

**In the United States District Court
for the District of Colorado**

Civil Action No. _____

U.S. COMMODITY FUTURES TRADING COMMISSION,
Plaintiff,

v.

GREGORY L. GRAMALEGUI,
Defendant.

**COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION,
CIVIL MONETARY PENALTIES, AND EQUITABLE RELIEF UNDER THE
COMMODITY EXCHANGE ACT**

Plaintiff U.S. Commodity Futures Trading Commission alleges as follows:

I. SUMMARY

1. From at least 2006 to the present, Defendant Gregory L. Gramalegui (“Defendant”), doing business as Emini Trading School (“ETS”), has offered for sale to clients a trading system and advisory service for trading the E-mini S&P 500 futures contract (“e-mini”). A trading system is a methodology for determining when to enter and exit a trade, among other things.

2. On July 12, 2001, Plaintiff U.S. Commodity Futures Trading Commission (“Commission”), the independent federal agency charged with enforcing the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (2012) (“Act”) and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2015) (“Regulations”), issued an order, filing and simultaneously settling, an administrative proceeding against Defendant, CFTC Docket No. 01-16 (“Order”):

The Order addressed Defendant's conduct in operating a prior business, S&P Safe Co., which also offered a trading system to clients for trading futures contracts.

3. The Commission's Order contained findings that Defendant made misrepresentations about his prior trading system, which constituted fraud in violation of 7 U.S.C. § 6o(1)(B) (2012), and that Defendant failed to provide the disclosure statement required by 17 C.F.R. § 4.41(b) (2015), concerning simulated or hypothetical trading results. The Order required Defendant, among other things, to cease and desist from those violations and to comply with undertakings to avoid similar misconduct in the future.

4. Nevertheless, since at least 2006, Defendant has repeatedly violated the Act, Regulations, and the Order by making misrepresentations to clients about his trading system and advisory service, in violation of 7 U.S.C. § 6o(1); by failing to provide required disclosures concerning client testimonials and hypothetical or simulated trading results, in violation of 17 C.F.R. § 4.41(a)(3) and (b); and by failing to comply with undertakings required by the Order.

5. In addition, Defendant made false or misleading statements to the Commission during its investigation of this matter. Defendant falsely stated in sworn testimony that he does not recommend or identify trades for clients in the Live Trading Room. Defendant also made material modifications to documents before producing them to the Commission without informing the Commission that the documents had been modified. These false or misleading statements and omissions constitute violations of 7 U.S.C. § 9(2) (2012).

6. Accordingly, pursuant to 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin Defendant's unlawful acts and practices and to compel his compliance with the Act, Regulations, and the Order. In addition, the Commission seeks a civil monetary penalty,

restitution, and such equitable relief as this Court may deem necessary or appropriate, including disgorgement of Defendant's ill-gotten gains.

7. Unless restrained and enjoined by this Court, Defendant is likely to engage in the acts and practices alleged in this Complaint or in similar acts and practices.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation, or order thereunder.

9. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendant is found in, inhabits, or transacts business in the District of Colorado, and the acts and practices in violation of the Act, Regulations, and the Order have occurred within this District, among other places.

III. THE PARTIES

10. Plaintiff U.S. Commodity Futures Trading Commission is the independent regulatory agency charged with the administration and enforcement of the Act and Regulations. The Commission is located at 1155 21st Street, NW, Washington, DC 20581.

11. Defendant Gregory L. Gramalegui, an individual, resides in Vail, CO. He has never been registered with the Commission in any capacity. Since at least 2006, Defendant has been doing business as ETS.

IV. FACTUAL BACKGROUND

A. The Commission's Order of July 12, 2001

12. Beginning in June 1997, Defendant, doing business as S&P Safe Co., offered a futures trading system called the Trend Reflection Trading System ("Trend System"). In a series of magazine advertisements, Defendant made false claims that his mother traded the Trend System and implied that her trading results were positive. Defendant's mother, however, never traded the system; instead, Defendant traded an account in his mother's name for seven months. That trading was not profitable but rather sustained a net loss of approximately \$6,000.

13. In addition, the trading results that Defendant advertised in connection with the Trend System were the product of hypothetical, rather than actual, trading, and Defendant consistently failed to provide the hypothetical trading disclosure statement required by 17 C.F.R. § 4.41(b) when displaying those results in magazine advertisements. Defendant's Internet website also displayed hypothetical trading results, and while sometimes the website provided the statement required by 17 C.F.R. § 4.41(b), at other times it did not.

14. Based on this conduct, Defendant agreed to the entry of an Order by the Commission on July 12, 2001, finding that Defendant had, while acting as a commodity trading advisor ("CTA"), (a) engaged in a "practice or course of business which operates as a fraud or deceit upon any client or prospective client" in violation of 7 U.S.C. § 6o(1)(b), and (b) failed to provide in marketing materials the disclosure statement required by 17 C.F.R. § 4.41(b), concerning simulated or hypothetical trading results.

15. The Order requires Defendant to cease and desist from violating 7 U.S.C. § 6o(1)(b) and 17 C.F.R. § 4.41(b).

16. The Order also requires Defendant to comply with the undertakings embodied in the Order and his Offer of Settlement. In pertinent part, the Order states:

Gramalegui shall not misrepresent, expressly or by implication, the performance, profits or results achieved by, or the results that can be achieved by users, including himself, of any commodity futures or options trading system or advisory service; and the risks associated with trading pursuant to any commodity futures or options trading system or advisory service.

Order pt. VII.3.A.

Gramalegui shall not present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest unless such performance is accompanied by [the disclosure statement required by 17 C.F.R. § 4.41(b)]. In doing so, Gramalegui shall clearly identify those hypothetical or simulated performance results which were based, in whole or in part, on hypothetical trading results.

Order pt. VII.3.B.

Gramalegui shall not make any representation of financial benefits associated with any commodity futures or options trading system or advisory service without first disclosing, prominently and conspicuously, that futures trading involves high risks with the potential for substantial losses.

Order pt. VII.3.C.

Gramalegui shall not represent, expressly or by implication: (1) the performance, profits or results achieved by, or the results that can be achieved by, users, including himself, of any commodity futures or options trading system or advisory service; (2) the risks associated with trading using any commodity futures or options trading system or advisory service; or (3) that the experience represented by any user, testimonial, or endorsement of the commodity futures or options trading system or advisory service represents the typical or ordinary experience of members of the public who use the system or advisory service; unless: (i) Defendant possesses and relies upon a reasonable basis substantiating the representation at the time it is made; and (ii) for two (2) years after the last date of the dissemination of any such representation, Defendant maintains all advertisements and promotional materials containing such representation and all

materials that were relied upon or that otherwise substantiated such representation at the time it was made, and makes such materials immediately available to the Commission's Division of Enforcement for inspection and copying upon request.

Order pt. VII.3.D.

B. Defendant's Operation of ETS

17. Defendant has been operating ETS since at least 2006. Through ETS, Defendant offers a trading system consisting of trading plans and trading software (the "trading system") and an advisory service that purportedly enable clients to trade e-minis profitably. Defendant demonstrates how to use the trading system through seminars, training videos, one-on-one training sessions, and access to a Live Trading Room. These ETS products and services are offered to the public in a series of packages ranging in price from hundreds of dollars to several thousands of dollars.

18. Defendant is the sole owner and operator of ETS. At certain times, Defendant engaged or employed individuals to assist with ETS sales and operations. At least some of these individuals were initially ETS clients.

19. Defendant has never tested his trading system through actual trading for profitability or accuracy.

1. Defendant's Marketing of ETS

20. Defendant markets ETS products and services through an Internet website located at <http://www.eminitradingschool.com> (the "Website"). Defendant also periodically sends marketing e-mails to members of the public advertising ETS products and services and offering promotional discounts. Defendant markets ETS products and services both to clients with no prior trading experience and to professional traders.

21. Defendant is responsible for Website content. On the Website, clients and prospective clients can read descriptions of ETS products and services, review client testimonials, view available product and service packages and pricing, and access the Live Trading Room.

2. ETS Products and Services

22. Defendant offers a variety of products and services on the Website that purportedly teach prospective clients how to use Defendant's "winning trading strategies" and enable them to become "professional day traders." The products and services include various trading software programs, trading plans, seminars, and subscriptions to the "Live Trading Room."

23. The trading plans are manuals provided in Adobe PDF format. Defendant describes the trading plans on his Website as "the best comprehensive trading plan that can help you become a professional day trader." The Website also states: "We truly do expect to be profitable each and every day and when following the trading plan and using our Market Profile Charts for Ninja Trader or Tradestation." Finally, the Website says: "The trading plan is always correct." Yet with regard to whether he has ever tested his trading plans through personal trading, Defendant admitted: "I mean I'm sure I have tried to. You can't always do it. Just because it's there doesn't mean you can do it. . . . Everything in life changes, you know, from that. My brain shuts off a lot of times when I trade."

24. ETS products and services rely heavily on Market Profile, a trading tool that was first developed in the 1980s and is the intellectual property of CME Group. Market Profile manipulates market price and time data visually for the trader.

3. Live Trading Room

25. Defendant operates the Live Trading Room to show clients how to apply the trading system through the demonstration of live trading. The Live Trading Room is free on a trial basis to new clients and offered on a paid basis as part of a package or through a monthly subscription fee. On the Website, Defendant explains that in the Live Trading Room, “new traders can watch how our traders use our proven trading strategies, and they can practice while using a demo account.” He also states that the Live Trading Room features “real quality trades” and provides the last training “you’ll need to take towards becoming a professional day trader.”

26. Communication between Defendant and clients occurs in several ways in the Live Trading Room: (1) There is a chat room component, in which Defendant and clients exchange written messages. Clients cannot see other clients’ messages unless Defendant decides to share a client’s message with the room. (2) There is an audio component, in which clients hear Defendant talk through a microphone. This is Defendant’s chief method of communicating with clients. Defendant generally answers clients’ typed questions and announces trades through his microphone. (3) There is also a video component, in which clients see trading charts, Defendant’s purported trading account on the Ninja Trader trading platform, or other visual aids that are displayed by Defendant. (4) In addition, there is a private messaging function, in which Defendant and clients can send messages to each other directly.

27. In the Live Trading Room, Defendant recommends trades to clients. At times, he announces that he will take a trade at a certain entry point. Even though Defendant told clients that he would recommend trades with enough lead time for clients to take the trade as well,

clients at times missed trades because Defendant did not leave enough time between announcing and entering the trade.

28. Clients could also see certain trades that Defendant took because he displayed his Ninja Trader account in the Live Trading Room. For example, when Defendant placed a limit order, a flag would appear on the screen with a buy or sell sign. The buy or sell sign meant that Defendant had committed to the order, and clients therefore knew that Defendant was entering a trade. Consistent with these practices, on the Website Defendant states that in the Live Trading Room “[y]ou will see our NinjaTrader and Trade Station trading charts and [trading] execution platform on a regular basis.”

29. Defendant advertises that he recommends trades in the Live Trading Room. For example, Defendant stated in the Live Trading Room on September 5, 2014: “[I] am not going to trade call all day long or trade once [I] am a winner and [I] give monthly traders one or two trades a day” The same day, Defendant stated in the Live Trading Room: “[I] will give traders one winner each day is my ambition then DONE.”

4. Defendant’s Trading Experience

30. Defendant is a self-taught trader. He first began reading books about trading while serving time in federal prison. He has not taken any outside training in trading futures or using Market Profile.

31. Defendant admitted that his “main reason” for starting ETS was “for myself, to try to understand Market Profile.” He also admitted that there are “things that I don’t understand about [Market Profile] at this point, that you know, would be, you know, not necessarily complicated.” He admitted that he “tr[ies] to” use the trading system he designed in

his own trading, but that “[t]here’s many things I probably – I wouldn’t understand because it’s an auction process.”

32. Despite holding himself out as a “professional day trader” to prospective clients, Defendant’s trading while he has operated ETS has not been profitable. Defendant is not a frequent trader, and he sustained trading losses during the period from March 2010 through February 2015, even after accounting for transaction fees.

C. Defendant’s Misrepresentations while Operating ETS

33. While operating ETS, Defendant has made numerous misrepresentations concerning the trading system’s performance record, its ability to predict market behavior, client profits, and the Live Trading Room, among other things.

1. Misrepresentations About the Trading System’s Performance Record

34. Defendant has made several misrepresentations about the trading system’s performance record. For example:

- a. On February 8, 2011, Defendant sent an e-mail responding to a question from a client that stated: “I generally trade till I am profitable and stop trading for myself at that time.”
- b. On August 9, 2011, Defendant sent a marketing e-mail to clients and prospective clients stating in the subject line: “73 Winning Days in a row!”
- c. As of October 7, 2014, the Website stated: “The software has be[en] up to 95% accurate for the past 4 months”
- d. On December 3, 2014, Defendant sent a marketing e-mail to clients and prospective clients stating in the subject line: “Yesterday Our MP Trading crushed the market.”

35. These statements are misleading because they represent to clients and prospective clients that Defendant actually traded and made real profits using his trading system. Yet

Defendant traded irregularly and sustained trading losses. Defendant therefore had no basis, such as actual performance results, for making these claims.

2. Misrepresentations About the Trading System's Ability to Predict Market Behavior

36. Defendant has made several misrepresentations about the trading system's ability to predict market behavior. For example:

- a. As of October 7, 2014, the Website stated: "We can then actually predict the first hour of the emini trading day . . . and know what should happen during the whole day of trading."
- b. On January 30, 2014, Defendant sent a marketing e-mail to clients and prospective clients stating: "Traders can Start off the New Year in our Live Emini ES Trading Room and for FREE! Have fun watching us predict where the Emini ES (or any market) will go and to the tick."

37. These statements are misleading because they represent to clients and prospective clients that Defendant had the ability to predict market movements. Yet Defendant sustained trading losses. Defendant therefore had no basis, such as actual performance results, for claiming that his trading system predicts what will happen in the futures markets.

3. Misrepresentations About Clients' Ability to Profit Using the System

38. Defendant has made several misrepresentations about clients' ability to profit using the trading system. For example:

- a. On August 9, 2011, Defendant sent a marketing e-mail to clients and prospective clients stating: "You can win every day in the markets by following our trading plan."
- b. In the same marketing e-mail, Defendant stated: "Most traders have made enough on one trade to pay for the monthly subscription."
- c. On January 15, 2014, Defendant sent a marketing e-mail to clients and prospective clients stating: "The traders who do use our Trading Plans had many LONG winning trades and NO Losing Trades."

- d. As of October 7, 2014, the Website stated: “We make it that easy for the trader to let the profits run.”

39. These statements are misleading because Defendant had no basis for these claims at the time he made them. Defendant admitted that he has never collected information on the results or profits achieved by clients using his trading system. In addition, Defendant’s own inability to sustain profits shows that these claims are groundless.

4. Misrepresentations About the Live Trading Room

40. Defendant has made several misrepresentations relating to the Live Trading Room. For example:

- a. On September 5, 2014, Defendant stated in the Live Trading Room: “[I] still am live and more accurate than any other trading room either way.”
- b. On September 9, 2014, Defendant stated in the Live Trading Room: “Yes, you are going to see Live Trades everyday starting at the opening bell.”
- c. As of October 7, 2014, the Website stated: “[In the Live Trading Room], new traders can watch how our traders use our proven trading strategies”

41. These statements are misleading because Defendant did not engage in actual trading each day that the Live Trading Room was open. Defendant falsely represented to clients in the Live Trading Room that he was trading when, in fact, he was not.

42. The misrepresentations in Paragraphs 34–41 are material because a reasonable client would consider them important in deciding whether to purchase Defendant’s products and services.

43. Defendant made the misrepresentations in Paragraphs 34–41 knowingly, willfully, and intentionally by making the claims with knowledge of their falsity and/or with knowledge that he lacked any basis for making the claims.

D. Failure to Make Required Disclosures

44. The Regulations require Defendant to make specific disclosures to clients and prospective clients when he engages in certain conduct. The Order imposes additional disclosure requirements. Both the Regulations and the Order specify the manner in which these disclosures must be made.

45. While operating ETS, Defendant made statements on the Website and in marketing e-mails that triggered his responsibility to make disclosures required by the Regulations and the Order. However, Defendant failed to comply with those requirements. He also attempted to conceal his noncompliance by modifying the Website before producing it to the Commission, as alleged in Paragraphs 64–69, below.

46. On October 7, 2014, the Commission captured a forensically-sound copy of the Website as it existed prior to Defendant’s modifications. In that version, there was a scroll box at the bottom of each webpage containing lengthy disclosures. The scroll box provided a narrow view of the language it contains; only eight lines of text were visible at any given time and a visitor was required to scroll to view the rest of the disclosure text. In addition, the scroll box was located after the “footer” on each webpage, which contained links to other pages of the Website and copyright information for the Website. There was no indication elsewhere on the Website that important disclosures were provided at the bottom of the page. Thus, a client or prospective client would have had no reason to scroll past the footer of the Website to discover the scroll box containing the disclosures.

1. Failure to Provide Required Disclosures Concerning Testimonials

47. Defendant has displayed client testimonials on the Website and in marketing e-mails. 17 C.F.R. § 4.41(a)(3) requires that certain disclosure language be “prominently disclose[d]” when a CTA displays testimonials.

48. As of October 7, 2014, the Website contained dozens of testimonials about the profits and results that can be achieved using the trading system. Defendant included the disclosure language required by 17 C.F.R. § 4.41(a)(3) in the scroll box described in Paragraph 46, far removed from the main Website content.

49. In addition, Defendant sent a marketing e-mail on November 1, 2012 to clients and prospective clients that contained a testimonial concerning a client’s trading results. Defendant did not include the disclosure language required by 17 C.F.R. § 4.41(a)(3) in the e-mail.

2. Failure to Provide Required Disclosures Concerning Hypothetical or Simulated Trading Results

50. Defendant has advertised trading results that were based on hypothetical or simulated trading on the Website and in marketing e-mails. 17 C.F.R. § 4.41(b) requires that specific disclosure language be “prominently disclosed and in immediate proximity” to simulated or hypothetical trading results. Part VII.3.B of the Order requires that Defendant accompany any simulated or hypothetical trading results with the disclosure language in 17 C.F.R. § 4.41(b) and also requires Defendant to “clearly identify” the results that were based, in whole or in part, on hypothetical trading.

51. As of October 7, 2014, the Website advertised certain results that were purportedly achieved using the trading system and were based on hypothetical or simulated

trading. Defendant included a modified version of the disclosure language required by 17 C.F.R. § 4.41(b) in the scroll box described in Paragraph 46, far removed from the advertised results and the main Website content. The disclosure language was not “prominently disclosed and in immediate proximity” to the simulated or hypothetical trading results, as required by 17 C.F.R. § 4.41(b). In addition, Defendant did not “clearly identify” the trading results that were based, in whole or in part, on hypothetical trading, as required by the Order.

3. Failure to Provide Required Disclosure Concerning Risks of Futures Trading

52. Part VII.3.C of the Order prohibits Defendant from making “any representation of financial benefits associated with any commodity futures or options trading system or advisory service without first disclosing, prominently and conspicuously, that futures trading involves high risks with the potential for substantial losses.” Defendant has made statements of financial benefits from futures trading on the Website, in marketing e-mails, and in the Live Trading Room without first disclosing the required language.

53. For example, in the version of the Website captured by the Commission on October 7, 2014, the Website did not state anywhere that “futures trading involves high risks with the potential for substantial losses,” as required by Part VII.3.C of the Order. In addition, there was no statement concerning the risks of futures trading before representations of financial benefits were displayed on the Website. The only statement concerning the risks of futures trading was buried in the scroll box described in Paragraph 46, after representations of financial benefits and removed from the main Website content.

E. Failure to Possess a Reasonable Basis Substantiating Claims and to Comply with the Retention Requirement

54. Part VII.3.D of the Order requires Defendant (1) to possess a reasonable basis substantiating statements concerning the “performance, profits, or results” that can be achieved by users of his trading system, including himself, at the time the statement is made; (2) to retain and produce to the Commission upon request copies of materials substantiating such statements; and (3) to retain and produce to the Commission upon request copies of the marketing materials that contain such statements.

55. Defendant never had a reasonable basis substantiating his statements concerning the performance, profits, or results that can be achieved using his trading system, including the statements alleged in Paragraphs 34 to 39. Defendant admitted that he does not “keep track” of clients’ trading performance, and never has. He also stated that he does not “keep track” of his own trading performance.

56. In addition, the Commission asked Defendant to produce copies of documents substantiating certain statements concerning performance, profits, and results that he made on the Website. In response, Defendant produced a host of irrelevant documents, none of which substantiated the statements at issue.

57. The Commission also asked Defendant to produce copies of all ETS marketing materials. In response, Defendant produced only a handful of documents, including a recently modified version of the Website and a single marketing e-mail. The Commission independently obtained copies of marketing e-mails that Defendant sent to clients and prospective clients less than two years ago and contained representations about the performance, profits, and results that

can be achieved using his trading system. Under Order Part VII.3.D, Defendant was required to, but did not, retain those marketing materials and produce them to the Commission upon request.

F. Defendant's False or Misleading Statements to the Commission

1. False or Misleading Statements About the Live Trading Room

58. On April 21, 2015, Defendant provided sworn testimony before officers of the Commission concerning the subject matter of this Complaint.

59. During his testimony, Defendant repeatedly made false statements of material fact concerning, among other things, the Live Trading Room. Specifically, Defendant denied that he ever recommended or "called" trades to customers in the Live Trading Room. He also denied that he showed his own trading to customers. Rather, Defendant testified that the only thing he did in the Live Trading Room was "teach[]."

60. In reality, Defendant "called" or recommended trades to clients in the Live Trading Room. Clients then attempted to replicate Defendant's trading by placing similar orders in their own trading accounts, which often resulted in trading losses. In addition, on at least some occasions, Defendant displayed his Ninja Trader trading account in the Live Trading Room, which enabled clients to see orders that Defendant placed in real time.

61. Defendant's own prior statements in marketing materials and in the Live Trading Room also corroborate that he "called" or recommended trades in the Live Trading Room. For example:

- a. As of October 7, 2014, the Website stated: "[In the Live Trading Room], new traders can watch how our traders use our proven trading strategies"
- b. As of October 7, 2014, the Website displayed a client testimonial that stated: "You can actually see what they are doing live with their charts as they enter trades."

- c. As of October 7, 2014, the Website displayed a client testimonial that stated: “He keeps updating the market data . . . and at the same time suggesting trading strategy i.e. buy/sell entry location, stop loss and profit target etc.”
- d. On September 5, 2014, Defendant stated in the Live Trading Room: “boom there you go, you are in the one winner i will point out today”
- e. On September 9, 2014, Defendant stated in the Live Trading Room: “Yes, you are going to see Live Trades everyday starting at the opening bell”

62. Accordingly, Defendant’s testimony that he did not “call,” recommend, or show trades in the Live Trading Room was knowingly false or misleading.

2. False or Misleading Statements About Modifications to the Website

63. Defendant also made false or misleading statements of material fact to the Commission through his conduct in attempting to conceal material modifications he made to the Website before producing it to the Commission. Specifically, Defendant modified the Website disclosures by (1) adding language that he is required to provide under the Order; (2) revising other portions of the disclosure language; and (3) removing the disclosure language from the scroll box in which it had previously been contained and placing it in the main Website text.

64. Defendant first became aware that the Commission was investigating him on October 7, 2014, when Commission staff called Defendant to ask questions about ETS.

65. Defendant modified the Website as alleged in Paragraph 63 at some point between October 7, 2014 (which is also the date that the Commission captured a forensically-sound copy of the Website) and December 2, 2014 (the date on which Defendant produced his modified version).

66. Defendant did not notify the Commission that he had modified the Website at the time he produced his version of the Website.

67. In a subsequent conversation between Commission staff and Defendant's counsel, Defendant's counsel noted that Defendant had made one modification to the Website before producing it. However, Defendant's counsel did not notify the Commission of the material modifications to the Website disclosures during that conversation or at any time thereafter.

68. Commission officers took Defendant's sworn testimony on April 21, 2015 and specifically asked him about changes to the Website. When he was asked how frequently the Website was updated or changed, Defendant testified: "[L]ately, not at all, you know, and prior to that like I produced economic news reports like in a blog or something." Defendant's attorney then clarified that he had advised Defendant "to have someone take links [to testimonials] off so they were no longer accessible" but did not mention any other modifications. Defendant was also specifically asked what "other changes" were made to the Website, and Defendant failed to disclose that he had recently modified the form and content of the Website disclosures.

69. Commission officers also asked Defendant about the content of the Website disclosures during testimony. Defendant testified that he was responsible for putting the disclosures on the Website and that he had submitted the disclosure content to his webmaster for publication "years and years ago." This testimony was misleading, because the disclosure content on the Website had been recently modified.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

VIOLATION OF 7 U.S.C. § 6o(1): FRAUD BY A COMMODITY TRADING ADVISOR

70. Paragraphs 1–69 are realleged and incorporated herein by reference.

71. 7 U.S.C. § 1a(6) defines a CTA as any person who, for compensation or profit, engages 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 made or to be made on or subject to the rules of a contract market. Through the sale of the products and services that form the trading system and advisory service, Defendant acts as a CTA.

72. 7 U.S.C. § 6o(1) makes it unlawful for a CTA, 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 client or customer or prospective client or customer; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

73. Through the conduct alleged in Paragraphs 33–41, Defendant, while acting as a CTA, by using the mails or other means or instrumentalities of interstate commerce (i) employed devices, schemes, or artifices to defraud clients or prospective clients, and (ii) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients, in violation of 7 U.S.C. § 6o(1).

74. Each fraudulent misrepresentation or omission made by Defendant, including those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6o(1).

COUNT II

VIOLATION OF 17 C.F.R. § 4.41: FAILURE TO PROVIDE REQUIRED DISCLOSURES

75. Paragraphs 1–69 are realleged and incorporated herein by reference.

76. 7 U.S.C. § 1a(6) defines a CTA as any person who, for compensation or profit, engages 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 made or to be made on or subject to the rules of a contract market. Through the sale of the products and services that form the trading system and advisory service, Defendant acts as a CTA.

77. 17 C.F.R. § 4.41(a)(3) makes it unlawful for any CTA to refer to any testimonial, unless the advertisement or sales literature providing the testimonial prominently discloses: (i) that the testimonial may not be representative of the experience of other clients; (ii) that the testimonial is no guarantee of future performance or success; and (iii) if, more than a nominal sum is paid, the fact that it is a paid testimonial.

78. Through the conduct alleged in Paragraphs 44–49, Defendant, while acting as a CTA, referred to testimonials on the Website and in marketing e-mails without prominently disclosing the required statement in violation of 17 C.F.R. § 4.41(a)(3).

79. 17 C.F.R. § 4.41(b) makes it unlawful for any person to present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a commodity pool operator, CTA, or any

principal thereof, unless such performance is accompanied by a required statement. If presentation of such simulated or hypothetical performance is other than oral, the prescribed statement must be prominently disclosed and in immediate proximity to the simulated or hypothetical performance being presented.

80. Through the conduct alleged in Paragraphs 44–46 and 50–51, Defendant, while acting as a CTA, presented the performance of simulated and hypothetical commodity interest accounts without prominently disclosing the required statement in immediate proximity to the performance being presented, in violation of 17 C.F.R. § 4.41(b).

81. Each failure to prominently disclose the required statements, including those specifically alleged herein, constitutes a separate and distinct violation of 17 C.F.R. § 4.41.

COUNT III

VIOLATION OF THE COMMISSION'S JULY 12, 2001 ORDER

82. Paragraphs 1–69 are realleged and incorporated herein by reference.

83. On July 12, 2001, the Commission issued an Order pursuant to 7 U.S.C. §§ 9, 13b, and 15 (2000).

84. Part VII.1 of the Order directs Defendant to cease and desist from violating 7 U.S.C. § 6o(1)(B) and 17 C.F.R. § 4.41(b). Through the conduct alleged in Paragraphs 33–43 and 50–51, Defendant has violated Part VII.1 of the Order.

85. Part VII.3.A of the Order prohibits Defendant from making misrepresentations about the performance, profits, or results that can be achieved using his trading system or advisory service. Through the conduct alleged in Paragraphs 33–43, Defendant has violated Part VII.3.A of the Order.

86. Part VII.3.B of the Order prohibits Defendant from presenting hypothetical or simulated trading results unless Defendant accompanies those results with the disclosure language in 17 C.F.R. § 4.41(b) and clearly identifies the results that are based on hypothetical trading. Through the conduct alleged in Paragraphs 50–51, Defendant has violated Part VII.3.B of the Order.

87. Part VII.3.C of the Order requires Defendant to provide a warning concerning the risks of futures trading before he makes any representation of the financial benefits associated with a trading system or advisory service. Through the conduct alleged in Paragraphs 52–53, Defendant has violated Part VII.3.C of the Order.

88. Part VII.3.D of the Order requires that Defendant possess a reasonable basis for any representation that he makes about the performance, profits, or results that can be achieved using his trading system or advisory service. Defendant must retain marketing materials containing such representations and materials substantiating such representations for two years after the last date of dissemination of the representation. Through the conduct alleged in Paragraphs 54–57, Defendant has violated Part VII.3.D of the Order.

89. Each act by Defendant in violation of the Order, including those specifically alleged herein, constitutes a separate and distinct violation of the Order.

COUNT IV

VIOLATION OF 7 U.S.C. § 9(2): FALSE STATEMENTS TO THE COMMISSION

90. Paragraphs 1–69 are realleged and incorporated herein by reference.

91. 7 U.S.C. § 9(2) makes it “unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any

report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.”

92. On April 21, 2015, Defendant testified before Commission officers that he does not recommend, identify, or show trades to clients in the Live Trading Room. Defendant’s testimony constituted false or misleading statements of material fact to the Commission.

93. On December 2, 2014, Defendant produced documents to the Commission that purportedly constituted a copy of the Website. Defendant produced the copy without informing the Commission that he modified the form and content of the Website disclosures after the Commission requested the copy. On April 21, 2015, Defendant testified before Commission officers concerning modifications to the Website and failed to inform the Commission about the recent modifications. Defendant’s failure to disclose the modifications to the form and content of Website disclosures on December 2, 2014 and on April 21, 2015 constituted false or misleading statements of material fact to the Commission.

94. Defendant knew or reasonably should have known that the statements alleged in Paragraphs 92 and 93 were false or misleading.

95. Each false or misleading statement of a material fact, including but not limited to those specifically alleged herein, is alleged as a separate violation of 7 U.S.C. § 9(2).

VI. PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court, as authorized by 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- a) An order finding that Defendant violated 7 U.S.C. §§ 6o(1) and 9(2); 17 C.F.R. § 4.41(a)(3) and (b); and the Commission's July 12, 2001 Order;
- b) An order of permanent injunction prohibiting Defendant, and any other person or entity associated with him, from engaging in conduct violative of 7 U.S.C. §§ 6o(1) and 9(2); 17 C.F.R. § 4.41(a)(3) and (b); and the Commission's July 12, 2001 Order;
- c) An order of permanent injunction prohibiting Defendant and any on his agents, servants, employees, assigns, attorneys, and persons in active concert or participation, including any successor thereof, from, directly or indirectly:
 - 1) trading on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(29));
 - 2) entering into any transactions involving "commodity interests" (as that term is defined in 17 C.F.R. § 1.3 (yy) (2015)) for his own personal or proprietary account or for any account in which he has a direct or indirect interest;
 - 3) having any commodity interests traded on his behalf;
 - 4) 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;
 - 5) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - 6) 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 17 C.F.R. § 4.41(a)(9);

- 7) acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2015)), agent or other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in 17 C.F.R. § 4.41(a)(9); and
 - 8) engaging in any business activities relating to commodity interests;
- d) An order directing Defendant, as well as any successors thereof, to disgorge all benefits received, directly or indirectly, from acts or practices that constitute violations of the Act, Regulations, or Order, as described herein, and pre- and post-judgment interest thereon from the date of such violations;
- e) An order requiring Defendant, as well as any successors thereof, to make full restitution to every person or entity whose funds Defendant received, or caused against person or entity to receive, from the acts or practices that constitute violations of the Act, Regulations, or Order, as described herein, and pre- and post-judgment interest thereon from the date of such violations;
- f) An order directing Defendant, as well as any successors thereof, to pay a civil monetary penalty, plus post-judgment interest, in the amount of the greater of: (1) \$140,000 for each violation of the Act, Regulations, and Order; or (2) triple Defendant's monetary gain from each violation of the Act, Regulations, and Order;
- g) An order requiring Defendant to pay costs and fees, as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and
- h) An order providing such other and further equitable or remedial ancillary relief as the Court may deem appropriate.

Dated: October 19, 2015

Respectfully submitted,



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