

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TOLLER STERN FINANCIAL LLC, a Florida company,
FRANCISCO JAVIER MALAVE HERNANDEZ, and
RICARDO JAVIER GUERRA FARIAS,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission (the “Commission”) alleges:

I. INTRODUCTION

1. Defendants Francisco Javier Malave Hernandez (“Malave”) and Ricardo Javier Guerra Farias (“Guerra”; collectively, the “Individual Defendants”), two Venezuelan citizens residing in South Florida, raised approximately \$5 million from at least 29 U.S. and foreign investors, including from members of the Venezuelan-American community, through a series of unregistered, fraudulent offerings conducted through Defendant Toller Stern Financial, LLC (“Toller Stern”), an unregistered investment adviser, and other entities owned and controlled by Malave and Guerra.

2. Between April 2019 and July 2022, Malave, through JDVP Financial Services Group, LLC (“JDVP Financial”) and Defendant Toller Stern, issued approximately \$2.2 million of securities in the form of promissory notes to at least 19 investors. Malave also participated with Guerra in other unregistered, fraudulent offerings by Toller Stern Asset Management Corp.

(“Toller Asset”), which Guerra owned and controlled. Toller Asset issued promissory notes, worth approximately \$2.8 million, to at least 10 investors between February 2021 and March 2022. The term “Note(s)” refers to the JDVP Financial, Toller Stern, and/or Toller Asset promissory notes described above. Through their respective entities, Malave and Guerra pitched the offerings as passive and secure investments paying annual interest rates between 24 and 72 percent.

3. Toller Stern, Malave, and Guerra used a combination of in-person pitches, emails, text messages, written marketing brochures and business plans, and a website to solicit investors and to falsely portray the investments as safe and lucrative. Defendants falsely represented to investors that Toller Stern and Toller Asset used investor money solely for the companies’ day-to-day operations and for working capital to invest in equities, crypto assets, real estate, and foreign exchange markets using an alleged automated trading platform (the “Trading Platform”).

4. In reality, Toller Stern, Malave, and Guerra never received any trading profits or money back from the Trading Platform. Further, they commingled Toller Stern and Toller Asset investor capital and used the commingled funds to make Ponzi-like payments to other investors. Malave, directly and indirectly, misappropriated \$558,900. Guerra misappropriated at least \$109,500. Defendants also misled investors about Toller Stern’s and Toller Asset’s financial conditions and operations.

5. The scheme unraveled during the first half of 2022 when Toller Stern and Toller Asset stopped making interest payments to investors. Even then, Defendants continued to lie to investors about the ceased payments, including blaming the late payments on a banking issue, and later claiming their accounts were frozen (but unable to explain why). Ultimately, Defendants disclosed to some investors that a colleague in South America, who was purportedly operating the Trading Platform, had lost or stolen investors’ money.

6. By engaging in this conduct, the Defendants violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a) and (c) and 77q(a)], and 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]. Toller Stern and Malave also violated Sections 206(1) and (2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-6(1) and (2)] and breached the fiduciary duties they owed to their advisory clients.

7. Unless enjoined, Defendants will continue to violate the federal securities laws. The Commission seeks injunctive relief, as well as disgorgement and civil penalties against Defendants. The Commission also seeks an order imposing an officer and director bar against Malave and Guerra.

II. DEFENDANTS AND RELATED ENTITIES

A. Defendants

8. Toller Stern is a Florida limited liability company with its supposed principal place of business in St. Petersburg, Florida. Between 2020-2022, Toller Stern’s principal place of business was Miami, Florida, where it offered, sold, and issued Notes to investors. Toller Stern held itself out as an investment adviser and a company that used working capital to invest in equities, crypto assets, real estate, and other investments. Toller Stern has never been registered with the Commission, nor had any securities registered with the Commission.

9. Malave is a Venezuelan citizen residing in Weston, Florida who, during the offerings, operated JDVP Financial and Toller Stern from Miami, Florida. Malave was the manager, member, and key executive controlling JDVP Financial and Toller Stern, and he signed the Notes issued by both companies. Malave was the signer for and controlled Toller Stern’s bank accounts. Malave has never been registered with the Commission or held any securities licenses.

10. Guerra is a Venezuelan citizen residing in Doral, Florida. Guerra was the principal and sole owner of Toller Asset and signed the Notes issued by Toller Asset. Guerra was the sole signatory and controlled the Toller Asset bank accounts. Guerra has never been registered with the Commission or held any securities licenses.

B. Related Non-Party Entities

11. JDVP Financial was a Florida limited liability company that was voluntarily dissolved in July 2022. JDVP Financial's principal place of business was in Miami, Florida. Malave owned or controlled JDVP Financial. JDVP Financial has never been registered with the Commission or had any securities registered with the Commission.

12. Toller Asset was a Florida corporation with its principal place of business in Miami, Florida that was administratively dissolved by the State of Florida in September 2023 for failing to file an annual report. Guerra owned and controlled Toller Asset. Toller Asset has never been registered with the Commission or had any securities registered with the Commission.

III. JURISDICTION AND VENUE

13. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)]; Sections 21(d), 21(e) and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa(a)], and Sections 209(d) and 214(a) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-14(a)].

14. This Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)] because, among other things, during the time of the violative conduct alleged herein: (i) Defendant Malave resided in Weston, Florida; (ii) Defendant Guerra resided in Doral,

Florida; and (iii) all Defendants transacted business or engaged in the violative conduct at issue in this District. In particular, Toller Stern maintained offices in this District and Malave and Guerra conducted, supervised, and managed all aspects of Toller Stern's and Toller Asset's respective business from this District, including meeting with, soliciting, and selling Notes to investors and thereafter communicating with those investors.

15. As alleged in this Complaint, Defendants, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce.

IV. DEFENDANTS' FRAUDULENT SCHEME

A. Defendants' Unregistered Securities Offerings

16. From approximately April 2019 until July 2022, Malave and Guerra, through Toller Stern, Toller Asset, and JDVP Financial, engaged in the offer and sale of unregistered securities in the form of the Notes with promised annualized returns of 24 to 72 percent. Many of the investors were members of the South Florida Venezuelan-American community, but also included investors in Venezuela, Spain, Argentina, and Portugal.

17. Malave and Guerra solicited prospective investors through phone, email, text messages, the use of a website, and through in-person meetings.

18. Malave represented to investors that he was a financial adviser, President and owner of Toller Stern, and a co-owner of an affiliate, Toller Stern Financial International. Malave told investors that Toller Stern used its "working capital" to invest in equities, crypto assets, real estate, and other investments through the Trading Platform. Malave recommended the Notes and emphasized the monthly interest payments investors would receive. Malave assured investors they

would not lose money and promised that investments were secured by Toller Stern's \$12 million in assets.

19. Malave provided at least some investors with a Toller Stern business plan or a marketing brochure (the "Toller Stern Brochure"), which portrayed Toller Stern as an international conglomerate of companies with 10 subsidiaries and commercial allies around the world. The Toller Stern Brochure also represented Toller Stern as having "high profile professionals with vast experience to help the clients organize and reach [the] personal wants and needs of [the] clients[.]" and claimed "to comprehensively tailor-fit portfolios to [its] clients." Malave also directed prospective investors to the Toller Stern website which described Toller Stern's services and investment opportunities. Malave represented in the Toller Stern Brochure and on Toller Stern's website that Toller Stern provided tailored investment adviser services to individuals interested in investing in mutual funds, stocks, bonds, treasury notes, and other investments.

20. Malave also assisted Guerra in raising money for Toller Asset by participating in sales pitches to prospective Toller Asset investors. In those meetings with prospective investors, Malave and Guerra explained they had an asset management fund, Toller Asset, that invested in, among others, crypto-assets, foreign exchange transactions, equities, and a Greek hotel. Malave and Guerra claimed they had approximately \$20 million in assets under management with monthly returns ranging from 4 to 10 percent. Malave explained he was the financial expert for the fund and Guerra ran the day-to-day operations of getting money from investors and into the fund.

21. At least 12 of the Notes issued by Toller Stern, Toller Asset, and JDVP Financial promised investors that they were secured by tangible and intangible assets and equity belonging to the respective companies. When Toller Stern, JDVP Financial, and Toller Asset issued these

Notes, which were signed by Malave or Guerra, the companies did not own any assets or valuable equity, which made the purported security interests illusory.

22. The written terms of most of the Notes say that Toller Stern and Toller Asset would use investor funds solely for the purpose of day-to-day operations or working capital. In reality, the companies used investor funds for purposes other than those stated, including paying other investors without the companies generating any profits, paying finders, paying the Individual Defendants' personal expenses, and transferring money to others.

23. Of the approximately \$2.2 million raised by Malave and Toller Stern, bank records show Toller Stern used: (i) approximately \$1.5 million to pay investors; and (ii) approximately another \$319,000 to pay relatives (some of whom were investors). Malave also misappropriated at least \$365,700 of investor funds for personal use.

24. Of the approximately \$2.8 million raised by Toller Asset, bank records show Toller Asset used: (i) approximately \$560,000 to pay investors; (ii) \$193,200 to a company owned by Malave and his wife; (iii) approximately \$316,000 to pay Toller Stern; and (iv) approximately \$625,000 to pay other entities and individuals. Guerra also misappropriated at least \$109,500 of investor funds for personal use.

25. Defendants pooled investor funds together in Toller Stern's and Toller Asset's bank accounts. Investors completely depended on Defendants to make successful investments to generate investment returns, to pay the specified interest, and to return the investors' principal. Defendants exercised exclusive control over investors' funds, including making all investment decisions purportedly generating investor returns.

26. Defendants engaged in general solicitation activities when offering and selling the Notes to investors and prospective investors. Defendants did not verify whether prospective

investors, including those described below, qualified as accredited investors, nor did they provide investors with any financial information about JDVP Financial, Toller Stern, or Toller Asset.

27. The Notes issued by JDVP Financial, Toller Stern, and Toller Asset are securities within the meaning of the Securities Act, the Exchange Act, and the Advisers Act. The Notes are investment contracts because: (i) they were sold to investors for money; (ii) Defendants offered the Notes through a common enterprise; (iii) the investors expected to profit from the Notes; and (iv) all investor profits were to be generated by Defendants' efforts. No registration statement was filed with the Commission pursuant to the Securities Act relating to the investments Defendants offered and sold, and no exemption from registration existed with respect to the Notes issued by JDVP Financial, Toller Stern, or Toller Asset.

B. Defendants' Materially False and Misleading Statements

28. Defendants made materially false and misleading statements to investors about, among other things: (i) the profitability of investments in the Notes; (ii) misrepresenting that the Notes were secured by assets; (iii) misrepresenting the value of assets under management and the operations of the companies issuing the Notes; and (iv) misrepresenting how investor funds would be used. The following are a representative sample of the materially false and misleading statements made by Defendants to investors.

(1) Materially False and Misleading Statements About JDVP Financial

31. From at least as early as April 15, 2019, until at least July 30, 2019, Malave, on behalf of JDVP Financial, offered and sold promissory notes signed by Malave and issued by JDVP Financial (the "JDVP Financial Notes") to Investor AB and others.

32. JDVP Financial, through Malave, guaranteed the profitability of investments in the JDVP Financial Notes and represented to Investor AB that the notes were secured by assets

belonging to JDVP Financial and its subsidiaries (the “JDVP Collateral”). Investor AB’s JDVP Financial Notes specifically promised that the JDVP Collateral secured the investments.

33. JDVP Financial’s and Malave’s representations about the JDVP Collateral given to Investor AB were materially false and misleading. Neither JDVP Financial nor Malave told Investor AB that JDVP Financial did not own assets and that the security interests were illusory because there was no secured property.

34. Based on Malave’s assurances about the safety and security of the JDVP Financial Note and its profitability, Investor AB contributed a total of \$70,000 in exchange for four JDVP Financial Notes. Specifically, on or about April 15, 2019, Investor AB paid \$30,000 in exchange for JDVP Financial Note number 6513. On or about June 15, 2019, Investor AB paid \$10,000 in exchange for JDVP Financial Note number 6551. On or about June 25, 2019, Investor AB paid \$15,000 in exchange JDVP Financial Note number 6559. And, on or about July 30, 2019, Investor AB paid \$15,000 in exchange JDVP Financial Note number 6563. Investor AB made these payments per Malave’s instructions.

35. JDVP Financial Note numbers 6513, 6551, 6559, and 6563 each promised to pay 36 percent annualized interest and to return principal at the end of the term of each respective Note.

36. In 2020, Malave told Investor AB that JDVP Financial merged with Toller Stern and that JDVP Financial’s debt, including Investor AB’s Notes, rolled into Toller Stern debt.

37. Investor AB received the promised interest payments pursuant to each of the JDVP Financial Notes until February of 2022, when the interest payments unexpectedly stopped. Since then, neither Toller Stern, which had assumed JDVP Financial’s obligations, nor Malave have returned Investor AB’s capital or paid any additional interest due pursuant to these Notes.

(2) **Materially False and Misleading Statements About Toller Stern**

a. Investor AB

38. On or about April 15, 2020, Investor AB received Toller Stern Note FX. 004 in exchange for providing Toller Stern with \$30,000. Malave, on behalf of Toller Stern, offered and sold to Investor AB Toller Stern Note FX. 004, which he signed and issued. To entice Investor AB to make the investment, Toller Stern and Malave promised to pay annualized interest of 54 percent and to return the \$30,000 principal at the end of the term of Toller Stern Note FX. 004.

39. When pitching Investor AB, Malave represented that Toller Stern made approximately 12 percent per month from the capital it invested and guaranteed Investor AB would make money. Malave also provided a copy of the Toller Stern Brochure to Investor AB.

40. The Toller Stern Brochure given to Investor AB represented Toller Stern Financial Group as a multinational corporation with “more than 10 subsidiaries and commercial allies, [with] hubs in Vienna, Dublin, Bogota, Miami, Mumbai, and Mexico DF” providing comprehensive financial planning and suitable wealth management services. In reality, Toller Stern did not have ten subsidiaries and did not operate in all of those locations. The Toller Stern Brochure also falsely represented that Toller Stern had more than \$12 million in assets under management. It also represented that Toller Stern had an international real estate portfolio, including a premium 6-star hotel in Skroponeria, Greece, when, in fact, Toller Stern had no international real estate portfolio.

41. The promise of 54 percent annualized returns was not the only enticement Defendants Malave and Toller Stern made to Investor AB. Toller Stern Note FX. 004 specifically provided that it was secured by the tangible and intangible assets, money market instruments, and equity of Toller Stern. These representations were false and misleading when made because Toller

Stern and its purported subsidiaries did not own any assets, money market instruments, or valuable equity. The foregoing misrepresentations and omissions were material.

42. Investor AB invested with Malave and Toller Stern based on their guarantee that Investor AB would not lose money, the high interest rate and return of principal, and based on the representation that investments were safe and secure given the extent of Toller Stern's operations, including purportedly having \$12 million in assets under management and an international real estate portfolio that included a hotel in Greece.

43. Toller Stern has failed to make any interest payments due under Toller Stern Note FX. 004 and also has failed to return Investor AB's \$30,000 in principal.

b. Investor DO

44. Investor DO met Malave in 2020 and thereafter made three investments with Malave and Toller Stern totaling \$180,000 in exchange for receiving certain Notes signed by Malave and issued by Toller Stern. Malave represented that Toller Stern managed funds for retirement and that it diversified its investments by investing in different areas, including foreign currency exchange, stock, and commodities markets. Malave and Toller Stern each represented Toller Stern's business was structured in three areas: international real estate, venture capital projects, and trading through the proprietary high-performance Trading Platform. Malave provided Investor DO with the Toller Stern Brochure, which made the same misrepresentations described in Paragraph 40 above, and also directed Investor DO to the Toller Stern website.

45. Toller Stern, through Malave, touted to Investor DO its automated Trading Platform, consisting of "14 Artificial Intelligence Modules developed with Machine Learning features that continuously track the market." Malave and Toller Stern represented the Trading Platform used more than "250 optimized strategies, prove[n] over the last 20 years of historical

data and monitored, maintained and updated by more [than] 18 financial software engineers daily[.]” When describing this Trading Platform, Malave failed to tell Investor DO that Malave and Toller Stern had never received any money back from the Trading Platform.

46. On or about September 17, 2020, Investor DO invested \$45,000 with Toller Stern in exchange for Toller Stern Note number 1039, which was provided to Investor DO online via DocuSign. Malave signed Toller Stern Note 1039 on behalf of Toller Stern.

47. To entice Investor DO to make the investment, Toller Stern and Malave promised to pay 42-percent annualized interest, and to return the \$45,000 principal at the end of the six-month term of Note 1039.

48. In addition to the promise of high returns, Note 1039 also claimed to be secured by the tangible and intangible assets, money market instruments, and equity of Toller Stern. Those representations were false, misleading, and illusory when made because Toller Stern did not own any such assets, instruments, or equity. These misrepresentations and omissions were material.

49. Investor DO invested with Malave and Toller Stern based on their guarantee that Investor DO would not lose money, the high interest rate and return of principal, and based on the representation that investments were safe and secured by \$12 million in assets.

50. On or about March 30, 2021, Investor DO made a second \$45,000 investment with Malave and Toller Stern in exchange for receiving Toller Stern Note number 1051, also provided online by DocuSign, and in September 2021 renewed the note for an additional six months. Malave signed Toller Stern Note number 1051 and the renewal Note on behalf of Toller Stern.

51. On or about April 12, 2021, and following the expiration of Toller Stern Note number 1039, Investor DO spoke with Malave and agreed to roll the principal for Toller Stern Note number 1039 into another promissory note issued by Toller Stern. Toller Stern then issued

Toller Stern Note number 1065, provided to Investor DO online with DocuSign, promising to pay 60 percent per year in interest for a term of 6 months. Malave signed Toller Stern Note number 1065 on behalf of Toller Stern. Investor DO renewed Toller Stern Note number 1065 for additional 6-month terms on or about September 18, 2021, and then again on April 7, 2022.

52. On or about April 19, 2022, Investor DO made a third investment with Defendants Malave and Toller Stern, contributing \$90,000 in exchange for Toller Stern Note number 1083, which promised to pay 60 percent per year for a term of 6 months. Malave signed Toller Stern Note number 1083 on behalf of Toller Stern and provided it to Investor DO online via DocuSign.

53. Toller Stern Note numbers 1051, 1065, 1083, and their respective renewal Notes each disclosed that Toller Stern would use the investment funds “for the sole purpose [of Toller Stern’s] day to day operations and any of its partner or affiliate firms. The principal balance shall not be used for payment to members or any other expense that are not related to [Toller Stern’s] day to day operations and any of its partner or affiliate firms.” These representations were material. The representations were also false because, among other things, Defendants Malave and Toller Stern used investor funds for purposes other than the day-to-day operations of Toller Stern, including commingling investor funds, paying Malave personally, paying for Malave’s personal expenses, paying other investors, and transferring money to other entities and individuals.

54. Since May 15, 2022, Toller Stern has not made any interest payments relating to Investor DO’s Notes and has not returned Investor DO’s \$180,000 in total principal.

c. Investor AHS

55. In 2021, Investor AHS made two investments with Malave and Toller Stern totaling \$100,000. Specifically, on or about June 30, 2021, Investor AHS invested \$50,000 and received Toller Stern Note number 1060, which Malave signed and which promised to pay interest monthly

at a 48 percent annualized rate. After the six-month term ended in January 2022, Investor AHS renewed Note number 1060 for an additional 6 months, and Malave signed the renewal Note.

56. Investor AHS made a second \$50,000 investment on or about December 30, 2021, and received Toller Stern Note number 1077, signed by Malave, promising to pay 54 percent annualized interest. Malave and Toller Stern provided all of Investor AHS's Notes, and Investor AHS signed those Notes, online via DocuSign.

57. Before investing, Investor AHS received a brochure stating that Toller Stern "offers the highest level of financial planning services" and provides "investment advisor services by creating tailored investment strategies and planning for the clients to help them manage their assets[.]" The brochure claimed that Toller Stern: (i) always placed clients first; and (ii) had more than \$12 million in assets under management.

58. These representations also were false. First, Toller Stern did not place its clients first given that Toller Stern and Malave commingled investor funds, paid themselves with investor funds, and paid investors' interest using other investor funds. Second, Toller Stern never had anywhere near \$12 million in assets under management.

59. Toller Stern Note number 1060 (and its renewal) and Note number 1077 each disclosed that investment funds: "are to be used for the sole purpose [of Toller Stern's] day to day operations and any of its partner or affiliate firms. The principal balance shall not be used for payment to members or any other expense that are not related to [Toller Stern's] day to day operations and any of its partner or affiliate firms."

60. These material representations concerning the use of investor funds were false because, among other things, Defendants Malave and Toller Stern commingled investor funds, and

used them: (i) to pay Malave personally; (ii) to pay Malave's personal expenses; (iii) to pay other investors; and (iv) to pay other entities and individuals.

61. Before Investor AHS's investments, Defendants Malave and Toller Stern touted their Trading Platform but failed to disclose to Investor AHS that Toller Stern had never received any money back from the Trading Platform.

62. Investor AHS received 11 interest payments pursuant to Note number 1060, but never received the last interest payment or the return of the \$50,000 in principal.

63. Investor AHS received only 1 interest payment pursuant to Note number 1077, and never received the return of the \$50,000 in principal.

64. Toller Stern stopped making interest payments to Investor AHS in June 2022.

(3) **Materially False and Misleading Statements About Toller Asset**

65. Investor AC met Defendants Malave and Guerra in early 2021 at the Toller Stern Brickell Avenue office in Miami, Florida.

66. Malave and Guerra told Investor AC that they had an asset management fund called Toller Asset that invested in crypto assets, foreign exchange transactions, equities, and a Greek hotel. Malave and Guerra also explained that Malave was the "financial expert" for the fund and Guerra ran the day-to-day operations by working with potential investors to raise capital.

67. Malave and Guerra represented they had approximately \$20 million in assets under management generating monthly returns ranging from 4 to 10 percent and that Malave and Guerra would be paid by taking 60-70 percent of the profits generated by the fund. Malave and Guerra each guaranteed that Investor AC would not lose money if Investor AC invested. Malave and Guerra specifically offered Investor AC the opportunity to invest in safe and secure promissory notes paying guaranteed interest. However, Investor AC did not make an investment at that time.

68. Later, Guerra provided Investor AC with a copy of a Toller Stern marketing brochure, which touted the benefits of investing with Toller Stern, including professional guidance, long-term investments, profitable market execution, in-house development and monitoring of the Trading Platform, and no hidden fees. The brochure also referenced a Toller Stern website at www.tollersternfinancial.com, which Investor AC accessed and reviewed.

69. Based on Malave's and Guerra's respective representations, Investor AC decided to invest with Toller Asset, Malave, and Guerra through an entity. Specifically, on or about October 25, 2021, Investor AC wired \$100,000 to Toller Asset's bank account. In exchange, Investor AC received Toller Asset Note number 1147, signed by Guerra, which promised to pay 48 percent annualized interest, on a quarterly basis, beginning March 15, 2022.

70. After the first investment, Investor AC met with Malave and Guerra at the Toller Stern office to discuss a second investment. Around December 27, 2021, Investor AC made a \$25,000 investment and, as instructed by Malave and Guerra, wired the funds to Toller Stern's bank account. In exchange, Investor AC received Toller Asset Note number 1158, signed by Guerra, promising to pay 48 percent annualized interest on a quarterly basis beginning on May 30, 2022. This Note and Note number 1147 were both provided to Investor AC online via DocuSign.

71. Toller Asset Note numbers 1147 and 1158 represented that Investor AC's funds would "be used for the sole purpose of day-to-day operations and working capital of [Toller Asset] and any of its partner or affiliate firms" and that the funds "shall not be used" for any other purpose.

72. Guerra knew these representations to be false because Toller Asset had been paying investor interest with funds received from other investors rather than trading profits from the Trading Platform or other revenue generated by Toller Asset.

73. Toller Asset Note numbers 1147 and 1158 also unconditionally guaranteed all of Toller Asset's obligations and represented that they were secured by all of Toller Asset's tangible and intangible assets. Guerra knew these material representations were false when made because Guerra knew that Toller Asset did not own any assets.

74. In March 2022, Toller Asset stopped making interest payments pursuant to the Toller Asset Notes it issued, including on Toller Asset Note numbers 1147 and 1158. Investor AC met with Malave and Guerra at the Toller Stern office in April 2022 to find out why payments stopped. Malave told Investor AC the lack of interest payments was "no big deal" and that they had the money to pay investors, including Investor AC.

75. That story then changed over time. During the first week of April, Malave and Guerra said the nonpayment was a banking issue. Malave and Guerra next claimed their accounts were frozen during the second and third weeks of April 2022, but neither Malave nor Guerra could explain why the accounts were frozen. Soon thereafter, Malave stopped responding to all inquiries, no one could be found at the Toller Stern office, and the Toller Stern website was disabled.

V. CLAIMS FOR RELIEF

COUNT I

Violations of Sections 5(a) and 5(c) of the Securities Act Against All Defendants

76. The Commission repeats and realleges Paragraphs 1 through 75 of this Complaint.

77. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities issued by Defendants as described in this Complaint, and no exemption from registration existed with respect to these securities.

78. From approximately August 2019 until at least July 2022, Malave and Toller Stern, directly and indirectly:

- a. made use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- b. carried or caused to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or
- c. made use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security,

without a registration statement having been filed or being in effect with the Commission as to such securities.

79. From approximately February 2021 until at least March 2022, Guerra, directly and indirectly:

- a. made use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- b. carried or caused to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or
- c. made use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security,

without a registration statement having been filed or being in effect with the Commission as to such securities.

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

COUNT II

Violations of Section 17(a)(1) of the Securities Act Against All Defendants

81. The Commission repeats and realleges Paragraphs 1 through 75 of this Complaint.

82. From approximately April 2019 until approximately July 2022, Toller Stern and Malave, in the offer or sale of securities by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, knowingly or recklessly employed devices, schemes or artifices to defraud.

83. From approximately February 2021 until at least March 2022, Guerra, in the offer or sale of securities by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, knowingly or recklessly employed devices, schemes or artifices to defraud.

84. By reason of the foregoing, the Defendants, directly or indirectly, have 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 III

Violations of Section 17(a)(2) of the Securities Act Against All Defendants

85. The Commission repeats and realleges Paragraphs 1 through 75 of this Complaint.

86. From approximately April 2019 until approximately July 2022, Toller Stern and Malave, in the offer or sale of securities by use of the 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.

87. From approximately February 2021 until at least March 2022, Guerra, in the offer or sale of securities by use of the 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.

88. By reason of the foregoing, the Defendants, directly and indirectly, have 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 IV

Violations of Section 17(a)(3) of the Securities Act Against All Defendants

89. The Commission repeats and realleges Paragraphs 1 through 75 of this Complaint.

90. From approximately April 2019 until approximately July 2022, Toller Stern and Malave, in the offer or sale of securities by use of the 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 have operated as a fraud or deceit upon the purchasers.

91. From approximately February 2021 until at least March 2022, Guerra, in the offer or sale of securities by use of the 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 have operated as a fraud or deceit upon the purchasers.

92. By reason of the foregoing, the Defendants, directly and indirectly, have 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 V

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) Against All Defendants

93. The Commission repeats and realleges Paragraphs 1 through 75 of this Complaint.

94. From approximately April 2019 until approximately July 2022, Toller Stern and Malave, directly or indirectly, by use of the means and instrumentalities of interstate commerce, or of the mails, knowingly or recklessly employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

95. From approximately February 2021 until at least March 2022, Guerra, directly or indirectly, by use of the means and instrumentalities of interstate commerce, or of the mails, knowingly or recklessly employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

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

COUNT VI

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Against All Defendants

97. The Commission repeats and realleges Paragraphs 1 through 75 of this Complaint.

98. From approximately April 2019 until approximately July 2022, Toller Stern and Malave, directly or indirectly, by use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly made

untrue statements of material facts or 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.

99. From approximately February 2021 until at least March 2022, Guerra, directly or indirectly, by use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly made untrue statements of material facts or 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.

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

COUNT VII

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(c) Against All Defendants

101. The Commission repeats and realleges Paragraphs 1 through 75 of this Complaint.

102. From approximately April 2019 until approximately July 2022, Toller Stern and Malave, directly or indirectly, by use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly engaged in acts, practices, and courses of business which have operated as a fraud upon the purchasers of such securities.

103. From approximately February 2021 until at least March 2022, Guerra, directly or indirectly, by use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly engaged in acts, practices, and courses of business which have operated as a fraud upon the purchasers of such securities.

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

COUNT VIII

Violations of Section 206(1) of the Advisers Act Against Toller Stern and Malave

105. The Commission repeats and realleges Paragraphs 1 through 75 of this Complaint.

106. From approximately April 2019 until approximately July 2022, Toller Stern and Malave, for compensation, engaged in the business of directly advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. Toller Stern and Malave were therefore “investment advisers” within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

107. Toller Stern and Malave, by the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, knowingly or recklessly employed a device, scheme, or artifice to defraud one or more clients or prospective clients.

108. By reason of the foregoing, Toller Stern and Malave violated and, unless enjoined, are reasonably likely to continue 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 Against Toller Stern and Malave

109. The Commission repeats and realleges Paragraphs 1 through 75 and 106 of this Complaint.

110. From approximately April 2019 until approximately July 2022, Toller Stern and Malave, by the 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.

111. By reason of the foregoing, Toller Stern and Malave each 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

The Commission respectfully requests the Court find that the Defendants committed the foregoing violations, and:

A. Permanent Injunction

Issue a permanent injunction enjoining the Individual Defendants and Toller Stern and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder; and further enjoining Toller Stern and Malave from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)].

B. Disgorgement and Prejudgment Interest

Issue an order directing Defendants to disgorge all ill-gotten gains or proceeds received, with prejudgment interest thereon, resulting from the acts and/or courses of conduct complained in this Complaint.

C. Civil Monetary Penalties

Issue an order directing Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)],

and, for Malave and Toller Stern, pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

D. Officer and Director Bar Against Defendants Malave and Guerra

Issue an order 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)], permanently prohibiting Malave and Guerra from acting as an officer or director of any issuer whose securities are registered with the Commission pursuant to Section 12 of the Exchange Act or which is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act.

E. Further Relief

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

F. Retention of Jurisdiction

Further, the Commission requests the Court retain jurisdiction over this action and over Defendants in order to implement and carry out the terms of all orders 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. DEMAND FOR JURY TRIAL

The Commission hereby demands a trial by jury on any and all issues in this action so triable.

Dated: September 3, 2024

Respectfully submitted,

s/ Brian Lechich

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