

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Case No. 1:20-cv-1440-WCG

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**SOUTHWEST SERVICES, L.L.C. A/K/A
SOUTH WEST SERVICES, LLC, and
TIMOTHY A. SACK,**

Defendants.

**ORDER OF DEFAULT FINAL
JUDGMENT, PERMANENT
INJUNCTION, CIVIL MONETARY
PENALTY, AND OTHER
EQUITABLE RELIEF AGAINST
DEFENDANTS**

1. Before the Court is Plaintiff Commodity Futures Trading Commission's ("Plaintiff," "CFTC," or "Commission") Motion and Supporting Memorandum for an Order of Default Final Judgment, Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Southwest Services, L.L.C. a/k/a South West Services, LLC ("Southwest Services") and Timothy A. Sack ("Sack") (collectively, "Defendants"), and the declaration and exhibits submitted therewith. (Mot., ECF No. 9.)

2. On September 14, 2020, the Commission filed its Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act ("Act") against Defendants. (ECF Nos. 1-2.) Southwest Services and Sack were properly served with the Complaint and Summons on September 18, 2020 and October 2, 2020, respectively. (ECF Nos. 4, 5.) Defendants failed to respond to the Complaint. (*See* ECF Docket.) Pursuant to Fed. R. Civ. P. 55(a), the Commission submitted applications for a Clerk's entry of default against Southwest

Services (ECF No. 6) and Sack (ECF No. 7). On October 14, 2020, the Clerk of the Court entered a default against Southwest Services, and on October 27, 2020, the Clerk of the Court entered a default against Sack. (*See* ECF Docket.)

3. Upon Plaintiff's Motion, which the Commission served upon Defendants, and having carefully considered the Complaint (the allegations in which are well-pleaded and hereby taken as true), the Motion, and the declaration accompanying it, pursuant to Federal Rule of Civil Procedure 55(b)(2), it is hereby **ORDERED AND ADJUDGED** that:

4. Plaintiff's Motion is **GRANTED**; and Pursuant to Federal Rules of Civil Procedure 55 and 58, final judgment by default is hereby **ENTERED** against Defendants.

Accordingly, the Court, having made the following findings of fact, orders the following relief.

I. FINDINGS OF FACT

A. The Parties

5. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the CEA, 7 U.S.C. §§ 1–26 (2018), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1–190 (2020). (Compl. ¶ 12.)

6. Defendant **Southwest Services, L.L.C.**, a/k/a South West Services, LLC, is a Wisconsin limited liability company, formed in August 2016. (Compl. ¶ 13.) Southwest Services maintained its principal office in Oshkosh, Wisconsin during the Relevant Period. (*Id.*) Southwest Services has never been registered with the Commission in any capacity. (Compl. ¶ 13.)

7. Defendant **Timothy A. Sack** ("Sack") is the sole managing member of Southwest Services. Throughout the Relevant Period, Sack, who organized and operated Southwest Services

as its sole managing member, acted as an officer of Southwest Services in a capacity that involved soliciting or accepting customers' orders for retail forex transactions. (Compl. ¶¶ 2, 14, 22-26, 45, 61; Malas Decl. ¶¶9-10.) Sack engaged in this conduct without being registered as an AP of an RFED. (Compl. ¶¶ 46, 61; Malas Decl. ¶8.) Formerly a resident of Oshkosh, Wisconsin, upon information and belief, Sack currently resides in Gaastra, Michigan. (Compl. ¶ 14.) Sack has never been registered with the Commission in any capacity. (Compl. ¶ 14)

B. Defendants' Financed Retail Forex Transactions

8. From at least August 2016 and continuing through at least April 2018 (the "Relevant Period"), Southwest Services, a Wisconsin limited liability company, offered to enter into and/or entered into agreements, contracts, or transactions in financed retail foreign currency ("forex") with customers located in the United States who were not eligible contract participants ("ECPs") that did not result in the delivery of forex within two (2) days of the transaction date. (Compl. ¶ 1; Decl. of George H. Malas dated Dec. 14, 2020 ("Malas Decl.") ¶¶ 7-8.) During the Relevant Period, Southwest Services acted as an unregistered RFED by being, or offering to be, the counterparty to financed retail forex transactions for U.S. retail forex customers who were not ECPs, which did not result in actual delivery of forex within two days of the transaction date. (Compl. ¶¶ 26, 44, 52; Malas Decl. ¶¶ 7-8.) Defendants, through their website *www.currencyliquidators.com* (the "website"), YouTube videos, and in-person solicitations, offered to enter into and/or entered into transactions in off-exchange forex on a financed basis with retail customers who were not ECPs by offering to act as the counterparty to transactions in Vietnamese Dong, Iraqi Dinar, and other foreign currencies. (Compl. ¶¶ 22; Malas Decl. ¶¶ 7-8.) As the sole managing member of Southwest Services, and the sole person responsible for its

creation and operation, Sack was responsible for the content of the website both individually and as the agent of Southwest Services. (Compl. ¶ 23; Malas Decl. ¶¶ 7-8.)

9. During the Relevant Period, Southwest Services offered to act as the counterparty to three types of forex transactions: 1) sell customers forex in cash, on a fully-paid basis; 2) buy forex from customers for cash; and 3) sell forex via a financed retail forex transaction that Defendants described as their “Premium + Layaway Program.” (Compl. ¶ 24; Malas Decl. ¶ 8(a)-(k).) Only the financed retail forex transactions Defendants offered through their “Premium + Layaway Program” are the subject of the Commission’s jurisdiction. (Compl. ¶ 24.) Under the caption “Premium + Layaway Program ‘How it Works,’” Defendants, through their website, offered retail customers transactions in forex utilizing a variety of financing options, which customers could choose by selecting the “Premium + Layaway Program” thirty (30) day or forty-five (45) day financing options displayed on the website. (Compl. ¶ 25; Malas Decl. ¶ 8(a)-(k).)

10. Each of the “Premium + Layaway Program” payment plans described above were financed by Southwest Services, acting as the counterparty, and none of the payment plans offered to customers resulted in actual delivery of forex within two days of the transaction(s). (Compl. ¶ 26; Malas Decl. ¶ 8 (a)-(k).) Instead, customers received their forex, if at all, over periods of not less than thirty (30) days, and up to forty-five (45) days, following the date of their financed retail forex transaction. (*Id.*) Each of these financed retail forex transactions included a significant financing charge. (Compl. ¶ 26.)

11. Defendants’ “Premium + Layaway Program” thirty (30) day option, as described on the website, instructed actual and prospective customers to make a “good faith down payment” then “[o]nce you’ve made that down payment you’ll be deeded the full amount of your foreign currency purchase, based on your promise to pay within the agreed 30- (sic) or 45-day term.” If

customers failed to pay the balance due at the end of either the thirty (30) or forty-five (45) day transaction, the customer's entire initial payment was forfeited. (Compl. ¶ 27; Malas Decl. ¶ 8(a)-(k).)

12. Defendants' website offered customers a variety of options as to the amount of the transaction in forex they may choose to enter into with Southwest Services, each of which carried a significant financing charge included within the transaction. For example, if a customer chose to enter into a transaction nominally involving ten million dinars in twenty-five thousand (25,000) dinar notes, the customer would have been charged a financing charge of one hundred twenty-nine dollars (\$129.00). (Compl. ¶ 28; Malas Decl. ¶ 27.)

13. Customers typically entered into transactions in forex with Southwest Services by submitting an online account application through the website. Defendants' website advised actual and prospective customers that Southwest Services "accept[ed] a myriad of payment options such as credit cards, debit cards, eChecks, cashiers' checks, money orders, wire transfers, and cash in person." (Compl. ¶ 29; Malas Decl. ¶ 8(a)-(k).)

14. The financed retail forex transactions that Defendants offered to retail customers via the "Premium+ Layaway Program" required customers to access the website and select a currency, denomination, amount for purchase, and the length of time to finance the retail forex transaction, typically either thirty (30) days or forty-five (45) days. (Compl. ¶ 30; Malas Decl. ¶ 8.) Each customer then provided his or her shipping and billing addresses and confirmed the order. (Compl. ¶ 31; Malas Decl. ¶ 8.) The customer would immediately send a non-refundable "Premium+ Layaway Fee" to Southwest Services via money order or cashier's check to cover the cost of sourcing and storing the currency layaway order. (*Id.*) The customer sent final payment

within the specified time period and once the payment cleared, the currency was mailed to the customer, according to the website, during the Relevant Period. (*Id.*)

15. Southwest Services' retail forex transactions neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer who had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, retail forex customers received their forex either 30 or 45 days following the date of their forex transactions. (Compl. ¶ 40; Malas Decl. ¶8.) During the Relevant Period, Defendants received at least \$4,500,000 from at least 1200 customers in connection with financed and cash forex transactions. (Compl. ¶¶ 32.) Southwest Group's cash transaction business in forex is not a basis for this civil enforcement action. (Compl. ¶ 24.)

C. Southwest Services' Required Recordkeeping and Disclosure Failures

16. During the checkout process on the website, each customer opened an account with Southwest Services by providing their name, billing and shipping addresses—including city, state/province, postal code, and country—and phone number. (Compl. ¶ 33; Malas Decl. ¶¶ 11-25.) For each of the financed retail forex transactions Southwest Services entered into during the Relevant Period, Southwest Services failed to keep and maintain records of each customer, the transaction entered into by each customer, the funds paid by each customer, and the monthly and/or quarterly account balance for each customer. (Compl. ¶ 33; Malas Decl. ¶¶28-31.)

17. For each of the financed retail forex transactions Southwest Services entered into during the Relevant Period, it failed to provide each customer with a separate written disclosure statement required to be furnished to retail forex customers pursuant to Regulation 5.5(a)(1)(i), 17 C.F.R. § 5.5(a)(1)(i) (2019). (Compl. ¶ 34; Malas Decl. ¶¶ 28-31.)

18. For each of the financed retail forex transactions Southwest Services entered into during the Relevant Period, it failed to keep and maintain books and records required to be kept and maintained by an RFED pursuant to Regulation 5.13, 17 C.F.R. § 5.13 (2019), including but not limited to: a copy of each customer's monthly statement and transaction confirmation(s). (Compl. ¶ 35; Malas Decl. ¶¶ 28-31.)

19. Southwest Services' online account application did not seek any information about prospective customers' ability to send or receive actual delivery of forex or customers' business need for forex. (Compl. ¶ 36; Malas Decl. ¶¶ 28-31.) During the Relevant Period, Southwest Services failed to keep or maintain any records containing any information about prospective customers' ability to send or receive actual delivery of forex or customers' business need for forex. (*Id.*)

20. Southwest Services' online account application did not inquire as to whether a prospective customer was an ECP or about a prospective customer's savings and investments. (Compl. ¶ 37; Malas Decl. ¶26.) Southwest Services failed to keep or maintain any records containing any information about a prospective customer's savings and investments or whether a prospective customer was an ECP. (Compl. ¶ 37; Malas Decl. ¶¶28-31.) Southwest Services' online account application did not inquire if a prospective customer had assets in excess of \$5 million, nor did it inquire if the prospective customer was seeking to engage in forex transactions to manage the risk of an asset or liability already owned, or about to be owned, by the prospective customer. (Compl. ¶ 38; Malas Decl. ¶26.) At no point in offering or entering into financed retail forex transactions during the Relevant Period did Southwest Services solicit or obtain information concerning whether prospective or actual customers were ECPs. (Compl. ¶ 39; Malas Decl. ¶26.)

Southwest Services failed to keep or maintain any records indicating whether its customers were ECPs. (Compl. ¶ 39; Malas Decl. ¶¶28-31.)

II. CONCLUSIONS OF LAW

A. Jurisdiction and Venue

21. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the CEA, 7 U.S.C. §13a-1(a) (2018), provides that district courts have jurisdiction to hear actions brought by the Commission for injunctive relief or to enforce compliance with the CEA whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in, an act or practice constituting a violation of any provision of the CEA or any rule, regulation, or order thereunder.

22. Venue properly lies with this Court pursuant to Section 6c(e) of the CEA, 7 U.S.C. § 13a-1(e) (2018), because Defendants resided and/or transacted business in the Eastern District of Wisconsin, and certain transactions, acts, and practices alleged in this Complaint occurred within this District.

B. Defendants' Failure to Answer Warrants Entry of Default Judgment

23. Federal Rule of Civil Procedure 55(a) authorizes the clerk of court to enter default against a defendant who has failed to plead or otherwise defend. After a party's default has been entered by the clerk, the party who sought the default may file a motion seeking default judgment. Fed. R. Civ. P. 55(b); *UMG Recordings, Inc. v. Stewart*, 461 F. Supp. 2d 837, 840 (S.D. Ill. 2006). Upon the entry of default, "the well-pleaded allegations of a complaint relating to liability are

taken as true.” *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983). A default judgment establishes, as a matter of law, that a defendant is “liable to plaintiff as to each cause of action alleged in the complaint.” *Breuer Elec. Mfg. Co. v. Toronado Sys. of Am., Inc.*, 687 F.2d 182, 186 (7th Cir. 1982). Granting a motion for default judgment lies within a district court’s sound discretion. *Dundee Cement Co.*, 722 F.2d at 1322.

24. Southwest Services and Sack were properly served with the Complaint and Summons on September 18, 2020, and October 9, 2020, respectively. (ECF Nos. 4, 5.) They failed to respond to the Complaint. Pursuant to Federal Rule of Civil Procedure 55(a), the Commission submitted applications for a Clerk’s entry of default against Southwest Services (ECF No. 6) and Sack (ECF No. 7). On October 14, 2020, the Clerk of the Court entered a default against Southwest Services, and on October 27, 2020, the Clerk of the Court entered a default against Sack. (See ECF Docket.) Consequently, Southwest Services and Sack have admitted to all of the well-pleaded allegations in the Complaint. See *Dundee*, 722 F.2d at 1323.

C. The Well-Pled Facts of the Complaint Establish that Southwest Services and Sack Violated the Commodity Exchange Act and Commission Regulations as Alleged

1. Southwest Services Violated Section 2(c)(2)(C)(iii)(I)(aa) of the CEA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2018), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2019) (Count I): Failure to Register as a Retail Foreign Exchange Dealer

25. Section 2(c)(2)(C)(i)(I) of the CEA, 7 U.S.C. § 2(c)(2)(C)(i)(I) (2018), in relevant part, applies to any agreement, contract, or transaction in forex that is offered to, or entered into with, a person that is not an ECP, subject to certain exceptions not applicable herein. The agreement, contract, or transaction in forex must be offered or entered into on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis. *Id.* Section 2(c)(2)(C)(i)(II)(bb) of the CEA, 7 U.S.C.

§ 2(c)(2)(C)(i)(I)(bb) (2018), in relevant part, provides that 7 U.S.C. § 2(c)(2)(C)(i)(I) shall not apply to a contract of sale that results in actual delivery within two (2) days of the transaction, or that creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business. (Compl. ¶ 15.)

26. Southwest Services violated 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. § 5.3(a)(6)(i) by soliciting and accepting forex orders on a financed basis from non-ECPs, and by being or offering to be the counterparty to such transactions without being registered with the Commission as an RFED. (Compl. ¶¶ 22–55; Malas Decl. ¶ 8.)

27. Southwest Services' financed forex transactions were the type of accounts, agreements, contracts, or transactions described in Section 2(c)(2)(C) of the CEA, 7 U.S.C. § 2(c)(2)(C) (2018). (Compl. ¶ 42.) None of Southwest Services' financed forex transactions was a contract of sale of a commodity for future delivery (or an option thereon) that was executed, traded on, or otherwise subject to the rules of a contract market designated pursuant to Section 5(a) of the CEA, 7 U.S.C. § 5(a) (2018). (Compl. ¶ 43.) Therefore, each of Southwest Services' financed forex transactions was a retail forex transaction. (Compl. ¶ 44.)

28. As set forth above and in the Complaint, during the Relevant Period, Southwest Services solicited and/or accepted orders from U.S. resident non-ECP customers in connection with retail forex transactions and was or offered to be the counterparty to those transactions. (Compl. ¶ 52.) Southwest Services engaged in this conduct without being registered as an RFED. (*Id.*) By this conduct and by failing to register as an RFED during the Relevant Period, Southwest Services violated 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. § 5.3(a)(6)(i). (Compl. ¶ 46, 53.) Accordingly, this Court enters judgment against Southwest Services, in favor of the Commission, as to Count One of the Complaint.

2. Sack Violated Section 2(c)(2)(C)(iii)(I)(aa) of the CEA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2018), and Regulation 5.3(a)(6)(ii), 17 C.F.R. § 5.3(a)(6)(ii) (2019) (Count II): Failure to Register as an Associated Person of a Retail Foreign Exchange Dealer

29. Regulation 5.1(h)(2), 17 C.F.R. § 5.1(h)(2) (2019), in relevant part, defines an AP of an RFED as any natural person associated with an RFED as a partner, officer, or employee (or any natural person occupying a similar status or performing similar functions) in any capacity that involves: (i) the solicitation or acceptance of retail forex customers' orders; or (ii) the supervision of any person or persons so engaged. (Compl. ¶ 19.) Regulation 5.1(k), 17 C.F.R. § 5.1(h)(2) (2019), in relevant part, defines a "retail forex customer" as a person, other than an ECP as defined in Section 1a(18)(xi) of the Act, 7 U.S.C. § 1a(18)(xi) (2018), acting on its own behalf and trading in any account, agreement, contract, or transaction described in 7 U.S.C. § 2(c)(2)(C). (Compl. ¶ 20.) Pursuant to Regulation 5.3(a)(6)(ii), 17 C.F.R. § 5.3(a)(6)(ii) (2019), any AP of an RFED is required to register with the Commission in that capacity. (Compl. ¶ 60.)

30. Throughout the Relevant Period, Sack, who organized and operated Southwest Services as its sole managing member, acted as an officer of Southwest Services in a capacity that involved soliciting or accepting customers' orders for retail forex transactions. (Compl. ¶¶ 2, 14, 22-26, 45, 61; Malas Decl. ¶¶ 9-10.) Sack engaged in this conduct without being registered as an AP of an RFED. (Compl. ¶¶ 46, 61; Malas Decl. ¶ 8.) By associating himself with Southwest Services in such a capacity and by failing to register as AP of an RFED during the Relevant Period, Sack violated 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. § 5.3(a)(6)(ii). (Compl. ¶ 62.) Accordingly, this Court enters judgment against Sack, in favor of the Commission, as to Count Two of the Complaint.

3. Southwest Services Violated Regulation 5.5(a)(1)(i), 17 C.F.R. § 5.5(a)(1)(i) (2019) (Count III): Failure to Provide Written Disclosure Statement

31. Southwest Services acted as an RFED by soliciting and accepting orders from U.S. resident non-ECPs in connection with retail forex transactions and was or offered to be the counterparty to those forex transactions. (Compl. ¶ 67; Malas Decl. ¶¶ 26-27.) Commission Regulation § 5.5(a)(1)(i), 17 C.F.R. § 5.5(a)(1)(i) (2019), in relevant part, provides that no RFED may open an account that will engage in retail forex transactions for a retail forex customer unless the RFED first furnishes the retail forex customer with a separate written disclosure statement containing only the language set forth in Regulation 5.5(b), 17 C.F.R. § 5.5(b) (2019), and the disclosure required by Regulation 5.5(e), 17 C.F.R. § 5.5(e) (2019). (Compl. ¶ 66.) At no time during the Relevant Period did Southwest Services furnish those retail forex customers with a separate written disclosure statement containing only the language set forth in 17 C.F.R. § 5.5(b) and the disclosure required by 17 C.F.R. § 5.5(e), in violation of 17 C.F.R. § 5.5(a)(1)(i). (Compl. ¶¶ 34, 68; Malas Decl. ¶¶ 28-31.) Therefore, Southwest Services violated 17 C.F.R. § 5.5(a)(1)(i) each time it opened an account for a customer that engaged in retail forex transactions. (Compl. ¶ 69.) Accordingly, this Court enters judgment against Southwest Services, in favor of the Commission, as to Count Three of the Complaint.

4. Southwest Services Violated Regulation 5.13(d), 17 C.F.R. § 5.13(d) (2019) (Count IV): Failure to Keep Required Books and Records

32. 17 C.F.R. § 5.13(d), in relevant part, provides that each RFED shall maintain, in accordance with Regulation 1.31, 17 C.F.R. § 1.31 (2019), a copy of each monthly statement and confirmation required by Regulation 5.13(a) and (b), 17 C.F.R. § 5.13(a), (b) (2019). (Compl. ¶ 71.)

33. During the Relevant Period, Southwest Services acted as an RFED by soliciting and accepting orders from U.S. resident non-ECPs in connection with retail forex transactions and was or offered to be the counterparty to those forex transactions. (Compl. ¶ 73) At no time during the Relevant Period did Southwest Services maintain, in accordance with 17 C.F.R. § 1.31, a copy of each monthly statement and confirmation required by 17 C.F.R. § 5.13(a) and (b), in violation of 17 C.F.R. § 5.13(d). (Compl. ¶¶ 33, 35-36, 74; Malas Decl. ¶¶ 28-31.) Therefore, Southwest Services violated 17 C.F.R. § 5.13(d) each instance during the Relevant Period in which it failed maintain the required RFED monthly account statements and confirmations. (Compl. ¶ 75.) Accordingly, this Court enters judgment against Southwest Services, in favor of the Commission, as to Count Four of the Complaint.

5. Sack Is Liable for Southwest Services' Violations

34. Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2018), provides, in relevant part provides that any person who, directly or indirectly, controls any person who has violated any provision of the CEA or Regulations may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. The fundamental purpose of this controlling person liability provision of the CEA is “to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the [CEA] directly on such individuals as well as on the corporation itself.” *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1334 (11th Cir. 2002) (internal quotations and citations omitted).

35. Because Sack controlled Southwest Services and knowingly induced the acts constituting its violations of the CEA and Regulations, Sack is liable as a controlling person for each of Southwest Services' violations of 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), 17 C.F.R. §§ 5.3(a)(6)(i), 5.5(a)(1)(i), and 5.13(d) as alleged in the Complaint. (Compl. ¶¶ 55, 70, 76.)

6. Southwest Services Is Liable for Its Agents' Violations

36. Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2018), along with Regulation 1.2, 17 C.F.R. § 1.2 (2019), imposes strict liability upon principals for the actions of their agents acting within the scope of their employment. *See Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986). Because the acts, omissions, and failures of Sack as described in the Complaint occurred within the scope of his employment, agency, or office with Southwest Services (Compl. ¶ 64), pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2, Southwest Services is liable as a principal for each act, omission, and failure of Sack constituting violations of 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. § 5.3(a)(6)(ii).

37. Accordingly, the Court hereby **ENTERS** default judgment against Southwest Services and Sack and in favor of the Commission on all counts of the Complaint pursuant to Federal Rule of Civil Procedure 55(b) and **ORDERS** the relief set forth below.

III. RELIEF

IT IS HEREBY ORDERED THAT:

A. **Permanent Injunction**

38. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Sack and Southwest Services, their officers, agents, servants, employees, successors, assigns, and/or attorneys, and all persons in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise, is/are hereby permanently restrained, enjoined, and prohibited from engaging in conduct that violates Section 2(c)(2)(C)(iii)(I)(aa) of the CEA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2018), and Regulations 5.3(a)(6)(i), 5.3(a)(6)(ii), 5.5(a)(1)(i), and 5.13(d), 17 C.F.R. §§ 5.3(a)(6)(i), 5.3(a)(6)(ii), 5.5(a)(1)(i), and 5.13(d) (2019).

39. Sack and Southwest Services, their officers, agents, servants, employees, successors, assigns, and/or attorneys, and all persons in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise, is/are hereby 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) (2018));
- (b) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020) for their own personal accounts or for any account in which they have a direct or indirect interest;
- (c) Having any commodity interests traded on their 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) (2020);
- (g) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2018)), registered,

exempted from registration, or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2020); and

(h) Engaging in any business activity related to commodity interests.

B. Civil Monetary Penalty

40. Pursuant to Section 6c(d)(1)(A) of the CEA, 7 U.S.C. § 13a-1(d)(1)(A) (2018), and Regulation 143.8(b)(1), 17 C.F.R. § 143.8(b)(1) (2020), Southwest Services and Sack shall pay, jointly and severally, a civil monetary penalty in the amount of **\$740,968** (“CMP Obligation”) (*i.e.*, \$185,242 for each of the four counts in the Complaint), plus post-judgment interest. 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 (2018).

41. Southwest Services and Sack shall pay their 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 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
Telephone: (405) 954-6569
Fax: (405) 954-1620
9-AMC-AR-CFTC@faa.gov

If payment by electronic funds transfer is chosen, Southwest Services and Sack shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Southwest Services and Sack shall accompany payment of the CMP

Obligation with a cover letter that identifies the payor and the name and docket number of this proceeding. Southwest Services and Sack 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, DC 20581.

C. Miscellaneous Provisions

42. Partial Satisfaction: Acceptance by the CFTC of any partial payment of the CMP Obligation shall not be deemed a waiver of Southwest Services and Sack's obligations to make further payments pursuant to this Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

43. Notice: All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested as follows:

Notice to Commission:

Paul G. Hayeck
Deputy Director
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

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

44. Change of Address/Phone: Until such time as Southwest Services and Sack satisfy in full their Disgorgement Obligation and CMP Obligation as set forth in this Order, they shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten calendar days of the change.

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

46. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Order shall be binding upon Southwest Services and Sack, upon any person under their authority or control, and upon any person who receives actual notice of this Order, by personal service, email, facsimile, or otherwise insofar as he or she is acting in active concert or participation with Southwest Services and Sack.

47. 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 Southwest Services and Sack to modify, or for relief from, the terms of this Order.

48. There being no just reason for delay, the Clerk of the Court is hereby instructed to enter this Order of Default Final Judgment, Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Southwest Services and Sack forthwith and without further notice.

SO ORDERED at Green Bay, Wisconsin this 16th day of December, 2020.

s/ William C. Griesbach

William C. Griesbach
United States District Judge