UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. **CUMBERLAND DRW LLC,** Defendant.	**24-CV-9842** **Complaint** **Jury Trial Demanded**

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission" or "SEC"), for its Complaint against Defendant Cumberland DRW LLC ("Cumberland"), alleges as follows:

SUMMARY

1. Since at least March 2018 and continuing through the present ("Relevant Time Period"), Defendant Cumberland bought and sold, for its own accounts as part of its regular business, at least $2 billion worth of crypto assets that were offered and sold as securities.

2. In doing so, Cumberland acted as a securities dealer but failed to register as a securities dealer with the Commission, in violation Section 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act"). Cumberland thus has reaped millions of dollars in ill-gotten gains by trading with investors while depriving them and the markets of the protections of the federal securities laws' registration provisions.

3. Cumberland publicly calls itself "one of the world's leading liquidity providers" in crypto assets. It operates its unregistered dealer business 24 hours a day, seven days a week, by trading with counterparties via telephone and its online trading platform, which Cumberland

describes as a “single dealer trading platform.” Cumberland provides price quotes to counterparties—oftentimes with large spreads between the bid and ask—to either buy or sell crypto assets offered and sold as securities. Cumberland profits by, among other things, capturing or earning the spread (or difference) between the purchase and sale prices of the securities or from closing positions that have increased in value.

4. Cumberland also employs a team of research analysts and relationship managers who create and publicly publish research reports regarding the crypto asset industry and certain crypto assets offered and sold as securities, which Cumberland characterizes to its counterparties as potentially lucrative investment opportunities in the future success of crypto asset projects that will purportedly provide lower blockchain transaction fees and higher speeds, new forms of blockchain technology, or more efficient storage networks.

5. By buying and selling securities for its own account as part of its regular business, Cumberland has acted as a dealer without registration, or exemption from such registration, in violation of Exchange Act Section 15(a) [15 U.S.C. § 78o(a)]. Unless Cumberland is permanently restrained and enjoined, it will continue to violate this statute.

6. The Commission seeks a final judgment: (i) permanently enjoining Defendant from violating Exchange Act Section 15(a) [15 U.S.C. § 78o(a)]; (ii) ordering disgorgement of all ill-gotten gains from the unlawful conduct set forth in this Complaint, together with prejudgment interest; (iii) imposing civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and (iv) ordering such other relief as the Court may deem just and proper.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the acts, practices, transactions and courses of business alleged in this Complaint occurred within the Northern District of Illinois, and were effected, directly or indirectly, by making use of means or instrumentalities of transportation or communication in interstate commerce, or the mails. In addition, Defendant is headquartered in Chicago, Illinois.

DEFENDANT

9. Cumberland is a Delaware limited liability company with its principal place of business in Chicago, Illinois. Prior to February 2019, it operated under the name Cumberland Mining & Materials LLC. It is a subsidiary of DRW Holdings, LLC ("DRW Holdings").

RELATED ENTITY

10. DRW Holdings is a privately held Delaware limited liability company with its principal place of business in Chicago, Illinois. DRW Holdings owns several broker-dealers registered with the Commission, which largely engage in principal trading across various securities asset classes.

BACKGROUND

A. Statutory and Legal Framework Regarding the Scope of U.S. Securities Laws

11. As the Supreme Court has recently reemphasized, the Exchange Act and the Securities Act of 1933 ("Securities Act") "form the backbone of American securities laws." *Slack Tech., LLC v. Pirani*, 598 U.S. 759, 762 (2023). Together, these Acts provide for the regulation of various entities involved in the purchase and sale of securities and define "security" broadly to include a wide range of assets, including "investment contracts." Securities Act § 2(a)(1) [15 U.S.C. § 77b(a)(1)]; Exchange Act § 3(a)(10) [15 U.S.C. § 78c(a)(10)].

12. Congress enacted the Exchange Act in part to provide for the regulation of the national securities markets. Congress created the SEC and charged it with protecting investors,

maintaining fair and orderly markets, and facilitating capital formation. The SEC carries out these statutorily mandated goals in part through a series of regulations concerning registration, disclosure, recordkeeping, and inspection.

13. Over seventy years ago, the Supreme Court in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), set forth the relevant test for determining whether an instrument is an investment contract subject to regulation under U.S. securities laws.

14. Investment contracts are contracts, schemes, or transactions through which a person invests money in a common enterprise and reasonably expects profits or returns derived from the entrepreneurial or managerial efforts of others. As the Supreme Court noted in *Howey*, Congress defined "security" broadly to embody a "flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *Id.* at 299. To give effect to Congress's intent, courts have found novel or unique investment vehicles to be offered and sold as investment contracts, including those involving orange groves, animal breeding programs, cattle embryos, mobile phones, enterprises that exist only on the internet, and a growing number of crypto assets.

15. To protect investors and fulfill the purposes of the Exchange Act, Congress imposed registration and disclosure obligations on certain defined intermediaries in the national securities markets, including dealers.

B. Crypto Assets and Crypto Trading Platforms

1. Crypto Assets

16. As used herein, the term "crypto asset" generally refers to an asset issued and/or transferred using blockchain or distributed ledger technology, including assets referred to colloquially as "tokens", "cryptocurrencies," "virtual currencies," and digital "coins."

17. A blockchain (a type of distributed ledger) is a database spread across a network of computers that records transactions in theoretically unchangeable, digitally recorded data packages, referred to as "blocks." These systems typically rely on cryptographic techniques to record transactions in a secure manner.

18. Some crypto assets are referred to as "native" to a particular blockchain, meaning that they are considered the blockchain's core asset that is integral to how the blockchain functions. In contrast, other crypto assets may be referred to as "non-native" and are built on top of an existing blockchain.

19. Crypto asset owners typically store the cryptographic key information that gives them control over their crypto assets on a piece of hardware or software commonly referred to as a "crypto asset wallet." Crypto asset wallets, among other functions, provide a user-friendly way to store and manage the "public keys" and the "private keys" associated with an investor's crypto assets. The public key is used to derive the user's blockchain "address," and it can be freely shared with others. The private key is roughly analogous to a password; its use confers the ability to transfer a crypto asset and transact using the user's public blockchain address. Whoever controls the private key controls the crypto asset(s) associated with that key.

20. Crypto assets can be transferred directly on the relevant blockchain or through a third-party intermediary. The transfer of a crypto asset from one address to another may be verified and recorded on the relevant blockchain's publicly available ledger and are referred to as "on-chain" transactions. Crypto asset transactions that occur without being submitted to, verified on, or recorded on a blockchain are known as "off-chain" transactions.

2. Blockchain Consensus Mechanisms and Transaction Validation

21. Blockchains typically employ a "consensus mechanism" which, among other things, aims to achieve agreement among the blockchain users as to a data value or as to the state

of the ledger.

22. A consensus mechanism describes the protocol used by a blockchain to agree on, among other things, which ledger transactions are valid, when and how to update the blockchain, and whether to compensate certain participants for validating transactions and adding new blocks. Blockchain consensus mechanisms often provide compensation to participants for providing these services, which can derive from fees charged to those transacting on the blockchain, or through the creation or "mining" of additional amounts of the blockchain's native crypto asset.

23. "Proof of work" and "proof of stake" are two of the most popular consensus mechanisms used by blockchains. Proof of work, the mechanism used by the Bitcoin blockchain, involves a network of computers, known as "miners," expending computational effort to guess the value of a predetermined number. The first miner to successfully guess this number earns the right to update the blockchain with a block of transactions and is rewarded with the blockchain's native crypto asset. Proof of stake, the consensus mechanism currently used on the Ethereum blockchain, involves selecting "validators" from a network of crypto asset holders who have committed or "staked" a minimum amount of a specified crypto asset.

3. The Initial Offer and Sale of Crypto Assets

24. To raise capital, persons have offered and sold crypto assets in exchange for consideration, including but not limited to through so-called "initial coin offerings" or "ICOs," "crowdsales," "initial exchange offerings" or "IEOs," or public "token sales." In some instances, the entities offering or selling the crypto assets may release a "whitepaper" or "litepaper" or other similar marketing materials that typically describe the project related to the crypto asset, the terms of the offering, and any rights associated with the crypto asset.

25. Some issuers continue to sell the crypto assets after the initial offer and sale,

including selling them on crypto asset trading platforms, at times through intermediaries.

4. Third-Party Crypto Asset Trading Platforms

26. Third-party crypto asset trading platforms are marketplaces that offer a variety of services, often including brokerage, trading, custody, and settlement services.

27. Third-party crypto asset trading platform interfaces also often look similar to traditional securities intermediaries. Regardless of the user interface employed, these crypto asset trading platform interfaces typically emulate those offered within the traditional securities markets: they show order books of the various assets available to trade and historical trading information like high and low prices, trading volumes, and capitalizations which serve in part to help investors recognize market opportunities.

C. The SEC's "DAO Report"

28. On July 25, 2017, the SEC issued the *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO* (the "DAO Report"), advising "those who would use … distributed ledger or blockchain-enabled means for capital raising[] to take appropriate steps to ensure compliance with the U.S. federal securities laws," and finding that the crypto assets at issue in the DAO Report were offered and sold as securities.

29. Since the DAO Report, the SEC has also instituted enforcement actions against various persons, based on alleged violations of the federal securities laws in the context of crypto assets being offered and sold as securities, including actions against unregistered dealers.

<u>FACTUAL ALLEGATIONS</u>

A. Cumberland's Operations

1. Overview

30. Since its founding in 2014, Cumberland has operated a principal trading business (*i.e.*, trading for its own account) that provides liquidity to the crypto asset markets by trading

through different methods, including Cumberland's trades on its single-dealer platform and on third-party crypto asset trading platforms.

31. In March 2018, Cumberland increased its trading activities and usually operates 24 hours a day, seven days a week. Cumberland largely conducts its trading business through its online trading platform, named Marea (the "Marea Platform"), which Cumberland started developing in 2018 and launched in early 2019. Through the Marea Platform, Cumberland provides quotes to, and trades on a principal basis with, counterparties (an entity or person that trades with Cumberland) that Cumberland has allowed to join the platform.

32. Cumberland has allowed more than 1,500 high-net-worth individuals and entities to join its trading platform as counterparties. Those counterparties currently include, and historically have included, prominent participants in the crypto asset space, such as funds managed by crypto asset investment firms and certain now defunct crypto asset hedge funds.

33. In addition to operating a single-dealer platform, Cumberland engages in other proprietary trading, including: (1) self-described "discretionary risk taking" trading, which involves Cumberland's taking a long or short position in various crypto assets through a transaction with an issuer or through a trade on a third-party crypto asset trading platform (hereinafter "discretionary risk trading"); and (2) deploying proprietary trading strategies on third-party crypto asset trading platforms (hereinafter "proprietary strategy trading"), including so-called market-making strategies and strategies to manage Cumberland's risk exposure.

34. The different types of trading conducted by Cumberland frequently share a common inventory of crypto assets.

35. Cumberland touts its prominence and importance in the crypto asset space. On its website, and in pitch decks that it presented to prospective counterparties from at least May 2021 to February 2023, Cumberland publicly refers to itself as "[o]ne of the world's leading liquidity

providers in cryptoassets."

36. Cumberland also describes itself on its website as a "Global leader[] in cryptoasset trading" and further states: "We've been at the forefront of this emerging market since 2014."

37. Cumberland's website further states that Cumberland has "[p]roven expertise for a new frontier" and notes that "We bring our deep expertise in market structure and liquidity to help institutions capitalize on innovative opportunities."

38. In a March 2023 update sent to counterparties, Cumberland also promoted its ability "to be the backstop of liquidity during the most chaotic and stressful markets" by providing liquidity for crypto assets "continuously."

39. During the Relevant Time Period, Cumberland has generated more than $400 million in revenue and more than $27 million in profits from its crypto asset trading business.

2. Cumberland's Single-Dealer Platform

a. How Counterparties Join Cumberland's Single-Dealer Platform

40. Counterparties who want to participate on Cumberland's single-dealer platform and trade against Cumberland must submit an application, which includes identification information and other documentation. Cumberland must approve counterparties' applications before they can trade with Cumberland and join its single-dealer platform.

41. Once approved, a counterparty must sign an agreement with Cumberland and, if it wants to trade on the Marea Platform, an electronic trading addendum.

42. Approved counterparties can request from Cumberland the ability to trade specific asset pairs (*i.e.*, trading one crypto asset for another asset, such as fiat currency or another crypto asset), as well as access to the Marea Platform.

43. If the counterparty requests access to the Marea Platform, Cumberland will

provide the counterparty with a username and password.

44. Cumberland also establishes risk limits for an approved counterparty's trading.

b. Call-in Process for Single Counterparty Trading

45. When Cumberland first started its single counterparty trading business, counterparties requesting a quote and then to trade (as described below, a "Call-In Trade") needed to communicate directly with a Cumberland trader. Counterparties can still do this today, via phone call, chat, or Skype.

46. The process for placing a Call-In Trade is as follows:

(a) The counterparty contacts Cumberland and requests a quote (the price at which Cumberland is willing to purchase or sell a particular crypto asset). To do so, the counterparty must specify the crypto asset pair (*e.g.*, Solana (often referenced using the symbol: "SOL")/U.S. dollars ("USD")), the size of the requested quote (*e.g.*, 1,000 SOL or $10,000), and whether it wants a one-sided (buy or sell) or two-sided quote (both buy and sell).

(b) Cumberland provides the quote.

(c) The counterparty has a set amount of time to accept the quote and trade.

(d) If the counterparty accepts the quote and trades, Cumberland sends a trade confirmation to the counterparty.

(e) Cumberland then settles the trade.

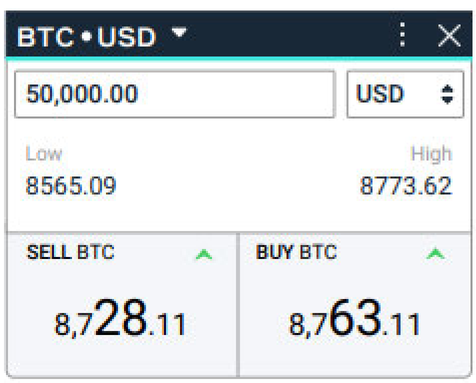
47. Cumberland trades only in a principal, at-risk capacity for its own account with counterparties. For example, Cumberland profits from the spread (if engaged in market making) or from closing positions that have increased in value. Cumberland is always on one side of its single counterparty trades.

c. Single Counterparty Trading Through Cumberland's Electronic Platforms

48. In addition to Call-In Trades, counter parties (also referred to as investors herein) can purchase or sell crypto assets by directly connecting to Cumberland's API or through Cumberland's Marea Platform, a web-based graphical user interface that connects to Cumberland's API. Cumberland describes the Marea Platform as its "single dealer trading platform."

49. While counterparties can also request and be granted direct access to Cumberland's API to get quotes and trade, many counterparties opt instead to use the Marea Platform.

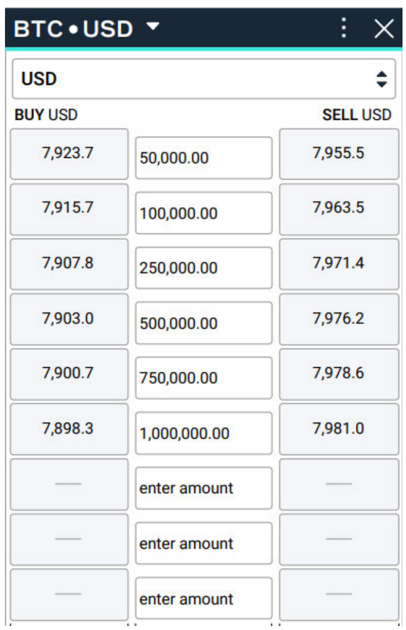
50. As shown in the following screenshot from the Marea Platform ("Screenshot 1"), the platform displays for its users continuously updated price quotes in something Cumberland calls a "trading tile":



51. Screenshot 1 provides an illustration of the technology and shows a two-sided quote for bitcoin ("BTC"), priced in USD. In Screenshot 1, the counterparty has configured the tile to display the prices the counterparty would receive or pay if it were to transact in a total volume of $50,000 USD and to sell BTC to Cumberland (*i.e.*, $8,728.11 per BTC) or to buy BTC from Cumberland (*i.e.*, $8,763.11 per BTC). The "Low" and "High" values on the tile represent Cumberland's understanding of the past 24-hour low and high prices for BTC in USD.

52. To accept the trade at the quoted price, the counterparty simply clicks on the sell or buy side of the tile. Counterparties can configure their trading to be done on a one-click basis (*i.e.*, click the tile and trade) or a two-click basis (*i.e.*, click the tile and click a second time to confirm). After Cumberland's system executes the trade, the Marea Platform displays a trade confirmation, and the trades settle in the manner described below.

53. As shown in the below Marea Platform screenshot ("Screenshot 2"), counterparties can also request tiles that display a "quote ladder"—*i.e.*, quotes in the same trading pair at different volumes. Screenshot 2 is an example of a quote ladder for the BTC-USD trading pair is below.



54. Screenshot 2 shows the prices per BTC that Cumberland will pay to purchase BTC from, and sell to, a counterparty at various total volumes. The spread between Cumberland's buy and sell quotes widens as the transaction volume increases, thus providing Cumberland a higher potential profit.

d. How Cumberland Settles Trades

55. For almost all settlements of trades between Cumberland and its counterparties,

Cumberland generally requires a counterparty to deliver funds and/or crypto assets to settle a trade before itself making delivery to the counterparty.

56. Thus, after a trade occurs, Cumberland typically emails settlement instructions to the counterparty, which include a bank account number to wire funds or a wallet address to send crypto assets.

57. Cumberland also tracks its trade settlement obligations in its self-created settlement management system, which communicates with Cumberland's other trading systems.

58. After the counterparty has performed its settlement obligations, Cumberland performs its half of the settlement by manually sending the crypto asset or fiat currency to the counterparty's account or crypto wallet (which counterparties typically have on file with Cumberland).

59. For a counterparty with multiple transactions per day, Cumberland nets these transactions and schedules settlement of all of them once in a 24-hour period.

e. Research Reports

60. Cumberland employs a team of research analysts and relationship managers who create research reports about the crypto asset industry broadly or about specific crypto assets. Cumberland posts these research reports to its social media accounts and emails them to some counterparties.

61. Cumberland also emails to counterparties various weekly or daily trading desk reports that discuss trends in the markets and performance metrics for specific crypto assets.

62. Cumberland's research reports and emails to counterparties also discuss updates and developments related to crypto assets and projects, the value of certain crypto assets, and, at times, imply that those values could increase. Thus, Cumberland's research reports and update emails promote crypto assets as investments and invite investors to reasonably expect that they

could profit from investing in such assets based on the entrepreneurial and managerial efforts of the issuers and promoters of the particular crypto assets that are the subjects of those reports and emails.

f. How Cumberland Finds New Counterparties

63. To attract new counterparties, Cumberland undertakes several activities that raise its public profile. Principally, Cumberland holds itself out to the public as engaging in a regular business of buying and selling crypto assets, including those being offered and sold as securities, for its own account.

64. For example, Cumberland: (1) sponsors and participates in industry conferences; (2) pitches its services to potential new counterparties; (3) through its executives, makes television appearances and gives media interviews to discuss the industry and the firm; (4) allows other crypto asset-related businesses to display Cumberland's logo on their websites; (5) maintains information on its website regarding how to become a counterparty; and (6) posts research reports to its social media accounts, which have a wide following (*e.g.*, the @CumberlandSays account on X (f/k/a Twitter) has over 29,000 followers).

65. Due to these efforts, Cumberland has attracted more than 1,500 high-net-worth individuals and entities to join Cumberland's trading platform as counterparties.

g. Other Cumberland Trading Strategies

66. At times, Cumberland takes a long position in a particular crypto asset (which allows Cumberland to profit if the asset's price increases) or a short position (which results in a profit if the asset's price decreases).

67. Cumberland establishes its own long or short position in a particular crypto asset through two methods. First, Cumberland invests in certain crypto asset projects directly, in by simply buying the crypto assets associated with those projects. Second, Cumberland takes

positions by trading on third-party crypto asset trading platforms.

68. Cumberland frequently transfers or sells its long or short positions in crypto assets to an affiliated entity also owned by DRW Holdings. That affiliated entity, in turn, sometimes loans crypto assets that it holds in its inventory back to Cumberland, which can use them to trade with a counterparty. For example, if Cumberland sells 100 SOL to a counterparty, Cumberland could borrow 100 SOL from the affiliated entity and deliver that SOL to the counterparty to fulfill Cumberland's settlement obligation.

h. Cumberland Uses Third-Party Trading Platforms

69. Through its accounts on third-party trading platforms, Cumberland also executes various proprietary trading strategies, which tend to be algorithmic and built to manage risk, capture spreads, or find arbitrage opportunities.

70. Cumberland currently has, or at times in the past had, accounts at the crypto asset trading platforms known as Binance.com; Binance.US; Bittrex; Coinbase; Kraken; and Poloniex.

71. The third-party crypto asset trading platforms that Cumberland uses are an integral part of the crypto asset markets, including crypto assets offered or sold as securities, and those platforms republish market information and amplify crypto asset issuers' and promoters' statements and activity.

72. The third-party crypto asset trading platforms that Cumberland uses also provide various types of investment-related information about the crypto assets available for trading, similar to a broker's trading platform in the traditional securities market. Such information includes the particular asset and its development; trading volumes and price; and republication and amplification of the crypto asset promoter's original, previously disseminated promotional materials regarding the economic reality of the assets (including statements touting the crypto assets as investment opportunities in a common enterprise, with the potential for investors to

profit as a result of the issuers' and promoters' entrepreneurial and managerial efforts towards the future success of the assets' ecosystems).

B. Many Crypto Assets Available Through Cumberland Are Offered and Sold as Securities

73. Throughout the Relevant Time Period, Cumberland has made available for trading many crypto assets offered or sold as investment contracts and, therefore, as securities.

74. Set forth herein are additional details regarding a non-exhaustive list of five crypto assets that were purchased or sold as investment contracts that are or were traded by Cumberland with counterparties as part of its regular business: Polygon Technology (formerly "MATIC", now called "POL"); SOL; Cosmos ("ATOM"); Algorand ("ALGO"); and Filecoin ("FIL") (collectively, the "Cumberland-Traded Assets").

75. Cumberland buys or sells, or bought and sold, each of these Cumberland-Traded Assets with counterparties as part of a regular business during the Relevant Time Period.

76. Each of the Cumberland-Traded Assets was offered and sold as an investment contract since inception.

77. Cumberland engages and has engaged in thousands of buy-and-sell transactions as part of its regular business in the Cumberland-Traded Assets.

78. Public statements by the issuers and promoters of the Cumberland-Traded Assets—including statements retransmitted by Cumberland and by the third-party crypto asset trading platforms that Cumberland uses —would have led objective investors to reasonably view the offer to purchase or sell of each of the Cumberland-Traded Assets as offers to purchase and sell investment contracts, which are securities pursuant to the federal securities laws. This has been objective investors' reasonable expectation whether investors had acquired the Cumberland-Traded Assets in initial distributions, through issuer direct or indirect sales, or in

secondary market sales, including purchases made from Cumberland.

79. Purchasers or sellers of the Cumberland-Traded Assets reasonably expected to profit from the efforts of the issuers and promoters of the Cumberland-Traded Assets to grow and maintain the technology platforms and blockchain ecosystems associated with those crypto assets; and that such growth or operations could, in turn, increase the price of the underlying crypto asset and/or provide increased value to holders of the Cumberland-Traded Assets.

80. In addition, the economic reality is that when an investor buys one of the Cumberland-Traded Assets from Cumberland, that investor can reasonably expect to profit from increases in value of the Cumberland-Traded Assets due to the efforts of the assets' issuers and promoters, including taking steps to cause the future success of the assets' ecosystems and by controlling or reducing the available supply of the Cumberland-Traded Assets.

81. Section D below further describes, among other things, the five Cumberland-Traded Assets, including detailing their development and the public issuer and promoter statements that would have led investors reasonably to expect profits as a result of the entrepreneurial and managerial efforts of others, such that objective investors are purchasing them with this reasonable expectation.

82. During the Relevant Time Period, Cumberland has bought and sold for its own accounts, as part of its regular business, at least $2 billion worth of the five Cumberland-Traded Assets. This activity occurred due to Cumberland making tens of thousands of trades involving millions of units of the Cumberland-Traded Assets.

C. Cumberland Was Required to Register with the Commission as a Dealer

83. During the Relevant Time Period, Cumberland has acted as a dealer by buying and selling crypto assets offered and sold as securities.

84. Because Cumberland has operated a regular business of buying and selling crypto

assets offered and sold as securities, for its own accounts, Cumberland was required to register as a dealer under the U.S. securities laws.

85. As previously noted, to fulfill the purposes of the Exchange Act, Congress imposed registration on certain defined participants in the national securities markets, including but not limited to dealers.

86. Nonetheless, Cumberland has never registered with the Commission as a dealer. Moreover, there is no exemption from registration with the Commission that would apply to Cumberland.

87. Thus, absent an applicable exemption, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] generally requires dealers to register with the Commission, and a dealer must also become a member of one or more "self-regulatory organizations" ("SROs"), which in turn require members to adhere to rules governing the activities of the SRO's members.

88. Section 3(a)(5) of the Exchange Act [15 U.S.C. § 78c(a)(5)] defines "dealer" generally as "any person engaged in the business of buying and selling securities … for such person's own account through a broker or otherwise."

89. The regulatory regime applicable to dealers is a cornerstone of the federal securities laws and provides important safeguards to investors and market participants. Registered dealers are subject to comprehensive regulation and rules that include recordkeeping and reporting obligations, Commission and SRO examination, and financial responsibility requirements, among other things. These rules and regulations are critical to the soundness of the national securities markets and to protecting investors in the public markets.

90. During the Relevant Time Period, Cumberland used means and instrumentalities of interstate commerce to effect thousands of transactions in crypto assets offered and sold as securities while engaged in the business of buying and selling securities for its own account.

91. Whether through Call-In Trades, the Marea Platform, or through third-party crypto-asset trading platforms, Cumberland bought and sold crypto assets offered and sold as securities, as part of its regular business.

92. Cumberland also held itself out to the public as being in the business of buying and selling crypto assets, some of which it offered and sold as investment contracts for its own account.

93. Thus, during the Relevant Time Period, Cumberland has acted as a dealer by buying and selling crypto assets offered and sold as securities, and it was required to register with the Commission as a dealer.

94. Nonetheless, Cumberland has never registered with the Commission as a dealer. Moreover, there is no exemption from registration with the Commission that would apply to Cumberland.

D. Crypto Assets Offered and Sold As Securities Are Bought and Sold by Cumberland

95. As previously alleged above, through the Marea Platform and other methods, Cumberland trades crypto assets that are offered and sold as investment contracts and thus as securities. Each of the crypto assets was offered and sold as an investment of money in a common enterprise from which the investor reasonably expects profits or returns derived from the entrepreneurial or managerial efforts of others.

96. Set forth below are details regarding the Cumberland-Traded Assets—five crypto assets that were offered and sold as investment contracts which that Cumberland bought and sold on the Marea Platform, through Call-In Trades, or third-party crypto asset trading platforms. Cumberland bought and sold each of these assets through one or more of these channels during the Relevant Time Period.

97. As part of its business practices, Cumberland promoted the Cumberland-Traded Assets as attractive investments for its counterparties, including by amplifying and reinforcing the promotional statements and activity of the crypto asset issuers and promoters and by suggesting that counterparties could profit from investing in the Cumberland-Traded Assets, as described below.

1. MATIC (now POL)

98. MATIC is the native token of the Polygon blockchain. Polygon, originally called the Matic Network and rebranded as Polygon in 2021, is a blockchain platform created in 2017 in Mumbai, India by, among others, Jaynti Kanani, Sandeep Nailwal, and Anurag Arjun. Since its creation, Polygon's founders have remained actively involved with Polygon through "Polygon Labs" ("Polygon"), an entity they also founded for "the development and growth of Polygon."

99. According to the Polygon website (https://polygon.technology/), the Polygon network is an Ethereum scaling platform that enables developers to build scalable user-friendly decentralized apps ("dApps") with low transaction fees, purportedly by hosting "sidechains" that run alongside the Ethereum blockchain, and that allows users to process transactions and initiate the transfer of assets and technology development on Polygon's supposedly less congested sidechain network.

100. According to the initial MATIC whitepaper that Polygon publicly released in 2018 ("Polygon Whitepaper"), "Matic Tokens [we]re expected to provide the economic incentives … of the Matic Network [now Polygon] . . . [w]ithout the Matic Token, there would be no incentive for users to expend resources to participate in activities or provide services for the benefit of the entire ecosystem on the Matic Network."

101. Polygon issued a fixed supply of 10 billion MATIC tokens. MATIC holders can earn additional MATIC for staking their MATIC on the Polygon platform and becoming a

validator, from delegating their MATIC to other validators in return for a portion of the fees collected from validating transactions, or from staking their MATIC with other third parties, such as crypto asset platforms that offer staking services.

102. In or around 2018, Polygon sold approximately 4% of the total supply of MATIC in two early rounds of sales, raising $165,000 at a price of $0.00079 USD per 1 MATIC and $450,000 at a price of $0.00263 USD per 1 MATIC, publicly stating that it was doing so to raise the funds needed to support the growth of its network.

103. MATIC has increased substantially from its initial offering price and through the end of September 2024 trades at approximately $.4 per 1 MATIC.

104. Polygon conducted its first public sales of MATIC through the Binance.com Platform. On April 1, 2019, Binance posted on its website that the MATIC token would be available for sale through what it described as an initial exchange offering ("IEO") on the Binance.com Platform, and that 19% of the total supply would be available through the IEO at a price of $0.00263 USD per 1 MATIC.

105. Demonstrating the importance of secondary market trading to the viability of crypto asset projects, MATIC's IEO on the Binance.com Platform raised an additional $5 million to fund development of the network. In an October 2023 interview, Nailwal described that, before the IEO, he was in "a struggle for survival" that became "much better" post-IEO.

106. In the MATIC Whitepaper, Polygon stated that it would pool investment proceeds through its private and public fundraising to develop and grow its business.

107. Polygon has also disclosed to the public that it has retained a significant portion of MATIC for reserves and its team. The April 2019 post on Binance's website described that 20% of MATIC was reserved to compensate the Polygon team members and advisors, and 57% allocated to the Polygon ecosystem, the Polygon Foundation (which Polygon's website explains

was "established by the co-creators of Polygon dedicated to support Polygon, including research, development & education"), and network operations. Consistent with this, Nailwal tweeted on February 21, 2023, that Polygon continues to hold over 1.9 billion MATIC.

108. Following the IEO, Polygon has engaged in additional MATIC sales, stating publicly that it was doing so in order to raise the funds needed to support the growth of its network. On February 7, 2022, Polygon reported on its blog that it raised about $450 million through a sale of MATIC in a funding round to several prominent venture capital firms. Polygon stated, "With this warchest, the core team can secure Polygon's lead in paving the way for mass adoption of Web3 applications, a race that we believe will result in Ethereum prevailing over alternative blockchains." The post further elaborated that "[t]he core team sees this investment round as the tide that lifts all boats and a testament to the importance of community in making Web3 a reality."

109. Since the so-called IEO launch, Polygon has routinely announced when crypto asset trading platforms have made MATIC available for trading, resulting in a robust secondary market.

110. Cumberland made MATIC available for trading on the Marea Platform beginning in September 2021. Since that time, Cumberland has engaged in more than $710 million in total dollar volume of MATIC trades with counterparties.

111. According to CoinMarketCap, as of September 5, 2024, MATIC had a daily trading volume of approximately $184 million, and a market cap of approximately $1.6 billion.

112. The information Polygon publicly disseminated has led objective investors in MATIC, including those who have purchased MATIC from Cumberland on the Marea Platform or otherwise, to reasonably view MATIC as an investment in, and reasonably to expect to profit from, Polygon's efforts to grow the Polygon network, which, in turn, would increase demand for,

and the value of, MATIC.

113. Polygon and its founders have regularly encouraged MATIC purchasers to expect profits from Polygon's efforts. For example:

(a) In a February 5, 2021 tweet, 14 months after MATIC's single biggest price drop, Nailwal compared the token to a prize fighter that came back from defeat to become a champion:


Sandeep Nailwal | sandeep. polygon
@sandeepnailwal

I never talk about token price but If MATIC token had a spirit, breaking ATH 14 months after that ominous crash of 70% in day, it would echo the words from @DustinPoirier after becoming Champion

"I've earned it in BLOOD, I paid in FULL, this is MINE!"

(b) In a May 24, 2022 "Fireside Chat" with CNBC posted on YouTube, Bejelic described part of "what's different about Polygon" as, "We are as a team very, very committed, we have a very hands on approach with all the projects out there, we are working around the clock on adoption and that's why we are currently the most adopted scaling infrastructure platform."

(c) In that same Fireside Chat, Bejelic described efforts to grow Polygon, stating that it was "continuing firing on all cylinders" and that it had "raised a large funding round" earlier in 2022 that Bejelic said would be used in "long term" projects. Bejelic further touted that "Polygon is top free project in the industry when it comes to fundamentals, when it comes to adoption, and when it comes to technology" and "[w]e just want to keep pushing hard, working around the clock to continue delivering great results." Bejelic also described the MATIC token as "publicly listed," which allows "[a]nyone [to] buy Polygon token and get a piece of the innovation and participate." Bejelic stated that these public sales gave them "responsibility" stating further that "we are trying our best to protect even the small, uneducated retail investors."

(d) On November 3, 2022, Nailwal stated on X (f/k/a Twitter): "I will not rest till @0xPolygon gets its well-deserved 'Top 3' spot alongside BTC & ETH. No other project comes even close."

(e) On February 21, 2023, Nailwal tweeted, and Kanani retweeted, "Polygon has grown exponentially. To continue on this path of stupendous growth we have crystallized our strategy for the next 5 yrs to drive mass adoption of web3 by scaling Ethereum. Our treasury remains healthy with a balance of over $250 million and over 1.9 billion MATIC."

114. In addition, the Polygon blog on its website provides frequent updates on network growth and developments at Polygon, including weekly statistics on active wallets and transactions per day, as well as financial metrics such as revenue per day and total network revenue. For example, a May 24, 2024 blog post on its website titled "Accomplishments and Vibe Check after a Year of Building" described detailed changes to the network.

115. Polygon has reported fundraising from other marquee and celebrity investors who described the potential growth of MATIC and the efforts of Polygon. One such celebrity investor stated in a January 29, 2022 interview, "If I want to invest in Polygon, I want to meet the engineering team, which I did in Dubai. I met the team, heard the vision of what they're doing, looked at the economic reality at the outcome, the potential of it."

116. Polygon has also publicly touted how its efforts to manage the supply of MATIC impacts its value. Since January 2022, Polygon has also marketed that it "burns" (or destroys) MATIC tokens accumulated as fees, indicating that the total supply of MATIC would decrease. For example, in January 2022, Polygon emphatically announced a protocol upgrade that enabled burning in a blog post titled, "Burn, MATIC, Burn!" As Polygon explained in another blog post on its website around the same time, "Polygon's MATIC has a fixed supply of 10 billion, so any reduction in the number of available tokens will have a deflationary effect."

117. As of March 28, 2023, Polygon had burned approximately 9.6 million MATIC tokens. This marketed burning of MATIC as part of the Polygon network's "deflationary effect" has led objective investors to reasonably view their purchase of MATIC as having the potential for profit as there is a built-in mechanism to decrease the supply and therefore increase the price of MATIC.

118. Crypto asset trading platforms, such as Cumberland, are an integral part of the

markets for MATIC because they fill these markets with information, republishing and amplifying the issuer and promoter statements and activity promoting MATIC as an investment.

119. For example, in a March 2021 ask me anything ("AMA") event posted on a website blog, Nailwal was asked, "What are the advantages of holding the MATIC token over the long and short term." For short-term MATIC holders, Nailwal responded that they have the ability to invest and receive staking rewards. Nailwal noted that Polygon allocated 12% of the total MATIC supply (1.2B tokens) to the staking rewards fund, which would ensure staking rewards for the first five years. For long-term MATIC holders, Nailwal touted increased demand for MATIC over time, noting that "we're aiming for Polygon to become THE go-to scaling solution for developers and enterprises to scale their applications for large scale usage."

120. Cumberland made statements to counterparties about MATIC and the Polygon Network that provided updates about project developments and reinforced investors' reasonable expectation of profits from an investment in MATIC due to the entrepreneurial or managerial efforts of Polygon and its promoters. For example:

(a) An email sent to counterparties on October 28, 2021 stated: "Alts have been lively on the OTC desk. . . . MATIC, which is up over 35% in the last four days, has been trading actively, and appears to be reaching a new stage of price discovery."

(b) An email sent to counterparties on December 7, 2021 stated: "MATIC is up about 20% after the announcement that Sequoia, Steadview, and other investors were purchasing tokens in a private round. One of the big open questions heading into 2022 will be the competition for users between Ethereum, alternate L1s, and Ethereum L2s, of which Polygon is one of the leaders."

(c) An email sent to counterparties on December 9, 2021 stated: "There has been a focus on ZK-rollups this week as the scaling solution of choice, with Vitalik discussing it at a Polygon presentation day. Polygon acquired Mir Protocol, a scaling startup which utilizes ZK tech, for $400m; Polygon is aiming to build a suite of scaling solutions, and become a 'Layer-2 aggregator'. MATIC is up about 8% on the week, compared to ETH unchanged, and has been trading quite often on the OTC side this week."

(d) An email sent to counterparties on July 31, 2022 stated: "Surprisingly, ETH was not leading the pack among L1s; . . . The strongest L1 by a mile has been MATIC, which is up 48% on the period thanks to a handful of partnership announcements as well as excitement behind zk tech."

(e) Cumberland issued a nine-page research report about Polygon Technology (MATIC) in September 2022. The introductory section explained that the report looks "at Polygon's growth strategy and emerging product suite and [tries] to understand how the project and investment case likely evolve going forward." The report went on to discuss Polygon's business and its potential for revenue and expresses Cumberland's view that: "Polygon is as well placed as anyone to execute here and actually monetize volumes." The report further stated that "[o]ther possible routes to long-term token value accretion could be from staking demand and possible from the use of MATIC as a currency . . . which would drive value through utility demand." The report later estimated that "there is ~50% upside to MATIC."

(f) An email sent to counterparties on October 5, 2022 stated: "On the OTC desk, we are seeing aggressive flow buying MATIC. Robinhood's Web3 wallet beta recently went live on Polygon network, the latest institutional partnership rolled out by the Polygon team."

(g) An email sent to counterparties on October 25, 2022 stated: "MATIC has been one of the only L1/L2s to track ETH on this rally, with the recent launch of Reddit NFTs on Polygon. These launched in July, but volume has taken off this week, with more than a third of the all-time trading volume taking place in the last three days. This is an exceptionally low barrier-to-entry market, so as demand increases, it's reasonable to expect supply to expect even more, which should dampen froth, but the real headline is the large number of Reddit users able to have their first touchpoint into crypto."

(h) An email sent to counterparties on January 16, 2023 stated: "MATIC has been fairly busy as it closes in on $1. The last time it traded through $1, in early Nov, it traded up to $1.30 before FTX brought all cryptoassets lower; this is definitely a chart worth checking out."

(i) Cumberland noted in its report titled "What We See in the Markets: July 31, 2023," that: "MATIC in particular feels like good value here, given the Polygon 2.0 announcement last week."

121. In or about February 2023, Cumberland prepared a pitch deck related to Polygon titled "Cumberland as a Liquidity provider." That pitch deck contains a slide titled: "Focus of today's discussion" and lists "Cumberland's goal for MATIC" as "Cement the liquidity

advantage MATIC currently has on Binance" and "Translate that liquidity advantage MATIC has on Binance to other leading institutional-facing exchanges." Another slide lists the "[O]pportunity for MATIC" as "The goal for MATIC is to be the token of choice for large, high-quality institutional investors." The deck further notes that "Cumberland has a long-standing relationship with Polygon and believes it is well positioned to be Polygon's long-term partner on liquidity provision and beyond." Yet another slide noted that "Cumberland works with the leading centralized crypto exchanges" and that "leading crypto exchanges are more likely to list a token on their platform knowing there is a reputable liquidity provider like Cumberland committed to providing liquidity 24/7."

2. SOL

122. SOL is the native crypto asset of the Solana blockchain. The Solana blockchain was created by Solana Labs, Inc. ("Solana Labs"), a Delaware corporation headquartered in San Francisco that was founded in 2018 by Anatoly Yakovenko ("Yakovenko") and Raj Gokal (Solana Labs' current CEO and COO, respectively). According to its website, www.solana.com, the Solana blockchain is a network upon which dApps can be built and is comprised of a platform that aims to improve blockchain scalability and achieve high transaction speeds by using a combination of consensus mechanisms.

123. According to its website, SOL may be "staked" on the Solana blockchain to earn rewards, and a certain infinitesimal amount of SOL must be "burned" to propose a transaction on the Solana blockchain, a common function for native tokens on blockchains that constitutes a method for cryptographically distributed ledgers to avoid a potential bad actor from "spamming" a blockchain by overwhelming it with an infinite number of proposed transactions.

124. Between 2018 and 2020, Solana Labs conducted a series of sales to investors. Between May 2018 and through at least July 2019, Solana Labs also filed with the Commission

multiple forms claiming that its offers and sales of securities—what it described in those forms as the "sale and issuance of rights to receive Solana Labs, Inc. tokens in the future via a Simple Agreement for Future Tokens (SAFTs)"—were exempt from registration under Rule 506(c) of Regulation D under the Securities Act. Through these offers and sales of securities, Solana Labs' sold approximately 177 million SOL, raising over $23 million.

125. Later in March 2020, Solana Labs conducted additional SOL sales on the CoinList trading platform (www.coinlist.co) in a "Dutch auction" (wherein investors place bids and the entire offering occurs at the price with the highest number of bidders). During this offering, Solana Labs sold approximately 8 million SOL, at an average price of $0.22 per SOL, raising approximately $1.76 million. In August 2021, Solana Labs completed another sale of SOL, raising over $314 million from investors, each of whom paid for SOL with fiat currency and was required to sign a purchase agreement.

126. SOL has increased substantially from its initial offering price and through the end of September 2024 trades at approximately $154 per 1 SOL.

127. Solana Labs also stated publicly that it would pool the proceeds from its private and public SOL sales in omnibus crypto asset wallets that it controlled, and that it would use those proceeds to fund the development, operations, and marketing efforts with respect to the Solana blockchain to attract more users to that blockchain (potentially increasing the demand for, and therefore the value of, SOL itself, given the need for those who wish to interact with the Solana blockchain to tender SOL).

128. For example, in connection with the 2021 sale of SOL, Solana Labs stated publicly that it would use investor funds to: (i) hire engineers and support staff to help grow its developer ecosystem; (ii) "accelerate the deployment of market-ready applications focused on onboarding the next billion users into crypto;" (iii) "launch an incubation studio to accelerate the

development of decentralized applications and Platforms building on Solana"; and (iv) develop a "venture investing arm" and "trading desk dedicated to the Solana ecosystem."

129. Solana Labs has stated publicly that of the 500 million SOL tokens it initially minted, 12.5% were allocated to Solana Labs' founders, including Yakovenko and Gokal, and another 12.5% were allocated to the Solana Foundation. The Solana Foundation is an organization that describes itself as a "non-profit foundation . . . dedicated to the decentralization, adoption, and security of the Solana ecosystem." In fact, on April 8, 2020, Solana Labs transferred 167 million SOL tokens to the Solana Foundation, and in its public announcement of the Solana Foundation's formation, Solana Labs stated, "The Foundation's initial focus is expanding and developing the ecosystem of the Solana protocol."

130. Solana Labs' two original founders have both worked for the Solana Foundation. Gokal currently serves as a member of the Solana Foundation Council. Yakovenko was a member and President of the Solana Foundation Council from its founding until December 2021, when he stepped down to focus on his work at Solana Labs.

131. When announcing the formation of the Solana Foundation on June 7, 2020, in an article still available on Solana's website and the Medium website as of September 5, 2024, Yakovenko also announced that Solana Labs would be retaining an estimated 50 million SOL tokens "to support operations."

132. Beginning in February 2020, Solana Labs took steps to make SOL available for trading on crypto asset trading platforms.

133. Solana Labs and the Solana Foundation publicized the announcement of trading on U.S. secondary markets. For example, in a September 17, 2020 X (f/k/a Twitter) post, Solana Labs stated: "The Solana community in the United States has been eagerly awaiting the chance to trade SOL on a U.S. exchange, and now that day has come. SOL/USDT, SOL/USD, and

SOL/BTC pairs are all open for trading on @ftx_us."

134. In addition, the Solana Foundation described the announcement of trading with U.S.-based exchanges as an opportunity to increase the value of SOL and its "ecosystem." An article by the Solana Foundation posted on the Solana Labs' website, describes the listing on the Binance.US Platform as:

> [A]n exciting milestone not just for The Solana Foundation, but also for US-based partners and community members who have played a tremendous role in expanding the value of the Solana ecosystem. Binance.US provides the Solana community with another first-rate liquidity partner to support our rapidly growing American audience. Across new applications, bridges, wallets, and other features, the community's hard work has driven significant value, and the Solana Foundation can't wait to share more of the genuinely great projects currently underway.

135. Cumberland made SOL available for counterparty trading on the Marea Platform since October 2021. Since that time, Cumberland has engaged in more than $830 million in total dollar volume of SOL trades with counterparties.

136. According to CoinMarketCap, as of September 5, 2024, SOL had a daily trading volume of approximately $2 billion, and a market cap of approximately $59 billion.

137. The information Solana Labs and the Solana Foundation publicly disseminated has led objective investors in SOL, including those who have purchased SOL from Cumberland on the Marea Platform to reasonably view SOL as an investment in, and reasonably to expect to profit from, Solana Labs' and the Solana Foundation's efforts to grow the Solana protocol, which, in turn, would increase demand for and the value of SOL.

138. In public statements on its website and social media pages, Solana Labs and the Solana Foundation specified their expertise in developing blockchain networks and described the efforts Solana and its founders had made and would continue to make to develop the Solana blockchain protocol and attract users to the technology, which, again, required those utilizing the technology to demand some amount of SOL.

139. Solana Labs and the Solana Foundation made such widely disseminated public statements and undertook other promotional efforts to increase participation in its network, and thus demand for SOL, including: (a) a Solana podcast of which there have been at least 90 episodes since July 2019, with the latest one being broadcast in September 2024, with interviews of key Solana Labs management and other key personnel, including Yakovenko; (b) a YouTube channel managed by the Solana Foundation with over 63,000 subscribers that posts videos about Solana news, events like their multi-day Solana Breakpoint, ecosystem updates, etc.; and (c) dedicated Telegram, X (f/k/a Twitter), Reddit, Solana Forums, Discord, GitHub, Meetup, and Weibo channels, with links to each available on the Solana website.

140. The promotional statements that Solana Labs and the Solana Foundation made in these fora with respect to SOL and their efforts to increase demand and value for SOL have continued since Solana Labs' initial distributions of SOL and have included, for example:

(a) A July 28, 2019 post on Solana Labs' Medium blog in which Yakovenko stated that "Solana … supports upwards of 50,000 TPS" (transactions per second) "making it the most performant blockchain and the world's first web-scale decentralized network" and that the "Solana team—comprised of pioneering technologists from [several high-profile technology companies]—has focused on building the tech required for Solana to function with these groundbreaking performance standards";

(b) The Solana website's statement that "Solana is engineered for widespread, mainstream use by being energy efficient, lightning fast, and extremely inexpensive" and that "[m]any of the core Solana builders, like co-founder Anatoly Yakovenko, have a background in building cell phone networks," which "means that they are singularly focused on building for scalability (the ability to grow) and efficiency (the ability to get the most information across with the least amount of resources)";

(c) An April 14, 2021 post on gemini.com in which Yakovenko touted the Solana network's ability to "support a theoretical peak capacity of 65,000 transactions per second, currently" ("around 10,000 times faster than Bitcoin, 4,000 times faster than Ethereum, and 35 times faster than Ripple—even around 2.5 times faster than Visa") and projecting that such speed would "doubl[e] in capacity every two years with improvements in hardware and bandwidth"; and

(d) A December 23, 2022 post on the Solana website marketing various "upgrades" that Solana Labs and its engineers would undertake, including "turbine optimizations" introduced by the "core engineering team," which Yakovenko described as the "coolest piece of technology that we built that nobody knows about."

141. Further, Solana Labs markets that it burns (or destroys) SOL tokens as part of a "deflationary model." As Yakovenko explained in an April 14, 2021 article entitled "Solana (SOL): Scaling Crypto to the Masses" posted on gemini.com, "Solana transaction fees are paid in SOL and burnt (or permanently destroyed) as a deflationary mechanism to reduce the total supply and thereby maintain a healthy SOL price." As explained on the Solana website, since the Solana network was launched, the "Total Current Supply" of SOL "has been reduced by the burning of transaction fees and a planned token reduction event." This marketed burning of SOL as part of the Solana network's "deflationary mechanism" has led investors to reasonably view their purchase of SOL as having the potential for profit since there is a built-in mechanism to decrease the supply and therefore increase the price of SOL.

142. Crypto asset trading platforms, such as Cumberland, are an integral part of the markets for SOL. They provide investors with information, republishing and amplifying the issuer and promoter statements and activity promoting SOL as an investment. They also provide investors with liquidity in SOL.

143. Cumberland made statements to counterparties about SOL and the Solana Protocol that provided updates about project developments and reinforced reasonable investors' expectation of profits from an investment in SOL due to the entrepreneurial or managerial efforts of Solana Labs and SOL's promoters. For example:

(a) An email sent to counterparties on November 5, 2021 stated: "The most attention this week, however, has been on SOL, up 25% on the week and trading at its own ATH, just shy of $250, having passed ADA in market cap this week. This is ahead of Breakpoint, a Solana conference in Lisbon which beings tomorrow. SOL has a history of performing well through its events, which have typically been hackathons in the past, and this is probably the largest event for the ecosystem thus far. (If you're in Lisbon this week, please let us know, as Cumberland does have boots on the ground, and would love to meet for a bica or cerveja!)"

(b) An email sent to counterparties on December 1, 2021 stated: "Grayscale announced a single-asset trust for SOL, which is up 6% on the week compared to BTC's 1%. Our desk continues to see a high amount of activity on SOL, primarily on our electronic platforms, and the flow ratio has been consistently above 70%."

(c) A message posted to the "CumberlandSays" X (f/k/a Twitter) account on April 5, 2022 stated: "NEAR & SOL (up 65% since mid-March) are on a tear because of exploding TVL and solid ecosystem development."

(d) An email sent to counterparties on October 5, 2022 stated: "Also on the OTC side, we've seen a healthy uptick in SOL, again suggesting some natural price support around $30. Solana has seen its share of challenging headlines this year, but it remains one of the only non-Ethereum L1s that has significant adoption in both DeFi and NTFs, so we're seeing funds pick units up opportunistically, and along with BTC, ETH and MATIC, we see it as one of the most-traded coins on the OTC side."

(e) An email sent to counterparties on November 1, 2022 stated: "In the same sector, Solana has its Breakpoint conference in Lisbon this week. This has typically been one of the more headline-generating conferences in the space, and right now, the SOL chart looks just sleepy enough to have some upside if there are strong headlines. The Solana Phone is one of the most interesting initiatives in the crypto space, so that in particular is one to look out for."

(f) An email sent to counterparties on January 8, 2023 stated: "We're seeing some signs of life there, with weekend volume in APT, ETC, and of course SOL. To be fair, SOL volume on the OTC side has never really slowed down; this seems to be the coin that, right now, triggers the widest spread of opinions among traders with whom we chat. There's certainly a case to be made on either side of the conversation; it's either the main alt-L1 contender to Ethereum, and only trading out of the top 10 because of FTX's liquidations, or it's a chain that everyone is exiting now that its institutional support has crumbled. In this case, I'm inclined to put fundamentals aside and pay more attention to the positioning; a huge proportion of unencumbered SOL was forced to hit the market it [sic] in the past two months, the narrative is terrible, and fast moving money is stuck paying high funding to keep shorts on; it feels like a good candidate to sharply outperform on even a modest ETH rally."

(g) An email sent to counterparties on January 29, 2023 stated: "SOL was up 12% over the weekend, now trading $26 after starting the year in single digits. SOL has put up 130% realized vol this year, and is actually one of the most popular altcoin options to trade with our OTC desk."

(h) An email sent to counterparties on April 16, 2023 stated: "Unlike prior weeks, last week saw outperformance by alt-L1s, as we saw many traders looking to play the catchup game. With BTC +7% over a week and ETH +14%, SOL rallied 25%, AVAX +17%, NEAR +17 and ATOM +16%. Solana launched its phone last week, with a free dApp store. SOL actually traded higher than this level in Feb, up to $27, before ticking back below $20; cracking through that level will open it up to the levels seem [sic] pre-FTX (around $33)."

(i) An article posted by Cumberland on its website dated August 11, 2024 stated: "We're now firmly in the second half of the year, and even some of the former best names in crypto are languishing, from a price perspective. Solana has been one of the exceptions, up 40% on the year and almost impacted through last week. SOL's separation from the rest of the L1/L2 pack has been noticeable all year; over the past twelve weeks, it's had only a 73% correlation with BTC, much lower than ETH, AVAX and NEAR, which are all around 82-85%. SOL's separation could be attributable to a few different factors. First, there could be a perception in the market that it stands the best chance of being adopted into the 'institutional' class, as a result of initial attempts by the industry to create a SOL ETF. Second, however, it has developed an actively used DeFi ecosystem."

3. ATOM

144. ATOM is the native crypto asset of the Cosmos Hub. The Cosmos project was launched by Jae Kwon and Ethan Buchman. According to Cosmos' website, Cosmos is an ecosystem of blockchains designed to scale and interoperate with each other, and the Cosmos team aims to "create an Internet of Blockchains" or "a network of blockchains able to communicate with each other in a decentralized way." Cosmos is built on a proof-of-stake consensus mechanism.

145. The Cosmos Hub is a central blockchain that provides services to other blockchains connected to it, including "the largest interchain token exchange, shared security through interchain security, bridges to ethereum (ETH) and bitcoin (BTC), and secure custodianship of digital assets." Cosmos described the Cosmos Hub as "the first hub among many hubs that [w]as launched within the Cosmos Network of sovereign blockchains."

146. At least four entities are currently or have been significantly involved in the development of Cosmos: (1) the Interchain Foundation (the "ICF"), a Swiss non-profit organization of which Buchman is President, which was created in 2017 by Kwon and Buchman, and—according to Cosmos' public website—was formed "to support the development of Cosmos and the ecosystem that will contribute to the Cosmos Network"; (2) Interchain GmbH, LLC, a German limited liability company and subsidiary of ICF, which employs a team of approximately 35 software engineers and operations personnel working primarily on the Cosmos network; (3) All in Bits, Inc. d/b/a Tendermint (n/k/a Ignite, Inc.) ("Tendermint"), a Delaware corporation created by Kwon and headquartered in Berkley, California, with which the ICF contracted in 2017 "to develop the initial portion of the CESS [Cosmos Essential Software and Services]," and that later focused on developing products and tools "to onboard the next wave of developers and crypto enthusiasts to Cosmos;" and (4) NewTendermint, Inc., a Delaware corporation of which Kwon is CEO that was spun off from Tendermint in February 2022, and that is "focus[ed] on contribution to the Cosmos ecosystem core technology."

147. The Cosmos whitepaper that Kwon and Buchman publicly released in 2017 ("Cosmos Whitepaper"), which is still available online as of September 1, 2024, describes ATOM as a "staking token" and "a license for the holder to vote, validate, or delegate to other validators" and "can also be used to pay for transaction fees to mitigate spam."

148. The ICF began fundraising for Cosmos in several ATOM sales in 2017. On April 6, 2017, the ICF conducted a two week "Cosmos Fundraiser" to collect so-called "donations" for the development of the Cosmos network. Pursuant to this offering, participants provided BTC or ETH in exchange for a later distribution of ATOM. The initial fundraising offered ATOM at a value of $0.10 per token, with a 25% discount on that price for partnering "strategic funders" and a 15% discount for individual "Pre-Fundraisers." However, the ATOM tokens were not

distributed at the time of the initial fundraising but were planned to be distributed later.

149. ATOM has increased substantially from its initial offering price and through the end of September 2024 trades at approximately $4.80 per 1 ATOM.

150. The ICF later disclosed the specifics of how they purportedly spent investor funds, for example in a 2019 post, “Projects Funded in 2018” posted to the ICF’s public GitHub page. The ICF posted a similar page for “Projects Funded in 2019.”

151. In promoting the Cosmos Fundraiser, the ICF represented that the funds raised would be deployed to develop the Cosmos network. For example, the March 31, 2017 “Cosmos Plan” posted on the Cosmos GitHub page provided that the raised funds would be used “to contract with entities”—including Tendermint—“and their agents for the development of the Cosmos Essential Software and Services (CESS) and to help foster a community around CESS.” The post stated that the “ICF is planning a Fundraiser for future staking tokens, called “atoms”, that give the holder limited license to validate the Cosmos Hub and Dex” and that “[t]he contributions made in connection with the Fundraiser will go to the ICF to develop the CESS.”

152. The March 2017 post also emphasized that the purchase of ATOM was a long-term investment, stating that “[t]he atoms will not be available for use until after genesis day[,]” which “is estimated to be sometime in early Q4 2017.” The post also warned investors “that the Cosmos Network is still in an early development stage.”

153. The March 2017 post also emphasized that initial investments would be pooled with assets from the sale of ATOM, stating that “[t]he ICF has received several commitments for donations from various individuals that will be tied to a portion of future atoms.” This March 2017 post remains on the Cosmos GitHub page as of September 5, 2024.

154. ICF raised approximately $17.3 million in BTC and ETH from investors in the Cosmos Fundraiser.

155. The Cosmos Whitepaper and "Fundraiser Plan" (both of which were publicly available on the Cosmos website), provided the following distribution for the 236 million ATOM tokens initially minted: 10% to the "Cosmos Network Foundation" (the ICF), 10% to All in Bits, Inc. (Tendermint), 5% to initial or "lead donors," and 75% to "the donors of the Cosmos Fundraiser" and pre-fundraiser donors (investors).

156. ICF has also touted to investors its retention of ATOM tokens in reserve, as well as the availability of proceeds from the sale of ATOM. In a March 25, 2020 Medium article, an ICF director stated, "To date, we still have over 1,400 BTC, over 50,000 ETH and just over 20 million ATOMs in the treasury[.]"

157. ATOM was released in March 2019 with the launch of the Cosmos Hub.

158. Cumberland has made ATOM available for trading on the Marea Platform since 2019. Since that time, Cumberland has engaged in more than $320 million in total dollar volume of ATOM trades with counterparties.

159. According to CoinMarketCap, as of September 5, 2024, ATOM had a daily trading volume of approximately $131 million, and a market cap of approximately $1.5 billion.

160. The information ICF, Kwon, and Buchman publicly disseminated has led objective investors in ATOM, including those who have purchased ATOM from Cumberland on the Marea Platform, to reasonably view ATOM as an investment in, and reasonably to expect to profit from, the efforts of ICF, Kwon, and Buchman to grow the Cosmos protocol, which, in turn, could increase demand for and the value of ATOM.

161. For example, in a March 13, 2020 GitHub post, Buchman claimed, one year after the launch of the Cosmos Hub, "the Cosmos community could not be stronger." The post noted that "there's so much more work to do on many fronts" and described several initiatives related to the Cosmos network.

162. In public statements on the Cosmos and ICF websites and other internet-based platforms, including statements made and available during the period while Cumberland made ATOM available for trading on the Marea Platform, the ICF described its expertise in developing blockchain networks and the efforts it and related entities (including Interchain GmbH and Tendermint) have made and that they will continue to make to develop the Cosmos network and attract users to the technology—typically casting these efforts as complex, extensive, and therefore implicitly requiring significant time, expertise, and funds. For example:

(a) Cosmos's website stated that "Cosmos is supported by the Interchain Foundation" and identifies Tendermint, Interchain GmbH, and 15 other "Cosmos core development teams."

(b) The ICF website stated that it "funds, stewards, and responsibly advances the Cosmos ecosystem" and its "core teams maintain the protocols and applications" in the "Cosmos tech stack" (including Cosmos Hub and Cosmos SDK), and identified 35 "Team" members, including Cosmos Hub and Cosmos SDK project, strategy, and developer relations leads, and software and developer relations engineers," that "[w]e help support projects like the Cosmos Network," and that with its "Engineering and Product" work "[w]e are primarily interested in general purpose technologies that expand the environment, capabilities, and security of the Cosmos ecosystem;"

(c) The 2019 "Projects Funded in 2018" post on the ICF's GitHub page (referenced above) identified grants, service agreements, and investments to develop the Cosmos network in 2018;

(d) The ICF website has touted the "Builders Program," which supposedly "provides mentorship, structured support and access to a wide network of partners"; "is led by a team experienced in building the ecosystem's software and infrastructure"; "is made by builders for builders, linking together our team of entrepreneurs, software engineers and designers with years of experience in building and launching chains"; and is a vehicle for ICF to "help teams navigate the ecosystem by giving access to our large network of investors, exchanges, custodians, auditors, development and design agencies, data providers and infrastructure partners"; and

(e) ICF hosts an annual "Cosmoverse" conference, which it describes as an opportunity to "update the community about current developments, implementations, and visions." ICF also has made videos of the conference widely available through its Cosmoverse YouTube channel. In one such video from the 2023 Cosmoverse conference, Buchman noted that "ATOM is not money" but is instead a "staking token" that is "uniquely positioned" because of the design of the Cosmos Hub and because the token is "well distributed[.]"

163. Crypto asset trading platforms, including Cumberland, are an integral part of the markets for ATOM because they provide investors with information, republishing and amplifying the issuer and promoter statements and activity promoting ATOM as an investment.

164. Cumberland made statements to counterparties about ATOM and the Cosmos protocol that provided updates about project developments and reinforced reasonable investors' expectation of profits from an investment in ATOM due to the entrepreneurial or managerial efforts of ICF, Kwon, Buchman, and other promoters. For example:

(a) An email sent to counterparties on August 5, 2019 stated: "Coinbase announced they were looking at several new coins, including ALGO, ATOM, DCR, and ONT."

(b) An email sent to counterparties on August 14, 2022 stated: "The low in crypto markets, and their recovery, has coincided with similar behavior in equity markets. And while ETH is towards the top of the pack, other L1s have performed similarly since their lows (ATOM +98%, AVAX +90%, NEAR +85%) and L2s have done even better (MATIC +180%, OP +217%)."

(c) An email sent to counterparties on September 20, 2022 stated: "Cosmos is hosting a conference in Colombia starting next Monday. ATOM has been the best performer by far in the L1 space since the start of August, up 35% compared to ETH down 18%. While Cosmos is typically lauded as having some of the best tech outside of Ethereum, ATOM currently has poor value-accrual, and it's widely rumored that 'ATOM 2.0', which could be announced at this conference, will address this."

(d) An email sent to counterparties on October 5, 2022 stated: "ATOM has had a disappointing performance since Cosmoverse last week, where the new economics announced were interesting, but came attached with a front-loaded inflation schedule. ATOM does have pretty solid staking yield, which effectively counters the high inflation, but it is a difficult coin to play for a short-term trade right now."

(e) An email sent to counterparties on November 23, 2022 stated: "An honorable mention to ATOM - the ATOM 2.0 proposal, which would have increased the ATOM inflation rate during the first year of its implementation, was denied via governance vote last week."

(f) An email sent to counterparties on February 20, 2023 stated: "At the moment, one of the smaller gainers in the sector, outside of ETH and EOS, has been ATOM. ATOM is up 'only' 53% YTD, despite strong fundamentals and a healthy developer community; it's a name where we expect to see a catchup rally if crypto remain buoyant."

4. ALGO

165. ALGO is the native crypto asset of the Algorand blockchain protocol founded by Silvio Micali. The Algorand blockchain uses a consensus algorithm it calls "pure proof-of-stake," in which each user's ability to influence the choice of a new block is proportional to its stake (number of tokens) in the system. Because ALGO is the native token of the Algorand blockchain, those utilizing the Algorand blockchain need to hold (and potentially stake) certain amounts of ALGO.

166. ALGO has a maximum supply of 10 billion, which was minted at the launch of the Algorand network. The Algorand Foundation Ltd. ("Algorand Foundation") has allocated 25% of the total supply for its team, foundation, and its investors.

167. The Algorand Foundation conducted a series of private equity raises in February and October 2018, raising approximately $66 million.

168. The Algorand Foundation first offered ALGO in an initial public token sale on or about June 19, 2019, selling 25 million tokens at $2.40 per ALGO, with a "capital raise" totaling approximately $60 million.

169. After the public sale, the Algorand Foundation pooled 90% of investor proceeds in a segregated bank account.

170. In advance of the initial token sale in June 2019, the Algorand Foundation promoted the token sale on X (f/k/a Twitter) and on its website. The Algorand Foundation promoted the June 19, 2019 token sale in part with a refund policy that allowed ALGO investors to return the ALGO to the Algorand Foundation one year later at 90% of the original purchase

price. The Algorand Foundation explained the economic rationale behind the refund policy by noting its own belief in and commitment to the value of ALGO: "We believe in the underlying value of the Algorand blockchain, the Algo, and the potential of the borderless economy. Our goal is to invest in the growth, sustainability and performance of that economy."

171. In other words, in promoting the ALGO token sale, the Algorand Foundation tied the potential growth of the Algorand blockchain to potential demand for the ALGO token itself, and to its own commitment to preserving a price floor for ALGO.

172. In or around August 2019, the Algorand Foundation publicly offered ALGO investors an early refund opportunity, and ALGO investors returned a total of approximately 20 million ALGO tokens to the Algorand Foundation in exchange for a refund that was 85% of the original purchase price.

173. In or around June 2020, ALGO investors who did not refund their ALGO tokens in August 2019 were publicly offered a second refund window. ALGO investors returned a total of approximately 5 million ALGO for a refund that was 90% of the original purchase price.

174. Through its rewards programs and incentive structures, the Algorand Foundation continued distributing tokens after the June 2019 token sale. As of September 2022, approximately 6.9 billion ALGO were in circulation.

175. At least two entities are responsible for Algorand: (1) the Algorand Foundation, an organization purportedly focused on Algorand "protocol governance, token dynamics and supporting grassroots, open-source development on the Algorand ecosystem," which was incorporated in Singapore; and (2) Algorand, Inc., a company purportedly focused on "layer-1 development of the Algorand Protocol and enabling Enterprise adoption of Algorand blockchain technology."

176. The Algorand Foundation and Algorand, Inc. purportedly collaborate on projects

and initiatives for the Algorand community.

177. Shortly before the June 19, 2019 ALGO token sale, Steven Kokinos, the CEO of Algorand, Inc., posted a publicly available article stating: "(a) We will be holding our founder's tokens for the long term and will not be selling them. (b) We will use our founder's tokens to participate in consensus and assist in securing the network, though we will never represent more than 49% of the voting. (c) We will use our founder's tokens to support the ecosystem and encourage development."

178. The Algorand Foundation purportedly owns 500 million ALGO tokens and the participation and governance rewards associated with those tokens. Also, members of the Algorand Foundation's board of directors and its advisory committees receive ALGO as compensation.

179. In addition to the tokens it owns, as of September 2022, the Algorand Foundation controls over 3 billion ALGO tokens in wallets publicly identified as for "Community & Governance Rewards," "Ecosystem Support," and "Foundation Endowment," signaling to the public that the Algorand Foundation would use the ALGO tokens to support the ALGO economy or ecosystem as well as to reward itself and participants in this ecosystem.

180. The Algorand Foundation also releases periodic "Transparency Reports" on its website where it discloses ALGO holdings for that period, and notes that its holdings can be verified via their published crypto asset wallet addresses.

181. Cumberland made ALGO available for trading on the Marea Platform starting in 2019. Cumberland stopped trading ALGO with counterparties in April 2023. Prior to that point, Cumberland engaged in more than $120 million in total dollar volume of ALGO trades with counterparties.

182. According to CoinMarketCap, as of September 5, 2024, ALGO had a daily

trading volume of approximately $24 million, and a market cap of approximately $950 million.

183. In widely available public statements on X (f/k/a Twitter), as well as on their respective websites, Algorand, Inc. and the Algorand Foundation have promoted the Algorand protocol and ALGO, including to Cumberland counterparties.

184. The information Algorand, Inc. and the Algorand Foundation publicly disseminated has led objective investors in ALGO, including those who have purchased ALGO from Cumberland, to reasonably view ALGO as an investment in, and reasonably to expect to profit from, the efforts of Algorand, Inc. and the Algorand Foundation to grow the Algorand protocol, which, in turn, would increase demand for and the value of ALGO.

185. Until approximately May 14, 2022, the Algorand Foundation told the investing public through X (f/k/a Twitter) that ALGO investors could receive participation rewards (purportedly a form of staking by delegation) by "participation in the Algorand ecosystem via holding Algo in an online wallet."

186. As of approximately May 14, 2022, the Algorand Foundation publicly stated that it would replace the participation rewards that ALGO holders were entitled to receive with so-called governance rewards. The Algorand Foundation describes "Governance" on its website as a way for investors to make investment returns on their ALGO purchases—stating it is "a decentralized program which allows Algo holders to vote on the future of Algorand" and "the best way to earn rewards for holding Algo, with APY% of 10.02% - 14.05% seen in previous periods."

187. The Algorand, Inc. and Algorand Foundation websites tout their teams' technical experience and expertise in the areas of cryptography and business development, which informs reasonable investors' expectations that Algorand, Inc.'s and the Algorand Foundation's efforts would facilitate the development of the Algorand ecosystem and increase demand and value of

ALGO. For example, Algorand, Inc.'s website states: "Blending technical mastery and professional stability, the Algorand team consists of internationally recognized researchers, mathematicians, cryptographers, and economists along with proven business leaders from global technology companies."

188. In a March 2022 report, the Algorand Foundation—continuing to tout the efforts it would undertake and casting them as requiring technical expertise and significant time—publicly stated that it had started a new program to incentivize the "growth of the ecosystem, which is the fundamental need of a maturing blockchain. The program includes a series of loans to help the growth of our DeFi network and to expand the institutional investments in the ecosystem . . . The Algorand Ecosystem team facilitates the development and growth of the ecosystem and developer pipeline including undiluted funding, technical onboarding and standardization conventions for ASAs, Wallets and AVM."

189. Algorand, Inc. and the Algorand Foundation have also taken steps to incentivize third parties to participate in and attract users to the ALGO protocol. For example, in or around February 2022, the Algorand Foundation announced a $10 million incentive for developers that can make the Algorand blockchain compatible with applications built on the Ethereum blockchain.

190. Also in or around February 2022, the Algorand Foundation announced a section of its website called AlgoHub, "a virtual community designed to grow the pipeline of #Algorand developers."

191. Crypto asset trading platforms, such as Cumberland, are an integral part of the markets for ALGO because they provide investors with information, republishing and amplifying the issuer and promoter statements and activity promoting ALGO as an investment.

192. A website associated with Binance.US had a page named "All About ALGO" as

of at least September 29, 2020, that noted that ALGO is the native asset for the Algorand protocol, serving as the "medium of exchange and store of value," and touted its blockchain protocol "for the next generation of financial products."

193. Cumberland made statements to counterparties about ALGO and the Algorand blockchain that provided updates about project developments and reinforced investors' reasonable expectation of profits from an investment in ALGO due to the entrepreneurial or managerial efforts of Algorand, Inc., the Algorand Foundation, and other promoters. For example:

(a) An email sent to counterparties on August 4, 2019 stated: "We've seen aggressive buying in ALGO ahead of the August 9 buyback. That token is up 40% since the announcement, which really reveals just how much of the price action there is related to the distribution mechanism (https://algorand.foundation/early-redemption)."

(b) An email sent to counterparties on August 5, 2019 stated: "Also in the alts space, Coinbase announced they were looking at several new coins, including ALGO, ATOM, DCR, and ONT. ALGO took another leg higher on this, up to $0.76, continuing its turbulent price action."

(c) An email sent to counterparties on August 7, 2019 stated: "A reminder to any counterparties that participated in the Algorand auction; to participate in the early buyback, you must have ALGO in your wallet tomorrow (Aug 9th)."

(d) An email sent to counterparties on November 3, 2019 stated: "One coin which did see an outsized move was ALGO, up 25% over the weekend. The price of ALGO had been pretty much one-way since launch, finding a floor around $0.20, and has rallied to $0.26 over the last several days. The Algorand founder submitted a post on Thursday describing smart contract tools on ALGO's Layer 1."

(e) An email sent to counterparties on November 6, 2019 stated: "ALGO has been making some outsized moves recently, and something that really stands out to me on this so-far-illiquid alt is how dramatically the OTC flow ratio has shifted. For a while it was selling only, but the flow ratio has been high in the past several days, suggesting OTC-grade traders have called a low."

(f) An email sent to counterparties on November 11, 2021 stated: "Algorand is about to undergo its first governance vote, which will be on, of course, how governance on Algorand will be handled in the future. In particular, the vote will determine if governors-ALGO holders who stake their units in order to vote-should be slashed if they unstake their units."

(g) An email sent to counterparties on October 5, 2022 stated: "With the World Cup a month away, we've been seeing interest in ALGO, which is one of the World Cup sponsors. Algorand recently wrapped up a developer conference in Singapore, and will host another in Dubai next month."

194. In or about February 2023, Cumberland prepared a pitch deck related to Algorand titled "Cumberland as a Liquidity provider." That pitch deck contains a slide titled: "Focus of today's discussion" and lists "Cumberland's goal for ALGO" as "Assist ALGO in improving its liquidity on leading exchanges" and "Partner with ALGO to eventually translate its liquidity advantage to other leading institutional-facing exchanges." Another slide lists the "[O]pportunity for ALGO" as "The goal for ALGO is to be the token of choice for large, high-quality institutional investors." The deck further notes that "Cumberland has a long-standing relationship with Algorand and believes it is well positioned to be Algorand's long-term partner on liquidity provision and beyond." Yet another slide noted that "Cumberland works with the leading centralized crypto exchanges" and that "leading crypto exchanges are more likely to list a token on their platform knowing there is a reputable liquidity provider like Cumberland committed to providing liquidity 24/7."

5. FIL

195. FIL is the native crypto asset of the Filecoin network that powers the entire network and all its processes. The Filecoin network is an open-source data storage network that runs on a blockchain, created by Protocol Labs, Inc. ("Protocol Labs"), which describes itself as a research, development, and deployment lab for network protocols.

196. In or around July 2014, Protocol Labs and its founder and CEO, Juan Batiz-Benet ("Benet"), published a whitepaper entitled "Filecoin: A Cryptocurrency Operated File Storage Network," which Protocol Labs updated approximately three years later, setting forth the "path

toward the construction of the Filecoin network." Describing the work set forth in the whitepaper as a "starting point," the whitepaper touted the novel approach and technology and closed by highlighting the future work ahead.

197. In 2017, Protocol Labs conducted a two-part token sale: first, an "Advisor Sale" for advisors of Protocol Labs and Filecoin; and, second, a "Public Sale" for the broader community, but supposedly limited to "accredited investors" (collectively, "2017 FIL Sales"). Investors could use U.S. dollars and certain crypto assets to buy Filecoin.

198. Protocol Labs ran the Advisor Sale from July 21 to July 24, 2017, and sold FIL to approximately 150 investors, which included individuals, institutional investors, trusts, and established syndicate investors. These investors paid $.075 per FIL and were offered "vesting/discount choices of 1-3 years and 0-30% discount."

199. In the August 2017 Public Sale, the FIL price was set based on a "public sale price function," described as "price = max ($1, amount raised / $40,000,000) USD/FIL" and increased thereafter based on the amount sold. For the Public Sale, like the Advisor Sale, investors received discounted pricing for agreeing to longer vesting periods.

200. In connection with the 2017 FIL Sales, which were effected pursuant to SAFTs, Protocol Labs filed forms with the Commission claiming an exemption from registration for the offerings of FIL pursuant to SAFTs.

201. Protocol Labs reported that they raised more than $205 million for the development of Filecoin in the 2017 FIL Sales, which value increased in the days following the close of the sale based on the fluctuation in value of certain invested crypto assets.

202. Protocol Labs pooled investment proceeds from the token sales to fund the development and growth of the Filecoin network.

203. FIL has increased substantially from its initial offering price and through the end

of September 2024 trades at approximately $3.85 per 1 FIL.

204. On October 15, 2020, Protocol Labs launched the mainnet (a publicly accessible version of the network) of the Filecoin network, and FIL began being minted and distributed. There was a stated maximum circulating supply of 2,000,000,000 FIL, meaning that no more than 2 billion FIL will ever be created, with issuance aligning with network growth.

205. Since the October 2020 launch, Protocol Labs has continued to use funds from the sale of FIL to develop, expand, and promote the Filecoin network.

206. Cumberland made "FIL" available for trading on the Marea Platform beginning in June 2021. Cumberland stopped trading FIL with counterparties in June 2023. Prior to that point, Cumberland engaged in more than $110 million in total dollar volume of FIL trades with counterparties.

207. According to CoinMarketCap, as of September 5, 2024, FIL had a daily trading volume of approximately $97 million, and a market cap of approximately $1.9 billion.

208. The information Protocol Labs publicly disseminated has led objective investors in FIL, including those who have purchased FIL from Cumberland on the Marea Platform, to reasonably view FIL as an investment in, and reasonably to expect to profit from, Protocol Lab's efforts to grow its protocol, which, in turn, would increase demand for and the value of FIL.

209. The Protocol Labs Filecoin Team posted about the sale in a September 13, 2017 blog post that is still on the Filecoin website as of September 1, 2024: "The Filecoin Sale was a critical milestone in the lifetime of the project. It raised the funding necessary to grow our team, to create the network, and build all the software tools needed to operate and use the network." They further stated, "Filecoin success will reward the investment of supporters like you by simultaneously driving down the cost of storage and increasing the value of the Filecoin tokens that incentivize miners to provide storage. We're thrilled by your widespread, enthusiastic

interest and look forward to staying engaged and including you in our success."

210. In addition, Benet and the Filecoin team released a document titled, "Filecoin Token Sale Economics" that is still available on the internet on coinlist.co, which is a website that claims it "finds and launches the best new tokens before they list on other exchanges." This document provides information about the 2017 FIL Sales and the Filecoin network, stating:

> Protocol Labs requires significant funding to develop, launch, and grow the Filecoin network. We must develop all the software required: the mining software, the client software, user interfaces and apps, network infrastructure and monitoring, software that third-party wallets and exchanges need to support Filecoin, integrations with other data storage software, tooling for web application and dApps to use Filecoin, and much more. We must deploy the network, facilitate its growth to large scale, market to and onboard miners and clients, bring key partners into the eco system, and much more.

211. That document also stated that FIL was to be distributed to groups "critical to the network's creation, development, growth, and maintenance" with an allocation, described as follows, that tied Protocol Labs' profits to those of FIL holders:

(a) 70% to Filecoin Miners – "For providing data storage service, maintaining the blockchain, distributing data, running contracts, and more."

(b) 15% to Protocol Labs – "For research, engineering, deployment, business development, marketing, distribution, and more."

(c) 10% to investors – "For funding network development, business development, partnerships, support, and more."

(d) 5% to Filecoin Foundation – "For long-term network governance, partner support, academic grants, public works, community building, etc."

212. The "Filecoin Token Sale Economics" document further explained: "We have structured the token sale to reward a large group of people that can help us build the [Filecoin] network, by selling Filecoin at what we think is a much lower price than it will be worth some day (caveat: as with any risky investment of course we cannot make guarantees or predictions)." As described in a July 2017 blog post, the Advisor Sale, in particular, was intended, in part, to

secure "long-term commitment to and alignment with the Filecoin network" and "to reward their contributions so far and/or future potential with the capability to invest early."

213. The "Filecoin Token Sale Economics" and another document made available to investors ahead of the 2017 FIL Sales, the Filecoin Primer, stated that Filecoin purchasers would be able to sell the token on crypto asset trading platforms in the future.

214. The Filecoin Primer also touted "Large Scale Value Creation," explaining, the Filecoin Network "will create value in a number of ways, and the total impact of the network can be tremendous. Growth of the network will drive demand for the token. The more value created by the Filecoin Network, the more things people and organizations spend Filecoin on, and the greater the value and worth of the token."

215. Similarly, a Confidential Private Placement Offering Memorandum ("PPM") in connection with the 2017 FIL Sales stated: "A significant portion of the proceeds of the Offering will be used by the Company to achieve the Minimum Viable Product and subsequently to build-out a decentralized storage network, powered by a blockchain and the Filecoin protocol token."

216. Moreover, both before and after the 2017 FIL Sales, Protocol Labs consistently touted its expertise and ability, and led the work to develop the Filecoin network for launch. In an August 2, 2017 Q&A Benet stated: "Over the last few years, Protocol Labs has proved to the world that we know how to deploy capital to create valuable projects, valuable technology, and valuable software. . . . We know how to deploy capital effectively. We have great plans for the Filecoin network and its surrounding ecosystem, at many levels of funding. We plan to deploy 100s of millions of dollars over the next few years to make Filecoin the world's best storage network, not just the best decentralized storage network."

217. Benet also addressed the funding needs, pricing, and economics of FIL in that August 2017 Q&A, stating: "Since we think and are working for Filecoin to be worth a lot more

in the future, then we naturally want to sell it at the highest price the market will bear. Subject to reason, if we can sell it higher, then we should." He also explained publicly that Filecoin needed funding in order to be able to compete: "Our (collective) competition is the massive, centralized cloud storage companies. We are talking about the tech titans – AWS, Google Cloud, and Microsoft Azure – the three biggest companies in the world have cloud businesses with BILLIONS of dollars in revenues, not just funding. In order to put up this fight, we will need significant resources. Yes, resources in the hundreds of millions will empower us to develop Filecoin as fast as we can, as well as the dozens of other tools and services required to make Filecoin a service and ecosystem remotely close to competitive with the centralized counterparts."

218. The economic structure of FIL distribution and public statements about that structure further led objective investors to view FIL as an investment in, and reasonably to expect to profit from, Protocol Labs' and the Filecoin Foundation's efforts to grow the Filecoin network, which, in turn, would increase demand for, and the value of, FIL; and to conclude that FIL investors' interests were aligned with those of FIL's developers. Specifically, the tokens allocated to Protocol Labs and the Filecoin Foundation were to vest over a six-year period beginning after the network launch. As stated in the "Filecoin Token Sale Economics" document, Protocol Labs and the Filecoin Foundation "aim[ed] to make Filecoin massively valuable in the long-term, and we want to attract investors similarly interested in long-term value creation and growth" and "[v]esting creates long-term alignment" because "Protocol Labs and the Filecoin Foundation are deeply committed for the long-term, and 6-year vesting boldly proves that to all other network participants."

219. Filecoin has also implemented a process to burn (or destroy) FIL tokens, thereby reducing the FIL supply. As with the burn mechanisms of other crypto assets set forth herein,

this marketed burning of FIL as part of the Filecoin's economic features led objective investors to reasonably expect that their purchase of FIL had the potential for profit as a result of the efforts of others.

220. Following the release of the protocol in October 2020, Protocol Labs continued to be heavily involved in the development and promotion of the Filecoin network and its pursuit of success.

221. In late 2021, Raul Kripalani, a Protocol Labs Researcher, introduced the "Filecoin Virtual Machine" ("FVM"), described as a "core pillar in the next evolution of the decentralized storage ecosystem." On November 6, 2022, Kripalani tweeted, "These were amazing weeks for the #FVM + team. Momentum and expectation are through the roof. 100s of teams building on the Wallaby testnet. Many promising @Filecoin apps to launch on mainnet the minute FEVM kicks in. Pumped to be building the future of $FIL with these rockstars!" The Protocol Labs X (f/k/a Twitter) account has posted updates regarding FVM, including through April 2023.

222. The Protocol Labs team has continued to release "roadmaps" or "master plans," available online and through recorded video presentations, that showcase future development plans for the Filecoin network. For example, in September 2022, Benet delivered the keynote address at FIL-Singapore, which "gathered builders from around the world to build, share experiences, and hear from other community members on what's next for the network." In his address, Benet presented "The Filecoin Masterplan" which included building the world's largest purportedly decentralized storage network.

223. Benet promoted the event and the level of engagement with FIL investors in advance on X (f/k/a Twitter): "FIL Singapore is going to be so epic [fire emoji]—largest gathering of the @ Filecoin community ever! See you there! [rocket ship emoji]."

224. In a February 3, 2023 Protocol Labs Blog post addressing the impact of the

"crypto winter" economic downturn, Benet touted the Filecoin team's supposed successes to date in growing the Filecoin ecosystem, "[w]e've achieved a tremendous amount in the past several years - from Filecoin launch; to scaling IPFS to millions of users; building one of the fastest growing developer ecosystems; supporting 300+ companies across the network; growing movements like SBS and FTC; launching testnets for FVM, Saturn, SpaceNet, and Bacalhau just last quarter; and much more."

225. Crypto asset trading platforms, such as Cumberland, are an integral part of the markets for FIL because they provide investors with information, republishing and amplifying the issuer and promoter statements and activity to promote FIL as an investment.

226. For example, Binance's blog website has a page named "All About Filecoin (FIL)" that provided information about the crypto asset and network, its limited supply, and the release of additional tokens via block rewards.

227. As part of its efforts to promote FIL to prospective investors, Cumberland made statements to counterparties about FIL and the Filecoin network that provided updates about project developments and reinforced investors' reasonable expectation of profits from an investment in FIL due to the entrepreneurial or managerial efforts of FIL, the Filecoin network, and other promoters. For example:

(a) An email sent to counterparties on October 21, 2020 stated: "On the desk, we continue to see healthy two-way flows in BTC and ETH, with a reduction in counterparty interest in altcoins. However, that's not to say there hasn't been noteworthy news. Filecoin's launch grabbed many market participants' attention as this became one of the biggest project launches in the history of cryptoassets. Subsequently after the launch, there has been some rumors of miner discontent. Due to the current governance issues, we believe it's likely that a major fork of Filecoin could occur, striving to capture some of Filecoin's value."

(b) An email sent to counterparties on April 1, 2021 stated: "FIL is up 100% over the past week and is now the #12 coin by market cap."

CLAIM FOR RELIEF

Violation of Section 15(a) of the Exchange Act

228. The Commission realleges and incorporates by reference paragraphs 1 through 227, as though fully set forth herein.

229. By engaging in the acts and conduct described in this Complaint, Cumberland, a person other than a natural person under the Exchange Act, is a dealer and made and continues to make use of the mails and the means and instrumentalities of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, securities, without registering as a dealer in accordance with Exchange Act Section 15 [15 U.S.C. § 78o], and without an exception or being exempted from such registration.

230. By reason of the conduct described above, Defendant, directly or indirectly, violated and, unless enjoined will again violate, Exchange Act Section 15(a) [15 U.S.C. § 78o(a)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court grant the following relief:

I.

Enter a Final Judgment permanently restraining and enjoining Defendant and its agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

II.

Enter a Final Judgment directing Defendant to disgorge, with prejudgment interest, all illicit trading profits or other ill-gotten gains obtained by reason of the unlawful conduct alleged in this Complaint.

III.

Enter a Final Judgment directing Defendant to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

Grant such other and further relief as this Court may deem just and proper.

JURY DEMAND

The Commission demands a jury in this matter for all claims so triable.

Dated: October 10, 2024

Respectfully submitted,

By: /s/ Christopher E. Martin
Christopher E. Martin (AZ Bar # 018486)
U.S. SECURITIES AND EXCHANGE COMMISSION
1961 Stout Street
Suite 1700
Denver, CO 80294
Phone: (303) 844-1106
martinc@sec.gov

Timothy J. Stockwell (DC Bar #484238)
U.S. SECURITIES AND EXCHANGE COMMISSION
175 West Jackson Boulevard, Suite 1450
Chicago, Illinois 60604
Telephone: (312) 596-6049
Facsimile: (312) 353-7398
Email: stockwellt@sec.gov

Of Counsel
Andrew R. McFall
100 F Street, NE
Washington, DC 20549
(202) 551-5538
McFallA@sec.gov
DC Bar No. 497878
IL Bar No. 6286837