UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

COMMODITY FUTURES TRADING COMMISSION,	
Plaintiff,	**Civil Action No. 4:19-cv-140**
v.	**[PROPOSED] ORDER OF FINAL JUDGMENT BY DEFAULT, PERMANENT INJUNCTION, CIVIL MONETARY PENALTIES, AND OTHER STATUTORY AND EQUITABLE RELIEF**
KELVIN OSCAR RAMIREZ,	
Defendant.	

I. INTRODUCTION AND PROCEDURAL HISTORY

On January 14, 2019, the Commodity Trading Futures Commission ("Commission" or "Plaintiff") filed its Complaint [DE 1] in this matter charging Defendant Kelvin O. Ramirez ("Defendant" or "Ramirez") with violating Sections 2(c)(2)(C)(iii)(I)(bb) and (cc), 4b(a)(2)(A)-(C), 4m(1), and 4*o*(1)(A) and (B) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb) and (cc), 6b(a)(2)(A)-(C), 6m(1), 6*o*(1)(A) and (B) (2012), and Commission Regulations ("Regulations") 4.20, 4.21, 4.22, 4.30(a), 4.31, 5.2(b)(1)-(3), 5.3(a)(2)(i), and 5.3(a)(3)(i), 17 C.F.R. §§ 4.20, 4.21, 4.22, 4.30(a), 4.31, 5.2(b)(1)-(3), 5.3(a)(2)(i), and 5.3(a)(3)(i) (2018).

On January 15, 2019, the Court entered an Order Granting Plaintiff's Emergency Motion for an *Ex Parte* Statutory Restraining Order ("SRO") [DE 6] against Defendant that, among other things, authorized the freezing of assets held in the name of or under the control or management of Defendant. On January 16, 2019, Defendant was properly served with the summons, Complaint, SRO, and other initiating documents in this case pursuant to Fed. R. Civ. P. 4(e)(2)(A) by personally serving him at his place of residence [D.E. 9]. On January 29, 2019,

the Court entered an Order of Preliminary Injunction and Other Ancillary Relief [DE 11] prohibiting Defendant from violating the sections of the Act and Regulations under which he was charged in the Complaint and keeping the SRO in force and effect until further order of the Court.

Defendant has failed to appear or answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1) and the Court-ordered deadline. After providing Defendant multiple additional notices of his obligation to file an answer, the Commission filed a motion for entry of a clerk's default against Defendant [DE 12] and on March 11, 2019, the Clerk of this Court entered a default against Defendant [DE 13].

The Commission has now moved this Court to grant final judgment by default against Defendant, order permanent injunctive relief, and impose a restitution obligation and civil monetary penalty. The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Commission's memorandum in support of its motion, the record in this case, and the Court being otherwise advised in the premises, it is hereby:

ORDERED that Plaintiff's Motion for Entry of Default Judgment against Defendant ("Motion") is **GRANTED** in all respects. Accordingly, the Court enters findings of fact, conclusions of law, and an Order of Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief ("Order") pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

II. FINDINGS OF FACT

THE COURT FINDS:

A. The Parties

1. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

2. Defendant Kelvin Oscar Ramirez is an individual who resides in Houston, Texas. He has identified himself on social media as the CEO of 1T1M, a forex trader, and an investment manager. Ramirez has never been registered with the Commission.

B. Defendant's Conduct

1. Defendant Fraudulently Solicited Members of the Public for his Forex Trading Services

3. From as early as 2015 through 2018 ("Relevant Period"), Defendant used multiple forms of electronic communication, including phone, text messaging, and app- and web-based social media platforms, to fraudulently market himself to the public as a highly successful forex trader who consistently earned huge profits trading forex in margined accounts. He did so in order to recruit paying clients for his forex education and trading signal service, forex pools, and individually-managed private forex accounts. The social media platforms include publicly-accessible Instagram accounts that Defendant operated under various names, such as "forex_account_manager – account_management," "accnt_management," and "investment_manager01," and a private Slack group called "1trade1million" that Defendant hosted to communicate with his pool participants and private account clients as well as his forex education/signals service clients.

4. For example, Defendant posted screenshots of purported off-shore forex trading accounts that he owned showing highly profitable trading—e.g., profits of over $100,000 in a single

day—and account balances topping $1 million. Another social media post boasted that he earned on average $20,000 to $50,000 per night trading forex.

5. Defendant posted screenshots of his personal bank account at JP Morgan Chase Bank and, later, Bank of America showing balances of $8,967,258 in March 2016, $10,815,405 in October 2016, and $11,281,543 by June 2018.

6. Defendant boasted of a luxurious lifestyle—multiple real estate properties, expensive automobiles, vacations—all purportedly funded by his forex trading profits.

7. Defendant claimed that both he and his family were financially secure because his forex trading earned him over $500,000 per month.

8. Moreover, Defendant repeatedly assured his prospective and existing pool participants and private account clients that he could achieve the same success for them.

9. Defendant's representations about his forex trading success were false.

10. During the Relevant Period, Defendant never opened a forex trading account at any registered domestic forex broker. The screenshots of his purported off-shore trading accounts were doctored by Defendant to falsely show actual trading—and profits from that trading—that never took place. When one of Defendant's clients shared some of these screenshots with one of the off-shore forex brokers, the broker told the client that the forex trades and dollar amounts shown in the screenshots were fabricated or could be associated with a demo account, rather than a real trading account. Further, Defendant's JP Morgan Chase and Bank of America account records show a total of only $15,470 ever going to a forex broker during the Relevant Period, $10,000 of which was eventually returned to his bank account.

11. The screenshots of Defendant's bank account that he posted showing a balance in the millions of dollars were also doctored by Defendant. During the period Defendant's five bank accounts at JP Morgan Chase, Bank of America, Wells Fargo, and First Convenience were open

between December 2014 and February 2019, the combined daily ending balance in those accounts never exceeded $135,000.

2. Defendants' Forex Education and Trading Signal Service

12. Defendant's social media marketing in 2015 and most of 2016 focused on soliciting customers to subscribe to his forex training and signal services for which Defendant charged a fee of $150 or more.

13. To this end, his social media posts frequently included testimonials from people purporting to have profited by following his trading advice along with solicitations such as "make your yearly salary in a month" and "you can be making $7,000 withdrawals for fun too." Another social media post boasted that he had turned some of his clients into "6 figure earners within months" and "helped people quit their 9-5 jobs." After subscribing to this service, Defendant invited subscribers to access Defendant's "1trade1million" Slack group where Defendant communicated with them.

14. In response to Defendant's misrepresentations about his forex trading success and ability to turn his subscribers into successful traders, dozens of people sent funds to Defendant to subscribe to his forex training and signal services.

15. In fact, Defendant rarely conducted any forex training sessions or sent trading signals to his subscribers.

3. Defendants' Forex Trading Pools

16. In October 2016, Defendant's marketing emphasis shifted to soliciting members of his Slack group and his followers on Instagram to participate in an investment pool that he would manage in 2017 (the "2017 Pool") that would trade leveraged or margined forex contracts. He offered this to those "looking to invest safely and a ROI for your money!!!!" The day after posting this offer on social media, Defendant posted that all the spots in the 2017 Pool were filled in less

than half a day so he "open[ed] up a 2nd group last night [with] limited spot[s] available [and once that filled he would] not open another one!" On December 21, 2016, Defendant announced on Instagram that pool participants who invested before the end of the year would have their investment doubled as a "gift to …fellow investors."

17. Defendant told prospective participants that one "spot" in the 2017 Pool would cost $1,000 and that, beginning a short period after the initial investment, each spot would pay out $2,000 or more in weekly profits for an entire year. Defendant further stated that at the end of the year, any remaining money in the 2017 Pool would be split between Defendant and his participants, with the latter receiving 75 percent of those funds. Defendant told one prospective participant that a $1,000 investment in his fund two years ago was now worth $200,000, and he promised to pay this prospective participant $200,000 over time per spot purchased.

18. In response to Defendant's misrepresentations about his forex trading success and promises of huge returns, dozens of people sent funds to Defendant to participate in the 2017 Pool.

19. Throughout 2017 and into 2018, Defendant regularly announced on social media what he falsely claimed to be the 2017 Pool's trading profits. These postings included doctored screenshots of his purported forex broker accounts and purported to show weekly trading profits from tens of thousands to hundreds of thousands of dollars. On November 11, 2017, Defendant announced on Instagram that each 2017 Pool participant's investment "just hit 6 figures."

20. On September 28, 2017, Defendant announced on Instagram that he was starting another forex pool (the "2018 Pool") under the same general terms as the 2017 Pool. He said he was starting the second pool for those who have "seen the profits that I am making in the first group investment [and were] left out." In a December 10, 2017 social media post announcing 2017 Pool weekly profits of $868,246, Defendant added a plug for the 2018 Pool, stating, "I only make 1 group investment per year and 2018 might be the last…So if you were to [sic] late for my 1st

account management and you were just sitting all year looking at the profits we were making [n]ow is your chance!"

21. In response to Defendant's misrepresentations about his forex trading success and promises of huge returns, dozens of people sent funds to Defendant to participate in the 2018 Pool.

22. In soliciting participants for the 2017 and 2018 Pools, Defendant couched his offer as a limited opportunity and urged people to invest before all of the spots were filled. In addition, Defendant offered special limited promotions to induce people to join the pool, including a promotion in which Defendant would supposedly match the investments of the first fifteen pool participants.

23. Defendant did not operate the 2017 and 2018 Pools as cognizable legal entities separate from himself.

4. Defendant's "Private" Individually Managed Forex Accounts

24. By the end of 2016, Defendant began leveraging his false claims of forex trading success and personal fortune to aggressively solicit private account clients by phone, text message, and on social media. As opposed to the pools, this time Defendant offered the opportunity for people to have their own individual leveraged or margined forex accounts "privately" managed by Defendant.

25. For example, Defendant's social media posts touted exaggerated investment returns and trading profits Defendant claimed to have earned for his existing private account clients, and a number of these posts included purported testimonials from satisfied clients. For example, a September 12, 2017, post included a screenshot of a message from a purported private account client claiming to have made over $9,000 after just two weeks of Defendant managing her account. In the post, Defendant described the investment as "1% risk and 8% gain per week" translating to "annually [sic] income of 216k that she created for herself by investing."

26. Another post referred to a new private account client who made a $60,000 initial investment under a two year contract who was to earn an annual return on investment of $180,000. Still another post claimed that a private account client was investing $700,000 with Defendant in a managed account and that the account would return around $450,000 in monthly profits with "a very very very very safe risk ratio."

27. Defendant told one prospective private account client, who eventually invested, that the minimum investment for a private account was $10,000 with no withdrawals for the first three months so Defendant could grow the capital before paying out profits. A written contract sent to this client by Defendant referenced that Defendant would be trading forex on margin or using leverage, that the return on investment would be 25 percent, and that at the end of one year the client would receive the trading profits, minus 25 percent for Defendant's fee.

28. Another client, who sent $50,000 to Defendant in November 2017 to open a private managed account, was told by Defendant that her investment would be worth $230,000 by January 2018 and that starting in February 2018, she would receive payouts of at least $40,000 each week for a year.

29. As with the pools, Defendant urged prospective private account clients to sign up without delay. For example, he told one client to send her money "asap" saying, "the faster I get the money…[t]he faster I can trade…" and "the sooner I get [your money]… the sooner I can trade it and give you payouts."

30. In response to Defendant's misrepresentations about his forex trading success and promises of huge returns, multiple people sent funds to Defendant to open individually managed forex accounts.

5. Defendant Downplayed Risk and Guaranteed His Pool Participants' and Private Account Clients' Investments

31. In his solicitations of prospective pool participants and private account clients, Defendant made little if any mention of risk. For some pool participants and private account clients, Defendant never made any mention of risk. For others, the only mention of risk Defendant ever made was in the form of boilerplate language contained in an investment agreement that he sent to some of his pool participants and private account clients, such as:

> Before i [sic] state all the agreements that we made, by law it's required that i [sic] notify and remember [sic] all my investors that: Trading foreign exchange on margin carries a high level of risk, and may not be suitable for all investors. Past performance is not indicative of future results. The high degree of leverage can work against you as well as for you. Before deciding to invest in foreign exchange you should carefully consider your investment objectives, level of experience, and risk appetite. The possibility exists that you could sustain a loss of some or all of your initial investment and therefore you should not invest money that you cannot afford to lose. You should be aware of all the risks associated with foreign exchange trading! All investors should be aware of all possible risks that the market pose [sic]!

32. Any statements that Defendant made regarding risk were undercut by the guarantees that he made to private account clients and pool participants. After providing the boilerplate risk language in the written agreement described above, the agreement went on to state that, in the event of loss, Defendant will refund the client's initial investment in full if any trade exceeded a specified risk level.

33. Defendant also stated on social media that he guarantees all of his pool participants' and private account clients' principal investments based on his own funds, which he represented to be in the millions of dollars. For pool participants, he guaranteed the payout of weekly profits and claimed that all of his participants' investments "are secured" because Defendant "personally make[s] over 6 figures monthly." He told one of his private account clients that his account would "only have a 2% risk management during trading" and that if the risk were higher than 2 percent, then the client would be entitled to a full refund of his principal investment. He guaranteed the $50,000 investment of another private account client telling her that he was one "of the very few

managers that can guarantee peoples [sic] investment with my personal money" and that his larger clients' investments are "100% secured even with losses."

34. In soliciting and accepting funds from pool participants and private account clients, Defendant never inquired about their net worth or amount of discretionary investments.

35. Many, if not all, of Defendant's pool participants and private account clients were not eligible contract participants ("ECPs").

6. Defendant Failed To Provide Required Disclosure Documents and Account Statements

36. Defendant failed to provide many pool participants and private account clients with any form of written contract documenting the terms of investment, even when requested to do so.

37. Defendant never provided to his pool participants any type of Disclosure Document required to be provided pursuant to Regulation 4.21, 17 C.F.R. § 4.21, or any type of Account Statement or Annual Report required to be provided pursuant to Regulation 4.22, 17 C.F.R. § 4.22.

38. Defendant never provided to his private account clients any type of Disclosure Document required to be provided pursuant to Regulation 4.31, 17 C.F.R. § 4.31.

7. Defendant Received More than $743,000 from Pool Participants, Private Account Clients, and Subscribers and Misappropriated These Funds

39. In response to Defendant's fraudulent misrepresentations and omissions, at least 203 pool participants and private account clients sent Defendant $681,479.45 for trading leveraged forex contracts on their behalf as part of a pooled investment or individually managed accounts. In addition, at least 199 individuals sent Defendant $62,428.90 to subscribe to his forex trading education and signals services.

40. Defendant instructed his pool participants and private account clients to send their funds directly to him in an account in Defendant's name. All of these funds were deposited in Defendant's personal bank accounts and commingled with Defendant's own funds. The funds were

generally sent to Defendant by wire, direct deposit, or using money transfer services linked to Defendant's email address.

41. Very little if any of the pool participants' and private account clients' funds were used to trade forex.

42. Rather, Defendant used the funds for his own purposes. For example, between October 26, 2015, the date the first apparent subscriber payment was received, and February 7, 2019:

- Defendant transferred $323,029.78 to persons who appear to be members of his family, friends, and associates;
- Defendant made net cash withdrawals totaling an additional $181,745.41, which included two single payments of $30,000 and $24,000 each to automobile dealerships;
- Defendant made 1,358 check card purchases totaling $100,930.77 at places such as Golf Mayan Entertainment, In The Shop (Automotive), G Force Motor Sports, High Tech Auto Sound, Sun & Ski Sports, Vida Vacations, Michael Kors, Fireworks Super, Jewelry Emporium, and Olive Garden;
- Defendant made 368 point-of-sale debit purchases totaling $21,831.38 at places such as Best Buy, Sunglass Hut, Galaxy Fireworks, Tires By Design, King Tire, Academy Sports, Aldo US, O'Reilly Auto, and Shell;
- Defendant made 327 internet check card and internet purchases totaling $47,926.21 at places such as American Airlines, Cancun Yacht, G Force Motor Sports, AT&T, Our Vacation Center, On Star Data Plan, and Red Box DVD Rental.

43. Defendant returned a total of $7,924.87 to his pool participants and private account clients, despite repeated requests from many of them for him to do so. In response to their requests, Defendant repeatedly promised to return the funds and made excuses for his inability to do so, including bank transfer limits, litigation holds on his bank accounts, and family illnesses and other personal issues. When some pool participants and private account clients persisted in demanding return of their funds, Defendant eventually stopped responding to them and kicked them out of his Slack group.

8. Defendant Admitted His Fraud

44. On or about July 19, 2018—in an effort to appease his pool participants and private account clients aggrieved at not receiving payments as promised and suspecting they had been defrauded—Defendant posted a video on Slack purporting to show the 2017 Pool trading balance held at an off-shore forex broker. After pool participants contacted the broker to inquire whether such a live funded trading account existed and were advised it did not, they confronted Defendant. In a Facebook message posted on Slack on or about July 20, 2018, Defendant confirmed "that it was all a lie and [he had] lost or spent all the money."

45. Nevertheless, by July 22, 2018, Defendant had shut down his most recent Instagram account used to communicate with existing and potential pool participants and private account clients and opened a new one labeled "investment_manager01." This new Instagram account had 5,470 followers on or about July 22, 2018. Under the heading "Product/Service," the account states: "Forex Trader! Investment manager! Monthly ROI 25% Contact for investment information."

46. One post to this new Instagram account contained yet another screenshot of an account statement from Defendant's purported off-shore forex trading account along with the following text:

> Last month was great! 347k for the whole month! Before anyone gets confused, this is last months [sic] broker statement! If you are intreated [sic] in investing in

> to a account Management. You can send me a email or text! Group accounts start at $1,000.00+ in which I have one open right now. Private accounts start at $5,000.00! My ROI is set at 25% monthly and my fee is 25%...

III. CONCLUSIONS OF LAW

A. Defendant's Willful Failure to Properly Answer or Defend Warrants Entry of Default Judgment

47. Fed. R. Civ. P. 55 authorizes a default judgment when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . ." Fed. R. Civ. P. 55(a); *see also New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996) ("A default occurs when a defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules"). A default judgment—issued by a court pursuant to Fed. R. Civ. P. 55 (b)(2) after the court clerk's entry of default—while not favored, is within the trial court's sound discretion, *Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977), and in cases of willful default, not subject to appellate reversal. *Lacy v. Sitel Corp.* 227 F.3d 290, 292 (5th Cir. 2000) ("A finding of willful default ends the inquiry [of whether good cause to set aside a default exists], for when the court finds an intentional failure of responsive pleadings there need be no other finding") (internal quotations and footnote omitted).

48. District courts in this Circuit at times have used a three-step analysis in adjudicating default judgment motions: (1) whether default judgment is "procedurally proper, countenancing six factors" identified in *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998) (relevant factors in a default judgment determination include material issues of fact, existence of substantial prejudice, clarity of the grounds for default, default caused by good faith mistake or excusable neglect, harshness, and "whether the court would think itself obliged to set aside the default on the defendant's motion"); (2), if procedurally proper, "whether the plaintiff's claims are substantively meritorious;" and (3) if substantively meritorious, "whether the requested relief is appropriate." *Travelers Cas. and Sur. Co. of Am. v. HighMark Constr. Co., LLC,* No. 7:16-cv-00255, 2018 WL

4334016, at *2 (S.D. Tex. May 5, 2018); *see also Cisneros v. Christiana Trust*, No. 7:17-CV-00160, 2017 WL 7796348, at *2 (S.D. Tex. May 30, 2017); *Bieler v. HP Debt Exch., LLC*, No. 3:13-cv-01609, 2013 WL 3283722, at *2 (N.D. Tex. June 28, 2013).

49. Consideration of procedural factors clearly warrants default judgment here. Because Defendant has failed to respond to the Complaint, its well-pled factual allegations are taken as true.[1] *Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank*, 515 F. 2d 1200, 1206 (5th Cir. 1975) ("The defendant, by his default, admits the plaintiff's well-pleaded allegations of fact") (citations omitted). Consequently, there are no material issues of fact. *Bieler*, 2013 WL 3283722, at *2. Given that Defendant was properly served and further notified by letter of his obligation to respond[2]—and that he has chosen not to do so—a default judgment against him is neither substantially prejudicial to him nor harsh. *See id.* Conversely, delaying judgment would prejudice the public interest generally and the victims of Defendant's fraud specifically; the former by frustrating the Commission's mission, *see R&W Tech. Servs. Ltd. v. CFTC*, 205 F. 3d 165, 173 (5th Cir. 2000) (Congress increased the Commission's "enforcement powers, in part because of the fear that unscrupulous individuals were encouraging amateurs to trade in the commodities markets through fraudulent advertising") (citations omitted), and the latter by delaying relief designed to make them whole. The grounds for default are clearly established in that Defendant has not answered or otherwise properly responded to the Complaint, and the Clerk has properly entered default against him. *See Bieler*, 2013 WL 3283722, at *2. Defendant's one communication with the Court provides no grounds to infer good faith mistake or excusable neglect; rather it indicates the opposite, *i.e.*,

[1] Factual allegations are well-pled to sustain a default judgment so long as they meet Fed. R. Civ. P. 8's fair-notice standard. *Wooten v. McDonald Transit Associates, Inc.*, 788 F.3d 490, 498 (5th Cir. 2015).

[2] As evidenced by the letter he filed with the Court in advance of the scheduled preliminary injunction hearing [DE 10]—at which he failed to appear—Defendant is aware that he has been named a party to this litigation. Further, Commission counsel advised him of the need to respond to the Complaint and extended additional time to do so. Despite this knowledge, notice, and accommodation, Defendant has elected not to respond.

Defendant has willfully chosen not to respond. Finally, Defendant's willfulness should preclude the likelihood of a judgment being set aside. *See Howard v. Sony Music BMG Entertainment,* No. 4:06-cv-3133, 2008 WL 11391396 (S.D. Tex. Jan 25, 2008) (Ellison, J.) (denying motion to set aside default judgment where defendant's "conduct in not responding to [plaintiff's complaint] can only be described as willful").

50. Further, the Commission's claims as stated in its well-pled Complaint (taken as true given Defendant's failure to respond) and repeated in its Emergency Motion for an Ex Parte Statutory Restraining Order, Preliminary Injunction, and Other Ancillary Relief [DE 2] and buttressed by the affidavits and documentary evidence appended thereto are substantively meritorious. As discussed below, these facts establish that Defendant, among other violations, repeatedly and with *scienter* engaged in core violations of the anti-fraud provisions of the Act and Regulations.

B. Jurisdiction and Venue

51. The Court has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-l, which authorizes the Commission to seek injunctive relief in district court against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

52. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because at least some of the acts and practices in violation of the Act and the Regulations occurred within this District.

C. The Commodity Exchange Act

53. In analyzing the Commission's Motion, the Court is cognizant of a crucial purpose of the Act to "protect[ ] the innocent individual investor–who may know little about the intricacies

and complexities of the commodities market–from being misled or deceived." *CFTC v. Total Call Group, Inc.*, No. 4:10-cv-00513, 2012 WL 1642196, at *6 (E.D. Tex. Mar. 30, 2012) (quoting *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1329 (11th Cir. 2002)) (internal quotes omitted). "[C]aveat emptor has no place in the realm of federal commodities fraud. Congress, the CFTC, and the Judiciary have determined that customers must be zealously protected from deceptive statements by brokers who deal in these highly complex and inherently risky financial instruments." *Id.* (quoting *R.J. Fitzgerald & Co., Inc.*, 310 F.3d at 1334).

D. Defendant's Violations

1. Defendant Violated 7 U.S.C. § 6b(a)(2)(A)-(C) (2012) and 17 C.F.R. § 5.2(b)(1)-(3) (2018)—Fraud in Connection with Retail Forex

54. 7 U.S.C. § 6b(a)(2)(A)-(C) makes it unlawful for any person to (A) cheat or defraud or attempt to cheat or defraud another person, (B) willfully to make a false report or statement to another person, or (C) willfully to deceive or attempt to deceive another person by any means whatsoever in connection with any retail forex transaction. Similarly, 17 C.F.R. § 5.2(b)(1)-(3) makes it unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, to (1) cheat or defraud or attempt to cheat or defraud another person, (2) willfully to make a false report or statement to another person, or (3) willfully to deceive or attempt to deceive another person by any means whatsoever in connection with any retail forex transaction. As discussed below, Defendant violated 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3) by misappropriating private account clients' and pool participants' funds and by willfully issuing false statements and making other material misrepresentations and omissions to clients and pool participants.

a. Fraud by Misappropriation

55. Misappropriation of private account client and pool participant funds constitutes "willful and blatant" fraud. *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000), *aff'd sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002); *see also In re Slusser*, CFTC No. 94-14, 1999 WL 507574, at *12 (July 19, 1999) (determining that respondents violated 7 U.S.C.§ 6b by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of investors), *aff'd in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *CFTC v. Morse*, 762 F.2d 60, 62 (8th Cir. 1985) (holding defendant's personal use of customer funds violated 7 U.S.C. § 6b); *CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1106 (C.D. Cal. 2003) (same); *CFTC v. McLaurin*, No. 95-C-285, 1996 WL 385334, at *3 (N.D. Ill. July 3, 1996) (by depositing customers' monies into bank accounts and making unauthorized disbursements from those accounts for his own use, defendant violated 7 U.S.C. § 6b); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (same). Where this fraudulent conduct involves mail, email, or telephone communications, it violates 17 C.F.R. § 5.2(b). *See, e.g., CFTC v. Wright*, No. 17 CV 4722-LTS-DCF, 2018 WL 6437055, at *3 (S.D.N.Y. Dec. 7, 2018).

56. As demonstrated above, from 2015 to the present, Defendant violated 7 U.S.C. § 6b(a)(2) and 17 C.F.R. § 5.2(b) by misappropriating at least $735,983.48 of private account client, pool participant, and subscriber funds, representing $743,908.35 taken in by Defendant as a result of his fraud minus $7,924.87 returned to private account clients, pool participants, and/or subscribers. The misappropriated funds were used to pay for, among other things, Defendant's personal expenses.

b. Fraud by Misrepresentations, Omissions, and Issuance of False Statements

57. To establish liability for fraud based on misrepresentations and omissions, the Commission must prove that: (1) a misrepresentation, misleading statement, or omission was made; (2) that the misrepresentation, statement or omission was material; and (3) that it was made with

scienter. *See, e.g., R.J. Fitzgerald & Co., Inc.*, 310 F.3d at 1328 (citations omitted). All three elements can be established in the instant matter. "Whether a misrepresentation has been made depends on the 'overall message' and the 'common understanding of the information conveyed.'" *Id.* (citing *Hammond v. Smith Barney Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657 & n.12 (CFTC Mar. 1, 1990); *see also CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447-48 (D.N.J. 2000) (finding fraud where defendant represented that he would open a trading account and then did not do so and that false reporting of account balances violates the Act); *CFTC v. Driver*, 877 F.Supp.2d 968, 977-78 (C.D. Cal. 2012) (finding defendant's false claims of successful trading, issuance of account statements to pool participants falsely depicting trading profits, and failure to advise investors that he used only a portion of pool funds for trading, among other acts, violated 7 U.S.C. § 6b(a)), *aff'd* 585 Fed. Appx. 366 (9th Cir. Oct. 7, 2014); *Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d at 687 (finding violation of § 6b(a) where defendants "misrepresented the profits and risks associated with…foreign exchange currency contracts, falsely characterized the experience of [defendant's] traders, issued false account statements and misappropriated customer funds").

58. "A statement or omitted fact is 'material' if there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." *R&W Tech. Serv. Ltd.*, 205 F.3d at 169 (citing *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)); *see also Driver*, 877 F.Supp.2d at 977 (same). Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *Driver*, 877 F.Supp.2d at 978 ("Driver's representations and omissions were false and material because they impacted the pool participants' decisions to invest, remain in the pool, or make additional investments."); *see also Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d at 686-87 (representations about profit potential and risk "go to the heart of a customer's investment decision

and are therefore material as a matter of law;" false representations regarding "expertise" and "account activity as reflected in customer account statements" are material); *CFTC v. Commonwealth Fin. Grp.*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994) (misrepresentations regarding trading record of firm or broker are fraudulent because past success and experience are material factors to reasonable investors).

59. The scienter element is established when an individual's acts are performed "with knowledge of their nature and character," *Wasnick v. Refco, Inc.*, 911 F.2d. 345, 348 (9th Cir. 1990) (internal quotation marks and citation omitted), and that the defendant acted with more than "mere negligence, mistake or inadvertence." *Id.*; *accord, Chu v. CFTC*, 823 F.3d 1245, 1251 (9th Cir. 2016). This standard may be met by demonstrating that a defendant committed the alleged wrongful acts "intentionally or with reckless disregard for his duties under the Act." *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (finding that recklessness is sufficient to satisfy scienter requirement); *see also Rosenberg*, 85 F. Supp. 2d at 448 (same). To prove that conduct is reckless, the Commission must show that it "departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing." *Drexel Burnham Lambert*, 850 F.2d at 748 (alteration in original) (internal quotation marks and citation omitted); *see also First Commodity Corp. of Boston v. CFTC*, 676 F.2d 1, 7 (1st Cir. 1982) (same).

60. As demonstrated above, from 2015 to the present, Defendant violated 7 U.S.C. § 6b(a)(2) and 17 C.F.R. § 5.2(b) by, among other things, intentionally misrepresenting to prospective and existing pool participants, private account clients, and subscribers that: (a) he was a highly successful forex trader who reaped huge profits; (b) the pool participants' and private account clients' funds would be used to trade forex for their benefit; (c) screenshots of his purported trading account showed the huge profits he was earning; and (d) pool participants' and private account

clients' principal investments were secured against loss based on his own personal assets totaling millions of dollars. In fact: (a) Defendant's claims of forex trading success were completely fabricated; (b) little if any of the pool participants' and private account clients' funds were used to trade forex; (c) the screenshots showing purported forex trading profits were false, and virtually all of these funds were misappropriated by Defendant; and (d) pool participants' and private account clients' funds were not secured by Defendant's personal assets because those assets did not exist.

61. Defendant acted with the requisite scienter. His operation was a sole proprietorship. His bank accounts, that received and held pool participant, private account client, and subscriber funds, were solely in his name. He controlled the social media accounts used to communicate with his pool participants, private account clients, and subscribers. Thus, Defendant knew that his representations of forex trading success, personal wealth, and disposition of funds were false. Moreover, Defendant personally engaged in the misappropriation of pool participant and private account client funds to pay his personal expenses.

62. Defendant's misrepresentations are material. A reasonable individual would want to know, among other things, that Defendant was not a highly profitable forex trader and that his/her funds were not being used to trade forex as promised, but rather were misappropriated by Defendant.

2. Defendant Violated 7 U.S.C. § 6o(1)(A), (B) (2012)—Fraud by a CTA/CPO

63. 7 U.S.C. § 6*o*(1)(A), (B), in relevant part, makes it unlawful for commodity trading advisors ("CTAs") and commodity pool operators ("CPOs"), by use of the mails or any other means of interstate commerce, directly or indirectly, to: (A) employ any device, scheme, or artifice to defraud any pool participant or client; or (B) engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any pool participant or client. "[7 U.S.C. § 6*o*(1)] broadly prohibits fraudulent conduct by a [CTA and CPO]" and "applies to all [CTAs and CPOs]

whether registered, required to be registered, or exempted from registration." *Weinberg*, 287 F. Supp. 2d at 1107-08 (citing *Skorupskas*, 605 F. Supp. at 932; *see also CFTC v. Vartuli*, 228 F.3d 94, 103 (2d Cir. 2000) (unregistered CTA liable under 7 U.S.C. § 6*o*(1)). 7 U.S.C. § 6*o*(1) applies to forex CTAs and CPOs pursuant to Section 2(c)(2)(C)(ii), (vii) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(ii), (vii).

64. As described in Section D.3 below, by soliciting, accepting, or receiving funds from non-ECPs[3] and pooling the funds for the purported purpose of engaging in retail forex transactions on their behalf, Defendant engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and, therefore, acted as an unregistered CPO. By advising and exercising discretionary trading authority over purported individual retail forex accounts for his non-ECP private account clients, Defendant acted as an unregistered CTA. The same fraudulent conduct that violates 7 U.S.C. § 6b also violates 7 U.S.C. § 6*o*(1). *See CFTC v. Aurifex Comm. Research Co.*, No. 1:06–CV–166, 2008 WL 299002, at *5-6 (W.D. Mich. Feb. 1, 2008); *see also Skorupskas*, 605 F. Supp. at 932. Accordingly, the elements of proof regarding the conduct of Defendant described above in violation of 7 U.S.C. § 6b(a)(2) and 17 C.F.R. § 5.2(b) also demonstrate a violation of 7 U.S.C. § 6*o*(1)(A), (B).[4]

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[3] In the case of an individual, 7 U.S.C. § 1a(18)(A)(xi) defines ECP to mean a person "acting for its own account … who has amounts invested on a discretionary basis, the aggregate of which is in excess of—(I) $10,000,000; or (II) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual." Most if not all of Defendant's pool participants and private account clients were not ECPs.

[4] Unlike 7 U.S.C. § 6b(a) and 6*o*(1)(A), the language of 7 U.S.C. § 6*o*(1)(B) does not require "knowing" or "willful" conduct as a prerequisite for establishing liability for fraud. *See, e.g., Commodity Trend Service, Inc. v. CFTC*, 233 F.3d 981, 993-94 (7th Cir. 2000) (noting that because it applies to "any transaction, practice, or course of business which operates as a fraud or deceit," 7 U.S.C. § 6*o*(1)(B) "focuses upon the effect a [wrongdoer]'s conduct has on its investing customers rather than the [wrongdoer]'s culpability, and so does not require a showing of scienter"); *Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988) (holding that Congress did not intend to require proof of scienter to establish a violation of 7 U.S.C. § 6*o*).

3. Defendant Violated 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), (cc), 6m(1) (2012), and 17 C.F.R. § 5.3(a)(2)(i), (3)(i) (2018)— Failure to Register as a CTA/CPO

65. 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb), (cc) prohibits any person from exercising discretionary trading authority or obtaining written authorization to exercise trading authority over any account for or on behalf of a non-ECP or operating or soliciting funds for a pooled investment vehicle for non-ECPs in connection with retail forex transactions, unless registered with the Commission, with certain exceptions not applicable here. Similarly, 17 C.F.R. § 5.3(a)(2)(i), (3)(i) requires any forex CTA or CPO, as defined in 17 C.F.R. § 5.1(d)(1), (e)(1), to register with the Commission. 17 C.F.R. § 5.1(d)(1) defines a CPO as any person who operates or solicits funds for a pooled investment vehicle on behalf of a non-ECP in connection with retail forex transactions. 17 C.F.R. § 5.1(e)(1) defines a CTA as any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account for or on behalf of a non-ECP in connection with retail forex transactions. Finally, 7 U.S.C. § 6m(1) prohibits a CTA and CPO, unless registered as such with the Commission, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CTA or CPO.

66. As the record demonstrates, all, or nearly all, of Defendant's private account clients and pool participants are non-ECPs. Defendant violated 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) by, without being registered with the Commission, engaging in the business of advising others, exercising or representing to exercise discretionary trading authority, and/or obtaining written authorization to exercise written trading authority over private account clients' forex accounts. Defendant violated 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) by, without being registered, operating or soliciting funds for a pooled forex investment vehicle. Similarly, Defendant violated 17 C.F.R. § 5.3(a)(2)(i), (3)(i) by exercising or representing to exercise discretionary trading authority and/or

obtaining written authorization to exercise discretionary trading authority over accounts for or on behalf of non-ECPs, and by operating or soliciting funds for a pooled investment vehicle for non-ECPs in connection with retail forex transactions, without being registered with the Commission. Finally, Defendant violated 7 U.S.C. 6m(1) by, without being registered, using the mails and other means or instrumentalities of interstate commerce (including text messaging and the Internet), in connection with his business as a CTA and CPO.

4. Defendant Violated 17 C.F.R. §§ 4.20, 4.21, 4.22, 4.30, and 4.31 (2018)—Improper Operation of a CPO/CTA

67. 17 C.F.R. § 4.20(a)(1), (b), (c) provides, inter alia, that a CPO must (i) operate its pool as a legal entity separate from that of the pool operator, (ii) receive funds from pool participants in the pool's name, and (iii) avoid commingling pool participant funds with that of the CPO. 17 C.F.R. § 4.21 requires a CPO to furnish prospective pool participants with a specified Disclosure Document. 17 C.F.R. § 4.22 requires a CPO to periodically distribute to pool participants a specified Account Statement and Annual Report. 17 C.F.R. § 4.30(a) prohibits a CTA from soliciting, accepting, or receiving from an existing or prospective client funds in the CTA's name to purchase, margin, or guarantee any commodity interest of the client. 17 C.F.R. § 4.31 requires a CTA to furnish prospective clients with a specified Disclosure Document.[5]

68. As demonstrated above, Defendant was required to be registered as a CTA and CPO. Defendant violated 17 C.F.R. § 4.20(a)(1), (b), and (c) by (i) not operating his pool as a separate legal entity from himself, (ii) failing to receive pool participants' funds in the name of a pool, and (c) commingling pool participants' funds with his own funds. Similarly, Defendant violated 17 C.F.R. § 4.30(a) by receiving private account client funds in his own name. Defendant

[5] 17 C.F.R. § 5.4 mandates that 17 C.F.R. part 4—including 17 C.F.R. §§ 4.20, 4.21, 4.22 cited above—applies to any person required to be registered as a forex CPO under Part 5 of the Regulations. As with the registration charges above, the reference to 17 C.F.R. § 5.4 makes clear that 17 C.F.R. Part 4, applicable to CTAs and CPOs generally, also applies to forex-specific CTAs and CPOs under 17 C.F.R. Part 5.

violated 17 C.F.R. §§ 4.21, 4.22, and 4.31 by failing to provide the required Disclosure Documents or periodic Account Statements and Annual Reports to prospective and existing private account clients and pool participants.

IV. ORDER FOR RELIEF

A. PERMANENT INJUNCTION

69. The Commission is authorized to seek, and the Court to impose, injunctive relief. Section 6c of the Act, 7 U.S.C. § 13a-1(a). Such relief may be sought against any person whenever it shall appear to the Commission that such person has engaged in any act or practice that violates the Act or Regulations.

70. As described above, the well-pleaded facts of the Commission's Complaint, and the evidence submitted through declarations, establish a reasonable likelihood that Defendant will be a repeat violator of the Act and Regulations unless permanently restrained and enjoined by the Court.

71. Based upon and in connection with the foregoing conduct, pursuant to 7 U.S.C. § 13a-1, Defendant is permanently restrained, enjoined and prohibited from directly or indirectly:

a. Cheating or defrauding (or attempting to cheat or defraud) another person, willfully making a false statement to another person, or willfully deceiving (or attempting to deceive) another person by any means in connection with any retail forex transaction in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3);

b. Employing a scheme to defraud or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any pool participant or client while acting as a CPO and/or CTA in violation of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1);

c. Exercising discretionary trading authority or obtaining written authorization to exercise trading authority over any account for or on behalf of a person who is not an ECP as defined in Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi), or operating or soliciting funds for a pooled investment vehicle for non-ECPs in connection with retail forex transactions, without being registered with the Commission as a CTA or CPO in violation of Sections 2(c)(2)(C)(iii)(I)(bb), (cc) and 4m(1) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb), (cc), 6m(1), and Regulations 5.3(a)(2)(i) and (3)(i), 17 C.F.R. § 5.3(a)(2)(i), (3)(i);

d. Operating improperly as a CPO by failing to operate a commodity pool as a separate legal entity from the CPO, failing to receive funds from pool participants in the pool's name, commingling pool participant funds with the CPO's funds, failing to furnish prospective pool participants with specified Disclosure Documents, and failing to furnish pool participants with specified Account Statements and Annual Reports in violation of Regulations 4.20 4.21, and 4.22, 17 C.F.R. §§ 4.20 4.21, 4.22; and,

e. Operating improperly as a CTA by soliciting, accepting, or receiving from an existing or prospective client funds in the CTA's name to purchase, margin, or guarantee any commodity interest of the client, and failing to furnish prospective clients with a specified Disclosure Document in violation of Regulations 4.30 and 4.31, 17 C.F.R. §§ 4.30, 4.31.

72. Defendant is also permanently restrained, enjoined, and prohibited from directly or indirectly:

a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40));

b. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3), for his own personal account or for any account in which he has a direct or indirect interest;

c. Having any commodity interests traded on his behalf;

d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;

f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and/or

g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

B. RESTITUTION AND CIVIL MONETARY PENALTY

1. Restitution

73. The Commission is authorized to seek, and the Court to impose, equitable remedies for violations of the Act, including "restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses)." Section 6c(d)(3)(A) of the Act, 7 U.S.C. § 13a-1(d)(3)(A).

74. Defendant's illegal conduct caused his private account clients, pool participants, and subscribers to incur net losses totaling $735,983.48, which reflects total funds Defendant fraudulently solicited, minus funds returned.

75. Defendant shall pay restitution in the amount of Seven Hundred Thirty-Five Thousand, Nine Hundred Eighty-Three Dollars and Forty-Eight Cents ($735,983.48) ("Restitution Obligation"). If the Restitution Obligation is not paid immediately, post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

76. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant's private account clients, pool participants, and subscribers, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall receive restitution payments from Defendant and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

77. Defendant shall make Restitution Obligation payments, and any post-judgment interest payments, under this Order to the Monitor in the name "Kelvin O. Ramirez–Restitution Fund" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of

payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

78. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant's private account clients, pool participants, and subscribers identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible clients, pool participants, and subscribers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part 2 below.

79. Defendant shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's private account clients, pool participants, and subscribers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

80. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendant's private account clients, pool participants, and subscribers during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

81. The amounts payable to each private account client, pool participant, and subscriber shall not limit the ability of any client, pool participant, or subscriber from proving that a greater amount is owed from Defendant or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any client, pool participant, or subscriber that exist under state or common law.

82. Pursuant to Fed. R. Civ. P. 71, each private account client, pool participant, and subscriber of Defendant who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendant to ensure continued compliance with any provision of this Order and to hold Defendant in contempt for any violations of any provision of this Order.

83. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendant's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

84. Any funds in accounts belonging to Defendant that have been frozen pursuant to the Court's SRO [DE 6] shall be released to the Monitor for purposes of satisfying Defendant's Restitution Obligation.

2. Civil Monetary Penalty

85. Under Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1), and Regulation 143.8(a)(4)(ii)(D), 17 C.F.R. § 143.8(a)(4)(ii)(D), the Commission is authorized to seek a civil monetary penalty equal to the higher of triple Defendant's monetary gain from each violation of the Act or Regulations or up to $182,031[6] per violation.

[6] The civil monetary penalty amount is adjusted annually for inflation. The civil monetary penalty amount for violations occurring through November 1, 2015 is $140,000. The current inflation-adjusted civil monetary penalty amount for violations occurring after November 1,

86. Based on the allegations in the Complaint and the evidence before the Court, the Court finds Defendant, acting intentionally and with scienter, fraudulently solicited and misappropriated $735,983.48 during the Relevant Period and attempted to conceal his fraud by, among other things, providing fabricated bank and trading account statements to his private account clients, pool participants, and subscribers.

87. As a result of Defendant's illegal conduct, Defendant's private account clients, pool participants, and subscribers incurred significant losses while Defendant enriched himself. The Court finds that these circumstances warrant imposition of a significant monetary penalty.

88. Based on Defendant's intentional and egregious conduct, the Court finds that a civil monetary penalty reflecting three times the net monetary gain to Defendant is appropriate under the circumstances.

89. Defendant reaped net gains from his fraud in the amount of $735,983.48, which reflects the total amount of funds he fraudulently solicited during the Relevant Period minus funds he returned.

90. Accordingly, Defendant shall pay a civil monetary penalty in the amount of Two Million, Two Hundred Seven Thousand, Nine Hundred Fifty Dollars and Forty-Four Cents ($2,207,950.44) ("CMP Obligation"). If the CMP Obligation is not paid immediately, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

91. Defendant shall pay his CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment

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2015 is $182,031. *See* CFTC Annual Adjustment of Civil Monetary Penalties to Reflect Inflation - 2019, 84 Fed. Reg. 3103 (Feb. 11, 2019) (codified at 17 C.F.R. 143.8).

shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment by electronic funds transfer is chosen, Defendant shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

3. Provisions Related to Monetary Sanctions

92. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Defendant's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

93. Asset Freeze: On January 15, 2019, the Court entered an SRO [DE 6] prohibiting the transfer, removal, dissipation and disposal of Defendant's assets. The court hereby lifts this prohibition, subject to Paragraph 84 above.

V. MISCELLANEOUS PROVISIONS

94. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Order shall be binding upon Defendant, upon any person under the authority or control of Defendant, and upon any person who receives actual notice of this Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant.

95. Notices: All notices required to be given by any provision of this Order shall be sent certified mail, return receipt requested, as follows:

Notice to the Commission:

Rick Glaser
Deputy Director
Commodity Futures Trading Commission
Division of Enforcement
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Notice to Defendant:

Kelvin O. Ramirez
6403 Briar Glade Drive
Houston, TX 77072

Notice to NFA:

Daniel Driscoll
Executive Vice President, COO
National Futures Association
300 S. Riverside Plaza, Suite 1800
Chicago, IL 60606-3447

All such notices to the Commission or the NFA shall reference the name and docket number of this action.

96. Change of Address/Phone: Until such time as Defendant satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Order, Defendant shall provide

written notice to the Commission by certified mail of any change to his telephone number and/or mailing address within ten calendar days of the change.

97. Invalidation: If any provision of this Order or if the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

98. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by Defendant to modify or to seek relief from the terms of this Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this Order of Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and other Statutory and Equitable Relief forthwith and without further notice

SO ORDERED, this 12th day of July, 2019, at Houston, Texas.

Keith P. Ellison
United States District Judge