

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

EMPIREX CAPITAL LLC and  
RAFAEL ALBERTO VARGAS  
GONZALEZ, a/k/a RAFAEL VARGAS,

Defendants.

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**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission alleges:

**I. INTRODUCTION**

1. The Commission brings this action to enjoin Empirex Capital LLC (“**Empirex**”), a South Florida-based company and its principal, Rafael Alberto Vargas Gonzalez, a/k/a Rafael Vargas, (collectively “**Defendants**”) from defrauding investors through the sale of unregistered securities involving investments into Empirex, in violation of the anti-fraud, securities registration, and investment adviser provisions of the federal securities laws.

2. From July 2018 through at least March 2023, the Defendants raised at least \$6.6 million from at least 162 investors, in the United States and abroad, by making repeated material misrepresentations and receiving compensation for making investment advisement decisions for these investors.

3. The misrepresentations concerned Vargas’s and Empirex’s use of assets obtained from investors, the profitability of Empirex’s trading activities, Empirex’s assets under

management, Vargas's and Empirex's qualifications to manage investors' assets and their backgrounds, and the risks of investing with Empirex.

4. Through Defendants' fraud Vargas misappropriated approximately \$1.8 million, using funds obtained from investors to pay for various personal uses, including jewelry purchases, housing, and luxury automobile payments, and for cash.

5. Moreover, the Defendants misled investors as to the profitability of their investments by making and facilitating Ponzi-like payments to the investors to mask Empirex's failure to generate sufficient profits in trading investors' assets in what they termed "traditional" investments, investments in crypto assets, or a combination of both. And, when confronted by investors after they stopped receiving returns, Vargas repeatedly lied to them that he would return the entirety of the funds owed to them.

6. Through their conduct, the Defendants have each violated the anti-fraud, securities registration, and investment adviser provisions of the federal securities laws.

7. As a result of the conduct alleged in the Complaint, Defendants have violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("**Securities Act**") [15 U.S.C. §§77e(a), 77e(c), and 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("**Exchange Act**") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("**Advisers Act**") [15 U.S.C. §§80b-6(1) and 80b-6(2)].

8. Unless restrained and enjoined, Defendants will continue to violate the federal securities laws. Among other relief, the Commission seeks permanent injunctions; specific conduct-based injunctions; civil monetary penalties against Defendants; disgorgement of ill-

gotten gains with prejudgment interest against the Defendants; and any other relief that may be necessary and appropriate.

## **II. DEFENDANTS AND OTHER RELEVANT ENTITY**

9. **Empirex** is a Florida Limited Liability Company formed in July 2018 with its principal place of business in Miami, Florida. Vargas manages, owns and controls Empirex. Empirex's investment offerings have never been registered with the Commission.

10. **Vargas**, 42, is CEO of Empirex, and manages, owns and controls it. Vargas is the sole signatory on Empirex's bank accounts and controlled Empirex's investments.

### **Relevant Entity**

11. NKC Management, LLC ("**NKC**"), is a Florida Limited Liability Company formed in April 2021, with its principal place of business in Miami, Florida. Vargas manages, owns and controls NKC. NKC entered into investment agreements with certain investors on behalf of Empirex and certain investors deposited their funds into NKC's bank accounts. NKC has never been registered with the Commission.

## **III. JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)]; Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]; and Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)].

13. This Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida because many of the Defendants' acts and transactions constituting violations of the Securities Act, Exchange Act and Investment Advisers Act occurred in the Southern District of Florida including the maintenance of bank accounts in the

Southern District of Florida which received investors' funds and were utilized by the Defendants in furtherance of their fraud. Additionally, at least one investor in Empirex resides in the Southern District of Florida. Furthermore, Empirex's principal place of business is located in the Southern District of Florida, and Vargas resides in this district as well.

14. Defendants, directly or indirectly, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of businesses alleged herein.

#### **IV. FACTUAL ALLEGATIONS**

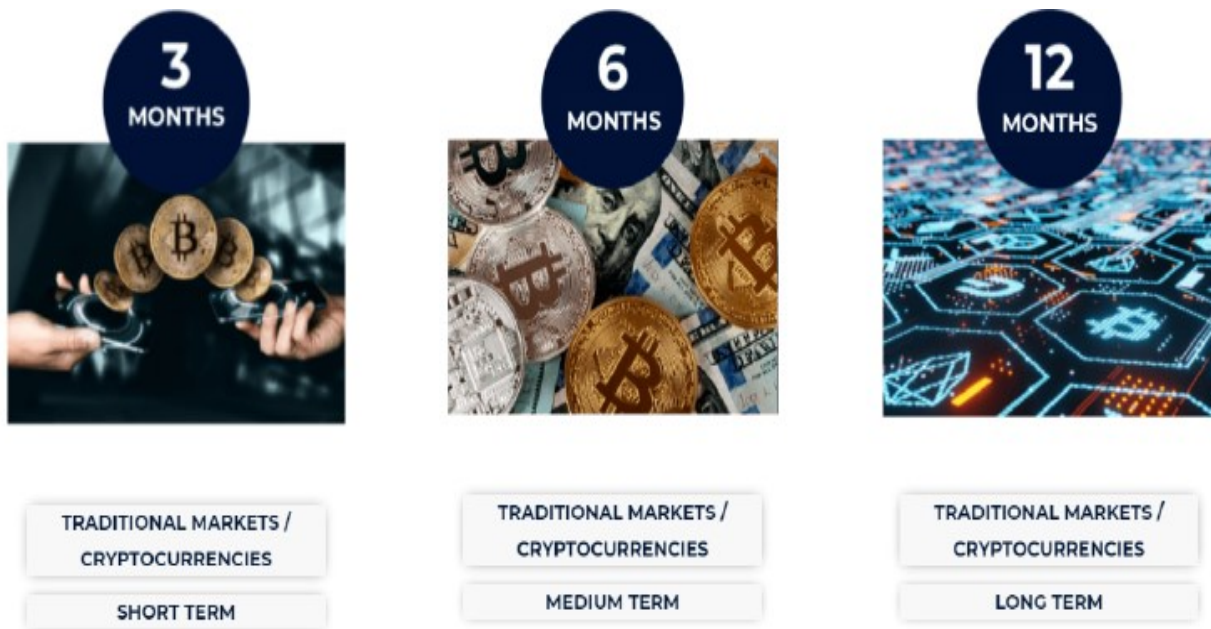
##### **A. The Empirex offerings**

15. Vargas formed Empirex in July 2018, and anointed himself CEO. Vargas had complete and entire control of Empirex. Empirex gave off the air of sophistication and legitimacy. Empirex advertised itself both as an investment management firm, managing investments in a crypto asset fund and a "traditional" investment fund, and also as a private investment fund.

16. Empirex represented that it raised capital from accredited investors and institutions to invest in its private pooled portfolios, and that it had various investment plans from which investors could choose from, offering investments in its "traditional" investment fund, which included stocks and bonds, as well as its crypto assets fund. These were treated as separate offerings.

17. Investors could purportedly invest cash or crypto assets for predetermined time periods (i.e. 3, 6, or 12 months) with profits to be earned monthly, quarterly or annually, which could be reinvested. Empirex urged potential investors in social media posts to let Empirex be

their “[c]rypto asset managers!” and “[j]oin our private fund!” The options for investors’ chosen terms was as indicated here:



18. Empirex offered investors fixed and variable returns with fixed returns ranging from 5% to 26% monthly. Empirex also offered certain existing investors the opportunity to invest in short-term investment plans that lasted approximately 1 or 2 months with projected returns that ranged as high as 34%, to be paid at the end of the investment period.

19. Empirex represented to investors all investor funds were to be pooled in either the “traditional” investment pool or crypto asset pool however, in reality, all investor funds were part of one pool.

20. Empirex typically stated it charged either a 20% or a 25% fee on profits earned. Empirex did not disclose any other justification for fees.

21. Empirex solicited interest in its investment plans through its website, brochures, YouTube videos, social media, LinkedIn page and public billboards, some of which were in English, Spanish, Arabic and Chinese. Empirex’s websites and brochures offered investors the

opportunity to invest in securities through its traditional investment plan and it claimed on social media, “[o]nly 30 days to receive your profits!” In a YouTube video Empirex also stated, “...rest assured that your initial investment will be always guaranteed.”

22. Empirex offered prospective investors purported expert investment advice and they could book private consultations online. Empirex’s social media posts repeatedly stated, “[w]e’ll protect your capital.”

23. Vargas held himself out as a sophisticated money manager and Empirex stated it had an “exclusive team of wealth management professionals.” Further, Empirex’s website stated, “...Rafael and our team of investment experts...provide our clients with investment advice that best suits their personal finances.”

24. Empirex and Vargas held themselves out as providing securities investment advice to Empirex’s purported “traditional” investment fund. Empirex and Vargas offered investors the opportunity to invest in crypto assets through Empirex’s crypto asset fund. Empirex and Vargas traded certain crypto assets that were securities. Further, Empirex and Vargas received compensation from Empirex for making investment decisions through Empirex’s purported performance fee and Vargas’s receipt of misappropriated funds.

25. Vargas touted his and Empirex’s purported expertise as indicated here:

"REMEMBER THAT A GOOD FINANCIAL DECISION CAN BE YOUR BEST ALLY TOWARDS SUCCESS"

RAFAEL VARGAS

Rafael adds real value to people looking to increase their investments. The 21st century is a brave new world for investors, which while very exciting, can easily become overwhelming. Rafael and our team of investment experts constantly study markets and trends to provide our clients with investment advice that best suits their personal finances.



*Rafael Vargas* (CEO)

"FIRST STEPS IN THE WORLD OF TRADING"



26. Empirex claimed to have offices in Miami, New York, Hong Kong, and Medellín and Cali, Colombia. Empirex claimed approximately \$800 million in assets under management.

**B. The investments offered by Empirex were securities**

27. Investors made an investment of money into Empirex by furnishing their fiat currency and/or crypto assets to Empirex. Their investments were then pooled for purported investment purposes and managed by Vargas and Empirex. Investors were passive and had a reasonable expectations of profit which was derived entirely from the purported efforts and investment strategies of Vargas and Empirex.

**C. Defendants raise millions of dollars from investors**

28. From July 2018 through no earlier than March 2023, Empirex raised at least \$6.6 million from at least 162 investors throughout the United States and abroad. Empirex and Vargas often received investors' funds, and NKC, on behalf of Empirex and Vargas, did as well.

29. Empirex's offerings were not registered with the Commission, as Empirex claimed it was relying on the Rule 506(c) exemption of Regulation D for offerings targeting accredited investors. However, Empirex solicited accredited and non-accredited investors alike and took no steps to verify whether investors were accredited before accepting their funds.

30. In connection with their investment, investors received from Empirex an investment agreement and various versions of an investor manual, which discussed policies associated with the investments including, among other things, details on when returns were supposed to be paid.

31. As part of the investment agreements, which Vargas countersigned, Empirex claimed its ‘Global Macro Strategy’ included minimizing risk through “a well-diversified and hedged portfolio.” Empirex claimed to create a portfolio that was “profitable, regardless of market direction.” Empirex further asserted that its goal with its strategy was “to provide a diversified return stream across different market environments, provide transparency, reduce volatility, and hedge appropriately through market disruptions.”

32. Empirex also claimed on its social media sites, including Facebook and Twitter, that it had highly profitable investment plans and guaranteed high profits to prospective investors.

33. Investors were given access to an online portal where they could view information and documents related to their investments such as their investment agreements and purported account statements that reflected their apparent profits.

**D. Material misrepresentations and omissions**

**1. Use of investor assets**

**a. Claims of significant investments in securities were a farce**

34. Empirex’s websites and brochures claimed to offer investors the opportunity to invest in underlying securities through its “traditional” investment plan. For example, in a January 22, 2019, social media post Empirex stated, “[o]ur new traditional investment fund consists of well-known assets such as stocks...” Investors executed investor agreements with Empirex, which Vargas countersigned, reflecting the terms of their “traditional” investment. At



least 75 investor agreements collectively totaled approximately \$1.2 million invested in Empirex's "traditional" investment plan.

35. However, despite these representations and the significant amount of investment into the "traditional" plan, Empirex never invested in traditional securities as it did not have *any* brokerage accounts. While Vargas did have several small personal online brokerage accounts, these small accounts only generated miniscule returns, wholly insufficient to pay these investors the returns they purportedly earned.

**b. Investments in crypto assets prior to 2021 were non-existent**

36. Empirex started soliciting investors into its purported crypto asset fund as early as 2018, resulting in at least 15 investors who collectively invested approximately \$140,000 in Empirex's purported crypto asset fund prior to 2021. Despite this early solicitation, Empirex did not use investor funds to purchase crypto assets before February 2021, whereupon it finally started sending funds to an Empirex crypto asset account. The only investor funds used for crypto asset investing before February 2021 was approximately \$4,300, which Vargas misappropriated and transferred to a crypto asset trading account in his name.

**2. There was no profitable trading and there were Ponzi-like payments**

37. Vargas and Empirex also made material misrepresentations concerning Empirex's profitable trading. Empirex's trading activities did not generate anywhere near the profits required to support the substantial returns paid to investors. All told, Empirex's crypto asset trading account, Vargas's personal crypto asset trading accounts and Vargas's brokerage accounts (Empirex did not have any brokerage accounts), demonstrated only modest returns amounting to only approximately \$306,000. These returns were woefully insufficient to make the approximate \$1.8 million Ponzi-like payments made by Vargas, personally and through Empirex and NKC to investors.

38. To convince investors their returns were real and that Empirex was trading profitably, Vargas and Empirex provided investors with fictitious statements. These statements, which were emailed and/or available online, touted investment returns as high as 25% in a single month. Given the insufficient profits being generated, these statements were demonstrably false.

39. Moreover, Vargas misled investors as to the status of their returns and their demands for refunds of their principal. Vargas would make false promises with respect to his intent to make the return payments and to refund aggrieved investors their principal. For example, in the summer and fall of 2022, Vargas promised to meet an investor in Miami, Florida on two separate occasions to return funds owed to the investor, but Vargas did not show up for either promised meeting.

40. In fact, in a last ditch effort, in mid-2023, Vargas sent investors a “Settlement Agreement and Mutual Release” where he attempted to get investors to agree to give him 180 days to deliver their principal owed to them in exchange for a promise to release Vargas from all claims of liability, requiring the maintenance of confidentiality, and prohibiting the investors from disparaging Vargas.

### **3. Empirex did not have assets under management as otherwise falsely represented**

41. Vargas and Empirex made further material misrepresentations concerning Empirex’s assets under management. Despite claims of assets under management of \$800 million, Vargas owned or controlled accounts with assets of only approximately \$293,000 on or around the times of this claim—a far cry from the \$800 million Vargas and Empirex claimed to have under management.

**4. Empirex and Vargas's claimed qualifications and background were fanciful**

42. Despite claiming to have a team of highly qualified investment professionals, the reality is that Empirex did not have any traders or analysts, Vargas included, who were experienced in asset management, trading or financial analysis. No one other than Vargas placed any trades for securities or crypto assets on behalf of investors, and even that activity was limited. In reality, there was no "team."

43. The Defendants did not register with the SEC any of its offers and sales of investments into Empirex. Further, Vargas is not, nor has he ever been, registered with the Commission in any capacity, which necessarily includes that he was not registered as a broker-dealer nor as an investment adviser.

**5. The stated safety of investing in Empirex and the risks of investing in Empirex were materially false and misleading**

44. Despite not generating profits to come anywhere near to paying investors legitimate returns, Empirex continued to hold out to the general public on its social media sites and to its investors through their investments agreements the safety of investing with Empirex, the liquidity of its portfolios, and that an investment in Empirex would be profitable "regardless of market direction." These statements remained on Empirex's social media sites and in its investment agreements even when Empirex and Vargas knew they were not generating sufficient profits from its "traditional" investment fund, as well as its crypto assets fund, to support the investment returns they were paying to investors and while Vargas was misappropriating funds obtained from investors.

45. Indeed, realizing the gig was up, recently, Empirex shut down its website.

**E. Vargas misappropriated funds obtained from investors**

46. From the inception of Empirex in July 2018, Vargas misappropriated approximately \$1.8 million of funds obtained from investors for his own personal enjoyment and use, including approximately \$295,000 of investor funds withdrawn as cash.

47. This misappropriation also included purchases at well-known both lower-end and high-end department stores, boutique clothing stores, exclusive jewelry stores, luxury automobiles, food delivery services, restaurants, ranging from fast-food, to moderate, to high-end, and payments to reduce the balances of various personal credit cards, amongst other expenditures.

**V. VIOLATIONS ALLEGED**

**COUNT I**

**Violations of Section 17(a)(1) of the Securities Act**

48. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint as if incorporated herein.

49. From July 2018 through at least March 2023, the Defendants, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, knowingly or severely recklessly, employed any device, scheme or artifice to defraud.

50. By reason of the foregoing, the Defendants violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**COUNT II**

**Violations of Section 17(a)(2) of the Securities Act**

51. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint as if incorporated herein.

52. From July 2018 through at least March 2023, the Defendants, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, negligently obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

53. By reason of the foregoing, the Defendants violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

**COUNT III**

**Violations of Section 17(a)(3) of the Securities Act**

54. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint as if incorporated herein.

55. From July 2018 through at least March 2023, the Defendants, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, negligently engaged in transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon the purchasers and prospective purchasers of such securities.

56. By reason of the foregoing, the Defendants violated, and, unless enjoined, are

reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)].

**COUNT IV**

**Violations of Section 10(b) and Rule 10b-5(a) of the Exchange Act**

57. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint as if incorporated herein.

58. From July 2018 through at least March 2023, the Defendants, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or severely recklessly employed any device, scheme or artifice to defraud in connection with the purchase or sale of any security.

59. By reason of the foregoing, the Defendants violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5(a) of the Exchange Act [17 C.F.R. § 240.10b-5(a)].

**COUNT V**

**Violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act**

60. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint as if incorporated herein.

61. From July 2018 through at least March 2023, the Defendants, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or severely recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the purchase or sale of any security.

62. By reason of the foregoing, the Defendants violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5(b) of

the Exchange Act [17 C.F.R. § 240.10b-5(b)].

## **COUNT VI**

### **Violations of Section 10(b) and Rule 10b-5(c) of the Exchange Act**

63. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint as if incorporated herein.

64. From July 2018 through at least March 2023, the Defendants, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or severely recklessly engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person in connection with the purchase or sale of any security.

65. By reason of the foregoing, the Defendants violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) [15 U.S.C. § 78j(c)] and Rule 10b-5(c) of the Exchange Act [17 C.F.R. § 240.10b-5(c)].

## **COUNT VII**

### **Violations of Sections 5(a) and 5(c) of the Securities Act**

66. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint.

67. From July 2018 through at least March 2023, the Defendants, directly or indirectly, have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, when no registration statement was in effect with the Commission as to such securities, and have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell such securities when no registration statement had been filed with the Commission as to such securities.

68. There were no applicable exemptions from registration.

69. By reason of the foregoing, the Defendants violated, and unless enjoined, are reasonably likely to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a), (c)].

### **COUNT VIII**

#### **Violations of Sections 206(1) of the Advisers Act**

70. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint.

71. From July 2018 through at least March 2023, Defendants, for compensation, engaged in the business of directly advising Empirex's "traditional" investment fund, as well as its crypto assets fund, as to the value of securities or as to the advisability of investing in, purchasing or selling securities. Defendants were therefore "investment advisers" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

72. Defendants, by use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly, knowingly or recklessly employed a device, scheme or artifice to defraud one or more client or prospective client.

73. By reason of the foregoing, the Defendants violated, and unless enjoined, are reasonably likely to violate, Section 206(1) of the Advisers Act [15 U.S.C. §80b-6(1)].

### **COUNT IX**

#### **Violations of Section 206(2) of the Advisers Act**

74. The Commission repeats and realleges Paragraphs 1 through 47 of its Complaint, and paragraph 70 of its Complaint.

75. From July 2018 through at least March 2023, Defendants, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, negligently engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon one or more clients or prospective clients.



76. By reason of the foregoing, Defendants violated, and unless enjoined, are reasonably likely to continue to violate Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)].

**VI. RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests the Court find the Defendants committed the violations alleged, and:

**I.**

**Permanent Injunction**

Issue a Permanent Injunction restraining and enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating the federal securities laws alleged in this Complaint.

**II.**

**Conduct-Based Injunction**

Issue permanent conduct-based injunctions enjoining Vargas and Empirex from directly or indirectly, including, but not limited to, through any entity owned or controlled by Vargas and Empirex, participating in the issuance, purchase, offer, or sale of any security, provided, however, that such injunction shall not prevent Vargas from purchasing or selling securities in his own personal account.

**III.**

**Officer and Director Bar**

Bar Vargas, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. §77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. §78u(d)(2), from serving as an officer or director of any entity having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to

Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

**IV.**

**Disgorgement**

Issue an Order directing the Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

**V.**

**Penalties**

Issue an Order directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]; Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

**VI.**

**Further Relief**

Grant such other and further relief as may be necessary and appropriate.

**VII.**

**Retention of Jurisdiction**

Further, the Commission respectfully requests that the Court retain jurisdiction over this action and over the Defendants in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

**VII. JURY TRIAL DEMAND**

The Commission demands a trial by jury on all issues so triable.

Dated: September 21, 2023

Respectfully submitted,

By:



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