UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 23-81320-CIV-CANNON

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

MOSAIC EXCHANGE LIMITED and **SEAN MICHAEL**,

Defendants.
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL DEFAULT JUDGMENT AND DENYING DEFAULTED DEFENDANT MICHAEL'S MOTION FOR HEARING

THIS CAUSE comes before the Court upon the Motion for Default Final Judgment ("Motion"), filed by Plaintiff Commodity Futures Trading Commission on August 9, 2024 [ECF No. 29]. The Court has reviewed the Motion and supporting attachments, Plaintiff's Supplement [ECF No. 44], and the entire record. Following such review, the Motion is **GRANTED** against both Defendants because (1) Defendants are in default and have not presented good cause to vacate the default; (2) the Complaint sets forth plausible claims for relief under the Commodity Exchange Act, and (3) Plaintiff has made an adequate showing to support the requested injunctive, equitable, and monetary relief. Defendant Sean Michael's "Motion for Hearing and Permission to Provide Testimony Under Oath; Request to Prevent or Vacate Default Judgment" ("Michael's Motion for Hearing") [ECF No. 46] is also **DENIED**.

FACTUAL BACKGROUND[1]

In September 2023, Plaintiff filed a three-count Complaint against two Defendants: Mosaic Exchange Limited ("Mosaic") and Sean Michael ("Michael") [ECF No. 1]. Plaintiff is an independent federal regulatory agency charged with administering and implementing the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (the "CEA"), and its accompanying regulations [ECF No. 1 ¶ 13]. Mosaic is an LLC registered in Pennsylvania that operates as a cryptocurrency exchange and trading platform [ECF No. 1 ¶¶ 14, 24]. Michael is Mosaic's sole owner, principal, and CEO [ECF No. ¶ 24]. Default was entered against Michael and Mosaic on July 24, 2024 [ECF No. 22].

Broadly speaking, the Complaint alleges that, from about February 2019 to June 2021, Defendants fraudulently solicited and induced customers to transfer Bitcoin (a digital asset commodity) and other funds to Mosaic, and Defendants then traded contracts on digital asset commodities on behalf of customers through pooled and individual accounts [ECF No. 1 ¶¶ 1–10; ¶¶ 27–34, 38–42 (explaining how Defendants' business operates); ¶¶ 35–36 (describing how Mosaic opened "pools" and individual accounts for customers with top cryptocurrency exchanges such as BitMEX and Binance)]. Mosaic was acting as a "Commodity Pool Operator" ("CPO"), while Michael was acting as the "Associated Person" ("AP") of Mosaic [ECF No. 1 ¶¶ 2, 20–21].[2] More specifically, Defendants fraudulently solicited and induced customers into transferring Bitcoin and other funds to Mosaic by claiming to have tens of millions of dollars in assets under management, an algorithm that produced profit margins of up to 60%, and partnerships with

[1] This factual background is taken from the well-pled allegations in Plaintiff's Complaint [ECF No. 1], which are deemed admitted in this default posture. *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005) (internal quotations omitted).

[2] A CPO and an AP are defined in the Act and its regulations. *See infra* p. 12.

BitMEX and Binance [ECF No. 1 ¶¶ 43–44]. In reality, however, Defendants only had $700,000 in combined total funds; the algorithm never consistently worked, never generated the represented profits, and was ultimately abandoned; and Defendants did not have a partnership or agreement with BitMEX or Binance [ECF No. 1 ¶¶ 46–67]. Plaintiff also alleges that Michael used some customer funds to pay for personal expenditures at hotels and restaurants, and that Mosaic's BitMEX and Binance accounts—into which Defendants put customers' money—never realized a profit from trading but instead lost money during every month [ECF No. 1 ¶¶ 72, 80–82, 92–96].

Based on this conduct, Plaintiff alleges that Defendants violated three separate provisions of the Act:

- fraud in connection with futures and/or swaps, in violation of 7 U.S.C. § 6(b)(2)(A), (C) [ECF No. 1 ¶¶ 110–119];
- fraud by a CPO and an AP of a CPO, in violation of 7 U.S.C. § 6o and 17 C.F.R. § 4.41 [ECF No. 1 ¶¶ 120–130]; and
- commodity fraud by deceptive devices, in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a) [ECF No. 1 ¶¶ 131–140].

Plaintiff also seeks to hold Mosaic liable for the acts of Michael as Mosaic's agent under 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 [ECF No. 1 ¶¶ 7, 22, 117, 128, 138], and vice versa [ECF No. 1 ¶¶ 98–105, 118, 129, 139]. Plaintiff seeks permanent injunctive relief, including prohibiting Defendants from trading commodities or engaging in related conduct; disgorgement of benefits; restitution; and civil penalties [ECF No. 1 pp. 31–33].

PROCEDURAL HISTORY

To frame the default posture of this case, and in light of Defendants' noncompliance with Court orders, the Court recounts the pertinent procedural history of this case below.

Plaintiff initiated this action on September 26, 2023 [ECF No. 1]. On December 1, 2023, seeing no proof of service, the Court ordered Plaintiff to perfect service on Defendants

[ECF No. 9]. Plaintiff timely responded with a request for additional time to effectuate service, noting its extensive efforts in attempting to serve Defendants—including eighteen attempts at nine different domestic addresses and three international addresses [ECF No. 10]. The Court granted the extension request, setting a new service deadline of March 25, 2024 [ECF No. 11]. On February 2, 2024, Plaintiff filed proof of service as to Defendant Mosaic via its registered agent [ECF No. 12]. And shortly thereafter, the Court granted Plaintiff's Motion to Authorize Substituted Service on Michael via the Florida Secretary of State as prescribed by Fla. Stat. §§ 48.161, 48.181 [ECF Nos. 14–15].

On May 24, 2024, with Defendant Mosaic already served, Plaintiff moved for an order deeming Defendant Michael served under Fla. Stat. §§ 48.161 and 48.181 [ECF No. 16]. An Amended Motion followed, further documenting Plaintiff's compliance with the requirements of substituted service under Florida law [ECF No. 18; ECF No. 18-1]. The Court ultimately granted Plaintiff's Amended Motion, ordering Defendants to file a single combined response or separate answers by July 9, 2024 [ECF No. 19].

Defendants' response deadline passed with no action or appearance from either Defendant, so Plaintiff moved for entry of a Clerk's default as to both Defendants, which the Clerk granted [ECF Nos. 21–22]. Plaintiff then filed the instant Motion for Final Default Judgment, which contains over 250 pages of exhibits and a proposed order [ECF Nos. 29, 29-1–29-3].

On August 12, 2024—60 days after Michael was deemed served, and almost 200 days after Mosaic was served—Michael filed a pro se Motion to Dismiss for Insufficient Service of Process and Failure to State a Claim [ECF No. 30]. The motion purported to be filed by both Defendants but was signed by Michael only [ECF No. 30].[3] In the motion, Michael claimed that service was

[3] Michael also contemporaneously filed a Motion for Referral to Volunteer Attorney Program,

improper because he had been living in Indonesia for years and only learned of the case when he returned to the United States in July 2024 [ECF No. 30 p. 1]. He also said that service on Mosaic's registered agent was improper because "the registered agent had not been active since 2020" [ECF No. 30 p. 2].

In response to Defendant Michael's filings, and to facilitate communication with Michael, the Court directed him to consent to receive electronic filings by September 3, 2024 [ECF No. 33]. Michael never complied. The Court also denied Defendants' Motion to Dismiss without prejudice; required Mosaic to retain counsel as a corporate entity [ECF No. 35 (citing *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985)]; and set September 10, 2024, as the deadline to file a motion to set aside the previously entered default [ECF No. 35]. Defendants never complied with these Court orders.

Next came another pro se motion filed by Defendant Michael on September 9, 2024, in which he moved for a 90-day extension of time "to secure [an] attorney, review case documents, and request restraining order damages" [ECF No. 39, 39-1].[4] Michael also sought a restraining order seeking to "prevent[] future visits to [his] home or further attempts to serve" him [ECF No. 39-1], despite previously seeking dismissal of the case for insufficient service [ECF No. 30]. Plaintiff opposed Michael's motion, arguing that Michael had not shown good cause for an additional extension given the time already provided by the Court and his failure to comply with Court deadlines [ECF No. 40]. Plaintiff also stressed that neither Defendant filed a motion to set aside the Clerk's default by the September 10, 2024, deadline [ECF No. 40].

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which the Court granted [ECF Nos. 31, 37].

[4] This motion appears to be brought by Michael only; he listed himself as the only Defendant in the case caption, argued on behalf of himself only, and signed it himself [ECF Nos. 39, 39-1].

On October 2, 2024, against the backdrop of the foregoing procedural history, the Court granted in part Defendant Michael's September 9 motion and afforded even more time for compliance [ECF No. 41]. The Court ordered Michael to complete and file the pro se consent-to-NEFs form by October 12, 2024, warning that no additional extensions would be granted [ECF No. 41 p. 3]. The Court directed Mosaic to retain counsel by an extended deadline October 18, 2024, emphasizing the mandatory nature of the requirement [ECF No. 41 p. 4]. And the Court provided a final extension until October 30, 2024, for the filing of "[a]ny motion to vacate default under Rule 55(c)" [ECF No. 41 p. 4]. The Court denied Michael's motion to the extent that it sought a restraining order and warned that failure to comply could result in entry of final default judgment without further notice [ECF No. 41 p. 4].

After the October 12 and 18 deadlines passed without compliance by Defendants—and without any motion from Defendants for vacatur of the default—Plaintiff filed a Supplement in Support of its Motion for Final Default Judgment, arguing that Defendants' failure to comply with Court orders provided another basis for default final judgment [ECF No. 44 pp. 6–8].

But this was not the end. On November 12, 2024, Michael filed a pro se "Motion for Hearing and Permission to Provide Testimony Under Oath; Request to Prevent or Vacate Default Judgment" [ECF No. 46].[5] The motion does not directly address any of the Court's previous Orders [ECF Nos. 35, 41], but instead asks "to present testimony under oath to provide clarity and establish that there was no fraudulent intent or wrongdoing on [his] part" [ECF No. 46 p. 3]. Plaintiff opposes the motion, arguing that it is untimely and meritless and does not establish good cause to set aside the valid default or to warrant a hearing [ECF No. 47]. Michael did not file a

[5] The motion, like his previous one [ECF No. 39-1], is brought by Michael only [ECF No. 46]. He labels the case "Sean Michael v. CFTC" and does not mention Mosaic at any point in the motion [ECF No. 46].

reply, and there has been no other filing since Plaintiff's response [ECF No. 47].

LEGAL STANDARDS

Federal Rule of Civil Procedure 55(b)(2) allows a court to enter a default judgment against a properly served defendant, who, like Defendants here, fail to file a timely responsive pleading. *See* Fed. R. Civ. P. 55(b)(2). By defaulting, a defendant admits all of plaintiff's well-pled allegations in the Complaint and "is barred from contesting on appeal the facts thus established." *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009). But a defendant's default "does not in itself warrant . . . entering a default judgment." *Fanatics, LLC v. Fanaticcheaps.com*, No. 24-60656, 2024 WL 4345842, at *6 (S.D. Fla. Sep. 30, 2024). If the admitted facts in the complaint establish liability—the standard for which is Rule 12(b)(6)—the Court can determine appropriate damages. *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1245 (11th Cir. 2015) ("Conceptually, then, a motion for default judgment is like a reverse motion to dismiss for failure to state a claim.").

The court "may set aside an entry of default for good cause." Fed. R. Civ. P. Rule 55(c). "'Good cause' is a mutable standard, varying from situation to situation." *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996). While "not susceptible to a precise formula," courts consider "whether the default was culpable or willful, whether setting it aside would prejudice the adversary, and whether the defaulting party presents a meritorious defense." *Id.* Courts also consider whether the defaulting party "acted promptly to correct the default." *Id.* "However, if a party willfully defaults by displaying either an intentional or reckless disregard for the judicial proceedings, the court need make no other findings in denying relief." *Id.* at 951–52.

To satisfy Rule 12(b)(6), a complaint must allege facts that, if accepted as true, "state a

claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see* Fed. R. Civ. P. 12(b)(6). A claim for relief is plausible if the complaint contains factual allegations that allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id*. (quoting *Twombly*, 550 U.S. at 545).

DISCUSSION

I. Defendants remain in default and have not shown good cause to vacate the default.

As the procedural history outlined above demonstrates, Defendants remain in default as of July 12, 2024 [ECF No. 22] and have not shown good cause to set aside that default, even construing Michael's November 12, 2024 Motion for Hearing as a proper motion under Rule 55(c) [ECF No. 22]. Although Michael mentions "work obligations, financial constraints, and logistical challenges" in general terms [ECF No. 46 p. 4], he never directly addresses the Court's previous Orders; he does not adequately account for his rampant noncompliance; and he provides no basis to believe that he acted promptly to correct the default. *See Compania Americana*, 88 F.3d at 951–52; *see also Savoia-McHugh v. Glass*, 95 F.4th 1337, 1342–43 (11th Cir. 2024). This conclusion is bolstered by Michael's reckless disregard for the judicial proceeding as outlined above and Defendants' overall failure to appear. A court "has the authority to enter default judgment for failure . . . to comply with its orders or rules of procedure," *Wahl v. McIver*, 773 F.3d 1169, 1174 (11th Cir. 1985), and that is the case here. Defendants appeared, improperly, for the first time after the Clerk entered default, and since then have been given ample opportunity to comply through clearly worded warnings and various extensions [*see* ECF Nos. 22, 30, 33, 35, 41]. Despite that grace, Defendants still have not complied with a single Court order, choosing

instead to file another procedurally improper motion [ECF No. 46]. Nor has Mosaic appeared or retained counsel as repeatedly ordered to do so [ECF Nos. 35, 41]. On this record, the Court sees no basis to vacate the properly entered default as to both Defendants [ECF No. 22].

II. The Complaint states plausible claims for relief.

Having confirmed that Defendants are, and remain, in default, the Court now considers Plaintiff's Motion on the merits and agrees with Plaintiff that default judgment on all claims is appropriate [ECF No. 29].

Plaintiff's Complaint states three plausible claims for relief: (1) fraud in connection with futures and/or swaps, in violation of 7 U.S.C. § 6b(a)(2)(A) and (C); (2) fraud by a CPO and an AP of a CPO, in violation of 7 U.S.C. § 6o, and deceptive advertising, in violation of 17 C.F.R. § 4.41; and (3) fraud by deceptive devices or contrivances, in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a) [ECF No. 1].

A. Count 1: Fraud in connection with futures and/or swaps, in violation of 7 U.S.C. § 6b(a)(2)(A) and (C)

Section 4b of the CEA, 7 U.S.C. § 6b(a)(2)(A) and (C), makes it unlawful

> for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market–(A) to cheat or defraud or attempt to cheat or defraud the other person . . . [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract[.]

7 U.S.C. § 6b(a)(2)(A), (C).

Plaintiff must prove three elements to establish Defendants' liability under this section—"(1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality." *Commodity Futures Trading Comm'n v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002). Plaintiff has plausibly alleged all three elements.

First, Plaintiff alleges three specific misrepresentations or misleading statements by

Defendants: (i) that Mosaic had $30 million to $120 million in assets under management [ECF No. 1 ¶¶ 44, 46–47, 115]; (ii) that Mosaic had historically earned specific monthly profits and that Mosaic's algorithm had specific "win" rates [ECF No. 1 ¶¶ 44, 48–65, 115]; and (iii) that Mosaic had a partnership agreement with BitMEX and Binance as well as a broker agreement with Binance [ECF No. 1 ¶¶ 44, 66–67, 115]. The first statement was false because Mosaic did not have $30 to $120 million in assets under management but rather had a combined total of less than $700,000 [ECF No. 1 ¶ 47]. The second was false because Mosaic did not generate win rates as represented but rather hypothetical projections—i.e., not actual trading [ECF No. 1 ¶¶ 58–61]. Moreover, the trading records show that Mosaic did not generate profits as it represented; in fact, Mosaic's BitMEX account never realized a profit from the trading but instead consistently lost money [ECF No. 1 ¶¶ 60, 80]. Finally, the third statement was false because Mosaic never had a partnership or broker agreement with Binance or BitMEX [ECF No. 1 ¶¶ 66–67]. Plaintiff has therefore plausibly pled element one.

Second, Plaintiff has plausibly alleged scienter in the making of such statements. Scienter is "established if Defendant intended to defraud, manipulate, or deceive, or if Defendant's conduct represents an extreme departure from the standards of ordinary care." *R.J. Fitzgerald & Co.*, 310 F.3d at 1328; *Commodity Futures Trading Comm'n v. S. Tr. Metals, Inc.*, 894 F.3d 1313, 1327 (11th Cir. 2018) ("[T]his circuit has stated that scienter is shown 'when Defendant's conduct involves highly unreasonable omissions or misrepresentations . . . that present a danger of misleading [customers] which is either known to the Defendant or so obvious that Defendant must have been aware of it'" (quoting *R.J. Fitzgerald & Co.*, 310 F.3d at 1328)). Taken as true, Plaintiff's well-pled factual allegations suffice to show that Defendants had the requisite scienter. Mosaic's trading accounts and other records plainly contradicted many of Defendants'

representations, such as their assets under management, relationships with BitMEX and Binance, and supposed profits [ECF No. 1 ¶¶ 56, 62, 65, 67, 116]. For example, Plaintiff alleges that despite advertising high profit rates, one account never realized a profit but instead lost over $300,000 [ECF No. 1 ¶ 80]. Given the wide gap between these repeated misrepresentations and reality, Plaintiff has adequately alleged that Defendant Michael, as the sole owner and CEO of Mosaic, knew or obviously should have known that such statements were false or misleading to customers. *See R.J. Fitzgerald & Co.*, 310 F.3d at 1328.

Finally, Plaintiff has plausibly alleged materiality. "A representation or omission is 'material' if a reasonable investor would consider it important in deciding whether to make an investment." *R.J. Fitzgerald & Co.*, 310 F.3d at 1328–29; *see also Commodity Futures Trading Comm'n v. Commonwealth Fin. Gr.*, 874 F. Supp. 1345, 1354 (S.D. Fla. 1994) ("Information regarding risk and profit potential is material because an investor would rely on such representations made by a broker in determining whether to invest."). Plaintiff alleges that Mosaic "touted on its website" that it had partnerships with Binance and BitMEX [ECF No. 1 ¶ 66]. Plaintiff further avers that Mosaic represented its algorithm and profits to future customers, and that customers in fact transferred funds to Mosaic [ECF No. 1 ¶¶ 62–63, 70–71, 115–16]. Accepting these allegations, Plaintiff has plausibly alleged element three.

Having met all three elements, the Court finds that Plaintiff has plausibly alleged fraud in violation of 7 U.S.C. § 6b(a)(2)(A) and (C).

B. Count 2: Fraud by a CPO and an AP of a CPO, in violation of 7 U.S.C. § 6o, and deceptive advertising, in violation of 17 C.F.R. § 4.41

Section 4o of the CEA, 7 U.S.C. § 6o(1), makes it unlawful for a

> commodity pool operator, or associated person of a commodity pool operator, 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 participant or prospective client or participant; or (B) to engage in any transaction,

> practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

7 U.S.C. § 6o(1)(A)–(b). The implementing regulations in turn prohibit a CPO or principal of a CPO from "advertis[ing] in a manner which (1) [e]mploys any device, scheme[,] or artifice to defraud any participant or client or prospective participant or client; [or] (2) involves any transaction, practice or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client." 17 C.F.R § 4.41(a)(1)–(2).

As a threshold definitional matter, Plaintiff has plausibly alleged that these provisions apply to Defendants in this case because Mosaic is a CPO as defined in the statute and Michael is an AP as defined in the statute. A CPO is defined, in part, as any person "engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities." 7 U.S.C. § 1a(11). An AP is defined as any "partner, officer, or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) The solicitation or acceptance of customers' orders . . . or (ii) the supervision of any person or persons so engaged." 17 C.F.R. § 1.3. Applied here, Mosaic is a CPO because it solicited, accepted, and received Bitcoin and other funds from customers for the purpose of trading commodities relating to digital assets through pooled accounts, including futures and/or swaps and leveraged or margined transactions as described in 7 U.S.C. § 23(c)(2)(D) [ECF No. 1 ¶¶ 27, 35–36, 44, 68–69, 123]. Plaintiff has also plausibly alleged that Michael is an AP of Mosaic because he was Mosaic's owner and CEO who solicited funds directly from customers for Mosaic to engage in futures trading [ECF No. 1 ¶¶ 24, 45 (alleging that Michael directly solicited at least 17 people), 49–51, 86, 98–105 (allegations of Michael's control over Mosaic)].

Turning to the merits of Count 2, Plaintiff has plausibly alleged violations of 7 U.S.C. § 6o and 17 C.F.R § 4.41. First, Mosaic and Michael solicited and made material misleading statements on Mosaic's website, in advertisements to social media platforms, on job postings, and in direct communications via email [ECF No. 1 ¶¶ 27, 29, 33–34, 43–44, 48, 59, 66, 99]. Second, for many of the same reasons as stated above in connection with Count 1, and accepting Plaintiff's well-pled allegations, the Complaint contains sufficient facts plausibly establishing that Defendants acted with the requisite intent to defraud Mosaic's customers under 7 U.S.C. § 6o(1) [ECF No. 47, 58–62, 66–67, 80, 116, 127]. *See Messer v. E.F. Hutton & Co.*, 847 F.2d 674, 677–78 (11th Cir. 1988) (concluding that "proof of a violation of § 6o(1)(A) requires proof of scienter). For example, Mosaic's trading accounts and other records clearly contradicted many of Defendants' representations, such as their assets under management, relationships with BitMEX and Binance, and supposed profits [ECF No. 1 ¶¶ 56, 62, 65, 67, 116]. Plaintiff has thus sufficiently pled fraud by a CPO and an AP of a CPO, in violation of 7 U.S.C. § 6o, and deceptive advertising, in violation of 17 C.F.R. § 4.41.

C. Count 3: Fraud by deceptive devices or contrivances, in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)

Section 6(c) of the CEA, 7 U.S.C. § 9(1), makes it unlawful for any person

> directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate.

7 U.S.C. § 9(1). The applicable regulation, 17 C.F.R. § 180.1, in turn enumerates various forms of fraudulent conduct, including the intentional or reckless use or employment of "manipulative device[s], scheme[s], or artifice[s] to defraud;" the making, or attempted making, of "any untrue or misleading statement of a material fact"; engaging in "fraud or deceit upon any person"; and

the delivery of "false or misleading or inaccurate report[s]" affecting commodity prices. 17 C.F.R. § 180.1(a)(1)–(4).

The Eleventh Circuit has explained that "7 U.S.C. § 6b(a) [Count 1 here], 7 U.S.C. § 9, and 17 C.F.R. § 180.1 are redundant" and contain the same elements as recited earlier: (1) the making of a misrepresentation, misleading statement, or deceptive omission; (2) scienter; and (3) materiality. *Southern Trust Metals*, 894 F.3d at 1325; *R.J. Fitzgerald & Co.*, 310 F.3d at 1328. As described above, *see supra* pp. 9–11, Plaintiff has adequately pled those requirements.

D. Derivative Liability

Under 7 U.S.C. § 13c(b),

> Any person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.

7 U.S.C. § 13c(b).

"A fundamental purpose of Section [13c(b)] is to allow the Commission to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as the corporation itself." *JCC, Inc. v. Commodity Futures Trading Comm'n*, 63 F.3d 1557, 1567 (11th Cir. 1995) (internal quotations and citation omitted). To succeed on a derivative-liability claim under § 13c(b), Plaintiff "must show that Defendant, as a controlling person, did not act in good faith *or* knowingly induced, directly or indirectly, the conduct which constitutes a violation of the Act." *R.J. Fitzgerald & Co.*, 310 F.3d at 1334. To satisfy this standard, Plaintiff "must show that the controlling person had actual or constructive knowledge of the core activities that make up the violation at issue and allowed them to continue." *Id.* (citing *JCC, Inc.*, 63 F.3d at 1568). "Section 13c(b), therefore,

is about power, and imposing liability for those who fail to exercise it to prevent illegal conduct." *Id.*

Plaintiff has plausibly alleged that Michael was the controlling person of Mosaic. Plaintiff alleges that Michael (1) was Mosaic's sole owner and CEO, (2) opened bank and trading accounts in Mosaic's name, (3) had control over the bank accounts and trading accounts, and (4) directed the trading activity for the trading accounts and executed trades on behalf of customers [ECF No. 1 ¶¶ 15, 24, 40–41, 77, 87–88, 98–105]. Plaintiff also alleges that Michael directly participated in Mosaic's core activities, including soliciting new customers; trading for current customers; and recruiting, hiring, and supervising Mosaic's staff [ECF No. 1 ¶¶ 43, 99, 102–04]. These allegations, in conjunction with the balance of the Complaint, are sufficient to allege that Michael is liable for Mosaic's violations.

Relatedly, 7 U.S.C. § 2(a)(1)(B) establishes liability for a principal for acts of an agent:

> The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

See also 17 C.F.R. § 1.2 (same); *Clayton Brokerage Co. of St. Louis, Inc. v. Commodity Futures Trading Comm'n*, 794 F.2d 573, 581 (11th Cir. 1986) ("This section provides respondeat superior and general principal-agent standards for imposing liability on employers and principals for the acts of their employees or agents." (internal quotations omitted)). Plaintiff has plausibly alleged that Mosaic is liable for Michael's violations of the Act because Michael committed violations of the Act while acting within the scope of his employment [ECF No. 1 ¶¶ 49, 72, 82, 86, 105].

II. Relief

Plaintiff seeks a permanent injunction, civil monetary penalties, restitution, and disgorgement against Defendants under 7 U.S.C. § 13a-1 [ECF No. 29 pp. 28–32]. Section 6c of

the CEA, 7 U.S.C. § 13a-1, provides various types of relief for violations of the Act. *See* 7 U.S.C. § 13a-1(b) (injunctions or restraining order); *id.* § 13a-1(c) (writs or other orders); *id.* § 13a–1(d) (civil penalties, restitution, and disgorgement). The Court addresses each requested relief in turn.

A. Injunctive Relief

Under the CEA, 7 U.S.C. § 13a–1(b), the Court may enter "a permanent or temporary injunction or restraining order" "[u]pon a proper showing." 7 U.S.C. § 13a–1(b). "[T]he ultimate test [for a permanent injunction] . . . is whether the defendant's past conduct indicates that there is a reasonable likelihood of further violations in the future." *Commodity Futures Trading Comm'n v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1346 (11th Cir. 2008). The Court must consider the following factors:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Id. (quoting *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir. 1982)); *see also Commodity Futures Trading Comm'n v. Sidoti*, 178 F.3d 1132 (11th Cir. 1999) (finding that a likelihood of future violations supported an entry of permanent injunction). The CFTC "need not prove irreparable injury or the inadequacy of other remedies as required in private injunctive suits." *Commodity Futures Trading Comm'n v. Muller*, 570 F.2d 1296, 1301 (5th Cir. 1978). The Eleventh Circuit has upheld broad injunctions that prohibit trading activity in addition to enjoining defendants from future violations. *See, e.g.*, *Wilshire Inv.*, 531 F.3d at 1346–47 (upholding district court's injunction finding that it properly considered past violations, potential for future harm, and the other factors listed above).

Plaintiff seeks to permanently enjoin Defendants from two things: (1) engaging in acts and practices in violation of 7 U.S.C. §§ 6b(a)(2)(A) and (C), 6o, 9(1), and 17 C.F.R. §§ 4.41, 180.1

[ECF No. 29 p. 30; ECF No. 29-3 pp. 29–30]; and (2) trading, transacting, or controlling any commodity interests or digital asset commodities [ECF No. 29 p. 30; ECF No. 29-3 pp. 30–31]. In other words, Plaintiff seeks to permanently enjoin Defendants (1) from violating the Act as they already have, as alleged, and (2) from engaging in conduct as a commodities trader under the Act.

The Court finds that both of Plaintiff's requested forms of permanent injunctive relief are appropriate.

First, an injunction prohibiting Defendants from violating the Act in the future is warranted because of Defendants' consistent violation of the Act as alleged in the well-pled Complaint. Applying the factors from the Eleventh Circuit—and accepting as true Plaintiff's allegations in this default posture—the Court agrees with Plaintiff that Defendants' violations of the Act were egregious in view of the materiality and degree of Defendants' misrepresentations to customers. Those misrepresentations were not isolated but rather pervasive throughout Defendants' operations during the relevant period—starting with Defendants' misleading advertisement and solicitations [ECF No. 1 ¶¶ 27–29, 34, 46–48, 50, 59] and continuing through Defendants' relationships with its customers [ECF No. 1 ¶¶ 44, 56–58, 64–65]. And, as discussed above, notwithstanding Michael's conclusory assertions in his latest Motion, Defendants acted with scienter, as reflected by the dramatic differences between the representations to customers and the reality of their operation. *See supra* pp. 10–11.

Second, an injunction permanently prohibiting Defendants from engaging in the practice of commodities trading is also warranted. *See Wilshire Inv.*, 531 F.3d at 1347 n.5 ("[I]njunctions broadly prohibiting 'commodity-related activity' have been found to be within a district court's authority."). Plaintiff argues that such an injunction is appropriate "where there is a connection between the violation and the integrity of the markets the CFTC regulate[s]"

[ECF No. 29 p. 30 (citing *Reddy v. CFTC*, 191 F.3d 109, 127 (2d Cir. 1999) ("Trading bans are appropriate where there is a nexus between the violation and the integrity of the futures market.")]. Defendants' fraud, Plaintiff argues, is a primary threat to market integrity, and a permanent ban is appropriate given the egregious nature of Defendants' intentional fraud [ECF No. 29 p. 30]. The Court agrees. Based on the gravity of Defendants' misrepresentations, there is a high "likelihood that [Defendants'] occupation will present opportunities for future violations." *Carriba Air*, 681 F.2d at 1322. Mispresenting the amount of assets under management by tens of millions of dollars, mispresenting profit margins by wide degrees, and flaunting agreements with top cryptocurrency exchanges when no such agreements exist all support a forward-looking injunction against Defendants engaging in "commodity-related activity." *See Wilshire Inv.*, 531 F.3d at 1347 n.5.

For these reasons, the Court finds permanent injunctive relief appropriate in this case and will delineate the particulars of such relief in a Final Default Judgment Order to follow.

B. Restitution

Section 6c of the CEA, 7 U.S.C. § 13a–1(d)(3)(A), enables the Court to impose restitution to compensate any "persons who have sustained losses proximately caused" by violations of the Act. 7 U.S.C. § 13a–1(d)(3)(A); *see Southern Trust Metals*, 894 F.3d at 1329. "The proper measurement is the amount that [Defendants] wrongfully gained by their misrepresentations." *Wilshire Inv.*, 51 F.3d at 1345.

Plaintiff submits that Defendants' conduct caused Mosaic customers to incur losses totaling $468,614.63 [ECF No. 29 p. 31; ECF No. 29-3 pp. 32–34]. That amount is the sum of the total principal amount of funds that eighteen Mosaic customers invested with Defendants, minus the amount that Defendants returned ($0) [ECF No. 29 p. 31]. Attached to Plaintiff's Motion is a

sworn declaration of Kara L. Mucha, Plaintiff's investigator, who calculated this number after conducting an extensive investigation [ECF No. 29-1]. Mucha reviewed bank records from both Defendants' accounts at Citibank N.A.; reviewed Michael's personal bank records from Discover Bank; searched the Federal Reserve Bank of New York's Fedwire Funds Service for results for electronic wire transfer records for Mosaic and Michael; examined Gemini Trust Company's records for Mosaic's trading account history; reviewed both BitMEX's and Binance's records for trading accounts in Mosaic's name; received documents from Mosaic customers, including emails from Mosaic; and interviewed Mosaic customers [ECF No. 29-1 ¶¶ 6–10]. From this investigation, Mucha identified eighteen Mosaic customers during the period of February 2019 through June 2021 [ECF No. 29-1 ¶ 12]. All such customers wired funds to Mosaic's business account; transferred Bitcoin to Binance that was deposited in a Mosaic Binance subaccount; transferred Bitcoin to a wallet address for Mosaic; and/or mailed a check to Michael that was payable to Michael and then deposited into Michael's Citibank personal checking account [ECF No. 29-1 ¶ 12]. Further detailed customer information is contained in a table accompanying Mucha's declaration [ECF No. 29-2 p. 2].[6] Mucha did not identify any payments to any of the eighteen customers from Mosaic's accounts [ECF No. 29-1 ¶¶ 24–25].

Plaintiff has made a "proper showing" sufficient to warrant $468,614.63 in restitution.

C. Disgorgement

Similarly, under 7 U.S.C. § 13a–1(d)(3)(B), the Court may order disgorgement of any "gains received in connection with [a violation of the Act]." 7 U.S.C. § 13a–1(d)(3)(B). "Disgorgement is an equitable remedy intended to prevent unjust enrichment from all ill-gotten

[6] The table itemizes each customer, provides the amount invested of each, provides the bank or cryptocurrency account that received the transfer or deposit, and cites documentary support for the amount listed for that individual [ECF No. 29-2 p. 2].

gains and must not be used punitively." *United States Commodity Futures Trading Comm'n v. Tayeh*, 848 F. App'x 827, 828 (11th Cir. 2021). Plaintiff has the burden "to produce a reasonable approximation of a defendant's ill-gotten gains to sustain a disgorgement amount." *Id.*; *see also Sidoti*, 178 F.3d at 1138 ("A district court may not disgorge profits, unless there is record evidence [that] the defendant is liable (either directly or indirectly) for fraud.").

Plaintiff seeks $60,979.45 in disgorgement [ECF No. 29 p. 31; ECF No. 29-3 pp. 34–36]. This number is derived from Mucha's sworn declaration, which illustrates how Michael used $52,229.45 of customers' funds to pay for personal expenditures such as restaurants and travel expenses, plus $8,750 for other personal purposes [ECF No. 29-1 ¶¶ 27–33]. First, starting with the $52,229.45, Mucha describes how, from an initial sum of $312,810 that customers transferred into Mosaic's Citibank account, $260,580.55 went to trading accounts [ECF No. 29-1 ¶ 29]. That resulted in $52,229.45 left over, which Michael used for other purposes such as hotels and restaurants noted in Mucha's declaration [ECF No. 29-1 ¶¶ 29–30]. Second, as to the other $8,750 mentioned above, Mucha explained that from a $50,000 customer fund, only $41,250 of it went to a trading account, and Michael kept the remaining $8,750 in his personal Citibank account, which he used for "some other purpose" [ECF No. 29-1 ¶¶ 31–32].

Having determined that Defendants are liable for fraud under the Act, the Court also concludes that disgorgement of Defendants' profits is appropriate. *See Sidoti*, 178 F.3d at 1138. Mucha's detailed explanation of specific customer funds used by Michael for his personal benefit is a "reasonable approximation" of Defendants' ill-gotten gains. *Tayeh*, F. App'x at 828–30 (holding that "the district court did not abuse its discretion when it set the disgorgement amount equal to the stipulated gain of the defendants because the CFTC had provided a reasonable approximation of the defendants' ill-gotten gains based on expert testimony and the records

provided by the defendants"). Plaintiff has made a "proper showing" sufficient to warrant $60,979.45 in disgorgement under 7 U.S.C. § 13a-1(d)(3)(B).

D. Civil Monetary Penalties

Under 7 U.S.C. § 13a–1(d)(1)(A), the Court may "impose, on a proper showing, on any person found in the action to have committed any violation–(A) a civil penalty in the amount of not more than the greater of $100,000 or triple the monetary gain to the person for each violation." 7 U.S.C. § 13a–1(d)(1)(A). That amount, adjusted for inflation, is currently set at a maximum of $221,466. 17 C.F.R. § 143.8(b)(1).

In evaluating civil penalties, the Eleventh Circuit considers "the general seriousness of the violation as well as any particular mitigating or aggravating circumstances that exist." *Wilshire Inv.*, 531 F.3d at 1346. "Defrauding customers is a violation of the core provisions of the [Act] and 'should be considered very serious.'" *Id.* (quoting *JCC, Inc.*, 63 F.3d at 1571). The Eleventh Circuit has approved the imposition of maximum civil penalties when violations of the Act are "knowingly and repeatedly committed." *Id.*; *see JCC, Inc.*, 63 F.3d at 1571 (affirming civil penalties after finding the violations of the Act to be "knowingly and repeatedly committed," emphasizing that "we are not dealing with a situation involving an isolated 'mistake' arising from an ambiguous statutory duty or from circumstances that are unique and unforeseeable").

Plaintiff seeks a civil monetary penalty of $660,000—roughly the inflation-adjusted $221,466 statutory damages amount under 17 U.S.C. § 143.8(b)(1) times three, since there are three counts in the Complaint [ECF No. 29 pp. 31–32]. Guided by the Eleventh Circuit's command that defrauding customers is "very serious," *JCC, Inc.*, 63 F.3d at 1571, the Court finds that a civil penalty in the amount of $660,000 is appropriate in this case. *See Wilshire Inv.*, 531 F.3d at 1346 (affirming district court's imposition of maximum civil penalties for fraud under the

Act). Defendants have made no attempt to cure past violations or provide restitution to the defrauded customers. *See id.* (finding defendant's post-violation conduct did not warrant a reduction in the civil penalty); *JCC, Inc.*, 63 F.3d at 1571 (same).

* * *

To summarize, Plaintiff has made proper showings under the Act warranting the requested injunctive relief, restitution, disgorgement, and civil penalties—plus post-judgment interest on the restitution and civil penalty awards. *See* 28 U.S.C. § 1961(a) ("Interest shall be allowed on any money judgment in a civil case recovered in a district court.").

CONCLUSION

It is hereby **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Default Final Judgment [ECF No. 29] is **GRANTED**.
2. Defendant Michael's "Motion for Hearing and Permission to Provide Testimony Under Oath; Request to Prevent or Vacate Default Judgment" [ECF No. 46] is **DENIED**.[7]
3. Final Judgment will be entered separately.
4. The Clerk is directed to **MAIL** a copy of this Order to Defendants' addresses listed below.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 23rd day of December 2024.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

[7] In light of his complete noncompliance with Court orders and failure to show good cause to set aside default, Michael has shown no justifiable reason for a hearing "to present testimony under oath to provide clarity and establish that there was no fraudulent intent or wrongdoing on [his] part" [ECF No. 46 p. 3].

cc: Mosaic Exchange Limited
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