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IN THE UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

U.S. COMMODITY FUTURES)	
TRADING COMMISSION)	Case No.
)	
Plaintiff,)	
)	
v.)	
)	
MY FOREX PLANET, INC., a)	
California Corporation, WAL)	
CAPITAL, S.A., a California)	
Corporation, TOP GLOBAL CAPITAL,)	
INC., a California Corporation,)	
MELODY NGANTHUY PHAN, an)	
individual,)	
Defendants.)	
)	

I. SUMMARY

1. From at least January 2009 and through at least February 2011 (“the Relevant Period”), My Forex Planet, Inc. (“MFP”), Wal Capital, S.A. (“Wal Capital”), and Top Global Capital, Inc. (“TGC”), (collectively “Corporate

1 Defendants”), acting through their agents and Defendant Melody Nghanthuy Phan
2 (“Phan”) (collectively, “Defendants”) fraudulently solicited at least \$3,764,214
3 from at least 174 customers for trading off-exchange leveraged or margined
4 foreign-currency contracts (“forex”). Additionally, the Defendants
5 misappropriated customer money, using it to repay past customers their principal
6 and interest in an effort to create the impression that the Defendants’ trading
7 activity was successful. In many cases, the Defendants immediately or very
8 quickly used the money provided by customers for purposes contrary to the
9 promises they had made. The Defendants also failed to refund customer monies in
10 a timely manner as requested.

14 2. By the aforementioned conduct, Corporate Defendants, acting through
15 their agents, and Phan have engaged, are engaging in, or are about to engage in
16 practices in violation of Sections 4b(a)(2)(A) and (C)¹ of the Commodity Exchange
17 Act (the “CEA”), 7 U.S.C. § 6b(a)(2)(A) and (C) (2012), and as of October 18,
18 2010, Commission Regulations (“Regulations”) 5.2(b)(1) and (3), 17 C.F. R. §
19 5.2(b)(1) and (3) (2013). Additionally, Phan, acting as an unregistered commodity
20 pool operator (“CPO”), violated Sections 4(o)(1) and 4(m)(1) of the CEA, 7 U.S.C.
21 §§ 6(o)(1) and 6(m)(1) (2012).

26 ¹ In 2010, the CEA was amended by the Dodd-Frank Wall Street Reform and
27 Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title
28 VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774,
124 Stat. 1376 (effective date July 16, 2011).

1 3. During the relevant period, Phan's acts and omissions in violation of
2 Sections 4b(a)(2)(A) and (C) CEA, 7 U.S.C. § 6b(a)(2)(A) and (C) (2012), and
3 Regulations 5.2(b)(1) and (3), 17 C.F. R. § 5.2(b)(1) and (3) (2013) occurred
4 within the scope of her office, employment or agency with the Corporate
5 Defendants. Therefore, the Corporate Defendants are liable for these acts and
6 omissions pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2012),
7 and and Regulation 1.2, 17 C.F.R. § 1.2 (2013), the Corporate Defendants, are
8 liable for the actions and omissions of Phan.
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11 4. During the relevant period, Phan, directly or indirectly, was a
12 controlling person of the Corporate Defendants. Phan failed to act in good faith, or
13 knowingly induced, directly or indirectly, the acts constituting the Corporate
14 Defendants' violations alleged herein. Therefore, Phan is liable for the Corporate
15 Defendants' violations of the CEA and Regulations pursuant to section 13(b) of the
16 CEA, 7 U.S.C. § 13c(b) (2012).
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19 5. Accordingly, pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1
20 (2012), the Commodity Futures Trading Commission ("Commission" or "CFTC")
21 brings this action to permanently enjoin Defendants' unlawful acts and practices
22 and to compel their compliance with the CEA and Regulations, and to further
23 enjoin Defendants from engaging in any commodity-related activity, including
24 forex. In addition, the Commission seeks seek civil monetary penalties and
25 remedial ancillary relief, including but not limited to, trading and registration bans,
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1 restitution, disgorgement, rescission, post-judgment interest, and such other relief
2 as the Court may deem necessary and appropriate.
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4 II. JURISDICTION AND VENUE

5 6. Section 6c(a) of the CEA, 7 U.S.C. § 13a-1(e) (2012), authorizes the
6 Commission to bring a civil action in district court to enforce compliance with the
7 CEA and any rule, regulation, or order thereunder.
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9 7. The Commission has jurisdiction over the conduct and transactions at
10 issue in this case pursuant to Sections 2(c)(2) and 6c of the CEA, 7 U.S.C.
11 §§2(c)(2) and 13a-1 (2012).
12

13 8. Venue properly lies with this Court pursuant to Section 6c(e) of the
14 CEA, 7 U.S.C. § 13a-1(e) (2012), in that the Defendants transacted business in this
15 District, and the acts and practices in violation of the CEA and Regulations have
16 occurred, are occurring, or are about to occur, within this District, among other
17 places.
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III. THE PARTIES

9. **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the responsibility for administering and enforcing the provisions of the CEA, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

10. **My Forex Planet, Inc.** is a Nevada corporation, which was incorporated by Phan in 2006. Phan and her husband jointly owned MFP, however, she controlled MFP: 1) Phan was the sole Director and President of MFP; 2) Phan controlled MFP's bank and trading accounts; and 3) Phan made all of the hiring and firing decisions at MFP. MFP was used to recruit customers for Phan's fraudulent investment schemes through trading classes run by Phan and other agents. MFP had pending registrations with the CFTC as an introducing broker ("IB"), commodity trading advisor ("CTA"), but withdrew these applications before the Commission decided their merit.

11. **Wal Capital, S.A. ("Wal Capital")**, upon information and belief, is a company owned or controlled by Phan and incorporated in Costa Rica. Wal Capital operated as a forex broker, offered customers self-traded forex accounts, and carried customer accounts managed by Phan or the other Corporate

1 Defendants. Wal Capital has never been registered with the Commission in any
2 capacity.

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4 12. **Top Global Capital, Inc. (“TGC”)**, upon information and belief, is a
5 company owned or controlled by Phan and was incorporated in Panama. TGC was
6 used by Phan, among other things, to operate a fraudulent forex commodity pool.
7
8 TGC has never been registered with the Commission in any capacity.

9 13. **Melody Nganthuy Phan (“Phan”)** was last known to reside in Las
10 Vegas, Nevada, but during the Relevant Period resided in Orange County,
11 California. Phan operated her various businesses from Orange County, California.
12 Phan owns or controls the Corporate Defendants and used them to perpetrate her
13 fraudulent schemes in connection with leveraged or margined forex as a common
14 enterprise. Phan has never been registered with the Commission in any capacity;
15 however she submitted a registration application as an Associated Person and
16 principal of MFP, but later withdrew this registration application before the
17 Commission decided its merit.
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21 IV. FACTS

22 Background

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24 14. In 2006, Phan incorporated MFP, and shortly after, began teaching
25 forex trading classes using the MFP entity. MFP operated out of storefront in
26 Garden Grove, California from which Phan also ran a number of unrelated
27 businesses. MFP, through Phan and other agents, touted Phan as an extremely
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1 successful forex trader with a proven trading system. Once students enrolled in the
2 forex trading classes, Phan and her agents, began soliciting the students to
3 participate in a number of other forex-related businesses.
4

5 15. Initially, Phan and her agents referred MFP customers who wished to
6 begin trading forex to forex brokers with whom MFP had an established
7 relationship so that MFP could collect referral fees. After Phan incorporated Wal
8 Capital in 2008, she began operating it as a forex broker, offering self-traded retail
9 forex accounts to customers most of whom were based in the United States and
10 recruited through MFP trading classes.
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13 16. In addition to MFP and Wal Capital, Phan, while acting as an
14 unregistered CPO, also operated a forex commodity pool through TGC, which was
15 incorporated in 2009. Phan and other agents then began soliciting existing MFP
16 and Wal Capital customers to become pool participants at TGC.
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18 17. By late 2009, Phan was operating the Corporate Defendants as a
19 common enterprise (collectively "Phan Common Enterprise") out of a variety of
20 locations in California. The Phan Common Enterprise operated out of the same
21 physical locations, commingled funds, shared agents, and was under the common
22 control of Phan. Phan, on behalf of herself and the Phan Common Enterprise, used
23 additional small entities which were subject to her control to accept and disburse
24 monies for the Phan Common Enterprise, including, but not limited to: Forex
25 Franchising, Zenoost, Soleil and West Newport.
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Defendants’ Fraudulent Solicitations of Wal Capital Customers
and TGC Pool Participants

18. Throughout the relevant period, Phan and the Phan Common Enterprise schemed to defraud individuals who became customers of her various forex-related ventures. Each act or omission by Phan and the Phan Common Enterprise in furtherance of the fraudulent scheme was done with the knowledge or consent of the others, and was done knowingly or with reckless disregard for the truth.

19. Phan, herself and through the Phan Common Enterprise, fraudulently solicited customers using MFP for at least two types of fraudulent investment schemes: 1) self-traded forex accounts opened at Wal Capital; and 2) pooled forex trading at TGC. Most, if not all, of these customers were U.S. residents. During the relevant period, Phan, herself and through the Phan Common Enterprise, fraudulently solicited at least \$1,677,762 from at least 112 customers who believed they opened self-traded forex accounts at Wal Capital. Beginning as early as October 2009, though at least January 2011, Phan, herself and through the Phan Common Enterprise, fraudulently solicited and received at least \$2,086,451.88 from at least 62 customers who became pool participants in a pooled forex trading account at TGC.

20. At least some of these customers at Wal Capital and pool participants at TCG were not eligible contract participants (“ECP”). An ECP, as relevant here, is an individual who has total assets in an amount in excess of (i) \$10 million or (ii)

1 \$5 million and who enters into the transaction in order to manage risk. See Section
2 1a(18)(A)(xi) of the CEA, 7 U.S. C. §1a(18)(A)(xi) (2012) (post July 16, 2011)
3 and 7 U.S.C. § 1a(12)(A)(xi) (2006) (pre July 16, 2011).
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5 21. MFP, through Phan, the Phan Common Enterprise, and other agents,
6 recruited students for its forex classes by word-of-mouth, as well as through ads
7 posted on Craigslist, You Tube, and on Vietnamese-language radio stations. The
8 MFP forex trading classes were often multi-day sessions, given in English or
9 Vietnamese. Tuition ranged from approximately \$500 to \$2000. MFP, through
10 Phan and others, would periodically waive the cost of the trading classes if
11 students agreed to trade a minimum volume in forex. MFP classes provided an
12 overview of forex trading as well as training in forex trading strategies. MFP,
13 through Phan and others agents, also taught a trading strategy purportedly
14 developed by Phan.
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19 22. Once individuals began taking trading classes at MFP, Phan and the
20 Phan Common Enterprise, solicited customers to open self-traded forex accounts at
21 Wal Capital and invest in the TGC forex pool by making the following fraudulent
22 statements: 1) Phan was a highly successful forex trader who had made millions of
23 dollars trading forex; 2) Phan's forex trading system, which was taught during
24 MFP classes, was a very safe system that virtually guaranteed profit over time;
25 and, 3) money deposited by Wal Capital customers and TGC pool participants
26 would be used for trading. Additionally, TGC pool participants were promised
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1 that: 4) profits would be generated by trading by Phan or traders Phan trained;
2 and, 5) they would get monthly returns of 3-5%, and at least two pool participants
3 were told their returns would be as high as 15% a month.
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5 23. In fact, Phan was not a successful forex trader. Between
6 approximately October 2006 and December 2011, Phan controlled at least 29
7 trading accounts in her name, her husband's name, or in the name of various
8 companies. Of Phan's 29 trading accounts, 17 accounts showed an aggregate net
9 loss of approximately \$1.41 million. Despite Phan's claims of success, only one of
10 these 17 accounts appears to have been profitable, with total net profits of less than
11 \$1,000.
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14 24. Upon information and belief, the remaining 12 trading accounts were
15 not as profitable as Phan and the Phan Common Enterprise had represented. Of
16 these 12 accounts, 9 had more funding sent to the trading accounts than returned
17 from the trading accounts, strongly suggesting that those 9 accounts suffered
18 overall net trading losses. The outstanding 3 trading accounts appear to have been
19 net winners. However, the potential profits in these 3 trading accounts ranged
20 from approximately \$3,000 to approximately \$50,000, far less than the highly
21 successful trading represented by Phan, herself and through the Phan Common
22 Enterprise.
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26 25. The representations made about the success and levels of risk
27 associated with Phan's trading system by Phan, herself and through the Phan
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1 Common Enterprise, were also false. Phan's trading system was risky and unlikely
2 to result in profits. Phan, and other agents acting pursuant to her instruction, taught
3 MFP customers to trade without stop - loss orders, thereby exposing the customers
4 to unlimited losses in their trading. This method of trading resulted in significant
5 losses as described above. Phan's trading system was neither safe nor likely to
6 generate profits as promised.
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9 26. As detailed in the misappropriation section below, despite their
10 solicitations to the contrary, Phan and the Phan Common Enterprise, by Phan's
11 own admission, did not always transfer the funds deposited by customers for the
12 purpose of trading into Wal Capital's trading accounts or the TGC pool accounts.
13 In fact, Wal Capital never maintained segregated bank or trading accounts for
14 customer funds.
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17 27. Despite assurances by Phan and the Phan Common Enterprise, TGC
18 funds were not always traded by Phan and/or traders trained by Phan. In sworn
19 testimony, Phan admitted that she did not trade the TGC forex pool for several
20 months despite leading pool participants to believe that their accounts were trading
21 and earning money.
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24 28. Finally, TGC pool participants were told that they would get monthly
25 returns of 3-5%, and at least two pool participants were told their returns would be
26 as high as 15% a month through forex trading. However, Phan did not trade the
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1 TGC pool for a number of months, and pool participants accounts did not
2 appreciate.

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4 Defendants' Misappropriation of Funds
5 from Wal Capital Customers and TGC Pool Participants

6 29. Phan, herself and through the Phan Common Enterprise,
7 misappropriated customer funds by: 1) failing to use funds for the purposes
8 intended by the customers (e.g., using funds for business expenses, using funds to
9 pay back other customers, and failing to trade forex); and 2) failing to honor
10 withdrawal requests.
11

12 30. Rather than open individual accounts at a futures commission
13 merchant ("FCM"), Wal Capital customers opened what they believed to be were
14 self-traded forex accounts at Wal Capital. Customers deposited funds by check,
15 wire transfer, credit card, or cash to either a Wal Capital bank account or, at times,
16 to other accounts controlled by Phan. In this way, Phan had access to Wal Capital
17 customer funds. Once Wal Capital customers deposited funds into their individual
18 trading accounts, they were then able to log into their respective accounts in order
19 to view their balances. In order for Wal Capital customers to execute futures
20 transactions, they made trades through a Wal Capital trading platform. In theory,
21 Wal Capital would then execute the transaction for a customer at an FCM in an
22 account in the name of Wal Capital and, presumably, funnel futures profits and
23 losses back into a customer account at Wal Capital.
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1 31. However, despite the fact that Wal Capital customers' accounts
2 showed balances reflecting their deposits and various trades, in reality, Phan,
3 herself and the Phan Common Enterprise, did not always deposit Wal Capital
4 customer funds into their proper accounts. Phan and Phan Common Enterprise
5 frequently diverted customer deposits from Wal Capital trading accounts to be
6 used to satisfy other customer requests for pay outs. Phan and the Phan Common
7 Enterprise also used funds intended for Wal Capital customer accounts for the
8 business expenses for the Phan Common Enterprise, such as radio advertising and
9 software development.
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13 32. Similarly, TGC pool participants deposited funds primarily by checks
14 or wire transfers into a Wal Capital bank account over which Phan had control. As
15 with the Wal Capital scheme, TGC pool participants could log into a TGC website
16 on which they could view their balances. And, as with the Wal Capital scheme,
17 TGC customer deposits did not always make it to their intended location. Rather,
18 customer deposits were used to pay back other customers and for the business
19 expenses of the Phan Common Enterprise. Moreover, Phan did not trade or
20 instruct her agents to trade the TGC pool funds between at least December 2009
21 and August 2010, and failed to inform TGC pool participants that their funds were
22 not being traded. Despite this, TGC, through Phan, continued to post monthly
23 trading profits of 3-5% in the customer accounts during this time period and altered
24 the balances posted on the TGC website to reflect this fictional profit as well.
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1 Moreover, as discussed above, TGC, through Phan, also altered the balances
2 posted on the TGC website to reflect the intended customer deposits of funds,
3 despite the fact that some if not all of the customer funds had been diverted.
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5 33. Phan, acting on behalf of and through the Phan Common Enterprise,
6 employed a myriad of accounting devices in order to perpetrate the fraudulent
7 schemes, including: using personal and corporate bank accounts not associated
8 with the Phan Common Enterprise; cash transactions; incorporation of numerous
9 US and international legal entities through which to funnel cash; US and
10 international trading accounts; and using the assistance of other individuals to
11 make such transactions so they could not be directly traced to the Phan Common
12 Enterprise and Phan.
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16 34. When Wal Capital customers and TGC pool participants made
17 withdrawal requests, Phan, herself and through the Phan Common Enterprise, paid
18 customers through various bank accounts. These bank accounts included the Wal
19 Capital corporate bank account and bank accounts registered to other companies
20 owned or controlled by Phan. On occasion, Phan paid customers with cash, either
21 directly or funneled through the personal bank accounts of Phan's associates. As
22 discussed above, often customer pay outs did not originate from the withdrawing
23 customer's account, but instead from incoming customer deposits.
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27 35. In many instances, however, customer withdrawal requests were not
28 honored. During the course of her operation of Wal Capital and TGC, Phan,

1 herself and through the Phan Common Enterprise, gave customers who asked to
2 withdraw funds various excuses and false assurances when the withdrawal requests
3 were not met. For example, Phan told customers and pool participants that: 1)
4 withdrawals were delayed because there were “stuck positions” in the account and
5 the funds could not be withdrawn before those positions were closed; 2)
6 withdrawals were delayed because the funds were overseas and foreign authorities
7 restricted fund transfers; and 3) withdrawals were delayed to avoid scrutiny by
8 U.S. authorities. Additionally, Phan, herself and through Phan Common
9 Enterprise, falsely promised customers that their withdrawals would be met by
10 various dates, but in fact, Phan and the Phan Common Enterprise failed to honor
11 the withdrawal requests as promised. In many instances, Wal Capital did not have
12 the funds to repay the customers because Defendants had misappropriated them to
13 pay for Phan Common Enterprise business expenses and prior customer
14 withdrawals. Phan’s assurances that the funds would be returned and the excuses
15 for the delays were therefore false and misleading.
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1 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**
2 **AND CFTC REGULATIONS**

3 **COUNT ONE**

4 **VIOLATIONS OF SECTIONS 4b(a)(1)(A) and (C) and**
5 **REGULATIONS 5.2(b)(1) and (3)**

6 **FRAUD BY MISAPPROPRIATION AND FRAUDULENT SOLICITATION**
7

8 **ALL DEFENDANTS**

9 36. The allegations set forth in paragraphs 1 through 35 are re-alleged and
10 incorporated herein by reference.
11

12 37. Sections 4b(a)(2)(A) and (C) of the CEA, 7 U.S.C. §§ 6b(a)(2)(A) and
13 (C) (2012), make it unlawful:
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15 for any person, in or in connection with any order to make, or the making of,
16 any contract of sale of any commodity in interstate commerce or for future delivery
17 . . . that is made, or to be made, for or on behalf of, or with, any person other than
18 on or subject to the rules of the designated contract market -- (A) to cheat or
19 defraud or attempt to cheat or defraud the other person; . . . (C) willfully to deceive
20 or attempt to deceive or attempt to deceive the other person by any means
21 whatsoever in regard to any order or contract or the disposition or execution of any
22 order or contract, or in regard to any act of agency performed, with respect to any
23 order or contract for or, in the case of [this] paragraph (2), with the other person . . .
24 . . .

25 38. Pursuant to Section 2(c)(2)(C)(iv) of the CEA, 7 U.S.C. §
26 2(c)(2)(C)(iv) (2012), Section 4b of the CEA applies to Defendants' forex
27 transactions "as if" they were contracts of sale of a commodity for future delivery.
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29 39. Effective October 18, 2010, Regulations 5.2(b)(1) and (3) provide that
30 it shall be unlawful:
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1 For any person, by use of the mails or by any means or instrumentality
2 of interstate commerce, directly or indirectly, in or in connection with
3 any retail forex transaction: (1) To cheat or defraud or attempt to cheat
4 or defraud any person; ... (3) Willfully to deceive or attempt to
deceive any person by any means whatsoever.

5 40. As set forth above, during the Relevant Period, in or in connection
6 with off-exchange agreements, contracts, or transactions in foreign currency that
7 are leveraged or margined, made or to be made, for or on behalf of, or with, other
8 persons, violated Sections 4b(a)(2)(A) and (C) of the CEA, 7 U.S.C. §§
9 6b(a)(2)(A) and (C) (2012), and, as of October 18, 2010, the Defendants violated
10 Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2(b)(1) and (3) (2013), by, among
11 other things: (1) misappropriating customers' and pool participants' funds; (2)
12 misrepresenting that customers' and pool participants' funds would be used for
13 their intended purposes; and (3) misrepresenting the experience and success of
14 Defendant Phan and her trading system.
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18 41. Phan, herself and through the Phan Common Enterprise, engaged in
19 the acts and practices alleged above knowingly, willfully or with reckless disregard
20 for the truth.
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22 42. During the Relevant Period, Phan directly or indirectly, controlled the
23 Corporate Defendants and did not act in good faith, or knowingly induced, directly
24 or indirectly, the acts constituting the Phan Common Enterprise violations of
25 Sections 4b(a)(2)(A) and (C) of the CEA, 7 U.S.C. §§ 6b(a)(2)(A) and (C) (2012),
26 and Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2 (b)(1) and (3) (2013). Phan is
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1 therefore liable for these violations pursuant to Section 13(b) of the CEA, 17
2 U.S.C. § 13c(b) (2012) to the same extent as the Phan Common Enterprise.
3

4 43. The foregoing misappropriation, fraudulent acts, misrepresentations,
5 and omissions of Phan occurred within the scope of her employment, office or
6 agency with the Corporate Defendants. Therefore, pursuant to Section 2(a)(1)(B)
7 of the CEA, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2
8 (2013), the Corporate Defendants are liable for Phan's violations of Sections
9 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C) (2012), and
10 Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2 (b)(1) and (3) (2013).
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13 44. Each act of misappropriation, fraudulent solicitation,
14 misrepresentation, or omission of material fact, including but not limited to those
15 specifically alleged herein, is alleged as a separate and distinct violation of
16 Sections 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C) (2012),
17 and Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2 (b)(1) and (3) (2013).
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20 **COUNT TWO**

21 **VIOLATIONS OF SECTION 4o(1) OF THE CEA**

22 **FRAUD BY A COMMODITY POOL OPERATOR**

23 **DEFENDANT PHAN**

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25 45. The allegations set forth in paragraphs 1 through 35 are re-alleged and
26 incorporated herein by reference.
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28 46. Section 4o(1) of the CEA, 7 U.S.C. § 6o(1) (2012), prohibits CPOs

1 and from using the mails or any other means of interstate commerce to:

2 (A) employ any device, scheme or artifice to defraud any
3 client or participant or prospective client or participant;
4 or

5 (B) engage in any transaction, practice or course of
6 business which operates as a fraud or deceit upon any
7 client or participant or prospective participant.

8 47. As set forth above, during the relevant period, Phan acted as a CPO by
9 soliciting, accepting, or receiving funds from others while engaged in a business
10 that is of the nature of an investment trust, syndicate, or similar form of enterprise,
11 for the purpose of, among other things, trading in futures.
12

13 48. Phan violated Section 4o(1) of the CEA, 7 U.S.C. § 6o(1) (2012), in
14 that she employed or is employing a device, scheme or artifice to defraud pool
15 participants and prospective pool participants or engaged or are engaging in
16 transactions, practices, or a course of business which operated or operates as a
17 fraud or deceit upon the pool participants or prospective pool participants. The
18 fraudulent acts include (1) misappropriating pool participants' funds; (2)
19 misrepresenting that pool participants' funds would be used for their intended
20 purposes; (3) guaranteeing profits to pool participants and (4) misrepresenting the
21 experience and success of Defendant Phan and her trading system.
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25 49. Each act of misappropriation, fraudulent solicitation,
26 misrepresentation, or omission of material fact, including but not limited to those
27 specifically alleged herein, is alleged as a separate and distinct violation of Section
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1 4o(1) of the CEA, 7 U.S.C. § 6o(1) (2012).

2 **COUNT THREE**

3 **VIOLATION OF SECTION 4M(1) OF THE CEA**

4 **FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR**
5 **DEFENDANT PHAN**

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7 50. The allegations set forth in paragraphs 1 through 35 are re-alleged and
8 incorporated herein by reference.

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10 51. Section 4m(1) of the CEA, 7 U.S.C § 6m(1) (2012), provides that it is
11 unlawful for any CPO, unless registered, to make use of the mails or any means or
12 instrumentality of interstate commerce in connection with its business as a CPO.

13
14 52. As set forth above, during the Relevant Period, Phan used the mails or
15 instrumentalities of interstate commerce in or in connection with a commodity pool
16 as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the
17 CEA, 7 U.S.C. § 6m(1) (2012).

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19 53. Each use of the mails or any means or instrumentality of interstate
20 commerce by Phan, while acting as a CPO including but not limited to those
21 specifically alleged herein, is alleged as a separate and distinct violation of Section
22 4m(1) of the CEA, 7 U.S.C. § 6m(1) (2012).

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VI. RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court, as authorized by Section 6c of the CEA, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers enter:

A. An order finding that:

1. Defendants violated Sections 4b(a)(2)(A) and (C) of the CEA, 7 U.S.C. §§ 6b(a)(2)(A) and (C) (2012), and, as of October 18, 2010, violated Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2(b)(1) and (3) (2013); and

2. Phan violated Sections 4o(1) and 4m(1) of the CEA, 7 U.S.C. §§ 6o(1) and 6m(1) (2012);

B. An order of permanent injunction prohibiting:

1. Defendants and any of their affiliates, agents, servants, employees, successors, assigns, attorneys and persons in active concert with them who receive actual notice of such order by personal service or otherwise, from engaging, directly or indirectly, from engaging in conduct in violation of Sections 4b(a)(2)(A) and (C) of the CEA, 7 U.S.C. §§ 6b(a)(2)(A) and (C) (2012), and, Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2(b)(1) and (3) (2013);

2. Phan and any of her affiliates, agents, servants, employees, successors, assigns, attorneys and persons in active concert with her who receive actual notice of such order by personal service or otherwise, from

1 engaging, directly or indirectly, from engaging in conduct in violation of
2 Sections 4o(1) and 4m(1) of the CEA, 7 U.S.C. §§ 6o(1) and 6m(1) (2012);

3
4 C. An order of permanent injunction prohibiting Defendants and any of
5 their affiliates, agents, servants, employees, successors, assigns, attorneys and
6 persons in active concert with them who receive actual notice of such order by
7 personal service or otherwise, from engaging, directly or indirectly, from
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9 1. trading on or subject to the rules of any registered entity, as that
10 term is defined in Section 1a(40) of the CEA, 7 U.S.C. § 1a (2012);

11
12 2. entering into any transactions involving commodity futures,
13 options on commodity futures, commodity options (as that term is defined in
14 Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2013)) (“commodity options”),
15 swaps (as that term is defined in Section 1a(47) of the CEA, and as further
16 defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012)) (“swaps”),
17 security futures products and/or foreign currency (as described in Sections
18 2(c)(2)(B) and 2(c)(2)(C)(i) of the CEA, 7 U.S.C. §§ 2(c)(2)(B) and
19 2(c)(2)(C)(i) (2012)) for their own personal account or for any account in
20 which they have a direct or indirect interest;
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24 3. having any commodity futures, options on commodity futures,
25 commodity options, swaps, security futures products, and/or forex traded on
26 their behalf;
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1 4. controlling or directing the trading for or on behalf of any other
2 person or entity, whether by power of attorney or otherwise, in any account
3 involving commodity futures, options on commodity futures, commodity
4 options, swaps, security futures products, and/or forex;
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6 5. soliciting, receiving, or accepting any funds from any person
7 for the purpose of purchasing or selling any commodity futures, options on
8 commodity futures, commodity options, swaps, security futures products,
9 and/or forex contracts;
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11 6. applying for registration or claiming exemption from
12 registration with the Commission in any capacity, and engaging in any
13 activity requiring such registration or exemption from registration with the
14 Commission, except as provided for in Commission Regulation 4.14(a)(9),
15 17 C.F.R. § 4.14(a)(9) (2013);
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17 7. acting as a principal (as that term is defined in Commission
18 Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2013)), agent or any other officer or
19 employee of any person (as the term “person” is defined in Section 1a(38) of
20 the CEA, 7 U.S.C. § 1a(38) (2012)) registered, required to be registered or
21 exempted from registration with the Commission, except as provided for in
22 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2013);
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24 D. An order directing Defendants to pay civil monetary penalties under
25 Section 6c of the CEA, to be assessed by the Court separately against each of them,
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1 in amounts not more than the higher of \$140,000 for each violation, or triple the
2 monetary gain to Defendants for each violation of the CEA or Regulations;

3
4 E. An order directing Defendants to disgorge, pursuant to such procedure
5 as the Court may order, all benefits including, but not limited to, salaries,
6 commission, loans, fees, revenues and trading profits derived, directly or
7 indirectly, from the acts or practices that constitute violations of the CEA or
8 Regulations, as described here, and pre- and post- judgment interest thereon from
9 the date of such violations;
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11
12 F. An order directing Defendants to make full restitution to every person
13 or entity whose funds Defendants received or caused another person or entity to
14 receive as a result of acts and practices that constitute violations of the CEA or
15 Regulations, as described herein, and pre- and post- judgment interest thereon from
16 the date of such violations;
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19 G. An order directing Defendants, and any successors thereof, to rescind,
20 pursuant to such procedures as the Court may order, all contracts and agreements,
21 whether implied or express, entered into between a Defendant and any of the
22 customers whose funds the Defendant received as a result of the acts and practices
23 that constitute violations of the CEA or Regulations, as described herein;
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25 H. An order requiring Defendants to pay costs and fees as permitted by
26 28 U.S.C. §§ 1920 and 2412 (2012); and
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28 I. Such further relief as the Court deems appropriate.

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Dated:

ATTORNEYS FOR THE PLAINTIFF
U.S. COMMODITY FUTURES
TRADING COMMISSION

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