

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 UNITED STATES COMMODITY  
5 FUTURES TRADING COMMISSION,

6 Plaintiff,

7 v.

8 JAMES D. CROMBIE,

9 Defendant.

Case No. 11-cv-04577-CW

ORDER RE: PERMANENT  
INJUNCTION ENJOINING CROMBIE  
FROM TRADING IN HIS PERSONAL  
CAPACITY

10 BACKGROUND

11 At issue before the Court is a remand from the Ninth Circuit  
12 of this Court's permanent injunction entered against Defendant  
13 James Crombie. Plaintiff United States Commodity Futures Trading  
14 Commission (USCFTC) filed a complaint seeking civil enforcement  
15 against Defendant Crombie and his company, Paron Capital  
16 Management, LLC (Paron), alleging counts of (1) concealing  
17 material facts and making false statements or representations to  
18 the National Futures Association (NFA)<sup>1</sup> in violation of § 9(a)(4)  
19 of the Commodity Exchange Act (the Act), 7 U.S.C. § 13(a)(4); (2)  
20 solicitation fraud in violation of § 4b(a)(1)(A) and (B) of the  
21 Act, 7 U.S.C. § 6b(a)(1)(A) and (B); and (3) fraud in violation  
22 of § 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B).  
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25 <sup>1</sup> The NFA is a private corporation registered as a futures  
26 association with USCFTC. It has delegated responsibility for  
27 some aspects of regulating certain futures professionals and  
28 entities that comprise its membership and their associated  
persons. The NFA focuses primarily on the qualifications,  
proficiency, financial conditions, retail sales practices and  
business conduct of its members. See Docket No. 267 (Summary  
Judgment Order) at 2 (describing the NFA).

1 On September 5, 2012, the Court entered a consent order resolving  
2 USCFTC's claims against Paron. Docket No. 190. On July 26,  
3 2013, the Court granted USCFTC's motion for summary judgment  
4 against Crombie and denied Crombie's cross-motion for summary  
5 judgment. Summary Judgment Order at 68. Specifically, the Court  
6 found that Crombie violated § 9(a)(4) by willfully making false  
7 statements and providing fraudulent documents to the NFA. Id. at  
8 54. The Court also found that Crombie violated §§ 4b(a)(1) and  
9 4o of the Act for fraud by providing false promotional materials  
10 to potential clients in order to solicit their business. Id. at  
11 56-57, 62. In granting USCFTC's motion for summary judgment, the  
12 Court noted that USCFTC did not address the relief it sought and  
13 asked it to identify the relief requested. Id. at 68. USCFTC  
14 complied and the Court granted the relief sought in its proposed  
15 order, which included restitution, a civil monetary penalty and a  
16 permanent injunction against Crombie. Docket No. 273 (Judgment  
17 and Order Granting Relief). The permanent injunction included  
18 enjoining Crombie from engaging in any personal trading on  
19 USCFTC-regulated markets, including trades from his personal  
20 account and trades made on his personal behalf. Id. at §§  
21 II(5)(b) & (c). Crombie appealed the Summary Judgment Order and  
22 the Judgment and Order Granting Relief.

23 The Ninth Circuit found that this Court incorrectly applied  
24 the civil standard of "willful" instead of the criminal standard  
25 of the statute, but nevertheless affirmed the Court's findings  
26 because, in applying the criminal standard de novo, the Ninth  
27 Circuit found that Crombie was nevertheless in violation.

28 Commodity Futures Trading Comm'n v. Crombie, 914 F.3d 1208, 1213

1 (9th Cir. 2019) (Ninth Cir. Op.). The Ninth Circuit also  
2 affirmed the remedy of restitution issued by this Court, finding  
3 that while the Court had not explained its reasoning when  
4 adopting the relief proposed by USCFTC, USCFTC had provided  
5 calculations showing how the restitution amounts were determined.<sup>2</sup>  
6 Id. at 1217. Lastly, the Ninth Circuit affirmed all but two  
7 sections, §§ 5(b) and (c), of the permanent injunction, finding  
8 that “the connection between the violations found and the  
9 prohibitions” as to the other provisions was “sufficiently self-  
10 evident.” Id. at 1217-18. As to §§ 5(b) and (c), the Ninth  
11 Circuit found that “the path from the violations found to the  
12 prohibitions ordered [was] not as clear,” vacating the permanent  
13 injunction as to these two sections and remanding for “further  
14 explanation.” Id. at 1218.

#### 15 LEGAL STANDARD

16 Injunctive relief under § 6c(a) of the Act is remedial in  
17 nature and is designed to prevent injury to the public and to  
18 deter future illegal conduct. Unlike private actions, which are  
19 rooted in the equity jurisdiction of the federal court, an  
20 agency's suit for injunctive relief is a creature of statute.  
21 USCFTC’s “[a]ctions for statutory injunctions need not meet the  
22 requirements for an injunction imposed by traditional equity  
23 jurisprudence.” Commodity Futures Trading Comm’n v. Hunt, 591  
24 F.2d 1211, 1220 (7th Cir. 1979); Trailer Train Co. v. State Bd.  
25 of Equalization, 697 F.2d 860, 869 (9th Cir. 1983); see also  
26 Commodity Futures Trading Comm’n v. Driver, 877 F. Supp. 2d 968,

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28 <sup>2</sup> The Court’s order for the civil penalty against Crombie was not challenged on appeal.

1 981-82 (C.D. Cal. 2012) ("To obtain a permanent injunction, the  
2 CFTC need not establish irreparable harm or inadequate remedy at  
3 law, as would a private litigant.") (internal citations omitted).  
4 Instead, USCFTC is entitled to injunctive relief upon a showing  
5 that a violation of the law has occurred and that "there is some  
6 reasonable likelihood of future violations." Hunt, 591 F.2d at  
7 1220; see also Fed. Election Comm'n v. Furgatch, 869 F.2d 1256,  
8 1261 (9th Cir. 1989) (in cases involving statutory injunctions on  
9 the basis of past violations, party moving for the injunction  
10 must show only that there is a "likelihood" of future  
11 violations).

12 "While past misconduct does not lead necessarily to the  
13 conclusion that there is a likelihood of future misconduct, it is  
14 highly suggestive of the likelihood of future violations." Hunt,  
15 591 F.2d at 1220 (internal citation omitted). Determining the  
16 likelihood of future violations may involve consideration of past  
17 unlawful conduct. Commodity Futures Trading Comm'n v. Co Petro  
18 Mktg. Grp., Inc., 502 F. Supp. 806, 818 (C.D. Cal. 1980). "In  
19 drawing such an inference from past violations," "the Court  
20 should look at the totality of the circumstances, and factors  
21 suggesting that the infraction might not have been an isolated  
22 occurrence are always relevant." Id. (internal quotation marks  
23 omitted). In addition, "[w]hen the violation has been predicated  
24 upon systematic wrongdoing, rather than an isolated occurrence, a  
25 court should be more willing to enjoin future conduct." Id.  
26 "Factors the Court may consider in determining whether permanent  
27 injunctive relief is appropriate include the egregiousness of the  
28 defendant's actions, whether the violation was isolated or

1 recurrent, the degree of scienter involved, the sincerity of the  
2 defendant's assurances against future violations, the defendant's  
3 recognition of his conduct's wrongfulness, and the likelihood  
4 that the defendant's occupation will present opportunities for  
5 future violations." Driver, 877 F. Supp. 2d at 981-92.

6 DISCUSSION

7 USCFTC argues that, under the Driver factors, Crombie's past  
8 conduct shows that future fraud is likely, and a personal trading  
9 ban will prevent Crombie from, again, fraudulently soliciting  
10 clients, whose funds he could then use to trade on his accounts.<sup>3</sup>  
11 USCFTC further argues that a personal ban against Crombie is  
12 necessary because a personal ban will protect the integrity of  
13 the markets regulated by USCFTC. Here, the issue is not whether  
14 a permanent injunction, generally, is appropriate, as the Ninth  
15 Circuit has affirmed the Court's findings that Crombie violated  
16 the Act and most of the permanent injunction entered against  
17 Crombie. The Ninth Circuit vacated §§ 5(b) and (c) and remanded  
18 to this Court as to the scope of the permanent injunction and  
19 required the Court to identify the path between the underlying  
20 violations committed by Crombie (i.e., the false statements made  
21 and the fraudulent documents provided to the NFA, and the use of  
22 false promotional materials in soliciting clients) and these  
23 violations' relation to the relief enjoining Crombie from  
24 engaging in trades in his personal capacity. Nonetheless, the

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26 <sup>3</sup> Both parties seek to introduce new evidence to support  
27 their arguments. The Court will not consider these exhibits for  
28 its purpose here, which is limited only to providing "further  
explanation" of its decision to enjoin Crombie from trading in  
his personal capacity based on the Court's findings in its  
summary judgment order and the evidence discussed therein.

1 Driver factors used to determine whether a permanent injunction  
2 would be an appropriate remedy are relevant to deciding whether  
3 particular terms of such an injunction are appropriate.

4 In considering the Driver factors, the Court finds that  
5 future violations by Crombie are likely. Crombie's fraud is  
6 sufficiently egregious, even without findings of  
7 misappropriations, as discussed further below. Crombie's actions  
8 were not isolated, as the Court found numerous separate acts  
9 amounting to multiple violations. Further, the Court and the  
10 Ninth Circuit found Crombie's actions were willful. Moreover, as  
11 his brief here shows, he continues to argue the Court erred in  
12 its findings that he violated the Act. Thus, he does not appear  
13 to recognize his own wrongdoing; this also detracts from the  
14 sincerity of any assurances against future wrongdoing he may have  
15 expressed. Indeed, while not necessary to the Court's findings  
16 here, the fact that Crombie engaged in and pleaded guilty to a  
17 crime involving the fraudulent use of his former business  
18 partner's personal identity fewer than eighteen months after he  
19 was enjoined here bolsters the Court's findings that there is a  
20 likelihood of future wrongdoing. It is true that the last  
21 factor, whether Crombie's occupation will present opportunities  
22 for future violations, does not weigh in favor of a permanent  
23 injunction, since Crombie is barred as a trading advisor now.  
24 But the Court need not find all factors present before issuing a  
25 permanent injunction. Commodity Futures Trading Comm'n v. S.  
26 Trust Metals, Inc., 894 F.3d 1313, 1328 (11th Cir. 2018) ("A  
27 court need not make a finding on every factor.").

28 It is also true that a ban from personally trading on

1 markets regulated by USCFTC would not prevent Crombie from  
2 submitting misstatements and fraudulent documents to the NFA  
3 in the future. As USCFTC acknowledged, Crombie has had his  
4 membership with the NFA permanently revoked. See Docket No. 285  
5 (Plaintiff's Supp. Resp.) at 8.

6 Nevertheless, a ban against Crombie from trading in his  
7 personal capacity is appropriate because it would likely prevent  
8 future fraudulent conduct using promotional materials to solicit  
9 potential customers. While Crombie is now banned from the NFA as  
10 a trading advisor, that does not make a personal trading ban  
11 superfluous. Without a ban preventing Crombie from engaging in  
12 personal trades, he could still make false statements and create  
13 falsified documents to solicit funds from customers and utilize  
14 his personal accounts for such purposes. See e.g., Commodity  
15 Futures Trading Comm'n v. Williams, cv-17-1325-PHX-JJT, 2018 WL  
16 3853992, at \*2 & \*6 (D. Ariz. Mar. 16, 2018) (finding that  
17 defendant violated a regulation by misappropriating client funds  
18 and placing them into his personal trading account); Commodity  
19 Futures Trading Comm'n v. Aurifex Commodities Research Co., 1:06-  
20 cv-166, 2008 WL 299002, at \*7-8 (W.D. Mich. Feb. 1, 2008)  
21 (finding defendants misappropriated client funds and "used  
22 significant portions of the participants' funds for their own  
23 personal expenditures"). While the Court did not find Crombie in  
24 violation of misappropriating client funds, the personal trading  
25 ban is not overly broad because the Court is not limited to  
26 enjoining Crombie only from future violations of the specific  
27 statutes identified in this case; rather, courts are given wide  
28 discretion to implement "broader injunctions prohibiting trading

1 activity, in addition to enjoining defendants from future  
2 violations. . . ." Commodity Futures Trading Comm'n v.  
3 Gutterman, 12-21047-cv, 2012 WL 2413082, at \*8 (S.D. Fl. June 26,  
4 2012) (summarizing cases holding the same proposition). Nor, as  
5 discussed below, is a finding of misappropriation needed to  
6 enjoin Crombie from personally trading.

7 Moreover, a personal trading ban is appropriate because  
8 "fraud is one of the primary threats to market integrity," and  
9 "[p]ermanent trading, solicitation and registration bans are  
10 appropriate when a defendant's violation of the [Act] and/or  
11 Regulations poses a threat to the integrity of the markets  
12 regulated by the CFTC." Commodity Futures Trading Comm'n v.  
13 Harrison, 255 F. Supp. 3d 645, 646-47 (D.S.C. 2015) (finding  
14 defendant's conduct of "executing a scheme to defraud and to  
15 obtain monies by means of false and fraudulent pretenses,  
16 representations, and promises," inter alia, to be a "significant  
17 threat to the integrity of the markets regulated by the CFTC");  
18 see also Williams, 2018 WL 3853992, at \*7 (noting that "another  
19 important policy goal" of USCFTC is to "protect[] the integrity  
20 of the commodity futures markets," because it is the "statutory  
21 guardian entrusted with the enforcement of the congressional  
22 scheme for safeguarding the public interest in the commodity  
23 futures markets") (internal citations omitted). Similarly, here,  
24 the personal trading ban is further warranted in order to protect  
25 the integrity of the markets against Crombie and his fraudulent  
26 conduct.

27 Crombie appears to argue that the personal trading ban was  
28 overly broad because there was no finding of misappropriation of



1 client funds for personal use here, unlike the cases identified  
2 by USCFTC. Thus, Crombie argues, his conduct did not amount to  
3 the same level of egregiousness as the conduct in those cases.<sup>4</sup>  
4 This fails. Courts have found § 4 violations of fraudulent  
5 misrepresentations to clients, alone, without misappropriation of  
6 client funds, sufficient to enforce a personal trading ban  
7 against defendants. See Commodity Futures Trading Comm'n v.  
8 Poole, 1:05cv00859, 2006 WL 1174286, at \*8 (M.D.N.C. May 1, 2006)  
9 (enjoining defendant from trading in his personal capacity after  
10 finding he violated § 4o based on misrepresentations made on his  
11 website and enjoining him from trading "in any markets or on any  
12 entity regulated by the [USCFTC] for himself or on behalf of any  
13 other person or entity"); Commodity Futures Trading Comm'n v.  
14 Gramalegui, 15-cv-02313-REB-GPG, 2018 WL 4610953, at \*30-31 (D.  
15 Co. Sept. 26, 2018) (implementing a personal trading ban against  
16 defendant who made "patently false and misleading claims  
17 specifically intended to defraud customers"); Commodity Futures  
18 Trading Comm'n v. Dupont, 8:16-cv-03258-TMC, 2018 WL 3148532, at  
19 \*9-10 (D.S.C. June 22, 2018) (implementing a personal trading ban  
20 against defendant for "consistently and repeatedly [lying] to its  
21 clients and potential clients through weekly updates in the  
22 newsletter, various posts on its website, and numerous postings  
23 on its social media profiles").

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26 <sup>4</sup> Crombie's other arguments as to why he should not be  
27 enjoined from trading, in his personal capacity, on USCFTC-  
28 regulated markets appear to relitigate issues considered at  
summary judgment. These arguments have no bearing here. The  
Ninth Circuit has affirmed the Court's findings that Crombie had  
violated various sections of the Act, as a matter of law.

1 For the foregoing reasons, the Court finds that §§ 5(b) and  
2 (c) of the permanent injunction in its Judgment and Order  
3 Granting Relief banning Crombie from personally trading are  
4 appropriate because they are likely to prevent future fraud on  
5 potential clients and appropriate to protect market integrity.  
6 Thus, Crombie is permanently restrained, enjoined and prohibited  
7 from trading in his personal capacity as set forth in these  
8 sections. See Judgment and Order Granting Relief at §§ II(5)(b)  
9 & (c).

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11 IT IS SO ORDERED.

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13 Dated: June 5, 2019



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14 CLAUDIA WILKEN  
15 United States District Judge  
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