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SECURITIES AND EXCHANGE COMMISSION

8 100 F Street, NE

Washington, DC 20549

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13  
14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 v.

18 BERNARDO MENDIA-ALCARAZ (a/k/a  
19 Bernardo Mendia) and TOLTEC  
20 CAPITAL LLC,

21 Defendants,

22 and

23 EDITH F. RAMIREZ CANO and FONDO  
24 TOLTEC S DE RL DE CV,

25 Relief Defendants.

Case No. 3:24-cv-5823

**COMPLAINT**

DEMAND FOR JURY TRIAL

26  
27 Plaintiff Securities and Exchange Commission (“SEC” or “Commission”) alleges the  
28 following:

**SUMMARY**

1  
2           1.       This action arises from securities fraud perpetrated by Bernardo Mendia-Alcaraz  
3 (“Mendia-Alcaraz”) and his wholly-owned private equity firm, Toltec Capital LLC (“Toltec  
4 Capital”) (together, “Defendants”), who defrauded numerous investors and a fund they advised out  
5 of millions of dollars.

6           2.       From at least December 12, 2019 through September 13, 2023 (the “Relevant  
7 Period”), Defendants engaged in securities fraud and unregistered securities offerings involving at  
8 least six private investment funds. In connection with these unregistered offerings, Defendants  
9 raised approximately \$3.3 million from at least 41 investors through a fraudulent scheme and by  
10 making materially false and misleading statements.

11           3.       Specifically, during the Relevant Period, Defendants:

- 12           a.       Guaranteed that investors would receive a return of their full invested  
13 capital plus, for certain funds, interest payments or dividends, when, in fact,  
14 Defendants did not have the financial means to fulfill these guarantees;  
15  
16           b.       Promised investors that their money would be used only for investment  
17 purposes, when, in fact, Mendia-Alcaraz used investor money to make  
18 Ponzi-like payments to other investors and to pay for his personal expenses;  
19  
20           c.       Told investors that Mendia-Alcaraz, who would serve as the managing  
21 partner of each fund, had academic credentials from the Goldman School of  
22 Public Policy at the University of California, Berkeley, when, in fact, he  
23 never attended the Goldman School of Public Policy; and  
24  
25           d.       Portrayed Mendia-Alcaraz as a successful asset manager but misleadingly  
26 failed to disclose his multiple bankruptcy filings and criminal history of  
27 check fraud and theft.  
28

1           4. Defendants made the foregoing misrepresentations knowingly, or at least  
2 recklessly, because Mendia-Alcaraz knew (a) that he and Toltec Capital did not have the financial  
3 means to pay investors the guaranteed returns; (b) that investor funds were used to pay other  
4 investors and to pay Mendia-Alcaraz’s personal expenses; (c) that Mendia-Alcaraz did not attend  
5 the Goldman School of Public Policy or graduate from the University of California, Berkeley; and  
6 (d) that Mendia-Alcaraz had been involved in bankruptcy and criminal litigation during the time  
7 that, according to the PPMs and marketing materials, he purportedly was operating Toltec Capital  
8 successfully as its Managing Partner.  
9

10           5. The foregoing misrepresentations also were material because a reasonable investor  
11 would consider it important to know the truth about, among other things, Toltec Capital’s financial  
12 condition, how investor funds would be used, and Mendia-Alcaraz’s education and criminal  
13 history.  
14

15           6. As a result of the conduct alleged herein, Defendants violated Sections 5(a), 5(c),  
16 and 17(a) and of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), and  
17 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §  
18 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5(a)-(c)], and Sections 206(1), 206(2),  
19 and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1), 80b-  
20 6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].  
21

22           7. Additionally, Relief Defendants Edith F. Ramirez Cano (“Ramirez Cano”) and  
23 Fondo Toltec S de RL de CV (“Fondo Toltec”) (together, “Relief Defendants”) received, directly  
24 or indirectly, funds or other property from Toltec Capital, which are the proceeds of, or traceable  
25 to the proceeds of, unlawful activities alleged herein and to which the Relief Defendants have no  
26 legitimate claim. It would be inequitable for the Relief Defendants to retain the proceeds from  
27 violations of the federal securities laws, so such proceeds should be disgorged.  
28



**DEFENDANTS**

1  
2           13.     **Bernardo Mendia-Alcaraz** (a/k/a Bernardo Mendia), age 52, resides in San  
3 Francisco, California. He is a dual citizen of Mexico and the United States. During the Relevant  
4 Period, Mendia-Alcaraz wholly owned and controlled Toltec Capital and served as its Managing  
5 Partner. Mendia-Alcaraz controlled, among other things, Toltec Capital’s bank accounts  
6 (collectively, the “Toltec Accounts”), and he had ultimate authority over the statements made by  
7 Toltec Capital, including but not limited to statements in securities offering documents, statements  
8 to investors, and statements to the public. Mendia-Alcaraz also serves as the CEO of Fondo  
9 Toltec. Between May 2007 and July 2009, Mendia-Alcaraz was held in California state detention  
10 facilities for alleged financial crimes. In February 2010, Mendia-Alcaraz pled no contest to two  
11 charges under California Penal Code § 476 (check fraud) and § 487 (theft). Additionally, Mendia-  
12 Alcaraz filed bankruptcy proceedings at least seven times, between August 2018 and December  
13 2019.

14  
15  
16           14.     **Toltec Capital LLC** is a California limited liability company, with its principal  
17 place of business in San Francisco, California. Toltec Capital first registered with the State of  
18 California on October 2, 2018. During the Relevant Period, on its website, Toltec Capital  
19 described itself as “a San Francisco based private equity firm focused on real estate and index fund  
20 investments.”

**RELIEF DEFENDANTS**

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23           15.     **Edith F. Ramirez Cano**, age 43, is a resident of California and a citizen of Mexico.  
24 She is listed as a secondary joint account owner on at least one of Mendia-Alcaraz’s personal bank  
25 accounts, and they currently share a residential address in San Francisco, California.

26           16.     **Fondo Toltec S de RL de CV** is a Mexican limited liability company based in  
27 Mexico City, Mexico. Toltec Capital stated in one of its brochures that Fondo Toltec is an  
28

1 “operating company” of Toltec Capital for the “purpose of developing real estate in Mexico.” As  
2 noted above, Mendia-Alcaraz is the CEO of Fondo Toltec.

3 **FACTS**

4 **A. Mendia-Alcaraz and Toltec Capital Created and Ran the Toltec Funds**

5 17. According to Toltec Capital’s marketing materials and offering documents, Toltec  
6 Capital began as a real estate investment advisory firm in 1999, before evolving into a real estate  
7 investment fund in 2009, and then expanding into index fund investments in 2018. Mendia-  
8 Alcaraz registered Toltec Capital with the State of California on October 2, 2018, listing himself as  
9 the entity’s organizer and sole manager. During the Relevant Period, Toltec Capital’s website  
10 stated that Mendia-Alcaraz was the company’s Managing Partner, and that he led a “team of  
11 private equity professionals and analysts in both the San Francisco and Mexico City offices.”

12 18. Toltec Capital leased an office on Montgomery Street in San Francisco, California.  
13 Mendia-Alcaraz, along with a small group of employees that he hired, conducted company  
14 operations out of this office, including communicating with investors and potential investors by  
15 letters, emails, and telephone calls. At all relevant times, Toltec Capital employees acted under the  
16 direction and supervision of Mendia-Alcaraz.

17 19. By at least December 2019, Mendia-Alcaraz began soliciting investors on behalf of  
18 Toltec Capital and taking in investor funds. Mendia-Alcaraz targeted high-net worth individuals  
19 across various states based on their occupation, age, and luxury car ownership. Mendia-Alcaraz  
20 and Toltec Capital employees sent communications and PPMs to numerous potential investors by  
21 mail and email. Additionally, Mendia-Alcaraz and Toltec Capital employees solicited investors by  
22 telephone cold-calling, LinkedIn messaging, word-of-mouth, and through Toltec Capital’s website  
23 on the internet.  
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1           20.     During the Relevant Period, Defendants raised approximately \$3.3 million from at  
2 least 41 investors. Investors deposited their money— mostly through checks or wire transfers—  
3 into the Toltec Accounts.

4           21.     Investors elected to invest in one or more of the private funds that Toltec Capital  
5 offered. Toltec Capital offered several private funds during the Relevant Period, including the  
6 following six funds (collectively, the “Toltec Funds”). The table below summarizes the dates and  
7 certain offering terms for the Toltec Funds:  
8

Fund	PPM Date	Offering Overview	Security Issued	Purported Fund Strategy
<i>Private Equity Fund II (“PE Fund”)</i>	1/2/2021  1/10/2022 (update)	<ul style="list-style-type: none"> <li>• Fixed annual returns of 15.09%.</li> <li>• Capped at 200 investors.</li> <li>• \$10 million fund capitalization.</li> </ul>	Promissory note	Provided short-term financing for small and mid-cap real estate developers in Mexico.
<i>Limited Cash Management Fund (“LCM Fund”)</i>	9/1/2021	<ul style="list-style-type: none"> <li>• Fixed annual returns of 7.21%.</li> <li>• Capped at 500 investors.</li> <li>• \$10 million fund capitalization.</li> </ul>	Promissory note	Provided short-term financing for small and mid-cap real estate developers in Mexico.
<i>Domestic Real Estate Equity Fund (“Domestic Fund”)</i>	4/20/2022	<ul style="list-style-type: none"> <li>• Fixed annual returns of 12%.</li> <li>• Capped at 200 investors.</li> <li>• \$5 million fund capitalization.</li> </ul>	Promissory note	Provided short-term loans to enable middle-class buyers of residential real estate to make all cash purchase offers.
<i>Real Estate Private Lending Fund II (“Lending Fund”)</i>	7/1/2022	<ul style="list-style-type: none"> <li>• Fixed annual returns of 12%.</li> <li>• Capped at 200 investors.</li> <li>• \$10 million fund capitalization.</li> </ul>	Promissory note	Provided short-term loans to enable luxury residential real estate buyers to make all cash purchase offers.
<i>S&amp;P 500 ETF Fund IV (“S&amp;P 500 Fund”)</i>	4/30/2021  1/25/2022 (update)	<ul style="list-style-type: none"> <li>• Expected annual returns of 21%.</li> <li>• Capped at 200 investors.</li> <li>• \$10 million fund capitalization.</li> </ul>	Joint venture agreement	Capitalized on equities market volatility through intraday trading in four specific ETFs tied to S&P 500 performance.

Fund	PPM Date	Offering Overview	Security Issued	Purported Fund Strategy
<i>Forex USD/MXN, MXN/JPY Fund (“Forex Fund”)</i>	3/20/2023	<ul style="list-style-type: none"> <li>• Target net annual returns of 36.88%.</li> <li>• Capped at 100 investors.</li> <li>• \$5 million fund capitalization.</li> </ul>	Joint venture agreement	Captured arbitrage opportunities in fluctuations of the U.S. Dollar through currency pairings of USD/MXN and MXN/JPY.

### 1. Defendants Managed the Toltec Funds and Acted as Investment Advisers

22. For all Toltec Funds, Mendia-Alcaraz was the only individual expressly identified as Toltec Capital “Management” in its PPMs and website.

23. Each Toltec Fund had a PPM that described the fund’s investment strategy. As described above, the purported fund strategy for the PE, LCM, Domestic, and Lending Funds (together, the “Toltec Real Estate Funds”) was to use investor funds to provide financing to developers or other buyers of residential real estate. The PPMs stated that Mendia-Alcaraz ran day-to-day investment operations of each fund, along with other fund managers or managing directors, under the guidance or overview of the management committee.

24. For the Forex Fund, its PPM described its investment strategy as seeking to capture the arbitrage opportunity in the revaluation and devaluation of the U.S. dollar. According to the joint venture agreement for the fund, “management and control of the day-to-day operations . . . and the administration of the [fund] assets [would] rest exclusively with” Mendia-Alcaraz.

25. For the S&P 500 Fund, its PPM described its investment strategy as securities trading, specifically, “to capitalize on the volatility in the market as reflected in four specific [Exchange-Traded Funds].” The S&P 500 Fund therefore is or holds itself out as being primarily engaged in the business of investing and trading in securities. As a result, the S&P 500 Fund is a pooled investment vehicle under the federal securities laws.



1           26.     Mendia-Alcaraz and Toltec Capital served as investment advisers to the S&P 500  
2 Fund. The fund was structured as a joint venture in which Toltec Capital served as the joint  
3 venture principal and each private party investor was the joint venture investor. As described in  
4 the PPM, Toltec Capital was the manager of the fund and had developed “propriety analytics,”  
5 which allowed fund managers to “accurately predict changes to the S&P 500 Index and capitalize  
6 on the volatility of the index through short-internal positions in index fund ETF positions.” The  
7 S&P 500 Fund joint venture agreement likewise described how Mendia-Alcaraz would manage  
8 and control day-to-day operations of the Fund and the administration of fund assets.  
9

10           27.     Toltec Capital and Mendia-Alcaraz received an economic benefit from their  
11 management of the S&P 500 Fund. According to the PPM, Toltec Capital would receive half of  
12 the Fund’s net profits as the joint venture principal. Mendia-Alcaraz received an economic benefit  
13 by misappropriating investor funds from the S&P 500 Fund for his personal use, as further detailed  
14 below.  
15

## 16                   2.     Defendants Offered and Sold Securities

17           28.     During the Relevant Period, Mendia-Alcaraz and Toltec Capital offered and sold  
18 securities in the form of promissory notes for the Toltec Real Estate Funds and joint venture  
19 agreements (“JV Agreements”) for the S&P 500 and Forex Funds. Both the promissory notes and  
20 JV agreements were securities under the federal securities laws.  
21

22           29.     With respect to the Toltec Real Estate Funds, investors were motivated by  
23 investment purposes, seeking to obtain fixed annualized returns, and these funds were marketed  
24 widely. Fund participants also invested money into these funds, which purported to use investor  
25 funds to provide short-term financing for real estate purchases. As described in the PPMs for the  
26 Lending and Domestic Funds, investor funds would be pooled together along with capital from  
27 Toltec Capital for purposes of executing the investment strategies of these funds. And investors  
28

1 were guaranteed fixed returns tied to the performance of the funds, which investors were told was  
2 directed in whole or in part by Mendia-Alcaraz.

3 30. As to the S&P 500 and Forex Funds, fund participants invested money into these  
4 funds, and investor capital would be pooled together for investment purposes. Investor returns  
5 would be based on fund performance, which was dependent on Mendia-Alcaraz's effort and ability  
6 to generate investment returns, as the Managing Partner of Toltec Capital. Investors' potential  
7 profits were thus dependent on Mendia-Alcaraz's ability to manage the funds and successfully  
8 execute the investment strategies of each fund.  
9

10 31. Defendants did not file a registration statement with the SEC for any of their  
11 securities offerings alleged herein.

12 **3. Defendants Guaranteed the Return of Investors' Capital and Made Other**  
13 **Representations About Returns on Investments**

14 32. During the Relevant Period, Defendants made various representations concerning  
15 investor principal guarantees and returns for the Toltec Funds.

16 33. In a marketing presentation that Toltec Capital shared with investors (the "Toltec  
17 Marketing Deck"), including during an in-person meeting held with one prospective investor in  
18 late 2022, Toltec Capital claimed its funds offered many advantages such as liquidity, capital  
19 protection, and flexibility, as shown in the below excerpt:  
20



1  
2 34. The Toltec Marketing Deck further represented that Toltec Capital guaranteed the  
3 full return of investors' principal, as shown in the graphic below:



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6  
7  
8 35. As alleged above, the Toltec Fund PPMs sent to investors during the Relevant  
9 Period also guaranteed a return of their full invested capital and, for the Toltec Real Estate Funds,  
10 fixed monthly interest payments. For example, on June 24, 2022, a Toltec Capital employee  
11 emailed a prospective investor the Domestic Fund PPM, which detailed this guarantee and outlined  
12 a fixed annualized rate of return of 12% with monthly cash payouts.

13  
14 36. For the S&P 500 and Forex Funds, the PPMs sent to investors also stated that  
15 investors would receive a return of their full invested capital plus expected prorated dividend  
16 disbursements of between 21% and 36.88% (dependent on the Toltec Fund) at the end of their  
17 investment terms. For example, on April 26, 2023, Mendia-Alcaraz emailed a prospective investor  
18 the S&P Fund PPM, which detailed the same investor guarantee and outlined target annualized  
19 dividend returns of 21%.

20  
21 37. During the Relevant Period, Mendia-Alcaraz repeated these promises of guaranteed  
22 returns and capital protection to investors orally and in writing. For example, Mendia-Alcaraz:

- 23 a. promised, in a marketing letter mailed to numerous prospective investors on  
24 or around January 17, 2023, net annualized investor returns of 12% for the  
25 Lending Fund;  
26  
27 b. wrote to an investor in an email sent on February 3, 2023, that "placing  
28 capital in an investment fund would not only prevent a loss of money but

1 *realize a positive gain*” (emphasis added); and

2 c. wrote to an investor in an email sent on March 23, 2023, that the Forex  
3 Fund was “a 90-day fund with a capitalization of \$20,000.00 and an  
4 expected net return of 36%.”

5 38. Investors relied on the foregoing representations when deciding to invest their  
6 money with Toltec Capital, and investors believed Toltec Capital and Mendia-Alcaraz were  
7 guaranteeing investment opportunities with little to no risk.  
8

9 **B. Defendants Made Materially False and Misleading Statements**

10 **1. Defendants Misled Investors About Mendia-Alcaraz’s Background and  
11 Experience**

12 39. To solicit investors, Mendia-Alcaraz and Toltec Capital portrayed Mendia-Alcaraz  
13 as a well-educated, experienced professional with a long track record of success in most of the  
14 Toltec Fund PPMs and on Toltec Capital’s website. For example, in the Domestic Fund PPM  
15 dated April 20, 2022, there was a biographic section on Mendia-Alcaraz, stating that he had  
16 “academic credentials ... from the Goldman School of Public Policy at the University of California  
17 at Berkeley and over two decades of experience in asset management[.]” A similar description of  
18 Mendia-Alcaraz was shown on Toltec Capital’s website, as captured in the following screenshot  
19 from Toltec Capital’s website as of December 2022:  
20



1           40.       Several PPMs, including the PPMs for the Domestic Fund and the PE Fund, stated  
2 that Toltec Capital established its first real estate fund in 2009, and that Management had  
3 “continued success” since then while the Firm “engaged in a diverse set of deals.” The S&P 500  
4 Fund PPM dated January 25, 2022 also represented that Toltec Capital had been trading U.S.  
5 equities since 2009, with “Management” establishing an in-house team of analysts for this  
6 portfolio.  
7

8           41.       In fact, Mendia-Alcaraz never attended the Goldman School of Public Policy. To  
9 the extent Toltec Capital existed or operated in 2009, Mendia-Alcaraz was not involved. Rather,  
10 between May 2007 and July 2009, Mendia-Alcaraz was held in California state detention facilities  
11 for alleged financial crimes. As noted above, in February 2010, Mendia-Alcaraz pled no contest to  
12 two charges under California Penal Code § 476 (check fraud) and § 487 (theft). Later, in August  
13 2010, Mendia-Alcaraz submitted a court filing in *Mendia v. John Garcia, et al.*, No. 3:10-cv-  
14 03910-MEJ (N.D. Cal.), stating that he had been unemployed for at least 12 months, had no bank  
15 accounts or other assets (apart from \$290 in cash), and was receiving government assistance.  
16

17           42.       In 2018, Mendia-Alcaraz filed for bankruptcy. In 2019, the same year Mendia-  
18 Alcaraz began soliciting investors for the Toltec Funds, he filed six additional bankruptcy  
19 proceedings. Each of his bankruptcy cases was dismissed for various reasons.  
20

21           43.       While Toltec Capital and Mendia-Alcaraz touted Mendia-Alcaraz’s credentials and  
22 experience to investors, they did not disclose to investors Mendia-Alcaraz’s history of bankruptcy  
23 filings and criminal record. These facts were material to a reasonable investor considering an  
24 investment with Toltec Capital. A reasonable investor would have wanted to know that the  
25 managing partner of the fund in which they were investing was lying about his educational  
26 background, had been convicted of financial crimes, and had recently filed bankruptcy numerous  
27  
28

1 times. The omission of those material facts made the statements by Toltec Capital and Mendia-  
2 Alcaraz regarding Mendia-Alcaraz's credentials and experience materially misleading.

3 **2. Defendants Made False Promises to Investors About the Return of**  
4 **Principal and Other Payments**

5 44. As discussed above, the Defendants guaranteed the full return of investors'  
6 principal and stated that investors would receive interest and/or dividend disbursements. In fact,  
7 during the Relevant Period, Toltec Capital almost never had sufficient money in its bank accounts  
8 to cover all investors' outstanding principal, interest, and dividend amounts. As a result, Toltec  
9 Capital often made late interest payments to investors, failed to pay interest or dividends, and did  
10 not return investors' principal.

11 45. When investors raised concerns about not being paid on time, Mendia-Alcaraz  
12 further misled them by telling investors money was coming soon or by sending investors updates  
13 regarding supposed investment performance. For example, on January 6, 2023, one investor  
14 emailed Mendia-Alcaraz, asking him to check on her account because she had not received her  
15 expected dividend disbursement for the S&P 500 Fund. Mendia-Alcaraz responded by email on  
16 January 7, 2023, stating that her net gains had been "between 21.78% to 22.09% (annualized),"  
17 and that her next dividend date was April 4, 2023. But despite these assurances, this investor  
18 ultimately never received her owed dividend disbursements nor a return of her principal  
19 investment at the end of her investment term. While this investor received funds from Toltec  
20 Capital in July 2022, these payments were funded through Ponzi payments from other investors,  
21 not from legitimate investment returns. In fact, despite Mendia-Alcaraz's representations, this  
22 investor's principal could not have been earning dividends because it was never invested in any  
23 fund, it was instead spent by Toltec Capital within the first month it was received, including to  
24 make Ponzi payments to other investors.  
25  
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1           46. Mendia-Alcaraz also hid Toltec Capital’s inability to repay investors by requesting  
2 or instructing them to sign new contracts to extend their investment term. For example, on April  
3 26, 2023, Mendia-Alcaraz emailed one investor whose final principal and interest payment was  
4 due on April 28, 2023 under his then current contract. Mendia-Alcaraz claimed that the investor’s  
5 “current contract [would] need to be amended to cover the interest arrears,” and set out dates for “a  
6 complete redemption” and “outstanding interest.” In a subsequent email that Mendia-Alcaraz sent  
7 to the investor later that same day, on April 26, 2023, Mendia-Alcaraz promised the investor  
8 would receive the outstanding principal and interest owed by June 30, 2023, although Mendia-  
9 Alcaraz “expected it to be sooner.” Mendia-Alcaraz would continue to provide this investor with  
10 additional, false assurances throughout 2023 that payment was forthcoming, emailing the investor  
11 on June 29, 2023, July 26, 2023, August 24, 2023, October 9, 2023, and December 11, 2023.  
12 Through false assurances such as these, Mendia-Alcaraz convinced numerous investors to sign  
13 contracts rolling over their principal for longer-term investment contracts, including the above-  
14 referenced investor who signed a revised Promissory Note dated December 11, 2023, to recover  
15 their accrued interest and principal.  
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17

18           47. Additionally, on or around February 16, 2024, Mendia-Alcaraz spoke with two  
19 investors who had jointly invested \$140,000 in one of the Toltec Capital funds. Mendia-Alcaraz  
20 blamed Toltec Capital’s delay in returning their money on various administrative or accounting  
21 problems, and he convinced the investors to extend their investment contract. Mendia-Alcaraz did  
22 not, however, tell the investors of the underlying cash shortage that prevented Toltec Capital from  
23 paying its investors. As of February 16, 2024, the Toltec Accounts had a negative net balance of  
24 approximately (\$62). As noted above, that was material information that a reasonable investor  
25 would have wanted to know.  
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27  
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1           **C. Defendants Misappropriated Investor Funds**

2           48. Contrary to Defendants' representations to investors about how invested funds  
3 would be used, Defendants misappropriated much of the money they received from investors. At  
4 Mendia-Alcaraz's direction, Defendants used investors' money to make Ponzi-like payments to  
5 other investors and to pay Mendia-Alcaraz's personal expenses.

6           49. For example, on October 19, 2022, an investor wired \$100,000 into one of the  
7 Toltec Accounts, which began that day with a negative balance of approximately (\$66). The next  
8 day, 25 payments were made to approximately 18 investors totaling approximately \$42,000,  
9 purportedly as interest, dividends, and a capital redemption. Additionally, on May 23, 2022, an  
10 investor wired \$250,000 to one of the Toltec Accounts, which began the day with a balance of  
11 approximately \$19,000. Over the following week, approximately \$128,329 was distributed to four  
12 separate investors. Similarly, on September 9, 2022, an investor wired \$25,000 into one of the  
13 Toltec Accounts, which began the day with a \$0.24 balance. That same day, six payments were  
14 made to investors totaling approximately \$4,900 and \$5,100 was withdrawn from the account.

15           50. Defendants also misappropriated investor funds for Mendia-Alcaraz's personal use.  
16 During the Relevant Period, Mendia-Alcaraz misappropriated at least approximately \$267,000 of  
17 investor funds for his personal expenses, including approximately \$65,000 spent on rent for one or  
18 more apartments in San Francisco, and \$2,600 spent at a jewelry store. Additionally,  
19 approximately \$150,000 in cash withdrawals were made from the Toltec Accounts that Mendia-  
20 Alcaraz controlled.

21           51. Mendia-Alcaraz also transferred at least approximately \$121,000 (representing  
22 investor funds) from the Toltec Accounts to a personal checking account that he co-owned with  
23 Ramirez Cano. Of those funds, at least approximately \$3,400 was spent by Ramirez Cano.  
24 Ramirez Cano did not have a legitimate claim to the investor funds that she spent.  
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1 52. Additionally, during the Relevant Period, approximately \$673,000 was transferred  
2 from the Toltec Accounts to Fondo Toltec. Of those funds, at least approximately \$400,000 is  
3 traceable to Toltec Capital investor funds. At least some of those funds were used to pay personal  
4 expenses, including an automobile purchase and condo payments. Fondo Toltec did not have a  
5 legitimate claim to the Toltec Capital investor funds that it received.  
6

7 **D. Defendants' Actions Harmed Investors**

8 53. To date, Defendants have not returned the investment principal to approximately 33  
9 of their 41 investors. The amount of these investors' lost principal is approximately \$2.2 million,  
10 which does not include owed interest and dividend payments.

11 54. Mendia-Alcaraz also continues to mislead investors by assuring them that Toltec  
12 Capital will return their funds in the near future. For example, on or around April 27, 2024,  
13 Mendia-Alcaraz spoke to one investor by phone and stated that Toltec Capital had been late in  
14 returning capital only because of problems with employees or vendors. In another instance,  
15 Mendia-Alcaraz spoke to a separate investor by phone on or around February 27, 2024, and  
16 assured the investor that his funds would be returned by March 31, 2024. Despite Mendia-  
17 Alcaraz's assurances, these investors' funds have not been returned.  
18

19 **FIRST CLAIM FOR RELIEF**

20 **Violations of Sections 5(a) and 5(c) of the Securities Act**  
21 **[15 U.S.C. §§ 77e(a), 77e(c)]**

22 **(Against Defendants Mendia-Alcaraz and Toltec Capital)**

23 55. The SEC re-alleges and incorporates by reference paragraphs 1 through 54 above.

24 56. As alleged above, Defendants offered and sold Toltec Fund securities through  
25 interstate commerce. There was no registration statement filed with the SEC or in effect for any of  
26 Defendants' securities offerings.  
27

28 57. No exemption from registration applied to Defendants' securities offerings.

1 Defendants engaged in general solicitation, broadly targeting members of the public across various  
2 states.

3 58. By their conduct alleged above, Defendants directly or indirectly, singly and in  
4 concert with others, made use of the means or instruments of transportation or communication in  
5 interstate commerce, or of the mails, to offer to sell or to sell securities, or carried or caused to be  
6 carried through the mails or in interstate commerce, by means or instruments of transportation,  
7 securities for the purpose of sale or for delivery after sale, when no registration statement had been  
8 filed or was in effect as to such securities, and when no exemption from registration was  
9 applicable.  
10

11 59. By reason of the foregoing, Defendants violated, and unless restrained and enjoined  
12 will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and  
13 77e(c)].  
14

## 15 **SECOND CLAIM FOR RELIEF**

### 16 **Violations of Section 17(a) of the Securities Act** 17 **[15 U.S.C. § 77q(a)]**

#### 18 **(Against Defendants Mendia-Alcaraz and Toltec Capital)**

19 60. The SEC re-alleges and incorporates by reference paragraphs 1 through 54 above.

20 61. Defendants, by engaging in the conduct described above, directly or indirectly, in  
21 the offer or sale of securities, by use of means or instruments of transportation or communication  
22 in interstate commerce or by use of the mails:

- 23 a. employed devices, schemes, or artifices to defraud;
- 24 b. obtained money or property by means of untrue statements of material fact  
25 or by omitting to state a material fact necessary in order to make the  
26 statements made, in light of the circumstances under which they were made,  
27 not misleading; and  
28

1 c. engaged in transactions, practices, or courses of business which operated or  
2 would operate as a fraud or deceit upon purchasers.

3 62. With regard to their violations of Section 17(a)(1), Defendants engaged in the  
4 conduct knowingly or recklessly. With regard to their violations of the Sections 17(a)(2) and  
5 17(a)(3), Defendants acted at least negligently.

6 63. By reason of the foregoing, Defendants violated, and unless restrained and enjoined  
7 will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

8  
9 **THIRD CLAIM FOR RELIEF**

10 **Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]**  
11 **and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

12 **(Against Defendants Mendia-Alcaraz and Toltec Capital)**

13 64. The SEC re-alleges and incorporates by reference paragraphs 1 through 54 above.

14 65. Defendants, by engaging in the conduct described above, directly or indirectly, in  
15 connection with the purchase or sale of securities, by use of means or instrumentalities of interstate  
16 commerce, or of the mails, knowingly or recklessly:

17 a. Employed devices, schemes, or artifices to defraud;

18 b. Made untrue statements of material facts or omitted to state material facts  
19 necessary in order to make the statements made, in the light of the  
20 circumstances under which they were made, not misleading; and

21 c. Engaged in acts, practices, or courses of business which operated or would  
22 operate as a fraud or deceit upon other persons, including purchasers of  
23 securities.  
24

25 66. By reason of the foregoing, Defendants violated, and unless restrained and enjoined  
26 will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5  
27 thereunder [17 C.F.R. § 240.10b-5].  
28

**FOURTH CLAIM FOR RELIEF**

**Violations of Sections 206(1) and 206(2) of the Advisers Act  
[15 U.S.C. §§ 80b-6(1) and (2)]**

**(Against Defendants Mendia-Alcaraz and Toltec Capital)**

67. The SEC re-alleges and incorporates by reference paragraphs 1 through 54 above.

68. As a result of the conduct alleged herein, Defendants acted as investment advisers within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)] to the S&P 500 Fund. Defendants were in the business of providing investment advice to others concerning securities for compensation.

69. As set forth above, Defendants, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (a) acting intentionally, knowingly, or recklessly, employed devices, schemes, or artifices to defraud clients and/or potential clients; or (b) engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client.

70. By reason of the foregoing, Defendants directly or indirectly violated, and unless restrained and enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**FIFTH CLAIM FOR RELIEF**

**Violations of Sections 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and  
Rule 206(4)-8 thereunder [17 C.F.R. § 206(4)-8]**

**(Against Defendants Mendia-Alcaraz and Toltec Capital)**

71. The SEC re-alleges and incorporates by reference paragraphs 1 through 54 above.

72. During the Relevant Period, the S&P 500 Fund was a pooled investment vehicle under the federal securities laws.



**PRAYER FOR RELIEF**

WHEREFORE, the SEC respectfully requests that the Court:

**I.**

79. Permanently enjoin Defendants from directly or indirectly violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

80. Permanently enjoin Defendants from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1), 206(2), and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(A) any investment strategy, or investment in or offering of securities;

(B) the registration status of any offering or securities;

(C) the prospects for success of any product or company;

(D) the use of investor funds;

(E) compensation to any person;

(F) Defendants' qualifications to advise investors; or

(G) the misappropriation of investor funds or investment proceeds.

**II.**

81. Permanently enjoin Defendant Mendia-Alcaraz from directly or indirectly, including but not limited to, through any entity owned or controlled by him, participating in the issuance, purchase, offer, or sale of any securities, provided however, that such injunction shall not prevent

1 him from purchasing or selling securities for his own personal account.

2 **III.**

3 82. Order Defendants to disgorge, on a joint and several basis, all ill-gotten gains or  
4 unjust enrichment derived from the unlawful activities set forth in this Complaint, together with  
5 prejudgment interest thereon.

6 **IV.**

7 83. Order Defendants to pay civil monetary penalties pursuant to Section 20(d) of the  
8 Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and  
9 Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)].

10 **V.**

11 84. Prohibit Defendant Mendia-Alcaraz, pursuant to Section 20(e) of the Securities Act  
12 [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from  
13 serving as an officer or director of any company that has a class of securities registered with the  
14 SEC pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports  
15 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

16 **VI.**

17 85. Order the Relief Defendants to disgorge, with prejudgment interest, all ill-gotten  
18 gains received or derived from the unlawful activities set forth in this Complaint.

19 **VII.**

20 86. Grant such other and further relief as this Court may determine to be appropriate.

21 **JURY DEMAND**

22 87. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the SEC demands a trial  
23 by jury on all issues so triable.

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Respectfully submitted,

Dated: August 23, 2024

By: /s/ Timothy K. Halloran

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Timothy K. Halloran

Daniel J. Ball

Laura J. Cunningham

Attorneys for Plaintiff

SECURITIES AND EXCHANGE

COMMISSION