

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60226-CIV-ZLOCH

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

DEFAULT FINAL JUDGMENT

RICO OMAR COX a/k/a Omar Negron,

Defendants.

THIS MATTER is before the Court upon Plaintiff's Motion For Final Judgment By Default, Permanent Injunction, Civil Monetary Penalties, And Other Statutory And Equitable Relief Against Defendant (DE 12). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

I. Introduction

On February 4, 2016, Plaintiff United States Commodity Futures Trading Commission ("CFTC" or "Commission") filed its Complaint (DE 1) for injunctive and other equitable relief and penalties against Defendant Rico Omar Cox, a.k.a. Omar Negron ("Cox"), for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 et seq. (2012). Said Complaint alleged that beginning in at least August 2010 through March 2015 (the "Relevant Period"), Cox fraudulently solicited his trading services for managed commodity futures accounts, and lost most of the at least \$499,000 he traded for or on behalf of at least nine clients. When soliciting clients for

his Commodity Trading Advisor ("CTA") business, Cox created and distributed through means and instrumentalities of interstate commerce promotional materials to prospective clients that intentionally or recklessly contained materially false and misleading statements and/or failed to disclose material facts, including: (a) claiming that he has been a successful futures day-trader full time for years; (b) claiming to make thousands of dollars and/or returns of 10-40% daily trading futures; (c) providing trading account statements purporting to represent his historical futures trading activity that materially overstated Cox's rates of return; and (d) failing to disclose his felony fraud and theft convictions in Florida in April 2013.

Additionally, the Complaint (DE 1) alleges that Cox created and distributed to clients fraudulent daily account statements and/or screen shots that materially overstated trading profits and account cash balances, when in reality Cox's trading of such customer accounts resulted in losses of virtually all their principal. Finally, during the Relevant Period, Cox also failed to register with the Commission as a CTA as required.

The Complaint (DE 1) ultimately alleges that Defendant engaged in acts and practices in violation of certain core anti-fraud and registration provisions of the Act, namely, Sections 4b(a)(1)(A), (B) and (C), 4o(1)(A) and (B), and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C), 6o(1)(A) and (B), and 6m(1). Said Complaint sought injunctive relief, disgorgement, restitution and civil monetary penalties.

Cox was properly served with the summons and Complaint pursuant to Fed. R. Civ. P. (4)(e)(2), by personal service on Friday, February 5, 2016. Pursuant to Fed. R. Civ. P. 12(a)(1), Cox's Answer was, therefore, due on or before Friday, February 26, 2016. Defendant has not otherwise answered, pled, or defended this action, nor has he sought an extension of time to respond to the Commission's Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). Accordingly, on February 29, 2016, the CFTC filed its Request For Entry Of Default Against Defendant (DE 9) pursuant to Fed. R. Civ. P. 55(a), and the Clerk of this Court entered default against Defendant on February 29, 2016. See DE 10. The Court approved, adopted, and ratified the default entered by the Clerk of this Court and ordered the CFTC to file its Motion For Default Final Judgment by noon on March 16, 2016. See DE 11.

The CFTC has now submitted its Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief Against Defendant (DE 12) ("Motion") pursuant to Fed. R. Civ. P. 55(b)(2) and Local Rule 7(a)(1)(E), to move this Court to grant final judgment by default against Defendant, order permanent injunctive relief, impose trading and registrations bans, and impose a restitution obligation, disgorgement obligation, and a civil monetary penalty.

The Court has carefully considered the Complaint (DE 1), the allegations of which are well-pled and hereby taken as true by virtue of Cox's default, the CFTC's Motion and the Declaration and Exhibits in support thereof (DE 12), and the record in this case.

The Court being otherwise fully advised in the premises finds as follows.

I. Findings of Fact

1. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 - 190.10 (2015).

2. Defendant Rico Cox resides in Dania Beach, Florida. Cox has never been registered with the Commission in any capacity. At all relevant times, Cox has acted as a CTA by holding himself out to the general public as a CTA by offering commodity futures trading services in managed accounts. In April 2013, Cox was convicted of third degree felony fraud and acting as an unlicensed mortgage broker in Broward County, Florida and was sentenced to 5 years' probation (See State of Florida v. Cox, Case No. 12016762CF10A, Fla. Broward County Ct., April 18, 2013). Later the same month, Cox was separately convicted of: (a) a felony scheme to defraud and operating as a broker/sales associate without a license, and (b) felony grand theft and operating as a broker/sales associate without a license, in Palm Beach County, Florida, and was sentenced to 30 days' imprisonment and 5 years' probation (See State of Florida v. Cox, Case Nos. 2012CF005665AXXX, and 2013CF001453AXXX, Fla. Palm Beach County Ct., April 30, 2013).

3. Cox promoted himself to the public over the internet in Craigslist advertisements or other similar websites offering either managed account services trading futures, or trading education and training through a live trade room. Cox claimed that he was an experienced, successful full-time futures trader for years. Cox touted achieving superior trading returns in such advertisements as: (a) "I trade futures, mainly crude oil, and make thousands of dollars daily," or (b) "we average 10-40% return daily," or (c) "we average a return of what most people make investing i[n] months or years in [sic] day."

4. None of the foregoing representations were true, and Cox knew that the representations were false or recklessly disregarded the truth while making these representations. Among other things, Cox did not achieve the purported actual profits he represented to customers and potential customers that had been made, Cox was never a successful futures trader, and he is unable to substantiate any of these touted returns. Additionally, when soliciting potential customers, Cox failed to disclose his 2013 felony fraud and theft convictions in Florida.

5. Cox instructed prospective clients to open futures trading accounts at one of two futures commission merchants ("FCMs"). For the accounts that Cox did not obtain discretionary trading authority over, he instructed certain clients to answer "no" on account opening documents to a question of whether anyone other than the account owner would have authority to trade the futures account. Cox then obtained trading access to the client's account

by using the client's login ID and password in lieu of getting a power of attorney to exercise discretionary trading authority.

6. Cox's trading the customer accounts in this fashion concealed his identity and involvement from the FCMs. In addition, it allowed him to assuage client concerns by telling clients he was only able to trade and could not take any money directly from their account. However, Cox had clients execute a trading agreement whereby the client agreed that Cox would be compensated by splitting any trading profits. At least one client sent Cox funds related to Cox's handling of his account.

7. Cox created and sent certain clients false account statements showing large account balances and monthly profits in accounts he purportedly traded. For example, in one instance, he sent three monthly account statements for a non-existent account in the name of his alias, Omar Negrón, to a prospective client. The statements showed monthly profits of approximately \$33,500, \$41,300, and \$31,500 with corresponding ending monthly cash balances of approximately \$658,700, \$677,100, and \$706,500. In this instance, the prospective client specifically relied on the false statements in deciding to open an account.

8. Cox's trading was in fact unsuccessful. In the aggregate, during the relevant time, at least nine clients deposited at least \$499,000 into commodity futures trading accounts that Cox managed. Excluding client withdrawals of approximately \$117,000 from their accounts, Cox lost no less than \$381,000 - *i.e.*, virtually all of the remaining funds - trading those accounts using his clients' login credentials.

9. Once he started trading a client's account, Cox generally lost most of the available funds in a very short period of time. For example, in trading on behalf of one client's account funded with total deposits of \$32,000, Cox lost money trading and traded the account down to a cash balance of less than \$200.00 in under fourteen (14) days. In order to conceal his trading losses, Cox created false account statements and/or account screen shots (collectively, "screen shots") that he distributed to such client via email that falsely reported their accounts were profitable. These screen shots also reflected inflated cash values and excess equity amounts. None of the screen shots accurately depicted an actual trading account traded by Cox, and Cox knew that his representations were false or recklessly disregarded the truth while making these representations.

10. In 2011, in response to questions from CFTC staff concerning his CTA activities conducted without the benefit of registration with the CFTC, Cox contended that he had ceased advertising and trading on behalf of clients. To the contrary, Cox continued or resumed soliciting managed trading accounts via Craigslist or other means, including at least three accounts in

2013 and 2014, and lost most of the funds trading for or on behalf of those accounts as well.

II. Conclusions of Law

1. When a party against whom a default judgment is sought has failed to plead or otherwise assert a defense, and that fact has been documented, the clerk shall enter the party's default. Fed. R. Civ. P. 55(a). The party seeking the default shall then apply to the court for a default judgment. Fed. R. Civ. P. 55(b). Fed. R. Civ. P. 55(b)(2) provides that judgment by default may be entered by a district court against a defendant upon the failure of that defendant to plead or otherwise defend. CFTC v. FX Professional Intern. Solutions, Inc., 2010 WL 5541050 at *4 (S.D. Fla. Nov. 29, 2010); Dunn v. Prudential Ins. Co. of America, 2011 WL 1298156 at *3-4 (M.D. Fla. April 4, 2011); Vaccaro v. Custom Sounds, Inc., 2009 U.S. Dist. LEXIS 113982 (M.D. Fla. Nov. 19, 2009). The grant or denial of a motion for default judgment lies within a district court's sound discretion. Hamm v. DeKalb County, 774 F.2d 1567, 1576 (11th Cir. 1985). Where a party fails to respond, after notice, the court is justified in entering a judgment against the defaulting party. Natures Way Marine, LLC v. N. Am. Materials, Inc. 2008 WL 801702 (S.D. Ala. 2008), (citing Int'l Brands USA, Inc. v. Old St. Andrews Ltd., 349 F. Supp.2d 256, 261 (D. Conn. 2004)). Further, if a district court determines that a defendant is in default, then well-pled factual allegations of the complaint, except those relating to unspecified damages, will be taken as true and liability is established by the entry of a default. Sampson v. Brewer, Michaels & Kane, LLC, 2010 WL 2432084

(M.D. Fla. May 26, 2010) (citing Buchanan v. Bowman, 820 F.2d 359, 361 (11th Cir. 1987)); see also Fed. R. Civ. P. 8(b)(6) (effect of failure to deny an allegation). Moreover, "[i]t is a familiar practice and an exercise of judicial power for a court upon default, by taking evidence when necessary or by computation from facts of record, to fix the amount which the plaintiff is lawfully entitled to recover and to give judgment accordingly." Pope v. United States, 323 U.S. 1, 12 (1944).

2. The Clerk of the Court already has entered a default against Defendant on February 29, 2016. See DE 9.

3. This Court hereby finds that the CFTC's allegations in the Complaint (DE 1) against Defendant are well-pleaded and hereby taken as true, that these allegations support finding of violations of the Act and Regulations, and in accordance with Fed. R. Civ. P. 55(b)(2), a default judgment is hereby entered against Defendant.

4. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), authorizes the CFTC to seek injunctive relief in district court against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), in that Defendant transacted business in the Southern District of Florida and the acts and practices in violation of the Act occurred within this District, among other places.

5. In, analyzing the CFTC's Motion, the Court keeps in mind a crucial purpose of the Act, "protecting the innocent individual

investor—who may know little about the intricacies and complexities of the commodities market—from being misled or deceived.” CFTC v. R.J. Fitzgerald & Co., 310 F.3d 1321, 1329 (11th Cir. 2002), cert. denied, 543 U.S. 1034 (2004). “[C]aveat emptor has no place in the realm of federal commodities fraud. Congress, the CFTC, and the Judiciary have determined that customers must be zealously protected from deceptive statements by brokers who deal in these highly complex and inherently risky financial instruments.” Id. at 1334.

6. Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A) and (C) (2012), make it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for on behalf of, or with, any other person: (A) to cheat or defraud or attempt to cheat or defraud another person; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for the other person.

7. During the Relevant Period, Cox cheated, defrauded or deceived, and/or attempted to cheat, defraud or willfully deceive current and prospective Cox clients by, among other things, knowingly or recklessly omitting and/or making false representations of material fact to clients and prospective clients, such as the following:

- (a) falsely claiming that he has been a successful futures day-trader full time for years;
- (b) falsely stating in promotional materials that Cox was an experienced, successful futures traders making thousands of dollars daily, and/or earning daily returns as high as 10 - 40% daily, when Cox was largely unsuccessful at futures trading; and
- (c) failing to disclose to clients and prospective clients his own felony fraud and theft criminal convictions in Florida in 2013.

8. By this conduct, Cox has violated Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A) and (C) (2012).

9. Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012), makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for on behalf of, or with, any other person "willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record.

10. Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012), makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated

contract market, for on behalf of, or with, any other person "willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record."

11: During the Relevant Period, Cox willfully made or caused to be made false reports or statements, and knowingly issued them to clients and prospective clients, such as the following:

- (a) providing some prospective clients with fraudulent trading account statements showing profitable trading activity of Cox, when in reality, such statements either: (1) were false account statements created in their entirety by Cox, or (2) contained results of simulated or hypothetical trading without being disclosed as such; and
- (b) leading at least some clients to believe that Cox was making profitable trades in their accounts by issuing false daily account statements and/or screenshots of profitable trading activity and overstated account balances that Cox created himself, when in reality Cox's trading in such client accounts caused losses of most of the principal.

12. By this conduct, Cox has violated Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012).

13. Section 4o(1) of the Act, 7 U.S.C. § 6o(1)§§ (2012), in relevant part, makes it unlawful for CTAs, Commodity Pool Operators ("CPOs"), and their associated persons, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, (A) to employ any device, scheme, or artifice to defraud any participant; or (B) to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant. Section 4o(1) of the Act applies to all CTAs, CPOs, and their associated persons, whether registered, required to be registered, or exempted from registration. CFTC v. Skorupskas, 605 F. Supp. 923, 932 (E.D. Mich. 1985); 17 C.F.R. § 4.15 (2015).

14. During the Relevant Period, Cox acted as a CTA by engaging in the business of advising others as to the value or the advisability of trading in any forex, commodity futures and/or options contract for compensation and profit, and by trading commodity futures on his customers' behalf.

15. Cox, while acting as a CTA, used the mails or any means or instrumentality of interstate commerce to employ a device, scheme or artifice to defraud its participants, and engaged in a transaction, practice or course of business which operated as a fraud upon its participants, by, among other things:

- (a) falsely stating in promotional materials that Cox was an experienced, successful futures traders making

thousands of dollars daily, and/or earning daily returns as high as 10 - 40% daily, when Cox was largely unsuccessful at futures trading;

- (b) providing some prospective clients with fraudulent trading account statements showing profitable trading activity of Cox, when in reality, such statements either: (1) were false account statements created in their entirety by Cox, or (2) contained results of simulated or hypothetical trading without being disclosed as such;
- (c) leading at least some clients to believe that Cox was making profitable trades in their accounts by issuing false daily account statements and/or screenshots of profitable trading activity and overstated account balances that Cox created himself, when in reality Cox's trading in such client accounts experienced massive, catastrophic losses; and
- (d) failing to disclose to clients and prospective clients his own felony fraud and theft criminal convictions in Florida in 2013.

16. By this conduct, Cox has violated Section 4o(1) (A), (B) of the Act, 7 U.S.C. § 6o(1) §§(A), (B) (2012).

17. A "commodity trading advisor" or "CTA" is defined in Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012), and in Regulation 1.3(bb)(1), 17 C.F.R. § 1.3(bb)(1) (2015), in relevant part, as any person who, "for compensation or profit, engages in the business of advising others . . . as to the value or the advisability of trading" in any foreign currency ("forex"), commodity futures and/or options contract.

18. Subject to certain exemptions and exclusions not applicable in this case, all CTAs must be registered with the CFTC pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

19. During the Relevant Period, Cox acted as a CTA within the meaning of Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012), and Regulation 1.3(bb)(1), 17 C.F.R. §§ 1.3(bb)(1) (2015), in that for compensation or profit he engaged in the business of advising others as to the value or the advisability of trading in commodity futures without the benefit of registration with the CFTC.

20. By this conduct, Cox has violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), in that he acted as a CTA without the benefit of registration with the Commission as a CTA.

21. Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), authorizes and directs the CFTC to enforce the Act and Regulations and allows a district court, upon a proper showing, to grant a permanent injunction. CFTC v. Wilshire Inv. Mgmt. Corp., 531 F.3d 1339, 1346 (11th Cir. 2008). In an action for permanent injunctive relief, the CFTC is not required to make a specific showing of irreparable injury or inadequacy of other remedies, which private litigants must make. CFTC v. Muller, 570 F.2d 1296, 1300 (5th Cir. 1978);

United States v. Quadro Corp., 928 F. Supp. 688, 697 (E.D. Tex. 1996) (citations omitted), aff'd, U.S. v. Quadro Corp., 127 F.3d 34 (5th Cir. 1997); CFTC v. British Am. Commodity Options Corp., 560 F.2d 135, 141-42 (2d Cir. 1977), cert. denied 438 U.S. 905 (1978). Rather, the CFTC makes the requisite showing for issuance of injunctive relief when it presents a prima facie case that the defendant has engaged, or is engaging, in illegal conduct, and that there is a likelihood of future violations. CFTC v. American Bd. of Trade, Inc., 803 F.2d 1242, 1250-51 (2d Cir. 1986); CFTC v. Hunt, 591 F.2d 1211, 1220 (7th Cir. 1979), cert. denied, 442 U.S. 921 (1979).

22. In a CFTC enforcement case, the 11th Circuit held that the district court's finding of a likelihood of future violations supported its entry of a permanent injunction. See CFTC v. Sidoti, 178 F.3d 1132 (11th Cir. 1999). In Sidoti, the 11th Circuit stated: "In light of the likelihood of future violations, the district court did not abuse its discretion in enjoining further violations of the Act." 178 F.3d at 1137; see also SEC v. Carriba Air, Inc., 681 F.2d 1318, 1322 (11th Cir. 1982); SEC v. Blatt, 583 F.2d 1325, 1334 (5th Cir. 1978). Whether such a likelihood of future violations exists depends on the "totality of the circumstances." SEC v. Mgmt. Dynamics, Inc., 515 F.2d 801, 807 (2d Cir. 1975); CFTC v. Morgan, Harris & Scott, Ltd., 484 F. Supp. 669, 676 (S.D.N.Y. 1979). Foremost among these circumstances is the past illegal conduct of the defendant, from which courts may infer a likelihood of future violations. British Am. Commodity Options

Corp., 560 F.2d at 142; Mgmt. Dynamics, Ltd., 515 F.2d at 807; Carriba Air, 681 F.2d at 1322.

23. The scope of the injunctive relief can be tailored to meet the circumstances of the violations shown. For example, upon the CFTC's showing of a violation, courts have entered permanent injunctions against future violations of the Act. See, e.g., CFTC v. U.S. Metals Depository Co., 468 F. Supp. 1149 (S.D.N.Y. 1979). Other courts have issued broader injunctions prohibiting trading activity, in addition to enjoining defendants from future violations. See, e.g., Wilshire Inv. Mgmt. Corp., 531 F.3d at 1346 (upholding the district court's permanent injunction prohibiting the defendants from "engaging in any commodity-related activity"); see also CFTC v. Noble Wealth Data Info. Servs., 90 F. Supp. 2d 676, 692 (D. Md. 2000) ("[t]he pervasiveness and seriousness of [the defendant's] violation justify the issuance of a permanent injunction prohibiting him from violating the Act and from engaging in any commodity-related activity, including soliciting customers and funds"), aff'd sub nom. CFTC v. Baragosh, 278 F.3d 319 (4th Cir. 2002); CFTC v. Rosenberg, 85 F. Supp. 2d 424, 454-55 (D.N.J. 2000) (permanently enjoining defendant from trading commodities on behalf of others). Under these standards, permanent injunctive relief, including a comprehensive trading ban, is clearly warranted against Defendant.

24. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defendant will continue to engage in

the acts and practices alleged in the Complaint, and in similar acts and practices in violation of the Act and Regulations.

25. Further, the unqualified grant of statutory authority to issue an injunction under the Act carries with it the full range of equitable remedies, among which is the power to grant restitution. CFTC v. Wilshire Inv. Mgmt. Corp., 531 F.3d 1339, 1344 (11th Cir. 2008); see also CFTC v. American Metals Exch. Corp., 991 F.2d 71, 76 (3d Cir. 1993) ("A number of courts have held that district courts have the power to order disgorgement as a remedy for violations of the Act for 'the purpose of depriving the wrongdoer of his ill-gotten gains and deterring violations of the law'"). In addition, Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), authorizes the imposition of civil monetary penalties. The CFTC seeks both forms of monetary relief in this case.

26. Under Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), this Court is authorized to order restitution. Section 6c(d)(3), 7 U.S.C. § 13a-1(d)(3) (2012), allows the CFTC to request and seek equitable remedies "on any person found in the action to have committed any violation," including:

"(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

(B) disgorgement of gains received in connection with such violation."

7 U.S.C. § 13a-1(d)(3); see also CFTC v. Hunter Wise Commodities, LLC, 21 F. Supp. 3d 1317, 1352-53 (S.D. Fla. 2014) (recognizing that the measure of restitution is equal to all customer losses as the appropriate remedy in a CFTC enforcement action for fraud).

27. Accordingly, the restitution award in this case is calculated with straightforward arithmetic, i.e. the amount of client funds taken in (\$499,000), less client withdrawals (\$117,000); in this instance, \$381,000, plus post-judgment interest. Such restitution award equals the amount the Defendant lost haphazardly trading futures contracts for his clients.

28. Similarly, the disgorgement figure in this case is determined to be an amount equivalent to Defendant's "performance fees" received representing 50% of certain fictitious trading profits, as a result of acts or practices constituting violations of the Act; in this instance, \$5,800, plus post-judgment interest.

29. Lastly, Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), provides that "the [CFTC] may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation [of the Act or Regulations] a civil penalty." Pursuant to Section 6c(d)(1)(A) of the Act, 7 U.S.C. § 13a-1(d)(1)(A) (2012), and Regulation 143.8(a)(1), 17 C.F.R. § 143.8(a)(1) (2015), for the time period at issue in the case at bar, the civil monetary penalty shall be not more than the greater of \$140,000 for each violation of the Act, or triple the monetary gain to Defendant.

30. The CFTC has set forth several factors to consider in assessing a civil monetary penalty. These factors include: the

relationship of the violation at issue to the regulatory purposes of the Act and whether or not the violations involved core provisions of the Act; whether or not scienter was involved; the consequences flowing from the violative conduct; financial benefits to a defendant; and harm to customers or the market. Noble Wealth, 90 F. Supp. 2d at 694; In re Grossfeld, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,921 at 44,467-8 (CFTC Dec. 10, 1996), *aff'd*, 137 F.3d 1300 (11th Cir. 1998)¶. Civil monetary penalties should "reflect the abstract or general seriousness of each violation and should be sufficiently high to deter future violations," which means that civil monetary penalties should make it financially detrimental to a defendant to fail to comply with the Act and Regulations so that the defendant would rather comply than risk violations. Grossfeld, ¶ 26,921 at 44,467-8. As the Commission has stated:

[Civil monetary] penalties signify the importance of particular provisions of the Act and the [CFTC]'s rules, and act to vindicate these provisions in individual cases, particularly where the respondent has committed the violations intentionally. Civil monetary penalties are also exemplary; they remind both the recipient of the penalty and other persons subject to the Act that noncompliance carries a cost. To effect this exemplary purpose, that cost must not be too low or potential violators may be encouraged to engage in illegal conduct.

In re GNP Commodities, Inc. [1990-92 Transfer Binder] Com. Fut. L. Rep. (CCH) ¶ 25,360 at 39,222 (CFTC Aug. 11, 1992), aff'd sub nom. Monieson v. CFTC, 996 F.2d 852 (7th Cir. 1993); see also Reddy v. CFTC, 191 F.3d,109, 123 (2d Cir. 1999) (civil monetary penalties serve to further the Act's remedial policies and to deter others from committing similar violations).

31. This case warrants the imposition of a substantial civil monetary penalty against Defendant because he knowingly engaged in fraud, which is a core violation of the Act. See Grossfeld, ¶ 26,921 at 44,467 and n. 28 (citation omitted); see also CFTC v. United Investors Group, Inc., 440 F. Supp. 2d 1345, 1361 (S.D. Fla. 2008) (determining that, among other things, "the gravity of the offenses, the brazen and intentional nature of the violations, [and] the vulnerability of the victims" justified "imposition of a substantial and meaningful [civil monetary] penalty"). Specifically, Defendant knowingly engaged in an illegal scheme by, *inter alia*, (i) fraudulently soliciting hundreds of thousands of dollars from customers for his commodity futures trading services, (ii) distributing fraudulent daily account statements or screen shots to clients that materially overstated trading profits and account cash balances, and (iii) failing to register with the Commission as a CTA as required.

32. A civil monetary penalty in the total amount of \$560,000 against the Defendant is justified in this case. This amount represents a \$140,000 civil monetary penalty for each of the four (4) counts as charged against him in the Complaint. The amount of

the civil monetary penalty is appropriate given the repeated and egregious nature of Defendant's fraudulent scheme. See United Investors Group, 440 F. Supp.2d at 1361; see also CFTC v. Levy, 541 F.3d 1102 (11th Cir. 2008) (holding that the Commodity Exchange Act provides for multiple civil monetary penalties for multiple violations even when those multiple violations are set forth in a single count).

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion For Final Judgment By Default, Permanent Injunction, Civil Monetary Penalties, And Other Statutory And Equitable Relief Against Defendant (DE 12) be and the same is hereby **GRANTED** as follows:

a. Defendant and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with him, is/are permanently restrained, enjoined, and prohibited from directly or indirectly:

i) cheating, defrauding or deceiving, and/or attempting to cheat, defraud or willfully deceive current and prospective Cox clients by, among other things, knowingly or recklessly omitting and/or making false representations of material fact to clients and prospective clients engaging in conduct in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2012);

- ii) willfully making or causing to be made false reports or statements, and knowingly issuing them to clients and prospective clients in violation of Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012);
- iii) using the mails or any means or instrumentality of interstate commerce to employ a device, scheme or artifice to defraud his participants, and engaging in a transaction, practice or course of business which operates as a fraud upon his participants in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2012); and/or
- iv) acting as a CTA without the benefit of registration with the Commission as a CTA in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

b. Defendant and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with him, is/are also permanently restrained, enjoined, and prohibited from directly or indirectly:

- i) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));
- ii) entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2015)) for Defendant's own personal accounts or for any accounts in which Defendant has a direct or indirect interest;

- iii) having any commodity interests traded on Defendant's behalf;
- iv) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- v) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- vi) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015); and/or
- vii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent, or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012) registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015).

c. Defendant shall pay restitution in the amount of three hundred eighty-one thousand dollars (\$381,000) ("Restitution Obligation"), plus post-judgment interest. Post-judgment interest on the Defendant's Restitution Obligation shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant's clients, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Defendant and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

Defendant shall make Restitution Obligation payments under this Order to the Monitor in the name of "Cox - Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial

Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant's clients identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a de minimis nature such that the Monitor determines that the administrative cost of making a distribution to eligible clients is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part III.B.2 below.

Defendant shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's clients to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendant's clients during the previous year. The Monitor

shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The amounts payable to each client shall not limit the ability of any client from proving that a greater amount is owed from Defendant or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any client that exist under state or common law.

Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each client of the Defendant who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution that has not been paid by the Defendant to ensure continued compliance with any provision of this Order and to hold the Defendant in contempt for any violations of any provision of this Order.

To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendant's Restitution Obligation, such funds

shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

d. Defendant shall pay, disgorgement in the amount of five thousand eight hundred dollars (\$5,800.00) ("Disgorgement Obligation"), plus post-judgment interest. Post-judgment interest on the Defendant's Disgorgement Obligation shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Defendant shall pay his Disgorgement Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-7262
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendant shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the paying Defendant and the name and docket number of the proceedings.

The Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

e. Defendant shall pay, jointly and severally, a civil monetary penalty in the amount of five hundred sixty thousand dollars (\$560,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest on this CMP Obligation shall accrue beginning on the date of entry of this Order and shall be calculated using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961 (2012).

Defendant shall pay his CMP Obligation by electronic funds transfer, or by U.S. Postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-7262
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendant shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those

instructions. Defendant shall accompany payment of the penalty with a cover letter that identifies the paying Defendant and the name and docket number of the proceedings. The Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

f. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Defendant's Restitution Obligation, Disgorgement Obligation, or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

g. All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Rosemary Hollinger
Deputy Director, Division of Enforcement
U.S. Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661

Notice to NFA:

Executive Vice President, Compliance
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 docket number of this action. Until such time as Defendant satisfies in full his Restitution Obligation,

Disgorgement Obligation, and CMP Obligation as set forth in this Order, Defendant shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

2. The Court will retain jurisdiction for purposes of enforcing this Default Final Judgment; and

3. To the extent not otherwise disposed of herein, all pending Motions be and the same are hereby **DENIED** as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 31st day of May, 2016.


WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record