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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 COMMODITY FUTURES TRADING
17 COMMISSION,

18 Plaintiff,

19 v.

20 SCOTT ALLENSWORTH, individually
21 and d/b/a CAPITAL GROWTH
22 GROUP ASSOCIATES AND COBRA
23 DEVELOPMENT GROUP LLP;
24 ROBERT J. FUSCO; DAVID
25 WEDDLE; and E-SLATE, INC. d/b/a
26 COBRA DEVELOPMENT GROUP
27 LLP,

28 Defendants.

Civil Action No. 2:17-CV-07102-CBM
(JPRx)

ORDER GRANTING PLAINTIFF'S
EX PARTE EMERGENCY MOTION
FOR STATUTORY RESTRAINING
ORDER, ORDER TO SHOW CAUSE
REGARDING PRELIMINARY
INJUNCTION, AND OTHER
EQUITABLE RELIEF

1 Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”),
2 has filed a Complaint for Injunctive and Other Equitable Relief and for Civil Monetary
3 Penalties Under the Commodity Exchange Act (“Act”) and Commission Regulations
4 (“Regulations”) (“the Complaint”) against Defendants Scott Allensworth, individually
5 and d/b/a Capital Growth Group Associates and Cobra Development Group LLP
6 (“Allensworth”); Robert J. Fusco (“Fusco”); and E-Slate, Inc. d/b/a Cobra
7 Development Group LLP (“E-Slate”). The Commission has moved, pursuant to 6c(a)
8 of the Act, 7 U.S.C. § 13a-1(a) (2012), for an *ex parte* statutory restraining order, an
9 order to show cause regarding preliminary injunction, and other equitable relief. The
10 Court has considered the pleadings, declarations, exhibits, and memorandum filed in
11 support of the Commission’s motion, and finds that:

- 12 1. This Court has jurisdiction over the parties and over the subject matter of
13 this action pursuant to 28 U.S.C. § 1331 (2012) and 28 U.S.C. § 1345
14 (2012). Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), authorizes the
15 Commission to seek injunctive and other relief against any person
16 whenever it appears to the Commission that such person has engaged, is
17 engaging, or is about to engage in any act or practice constituting a
18 violation of any provision of the Act or any rule, regulation or order
19 thereunder.
- 20 2. Venue lies properly within this District pursuant to Section 6c(e) of the
21 Act, 7 U.S.C. 13a-1(e) (2012).
- 22 3. There is good cause to believe that Defendants Allensworth, Fusco, and
23 E-Slate (collectively “Defendants”) have engaged, are engaging, or are
24 about to engage in violations of the Act and Regulations. Specifically, it
25 appears that Defendants violated Sections 4b(a)(1)(A)-(C) and 4o(1)(A)
26 and (B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1)(A), (B) (2012);
27 Fusco violated Regulation 4.20(b) and (c), 17 C.F.R. § 4.20(b), (c) (2017);
28 Fusco violated 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012); and

1 Allensworth, Fusco, and E-Slate violated Section 4k(2)(i) of the Act, 7
2 U.S.C. § 6k(2)(i) (2012) and Regulation 3.12(a), 17 C.F.R. §§ 3.12(a)
3 (2017).

- 4 4. There is good cause to believe that Defendants are actively concealing
5 from pool participants their fraudulent solicitation of investments in
6 commodity pools that purported to trade commodity futures contracts and
7 their misappropriation of funds contributed by pool participants. There is
8 good cause to believe that from at least December 2013 to the present
9 (“Relevant Period”), Defendants made material misrepresentations and
10 fraudulent omissions to existing and prospective pool participants
11 regarding, among other things, that all invested funds would be traded in
12 commodity futures and returns would be generated by the trading profits,
13 the pool was consistently profitable during the Relevant Period, and all
14 invested funds would be used to trade, when funds were instead
15 misappropriated by Defendants for their own use.
- 16 5. There is good cause to believe that immediate and irreparable damage to
17 the Court’s ability to grant effective final relief for pool participants in the
18 form of monetary redress will occur from the sale, transfer, assignment, or
19 other disposition by Defendants of assets or records unless Defendants are
20 immediately restrained and enjoined by Order of the Court.
- 21 6. There is good cause for the Court to freeze assets owned, controlled,
22 managed, or held by or on behalf of, or for the benefit of Defendants,
23 including assets in accounts held by E-Slate, DTG LLC, and any other
24 entities owned or controlled by Defendants, and assets in accounts held by
25 Allensworth under the name CGGA or the name Cobra Development
26 Group LLP.
- 27 7. There is good cause for entry of an order prohibiting Defendants, their
28 agents, servants, employees, assigns, attorneys, and persons in active

1 concert or participation with the Defendants, including any successor
2 thereof, from destroying records and/or denying agents of the
3 Commission access to inspect and copy records to ensure that
4 Commission representatives have immediate and complete access to those
5 books and records.

- 6 8. Absent the entry of this statutory restraining order, the Defendants are
7 likely to dissipate or transfer assets.
- 8 9. This is a proper case for granting a statutory restraining order *ex parte* to
9 preserve the status quo, protect members of the public from loss and
10 damage, and enable the Commission to fulfill its statutory duties.
- 11 10. It appears the interest of justice requires that the *ex parte* application be
12 heard without notice, and therefore the notice requirement of L.R. 7-19.1
13 is waived. *See* L.R. 7-19.2.
- 14 11. Therefore the Court orders as follows:

15
16 **DEFINITIONS**

17 For purposes of this Order, the following definitions apply:

- 18 12. The term “assets” means any legal or equitable interest in, right to, or claim
19 to, any real or personal property, whether individually or jointly, directly or
20 indirectly controlled, and wherever located, including but not limited to:
21 chattels, goods, instruments, equipment, fixtures, general intangibles,
22 effects, leaseholds mail or other deliveries, inventory, checks, notes,
23 accounts (including, but not limited to, bank accounts and accounts at other
24 financial institutions), credits, receivables, lines of credit, contracts
25 (including spot, futures, options, or swaps contracts), insurance policies, and
26 all cash, wherever located, whether in the United States or outside the
27 United States.
- 28 13. The term “document” is synonymous in meaning and equal in scope to the

1 usage of the term in Federal Rule of Civil Procedure (“Fed. R. Civ. P.”)
2 34(a), and includes, but is not limited to, writings, drawings, graphs, charts,
3 photographs, audio and video recordings, computer records, and other data
4 compilations from which information can be obtained and translated, if
5 necessary, through detection devices into reasonably usable form. A draft
6 or non-identical copy is a separate document within the meaning of the
7 term. A document also includes the file and folder tabs associated with
8 each original and copy.

- 9 14. “Defendants” as used in this Order refers to Allensworth, Fusco, and E-
10 Slate, as well as any other person insofar as he or she is acting in the
11 capacity of an officer, agent, servant, employee, or attorney of any
12 Defendant and any person who receives actual notice of this Order by
13 personal service or otherwise insofar as he or she is acting in concert or
14 participation with any Defendant. “Defendants” also refers to any d/b/a,
15 successor, affiliate, subsidiary, or other entity owned, controlled, managed,
16 or held by, or on behalf of, or for the benefit of Allensworth, Fusco, and/or
17 E-Slate.

18 **RELIEF GRANTED**

19 **I.**

20 **Order Prohibiting the Transfer,**
21 **Removal, Dissipation, and Disposal of Assets**

22 **IT IS HEREBY ORDERED** that:

- 23 15. Defendants and their agents, servants, employees, assigns, attorneys, and
24 persons in active concert or participation with them, including any
25 successors thereof, who receive actual notice of this Order by personal
26 service or otherwise, are immediately restrained and enjoined, except as
27 otherwise ordered by this Court, from directly or indirectly: withdrawing,
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1 transferring, removing, dissipating, or disposing of any assets, wherever
2 located, including Defendants' assets held outside the United States;

- 3 16. The assets affected by this Order shall include both existing assets and
4 assets acquired after the effective date of this Order.

5 **II.**

6 **Maintenance of and Access to Business Records**

7 **IT IS FURTHER ORDERED that:**

- 8 17. Defendants, and their agents, servants, employees, assigns, attorneys, and
9 persons in active concert or participation with them, including any
10 successors thereof, and all persons or entities who receive notice of this
11 Order by personal service or otherwise, are immediately restrained and
12 enjoined from directly or indirectly destroying, altering, or disposing of, in
13 any manner, directly or indirectly, any documents that relate to the business
14 practices or business or personal finances of any Defendant.
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16 **III.**

17 **Inspection and Copying of Books and Records**

18 **IT IS FURTHER ORDERED that:**

- 19 18. Defendants are prohibited from refusing to permit representatives of the
20 Commission to immediately inspect the books, records, and other
21 documents of the Defendants and their agents including, but not limited to,
22 paper documents, electronically stored information, tape recordings, and
23 computer discs, wherever they may be situated and whether they are in the
24 possession of the Defendants.
25 19. Defendants shall, within 24 hours of the issuance of this Order, cause to be
26 prepared and delivered to the Commission, a detailed and complete
27 schedule of all passwords and identification (ID) numbers for all websites
28

1 and all accounts at any bank, financial institution or brokerage firm
2 (including any introducing broker or futures commission merchant)
3 operated by or to which any of the Defendants has access.

4 20. Defendants shall, within 24 hours of the issuance of this Order, cause to be
5 prepared and delivered to the Commission, a detailed and complete
6 schedule of all desktop computers, laptop computers, and/or mobile devices
7 owned and/or used by them in connection with their business. The
8 schedules required by this section shall include at a minimum the make,
9 model, and description of each, along with the location, the name of the
10 person primarily assigned to use the computer and/or PDA, and all
11 passwords necessary to access and use the software contained on the
12 computer and/or PDA.

13 **IV.**

14 **Bond Not Required of Plaintiff**

15 **IT IS FURTHER ORDERED that:**

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17 21. As Plaintiff Commission is an agency of the United States of America
18 which has made a proper showing under Section 6c(b), 7 U.S.C. § 13a-1
19 (2012), this restraining order is granted without bond. Accordingly, the
20 Commission need not post a bond.

21 **V.**

22 **Service**

23 **IT IS FURTHER ORDERED that:**

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25 22. Copies of this Order may be served by any means, including electronic mail
26 or any other electronic communication, upon any financial institution or
27 other entity or person that may have possession, custody, or control of any
28 documents or assets of any Defendant, or that may be subject to any

1 provision of this Order.

- 2 23. Staff of the Commission's Division of Enforcement, including Thomas
3 Simek, James M. Humphrey IV, Elsie Robinson, Christopher Reed,
4 Christopher Beatty, Salma Mack, or representatives thereof, representatives
5 of the United States Marshals Service, and representatives of any state or
6 local law enforcement agencies in the jurisdictions in which any Defendant
7 resides, are specially appointed by the Court to effect service.
- 8 24. The United States Marshals service, as well as any representative of any
9 state or local law enforcement agencies in the jurisdiction in which any
10 defendant resides, is authorized to assist Commission representatives in
11 effecting service of the Order, summons, and Complaint upon defendants as
12 set out in this Order and in accordance with Fed. R. Civ. P. 4, and in
13 carrying out the seizure of documents as authorized in this Order.
- 14 25. Furthermore, service of the Order, summons, and Complaint on corporate
15 entities may be effected by serving the Summons, Complaint, or other
16 process via overnight delivery to the registered agent of said corporate
17 entities.

18 **VI.**

19 **Service on the Commission**

20 **IT IS FURTHER ORDERED that:**

- 21
- 22 26. The Defendants shall comply with all electronic filing rules and
23 requirements of the U.S. District Court for the Central District of California
24 and shall serve all pleadings, correspondence, notices required by this
25 Order, and other materials on the Commission by delivering a copy to
26 Thomas Simek, Chief Trial Attorney, Division of Enforcement, Commodity
27 Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City,
28 Missouri 64112, by electronic filing, e-mail, personal delivery, courier

1 service (such as Federal Express or United Parcel Service), or regular mail.

2 **VII.**

3 **Order to Show Cause**

4 **IT IS FURTHER ORDERED that:**

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6 27. Defendants Allensworth, Fusco, and E-Slate shall appear before this Court
7 on the 17th day of October, 2017, at 10:00 a.m. before the Honorable
8 Consuelo B. Marshall, Courtroom 8b, at the United States Courthouse for
9 the Central District of California, located at 350 W. First Street, Los
10 Angeles, California 90012, to show cause, if there be any, why an Order for
11 Preliminary Injunction should not be granted to prohibit further violations of
12 the Act and Regulations and why this Court should not continue the freeze
13 on the assets of the Defendants and order any additional relief this Court
14 deems appropriate pending trial on the merits of this action. Should any
15 party wish to file a memorandum of law or other papers concerning the
16 issuance of a preliminary injunction against the Defendants, such materials
17 shall be filed, served, and received by all parties no later than October 10,
18 2017. Any reply papers shall be served and filed no later than October 12,
19 2017. Service of all papers shall be by electronic mail, facsimile, or
20 personal service.

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VIII.

Force and Effect

IT IS FURTHER ORDERED that:

28. This Order shall remain in full force and effect until further order of this Court, and this Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED.

DATED: October 3, 2017.



HON. CONSUELO MARSHALL
UNITED STATES DISTRICT JUDGE