

COURTESY COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

EJS CAPITAL MANAGEMENT, LLC,
ALEX VLADIMIR EKDESHMAN AND
EDWARD J. SERVIDER,

Defendants.

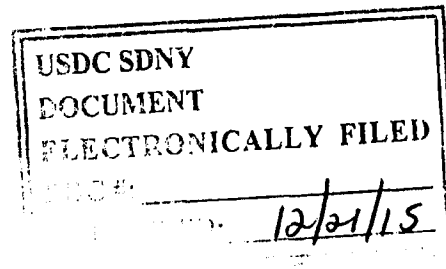
and

ALISA EKDESHMAN, EXECUTIVE
SERVICES OF FLORIDA LLC,
EXECUTIVE MANAGEMENT OF
MONTANA, INC., AND MICHAEL
VILNER,

Relief Defendants.

Case No. 14 CV 3107 (CM)

ECF Case



~~PROPOSED~~ ORDER MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANTS
EJS CAPITAL MANAGEMENT, LLC, ALEX VLADIMIR EKDESHMAN AND
EDWARD J. SERVIDER AND RELIEF DEFENDANTS EXECUTIVE SERVICES OF
FLORIDA LLC, EXECUTIVE MANAGEMENT OF MONTANA, INC.,
AND MICHAEL VILNER

U.S. COMMODITY FUTURES TRADING
COMMISSION
Division of Enforcement
140 Broadway, 19th Floor
New York, NY 10005
Telephone: (646) 746-9700
Facsimile: (646) 746-9940

I. INTRODUCTION

This matter is before the Court on Plaintiff Commodity Futures Trading Commission's ("CFTC") motion for summary judgment pursuant to Fed. R. Civ. P. 56 and L.R. 56.1 against Defendants ~~EJS Capital Management, LLC ("EJS"), Alex Vladimir Ekdeshman ("Ekdeshman"),~~ and Edward J. Servider ("Servider") (collectively "Defendants") and Relief Defendants ~~Executive Services of Florida LLC ("ESF"), Executive Management of Montana, Inc. ("EMM")~~ and Michael Vilner ("Vilner") (collectively "Relief Defendants"). For good cause shown, the Court grants Plaintiff's summary judgment motion, ^{against Servider and Vilner,} makes findings of fact and conclusions of law, and orders the following injunctive and monetary relief.

The court previously entered a default judgment against defendants

II. FINDINGS OF FACT

1. Between April 2013 and May 2014 (the "Relevant Period"), Defendants fraudulently solicited customers and prospective customers through telephone cold calls and through Defendants' website *www.ejsfinancial.com* (the "EJS website").

EJS Capital Management, LLC and Alex Vladimir Ekdeshman

Fraudulent Solicitation

2. In telephone cold calls and through EJS's website, Defendants' customers were fraudulently solicited to open leveraged, off-exchange foreign currency ("forex") trading accounts which the Defendants would then purportedly trade on behalf of customers.

Relief Defendants Executive Services of Florida

3. The EJS website contained a "Performance Report" which stated that EJS achieved a 2011 Gross Return of 21.86 percent, a 2012 Gross Return of 30.47 percent, and a 2013 Gross Return of 76.71 percent.

4. The "Performance Report" on the EJS website was false since EJS did not even exist in 2011 and 2012, was not formed as a Nevada corporation until January 30, 2013; when

LLC and

"Defaulting Defendants" and "Defaulting Relief Defendants"
2 *Executive Management of Montana Inc. (Dolet #74) The note for summary judgment as against EMMOT.*

EJS did come into existence, it conducted no trading at all; and EJS did not have bank accounts until March 2013.

5. EJS customers were directed to wire their funds directly to an EJS bank account ending in 8535 at a Bank of America branch located at 29 Broadway, New York, NY (“EJS BoA #8535”), or to send a check, payable to “EJS Capital Management, LLC,” by U.S. mail or FedEx to EJS’s office at 40 Wall Street, 28th Floor, New York, N.Y.

6. EJS customers were further informed that their funds would be used by EJS to trade forex on their behalf and that EJS would manage the forex trading, thus giving EJS discretionary trading authority in the individual customer accounts. EJS purported to charge a fee based on the amount that the accounts profited.

7. In a Limited Power of Attorney (“LPOA”) form on the EJS website and used as part of the customer opening documents, EJS identified itself as the “Trading Agent” responsible for purchasing and selling foreign currencies on the OTC foreign exchange markets on margin on behalf of its customers.

8. The LPOA also identified, with the initials “ACM,” what appeared to be a forex clearing firm or counterparty to which EJS purportedly sent customer funds and trading instructions. However, no funds were sent to an entity by that name or with those initials from either of EJS’s bank accounts at Bank of America and, in fact, EJS’s bank records do not show any funds being sent to any forex clearing firm or counterparty.

9. Contrary to the claims made on EJS’s website, during customer solicitations, in EJS account paperwork, and in EJS’s LPOA documentation, EJS did not manage or trade any customer accounts.

False Account Statements

10. Once they opened an account with EJS, customers were provided with account statements which listed various purported trades resulting in purported profits.

11. These statements were false because customer funds were not traded and no trading profits were generated.

12. Defendants did not disclose to EJS customers that these account statements were false.

13. Defendants issued false account statements to their customers to hide their fraud from them.

Misappropriation

14. Servider and Ekdesman opened two accounts at Bank of America in EJS's name in March 2013. In the account opening documents for EJS BoA #8535 and Bank of America account ending in 8564 ("EJS BoA #8564"), Servider lists his title with EJS as "member/manager" and Ekdesman lists his title with EJS as "member." Servider and Ekdesman were the only two signatories on these accounts. As sole signatories to the EJS bank accounts, Servider and Ekdesman controlled all deposits of customer funds into the two accounts and all withdrawals of customer funds from the accounts.

15. Between April, 2013 and May 2014, approximately 112 customers sent wire transfers and checks totaling approximately \$2,582,964 to EJS BoA #8535 to open or to further fund their managed forex accounts with EJS.

16. Many of the EJS customer checks and wire transfers bear the notations "forex," "currency" or "investment."

17. Of the approximately \$2,582,964.92 received by EJS from customers, approximately \$256,476.61 was returned to EJS customers including purported profits to five EJS customers.

18. EJS BoA #8535 was funded almost exclusively by deposits from EJS customers, to wit, during the Relevant Period a total of \$2,607,166.11 was deposited into EJS BoA #8535, and of that amount, \$2,582,964.92 was deposited by EJS customers.

19. As of May 2, 2014, the balance in EJS BoA #8535 was \$80,199.61 and the balance in EJS BoA #8564 was \$416.23.

20. Instead of trading EJS customer funds as promised, Defendants misappropriated EJS customer funds.

21. Defendants misappropriated customer funds totaling approximately \$2,354,608.36 through cash withdrawals and payments for personal and business expenses. These personal expenses included restaurants, entertainment, groceries, retail shopping, vacations, automobile leases and liquor purchases; these purported business expenses included office rent, office supplies, parking, employee salaries and bonuses, telephone bills, and payments to FedEx and Craigslist.

22. For example, Servider and Ekdesman signed checks drawn from EJS BoA #8535 and EJS BoA #8564 payable to third parties with the notation "payroll" or "rent" and checks made payable to Servider with the notation "payroll." Servider and Ekdesman also used debit cards in their names that were linked to EJS BoA #8535 and EJS BoA #8564 to pay for personal expenses.

23. Defendants did not disclose to EJS customers that their funds were being used and would be used for Servider's and Ekdeshman's personal expenses as well as for business expenses.

Servider and Ekdeshman Controlled EJS and Acted Within the Scope of Their Employment or Office at EJS

24. Servider exercised control over EJS.

25. Servider was the managing member of EJS.

26. Ekdeshman was a member of EJS.

27. Servider registered the EJS website, *www.ejsfinancial.com*, on January 30, 2013, and the domain registration lists Servider as the registered owner, administrative contact and technical contact for the website.

28. Servider signed the Bank of America paperwork opening the two EJS bank accounts as "member/manager" and Ekdeshman signed as "member."

29. Servider and Ekdeshman were the only signatories on the two EJS Bank of America accounts.

30. Servider and Ekdeshman signed checks drawn from the EJS bank accounts payable to employees, cash, telephone services and rent.

31. Servider and Ekdeshman used debit cards linked to the EJS bank accounts to withdraw EJS customer funds to pay for personal and business expenses.

EJS Customers

32. EJS customers, many of whom were not Eligible Contract Participants ("ECPs") as defined by Sections 2(c)(2)(C)(i) and (vii), and 1a of the Commodity Exchange Act ("CEA"), opened accounts with EJS using U.S. dollars in order to profit from forex speculative trading on a leveraged or margined basis.

33. Defendants and their customers were not United States financial institutions, registered broker dealers (or their associated persons), futures commission merchants (or their affiliated persons), financial holding companies, or retail foreign exchange dealers.

34. Many of Defendants' customers were non-ECPs. These customers, at the time they were solicited by the Defendants to engage in managed forex transactions on a leveraged or margined basis, did not have amounts invested on a discretionary basis, the aggregate of which was in excess of:

- a. \$10,000,000; or
- b. \$5,000,000 and who entered in the agreement, contract, or transaction with the Defendants in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred by the customer.

EJS Acted as a Commodity Trading Advisor

35. During the Relevant Period, EJS, through its website and in solicitations provided to EJS customers via the mail and overnight delivery, advised its customers as to the value of and advisability of trading in forex.

36. During the Relevant Period, EJS obtained written authorization to exercise discretionary trading authority over EJS customers' forex accounts.

Relief Defendants Vilner, ESF and EMM Received Ill-Gotten Gains to Which They Had No Legitimate Claim

37. During the Relevant Period, Defendants transferred funds totaling \$555,000 from EJS BoA #8535 to ESF's bank account ending in 6370 at Bank of America ("ESF BoA #6370).

38. Vilner was the sole signatory to ESF BoA #6370.

39. Six of the eight wires sent from EJS BoA #8535 to ESF BoA #6370 included a notation of "investment." None of the wires or the check sent from EJS to ESF bore any notation referring to a software program.

40. During the Relevant Period, ESF BoA #6370 received a total of less than \$11,000 in funds from only one other outside source, to wit, "Brd Cty Hsg Auth Des: Section 8" as indicated on ESF's bank monthly statements.

41. During the Relevant Period, Vilner transferred a total of approximately \$494,400 from ESF BoA #6370 to a bank account ending in #6469 maintained in EMM's name at Citibank ("EMM Citibank #6469") for which Vilner was the sole signatory.

42. During the Relevant Period, Vilner's EMM Citibank #3163 received a total of only approximately \$2,069 in funds from sources other than ESF BoA #6370 and EMM Citi #6469 received a total of only approximately \$51,290 in funds from sources other than ESF BoA #6370.

43. On or about March 6, 2014, Vilner transferred approximately \$50,000 from ESF BoA #6370 to a bank account ending in #3163 maintained in EMM's name at Citibank ("EMM Citibank #3163") for which Vilner was the sole signatory.

44. No funds were transferred from ESF, EMM or Vilner back to EJS.

45. On May 7, 2015, the CFTC served Vilner with a demand for production of documents on behalf of himself, ESF and EMI ("May 7 CFTC Document Request"). Vilner, ESF and EMI produced no documents to the Commission evidencing any contract of sale by Vilner, ESF and/or EMI of a computer software program to Ekdesman, Servider and/or EJS in response to the May 7 CFTC Document Request.

46. Vilner produced no documents to the Commission in response to the May 7 CFTC Document Request evidencing any contract of sale by Vilner, ESF and/or EMI of a computer software program to any other parties, customers, or clients in response to the Commission's May 7, 2014 document request.

47. Although Vilner produced no documents relating to his relationship with Paramount Management LLC ("Paramount") in response to the May 7 CFTC Document Request, Vilner and Ekdeshman were managers of Paramount as of April 26, 2010.

48. During the course of the Paramount fraud, approximately \$180,340 was sent from Paramount's bank account to EMM Citibank #6469 and approximately \$117,565 was sent from EMM Citibank #6469 to Paramount's bank account.

CONCLUSIONS OF LAW

Jurisdiction and Venue

49. The Court has jurisdiction over this action under Section 6c(a) of the Act 7 U.S.C. § 13a-1 (2012). Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), in that Defendants transacted business in this District, and actions by the Defendants in violation of the Act and Regulations occurred in this District.

50. The Commission has jurisdiction over the forex solicitations and transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C).

Fraud by Misrepresentations and Omissions, False Account Statements, and Misappropriation of Customer Funds

51. During the Relevant Period, by the conduct described in paragraphs 1 through 48 above, Defendants cheated and defrauded, or attempted to cheat and defraud, willfully made and caused to be made false statements and willfully deceived, or attempted to deceive, EJS

customers by, among other things, knowingly or recklessly: not trading their funds as promised, misappropriating customer funds to pay for personal and business expenses, not informing prospective customers that the historical trading performance on EJS's website was purely fictitious, issuing false account statements to customers and by representing on EJS' website a fictitious trading performance in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2006 & Supp. V 2011).

Violation of Regulation § 5.2(b) 17, C.F.R. § 5.2(b)

52. During the Relevant Period, by the conduct described in paragraphs 1 through 48 above, Defendants, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) cheated or defrauded or attempted to cheat or defraud any person; (2) willfully made or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) willfully deceived or attempted to deceive any person by any means whatsoever by, among other things: (1) not trading EJS customer funds as promised; (2) misappropriating customer funds to pay for personal and business expenses; (3) not informing prospective customers that the historical trading performance on the website, www.ejsfinancial.com, was purely fictitious; (4) issuing false account statements to customers and by (5) representing on EJS' website a fictitious trading performance in violation of Regulation § 5.2(b), 17 C.F.R. § 5.2(b).

Fraud by a Commodity Trading Advisor

53. During the Relevant Period, by the conduct described in paragraphs 1 through 48, Defendant EJS, by use of the mails or other means or instrumentalities of interstate commerce, while acting as a commodity trading advisor ("CTA"), directly or indirectly employed a

device, scheme, or artifice to defraud investors or engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon customers by, among other things: not trading their funds as promised, misappropriating customer funds to pay for personal and business expenses, not informing prospective customers that the historical trading performance on EJS's website was purely fictitious, issuing false account statements to customers and by representing on EJS' website a fictitious trading performance, in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012).

Failure to Register with the Commission

54. During the Relevant Period, by the conduct described in paragraphs 1 through 48, Defendant EJS engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery, security, futures product, foreign currency as described in Section 2(c)(2)(C)(i), or swap for compensation or profit, thus making it a CTA. Further, EJS made use of the mails or any means of interstate commerce in connection with its business as a CTA, while failing to register, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012). During the relevant period, EJS was not exempt from registering as a CTA. During the relevant period, EJS exercised discretionary trading authority or obtained written authorization to exercise discretionary trading authority over customer accounts of customers who were not ECPs in connection with retail forex transactions. As such, EJS was required to register as a CTA pursuant Regulation 5.3(a)(3), 17 C.F.R. § 5.3(a)(3) and failed to do so, in violation of Regulation 5.3(a)(3).

Servider and Ekdesman Are Liable for Defendant EJS's Violations as Controlling Persons of EJS

55. During the Relevant Period, Servider and Ekdesman controlled EJS, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, EJS's act or acts in violation of the Act and Regulations; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Servider and Ekdesman are liable for EJS's violations of Sections 4b(a)(2)(A)-(C), 4m and 4o of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6m(1) and 6o and Commission Regulations § 5.2(b) and 5.3(a), 17 C.F.R. § 5.2(b).

Relief Defendants Vilner, ESF and EMM Must Disgorge Ill-Gotten Funds

56. The Court may grant equitable relief against a relief defendant if it is established that the relief defendant possesses property or profits illegally obtained, and the relief defendant has no legitimate claim to them. *See SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998) ("Federal courts may order equitable relief against a person who is not accused of wrongdoing in a securities enforcement action where that person: (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds"); *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187,192 n.4 (4th Cir. 2002) ("it is entirely appropriate to allow the Commission to proceed against nominal defendants under the same circumstances in which the SEC could proceed against such defendants") (*citing SEC v. Colello*, 139 F.3d 674, 676 (9th Cir. 1998)). Where disgorgement by a relief defendant is ordered, funds may be used to compensate customers. *See FTC v. Think Achievement, Inc.*, 144 F. Supp.2d 1013, 1022 (N.D. Ind. 2000). Relief Defendants Vilner, ESF and EMM received a total of \$555,000 of property or illegally obtained property from EJS to which they have no legitimate claim and are therefore required to disgorge that amount.

IT IS HEREBY ORDERED THAT:

57. Plaintiff's Motion for Summary Judgment Against Defendants ~~EJS, Ekdeshman~~
and ~~Serverid~~ and Relief Defendant ~~Vilner, ESF and EMM~~ is GRANTED.

Permanent Injunction

58. Based upon and in connection with the foregoing conduct, pursuant to Section 6c
of the Act, 7 U.S.C. § 13a-1 (2012), ~~Defendants~~ ^{Serverid and Vilner} are permanently restrained, enjoined and
prohibited from directly or indirectly:

- a. cheating or defrauding or attempting to cheat or defraud other persons, willfully making or causing to be made to other persons any false report or statement or willfully entering or causing to be entered for another person any false record, or willfully deceiving or attempting to deceive other persons in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery in violation of Sections 4b(a)(2)(A)-(C) of the Act 7 U.S.C. §§ 6b(a)(2)(A)-(C)(2012);
- b. by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction, cheating or defrauding, or attempting to cheat or defraud, or willfully deceiving, or attempting to deceive other persons in violation of Regulation 5.2 (b), 17 C.F.R. § 5.2(b);
- c. by use of the mails or other means or instrumentalities of interstate commerce, while registered or acting as a CTA, to wit, for compensation or profit, engaging in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery, security futures product, swap, or

foreign currency (as described in 7 U.S.C. §2(c)(2)(C)(i)) (“forex contracts”), directly or indirectly employing a device, scheme, or artifice to defraud other persons or engaging in transactions, practices, or a course of business which operates as a fraud or deceit upon other persons in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012);

- d. engaging in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery, security futures product, swap, or forex contract, for compensation or profit and making use of the mails or any means or instrumentality of interstate commerce in connection with their business as a CTA, while failing to register with the Commission as a CTA, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012); and
- e. exercising discretionary trading authority or obtaining written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an ECP as defined in Section 1a(18) of the Act, in connection with retail forex transactions in violation of Regulation § 5.3(a)(3), 17 C.F.R. § 5.3(a)(3).

59. Defendants are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. 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));

- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014) for their own personal accounts or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their behalf;
- d. 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;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. 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) (2014); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), 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, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014).

Restitution

all

60. Defendants ~~shall pay~~, jointly and severally, restitution in the amount of

\$2,354,608.36 (“Restitution Obligation”), plus post judgment interest. Post-judgment interest shall accrue on the Restitution Obligation 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).

61. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' customers, the Court continues the appointment of the National Futures Association ("NFA") as Monitor ("Monitor") previously appointed by this Court's Order dated March 17, 2015 (ECF Dkt. No. 46). The Monitor shall collect restitution payments from Defendants as set forth in Paragraphs 63 and 77-86 below, and make distributions as set forth below when directed to do so by further order of this Court. 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.

62. Defendants shall make Restitution Obligation payments under this Order to the Monitor in the name "EJS – 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 cover letter that identifies the paying Defendants and the name and docket number of this proceeding. Defendants 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.

63. 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 Defendants' customers 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 customers 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 below.

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

65. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers 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.

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

67. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendants 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 Defendants to ensure continued compliance with any provision of this Order and to hold Defendants in contempt for any violations of any provision of this Order.

68. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

69. Defendants will obtain a dollar-for-dollar credit against their Restitution Obligation as a result of any payments made in satisfaction of their disgorgement obligations (described below). Further, Defendants will also obtain a dollar-for-dollar credit against their restitution obligations as a result of any funds disgorged from the Relief Defendants ESF, EMM, and Vilner which are used for the purpose of paying restitution.

Civil Monetary Penalty

Serriter ~~and others~~

and held other and with the Defaulting Defendants,

70. Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of seven million sixty-three thousand eight hundred twenty-five dollars and eight cents, \$7,063,825.08 ("CMP Obligation"), calculated as triple the monetary gain to Defendants as measured by the amount of funds they misappropriated of \$2,354,608.36, pursuant to Section 6c(d)(1)(A) of the Act, 7 U.S.C. § 13a-1(d)(1)(A), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation 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).

71. Defendants shall pay his CMP 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, then 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
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

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

Disgorgement

Serrill *with the Default Defendants*
72. Defendants shall pay, jointly and severally, disgorgement in the amount of two million three hundred fifty-four thousand six hundred eight dollars and thirty six cents \$2,354,608.36 ("Defendants' Disgorgement Obligation"), as measured by the gains received by the Defendants in connection with their violations of the Act, pursuant to Section 6c(d)(3)(B) of the Act, 7 U.S.C. § 13a-1(d)(3)(B), plus post-judgment interest. Post-judgment interest shall accrue on the Defendant's Disgorgement Obligation 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).

73. Relief Defendants Vilner, ESF and EMM shall pay, jointly and severally, disgorgement in the amount of \$555,000 (“Relief Defendants’ Disgorgement Obligation”), as measured by the funds received by Relief Defendants, from Defendants to which Relief Defendants had no legitimate claim, plus post-judgment interest. Post-judgment interest shall accrue on Relief Defendants’ Disgorgement Obligation commencing on the date of the entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

74. All disgorgement payments made by all Defendants and Relief Defendants shall first be used to pay restitution to the defrauded EJS customers. Disgorgement payments under this Order shall be made to the Monitor in the name “EJS – Restitution Fund” as stated in Paragraphs 64-73 above.

75. Once restitution is completely satisfied, Defendants and Relief Defendants shall pay the remainder of their respective Disgorgement Obligations 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, then 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
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendants or Relief Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants or Relief Defendants shall accompany payment of their respective Disgorgement Obligations with a cover letter that identifies Defendants or Relief Defendants and the name and docket number of this proceeding. Defendants or Relief Defendants 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.

76. Defendants will obtain a dollar-for-dollar credit against their disgorgement obligations as a result of any payments made in satisfaction of their restitution obligations. Defendants also will obtain a dollar-for-dollar credit against their disgorgement obligation as a result of any funds disgorged from Relief Defendants.

Provisions Related to Monetary Sanctions

77. The Monitor, previously appointed by this Court's Order dated March 17, 2015 (ECF Entry No. 46), shall open a custodial bank account titled "EJS Restitution Fund" ("NFA EJS Restitution Funds Account").

78. Upon entry of this Order, the Commission shall provide Bank of America ("Bank of America") Citibank, N.A. ("Citibank"), and Alpari UK with a copy of this Order.

79. Bank of America is directed to liquidate and release all funds in any account identified below and to convey forthwith, by wire transfer, all funds in these accounts to NFA EJS Restitution Funds Account:

- a. EJS Capital Management LLC account #xxxxxxxx8564;
- b. EJS Capital Management LLC account #xxxxxxxx8535;

- c. Executive Services of Florida LLC account #xxxxxxxx6370; and
- d. Edward Servider account #xxxxxxxx5502.

80. Citibank is directed to liquidate and release all funds in any account identified below and to convey forthwith, by wire transfer, all funds in these accounts to NFA EJS

Restitution Funds Account:

- a. Michael Vilner and Valentine Bondarchuk account #xxxxxxx0301;
- b. Michael Vilner account #xxxxxxx2410;
- c. Michael Vilner account #xxxxxxx3545;
- d. Executive Management Inc. account #xxxxxxx3163; and
- e. Executive Management Inc. account #xxxxxxx6469.

81. Alpari UK is directed to liquidate and release all funds in any account identified below and to convey forthwith, by wire transfer, all funds in these accounts to NFA EJS

Restitution Funds Account:

- a. Executive Management Inc. account #xxxxx3235.

82. The Monitor shall notify the Commission, to wit, Steven Ringer and Elizabeth C. Brennan, upon receipt of said transfers to the NFA EJS Restitution Funds Account detailing the funds received in a report under a cover letter identifying the name and docket number of this proceeding. The Commission shall, in turn, notify the Court.

83. The Monitor shall maintain the funds in the NFA EJS Restitution Funds Account until further order of the Court.

84. Defendants and Relief Defendants, Bank of America, Citibank, and Alpari UK shall cooperate fully and expeditiously with the Commission and the Monitor in the liquidation, release and transfer of these funds. It is further ordered that, subsequent to the

transfer of said funds from the above-listed accounts, said accounts will no longer be encumbered pursuant to Paragraph 21(a) of Statutory Restraining Order the and Paragraph 28 of the Preliminary and Permanent Injunction.

85. The Court's Statutory Restraining Order and Permanent and Preliminary Injunction Order except as modified herein shall remain in full force and effect until further order of the Court.

86. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Defendants' Restitution Obligation, Disgorgement Obligation, or CMP Obligation and/or Relief Defendants' Disgorgement Obligation, shall not be deemed a waiver of their 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.

Miscellaneous Provisions

87. Notice: 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:

Manal M. Sultan, Deputy Director
Division of Enforcement
U.S. Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

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 docket number of this action.

88. Change of Address/Phone: Until such time as Defendants and Relief Defendants satisfy in full their Restitution Obligation, Disgorgement Obligation, and CMP Obligation as set forth in this Order, Defendants and Relief Defendants 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.

89. 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.

90. 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 Defendants or Relief Defendants to modify, or for relief from, the terms of this Order.

91. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Order shall be binding upon Defendants and Relief Defendants, upon any person under the authority or control of Defendants or Relief Defendants, and upon any person who receives actual notice of this Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants or Relief Defendants.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Order Making Findings of Fact and Conclusions of Law on Plaintiff's Motion for Summary Judgment Against Defendants EJS Capital Management LLC, Alex Vladimir Ekdeshman and Edward J. Servider and Relief Defendants Executive Services of Florida LLC, Executive Management of Montana, Inc. and Michael Vilner* forthwith and without further notice.

IT IS SO ORDERED on this 24 day of December, 2015.



UNITED STATES DISTRICT JUDGE