

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

FINANCIAL TREE dba FINANCIAL
TREE TRUST, et al.,

Defendants.

No. 2:20-cv-01184 TLN AC

FINDINGS AND RECOMMENDATIONS

This matter is before the Court on plaintiff Commodity Futures Trading Commission’s (“CFTC” or “Commission”) Motion for Issuance of an Order for Final Judgment of Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief (“Motion”) against Defendants Financial Tree (“Financial Tree”), Financial Solution Group (“Financial Solution”), New Money Advisors, LLC (“New Money”), The Law Firm of John Glenn, P.C. (“Glenn Law Firm”), John D. Black (“Black”), Christopher Mancuso (“Mancuso”), Joseph Tufo (“Tufo”), and John P. Glenn (“Glenn,” and together with the Glenn Law Firm, the “Glenn Defendants”) (collectively, “Defendants”); and Relief Defendants Suisse Group (USA) LLC (“Suisse Group”), JMC Industries LLC (“JMC”), Landes Capital Management, LLC (“Landes”), Kingdom Trust LLC (“Kingdom”), Herbert Caswell (“Caswell”), Anne Mancuso (“Anne Mancuso”), and Tyler Mancuso (“Tyler Mancuso”) (collectively, “Relief Defendants,”

1 and together with Defendants, the “Parties”). Plaintiff asserts that other than the Black and the
2 Glenn Defendants, who appeared in this action solely to litigate bankruptcy stay and/or default-
3 related issues but ultimately defaulted (ECF Nos. 111, 122) the defendants have each failed to
4 appear.

5 Defendants John Glenn and the Law Firm from John Glenn P.C. filed a notice of intent to
6 default (ECF No. 109) and filed a statement of non-opposition to the pending motion (ECF No.
7 127). Two non-parties, acting in pro se, filed a “notice” in response to the motion for default
8 judgment, purportedly on behalf of defendant Kingdom Trust LLC. ECF No. 128.

9 The undersigned issues findings and recommendations on this motion pursuant to Local
10 Rule 302(c)(19).

11 I. FACTUAL AND PROCEDURAL BACKGROUND

12 A. Procedural History

13 On June 15, 2020, the CFTC filed a Complaint charging the Defendants with violating
14 Sections 4b(a)(2)(A)-(C), 4c(b), 4k(2), 4m(1), 4o(1)(A)-(B), and 2(c)(2)(C)(iii)(I)(cc) of the
15 Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6c(b), 6k(2), 6m(1), 6o(1)(A)-
16 (B), and 2(c)(2)(C)(iii)(I)(cc) (2018), and Commission Regulations (“Regulations”) 4.20(a)(1),
17 (b)-(c), 4.21, 4.22, 5.2(b)(1)-(3), 5.3(a)(2), and 32.4, 17 C.F.R. §§ 4.20(a)(1), (b)-(c), 4.21, 4.22,
18 5.2(b)(1)-(3), 5.3(a)(2), and 32.4 (2021). ECF No. 1. In addition, the Complaint alleges that
19 Relief Defendants, who were not charged with violating the Act or Regulations, received funds
20 and assets from Defendants, to which Relief Defendants held no legitimate interest or entitlement
21 and which were derived from Defendants’ fraudulent and violative acts. Id. On July 2, 2020, the
22 Court entered a Statutory Restraining Order (“SRO”) against the Parties that, among other things,
23 authorized the freezing of assets held in the name of or under the control or management of the
24 Parties. ECF No. 9.

25 On July 8, 2020 and, in the case of Mancuso, July 12, 2020, the CFTC properly effected
26 service of the Summons and Complaint by personal service by private process server pursuant to
27 Rule 4 of the Federal Rules of Civil Procedure (“FRCP”) on Black (and, through Black, on
28 Black’s entities Financial Tree, Financial Solution, and New Money), Mancuso, Tufo, Landes

1 (through its principal, Justin Smith), Kingdom (through its principals, Michael and Ruby Handler
2 Jacobs), Anne Mancuso, and Tyler Mancuso. ECF Nos. 13-22. On July 22, 2020, the CFTC
3 properly effected service of the Summons and Complaint on JMC and Suisse Group. On July 23,
4 2020, following repeated attempts to serve Caswell personally, the CFTC properly effected
5 service of the Summons and Complaint on Caswell via substitute service on Caswell’s mother at
6 Caswell’s usual place of abode and last known mailing address. ECF No. 57 at 2 ¶¶ 2-3 & nn.1-2
7 (detailing completed service).

8 Other than Black and the Glenn Defendants—who appeared in this action solely to litigate
9 stay- and/or default-related issues but ultimately defaulted—the Parties have failed to appear. All
10 Parties failed to file a responsive pleading or otherwise defend in this action, and the clerk has
11 entered default against all Parties pursuant to FRCP 55(a). ECF Nos. 49-50, 58, 111, 122. The
12 CFTC has moved this Court to grant final judgment by default against Defendants, order
13 permanent injunctive relief, impose restitution obligations, and impose civil monetary penalties.
14 The CFTC has further moved this Court to grant final judgment by default against Relief
15 Defendants and order disgorgement of ill-gotten funds to which they are not entitled.

16 B. Factual Allegations

17 The following allegations are asserted in plaintiff’s complaint unless otherwise specified.
18 ECF No. 1 at 6-54. The court notes that plaintiff has submitted updated calculations regarding
19 the amount of funds returned to pool participants and aggregate pool participant losses; these
20 numbers differ from those described in the complaint and are substantiated by the declaration of
21 fraud examiner Elise Robinson (ECF No. 125-1) filed concurrently with the motion for default
22 judgment. During the Relevant Period, pool participants contributed a total of \$14,512,482.49 to
23 the Black Pools. Defendants returned \$4,370,307.18 to certain pool participants in the form of
24 Ponzi payments. Pool participants suffered net losses of \$10,495,328.38. Of those losses,
25 \$4,690,155.52 were suffered by pool participants whose contributions resulted in Tufo receiving a
26 commission. Robinson Declaration (“Robinson Decl.,” attached as Exhibit 1 to this Motion) ¶¶
27 9-11 & Ex. A.

28 ///

1 Plaintiff Commodity Futures Trading Commission is an independent federal regulatory
2 agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1–26
3 (2018), and the Regulations promulgated thereunder, 17 C.F.R. pts. 1–190 (2021). Defendant
4 Financial Tree is a “Pure Trust Organization in Common Law” doing business as Financial Tree
5 and Financial Tree Trust. In April 2014, John Black, Trustee, executed Financial Tree’s Articles
6 of Trust. Financial Tree’s mailing address is 13389 Folsom Boulevard, Suite 300-122, Folsom,
7 CA 95630—a UPS store. Defendant Black is Financial Tree’s Trustee. From at least June 15,
8 2015 through at least the filing of the CFTC’s Complaint on June 15, 2020 (the “Relevant
9 Period”), Financial Tree operated as a commodity pool operator (“CPO”) by accepting and
10 receiving funds from members of the public (“pool participants”) for participation in two
11 commodity pools—the Financial Tree Pool (the “FT Pool”) and the Financial Solution Group
12 Pool (the “FSG Pool”) (collectively, the “Black Pools”). In addition to operating as a CPO,
13 during the Relevant Period, Financial Tree also operated as a commodity pool itself—the FT
14 Pool—because it owned a trading account in its name that traded pool funds in forex. Financial
15 Tree has never been registered with the Commission in any capacity.

16 Defendant Financial Solution is a “Pure Trust Organization in Common Law” formed in
17 April 2015 doing business as Financial Solution Group and Financial Solution Group Trust.
18 Financial Solution’s mailing address is 13389 Folsom Boulevard, Suite 300-113, Folsom, CA
19 95630—the same UPS store that Financial Tree utilizes for its mailing address. Defendant Black
20 is Financial Solution’s Trustee. During the Relevant Period, Financial Solution operated as a
21 CPO by soliciting, accepting, and receiving funds from pool participants for participation in the
22 Black Pools. In addition to operating as a CPO, during the Relevant Period, Financial Solution
23 also operated as a commodity pool itself—the FSG Pool—because it owned a trading account in
24 its name that traded pool funds in forex. Financial Solution has never been registered with the
25 Commission in any capacity.

26 Defendant New Money is a Nevada limited liability company formed in December 2017.
27 New Money’s address is 1400 South Linda Street, Pahrump, Nevada 89048. New Money’s
28 Officers are Black and Financial Tree, which Black controls. During the Relevant Period, New

1 Money operated as a CPO by soliciting funds from pool participants for participation in the Black
2 Pools. New Money has never been registered with the Commission in any capacity.

3 Defendant Glenn Law Firm is a Colorado law firm with its principal place of business at
4 155 East Boardwalk Drive, Suite 400, Fort Collins, CO 80525. Glenn is the Managing Partner of
5 the Glenn Law Firm. During the Relevant Period, the Glenn Law Firm operated as a CPO by
6 soliciting, accepting, and receiving funds from pool participants for participation in the Black
7 Pools. The Glenn Law Firm has never been registered with the Commission in any capacity.

8 Defendant Black is a resident of Folsom, California. Black is also known as John Barnes.
9 Black created and controls Financial Tree, Financial Solution, and New Money. During the
10 Relevant Period, Black acted as an Associated Person (“AP”) for CPOs Financial Tree, Financial
11 Solution, and New Money by soliciting pool participants for participation in the Black Pools and
12 supervising individuals so soliciting. Black has never been registered with the Commission in
13 any capacity.

14 Defendant Mancuso is a resident of Irvine, California. During the Relevant Period,
15 Mancuso acted as an AP for CPOs Financial Tree, Financial Solution, and New Money by
16 soliciting pool participants for participation in the Black Pools. Mancuso has never been
17 registered with the Commission in any capacity.

18 Defendant Tufo is a resident of Antioch, California. During the Relevant Period, Tufo
19 acted as an AP for CPOs Financial Tree, Financial Solution, and New Money by soliciting pool
20 participants for participation in the Black Pools. Separate from this Complaint’s allegations, in
21 1999, the Securities and Exchange Commission issued an order against Tufo relating to his role in
22 the fraudulent offer and sale of securities to the public. Similarly, in November 2015, Tufo pled
23 guilty to criminal violations of the Alabama Securities Act for fraudulently soliciting investments
24 in “no risk” gold trading programs where funds would purportedly be held in an attorney’s trust
25 account. Tufo has never been registered with the Commission in any capacity.

26 Defendant Glenn is a resident of Fort Collins, Colorado. During the Relevant Period,
27 Glenn acted as an AP for CPOs Financial Tree, Financial Solution, New Money, and the Glenn
28 Law Firm by soliciting at least one pool participant for participation in the Black Pools. In

1 addition, Glenn was the Managing Partner of the Glenn Law Firm. Glenn directed and controlled
2 the Glenn Law Firm's actions in all relevant respects, including the Glenn Law Firm's activities
3 as a CPO soliciting, receiving, and accepting funds from pool participants for participation in the
4 Black Pools. Glenn used his Glenn Law Firm email address to communicate with pool
5 participants. Glenn has never been registered with the Commission in any capacity.

6 Relief Defendant Landes is a Wyoming limited liability company with an address of 109
7 E. 17th Street #25, Cheyenne, Wyoming 82001. In September 2016, JMC transferred \$200,000
8 in pool funds to Landes. Landes has no legitimate claim to pool funds and did not provide any
9 services for the Black Pools or pool participants.

10 Relief Defendant Kingdom is a Wyoming limited liability company with an address of
11 2123 Pioneer Ave., Cheyenne, Wyoming 82001. Between March and October 2016, Financial
12 Solution transferred approximately \$1,050,000 in pool funds to Kingdom. On September 30,
13 2016, the BBB Jabez Foundation—which Black controls—transferred approximately \$25,000 in
14 pool funds to Kingdom. On October 3, 2016, Tyler Mancuso transferred approximately \$25,000
15 in pool funds to Kingdom. Kingdom has no legitimate claim to pool funds and did not provide
16 any services for the Black Pools or pool participants.

17 Relief Defendant Suisse Group is a Delaware limited liability company with an address of
18 1650 Margaret Street, Suite 302-326, Jacksonville, Florida 32209—a UPS store. Caswell is the
19 Director of and controls Suisse Group. In June 2016, Financial Solution transferred \$500,000 in
20 pool funds to a Suisse Group bank account. Suisse Group has no legitimate claim to pool funds
21 and did not provide any services for the Black Pools or pool participants.

22 Relief Defendant JMC is a Delaware limited liability company with an address of 1650
23 Margaret Street, Suite 302-326, Jacksonville, Florida 32209—the same UPS store address as
24 Suisse Group's. During the Relevant Period, Caswell was the Managing Member of and
25 controlled JMC until April 2019. In September 2016, Glenn transferred \$300,000 in pool funds
26 from a Glenn Law Firm bank account to JMC. JMC has no legitimate claim to pool funds and
27 did not provide any services for the Black Pools or pool participants.

28 ///

1 Relief Defendant Caswell is a resident of Jacksonville, Florida. During the Relevant
2 Period, including in 2016 when Financial Solution and the Glenn Law Firm transferred funds to
3 Suisse Group and JMC, respectively, Caswell controlled both entities as the lone Director of
4 Suisse Group and the lone Managing Member of JMC, commingled his personal funds with
5 Suisse Group and JMC Funds, and transferred Suisse Group and JMC funds to apparent relatives
6 and acquaintances. Suisse Group and JMC were the alter egos of Caswell. In 2016, Suisse
7 Group and JMC transferred at least \$150,187.33 in pool funds to bank accounts owned by
8 Caswell. Caswell has no legitimate claim to pool funds and did not provide any services for the
9 Black Pools or pool participants.

10 Relief Defendant Anne Mancuso is a resident of Newport Beach, California. Anne
11 Mancuso was Chris Mancuso's wife. During the Relevant Period, Defendant Chris Mancuso
12 transferred at least \$252,874.93 in pool funds to Anne Mancuso. Anne Mancuso has no
13 legitimate claim to pool funds and did not provide any services for the Black Pools or pool
14 participants.

15 Relief Defendant Tyler Mancuso is a resident of San Diego, California. Tyler Mancuso is
16 Chris Mancuso's son. During the Relevant Period, Defendant Chris Mancuso transferred at least
17 \$340,087.23 in pool funds to Tyler Mancuso. Tyler Mancuso has no legitimate claim to pool
18 funds and did not provide any services for the Black Pools or pool participants.

19 Plaintiff alleges that Defendants created and operated a Ponzi scheme. To operate the
20 fraudulent scheme, Black caused to be created, and controlled, three entities: Financial Tree,
21 Financial Solution, and New Money. Black has used these entities to operate and control the
22 Black Pools (i.e., the FSG Pool and the FT Pool). Financial Tree has served in three roles in
23 Defendants' fraud—as a CPO operating and controlling the Black Pools; as one of the Black
24 Pools itself (the FT Pool); and as an officer of New Money. Similarly, Financial Solution has had
25 a dual role in Defendants' fraud—as a CPO operating and controlling the Black Pools; and as one
26 of the Black Pools itself (the FSG Pool). Black is the only employee of the three entities. And
27 the only business the three entities conducted was related to Defendants' fraud.

28 ///

1 Through Financial Solution and New Money, Black and other APs solicited funds from
2 pool participants for participation in the Black Pools, in which pool participant funds were
3 purportedly to be held in a protected account and used as collateral to secure separate lines of
4 credit to trade forex and binary options. Pool participants could participate by entering into joint
5 venture agreements (“Agreements”) with Financial Solution or New Money. The Agreements,
6 however, did not direct pool participants to send funds directly to the Black Pools. Instead, the
7 Agreements required pool participants to send funds to a Glenn Law Firm “attorney escrow
8 account,” after which the Glenn Law Firm was to pass those funds along to the Black Pools.

9 In approximately August 2014, Mancuso contacted Glenn “to provide paymaster services
10 for Mr. Black and his companies based upon his various joint ventures with his clients.” Later
11 that month, Black (on behalf of Financial Tree) and Glenn (on behalf of the Glenn Law Firm)
12 signed a “Paymaster Agreement” providing that the Glenn Law Firm would accept funds from
13 third parties and disburse such funds to Financial Tree in exchange for a fee. In practice, the only
14 service the Glenn Law Firm provided to the Black Pools was to accept and transfer pool funds.
15 There was no legitimate business reason for pool participants to wire funds to the Glenn Law
16 Firm, and for the Glenn Law Firm to then wire funds to Financial Tree (less Glenn’s fee). Pool
17 participants could have just as easily wired money directly to Financial Tree. Black engaged the
18 Glenn Law Firm to provide a false veneer of safety and legitimacy to the Black Pools. Glenn
19 used his position as an attorney and Managing Partner of the Glenn Law Firm to deceive pool
20 participants into believing that the Black Pools were legitimate and safe.

21 During the Relevant Period, 92 pool participants (Robinson Decl. n.2) deposited over
22 \$14.32 million in the Black Pools through at least 134 total wire transfers to the Glenn Law
23 Firm’s bank accounts. In addition, at least five pool participants deposited at least \$190,793.73
24 through at least six wire transfers directly to Financial Tree or Financial Solution. Pool
25 participants deposited funds for trading in the Black Pools at least as early as January 2, 2015, and
26 at least as recently as January 29, 2020. Specifically, on February 14, 2016, the FSG Pool, by and
27 through Black, opened a forex trading account at Trading Firm A, a registered futures
28 commission merchant (“FCM”) and retail foreign exchange dealer (“RFED”). On March 18,

1 2016, Financial Solution transferred \$5,000 into the FSG Pool's forex trading account at Trading
2 Firm A. No trading occurred in the account. As of March 2020, the account was dormant.

3 Likewise, on July 6, 2016, the FT Pool, by and through Black, opened a forex (foreign
4 exchange) trading account at Trading Firm B. On July 7, 2016, Financial Tree transferred \$5,000
5 into the account. The account engaged in limited forex trading, generating net losses. On May 7,
6 2018, the FT Pool, at Black's direction, transferred the remaining \$2,554.79 from the account,
7 which is no longer active. In addition, during the Relevant Period, Financial Solution and
8 Financial Tree, by and through Black and/or other employees or agents, transferred
9 approximately \$254,280 overseas to possible binary options and/or forex trading firms. Financial
10 Solution and Financial Tree received back only approximately \$59,239.

11 Financial Solution and Financial Tree, by and through Black and/or other employees or
12 agents, made payments totaling \$4,370,307.18 (approximately 30% of pool funds) to certain pool
13 participants during the Relevant Period. Robinson Decl. ¶ 11. These were Ponzi payments made
14 from funds newly received from other pool participants. Defendants also misappropriated funds
15 to enrich themselves. Of the approximately \$14.5 million in pool funds, Defendants redirected
16 approximately \$6.3 million (approximately 43% of pool funds) to various Defendants' business
17 or personal bank accounts. Of the approximately \$14.32 million transferred to the Glenn Law
18 Firm's bank accounts in connection with the Black Pools, Glenn misappropriated at least
19 approximately \$285,438.24 by retaining such funds in those accounts and/or transferring such
20 pool funds to other bank accounts Glenn owned and/or controlled. Glenn had no legal right to
21 these pool funds. Glenn spent such funds on, among other things, expenses related to his divorce
22 and spousal support.

23 Of the remaining pool funds that Glenn did not misappropriate for himself, Glenn
24 transferred approximately \$13.5 million to Financial Tree and Financial Solution; approximately
25 \$300,000 to Relief Defendant JMC; at least approximately \$171,292.18 in apparent Ponzi
26 payments to pool participants; and approximately \$51,503.56 to an entity owned by Mancuso.
27 Upon receipt, Financial Tree, Financial Solution, and New Money did not deposit pool funds into
28 fiduciary-protected, separate bank accounts, and did not use pool funds as collateral to obtain

1 lines of credit to trade binary options and forex on pool participants' behalf, as the Agreements
2 promised. Instead, during the Relevant Period, Financial Solution and Financial Tree, by and
3 through Black and/or other employees or agents, transferred at least \$1,809,117.56 of pool funds
4 to business and personal bank accounts owned and/or controlled by Black. Black withdrew in
5 cash at least \$367,408.57 in pool funds, and spent additional misappropriated funds on, among
6 other things, personal travel, rent for his personal residence, legal fees, online gambling,
7 multilevel marketing programs, food and dining expenses, and software and online advertising.
8 Similarly, during the Relevant Period, Financial Solution and Financial Tree, by and through
9 Black and/or other employees or agents, made at least 238 payments totaling at least
10 approximately \$3,977,470.20 of pool funds to business and personal bank accounts owned and/or
11 controlled by Mancuso. Mancuso further misappropriated such funds, including by withdrawing
12 at least approximately \$1.3 million in cash, transferring at least approximately \$593,000 to Relief
13 Defendants Anne Mancuso and Tyler Mancuso, and spending additional such funds on, among
14 other things, personal travel, limousine expenses, spa and haircare expenses, and home
15 renovations.¹

16 Likewise, during the Relevant Period, Financial Solution and Financial Tree, by and
17 through Black and/or other employees or agents, made payments totaling at least approximately
18 \$228,000.01 in pool funds to business and personal bank accounts owned or controlled by, or
19 affiliated with, Tufo. Tufo further misappropriated pool funds by spending them on, among other
20 things, automobile-related expenses, eating out, groceries, insurance premiums, office expenses,
21 utilities, and miscellaneous household expenses. During the Relevant Period, pool participants
22 contributed a total of \$14,512,482.49 to the Black Pools. Defendants returned \$4,370,307.18 to
23 certain pool participants in the form of Ponzi payments. Pool participants suffered net losses of
24 \$10,495,328.38. Of those losses, \$4,690,155.52 were suffered by pool participants whose
25 contributions resulted in Tufo receiving a commission.

27 ¹ The updated financial information in these paragraphs is taken from plaintiff's proposed order,
28 which is supported by the Robinson Declaration and the Motion for Default Judgment. ECF No.
125-2 ¶¶ 33-41.

1 As set forth above, Financial Tree, Financial Solution, and New Money, by and through
2 its employees or agents, misappropriated and dissipated the vast majority of pool funds received,
3 including by transferring pool funds to Black, Mancuso, Tufo, and others. However, as of July
4 2020, Financial Tree and Financial Solution owned trading accounts containing pool funds
5 totaling \$4,630.15, which the CFTC froze pursuant to the SRO issued by this Court (ECF No. 9).
6 Financial Solution, Black, and Mancuso Ignored a California Department of Business Oversight
7 (“DBO”) Desist and Refrain Order to Cease Their Unlawful Activities.

8 On April 27, 2018, the California DBO issued a Desist and Refrain Order to Financial
9 Solution, Black, and Mancuso finding they unlawfully sold unregistered securities in California
10 and made material misrepresentations or omissions to a pool participant in connection therewith.
11 Financial Solution, Black, and Mancuso did not abide by the Desist and Refrain Order and
12 continued soliciting for the Black Pools. Defendants did not disclose to pool participants any of
13 the above conduct, including that they had traded very few pool funds in binary options or forex,
14 that they were using pool funds to pay personal expenses and make Ponzi payments instead of
15 keeping funds in a separate fiduciary-protected account, and that the California DBO had issued a
16 Desist and Refrain Order to Financial Solution, Black and Mancuso. Instead, Defendants made
17 material misrepresentations when soliciting pool participants to participate in the Black Pools.
18 Financial Solution, by and through Black, issued false account statements to pool participants.
19 Defendants also made material misrepresentations and/or omitted material facts to pool
20 participants when they asked for their funds to be returned or otherwise inquired about the status
21 of their deposits in the Black Pools, and Defendants did this while continuing to solicit and/or
22 accept funds from new pool participants.

23 Defendants made material misrepresentations and omissions to prospective and actual
24 pool participants, including in teleconference seminars, emails, and Agreements executed with
25 pool participants. Defendants’ representations to pool participants downplayed the risk
26 associated with the pools while promising monthly returns between 10-70%. These fraudulent
27 solicitations, as illustrated by the following representative examples, included, but were not
28 limited to, material misrepresentations that:

- 1 a. all pool funds would be protected in a “no risk” separate account by a
- 2 fiduciary-protected bank block and returned to pool participants on a schedule
- 3 prescribed by the Agreements;
- 4 b. traders would secure separate lines of credit to trade binary options and/or
- 5 forex for the benefit of pool participants;
- 6 c. pool participants would receive between 10% and 70% monthly returns on
- 7 their deposits as profits, depending on participation level;
- 8 d. more than 85% of trades had been successful; and
- 9 e. the Black Pools’ activities were overseen by a “globally renowned and highly
- 10 respected fiduciary accounting firm.”

11 The fraudulent solicitations also included, but were not limited to, the material omissions that:

- 12 a. the California DBO had issued a Desist & Refrain Order against Financial
- 13 Solution, Black, and Mancuso;
- 14 b. Defendants would pay themselves and other Defendants approximately 43% of
- 15 pool fund principal received, prior to trading any funds;
- 16 c. Defendants would make Ponzi payments to other pool participants using an
- 17 additional approximately 34% of pool fund principal received, prior to trading any
- 18 funds;
- 19 d. Defendants would improperly transfer pool fund principal to other third parties,
- 20 prior to trading any funds;
- 21 e. Defendants would trade binary options and forex with, at most, 2% of pool fund
- 22 principal received;
- 23 f. binary options and forex trading involves significant risk of trading losses;
- 24 g. Defendants had failed to return principal and deliver profits to other pool
- 25 participants; and
- 26 h. at least as early as December 2016, Defendants were expressly communicating to
- 27 existing pool participants that Defendants were struggling to make profitable
- 28 trades (which, itself, was a misrepresentation because Defendants were not in fact

1 trading pool funds) and were not returning principal or delivering profits to pool
2 participants as promised.

3 For example, during the Relevant Period, Black advised Pool Participant B that he could
4 increase his return on deposits from 10% to 13% per month—but only if he deposited an
5 additional \$25,000 in addition to his previously deposited \$25,000. Similarly, during the
6 Relevant Period, Mancuso circulated an email to prospective pool participants making similar
7 claims, adding “YOU WILL EARN A MINIMUM 10% on your money EVERY MONTH...
8 Funds must be wired to the Escrow Attorney here in the USA.” Mancuso promised escalating
9 monthly returns depending on the size of the deposit, up to 45% per month for deposits exceeding
10 \$1 million. On approximately June 13, 2015, a pool participant responded to Mancuso requesting
11 additional information regarding “the guarantee on your money.” Mancuso replied the next day,
12 “[i]n this program the funds are blocked and the trader uses his credit for the trade. So no risk to
13 blocked funds.”

14 Also during the Relevant Period, Tufo solicited potential pool participants by stating that
15 they could earn exorbitant returns (for example, \$600,000 from a \$100,000 deposit in 120 days);
16 and that the Black Pools were “foolproof” and “a sure thing.” Similarly, during the Relevant
17 Period, Glenn solicited potential pool participants, communicating, among other things, that
18 participating in the Black Pools would be a “good deal” for a pool participant and that Black and
19 Mancuso were “great guys.” On January 18, 2017, that pool participant transferred \$100,000 to
20 the Glenn Law Firm. Later that day, on a telephone call, Glenn told that pool participant that she
21 would receive the full amount promised in the Agreement.

22 In approximately June 2018, a pool participant spoke with Black, Mancuso, Tufo, and
23 others on a teleconference call. Mancuso communicated that the pool participant’s money would
24 be safe because “you’re not paying us, you’re paying an attorney.” Mancuso introduced Tufo as
25 the account manager who would be the pool participant’s principal point of contact for the
26 opportunity. Prior to the pool participant’s deposit of \$150,000 on approximately July 9, 2018,
27 Tufo communicated to the pool participant that Tufo knew many people who had successfully
28 deposited funds with Defendants, that the pool participant’s money would be safe, and if the pool

1 participant ever wanted to cancel the Agreement, he could do so easily and would receive his
2 money back.

3 Throughout the Relevant Period, pool participants entered into Agreements with Financial
4 Solution or New Money, signed by Black, containing representations that pool funds would be
5 deposited in a bank account where they would be “blocked and thereby fully protected against
6 loss of principal at all times” and used only as collateral for trading binary options, forex, and
7 other products; that pool participants would receive 10% or higher monthly returns and/or loan
8 funding generated by trading profits; that activities would be monitored by a global accounting
9 firm; and that pool participants could withdraw all principal after a specified period of time. The
10 Agreements directed pool participants to wire their funds to a Glenn Law Firm “attorney escrow”
11 bank account.

12 The above solicitations contained material misrepresentations and material omissions
13 because, among other things, Defendants did not have a historical 85% success rate trading; did
14 not segregate all pool funds in “no-risk” separate accounts protected by a Fiduciary-protected
15 bank block; did not return pool funds to pool participants on Agreement-prescribed schedules; did
16 not secure separate lines of credit to trade binary options and/or forex for the benefit of pool
17 participants; did not have an accounting firm overseeing trading activities; traded, at most, only a
18 small percentage of pool funds collected in binary options or forex; did not generate 10-70%
19 monthly returns or turn a \$100,000 deposit into \$600,000 in four months; and misappropriated the
20 vast majority of pool funds for unauthorized personal and business expenses and to make Ponzi
21 payments.

22 During the Relevant Period, Financial Solution, by and through Black and/or other
23 employees or agents, provided false account statements to pool participants purporting to reflect
24 monthly profits. However, these account statements contained material misrepresentations.
25 Financial Solution had not, in fact, generated any profits at all for pool participants, as Financial
26 Solution had not engaged in any profitable trading using pool funds. False account statements,
27 combined with Ponzi payments, in at least one case incentivized additional deposits by a pool
28 participant.

1 Despite making Ponzi payments to certain pool participants, Financial Solution and New
2 Money failed to return principal plus profits as promised to most pool participants. When pool
3 participants complained, Defendants made bogus excuses regarding Financial Solution’s and New
4 Money’s failures to return pool funds, all while soliciting additional funds and/or accepting pool
5 funds from those very same pool participants as well as new pool participants.

6 For example, in or about April of 2017, Mancuso and Black jointly sent a letter to pool
7 participants falsely claiming that “funds are actually flowing” and promising imminent return of
8 funds. Mancuso forwarded to pool participants a similar letter from Financial Solution (signed by
9 Black) blaming “breach of contract and nonpayment from some of our previous banking sources”
10 but claiming to have “hit the jackpot” with a new funding source and falsely promising repayment
11 by the end of the month. In a separate instance, Mancuso falsely claimed to a pool participant
12 that funds had arrived at a Bahamian bank, but storms and rain in the Bahamas had created
13 connectivity issues delaying return of funds. In some cases, Mancuso communicated with pool
14 participants over the course of multiple years offering a litany of fraudulent excuses and
15 repeatedly falsely promising the imminent return of funds. Yet at the very same time—in some
16 cases in the same communications that offered the fraudulent excuses—Black and Mancuso
17 solicited additional funds from existing and new pool participants.

18 During the Relevant Period, a pool participant emailed Mancuso and others, noting “this
19 matter has become exhausting, comical and nonsensical. It borders on criminal. Your last
20 response that the matters would close in 15 days has per usual been nothing but . . . another lie. I
21 am sick to my core of your damn lies.” Mancuso replied claiming no one had lied to the pool
22 participant, that funds would arrive within a month, and that Defendants were simply at the mercy
23 of various banks. Also during the Relevant Period, another pool participant emailed Black and
24 others, expressing frustration at receiving “one story after the next” from Black, including “that
25 funds were delayed in August because the European market had fluctuation and it was their
26 summer vacations” and that “there was a legal issue as to why the funds did not transfer from
27 Singapore to Hong Kong.” During the Relevant Period, after a pool participant confronted
28 Mancuso regarding the Desist & Refrain Order from the California DBO, Mancuso claimed to the

1 pool participant that the Order “WAS RESOLVED SOME TIME AGO... A CURRENCY
2 PROGRAM THAT WAS NOT OUR SERVICE. THIS CLIENT RECEIVED A REFUND BUT
3 SOMETIMES IT’S HARD TO REMOVE ADMINISTRATIVE PROCEEDINGS FROM THE
4 INTERNET...”

5 Like Black and Mancuso, Tufo knew of Financial Solution’s and New Money’s failure to
6 return pool funds and Black’s and Mancuso’s excuses for such failures. For example, during the
7 Relevant Period, Tufo emailed pool participants, stating “I am so sorry for these never ending
8 excuses. I’ve suggested several times that Chris and John sell everything they own to make you
9 whole” While Tufo, on emails to pool participants responding to their complaints, claimed
10 to be frustrated regarding such failures and that he was attempting to help resolve them, Tufo
11 continued soliciting new pool participants—and receiving payments in the form of
12 commissions—while omitting information regarding such failures and excuses.

13 Glenn also made fraudulent statements to pool participants regarding their funds, received
14 extensive complaints from pool participants regarding Defendants’ broken promises, and yet
15 continued to accept funds (and misappropriate his secret, unauthorized commissions) from new
16 pool participants as if the entire business was legitimate, while omitting that other pool
17 participants were complaining about their money. For example, during the Relevant Period,
18 shortly after Financial Solution and New Money failed to deliver funds to a pool participant as the
19 Agreements promised, the pool participant called Glenn requesting an update on her funds.
20 Glenn, in his capacity as an attorney and as the Managing Partner of the Glenn Law Firm, told the
21 pool participant that he was in possession of the pool participant’s money and would transfer the
22 \$600,000 she was owed by the end of the week. But these statements were false. At no time
23 during the Relevant Period did Glenn or the Glenn Law Firm possess the \$600,000 the pool
24 participant was owed under her Agreement. Defendants never paid the pool participant. When
25 the pool participant subsequently attempted to call Glenn, he did not answer his phone or return
26 her calls.

27 During the Relevant Period, Glenn, in his capacity as an attorney from his Glenn Law
28 Firm email address with his Glenn Law Firm signature block, emailed unspecified recipients

1 regarding a pool participant's deposit, claiming that he had been trying to resolve with Financial
2 Solution, Black, and Mancuso the issues returning funds. In this communication, Glenn omitted
3 the material fact that Glenn, himself, had misappropriated a portion of the pool participant's
4 funds. During the Relevant Period, the Colorado Supreme Court, Attorney Regulation Counsel
5 sent Glenn three separate bar complaints filed by individuals, including a pool participant,
6 regarding Glenn's role in the fraud.

7 Separately during the Relevant Period, pool participants repeatedly emailed Glenn
8 complaining that he was participating in a fraud. For example, one pool participant emailed
9 Glenn stating Mancuso and Black "have absolutely no intention of returning our money."
10 Thereafter during the Relevant Period, that pool participant forwarded Glenn correspondence
11 regarding extensive delays, stating, "These are the kind of people you have supported transferring
12 our money into their accounts for personal gains There are more victims." Again, during the
13 Relevant Period, Glenn forwarded the pool participant from his Glenn Law Firm email account
14 correspondence with Black and Mancuso asserting that the pool participant would be paid "by
15 month end." Separately during the Relevant Period, another pool participant emailed Glenn,
16 expressing concern regarding Glenn's involvement and that Glenn's "participation lended
17 credibility to . . . [Black's and Mancuso's] operation." As Black, Mancuso, Tufo, and Glenn
18 made those communications, each, along with the remaining Defendants, continued to solicit
19 and/or accept new funds from new and existing pool participants, and each misappropriated
20 money from those pool participants, while omitting the material facts that Defendants had failed
21 to return funds as promised to other pool participants and were expressly communicating with
22 those pool participants regarding such failures.

23 During the Relevant Period, Financial Tree, Financial Solution, New Money, and the
24 Glenn Law Firm acted as CPOs by engaging in a business that is of the nature of a commodity
25 pool and, in connection with that business, soliciting, accepting, and/or receiving funds for the
26 Black Pools. However, Financial Tree, Financial Solution, New Money, and the Glenn Law Firm
27 failed to register with the CFTC as CPOs. During the Relevant Period, Black, Mancuso, Tufo,
28 and Glenn acted as APs of CPOs by soliciting funds for the Black Pools, but failed to register

1 with the CFTC as APs of CPOs. Defendants Financial Tree and Financial Solution, while acting
2 as CPOs of the FT Pool and the FSG Pool, respectively, failed to operate the FT Pool and FSG
3 Pool as legal entities separate from those of the CPOs and commingled pool funds with non-pool
4 property by transferring pool funds into bank accounts controlled by Black, Mancuso, Tufo, and
5 others which contained non-pool funds. Defendant Glenn Law Firm, while acting as CPO of the
6 Black Pools, received and accepted pool funds into the Glenn Law Firm's attorney trust bank
7 accounts, rather than accounts in the names of the Black Pools. In addition, the Glenn Law Firm
8 commingled pool funds with non-pool property by accepting pool funds into bank accounts that
9 contained non-pool property.

10 Defendants Financial Tree, Financial Solution, New Money, and the Glenn Law Firm,
11 while acting as CPOs of the Black Pools, failed to provide pool disclosure documents, account
12 statements presented and computed in accordance with generally accepted accounting principles
13 and containing required information, and other documents required by Regulations 4.21 and 4.22,
14 17 C.F.R. §§ 4.21, 4.22 (2021), including but not limited to required cautionary statements, risk
15 disclosures, fees and expenses incurred by the Black Pools, past performance disclosures, a
16 statement that the CPO is required to provide all pool participants with monthly or quarterly
17 account statements, as well as an annual report containing financial statements certified by an
18 independent public accountant.

19 During the Relevant Period, Black was a controlling person for Financial Tree, Financial
20 Solution, and New Money. Black is the lone Trustee of Financial Tree and Financial Solution.
21 Financial Tree's and Financial Solution's Articles of Trust list Black as Trustee having exclusive
22 control of Financial Tree and Financial Solution. Black opened bank accounts for Financial Tree
23 and Financial Solution and was the sole signatory on these accounts (including the bank accounts
24 to which the Glenn Law Firm's bank accounts transferred funds). Black signed Agreements
25 between Financial Solution and pool participants. Black did not act in good faith or knowingly
26 induced Financial Tree's and Financial Solution's fraudulent acts.

27 During the Relevant Period, Glenn was a controlling person for the Glenn Law Firm.
28 Glenn is the Managing Partner of the Glenn Law Firm, whose website does not list other

1 attorneys as being members of the firm. Glenn signed the August 25, 2014 “Paymaster
2 Agreement” with Financial Tree on behalf of the Glenn Law Firm. Glenn opened bank accounts
3 for each Glenn Law Firm bank account to which pool participants contributed funds. Glenn did
4 not act in good faith or knowingly induced the Glenn Law Firm’s fraudulent acts. Black,
5 Mancuso, Tufo, and Glenn Acted Within the Scope of Their Employment, Office, or Agency with
6 Financial Tree, Financial Solution, New Money, and/or the Glenn Law Firm. Black, Mancuso,
7 Tufo, and Glenn committed the acts and omissions described above within the course and scope
8 of their employment, office, or agency with Financial Tree, Financial Solution, New Money,
9 and/or the Glenn Law Firm.

10 Suisse Group and JMC Were Alter Egos of Caswell. When Financial Solution and the
11 Glenn Law Firm transferred a total of \$800,000 to Suisse Group and JMC in June and September
12 2016, Caswell controlled both entities as the lone Director of Suisse Group and the lone
13 Managing Member of JMC. Suisse Group and JMC share the same UPS store mailing address
14 and the same email address—ctkholdingsfund@gmail.com. Caswell operated Suisse Group and
15 JMC to receive and dissipate ill-gotten funds for his personal benefit.

16 In the three months prior to receiving the \$500,000 transfer from Financial Solution in
17 June 2016, the Suisse Group bank account that received the transfer maintained a balance of
18 \$12.15 or lower. After receiving the \$500,000 transfer, within two days, Suisse Group transferred
19 approximately \$55,000 to JMC (owned by Caswell), approximately \$30,100 to a personal bank
20 account owned by Caswell, and additional funds to other entities and individuals. Over the next
21 two days, Suisse Group transferred a total of approximately \$415,000 to a TD Ameritrade
22 securities account in the name of JMC, which in turn funded a TD Ameritrade forex trading
23 account (“JMC Forex Account”) in the same name. After incurring approximately \$50,000 in
24 trading losses, the JMC Forex Account transferred the remaining approximately \$365,000 to JMC
25 from June to August 2016. After dissipating the approximately \$500,000 in pool funds, the
26 balance in the Suisse Group account that received those funds was, at its highest, approximately
27 \$383.14, and closed in July 2016.

28 ///

1 After the JMC Forex Account transferred approximately \$365,000 in pool funds to JMC
2 in July and August 2016, Caswell transferred approximately \$88,087.33 to a checking account
3 Caswell controlled and otherwise dissipated the remaining funds on business and personal
4 expenses having nothing to do with the Black Pools. Similarly, within one week of the Glenn
5 Law Firm transferring \$300,000 to JMC in September 2016, Caswell transferred approximately
6 \$200,000 to Landes; withdrew approximately \$1,500 in cash from this account; transferred
7 approximately \$32,000 to personal bank accounts owned by Caswell; transferred approximately
8 \$68,350 to various individuals including another person with the last name “Caswell;” and made
9 payments from this account for massages, insurance premiums, and a mobile phone. After
10 dissipating the pool funds, in 2016, the balance in that account was, at its highest, approximately
11 \$155, and the account was overdrawn by December 2016.

12 II. CONCLUSIONS OF LAW

13 A. The CFTC Has Established Jurisdiction and Venue

14 This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. §
15 13a-1 (2018), which provides that whenever it shall appear to the CFTC that any person has
16 engaged, is engaging, or is about to engage in any act or practice constituting a violation of any
17 provision of the Act or any rule, regulation, or order promulgated thereunder, the CFTC may
18 bring an action in the proper district court of the United States against such person to enjoin such
19 act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.
20 See also 28 U.S.C. § 1331 (2018) (federal question jurisdiction) and 28 U.S.C. § 1345 (2018)
21 (jurisdiction over civil actions commenced by the United States or by any agency authorized to
22 sue by Act of Congress).

23 The Court has personal jurisdiction over the Parties because they transacted business
24 within this District and otherwise engaged in acts and practices in violation of the Act and
25 Regulations in this District, among other places. Venue properly lies with this Court pursuant to
26 7 U.S.C. § 13a-1(e), because Parties reside or transact business in this jurisdiction and the acts
27 and practices in violation of the Act and Regulations occurred, are occurring or are about to occur
28 within this District, among other places.

1 B. Default Judgment is Warranted Against All Defaulting Parties

2 1. Legal Standards

3 In accordance with Federal Rule of Civil Procedure 55, default may be entered against a
4 party against whom a judgment for affirmative relief is sought who fails to plead or otherwise
5 defend against the action. See Fed. R. Civ. P. 55(a). However, “[a] defendant’s default does not
6 automatically entitle the plaintiff to a court-ordered judgment.” PepsiCo, Inc. v. Cal. Sec. Cans,
7 238 F.Supp.2d 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25 (9th
8 Cir. 1986)); see Fed. R. Civ. P. 55(b) (governing the entry of default judgments). Instead, the
9 decision to grant or deny an application for default judgment lies within the district court’s sound
10 discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In making this
11 determination, the court may consider the following factors: (1) the possibility of prejudice to the
12 plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4)
13 the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts;
14 (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the
15 Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d
16 1470, 1471-72 (9th Cir. 1986). Default judgments are ordinarily disfavored. Id. at 1472.

17 As a general rule, once default is entered, well-pleaded factual allegations in the operative
18 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.
19 v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.
20 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); see also Fair Housing of Marin v.
21 Combs, 285 F.3d 899, 906 (9th Cir. 2002). Although well-pleaded allegations in the complaint
22 are admitted by a defendant’s failure to respond, “necessary facts not contained in the pleadings,
23 and claims which are legally insufficient, are not established by default.” Cripps v. Life Ins. Co.
24 of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d 1386, 1388
25 (9th Cir. 1978)); accord DIRECTV, Inc. v. Huynh, 503 F.3d 847, 854 (9th Cir. 2007) (“[A]
26 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law”)
27 (citation and quotation marks omitted); Abney v. Alameida, 334 F.Supp.2d 1221, 1235 (S.D. Cal.
28 2004) (“[A] default judgment may not be entered on a legally insufficient claim.”). A party’s

1 default conclusively establishes that party’s liability, although it does not establish the amount of
2 damages. Geddes, 559 F.2d at 560; cf. Adriana Int’l Corp. v. Thoeren, 913 F.2d 1406, 1414 (9th
3 Cir. 1990) (stating in the context of a default entered pursuant to Federal Rule of Civil Procedure
4 37 that the default conclusively established the liability of the defaulting party).

5 2. Analysis

6 a. Possibility of Prejudice to Plaintiff

7 Regarding the first Eitel factor, the CFTC will be prejudiced if default judgment is not
8 entered because it “will be deprived of the opportunity to obtain judicial resolution of its
9 claim[s].” Sky Billiards, 2016 WL 6661175, at *5; see also Halsey v. Colonial Asset Mgmt., No.
10 5:13-cv-02025, 2014 WL 12601015, at *4 (C.D. Cal. July 17, 2014) (concluding plaintiff lacked
11 remedy in absence of default judgment where defendant failed to file responsive pleading). The
12 CFTC has strong, congressionally mandated interests in enforcing the Act, obtaining restitution
13 and disgorgement for victims of fraud, and deterring future wrongdoing through penalties, among
14 other monetary relief. Yet the Parties’ refusal to appear and defend will continue to deprive the
15 CFTC of the opportunity to obtain judgment on the merits. This factor thus supports a default
16 judgment. See SEC v. Fortitude Grp., No. 16-50, 2017 WL 818604, at *2 (W.D. Pa. Feb. 10,
17 2017) (granting SEC’s motion for default judgment because SEC would “be prejudiced by its
18 inability to effectively enforce federal securities laws” if motion were denied).

19 b. Merits of Claims and Sufficiency of Complaint

20 The second and third Eitel factors also weigh in favor of default judgment. The CFTC’s
21 claims are meritorious and the allegations of the Complaint, accepted as true, are sufficient to
22 establish all defendants’ liability. Plaintiff brings six claims based on violations of the
23 Commodity Exchange Act (“the Act”) and Commission Regulations (“Regulations”); each cause
24 of action is addressed individually below. In this context, the court also evaluates the sufficiency
25 of the complaint’s allegations to establish various principles of liability that pertain to the claims
26 collectively.

27 ///

28 ///

1 i. Defendants Committed Commodity Option Fraud in Violation of 7 U.S.C.
2 § 6c(b) (2018) and 17 C.F.R. § 32.4 (2021) (Count One)

3 Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2018), provides, in relevant part, that “[n]o
4 person shall offer to enter into, enter into or confirm the execution of any transaction involving
5 any commodity . . . which is . . . an ‘option’ contrary to” CFTC Regulations. Regulation
6 32.4, 17 C.F.R. § 32.4 (2021), provides:

7 In or in connection with an offer to enter into, the entry into, or the
8 confirmation of the execution of, any commodity option transaction,
9 it shall be unlawful for any person directly or indirectly: (a) To cheat
10 or defraud or attempt to cheat or defraud any other person; (b) To
11 make or cause to be made to any other person any false report or
statement thereof or cause to be entered for any person any false
record thereof; or (c) To deceive or attempt to deceive any other
person by any means whatsoever.

12 “Binary options” transactions are commodity option transactions under the Act and
13 Regulations. See, e.g., CFTC v. Vision Fin. Partners, LLC, 190 F. Supp. 3d 1126, 1130 (S.D.
14 Fla. 2016) (denying motion to dismiss; holding that binary options are commodity options within
15 the meaning of 7 U.S.C. § 6c(b)). Defendants’ conduct occurred “[i]n or in connection with an
16 offer to enter into, the entry into, or the confirmation of the execution of” binary options
17 transactions. Conduct so occurs when, inter alia, a defendant solicits individuals to trade binary
18 options. See CFTC v. Vault Options, Ltd., No. 1:16-CV-01881, 2016 WL 5339716, at *2, *6
19 (N.D. Ill. July 20, 2016) (by “solicit[ing] . . . customers . . . to trade binary commodity options . . .
20 [defendants] offered to enter into . . . binary option transactions”).

21 To establish that Defendants violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 through
22 misrepresentations and omissions, the Commission must prove that (1) Defendants made
23 misrepresentations or omissions; (2) the misrepresentations or omissions were material; and (3)
24 Defendants acted with scienter. CFTC v. R.J. Fitzgerald & Co., Inc., 310 F.3d 1321, 1328 (11th
25 Cir. 2002); Am. Bullion, 2014 WL 12603558, at *4. Misappropriation and issuing false account
26 statements also violates these provisions. See, e.g., Am. Bullion, 2014 WL 12603558, at *7
27 (holding misappropriation violated 7 U.S.C. § 6c(b)) and other anti-fraud provisions of the Act
28 and related Regulations); CFTC v. Weinberg, 287 F. Supp. 2d 1100, 1107 (C.D. Cal. 2003)

1 (default order) (finding false and misleading statements as to amount and location of investors'
2 money violated 7 U.S.C. § 6c(b)).

3 By the conduct described herein, Defendants Financial Tree, Financial Solution, and New
4 Money (acting as a common enterprise) and Defendant Glenn Law Firm, by and through their
5 officers, employees, and agents, and Defendants Black, Mancuso, Tufo, and Glenn, in connection
6 with offers to enter into, entry into, or confirmation of the execution of commodity option
7 transactions, directly or indirectly, and knowingly or recklessly, violated 7 U.S.C. § 6c(b) and 17
8 C.F.R. § 32.4 by, among other things, misrepresenting and omitting material facts in soliciting
9 pool participants, misappropriating funds solicited for the Black Pools, and, in the case of
10 Financial Tree, Financial Solution, and New Money (acting as a common enterprise), by and
11 through their officers, employees, and agents, and Defendant Black, by making and disseminating
12 false account statements.

13 ii. Defendants Committed Forex Fraud in Violation of 7 U.S.C. §

14 6b(a)(2)(A)-(C) (2018) and 17 C.F.R. § 5.2(b) (2021) (Count Two)

15 7 U.S.C. § 6b(a)(2)(A)-(C) of the Act makes it unlawful

16 [f]or any person, in or in connection with any order to make, or the
17 making of, any contract of sale of any commodity for future delivery,
18 or swap, that is made, or to be made, for or on behalf of, or with, any
19 other person, other than on or subject to the rules of a designated
20 contract market—(A) to cheat or defraud or attempt to cheat or
21 defraud the other person; (B) willfully to make or cause to be made
22 to the other person any false report or statement or willfully to enter
or cause to be entered for the other person any false record; [or] (C)
willfully to deceive or attempt to deceive the other person by any
means whatsoever in regard to any order or contract or the
disposition or execution of any order or contract, or in regard to any
act of agency performed, with respect to any order or contract for or,
in the case of paragraph (2), with the other person[.]

23 To show that Defendants violated 7 U.S.C. § 6b(a)(2) through misrepresentations and
24 omissions, the Commission must prove the same elements as those required to prove a violation
25 under 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4. See, e.g., Am. Bullion, 2014 WL 12603558, at *5
26 (citing CFTC v. Rosenberg, 85 F. Supp. 2d 424, 445 (D.N.J. 2000)). The Complaint establishes
27 all three elements, for the reasons described above. Likewise, the Complaint establishes
28 violations of 7 U.S.C. § 6b(a) through misappropriation and through issuing false account

1 statements, for the same reasons previously explained.

2 Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2021), provides, in relevant part:

3 “[i]t shall be unlawful for any person, by use of the mails or by any
4 means or instrumentality of interstate commerce, directly or
indirectly, in or in connection with any retail forex transaction:

5 (1) To cheat or defraud or attempt to cheat or defraud any person; (2)
6 Willfully to make or cause to be made to any person any false report
or statement or cause to be entered for any person any false record;
7 or (3) Willfully to deceive or attempt to deceive any person by any
means whatsoever.

8
9 17 C.F.R. § 5.2(b) adds only one additional element not found in 7 U.S.C. § 6b(a)(2)(A)-
10 (C): that a defendant’s conduct must involve “use of the mails or by any means or instrumentality
11 of interstate commerce.” Here, Defendants communicated with pool participants via email and
12 telephone, both instrumentalities of interstate commerce. And much money was transferred to
13 bank accounts through wire transfers or other instrumentalities of interstate commerce. Thus, the
14 Complaint establishes the additional required element.

15 iii. Defendants Committed Fraud By Commodity Pool Operators (“CPOs”)
16 and Associated Persons (“APs”) of CPOs in Violation of 7 U.S.C. §
17 6o(1)(A)-(B) (2018) (Count Three)

18 Section 1a(10)(A) of the Act, 7 U.S.C. § 1a(10)(A) (2018), defines a “commodity pool” as
19 “any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading
20 in commodity interests,” including for the trading of futures, binary options, or forex. 7 U.S.C. §
21 1a(11)(A)(i) defines a CPO as

22 any person engaged in a business that is of the nature of a commodity
23 pool, investment trust, syndicate, or similar form of enterprise, and
24 who, in connection therewith, solicits, accepts, or receives from
25 others, funds, securities, or property, either directly or through capital
26 contributions, the sale of stock or other forms of securities, or
27 otherwise, for the purpose of trading in commodity interests,
including any—(I) commodity for future delivery, security futures
28 product, or swap; [or] (II) agreement, contract, or transaction
described in [S]ection 2(c)(2)(C)(i) [of the Act] or [S]ection
2(c)(2)(D)(i) [of the Act.]

1 Pursuant to Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2021), and subject to certain
2 exceptions not relevant here, any person who operates or solicits funds, securities, or property for
3 a pooled investment vehicle and engages in retail forex transactions is defined as a retail forex
4 CPO. Pursuant to Section 2(c)(2)(C)(ii)(I) of the Act, 7 U.S.C. § 2(c)(2)(C)(ii)(I) (2018),
5 “[a]greements, contracts, or transactions” in retail forex and accounts or pooled investment
6 vehicles in retail forex “shall be subject to . . . [7 U.S.C. §] 6o,” except in circumstances not
7 relevant here.

8 During the Relevant Period, Defendants Financial Tree, Financial Solution, and New
9 Money (acting as a common enterprise) and Defendant Glenn Law Firm solicited, accepted,
10 and/or received funds for the Black Pools, and thus acted as CPOs and retail forex CPOs, as
11 defined by 7 U.S.C. § 1a(11) of the Act and 17 C.F.R. § 5.1(d)(1), respectively. Regulation 1.3,
12 17 C.F.R. § 1.3 (2021), defines an AP of a CPO as:

13 a natural person associated with: (3) A [CPO] as a partner, officer,
14 employee, consultant, or agent (or any natural person occupying a
15 similar status or performing similar functions), in any capacity which
16 involves (i) the solicitation of funds, securities, or property for a
participation in a commodity pool or (ii) the supervision of any
person or persons so engaged[.]

17 Similarly, 17 C.F.R. § 5.1(d)(2) defines as an AP of a retail forex CPO any person
18 associated with a retail forex CPO (as defined by 17 C.F.R. § 5.1(d)(1)) as:

19 a partner, officer, employee, consultant or agent (or any natural
20 person occupying a similar status or performing similar functions),
21 in any capacity which involves: (i) [t]he solicitation of funds,
22 securities, or property for a participation in a pooled investment
vehicle; or (ii) [t]he supervision of any person or persons so
engaged[.]

23 During the Relevant Period, Defendants Black, Mancuso, Tufo, and Glenn were each
24 associated with one or more of the above CPOs and retail forex CPOs as a partner, officer,
25 employee, consultant, or agent in a capacity that involved the solicitation of funds for the Black
26 Pools, and/or the supervision of any person or persons so engaged. Therefore, these Defendants
27 were APs of a CPO as defined by Regulation 1.3 and APs of a retail forex CPO as defined by
28 Regulation 5.1(d)(2).

1 Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018), provides, in relevant part, that:

2 [i]t shall be unlawful for a . . . [CPO or an AP of a CPO], by use of
3 the mails or any means or instrumentality of interstate commerce,
4 directly or indirectly—(A) to employ any device, scheme, or
5 artifice to defraud any client or participant or prospective client or
6 participant; or (B) to engage in any transaction, practice, or course of
7 business which operates as a fraud or deceit upon any client or
8 participant or prospective client or participant.

9 Defendants violated 7 U.S.C. § 6o(1) by the same fraudulent misconduct described above.
10 7 U.S.C. § 6o(1) is a parallel statute to 7 U.S.C. § 6b of the Act—the same conduct that violates
11 the latter can violate the former. Am. Bullion, 2014 WL 12603558, at *5; Driver, 877 F. Supp.
12 2d at 978. To prove a violation of 7 U.S.C. § 6o(1)(B), the Commission need not prove
13 scienter—only that “the [violator] . . . intended to do what was done and its consequence is to
14 defraud.” See CFTC v. Crombie, 914 F.3d 1208, 1215 (9th Cir. 2019) (citation omitted); CFTC
15 v. Savage, 611 F.2d 270, 285 (9th Cir. 1978).

16 The only additional element set forth in 7 U.S.C. § 6o(1) is that Defendants’ conduct must
17 involve use of the mails or any means or instrumentality of interstate commerce, which it did as
18 described above. 7 U.S.C. § 6o(1) of the Act applies to all CPOs and APs whether registered,
19 required to be registered, or exempt from registration. See Weinberg, 287 F. Supp. 2d at 1107-08
20 (so noting with respect to CPOs).

21 iv. Defendants Failed to Properly Register with the Commission in Violation
22 of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), 6m(1) (2018) and 17 C.F.R. §
23 5.3(a)(2) (2021) (Count Four)

24 Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018), provides that it is unlawful for a CPO,
25 unless registered, “to make use of the mails or any means or instrumentality of interstate
26 commerce in connection with his business as a CPO.” Similarly, Section 2(c)(2)(C)(iii)(I)(cc) of
27 the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), states that a person shall not operate or solicit funds for
28 any pooled investment vehicle in connection with forex transactions, unless registered pursuant to
Commission regulations. Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2021), requires retail
forex CPOs, as defined by 17 C.F.R. § 5.1(d)(1), to register as such with the Commission.

Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2018) states that APs of CPOs who are soliciting for

1 participation in a pool must register with the Commission. And, except in certain circumstances
2 not relevant here, 17 C.F.R. § 5.3(a)(2)(ii) requires those that meet the definition of an AP of a
3 retail forex CPO under Regulation 5.1(d)(2) to register as an AP of a CPO with the Commission.
4 See, e.g., Am. Bullion, 2014 WL 12603558, at *7 (finding defendants who should have registered
5 but failed to register as CPOs and APs violated the Act and Regulations).

6 For the reasons described above, Defendants Financial Tree, Financial Solution, and New
7 Money (acting as a common enterprise) and the Glenn Law Firm are CPOs, and Defendants
8 Black, Mancuso, Tufo, and Glenn are APs of CPOs. Although required by the Act and
9 Regulations, they did not register with the Commission as such. Defendants thus violated 7
10 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), 6m(1), and 17 C.F.R. § 5.3(a)(2)(i)-(ii).

11 v. Defendants Financial Tree, Financial Solution, and the Glenn Law Firm
12 Failed to Operate Pools as Separate Entities and Commingled Pool Funds
13 in Violation of 17 C.F.R. § 4.20(a)(1), (b)-(c) (2021) (Count Five)

14 Regulation 4.20(a)(1), 17 C.F.R. § 4.20(a)(1) (2021), requires a CPO, whether registered
15 or not, to operate its pool as a legal entity separate from that of the CPO. See, e.g., Am. Bullion,
16 2014 WL 12603558, at *7 (finding CPOs violated 17 C.F.R. § 4.20(a)(1) and (b) when they failed
17 to operate pool as separate legal entity and received pool funds in a name other than that of the
18 pool). 17 C.F.R. § 4.20(c) prohibits a CPO, whether registered or not, from commingling the
19 property of any pool it operates with the property of any other person. See, e.g., Capitol Equity
20 FX, 2017 WL 9565340, at *5 (holding that CPO violated 17 C.F.R. § 4.20(c) by commingling
21 pool funds with non-pool property). Regulation 5.4, 17 C.F.R. § 5.4 (2021), states that Part 4 of
22 the Regulations, 17 C.F.R. pt. 4 (2021), applies to any person required to register as a CPO
23 pursuant to Part 5 of the Regulations, 17 C.F.R. pt. 5 (2021), relating to forex transactions.

24 During the Relevant Period, Financial Tree and Financial Solution violated Regulation
25 4.20(a)(1) by failing to operate the FT Pool and FSG Pool, respectively, as a legal entity separate
26 from that of the CPO. Financial Tree and Financial Solution violated Regulation 4.20(c) by
27 transferring pool funds into bank accounts controlled by Black, Mancuso, Tufo, and others which
28 contained non-pool property. During the Relevant Period, the Glenn Law Firm, while acting as

1 CPO for the Black Pools, violated Regulation 4.20(b) by failing to receive pool participants'
2 funds in the names of the Black Pools and violated Regulation 4.20(c) by accepting pool funds
3 into bank accounts containing non-pool property.

4 vi. Defendants Financial Tree, Financial Solution, New Money, and the Glenn
5 Law Firm Failed to Provide Pool Participants with Disclosure and Other
6 Required Documents in Violation of 17 C.F.R. §§ 4.21, 4.22 (2021) (Count
7 Six)

8 Regulation 5.4, 17 C.F.R. § 5.4 (2021), states that Part 4 of the Regulations, 17 C.F.R. pt.
9 4 (2021), applies to any person required to register as a CPO pursuant to Part 5 of the
10 Regulations, 17 C.F.R. pt. 5 (2021), relating to forex transactions. Regulation 4.21(a)(1), 17
11 C.F.R. § 4.21(a)(1) (2021), provides that:

12 each commodity pool operator registered or required to be registered
13 under the Act must deliver or cause to be delivered to a prospective
14 participant in a pool that it operates or intends to operate a Disclosure
15 Document for the pool prepared in accordance with §§ 4.24 and 4.25
by no later than the time it delivers to the prospective participant a
subscription agreement for the pool . . .

16 Regulation 4.22(a), (c), 17 C.F.R. § 4.22(a), (c) (2021), provides that:

17 each commodity pool operator registered or required to be registered
18 under the Act must periodically distribute to each participant in each
19 pool . . . an Account Statement, which shall be presented in the form
20 of a Statement of Operations and a Statement of Changes in Net
Assets . . . [and which] must be presented and computed in
accordance with generally accepted accounting principles . . . [and]
must [also] distribute an Annual Report

21 See, e.g., Am. Bullion, 2014 WL 12603558, at *7 (finding CPOs violated Regulations 4.21 and
22 4.22 when they failed to provide a required disclosure document and account statements).

23 Defendants Financial Tree, Financial Solution, and New Money (acting as a common
24 enterprise) and the Glenn Law Firm failed to provide prospective pool participants with a pool
25 disclosure document in the form specified in Regulations 4.24 and 4.25. Nor did these
26 Defendants provide accurate account statements presented and computed in accordance with
27 generally accepted accounting principles and containing required information, fees, and expenses
28 incurred by the Black Pools, or an annual report containing financial statements certified by an

1 independent public accountant. Accordingly, Financial Tree, Financial Solution, New Money,
2 and the Glenn Law Firm violated 17 C.F.R. §§ 4.21, 4.22.

3 vii. Defendants Black and Glenn Are Liable as Controlling Persons for the
4 Unlawful Conduct of the Entities They Controlled

5 Controlling persons are liable for violations of the entities they control under certain
6 circumstances. Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018), states that a controlling person
7 of an entity is liable for the violations of that entity if the controlling person knowingly induced
8 the violations, directly or indirectly, or did not act in good faith. “A fundamental purpose of
9 Section 13[(b)] is to allow the Commission to reach behind the corporate entity to the controlling
10 individuals of the corporation and to impose liability for violations of the Act directly on such
11 individuals as well as the corporation itself.” R.J. Fitzgerald, 310 F.3d at 1334 (citation omitted)
12 (defendant who was ultimate decision maker at firm, was ultimately responsible for compliance
13 with Act and Regulations, and reviewed and approved activities violating Act was controlling
14 person); see also Capitol Equity FX, 2017 WL 9565340, at *4 (noting that “one is a controlling
15 person when he or she has the possession, direct or indirect, of the power to direct or cause the
16 direction of the management and policies of a person” and holding that husband and wife
17 who were president and sole owner, respectively, of relevant entities and opened trading accounts
18 in entities’ names were controlling persons of those entities); CFTC v. FX First, Inc., No. SACV
19 03-1454JVS (MLGx), 2007 WL 9711431, at *8–12 (C.D. Cal. Sept. 28, 2007) (applying 7 U.S.C.
20 § 13c(b) and finding controlling person liability).

21 Defendant Black was a controlling person of Financial Tree, Financial Solution, and New
22 Money during the Relevant Period. Black caused the creation of Financial Tree, Financial
23 Solution, and New Money. Black is the lone Trustee of Financial Tree and Financial Solution
24 and is the Managing Director of New Money. Financial Tree’s and Financial Solution’s Articles
25 of Trust list Black as Trustee having exclusive control of Financial Tree and Financial Solution.
26 New Money’s registration documents with the Nevada Secretary of State list Black and Financial
27 Tree (which Black controls) as New Money’s two managers. Black opened bank accounts for
28 Financial Tree, Financial Solution, and New Money and was the sole signatory on those accounts.

1 Black signed Agreements on behalf of Financial Solution and New Money. Therefore, pursuant
2 to 7 U.S.C. § 13c(b), Black is liable for all of Financial Tree’s, Financial Solution’s, and New
3 Money’s violations of the Act and Regulations as described in Counts 1 through 6 of the
4 Complaint and above.

5 Defendant Glenn was a controlling person of the Glenn Law Firm during the Relevant
6 Period. Glenn is the Managing Partner of the Glenn Law Firm, whose website does not list other
7 attorneys as being members of the firm. Glenn signed the August 25, 2014 “Paymaster
8 Agreement” with Financial Tree on behalf of the Glenn Law Firm. Glenn opened bank accounts
9 for each Glenn Law Firm bank account to which pool participants contributed funds. Therefore,
10 pursuant to 7 U.S.C. § 13c(b), Glenn is liable for all of the Glenn Law Firm’s violations of the
11 Act and Regulations as described in Counts 1 through 6 of the Complaint and above.

12 viii. Defendants Financial Tree, Financial Solution, New Money, and the Glenn
13 Law Firm Are Liable For the Acts of Their Agents Black, Mancuso, Tufo,
14 and/or Glenn

15 Corporate entities can also be liable for the acts of individuals acting on their behalves.
16 Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2
17 (2020), state that the act, omission, or failure of any person acting for any entity within the scope
18 of his employment or office shall be deemed the act, omission or failure of such entity, as well as
19 of that person. See R.J. Fitzgerald, 310 F.3d at 1335 (imposing liability on corporate entity
20 because of acts of individuals); Am. Bullion, 2014 WL 12603558, at *8 (same). During the
21 Relevant Period, Defendants Black, Mancuso, Tufo, and Glenn were officers, employees, or
22 agents of Financial Tree, Financial Solution, and New Money. Likewise, Defendant Glenn was
23 an officer, employee, or agent of the Glenn Law Firm. Therefore, pursuant to 7 U.S.C. §
24 2(a)(1)(B) and 17 C.F.R. § 1.2, Financial Tree, Financial Solution, New Money, and the Glenn
25 Law Firm are liable for each of the acts, misrepresentations, omissions, and failures of those
26 officers, employees, or agents done in the scope of their employment or office, as described in
27 Counts 1 through 6 of the Complaint and above.

28 ///

ix. Defendants Financial Tree, Financial Solution, and New Money Are Liable for the Acts of Each Other as a Common Enterprise

When defendants act “[a]s a common enterprise,” they may be held “jointly and severally liable for the acts of the common scheme.” Am. Bullion, 2014 WL 12603558, at *8 (citations omitted); see, e.g., Noble Wealth, 90 F. Supp. 2d at 691. When determining whether a common enterprise exists, courts consider “a variety of factors, including: common control; the sharing of office space and officers; whether business is transacted through a maze of interrelated companies; unified advertising; and evidence which reveals that no real distinction existed between the Corporate Defendants.” Am. Bullion, 2014 WL 12603558, at *8 (internal citations and quotations omitted) (finding two entities operated as a common enterprise because “[t]heir principals are the same, their employees are the same and their customers are the same” and “there is no meaningful distinction between the two entities”). Black formed, opened bank accounts for, is the only employee associated with, and controls Financial Solution, New Money, and Financial Tree. Financial Solution and Financial Tree share the same address—a UPS store in Folsom, California. The only business Financial Solution, New Money, and Financial Tree conducted was related to Defendants’ fraud. These facts warrant treating Financial Tree, Financial Solution, and New Money as a common enterprise, thus making each individual company liable for the deceptive acts and practices of the other, as reflected in Counts 1 through 6 of the Complaint.

x. Relief Defendants Are Liable for Disgorgement

Each Relief Defendant received ill-gotten funds with no entitlement to those funds and is thus liable for disgorgement. To support disgorgement against a relief defendant, the CFTC need only demonstrate that the relief defendant received ill-gotten funds and does not have a legitimate claim to those funds. SEC v. World Capital Mkt., Inc., 864 F.3d 996, 1004 (9th Cir. 2017); Am. Bullion, 2014 WL 12603558, at *8 (holding Relief Defendants who received over \$1 million in pool funds without providing legitimate services or having legitimate claim to those funds should be required to disgorge such funds). The relief defendant must disgorge such funds even if the relief defendant no longer possesses the funds. See World Capital Mkt., 864 F.3d at 1007

1 (“ongoing possession of the funds is not required for disgorgement”). As the Complaint
2 describes, each Relief Defendant received pool funds, either directly from Defendants or through
3 other Relief Defendants. The Relief Defendants have no legitimate claim to pool funds and did
4 not provide any services related to the Black Pools for pool participants. The Relief Defendants
5 are thus required to disgorge the money they received.

6 xi. Relief Defendant Caswell Is Jointly and Severally Liable for Relief
7 Defendants Suisse Group’s and JMC’s Disgorgement Obligations

8 Relief Defendant Caswell is jointly and severally liable for Relief Defendants Suisse
9 Group’s and JMC’s disgorgement obligations because Suisse Group and JMC were alter egos of
10 Caswell. In the Ninth Circuit, an individual relief defendant may be held jointly and severally
11 liable for disgorgement of ill-gotten funds received by an entity relief defendant where the entity
12 is the alter ego of the individual. See FTC v. Ivy Capital, Inc., 616 Fed. Appx. 360, 361 (9th Cir.
13 2015) (holding district court did not err in finding entity was alter ego of jointly and severally
14 liable individual where individual was 51% owner, entity funds were used to pay personal
15 expenses, and adherence to the corporate fiction would promote injustice). Under California law,
16 to prove alter ego liability, (1) there must be “such unity of interest and ownership that the
17 separate personalities of the corporation and the individual no longer exist, and (2) that, if the acts
18 are treated as those of the corporation alone, an inequitable result will follow.” Associated
19 Vendors, Inc. v. Oakland Meat Co., 210 Cal. App. 2d 825, 837 (1962) (citations omitted)
20 (identifying factors supporting alter ego liability, including commingling and personal use of
21 corporate funds and other assets, undercapitalization of the corporate entity, the disregard of legal
22 formalities and failure to maintain an arms-length relationship among related entities, and use of
23 the same office locations and employment of the same employees).

24 Here, Caswell solely owned and controlled Suisse Group and JMC. Both entities shared
25 the same UPS store mailing address and the same email address. Caswell transferred corporate
26 funds to himself as well as apparent relatives and friends, made payments from corporate
27 accounts for personal expenses such as massages and mobile phones, transferred pool funds from
28 Suisse Group to JMC, and, for most of 2016, maintained almost zero funds, beyond pool funds, in

1 the bank accounts that received transfers from Defendants in 2016. It appears Caswell utilized
2 Suisse Group and JMC not for legitimate business purposes, but to receive and immediately
3 dissipate ill-gotten pool funds. It would be inequitable for Suisse Group and JMC to avoid
4 disgorging the \$800,000 they collectively received simply because Caswell transferred the money
5 elsewhere. Thus, Suisse Group, JMC, and Caswell are jointly and severally liable for
6 disgorgement of the \$800,000 on an alter ego basis.

7 c. Sum of Money at Stake

8 The fourth Eitel factor, “the amount of money at stake in relation to the seriousness of the
9 defendant’s conduct” weighs in favor of a default judgment. PepsiCo, Inc. v. Los Potros Dist.
10 Ctr., LLC, No. CV-07-2425, 2008 WL 942283, at *3 (D. Ariz. Apr. 7, 2008). Although the
11 amount of money at stake in this case is large, the restitution and civil monetary penalties the
12 CFTC seeks from Defendants, as well as the disgorgement the CFTC seeks from Relief
13 Defendants, are consistent with awards and penalties in similar enforcement actions. See, e.g.,
14 CFTC v. Driver, 877 F. Supp. 2d 968, 981 (C.D. Cal. 2012) (awarding over \$9.5 million in
15 restitution and a \$31.8 million civil monetary penalty) aff’d 585 F. App’x 366 (9th Cir. 2014);
16 CFTC v. Am. Bullion Exch. ABEX, Corp. (“Am. Bullion”), No. SACV10-1876, 2014 WL
17 12603558, at *10-11 (C.D. Cal. Sept. 16, 2014) (entering default judgment for CFTC and
18 ordering defendants to pay a civil monetary penalty of triple the defendants’ gain, which
19 exceeded \$14 million, and ordering two relief defendants to disgorge \$1.25 million and \$110,600,
20 respectively, reflecting pool funds improperly received by those relief defendants); CFTC v.
21 Schiera, No. CV05 2660, 2006 WL 4586786, at *7, *9 (S.D. Cal. Dec. 11, 2006) (entering default
22 judgment and ordering defendants to disgorge \$3 million and pay a \$9 million civil monetary
23 penalty).

24 Moreover, Defendants’ fraudulent conduct and registration violations constitute core
25 violations of the Act and Regulations which attack the integrity of the commodity markets. The
26 CFTC’s requested relief is therefore reasonable. See Sky Billiards, 2016 WL 6661175, at *5
27 (entering default judgment and noting that the “award [was] consistent with other default
28 judgment awards in the context of [similar cases].”).

1 d. Possibility of Factual Disputes

2 The fifth Eitel Factor, the possibility of a dispute as to material facts, weighs in favor of a
3 default judgment. The Complaint details Defendants' fraudulent solicitations, misappropriation
4 of pool funds, and extensive efforts to conceal and prolong the scheme. The Complaint refers to,
5 and relies heavily on, documentary evidence such as emails and account statements reflecting
6 Defendants' communications and financial activities. Given this, the likelihood of a genuine
7 factual dispute on a material issue is exceedingly remote. See also Sky Billiards, 2016 WL
8 6661175, at *5 (recognizing that the defendant's failure to respond "supports the conclusion that
9 the possibility of a dispute as to the material facts is minimal").²

10 e. Excusable Neglect

11 As to the sixth Eitel factor, there was no excusable neglect for the defaults because all
12 Parties were properly served with the Summons and Complaint in July and August 2020. See
13 Halsey, 2014 WL 12601015, at *4 (recognizing that proper service of process supports a finding
14 that default is not due to excusable neglect). Since that time, Black and the Glenn Defendants
15 appeared only to litigate matters related to stay and default, then ultimately chose to default. The
16 remaining, non-appearing Parties made no effort to appear and defend this lawsuit either pro se
17 (in the case of individual Parties) or through counsel (as permitted for individuals and required for
18 entity Parties). Notably, this Court explicitly placed the Parties on notice of the requirements
19 under E.D. Cal. L.R. 183(a) for entities to appear through counsel. See, e.g., ECF Nos. 48, 96
20

21 ² The court notes that non-parties Michael J. Jacobs and Ruby Handler Jacobs filed a "notice"
22 with the court as a "courtesy" that purports to argue the facts of this case. ECF No. 128 at 1, 8.
23 The Jacobses, who were officers of the "now defunct named Relief Defendant Kingdom Trust
24 LLC" make clear that they "speak for themselves as they are not authorized to represent nominal
25 Kingdom in this action." ECF No. 128 at 2. Their statements as non-parties do not alter the
26 outcome of this Eitel factor because in the default judgment context, the court makes a
27 determination based on the well-pleaded facts in the Complaint which, as discussed above,
28 support default judgment against Relief Defendant Kingdom in this case. Kingdom, the actual
party to this case, has not raised any dispute as to material facts and is inarguably in default. ECF
No. 50. The Court has previously explained that Michael Jacobs may not represent Kingdom in
this matter. ECF No. 48. The Jacobses' notice is an attempt at an end-run around their inability
to represent Kingdom and it does not alter the court's analysis with respect to the entry of default
judgment.

1 (rejecting efforts by Financial Tree, Financial Solution, New Money, and Kingdom to appear
2 through non-attorney principals). Thus, the Parties’ defaults cannot be excused.

3 f. Policy Favoring Merits Determinations

4 Finally, the seventh Eitel factor—the general preference for deciding cases on the
5 merits—does not counsel against a default judgment here because “[d]efendant[s]’ failure to
6 answer Plaintiffs’ Complaint makes a decision on the merits impractical, if not impossible.”
7 PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (noting that the on-
8 the-merits “preference, standing alone, is not dispositive”) (citation omitted). In addition,
9 countervailing interests outweigh any residual interest in preserving the remote potential for a
10 merits decision. “[T]he CFTC is the statutory guardian entrusted with the enforcement of the
11 congressional scheme for safeguarding the public interest in commodity futures markets.” See
12 Stephen Bronte, Advisors, LLC v. CFTC, 90 F. App’x 251, 252 (9th Cir. 2004) (internal
13 quotations and citations omitted). Absent a default judgment, the CFTC will likely be unable to
14 secure an order of restitution and disgorgement on behalf of defrauded pool participants, deter
15 misconduct through penalties, and protect the public through permanent injunctive relief. This
16 weighs in favor of a default judgment.

17 g. Conclusion

18 For the reasons explained above, all Eitel factors weigh in favor of default judgment.
19 Accordingly, default judgment is appropriate in this case. What remains is a determination of the
20 terms of relief.

21 **III. RECOMMENDED TERMS OF JUDGMENT**

22 A. Permanent Injunction

23 The CFTC is authorized to seek, and the Court to impose, injunctive relief. Section 6c of
24 the Act, 7 U.S.C. § 13a-1(a) (2018). “The CFTC is entitled to a permanent injunction upon a
25 showing that a violation [of the Act or Regulations] has occurred and is likely to continue unless
26 enjoined.” Driver, 877 F. Supp. 2d at 981. “Once a violation is demonstrated, the [CFTC] need
27 show only that there is some reasonable likelihood of future violations.” CFTC v. Wilson, No.

28 ///

1 11-cv-1651, 2011 WL 6398933, at *2 (S.D. Cal. Dec. 20, 2011) (quoting CFTC v. Hunt, 591 F.2d
2 1211, 1220 (7th Cir. 1979)).

3 The well-pleaded facts of the CFTC’s Complaint, and the evidence submitted through
4 declarations, establish a long-standing pattern of sophisticated unlawful conduct. In light of these
5 facts, the undersigned finds it highly likely that Defendants will be repeat violators of the Act and
6 Regulations unless permanently restrained and enjoined by the Court. Defendants’ repetitive
7 prior misconduct—fraudulently soliciting over ninety pool participants over five years,
8 misappropriating their money, and offering bogus excuses for failure to return funds—is highly
9 suggestive of future violations. So too is Defendants’ disregard of the California DBO’s Desist &
10 Refrain Order against Black, Mancuso, and Financial Solution in April 2018 and repeated
11 complaints from pool participants to that Defendants were defrauding them. Mancuso continued
12 falsely promising disbursement of funds to pool participants and discouraging cooperation with
13 the CFTC at least as recently as August 2020—well after being served with the SRO entered by
14 this Court. And Tufo is a recidivist—he has been charged civilly and criminally with two prior
15 fraudulent schemes. Defendants have shown no signs of stopping their fraud.

16 Based upon and in connection with the foregoing conduct, pursuant to 7 U.S.C. § 13a-1,
17 Defendants should be permanently restrained, enjoined and prohibited from directly or indirectly
18 engaging in conduct in violation of Sections 4b(a)(2)(A), (C), 4c(b), 4k(2), 4m(1), 4o(1)(A)-(B),
19 and 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C), 6c(b), 6k(2), 6m(1), 6o(1)(A)-
20 (B), and 2(c)(2)(C)(iii)(I)(cc) (2018), and Regulations 5.2(b)(1)-(3), 5.3(a)(2), and 32.4, 17 C.F.R.
21 §§ 5.2(b)(1)-(3), 5.3(a)(2), and 32.4 (2021), including:

22 a. Cheating or defrauding, or attempting to cheat or defraud, any other person; or
23 deceiving, or attempting to deceive, any other person by any means whatsoever; in or in
24 connection with an offer to enter into, the entry into, or the confirmation of the execution of, any
25 commodity option transaction;

26 b. in or in connection with any order to make, or the making of, any contract of sale
27 of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or
28 with, any other person, (i) cheating or defrauding, or attempting to cheat or defraud, any other

1 person; or (ii) willfully deceiving or attempting to deceive any other person by any means
2 whatsoever in regard to any order or contract or the disposition or execution of any order or
3 contract, or in regard to any act of agency performed, with respect to any order or contract for or
4 with the other person;

5 c. acting as a CPO or an AP of a CPO and employing any device, scheme, or artifice
6 to defraud any client or participant or prospective client or participant; or engaging in any
7 transaction, practice, or course of business which operates as a fraud or deceit upon any client or
8 participant or prospective client or participant; or

9 d. acting as a CPO or an AP of a CPO without being registered with the CFTC.

10 Based upon and in connection with the foregoing conduct, pursuant to 7 U.S.C. § 13a-1,
11 Defendants Financial Tree, Financial Solution, New Money, and Black should also be
12 permanently restrained, enjoined, and prohibited from directly or indirectly engaging in conduct
13 in violation of 7 U.S.C. § 6b(a)(2)(B), including willfully making or causing to be made to any
14 other person any false report or statement or willfully entering or causing to be entered for the
15 other person any false record, in or in connection with any order to make, or the making of, any
16 contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or
17 on behalf of, or with, any other person.

18 Based upon and in connection with the foregoing conduct, pursuant to 7 U.S.C. § 13a-1,
19 Defendants Financial Tree, Financial Solution, New Money, the Glenn Law Firm, Black, and
20 Glenn should also be permanently restrained, enjoined and prohibited from directly or indirectly
21 engaging in conduct in violation of 7 U.S.C. § 6b(a)(2)(B) and 17 C.F.R. §§ 4.20(a)(1), (b)-(c),
22 4.21, and 4.22, including failing to properly operate any commodity pool in compliance with the
23 Act and Regulations, including but not limited to 17 C.F.R. §§ 4.20(a)(1), (b)-(c), 4.21, and 4.22.

24 Defendants should also be permanently restrained, enjoined and prohibited from directly
25 or indirectly:

26 a. Trading on or subject to the rules of any registered entity (as that term is defined in
27 Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));

28 ///

1 b. Entering into any transactions involving “commodity interests” (as that term is
2 defined in Regulation 1.3, 17 C.F.R. § 1.3 (2021)), for their own personal account or for any
3 account in which they have a direct or indirect interest;

4 c. Having any commodity interests traded on their behalves;

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

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

9 f. Applying for registration or claiming exemption from registration with the CFTC
10 in any capacity, and engaging in any activity requiring such registration or exemption from
11 registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. §
12 4.14(a)(9) (2021); and/or

13 g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. §
14 3.1(a) (2021)), agent or any other officer or employee of any person (as that term is defined in 7
15 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the
16 CFTC except as provided for in 17 C.F.R. § 4.14(a)(9).

17 B. Restitution

18 The CFTC is authorized to seek, and the Court to impose, equitable remedies for
19 violations of the Act and Regulations, including “restitution to persons who have sustained losses
20 proximately caused by such violation (in the amount of such losses).” 7 U.S.C. § 13a-1(d)(3)(A).
21 Restitution exists to “restore the status quo” and reflects “the difference between what defendants
22 obtained and the amount customers received back” Driver, 877 F. Supp. 2d at 981; see also
23 CFTC v. Leighton, No. 2:12-cv-04012, 2013 WL 4101874, at *9 (C.D. Cal. July 8, 2013).

24 Defendants Financial Tree, Financial Solution, New Money, the Glenn Law Firm, Black,
25 Mancuso, and Glenn should be ordered to pay, jointly and severally, restitution in the amount of
26 \$10,495,328.38 (“General Restitution Obligation”), representing net pool participant losses. See
27 Robinson Decl. ¶ 11 (describing losses). If the General Restitution Obligation is not paid
28 immediately, post-judgment interest should accrue on the General Restitution Obligation

1 beginning on the date of entry of this Order and shall be determined by using the Treasury Bill
2 rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

3 Defendant Tufo should be ordered to pay, jointly and severally with the remaining
4 Defendants, restitution in the amount of \$4,690,155.52 (“Tufo Restitution Obligation,” and
5 together with the General Restitution Obligation [of which the Tufo Restitution Obligation is a
6 subset], the “Restitution Obligations”), representing total losses by pool participants Tufo
7 fraudulently solicited. See Robinson Decl. ¶ 11. If the Tufo Restitution Obligation is not paid
8 immediately, post-judgment interest should accrue on the Tufo Restitution Obligation beginning
9 on the date of entry of this Order and shall be determined by using the Treasury Bill rate
10 prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

11 Defendants Black, Mancuso, and Tufo are currently defendants in a criminal action
12 charging them, in part, for the misconduct that is at issue in this matter. See The People of the
13 State of California v. Christopher J. Mancuso, John D. Black, and Joseph P. Tufo, Case No. 20-
14 FE-011219 (Superior Court of the State of California, County of Sacramento, filed July 22, 2020)
15 (with respect to Black, the “Black Criminal Action;” with respect to Mancuso, the “Mancuso
16 Criminal Action;” and with respect to Tufo, the “Tufo Criminal Action”). For amounts disbursed
17 to pool participants as a result of satisfaction of any restitution ordered (1) in the Black Criminal
18 Action or the Mancuso Criminal Action, Defendants should receive a dollar-for-dollar credit
19 against the General Restitution Obligation; or (2) in the Tufo Criminal Action, Defendants should
20 receive a dollar-for-dollar credit against both Restitution Obligations. Within ten days of
21 disbursement in the Criminal Action to pool participants, Mancuso and Tufo should be ordered to
22 transmit, under a cover letter that identifies the name and docket number of this proceeding, to the
23 Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155
24 21st Street, NW, Washington, D.C. 20581, and the Office of Administration, National Futures
25 Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, copies of the form
26 of payment to those pool participants; with a copy to Charles Marvine, Deputy Director,
27 Commodity Futures Trading Commission, 2600 Grand Boulevard, Suite 210, Kansas City, MO
28 64108.

1 To effect payment of the Restitution Obligations and the distribution of any restitution
2 payments to pool participants, the Court should appoint the National Futures Association
3 (“NFA”) as Monitor (“Monitor”). The Monitor should be directed to receive restitution payments
4 from Defendants and make distributions as set forth below. Because the Monitor will be acting as
5 an officer of this Court in performing these services, the NFA shall not be liable for any action or
6 inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

7 Defendants should be ordered to make payments of their Restitution Obligations, and any post-
8 judgment interest payments, under this Order to the Monitor in the name “Financial Tree
9 Restitution Fund” and directed to send such payments by electronic funds transfer, or by U.S.
10 postal money order, certified check, bank cashier’s check, or bank money order, to the Office of
11 Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago,
12 Illinois 60606 under cover letter that identifies the paying Defendant(s) and the name and docket
13 number of this proceeding. Defendants should be further ordered as follows: If payment by
14 electronic funds transfer is chosen, Defendants shall contact Daniel Driscoll or his successor at
15 312-781-1300 or at the address above to receive payment instructions and shall fully comply with
16 those instructions. Defendants shall simultaneously transmit copies of the cover letter and the
17 form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three
18 Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; with a copy to Charles
19 Marvine, Deputy Director, Commodity Futures Trading Commission, 2600 Grand Boulevard,
20 Suite 210, Kansas City, MO 64108.

21 It should be further ordered as follows: The Restitution Obligations shall be partially
22 satisfied by applying amounts currently frozen in conjunction with this lawsuit. See ECF No. 9 at
23 2 n.1, 20-21, 24-25 (SRO prohibiting the Parties from transferring, removing, dissipating, and
24 disposing of their assets and prohibiting financial institutions and others who hold, control, or
25 maintain custody of any of the Parties’ assets from permitting the Parties to dispose of those
26 assets); ECF No. 33 at 18-19 (Preliminary Injunction extending asset freeze until further order of
27 the Court). All Assets, as defined in the SRO (ECF No. 9 at 2 n.1), currently frozen (“Frozen
28 Assets”) shall be applied toward any restitution award the Court may order, with the exception of

1 the Glenn Defendants' Frozen Assets.³ Financial Institutions and others who hold or control
2 Frozen Assets shall transfer Frozen Assets to the Monitor within three days of receiving actual
3 notice of this Order, including notice via electronic mail. Transfers of Tufo's Frozen Assets shall
4 reduce both Restitution Obligations by the amount transferred. Transfers of any other Frozen
5 Assets shall reduce the General Restitution Obligation by the amount transferred. Transfers to the
6 Monitor shall follow the procedure prescribed above.

7 It should be further ordered as follows: The Monitor shall oversee the Restitution
8 Obligations and shall have the discretion to determine the manner of distribution of such funds in
9 an equitable fashion to pool participants identified by the CFTC or may defer distribution until
10 such time as the Monitor deems appropriate. In the event that the amount of Restitution
11 Obligations payments to the Monitor are of a de minimis nature such that the Monitor determines
12 that the administrative cost of making a distribution to eligible pool participants is impractical, the
13 Monitor may, in its discretion, treat such restitution payments as civil monetary penalty
14 payments, which the Monitor shall forward to the CFTC following the instructions for civil
15 monetary penalty payments set forth below.

16 Defendants should be ordered to cooperate with the Monitor as appropriate to provide
17 such information as the Monitor deems necessary and appropriate to identify pool participants to
18 whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of
19 any Restitution Obligations payments. Defendants should be ordered to execute any documents
20 necessary to release funds that they have in any repository, bank, investment or other financial
21 institution, wherever located, in order to make partial or total payment toward the Restitution
22 Obligations.

23
24 ³ On January 6, 2021, Glenn filed for bankruptcy in the United States Bankruptcy Court for the
25 District of Colorado ("Bankruptcy Court") (Case No. 21-10051-KHT). As a result, there is an
26 automatic stay in place pursuant to 11 U.S.C. § 362(a) (2018) prohibiting the CFTC from
27 obtaining an order transferring the Glenn Defendants' assets. See, e.g., SEC v. Miller, 808 F.3d
28 623, 630-35 (2d Cir. 2015). In the event the automatic stay is lifted without disposing of Glenn's
Frozen Assets, or the CFTC is granted an order to lift the automatic stay for the purpose of
transferring or collecting Glenn's Frozen Assets, any such assets shall be transferred and applied
to the General Restitution Obligation pursuant to this paragraph.

1 It should be ordered that the Monitor shall provide the CFTC at the beginning of each
2 calendar year with a report detailing the disbursement of funds to pool participants during the
3 previous year. The Monitor shall transmit this report under a cover letter that identifies the name
4 and docket number of this proceeding to the CFTC recipients specified above.

5 It should be further ordered as follows. The amounts payable to each pool participant
6 shall not limit the ability of any pool participant to prove that a greater amount is owed from
7 Defendants or any other person or entity, and nothing herein shall be construed in any way to
8 limit or abridge the rights of any pool participant that exist under state or common law. Pursuant
9 to Rule 71 of the Federal Rules of Civil Procedure, each pool participant who suffered a loss is
10 explicitly made an intended third-party beneficiary of this Order and may seek to enforce
11 obedience of this Order to obtain satisfaction of any portion of the restitution that has not been
12 paid by Defendants to ensure continued compliance with any provision of this Order and to hold
13 Defendants in contempt for any violations of any provision of this Order.

14 It should be ordered that, to the extent that any funds accrue to the U.S. Treasury for
15 satisfaction of the Restitution Obligations, such funds shall be transferred to the Monitor for
16 disbursement in accordance with the procedures set forth above.

17 C. Disgorgement

18 To support disgorgement against a relief defendant, the CFTC need only demonstrate that
19 the relief defendant received ill-gotten funds and does not have a legitimate claim to those funds.
20 SEC v. World Capital Mkt., Inc., 864 F.3d 996, 1004 (9th Cir. 2017); Am. Bullion, 2014 WL
21 12603558, at *8 (holding Relief Defendants who received over \$1 million in pool funds without
22 providing legitimate services or having legitimate claim to those funds should be required to
23 disgorge such funds). The CFTC has so demonstrated with respect to Relief Defendants. Relief
24 Defendants Caswell, Suisse Group, and JMC shall pay, jointly and severally, disgorgement in the
25 amount of eight hundred thousand dollars (\$800,000) (“Caswell Disgorgement Obligation”),
26 representing ill-gotten funds for which they did not provide legitimate services and to which they
27 do not have a legitimate claim.

28 ///

1 Accordingly, it is recommended that the following language be adopted:

2 Relief Defendant Landes shall pay disgorgement in the amount of
3 two hundred thousand dollars (\$200,000) (“Landes Disgorgement
4 Obligation”), representing ill-gotten funds for which Landes did not
5 provide legitimate services and to which Landes does not have a
6 legitimate claim.

7 Relief Defendant Kingdom shall pay disgorgement in the amount of
8 one million, one hundred thousand dollars (\$1,100,000) (“Kingdom
9 Disgorgement Obligation”), representing ill-gotten funds for which
10 Kingdom did not provide legitimate services and to which Kingdom
11 does not have a legitimate claim.

12 Relief Defendant Anne Mancuso shall pay disgorgement in the
13 amount of two hundred and fifty-two thousand, eight hundred and
14 seventy-four dollars and ninety-three cents (\$252,874.93) (“Anne
15 Mancuso Disgorgement Obligation”), representing ill-gotten funds
16 for which Anne Mancuso did not provide legitimate services and to
17 which she does not have a legitimate claim.

18 Relief Defendant Tyler Mancuso shall pay disgorgement in the
19 amount of three hundred forty thousand, eighty-seven dollars and
20 twenty-three cents (\$340,087.23) (“Tyler Mancuso Disgorgement
21 Obligation,” and together with the Caswell Disgorgement
22 Obligation, Landes Disgorgement Obligation, Kingdom
23 Disgorgement Obligation, and Anne Mancuso Disgorgement
24 Obligation, the “Disgorgement Obligations”), representing ill-gotten
25 funds for which Tyler Mancuso did not provide legitimate services
26 and to which he does not have a legitimate claim.

27 If the Disgorgement Obligations are not paid immediately, then post-
28 judgment interest shall accrue on the Disgorgement Obligations
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). The Relief Defendants
shall pay their respective Disgorgement Obligations and any post-
judgment interest to the Monitor for satisfaction of the General
Restitution Obligation pursuant to the procedure set forth in above,
resulting in a dollar-for-dollar credit against the applicable
Restitution Obligation(s) as well as the applicable Disgorgement
Obligation(s). To the extent the General Restitution Obligation has
been satisfied at the time of a payment made, the payment will simply
result in a credit against the applicable Disgorgement Obligation(s),
and the Monitor shall transfer such funds exceeding the applicable
Restitution Obligation to the CFTC. If funds are to be transferred
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:

Commodity Futures Trading Commission
Division of Enforcement
C/O ESC/AMK-326; HQ RM 265

1 6500 S. MacArthur Blvd.
2 Oklahoma City, OK 73169
3 9-AMC-AR-CFTC@faa.gov

4 If payment by electronic funds transfer is chosen, the Monitor shall
5 contact the email address above to receive payment instructions. To
6 the extent any Relief Defendant's Frozen Assets are utilized to
7 satisfy the General Restitution Obligation described above, that
8 Relief Defendant's Disgorgement Obligation shall be reduced by the
9 amount of that payment.

10 D. Civil Monetary Penalty

11 Under 7 U.S.C. § 13a-1(d)(1), and Regulation 143.8(a)(4)(ii)(D), 17 C.F.R. §
12 143.8(a)(4)(ii)(D) (2021), the CFTC is authorized to seek a civil monetary penalty equal to the
13 higher of triple Defendants' monetary gain from each violation of the Act or Regulations, or
14 \$187,432 per violation. The Court may "fashion a civil monetary penalty appropriate to the
15 gravity of the offense and sufficient to act as a deterrent." CFTC v. Trimble, No. 11-cv-02887,
16 2013 WL 317576, at *9 (D. Colo. Jan. 28, 2013) (citing Miller v. CFTC, 197 F.3d 1227, 1236
17 (9th Cir. 1999)).

18 Based on Defendants' intentional and egregious conduct, civil monetary penalties
19 reflecting three times the monetary net gain to each are appropriate. This penalty is authorized by
20 7 U.S.C. § 13a-1(d)(1)(A). Accordingly, the following language should be adopted:

21 Defendants Black, Financial Tree, Financial Solution, and New
22 Money shall pay, jointly and severally, a civil monetary penalty
23 ("CMP") in the amount of five million, four hundred forty-one
24 thousand, two hundred forty-three dollars and thirteen cents
25 (\$5,441,243.13) ("Black and Black Entities CMP Obligation"),
26 representing three times Black's gains of \$1,809,117.56 and
27 Financial Tree's, Financial Solution's, and New Money's gains of
28 \$4,630.15 received in connection with the violations described
herein.

Defendant Mancuso shall pay a CMP in the amount of twelve
million, one hundred forty-six thousand, nine hundred twenty-one
dollars and twenty-eight cents (\$12,146,921.28) ("Mancuso CMP
Obligation"), representing three times Mancuso's gains received in
connection with the violations described herein.

Defendant Tufo shall pay a CMP in the amount of six hundred
eighty-four thousand dollars and three cents (\$684,000.03) ("Tufo
CMP Obligation"), representing three times Tufo's gains received in

1 connection with the violations described herein.

2 Defendants Glenn and the Glenn Law Firm shall pay, jointly and
3 severally, a CMP in the amount of eight hundred fifty-six thousand,
4 three hundred fourteen dollars and seventy-two cents (\$856,314.72)
5 (“Glenn Defendants CMP Obligation,” and together with the Black
6 and Black Entities CMP Obligation, the Mancuso CMP Obligation,
7 and the Tufo CMP Obligation, the “CMP Obligations”), representing
8 three times the Glenn Defendants’ gains received in connection with
9 the violations described herein.

10 If the CMP Obligations are not paid immediately, then post-
11 judgment interest shall accrue on the CMP Obligations beginning on
12 the date of entry of this Order and shall be determined by using the
13 Treasury Bill rate prevailing on the date of entry of this Order
14 pursuant to 28 U.S.C. § 1961 (2018). Defendants shall pay their
15 CMP Obligations and any post-judgment interest by electronic funds
16 transfer, U.S. postal money order, certified check, bank cashier’s
17 check, or bank money order. If payment is to be made other than by
18 electronic funds transfer, then the payment shall be made payable to
19 the Commodity Futures Trading Commission and sent to the address
20 below:

21
22 Commodity Futures Trading Commission
23 Division of Enforcement
24 C/O ESC/AMK-326; HQ RM 265
25 6500 S. MacArthur Blvd.
26 Oklahoma City, OK 73169
27 9-AMC-AR-CFTC@faa.gov
28

29 If payment by electronic funds transfer is chosen, Defendants shall
30 contact the email address above to receive payment instructions and
31 shall fully comply with those instructions. Defendants shall
32 accompany payment of their respective CMP Obligations with a
33 cover letter that identifies the paying Defendant(s) and the name and
34 docket number of this proceeding. Defendants shall simultaneously
35 transmit copies of the cover letter and the form of payment to the
36 CFTC recipients specified above.

37 E. Provisions Related to Monetary Relief

38 The undersigned recommends adoption of the following additional language related to
39 monetary relief:

40 Partial Satisfaction: Acceptance by the CFTC or the Monitor of any
41 partial payment of the Parties’ Restitution Obligations,
42 Disgorgement Obligations, or CMP Obligations shall not be deemed
43 a waiver of the Parties’ obligation to make further payments pursuant
44 to this Order, or a waiver of the CFTC’s right to seek to compel
45 payment of any remaining balance.

1 Asset Freeze: On July 2, 2020 the court entered an asset freeze order
2 prohibiting the transfer, removal, dissipation and disposal of Frozen
3 Assets (“Asset Freeze Order”). See ECF No. 9 (July 2, 2020 SRO);
4 ECF No. 33 (July 28, 2020 Preliminary Injunction extending asset
5 freeze). The Monitor shall ensure that all of Parties’ Frozen Assets
6 are collected and applied toward the Restitution Obligations, set out
7 above. See Driver, 877 F. Supp. 2d at 981 (applying amounts in bank
8 accounts and futures trading account and frozen by SRO toward
9 restitution obligation). Once the Monitor completes the collection
10 process and notifies the CFTC recipients described above
11 accordingly, the Asset Freeze Order as applied to the Parties only
12 shall be deemed lifted pursuant to the terms of this Order.

13 F. Cooperation

14 The Parties should be ordered to cooperate fully and expeditiously with the CFTC,
15 including the CFTC’s Division of Enforcement, in this action, and in any current or future CFTC
16 investigation or action related thereto. The Parties should also be ordered to cooperate in any
17 investigation, civil litigation, or administrative matter related to, or arising from, this action.

18 G. Miscellaneous Provisions

19 The undersigned recommends adoption of the following miscellaneous provisions, which
20 are necessary to effectuate the judgment:

21 Notice: Unless otherwise specifically required herein, notices
22 required to be given by any provision in this Order shall be sent
23 certified mail, return receipt requested, as follows:

24 Notice to CFTC:

25 Charles Marvine
26 Deputy Director, Division of Enforcement
27 Commodity Futures Trading Commission
28 2600 Grand Boulevard, Suite 210
 Kansas City, MO 64108
 816-960-7743

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

Notice to Defendants and Relief Defendants:

 John D. Black
 Financial Tree
 Financial Solution Group
 New Money Advisors, LLC
 128 Silberhorn Drive

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Folsom, CA 95630
Christopher Mancuso
34 Statehouse Place
Irvine, CA 92602

Joseph Tufo
4631 Shetland Way,
Antioch, CA 94531

John P. Glenn
The Law Firm of John Glenn P.C.
1400 Orange Court
Fort Collins, CO 80525

Herbert Caswell
Suisse Group (USA) LLC
JMC Industries LLC
9626 Scadlocke Road
Jacksonville, FL 32208

Kingdom Trust LLC
c/o Michael Jacobs and Ruby Handler Jacobs
800 NE Calle Davina
Albuquerque, New Mexico 87113

Landes Capital Management, LLC
/o Justin Smith
1346 Iroquois Ave.
Cleveland, Ohio 44124

Anne Mancuso
290 Ambroise
Newport Coast, CA 92657

Tyler Mancuso
290 Ambroise
Newport Coast, CA 92657

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 NFA shall reference the name and docket number of this action.

1 Change of Address/Phone: Until such time as the Parties satisfy in
2 full their Restitution Obligations, Disgorgement Obligations, and
3 CMP Obligations as set forth in this Order, each Party shall provide
4 written notice to the Commission by certified mail of any change to
5 the Party's telephone number and mailing address within ten
6 calendar days of the change.

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

11 Continuing Jurisdiction of this Court: This Court shall retain
12 jurisdiction of this action to ensure compliance with this Order and
13 for all other purposes related to this action, including any motion by
14 a Party to modify or for relief from the terms of this Order.

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

21 IV. RECOMMENDATION

22 Based on the foregoing, the undersigned recommends as follows:

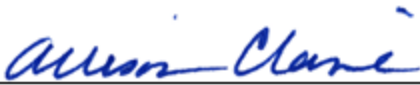
- 23 1. Plaintiff's November 4, 2021 motion for default judgment, (ECF No. 126) be granted;
- 24 2. The court enter judgment in plaintiff's favor and order the relief described above in the
25 language specified;
- 26 3. This case be closed.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
after being served with these findings and recommendations, any party may file written
objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a
document should be captioned "Objections to Magistrate Judge's Findings and
Recommendations." Any response to the objections shall be filed with the court and served on all
parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file
objections within the specified time may waive the right to appeal the District Court's order.

////

1 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57
2 (9th Cir. 1991).

3 DATED: January 3, 2022

4 
5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28