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| TEXAS STATE SECURITIES BOARD, Petitioner | § | BEFORE THE STATE OFFICE |
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| | § | |
| v. | § | OF |
| | § | |
| TEXITCOIN, MINETXC, BLOCKCHAIN MINT, AND ROBERT J. GRAY, | § | |
| | § | |
| Respondents | § | ADMINISTRATIVE HEARINGS |

**PETITIONER'S RESPONSE TO RESPONDENTS' MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT THEREOF**

## SUMMARY

This case arises from an Emergency Cease and Desist Order ("the Order") issued by the Securities Commissioner alleging that Respondents violated the registration and anti-fraud provisions of The Securities Act, Tex. Gov't Code §§ 4001.001–4008.105. Respondents seek summary disposition, asking the Honorable Administrative Law Judge to recommend that the Order be set aside in its entirety on the grounds that no genuine issue of material fact exists and that they are entitled to judgment as a matter of law.

Respondents' Motion should be denied because it asks the Honorable Administrative Law Judge to resolve the very factual disputes that require an evidentiary hearing. The Motion repeatedly characterizes disputed facts as "undisputed," asks the Honorable Administrative Law Judge to draw inferences in Respondents' favor, and invites the Honorable Administrative Law

Judge to decide mixed questions of law and fact based solely on a paper record. That is not the purpose of summary disposition.

The central issues in this proceeding, including whether Respondents' mining packages constitute investment contracts under Texas law and whether Respondents engaged in fraud, depend upon the economic realities of the transactions, the representations made to purchasers, the purchasers' expectations, and the role Respondents played in generating the promised returns. Those issues are inherently factual and cannot be resolved without hearing testimony from the purchasers themselves, together with the other witnesses and evidence Petitioner intends to present at the hearing on the merits.

Summary disposition is not a substitute for trial where disputed facts, competing inferences, and witness credibility remain at issue. Because genuine issues of material fact permeate the claims asserted in the Order, Respondents have failed to meet their burden under Section 155.505 of the Texas Administrative Code. The Enforcement Division therefore respectfully requests that the Honorable Administrative Law Judge deny Respondents' Motion for Summary Disposition and allow this matter to proceed to a full evidentiary hearing.

## ARGUMENT

### I. Respondents Are Not Entitled to Summary Disposition as a Matter of Law

#### A. Summary Disposition Standard

Summary disposition is an extraordinary procedural device appropriate only when the movant establishes that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Under Section 155.505 of the Texas Administrative Code, the Honorable Administrative Law Judge may grant summary disposition only when the administrative record is sufficient to sustain a judgment as a matter of law. *See Rogers v. Tex. Bd. of Architectural Examiners*, 390 S.W.3d 377, 389 (Tex. App.—Austin 2011, no pet.).

Respondents cannot satisfy that standard here. The administrative record is not sufficient to sustain judgment as a matter of law because the issues presented by Respondents' Motion require the resolution of disputed facts and mixed questions of law and fact that depend upon live testimony and credibility determinations. Among the most significant evidence Petitioner intends to present is the first-hand testimony of mining package purchasers regarding the representations made to them, their expectations in purchasing the mining packages, and the economic realities of the transactions. Moreover, expert opinions alone "[do] not constitute evidence of probative force" and cannot substitute for competent testimonial evidence. *Id*. at 389-90.

More fundamentally, Section 155.505(a) expressly prohibits granting summary disposition on the ground that there is no evidence of an essential element of a claim for which the nonmovant bears the burden of proof. That is precisely what Respondents seek. Respondents argue Petitioner cannot prove the mining packages were securities and cannot prove Respondents engaged in fraud. Petitioner bears the burden of proof on both issues. Accordingly, Section 155.505(a) expressly forecloses Respondents' attempt to obtain summary disposition on those grounds.

Consistent with well-established Texas summary judgment principles, because Petitioner bears the burden of proof, all evidence must be viewed in the light most favorable to Petitioner, every reasonable inference must be indulged in Petitioner's favor, and any doubts regarding the existence of a genuine issue of material fact must be resolved against the moving party. *See Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985).

Summary disposition therefore is not a vehicle for deciding whose version of disputed events is more persuasive. Where, as here, the record contains competing testimony, conflicting documentary evidence, or competing reasonable inferences, summary disposition must be denied so those issues may be resolved after a full evidentiary hearing.

These principles are particularly important in administrative enforcement proceedings under The Securities Act. The issues presented here, including whether Respondents' mining packages constitute investment contracts and whether Respondents engaged in fraud, involve mixed questions of law and fact that turn on the economic realities of the transactions, the expectations of purchasers, the representations made by Respondents, and the credibility of competing witnesses. The evidentiary record will necessarily include testimony from investors, investigators, Respondents, and experts, together with extensive documentary, electronic, and financial evidence. Those issues cannot properly be resolved on a paper record.

Ultimately, the burden rests squarely on Respondents to establish both that no genuine issue of material fact exists and that they are entitled to judgment as a matter of law. Petitioner is not required to prove its case at the summary disposition stage. Rather, if the record reveals disputed material facts, or if reasonable factfinders could draw differing conclusions from the evidence, the Motion must be denied and the matter allowed to proceed to a full evidentiary hearing. As demonstrated below, Respondents fall well short of satisfying that demanding standard.

**B. Respondents' Cannot Meet Their Burden for Summary Disposition**

Respondents seek summary disposition by portraying a sharply disputed evidentiary record as though it presents only one permissible interpretation. It does not. Rather than demonstrating the absence of a genuine issue of material fact, Respondents selectively rely on evidence favorable to their position, disregard contrary evidence, draw inferences in their own favor, and ask the Honorable Administrative Law Judge to accept Respondents' version of disputed events over Petitioner's competing evidence. In doing so, Respondents ask the Court to perform the very functions prohibited at the summary disposition stage, namely, weighing competing evidence, resolving factual disputes, and choosing between competing reasonable inferences.

Moreover, Respondents' Motion assumes that the existing documentary record is complete. It is not. Petitioner has not yet had the opportunity to present the testimony of mining package purchasers and other witnesses whose testimony bears directly on the disputed issues raised in the Motion, including the representations made to investors, investors' expectations in purchasing the mining packages, the economic realities of the transactions, and the materiality of the alleged omissions. Those factual issues cannot be resolved on a paper record alone.

Under Section 155.505 of the Texas Administrative Code, Respondents bear the burden to establish both that no genuine issue of material fact exists and that they are entitled to judgment as a matter of law. They cannot satisfy that burden merely by submitting declarations, expert opinions, or competing interpretations of disputed evidence. Nor may Respondents obtain summary disposition simply by asserting that Petitioner's evidence is insufficient where Petitioner bears the burden of proof. See 1 Tex. Admin. Code § 155.505(a).

The Emergency Cease and Desist Order alleges facts materially different from Respondents' narrative, and Petitioner intends to present testimony and documentary evidence supporting those allegations at the hearing on the merits. At a minimum, reasonable factfinders could draw differing conclusions from the evidence presented by the parties. Those disputes—including what representations were made to investors, what investors reasonably expected, whether the mining packages constituted investment contracts under Texas law, and whether Respondents engaged in fraud, are quintessential questions for the factfinder after a full evidentiary hearing, not on summary disposition. Accordingly, Respondents have failed to meet their burden under Section 155.505, and their Motion should be denied.

## II. Respondents' Mining Packages Are Securities and Investor Testimony Is Critical in Proving This

Respondents incorrectly frame the Order as an attempt by Petitioner to assert regulatory jurisdiction over a commodity. At the same time, however, Respondents correctly acknowledge that the Order does not allege the sale of TEXITcoin ("TXC"), the digital currency itself, constitutes the offer or sale of a security. The Order makes no such allegation. Rather, the Order alleges that Respondents' offer for sale and sale of mining packages constitute the offer for sale and sale of securities under The Securities Act.

Nor should Respondents be surprised that digital assets may be involved in securities transactions. Since 2018, Petitioner has consistently issued cease and desist orders involving securities offerings tied to digital assets while recognizing that the digital assets themselves are not necessarily securities.[1] Likewise, Petitioner has repeatedly issued public guidance addressing securities offerings involving digital assets, not the regulation of digital currencies themselves. Furthermore, while Respondents argue that non-binding federal authority requires a finding that the mining packages at issue are not securities as a matter of law, they largely ignore longstanding Texas precedent regulating substantially similar cloud-mining and cryptocurrency investment offerings. *See In the Matter of Bitcoin Trading & Cloud Mining Limited Aka Btcrush, Jaylon Cross, Bruce Rodgerson, Robin Lozinski and Thomas A. Johnson*, 2018 WL 2200023.

More importantly, the issue before the Honorable Administrative Law Judge is not whether Respondents have advanced one possible interpretation of the evidence. The issue is whether

[1] The Investor's Guide to Cryptocurrency Offerings | Texas State Securities Board

Respondents have established that no genuine issue of material fact exists regarding whether the mining packages constitute investment contracts under Texas law. They have not.

The Order alleges facts sufficient to establish that Respondents' mining packages constitute securities in the form of investment contracts. Section 4001.068(a)(1)(O) of The Securities Act expressly includes an "investment contract" within the definition of a security. Texas law further defines an investment contract as:

> "a contract, transaction, or scheme through which a person pays money to participate in a common venture or enterprise with the expectation of receiving profits, under circumstances in which the failure or success of the enterprise, and thus the person's realization of the expected profits, is at least predominately due to the entrepreneurial or managerial, rather than merely ministerial or clerical, efforts of others."
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> *Life Partners, Inc. v. Arnold*, 464 S.W.3d 660, 681 (Tex. 2015).

The Texas Supreme Court further instructed that "the Texas Securities Act's definition of 'securities' must be construed broadly to maximize the protection it provides to investors, while focusing on the economic realities of the transaction regardless of any labels or terminology the parties may have used." *Id*. at 681.

That directive is particularly significant here. Respondents repeatedly rely on labels such as "proof-of-work mining," "hash power," "miners," and "digital commodity" in arguing that the mining packages cannot constitute securities. *Life Partners* instructs precisely the opposite. The Court must look beyond Respondents' terminology and instead examine the economic realities of the transactions. That inquiry necessarily turns on disputed factual issues, including the representations made to purchasers, purchasers' expectations, the degree of managerial control exercised by Respondents, and the role purchasers actually played in the mining enterprise.

As demonstrated in the discussion that follows, each of the *Life Partners* elements depends upon disputed facts that Petitioner intends to establish through documentary evidence and

testimony from actual mining package purchasers. Because those disputed factual issues are central to determining whether the mining packages constitute investment contracts under Texas law, Respondents cannot establish entitlement to summary disposition, and the matter must proceed to a hearing on the merits.

### A. Application of the *Life Partners* Test

It is undisputed that investors purchased mining packages from Respondents. Respondents admit in their Motion that they sold mining packages through their website located at https://minetxc.com/. Accordingly, the first element of the *Life Partners* test, that there be a transaction through which a person pays money, is satisfied.

Respondents instead dispute the remaining three elements of the *Life Partners* test by arguing that the mining packages did not "[confer] any ownership stake, profits, or other interest in TEXITCoin, MineTXC, or Blockchain Mint" and that purchasers were entitled only "to a daily allocation of mined TXC." Resp'ts Mot. Summ. Disp., at 10. Those remaining elements require participation in a common enterprise with the expectation of profits predominately due to the entrepreneurial or managerial efforts of others. *Life Partners, Inc.*, 464 S.W.3d at 667.

Notably, Respondents do not dispute several material facts alleged in the Order. They do not dispute that the purchase of a mining package entitled purchasers to receive a specified amount of hash power that was added to the mine's total computing power, thereby determining each purchaser's pro rata share of the TXC mined by the network and distributed as a daily return. Resp'ts Mot. Summ. Disp., at 4. Likewise, Respondents do not dispute Petitioner's allegation that some purchasers never received possession or control of any mining hardware, leaving Respondents to conduct the mining activities on their behalf. ENF-26-CDO-1983 ¶16; Resp'ts Mot. Summ. Disp., at 5-6.

What Respondents dispute is not these underlying facts, but their legal significance. Specifically, Respondents dispute what purchasers reasonably understood they were buying, what they expected to receive in return, and whether the economic realities of the transactions satisfy the remaining *Life Partners* elements. Those are mixed questions of law and fact that cannot be resolved without hearing testimony from the purchasers themselves. Their testimony is highly probative of what representations were made, what expectations they reasonably formed, and what role they understood Respondents would perform in generating the promised returns.

The central premise of Respondents' Motion is that no factual disputes exist and that this case can be decided solely on the existing documentary record. The record, however, has not yet been developed through the presentation of live testimony at the hearing on the merits. Testimony from actual purchasers is critical to determining whether they expected to receive profits, how they expected those profits to be generated, and what entrepreneurial or managerial efforts they expected Respondents to undertake on their behalf. These issues lie at the heart of the *Life Partners* analysis and cannot be fully evaluated on a paper record alone.

Turning to the second element of *Life Partners*, participation in a common enterprise, Texas securities law recognizes that either horizontal or vertical commonality satisfies this requirement. *Searsy v. Commercial Trading Corp*., 560 S.W.2d 637, 640 (Tex. 1977). Horizontal commonality exists when the success of one investor is accompanied by or occurs simultaneously with the success of other investors, while vertical commonality exists when the success of the investor depends upon the efforts and success of the promoter. *Id*. (citing *S.E.C. v. Koscot Interplanetary, Inc.*, 497 F.2d 473 (5th Cir. 1974)).

Respondents admit that all purchasers shared the network's daily mining output. Resp'ts Mot. Summ. Disp., at 6. Petitioner will present testimony at the hearing demonstrating that purchasers understood they were participating in a shared mining enterprise and expected to profit

from Respondents' operation of that enterprise. Based on this evidence, a reasonable factfinder could conclude that horizontal commonality exists because purchasers shared proportionately in the mining output generated by the collective hash power of the network.

Likewise, Respondents acknowledge that not every purchaser took possession of mining equipment. Resp'ts Mot. Summ. Disp., at 4-6. Purchasers who did not receive possession of mining hardware necessarily depended upon Respondents to operate, maintain, and manage the mining enterprise that generated their daily returns. A reasonable factfinder could therefore conclude that vertical commonality exists because those investors' financial success depended upon Respondents' continued mining efforts. Whether horizontal commonality, vertical commonality, or both ultimately exist presents factual questions that cannot be resolved on summary disposition.

Respondent Gray's own statements further support the existence of a common enterprise. For example, Respondent Gray told purchasers that "[he's] directly plugged in to good information because [he's] here every day working hard for [their] mutual success." Pet'r's Ex. 1 at 3:34. A reasonable factfinder could infer from this statement that Respondents themselves viewed the mining operation as a shared enterprise in which Respondents' continuing efforts directly affected investors' success. Combined with testimony from actual purchasers regarding their understanding of the transaction, this evidence further demonstrates why the existence of a common enterprise cannot be determined without an evidentiary hearing.

The third and fourth elements of the *Life Partners* test likewise present disputed factual issues inappropriate for summary disposition. Those elements require the factfinder to determine whether purchasers expected to receive profits and whether those profits were expected to result predominantly from Respondents' entrepreneurial or managerial efforts. Managerial efforts include both "those that are made prior to the transaction as well as those that are made after." *Life Partners, Inc.*, 464 S.W.3d at 681.

A hearing on the merits is necessary because testimony from purchasers is critical to determining why they purchased these mining packages, what they reasonably expected to receive, and what role they expected Respondents to perform in generating returns. Without hearing directly from those purchasers, the trier of fact cannot fully evaluate whether they reasonably expected profits or whether those anticipated profits depended predominantly upon Respondents' managerial efforts.

Petitioner intends to present testimony from at least two investors who believed they were making an investment when purchasing these mining packages and whose motivation was to receive a passive return on that investment. *See* Hesse Decl.; Webb Decl.. Both investors purchased mining packages but were informed only that the mining equipment was located somewhere in the Texas mine; they were never provided the precise location of the equipment and remained dependent upon Respondents to successfully operate the mining enterprise.

The documentary evidence likewise supports those expectations. The welcome letter emailed to new purchasers states in its second paragraph:

> "First, you've done all that's necessary to be on our TXC (TEXITcoin) team. You've got your seat on the rocket ship, and now you can simply sit back and enjoy the ride. There's a lot more that you can do, but everything else from here on out is optional."
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> Pet'r's Ex. 3.

A reasonable factfinder could conclude that this communication encouraged purchasers to assume a passive role while relying upon Respondents to operate and manage the mining enterprise. Together with the testimony Petitioner intends to present at the hearing, this evidence supports Petitioner's allegation that purchasers invested in a common cryptocurrency mining enterprise with the expectation of receiving profits generated predominantly through Respondents'

entrepreneurial and managerial efforts. At a minimum, it demonstrates the existence of disputed material facts regarding the remaining *Life Partners* elements, precluding summary disposition.

**B. Respondents Misapply Federal Caselaw**

Respondents contend that their mining packages "lack the key attributes of a security" and rely primarily on *Audet v. Fraser* in support of that assertion. Resp'ts Mot. Summ. Disp., at 11 (citing *Audet v. Fraser*, 605 F. Supp. 3d 372 (D. Conn. 2022)). Respondents' reliance on *Audet* is misplaced for several reasons.

First, *Audet* is a Connecticut federal district court decision applying federal securities law, not Texas law governing investment contracts under *Life Partners*. Unlike Texas law, which expressly requires courts to construe the definition of "security" broadly to maximize investor protection while focusing on the economic realities of the transaction regardless of the labels used by the parties, *see Life Partners, Inc.*, 464 S.W.3d at 681, *Audet* applied federal investment contract principles in the context of a private securities class action brought by investors against the sellers of mining pool interests. *Audet*, 605 F. Supp 3d at 375-76. It is therefore neither binding nor controlling on the issues before this Honorable Administrative Law Judge.

Second, the factual circumstances presented in *Audet* differ materially from those presented here. In *Audet*, the jury heard evidence that purchasers of mining pool interests, referred to as "Hashlets," could direct their interests among different mining pools that generated different returns and mined different cryptocurrencies. *Audet*, 605 F. Supp. 3d at 376-79. Here, by contrast, purchasers of Respondents' mining packages were given no such discretion. They could not choose which cryptocurrency would be mined, direct Respondents' mining activities, or otherwise control the mining operation. Instead, Respondents instructed purchasers that they could simply sit back and "enjoy the ride." Pet'r's Ex. 4. Those factual distinctions bear directly on the *Life Partners*

inquiry concerning the economic realities of the transactions and the extent to which purchasers depended upon Respondents' entrepreneurial and managerial efforts.

Most importantly, Respondents' reliance on *Audet* undermines, rather than supports, their request for summary disposition. The issue before the district court in *Audet* arose only after the parties presented evidence during a full trial and a jury had heard testimony from witnesses before returning its verdict. The court denied a motion for judgment as a matter of law and upheld the jury's factual determinations. *Audet*, 605 F. Supp. 3d at 376. Thus, rather than demonstrating that investment contract issues involving cryptocurrency mining operations can be decided on a paper record, *Audet* illustrates precisely the opposite: questions concerning investor expectations, the economic realities of the transactions, and the role of the promoter were resolved only after the presentation of live testimony and other evidence.

The same is true here. Petitioner intends to present testimony from actual purchasers concerning the representations made by Respondents, the purchasers' motivations in acquiring the mining packages, the expectations they reasonably formed regarding profits, and the role they understood Respondents would perform in generating those profits. Those factual issues are central to the application of the *Life Partners* test and cannot properly be resolved on summary disposition.

Accordingly, *Audet* neither compels nor supports summary disposition in this case. On the contrary, it reinforces why the disputed factual issues surrounding Respondents' mining packages should be resolved only after a full evidentiary hearing.

**C. Respondents Misapply SEC Guidance**

Respondents devote a significant portion of their Motion to recent guidance issued by the Securities and Exchange Commission ("SEC") concerning the "interpretation of the definition of 'security' as applied to crypto assets and transactions involving crypto assets." Application of the Fed. Sec. Laws to Certain Types of Crypto Assets & Certain Transactions Involving Crypto Assets,

Release No. 11412 (S.E.C. Mar. 23, 2026). Respondents contend that this guidance establishes, as a matter of law, that the mining packages at issue are not securities. That reliance is misplaced for at least two reasons. First, Respondents omit the portions of the SEC's own guidance that directly undermine their position. Second, even if considered persuasive authority, the SEC's staff guidance neither controls this proceeding nor resolves the disputed factual issues presented by Petitioner's allegations and Respondents' Motion.

Respondents rely on the SEC's discussion of "digital commodity activities known as 'mining,'" in which the SEC concludes that, under certain circumstances, "when a miner combines its computational resources with other miners to increase their chances of successfully mining new blocks . . . the miner has no expectation of profit derived from the essential managerial efforts of others." *Id.* at 19. According to the SEC, that conclusion follows because "individual miners still perform the actual mining activity by contributing their computational power to solve the cryptographic puzzles for validation of new blocks." *Id.* at 19.

Respondents, however, omit the very language that limits the scope of that conclusion. Footnote 105 expressly states:

> "This assumes miners receive a pro rata share of the rewards from the pool based on their contribution of computational power, rather than where non-miners can purchase interests in the pool, or miners can pay to receive greater than a pro rata share of the rewards from the pool based on their contribution of computational power."
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> *Id.* at n.105.

Likewise, Footnote 106 explains that the SEC's analysis assumes miners expect "the computational resources that they provide in conjunction with other members to the mining pool to earn profits. To this end, a miner does not join a mining pool based on the ability to earn profits passively from the activities of the pool operator." *Id.* at 19. The SEC then draws the very distinction Respondents fail to address:

> "In contrast, where miners passively rely on the pool operator to provide the computational resources, the pool operator's activities constitute essential managerial efforts."

*Id.* at n.106.

Those footnotes address the precise factual issues presented in this case. Here, Petitioner alleges the mining packages were marketed to non-miners and allowed purchasers to acquire interests in a mining operation operated by Respondents. Respondents admit that not every purchaser received a "home mining unit[]" or otherwise mined independently. Resp'ts Mot. Summ. Disp., at 5-6. Respondents likewise acknowledge that purchasers could acquire additional hash power through direct purchases or by recruiting additional purchasers. Resp'ts Mot. Summ. Disp., at 4. These facts place Respondents' offering squarely within the factual scenarios expressly distinguished by Footnotes 105 and 106 rather than the circumstances under which the SEC concluded pooled mining generally does not involve securities.

More importantly, the SEC's own guidance demonstrates why summary disposition is inappropriate. Whether purchasers were passive participants, whether they actually contributed computational resources, whether they expected profits from Respondents' managerial efforts, and whether Respondents controlled the mining infrastructure are all factual questions. Those issues cannot be answered by reading marketing materials or technical descriptions in isolation. They require testimony from the purchasers themselves concerning the representations made to them, their understanding of the transactions, and the role they expected Respondents to perform in generating profits.

Indeed, the SEC guidance itself assumes factual predicates that are vigorously disputed in this proceeding. Its analysis depends upon the nature of participants' activities, the degree of decentralization, the participants' expectations, the allocation of operational responsibilities, and the source of anticipated profits. Those very issues lie at the heart of this contested case. Petitioner

has produced evidence from Respondents' marketing materials, presentations, recorded meetings, investor declarations, investigative findings, and other exhibits indicating that purchasers were encouraged to expect profits generated through Respondents' efforts rather than through their own mining activities. Respondents disagree. That disagreement creates classic issues of material fact that cannot be resolved on summary disposition.

Respondents also overlook the fundamental principle, recognized under both Texas law and the SEC's own analysis, that securities determinations turn on the economic realities of the transaction rather than labels or technological terminology. Simply characterizing an arrangement as "proof-of-work mining" does not answer whether the mining packages constitute investment contracts under The Securities Act. As the Texas Supreme Court explained in *Life Partners*, courts must focus on the economic realities of the transaction and construe the definition of "security" broadly to maximize investor protection, regardless of the labels used by the parties. *Life Partners*, 464 S.W.3d at 681.

Finally, Respondents' reliance on the SEC guidance improperly attempts to replace the individualized, fact-intensive analysis required by Texas law with generalized federal staff guidance addressing different factual scenarios. Whether purchasers invested money in a common enterprise, whether they reasonably expected profits, and whether those anticipated profits were expected to derive predominantly from the entrepreneurial or managerial efforts of Respondents are the very questions presented by the *Life Partners* test. Those issues are inherently factual and cannot be resolved by reference to generalized SEC guidance or on a documentary record alone. Accordingly, Respondents' extensive discussion of the SEC guidance does not establish entitlement to summary disposition. At most, it presents non-binding persuasive authority that may ultimately be considered together with the complete evidentiary record developed at the hearing on the merits. It does not eliminate the numerous disputed issues of material fact concerning the

nature of Respondents' mining packages, the manner in which they were marketed, the expectations created for purchasers, or the economic realities of the transactions alleged in the Emergency Cease and Desist Order. Those issues must be resolved after a full evidentiary hearing—not on summary disposition.

## III. Respondents Engaged in Fraud Justifying Issuance of the Emergency Cease and Desist Order

Respondents are not entitled to summary disposition on Petitioner's fraud allegations because they fail to establish the absence of genuine issues of material fact and because many of the issues raised in their Motion involve mixed questions of law and fact that require resolution at an evidentiary hearing. The testimony of mining package purchasers is particularly important in evaluating the materiality of the alleged omissions, the representations made by Respondents, the reasonable expectations of purchasers, and whether those purchasers were misled in connection with the offer and sale of the mining packages.

The Order alleges Respondents violated the fraud provisions of The Securities Act in six separate ways: (1) by failing to disclose the Mulligan Mint bankruptcy; (2) by failing to disclose information concerning Respondent MineTXC's assets, liabilities, and capitalization; (3) by failing to disclose information concerning Danager Resources, the apparent payment agent for purchasers paying by paper check; (4) by failing to disclose material information concerning the operations of Respondent MineTXC; (5) by failing to disclose that Respondent TEXITCoin, Respondent MineTXC, Respondent Blockchain Mint, and Danager Resources were not registered with the Texas Secretary of State or authorized to transact business in Texas; and (6) by making statements that were materially misleading or otherwise likely to deceive the public concerning the payment of bonuses and commissions to sales agents.

Respondents' Motion fails at the outset because it does not address all of Petitioner's fraud allegations. Specifically, Respondents completely ignore the sixth manner and means alleged in the Order, that Respondents made materially misleading statements concerning the payment of bonuses and commissions to sales agents. Because Respondents do not challenge that independent basis supporting the fraud allegations, they necessarily fail to establish entitlement to summary disposition on Petitioner's fraud claims.

Even with respect to the five omission-based allegations Respondents do address, their Motion does not eliminate the numerous disputed issues of material fact. Respondents repeatedly characterize disputed factual issues as established facts while simultaneously acknowledging factual disputes. For example, Respondents contend the allegation concerning the Mulligan Mint bankruptcy is false because the bankruptcy was allegedly disclosed during Zoom presentations conducted by Respondent Gray. Whether those alleged disclosures occurred, what information was actually conveyed, whether purchasers received or understood those disclosures, and whether any such disclosures were legally sufficient are disputed factual issues that cannot be resolved on summary disposition.

Likewise, Respondents' arguments concerning materiality, the adequacy of their disclosures, and whether purchasers possessed sufficient information to make informed investment decisions present classic mixed questions of law and fact. Those issues necessarily require consideration of testimony from mining package purchasers regarding what information they received, what representations were made to them, what information they considered important in deciding to purchase the mining packages, and whether the alleged omissions affected their investment decisions. Those factual determinations cannot be made solely from the existing documentary record.

Respondents also incorrectly argue they are entitled to judgment as a matter of law because the Order alleges only fraud by omission, because they allegedly had no legal duty to disclose the Mulligan Mint bankruptcy, because they lacked fraudulent intent, and because they purportedly provided purchasers with all information necessary to make an informed investment decision. In doing so, Respondents rely on authority that does not govern the statutory fraud provisions of The Securities Act and improperly import common-law fraud principles into a statutory securities enforcement proceeding.

The Securities Act imposes affirmative disclosure obligations on those offering or selling securities. Unlike common-law fraud, Texas securities law is designed to protect investors by requiring sellers to disclose material information necessary to prevent their statements from being misleading. Accordingly, Respondents' reliance on common-law disclosure principles is misplaced because the duty to disclose under The Securities Act rests with the seller of the investment, not with investors to independently investigate the offering beyond the information provided to them when purchasing the investment. Fraud by omission is no less actionable than fraud by affirmative misrepresentation where the omitted information is material.

As a matter of law, the conduct alleged in the Order constitutes actionable fraud under The Securities Act and provides a legally sufficient basis for issuance of the Emergency Cease and Desist Order. Respondents identify no authority establishing that intentional omissions of material facts are somehow exempt from the Act's anti-fraud provisions or incapable of supporting an emergency cease and desist order. Their contention that omission-based fraud is legally insufficient therefore fails as a matter of law.

Accordingly, Respondents have failed to demonstrate either that no genuine issues of material fact exist or that they are entitled to judgment as a matter of law on Petitioner's fraud

allegations. Those issues should instead be resolved after the presentation of testimony and the full evidentiary record at the hearing on the merits.

### A. Respondents Made Misleading Statements Regarding the Payment of Commissions

The Order independently alleges that Respondents violated the anti-fraud provisions of The Securities Act by making statements concerning the payment of bonuses and commissions to individuals who sold mining packages and recruited additional purchasers that were materially misleading or otherwise likely to deceive the public. Specifically, the Order alleges those statements were misleading because Respondents failed to disclose that offering and selling securities in Texas without first registering as dealers or agents violates Section 4004.051 of The Securities Act and that the offer and sale of unregistered securities violates Section 4003.001 of The Securities Act.

Respondents' Motion for Summary Disposition does not address these allegations. Rather, Respondents limit their arguments to the Order's omission-based fraud allegations and make no argument that they are entitled to judgment as a matter of law regarding the allegations that their statements concerning the payment of bonuses and commissions were materially misleading or otherwise likely to deceive the public.

Because Respondents fail to challenge this independent basis supporting Petitioner's fraud allegations, they necessarily fail to satisfy their burden under Section 155.505 of the Texas Administrative Code to establish that no genuine issue of material fact exists and that they are entitled to judgment as a matter of law on Petitioner's fraud claims. Summary disposition therefore must be denied as to Petitioner's fraud allegations without reaching Respondents' remaining arguments concerning the omission-based allegations.

### B. Respondents' Omitted Material Facts from Their Offering

The Securities Act prohibits the use of any fraud or fraudulent practice in connection with the offer for sale or sale of a security. Tex. Gov't Code Ann. §§ 4007.104(a)(1)(A), 4007.203. The Act defines "fraud" and "fraudulent practice" to include both the intentional failure to disclose a material fact and the misrepresentation of a relevant fact made in any manner. Tex. Gov't Code Ann. § 4001.058(a). Accordingly, the intentional omission of material information in connection with the offer or sale of a security constitutes actionable fraud under Texas securities law. Petitioner is charged by statute with protecting investors. Tex. Gov't Code Ann. § 4001.002(a)(1). To fulfill that responsibility, Section 4007.104 authorizes the Commissioner to issue an emergency cease and desist order whenever the Commissioner reasonably believes a person has engaged or is about to engage in fraud, has made an offer containing a statement that is materially misleading or otherwise likely to deceive the public, or is engaging in conduct that violates The Securities Act or a Board rule. Tex. Gov't Code Ann. § 4007.104(a).

Respondents nevertheless argue that the alleged omissions were insufficient as a matter of law to justify issuance of the Emergency Cease and Desist Order. That argument misunderstands both the scope of The Securities Act and the procedural posture of this case. The issue presented on summary disposition is not whether Respondents ultimately prevail on the materiality of the omitted facts, but whether Respondents have established that no genuine issue of material fact exists regarding those omissions. They have not.

Texas securities law requires the seller of a security to disclose material facts where there is a substantial likelihood that the information would significantly alter a reasonable investor's decision whether to invest. *Bridwell v. State*, 804 S.W.2d 900, 904 (Tex. Crim. App. 1991). Whether a fact is material under Section 4001.058 depends upon whether "a substantial likelihood exists that the fact would have assumed actual significance in a reasonable investor's deliberations,

in that it would have been viewed by the reasonable investor as significantly altering the total mix of available information" used in making the investment decision. *Bridwell*, 804 S.W.2d at 904; *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449-50 (1976); *see also Head v. State*, 299 S.W.3d 414, 425 (Tex. App.—Houston [14th Dist.] 2009, pet. ref'd); *Gant v. State*, 814 S.W.2d 444, 448-49 (Tex. App.—Austin 1991, no pet.). As the United States Supreme Court recognized in *TSC Industries*, materiality is a mixed question of law and fact requiring application of the governing legal standard to the facts of the particular case. *TSC Industries*, 426 U.S. at 450.

Texas courts have repeatedly relied on investor testimony in determining whether omitted facts were material. In *Bridwell*, investors testified that the issuer failed to disclose prior fraudulent dealings involving a similar business venture. *Bridwell*, 804 S.W.2d at 904. The court held that this testimony constituted sufficient evidence for the trier of fact to conclude the omitted information was material. Likewise, in *Gant*, investors testified that the issuer failed to disclose that funds obtained from prior investors had been diverted for purposes other than those represented. *Gant*, 814 S.W.2d at 450. The court also held that the investors' testimony supported the finding that the omitted information was material. In both cases, investors further testified that knowledge of the omitted information would have affected their decision whether to invest. Those decisions demonstrate that materiality is ordinarily established through evidence presented to the factfinder—including testimony from the investors themselves—not by summary disposition on a documentary record alone.

The same is true here. Because materiality presents a mixed question of law and fact, Petitioner intends to present testimony from multiple mining package purchasers demonstrating both that the omitted information was not disclosed and that it would have materially affected their investment decisions. *See TSC Industries*, 426 U.S. at 450. For example, investors will testify that their decisions to purchase the mining packages would have been negatively affected had they

known of the 2013 Mulligan Mint bankruptcy, Respondent Gray's involvement with Mulligan Mint, the role of Danager Resources, or that Respondent TEXITCoin, Respondent MineTXC, Respondent Blockchain Mint, and Danager Resources were not registered with the Texas Secretary of State or authorized to transact business in Texas. *See, e.g.,* Hesse Decl.; Webb Decl.

That testimony will bear directly on the materiality of the omitted information and will also assist the factfinder in resolving the underlying factual dispute concerning whether those facts were disclosed at all. For example, Petitioner alleges the Mulligan Mint bankruptcy was never disclosed, while Respondents contend that it was discussed during Zoom presentations. Determining what information purchasers actually received, whether they understood that information, and whether the alleged omissions materially affected their investment decisions are classic factual issues that cannot be resolved on summary disposition. Under *Bridwell*, *Gant*, and *TSC Industries*, those issues should instead be decided after the presentation of live testimony and the full evidentiary record at the hearing on the merits.

**1. The Timing of Respondents' Alleged Disclosures Matters – Post Purchase Disclosures Do Not Cure Fraud Which Occurs at time of Offer or Sale**

Texas securities law requires sellers of securities to disclose material facts before or at the time the securities are offered or sold. The subsequent disclosure of material information that was omitted at the time of the offer or sale does not negate or cure fraud already committed. A promoter cannot avoid liability under The Securities Act by attempting to disclose material information only after investors have purchased the securities.

Here, Petitioner alleges that, before offering and selling the mining packages, Respondents failed to disclose material information concerning: (1) the bankruptcy of Respondent Gray's company, Mulligan Mint; (2) Respondent MineTXC's and Danagger Resources' assets, liabilities, and capitalization; (3) the identity, business repute, and experience of the owners and principals of

Danagger Resources; (4) Danagger Resources' relationship to Respondents; (5) Danagger Resources' control of investor funds, where those funds were held, and its custodial safeguards; (6) the identity, business repute, or qualifications of those managing the operations of Respondent MineTXC's cryptocurrency mining farms and data centers; (7) Respondent MineTXC's strategy for addressing hardware failures, power outages, or network disconnections; (8) the security of Respondent MineTXC's mining farms, data centers, and any other facilities maintaining custody of the hardware involved in the mining operations; and (9) the registration status of Respondent TEXITCoin, Respondent MineTXC, Respondent Blockchain Mint, and Danager Resources with the Texas Secretary of State. Whether those disclosures were made before purchasers invested, or only after the sales had already occurred, is itself a disputed factual issue that cannot be resolved on summary disposition.

Respondents contend that they adequately disclosed the 2013 Mulligan Mint bankruptcy during what they describe as "literally hundreds of hours of recorded weekly community Zoom calls hosted by Mr. Gray and publicly accessible on YouTube." Resp'ts Mot. Summ. Disp., at 17. That characterization overstates both the timing and substance of the alleged disclosures.

Respondents began operating in Texas in approximately late March or early April 2024. Respondents themselves state that MineTXC operated as "a community currency project in Texas" for 98 weeks before issuance of the Emergency Cease and Desist Order on February 11, 2026. Pet'r's Ex. 3, at 23. Yet the earliest instance identified in Respondents' Motion in which Respondent Gray actually identifies Mulligan Mint by name and connects it to the 2013 bankruptcy occurred

during a Zoom call on September 2, 2025, more than one year after MineTXC began offering and selling mining packages in Texas.

Respondents also rely upon an earlier Zoom call held on November 26, 2024, during which Respondent Gray stated:

> "I left the U.S. November 24th, November 24th, 2013… I left because I was going through a very terrible sad bankruptcy at the time. And… this was all very well known, very well documented."
>
> Resp'ts Ex. 9, at 2.

However, Respondent Gray never identified Mulligan Mint during that discussion or informed listeners that Mulligan Mint was the company involved in the bankruptcy. Likewise, Respondents assert that Respondent Gray again discussed the Mulligan Mint bankruptcy during an August 19, 2025 Zoom call. Resp'ts Mot. Summ. Disp., at 18 ("In August 2025, Mr. Gray again discussed the Mulligan Mint bankruptcy at length."). Yet during that presentation, although Respondent Gray described starting a minting business in 2012 and later going bankrupt in 2013, he again failed to identify the business as Mulligan Mint or otherwise mention Mulligan Mint by name. Resp’ts Ex. 10, at 5.

According to Respondents' own Motion, the first Zoom call in which Respondent Gray actually identified Mulligan Mint by name occurred on September 2, 2025. During that call, Respondent Gray mentioned that Mulligan Mint had gone through bankruptcy at the end of 2013 only after an anonymous attendee asked, "what happened to Mulligan Mint in the missing 4,000 pounds of silver[.]" Resp’ts Ex. 11, at 30.

Even accepting Respondents' characterization of these Zoom presentations, their evidence creates factual disputes rather than eliminating them. At a minimum, the record presents disputed issues concerning when any disclosures occurred, what information was actually disclosed,

whether purchasers received or viewed the Zoom presentations before purchasing mining packages, and whether those disclosures, if made, were legally sufficient under The Securities Act.

Petitioner intends to present testimony from TexitCoin investors, including Texas residents, regarding the timing of their purchases, the information available to them at the time they invested, and whether they were aware of the information Respondents now contend was disclosed. That testimony is directly relevant to determining whether the alleged disclosures occurred before or after investors purchased mining packages, whether the omitted information was known to investors when making their investment decisions, and whether the timing and content of Respondents' alleged disclosures satisfied their obligations under The Securities Act. Those disputed factual issues cannot be resolved on summary disposition.

**2. Respondents Had the Duty to Disclose – Investors have no Duty to Investigate**

As discussed previously, there is a clear dispute between the parties concerning whether Respondents disclosed the existence of Mulligan Mint and its 2013 bankruptcy in a manner that complied with Section 4001.058(a)(3) of The Securities Act. Likewise, the materiality of the Mulligan Mint bankruptcy remains sharply disputed. The Order alleges the bankruptcy was a material fact that Respondents were required to disclose to prospective purchasers and they did not disclose the bankruptcy to prospective purchasers. ENF-26-CDO-1983, ¶28. Respondents dispute both the adequacy of their disclosures and the materiality of the omitted information. Those issues present disputed questions of fact requiring testimonial evidence from actual purchasers to fully resolve.

Respondents nevertheless argue that even if their disclosures were inadequate, investors had an independent duty to discover the omitted information because the bankruptcy was allegedly a matter of public record and because Respondent Gray made passing references to a bankruptcy during a handful of community Zoom calls. In making this argument, Respondents rely exclusively

upon common-law fraud cases that do not involve securities transactions and do not interpret The Securities Act. Their reliance is misplaced.

Unlike common-law fraud, The Securities Act places the burden of disclosing material information upon those offering and selling securities. The statutory definition of fraud expressly includes the intentional failure to disclose a material fact. Tex. Gov't Code Ann. §4001.058(a). The purpose of that statutory framework is to protect investors by requiring sellers to provide material information necessary to make informed investment decisions. Respondents therefore cannot shift their statutory disclosure obligations to prospective purchasers by arguing investors should have independently uncovered information omitted from the offering materials.

Respondents' argument also depends upon disputed factual issues concerning the nature of their solicitations and promotional statements. Petitioner expects to present evidence demonstrating that Respondents affirmatively promoted Respondent Gray's experience, the success of the mining enterprise, the opportunity to earn passive income, and the anticipated benefits of purchasing mining packages, while omitting information that a reasonable investor would have considered important in evaluating those representations. Whether those affirmative statements triggered additional disclosure obligations under The Securities Act presents a mixed question of law and fact that cannot be resolved on summary disposition.

Respondents further contend investors should have known about the Mulligan Mint bankruptcy because it was "a matter of public record" and because Respondent Gray allegedly made "direct disclosures" during mere seconds of three community Zoom calls selected from what Respondents acknowledge are "literally hundreds of hours of recorded weekly community Zoom calls hosted by Mr. Gray and publicly accessible on YouTube." Resp'ts Mot. Summ. Disp., at 17-18. Yet Respondents identify no disclosure concerning Mulligan Mint or its bankruptcy on the TexitCoin website, the MineTXC website, the Whitepaper, the Mission Control Manual, or any

other offering materials upon which investors were expected to rely in deciding whether to purchase mining packages. This is because no such disclosures about Mulligan Mint or its bankruptcy appeared in any of the offering documents or on the websites. *See* Pet'r's Exs. 2-5; Pet'r's Ex. 8. Instead, Respondents ask the Court to impose upon investors a duty to discover material facts omitted from the offering itself. The Securities Act imposes no such obligation.

The authorities cited by Respondents underscore why their argument fails. Respondents first rely upon *Bradford v. Vento*, 48 S.W.3d 749 (Tex. 2001), a common-law fraud case involving the purchase of a shopping mall business. There, the alleged nondisclosure concerned lease terms that the purchaser could have obtained from his business partner, who negotiated and signed the leases, or by requesting copies from the mall before completing the transaction. *Id.* at 755-56. The Texas Supreme Court concluded there was no evidence the mall manager knew the purchaser lacked equal access to the lease information and therefore declined to impose liability under common-law fraud principles. *Id.* That decision neither involved a securities offering nor interpreted The Securities Act. More importantly, proving that investors lacked an equal opportunity to discover omitted information is not an element of statutory securities fraud.

Respondents next cite *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553 (Tex. 2019), for the proposition that a party failing to exercise ordinary diligence is "charged with knowledge of all facts that would have been discovered by a reasonably prudent person similarly situated." Resp'ts Mot. Summ. Disp., at 17. That case likewise involved common-law fraudulent inducement arising from the purchase of an automobile dealership, not the offer or sale of securities. The purchaser was "an experienced car dealer with decades of experience with several manufacturers" who fully understood the relationship between automobile manufacturers and authorized dealerships. *Mercedes-Benz*, 583 S.W.3d at 563. The Texas Supreme Court held that a sophisticated commercial purchaser engaged in an arm's-length business transaction was required

to exercise reasonable diligence before purchasing the dealership. *Id.* TexitCoin investors stand in an entirely different position. Many possessed little or no experience with cryptocurrency mining pools, mining farms, blockchain infrastructure, or the mining packages Respondents offered. Nothing in *Mercedes-Benz* suggests that ordinary investors purchasing securities assume the issuer's statutory duty to disclose material information.

Respondents also rely upon *Morales v. Carlin*, No. 03-18-00376-CV, 2019 WL 1388524 (Tex. App.—Austin Mar. 28, 2019, no pet.), a common-law fraud case arising from the purchase of real property. There, the purchaser admitted he never read the closing documents, including the Title Commitment, which expressly identified the very issue later alleged to have been concealed. *Id.* at *3. The court concluded that a reasonable purchaser exercising ordinary diligence would have reviewed those transaction documents before closing. Again, the case involved neither securities nor The Securities Act. It therefore provides no support for importing common-law due diligence requirements into Texas securities fraud claims.

These authorities are distinguishable for another important reason. In each, the plaintiff possessed information that would have led a reasonably prudent person to discover the relevant facts. Here, by contrast, investors reviewing Respondents' offering materials would not have learned of Mulligan Mint, Respondent Gray's connection to that company, or its 2013 bankruptcy. Respondent Gray prominently emphasized his experience and portrayed himself as a veteran of the alternative currency industry yet omitted any reference to Mulligan Mint from his biography appearing on the TexitCoin website, the Whitepaper, and other offering materials. *See* Pet'r's Ex. 3, at 18-19, 138, 150, 160, 166; Pet'r's Ex. 4, at 1-2; Pet'r's Ex. 5, at 62-63; Pet'r's Ex. 8, at 28. Without first knowing the name "Mulligan Mint" or Respondent Gray's association with that company, investors would have had little reason to locate bankruptcy filings identifying only

"Mulligan Mint" and "Rob Gray," rather than "Bobby Gray," the name Respondent Gray consistently used throughout the TexitCoin project.

The facts in *Securities and Exchange Commission v. Haarman* more closely resemble the current case. There, organizers of an investment fund highlighted their professional experience in the fund's offering documents while omitting that one organizer had previously filed for bankruptcy. *Sec. & Exch. Comm'n v. Haarman*, No. 1:21-CV-235-DAE, 2025 WL 2429058, at *4 (W.D. Tex. Mar. 7, 2025), opinion clarified, 2025 WL 2429047 (W.D. Tex. June 9, 2025) (clarifying, in part, that the court granted summary judgment in favor of the SEC on its fraud claim based on organizer's misrepresentations about his background). The court concluded that emphasizing an organizer's qualifications while omitting a prior bankruptcy rendered the offering materially misleading as a matter of law. *Id.*, at *5-6 . The district court's reasoning in *Haarman* is applicable to the allegations presented here, where Petitioner alleges Respondent Gray similarly highlighted his experience while omitting a prior business bankruptcy that reasonable investors would have considered significant.

Finally, Respondents contend that a reasonably prudent investor should have discovered Respondent Gray's brief references to Mulligan Mint or an unspecified bankruptcy by searching through "literally hundreds of hours" of archived community Zoom recordings uploaded to YouTube. Resp'ts Mot. Summ. Disp., at 17-18. Whether such sporadic references, assuming they occurred, constituted legally sufficient disclosures before purchasers invested, whether reasonable investors actually viewed those recordings before purchasing mining packages, and whether those alleged disclosures satisfied Respondents' statutory obligations under The Securities Act are disputed factual questions that cannot be resolved on summary disposition. Those issues require testimony from investors and a full evidentiary hearing, not resolution on a paper record.

### 3. Intent Is Only Required as to the Circumstances of the Fraudulent Conduct – an Intent to Defraud Is Not Required

Respondents argue that Petitioner's fraud claims fail because the Emergency Cease and Desist Order does not allege the requisite intent on the part of Respondents. Respondents argue The Securities Act requires a showing of an intent to deceive, manipulate, or defraud. Resp'ts Mot. Summ. Disp., at 24-25. However, that is not the correct legal standard for intent as it relates to fraud under The Securities Act.

Here Respondents are charged in the Order with engaging in fraud by intentionally failing to disclose the following material facts: the Mulligan Mint bankruptcy; information concerning Respondent MineTXC's assets, liabilities, and capitalization; information concerning Danager Resources; material facts regarding the operations of Respondent MineTXC; and that Respondent TEXITCoin, Respondent MineTXC, Respondent Blockchain Mint, and Danager Resources were not registered with the Texas Secretary of State or authorized to transact business in Texas. ENF-26-CDO-1983, ¶¶ 28-32.

Engaging in fraud or a fraudulent practice in connection with the offer for sale or sale of a security, as alleged in the Order, gives rise to both an administrative violation and a criminal violation of The Securities Act. Tex. Gov't Code §§ 4001.058, 4007.104, 4007.203. To be clear, the same conduct is both an administrative and a criminal violation of The Securities Act.

There is no guidance from Texas courts on the requisite intent required for fraud in the context of an administrative action, but there is guidance on the requisite criminal intent for the same offense in a criminal context. The Penal Code defines criminal intent by categorizing offenses in three ways: (1) the nature of the conduct; (2) the result of the conduct; and (3) the circumstances surrounding the conduct. Tex. Pen. Code Ann. § 6.03. In Texas, a violation of The Securities Act is not a "result-oriented crime." *Cook v. State*, 824 S.W.2d 634, 638 (Tex. App.—

Dallas 1991, pet. ref'd). Instead, "a violation of [T]he Securities Act is an offense dealing with the 'circumstances surrounding the conduct.'" *Id.* at 638–39. Here "the prohibited conduct is the fraud, i.e., the failure to disclose a material fact. Therefore, the culpable mental state must be in conjunction with the fraud." *Id.* at 637. This means Respondents did not need to intend the result of their conduct, just the circumstances surrounding their conduct. In other words, Respondents did not have to intend to deceive, defraud, or manipulate anyone. Petitioner is only required to prove Respondents were aware of the circumstances surrounding their conduct, namely that Respondents knew the alleged material facts and failed to disclose them.

Additionally, Respondents' own authorities further demonstrate why summary disposition is inappropriate. Respondents rely upon two SOAH decisions in which Honorable Administrative Law Judges concluded that the Texas State Securities Board failed to establish scienter. *See* Resp'ts Mot. Summ. Disp., at 24 (citing *In the Matter of Balanced Energy, LLC*, 2016 WL 2941389 (SOAH May 10, 2016); *In the Matter of the Inv. Adviser Registration of Mowery Capital Mgmt., LLC*, 2015 WL 4868701 (SOAH July 31, 2015)). Notably, neither of these cases considered the criminal intent standard for violations of The Securities Act as guidance for what intent is required for the same conduct in an administrative context. Also, significantly, both of those cases were decided after evidentiary hearings at which the Honorable Administrative Law Judge heard testimony, evaluated documentary evidence, weighed credibility, and determined the inferences to be drawn from the record. Neither decision suggests that scienter ordinarily may be resolved on summary disposition before the parties have presented evidence including key testimonial evidence from actual purchasers and the Respondents themselves.

Petitioner has not yet had the opportunity to present its evidence before the Honorable Administrative Law Judge. At the hearing on the merits, Petitioner intends to introduce Respondents' marketing materials, promotional videos, Monday calls, Mission Control materials,

website content, investor testimony, undercover investigative evidence, and other communications bearing directly on what Respondents knew, what information they affirmatively disclosed, what material information they intentionally omitted, and the reasonable inferences arising from that evidence. *See* Pet'r's Ex.5 at 13-35 and Pet'r's Ex.13 at 63. Those competing inferences concerning knowledge, intent, and scienter present classic questions for the trier of fact. They cannot be resolved on summary disposition.

**VI. The Deputy Commissioner Is Empowered to Modify the Emergency Order to Include a Refund**

Respondents argue that the requested refund remedy is unavailable in this proceeding. The Securities Act provides otherwise.

The Securities Act expressly authorizes the Commissioner to "order a dealer... regulated under this title to pay a refund to a client or purchaser of securities... in an agreed order or an enforcement order." Tex. Gov't Code § 4007.108(a). The Act broadly defines a "dealer" to include a person who offers a security for sale or delivery. Tex. Gov't Code § 4001.056. Accordingly, the Commissioner's authority to order refunds extends to persons determined to have unlawfully offered or sold securities in violation of The Securities Act.

Here, Respondents acknowledge that the named Respondents are either an individual or brand names controlled by that individual. Resp'ts Mot. Summ. Disp., at 3-4. Petitioner alleges that Respondents offered and sold the mining packages that are the subject of the Order. Whether Respondents acted as dealers within the meaning of The Securities Act presents an issue to be resolved on the evidence presented at the hearing on the merits.

If, after hearing the evidence, the Deputy Securities Commissioner determines that Respondents violated The Securities Act, Section 4007.108(a) expressly authorizes the issuance of an enforcement order requiring refunds to purchasers of the securities. Petitioner intends to

present evidence establishing Respondents' violations of The Securities Act and demonstrating that a refund order is appropriate and in the best interests of investors. Accordingly, Respondents are not entitled to summary disposition on Petitioner's requested refund remedy.

**VII. Respondents Are Not Entitled to Summary Disposition Based on Their Assertion There is No Evidence of Immediate or Irreparable Harm**

Respondents contend no emergency existed to justify issuance of the Emergency Cease and Desist Order because Petitioner did not allege "the loss or misappropriation of a single dollar," the existence of any 'victims,' or the "immediacy of any harm in the Order." Resp'ts Mot. Summ. Disp., at 27. Their argument misunderstands the legal standard governing emergency relief under The Securities Act. More importantly, this no-evidence argument is expressly prohibited by SOAH Rules of Procedure which expressly prohibit granting summary disposition on the ground there is no evidence of an essential element of a claim for which the non-movant bears the burden of proof. 1 Tex. Admin. Code § 155.505(a).

Section 4007.104 of The Securities Act authorizes the Securities Commissioner to issue an Emergency Cease and Desist Order to a person when the Commissioner reasonably believes a person: (1) is engaging in or is about to engage in fraud; (2) has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or (3) is engaging in or is about to engage in an act or practice that violates The Securities Act or a Board rule; and the conduct, act, or practice threatens immediate and irreparable public harm. Tex. Gov't Code § 4007.104. The Order alleges "Respondents are engaging in illegal, fraudulent, deceptive, and/or misleading practices in connection with the offer of the Mining Packages to Texas residents" and, as described in the Order, "their conduct threatens immediate and irreparable harm to the public." ENF-26-CDO-1983, ¶¶ 11-33.

Acting pursuant to her statutory authority, the Deputy Securities Commissioner issued the Emergency Order to Respondents after determining the Enforcement Division had presented sufficient evidence to reasonably conclude Respondents were engaging in violations of The Securities Act and about to engage in acts and practices that violated The Securities Act, including the offer and sale of unregistered securities, use of an unregistered sales agent network, and engaging in fraud and materially misleading practices all in violation of The Securities Act. The Commissioner specifically found that Respondents were actively offering and selling fraudulent mining packages utilizing a multilevel marketing network to recruit additional purchasers and continuing to solicit investors through websites, social media, and other public advertising. ENF-26-CDO-1983, ¶¶ 9-25. This was an ongoing offering when the Order was issued to Respondents. Further, the Commissioner found this conduct threatened immediate and irreparable public harm, i.e. continued violations of The Securities Act. *Id.* at ¶ 11.

Texas courts have not evaluated what constitutes "immediate and irreparable public harm" as it relates to the issuance of Emergency Cease and Desist Orders under the authority of Section 4007.104 of The Securities Act. However, persuasive authority exists that analogous violations of federal securities laws are presumptively injurious to the public making "a specific allegation of public harm . . . unnecessary." *Fisher v. Samuels*, 691 F. Supp. 63, 73–74 (N.D. Ill. 1988). In *Fisher*, investors in an oil and gas investment brought a private, civil suit against the promoter claiming violations of federal securities laws and state consumer fraud and deceptive practices laws. *Id.* at 66. The promoter-defendants moved for summary judgment and argued that the investor-plaintiffs' state consumer fraud claim failed to prove any public injury alleged to be required under state law. *Id.* at 73. Since Illinois state courts had yet to decide whether public injury was an element of the investor-plaintiffs' claims under state consumer protection laws, it was unnecessary for the *Fisher* court to decide this public harm issue in resolving the motion for

summary judgment. However, the *Fisher* court noted violations of federal securities laws can be presumed to injure the public making any specific allegation of public harm unnecessary. *Id.* at 73-74.

As indicated by the *Fisher* court, the public harm here is the violation of Texas securities laws. The Securities Act is aimed at protecting the investing public, encouraging capital formation, encouraging job formation, and encouraging free and competitive securities markets in Texas. Tex. Gov't Code § 4001.002. It is a logical and reasonable inference that proving a violation of The Securities Act also provides a basis for finding that the mere violation of the securities laws threatens immediate and irreparable public harm. Requiring a showing of theft of misappropriation of investor funds, as Respondents suggest, would severely curtail Petitioner's ability to regulate the offer for sale and sale of securities in Texas unnecessarily.

Respondents principally rely upon *Edison Cement Corp. v. N.C. Furniture Direct 1, Ltd.*, No. 03-15-00772-CV, 2017 WL 3222565 (Tex. App.—Austin July 26, 2017), to argue that no emergency existed because the alleged harm was merely monetary. That reliance is misplaced. *Edison Cement* addressed the equitable requirements governing a temporary injunction issued by a district court. This proceeding does not involve a common-law request for temporary injunctive relief. Rather, it involves a statutory administrative enforcement action created by the Legislature to protect the investing public through the issuance of an Emergency Cease and Desist Order under Section 4007.104 of The Securities Act. As stated above, violation of the law in and of itself is enough of a public harm to justify issuance of the Order. Respondents cite no authority extending the common-law standards governing temporary injunctions to administrative enforcement proceedings brought under The Securities Act and logic and common sense dictate no such extension is necessary.

More fundamentally, however, Respondents seek relief that is unavailable through summary disposition. The issue before the Honorable Administrative Law Judge is not whether Respondents can relitigate the Commissioner's preliminary emergency determination by presenting competing factual assertions on a paper record. The Legislature has already prescribed the procedure for reviewing an Emergency Cease and Desist Order. After notice and hearing, the Commissioner determines, based upon the complete evidentiary record, whether the Emergency Order should be affirmed, modified, or set aside. Respondents' Motion instead asks the Honorable Administrative Law Judge to resolve the very factual disputes that necessitate the hearing. As previously discussed, the paper record in this case is not the complete evidentiary record and testimonial evidence from actual mining package purchasers is needed to fully evaluate the legal and factual issues raised by Respondents. Accordingly, this matter should be allowed to proceed to a hearing.

**VIII. Respondents' "Brand Names" Argument Does Not Entitle Them to Summary Disposition**

The Order at issue here was directed to TEXITcoin, MineTXC, Blockchain Mint, and Robert J. Gray. Petitioner identified TEXITcoin as a cryptocurrency, Blockchain Mint as "the Texas-based cold storage coin manufacturing partner" of TEXITcoin and MineTXC as well as their marketing arm, and all four Respondents as issuers of the mining packages. ENF-26-CDO-1983, ¶¶ 1-8. However, Respondents argue only Gray was properly named in the Order. Resp'ts Mot. Summ. Disp., at 2, 8, 10. Respondents allege TEXITcoin, MineTXC, and Blockchain Mint are brand names controlled by Gray and not legal entities capable of being sued. *Id.* at 2, 4. Because of this Respondents' request the Order be set aside as to Respondents TEXITcoin, MineTXC, and Blockchain Mint. *Id.* at 2.

The proper remedy for incorrectly named parties in this context is a modification of the order and not the drastic setting aside of the order all together as to Respondents TEXITcoin, MineTXC, and Blockchain Mint. It is not clear from Respondent Gray's declaration whether he owns the brand names TEXITcoin, MineTXC, and Blockchain Mint and whether they are assumed names or entities he controls operates under. These are factual issues requiring testimonial evidence from Respondent Gray and purchasers of mining packages to fully determine. This requires a hearing to fully evaluate and cannot be determined on the documentary evidence of the summary disposition record alone.

The Securities Act regulates the conduct of persons who offer or sell securities, not merely the corporate form through which that conduct is carried out. The Order alleges Respondents offered and sold the mining packages through TEXITCoin, MineTXC, and Blockchain Mint. Whether those names constitute separate legal entities, assumed names, trade names, digital platforms, or brands used by Respondent Gray does not eliminate the disputed factual issues concerning who offered or sold the mining packages or who engaged in the conduct alleged in the Order. Indeed, Respondents acknowledge that TEXITCoin, MineTXC, and Blockchain Mint are names controlled and used by Respondent Gray. That admission does not defeat Petitioner's claims; rather, it confirms that the challenged conduct was carried out through those names. The Order can be modified to acknowledge that these names are aliases, assumed names, or even alter egos of Gray if that is the case.

Texas courts distinguish between misnomer, in which the correct party is sued under an incorrect name, and misidentification, in which the wrong party is sued altogether. *Chilkewitz v. Hyson*, 22 S.W.3d 825, 828 (Tex. 1999). A misnomer does not defeat an action where the correct party has been served, has appeared, and suffers no prejudice because it understood it was the intended respondent. *Id.* Respondents' contention that Petitioner misidentified the parties in the

Order involved in the alleged illegal conduct is a misnomer argument and not a misidentification argument. Here, Respondent Gray has appeared, answered, participated in discovery, designated an expert, and affirmatively acknowledges that TEXITCoin, MineTXC, and Blockchain Mint are names through which he conducted the activities at issue. Additionally, Rule 28 of the Texas Rules of Civil Procedure provides:

> Any partnership, unincorporated association, private corporation, or individual doing business under an assumed name may sue or be sued in its partnership, assumed or common name for the purpose of enforcing for or against it a substantive right, but on a motion by any party or on the court's own motion the true name may be substituted.
>
> Tex. R. Civ. P. 28

"Under this Rule, a plaintiff can bring suit against an individual doing business under the name of an association, partnership, or corporation, even if the association, partnership, or corporation does not exist." *Chilkewitz*, 22 S.W.3d at 828–29. Respondents cannot plausibly contend they lacked notice of the allegations or were misled as to the identity of the parties alleged to be involved in the fraudulent offering.

Petitioner will present evidence that Respondents collectively used the TEXITCoin, MineTXC, and Blockchain Mint names in marketing, promoting, and operating the mining package program. *See e.g.*, Pet'r's Ex. 2, at 1 (MineTXC support email with the @minetxc.com domain), Pet'r's Ex. 4, at 1-2 (Bobby Gray is listed as the founder of TEXITcoin), Pet'r's Ex. 6 (support emails for mining packages were also replied to by support@blockchainmint.zendesk.com), and Pet'r's Ex. 7 (Respondent Gray registered the trademark of Texit Coin individually D/B/A Blockchain Mint). This is also evidence that each of these alleged “brand names” were Respondents operating businesses under aliases and assumed names.

Texas requires each unincorporated person regularly conducting business under an assumed name to file a certificate with the county clerk in each county in which the person maintains or will maintain a business office, or, if the person does not maintain a business office in Texas, in each county in which the person conducts business. Tex. Bus. & Com. Code Ann. §§ 71.051-054. Since issuing the order, Petitioner has discovered Respondent Gray filed assumed name certificates for "Blockchain Mint" and "Danagger Resources" with the Collin County Clerk but did not file any such certificate for TEXITCoin or MineTXC. Pet'r's Exs. 9-12. Whether each Respondent participated in the offer or sale of the mining packages and whether each Respondent operated a business under an assumed name and is therefore properly named in the Order presents disputed issues of material fact that cannot be resolved on summary disposition since they require testimonial evidence of Respondent Gray and purchasers of mining packages.

Accordingly, Respondents' characterization of TEXITCoin, MineTXC, and Blockchain Mint as "brand names" rather than separately registered legal entities does not entitle them to summary disposition or require that the Emergency Cease and Desist Order be set aside.

**IX. Respondents' Fair Notice Argument Provides No Basis for Summary Disposition**

Respondents' final argument, that the Emergency Cease and Desist Order violates principles of "fair notice," misconstrues both the requirements of due process and the procedural posture of this contested case. The Emergency Order provided constitutionally and statutorily adequate notice of the allegations against Respondents, and Respondents' extensive participation in this proceeding confirms they understood precisely what conduct, statutory violations, and legal theories are at issue.

The Due Process Clause requires notice reasonably calculated to apprise a party of the nature of the claims and a meaningful opportunity to be heard. *See Mathews v. Eldridge*, 424 U.S. 319, 333, 348-49 (1976). It does not require an agency to prove its case in its initiating pleading,

anticipate every defense, or issue what amounts to a judicial opinion before commencing an enforcement action. *Id.* Rather, the constitutional inquiry is whether the respondent received sufficient notice to understand the alleged violations and prepare a defense.

The Emergency Cease and Desist Order easily satisfies that standard. It identifies each Respondent, describes the mining packages and the conduct giving rise to the proceeding, identifies the provisions of The Texas Securities Act allegedly violated, alleges that the mining packages constitute securities subject to the Act, sets forth the factual basis supporting the alleged registration and fraud violations, and explains the Commissioner's basis for issuing emergency relief. The Order therefore provided Respondents with clear notice of both the factual allegations and the legal theories to be litigated during this contested case.

Indeed, Respondents' own conduct confirms that they fully understood the allegations. Rather than expressing uncertainty concerning the Order, Respondents filed a detailed Answer, designated an expert witness, produced an extensive expert report addressing the Enforcement Division's investment contract theory, engaged in discovery, and ultimately filed a comprehensive thirty-seven-page Motion for Summary Disposition addressing each substantive allegation contained in the Emergency Order. That extensive participation is wholly inconsistent with any assertion that Respondents lacked notice of the claims against them.

Equally significant, Respondents never sought clarification of the Emergency Order. They did not file special exceptions, move for a more definite statement, seek dismissal based upon insufficient specificity, or otherwise contend that they were unable to understand or respond to the allegations. Instead, they elected to litigate the merits of those allegations for months. Having developed a comprehensive factual and legal defense, Respondents cannot now credibly contend that the Emergency Order failed to provide constitutionally adequate notice.

Respondents' reliance on *Upton v. SEC*, 75 F.3d 92 (2d Cir. 1996), and *General Electric Co. v. EPA*, 53 F.3d 1324 (D.C. Cir. 1995), is likewise misplaced. Those cases involved agencies imposing sanctions based upon novel or unforeseeable interpretations of ambiguous regulations that failed to provide regulated parties fair warning concerning what conduct was prohibited. This proceeding presents no comparable circumstance.

The Enforcement Division proceeds under The Texas Securities Act utilizing the longstanding investment contract analysis established in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), and expressly adopted by the Texas Supreme Court in *Searsy v. Commercial Trading Corp.*, 560 S.W.2d 637, 640 (Tex. 1977). That analytical framework has governed Texas securities enforcement actions for nearly fifty years. Respondents may disagree with the Enforcement Division's application of those settled legal principles to the disputed facts of this case, but disagreement with an agency's legal analysis does not establish a constitutional violation of fair notice.

More fundamentally, Respondents conflate two distinct concepts. The constitutional "fair notice" cases upon which they rely concern whether regulated parties had adequate notice that particular conduct could subject them to governmental sanction. This case presents an entirely different question, whether the Emergency Cease and Desist Order provided adequate notice of the allegations to be litigated in this contested case. The Order plainly did so. Respondents' ability to prepare a detailed factual and legal defense confirms that they understood the claims and had a full opportunity to contest them.

Nor is the Enforcement Division required to plead every evidentiary fact or anticipate every defense Respondents might later assert. Administrative pleadings exist to provide notice of the issues to be litigated, not to resolve disputed questions of law or fact before discovery and hearing. Whether the mining packages constitute investment contracts, whether purchasers reasonably

expected profits derived from the managerial efforts of others, whether the alleged omissions were material, and whether Respondents' disclosures were legally sufficient are the central disputed issues to be resolved upon a complete evidentiary record. Those are merits questions, not procedural due process violations.

Ultimately, Respondents' "fair notice" argument is simply another attempt to relitigate the merits of this proceeding under a constitutional label. At most, Respondents disagree with the Enforcement Division's application of well-established Texas securities law to the disputed facts surrounding their mining packages. Those disputes are precisely why this matter must proceed to an evidentiary hearing rather than be resolved on summary disposition.

Accordingly, Respondents have failed to demonstrate any violation of constitutional or statutory notice requirements, and their fair notice argument provides no basis for granting summary disposition.

## CONCLUSION AND PRAYER

Summary disposition is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. This is not such a case.

Respondents seek an extraordinary remedy on a record replete with disputed issues of material fact. Throughout their Motion, Respondents characterize contested evidence as "undisputed," ask the Honorable Administrative Law Judge to resolve competing interpretations of documentary evidence, draw factual inferences in their favor, and make credibility determinations that cannot properly be resolved on summary disposition. At this stage, the Petitioner is not required to prove its case; it need only demonstrate the existence of genuine issues of material fact. The summary disposition record does far more than that.

The record presents substantial factual disputes concerning, among other things, whether the mining packages constitute investment contracts; the representations made to investors;

purchasers' reasonable expectations of profits; the extent of Respondents' managerial efforts; the adequacy, timing, and materiality of Respondents' disclosures; Respondents' knowledge and intent; the identity of the persons offering and selling the mining packages; and the statutory bases supporting the Commissioner's Emergency Cease and Desist Order. Resolution of those issues requires a full evidentiary hearing where witnesses may be examined, documentary evidence considered in context, credibility assessed, and the evidence weighed by the trier of fact.

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully requests that the Honorable Administrative Law Judge deny Respondents' Motion for Summary Disposition in its entirety, allow this contested case to proceed to a hearing on the merits, and, following the evidentiary hearing and consideration of the complete record, recommend that the Deputy Securities Commissioner affirm the Emergency Cease and Desist Order and grant such other and further relief, at law or in equity, to which the Enforcement Division may be justly entitled

Signed on this, the 23rd day of July 2026

By: _____

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## CERTIFICATE OF SERVICE

I hereby certify that on this, the 23rd of July 2026, true and correct copies of this Response to Respondents' Motion for Summary Disposition, as well as the exhibits referenced herein, are being served on the following parties through the means set forth below:

CHERYN NETZ HOWARD, General Counsel for the Texas State Securities Board and the Securities Commissioner's Representative, by hand delivery at 208 E. 10th Street, 5th Floor, Austin, Texas 70701, and by electronic mail addressed to cnetzhoward@ssb.texas.gov.

TEXITcoin
Service by certified mail, return receipt requested, addressed to (1) 1801 West Louisiana Street, McKinney, Texas 75069 and (2) by electronic mail to its counsel, Avi Perry at aviperry@quinnemanuel.com and Alex Rossmiller at alexrossmiller@quinnemanuel.com.

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Service by certified mail, return receipt requested, addressed to (1) 11625 Custer Road, #110-345, Frisco, Texas 75035 and (2) by electronic mail to its counsel, Avi Perry at aviperry@quinnemanuel.com and Alex Rossmiller at alexrossmiller@quinnemanuel.com.

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Service by certified mail, return receipt requested, addressed to (1) 10550 Rose Bud Court, McKinney, Texas 75072; (2) 1801 West Louisiana Street, McKinney, Texas 75069; (3) 11588 Wild Rose Lane, Anna, Texas 75409; and (4) by electronic mail to its counsel, Avi Perry at aviperry@quinnemanuel.com and Alex Rossmiller at alexrossmiller@quinnemanuel.com.

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