UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95649 / August 31, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21021

In the Matter of **MICAH J. ELDRED,** **Respondent.**	**RESPONDENT'S ANSWER AND OBJECTIONS**

RESPONDENT'S ANSWER AND OBJECTIONS

Micah J. Eldred ("Respondent" or "Eldred"), through undersigned counsel, hereby Answers the allegations made by the Division of Enforcement in Section II of the Securities and Exchange Commission's Order Instituting Administrative Proceedings ("OIP"), and lodges defenses and objections to the proceeding.

Respondent states as follows:

ANSWER TO OIP SECTION II

II.A.1. Admitted.

II.B.2. Admitted.

II. B.3. Respondent denies the factual allegations in the Commission's Complaint. Additionally, Respondent notes that the jury returned a verdict for Respondent on 13 of the 14 counts alleged in the Complaint, and the district court entered a final judgment against the Division of Enforcement

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on those counts. *See SEC v. Spartan Securities Group, Ltd., et al.*, 8:19-cv-00448, ECF No. 256 (M.D. Fla. Aug. 9, 2021). This proceeding is barred by principles of *res judiciata* from revisiting those factual determinations that were made in Respondent's favor. *See Siris v. SEC*, 773 F.3d 89, 91–92 (D.C. Cir. 2014) (follow-on proceedings may not "relitigate the factual issues 'conclusively decided' in the underlying civil suit"); *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1111 (D.C. Cir. 1988) (*res judicata* applies to follow-on proceedings concerning issues decided by the district court, but does not bar introduction of relevant mitigation evidence). Respondent has also appealed the district court's judgment against him to the Eleventh Circuit Court of Appeals, where he has challenged the legal sufficiency of the verdict against him. *See SEC v. Spartan Securities Group, Ltd., et al.,* No. 22-13129. That challenge, if successful, would result in the preclusion of this follow-on proceeding entirely.

DEFENSES AND OBJECTIONS TO THE PROCEEDING

1. As stated above, the Commission is barred by principles of *res judiciata* from revisiting the factual determinations that were made in Respondent's favor by the district court.

2. Consistent with *res judicata* and principles of due process under the Fifth Amendment to the U.S. Constitution, this proceeding may not result in any sanctions beyond those issued by the district court.

3. To the extent that this proceeding might result in any sanctions beyond those issued by the district court, it violates the Seventh Amendment and Article III of the U.S. Constitution. *See Jarkesy v. SEC*, 34 F.4th 446, 459 (5th Cir. 2022) ("the agency proceedings below violated Petitioners' Seventh Amendment rights, and the SEC's decision must be vacated").

4. The statutory provision authorizing this administrative proceeding violates Article I of the U.S. Constitution, and this proceeding is therefore an unlawful exercise of improperly

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delegated authority. *See id.* at 462-63 (finding that 15 U.S.C. § 78u-2 related to initiation of cease-and-desist proceedings "is impermissible under the Constitution"); 15 U.S.C. § 78u-3(a) ("Authority of Commission" to conduct cease-and-desist proceedings).

5. The administration of this proceeding by an administrative law judge with removal protections violates Article II of the U.S. Constitution. *See Jarkesy*, 34 F.4th at 463 ("the statutory removal restrictions for SEC ALJs are unconstitutional").

November 11, 2022

Respectfully,

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Certificate of Service

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & .151, I certify that a copy of this document was filed on this date via the Commission's Electronic Filings in Administrative Proceedings (eFAP) system. I also sent a copy of this document by email on this date to counsel for the Division of Enforcement as follows:

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Respectfully,

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