capitol Equity and submitted documents to the United States Bankruptcy Court for
5 the Central District of California on that basis. On October 14, 2015, Johnson, jointly
6 with Marisa Johnson, filed for Chapter 7 bankruptcy protection in the United States
7 Bankruptcy Court for the Central District of California, *In re Robert L Johnson and*
8 *Marisa E Johnson*, Case No. 6:15-bk-20060-MJ (Bankr. C.D. Cal. 2015). Johnson's
9 bankruptcy petition was terminated, without discharge, on October 15, 2016. During
10 the Relevant Period, Johnson was not an associated person of a United States
11 financial institution, registered dealer, insurance company, financial holding
12 company, or investment bank holding company, as defined by the Act. Johnson was
13 registered with the Financial Industry Regulatory Authority, Inc. ("FINRA") as a
14 securities broker from April 2007 through November 2012. In August 2013, FINRA
15 permanently barred Johnson from acting as a broker or otherwise associating with
16 firms that sell securities to the public. Johnson has never been registered with the
17 Commission in any capacity.

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24 10. Defendant **Marisa E. Johnson** is married to Johnson and resides in
25 Chino, California. Marisa Johnson is identified as the sole owner of 100% of Capitol
26 Equity in Exhibit A to Capitol Equity's Operating Agreement. Marisa Johnson is
27 also identified as the "President" of Capitol Equity in account opening documents
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1 that Defendants submitted to OANDA Corporation (“OANDA”) for the purpose of
2 opening a non-pooled forex trading account in the name of Capitol Equity FX. As set
3 forth below, Marisa Johnson opened additional forex trading accounts used in
4 Defendants’ fraudulent scheme and, with Johnson, controlled bank accounts into
5 which funds misappropriated from pool participants were transferred. On October
6 14, 2015, Marisa Johnson, jointly with Johnson, filed for Chapter 7 bankruptcy
7 protection in the United States Bankruptcy Court for the Central District of
8 California, *In re Robert L Johnson and Marisa E Johnson*, Case No. 6:15-bk-20060-
9 MJ (Bankr. C.D. Cal. 2015). Marisa Johnson received a bankruptcy discharge on
10 September 6, 2016. Marisa Johnson has never been registered with the Commission
11 in any capacity.
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16 IV. FACTS

17 A. The Fraudulent Scheme

18 11. During the Relevant Period, Defendants fraudulently solicited and
19 received at least \$1,735,750 from not less than 10 pool participants. Defendants
20 knowingly and falsely represented to actual and prospective pool participants that all
21 funds were pooled and used to trade commodity futures and forex on behalf of the
22 pool; that Johnson was an “expert” forex trader; that Defendants’ trading for the pool
23 was profitable; and that pool participants’ Capitol Equity participation or partnership
24 units were earning significant gains. All of these representations were false.
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1 12. To execute the fraudulent scheme, Johnson, as an agent or employee of
2 Capitol Equity, solicited friends and acquaintances residing in California, in person,
3 by word-of-mouth, by email, by the Internet, and by use of the mails and/or other
4 means or instrumentalities of interstate commerce, to transfer funds into bank
5 accounts in the name of, and under the control of, the Defendants. In these bank
6 accounts, Defendants commingled their own personal funds with the funds of pool
7 participants.
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10 13. Between May 2012 and December 2013, before the formation of Capitol
11 Equity, Johnson and Maria Johnson solicited and received funds from at least three
12 pool participants. After forming Capitol Equity on April 14, 2014, Defendants began
13 doing business as Capitol Equity and continued to fraudulently solicit and pool funds
14 for trading commodity futures and leveraged or margined forex contracts.
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17 14. In April 2014, Defendants registered the domain name
18 *capitolequityfx.com* and created a public website at that domain (the “Capitol Equity
19 Website”). Defendants used the Capitol Equity Website to advertise Capitol Equity
20 as an investment management company offering a “program” that drew on 18 years
21 of experience to provide a “systematic approach trading a diversified portfolio of
22 futures and forex markets.” According to the Capitol Equity Website, Defendants’
23 “model measures the expansion and contraction of daily volatility for multiple
24 commodities . . . with the objective to limit losses on a per trade basis while allowing
25 the system to profit from short-term price movements.”
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1 15. After forming Capitol Equity, Defendants required some pool
2 participants to sign a “Subscription Agreement,” which provided that pool
3 participants acquired “limited partnership interests” in Capitol Equity in exchange for
4 having “transferred cash by wire or by check” or having provided “marketable
5 securities” to Capitol Equity. Johnson executed the Subscription Agreements on
6 behalf of Capitol Equity.
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9 16. Defendants also required some or all new pool participants to enter into
10 an “Investment Management Agreement,” which provided that Capitol Equity would
11 be retained by the pool participant “to manage all of [the pool participant’s] assets on
12 a discretionary basis” Section 5 of the Investment Management Agreement
13 provided that Capitol Equity, the “Investment Manager,” “shall have full power to
14 invest and reinvest the [pool participant’s assets] in such securities and other
15 investments as the Investment Manager in its discretion shall consider to be in the
16 best interest of the [pool participant].” Johnson executed the Investment
17 Management Agreements as the “President” of Capitol Equity, and identified himself
18 as the “Investment Manager” of Capitol Equity in Schedule B to the Investment
19 Management Agreements.
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24 17. As a result of Defendants’ solicitations throughout the Relevant Period,
25 Defendants accepted at least \$1,735,750 from at least 10 participants. The majority
26 of these funds - \$861,625 - was deposited into a bank account at JP Morgan Chase
27 Bank (“JPMC”) *5205 held in the name of Capitol Equity. An additional \$130,000
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1 of participants' funds was deposited into JPMC bank account *6733 (in the names of
2 Johnson and Marisa Johnson), and \$744,125 of participants' funds was deposited into
3 JPMC account *1260 (in the name of Johnson).
4

5 18. Of the at least \$1,735,750 total funds Defendants collected during the
6 Relevant Period, Defendants returned only approximately \$172,000 to some pool
7 participants in the nature of a "Ponzi" scheme.
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9 19. The commodity pool Defendants operated was not an eligible contract
10 participant ("ECP") as that term is defined in Section 1a(18) of the Act, 7 U.S.C. §
11 1a(18) (2012).
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13 **B. Operation of the Pool**

14 20. During the Relevant Period, Capitol Equity acted as a CPO by soliciting,
15 accepting, and receiving funds from the public while engaged in a business that is of
16 the nature of an investment trust, syndicate, or similar form of enterprise, for the
17 purpose of, among other things, trading in commodity futures and off-exchange
18 leveraged or margined forex contracts, without being registered with the Commission
19 as a CPO. At no time did Defendants operate the pool as an entity cognizable as a
20 legal entity separate from that of the pool operator, nor did the Defendants ever open
21 a pooled trading account for the benefit of participants.
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25 21. During the Relevant Period, Johnson and Marisa Johnson acted as APs
26 of a CPO by soliciting funds, securities, or property for participation in the
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1 commodity pool operated by Capitol Equity, without being registered with the
2 Commission as APs of a CPO.

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4 22. During the Relevant Period, Marisa Johnson was identified as the sole
5 owner of 100% of Capitol Equity in Exhibit A to Capitol Equity's Operating
6 Agreement. As the 100% sole owner of Capitol Equity, Marisa Johnson was solely
7 responsible for supervising Johnson with respect to his actions as an agent or
8 employee of Capitol Equity.
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10 **C. Forex Trading Accounts**

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12 23. During the Relevant Period, Defendants at various times held forex
13 trading accounts at Forex Capital Markets LLC ("FXCM"), Interactive Brokers LLC
14 ("Interactive Brokers"), and OANDA. FXCM, Interactive Brokers, and OANDA are
15 all forex dealers that are registered with the Commission as Futures Commission
16 Merchants. None of these accounts were pooled accounts held in the name of a
17 commodity pool.
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20 24. On or about May 21, 2012, Defendants opened Interactive Brokers forex
21 trading account *559 in the name of Johnson. On information and belief, Defendants
22 controlled Interactive Brokers account *559.
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24 25. On or about March 18, 2013, Defendants opened FXCM forex trading
25 account *801 in the name of Capitol Equity, with Marisa Johnson identified as the
26 signatory. No funds were deposited into FXCM forex trading account *801, and no
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1 trades were made. On information and belief, Defendants controlled FXCM account
2 *801.

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4 26. On or about November 24, 2013, Defendants opened Interactive Brokers
5 forex trading account *651 in the name of Marisa Johnson. On information and
6 belief, Defendants controlled Interactive Brokers account *651.

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8 27. On May 30, 2014, Defendants opened OANDA forex trading account
9 *282 in the name of Capitol Equity. On information and belief, Defendants
10 controlled OANDA account *282.

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12 28. On July 25, 2014, Interactive Brokers forex trading account *651 was
13 closed. Thereafter, Defendants attempted to re-open the trading account. On
14 December 26, 2014, Interactive Brokers contacted Marisa Johnson by email to inform
15 her that the Interactive Brokers Compliance Department declined to re-open trading
16 account *651.

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18 29. Of the at least \$1,735,750 million collected from pool participants
19 during the Relevant Period, Defendant transferred approximately \$1.19 million into
20 the Interactive Brokers and OANDA trading accounts.

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22 30. A total of approximately \$622,000 was transferred from the Interactive
23 Brokers and OANDA trading accounts back to bank accounts controlled by Johnson
24 and Marisa Johnson.
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1 31. During the Relevant Period, Defendants' forex trading in the Interactive
2 Brokers and OANDA trading accounts sustained net realized losses of approximately
3 \$728,000.
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5 **D. Structure of the Pool and Commingling**

6 32. At no time did Capitol Equity, as the CPO, operate the pool as an entity
7 cognizable as a legal entity separate from Capitol Equity. As a result, at no time were
8 any funds received from pool participants received in the pool's name because a
9 separate pool was never created.
10

11 33. During the Relevant Period, Defendants commingled pool participants'
12 funds with the funds of Johnson and Marisa Johnson. On numerous occasions,
13 Defendants transferred pool participants' funds to Johnson's and Marisa Johnson's
14 personal bank accounts, including JPMorgan Chase accounts *1260 (held in the name
15 of Johnson) and *6733 (in the names of Johnson and Marisa Johnson) and Bank of
16 America account *2735 (in the names of Johnson and Marisa Johnson).
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19 34. From September 2013 through March 2014, Johnson and/or Marisa
20 Johnson deposited \$57,806 in proceeds from a homeowners insurance claim and a
21 \$4,678 tax refund from the U.S. Treasury into their Bank of America account *2735,
22 where their personal funds were commingled with funds received from pool
23 participants.
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1 **E. Misrepresentations and Omissions of Material Facts**

2 35. During the Relevant Period, Defendants knowingly made numerous
3 fraudulent misrepresentations in person, via email, via telephone, and via the Capitol
4 Equity Website to attract pool participants, including that:
5

6 a. all pool participant funds would be pooled to trade commodity
7 futures and forex and that returns would be derived from the pool's
8 trading profits;

9 b. pool participant funds would be used to execute a technical
10 trading strategy based on "pips," which Johnson described as small
11 changes in the exchange rate between the U.S. Dollar and the Euro;

12 c. Capitol Equity provided a "systematic approach trading a
13 diversified portfolio of futures and forex markets" and used a "model"
14 that "measures the expansion and contraction of daily volatility for
15 multiple commodities . . . with the objective to limit losses on a per trade
16 basis while allowing the system to profit from short-term price
17 movements.";

18 d. Defendants drew on 18 years of successful experience trading
19 commodity futures and forex;

20 e. Johnson was an "expert" forex trader;

21 f. Johnson invested \$400,000 of his own funds into the Capitol
22 Equity pool;
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1 g. the Capitol Equity pool held as much as \$3 million in its trading
2 accounts; and

3
4 h. the Capitol Equity pool was consistently profitable during the
5 Relevant Period.

6 36. During the Relevant Period, Defendants knowingly made numerous
7 material omissions to attract pool participants, including by failing to disclose that:

8
9 a. the Capitol Equity pool was suffering significant net trading losses
10 during the Relevant Period;

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12 b. Defendants misappropriated pool participants' funds for their own
13 use;

14
15 c. Defendants were not registered with the Commission in any
16 capacity, as required by federal law;

17
18 d. Defendants commingled customer funds with Defendants' own
19 funds in violation of federal law;

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21 e. FINRA had permanently barred Johnson from acting as a broker
22 or associating with firms that sell securities to the public;

23
24 f. purported "returns" paid to some pool participants were in fact the
25 principal deposits of other pool participants and were not generated by
26 profitable forex trading.

27 37. By way of example, on July 9, 2014, using the email address
28 rob@*****.com, Johnson responded to an email message from pool participant K.P.

1 inquiring whether K.P.’s Capitol Equity returns would “remain at 25% annually” and
2 whether K.P. “can put more in as well?” Johnson responded, “Your return will go
3 higher than 25% and yes you can and should put more in if possible. I am getting a
4 50-50 split that’s the only way to do the fund. So your returns can go and will go
5 higher.” Johnson knowingly made these false statements and omitted material facts
6 for the purpose of luring pool participant K.P. to deposit additional funds into the
7 Capitol Equity pool.
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9
10 38. On December 9, 2014, using the email address rob@*****.com,
11 Johnson sent an email message to pool participant R.H., stating that Capitol Equity
12 “is my hedge fund I started over 2 years ago I’m the primary trader behind the fund.”
13 Johnson further wrote, “I only trade EUR/USD that’s it! I’ve become an expert at it
14 and I trade everyday [sic] with my mentor who has been doing it for over 30 years . . .
15 .” Johnson knowingly made these false statements and omitted material facts for the
16 purpose of enticing pool participant R.H. to deposit funds into the Capitol Equity
17 pool.
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21 39. On February 12, 2015, using the email address rob@*****.com,
22 Johnson sent an email to pool participant H.A., stating that Johnson had been trading
23 forex contracts “for a long time and you have nothing to worry about” with respect to
24 funds deposited into the Capitol Equity pool. Johnson knowingly made these false
25 statements and omitted material facts for the purpose of causing pool participant H.A.
26 to deposit funds into the Capitol Equity pool.
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1 40. To perpetuate their fraudulent scheme and to solicit additional pool
2 participants, Defendants also provided pool participants and prospective pool
3 participants with false reports and records in the form of fake pool performance
4 statements, fake OANDA fxTrade account statements, and fake individual account
5 statements. These documents falsely represented that Defendants engaged in
6 profitable forex trading with pool participants' funds and that pool participants'
7 Capitol Equity accounts were growing as a result of Defendants' forex trading.
8
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10 41. Defendants knowingly provided pool participants with fake pool
11 performance statements for the purpose of luring victims to the Capitol Equity pool.
12 For example, Defendants provided pool participants and prospective pool participants
13 with pool performance statements falsely reflecting that Capitol Equity had generated
14 enormous trading profits in calendar year 2013, based on the following fabricated
15 monthly returns:
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17

- 18 a. 7.65% in January;
- 19 b. 32.14% in February;
- 20 c. 7.91% in March;
- 21 d. 6.38% in April;
- 22 e. 12.16% May;
- 23 f. 35.48% in June;
- 24 g. 9.64% in July;
- 25 h. 5.51% in August;
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- 1 i. 16.89% in September;
- 2 j. 18.79% October;
- 3 k. 14.37% in November; and
- 4 l. 10.76% in December.

6 42. Defendants provided pool participants with similar fabricated pool
7 performance statements for the years 2014 and 2015.

9 43. Defendants also provided fake OANDA fxTrade account statements to
10 pool participants that mirrored the form of actual OANDA fxTrade account
11 statements and were designed to mislead pool participants. The fake OANDA
12 fxTrade account statements falsely inflated the balances held in Capitol Equity's
13 trading accounts. These fabricated statements were made to appear as if they had
14 been issued by OANDA for Capitol Equity's account *282, and falsely represented
15 that the account held far more funds than it did in reality. In fact, the fake statements
16 overstated balances by millions of dollars.

19 44. For example, Johnson used email to provide pool participants with a
20 purported OANDA fxTrade account statement for December 2014 which falsely
21 reflected a Closing Balance and Closing NAV (net asset value) of \$1,942,398.96.
22 Capitol Equity's actual OANDA statement reveals that Capitol Equity's account *282
23 had a closing balance of \$0.01 as of December 31, 2014.

26 45. The fake OANDA fxTrade account statement for December 2014 falsely
27 reflected Closing Unrealized profits of \$324,000.00. Capitol Equity's actual
28

1 OANDA statements reflect that Capitol Equity's account *282 did not trade and
2 made no profits during December 2014.

3
4 46. During the Relevant Period, Defendants also provided pool participants
5 with fake account statements purportedly reflecting the value of pool participants'
6 individual "accounts" with Capitol Equity. These individual account statements
7 falsely represented that balances held in the pool on behalf of the pool participant had
8 increased in value as a result of profitable forex trading by Defendants. In reality,
9 pool participants accrued no profits and suffered total or near total losses of their
10 deposits.
11

12
13 **F. Misappropriation of Pool Participants' Funds**

14 47. While Defendants represented to pool participants that all pool funds
15 would be used to trade commodity futures or forex, only \$1,190,000 of the
16 \$1,735,750 collected from pool participants was transferred to Defendants' personal
17 trading accounts, none of which was maintained for the benefit of the pool.
18 Additionally, small amounts of funds were consistently transferred from the trading
19 accounts back into the personal bank accounts of Johnson and Marisa Johnson.
20

21
22 48. During the Relevant Period, instead of pooling and trading pool
23 participants' funds in commodity futures and forex as promised, Defendants
24 misappropriated all of the pool participants' funds for unauthorized purposes,
25 including to pay their own personal expenses, and for the benefit of Johnson and
26 Marisa Johnson's own trading accounts.
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1 49. Johnson and Marisa Johnson used pool participants’ funds to pay their
 2 own personal expenses including mortgage payments, groceries, dining, gym
 3 memberships, luxury clothing, and massages. Defendants did not disclose these
 4 unauthorized uses of pool participants’ funds to pool participants or prospective pool
 5 participants.
 6

7 50. Defendants also misappropriated pool participants’ funds by transferring
 8 pool participants’ funds to Johnson and to Marisa Johnson via wire transfers, check
 9 payments, and cash withdrawals. Defendants did not disclose these unauthorized
 10 uses of pool participants’ funds to pool participants or prospective pool participants.
 11

12 51. Defendants also used pool participants’ funds to pay purported profits to
 13 other pool participants in order to create the illusion that the Capitol Equity pool was
 14 profitable, when in fact it was not. Defendants did not disclose the nature of these
 15 payments to pool participants or prospective pool participants.
 16

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 18 **V. STATUTORY AND REGULATORY VIOLATIONS**

19
 20 **COUNT I**

21 **FRAUD IN CONNECTION WITH COMMODITY FUTURES**
 22 **Violations of 7 U.S.C. § 6b(a)(1)(A)-(C)**

23 52. The allegations in the preceding paragraphs are re-alleged and
 24 incorporated herein by reference.
 25

26 53. 7 U.S.C. § 6b(a)(1)(A)-(C) (2012) makes it unlawful:
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1 for any person, in or in connection with any order to make,
2 or the making of, any contract of sale of any commodity for
3 future delivery, [. . .] that is made, or to be made, on or
4 subject to the rules of a designated contract market, for or
5 on behalf of any other person – (A) to cheat or defraud or
6 attempt to cheat or defraud the other person; (B) willfully to
7 make or cause to be made to the other person any false
8 report or statement or willfully to enter or cause to be
9 entered for the other person any false record; [or] (C)
10 willfully to deceive or attempt to deceive the other person
11 by any means whatsoever in regard to any order or contract
12 or the disposition or execution of any order or contract, or
13 in regard to any act of agency performed, with respect to
14 any order or contract for or, in the case of paragraph (2),
15 with the other person.

21 54. As described herein, Defendants violated U.S.C. § 6b(a)(1)(A)-(C)
22 (2012) by cheating or defrauding, or attempting to cheat or defraud, other persons;
23 issuing or causing to be issued false statements and records; and willfully deceiving
24 or attempting to deceive other persons in connection with the offering of, or entering
25 into, the commodity futures transactions alleged herein, by, among other things: (i)
26 fraudulently soliciting pool participants and prospective pool participants by making
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1 material misrepresentations and omissions about Defendants' commodity futures and
2 forex trading strategy, Defendants' trading abilities and profits, and Defendants' use
3 of deposited funds; (ii) misappropriating pool participants' funds; and (iii) fabricating
4 false records in the form of fake pool performance statements, fake OANDA fxTrade
5 account statements, and fake individual account statements.
6

7
8 55. Defendants engaged in the acts and practices described above using
9 instrumentalities of interstate commerce, including but not limited to: interstate wires
10 for transfer of funds, email, websites, and other electronic communication devices.
11

12 56. Defendants engaged in the acts and practices described above
13 knowingly, willfully or with reckless disregard for the truth.
14

15 57. Johnson and Marisa Johnson controlled Capitol Equity, directly or
16 indirectly, and did not act in good faith and knowingly induced, directly or indirectly,
17 Capitol Equity to commit the acts and/or omissions alleged herein. Therefore,
18 pursuant to 7 U.S.C. § 13c(b) (2012), Johnson and Marisa Johnson are liable for
19 Capitol Equity's violations of 7 U.S.C. § 6b(a)(1)(A)-(C) (2012).
20

21 58. Johnson and Marisa Johnson acted within the course and scope of their
22 employment, agency, or office with Capitol Equity. Pursuant to 7 U.S.C. §
23 2(a)(1)(B) (2012), and 17 C.F.R. § 1.2 (2016), Capitol Equity is liable as principal for
24 Johnson's and Marisa Johnson's violations of 7 U.S.C. § 6b(a)(1)(A)-(C) (2012).
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1 59. Each act of fraudulent solicitation, misappropriation, and false statement
2 or report, including but not limited to those specifically alleged herein, is alleged as a
3 separate and distinct violation of 7 U.S.C. § 6b(a)(1)(A)-(C) (2012).
4

5 **COUNT II**

6 **FRAUD IN CONNECTION WITH FOREX TRANSACTIONS**
7 **Violation of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)**

8 60. The allegations in the preceding paragraphs are re-alleged and
9 incorporated herein by reference.
10

11 61. 7 U.S.C. § 6b(a)(2)(A)-(C) (2012) makes it unlawful:

12 for any person, in or in connection with any order to make,
13 or the making of, any contract of sale of any commodity for
14 future delivery, [. . .] that is made, or to be made, for or on
15 behalf of, or with, any other person other than on or subject
16 to the rules of a designated contract market – (A) to cheat or
17 defraud or attempt to cheat or defraud the other person; (B)
18 willfully to make or cause to be made to the other person
19 any false report or statement or willfully to enter or cause to
20 be entered for the other person any false record; [or] (C)
21 willfully to deceive or attempt to deceive the other person
22 by any means whatsoever in regard to any order or contract
23 or the disposition or execution of any order or contract, or
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1 in regard to any act of agency performed, with respect to
2 any order or contract for or, in the case of paragraph (2),
3 with the other person.
4

5 62. 7 U.S.C. § 2(c)(2)(C)(iv) (2012) states that 7 U.S.C. § 6b (2012) applies
6 to the forex transactions, agreements, or contracts offered by Defendants as if they
7 were contracts of sale of a commodity for future delivery.
8

9 63. 17 C.F.R. § 5.2(b) (2016) makes it unlawful:

10 for any person, by use of the mails or by any means or
11 instrumentality of interstate commerce, directly or
12 indirectly, in or in connection with any retail forex
13 transaction: (1) To cheat or defraud or attempt to cheat or
14 defraud any person; (2) Willfully to make or cause to be
15 made to any person any false report or statement or cause to
16 be entered for any person any false record; or (3) Willfully
17 to deceive or attempt to deceive any person by any means
18 whatsoever.
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22 64. As described herein, Defendants violated 7 U.S.C. § 6b(a)(2)(A)-(C)
23 (2012) and 17 C.F.R. § 5.2(b) (2016) by cheating or defrauding, or attempting to
24 cheat or defraud, other persons; issuing or causing to be issued false statements and
25 records; and willfully deceiving or attempting to deceive other persons in connection
26 with the offering of, or entering into, the off-exchange leveraged or margined forex
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1 transactions alleged herein, by, among other things: (i) fraudulently soliciting pool
2 participants and prospective pool participants by making material misrepresentations
3 and omissions about Defendants' forex trading strategy, Defendants' trading abilities
4 and profits, and Defendants' use of deposited funds; (ii) misappropriating pool
5 participants' funds; and (iii) fabricating false records in the form of fake pool
6 performance statements, fake OANDA fxTrade account statements, and fake
7 individual account statements, all in violation of 7 U.S.C. § 6b(a)(2)(A)-(C) (2012)
8 and 17 C.F.R. § 5.2(b) (2016).
9
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11
12 65. Defendants engaged in the acts and practices described above using
13 instrumentalities of interstate commerce, including but not limited to: interstate wires
14 for transfer of funds, email, websites, and other electronic communication devices.
15

16 66. Defendants engaged in the acts and practices described above
17 knowingly, willfully or with reckless disregard for the truth.
18

19 67. Johnson and Marisa Johnson controlled Capitol Equity, directly or
20 indirectly, and did not act in good faith and knowingly induced, directly or indirectly,
21 Capitol Equity to commit the acts and/or omissions alleged herein. Therefore,
22 pursuant to 7 U.S.C. § 13c(b) (2012), Johnson and Marisa Johnson are liable for
23 Capitol Equity's violations of 7 U.S.C. § 6b(a)(2)(A)-(C) (2012) and 17 C.F.R. §
24 5.2(b) (2016).
25

26 68. Johnson and Marisa Johnson acted within the course and scope of their
27 employment, agency, or office with Capitol Equity. Pursuant to 7 U.S.C. §
28

1 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2016), Capitol Equity is liable as principal for
2 Johnson's and Marisa Johnson's violations of 7 U.S.C. § 6b(a)(2)(A)-(C) (2012) and
3
4 17 C.F.R. § 5.2(b) (2016).

5 69. Each act of fraudulent solicitation, misappropriation, and false statement
6 or report, including but not limited to those specifically alleged herein, is alleged as a
7
8 separate and distinct violation of 7 U.S.C. § 6b(a)(2)(A)-(C) (2012) and 17 C.F.R. §
9 5.2(b) (2013).

10 **COUNT III**

11
12 **FRAUD BY A COMMODITY POOL OPERATOR**
13 **Violations of 7 U.S.C. § 6o(1)(A) and (B) and 17 C.F.R. § 4.41(a)**

14 70. The allegations set forth in the preceding paragraphs are re-alleged and
15 incorporated herein by reference.

16 71. 7 U.S.C. § 6o(1) (2012) makes it unlawful for a CPO to:
17
18 by use of the mails or any other means or instrumentality of
19 interstate commerce, directly or indirectly – (A) to employ
20 any device, scheme, or artifice to defraud any client or
21 participant or prospective client or participant; or (B) to
22 engage in any transaction, practice, or course of business
23 which operates as a fraud or deceit upon any client or
24 participant or prospective client or participant.
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1 72. 17 C.F.R. § 5.4 (2016) states that 17 C.F.R. §§ 4.1 – 4.41 (2016) applies
2 to any person required to register as a forex CPO pursuant to 17 C.F.R. §§ 5.1 – 5.25
3 (2016).
4

5 73. 17 C.F.R. § 4.41(a) (2016) makes it unlawful for any CPO, or any
6 principal thereof, to publish, distribute, or broadcast, whether by electronic media or
7 otherwise, any report, letter, circular, memorandum, publication, writing,
8 advertisement, or other literature or advice that: (1) employs any device, scheme, or
9 artifice to defraud any participant or client or prospective participant or client; or (2)
10 involves any transaction, practice, or course of business which operates as a fraud or
11 deceit upon any participant or client or any prospective participant or client.
12
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14 74. As alleged herein, during the Relevant Period, Capitol Equity acted as a
15 CPO by soliciting, accepting, or receiving funds from the public while engaged in a
16 business that is of the nature of an investment trust, syndicate, or similar form of
17 enterprise, for the purpose of, among other things, trading in commodity futures and
18 off-exchange leveraged or margined forex contracts.
19
20

21 75. Capitol Equity violated 7 U.S.C. § 6o(1)(A) and (B) (2012), and 17
22 C.F.R. § 4.41(a) (2016), in that it employed or is employing a device, scheme, or
23 artifice to defraud actual and prospective pool participants or engaged or are engaging
24 in transactions, practices, or a course of business which operated or operates as a
25 fraud or deceit upon pool participants or prospective pool participants, including
26
27 without limitation: misappropriation of participants' funds, issuing false account
28

1 statements, misrepresenting and/or omitting material facts in solicitations and
2 communications with participants, and acting as a CPO without registering as such as
3 required by federal law.
4

5 76. Johnson and Marisa Johnson controlled Capitol Equity, directly or
6 indirectly, and did not act in good faith and knowingly induced, directly or indirectly,
7 Capitol Equity to commit the acts and/or omissions alleged herein. Therefore,
8 pursuant to 7 U.S.C. § 13c(b) (2012), Johnson and Marisa Johnson are liable for
9 Capitol Equity's violations of 7 U.S.C. § 6o(1)(A) and (B) (2012) and 17 C.F.R. §
10 4.41(a) (2016).
11
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13 77. Each act of fraudulent solicitation, misappropriation, and false statement
14 or report, including but not limited to those specifically alleged herein, is alleged as a
15 separate and distinct violation of 7 U.S.C. § 6o(1)(A) and (B) (2012) and 17 C.F.R. §
16 4.41(a) (2016).
17
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19 **COUNT IV**

20 **PROHIBITED ACTIVITIES BY A COMMODITY POOL OPERATOR**
21 **Violation of 17 C.F.R. § 4.20(a)(1), (b), and (c)**

22 78. The allegations in the preceding paragraphs are re-alleged and
23 incorporated herein by reference.
24

25 79. 17 C.F.R. § 4.20(a)(1) (2016) provides, "Except as provided in
26 paragraph (a)(2) of this section, a commodity pool operator must operate its pool as
27 an entity cognizable as a legal entity separate from that of the pool operator."
28

1 80. As set forth above, during the Relevant Period, Capitol Equity acted as a
2 CPO by soliciting, accepting, or receiving funds from the public while engaged in a
3 business that is of the nature of an investment trust, syndicate, or similar form of
4 enterprise, for the purpose of, among other things, trading in commodity futures and
5 off-exchange leveraged or margined forex contracts.
6

7
8 81. During the Relevant Period, Capitol Equity, in operating an investment
9 trust, syndicate, or similar form of enterprise for the purpose of, among other things,
10 trading in commodity futures and off-exchange leveraged or margined forex
11 contracts, did not operate the pool as an entity cognizable as a legal entity separate
12 from that of Capitol Equity, the pool operator.
13

14 82. 17 C.F.R. § 4.20(b) (2016) provides:

15
16 All funds, securities or other property received by a
17 commodity pool operator from an existing or prospective
18 pool participant for the purchase of an interest or as an
19 assessment (whether voluntary or involuntary) on an
20 interest in a pool that it operates or that it intends to operate
21 must be received in the pool's name.
22
23

24 83. As set forth above, during the Relevant Period, Capitol Equity, by
25 operating an investment trust, syndicate, or similar form of enterprise for the purpose
26 of, among other things, trading in commodity futures and off-exchange leveraged or
27 margined forex contracts, failed to operate the pool as an entity cognizable as a legal
28

1 entity separate from Capitol Equity, and received funds, securities or other property
2 from existing or prospective pool participants for the purchase of an interest in the
3 pool without receiving same in the pool's name.
4

5 84. 17 C.F.R. § 4.20(c) (2016) provides, "No commodity pool operator may
6 commingle the property of any pool that it operates or that it intends to operate with
7 the property of any other person."
8

9 85. As set forth above, during the Relevant Period, Capitol Equity
10 commingled pool participants' funds by failing to maintain separation between
11 Capitol Equity's funds and the pool's funds, by commingling pool funds with the
12 personal funds of Johnson and Marisa Johnson, and by placing pool funds into the
13 personal bank and trading accounts of Johnson and Marisa Johnson.
14
15

16 86. Johnson and Marisa Johnson controlled Capitol Equity, directly or
17 indirectly, and did not act in good faith and knowingly induced, directly or indirectly,
18 Capitol Equity to commit the acts and/or omissions alleged herein. Therefore,
19 pursuant to 7 U.S.C. § 13c(b) (2012), Johnson and Marisa Johnson are liable for
20 Capitol Equity's violations of 17 C.F.R. § 4.20(a)(1), (b), (c) (2016).
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COUNT V

**FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR
Violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6m(1)
and 17 C.F.R. § 5.3(a)(2)(i)**

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5 87. The allegations in the preceding paragraphs are re-alleged incorporated
6 herein by reference.

7
8 88. 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (2012) makes it unlawful for any person,
9 unless registered in such capacity as the Commission shall determine, to operate or
10 solicit funds, securities, or property for any pooled investment vehicle that is not an
11 eligible contract participant (as defined by 7 U.S.C. § 1(18) (2012)) in connection
12 with agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i)
13 (2012) (leveraged or margined forex transactions), entered into with or to be entered
14 into with a person who is not described in item (aa), (bb), (ee), or (ff) of 7 U.S.C. §
15 2(c)(2)(B)(i)(II) (2012) (describing counterparties such as registered futures
16 commission merchants).

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20 89. As set forth above, during the Relevant Period, Capitol Equity acted as a
21 CPO by soliciting, accepting, or receiving funds from the public while engaged in a
22 business that is of the nature of an investment trust, syndicate, or similar form of
23 enterprise, for the purpose of, among other things, trading in commodity futures and
24 off-exchange leveraged or margined forex contracts.
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1 90. 7 U.S.C. § 6m(1) (2012) makes it unlawful for any CPO, unless
2 registered with the Commission, to make use of the mails or any means or
3 instrumentality of interstate commerce in connection with its business as a CPO.
4

5 91. During the Relevant Period, Capitol Equity engaged in the acts and
6 practices described above using the mails and instrumentalities of interstate
7 commerce, including but not limited to: interstate wires for transfer of funds, email,
8 websites, and other electronic communication devices, while failing to register with
9 the Commission, in violation of 7 U.S.C. § 6m(1) (2012).
10

11 92. 17 C.F.R. § 5.3(a)(2)(i) (2016) requires any CPO engaged in retail forex
12 transactions to register with the Commission. 17 C.F.R. § 5.1(d)(1) (2016) defines a
13 CPO as any person who “operates or solicits funds, securities, or property for a
14 pooled investment vehicle . . . that engages in retail forex transactions.”
15
16

17 93. During the Relevant Period, Capitol Equity acted as a CPO because it
18 solicited funds, securities, or property for a pooled investment vehicle that was not an
19 eligible contract participant and engaged in off-exchange leveraged or margined forex
20 transactions, in violation of 17 C.F.R. § 5.3(a)(2)(i) (2016).
21

22 94. During the Relevant Period, Capitol Equity was not exempt from
23 registering as a CPO.
24

25 95. Johnson and Marisa Johnson controlled Capitol Equity, directly or
26 indirectly, and did not act in good faith and knowingly induced, directly or indirectly,
27 Capitol Equity to commit the acts and/or omissions alleged herein. Therefore,
28

1 pursuant to 7 U.S.C. § 13c(b) (2012), Johnson and Marisa Johnson are liable for
2 Capitol Equity's violations of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1) (2012), and 17
3 C.F.R. § 5.3(a)(2)(i) (2016).
4

5 **COUNT VI**

6 **FAILURE TO REGISTER AS ASSOCIATED PERSONS**
7 **OF A COMMODITY POOL OPERATOR**
8 **Violation of 7 U.S.C. § 6k(2) and 17 C.F.R. §§ 3.12 and 5.3(a)(2)(ii)**

9 96. The allegations in the preceding paragraphs are re-alleged and
10 incorporated herein by reference.
11

12 97. 7 U.S.C. § 6k(2) (2012) and 17 C.F.R. § 5.3(a)(2)(ii) (2016) require
13 registration with the Commission for any person who is associated with a CPO as a
14 partner, officer, employee, consultant, or agent (or any person occupying a similar
15 status or performing similar functions), in any capacity that involves the solicitation
16 of funds, securities, or property for participation in a commodity pool or the
17 supervision of any person or persons so engaged.
18

19 98. 7 U.S.C. § 6k(2) (2012) also makes it unlawful for any CPO to permit
20 any person not registered with the Commission to become or remain associated with
21 the CPO in any capacity described in the preceding paragraph when the CPO knew or
22 should have known that such person was not registered with the Commission or that
23 such registration had expired, been suspended (and the period of suspension has not
24 expired), or been revoked.
25
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28

1 99. 17 C.F.R. § 3.12 (2016) prohibits any person from being an AP of a
2 CPO unless that person is registered with the Commission as an AP of the sponsoring
3 CPO.
4

5 100. 17 C.F.R. § 5.1(d)(2) (2016) defines an AP, for purposes relating to
6 forex transactions, as any natural person associated with a CPO (as that term is
7 defined in 17 C.F.R. § 5.1(d)(1) (2016)) as a partner, officer, employee, consultant, or
8 agent that is involved in the solicitation of funds, securities, or property, or the
9 supervision of any such person so engaged.
10

11 101. 17 C.F.R. § 5.3(a)(2)(ii) (2016) requires any AP of a CPO engaged in
12 retail forex transactions to register with the Commission.
13

14 102. During the Relevant Period, Johnson and Marisa Johnson, who have
15 never been registered with the Commission in any capacity, acted as APs of a CPO
16 by: (i) soliciting funds, securities, or property for participation in a commodity pool
17 operated by Capitol Equity and/or supervised persons so engaged, and (ii) operating
18 or soliciting funds, securities, or property for the Capitol Equity pool, which was not
19 an eligible contract participant, in connection with commodity futures and off-
20 exchange leveraged or margined forex transactions.
21

22 103. Johnson and Marisa Johnson acted within the course and scope of their
23 employment, agency, or office with Capitol Equity. Pursuant to 7 U.S.C. §
24 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2016), Capitol Equity is liable as principal for
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28

1 Johnson's and Marisa Johnson's violations of 7 U.S.C. § 6k(2) (2012) and 17 C.F.R.
2 §§ 3.12 and 5.3(a)(2)(ii) (2016).

3 4 **VI. RELIEF REQUESTED**

5 WHEREFORE, the Commission respectfully requests that this Court, as
6 authorized by 7 U.S.C. § 13a-1 (2012), and pursuant to the Court's inherent equitable
7 powers, enter:

9 A. an order finding Defendants liable for violating 7 U.S.C. §§
10 2(c)(2)(C)(iii)(I)(cc), 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C), 6k(2), 6m(1), 6o(1)(A)-(B)
11 (2012), and 17 C.F.R. §§ 3.12, 4.20(a)(1), (b), and (c), 4.41(a), 5.2(b), 5.3(a)(2)(i)-(ii)
12 (2016).

14 B. an order of permanent injunction prohibiting Defendants and any of their
15 agents, servants, employees, assigns, attorneys, holding companies, alter egos, and
16 persons in active concert or participation with them, including any of their successors,
17 from, directly or indirectly:

- 19
- 20 (i) trading on or subject to the rules of any registered entity (as that term is
 - 21 defined in 7 U.S.C. § 1a(40) (2012));
 - 22
 - 23 (ii) entering into any transactions involving "commodity interests" (as that
 - 24 term is defined in 17 C.F.R. § 1.3(yy) (2016)) for their own personal
 - 25 account or for any account in which they have a direct or indirect interest;
 - 26
 - 27 (iii) having any commodity interests traded on their behalf;
 - 28

1 (iv) controlling or directing the trading for or on behalf of any other person or
2 entity, whether by power of attorney or otherwise, in any account
3 involving commodity interests;
4

5 (v) soliciting, receiving or accepting any funds from any person for the
6 purpose of purchasing or selling any commodity interests;
7

8 (vi) applying for registration or claiming exemption from registration with the
9 Commission in any capacity, and engaging in any activity requiring
10 registration or exemption from registration with the Commission, except
11 as provided for in 17 C.F.R. § 4.14(a)(9) (2016);
12

13 (vii) acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2016)),
14 agent, or any other officer or employee of any person registered, exempted
15 from registration, or required to be registered with the Commission,
16 except as provided for in 17 C.F.R. § 4.14(a)(9) (2016);
17

18 (viii) engaging in any business activities related to commodity interests;
19

20 C. an order directing Defendants, as well as any successors thereof, holding
21 companies, and alter egos, to disgorge, pursuant to such procedure as the Court may
22 order, all benefits received from the acts or practices which constitute violations of
23 the Act and Regulations, as described herein, and pre- and post-judgment interest
24 thereon from the date of such violations;
25

26 D. an order directing Defendants, as well as any successors thereof, to make
27 full restitution to every person or entity whose funds they received or caused another
28

1 person or entity to receive as a result of acts and practices that constituted violations
2 of the Act and Regulations, as described herein, and pre- and post-judgment interest
3 thereon from the date of such violations;
4

5 E. an order directing Defendants, as well as any successors thereof, to
6 provide a full accounting of all pool participant funds they have received during the
7 Relevant Period as a result of the acts and practices that constituted violations of the
8 Act and Regulations, as described herein;
9

10 F. an order directing Defendants, as well as any successors thereof, holding
11 companies, and alter egos, to rescind, pursuant to such procedures as the Court may
12 order, all contracts and agreements, whether implied or express, entered into between
13 them and any pool participants whose funds were received by them as a result of the
14 acts and practices which constituted violations of the Act and Regulations, as
15 described herein;
16
17

18 G. an order directing Defendants to pay a civil monetary penalty for each
19 violation of the Act and Regulations described herein, plus post-judgment interest, in
20 the amount of the higher of: 1) \$170,472 for each violation of the Act and
21 Regulations Defendants committed; or 2) triple the monetary gain to Defendants for
22 each violation of the Act and Regulations, plus post-judgment interest;
23
24

25 H. an order requiring Defendants to pay costs and fees as permitted by 28
26 U.S.C. §§ 1920 and 2412(a)(2) (2012); and
27
28

1 I. such other and further relief as the Court deems proper.
2

3 Dated: April 19, 2017
4

Respectfully submitted,

5 U.S. COMMODITY FUTURES
6 TRADING COMMISSION

7 /s/ James H. Holl, III

JAMES H. HOLL, III. CA Bar. No. 177885

8 DANIEL J. GRIMM, *pro hac vice pending*

9 TIMOTHY J. MULREANY, *pro hac vice*
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