

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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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  
RELIEF DEFENDANT ALISA EKDESHMAN

U.S. COMMODITY FUTURES TRADING  
COMMISSION  
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## 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 Relief Defendant Alisa Ekdeshman ("Alisa Ekdeshman"). For good cause shown, the Court grants Plaintiff's summary judgment motion against Alisa Ekdeshman, makes findings of fact and conclusions of law, and orders disgorgement of ill-gotten funds and other equitable relief.

## II. PROCEDURAL HISTORY

On May 1, 2014, the Commission filed a Complaint charging Defendants EJS Capital Management LLC ("EJS"), Alex Vladimir Ekdeshman ("Ekdeshman") and Edward J. Servider ("Servider") (collectively "Defendants") with fraudulently soliciting more than \$2 million from at least 90 customers in connection with agreements, contracts or transactions in off-exchange foreign currency ("forex"),<sup>1</sup> misappropriation of customer funds, and issuing false account statements to customers 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), and Regulation § 5.2(b), 17 C.F.R. § 5.2(b); failing to register EJS as a Commodity Trading Advisor ("CTA") in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), and Regulation § 5.3(a), 17 C.F.R. § 5.3(a); and CTA fraud in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1). The Commission also charged Ekdeshman with violating a Consent Order agreed to by Ekdeshman on July 8, 2013 and entered by the Court on September 9, 2013 in *CFTC v. Paramount Management LLC and Alex Vladimir Ekdeshman*, C.A. No. 13-CV-4436 (CM) (SDNY Sept. 9, 2013) in violation of Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006 and Supp. V 2011). The Commission also named Alisa Ekdeshman as a

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<sup>1</sup> As used herein, the term "Forex" means retail forex transactions which are defined in Regulation § 5.1(m), 17 C.F.R. § 5.1(m) as "any account, agreement, contract or transaction described in Section 2(c)(2)(B) or 2(c)(2)(C) of the Act.

Relief Defendant in the Complaint.<sup>2</sup>

On May 1, 2014, the Court granted the Commission's *Ex Parte* Application for Statutory Restraining Order, Expedited Discovery, Order to Show Cause Regarding Preliminary Injunction, and Other Equitable Relief against Defendants and Relief Defendants ("SRO").

On May 3, 2014, Alisa Ekdeshman was properly served with copies of the summons, Complaint, the SRO Application, the SRO Brief, the May 1, 2014 Declaration by Investigator Philip Rix ("Rix May 1 Decl."), and the SRO at Alisa Ekdeshman's residence via service upon her husband, Ekdeshman. *See* ECF Entry No. 26.

After a May 12, 2014 hearing on the Commission's motion by order to show cause for preliminary injunction and other equitable relief ("Show Cause Motion"), the Court issued an "Order of Permanent Injunction on Contempt of Court Claim Against Alex Vladimir Ekdeshman, Preliminary Injunction on All Other Claims and Other Equitable Relief" ("June 3rd Order") holding, in pertinent part, that the Commission made a proper showing that there was a reasonable likelihood of success on the merits that Alisa Ekdeshman received ill-gotten gains and did not have a legitimate claim to those funds. The Court also issued a permanent injunction against Ekdeshman and found him in contempt of court, based on clear and convincing evidence, for: (1) not trading EJS funds as promised; (2) misappropriating EJS customer funds; (3) failing to inform prospective EJS customers that the historical trading performance of EJS listed on its website was purely fictitious; (4) issuing false account statements to EJS customers; and (5) representing on EJS's website a fictitious trading performance. June 3rd Order, pp. 4-5 (ECF Entry No. 25).

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<sup>2</sup> The Complaint also charged Executive Services of Florida LLC ("ESF"), Executive Management of Montana, Inc. ("EMM") and Michael Vilner ("Vilner") together with Alisa Ekdeshman as Relief Defendants (collectively "Relief Defendants").

Alisa Ekdeshman filed her Answer to the Complaint on October 24, 2014. ECF Entry No. 35.

After the Commission filed a “Motion to Continue Freeze of Relief Defendant Alisa Ekdeshman’s Assets and to Increase the Amount of Assets Frozen Up To \$205,375” (ECF Entry Nos. 68-70) and Alisa Ekdeshman filed a “Motion to Vacate Order of Restraint and in Opposition to CFTC’s Motion to Increase the Amount Subject to Restraint” (ECF Entry No. 82), the parties submitted “Plaintiff U.S. Commodity Futures Trading Commission’s and Relief Defendant Alisa Ekdeshman’s Stipulated Facts” (“Stipulated Facts”) (ECF Entry No. 70-1). On September 24, 2015, the Court issued the “Decision and Order Denying Relief-Defendant Ekdeshman’s Motion to Vacate Order of Restraint Against Her and Granting Plaintiff’s Motion to (1) Continue Freeze of Relief-Defendant Alisa Ekdeshman’s Assets and (2) Increase the Amount of Assets Frozen” dated September 24, 2015 (“September 24 Order”) (ECF Entry No. 108). The September 24 Order held that Alisa Ekdeshman is a properly named Relief Defendant (ECF Entry No. 108, pp. 7-8). The September 24 Order also held that the undisputed evidence presented to the Court established that the funds Alisa Ekdeshman received from EJS were ill-gotten gains fraudulently solicited and misappropriated by Defendants, i.e. EJS customer funds (ECF Entry No. 108, p. 8). Further, the September 24 Order held that Alisa Ekdeshman received a total of \$205,375 in EJS funds into accounts she controlled (ECF Entry No. 108, p. 8) and that Alisa Ekdeshman “has not offered any evidence that she paid any consideration, let alone fair consideration, in exchange for the EJS funds she received” (ECF Entry No. 108, p. 10).

On December 18, 2015, the Court entered an “Order for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief Against Defendants EJS Capital Management LLC and Alex Vladimir Ekdeshman and Relief

Defendants Executive Services of Florida LLC and Executive Management of Montana, Inc.” (“Default Judgment Order”) (ECF Entry No. 110). On December 21, 2015 the Court entered an “Order Making Findings of Fact and Conclusions of Law Against Defendant Edward J. Servider and Relief Defendant Michael Vilner” (“December Summary Judgment Order”) (ECF Entry No. 111, (“Default Judgment Order”) (ECF Entry No. 110).

### III. FINDINGS OF FACT

#### **Fraudulent Solicitation**

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”). December Summary Judgment Order ¶ 1; Default Judgment Order ¶ 6.

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. December Summary Judgment Order ¶ 2; Default Judgment Order ¶ 6.

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. December Summary Judgment Order ¶ 3; Default Judgment Order ¶ 7.

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 EJS did come into existence, it conducted no trading at all; and EJS did not have bank accounts until March 2013. December Summary Judgment Order ¶ 4; Default Judgment Order ¶ 7.

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. December Summary Judgment Order ¶ 5; Default Judgment Order ¶¶ 9-10.

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. December Summary Judgment Order ¶ 6; Default Judgment Order ¶¶ 8, 10, 18.

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. December Summary Judgment Order ¶ 7; Default Judgment Order ¶ 18.

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. December Summary Judgment Order ¶ 8.

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. December Summary Judgment Order ¶ 9; Default Judgment Order ¶ 11.

#### **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. December Summary Judgment Order ¶ 10; Default Judgment Order ¶ 17.

11. These statements were false because customer funds were not traded and no trading profits were generated. December Summary Judgment Order ¶ 11; Default Judgment Order ¶ 17.

12. Defendants did not disclose to EJS customers that these account statements were false. December Summary Judgment Order ¶ 12; Default Judgment Order ¶ 15.

13. Defendants issued false account statements to their customers to hide their fraud from them. December Summary Judgment Order ¶ 13; Default Judgment Order ¶ 15.

#### **Misappropriation**

14. Servider and Ekdeshman 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 Ekdeshman lists his title with EJS as "member." Servider and Ekdeshman were the only two signatories on these accounts. As sole signatories to the EJS bank accounts, Servider and Ekdeshman controlled all deposits of customer funds into the two accounts and all withdrawals of customer funds from the accounts. December Summary Judgment Order ¶ 14; Default Judgment Order ¶ 10.

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. December Summary Judgment Order ¶ 15; Default Judgment Order ¶ 12.

16. Many of the EJS customer checks and wire transfers bear the notations “forex,” “currency” or “investment.” December Summary Judgment Order ¶ 16.

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. December Summary Judgment Order ¶ 17; Default Judgment Order ¶ 13.

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. December Summary Judgment Order ¶ 18.

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. December Summary Judgment Order ¶ 19.

20. Instead of trading EJS customer funds as promised, Defendants misappropriated EJS customer funds. December Summary Judgment Order ¶ 20; Default Judgment Order ¶ 11.

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. December Summary Judgment Order ¶ 21; Default Judgment Order ¶ 14.

22. For example, Servider and Ekdeshman 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 Ekdeshman also used debit cards in their names that were linked to EJS BoA #8535 and EJS BoA #8564 to pay for personal expenses. December Summary Judgment Order ¶ 22.

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. December Summary Judgment Order ¶ 23; Default Judgment Order ¶ 15.

24. Servider and Ekdeshman exercised control over EJS. December Summary Judgment Order ¶ 24; Default Judgment Order ¶¶ 49-50.

25. Servider was the managing member of EJS. December Summary Judgment Order ¶ 25.

26. Ekdeshman was a member of EJS. December Summary Judgment Order ¶ 26; Default Judgment Order ¶ 3.

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. December Summary Judgment Order ¶ 27.

28. Servider signed the Bank of America paperwork opening the two EJS bank accounts as “member/manager” and Ekdeshman signed as “member.” December Summary Judgment Order ¶ 28; Default Judgment Order ¶ 10.

29. Servider and Ekdeshman were the only signatories on the two EJS Bank of America accounts. December Summary Judgment Order ¶ 29; Default Judgment Order ¶ 10.

30. Servider and Ekdeshman signed checks drawn from the EJS bank accounts payable to employees, cash, telephone services and rent. December Summary Judgment Order ¶ 30; Default Judgment Order ¶ 14.

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. December Summary Judgment Order ¶ 31.

### **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. December Summary Judgment Order ¶¶ 32, 34; Default Judgment Order ¶ 8.

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. December Summary Judgment Order ¶ 33.

### **Alisa Ekdeshman Received Ill-Gotten Gains to Which She Had No Legitimate Claim**

34. During the Relevant Period, instead of trading EJS customer funds as promised, Defendants transferred EJS customer funds totaling \$205,375 from EJS’s bank account to bank accounts in the name of and/or under the control of Alisa Ekdeshman as follows: 1) to three bank accounts that she controlled solely, to wit, \$99,075 to TD Bank #2429, \$24,200 to TD Bank

#6601, and \$49,500 to TD Bank # 4481 (Stipulated Facts ¶¶ 11a-l, 23a-d and 33a-f); 2) to one bank account she controlled jointly with her mother, to wit \$11,000 to Chase Bank #5665 (Stipulated Facts ¶ 70a-b); and 3) to two UTMA bank accounts which she controlled as custodian, to wit, \$15,600 to TD Bank #4118 and \$6,000 to TD Bank #0115 (Stipulated Facts ¶¶ 40a-b and 48). September 24 Order, p. 8.

35. Alisa Ekdesman commingled the \$205,375 deposited into the accounts in her name and/or under her control (see paragraph 34 above) with other funds as well as amongst other accounts into which she also deposited EJS customer funds, and spent these commingled funds. Stipulated Facts ¶¶ 11, 13-15, 23, 25-28, 33-35, 40-41, 48-51, 55-56, 59, 61, 65d, 65g, 65l, 70 and 72. September 24 Order, pp. 10-11.

**TD Account #2429**

36. Alisa Ekdesman opened checking bank account #2429 at TD Bank on June 21, 2012, in the name of Alisa Ekdesman and she was the sole signatory on this account. Stipulated Facts ¶ 9. September 24 Order, p. 12.

37. During the relevant period, Alisa Ekdesman deposited eleven checks into TD account #2429 which were drawn against EJS BoA #8535 and made payable to “Alisa Ekdesman,” “Cash” or “A. Ekdesman.” Alisa also received into TD account #2429 one wire transfer from an EJS bank account. The funds received into TD account #2429 totaled \$99,075. Stipulated Facts ¶¶ 11a-l. September 24 Order, p. 12.

38. During the relevant period, TD Bank #2429 paid funds for Ekdesman family household-related and other Ekdesman family living expenses. Stipulated Facts ¶¶ 15a-k.

**TD Account #6601**

39. Alisa Ekdesman opened savings account # 6601 at TD Bank on January 21, 2009 in the name of Alisa Ekdesman and she was the sole signatory on this account.

Stipulated Facts ¶ 20.

40. During the relevant period, Alisa Ekdesman deposited four checks into TD account # 6601 which were drawn against EJS BoA #8535 and made payable to Alisa Ekdesman totaling \$24,200. Stipulated Facts ¶¶ 23a-d.

41. During the Relevant Period, Alisa Ekdesman also made cash deposits, withdrew funds and transferred funds between TD account #6601 and other bank accounts which she controlled. Stipulated Facts ¶¶ 24-27, 29, 31; September 24 Order p 10-11.

**TD Account #4481**

42. Alisa Ekdesman opened account #4481 at TD Bank on October 4, 2013, in the name of Alisa Ekdesman with a deposit of \$95,000 transferred from TD account #6601 and she was the sole signatory on this account. Stipulated Facts ¶ 27 and 31.

43. During the relevant period, Alisa Ekdesman deposited six checks into TD account #4481 which were drawn against EJS BoA #8535 and made payable to “Alisa Ekdesman,” “Cash” or “A. Ekdesman” totaling \$49,500. Stipulated Facts ¶¶ 33a-f.

44. During the Relevant Period, Alisa Ekdesman also withdrew funds and transferred funds between TD account #4481 and other bank accounts which she controlled. Stipulated Facts ¶¶ 34-36; September 24 Order p 10-11.

**Chase Account #5665**

45. As of at least June 30, 2008, and continuing no later than May 2, 2014, Alisa Ekdesman and her mother maintained a joint bank account #5665 at Chase. Stipulated Facts ¶ 67.

46. During the relevant period, two checks were deposited into Chase account #5665 which were drawn against EJS BoA #8535 and made payable to “Cash” totaling \$11,000. The checks contained Alisa Ekdesman’s mother’s endorsement. Stipulated Facts ¶¶ 70a-b. September 24 Order, p. 13.

**TD Account #4118**

47. Alisa Ekdesman opened account #4118 at TD Bank on October 4, 2013, in the name of her son, “NJ UTMA Alisa Ekdesman Custodian.” Alisa Ekdesman is the sole signatory on this account. Stipulated Facts ¶ 38.

48. During the relevant period, two checks were deposited into TD account #4118 which were drawn against EJS BoA #8535 and made payable to “M. Ekdesman” totaling \$15,600. The checks contained Alisa Ekdesman’s son’s endorsement. Stipulated Facts ¶¶ 40a-b.

49. On March 7, 2014, Alisa Ekdesman transferred \$9,000 from TD account #4118 to TD account #4481. Stipulated Facts ¶ 41; September 24 Order, p. 17.

50. On June 17, 2014, Alisa Ekdesman closed TD account #4118 which, as of that date, had a balance of \$26,105.14 and TD Bank issued a cashier’s check in that amount made payable to Alisa Ekdesman’s son. Stipulated Facts ¶ 42.

**TD Account #0115**

51. Alisa Ekdesman opened account #0115 at TD Bank on January 25, 2013, in the name of her daughter, “NJ UTMA Alisa Ekdesman Custodian.” Alisa Ekdesman is the sole signatory on this account. Stipulated Facts ¶ 44.

52. During the relevant period, one check was deposited into TD account #0115 which was drawn against EJS BoA #8535 and made payable to “D. Ekdesman” in the amount of \$6,000. The check contained Alisa Ekdesman’s daughter’s endorsement. Stipulated Facts ¶ 48.

53. During the relevant period, cash and a check made payable to cash totaling \$2,511 were deposited into account #0115. Stipulated Facts ¶¶ 46, 47, 49 and 50.

54. On January 12, 2015, Alisa Ekdesman withdrew \$3,000 in cash from TD account #0115. Stipulated Facts ¶ 51; September 24 Order, p. 17.

**Alisa Ekdesman and EJS**

55. Alisa Ekdesman has never been employed by EJS. Stipulated Facts ¶ 6; September 24 Order, p. 9 fn. 2.

56. Alisa Ekdesman has never performed any services for EJS. Stipulated Facts ¶ 7.

57. Alisa Ekdesman has provided no evidence to support any legitimate claim of entitlement to the funds she received from EJS. September 24 Order, pp. 9-10.

58. Alisa Ekdesman has provided no evidence that she conveyed anything of value in good faith to EJS in exchange for the funds she received from EJS. September 24 Order, pp. 9-10.

59. On June 15, 2015, the CFTC served Alisa Ekdesman with a demand for production of documents (“June 15 CFTC Document Request”) evidencing any loans, advances,

credits, debits, payments, fees, agreements, and/or contracts between Alisa Ekdeshman and Defendants. Alisa Ekdeshman produced no documents to the Commission in response to the June 15 CFTC Document Request.

## CONCLUSIONS OF LAW

### Jurisdiction and Venue

60. 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.

61. 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).

### Standard for Summary Judgment

62. Summary judgment is appropriate when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” FRCP 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

63. The moving party bears the burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). *Anderson*, 477 U.S. at 258. A fact is material if it “might affect the outcome of the suit under the governing law....” *Anderson*, 477 U.S. at 248. “Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*

64. The moving party's burden of proof may be met by "showing"—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp.*, 477 U.S. at 325.

65. Once the moving party meets its burden, "the non-moving party must produce evidence in the record and "may not rely simply on conclusory statements or contentions that the affidavits supporting the motion are not credible..." *Ying Jing Gan v. City of New York*, 996 F.2d 522, 532 (2d Cir. 1993).

66. As detailed below, the Commission has demonstrated through ample evidence that it is entitled to a judgment against Alisa Ekdesman as a matter of law and that Alisa Ekdesman has failed to demonstrate any legitimate claim to the funds she received from EJS.

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

67. During the Relevant Period, by the conduct described in paragraphs 1 through 33 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 failing to trade their funds as promised, misappropriating customer funds to pay for personal and business expenses, failing to inform 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). December Summary Judgment Order ¶ 51; Default Judgment Order ¶ 28. *See, e.g., CFTC v. Highland Stone Capital Management, LLC*, 2013 WL 4647191 at \*15 (S.D.N.Y. Aug. 29, 2013).



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

68. During the Relevant Period, by the conduct described in paragraphs 1 through 33 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 cheated or defrauded or attempted to cheat or defraud any person; willfully made or caused to be made to any person any false report or statement or cause to be entered for any person any false record; or willfully deceived or attempted to deceive any person by any means whatsoever by, among other things: (1) failing to trade EJS customer funds as promised; (2) misappropriating customer funds to pay for personal and business expenses; (3) failing to inform prospective customers that the historical trading performance on the website, [www.ejsfinancial.com](http://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). December Summary Judgment Order ¶ 52; Default Judgment Order ¶ 29.

**Fraud by a Commodity Trading Advisor**

69. During the Relevant Period, by the conduct described in paragraphs 1 through 33 above, 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). December Summary Judgment Order ¶ 53; Default Judgment Order ¶ 30. *See, e.g., CFTC v. Vartuli*, 228 F.3d 94, 103 (2d Cir. 2000).

#### **Failure to Register with the Commission**

70. During the Relevant Period, by the conduct described in paragraphs 1 through 33 above, 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). December Summary Judgment Order ¶ 54; Default Judgment Order ¶ 31. *See, e.g., Highland Stone Capital Management, LLC*, 2013 WL 4647191 at \*19.

#### **Servider and Ekdeshman Are Liable for Defendant EJS's Violations as Controlling Persons of EJS**

71. During the Relevant Period, by the conduct described in paragraphs 1 through 33 above, Servider and Ekdeshman 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). December Summary Judgment Order ¶ 55; Default Judgment Order ¶ 32. *See, e.g., CFTC v. International Fin. Servs, Inc.*, 323 F.Supp.2d 482, 504-09 (S.D.N.Y. 2004).

#### **EJS Is Liable as Principal for the Acts of Ekdesman and Servider**

72. The foregoing acts, omissions, and failures of Ekdesman and Servider occurred within the scope of their employment, office, or agency with EJS; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014), EJS is liable for Ekdesman's and Servider's acts, omissions, and failures in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C), Regulation § 5.2(b), 17 C.F.R. § 5.2(b), Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B). Default Judgment Order ¶ 33. *See, e.g., Guttman v. CFTC*, 197 F.3d 33, 39 (2d Cir. 1999).

#### **Alisa Ekdesman Must Disgorge Ill-Gotten Funds**

73. 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 CFTC v. Walsh*, 618 F.3d 218, 225 (2d Cir. 2010) ("District courts have the power to order disgorgement from a relief defendant upon an finding that she (1) is in possession of ill-gotten funds and (2) lacks 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. Bronson Partners, LLC*, 654 F.3d 359, 373 (2d Cir. 2011)

“...agencies may, as a matter of grace, attempt to return as much of the disgorgement proceeds as possible [to compensate the victims]...”).

74. The undisputed evidence establishes that Alisa Ekdesman is a properly named Relief Defendant liable for purposes of disgorgement of funds she received from EJS. September 24 Order, pp. 7-9.

75. The undisputed evidence establishes that the funds Alisa Ekdesman received from EJS were ill-gotten gains fraudulently solicited by Defendants. September 24 Order, p. 8; June 3 Order ¶¶ 10, 18, 29; Stipulated Facts, ¶¶ 11, 23, 33, 40, 48, 70.

76. The undisputed evidence establishes that Alisa Ekdesman received a total of \$205,375 of ill-gotten gains and that those funds were deposited into bank accounts she controlled. September 24 Order, p. 8; Stipulated Facts, ¶¶ 11, 23, 33, 40, 48, 70.

77. The undisputed evidence establishes that Alisa Ekdesman provided no services to or performed any work for EJS in exchange for the \$205,375 she received from EJS. Stipulated Facts ¶¶ 6-7; September 24 Order, pp. 8-9.

78. The undisputed evidence establishes that Alisa Ekdesman has offered no evidence that she conveyed fair consideration – or any consideration- in good faith to EJS in exchange for the funds she received from EJS. September 24 Order, p. 10.

79. The undisputed evidence establishes that Alisa Ekdesman is not entitled to make any marital property claim on the fraudulently obtained funds she received from Defendants. September 24 Order, pp. 9-10.

80. The undisputed evidence establishes that Alisa Ekdesman has offered no evidence that she was entitled to the funds she received from EJS. September 24 Order, pp. 9-10.

**IT IS HEREBY ORDERED THAT:**

81. Plaintiff's Motion for Summary Judgment Against Alisa Ekdesman is  
**GRANTED.**

**Disgorgement**

82. Alisa Ekdesman shall pay disgorgement in the amount of two hundred five thousand three hundred seventy five dollars \$205,375 ("Alisa Ekdesman's Disgorgement Obligation"), as measured by the funds received by Alisa Ekdesman from Defendants to which Alisa Ekdesman had no legitimate claim, and shall pay post-judgment interest. Post-judgment interest shall accrue on Alisa Ekdesman's 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 (2012).

83. To effect payment of Alisa Ekdesman's Disgorgement Obligation and the distribution of Alisa Ekdesman's Disgorgement Obligation to Defendants' customers, the Court continues the appointment of the National Futures Association ("NFA") as Monitor ("Monitor"). NFA was appointed as Monitor by this Court's Order dated March 17, 2015 (ECF Dkt. No. 46) and that appointment was continued by this Court's *Order for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief Against Defendants EJS Capital Management LLC and Alex Vladimir Ekdesman and Relief Defendants Executive Services of Florida LLC and Executive Management of Montana Inc.* dated December 18, 2015 ("December 18 Default Judgment Order") (ECF Dkt No. 110). The Monitor shall collect Alisa Ekdesman's Disgorgement Obligation payments from Alisa Ekdesman as set forth in Paragraph 84 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.

84. Alisa Ekdeshman shall make Disgorgement Obligation payments under this Order to the Monitor in the name "EJS – Restitution Fund" and shall send such Disgorgement 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 Alisa Ekdeshman and the name and docket number of this proceeding. Alisa Ekdeshman 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.

85. All disgorgement payments made by Alisa Ekdeshman shall be used by the Monitor 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 Paragraph 84 above.

#### **Provisions Related to Monetary Relief**

86. Pursuant to this Court's *Order Appointing the National Futures Association As Monitor and Directing the Transfer of Specified Funds to the Monitor* dated March 16, 2015, ECF Entry No. 45, this Court directed that funds from bank accounts in the name of or under the control of Alisa Ekdeshman that were previously frozen pursuant to the *Order Granting Plaintiff's Ex Parte Application for Statutory Restraining Order, Expedited Discovery, Asset Freeze, Order to Show Cause Regarding Preliminary Injunction and Other Equitable Relief*

(“Statutory Restraining Order”) (ECF Entry No. 8) dated May 1, 2014, and the *Order of Permanent Injunction on Contempt of Court Claim Against Alex Vladimir Ekdeshman, Preliminary Injunction on All Other Claims and Other Equitable Relief* (“Permanent and Preliminary Injunction Order”) (ECF Entry No. 25) dated June 3, 2014, be transferred to a custodial bank account titled “Relief Defendant Alisa Ekdeshman Frozen Assets” (“NFA Custodial Account”).

87. Pursuant to this Court’s December 18 Default Judgment Order, the Monitor has previously opened a custodial bank account titled “EJS Restitution Fund” (“NFA EJS Restitution Funds Account”).

88. Upon entry of this Order, the Monitor shall transfer all funds maintained in the NFA Custodial Account to the NFA EJS Restitution Funds Account.

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

90. 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.

91. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Alisa Ekdeshman’s Disgorgement Obligation shall not be deemed a waiver of her 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**

92. 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, 19<sup>th</sup> 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.

93. Change of Address/Phone: Until such time as Alisa Ekdesman satisfies in full her Disgorgement Obligation as set forth in this Order, Alisa Ekdesman shall provide written notice to the Commission by certified mail of any change to her telephone number and mailing address within ten (10) calendar days of the change.

94. 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.

95. 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 Alisa Ekdesman to modify, or for relief from, the terms of this Order.


96. Equitable Relief Provisions: The equitable relief provisions of this Order shall be binding upon Alisa Ekdesman, upon any person under the authority or control of Alisa Ekdesman, 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 Alisa Ekdeshman.

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 Relief Defendant Alisa Ekdeshman* forthwith and without further notice.

IT IS SO ORDERED on this 26 day of October, 2016.

  
Colleen McMahon  
UNITED STATES DISTRICT JUDGE