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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT CALIFORNIA
18 SOUTHERN DIVISION

19	_____)	
20	UNITED STATES)	Case 8:16-cv-01461 AG-JCG
21	COMMODITY FUTURES)	
22	TRADING COMMISSION)	Hon. Andrew J. Guilford
23	Plaintiff,)	
24	vs.)	ORDER FOR FINAL
25	FRANK J. COLLINS, et al.)	JUDGMENT BY
26	Defendants.)	DEFAULT, PERMANENT
27)	INJUNCTION, CIVIL
28)	MONETARY PENALTIES
)	AND OTHER

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**STATUTORY AND
EQUITABLE RELIEF
AGAINST DEFENDANTS
GERARD SUITE AND
STA OPUS NR LLC**

On August 8, 2016, Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”), filed a Complaint against Defendants Frank J. Collins (“Collins”), Gerard Suite, a/k/a Rawle Gerard Suite, a/k/a Jerry Suite, a/k/a Jerry Snead (“Suite”) and STA Opus NR LLC (“STA Opus”) (collectively “Defendants”) for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26 (2012), and the Commissions Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pt. 1-190 (2016) (Doc. 1). In particular, the Commission’s Complaint alleged that from at least January 2013 through July 2016 (“relevant period”) Defendants fraudulently solicited at least \$1.6 million from at least 30 customers to operate a commodity pool, misappropriated approximately \$1.25 million of customers’ funds for their own benefit, and issued false account statements to customers in order to conceal their fraud. By virtue of this conduct, the Complaint alleged that Defendants violated the anti-fraud provisions of the Act, Sections 4b(a)(1)(A)-(C), 4o(1) and 6(c)(1), 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1), 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2016). Additionally, the Complaint alleged that STA Opus engaged in the foregoing

1 misconduct without benefit of registration with the Commission as a commodity
2 pool operator (“CPO”), in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1)
3 (2012), and that Collins and Suite engaged in their misconduct without benefit of
4 registration as associated persons (“APs”) of STA Opus, a CPO, in violation of
5 Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012).
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8 Service was properly effected upon Suite on August 19, 2016, pursuant to
9 Fed. R. Civ. P. 4(e)(2)(A), by a Deputy U.S. Marshal, who delivered a copy of the
10 summons, complaint, and related pleadings to Suite, who was in custody at the
11 Santa Ana Jail, 62 Civic Center Plaza, Santa Ana, CA 92701. (Docs. 16, 20).
12

13 Similarly, service was properly effected on STA Opus on August 15, 2016,
14 pursuant to Fed. R. Civ. P. 4(e)(2)(C), by delivering a copy of the summons,
15 complaint, and related pleadings to Richard Shellenberger, registered agent, 1201
16 Orange Street, Suite 600, Wilmington, DE 19801, who is authorized by law to
17 receive service of process for STA Opus. (Doc. 18).
18
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20 On October 5, 2016, pursuant to Rule 55(a) of the Fed. R. Civ. P., the CFTC
21 filed a Corrected Motion for Default (“Default Motion”) against Defendant Suite
22 and STA Opus, because Suite and STA Opus failed to plead or otherwise defend
23 the Commission’s enforcement action. (Doc. 27).¹ On October 6, 2016, the Clerk
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25

26 ¹ Suite, under the name Rawle Suite, is currently in the custody of the Santa Ana Jail, Booking
27 No. 1600001427, and therefore, is not in the military service of the United States and STA Opus
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1 of the United States District Court for the Central District of California entered a
2 Rule 55(a) Default against Suite and STA Opus. (Doc. 28).
3

4 The Commission now moves this Court to grant final judgment by default
5 against Defendants Suite and STA Opus, order permanent injunctive relief, award
6 restitution to defrauded pool participants and impose civil monetary penalties.
7

8 The Court has carefully considered the Complaint, the allegations of which
9 are well-pleaded and taken as true, the CFTC's Renewed Application for Final
10 Judgment by Default, Permanent Injunction, Civil Monetary Penalties and Other
11 Statutory and Equitable Relief against Defendants Suite and STA Opus, and the
12 incorporated Memorandum of Law, the declarations and exhibits filed by Plaintiff,
13 and all other papers herein, and being fully advised in the premises, it is hereby:
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15

16 **ORDERED** that Plaintiff's Renewed Application for Final Judgment by
17 Default, Permanent Injunction, Civil Monetary Penalties and Other Statutory and
18 Equitable Relief against Defendants Suite and STA Opus is **GRANTED**.
19

20 Accordingly, the Court enters findings of fact, conclusions of law, and an Order of
21 Final Judgment by Default for Permanent Injunction, Civil Monetary Penalties,
22 and Other Statutory and Equitable Relief ("Order") pursuant to Sections 6c and 6d
23 of the Act, 7 U.S.C. §§ 13a-1, 13a-2 (2012), as set forth herein.
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26 _____
27 is a Delaware company not subject to military service.
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I.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

The Parties

1. Plaintiff Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. pt. 1-190 (2017).

2. Defendant Suite was arrested by Federal Bureau of Investigation (“FBI”) agents on May 6, 2016, and on May 25, 2016, he was indicted and charged with four counts of mail fraud under 18 U.S.C. § 1343, based on substantially the same facts alleged in the Commission’s Complaint against Suite. On June 5, 2017, Suite entered a guilty plea to all four counts. See *United States v. Suite*, Case No. SACR 16-00069, U.S. District Court, Central District of California (ECF Doc. Nos. 1, 14, 93).

3. Defendant Suite was registered as an AP of various Commission registrants between January 1, 1982 and May 3, 1990, when his registration was revoked by the Commission based on the findings of the Arizona Corporation Commission (“ACC”) that Suite engaged in fraudulent conduct in violation of the Arizona Securities Laws. (Doc. 1 ¶ 10)

1 4. Moreover, on July 25, 2006, the California Corporations
2 Commissioner issued a Desist and Refrain Order against Suite finding that between
3 June 2004 and January 2005, Suite offered and sold securities to an investor,
4 without authorization, and that he did so by means of oral and written
5 communications, including untrue statements of material facts or omitted to state
6 material facts in order to make his statements not misleading. (Doc. 1 ¶ 11)
7
8 Additionally, on January 18, 2011, the California Corporations Commissioner filed
9 a Complaint against Suite and entities acting in concert with him, in Los Angeles
10 County Superior Court, Case No. BC452780, alleging that Suite and his related
11 entities, continued to sell unlicensed and unregistered securities as an unlicensed
12 and unregistered Investment Advisor and by so doing, violated the California
13 Corporations Commissioner’s Order dated July 25, 2006. On January 4, 2012, the
14 Los Angeles County Superior Court entered a permanent injunction against Suite
15 and the entities acting in concert with him, and ordered them to pay a total of \$2.5
16 million in restitution and fines. (Doc. 1 ¶ 12)
17

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21 5. STA Opus is a Delaware limited liability company that was formed on
22 September 19, 2012. STA Opus’ current status with the state of Delaware is “Not
23 in Good Standing.” STA Opus has never been registered with the Commission in
24 any capacity. (Doc. 1 ¶ 13)
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1 **STA Opus and Suite Fraudulently Solicited Pool Participants**

2 6. During the relevant period, STA Opus, by its agent, Suite, solicited
3
4 prospective commodity pool participants through telephone and email solicitations.
5 The email solicitations contained promotional material, including monthly and
6 yearly performance charts for STA Opus' commodity pool that falsely represented
7 the pool's trading performance. (Doc. 1 ¶ 18) For example, some of the
8 performance charts represented that the pool had an annual rate of return of
9 132.77% in 2012, 78.117% in 2013, 64.39% in 2014, and an 11-month rate of
10 return of 60.05% in 2015. Other performance charts represented that the pool had
11 an annual rate of return of 132.77% in 2012, 78.117% in 2013 and 57.60% in
12 2014. In fact, STA Opus' three commodity futures trading accounts carried at a
13 registered futures commission merchant ("FCM") had a negative return, losing
14 virtually all of the funds Defendants committed to trading. (Doc. 1 ¶ 20)

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18 7. During Suite's telephone and email solicitations, he failed to disclose
19 to current and prospective pool participants sanctions entered against him by the
20 Commission and the state of California, namely: i) that in May 1990, the
21 Commission revoked Suite's registration and disqualified him from registration
22 with the Commission because he engaged in fraudulent conduct in violation of the
23 Arizona securities laws; and ii) that in January 2012, the Los Angeles County
24 Superior Court ordered Suite, and entities acting in concert with him, to pay a total
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1 of \$2.5 million in restitution and fines for conducting business as an unregistered
2 investment advisor and for violating a previous Desist and Refrain Order issued by
3 the California Corporations Commissioner in July 2006. (Doc. 1 ¶ 21)

4
5 **STA Opus' Bank Account**

6 8. After prospective pool participants expressed an interest in investing
7 in STA Opus' pool, Suite sent them Account Funding Instructions. These
8 instructions directed prospective pool participants to send wires to an STA Opus
9 bank account opened by Defendants or to issue checks payable to STA Opus, at an
10 address in Irvine, CA. (Doc. 1 ¶ 22)

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12
13 9. After pool participants invested in STA Opus' pool, Suite caused false
14 account statements to be sent to them that misrepresented the value of their
15 respective interests in the pool and concealed Defendants' misappropriation of
16 their monies. (Doc. 1 ¶ 29)

17
18 10. Suite also devised a scheme to further defraud some participants,
19 through the use of unauthorized withdrawals from a participant's bank account.
20 Specifically, Suite told some pool participants that they could invest additional
21 money with STA Opus, by sending STA Opus "voided" personal checks. When
22 some participants sent Suite voided personal checks, Suite used the bank routing
23 information and account numbers on the voided checks to have "new" checks
24 issued that were payable to STA Opus. At least one customer did not authorize the
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1 checks Suite issued, thus allowing Suite to make unauthorized withdrawals from
2 his bank account. (Doc. 1 ¶¶ 24-25)
3

4 11. During the relevant period, at least 30 pool participants transferred a
5 total of at least \$1.6 million to STA Opus, for investment in the pool. (Doc. 1
6 ¶ 26)
7

8 **STA Opus' Actual Commodity Trading Performance Record**

9 12. STA Opus opened a total of three commodity trading accounts at a
10 registered FCM. Account opening documents establish that the trading accounts
11 were opened electronically, by Collins. During the relevant period, a total of
12 approximately \$413,350 was deposited into the three accounts, a total of
13 approximately \$56,729 was withdrawn from the accounts, and approximately
14 approximately \$356,081 was lost trading commodity futures. (Doc. 1 ¶ 27)
15
16

17 **Suite and STA Opus Misappropriated Pool Participants' Monies**

18 13. Suite and STA Opus misappropriated approximately \$1,127,855 of
19 pool participants' monies. Suite used a portion of the misappropriated funds for
20 personal expenses, such as travel, dining, shopping and entertainment. (Doc. 1
21 ¶ 31; Exhibit 1, Cavers Declaration ¶¶ 14-15)
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23

24 **B. Conclusions of Law**

25 **Jurisdiction and Venue**

26 14. This Court has jurisdiction over this action pursuant to Section 6c(a)
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1 of the Act, as amended, 7 U.S.C. § 13a-1(a), which authorizes the Commission to
2 seek injunctive relief in a U.S. district court against any person whenever it appears
3 that such person has engaged, is engaging, or is about to engage in any act or
4 practice constituting a violation of the Act or any rule, regulation, or order
5 promulgated thereunder.
6

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8 15. Venue properly lies with this Court pursuant to Section 6c(e) of the
9 Act, as amended, 7 U.S.C. § 13a-1(e), because Collins transacted business in this
10 District, and the acts and practices in violation of the Act occurred within this
11 District.
12

13 **Counts I and II: Suite and STA Opus Violated Section 4b(a)(1)(A)-(C)**
14 **of the Act**

15 16. By the conduct described in Paragraphs 2 through 13, in or in
16 connection with commodities for future delivery, Defendants Suite and STA Opus
17 cheated or defrauded or attempted to cheat or defraud, and willfully deceived or
18 attempted to deceive pool participants by: i) failing to disclose that sanctions were
19 entered against Suite revoking his registration with the Commission, enjoining him
20 from violating the California Corporations Act, and ordering him and entities in
21 concert with him, to pay \$2.5 million in restitution and fines for conducting
22 business as an unregistered investment advisor in California; ii) falsely
23 representing that STA Opus' pool had positive annual rates of return during the
24 relevant period, when, in fact, STA Opus' three commodity futures trading
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1 accounts had a negative return, losing virtually all of the funds Defendants
2 committed to trading; iii) issuing false account statements to participants that
3 misrepresented the value of participants' respective interests in the pool and
4 concealed Defendants' misappropriation of their monies; and iv) misappropriating
5 \$1,127,855 of participants' monies, in violation of Section 4b(a)(1)(A)-(C) of the
6 Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012).
7
8

9 17. Suite was acting as an agent of STA Opus when he violated the Act
10 with regard to STA Opus' pool participants, therefore, STA Opus, as Suite's
11 principal, is liable for Suite's acts constituting violations of Section 4b(a)(1)(A)-
12 (C) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B)
13 (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017).
14
15

16 **Count III: Suite and STA Opus Violated Section 4o(1)(A) and (B) of the**
17 **Act**

18 18. By the conduct described in Paragraphs 2 through 13, by use of the
19 mails or other means or instrumentalities of interstate commerce, STA Opus and
20 Suite, acting as a CPO and an AP of a CPO, respectively, directly or indirectly,
21 employed a device, scheme, or artifice to defraud pool participants and engaged in
22 a transaction, practice or course of business which operated as a fraud or deceit
23 upon pool participants by, among other things: i) failing to disclose that sanctions
24 were entered against Suite revoking his registration with the Commission,
25 enjoining him from violating the California Corporations Act, and ordering him
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1 and entities in concert with him, to pay \$2.5 million in restitution and fines for
2 conducting business as an unregistered investment advisor in California; ii) falsely
3 representing that STA Opus' pool had positive annual rates of return during the
4 relevant period, when, in fact, STA Opus' three commodity futures trading
5 accounts had a negative return, losing virtually all of the funds Defendants
6 committed to trading; iii) issuing false account statements to participants that
7 misrepresented the value of participants' respective interests in the pool and
8 concealed Defendants' misappropriation of their monies; and iv) misappropriating
9 \$1,127,855 of participants' monies, in violation of Section 4o(1)(A) and (B) of the
10 Act, 7 U.S.C. § 6o(1)(A),(B) (2012).
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14 19. Suite was acting as an agent of STA Opus when he violated the Act
15 with regard to STA Opus' pool participants, therefore, STA Opus, as Suite's
16 principal, is liable for Suite's acts constituting violations of Section 4o(1)(A) and
17 (B) of the Act, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.
18
19

20 **Count IV: Suite and STA Opus Violated Section 6(c)(1) of the Act and**
21 **Regulation 180.1(a)**

22 20. By the conduct described in Paragraphs 2 through 13, Suite and STA
23 Opus knowingly employed manipulative or deceptive devices or contrivances in
24 connection with commodities for future delivery on or subject to the rules of a
25 registered entity, by: i) failing to disclose that sanctions were entered against Suite
26 revoking his registration with the Commission, enjoining him from violating the
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1 California Corporations Act, and ordering him and entities in concert with him, to
2 pay \$2.5 million in restitution and fines for conducting business as an unregistered
3 investment advisor in California; ii) falsely representing that STA Opus' pool had
4 positive annual rates of return during the relevant period, when, in fact, STA Opus'
5 three commodity futures trading accounts had a negative return, losing virtually all
6 of the funds Defendants committed to trading; iii) issuing false account statements
7 to participants that misrepresented the value of participants' respective interests in
8 the pool and concealed Defendants' misappropriation of their monies; and
9 iv) misappropriating \$1,127,855 of participants' monies, in violation of Section
10 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) and Regulation 180.1(a), 17 C.F.R.
11 § 180.1(a) (2017).

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16 21. Suite was acting as an agent of STA Opus when he violated the Act
17 with regard to STA Opus' pool participants, therefore, STA Opus, as Suite's
18 principal, is liable for Suite's acts constituting violations of Section 6(c)(1) of the
19 Act and Regulation 180.1(a), pursuant to Section 2(a)(1)(B) of the Act and
20 Regulation 1.2.
21

22
23 **Count V: STA Opus Violated Section 4m(1) of the Act and Suite**
24 **Violated Section 4k(2) of the Act**

25 22. By the conduct described in Paragraphs 2 through 13, STA Opus
26 acted as a CPO with regard to STA Opus' pool, in that it engaged in a business that
27 is of the nature of an investment trust, syndicate, or similar form of enterprise and
28

1 in connection therewith, solicited, accepted or received funds, securities or
2 property from others for the purpose of trading in any commodity for future
3 delivery on or subject to the rules of any contract market or derivatives transaction
4 execution facility. Similarly, with regard to STA Opus' pool, Suite acted as an AP
5 of a CPO in that he solicited funds for STA Opus' pool. In connection with such
6 conduct, STA Opus and Suite used the mails and other means or instrumentalities
7 of interstate commerce, directly or indirectly, to engage in their businesses as a
8 CPO and an AP of a CPO.
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12 23. During the relevant period, STA Opus acted as a CPO, without the
13 benefit of registration as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C.
14 § 6m(1) (2012), and Suite engaged in his solicitation activities for STA Opus
15 without the benefit of registration as an AP of a CPO, in violation of Section 4k(2)
16 of the Act, 7 U.S.C. § 6k(2) (2012).
17

18 24. Unless restrained and enjoined by this Court, there is a reasonable
19 likelihood that Defendants Suite and STA Opus will continue to engage in the acts
20 and practices alleged in the Complaint and in similar Acts and practices in
21 violation of the Act and Regulations.
22
23

24 **II.**
25 **ORDER FOR RELIEF**

26 **IT IS HEREBY ORDERED THAT:**

27 25. The Commission's Renewed Application for Final Judgment by
28

1 Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and
2 Equitable Relief against Defendants Suite and STA Opus is GRANTED.
3

4 **IT IS HEREBY ORDERED THAT:**

5 **Permanent Injunction**

6 26. Based upon and in connection with the foregoing conduct, pursuant to
7
8 Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendants Suite and STA Opus
9 are permanently restrained, enjoined, and prohibited from directly or indirectly:

- 10 A. Cheating or defrauding, or attempting to cheat or defraud, other
11 persons; willfully making, or causing to be made, any false report or
12 statement to other persons, or willfully entering, or causing to be
13 entered, any false record for other persons; or willfully deceiving, or
14 attempting to deceive, other persons, in or in connection with any
15 order to make, or the making of, any contract of sale of any
16 commodity in interstate commerce or for future delivery that is made,
17 or to be made, on or subject to the rules of a designated contract
18 market, for or on behalf of such other persons, in violation of Section
19 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012);
- 20 B. Employing any device, scheme, or artifice to defraud any participant
21 or prospective participant, or engaging in any transaction, practice or
22 course of business which operates as a fraud or deceit upon any
23 participant or prospective participant, while acting as a CPO or an AP
24 of a CPO and using the mails or any instrumentality of interstate
25 commerce, in violation of Section 4o(1)(A) and (B) of the Act,
26 7 U.S.C. § 6o(1)(A),(B) (2012);
- 27 C. Using or employing, or attempting to use or employ, any manipulative
28 device, scheme, or artifice to defraud; making, or attempting to make,
any untrue or misleading statement of a material fact or omitting to
state a material fact necessary in order to make the statements made
not untrue or misleading; or engaging, or attempting to engage, in any
act, practice, or course of business, which operates or would operate
as a fraud or deceit on other person, in connection with any swap, or a

1 contract of sale of any commodity in interstate commerce, or for
2 future delivery on or subject to the rules of any registered entity, in
3 violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) and
4 Regulation 180.1(a), 17 C.F.R § 180.1(a) (2017);

5 D. Acting as a CPO without the benefit of registration with the
6 Commission, in violation of Section 4m(1) of the Act, 7 U.S.C.
7 § 6m(1) (2012); and

8 E. Acting as an AP of a CPO without the benefit of registration with the
9 Commission, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2)
10 (2012).

11 27. Defendants Suite and STA Opus are also permanently restrained,
12 enjoined, and prohibited from directly and indirectly:

13 A. Trading on or subject to the rules of any registered entity, as that term
14 is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012);

15 B. Entering into any transactions involving “commodity interests” (as
16 that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2017),
17 for their own personal account or for any account in which they have
18 a direct or indirect interest;

19 C. Having any commodity interests traded on their behalf;

20 D. Controlling or directing the trading for or on behalf of any other
21 person or entity, whether by power of attorney or otherwise, in any
22 account involving commodity interests

23 E. Soliciting, receiving, or accepting any funds from any person for the
24 purpose of purchasing or selling any commodity interests;

25 F. Applying for registration or claiming exemption from registration
26 with the Commission in any capacity, and engaging in any activity
27 requiring such registration or exemption from registration with the
28 Commission, except as provided for in Regulation 4.14(a)(9),
17 C.F.R. § 4.14(a)(9) (2017);and/or

1 G. acting as a principal (as that term is defined in Regulation 3.1(a),
2 17 C.F.R. § 3.1(a) (2017)), agent or any other officer or employee of
3 any person (as that term is defined in Section 1a(38) of the Act,
4 7 U.S.C. § 1a(38) (2012)) registered, exempted from registration or
5 required to be registered with the Commission, except as provided for
6 in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017).

6 **Restitution**

7 28. Defendants Suite and STA Opus shall, jointly and severally, pay
8 restitution in the amount of one million one hundred twenty-seven thousand eight
9 hundred fifty-five dollars (\$1,127,855) (“Restitution Obligation”), plus post-
10 judgment interest. Post-judgment interest shall accrue on the Restitution
11 Obligation beginning on the date of entry of this Order and shall be determined by
12 using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to
13 28 U.S.C. § 1961 (2012).
14
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16 29. Defendant Suite is currently the defendant in a criminal action
17 charging him, in part, for the misconduct at issue in this matter. *See United States*
18 *v. Suite*, Case No. SACR 16-00069, pending in the U.S. District Court, Central
19 District of California, filed May 25, 2016 (“Criminal Action”). For amounts
20 disbursed to Defendants’ pool participants as a result of satisfaction of any
21 restitution ordered in the Criminal Action, the Defendants shall receive dollar-for-
22 dollar credit against the Restitution Obligation. Within ten (10) days of
23 disbursement in the Criminal Action to Defendants’ pool participants, Defendant
24 shall, under a cover letter that identifies the name and docket number of this
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1 proceeding, transmit to the Chief Financial Officer, Commodity Futures Trading
2 Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C.
3 20581, and the Office of Administration, National Futures Association (“NFA”),
4 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, copies of the form
5 of payment to those pool participants.
6
7

8 30. To effect payment of the Restitution Obligation and the distribution of
9 any restitution payments to the defrauded STA Opus pool participants, the Court
10 appoints the NFA as Monitor (“Monitor”). The Monitor shall collect restitution
11 payments from Suite and STA Opus and make distributions as set forth below.
12

13 Because the Monitor is acting as an officer of this Court in performing these
14 services, the NFA shall not be liable for any action or inaction arising from NFA’s
15 appointment as Monitor, other than actions involving fraud.
16

17 31. Defendants Suite and STA Opus shall make Restitution Obligation
18 payments under this Order to the Monitor in the name “Suite/STA Opus –
19 Restitution Fund” and shall send such Restitution Obligation payments by
20 electronic funds transfer, or by U.S. postal money order, certified check, bank
21 cashier’s, or bank money order, to the Office of Administration, National Futures
22 Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under
23 cover letter that identifies the paying Defendant and the name and docket number
24 of this proceeding. Suite shall simultaneously transmit copies of the cover letter
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1 and the form of payment to the Chief Financial Officer, Commodity Futures
2 Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington,
3 D.C. 20581.
4

5 32. The Monitor shall oversee the Restitution Obligation and shall have
6 the discretion to determine the manner of distribution of such funds in any
7 equitable fashion to STA Opus' defrauded pool participants or may defer
8 distribution until such time as the Monitor deems appropriate. In the event that the
9 amount of Restitution Obligation payments to the Monitor are of a *de minimis*
10 nature such that the Monitor determines that the administrative cost of making a
11 distribution to pool participants is impractical, the Monitor may, in its discretion,
12 treat such restitution payments as civil monetary payments, which the Monitor
13 shall forward to the Commission following the instructions for civil monetary
14 penalty payments set forth below.
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18 33. Suite and STA Opus shall cooperate with the Monitor as appropriate
19 to provide such information as the Monitor deems necessary and appropriate.
20 Suite shall execute any documents necessary to release funds that he has in any
21 repository, bank, investment or other financial institution, wherever located, in
22 order to make partial or total payment toward the Restitution Obligation.
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25 34. The Monitor shall provide the Commission at the beginning of each
26 calendar year with a report detailing the disbursement of funds to STA Opus' pool
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1 participants during the previous year. The Monitor shall transmit this report under
2 a cover letter that identifies the name and docket number of this proceeding to the
3 Chief Financial Officer, Commodity Futures Trading Commission, Three
4 Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.
5

6 35. The amount payable to a pool participant shall not limit the
7 participant's ability from proving that a greater amount is owed from Suite or STA
8 Opus or any other person or entity, and nothing herein shall be construed in any
9 way to limit or abridge the rights of pool participants that exist under state or
10 common law.
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13 36. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, all STA
14 Opus pool participants are explicitly made intended third-party beneficiaries of this
15 Order and may seek to enforce obedience of this Order to obtain satisfaction of any
16 portion of the restitution that has not been paid by Suite and STA Opus to ensure
17 continued compliance with any provision of this Order and to hold Suite and STA
18 Opus in contempt for any violation of any provision of this Order.
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21 37. To the extent that any funds accrue to the U.S. Treasury for
22 satisfaction of Suite's and STA Opus' Restitution Obligation, such funds shall be
23 transferred to the Monitor for disbursement in accordance with the procedures set
24 forth above.
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1 **Civil Monetary Penalty**

2 38. Suite and STA Opus shall, jointly and severally, pay a civil monetary
3 penalty in the amount of three million three hundred eighty-three thousand five
4 hundred sixty-five dollars (\$3,383,565) (“CMP Obligation”), plus post-judgment
5 interest. Post-judgment interest shall accrue on the CMP Obligation beginning on
6 the date of entry of this Order and shall be determined by using the Treasury Bill
7 rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961
8 (2012).
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11 39. Suite and STA Opus shall pay their CMP Obligation by electronic
12 funds transfer, U.S. postal money order, certified check, bank cashier’s check, or
13 bank money order. If payment is to be made other than by electronic funds
14 transfer, then the payment shall be made payable to the Commodity Futures
15 Trading Commission and sent to the address below:
16
17

18 Commodity Futures Trading Commission
19 Division of Enforcement
20 ATTN: Accounts Receivables
21 DOT/FAA/MMAC/AMZ-341
22 CFTC/CPS/SEC
23 6500 S. MacArthur Blvd.
24 Oklahoma City, OK 73169
25 (405) 954-7262 office
26 (405) 954-1620 fax
27 Nikki.gibson@faa.gov

28 If payment by electronic funds transfer is chosen, Suite and STA Opus shall
contact Nikki Gibson or her successor at the address above to receive payment

1 instructions and shall fully comply with those instructions. Suite and STA Opus
2 shall accompany payment of the CMP Obligation with a cover letter that identifies
3 them and the name and docket number of this proceeding. Suite and STA Opus
4 shall simultaneously transmit copies of the cover letter and the form of payment to
5 the Chief Financial Officer, Commodity Futures Trading Commission, Three
6 Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.
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9 **Provisions Related to Monetary Sanctions**

10 40. Partial Satisfaction: Acceptance by the Commission or the Monitor of
11 any partial payment of Suite's and STA Opus' Restitution Obligation or CMP
12 Obligation shall not be deemed a waiver of their obligation to make further
13 payments pursuant to this Order, or a waiver of the Commission's right to seek to
14 compel payment of any remaining balance.
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17 **Miscellaneous Provisions**

18 41. Notice: All notices required to be given by any provision of this
19 Order shall be sent by certified mail, return receipt requested as follows:
20

21 Notice to the Commission:
22 Director, Division of Enforcement, Commodity Futures Trading
23 Commission,
24 Three Lafayette Centre, 1155 21st Street, NW,
25 Washington, D.C. 20581.
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Notice to NFA:

Daniel Driscoll, Executive Vice President, COO
National Futures Association
300 S. Riverside Plaza, Suite 1800
Chicago, IL 60606-3447

All such notices to the Commission or the NFA shall reference the name and the docket number of the action.

42. Change of Address/Phone: Until such time as Suite and STA Opus satisfy their Restitution and CMP Obligations as set forth in this Order, Suite shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

43. Invalidation: If any provision of this Order or if the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

44. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by Suite and/or STA Opus to modify or for relief from the terms of this Order.

45. Injunctive and Equitable Provisions: The injunctive and equitable relief provisions of this Order shall be binding upon Suite and STA Opus, upon any person under the authority or control of Suite and/or STA Opus, and upon any person

1 who receives actual notice of this Order, by personal service, e-mail, facsimile or
2 otherwise insofar as he or she is acting in active concert or participation with Suite
3 and/or STA Opus.
4

5 There being no just reason for delay, the Clerk of the Court is hereby
6 ordered to enter this Order for Final Judgment by Default, Permanent Injunction,
7 Civil Monetary Penalties and Other Statutory and Equitable Relief against
8 Defendants Suite and STA Opus forthwith and without further notice.
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11 **IT IS SO ORDERED** on this 13th day of November 2017.
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16 _____
17 Andrew J. Guilford
18 United States District Judge
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CERTIFICATE OF SERVICE

The undersigned, an attorney with the Commodity Futures Trading Commission, certifies that she filed the below electronically, on September 27, 2017, by operation of the Court’s electronic filing system (“ECF”) on Darryl Sheetz, attorney for Defendant Frank Collins, Robert Howell, attorney for Plaintiff CFTC, Rosemary Hollinger, attorney for Plaintiff CFTC, and Kent Kawakami, Assistant United States Attorney, Plaintiff’s Local Counsel. I also certify that I served the below on the parties listed on the Service List on September 27, 2017, by UPS Overnight Service.

PLAINTIFF CFTC’S [PROPOSED] ORDER FOR FINAL JUDGMENT BY DEFAULT, PERMANENT INJUNCTION, CIVIL MONETARY PENALTIES AND OTHER STATUTORY AND EQUITABLE RELIEF AGAINST DEFENDANTS GERARD SUITE AND STA OPUS NR LLC

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: September 27, 2017

/s/ Diane M. Romaniuk
Attorney for Plaintiff
Commodity Futures Trading
Commission
525 W. Monroe St., Suite 1100
Chicago, IL 60661
(312) 596-0541
dromaniuk@cftc.gov

Service List by UPS Overnight

Gerard Suite, a/k/a Rawle Gerard Suite
Santa Ana Jail
62 Civic Center Plaza
Santa Ana, CA 92701

STA Opus NR LLC
c/o Registered Agent
1201 Orange Street, Suite 600
Wilmington, DE 19801