

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**ANDREW M.
MIDDLEBROOKS and EIA
ALL WEATHER ALPHA
FUND I PARTNERS, LLC,**

Defendants.

Case No. 2:22-cv-11943

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF
AND CIVIL MONETARY PENALTIES**

Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”), an independent federal agency, by and through its attorneys, for its Complaint against defendants Andrew M. Middlebrooks (“Middlebrooks”) and EIA All Weather Alpha Fund I Partners, LLC (“EIA”) (collectively, “Defendants”), alleges as follows:

I. INTRODUCTION

1. From at least mid-2017 through at least April 2022 (the “Relevant

Period”), EIA, through Middlebrooks, engaged in a scheme through which they fraudulently solicited individuals in the United States and elsewhere to trade commodity interests, among other financial products, through a commodity pool called EIA All Weather Alpha Fund I, LP (the “Fund”). Middlebrooks managed the Fund. In connection with this fraudulent scheme, Defendants accepted and pooled millions of dollars from dozens of Fund participants.

2. During the Relevant Period, Middlebrooks and EIA made numerous false and misleading statements and omissions in order to, among other things, lure new Fund participants and convince existing Fund participants to maintain or increase their contributions to the Fund. These misrepresentations and omissions included claims (i) that the Fund was extraordinarily profitable when in fact it suffered catastrophic trading losses; (ii) exaggerating the amount of assets under management in the Fund; and (iii) that the Fund’s financial statements were audited by an outside auditing firm when in fact they were not. Such claims were made by Defendants in part by issuing false reports to existing and prospective Fund participants in the form of falsified monthly account statements and fabricated financial statements, among other things.

3. Middlebrooks and EIA repeatedly lied and engaged in deceptive conduct throughout the Relevant Period in order to fraudulently conceal the Fund’s abysmal performance.

4. By engaging in this conduct and the conduct further described herein, Defendants violated 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), 6o(1)(A) and (B), and 17 C.F.R. § 33.10 (2021).

5. Unless restrained and enjoined, Defendants are likely to continue engaging in the acts and practices alleged in this Complaint.

6. Accordingly, pursuant to 7 U.S.C. § 13a-1, the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26, and the Commission's Regulations ("Regulations"), 17 C.F.R. pts. 1-190 (2021). The Commission also seeks civil monetary penalties and remedial ancillary relief, including restitution to defrauded clients, disgorgement, pre- and post-judgment interest, and such other equitable relief as this Court may deem necessary and appropriate.

II. DEFENDANTS

7. **Andrew M. Middlebrooks** was a resident of the Detroit, Michigan metro area from approximately 2017 through February 2020, but now resides in Dallas, Texas. Middlebrooks acted as an Associated Person ("AP") of EIA, a Commodity Pool Operator ("CPO"). Middlebrooks has never been registered with the CFTC in any capacity.

8. **EIA All Weather Alpha Fund I Partners, LLC**, is a Delaware limited liability company formed on or about June 12, 2017, with its principal place of business in Novi, Michigan. EIA is the general partner and CPO of the Fund, with ultimate authority over the Fund's investments and operations. EIA is controlled by Middlebrooks, who is the sole owner and member-manager of EIA as well as its Chief Executive Officer, Chief Investment Officer, and portfolio manager. The Fund is a Delaware limited partnership, formed on or about June 13, 2017. EIA has never been registered with the CFTC in any capacity and claims to be exempt from registration as a CPO.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1345 (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). This Court also has jurisdiction over Middlebrooks, EIA, and the subject matter of this action pursuant to 7 U.S.C. § 13a-1(a), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

10. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because many of the acts and transactions constituting violations of the Act and Regulations occurred in this district. In addition, from at least mid-2017 through February 2020, Middlebrooks resided in this district, and EIA and the Fund have their principal places of business in this district.

IV. FACTS

A. Middlebrooks Controlled and Had Authority Over EIA and Its Creation and Dissemination of Fund Materials.

11. Middlebrooks, as the sole owner and managing-member of EIA, who exercised ultimate authority over the Fund, was the control person for the Fund and was responsible for the content of all the EIA- and Fund-related documents, communications, and information provided to existing and prospective Fund participants. In addition, Middlebrooks solicited and supervised the solicitation by others of existing and prospective Fund participants to invest in the fund.

12. The EIA- and Fund-related documents included the following: EIA representatives' oral representations; EIA representatives' emails; investor presentations ("Investor Presentations"); a Private Placement Memorandum ("PPM"); one-page monthly summaries of the Fund that showed its purported monthly performance ("Performance Sheets"); a Limited Partnership Agreement ("LPA"); subscription documents for investment in Fund limited partnership interests ("Subscription Documents"); EIA's website; Middlebrooks's LinkedIn

page; and monthly investor account statements made available through an investor internet portal.

13. Middlebrooks either prepared or directed the preparation of each document or had ultimate authority over the content of each document or oral representation, and was responsible for the dissemination of the documents and other communications described in this Complaint.

B. Defendants Solicited and Accepted Millions of Dollars from Fund Participants.

14. During the Relevant Period, EIA, through Middlebrooks, EIA employees, and individuals associated with EIA, solicited existing and prospective participants for the Fund by use of the mails and other means or instrumentalities of interstate commerce. Middlebrooks and others who worked with him at times held telephone calls and video conference calls to discuss the Fund with prospective Fund participants before emailing offering materials, subscription information, and wire information to prospective Fund participants.

15. At various points during the Relevant Period, Middlebrooks and EIA solicited existing and prospective Fund participants through EIA's website, which described EIA's investment strategy for the Fund and other information about its operations. Additionally, at various points during the Relevant Period, Middlebrooks maintained a LinkedIn account that contained background information on the Fund.

16. To complete a Fund investment, participants typically signed various Subscription Documents and sent them back to EIA. According to the Subscription Documents, participants in the Fund were provided a copy of the PPM and LPA.

17. The PPM and LPA each describe numerous aspects of the structure, operation, and management of the Fund, including how the Fund must use participant money to invest and trade in a wide range of investments (including commodity interests as that term is defined in 17 C.F.R. § 1.3 (2021)).

18. During the Relevant Period, Middlebrooks and EIA received millions of dollars from dozens of participants for the purpose of investing in the Fund.

C. The Fund Traded Commodity Interests Among Other Financial Products, and Defendants' Trading Resulted in Massive Losses.

19. According to the Fund's June 2017 PPM, which was provided to prospective Fund participants, the Fund's portfolio is not limited to any particular type of instrument and thus may include "derivatives," "options," and "swaps."

20. According to EIA's LPA, which was provided to Fund participants, the Fund "is organized to invest in a wide range of investments," including commodity interests such as "foreign currencies, ...as well as futures and forward contracts (and options thereon) relating to all financial instruments..."

21. During the Relevant Period, Defendants transferred the large majority of Fund participant money to trading or other investment accounts.

22. During the Relevant Period, Defendants traded in the Fund a large volume of commodity interests on a registered exchange. The commodity interests included futures contracts and options on futures contracts.

23. Defendants' trading and investing of Fund participant money resulted in catastrophic losses.

24. For example, during the Relevant Period, Defendants deposited approximately \$21 million of Fund participant funds into trading accounts at one particular brokerage firm. Defendants' trading in these accounts resulted in realized losses of more than \$16 million. Further, almost 90 percent of these losses were incurred trading futures and futures options.

D. Defendants Made Material Misstatements and Omissions When Soliciting Participants to Participate in the Fund.

25. In soliciting participants in the Fund, Defendants made numerous materially false and misleading statements and omissions regarding, among other things, the Fund's performance, the amount of assets in the Fund, and the Fund's purported auditor and advisory board.

1. Defendants Made False and Misleading Statements about the Fund's Performance.

26. Throughout the Relevant Period, EIA and Middlebrooks misrepresented the Fund's performance in order to solicit new participants and to lull current Fund participants into maintaining their Fund investment and induce

them into investing more. Upon information and belief, each year, and in most months, the Fund suffered significant losses. However, despite these losses, Middlebrooks and EIA created and distributed numerous documents claiming the Fund had exceptionally positive investment performance.

a. Investor Presentations and Performance Sheets.

27. Middlebrooks and EIA made false and misleading statements regarding the financial performance of the Fund in Investor Presentations and one-page monthly Performance Sheets they provided to prospective and existing Fund participants throughout the Relevant Period.

28. Investor Presentations, whose titles indicate they were prepared and distributed quarterly (e.g., “Investor Presentation Q1 2020”), represented the Fund’s cumulative return and “winning months” percentage, among other things. For example, an Investor Presentation for the quarter ending September 30, 2019 stated that the Fund had a total cumulative return to date of 476.81 percent and that in the months of trading to date, 81.82 percent of them were “winning months.” In reality, EIA and the Fund had lost money every year (and almost every month) since the Fund’s inception.

29. The Performance Sheets, which appear to have been created and distributed on a monthly basis, provided misinformation similar if not identical to the Investor Presentations. For example, the December 2021 Performance Sheet

claimed that the Fund had yearly positive returns of 117.25% (2017), 54.31% (2018), 71.94% (2019), 135.74% (2020), 86.66% (2021). This Performance Sheet also claimed that the Fund had a total cumulative return to date of 2,436.43 percent and that in the months of trading to date, 85 percent of them were “winning months.” In reality, the Fund had negative returns in each of those years.

30. Existing and prospective Fund participants relied on Defendants’ representations about Fund performance in deciding whether to participate in the Fund. For example, on May 21, 2020, an individual associated with EIA, under the authority of Middlebrooks, sent an email to a prospective Fund participant (“Fund Participant 1”), who had not yet invested in the Fund, that copied Middlebrooks and others and attached documents including an April 2020 Performance Sheet and a Q1 2020 Investor Presentation.

31. On or about May 29, 2020, Fund Participant 1 made an initial \$1 million investment in the Fund, in part, based on the false performance returns stated in these documents.

32. As another example, in February 2021, an individual associated with EIA, under the authority of Middlebrooks, sent an email to a prospective Fund participant (“Fund Participant 2”), who had not yet invested in the Fund, and attached a January 2021 Performance Sheet.

33. In early April 2021, Fund Participant 2 contacted Defendants to inform them that he would participate in the Fund. On or around May 6, 2021, Fund Participant 2 made an initial \$1.6 million investment in the Fund based in part on the false performance returns stated in the Performance Sheet.

34. A reasonable Fund participant would have understood from the statements regarding the Fund's performance in the Performance Sheets and Investor Presentations that EIA's trading of Fund assets was extraordinarily profitable.

35. In reality, each of these statements was false. EIA lost money trading Fund assets.

36. Each of the above statements regarding the performance of the Fund was false when made, and Defendants knew or were reckless in not knowing, and should have known, that their statements concerning the performance of the Fund were false and misleading. Middlebrooks, as the sole owner, portfolio manager, and member-manager of EIA, which "serves as the Fund's Investment Manager" and is "responsible for managing the investment of the Fund's assets," would have known the actual performance numbers and knew the performance number representations made to Fund participants were false.

37. The above misrepresentations regarding the performance of the Fund were material to existing and prospective Fund participants because, among other

things, participants consider a pool operator's historical performance to be relevant to the probability that a pool operator may perform well in the future. Moreover, ongoing performance updates, including the Performance Sheets, were material to Fund participants' decisions to maintain or increase their investments in the Fund.

b. Falsified Monthly Account Statements.

38. Throughout the Relevant Period, Defendants also provided false performance results to Fund participants in monthly individual statements disseminated to Fund participants through an internet portal hosted by a third party. These monthly Fund participant statements represented positive returns in the Fund participants' accounts and ever-increasing account balances based on purported gains from trading the Fund's assets.

39. A reasonable investor would have understood from the monthly individual statements that EIA's trading of the Fund assets was profitable and that their investments in the Fund were increasing in value.

40. In reality, the purported gains and Fund participant balances reflected in the monthly individual statements were false. As described above, the Fund lost money trading each year during the Relevant Period.

41. Based in part on these false monthly account statements, certain Fund participants, including Fund Participant 1 and Fund Participant 2, continued to increase their investments in the Fund.

42. Each of the above representations regarding the performance and value of participants' Fund investments reflected in the monthly individual statements was false when made, and Defendants knew or were reckless in not knowing, and should have known, that their statements concerning the performance and value of participants' Fund investments in the monthly statements were false and misleading. Middlebrooks, as the sole owner, portfolio manager, and member-manager of EIA, which "serves as the Fund's Investment Manager" and is "responsible for managing the investment of the Fund's assets," would have known the value of participants' Fund investments set forth in the monthly statements were false and misleading.

43. These misrepresentations regarding the performance of participants' Fund investments were material to Fund participants because, among other things, participants consider a pool's performance when deciding to redeem, hold, or increase the amount of their investment.

2. Defendants Made False and Misleading Statements about the Amount of Assets in the Fund.

44. Defendants also repeatedly misrepresented the amount of assets in the Fund orally and in documents disseminated to existing and prospective Fund participants.

45. Defendants misrepresented to existing and prospective Fund participants that the Fund had tens of millions to over \$100 million in assets.

Performance Sheets represented that the Fund had “AUM [Assets Under Management]” of “\$4 million” by January 2018, “\$8 million” by April 2018, “\$17 million” by October 2019, “~\$25 million” by April 2020, “~\$50 million” by February 2021, and “~\$100 million” by December 2021.

46. Further, Performance Sheets and Investor Presentations represented Fund performance each month since January 2017, and a cumulative performance return since January 2017, implying the Fund had assets starting in January 2017. In reality, the Fund did not exist until June 2017.

47. Middlebrooks orally represented to certain Fund participants that the Fund had AUM of “\$110 million” in February or March 2022 and “\$130 million” in March 2022.

48. In early 2022, Defendants sent to existing and prospective Fund participants purportedly audited Fund financial statements as of December 31, 2020, misrepresenting that the Fund had assets of \$139,071,427.

49. Defendants’ representations of the Fund’s assets under management, in particular representations of AUM in excess of \$40 million, were false.

50. A reasonable Fund participant would have understood from these statements that the Fund had assets in the amounts contained in the various disclosures described above.

51. Each of the above disclosures was false when made, and Defendants knew or were reckless in not knowing, and should have known, that their statements were false and misleading.

52. The above misrepresentations regarding assets of the Fund and the amount of its AUM were material to existing and prospective Fund participants because, among other reasons, the amount of the Fund's assets indicated that other Fund participants had analyzed the Fund and determined that it was an attractive investment, and the Fund's substantial assets signaled that the operations of EIA and the Fund were profitable and sustainable.

3. Defendants Made False and Misleading Statements about an Audit of the Fund's Financial Statements and the Fund's Purported Auditor.

53. Throughout the Relevant Period, Defendants falsely represented to Fund participants that the Fund engaged outside auditors to audit its financial statements and that its financial records would be audited.

54. The LPA provides that the books and records of the Fund would be audited as of the end of each fiscal year by an independent accounting firm. The LPA also represented that as soon as practicable after an audit and, in no event later than 120 days after the fiscal year-end, the Fund would mail to each limited partner a copy of the audited financial statements prepared for the Fund.

55. These representations were false because an audit of the Fund was never completed.

56. Defendants also misrepresented that the Fund had an audit firm.

57. Numerous Investor Presentations and Performance Sheets stated that the Fund's Auditor is "Audit Firm 1 or Audit Firm 2" or that "Audit Firm 1" was the Fund's auditor. Defendants also listed Audit Firm 2 next to "Accounting" on Performance Sheets in June and November 2021. In reality, neither EIA nor the Fund has ever been a client of Audit Firm 1 or 2.

58. Beginning in at least December 2021, EIA and Middlebrooks began representing in Performance Sheets and Investor Presentations that Audit Firm 3 was the Fund's auditor. While Middlebrooks, on behalf of EIA, did sign an engagement letter with Audit Firm 3 in August 2021 for an audit of the Fund, Audit Firm 3 never did any work on, let alone complete, an audit of the financial statements for the Fund, nor did Audit Firm 3 create or issue any draft or final audit reports related to any such audits.

59. Rather than actually retain Audit Firm 3 to audit the Fund's financials, on information and belief Middlebrooks fabricated financial statements for the Fund and a related audit report for year-end 2020.

60. In order to fabricate these reports, Middlebrooks requested an engagement proposal from Audit Firm 3 in August 2021 as well as "templates of

the reports and statements” used by Audit Firm 3 and a “sample of a completed audit.”

61. In response, Audit Firm 3 provided Middlebrooks with an engagement proposal for audit and tax work for the Fund, as well as watermarked draft templates of an incomplete audit report and a financial statement spreadsheet.

62. Middlebrooks executed and returned a signature page for the engagement letter on August 31, 2021. Audit Firm 3 last heard from Middlebrooks on September 1, 2021.

63. On information and belief, Middlebrooks took the documents he received from Audit Firm 3 and fabricated audited Fund financial statements and a December 31, 2020 year-end audit report purportedly prepared by Audit Firm 3

64. Middlebrooks provided this fake report and falsified financial statements to at least two Fund participants who subsequently sent additional funds to Defendants for investment in the Fund.

65. A reasonable investor would have understood from the disclosures referenced above that Defendants had retained audit firms to audit the Fund’s financial statements and that these financial statements were true and accurate.

66. Each of the above disclosures regarding audit firms purportedly engaged by Defendants to audit the Fund’s financial statements was false when made, and Defendants knew or were reckless in not knowing, and should have

known, that their statements were false and misleading.

67. The above misrepresentations regarding audit firms purportedly engaged to audit the Fund's financial statements were material to existing and prospective Fund participants because a reasonable Fund participant would consider whether the Fund's financial statements were audited when assessing the reliability of representations regarding the Fund's financial condition and performance. Further, it was important to Fund participants that the Fund's financials were audited by an independent accounting firm, as evidenced by the fact that at least one Fund participant (Fund Participant 1) asked Defendants if the Fund was audited and requested audited financial statements.

4. Defendants Made False and Misleading Statements about the Fund's Purported Advisory Board.

68. Defendants also made misrepresentations about the existence of a purported advisory board to the Fund.

69. Investor Presentations disseminated to existing or prospective Fund participants represented that the Fund had a five- or six-member advisory board comprised of individuals with significant experience in the financial and investment industries, and included a photograph and narrative background for each member.

70. At least two of the purported members never served on the advisory board.

71. A reasonable Fund participant would have understood from the representations concerning the Fund advisory board that the experienced individuals listed as members of the Fund advisory board were in fact members of that board.

72. Each of the above disclosures was false when made, and Defendants knew or were reckless in not knowing, and should have known, that their statements were false and misleading, because at least two purported members of the Fund advisory board never served on the board.

73. The above misrepresentations regarding members of the Fund advisory board were material to existing and prospective Fund participants because, among other reasons, the purported presence of a Fund advisory board comprised of experienced investment professionals indicated that the Fund was well-established and bolstered the appearance that the Fund was legitimate and successful.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND
CFTC REGULATIONS**

Count I

**Violations of 7 U.S.C. § 6b(a)(1)(A)-(C)
Fraud in Connection with Futures
(Against All Defendants)**

74. The allegations set forth in the preceding paragraphs are realleged and incorporated herein by reference.

75. 7 U.S.C. § 6b(a)(1)(A)-(C) make it unlawful for any person, in or in connection with any order to make, or the making of, any contract for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: “(A) to cheat or defraud or attempt to cheat or defraud the other person;” “(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;” or “(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for ... the other person.”

76. During the Relevant Period and as described above, in connection with any contract for future delivery on or subject to the rules of any registered entity, Defendants violated 7 U.S.C. § 6b(a)(1)(A), (B), and/or (C) by, among other things, making false and misleading statements, issuing false records, and otherwise deceiving existing and prospective Fund participants about:

- (a) The Fund’s performance;
- (b) The amount of assets in the Fund;
- (c) An audit of the Fund’s financial statements and the Fund’s purported auditor; and

(d) The Fund's purported advisory board.

77. Defendants directly engaged in the acts and practices described above intentionally, knowingly, or with reckless disregard for the truth of their representations or omissions.

78. Middlebrooks directly or indirectly controlled EIA and did not act in good faith or knowingly induced, directly or indirectly, EIA's violations as alleged in this Count. Accordingly, Middlebrooks is liable for EIA's violations of 7 U.S.C. § 6b(a)(1)(A)-(C) as a controlling person pursuant to 7 U.S.C. § 13c(b).

79. The acts and omissions of Middlebrooks and all other agents of EIA and the Fund alleged herein occurred within the scope of their employment, office, or agency with EIA. Accordingly, EIA is liable under 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 (2021) for its agents' acts in violation of 7 U.S.C. § 6b(a)(1)(A)-(C).

80. Each act of misrepresentation or omission of a material fact, providing a false statement or report to Fund participants, and deceiving Fund participants, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6b(a)(1)(A), (B), and/or (C).

Count II

**Violations of 7 U.S.C. § 6c(b) and 17 C.F.R. 33.10 (2021)
Fraud in Connection with Options on Futures Contracts
(Against All Defendants)**

81. The allegations set forth in the preceding paragraphs are realleged and incorporated herein by reference.

82. 7 U.S.C. § 6c(b), provides that no person shall offer to enter into, enter into or confirm the execution of any transaction involving any option transaction contrary to any regulation of the Commission.

83. 17 C.F.R. § 33.10 (2021) makes it unlawful for any person, in connection with an option transaction, directly or indirectly, “(a) To cheat or defraud or attempt to cheat or defraud any other person;” “(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof” or “(c) To deceive or attempt to deceive any other person by any means whatsoever.”

84. During the Relevant Period and as described above, in connection with options on futures contracts, Defendants violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 33.10 (2021) by, among other things, making false and misleading statements, issuing false records, and otherwise deceiving existing and prospective Fund participants about:

- (a) The Fund's performance;
- (b) The amount of assets in the Fund;
- (c) An audit of the Fund's financial statements and the Fund's purported auditor; and
- (d) The Fund's purported advisory board.

85. Defendants directly engaged in the acts and practices described above intentionally, knowingly, or with reckless disregard for the truth of their representations or omissions.

86. Middlebrooks directly or indirectly controlled EIA and did not act in good faith or knowingly induced, directly or indirectly, EIA's violations as alleged in this Count. Accordingly, Middlebrooks is liable for EIA's violations of 7 U.S.C. § 6c(b) and 17 C.F.R. § 33.10 (2021) as a controlling person pursuant to 7 U.S.C. § 13c(b).

87. The acts and omissions of Middlebrooks and all other agents of EIA and the Fund alleged herein occurred within the scope of their employment, office, or agency with EIA. Accordingly, EIA is liable under 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 (2021) for its agents' acts in violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 33.10 (2021).

88. Each act of misrepresentation or omission of a material fact, providing a false statement or report to Fund participants, and deceiving Fund participants,

including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 33.10 (2021).

Count III

Violations of 7 U.S.C. § 6o(1)(A) and (B) Fraud and Deceit by a Commodity Pool Operator (Against All Defendants)

89. The allegations set forth in the preceding paragraphs are realleged and incorporated herein by reference.

90. A commodity pool is defined in 7 U.S.C. § 1a(10) as “any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests”

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

92. An AP is defined in 17 C.F.R. § 1.3 (2021) as any “partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.”

93. During the Relevant Period, EIA acted as a CPO, under Middlebrooks' direction and control, and Middlebrooks acted as an AP of a CPO, by soliciting, accepting, or receiving funds from others for the purpose of trading in commodity interests.

94. 7 U.S.C. § 6o(1)(A) and (B) make it unlawful for a CPO or an AP of a CPO, "by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly . . . (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant." As provided in 17 C.F.R. § 4.15 (2021), 7 U.S.C. § 6o(1) applies to all CPOs and APs of CPOs whether registered, required to be registered, or exempted from registration.

95. During the Relevant Period and as described above, EIA, acting as a CPO, and Middlebrooks, acting as an AP of a CPO, while using the mails or other means or instrumentality of interstate commerce, violated 7 U.S.C. § 6o(1)(A) and (B) by, among other things, making false and misleading statements, issuing false records, and otherwise deceiving existing and prospective Fund participants about:

- (a) The Fund's performance;
- (b) The amount of assets in the Fund;
- (c) An audit of the Fund's financial statements and the Fund's

purported auditor; and

(d) The Fund's purported advisory board.

96. Middlebrooks directly or indirectly controlled EIA and did not act in good faith or knowingly induced, directly or indirectly, EIA's violations as alleged in this Count. Accordingly, Middlebrooks is liable for EIA's violations of 7 U.S.C. § 6o(1)(A) and (B) as a controlling person pursuant to 7 U.S.C. § 13c(b).

97. The acts and omissions of Middlebrooks and all other agents of EIA and the Fund alleged herein occurred within the scope of their employment, office, or agency with EIA. Accordingly, EIA is liable under 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 (2021) for its agents' acts in violation of 7 U.S.C. § 6o(1)(A) and (B).

98. Each misrepresentation or omission of material fact, employment of a device, scheme, or artifice to defraud, and transaction, practice, or course of business which operated as a fraud or deceit made during the Relevant Period, including, but not limited to, those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6o(1)(A) and/or (B).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by 7 U.S.C. § 13a-1 and pursuant to its own equitable powers:

A. Find that Defendants violated 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), and

6o(a)(1)(A) and (B), and 17 C.F.R. § 33.10 (2021).

B. Enter an order of permanent injunction enjoining Defendants, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, who receive actual notice of such order by personal service or otherwise, from engaging in the conduct described above, in violation of 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), and 6o(a)(1)(A) and (B), and 17 C.F.R. § 33.10 (2021).

C. Enter an order of permanent injunction restraining and enjoining Defendants, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, from directly or indirectly:

- (1) Trading on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40));
- (2) Entering into any transactions involving “commodity interests” (as that term is defined in 17 C.F.R. § 1.3 (2021)), for accounts held in the name of either Defendant or for accounts in which either Defendant has a direct or indirect interest;
- (3) Having any commodity interests traded on either Defendant’s behalf;
- (4) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

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

(6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9) (2021); and/or

(7) Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2021)), agent, or any other officer or employee of any person registered, exempt from registration with the CFTC, or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9) (2021).

D. Enter an order directing that Defendants, as well as any third-party transferee and/or successors thereof, disgorge pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein, including pre-judgment and post-judgment interest;

E. Enter an order requiring Defendants, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgment and

post-judgment interest;

F. Enter an order directing Defendants, as well as any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between, with or among Defendants and any of the Fund participants whose funds were received by Defendants as a result of the acts and practices that constituted violations of the Act and Regulations as described herein;

G. Enter an order requiring Defendants to pay civil monetary penalties assessed by the Court, in an amount not to exceed the penalty prescribed by 7 U.S.C. § 13a-1(d)(1), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, tit. VII, § 701, 129 Stat. 584, 599-600, *see* 17 C.F.R. § 143.8 (2021), for each violation of the Act and Regulation, as described herein;

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2); and

I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: August 19, 2022

Respectfully submitted,

/s Daniel C. Jordan
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